

Insight 217

from Horwich Farrelly's Large & Complex Injury Group



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In this edition of Insight, we look at:

Hoyle v Hampshire County Council and others [2022] EWHC 934, a case brought to trial by Partner, Alistair Graham. The case involved a man driving on the A287 who was fatally injured when a tree adjacent to the road fell onto his car.

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Hoyle v Hampshire County Council and others

Background

On 6 June 2017 Mr David Hoyle was driving his car on the A287 in Hampshire when a cherry tree growing adjacent to the carriageway fell on to Mr Hoyle's car causing Mr Hoyle fatal injuries. The claim was brought by the estate of Mr Hoyle on behalf of Mr Hoyle's dependents under the Fatal Accidents Act 1976.

The defendants

The first defendant was Hampshire County Council (HCC) who owned the land on which the cherry tree (tree 572) grew.

The second defendant Atkins were HCC's service contractor. The claim against the second defendant was discontinued following the filing of the second defendant's defence.

The third defendant was Simon P Holmes trading as Tree Surveys who were commissioned by HCC to carry out tree survey works.

The fourth defendant Ed Power was an arboriculturist subcontracted by the third defendant to undertake the survey work.

The tree

Tree 572 was a mature wild cherry about 60 years old. It was about 15 to 20 metres in height with a crown

spread of 10 to 15 metres. The centre of the tree was about 6.5 metres from the edge of the road. It was growing beside a ditch which was about 30 to 50 cm deep. The ditch was in clay soil that was poorly draining. Tree 572 was in normal health before the failure, but it had an asymmetrical crown and slight lean towards the road.

The cause of the tree failure was disputed.

The claimant's allegations

The claimant's case relied entirely on the expert evidence of Mr Jeremy Barrell, an expert arboriculturist who concluded that tree 572 had a severely imbalanced crown and an asymmetrical root system that had no significant structural roots extending to and beyond the ditch.

Mr Barrell considered any competent tree inspector would have noticed the lack of root buttresses facing the ditch which should have raised an alarm and led to further investigation.

Tree 572 had been inspected in February 2016 by HCC's tree inspector, Mr Soffe and by the fourth defendant in November 2016. The claimant alleged that the failure to identify the structural issues with the tree and the failure to take remedial action had been causative of the tree failing in June 2017.





The defence of the first defendant

HCC contended that:

- The tree was subject to a double regime of inspection being drive by inspections and two visual inspections by arboriculturists.
- Mr Soffe had not recommended any action following his inspection in February 2016.
- The fourth defendant had recommended that deadwood over 25mm in diameter be removed and the crown be lifted over the highway and the basal area be monitored annually. The recommendations did not indicate any urgency or concern for the tree.
- The inspections carried out by Mr Soffe and the fourth defendant were compliant with the normal expectations of surveyors when inspecting trees.
- The claimant had failed to establish there was a risk of the tree failing when the inspections took place.

The defence of the third and fourth defendants

The third and fourth defendant contended that:

- The works recommended by the fourth defendant were appropriate.
- The recommended works had not been carried out by HCC prior to the tree failing.
- The recommendations and priority rating were in line with HCC’s policies.
- They had carried out their contractual obligations to HCC by visually inspecting the tree and making appropriate recommendations.

- There was no need for any urgent pruning or lopping of the tree.
- There was nothing about the condition of the tree which would have put a reasonably competent arboricultural inspector on notice that the tree would fail within the next 12 months, or that more detailed investigations were required.

The key issues for the court to determine

The judge identified the following key issues:

1. Was there a defect or a combination of defects in tree 572 that created a risk of it failing that was present and visible to the fourth defendant in November 2016.
2. Was there a defect or combination of defects in tree 572 that created a risk of it failing that were present and visible to Mr Soffe in February 2016.
3. Was Mr Soffe’s and the fourth defendant’s visual tree assessment (VTA) of tree 572 such that no competent Tree Inspector would have completed it in this way.
4. Was the fourth defendant’s completion of the HCC priority matrix such that no competent Tree inspector would have completed it in this way.
5. Whether but for breach on the part of the defendants the tree would not have failed and Mr Hoyle’s vehicle would not have been struck.

When considering the issues, the judge considered guidance regarding the standard and frequency of tree inspection.

Frequency

The guidance was that roadside trees should be inspected at intervals not exceeding three years. HCC inspected trees in high target areas annually and those in medium areas every three years. HCC’s inspection regime was more than adequate.



Qualifications

There was no question that Mr Soffe and the fourth defendant were appropriately qualified. Both had undertaken the Lantra professional tree inspection course.

The HCC Matrix

The matrix covered the likelihood of tree failure and the likelihood of causing damage. This allowed HCC to prioritise tree works. The rating applied by the fourth defendant was 6/16 which did not indicate urgent work was required.

Expert evidence

The court heard expert evidence from three arboricultural experts, Mr Jeremy Barrell (claimant), Dr Martin Dobson (third and fourth defendants) and Dr Dealga O’Callahan (HCC). The judge preferred the evidence of the defendant’s experts on the key issues.

The judge’s findings on the key issues

1. Was there a defect or a combination of defects in tree 572 that created a risk of it falling that was present and visible to the fourth defendant in November 2016?

The judge concluded that the evidence before the court did not support the claimant’s case that tree 572 was structurally defective at all. It was healthy before it failed. There was no visible signs to the fourth defendant that the tree would be vulnerable to excessive wind and rain.

The condition of tree 572 at the time of the inspection by the fourth defendant was not such as would have put a reasonably competent arboricultural inspector on notice that the tree would fail within 12 months or that more detailed investigations were required.

The claimant had not proved on the balance of probabilities that tree 572 was at risk of failing or that that risk was visible to an ordinary skilled tree inspector.

2. Was there a defect or combination of defects in tree 572 that created a risk of it failing that were present and visible to Mr Soffe in February 2016?

The judge concluded there was no evidence of defects such that created a risk of tree 572 falling. There was no evidence of negligence on the part of Mr Soffe. The fact that the fourth defendant’s inspection was more detailed does not equate to Mr Soffe being negligent. There was no evidence to suggest that Mr Soffe should have any concerns about tree 572 when the inspection took place.

3. Was the visual tree inspection by Mr Soffe and the fourth defendant such that no competent body of inspectors would have failed to identify the state of risk contended to exist?

The judge concluded that the visual assessments were not only competent but conducted with care both by Mr Soffe and the fourth defendant. The judge found that tree 572 exhibited no sign of being at risk of failure.

4. Was the fourth defendant’s completion of the HCC matrix such that no competent Tree Inspector would have completed it in that way?

The defendant’s expert witnesses agreed in general terms with the matrix scoring applied by the fourth defendant. The expert evidence before the court supported the conclusion that the claimant had not proved that no competent tree inspector would have applied the same score as the fourth defendant.

5. Why tree 572 failed and whether but for any breach on the part of the defendants the tree would not have failed, and Mr Hoyle's vehicle would not have been struck?

The expert evidence showed that usually a combination of factors caused a tree to fail. There was no proved structural defect prior to the failure of the tree. There was no breach of duty on the part of any of the defendants.

Even if the fourth defendant had scored the tree higher on the matrix the judge was satisfied HCC would not have carried out the recommended works prior to the tree failing. The evidence conflicted as to whether this work would have prevented the failure of the tree but on the balance of probabilities the claimant has not shown it would have. The claimant's expert agreed with the works recommended by the fourth defendant. It was not suggested by Mr Barrell that tree 572 should have been felled.

The judge concluded:

"The morning of 6 June 2017 oversaw a cruel combination of circumstances that resulted in tree 572 falling onto David Hoyle's car at that moment he was passing.

It is understandable that David Hoyle's family seek liability against the defendants. But whilst understanding the claimant's desire for compensation for such a loss, it would require the defendants to have done more than was reasonable to ensure safe tree lined roads. Requiring a greater risk adverse approach would result in unnecessary removal of trees and accompanying destruction of habitats. The value of trees as described in HCC's Tree Safety Policy would be reduced.

The law ties compensation to negligence. I cannot find the defendant's negligent or in breach of their duty in relation to this terrible moment on 6 June 2017. It was a tragedy where I am satisfied no one was to blame."

The claimant's claim was dismissed.



Commentary

Ultimately the claimant's claim depended entirely on the claimant's expert witness's evidence being accepted. The judge preferred the expert evidence relied upon by the defendants.

In addition, the defendants were able to satisfy the court that:

- HCC had in place a robust tree management programme which incorporated a high level of tree inspection commensurate with risk.
- The inspection regime in place was over and above the standard recommended.
- The inspections themselves were detailed, carefully carried out and undertaken by experienced and competent tree inspectors.
- The HCC matrix adequately identified trees requiring priority work.
- It was unreasonable to require the defendants to adopt a more cautious approach taking into account the environmental benefit of trees and the preservation of wildlife. Had this approach been accepted thousands of trees would have been required to be felled with significant consequences for the landscape.

For more information about the case, please contact [Alistair Graham](#).



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