

Game of Drones: Damages caused by UAVs & claiming compensation

Drones or Unmanned Aerial Vehicles (UAV) were originally developed exclusively for military purposes. However, as the technology developed within military environment, this past century innovation transited into civilian business and found its usefulness in recreational and commercial market.

Use of drones in the UK

Drones are having a positive effect on well-being of society and growth of economy. Beside their recreational use, where they have introduced communities to a fun and rewarding hobby, drones are increasingly being used in construction industry, medical and emergency service provision and logistic support. Amazon has already successfully trialled the use of drones to deliver goods in the UK in 2016. Metropolitan Police are in preparation to deploy drones to monitor road users and NHS is also exploring option to use drones for emergency services for conducting missions which were previously unsafe or not possible and to enable them to respond quicker to incidents. A recent report by PwC estimates that by 2030, there could be: £42 billion increase in UK gross domestic product (GDP); £16 billion in net cost savings to the UK economy; 76,000 drones operating in the UK's skies and 628,000 jobs in the drone's economy.

This all sounds very impressive however; like any vehicle, drones can sometimes get out of hands. Drones have capacity to carry items and can be installed with cameras and GPS units which can turn them into self-flying tools.

Although personal injury claims caused by use of drones have not inundated the UK court system yet, but as of an estimate there were around 90,000 drone users in the UK by November 2019. These numbers are increasing and so is the risk to public lives and safety. A malfunctioning or negligently operated drone can cause serious accidents and severe bodily injuries.

Damages caused by drones

If a drone comes in to a direct collision with a human it can cause a wide variety of injuries ranging from bruises, laceration and broken bones to loss of eye and auricle depending on its momentum and angle of contact. A drone can also cause damage without even making a direct contact with people and property itself; for example, it can cause damage by dropping delivery goods from a height, provoke a road traffic collision due to distraction caused by it becoming too close to the road users, crashing into power lines and interfering with other air traffic particularly, commercial air crafts etc.

Although, laws are being introduced to regularise the use of drone to protect lives but it can be

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predicted that, with an increased use of drones in our daily lives, personal injury claims resulting of use of drones will become more common in future.

Current Legislation

Relevant legislation concerning the operation of drones are contained primarily in the Civil Aviation Act 1982 and the Air Navigation Order 2016, as amended in 2018. Detailed guidance is also set out in the Civil Aviation Authority's Unmanned Aircraft System Operations in UK Airspace. Breaches of these aviation laws are criminal offenses, enforced by the CAA.

A drone user has a responsibility for flying their drone in a safe manner. Briefly speaking; the drone users should keep their drones in their direct sight so as to ensure that it does not collide with anything, especially other aircraft; the drone users must not endanger anyone, or anything, with their drones, including any articles that they drop from it; they should not fly more than 400ft above the surface; and they should not fly within the 5km Flight Restriction Zone of a protected aerodrome.

If a drone user wishes to operate outside the limits as set by these restrictions, they must obtain commercial operating permission granted by the CAA. This permission involves demonstration of remote pilot competence and a sufficient understanding of aviation theory, as well as completion of a practical flight examination and preparation of an Operations Manual.

UK law distinguishes between the operator of the drone and its pilot/flyer. The operator is the person who has the "management" of (ie is responsible for) the drone. This is usually the person who owns it. The pilot or flyer is the person who operates the flight controls. Often, the operator and pilot are the same person but there can be some exceptions. Restrictions apply to both; to the operator (who must not permit the drone to be flown in a certain way), and the pilot (who must not fly it in that way).

From 30 November 2019, all drones weighing between 250g and 20kg (which encompasses virtually all but the smallest toys) must be registered and labelled with a unique licence number. Anyone who wants to fly must get a flyer ID from the CAA and the person that's responsible for the drone or model aircraft must register to get an operator ID. If you'll fly your own drone or model aircraft, you'll need to register and take the test to get both IDs. Or you can just get the ID you need.

The operator is responsible for making sure that only people with a valid flyer ID use their drone or model aircraft.

They must label their drones and model aircraft with their operator ID.

Public liability and entitlement of compensation

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Commercial use/liability for accidents falls into a legal grey area. There are some well known protocols designed to deal with personal injury claim arising out of road traffic accident, uninsured/untraced motor vehicles, employer, public or occupiers liability however, so far so there has been no specific mechanism or protocol designed to deal with claims arising out of use of drones within the civil procedure rules.

A critical review of aforementioned CAA Act and the related regulations reveals that they share the essence of the Highway Code for roads.

Keeping and operating a drone is like driving a vehicle or machinery on public land. A flyer (or in some circumstances, the operator, if flyer is a child, for example) would owe a duty of care to public and therefore, would be primarily responsible for the accidents caused by his negligence or drone being going out of control.

Most operators of drones that weigh over 20 kg are required to obtain adequate levels of insurance to cover their liability in case of an accident. However, for drones weighing less than 20 kg this is optional and accordingly, exposes the flyer/operator of such UAV to substantial financial liability risks.

In the event an accident is caused by a drone the starting point is to identify its flyer or operator with reference to its unique license number. At present drones have to be grounded to identify their owners, but in future it could be done remotely or while drones are in the air. Some models already have transmitters that would enable that. Once an operator has been identified a claim can be brought forward against the tortfeasor under the Pre-Action Protocol for Personal Injury claims and subsequently, disputed claims can be progressed under the provisions of Civil Procedure Rules or specific court direction.