Forbes at Trial Special

Vol THREE/ALARM Edition

upfront

Forbes looks to protect our clients best interests at all times. That does not necessarily mean that every case we receive should be defended to trial but where it is appropriate to do so we are robust in our defence. This document highlights a number of those matters which we think may be of some general interest.

HALSALL V WIGAN COUNCIL

Forbes successfully defended a claim for Wigan Council in respect of an accident at an Infant School.

The Claimant was employed by the Defendant as an assistant gardener and was required to use a wheeled rotary mower. Whilst using the mower to cut grass, the blade dislodged a piece of hardcore that had been hidden by the grass. The Claimant suffered a fracture to his left tibia.

The Claimant alleged breach of statutory duty and sought to rely on the provisions of the PUWER 1998 and PPE Regulations 1992. The Claimant alleged that the terrain was unsuitable and that the contour of the ground caused the rear of the mower to be raised with no protection for the Claimant and the Defendant should have provided the Claimant with shin pads. If the accident was found to be caused by operator error, it was alleged that the Defendant failed to instruct, inform and train the Claimant appropriately.

This claim was defended on the basis that the Claimant underwent appropriate training, the mower was appropriate for use on the piece of grass in question and the grass had been recently mown (approximately 19 days prior to the accident) therefore ought not to have impeded the Claimant's detection of the said piece of hardcore.

The Judge in dismissing the claim found that the mower was suitable for the task in hand, the terrain was not unsuitable for use of the mower, the length of the grass was not as long as the Claimant claimed and the skirt to the mower provided adequate protection. The Judge was also satisfied that the Claimant was also properly trained and informed and this was nothing but an unfortunate incident.

> The Claimant alleged breach of statutory duty and sought to rely on the provisions of the PUWER 1998 and PPE Regulations 1992

Forbes Comment

The case shows that Employer Liability claims notwithstanding the strictness of the Regulations are capable of being defended subject to steps being taken to ensure that appropriate risk assessments, training and use of work equipment is being used. Part of the Claimant's task prior to the mowing procedure was to ensure that obstructions were removed. On this occasion a hidden stone had clearly been missed but with no one at fault

CRAIG SHOREMAN V TAMESIDE MBC & ANOTHER

Forbes Insurance Department represented Tameside MBC in a claim brought by the Claimant who alleged that he had suffered injuries as a result of a tripping incident in 2007.

The Claimant alleged that he had fallen down a hole adjacent to a grid, whilst taking a detour to the bus stop and suffered a serious injury to his left leg and ankle. There were conflicting statements as to whether the cause of the alleged injury was an open grid, or a hole next to a grid.

The Claimant produced photos of the hole at the trial, which had been taken by his solicitor when visiting the scene of the accident. When cross examined on the location of the accident he stated that when retracing his steps of the route taken he came across this hole and later admitted to not knowing what had caused the accident, a hole or an open grid.

The accident was alleged to have happened at some point before midnight as the Claimant had been attempting to catch the last bus home having been at his sister's. It was not until 7am that an elderly couple were said to have come to his aid. They called a taxi for the Claimant and he was dropped off at his home at around 9am. The intervening period, between the time of the accident and the elderly couple coming to his aid, was accounted for by the Claimant alleging he was unconscious. The Claimant said he was reluctant to attend hospital, but was finally persuaded by his mother and an ambulance was called around midday.

The A&E records, relating to the attendance after the accident, suggested that the Claimant had been out drinking the night of the accident. This was also repeated in the medical notes of the consultant treating the Claimant on the ward. However, the Claimant stated he only had a couple of lagers whilst watching videos with his sister. His sister was not called to give evidence.

The medical notes made no reference to the significant period of time the Claimant had spent unconscious. The Judge found this surprising. He considered that the intoxication issue may have been linked, which would have explained the gap in time between the accident and arriving home. In the end, the Judge made a finding that the accident was unlikely to have happened as early as alleged.

In reaching his judgment the trial Judge found that there were many unsatisfactory elements in the case and that the case rested on the uncorroborated evidence of the Claimant. Serious questions arose as to his credibility throughout the case.

Perhaps the most interesting of which were the Claimant's status updates on Facebook, which were uncovered during investigations undertaken by Forbes anti-fraud team. Several entries recorded the Claimant as going off to work and being unable to work due to the weather. These entries were all the more important considering the significant claim for loss of earnings the Claimant put forward and the allegation that his injury restricted him to a sedentary type of work. This culminated in a schedule of loss in the region of £500,000.

The Judge made a finding that the Claimant had concealed from his legal representatives, his counsel and the court the casual work he had undertaken.

The Judge in dismissing the case felt the Claimant's credibility was sufficiently diminished that he had failed to discharge the burden on him to establish the circumstances of his accident on the balance of probabilities. The Claimant was ordered to pay the Defendants' costs of the action.

Forbes Comment

This case demonstrates the court's willingness to accept evidence gathered from social media sites such as Facebook when any adverse entries can cast doubt on the credibility of a Claimant.

Several inconsistencies were noted in the Claimant's account, especially when referenced with the A&E records which were sufficient to cast significant doubt as to the Claimant's credibility.

forbessolicitors.

Enid Davies v Conwy County Borough Council

The claimant alleges tripping when stepping up off the road onto the pavement. She alleged that a street light was out, causing the area where she was walking to be in darkness. Her allegation against the Council was of a failure to act promptly enough following complaints about the street light being out.

The evidence of the Council was that upon the outage being reported to them, they attended the street light the following day. On becoming aware that the problem was caused by the power supply, they then reported it to the electricity suppliers. The Ofgem agreement stated that the repair must be carried out within 10 working days. The repair was effected on the tenth day of being reported to electricity suppliers.

The claimant sought to argue that taking into account the fact that it had taken the Council more than a day to attend the defect and report it, that the repair actually took in excess of the 10 working day period. It was argued by the Council that the 10 working day period was from when the electricity suppliers had been notified, and that as long as the Council was shown to have acted promptly, its defence would be successful.

The claimant discontinued her claim and agreed to pay the Council's costs.

KATHLEEN BERRY V CITY WEST HOUSING TRUST

Forbes successfully defended City West Housing Trust at a trial at Manchester County Court in a claim for damages being brought as a result of flooding of the property of one of their tenants caused by the ingress of water from the property next door.

The Claimant alleged that the Defendant was guilty in nuisance and/or had been negligent by responding too slowly to the leak from the neighbouring vacant property.

There were three key issues for the court to determine:

- **Firstly, whether the leak from the adjoining property should have been prevented altogether, by draining it prior to the leak occurring.**
- **Secondly, whether, once the leak was reported to the Defendant, the Defendant dealt with it within a reasonable period of time.**
- **Finally, if there was delay, whether it made the situation worse, insofar as it exacerbated the damage to the Claimant's belongings.**

The Court held that over the Christmas period, during a cold snap when resources were stretched, it was perfectly reasonable for the Defendant to identify the leak and rectify it within 24 hours, which is what the Defendant had done.

Further still, the court was satisfied that the damage to the Claimant's carpets was essentially the same after 24 hours as it was after four hours, and so any delay would have been negligible to the damage suffered.

On the issue of whether the leak should have been prevented in the first place, it was held that while the adjoining property was vacant, insofar as the tenant was no longer in occupation, the tenancy was still live. That was to say, for the Defendant to have entered the property of its own volition and drain the water system would have been a breach of that tenant's right to quiet enjoyment. There was, therefore, no obligation on the Defendant to drain the property; and it could not be held liable for not doing so.

The Claimant's claim was dismissed in full.

Forbes Comment

The court agreed wholeheartedly with the Defendant's position on the reasonableness of its response and appreciated the context in which events occurred. The decision should provide encouragement to Defendants who employ reasonable systems of logging complaints and actioning repairs.

James and Davis v Conwy County Borough Council

Forbes successfully defended Conwy County Borough Council in a claim for damages when a boat's mooring failed to keep it in situ and the vessel floated downstream colliding with a number of other boats including the Claimants' boat.

The Claimants alleged that the very happening of the accident was proof in itself of negligence of the Council's negligence.

In assessing the Claimants' "the facts speak for themselves" approach, the Court emphasised that despite the matter being heard in the Conwy and Colwyn County Court, the legal tests and principles applied just the same, as had the matter proceeded in the Admiraly Court in London.

In this regard, the case demonstrates the multi-faceted nature of a claim in negligence and, therefore, the variety of grounds on which a Defendant can seek to contest claims.

The Court stated that it was for the Claimants to show that: firstly, a duty of care existed; secondly, that duty was breached by Conwy CBC; thirdly, the breach caused the loss; and finally, the loss was not too remote.

It was generally accepted that a duty of care was owed by Conwy to the Claimants. The Court was also satisfied that the amounts claimed were entirely in proportion to the damage incurred. However, the Claimants then had to show that the Council failed to live up to the standard of a reasonable harbour authority in maintaining the harbour and mooring.

For the Claimants' argument that "the facts speak for themselves" to succeed the Court would have to impose an absolute duty on the Defendants, such that the Council would be strictly liable if damage occurred.

Neither the Defendants' witnesses nor the Claimants themselves could explain how the 1.5 tonne underwater mooring had come loose to allow the vessel to move down the river. As such, the Court could not make a finding on the cause of the accident. Additionally, when the Court considered that there had been no comparable incidents in the past twenty years it followed that the events as they had occurred were not foreseeable.

The Council was held to have acted entirely reasonably in inspecting moorings on a yearly basis and the mooring blocks and length of chains had been found to be perfectly adequate and reasonable for their purposes on the pre incident inspection. The Court also found that the method used by the Council for calculating the correct length of the chain between the mooring and the vessel, to be appropriate taking into account the depth of the bay and the highest possible tide. . In fact, the Court stated that the uniqueness and mystery of this accident was itself a sign that "the Council had acted properly" and it would take a number of other accidents of this kind before the Council should have to consider changing its systems, equipment, and procedures.

On the basis, therefore, that the Council had acted reasonably the Court found there had been no breach of duty. Further, the Court held that this was not a foreseeable event, meaning the Claimants had failed to prove every aspect of the test for negligence and the claim was dismissed.

Forbes Comment

This case shows that as long as the Council's policies and procedures are reasonable, and as long as the Council can show the reason why these policies are in place, then, whether the Council is looking to show the reasonableness of its highways inspection, or as in this case, its methods of calculating the length of chains attached to moorings and its frequency of inspection of those moorings, the claim can be defended.

Further still, the judgment in this instance has served to prevent claims by the owners of the other vessels damaged in this incident and indeed future such incidents, showing that Forbes' robust approach to defending claims has a tangible effect on the claims that Local Authorities can face

In this regard, the case demonstrates the multi-faceted nature of a claim in negligence and, therefore, the variety of grounds on which a Defendant can seek to contest claims.

Lindop v Wigan Council

This claim arose out of an alleged accident which occurred on 22 January 2007 during the course of the Claimant's employment as a cleaner in a school. She alleged that as she started work at the end of the school day she slipped and fell in a pool of water outside a block of toilets on the school premises suffering back injuries of a serious nature that required her to be retired on ill-health grounds.

No-one saw the Claimant fall and there was no evidence of water in the area after the accident. The Claimant herself was unable to explain to the Court the size of the pool of water and admitted that whilst she was the cleaner on duty and had continued working after the accident, she had not cleared the water up. The fact that she carried on working after the accident cast doubt on the seriousness of her injury.

The case fell at the first hurdle as District Judge Mornington took issue with the Claimant's credibility. She accepted the Defendant's witnesses' evidence that the Claimant had not mentioned the cause of her fall nor that her clothes were wet after the accident, which one would expect her to do.

In addition, the Claimant was adamant that she went to the doctors the day after her accident. There was no note of this attendance in her records nor was it mentioned in her medical report. The District Judge did not believe a doctor would not write a note to say a patient had attended and been prescribed painkillers.

Interestingly the accident form was dated 1 February 2007. This would have been following her alleged attendance at the doctor and possibly after her subsequent road traffic accident. This accident form appeared to be the first mention of the water causing the fall.

As well as other issues with the Claimant's credibility the District Judge found that the Claimant was wearing heels at the time of the accident, not the trainers she alleged she was wearing.

The District Judge went on to say that if she had believed the Claimant the Defendant's reactive system of inspection was sufficient and a pro-active system was not required. The building itself was under strict control due to it being new and containing valuable assets. The entrance needed to be opened by a teacher and the bathrooms were always locked.

The Claimant's claim was dismissed and she was ordered to pay the Defendant's costs.

The fact that she carried on working after the accident cast doubt on the seriousness of her injury.

Liane Walsh v Rochdale MBC

Forbes Insurance department successfully represented the Defendant in a trial where the claimant alleged that she had slipped on grass clippings left on the pavement.

Forbes Insurance department successfully represented the Defendant in a trial where the claimant alleged that she had slipped on grass clippings left on the pavement.

Briefly, Rochdale MBC had previously mown the grass verge adjacent to the pavement next to a bus stop. Upon crossing the road to reach the bus stop, the claimant alleged that when stepping on to the pavement she slipped on grass cuttings that had been left, causing a fracture to her elbow.

The Defendant employed a boxing off system when cutting grass. The Judge found that this was an entirely reasonable and acceptable method. Furthermore, it was noted that it was a method used by other Local Authorities because it prevents any spillage onto the pavements.

The Judge found that the presence of the grass clippings on the pavement was not dangerous and did not create a foreseeable risk of injury. The Defendant was exercising a statutory power to cut the grass and had taken reasonable care and skill in doing so. It was found that the grass clippings did not give rise to a dangerous state of affairs nor did it cause an obstruction or danger.

In addition, it was noted that the Claimant had failed to provide a clear, concise or compelling account of the circumstances of the incident. The claim was therefore dismissed.

Forbes Comment

This case shows that as long as the Council's policies and procedures are reasonable, and as long as the Council can show the reason why There is no statutory duty placed upon highway authorities to cut grass verges positioned on the highway, this being undertaken as a statutory power rather than a duty. Pursuant to section 41 of the Highways Act the presence of grass on the highway does not render the fabric of the highway "out of repair". As such, there is no relationship giving rise to a common law duty of care.

SAMANTHA SMYTH V NORTHWARDS HOUSING LIMITED

The claimant alleged falling in her home due to water being on the floor of her kitchen caused by a leak from the ceiling. She complained to the defendant, who passed on the complaint to their appointed contractors. On attendance by the contractors, the claimant was not at home so they left a card asking the claimant to contact them. It was not until a couple of months later that she complained again. On attendance by the contractors, they tried to effect a repair to the leak which was coming from the bathroom which was unsuccessful. They reattended the following month but the leak remained, and finally after a third attendance, the problem was resolved. In the meantime, the claimant slipped suffering personal injury. She issued proceedings, but did not include the contractors within the proceedings.

The defendants were of the view that if it was considered by the court that the works carried out by the contractors had been done properly, then the claim would fail. If the works were not done adequately, then the claim would succeed against the contractors. In either scenario, the defendant would not have any liability. Unfortunately, the contractors did not see it this way and refused to take over conduct of the claim, in particular alleging that they had a defence to the claim. Accordingly, the defendant was forced to join the contractors into the action as Part 20 defendant.

Eventually, and a matter of a few weeks pre-trial the contractors made an offer to settle to the claimant, and agreed to pay the defendant's costs.

POTTS V SALFORD CITY COUNCIL & ANOTHER

Forbes successfully defended a claim for a Highway Authority in respect of an incident whereby the Claimant sustained serious injury following a trip in April 2007 caused by a missing water hydrant cover.

The Claimant produced evidence that the water hydrant covers had a history of interference which the highway authority and the water company should have been aware of and should therefore have increased their frequency of inspection.

When considering the inspection records dating back to 2002 onwards, a number of inspectors had noted during the course of inspections missing hydrant covers at various locations which would then be referred to the water company to repair given their responsibility for their own apparatus.

In October 2006 the Highway Authority themselves had reported to the water company two missing hydrant covers. The Judge found that repairs had been undertaken and it would have been inconceivable that the repairs would not have included the replacement of the covers.

The area was inspected two weeks post accident and the highway inspector noted two missing hydrant covers. The Judge found that the interference with the covers was most probably due to theft for the metal and unlikely to be undertaken by youths.

Whilst the Judge accepted that the hydrant covers and stop tap covers were missing on a frequent basis, there was no evidence to compare the area to other locations within the country. The Claimant was suggesting that the highway authority should have increased their frequency of inspection to a monthly basis. The Judge found that the section 58 special defence afforded to the Highway Authority had been made out as they could not have been aware of or known of a specific problem of metal theft of the hydrant covers, and therefore the Authority's frequency of inspection at the accident was entirely reasonable.

The claim was dismissed with an order that the costs of the Defendant by paid by the Claimant.

Forbes Comment

It is our experience that metal theft of gully covers and hydrant covers are on the increase. Highway Authorities need to ensure that they respond appropriately on notification of complaints to inform the relevant utility company responsible for the apparatus but may have to temporarily make the area safe in the interim period. Unprecedented theft of metal work from the highway is unpredictable and it is encouraging the Courts agree that existing inspection procedures may be deemed appropriate to satisfy a section 58 defence.

Sharon Tingle v Scarborough Borough Council

Forbes successfully defended at case at trial involving a Claimant who broke both her elbows when she tripped over a low slung wire fence.

The Claimant, a 23 year old female, walked home alone through Scarborough's Peasholm Park at 11.00pm on a September's night. The park is open 24/7. The Claimant alleged the area was poorly lit and she accidentally strayed from the path. As she was about to re-join the path she tripped over a low wire strung between posts which was in situ to protect the grassed area surrounding a flower bed.

The claim was intimated in accordance with the Occupier's Liability Act 1957; the main allegations centred upon the adequacy of the lighting in the park, the height of the wire fence and whether the same constituted a trap/foreseeable danger.

In cross-examination, the Claimant readily admitted she had no qualms about walking alone through the park at night as a female (which would suggest the lighting was no inadequate) and was aware of the presence of the wire fence having been born and bred in Scarborough and a regular visitor to the park. She maintained it was not visible on a night and that she had not been looking at the ground as she walked. It was also argued by the Claimant that in the absence of any 'Keep off the grass' signs, she was not prohibited from walking on the grass anyway.

Forbes produced DVD footage of the route the Claimant took from the entrance of the park to the accident locus; as she approached the accident locus she would have been met with a choice as the footpath forked into two different directions. The DVD showed a total of 4 routes from that point; 3 of which she could have taken and finally the route she did take. The first 3 routes were entirely safe and on the main path thereby avoiding the wire fence; the 4th route involved a short cut across the grassed area (even though she says this was unintentional) to the point of the wire fence.

In addition, the Defendant relied on witness evidence showing no lamp columns were recorded as defective at the time and that the wire fencing had been in situ for over 60 years without previous incident. In terms of the type of fencing in situ, the Defendant's case that the wire fencing was in keeping with the rest of the park and also with the park's Japanese garden/ornamental theme.

In dismissing the claim, the Judge held he did not consider the wire fence constituted a danger/trap; he accepted it was inevitably not as visible at night and to paint it fluorescent yellow for example would have made it so however there had to be an aesthetic element to any such decision. Furthermore His Honour held that, even though the park was open 24/7, the Defendant was entitled to assume visitors would take more care on a night and stick to main paths. He considered the Claimant's choice of route on the night foolish and in that she had 3 alternative and safer options.

He concluded that sometimes accidents just happen, there is not always fault to be allocated.

Forbes Comment

Just because relatively simply remedial action might have prevented an accident, this does not mean the court will necessarily expect it to be carried out. Here the aesthetics of the area and the availability of an alternative route as well as the Claimant's own contributory decisions outweighed other considerations

Samantha Mannion v Warrington Borough Council

The claimant was a pupil at the Council's school. During PE, the claimant, who was a Year 10 pupil, alleges that she was on the trampoline and suffered an injury when she landed awkwardly on her left ankle. She alleged that she was not supervised adequately when on the trampoline, and in particular that the supervising teacher was in another part of the sports hall supervising table tennis.

The claimant's case is that this was the first time she been on a trampoline and that the incident occurred when she was merely bouncing up and down. She stated that during the class, this was the first occasion she had been on the trampoline and that she had been bouncing up and down for approximately five minutes.

The PE teacher's evidence disagreed almost entirely with the claimant's version of events, save that it is accepted the claimant suffered injury on the trampoline but that it occurred when the claimant was attempting a somersault. It was her evidence that the other activity in the sports hall was badminton. She also stated that she was supervising the trampoline at the time of the accident. She also states having discussed with the claimant her capabilities on a trampoline, and in any event, would have let her on the trampoline even if she was of the view the claimant had no experience, in order to assess what she was capable of. If the pupil showed she was capable she would start by asking the pupil to carry out the simplest manoeuvre before moving on to more difficult exercises. These would be carried out over a number of visits to the trampoline in order that the pupil would not get over-tired. The teacher's evidence was that the claimant showed she was capable of a number of difficult manoeuvres on the trampoline, and the teacher was not surprised at this as she knew the claimant to be a talented sports and dance student.

The court accepted that the teacher was supervising the trampoline at the time of the accident, as there was more risk attached to this activity than the other activity in the sports hall, badminton. It was also found that the claimant was attempting a somersault when the incident occurred but that the teacher had assessed the claimant's capabilities on the trampoline, and in relation to carrying out a somersault in particular.

The claim was therefore dismissed, with an order for the claimant to pay the Council's costs.

This case evidences the fact that when carrying out an activity that carries a risk of injury, as most sports do, that as long as a suitable assessment of the abilities of claimant is carried out leading to a decision that the claimant should be capable of the activity, and as long as the appropriate supervision is provided, then claims in such instances should be capable of defending.

Thomas Michael McManus v Salford City Council (1); Punch Partnerships Ltd (2)

Forbes represented Salford City Council in a trial on preliminary issues in the Technology and Construction Court at Manchester County Court for a claim for tree-root subsidence damage. The claim was issued against Salford City Council as the registered freehold owner of the land on which the offending trees stand and/or against the Second Defendant, the registered leasehold owner of the same land.

The Claimant's property was next door to the land, and suffered damage at the foundation level. The trees were situated at the back of a car park to a pub, owned by the Council, but which land had been leased in 1984 to the Second Defendant by way of a 99 year lease.

The issue for the Court to decide was which Defendant had sufficient control over the trees to be potentially liable in nuisance.

It was held that the relevant law was laid down in the judgment of Dyson LJ in LE Jones v Portsmouth City Council [2002] EWCA Civ 1723, paras 10 and 11:

"Speaking generally, the occupier of premises is liable for all nuisances which exist upon them during the period of his occupancy.

"In my view, the basis for the liability of an occupier for a nuisance on his land is not his occupation as such. Rather, it is that, by virtue of his occupation, an occupier usually has it in his power to take the measures that are necessary to prevent or eliminate the nuisance.

"Similarly, control lies at the heart of the liability of a non-occupying owner for liability when the nuisance is attributable to a breach by him of the covenants of a lease, or a failure to exercise his right to enter and carry out repairs."

On this final point, the judge rejected the Second Defendant's argument that an absence of express obligations on the tenant to undertake works on the trees, along with the fact there were specific obligations elsewhere in the lease – such as the right to enter to inspect and for all other reasonable purposes – meant that it was the parties' intention for the Council to retain control over the trees.

It was held that while there were positive obligations contained within the lease, it did not follow that the Second Defendant had no obligations regarding the trees. To hold otherwise would be inconsistent with the fundamental notion that the Council demised the whole land – that is, exclusive possession of the land, for the duration of the lease.

Further still, the clause that stated that the Council could enter the land for "all other reasonable purposes" did not, in the context of a 99 year lease, include entering to repair any trees.

As such, the Council had no control or maintenance of the trees and therefore no liability to the Claimant in nuisance.

The Court further ruled that, even if the Council did have control over the trees, it was entitled to an indemnity from the Second Defendant pursuant to the indemnity clause appearing within the lease. It was held that the lease was clearly drafted to cover such a claim as this.

The judge accepted the following submissions on behalf of the Council.

(i) Prior to the 1984 lease, the Council had full control in law over the trees. But this claim related not to pre-lease events, and so this was irrelevant.

(ii) If at the time of the lease the trees were causing damage, the Council could be liable – but damage was not caused until 2005.

(iii) In demising land by lease, an owner of land transfers his right of exclusive possession – including corporeal hereditaments, such as trees. Therefore, the lease allows the owner to cede all control to the tenant.

(iv) There was no evidence that the Council retained or exercised any control over the land and trees since the lease was entered into.

(v) There was nothing in the lease – express or implied – that led to the conclusion that the Council had retained sufficient control to be liable in nuisance

(vi) And in any event, that the indemnity clause in the lease provided that the Council would be fully indemnified against this, and any other claims.

Forbes Comment

The case demonstrates the importance of beginning at the start. The 'back to basics' approach, which focused on the fundamental purpose of a lease, provided the Court with a logical starting point for assessing control of the land in a dispute which could have become embroiled in convoluted issues of clause construction.

That the judgment also focused on the indemnity issue highlights the importance of approaching a claim with a multi-faceted Defence, in order to cover all contingencies.

> As such, the Council had no control or maintenance of the trees and therefore no liability to the Claimant in nuisance.

forbessolicitors.
with you every step of the way

For legal advice that is straight to the point:

Blackburn Office t: 01254 662831
Leeds Office t: 0113 244 6688
Manchester Office t: 0161 918 0000
www.forbessolicitors.co.uk

STEPHENSON V SALFORD CITY COUNCIL

According to an HSE Forbes Insurance department successfully represented the Defendant in a highway tripping claim which proceeded to trial.

Briefly, the Claimant alleged that she tripped and fell into a pothole on 2nd May 2009 whilst crossing a road sustaining a soft tissue injury to her ankle and right wrist.

There were a number of inconsistencies within the Claimant's evidence with a decision being made by Forbes in conjunction with the Defendant to proceed to defend the matter to trial.

During the course of cross-examination the Claimant could not explain why she had not advised any of the medical staff as to what had happened, there was no reference to a trip or fall or an injury to her ankle in her initial visits to A&E, the first such reference was on 27th May 2009, nearly a month later. The Claimant alleged that some of the medical staff she saw did not take notes at all, and she could not remember exactly what she told the staff as to the circumstances.

The Claimant relied on two witness statements at trial, and in cross-examination provided a contradictory account of the circumstances of the incident. The Claimant suggested that this may be because her solicitor took her instructions over the telephone, and did not explain that full details of the accident circumstances were required.

In relation to the fall itself, the Claimant was unable to provide a consistent version of events, with the Judge at one point commenting that she had provided numerous explanations. The Claimant was unable to provide evidence consistent with her statements.

The Claimant was also unsupported by her A&E records; they supported her assertion that she attended hospital on 2nd May 2009; however there was no mention of a fall or trip. The triage nurse's notes stated 'Has swollen right hand sustained during restraining dog'. The Claimant then saw a female junior doctor whose notes of the circumstances were 'At 06:00 playing with dog. Hand caught in lead and wrenched into forced hyperextension at wrist. Swollen wrist and fingers since pain'.

It was put to the Claimant whether it was possible that both the doctor and the nurse noted the circumstances wrongly. The Claimant stated that the nurse wrote nothing and the junior doctor got a more senior male doctor to look at her. The Claimant made no reference to seeing two doctors in her statement.

The District Judge found the Claimant's evidence unreliable, her account not credible and her recollection jaded. The claim was dismissed as she was unable to prove her case. The Claimant was ordered to pay the Defendant's costs of the action.

Forbes Comment

Despite having no oral witness evidence to dispute the Claimant's version of events, careful consideration of all the medical records enabled us to identify a crucial inconsistency in the case the Claimant was purporting to put forward. Following cross examination the Claimant's case was shown to still be lacking in veracity and therefore failed. Therefore, just because the Council may not be able to rely on their highways inspection to defend a case, does not mean the case needs to be settled. Documentation should be reviewed for inconsistencies in the Claimant's case that can assist in successfully defending cases. For more information etc.