Leigh Day

Direct Dial: 0161 393 3570
Email: rwhalley@leighday.co.uk
Our Ref: ROW/211309/1
Date: 16 April 2021

Kirsty North
60 Belgrave
Leicester
LE4 5PA

Via email to kirstynorth@yahoo.com

Dear Kirsty,

Accident 6 August 2019

I write further to my email of 5 March.

As you may recall, Leicestershire Council, have denied legal responsibility on the basis that:

- The road has been in existence since 1884
- The road has a dip at the bottom where the stream & ford are situated
- The road is subject to annual driven inspections for defects
- Their last inspection was 14 December 18 (so 8 months before your accident)
- At their last inspection, no “actionable” defects were found
- The Council has brought the danger to the attention of road uses with 3 warnings signs as follows;
    - Sign 1 – towards Ratby – “Ford 200 yards” – 182 metres away
    - Sign 2 – towards Ratby – “Ford – cyclists dismount slippery surface” – 82 metres away
    - Sign 3 – from Ratby – “Ford – cyclists dismount slippery surface” – 132 metres away
- They believe the signage to be adequate
- There is no legal duty upon them to place warning
- There is no legal duty upon them to remove moss, algae, etc. from the road
- The incidents were caused by you continuing through, missing the signs, and in any event cycling through the stream through despite seeing water and footbridge at the ford itself
- They say the signs were not obscured by vegetation

Firstly, the Council is seeking to rely upon a statutory Defence prescribed by Section 58 of the Highways Act 1980 Defence. This statutory defence allows a council or highways agency to defend claims on the basis that they had taken

reasonable measures to ensure that “actionable defects” are found and dealt with swiftly. All councils should have a reasonable system in place whereby they regularly inspect highways and repair them if necessary. So they say as at their last inspection, they saw no “actionable defects” (this would include potholes over 1 inch) and so there was no defect then.

Further, this line of defence is folly as they later go on to say moss, algae would not be classified as an “actionable defect”. They are also right in that there is no legal duty upon them to put in place warning signs. This is a general rule as per the case of Gorringe v Calderdale MBC 2004 & section 39 Road Traffic Act 1988. It is surprising that the Council only put in places signs and streetlight under a “power” (different form a duty as a power is at their discretion whereas a duty is a legal obligation upon them). Our Barrister, Mr Tobin, concluded that the House of Lords’ decision in Gorringe is just too great a legal barrier to the claim.

He considered another case Poole BC v. GN as a means of undermining the application of Gorringe to the fairly unusual facts of our cases. But having considered Poole BC he believes it only strengthens the defence of the council as there is nothing in there that would justify a departure from the application of that case despite the fact that the council clearly know of the danger presented to cyclists here and that it continues.

The drainage arguments failed in the previous unsuccessful case of Ms Sanders and the provisions of the Highways Act are of not help – they only set out duties for the Council to guard against specific physical defects like potholes or ice.

The Council seems intent not to scarify (as advised by their Inspector, Gill Howe in May 2019 or install drainage / alternative system as our Civil Engineer, Mr Blake, had suggested.

The sad truth of the matter is that any cyclist subsequently injured here (say tomorrow) will not have a stronger case than yourselves either. Whilst we have raised awareness, the Council haven’t changed anything.

I agree with Mr Tobin’s view. I had hoped with his greater knowledge and Court experience, he may have been able to assist further. I appreciate the Highways Act is harsh and it excludes many valid cases. It was designed with a view to protect Council’s from financial ruin, and that they should not be held accountable for all defects. Whether or not civil laws should be set by a tortfeasors ability to pay is a separate matter.

My Supervising Partner, Andrew Bradley and I, have reviewed all of the evidence received. Unfortunately, he also does not believe that you have reasonable prospects of succeeding with your claim for damages against the Council either.

I can only continue to pursue a claim on your behalf, according to British Cyclin's Collective Conditional Fee Agreement, where your claim has a greater than 50% prospect of success.

In light of the above, it is my opinion that your claim does not have prospects of success greater than 50% and so is unlikely to be successful.

I am sorry that this is not the outcome for which you would have hoped. We discussed at the outset the challenges with your case. I am under a duty to advise you of your prospects of success, even where that advice may be unpalatable. I recognise that my view will not always be agreeable.

There is nothing to stop you approaching another firm of solicitors to see if they take a different view and are prepared to assist with your claim. You would need to make your own arrangements with them in terms of funding your claim and covering any risk to you of having to pay your opponent's costs.

Please note that you have 3 years from the date of your accident in which to commence court proceedings to pursue your claim. If you have not done so in that time, or negotiated a settlement of the claim, then you will lose the opportunity to claim.

Please do not hesitate to contact me if you have any questions or if I can ever be of any assistance to you in any way in the future.

I wish you the best of luck for the future and a full recovery, it has been a pleasure to act on your behalf.

Yours sincerely,

Ross Whalley

Ross Whalley
Leigh Day