

08 JULY 2011

Inspiration and risk management

At the risk of being disowned by my History of Art student daughter, I have to admit that installation art doesn't engage me much. The lawyer in me kicks in and I start thinking about what could go wrong.

For example, earlier this year, said daughter led me through *The Forked Forest Path* by Olafur Eliason at the Whitworth Gallery in Manchester. For those unfamiliar with the work, it consists of an area of tall and dense bushes, all dead and very dry (it dates from 1998), through which you walk in a maze of paths in semi-darkness. I soon began to fear that some bored child on a school trip might think it a great place to mess around with a cigarette lighter!

Then of course we had Ai Weiwei's *Sunflower Seeds* at Tate Modern. From originally inviting visitors to interact with the massive area of hand painted stone seeds, the stage was reached where they could only be accessed in white overalls and breathing apparatus (OK, I'm exaggerating slightly) in view of the potential health hazard from the dust.

There was also a recent case heard by the High Court in London about a work of art called *Dreamspace V*. It was described as a substantial inflatable PVC structure, approximately 50 metres by 50 metres by 5 metres high, divided into interconnected cells through which people walked and listened to music. It was installed in a park in Chester-le-Street and tethered to the ground. Tragically, there was a gust of wind, the tethers gave way, the structure lifted into the air and two people inside it were killed and others were injured. The issue was how the liability should be shared between the local council, who owned the park and who failed to do a proper risk assessment, and the organisers, who were occupiers for the purposes of the Occupiers' Liability Act 1957. On the facts of the case, the court fixed liability at 45%/55% respectively.

Risk management hardly sits well with artistic inspiration, but for installation art, especially if it is interactive, a formal process of risk assessment is essential for any hope of avoiding liability, although "occupiers", as defined by the Act, can be strictly liable in any event.

Insurance may have to be relied upon, but the insurers must be given a clear understanding of the risk they are taking, or else they will rescind the policy. One could imagine insurers saying that they just expected a gallery to hang paintings and have a few sculptures, or the insurers of Chester-le-Street's parks arguing that they expected flower beds and play swings, rather than *Dreamspace V*.