

## The Finnich Glen culpable and reckless conduct case – the implications for outdoor recreation

### Description

It is eleven months since I raised concerns about the implications of the police charging two hillwalkers at Crianlarich with Culpable and Reckless Conduct ([see here](#)). In January, two women from Fife were charged with the same offence after they had called the mountain rescue on Ben Lomond ([see here](#)). Now the police have charged two men with Culpable and Reckless Conduct after being rescued from Finnich Glen ([see here](#)). The implications for access rights, outdoor recreation and mountain rescue are serious.

Culpable and reckless conduct is a very serious common law offence. Up until last year it was used by the police to charge people whose actions could cause death to others, such as by dropping traffic cones off bridges or having unprotected sex when infected with a disease like HIV. In other words actions where a person is clearly endangering the lives of others. While the full facts behind the rescue are not public, the Stirling Observer reported that the two men – had become stranded beneath the road bridge section – and were then winched out as part of – a technical rope rescue –. That is core business for mountain rescue team members and one which they are fully trained to do safely. There are reasons therefore to be seriously concerned about why the two men were charged with culpable and reckless conduct in this case. Who were they endangering apart from themselves?

A few days later a man and a daughter were also extracted from the gorge by a – technical rope rescue – in what appears to have been similar circumstances ([see here](#)). Thankfully, they weren't charged with any offence, but what was the difference between what they did and the two men? Both got stuck. The Daily Record article refers to the two men being – ill-prepared for the conditions –, but weren't the man and the daughter equally ill-prepared?

In any case, being ill-prepared is not the same as being reckless.

Moreover, there are serious implications if we confuse a person recklessly endangering their own life with recklessly endangering that of others. A third accident in Finnich Glen in the last two weeks involved a man falling down the gorge sustaining serious injuries. Should Police Scotland have charged him with culpable and reckless conduct after he had been rescued and taken to hospital?

It is worth noting here that when people – recklessly – disregard their own safety to help others they are usually regarded as brave and often described as heroes or heroines. A tragic example is the two men who recently jumped into the freezing Thames to try and save a woman who had fallen from a bridge ([see here](#)). Do Police Scotland want to stop people doing that?

A key tenet of Mountain Rescue in Scotland up until now has been not to blame people needing rescued, however ill-prepared or foolish they may appear. There are both practical and philosophical reasons for that stance.

The practical reason is that if people are blamed or shamed publicly, there is likely to be a knock-on effect on people who find themselves in similar situations. The two parties who called the Mountain Rescue when stuck in Finnich Glen did absolutely the right thing, they stopped and called for help rather than getting themselves into further difficulties. But would the two men have done the same if they had known they would be charged with a very serious criminal offence? How many more cases before the general public gets the message and decides not to call the rescue in case they are charged? To the best of my knowledge until last year no-one has been charged with Culpable and Reckless Conduct because they called out the mountain rescue.

The philosophical reasons for not blaming people who call the mountain rescue are equally important. The desire to explore is an inherent part of childhood and the desire to pit oneself against the natural environment a fundamental part of the human condition, even if both these instincts are now generally beaten out of many people as they grown up.

It should not surprise us, however, that having found or been directed to places like Finnich Glen by social media, people want to take a closer look. In doing so there is a fine line, which is very easy to overstep, between being in control and getting into difficulty. Two steps and a person may be unable to reverse a route which appeared perfectly safe to them up until that moment. People can only develop understanding and judgement about where that line lies for them through experience. Now Police Scotland is raising serious criminal charges against people for daring to test their experience. The implications for human liberty and people's ability to exercise access rights in Scotland are far-reaching. At stake is whether the police have the right to limit where people go and what they do in the countryside.

## **Stirlingshire police and the Loch Lomond and Trossachs National Park Authority**

All three of these Culpable and Reckless Conduct charges have been levied by the Stirlingshire division of Police Scotland. That, as I stated in my post in January, is not a coincidence:

*For six years now the Loch Lomond and Trossachs National Park Authority, which has a statutory duty to promote public enjoyment of the countryside, has been doing the opposite, blaming, controlling and penalising people who want to do outdoor recreation. Working in partnership with police and local authorities they have created a toxic culture in which use of the criminal law to manage people enjoying the countryside has become the preferred visitor management option.*

That toxic culture was demonstrated the weekend before last by the large number of parking fines issued by Stirling Police to people trying to visit beauty spots ([see here](#)).

Public Authorities in the Stirling area did almost nothing to improve visitor infrastructure for the anticipated surge in Covid visitors post lockdown. Instead of paying farmers to open up fields to allow for extra parking, the LLTNPA Chief Executive has used the £960k of government funding his Board failed to allocate on recruiting more managers ([see here](#)).

Finnich Glen is only just outside the National Park boundary. After the surge of visitors there last year, which resulted in Stirling Council temporarily passing a legal order to exempt the area from access rights ([see here](#)), the LLTNPA became involved in advising how to manage access there. It should

come as no surprise that, instead of making it easier for the thousands of people who wanted to see the gorge as a result of the Outlander series, as a result of their advice Stirling Council and Stirling district of Police Scotland made it more difficult.

## **The failure to provide appropriate visitor infrastructure at Finnich Glen**



The parking area at Finnich Glen is small and can maybe take ten cars at most. That was adequate so long as one of the natural wonders of the Glasgow area was only known to a few people. It became hopelessly inadequate after Outlander was filmed there. People started parking on the main Glasgow-Drymen Road but, instead of creating extra parking and improving the access infrastructure, Stirling Council responded by imposing a clearway and painting the road with double yellow lines.



View from north side of the road bridge over Finnich Glen. The small parking area is by the signs at the top of the hill. The next nearest parking is a layby, a couple of hundred metres beyond that.

While addressing the safety risks to cars, nothing was done to address the safety risks to pedestrians.

Currently the only viewpoint for Finnich Glen which is safe from natural hazards is at the road bridge. There is no signage of how to access this from the car park without walking down the road.



Looking south to the small parking area, just to the left of the brow of the hill, from the next layby along the main road. It has limited capacity for cars.

The next nearest place where it is legal to park involves an even longer walk along the main road.



View from the bridge

Unfortunately, for those wanting a safe view down the gorge, in summer there is almost nothing visible from the road bridge. That means if you want to see the gorge the only option is to try walking along one side or the other.



The bottom of the gorge is mostly hidden from view from above.

The nature of the gorge and the vegetation, however, means there are no “safe” viewing points from above. Anyone wanting to see the bottom necessarily has to take some risks. It is hardly surprising that, as with the man who fell last week, serious accidents occur.

There was a time when, notwithstanding our rights to take risks, those responsible for managing access saw it as their job to create appropriate infrastructure, including safe viewing points, for the general public in visitor hot spots like this. Austerity and neo-liberal ideology put paid to that.



The direct path down to the bottom end of the gorge, on the right, is lethal in the wet

The other main option for viewing the gorge is to enter it from above or below, which appears to be what both the parties needing rescued did.

While there is a safe path round the fields to the bottom of the gorge, it is not signed, and many people take the more direct route. This takes a mud slope above the fence in the picture where there is a high risk that anyone without appropriate footwear or used to such ground could slip into the gorge.

Once at the bottom of the gorge, you are heading into the unknown. A great adventure â?? which is why outdoor centres bring children to experience gorge walking here in suitable conditions â?? but with its dangers. It shouldnâ??t surprise us that anyone determined to see the gorge or who is keen to show their photos on instagram many make the wrong choice when conditions are marginal. There is indicator to show when water levels are safe. It is thus almost inevitable that some people get into difficulties and call the rescue. It is these people that Stirling district of Police Scotland now want to brand as having committed a serious criminal offence.



The old access sign, which explained the hazards of the site, was perfectly adequate before the glen became well-known. The problem now, however, is that the gorge has become so popular that the framework for managing access that is provided by the advice in the Scottish Outdoor Access Code is not, by itself, sufficient.



View back across the field to the parking area

Having visited last October, I felt a lot of sympathy with the local farmer. His field, which is large, has effectively become unusable for farming purposes. In the absence of signage and stiles, the fence above the gorge has been broken in many many places. Useless for livestock or crops.



View down the unsigned but safer path to the bottom of the gorge

There are no bins and litter is a significant problem.

Unfortunately, however, instead of our public authorities paying the farmer to install appropriate infrastructure, managing visitors and compensating him for the loss of his field â?? or even buying it for the public good â?? he has been left to find his own solutions. Shortly after I visited, Stirling Council approved a major development for the site, contrary to their Local Development Plan, which will turn it into a major visitor â??attractionâ?• ([see here](#)). This will have serious implications for access rights. The question of whether people will still be allowed to enjoy the gorge for free is still to be decided.

In charging the two men with Culpable and Reckless Conduct, Police Scotland appear to have played into the hands of the farmer as developer. He can use the case to argue that the only way to stop people recklessly endangering others is to force them to pay to access the proposed viewing platform. Instead of our public authorities supporting access rights, they are allowing them to be privatised.

## **What needs to happen**

The recent predicable accidents at Finnich Glen and the police response provide another good example of the consequences of our failure in Scotland to invest publicly in visitor infrastructure and the way that our public authorities are resorting to the criminal law to manage visitor. While the mis-use of the criminal law is worst in Stirling and the Loch Lomond and Trossachs National Park, if this goes unchallenged there are real risks that this could be extended to other parts of Scotland. It is surely time that all those who care about outdoor recreation and our access rights call for a halt to what is happening. More specifically:

- Police Scotland nationally should instigate an inquiry into how their Stirling District has been using the offence of Culpable and Reckless Conduct to criminalise outdoor recreation;
- The Procurator Fiscal's office should come clean about how they have handled the other cases to date (I will submit FOI requests).
- The new Scottish Government should commission an independent review into the use of the Culpable and Reckless Conduct offence from a human rights perspective;
- If Police Scotland doesn't act, consideration should be given to transferring their responsibilities for mountain rescue to the Fire and Rescue Service

A week ago the UK Parliament's Joint Committee on Human Rights issued a report ([see here](#)) calling for every single Fixed Penalty Notice (FPN) issued under the Coronavirus Regulations during lockdown to be reviewed. The report has numerous implications for Scotland. Our public authorities should heed the final sentence in the summary:

*“A heavy-handed approach to enforcement in such circumstances risks unjustly penalising a wide range of behaviour, in circumstances where there are insufficient safeguards in place to protect people from arbitrariness and unjustified interferences with basic human rights”.*

## Category

1. Access rights
2. Loch Lomond and Trossachs

## Tags

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## Author

nickkempe