

Covid-19 – why the Police charges against the two “Crianlarich” hillwalkers should be dropped

Description



The tricky section up Beinn a Chroin from close to the col with An Caisteal. The path and easiest route slants over to the right. September 2019.

Earlier this week one of parkswatch’s critical readers – a good thing! – posted a link to a BBC news piece ([see here](#)) about two hillwalkers who had been charged by the Police with “Culpable and Reckless Conduct” after being rescued on Beinn a Chroin near Crianlarich. Since then, there have been a number of developments. This posts takes a look at the legal implications, both for Covid-19 and for Mountain Rescue more generally.

I last walked over Beinn a Chroin on 20th March, just a few days before lockdown, having approached from Inverlocharig to the south. This is the quiet side and a longer drive than if I had gone to Glen Falloch, the more popular starting point. But I enjoy exploring and had wanted to get a closer look at the landslips on Stob ab Duibhe that I had seen six months previously.



The most dramatic landslide on Stob an Duibhe triggered by the flash storm last August, others visible to the right

The round up Beinn an Chroin and An Caisteal from Glen Falloch involves a short section of scrambling through some complex crags (top photo). Before the path developed, finding the easiest route was quite difficult. I remember my first visit, part of a round of all seven of the Crianlarich Munros, scrambling with trepidation up through the steep crags above the col. It was not until I repeated the round, years later, that I realised I had not traversed nearly far enough over over. If you missed or decided to avoid the path, the descent would be even more challenging. My initial guess, from the news reports, given the fine weather, was that the two walkers might have got into difficulties on the crags

Since then, the waters have muddied considerably. There are now two radically different possible accounts of what happened, with several interpretations in-between. It's not the purpose of the post to determine what happened – though the truth is always important – but rather to consider the implications.

The facts

Police Scotland issued a news release on 2nd June ([see here](#)) which stated:

“Police Scotland can confirm that two people have been charged in connection with culpable and reckless conduct after needing rescued from a munro on Saturday, 30 May, 2020.....”

The news release was thus issued 3 calendar days after the two hillwalkers were charged. As to what actually happened, this is less clear:

“Police received a report of a man and woman in difficulty on the munro around 2.40pm on Saturday. Officers and members of Killin Mountain Rescue Team were subsequently deployed to rescue the individuals who had not been suitably equipped for the climb. They were traced safe and well.”

This statement has raised a number of questions, including from people who have commented on parkwatch ([see here](#)). Among the points raised are that it's not clear if it was the two hillwalkers or a third party who called the Mountain Rescue and whether the two actually needed help off the hill.

At the end of the police release the Chair of Mountain Rescue Scotland, Damon Powell, was quoted as saying:

“We are also aware how deeply frustrating it is when everyone who is making such sacrifices see people openly flouting the guidance. We are pleased to see the police taking action against such individuals.” [my underlining].

On Thursday Mountaineering Scotland, the body that represents hillwalkers and mountaineers in Scotland [I used to be its President and served on its Committee for 8 years] issued another news release ([see here](#)). This quoted Damon Powell as saying:

“Mountain rescue teams are here to help. If people get into difficulties in the hills they should be clear that MR assistance is provided without cost and without judgement.”

The two statements are contradictory. Moreover, if you read the Police Scotland quotes in the two releases, they are very different in tone. Both have been quoted by the media ([see here for second BBC story](#)).

What's going on?

Implications of scenario 1 – the two hillwalkers needed rescuing

I have heard, third hand so not reliable, that the hillwalkers did need rescuing, contrary to the scepticism (mine included). Indeed, worse than that it is possible they rang, demanding a helicopter, and then when brought down by the Killin Mountain Rescue Team were rude and ungrateful. Let's suppose this shameful scenario is true and it was this behaviour that prompted the Police to charge them with “Culpable and Reckless Conduct”.

This offence is normally used to cover activities that endanger others, like dropping objects from height onto others or – interestingly – deliberately infecting people with disease ([see here](#)). I absolutely understand the concerns from mountain rescue team members, who are for the most part volunteers, of being infected. However, if the charge was made because of the risk of spreading disease, the Procurator Fiscal would probably have to show that the two people went out walking knowing that they

had Covid-19 and therefore, if they needed the mountain rescue, they would be putting team members at risk. That appears unlikely as very few people have Covid-19 due to the lockdown. Moreover, if the walkers had been isolating the previous weeks, they would almost certainly be Covid-free and therefore not putting others at risk.

If, however, the Police made the charge on the grounds of preventing disease, the implications for Mountain Rescue would be significant. Any symptom free person who called the rescue for whatever reason would effectively be criminalising themselves. Such people include those working in the countryside – gamekeepers have accidents and get rescued – and those walking in the hills close to their homes (which is endorsed, if undertaken with care, as a safe activity under current Scottish Government guidance).

It seems more likely that the Police decided to charge the two hillwalkers because they were ill-prepared – hence the references to them being not “suitably equipped”. The implications of this, however, are even wider and extend far beyond the corona crisis. Anyone calling the rescue in future could lay themselves open to charges of “Culpable and Reckless Conduct”. That would deter people calling out the rescue, whether for themselves or others, with potentially disastrously consequences.

It's because of issues such as this that Mountain Rescue Teams in Scotland have, in the past, generally avoided judging people they have rescued, however foolish they have been. Most people who are rescued are of course very grateful, learn from their mistakes and go on to raise money for the Rescue Teams.

In the current situation, where Team Members are putting themselves at risk, however small, of catching Covid-19 one can see why the mountain rescue, faced with some rude hillwalkers, might have lost their usual patience. Then, once they realised the implications, they corrected what they had said. Whatever the details of what actually happened, I think they were right to do that. The charge of “Culpable and Reckless Conduct” is not appropriate for people who need to be rescued.

This is not to argue that the charge of “culpable and reckless conduct” might never be appropriate in in the hills. For example, deliberately trundling boulders down hillsides, knowing people might be below, poses similar risks to dropping traffic cones off bridges.

Implications of Scenario 2 – the hillwalkers didn't need rescuing

At the other extreme, suppose the hillwalkers didn't really need rescuing and they were charged because they had travelled 60 miles, as is implied by other parts of the Police News Release:

“A 27-year-old man and a 23-year-old woman have been reported to the Procurator Fiscal after travelling more than 60 miles from Glasgow to climb Beinn A' Chroin, near Crianlarich.”

If this was the case, it raises very serious legal issues. Travel for Outdoor Recreation is not unlawful under the current Coronavirus Restriction Regulations. That interpretation of the law was confirmed on Monday by Nicola Sturgeon when she threatened to legally restrict how far people can travel if the public don't follow the latest government guidance which recommends only travelling c.5 miles. While Nicola Sturgeon may not want people to travel at present, you still have a perfect legal right to do so under the Restriction Regulation.

For the Police to try and turn government guidance into law by using the common law charge of “Culpable and Reckless Conduct” to people breaking that guidance would be to act way beyond their powers, pervert the use of the law and have serious civil liberties and human rights implications.

It's worth noting here a further point in terms of the distance these two walkers travelled from Glasgow. Most of the car parks around Glasgow remain closed, under government orders of dubious legal status as is now coming increasingly clear. If people living in urban areas, therefore, do want to exercise their legal rights to enjoy outdoor recreation in the countryside, it's very hard to do so without travelling a distance (I drove 50 miles down to the Borders last weekend to find a place I could park without difficulty or hassle). The Luss Hills are far closer to Glasgow but good luck if you want to go there because the car parks have been shut off. The layby in Glen Falloch where these two walkers most probably parked is one of places where I have headed to if travelling north as there is plenty of safe off-road park and its 800m from any house so poses little or no risk to nobody. Whatever happened afterwards, this was a “responsible” place to go in the current circumstances.



View down to the large layby along A82 in Glen Falloch from near Keilator

What needs to happen

While the truth about why the Police charged the two walkers with “Culpable and Reckless Conduct”

may lie between these two scenarios, whatever the case the charge appears unjustified. Either it has huge implications for the future of Mountain Rescue or it was an abuse of the law. Because of this the Chief Constable of Police Scotland, Iain Livingstone, needs to instruct his force to withdraw the charges.

What then happens should depend on what prompted these charges. If the concern of the local officers was that the hillwalkers had breached government guidance, Iain Livingstone should remind them that law enforcement is about law, not guidance. He has already said as such, while standing alongside Nicola Sturgeon at a daily briefing. He has also, to his credit, engaged the Human Rights Lawyer, John Scott, to review whether Police Scotland has enforced the law equitably during the ([see here](#)). The problem is some of these officers still appear keen to take the law into their own hands. The reasons this is happening need to be made public.

If the concern of the police, however, was that these two hillwalkers had put themselves and others at some risk, then I have some sympathy but I think there is a need to consider other ways of dealing with the issues. As Mountain Rescue Scotland has recognised, charging people, however stupid, with reckless conduct is likely to have serious adverse consequences for whether people call out the mountain rescue in future.

One option, which I know Mountain Rescue Teams have been keen to avoid up till now, would be to name and shame people after packing them off back home. It might have been quite effective in this case. Another would have been to announce that Mountain Rescue Teams can't guarantee they will rescue anybody while Covid-19 is prevalent. That might deter people who think they can call out a helicopter any time and those who are most likely to get into difficulties. Other more sensible people would follow Mountaineering Scotland advice and choose routes and activities that are well within their competence.

Whatever the answer, Mountain Rescue Scotland and the police need to engage with the wider mountaineering and hill walking community about how they can respect the rights of people wanting to go to the hills while those undertaking outdoor recreation need to respect the rights of rescue team members not to put themselves at risk.

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