Compass Chambers

RTA Case Update 2017

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Compass Chambers

26th May 2017

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RTA Case Update 2017

Pedestrian cases

McCreery v Letson & Others [2015] CSOH 153

Bridges v. Alpha Insurance A/S [2016] CSOH 11

Till v Tayside Public Transport Co [2017] CSOH 6

Buck v Ainslie & and [2017] CSOH 73

General RTA cases

Wagner v Grant [2016] CSIH 34

Paterson v Macleod [2017] CSOH 20

Roads Authority Cases

Robinson v SBC [2016] CSOH 47

Bowes & others v The Highland Council [2017] CSOH 53

Dewar v Scottish Borders Council [2017] CSOH 53

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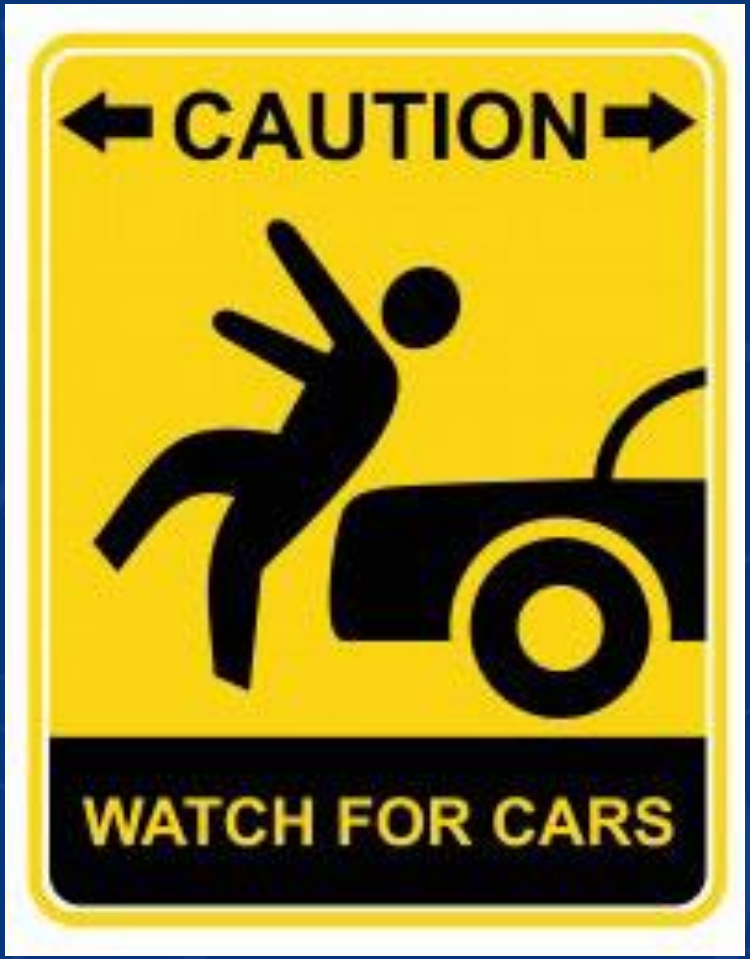
PEDESTRIAN CASES



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PEDESTRIAN CASES

McCreery v Letson & Others [2015] CSOH 153

Lord Bannatyne

- Pedestrian struck by van - pursuer – crossing road to get to Liff Hospital after getting off bus
- 50 mph speed restriction – road sign warning of disabled persons crossing the road
- bus on which the pursuer was travelling had four video cameras - date and time stamped
- Defender - “Didn’t cross my mind pedestrian might be crossing”

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PEDESTRIAN CASES
McCreery v Letson & Ors

- Purser alleged – Defender knew or ought to have known that there was a risk of pedestrians seeking to cross the road or otherwise be in the road; and that he should have moderated his speed accordingly (bus movements - bus stop & crossing sign)

- Pursuer's Senior Counsel argued that the Defender's reconstruction expert – "**was plainly going out of his way to assist the defender at all costs**"

- Expert failed to narrate the very extensive portions of the Highway code that related to the obligations of a driver. However, he narrated in full the provisions relating to pedestrians. He had no good explanation for this omission other than 'oversight'.

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PEDESTRIAN CASES
McCreery v Letson & Ors

- He failed to mention the presence of the road sign warning of the hospital and risk of persons crossing.

- He did not carry out ‘throw’ calculations to assess the speed of the vehicle at impact.

- He was reluctant to engage in the exercise of saying how much time would have been saved by a speed reduction from 100m away, suggesting that it was not possible to do the calculation. However, as was demonstrated, this was a simple exercise which he agreed gave appropriate figures on certain assumptions.

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PEDESTRIAN CASES
McCreery v Letson & Ors

- He was prepared to speculate about a number of matters including the point of impact

- He suggested something that was not part of the case by either party nor was it what the defender suggested: that somehow the pursuer might have blended in to the background.

- He failed to address the pursuer's case that the defender could have slowed down prior to the hazard perception

- He failed to calculate the speed of the vehicle using coefficient of friction on the basis of the stop distance.

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PEDESTRIAN CASES
McCreery v Letson & Ors

- HELD: the defender's expert showed : "a lack of overall balance and even-handedness" – his report "did lack the necessary balance" - "not prepared to accept the evidence of" - "I hold his speed on approach was about 42mph" (note speed limit 50mph) – primary liability established

- Contributory negligence - *Jackson* v *Murray* 2015 UKSC 5 & *Eagle* v *Chambers* 2003 EWCA Civ 1107 [2004] RTR 9 (causative potency) applied - Decision 50/50

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PEDESTRIAN CASES

Bridges v. Alpha Insurance A/S [2016] CSOH 11

Lord Tyre and Jury

- On 23 November 2014, at around 1 am, the pursuer, Caroline Bridges, aged 63, had crossed over Leith Walk to hail a taxi on the other carriageway. After hailing a taxi, she suddenly turned and retraced her steps into the path of the private hire taxi without looking.

- Evidence that the pursuer was under the influence of alcohol at the time was not disputed. The pursuer sued the driver's insurer directly under the European Communities (Rights against Insurers) Regulations 2002.

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PEDESTRIAN CASES
Bridges v Alpha Insurance A/S

- The matter at issue was whether the private hire taxi driver was driving at excessive speed.

- At the conclusion of evidence, Lord Tyre heard submissions from counsel on the appropriate level of *solatium*, following the change of practice introduced by the Inner House in the case of *Hamilton v. Ferguson Transport (Spean Bridge) Ltd*.

- In his charge, Lord Tyre gave guidance to the jury that *solatium* in respect of the pursuer's rib fractures and tibial plateau fracture could be valued in the range of £25,000 to £40,000.

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PEDESTRIAN CASES
Bridges v Alpha Industries A/S

- The pursuer sought to lodge a Note of Exception to the guidance given by Lord Tyre to the jury. Following submissions from counsel, the Note of Exception was held to be incompetent on the bases: firstly, that it came too late as the jury had been deliberating for over an hour; and secondly, that the guidance given by the court was not a ‘direction in law’ as provided in the Rules of the Court of Session.

- The jury found liability established by majority and valued *solatium* at £32,000. The other heads of damage were agreed between parties at £6,900. **The defenders successfully obtained a finding of 85% contributory negligence.**

- Award substantially less than defender’s tender

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PEDESTRIAN CASES

Till v Tayside Public Transport Co [2017] CSOH 6

Lord Clarke

- Pursuer was a pedestrian knocked down by bus in Dundee. Pursuer incapax. Bus driver subsequently died (unrelated to accident).
- Evidence of eye witnesses (including bus passengers) and RTA reconstruction experts
- CCTV evidence from bus video cameras.

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PEDESTRIAN CASES
Till v Tayside Public Transport Co

- In his report the defenders expert listed a very long number of documents he had regard to in preparing his report These included a substantial number of statements from witnesses who were not led by either party at the proof.

- Lord Clarke accepted the evidence of the defenders expert to that of the pursuer's "On the key issue, the defenders expert evidence, to my mind, had been arrived at throughout by a proper recognition of what her task was, namely, seeking to assist the court in an objective manner as to how the evidence might be interpreted. Throughout her evidence in chief and in cross examination, she gave that evidence in a careful and non-exaggerated manner but remained unshaken in her basic conclusions."

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PEDESTRIAN CASES
Till v Tayside Public Transport Co

- Lord Clarke referred to *Ahanonu* v *South East London Bus Co* [2008] EWCA Civ 274, a case involving a female teenage pedestrian and a bus in which Laws LJ said at paragraph 23:

  "*the nature of the bus driver's duty which was no more nor less than a duty to take reasonable care. There is sometimes a danger in cases of negligence that the court may evaluate the standard of care owed by the defendant by reference to fine considerations elicited in the leisure of the court room, perhaps with the liberal use of hindsight. The obligation thus* ***constructed can look more like a guarantee of the claimants safety than a duty to take reasonable care****".*

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PEDESTRIAN CASES
Till v Tayside Public Transport Co

- He also referred to *Stewart* v *Glaze* [2009] EWHC 704, a case involving a collision of a vehicle with a pedestrian, Coulson J at paragraph 10 said:

  "In my judgment, it is the primary factual evidence which is of the greatest importance in a case of this kind. The expert evidence comprises a useful way in which that factual evidence, and the inference has to be drawn from it, ***can be tested****. It is, however, very important to ensure that the expert evidence is not elevated into a fixed framework of formulae against which the defendant's actions have then to be rigidly judged with a mathematical provision".*

- Applying these tests to the evidence Lord Clarke assoilzied the defenders

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PEDESTRIAN CASES

Buck v Ainslie & Another

[2017] CSOH 73

Lady Carmichael

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PEDESTRIAN CASES
Buck v Ainslie & Another

- Pursuer was a pedestrian on the A9 Bannockburn to Plean road. The defender encountered the pursuer in the roadway and her car collided with him. Her car was in fifth gear, and she was using full beam headlights. Her car sustained damage to the nearside front bumper and nearside front windscreen. The pursuer was wearing dark clothing. None of these matters were disputed.

- The defenders did not aver in terms that the pursuer had been attempting suicide at the time of the collision, but did aver that after the accident medical staff suspected that he been doing so. They averred that on the afternoon preceding the accident the pursuer was noted to be drowsy and suspected of being under the influence of drugs and that he had attended a hospital that afternoon complaining of leg injuries sustained when he had jumped out in front of and been struck by a car in the previous week.

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PEDESTRIAN CASES
Buck v Ainslie & Another

- Lady Carmichael rejected most of the pursuer's expert's evidence and found that the pursuer had failed to prove negligence on the part of the first defender.

- She held that the duty incumbent on the first defender was to take reasonable care. "I accept as correct and adopt the approach taken by Coulson J in *Stewart* v *Glaze* [2009] EWCH 704 (QB) at paragraphs 5-7:

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PEDESTRIAN CASES
Buck v Ainslie & Another

"5. I have to apply to Mr Glaze's actions the standard of the reasonable driver. ***It is important to ensure that the court does not unwittingly replace that test with the standard of the ideal driver****. It is also important to ensure, particularly in a case with accident reconstruction experts, that the court is not guided by what is sometimes referred to as '20-20 hindsight'. In Ahanonu v South East London & Kent Bus Company Limited [2008] EWCA Civ 274 , Laws LJ said:*

'*There is sometimes a danger in cases of negligence that the court may evaluate the standard of care owed by the defendant by reference to fine considerations elicited in the leisure of the court room, perhaps with the liberal use of hindsight. The obligation thus constructed can look more like a guarantee of the claimant's safety than a duty to take reasonable care.*'"

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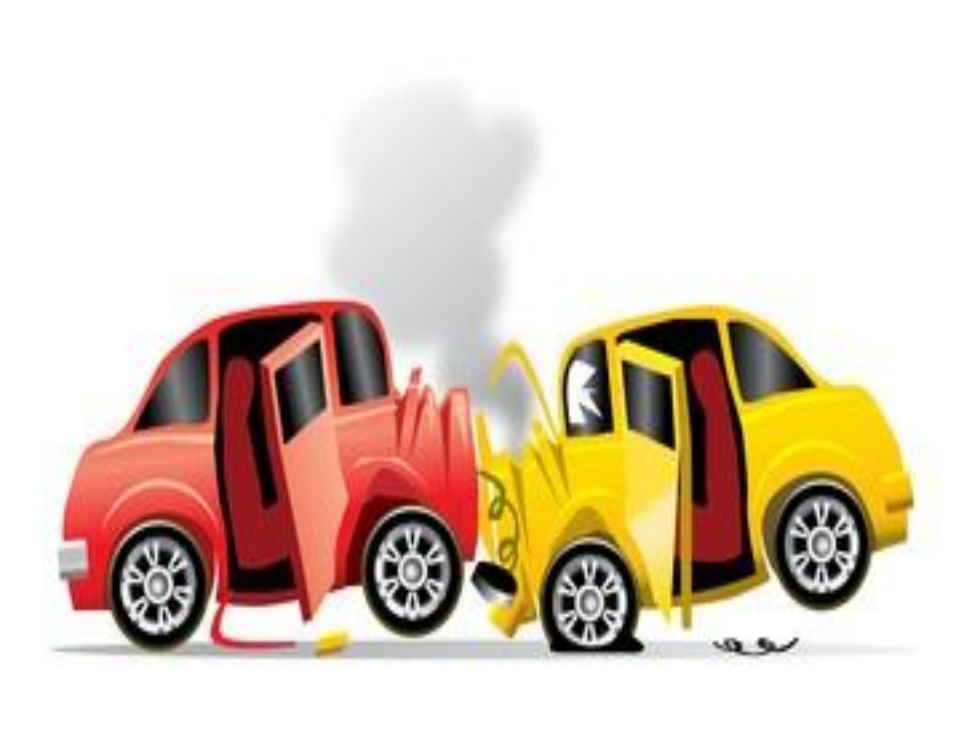
GENERAL RTA CASES



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GENERAL RTA CASES

Wagner v Grant [2016] CSIH 34

Inner House

- Reclaiming motion – apportionment of liability
- Pursuer motor cyclist collided at night with milk tanker which had been reversing into a farm entrance and was straddling most (or all) of the road.
- Assessment by Lord Ordinary – 40% blame to pursuer 60% blame to tanker.
- Cross-Reclaiming motions

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GENERAL RTA CASES
Wagner v Grant

- The court observed “there are no hard and fast rules as to how a court should assess a pursuer’s share in the responsibility of damage – it must apply a commonsense approach to the task, and **assess the causative potency and the blameworthiness of the pursuer’s actions** – *Davies* v *Swan Motor Co (Swansea) Ltd* [1949] 2 KB 291 at 326.”

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GENERAL RTA CASES
Wagner v Grant

- We are mindful of the observations of the Second Division in *Porter* v *Strathclyde Regional Council* 1991 SLT 446 at 449:
"It has been laid down in *McCusker* v *Saveheat Cavity Wall Insulation Ltd*, and in *MacIntosh* v *National Coal Board* that the Inner House will not interfere with the Lord Ordinary's apportionment of negligence except in exceptional circumstances which must demonstrate that *'he has* ***manifestly and to a substantial degree gone wrong***'. Even if the Inner House would have expected a different apportionment, it will not interfere".

- "In the present case the Lord Ordinary gives no indication that he has carried out any assessment of the causative potency or the blameworthiness of the pursuer's actions. If he has done so, he gives no explanation for reaching the figure of 40%, except that this was the figure which he adopted in *Cronie* v *Messenger*."

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GENERAL RTA CASES
Wagner v Grant

- In the present case, the Lord Ordinary has not set out his reasoning on the point at all, and in all the circumstances of this case we consider that he **has manifestly and to a substantial degree gone wrong.** Despite the misleading effect of the articulated lorry's headlights, we consider that the degree of blame attributable to the pursuer in failing to keep a proper lookout when the tanker trailer was lit up "better than a Christmas tree" and the pursuer had between 18 and 13 seconds to see it and slow down or stop must be significantly greater than 40%. We consider that a just and equitable figure to reflect the pursuer's blameworthiness is 60%. We shall accordingly allow the reclaiming motion to the extent of quashing the Lord Ordinary's assessment of 40% contributory negligence, and substituting therefore 60%.

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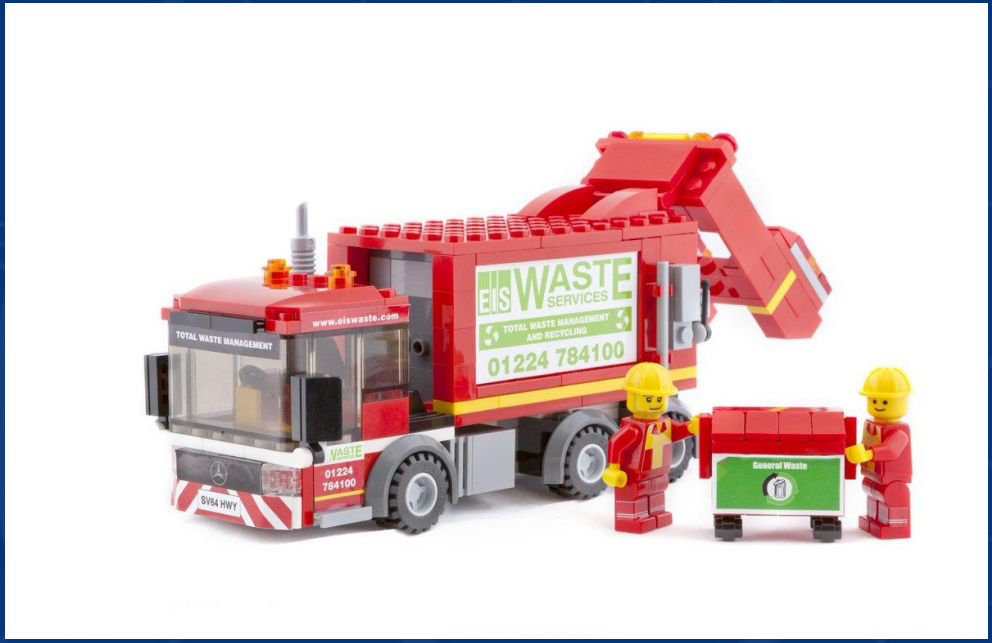
GENERAL RTA CASES

Paterson v Macleod, Highland Council, William Fraser & Axa Corporate Solutions Assurance SA [2017] CSOH 20

Lord Armstrong



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GENERAL RTA CASES
Paterson v Macleod & Ors

- P driving his car towards Inverness
- Rounded a blind bend and collided with bin lorry which was stationary at the side of the opposite carriageway
- The bin lorry was being overtaken by another lorry approaching in opposite direction to P
- P's case - his vehicle collided with the stationary bin lorry as a consequence of necessary evasive action taken by him in order to avoid the oncoming lorry, which was blocking his lane.
- Alleged bin lorry a hazard and council at fault at common law. Also council's policy of allowing bin lorry to stop at side of road - breach of Traffic Signs Regulations and General Directions 2002

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GENERAL RTA CASES
Paterson v Macleod & Ors

- Action against driver of refuse lorry, his employers (the council), the driver of the oncoming lorry and his insurers
- Quantum agreed. Proof on liability and contributory negligence
- Issues – speed of P and nature and timing of his reactions to events confronting him as rounded bend
- P had pled guilty to contravention of s3 of the Road Traffic Act 1988, by driving at inappropriate speed and colliding with the refuse lorry
- Law Reform (Miscellaneous Provisions) (Scotland) Act 1968 s.10(2)(a) - presumption of negligence on his part thereby shifting onus of proof

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GENERAL RTA CASES
Paterson v Macleod & Ors

Evidence

- P had noticed bin lorry after negotiating the blind bend; then noticed the oncoming lorry, overtaking the bin lorry and parallel with it, blocking his lane; he had required to take emergency evasive action; deemed collision with bin lorry the safest option; wheels locked; “agony” of the moment

- Passenger witness - had seen oncoming lorry immediately after P negotiated the blind bend and it was parallel to bin lorry

- Two cyclists and a driver - P had overtaken them at high speed prior to negotiating the blind bend and had been driving in excess of the speed limit

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GENERAL RTA CASES
Paterson v Macleod & Ors

- Overtaking lorry driver gave evidence that when he had commenced overtaking the refuse lorry, the road ahead had been clear - supported by his police statement.

- Reporting officer calculated P's speed as 86 mph based on tyre skid marks at the accident site

- P led expert evidence that the tyre marks used to calculate his speed had not been caused by the same car; that his speed had been approximately 55-60 mph

- Distance between the bin lorry's position and the blind bend was 145 metres

- Typical stopping distance from 60 mph was 73 metres

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GENERAL RTA CASES
Paterson v Macleod & Ors

P in witness box for 3 ½ days

Lord Armstrong at para 119

"….*I regard the pursuer's account of the accident, given the evidence from other witnesses, as one involving a significant degree of historical revisionism…*"

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GENERAL RTA CASES
Paterson v Macleod & Ors

HELD:

- P had been driving carelessly, at inappropriate speed. Accident caused entirely by him. He failed to discharge the reverse onus of proof

- Council's policy allowing bin lorry to stop at the roadside was appropriate. Not in breach of Traffic Signs Regulations and General Directions 2002 Pt I Reg 26

- Bin lorry had not constituted a hazard and there was no fault at common law in respect of the council.

- No liability on part of overtaking lorry driver - reasonable to infer that when he commenced overtaking manoeuvre, the road ahead had been clear

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GENERAL RTA CASES
Paterson v Macleod & Ors

EXPERTS…..?!

- P led evidence from 4 experts (3 reconstruction experts). 2 were criticised as being partisan in their approach

Lord Armstrong at para 136

"…*For the purposes of this case, each was, in effect, asked to consider matters from the particular perspective that the calculation of the pursuer's initial speed by the police was wrong, a context no doubt reasonably influenced by the pursuer's structured analysis……it can be fairly stated that each strove to support the pursuer's case….*".

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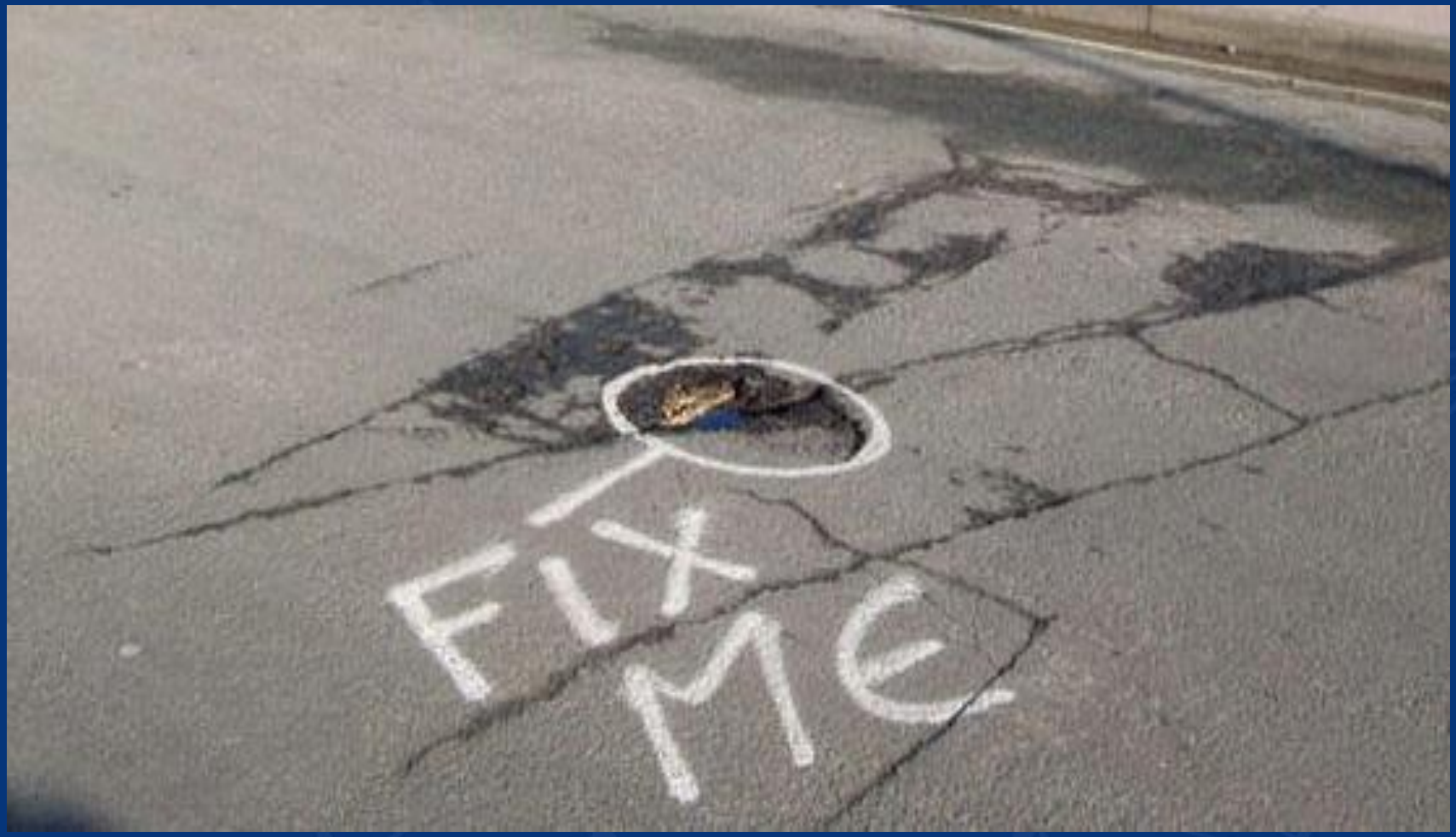
ROADS AUTHORITY CASES



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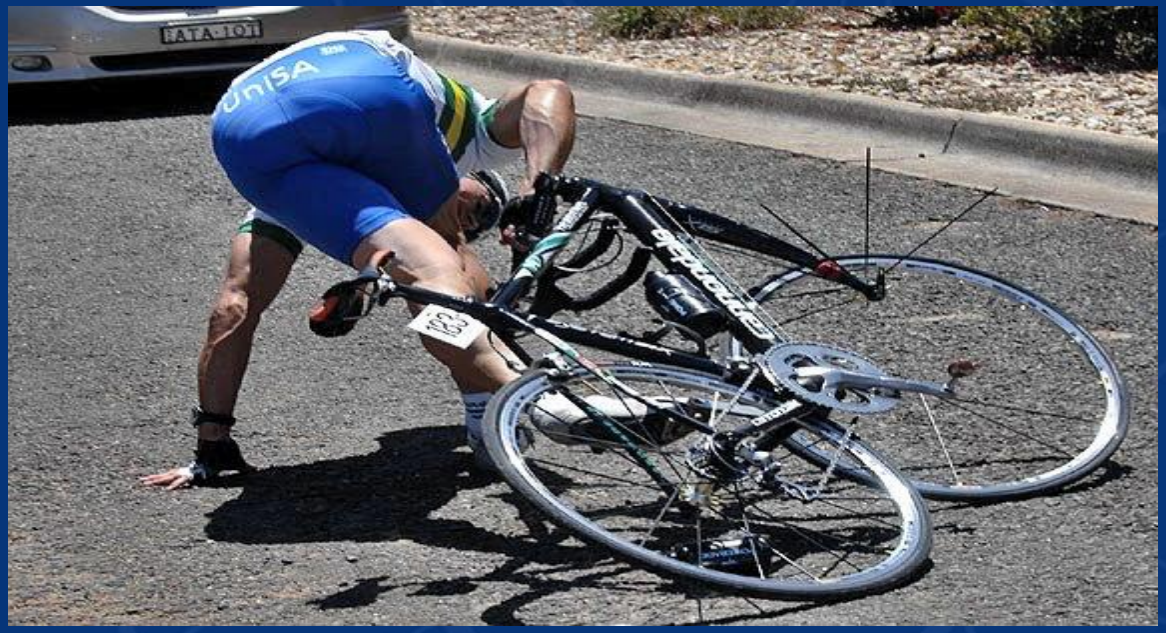
ROADS AUTHORITY CASES
Robinson v Scottish Borders Council

Robinson v Scottish Borders Council

2016 S.L.T 435

Lady Wolffe



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ROADS AUTHORITY CASES
Robinson v Scottish Borders Council

- Cyclist suffered injury when fell off bike
- Alleged accident caused by state of road – presence of metal strips and grooves set in to a road surface on a bridge
- Presented hazard to those using it
- No prior recorded accidents of this type at locus
- Defenders' employees had not identified hazard

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ROADS AUTHORITY CASES
Robinson v Scottish Borders Council

- Remedial work, at relatively low cost, undertaken 2 years post accident
- Expert evidence supported P's case that metal strips presented hazard to cyclists
- That hazard should have been identified by competent roads engineer
- Parties agreed and Lady Wolffe followed Lord Drummond Young's approach in *MacDonald v Aberdeenshire Council* 2014 S.C 114
- Sets out modern law in relation to common law duties incumbent on roads authorities in Scotland

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ROADS AUTHORITY CASES
Robinson v Scottish Borders Council

Lord Drummond Young *(MacDonald)*

".[63]…A roads authority is liable in negligence at common law for any failure to deal with a hazard that exists on the roads under its control. A 'hazard' for this purpose is something that would present a significant risk of an accident to a person proceeding along the road in question with due skill and care….."

"[64] This means that, for a roads authority to be liable to a person who suffers injury because of the state of a road under their charge, two features must exist. First, the injury must be caused by a hazard, the sort of danger that would create a significant risk of an accident to a careful road user. Secondly, the authority must be at fault in failing to deal with the hazard. This means that the pursuer must establish that a roads authority of ordinary competence using reasonable care would have identified the hazard and would have taken steps to correct it, whether by altering the road, or by placing suitable signs, or in an extreme case by closing the road ….. The second feature means that the hazard must be apparent to a competent roads engineer. "

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ROADS AUTHORITY CASES
Robinson v Scottish Borders Council

In her reasoning, Lady Wolffe considered a number of questions:

1. whether or not the metal strips posed a hazard;
2. whether the pursuer was riding with due skill and care; and
3. whether the hazard was one that would be apparent to a roads authority of ordinary competence using reasonable care

HELD:

Yes to all 3

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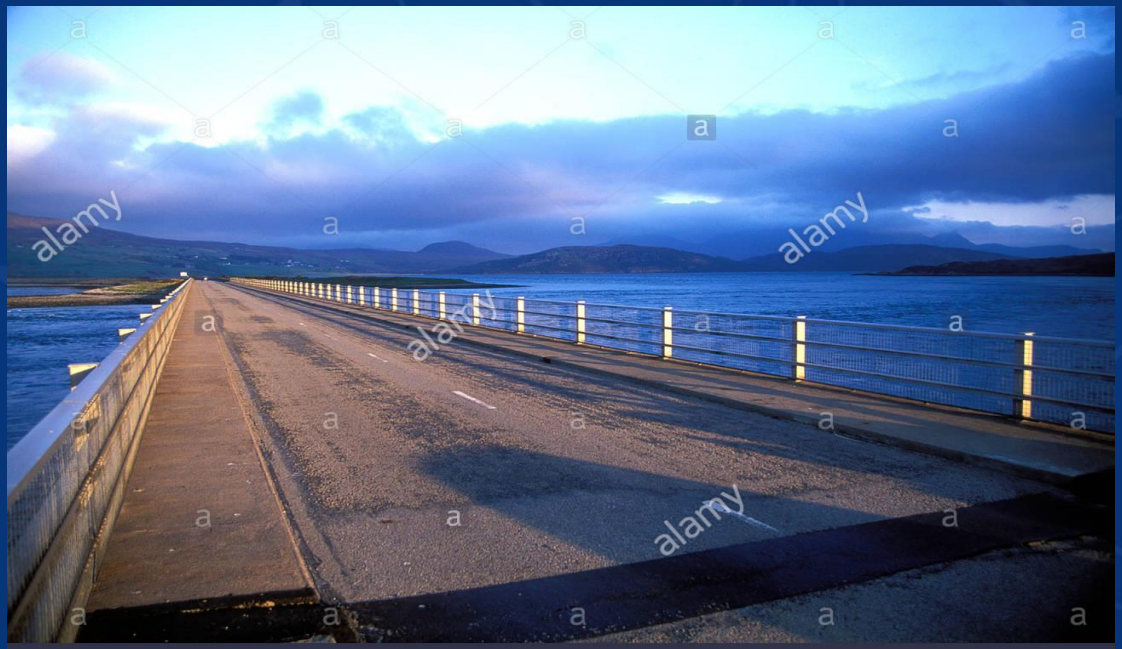
ROADS AUTHORITY CASES

Bowes v The Highland Council

2017 Rep L.R. 52

Lord Mulholland



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ROADS AUTHORITY CASES
Bowes v The Highland Council

- Mr Bowes drowned after his vehicle fell from Kyle of Tongue bridge
- Ps, his relatives, raised action against the local roads authority on the basis that Mr B's accident had been caused by their failure at common law to take reasonable care for his safety while crossing the bridge
- Quantum was agreed and the proof restricted to liability

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ROADS AUTHORITY CASES
Bowes v The Highland Council

- Mr B travelling alone; poor weather conditions and the road surface covered with snow and slush.
- Unchallenged evidence that he was a careful and slow driver
- No witnesses to accident but could be inferred from evidence that as Mr B crossed bridge his vehicle crossed to the opposite lane, mounted the kerb and collided with the parapet, the railings of which had broken off at the welds and had swung out, and his vehicle had fallen into the water.

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ROADS AUTHORITY CASES
Bowes v The Highland Council

- Bridge inspected July 2005 – defects found in major structural elements of bridge, including defects to parapet, categorised as “severe”. Twice yearly monitoring of defects recommended

- 5 inspections between 2006-2008 – found no defects in section of parapet which failed but those detected were serious and adversely affected the parapet’s containment strength

- Defenders then ceased to monitor parapet

- 2008 – Defenders got report from consulting engineers noting the parapet did not comply with current standards for restraint

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ROADS AUTHORITY CASES
Bowes v The Highland Council

- Ps' case – defenders ought to have implemented interim measures eg secondary barrier, reduction of speed limit, warning signs
- *Esto*, measures not required in exercise of reasonable care for budgetary reasons, bridge should have been temporarily closed
- Defenders denied they owed duty of care to Mr B
- No obligation to provide parapet of any strength and therefore no requirement to put in place temporary measures pending replacement of defective parapet

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ROADS AUTHORITY CASES
Bowes v The Highland Council

HELD:

- “inescapable inference” that loss of control due to Mr B’s negligence and not any failure on defenders’ part
- Parapet had no operated as it ought to have in accident
- Had parapet been acting to it’s design capacity, Mr B’s vehicle would have been contained, would not have left the bridge and, at worst, he would have sustained minor injury
- Critical of defenders decision to cease monitoring parapet
- No Risk Assessment and basic health and safety principles not applied to critical issue of safety

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ROADS AUTHORITY CASES
Bowes v The Highland Council

- Defenders knew parapet not compliant with current safety standards, defective, containment capacity compromised to unknown extent and had it been operating as designed, it would have contained Mr B's vehicle
- Parapet an integral part of road for which defenders responsible for managing & maintaining
- Parapet clearly defective, posed a danger to road users and significant risk of accident therefore a "hazard"
- Accident foreseeable
- Urgent requirement to address hazard but had failed to do so

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ROADS AUTHORITY CASES
Bowes v The Highland Council

- Temporary measures e.g. reduction in speed, were reasonably practicable and cost modest

- Defenders in breach of duty in failing to deal with hazard by implementing interim measures; had they done so, Mr B's death would have been prevented

- No basis for any finding of contributory negligence on Mr B's part

- *MacDonald v Aberdeenshire Council* applied

NOTE:

Defenders argued that roads authority's duty should be judged according to professional standards

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ROADS AUTHORITY CASES
Bowes v The Highland Council

"30 The next issue is whether the authority is at fault in failing to deal with the hazard which they clearly had knowledge of from 2005, prior to the accident. The defender submitted that the roads authority's duty should be judged according to professional standards. This submission was based on the clinical negligence case of Hunter v Hanley 1955 SC 200 (in support of this submission the defender also cited Honisz v Lothian Health Board 2008 SC 235, which deals with two opposing schools of thought as to the appropriateness of a particular practice). However, the tripartite test set out in Hunter v Hanley, supra , by Lord President (Clyde) at page 206 is clearly directed at the issue of professional negligence and not whether a roads authority is negligent for failing to deal with a hazard. I will therefore apply the test set out in MacDonald , supra, per Lord Drummond Young at paragraph 64, namely whether a roads authority of ordinary competence using reasonable care would have identified the hazard and would have taken steps to correct it."

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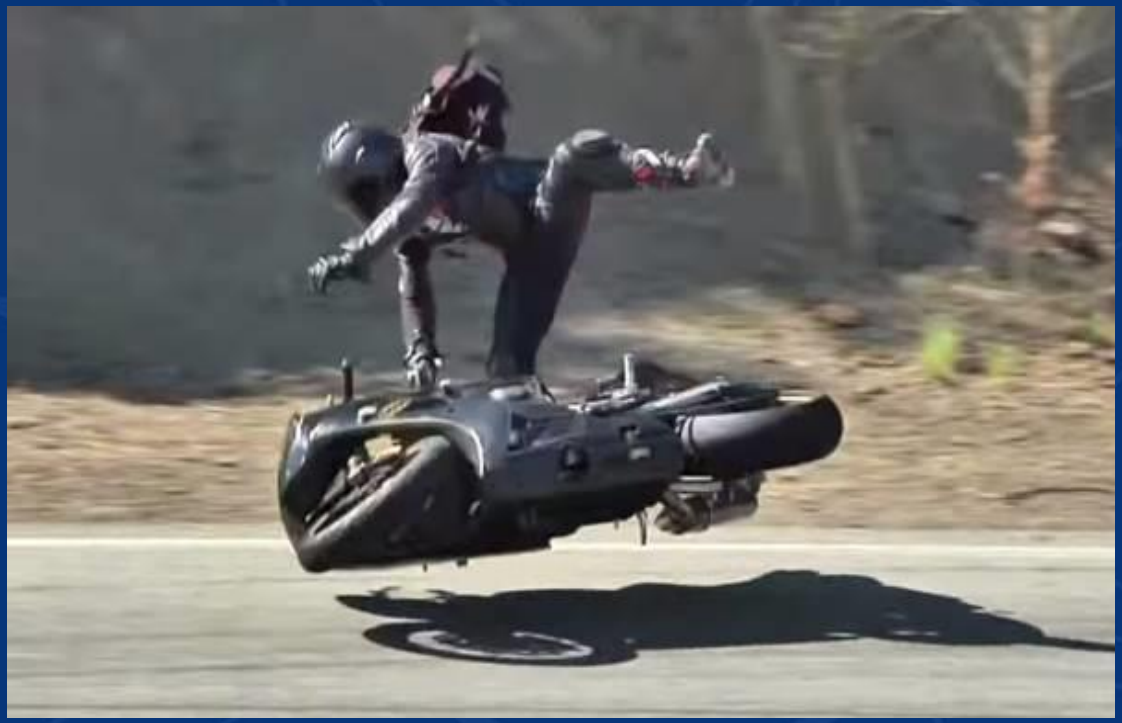
ROADS AUTHORITY CASES

Peter Dewar v Scottish Borders Council
[2017] SCOH 68

Lord Pentland



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ROADS AUTHORITY CASES
Dewar v Scottish Borders Council

- Motorcyclist seriously injured when lost control of his motorcycle on A701
- P's case - wheels of his motorcycle went in to defect, which caused him to lose control
- Defect was a damaged area of road surface along nearside edge of road on approach to right hand bend
- P sought to prove defect a "hazard" (per *MacDonald*) – presented significant risk of accident to the P
- That as he negotiated the right hand bend, he did so with due skill and care

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ROADS AUTHORITY CASES
Dewar v Scottish Borders Council

- Quantum agreed. Proof on liability and contributory negligence
- Alleged accident caused by negligence of the defenders - at fault for failing to deal with the hazard – ought to have been “apparent” to a competent roads engineer/inspector, on a reasonable visual inspection which took place 3 weeks before the accident
- No issue in relation to defenders’ policy/system of inspecting road
- Had repairs been effected in accordance with the defenders’ policy, the road would have been repaired before the pursuer’s accident
- Defenders vicariously liable for the acts and omissions of their employees i.e. roads inspector

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ROADS AUTHORITY CASES
Dewar v Scottish Borders Council

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ROADS AUTHORITY CASES
Dewar v Scottish Borders Council

- Extended 15-20 metres
- Varied in width between 35-40 cm
- Depth in contention - if 40 mm in depth, then actionable defect in terms of defenders' policy and should have arranged repairs within 7 days
- P led evidence from 2 police officers who attended accident (not crash investigators) - spoke to defect being 40–50 mm
- Crash investigation officer – did not measure it (no-one idd). Said not a "significant" hazard
- Photographs/Video footage

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ROADS AUTHORITY CASES
Dewar v Scottish Borders Council

The defenders case

- P had not proved that the accident was caused by the defect
- P caused or materially contributed to accident by adopting incorrect road position, by failing to keep lookout and inappropriate speed as he entered the bend
- The hazard did not constitute a defect which required repair in terms of their policy
- P had failed to lead evidence that the ordinarily competent roads inspector seeing the defect would have acted any differently

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ROADS AUTHORITY CASES
Dewar v Scottish Borders Council

HELD:

- Absolvitor!
- Accepted defect caused P's motorcycle to leave the road - No evidence that he was driving at excessive speed or that he failed to exercise reasonable care or attention or adopted incorrect road position as he negotiated the bend
- Did not accept that P had proved defect was a "hazard"
- Failed to prove depth of defect such that it fell within category requiring repair within 7 days
- Rejected evidence of the 2 police officers on depth– exaggerated

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ROADS AUTHORITY CASES
Dewar v Scottish Borders Council

Further…

- P would have failed as led no evidence which would have enabled the court to hold that the roads inspector's inspection on 19th July 2011 was negligently performed
- Inspector relied on his skill and experience
- No basis upon which court could make a finding as to what exactly would have constituted a reasonable (non-negligent) inspection
- Rejected P's submission that this was a jury question on which the court can reach its own view

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ROADS AUTHORITY CASES
Dewar v Scottish Borders Council

"…*In my opinion, the court's assessment as to whether the level of care actually shown fell short of the care that would be expected of a reasonably competent roads inspector in the circumstances has to be built upon the secure foundation of evidence explaining what such a hypothetical inspector would have done in the same set of circumstances. The necessary corner stone, comprising evidence as to reasonable and acceptable practice, has not been put in place in the present case. In short, there is no evidence as to what would have amounted to the exercise of an ordinary level of skill and care in the circumstances (cf Hunter v Hanley 1955 SC 200; Honisz v Lothian Health Board 2008 SC 235; and French; Dempsie v Strathclyde Fire Board 2013 SLT 247). In the absence of any acceptable evidence that there was a reportable defect in the road and that it amounted to one that any competent roads inspector would have identified, there is no basis on which I could hold that Mr McCudden was negligent in the way that he carried out his inspection on 19 July 2011.*"

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ROADS AUTHORITY CASES
Dewar v Scottish Borders Council

BUT….

- Road inspector's evidence was that he would expect to identify something in the range of 30 – 40mm; would err on the side of caution; if he saw something between 30-40mm in depth he would action it

- Defenders' expert accepted that, if the defect exceeded 40mm in depth, it should have been identified by experienced inspector exercising reasonable care

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- What does this mean for the future?
- Conflicting opinions (Bowes v Dewar)
- Standard of care on roads inspector (roads authority) to be judged against a higher standard approaching a standard of professional negligence?
- Or not?

RTA Case Update 2017

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