The recent case of *Maylin v Dacorum Sports Trust* [2017] EWHC 378 (QB) is the latest example of a claim being made for damages suffered whilst participating in bouldering, a form of low-level climbing. Whilst interesting in its own right in terms of how the courts apply legal principles to the area, it also sheds light on approaches to lifestyle sports more generally and the place of risk within play. This Intervention is essentially a case note of *Maylin*, but viewed, in part, through the lens of recent interdisciplinary work the authors have undertaken into parkour.

Keywords: risk; liability; bouldering; lifestyle sports; climbing; negligence

**Context and Background of Bouldering**

The popularity of climbing is growing rapidly; both at elite and grass-roots levels, with 25 million people participating regularly worldwide (Grønhaug & Norberg, 2016). There are many variants of climbing activity, and bouldering is particularly popular, being an activity that is based on low-level climbing that foregrounds the athletic abilities of the climber and which eschews ropes, harnesses and even partners. As Tejada-Flores (2000, 19) notes:

> It is complex by definition since it has more rules than any other climbing game, rules which prohibit nearly everything – ropes, pitons and belayers. All that is left is the individual standing in front of a rock problem.

Bouldering takes place at lower heights than traditional climbing, and consists of bouldering routes or problems that need to be solved (Beal, 2011). The practice has been used by climbers training for roped climbs, but has also evolved into a discipline in its own right and with its own ethos and approach. Like parkour, it encourages reflection and self-negotiation for the practitioner, an evaluation of individual capability and iterative learning. There are prominent outdoor bouldering areas, but it is also practiced, indoors and outdoors, at artificial climbing walls, sometimes in private climbing gyms or facilities. Climbers attempt short sections of rock, generally 2.5–5 m high, and the problems generated by the boulder can take a long time to solve, particularly for sections rated with a high difficulty level. Through repetitive movements performed on a boulder, the climber gains confidence and knowledge of how to overcome bouldering problems. A typical safety measure is the use of a specialised portable pad in order to reduce the prevalence and extent of injuries from falls, which is placed underneath the area the climber is working in. Occasionally, a spotter is used who stands below the climber with arms at the ready to redirect the climber if they fall onto the mat, a technique that helps to prevent direct blows to the climber’s head or back, thus maximising the chances of (though not necessarily guaranteeing) a safe landing (Josephsen et al., 2007). It is an accident that occurred whilst bouldering at an activity centre that is the focal point of *Maylin*, but before discussing the case itself we turn to some remarks about risk and lifestyle sport more generally.

**Risk and Lifestyle Sport**

Activities such as bouldering are, of course, not without their dangers (Josephsen et al., 2007; Woolings et al., 2015). From a legal perspective, the courts have previously considered whether those who put themselves deliberately at risk should be able to seek compensation. Generally this has been answered in the negative – see for example the case of *Poppleton v Trustees of the Portsmouth Youth Activities Committee* [2008] All ER (D) 150, similarly a case that involved bouldering, where it was noted that:

> Adults who choose to engage in physical activities which obviously give rise to a degree of unavoidable risk may find that they have no means of recompense if the risk materialises so they are injured.
The essence of Miss Maylin’s claim was that the risks involved in the activity were not sufficiently drawn to her attention and basic safety information was not provided to ensure she was reasonably safe in all the circumstances. However, previous case law such as *Tomlinson v Congleton BC* [2003] UK HL 47, and in particular *Poppleton*, provided a significant
obstacle to her claim. In Poppleton it was found that where risks were inherent and obvious there is no requirement to train, supervise or warn and the claim would fail on this ground. In addition, even if there were a duty to do this, such duty would, the judge argued, have been discharged by the defendant taking adequate steps to draw attention to these inherent risks and dangers via the participation statement and warning signs.

Signs are in fact artefacts that may fulfil a number of functions and can be read as texts that inform us about culture and practice (Gilchrist and Osborn, 2017b). In terms of a specific role of putting users on notice of potential danger, or attempting to exclude or limit liability, the ultimate criterion is its effectiveness. This can be gauged by examining whether: (i) the sign gains attention; (ii) the nature of hazard is highlighted; (iii) there is a statement of consequences; and (iv) whether there are specific instructions for action. Whilst the judge in Maylin primarily based his decision on the basis of the inherent risk in the activity, he further argued that the warning signs, in conjunction with other action that had been taken, was sufficient. Compared to the signage we analysed as part of our longitudinal study into the juridification of parkour (Gilchrist and Osborn, 2017a; Gilchrist and Osborn 2017b), the sign in this case appears to be fairly simplistic. The case does not reproduce the warning in full, but the judge does not mention any specific attempt on the signs to limit or exclude liability or invoke the defence of volenti.

Interestingly, since the incident, there is now a requirement for novice climbers to undertake an induction (see http://www.thexc.co.uk/bouldering/) and a safety briefing is given on arrival. In addition, noting the specific potential of injury being occasioned by minors, Pieber et al (2012) illustrate that younger climbers seem more prone to injury. This has resulted in XC Sportspace limiting the activity to those over 18, although other activities can be undertaken by younger climbers if a parent or guardian has completed the disclaimer (see http://www.thexc.co.uk/climbing/first-time-visiters/).

There is in fact a Code of Practice (https://www.abcwalls.co.uk/about/code-of-practice/) for the climbing wall industry, emanating from the Association of British Climbing Walls, and it would appear that adherence to their 10 principles will be strong evidence of good practice and a likely useful shield for operators of such activities. These principles include the statement that walls must be fit for purpose and should comply with European standards, and that these walls must be maintained and regularly inspected. In terms of users, Principle 3 notes that whilst the BMC Participation Statement, such as that used in Maylin, is a useful starting point, ‘in many cases the user will require more specific information’ and Principle 5 that all users should be competent and that this should be documented (our emphasis). Both of these appear to have been bolstered at XC Sportspace post this incident. This also raises the issue of what the law requires facilities providers to do, and what the role of sporting governing bodies in terms of providing guidance is. This is especially pertinent for lifestyle sports as the tension seen when something that emerges as countercultural begins to become bureaucratised and professionalised (Gilchrist and Osborn, 2017a and 2017b). This perhaps reaches its apotheosis where risk becomes commodified (McCarthy, 2017). In Maylin, the court was clear that as the activity undertaken was one with obvious and inherent risk, there was no requirement, following Poppleton, to train, supervise or warn. So what then is the status of the guidance provided by bodies like the BMC and its implementation by providers? It appears that by providing instruction or supervision, and following good practice provided by the BMC, the provider shifts from the obvious and inherent risk category towards the ‘assumed duty’ category represented by cases such as Wilson. This then means that any training or supervision must be competent or risk possible legal intervention (Pugh, 2013). More broadly, it raises questions about the bureaucratisation of lifestyle sports. For now, Maylin stands as further confirmation of the courts’ approach to inherently risky sports, although as we have previously argued, the benefit of the activity and its social utility should not be overlooked.

Competing Interests
The authors have no competing interests to declare.

References

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