

## Landowner Relations Seminars

### The Present Situation

Balloons land uninvited, sometimes on private property.

This is not illegal and provided no damage has been done, legally the owner must allow access for retrieval – on foot if necessary, but hopefully by vehicle. As has been tested in court a balloon cannot be impounded against costs or any damage caused.

Landing fees, as charged by airfields, have to be published in advance and are for services provided e.g. maintained runways, air traffic control, fire services, fuel etc.

The Code of Conduct for Pilots and Farmers, approved by the BBAC, National Farmers Union (NFU), National Farmers Union Scotland (NFUS), the National Trust, the Country Land and Business Association (CLA), the Scottish Rural Property and Business Association (SRPBA) and the Thoroughbred Breeders Association (TBA), is an established agreement and provided that it is respected by them all we should be able to enjoy our sport and the landowner/farm no disruption of their livelihood.

One of the items agreed in the Code of Conduct is the use of landing cards. The pilot or crew of a balloon must always leave a landing card with the landowner (or responsible agent) giving a contact name and number for the balloon and confirming that permission has been requested and granted to retrieve the balloon.

On the other hand the farmer must agree to provide details of him and is requested to give reasonable assistance to the pilot to ensure that the balloon is recovered as soon as possible without damage – any additional costs incurred being agreed in advance!

All the organisations involved in drawing up the Code of Conduct agree that should a request for any sort of recovery fee be made it should be as a the local NFU and CLA agents and the BBAC Landowner Relations Officers have negotiated. This will be publicised in local, regional newsletters or by meet organisers. If no local arrangement exists than a recovery fee of –

- £4 for each passenger in a non-partitioned basket with a minimum of £10
- £5 for each passenger in a partitioned basket, with a minimum charge of £35 and a maximum charge of £80.

Many regions and clubs operate farmers draws, raffles, win a flight and similar – these supplement and run alongside the landing card scheme and the national agreements. Regional landing cards may now be produced with the logos of the NFU, CLA and BBAC, providing an agreed form of wording, is used on the cards. Contact the National Landowner Relations Officer for more details.

However, many incidents are caused by not landing, but during flight. Please fly high, use the liquid fire and look ahead when flying, ready to anticipate potential problems. Accept that you may, unwittingly and unknowingly, cause a problem, so if one the LRO's contact you, please cooperate with them, it probably means they have had a phone call from a farmer.

Most incidents are sorted out quite happily between the pilot and the farmer. The BBAC will only take incidents further if an LRO finds they are continually being called about a particular balloon, or if the pilot concerned is unhelpful.

In addition, the driver of the retrieve vehicle has a vital part to play in landowner relations. The pilot of the balloon is responsible for all the actions of their crew. If a vehicle enters private land without permission, or a “discussion” ensues between the crew and other parties, the BBAC will look to the pilot for an explanation and assistance in calming the situation. All pilots owe it to themselves and their crew to ensure that everyone is fully trained.

A system of sensitive areas exists where areas such as stud farms, pig units etc and people who have requested no landings are identified on our maps, perhaps with a request for a height clearance, or no landing. Sometimes these are warning areas – e.g. small arms firing ranges, sometimes caused by incidents.

Should a problem occur with a particular farmer, it is possible that a sensitive area may be established. This involves the local LRO getting full details of the area from the farmer and then passing it through the system, so it is notified to all balloonists. Only LRO's are responsible for instigating a sensitive area – pilots and crew should refer all requests on.

It is therefore vital that all balloonists in the air have fully marked up maps. A pilot flying without a fully marked up map is a hazard to all and does a great disservice to the sport. A list of sensitive areas can be found on the BBAC website ([www.bbac.org](http://www.bbac.org)).

Problems and incidents are caused by people, not balloons. If the person flying the balloon had thought ahead, planned properly, gone back and apologised, marked up their maps; or if the person driving the car had walked up to the farmhouse, had driven slowly down the lane passed the horses, and if everyone had given time to talk and explain, then most of our problems would not even begin to exist.

Balloonists gather together with tall stories and tales, so do farmers – one small incident with a balloonist will soon have a whole area believing we are all arrogant, rich, uneducated, insensitive, uncaring people. Prove to them we are not.

Fly high, know where you are at all times, fly safely, plan ahead and abide by the Code of Conduct.

## Some Law for Balloonists

### A. Kinds of Law

Criminal law: Police do it for you, magistrate's court fines; examples: assault, criminal damage.

Civil law (torts): You have to sue; County Court (small claims), compensation. Examples: negligence, trespass, nuisance, conversion.

Statute law: – criminal or civil liability created by statute – reasonably easily found and certain.

Common law: judge made law – made by decision of previous cases; more difficult to find and less certain.

### B. Two areas of concern, that are relevant to landowner relations:

Overflying – strict liability under S76 Civil Aviation Act 1982.

No trespass or nuisance but in return liability without proof of fault for any damage caused by the flight of aircraft, or articles dropping or by landing.

This means the only issue is cause.

Landing – Any landing for which consent has not been previously obtained is trespass. This is not a crime (usually) but it is a tort.

This means;

- (a) The landowner can require the trespasser to leave and remove him by reasonable force, if necessary.
- (b) The landowner can recover damages for any damage caused (also see above);
- (c) The landowner can seize any item that has caused damage to him and hold until either damage is paid for or good security for damage has been given.
- (d) If no damage is caused, the landowner is entitled to nominal damages.

### Can we get our balloon back?

Conflict of rights –

- The right of the landowner to control his property and exclude trespassers; and
- The right of the balloon owner is to possess and use his chattel.

E.g. child's ball over the fence.

## Pine v Ingleton (1991)

This case resulted in an order for the return of the balloon and an award of damages of £766, but note that balloonist was ordered to pay £73.84 in damages for trespass.

*Was this nominal damage?*

It is clear that nominal damage should at least represent the value of the use made of the land.

*How much is that?*

This clearly justifies the agreement by the BBAC with the NFU, CLA and others.

## The Wheel Clamping Cases

The courts have dealt with two cases of wheel clamping of trespassing vehicles.

In the first, the vehicle owner had resorted to self help and cut off the clamp. He was found guilty of the crime of criminal damage. Cf – the balloonist who cuts the lock off the gate.

In the second, the vehicle owner sued when his car had been clamped and a declamp fee of £40 was demanded. He failed.

The court took the view that a landowner could demand payment as a condition of release of the car provided that the fee was *reasonable* and that the vehicle owner had notice of the fee before he parked his car there. Cf - the balloonist who lands in an area where a landing fee has been notified.

To demand an excessive fee for the release of balloon could in theory be the crime of *blackmail*, but the police are most unlikely to be willing to investigate on that basis.

It is better to suggest that the police should accompany you when you attempt to recover the balloon to ensure that there is no breach of the peace (i.e. acts of violence).

# Injunction Order

Between JEFFREY ALAN PINE  
 and STEPHEN INGLETON

Plaintiff  
 Applicant  
 Petitioner  
 Defendant  
 Respondent

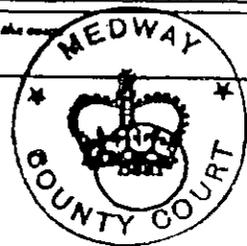
In the SITTINGBOURNE COUNTY  
 CT HEARD AT MEDWAY County Court

Case No Always quote this 9101955

Plaintiff's Ref

Defendant's Ref

For completion by the court  
 Issued on **MEDWAY COUNTY COURT** 1991



To (1) **STEPHEN INGLETON**  
 of (2) Lower Frognall Farm,  
 Lower Road,  
 Teynham,  
 Nr. Sittingbourne,  
 Kent. ME9 9BY

(1) The name of the person the order is directed to

(2) The address of the area the order is directed to

(3) The terms of any restraining order to be proceeded by the words "in addition whether by himself or by instructing or encouraging any other person" or if defendant is a limited company by its servants, etc. officers or otherwise"

**If you do not obey this order you will be guilty of contempt of court and you may be sent to prison**

On WEDNESDAY the 14TH of AUGUST 1991 the court considered

an application for an injunction

~~The Court ordered that~~

(1) UPON the Plaintiff undertaking to abide by any order for damages which the Court may make in the event of the Court deciding that the Defendant has suffered loss or damage herein.

IT IS ORDERED THAT:-

1. The Defendant do forthwith deliver up to the Plaintiff or his agent or cause to be delivered up a hot air balloon G-Pine now in the Defendant's land and that he do accord to the Plaintiff or his agent all the necessary rights of entry on to his land to enable the Plaintiff or his agent to remove the said balloon therefrom.
2. The Plaintiff do make good any damage caused in the exercise of this order. This matter be adjourned to be heard at Medway County Court, Anchorage House, 47-67 High Street, Chatham, Kent, on Friday 27th September 1991 at 11.00 a.m.
3. Costs reserved.

*If you do not understand anything in this order you should go to a Solicitor, Legal Advice Centre or a Citizens' Advice Bureau*

Court Office at  
 open from 10am to 4pm. Mon - Fri. When corresponding with the court, address all forms and letters to the Chief Clerk and quote the case number

## THIRD PARTY INSURANCE CLAIMS AIDE MEMOIR

A third party property damage claim will come to light in one of four ways:-

- 1) You spot the problem and the farmer does not.
- 2) The farmer spots the problem and you do not.
- 3) Both of you spot the problem.
- 4) Neither of you spot the problem and it comes to light at a later date.

Inevitably things will go wrong. One day you could be facing the wrath of a farmer who claims you scared his sheep, what do you do?

Well, it is probably best to start with what you don't do. Dealing with people can vary so much, depending on your own personality and that of the other person, so the following must be taken as generalisation.

### AT THE SCENE

- Don't panic, keep calm
- Show concern, but don't admit fault
- Show respect, don't be rude or arrogant. The chances are if he does have a grievance you will need to sort the problem out.
  
- Ask to see the beasts and take a witness with you. How do they seem?
- Did anyone else, independently, witness the incident?
- Did you notice the animals upset?
- Is there a chance you did cause the problem?

### IF THERE IS A CHANCE YOU DID CAUSE THE PROBLEM

- Don't offer to pay and don't give anything to him like a bottle of whisky
- Tell him you must inform your insurance company as soon as possible
- Make sure you will get back to him within 48 hours

### AFTERWARDS

Upon your return from the flight call your LRO and then your insurer to report the incident. Often the next course of action can be assessed and advice provided over the phone.

The questions we will ask are:-

- 1) Date and time of flight
- 2) Balloon and pilot registration details
- 3) Name, address and telephone number of farmer
- 4) Name, address and telephone number of any witnesses
- 5) Description of what happened
- 6) Details of the damage that may have been caused
- 7) Was the farmer reasonable?
  - i) Do you think you were the cause and he has actually suffered?
  - ii) Is it a try on?
- 8) Likely amount involved

We will then make a decision as to whether you can settle immediately or whether we will want our own vet or loss adjuster on the case.

Finally, please bear in mind that most people are reasonable and if your body language and actions are reasonable too, then the problem will be sorted out with the minimum of fuss.

For further advice on this and any insurance matter please feel free to contact me on 01494 455801.

Peter Dowlen, J BENNETT & SON, 21 High Street, High Wycombe. HP11 2UX.