



This note provides an overview of legal disclaimers under UK law.

### Definition

A disclaimer is generally any statement intended to specify or delimit the scope of rights and obligations that may be exercised and enforced by parties in a legally recognised relationship.

### Do they work?

In law, a disclaimer is a statement denying responsibility intended to prevent civil liability arising for particular acts or omissions. Disclaimers are frequently made to escape the effects of the torts of negligence and of occupiers' liability towards visitors. The courts may or may not give effect to the disclaimer depending on whether the law permits exclusion of liability in the particular situation and whether the acts or omissions complained of fall within the wording of the disclaimer.

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A disclaimer may take effect as a term of the contract between the person making the disclaimer and the person who is thereby prevented from suing. This kind of disclaimer is, for example, invariably found in the 'terms and conditions' that a software user is confronted with when first installing the software. There will often be term excluding any liability for any damage that the software might cause to the rest of the user's software and hardware. By clicking "I Agree" in the dialogue box, users are agreeing to this disclaimer as matter of contract between themselves and the software company.

At common law, disclaimers can also have effect as conditions of a license (i.e. permission) to enter land. An occupier of land will have certain duties to take care for the personal safety of people he or she allows onto the premises. By placing a sign at the entrance to the premises, such as "visitors enter at their own risk", the occupier may be able to stop entrants successfully suing in tort for damage or injury caused by the unsafe nature of the premises. Warnings or disclaimers contained in signs may, by a slightly different legal analysis leading to the same result, allow the person who would otherwise be responsible to rely on the defence of consent.

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Under UK law, the validity of disclaimers is significantly limited by the Unfair Contract Terms Act 1977. By virtue of the Act, a business cannot use a contract term or a notice to exclude or restrict its liability for negligence causing death or personal injury. In the case of other loss or damage, a disclaimer will only be effective so long as it is reasonable in all the circumstances.

Therefore to surmise, disclaimers must be reasonable if they are to be relied upon to defend any action. Simply having a disclaimer in place is not a guarantee of eliminating any liability but you can use them/refer to them as evidence for a Court matter.

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## When to use a disclaimer

Much depends on when and how you intend to use a disclaimer. They vary significantly in length and style. Some are aimed at avoiding liability and some are more about informing people.

## Examples

As I've touched on above, there are a number of variations to a disclaimer and it will depend on your specific circumstances as to how you word and use a disclaimer.

There is the straightforward disclaimer that you will see in most car parks which states something along the lines of "vehicles left at owners risk" which is an attempt to avoid any liability on the car park owner's part for any potential theft or damages to visitor's vehicles.

People use disclaimers when sending e-mails. An example of one is:

*This email and its contents, together with any attachments, are confidential to the sender. If you are not the intended recipient of this email and its attachments (if any), you must take no action based upon them, nor must you copy them or show them to anyone. Please contact the sender if you believe you have received this email in error.*

The British Mountaineering Council's disclaimer is:

*The BMC recognises that climbing and mountaineering are activities with a danger of personal injury or death. Participants in these activities should be aware of and accept these risks and be responsible for their own actions.*

## Conclusions

Your disclaimer must be reasonable. Your disclaimer must be clearly visible for all users and not hidden away. If used correctly a disclaimer can be used to eliminate you from any liability.

## Key law

The Unfair Contract Terms Act 1977

*Maylin v Dacorum Sports Trust (T/A XC Sportspace) (2017) EWHC 378 QB*

*Poppleton v Trustees of Portsmouth Activity Committee (2008) EWCA Civ 646*

*Tomlinson v Congleton BC (2003) UK HL47*

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