

# Invitation only

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## Vivien King considers liability issues when inspecting premises

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An invitation to a chartered surveyor to inspect premises may come from the property's occupier or from another party, for instance a landlord or mortgagee. Either way, the invitation will give rise to various duties owed by one party to another, possibly pursuant to a particular contract but always under the law of tort. One is a duty of care by the occupier to (and not by) the visiting surveyor, regardless of who initiated the invitation.

Hopefully, information concerning fire escapes (or lack of them) and dangerous substances including asbestos is provided before inspection, but other hazards may await. A glance at case law surrounding occupiers' potential liability to persons visiting or even trespassing on their premises reveal examples, some of which are quirky.

For instance, a 5.5ha lake created by flooding an old sand quarry in a public park; wooden grid piles standing proud of a harbour bed near a slipway or an electrically charged railway track or hotel refrigerator. The list goes on; poorly lit back stairs at a public house where the hand rail ended before the bottom of the stairs; a cracked and defective raft foundation under a housing development or the danger of a branch falling from a large, mature beech tree.

Some dangers are obvious, others are not. But when is the occupier liable, what steps can they take, if any, to restrict liability and when are the actions of the visitor relevant?

## Occupiers' liability acts

In relation to visitors, an occupier of premises (within the built environment or not) has '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 purposes for which they are invited or permitted by the occupier to be there' (section 2, [Occupiers' Liability Act 1957](#)).

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The occupier is also under a duty of care to anyone on site (including trespassers), not being a visitor, at potential risk of suffering injury from any danger due to the physical state of the premises or to things done or omitted to be done. However, in this instance, the occupier must be aware of the danger (or have reasonable grounds to believe it exists), knows or believes someone is in the vicinity of the danger and that they may reasonably be expected to offer some protection from the danger. This duty may be discharged by simply giving reasonable warning of the danger concerned (section 1, [Occupiers Liability Act 1984](#)).

A chartered surveyor is unlikely to trespass in order to conduct a survey and the occupier will usually have consented to the inspection. Hence, generally speaking, the surveyor will be classed a visitor. The occupier, therefore, needs to make sure the surveyor will be reasonably safe while inspecting the premises. However, as stated by the judge in [Bowen v The National Trust \[2011\] EWHC 1992](#), there is no obligation on the occupier to ensure the safety of visitors, merely to take reasonable care to provide reasonable safety?. In assuming safety, the occupier may rely on the advice of others so long as it is reasonable so to do.

## **The surveyor's actions**

Nevertheless, inspecting surveyors need to take care. If they exceed the limitations of their invitation?, they may become a trespasser and a mere warning of danger will suffice. The much-quoted phrase first used by Scrutton LJ in *The Calgarth* [1927] p93, 'When you invite a person into your house to use the staircase, you do not invite them to slide down the banisters?' makes the point. If invited to inspect the interior of the premises but not the exterior, the surveyor will act as a trespasser if they clamber, for instance, onto the roof.

They also need to act reasonably. If asked by the occupier, for instance, not to conduct an inspection of manufacturing plant without first ensuring the equipment is switched off, they will exceed this invitation if the examination is done when the machinery is operating. So, check the invitation and in all cases, take care.

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## **Further information**

- Related competencies include [Inspection](#)
- This feature is taken from the RICS *Property journal* November 2015