

Play Areas and Parks Footpaths

Managing Claims Against Your Service

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- Legislation
 - Occupiers Liability Act 1957 and 1984
 - Highways Act 1980
- Case Law
- Managing and Defending Claims

Occupiers Liability Act 1957 - Duty

s.2(2) The common duty of care is a duty to take such care as in all the circumstances of the case is reasonable to see that the visitor will be reasonably safe in using the premises for the purposes for which he is invited or permitted by the occupier to be there.

Who is an “occupier”?

- No definition in the Act
- “Occupational control”
- Can be more than one occupier

Who is the duty owed to?

- Visitors – invited or permitted to be on the land
- Includes people exercising rights under Countryside and Rights of Way Act 2000/National Parks and Access to Countryside Act 1949
- Children may be less careful than adults
- Is a warning enough?
- Does not extend to risks willingly accepted

What is the Duty?

- To take such care as is reasonable in all the circumstances
- To see that the Visitor will be reasonably safe
- In using the premises for the purposes for which he is invited or permitted to be there

Non-Visitors – OLA 1984

- 1(3) An occupier of premises owes a duty to another (not being his visitor) in respect of any such risk as is referred to in subsection (1) above if —
- (a) he is aware of the danger or has reasonable grounds to believe that it exists;
 - (b) he knows or has reasonable grounds to believe that the other is in the vicinity of the danger concerned or that he may come into the vicinity of the danger (in either case, whether the other has lawful authority for being in that vicinity or not); and
 - (c) the risk is one against which, in all the circumstances of the case, he may reasonably be expected to offer the other some protection.

OLA 1984 – Duty to non-visitors

- Definition of occupier is the same

- Differs from OLA 1957
 - Occupier must be aware of danger (but cannot close eyes to dangers)
 - Must believe that people could come into the vicinity
 - Must be expected to offer some protection

Tomlinson v Congleton BC [2003]



Background

- A lake where notices were displayed forbidding swimming, but it was well known that swimming took place (and there had been previous accidents)
- Claimant was in shallow water and dove from a standing position, hitting his head on the lake bed
- Suffered serious injuries

Lord Hoffman's Judgment

“I think it will be extremely rare for an occupier of land to be under a duty to prevent people from taking risks which are inherent in the activities they freely choose to undertake upon the land....the landowner may for his own reasons wish to prohibit such activities. He is entitled to impose such conditions, as the Council did by prohibiting swimming. But the law does not require him to do so... The fact that such people take no notice of warnings cannot create a duty to take other steps to protect them.”

Analysis

- Prohibition on swimming – not using the lake for the purpose invited – OLA 1957 or 1984?
- The danger of diving into obviously shallow water did not require a warning by the occupier, even though one was given
- No duty to actively monitor

Highways Act 1980

- S41 Duty - *“The authority who are for the time being the Highway Authority for a highway maintainable at the public expense are under a duty to maintain the highway”*
- Includes
 - Bridleways – foot and horseback
 - Cycle track – pedal cycles (with or without rights of way on foot)
 - Footpath – only on foot

What does this mean?!

- Already maintainable at public expense when 1980 Act came into force
- A highway built by a highway authority
- A footpath or bridleway created by a public order
- A highway adopted as a maintainable highway
- A highway used for 20 years uninterrupted?
- Duty to maintain a list
- If not maintainable at public expense, OLA 57 only applies if occupier creates the defect

Highways Act – Statutory Defence

- Claimant must prove
 - The highway was not reasonable safe
 - The accident was caused by the dangerous condition of the Highway (Thompson –v- Hampshire CC (2004) – accident happened in ditch alongside the highway – Highways Authority not liable
- No definition of when a highway stops being reasonably safe

S58 Highways Act Defence

- *“..a defence... to prove that the authority had taken such care as in all the circumstances was reasonably required to secure that part of the highway... was not dangerous for traffic...”*
- Take account of
 - Character of highway and traffic expected to use it
 - Standard of maintenance given that character
 - State of repair that would be reasonably expected for that highway
 - Whether authority knew or could reasonably have know the condition of the highway was likely to cause danger to users

Practicalities – OHA and HA claims

- Rural footpaths and areas need not be maintained to the same standards as a busy high street foot way
- Knowledge of the area must be applied – areas prone to flooding may leave road fragile
- Reasonable systems of inspection and maintenance are the key to defending claims
- Systems must operate properly, not just be “good on paper”

Bowen v The National Trust [2011]



Facts

- Tree limb broke due to decay in the top of the branch fork (“B3”)
- Landed on party of children
- Proceedings against the National Trust alleging a breach of section 2(2) of the OLA 1957
- National Trust had written inspection policy – high risk (close to public areas), medium risk (footpaths/bridleways in regular but not intensive use) and low risk (woodland areas, only lightly used).

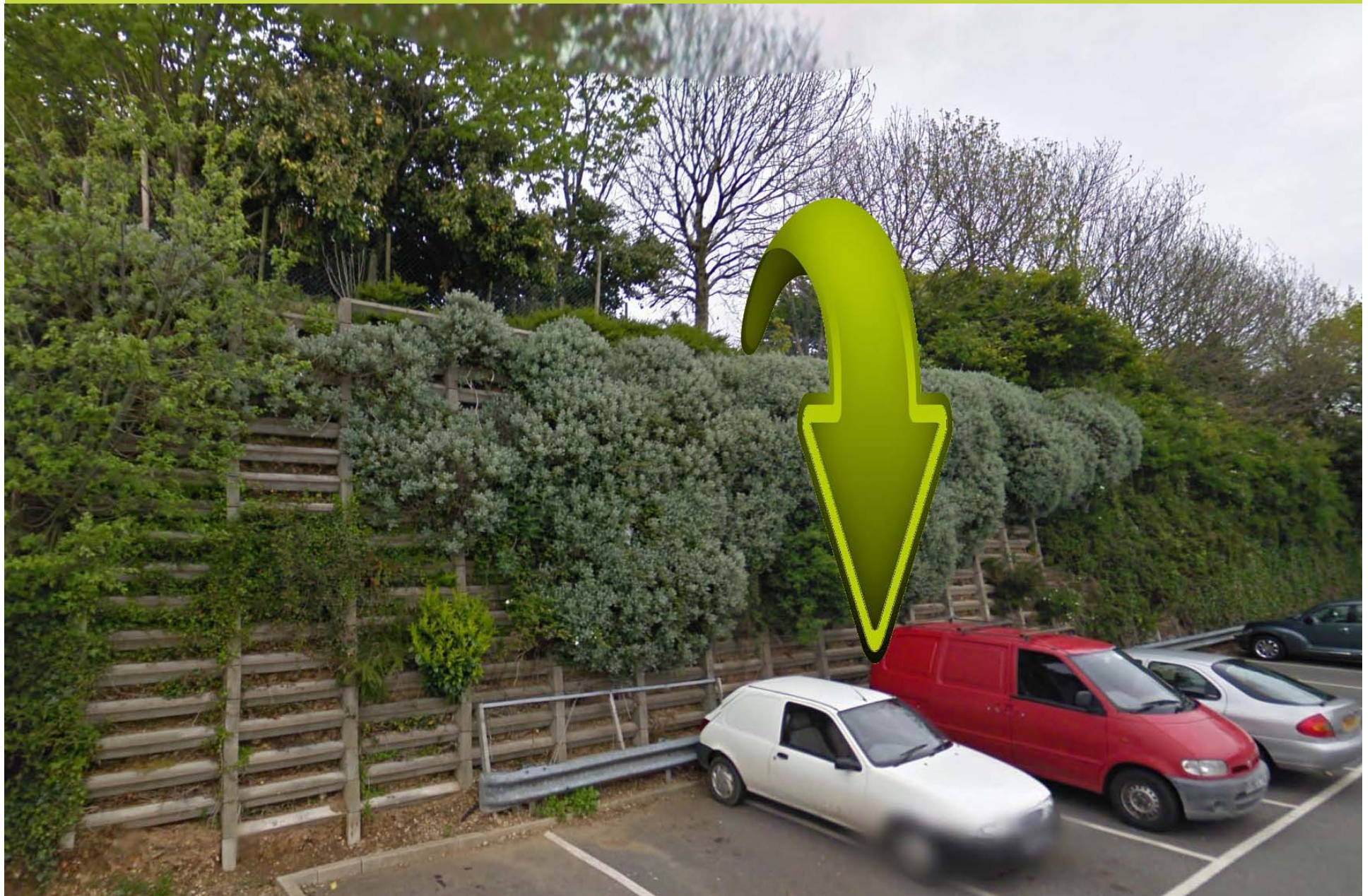
System of Inspection

- Principally based on visual inspection from the ground
- Tree was in a medium risk area (having been reclassified in 2006 from low risk).
- First specific inspection six months before incident
- There were no signs of a probability of failure

- Judge found inspectors used reasonable care, and that they had received adequate training and instruction.

Harvey v Plymouth City Council [2010]





Whose land is it anyway?

- Claimant running from a taxi at night – went onto land which Council appeared to have forgotten it owned
- Hidden drop into supermarket car park – fence low
- Land used for recreational purposes
- Foreseeable activity?
- What if someone chasing a football? A different story?

Dad to sue Basildon Council over son's playground accident



- <http://www.newdeal-fairdeal.co.uk/news/roundabout-accident>
- http://www.essexcountystandard.co.uk/news/ecsnews/8435154.Mum_says_park_playground_is_unsafe_for_kids/
- <http://childinjuries.co.uk/playground-child-accidents/>

Play Areas

- Safe Construction
 - Equipment
 - Flooring
- Properly Inspected
- Properly Maintained
- No duty to supervise
- Not about eliminating risk entirely!

What is a reasonable system of inspection?

- Reasonable system of inspection
 - Documented
 - Reasons explained
 - Regular enough
 - Appropriate training
 - Local knowledge *is* relevant
 - Keep under review

Was the inspection being done?

- Sign off sheets
- Can contract out – reputable contractors!
- May need to contract out – play equipment
 - Day to day
 - More detailed – quarterly/annual
- Be flexible

Was the maintenance done?

- Within a reasonable time?
- Was the defect taken out of use? How?
- Document the work – by a competent contractor
 - Play areas – constructed/repaired to standards?
 - Certificated?

Hall v Holker Estate [2008]



Facts

- Playing football at a caravan park
- Goal fell over – no pegs securing goal
- No evidence called by Defendant employees on systems of inspection
- Court of Appeal found for Claimant

- Compare with *Taylor v Solihull Metropolitan Borough Council [2013]*

MOJ Portal – EL/PL Claims

- Claims under £25,000 damages
- Fixed costs if comply with strict time limits
 - 40 days to respond on liability
 - No success fees and ATE insurance
- Lack of initial information
- Importance of initial investigations – quick co-operation
- Fraud concerns?

Jackson Reforms

- Strict time limits
- Failure to comply will lead to case collapsing – limited leeway
- Be on top of paperwork
- Identify witnesses and make available

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