

## **Winter Maintenance Responsibilities**

It is well-established law that no liabilities attach for non-feasance (failure to act), unless the party concerned is under a positive duty to act, and fails to do so.

In the case of property, which includes open spaces such as parks and car parks, positive duties to act are created by the Occupiers Liability Act 1957, which imposes on occupiers *“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.”*

In relation to winter maintenance, the extent of this duty has been clarified by the Court of Appeal in two cases: -

### **Fildes v International Computers 1984**

The claimant fell on ice on an ungritted area of a car park. Paths and areas of high pedestrian traffic had been gritted however, and the Court held that this was sufficient to satisfy the duty of “reasonable care”, as it would have been impracticable to have gritted the whole car park. The defendants were not liable.

### **Murphy v City of Bradford Metropolitan Council 1991**

The claimant and another person fell on ice on a sloping path to a school. The school had an excellent system in place, and the path had been cleared of snow and salted. The Court held that whilst the system was adequate, the fact that at least two people had fallen showed that insufficient salt had been spread on the slope. The defendants were therefore liable on the basis of inadequate implementation of a good system.

In the case of adopted highways, the legal position prior to 2000 was that Highway Authorities were responsible for clearing snow and ice by virtue of the Appeal Court’s interpretation of the Highways Act 1959, (*Haydon v Kent County Council 1978*). This interpretation was reversed however by the House of Lords decision in 2000 in the case of *Goodes v East Sussex County Council*. The basis of this decision was that the Highways Act imposed an absolute duty to maintain the highway, and as it is clearly impossible to keep roads and pavements absolutely free of ice and snow, the duties should not be interpreted as extending to winter maintenance.

Parliament responded to this change in the law with the passage of the Railways and Transport Safety Act 2003. This inserted a new Section 41(1A) into the Highways Act 1980, which became effective on 31<sup>st</sup>. October 2003. This created a new duty on Highway Authorities *“to ensure, so far as is reasonably practicable, that safe passage along a highway is not endangered by snow or ice.”*

To the best of our knowledge there are not yet any Appeal Court cases interpreting this new duty. There are however interesting County Court decisions: -

### **Macdonald v Leicester City Council 2006**

The claimant fell on ice and snow on a footpath which remained uncleared from the previous day. The Authority had a good system of winter maintenance, but would not have cleared the path for a few days, because it was classified as a low priority. The Authority were held not liable as they had a good system, and the classification was considered reasonable. The Judge specifically recognised that prioritisation was necessary as the Council had to allocate finite resources.

### **Pace v City and County of Swansea 2007**

The claimant's car skidded and overturned on ice. The Authority had a good system of gritting, and following a report of freezing temperatures planned to grit from 20:00. This was then delayed due to unexpected rain, which would have washed the grit away. Gritting then commenced at 24:00, and was completed by 05:00, five hours before the accident at 10:00. By this time there was no sign of grit on the road, it presumably having been covered by snow and ice. Swansea were held not liable, as they had done everything reasonably practicable to discharge their duty, including making late changes to their plans in response to changing conditions.

The essence of the legal requirements for winter maintenance therefore, whether in relation to Highways or otherwise, is to take such measures as are reasonably practicable to ensure the safety of the public.

In order to meet the test of reasonableness, and be sufficient to successfully defend claims, a winter maintenance system needs to: -

- Be documented clearly, and in detail, including evidence of work undertaken.
- Prioritise the most important routes and areas, taking account of the expected type and volume of traffic, including for example the proximity of old persons homes or schools, and physical features such as slopes.
- Be responsive to both forecasts and actual weather.
- Include suitable instruction of operatives regarding the standard of gritting required.
- Ideally, include the placing of warnings for particular hazards, such as ponding water which becomes frozen.

Turning to the specific questions raised by the Board: -

1. Because of the duties described above failure to clear snow and ice can certainly result in liability for subsequent accidents. This is far from automatic however.
2. It is most certainly not the case that clearing a path renders the actor liable for subsequent accidents on it. It is not impossible however that in certain circumstances a liability could follow. These would have to be very particular however, such as clearing snow, but leaving untreated underlying ice exposed as a result.
3. In relation to the proposed arrangement with the Probation Service, it is possible that a claim could be brought against either the Council, or them. In practical terms it is most unlikely that a claimant would look beyond the Highway Authority or property owner, and would instead leave them to join any other party involved in the action. In the unlikely event of a claim against the Probation Service, it is extremely difficult to see how this could succeed except in circumstances in which the Highway Authority or property owner were not also liable.

The Probation Service may be assured that we would not seek to involve them in any claim, except of course in the case of deliberate wrong-doing by any of their probationers. In order to provide them with comfort in this regard we would suggest that we offer to provide them with an indemnity in relation to claims arising from accidents in areas they had cleared or treated on behalf of the Council. This would not materially increase the Council's risk, and would hopefully avoid the possibility of them being dissuaded from providing a valuable service to both the Council and public.

R.F.C. .  
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