



Micklewright -v- Surrey County Council (2010)



Legal Case Study: Micklewright -v- Surrey County Council (2010)

On 12 August 2007, Mr Christopher Imison decided to go for a bike ride in Windsor Great Park with his partner Joanne Micklewright and their 13-year-old son. As Mr Imison was unloading their bicycles from the family car, a large branch fell from a mature oak adjacent to the car park and struck him. He died in hospital on 19 August 2007. The tree had extensive ivy covering it and was not part of a formal checking regime. The branch that failed had internal decay, but it was found that this would not have been discoverable from a ground-based visual check.

Miss Micklewright brought actions against the Defendant, Surrey County Council, in a three-day hearing at Guildford County Court, where damages had been agreed between the parties in the sum of £500,000. The court judgment of 20 October 2010 found in favour of the Defendant (Case No: 8GU02043). Leave was given to appeal, which resulted in the original decision being upheld in a judgment dated 28 July 2011 (Court of Appeal; Neutral Citation No: [2011] EWCA Civ 922; Case No: B3/2010/2700; <http://www.bailii.org/ew/cases/EWCA/Civ/2011/922.html>).

The tree experts were Jonathan Cocking (Claimant) and Jeremy Barrell (Defendant).

Points of arboricultural interest:

- 1. Retention of tree incident material:** The Defendant did not make provision to retain all the evidence of the fallen branch, which prevented the Claimant inspecting the bulk of branch. Thus, it was held that "... the Court should judge the Claimant's evidence benevolently and the Defendant's evidence critically." This was also a key issue explored in the Appeal, which upheld the original decision. The obvious wider implication from this is that a failure to retain evidence after an incident could prejudice defendants.
- 2. The need to inspect highway trees:** The court found against the Defendant for not having a formal inspection process in place for this tree, despite the location being a public highway, albeit a low category road. However, it was held that even if the tree had been inspected, this would not have resulted in works that would have prevented the failure, and so the Claimant was unsuccessful.
- 3. Liability not solely linked to failure to inspect:** This judgment demonstrates a subtle point often missed by prospective claimants, namely that there is no automatic liability through a failure to inspect. If it is found that, had an inspection been carried out, it would not have discovered the cause of failure, then liability will not flow to the duty holder.



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