

Slips and Trips

- A talk to APIL



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Types of Claim

- Highways Act 1980
- Occupiers' Liability Act 1957
- Workplace Regulations
- Common Law Negligence
 - Positive Acts

Which cause of action?

Highways Act 1980

- Maintainable at the public expense
- Highway authority keep list
- Can't delegate away statutory duties

Occupiers' Liability Act 1957

- Private property
- Control not ownership
 - Agreements between parties
- Public right of way through owners land not subject to Occupiers Liability Act 1957
- Ward v Tesco Stores Ltd [1976] 1 WLR 810
- Tedstone v Bourne Leisure Ltd [2008] EWHC 175 654

subcontractors etc - stat duty not to be delegated

Tcy / licence agreements

↓
Dipped system of insp
- Spa - slipped in water
Nik - Spa overbubbled
Wade witness said clear

Public right of way through
Occupier land → OLA not invitee
so 1957 not apply

What is the cause of action

- Employment based Regulations
 - Workplace Regs 1992
 - Control over a workplace
 - Not based on employment relationship
 - Regulation 12 - Floors and Traffic Routes
- Accident not related to location
 - Creation of positive danger
 - Common Law negligence
- Others
 - Defective premises Act 1972
 - Nuisance

emp @ a site of another -
depends on if they have control

Section 41 (1)

- Duty to maintain highways maintainable at public expense.
- (1) The authority who are for the time being the highway authority for a highway maintainable at the public expense are under a duty, subject to subsections (2) and (4) below, to maintain the highway.

Dangerousness

"I do not consider depressions of less than one inch will never be dangerous but one above will always be dangerous"

Miles v Barnet's MBC (1992) 1 PROR 1291

- 20-40 rule
- Carriageway
 - Lowering the intervention level
 - Features
- Footway



Not a mechanical approach

20mm - intervention for footway
40mm - for highway

Can be lower intervention level if
people walk across road

Practical Tips

- The three key pieces of evidence:
 - Measurement
 - Measurement
 - Measurement
- If do not have an accurate measurement no real prospects of success

Mechanical Approach

- Kent CC v Lawrence [2011] EW11C 1590 (QB)
 - At least 15mm rise on a manhole cover
 - Judge had difficulty with defect as evidence was insufficient
 - No measurement from either side
 - Witnesses felt defect was dangerous
 - Judgment for the Claimant at first instance
 - Judge placed little weight on this evidence but should have placed none
 - Views of witnesses (and highway inspectors) as to dangerousness is irrelevant
 - Mr Justice Eady concluded defect not dangerous

What Judge had to do was
hear description of defect +
decide if dangerous

Tactics

- Photos - Single most important evidence
 - Important
 - With measurement (ruler or tape measure NOT phone!)
 - Direction of travel
 - Context
 - Contemporaneous
- When to send the letter of claim
 - Holding off letter of claim in early claims
 - Re-inspect defect after inspection period
 - Another photo measurement - Lack of change

→ area around
→ earlier the better

→ will undermine a s58 defence

Limitations

- Failure to maintain
 - Not lighting or signage under s 41 or common law (*Chatteridge v Calderbank M/W* [1991] 1 W.L.R. 1037)
- Fabric of the Highway
 - *Valentin v G.L. Transport for London (Ld) Hoveston, London Borough Council* [2001] E.W.A.C. 1337
- Not layout of the road whether in repair or not
 - *Thompson v Hampshire County Council* [2002] E.W.A.C. 1116
- Not transient hazards
 - Leaves
 - S 41(1A)

Only liable for positive acts

→ failure to light not a good claim

→ sliver of gravel - CA allowed Borough Council in

→ excludes water + ice

The Statutory Defence

- **S 58 Special defence in action against a highway authority for damages for non-repair of highway.**
- (1) In an action against a highway authority in respect of damage resulting from their failure to maintain highway maintainable at the public expense it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the authority 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.

Factors under s.58

(2) For the purposes of a defence under subsection (1) above the court shall in particular have regard to the following matters -

- (a) the character of the highway and the traffic which was reasonably to be expected to use it;
- (b) the standard of maintenance appropriate for a highway of that character and used by such traffic;
- (c) the state of repair in which a reasonable person would have expected to find the highway;
- (d) whether the highway authority knew, or could reasonably have been expected to know, that the condition of the part of the highway to which the action relates was likely to cause danger to users of the highway;
- (e) where the highway authority could not reasonably have been expected to repair that part of the highway before the time of action a rise in warning notices of its condition had been displayed.

but for the purposes of such a defence it is not necessary to prove that the highway authority had arranged for a competent person to carry out or supervise the maintenance of the part of the highway to which the action relates unless it is also proved that the authority had given him proper instructions with regard to the maintenance of the highway and that he had carried out the instructions.

Limitations to Defence

- Causation not relevant
 - *Griffith v Liverpool Corporation* [1967] QB374
- Financial Restraints do not help
 - Relevant to s 41
 - Only in general terms
 - *Wilkinson v City of York Council* [2011] EWCA Civ 207

→ relevant balancing act

→ reasonable of inspection regime
- Council insp differed to

National guidelines - not offered to meet them - Def succeeded

Causation not relevant under s.58

"Unless the highway authority proves that it did take reasonable care the statutory defence is not available to it at all. Nor is it a defence for the highway authority to show that even if it had taken all reasonable care this might not have prevented the damage which caused the injury"

Griffith v Liverpool Corporation [1967] QB374

Wilkinson v City of York Council [2011] EWCA Civ 207

- Carriageway defect
- Own inspection regime met
- Own inspection regime did not match national guidance
- Could financial circumstances overturn need to meet national guidance
- C succeeds at 1st instance, overturned on appeal.

Wilkinson v City of York Council
[2011] EWCA Civ 207

"It seems to me that resources are always a factor, and it is a balance between what the ratepayers will bear and how the resources should be allocated, which is a matter for the elected members of the council. A judge, it seems to me, should be slow to reject the evidence given by a responsible council official that resources did not permit a more frequent inspection than that which was given."

- HHJ Hawkesworth QC

If allowed budget not
allow - would be
council comment

Wilkinson v City of York Council
[2011] EWCA Civ 207

"In my judgment this was the wrong approach by the Circuit Judge to the defence provided by section 58"

"That requires an objective judgment based on risk"

"If Parliament had wanted to weaken that fundamental obligation, now contained in section 41, it would have done so"

"Section 58 was designed simply to afford a defence to a claim for damages brought against a highway authority which was able to demonstrate that it had done all that was reasonably necessary to make the road safe for users, not an authority which decided that it was preferable to allocate its resources in other directions because other needs were more pressing than doing what was reasonably required to make the roads safe"

Not able to plead
lack of funds.

→

Thank you

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