



PUMP COURT

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Highway Claims

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Introduction

- Highways Act 1980.
- An Act of consolidation which includes a private law remedy for a person suffering loss.
- Section 41 – duty to maintain highways maintainable at public expense.
- Section 58 – special defence for highway authority.

Section 41 - overview

- The highway authority for a highway maintainable at the public expense are under a duty to maintain the highway.
- *Mills v Barnsley Metropolitan Borough Council* [1992] PIQR P291, Steyn LJ's three-stage test:

In order for a plaintiff to succeed against a highway authority in a claim for personal injury for failing to maintain or repair the highway, the plaintiff must prove that:

- (a) the highway was in such a condition that it was dangerous to traffic or pedestrians in the sense that, in the ordinary course of human affairs, danger may reasonably have been anticipated from its continued use by the public;*
- (b) the dangerous condition was created by the failure to maintain or repair the highway; and*
- (c) the injury or damage resulted from such a failure.*

Section 41 – scope of duty

- Duty to maintain is a duty to repair and keep in repair the structure and fabric of the highway.
- *Burnside v Emerson* [1968] 1 WLR 1490, as per Diplock LJ:

In such good repair as renders it reasonably passable for the ordinary traffic of the neighbourhood at all seasons of the year without danger caused by its physical condition.

- An absolute duty and an objective standard.
- Section 41(1A) - ice. Not absolute.
- Drainage but not surface-lying material, obstructions or spillages.
- Not pure economic loss (*Wentworth v Wiltshire CC* [1993] QB 654).

Section 41 – practical points

- Private law action for damages for breach of statutory duty.
- Claimant bears the burden of proving breach of statutory duty.
- Determining what amounts to a danger.
- *Nash v Hertfordshire County Council* [2020] EWHC 3247 (QB) – importance of good quality photographs.
- Contributory negligence.
- PI, special damages and future losses.



Section 58 – overview

- Mitigating the absolute duty.
- Must take reasonable care.
- The court must have regard to:
 - 1) character of highway and traffic;
 - 2) appropriate standard of maintenance;
 - 3) reasonable state of repair;
 - 4) whether the highway authority knew, or might reasonably have been expected to know, that condition was likely to cause damage; and
 - 5) if could not reasonably have been expected to repair, what warning notices had been displayed.

Section 58 – practical points

- Highway authority bears burden of proving the statutory defence.
- Budgetary constraints irrelevant (*Wilkinson v York City Council* [2011] EWCA Civ 207).
- Well-Maintained Highways.
- Proper instructions, which must be carried out.
- *Crosby v Wakefield MDC* [2020] 1 WLUK 573. Must have evidence to show that a policy has been complied with.



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