

Relevant legislation

The Council's basic legal duties are set out in the Occupiers' Liability Acts 1957 and 1984. The earlier Act deals with "visitors" and the later Act deals with "trespassers".

The Occupiers' Liability Act 1957 provides:-

- "(2) The common duty of care is a duty to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purpose for which he was invited or permitted by the occupier to be there.
- (3) The circumstances relevant for the present purpose include the degree of care and of want of care which ordinarily would be looked for in such a visitor, so that (for example) in proper cases –
- a) an occupier must be prepared for children to be less careful than adults: and
 - b) an occupier may expect that a person, in the exercise of his calling, will appreciate and guard against any special risks ordinarily incident to it, so far as the occupier leaves him free to do so.
- (4) In determining whether the occupier of the premises has discharged the common duty of care to a visitor, regard is to be had to all the circumstances, so that (for example) –
- a) where damage is caused to a visitor by a danger of which he had been warned by the occupier, the warning is not to be treated without more as absolving the occupier from liability, unless in all the circumstances it was enough to enable the visitor to be reasonably safe; and
 - b) where damage is caused to a visitor by a danger due to the faulty execution of any work or construction, maintenance or repair by an independent contractor employed by the occupier, the occupier is not to be treated without more as answerable for the danger if in all the circumstances he had acted reasonably in entrusting the work to an independent contractor and had taken such steps (if any) as he reasonably ought in order to satisfy himself that the contractor was competent and that the work had been properly done.
- (5) The common duty of care does not impose on an occupier any obligation to a visitor in respect of risks willingly accepted as his by the visitor (the question whether a risk was so accepted to be decided on the same principles as in other cases in which one person owes a duty of care to another)".

The Occupiers Liability Act 1984 provides:

- "1(3) An occupier of premises owes a duty to another (not being his visitor) in respect of any such risk as is referred to in the sub-section (1) above. If –

- a) he is aware of the danger or has reasonable grounds to believe that it exists;
 - b) he knows or has reasonable grounds to believe that the other is in the vicinity of the danger concerned (or that he may come into the vicinity of the danger) (in either case, whether he has lawful authority for being in that vicinity or not); and
 - c) the risk is one against which, in all the circumstances of the case, he may reasonably be expected to offer the other some protection.
- (4) Where, by virtue of this section, an occupier of premises owes a duty to another in respect of such a risk the duty is to take such care as is reasonable in all the circumstances of the case to see that he does not suffer injury on the premises by reason of the danger concerned.
- (5) Any duty owed by virtue of this section in respect of a risk may, in an appropriate case, be discharged, by taking such steps as are reasonable in the circumstances of the case to give warning of the danger concerned or to discourage persons from incurring the risk.
- (6) No duty is owed by virtue of this section to any person in respect of risks willingly accepted as his by that person (the question of whether a risk was so accepted to be decided on the same principles as in other cases in which one person owes a duty of care to another)."

Legal position regarding corporate killing

There has also been some public speculation that the Council position is that it must fence off the relevant part of the river because of fears by the Council (and/or its members and officers) of prosecution being brought for gross negligence manslaughter (sometimes known as corporate killing). Although new legal provisions are in the pipeline in relation to this area, the current law is that the offence is committed where there is a breach of duty which causes the death and the breach is so "gross" as to be properly categorised as being criminal. Individuals may be liable to prosecution where their actions are directly connected with and cause the breach. This can and has included senior Council officials (as the well known Barrow-in-Furness case illustrated). This could also include conceivably (but remotely) elected members who represent the "controlling mind" of the Council i.e. the Executive Board. However if the Executive Board were to fail to act on clear advice of officers regarding preventative measures to ensure the safety of the public and that failure to implement such measures was causative of their death, then arguably the elected members could face prosecution for manslaughter. This prospect would necessarily depend on the precise circumstances of the causative breach, the link between that breach and the actions of the Executive Board; and whether the law was still as it presently is or whether the new proposed Bill was law. In reality however it is not a situation that should ever be allowed to become even a remote possibility. The new Corporate Killing Bill focuses on the organisation and the way in which it manages and organises its activities. If the way it does so causes a person's death and the breach of duty is gross then the organisation and/or

individual will be liable to prosecution for manslaughter. This clearly will not happen if the Council and its members and officers act within the law as set out above and to a large extent is irrelevant as a consideration.