



Middleton -v- Surrey County Council (2015)



## Legal Case Study: Middleton -v- Surrey County Council (2015)

On 23 December 2010, Mr Middleton (Claimant) was driving his Toyota Hilux along the A242 Gratton Park Road in Redhill, Surrey, when a maturing ash tree fell from a narrow verge and crushed part of the vehicle, trapping him inside. For this road, the Defendant, Surrey County Council (“SCC”) had a system of tree inspection by a trained arboriculturist every three years using a driven inspection and walked inspection by a highway inspector every year.

The last inspection by an arboriculturist was about 17 months before the incident and no cause for concern was noted for the subject tree. The tree had extensive basal decay, which was the cause of the failure, but that decay was hidden by thick ivy growth. It was agreed by the experts that the decay would have been discovered if the tree had been closely inspected.

The case was heard in Guildford County Court during March 2015 and judgment was handed down on 27 March 2015 in favour of the Claimant (Case No: 2YM50004).

The tree experts were Dr Frank Hope (Claimant) and Jeremy Barrell (Defendant).

### Points of arboricultural interest:

- 1. Preserving evidence:** The Judge was critical of the Defendant removing and disposing of the fallen tree before any photographs were taken or any other evidence gathered.

This was made worse by the Defendant having removed the material from another high profile case several years before (Micklewright -v- SCC).

- 2. Negligent inspection:** In the absence of any evidence showing the condition of the crown of the tree, the judge found that there would have been evidence of poor health in the crown, probably consisting of dead branches, a thin canopy and yellowing leaves.

These vital signs were missed and there was negligence in the way that the inspection was carried out.

- 3. Adequate system of inspection:** The judge rejected the Claimant's suggestion that an adequate regime should involve an individual inspection on foot every year because it would be impractical.

The judge accepted that, for this set of circumstances, a drive-by inspection every three years is a good basic regime, coupled with inspections by highway inspectors.



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