

Section 58

What duty does the local highway authority owe you for the conditions of the road?

It owes you a duty of care for roads maintainable of public expense. These roads are the responsibility of highway authorities and they are responsible for maintaining the highway.

However, Section 58 of the 1980's Highways Act gives a highway authority a defence: that it is not liable for the consequences of a matter if it can prove that 'such care as in all the circumstances was reasonably required to secure that part of the highway, to which the action relates was not dangerous for traffic'.

Which is the right highway authority?

- county councils, and metropolitan district councils are normally the highway authorities for their areas
- in London, borough councils or the Common Council of the City of London will be the relevant authority, although Transport for London is now responsible for some highways
- district councils, parish or community councils may in some cases (if they have undertaken the duty or made representations to the main highway authority) be responsible for the maintenance of highways within their district. This does not however absolve the highway authority of its duty

What does this mean?

The local authority is responsible for maintaining and repairing the highway, which can be a road, cycle tracks, walkway, footpath over which every member of the general public has a right of passage.

There is no obligation to improve a highway only to maintain it. Highway authorities are under a duty to maintain the highway in a fit state to accommodate the 'ordinary traffic which passes or maybe expected to pass' along them.

Section 58: What does it mean?

The highway authority, as stated, can raise a defence to prove that they have taken 'such care as in all the circumstances was required to secure that part of the highway to which the action relates was not dangerous to the traffic'. Therefore, a highway authority needs to take reasonable care of the road.

What must a court take into account?

The court must look at the following (under Section 58 (2)):

- the nature of the road, i.e. is this a main highway (and therefore the traffic that is reasonably expected to use it)
- the standard of maintenance appropriate for a road of that character and used by that traffic
- the state of repair in which a reasonable person would have expected to find the highway
- whether the highway authority knew or could reasonably have been expected to know the condition of that part of the highway to which the action relates was likely to cause danger to users of the highway, i.e. have pot holes already been reported?
- where the highways authority could not have reasonable been expected to repair that part of the highway before the accident occurred, what warning notices of its condition had been displayed.

What do you have to prove?

You have to prove on the balance of probabilities (i.e. that it's more probable than not) that the part of the highway where the accident occurred was not reasonably safe and that the accident was caused by the dangerous condition of the highway.

If you are able to establish these two areas, the highway authority can then raise the Section 58 defence. The burden of proving the defence is upon the highway authority.

This is very much a public policy decision.

The courts are expressing a view that they want finances to be put into maintaining the highway, rather than being used to pay damages.

Several cases illustrate the courts' views on this. Some extracts are listed below by way of example.

- "Everyone must take into account of the fact there maybe unevenness here and there." *Meggs v Liverpool Corporation* 1968.
- "A highway is not to be criticised by the standards of a bowling green." (*Little v Liverpool Corporation* 1968).
- The best illustration is in *Mills v Barnsley Metropolitan Borough Council* 1992, where the court said: "It is important that our law should not impose unreasonably high standards, otherwise scare resources should be diverted from situations where maintenance and repair of the highway is more urgently needed.
- "This branch of the law ought to represent a sensible balance of compromises between private and public interest."

So what must the highway authority show to avoid liability?

It must show that no amount of reasonable care on their part could have prevented the danger, in that an inevitable accident may occur. Carriageways do not have to be maintained to the same standards (i.e. major and minor roads require different levels of inspection and repair), but the local authority must know the character of the highway and the traffic reasonably expected to use it in order to decide levels of inspection and maintenance.

For example if a road is particularly old or fragile, the local authority must take that into account, if heavy lorries are using it etc. Therefore more frequent and detailed inspections of roads where traffic flow is high are a reasonable assumption when compared to a country road with less traffic.

There are cases where a highway authority has inspected the road and noticed a defect, and an accident has occurred between the defect being flagged and repaired. Here, the court will look at the size of the defect, the amount of the traffic using the stretch of highway concerned and the danger posed. Obviously the greater the danger, the less tolerant of delays the court would be. If there is a serious defect warning notices will be expected.

In order to support its position the highway authority should be able to provide records of highway inspections, maintenance records, and complaint/accident records.

All of these can be investigated to see whether or not the right inspections were being dealt with at the right time by the courts to be put in place. You are entitled to ask for and see these documents which will allow you to see if you have a case to progress.