

No bull: farmers and footpaths during the COVID-19 lockdown

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The relationship between those using public footpaths and those whose land is crossed by public footpaths is often one of an uneasy truce. Farmers know all too well the damage, nuisance and fear which can be and is caused by walkers straying from public footpaths, by uncontrolled dogs and by failures to comply with the Countryside Code. On the other side of the coin, incidents such as unlawful obstructions on or the long-term ploughing of public footpaths are not unknown.

The COVID-19 lockdown has put a great strain on this uneasy truce. In some areas, the daily exercise routine has increased use of public footpaths with an attendant increase in problems caused to farmers and even the abuse of them. Some farmers have resorted to “self-help remedies” in an attempt to mitigate the problems.

This article discusses some of the boundaries of the law in this area.

A farmer may decide during lockdown to provide an alternative route to a public footpath, perhaps in order to try to discourage walkers from coming into close contact with farmworkers, but the alternative route must be safe and the public footpath should as a rule remain available, indicated and unobstructed. The farmer may erect notices indicating the alternative route, which invite walkers to consider using it and which include the reasons for it. Those reasons could include the law or guidance on social distancing. Indeed, farmers may erect notices seeking to discourage the use of a public footpath on social distancing grounds but without provision of an alternative route. Once again though, the public footpath should as a rule remain available, indicated and unobstructed. It almost goes without saying perhaps that notices of the kind discussed should be temporary and polite.

A notice discouraging public footpath use may be polite but yet still false or misleading. The classic false sign is the one which reads “Bull in field”, giving the impression of danger ahead, when in reality there is no bull. The placing or maintaining of such a sign may give rise to a prosecution for an offence under section 57 of the National Parks and Access to the Countryside Act 1949. Incidentally, it is a criminal offence under section 59 of the Wildlife and Countryside Act 1981 for an occupier of a field crossed by a public footpath to permit a bull to be at large in the field, unless it does not exceed the age of 10 months or it is not of a recognised dairy breed (as defined) and there are cows or heifers also at large in the field. Bulls in fields are no laughing matter. Although fatal incidents are rare, deaths are not unknown as happened in the case of the walker killed by a bull in Leicestershire in 2010. It follows that farmers should think long and hard before deploying bulls (or signs about imaginary ones) as a means of discouraging public footpath use during lockdown.

Section 137 of the Highways Act 1980 (“the 1980 Act”) makes it a criminal offence for a person, without lawful authority or excuse, in any way wilfully to obstruct the free passage along a highway (which includes a public footpath). Wilful obstruction connotes deliberate obstruction. Lawful authority in this context includes such matters as statutory permits or licences. Lawful excuse in this context embraces activities which are otherwise lawful and which are reasonable in all the circumstances: these circumstances include the duration of the

obstruction, the place of the obstruction, the purpose of the obstruction and whether it does in fact cause an actual obstruction as opposed to a potential obstruction. So it is then that the farmer who briefly during lockdown obstructs with two bales a short length of public footpath across a lambing field, actually obstructing no-one, is more likely to have a lawful excuse for the obstruction than the farmer who obstructs an entire public footpath with barbed wire fencing at each end and which in fact obstructs a large number of walkers. We would add that the court has power upon conviction for a section 137 offence to order removal of the cause of the obstruction, if continuing. We would also add that, pursuant to section 130 of the 1980 Act, councils who are highway authorities are under a statutory duty to prevent, as far as possible, the obstruction of highways. A local highway authority may be served with a section 130A notice to enforce this duty with respect to public footpaths. Competent authorities may by section 143 notice require the removal of a highway structure or else remove it in default at the expense of the person in possession or control of the structure. In the light of all the foregoing, the best advice perhaps to any farmer tempted by COVID-19 to obstruct a public footpath but without a statutory permit or licence to do so is: don't.

As alluded to earlier, it is not unknown for a farmer to plough a public footpath passing over a field. This can make the line of the public footpath no longer apparent or the way impassable, discouraging use of it. Section 134 of the 1980 Act permits such ploughing by occupiers (other than in the case of field-edge public footpaths), but this is subject to qualifications. The field must consist of agricultural land (or land which is being brought into use for agriculture), the occupier of the field must desire in accordance with the rules of good husbandry to plough all or part of the field and it must not be reasonably convenient in ploughing the land to avoid disturbing the surface of the public footpath so as to render it inconvenient for the exercise of the public right of way. Moreover, the surface of the public footpath must be made good and its line indicated on the ground within certain time limits (14 days in the case of the first ploughing for the purposes of sowing a particular agricultural crop, and 24 hours in any other case) although a 28-day extension may be applied for and granted. A failure to comply with the restoration duty is a crime. Farmers are typically familiar with this qualified right to plough public footpaths, at least in general terms, and an informed exponent may exercise it in such a way that it has the effect of discouraging use of the public footpath whilst staying within the boundaries of the law.

Finally, we ought to mention that the Welsh Ministers have, in exercise of the powers conferred by the Public Health (Control of Disease) Act 1984, made regulations whereby certain authorities must, during the COVID-19 emergency period (as defined), close certain public footpaths. The current regulations are the Health Protection (Coronavirus Restrictions)(Wales) Regulations 2020. As far as we are aware, there are no equivalent regulations applying east of Offa's Dyke. Farmers in England may feel they should continue to resort to self-help remedies to mitigate the problems associated with increased use of public footpaths during the COVID-19 lockdown. As this article explains, they need to be very careful in so doing.

Stephen Whale and Evie Barden have a particular interest and expertise in rural cases. Both are active members of the [Agricultural Law Association](#). Their [previous article](#), dated 3 April 2020, discussed whether an interruption to use of a way as a result of COVID-19 could help defeat a public or private right of way claim.