

NATIONAL ASSEMBLY FOR WALES

SAFE ROADS, SAFE COMMUNITIES

**A RESPONSE BY THE ASSOCIATION OF PERSONAL INJURY LAWYERS
(WALES)**

NOVEMBER 2001

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1. The Association of Personal Injury Lawyers (APIL) was formed in 1990 and represents more than 4900 solicitors, barristers, legal executives and academics whose interest in personal injury work is predominantly on behalf of injured claimants. APIL Wales was formed to address issues of particular concern within the jurisdiction and has around 240 members. The aims of the association are:
 - To promote full and prompt compensation for all types of personal injury;
 - To improve access to our legal system by all means including education, the exchange of information and the enhancement of law reform;
 - To alert the public to dangers in society such as harmful products and dangerous drugs;
 - To provide a communication network exchanging views formally and informally.
2. We would like to draw the Assembly's attention to a House of Lords decision, relating to road safety, that does not feature in the consultation document but which we believe to be of considerable importance. The decision relates to a council's obligation to grit or salt icy roads – an obvious danger to road users.
3. In June 2000 the House of Lords delivered their judgment in *Goodes v East Sussex County Council*. On 14 November 1991, at 7.10a.m., Mr Goodes was driving his car on a highway maintainable by East Sussex County Council. He skidded on ice on the road and was badly injured. He claimed compensation from the East Sussex County Council on the grounds that it had breached its statutory duty to “maintain the highway” under section 41 of the Highways Act 1980. He alleged that the council should have prevented the formation of ice by spreading salt and grit on the road before dawn. The issue before the Lords was whether the duty to “maintain” within section 41 included a duty to keep the road safe by preventing ice from forming.

4. The Lords decided that the council was not under a statutory duty to prevent ice from forming on roads for which they were responsible by salting or gritting. This was despite the fact that the council could still have established a complete defence to the claim, under section 58(1) of the Highway Act 1980, if it had:

“...taken such care as in all the circumstances was reasonably required to secure that the part of the highway to which the action relates was not dangerous for traffic”.

5. A Code of Good Practice, issued by the Association of County Councils and three other local authority associations, does provide some guidelines to councils as to when they should salt or grit roads. Councils are not, however, legally required to follow this guidance. With various safety issues competing for council resources, therefore, such as food safety, there is a distinct risk that road users will not receive the protection they deserve from their local councils. This differs greatly from the position of road users in Scotland, as in that jurisdiction motorists are protected by section 34 of the Roads (Scotland) Act 1984, which provides that:

“A roads authority shall take steps as they consider reasonable to prevent snow and ice endangering the safe passage of pedestrians and vehicles over public roads.”

6. The result is that road users in Wales are required to rely upon the goodwill of their local councils to grit or salt roads. We do not believe that this is good enough when people's lives could be at stake. We have called for the Government to rectify this issue in law and, in the interim, to issue instructions to councils to give motorists some measures of protection. We urge the National Assembly for Wales to do as much as it can to protect Welsh road users before the winter sets in and road users are injured unnecessarily.