POSSIBLE REFORMS

To introduce no fault liability so that the injured visitor, whether lawful or trespasser, should be able to claim compensation

A possible reform would be to have a state-run compensation scheme paid for by a levy.the government is following an approach of imposing a general tax on all insurance policies and is not proposing to allocate any monies raised to set up such a compensation scheme.

The main reform in this area seems to be the approach of personal responsibility imposed by judges This approach appears to now apply to claims by lawful visitors as shown in the recent cases of Edwards v Sutton BC (2016) and Dean and Chapter of Rochester Cathedral v Debell (2016).

Trespassers who are injured can claim damages for personal injuries only

THE CURRENT APPROACH OF THE COURTS

the courts are trying to send a message that, despite publicity suggesting there is a compensation culture operating in the UK, visitors have to take personal responsibility for their safety and that sometimes pure accidents do happen. This was shown in Laverton v Kiapasha Takeaway Supreme (2002) and has been reinforced in the Dean and Chapter of Rochester Cathedral v Debell (2016). If these claims had been decided in favour of the claimants then it is likely that many other similar claims would follow and the cost of insurance would rise for all.

THE CURRENT APPROACH OF THE COURTS (cont)

the 1984 Act: “There are, however, circumstances in which it may be foreseeable that a trespasser will appreciate that a dangerous feature of the premises poses a risk of injury, but will nevertheless deliberately court the danger and risk the injury. It seems to me that, at least where the individual is an adult, it will be rare that those circumstances will be such that the occupier can reasonably be expected to offer some protection to the trespasser against the risk.”

Public opinion would support the view that an occupier does not deliberately injure a trespasser. However, there would be less support for allowing claims by trespassers. The approach of judges to make it difficult for trespassers to claim when injured by obvious dangers would have popular support.

it has to be borne in mind that if the visitor, whether lawful or trespasser, is severely injured and is unsuccessful in claiming, the burden of caring for them for the rest of his or her life is likely to be passed to the state.

The occupier will not be libale if the trespasser is injured by an obvious risk or injury occurs at an unusual time of day or tear. the occupier I don't require to spend a considerable amount of money in protecting the trespasser from obvious in dangers.

COMPARING THE 1957 AND 1984 ACTS

The duty imposed on occupiers has been imposed by statute, whereas in negligence it is a common law duty. The statutes dealing with occupiers' duty were introduced at different times. The 1957 Act deals with liability to lawful visitors and the 1984 Act deals With liability to trespassers.

COMPARING THE 1957 AND 1984 ACTS (cont)

There appear to be some differences between the two Acts and the duties imposed on occupiers. 1) The 1957 Act allows for claims for personal injury and for damage to property whereas the 1984 Act allows claims for personal injury only. 2)As a result of this the compensation that can be awarded to trespassers is more limited.The two Aacts set two different approaches to the imposition of a duty. 3) For claims under both Acts it is 'necessary to identify the particular danger before one can see to what (if anything the occupier's duty is', per L McCombe in Edwards v Sutton LBC (2016). 4) Except for child visitors, the 1957 Act does not require the court to consider whether the premises are safe for the particular visitor who is injured. 5) The 1984 Act gives trespassers the right to make claims, but judges seem to find reasons not to allow claims by trespassers. This reflects public opinion which does not support a person who should not be on premises from profiting from their actions. 6) No duty is owed by the occupier when the trespasser is injured due to an obvious danger.

This concept of obvious dangers has also recently been introduced into claims under the 1957 Act. In Edwards v Sutton LBC (2016) when the claimant was badly injured when he fell off a bridge over a stream in a public park,

The approach to the bridge was clear and unobstructed. The width of the bridge and the height of the parapets were also obvious to the eye. Any user of the bridge would appreciate the need to take care and any user limiting the width of the bridge's track, by pushing a bicycle to his side, would see the need to take extra care. It is not necessary to give a warning against obvious dangers ... Not every accident

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