Neutral Citation Number: [2022] EWHC 934 (QB)

Case No: QB-2020-001625

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19 April 2022

Before:

KIRSTY BRIMELOW QC
(sitting as a Deputy High Court Judge)

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Between:

MR MICHAEL HOYLE
(Suing as the Administrator of the Estate of his Late Son Mr. David Hoyle) **Claimant**

- and -

(1) HAMPSHIRE COUNTY COUNCIL
(3) SIMON P HOLMES LIMITED
(T/A Tree Surveys)
(4) MR ED POWER **Defendants**

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Mr. Ben Davies (instructed by Admiral Law Solicitors) for the Claimants
Mr. Geoffrey Weddell (instructed by Hampshire County Council Legal Practice) for the First Defendant
Ms. Catherine Peck (instructed by Horwich Farrelly Solicitors) for the Third and Fourth Defendants

Hearing dates: 25 January, 26 January, 27 January, 28 January 2022
Written submissions 8 February 2022

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APPROVED JUDGMENT

This judgment was handed down remotely by circulation to the parties' representatives by email and release to Bailii. The date for hand-down is deemed to be on 19 April 2022.

Kirsty Brimelow QC:

Introduction

1. On 6 June 2017 at approximately 7.15am Mr David Hoyle was driving his car, a Citroen Xsara, west on the A287 between Ewshot and Rye Common, Hampshire when a cherry tree growing immediately adjacent to the road fell onto the car causing Mr David Hoyle fatal injuries. He was pronounced dead at the scene. Mr. Hoyle was 44 years old, and he left dependents namely his wife and three children as well as other immediate family. This claim is brought by Michael Hoyle, David Hoyle's father on behalf of his son's estate. On any view this was a tragic event.

2. The Claimant brings a claim under the Fatal Accidents Act 1976 for damages arising from the road traffic accident on 6 June 2017. By an order made on 30 March 2021 Master Thornett directed that the issue of liability be tried before that of quantum. This trial therefore is of the issue of liability only.

3. It is common ground that the cherry tree (tree 572) grew on land belonging to the first defendant Hampshire County Council (HCC) which also acted as the highway authority for the roadside land on which the tree stood. It was their responsibility and so they owed a duty of care to act as a reasonable and prudent landowner, which included acting to avoid apparent danger and with a duty to undertake regular inspections. There is no dispute between the parties that a checking frequency of about once every three years by a trained arboriculturist was appropriate for the location and that the regime in place by HCC exceeded this.

4. Tree 572 was a maturing to mature wild cherry (prunus avium), about 60 years old with a trunk diameter of about 50cm. There was evidence that it could have lived to 120 years old. It was about 15-20 metres in height with a crown spread of 10 -15 metres. The centre of the tree was about 6.5 metres from the centre of the white line defining the edge of the road. It was growing beside an historic drainage ditch which was located just to the south of the trunk. This was the tension side of the tree. The side towards the road which was the direction of the lean is the compression side. The ditch was about 30-50 cm deep (shallower than originally pleaded by the Claimant) and generally less than 1 metre wide. The ditch was in clay soil that is poorly draining.

5. The third defendant is Simon P Holmes Limited trading as Tree Surveys (Tree Surveys/third defendant) a company specialising in arboricultural service which acted as a subcontractor for tree survey works commissioned by HCC in February 2016 and in turn, in April 2016 sub-contracted Ed Power (Mr. Power/fourth defendant) an arboriculturist, to undertake the survey work. As originally formulated a claim was also brought against Atkins, the council's service contractor (then the second defendant) but that claim was discontinued shortly after Atkins filed its defence.

6. Tree 572 was in normal health before the failure, but it had an asymmetrical crown and slight lean towards the road. The extent of the asymmetry and, at one

point, the lean were disputed. The cause of the failure of tree 572 was not agreed save those contributory factors in the failure were agreed to be the asymmetrical root architecture, the asymmetrical crown, the wet/waterlogged ground conditions, and the wind.

7. In dispute was the extent of tree 572's asymmetrical root architecture and asymmetrical crown as well as absence or presence of structural roots. Also, in dispute was whether the asymmetry of the root spread was visibly obvious and whether work recommended by Mr. Power would likely have reduced the failure occurring when it did. Finally, there was dispute as to the appropriateness of Mr. Power's priority rating matrix score for tree 572.

Brief Summary of Claim and Defences

8. The Claimant's case rested entirely upon the evidence of the expert arboriculturist Mr. Jeremy Barrell, instructed by the Claimant, who considered that tree 572 had a severely imbalanced crown towards the road and an asymmetrical root system that had no significant structural roots extending to and beyond the ditch.

9. Mr. Barrell's opinion was that any competent tree inspector should have noticed the lack of any root buttresses directly facing the ditch which should have raised an alarm and led to further investigation. He considered the HCC priority matrix should have been 12/16 or 16/16, not 6/16 as scored by Mr. Power. Mr. Barrell also considered that if the works recommended by Mr. Power had been carried out before 6 June 2017, it is likely that tree 572 would not have failed.

10. It was not part of the Claimant's case that there was evidence of specific decay or cracks or cavities in relation to tree 572 but rather that it had failed because, whilst in full leaf and wet, it was unable to support its own weight because of the above. Mr. Barrell stated that there were no obvious signs of decline before the tree failed. He also considered that the weather conditions on the day of the accident may have been a secondary contributory factor.

11. Further, the Claimant relied upon and criticised an earlier survey of the trees that included tree 572, in February 2016, by arboriculturist and Professional Tree Inspector, David Soffe on behalf of HCC. The Claimant's case was that tree 572 would have been in the same condition as observed by Mr. Power and that works recommended by Mr. Power should have been recommended by Mr. Soffe. If he had done so, then these works would have been completed by HCC by September 2016 as works were scheduled to complete in 6 months and tree 572 would have been unlikely to have failed due to weight being lifted from the tree.

12. In addition, the Claimant alleged that there was need for urgent pruning, lopping or other work to reduce the size or weight of this tree and/or to highlight the extent to which the crown encroached upon the highway.

13. And so, in summary, the Claimant contends that the proximity of the base of Tree 572 to the historic ditch, the lack of any structural roots extending across, through or under the ditch, the asymmetry of the root structure and the potential

for imbalance and failure ought to have been apparent to both David Soffe and/or Mr. Power during their tree inspections in February 2016 and November 2016.

14. In his Particulars of Claim, it was asserted that a number of statutes applied to HCC in this case, namely, section 3 of the Health and Safety at Work etc Act 1974, sections 41 and 154 of the Highways Act 1980 and section 2 of the Occupiers' Liability Act 1957. Further, reliance was put upon section 3 of the Health and Safety at Work etc Act 1974 as applying to Simon Holmes Ltd and Mr. Power and that all Defendants owed a common law duty of care to the Claimant.

15. However, by the time of trial, the Claimant abandoned reliance on statutory breaches other than in relation to alleged breaches of section 41 of the Highways Act 1980 (HA) against HCC as well as common law negligence against both HCC and Tree Surveys and Mr. Power, including, inter alia, a duty to take reasonable care to ensure that the health and safety of users of the dual carriageway, such as David Hoyle, was not endangered by overhanging, unstable and/or falling trees.

16. HCC accepted that it owed a common law duty of care to Mr. Hoyle to act as a reasonable and prudent landowner but denied that section 41 of the HA applied. HCC's case was that tree 572 was subject to a double regime of inspection by the Highways Department and the Countryside Department. It had been within drive by inspections of the Highways Department on 16 occasions in the 16 months prior to the accident. It also had been inspected on foot by two arboriculturists, namely David Soffe and Ed Power on 10 February 2016 and on 22 November 2016.

17. Mr. Soffe had not made any record of tree 572, meaning that it was not one of 15 trees where he had recommended action. The inference to be drawn was that Mr. Soffe did not observe any level of asymmetry to the roots which was likely to impact on the stability of the tree. Mr. Power had recorded that the lower crown was encroaching on the highway and that the tree had deadwood throughout its crown, that it was growing on a ditch embankment and that surface roots were visible. The defendants contended that these characteristics were entirely normal for cherry trees and Mr. Power's work recommendations were competent and reasonable. He recommended that deadwood over 25 mm in diameter be removed and the crown be lifted over the highway, meaning that the tips of the lower branches be pruned to prevent any high sided vehicles striking the branches and the basal area be monitored annually. The recommendations did not indicate any urgency or concern for the tree and Mr. Power gave it a priority rating of 6 out of 16 on HCC's matrix.

18. HCC placed reliance on insufficient evidence to support Mr. Hoyle's case and referred to relevant guidance for the management of trees from Health and Safety Executive Sector Information Minutes, namely SIM 01/2007/05 which sets a minimum standard of inspection for trees in a frequently visited zone as a "quick visual check" or visual tree assessment (VTA). HCC's response to this part of the claimant's case was that the inspections carried out by Mr. Soffe and

Mr. Power were compliant with the normal expectations of surveyors when inspecting trees.

19. Further, HCC's case was that Mr. Barrell's contention that tree 572 was unsupported by roots on the ditch side was factually inaccurate and the extent of the asymmetry of the crown was disputed. HCC relied upon the evidence of expert arboriculturists, Dr. Dealga O'Callaghan, instructed by HCC and Dr. Martin Dobson, instructed by the third and fourth defendants. Dr. Dobson pointed to other buttress roots showing the tree had adapted to asymmetry of its Crown and root system. He gave evidence that the asymmetrical crown was a typical feature of a tree on the edge of wooded area which grew towards the light and did not indicate any significant risk of failure.

20. HCC also pointed to unseasonably adverse weather conditions for June - particularly torrential rain - that occurred on 6 June 2017. Tree 572 had been inspected by Mr Power in November 2016 two days after storm Angus. It had shown no sign of storm damage. It could be inferred to be a robust tree, as well as a healthy one. However, in June 2017 it was in adverse weather conditions which were not usually expected in the summer and whilst it was in full leaf.

21. In summary, HCC maintained that the Claimant has not established that there was a risk of the tree falling and that even if there was such a risk the Claimant had not shown that no competent body of tree inspectors would have failed to identify this risk.

22. Turning to third and fourth defendants, Tree Surveys and Mr. Power, they denied that that they owed an open-ended duty of care to motorists over the months after their surveys of thousands of trees and so, considering proximity and fairness, did not owe a duty of care to Mr. Hoyle. Rather, in this case, at the time of the accident, they had a contractual responsibility alone to HCC. This legal point is not to be interpreted as indicating any lack of empathy by the third and fourth defendants towards the claimant for the tragic loss of his son. Indeed, sadness was expressed by all defendants towards the claimant in oral submissions.

23. In fact, the third and fourth defendants did not focus on the duty of care argument in oral submissions but rather concentrated upon the quality of the evidence underpinning the claim; submitting there was insufficient evidence. They also relied upon the evidence of Dr. O'Callaghan and Dr. Dobson who would have scored tree 572 at a similar level to that scored by Mr. Power. Finally, they pointed out that Mr. Power's recommendations of work to tree 572 were not criticised and they had no control over the speed with which HCC carried out works. Further, they point to the fact that Mr. Power makes recommendations that might not be necessarily carried out by HCC and referred to a document in October 2017 where Mr. Power has recommended the felling of a number of trees, but HCC had decided that that the trees were not to be felled but pollarded or monolithed.

24. In summary the third and fourth defendants argued that given that Mr. Power's recommendations of works to tree 572 were not by themselves criticised and there was no evidence that even if tree 572 had received a higher matrix score

the work would have been actioned by 6 June 2017, even if the Claimant establishes the existence of a duty of care to the Claimant and breach of that duty, the Claimant cannot prove that but for that breach the tree would not have failed.

25. It is the third and fourth Defendant's case that where the cause of the failure was the extremely high wind gusts, in combination with water logging of the surrounding ground following torrential rain, then the failure to carry out the recommended works had no bearing upon the cause of the accident.

26. In relation to the matrix risk rating, it is submitted that the rating was not unusual, particularly for a tree adjacent to a highway, and the recommendation to inspect the basal area annually was in line with HCC's policy that high risk areas should be inspected every 12 months.

27. In summary, Tree Surveys and Mr. Power contested that they carried out their contracted work in accordance with the required VTA and no concerns were found such as to require recommendations additional to those recorded by Mr. Power or invasive inspection. It was denied that the accident was caused by negligence of Tree Surveys and Mr. Power. Whilst they had no control over the time for implementation of recommendations by HCC, they also did not consider that the tree raised a need for urgent pruning or lopping. Finally, the third and fourth defendants say that this case is unusual in that the Claimant is attempting to raise retrospective inferences to be drawn from Mr. Barrell's evidence which in part relies on Google Streetview images in 2010 and 2012 and also is against the balance of the evidence.

28. Overall, the case of all defendants is there was nothing about the condition of tree 572 which would have put a reasonably competent arboricultural inspector on notice that this tree would fail within the next 12 months, or that more detailed investigations were required to properly assess the status of the tree. The Claimant, the defendants say, has not shown the weight of the evidence contradicting Mr. Barrell to be illogical.

29. HCC's Countryside Service Tree Safety policy issued October 2010 and reviewed March 2015 (with further review date March 2017) set out its primary objectives when considering tree management as being to control the risk to people and structures from trees, to conserve the biodiversity value that these trees provide, including old and decaying trees and to avoid unnecessary removal, disfigurement, or damage to trees with amenity, landscape, or wildlife value. In order to meet these objectives, if trees require work for the purposes of safety, it will be the minimum required to reduce the risk to an acceptable level. The value of trees is considered within a protective legal framework in this way [at page 8 of the policy] "Under the Natural Environment and Rural Communities Act 2006. Local Authorities have a duty to conserve biodiversity: Every public authority must, in exercising its functions, have regard, so far as is consistent with the proper exercise of those functions, to the purpose of conserving biodiversity." And "the considerate management of trees plays an effective role in delivering this duty…..It is therefore important that the risk from trees is balanced against their high value in terms of wildlife, heritage and amenity."

30. It also identifies that the risk of fatality from falling trees is less than 1:150 million. Dr. O'Callaghan mused whether deaths from falling trees may become less rare in light of climate change and accompanying extreme weather events. However, for the purposes of this case, importantly, the policy specified a minimum inspection regime for high target areas as annually and after extreme events. This regime itself was agreed to be reasonable.

Issues for determination

31. The key issues for determination have been expressed by the Claimant as follows: What was the nature of the duty owed by HCC to the Claimant and did section 41 HA apply; did defendants three and four owe the Claimant any duty of care and what was the nature of that duty; did any defendant breach any duty owed to the Claimant; was any established breach of duty causative of the accident. This is a helpful outline by Mr. Davies. However, my findings on facts and common law negligence mean that it is not necessary to address all issues.

32. Focusing on relevant questions, the principal issues for determination are these: (i) 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 Mr. Power in November 2016 (ii) Was there a defect or a combination of defects in tree 572 that created a risk of it falling that were present and visible to Mr. Soffe in February 2016 (iii) was Mr. Soffe's/Mr. Power's VTA of tree 572 such that no competent Tree Inspector would have completed it in this way (iv) was Mr. Power's completion of HCC's matrix such that no competent Tree Inspector would have completed it in this way and (v) whether but for any breach on the part of the defendants the tree would not have failed and David Hoyle's vehicle would not have been struck. Whether consideration of (v) is necessary will depend on the answers to earlier questions.

33. These issues guide my analysis of the relevant evidence. First, it is necessary to consider the surveys in more detail; to focus on cherry tree 572.

Publications

34. I have been referred to a number of publications that have informed highway authorities and arboriculturists regarding the standard and frequency of tree inspections.

Frequency

35. In summary, the Department of the Environment's Circular 90/73 "Inspection, Maintenance and Planting of Roadside trees on Rural Roads" and subsequent guidance support a general recognition that roadside trees inspection should take place at intervals not exceeding three years. HCC inspected trees in high target areas on an annual basis and those in medium target areas every three years. Both were to be inspected after extreme weather events. There is no dispute that HCC's inspection regime for the area of woodland where tree 572 grew was more than adequate.

Qualifications

36. HCC's Countryside Service Tree Safety policy specified that tree inspectors would undertake the Lantra professional tree inspection ITA course. By the time of the trial, there was or could be no reasonable dispute by the Claimant that Mr. Power (and Mr. Soffe) were appropriately qualified. The Claimant was entitled to explore and, indeed, did ask questions about the expertise of both witnesses in cross-examination. Mr. Power is an arboriculturist with over 25 years' experience and had obtained his Lantra certificate after a 5-day course in 2013. Further Simon Holmes, Director of Tree Surveys holds extensive qualifications in the tree sector and has experience spanning over four decades.

HCC Matrix

37. HCC's priority matrix for likelihood of tree failure and likelihood of causing damage is contained within the HCC Tree Inspection Survey document which was produced alongside the HCC Countryside survey project (2015-2017) and Tree Safety policy. Both criteria of likelihood of tree failure and likelihood of causing damage had scores ranging from 1 (unlikely) to 4 (very likely). The priority rating and the target area then would be evaluated by HCC to prioritise tree works. HCC did not need to follow recommendations to fell or carry out specific works on particular trees.

Management of Risk from Falling Trees

38. There is guidance produced by various organisations including the National Tree Safety Group (Common Risk Management of trees published by the Forestry Commission 2011), the Arboricultural Association and the Forestry Commission (Hazards from Trees), ISA best management practice Tree Risk Assessment (2011), UK Roads Liaison Group (Well-managed Highway Infrastructure: A Code of Practice (2016)) and The Tree Advice Trust ARIN 130/95/ARB Tree Root Systems (1995)). Mr. Barrell also referred to an article he had written "Tree Inspections: a simpler alternative to the present complication and confusion (2013)" and a prevention of future deaths report (PFD) from an Inquest which related to Bracknell Forest Council and the training of its Highway Inspectors. I do not consider the PFD relevant to this case. In any event, HCC did actually provide tree hazard awareness training for its Highway Inspectors. The court also was provided with publications from Mr. Barrell's Tree Consultancy and the Lantra Awards Professional Tree Inspection Workbook. The Workbook has a chapter on the tree as a dynamic living system:

> "It is appropriate for the reasons of maintaining healthy trees and not compromising their future health, that the tree inspector understands how a tree works, and to understand what effects a remedial action may have on the tree as a whole."

39. Reference was made to the National Tree Safety Group Guidance where it provides its definition of "a defect in the context of the growing environment of a tree is a structural health or environmental condition that could predispose a tree to failure." Defects should not be confused with hazards and hazards should

not be confused with risk in considering management otherwise management "can be seriously misinformed potentially leading to costly and unnecessary intervention." (page 44).

40. Mr. Barrell in his article 'a simpler alternative to the present complication and confusion' (2013) at Appendix 10 to Mr Barrell's report, acknowledges that stress relating to the risk of litigation can create intense psychological pressure which encourages "a 'better safe than sorry' culture, contributing to unnecessary tree removals".

41. *Stagecoach v South Western Trains Limited* [2014] EWHC 1891 is a relevant case to the court's consideration of different sources of guidance. In that case, Coulson J singled out two pieces of guidance as being relevant to those concerned with the management of trees [§53], namely the National Safety Tree Group document and the SIM. At paragraph 55 Coulson J stated:

> "The other document was the SIM 01/2007/05 published by the Health and Safety Executive ("HSE"). This document is principally aimed at local authorities and those dealing with trees on a regular basis. It sets out to balance, on the one hand, the benefit and value of trees, with the "limited" risk that they pose. At paragraph 7 of the document, the HSE say:
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> > "Given the large number of trees in public spaces across the country, control measures that involve inspecting and recording every tree would appear to be grossly disproportionate to the risk. Individual tree inspection should only be necessary in specific circumstances, for example where a particular tree is in a place frequently visited by the public, has been identified as having structural faults that are likely to make it unstable, but a decision has been made to retain it with these faults."
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> At paragraph 10(ii) the guidance goes on:
>
> > "For trees in a frequently visited zone, a system for periodic, proactive checks is appropriate. This should involve a quick visual check for obvious signs that a tree is likely to be unstable and be carried out by a person with a working knowledge of trees and their defects, but who need not be an arboricultural specialist."

42. Whilst no specific policy considerations are urged upon me by either Claimant or HCC, I take into account the HSE document in my analysis of the evidence relied upon by the Claimant in its allegation of negligence. I also am informed by the other publications and take into account those relied upon by Mr. Davies. However, I also bear in mind submissions by Mr. Weddell that they are guidance only rather than a minimum standard. However, ultimately, as indicated above, no specific criticism is made by the Claimant of HCC's Countryside Service Tree Safety Policy.

Tree Surveys and Inspection

43. The tagging of Tree 572 was part of a large survey of 23,084 trees in high-risk zones (described as the location of the tree being such that its failure could lead to personal injury) at 26 sites managed by HCC's Countryside Department as sub-contracted to the third and fourth defendants. It was part of a larger professional arboriculture survey of 50 sites within Hampshire. HCC has provided a copy of the Framework Contract dated July 2015. It has not been relied upon by the Claimant or Defendants as having any particular relevance to the issues to be decided.

44. According to Jonathan Dyer-Slade, Strategic Manager within the Countryside Department at HCC, the project undertaken by Tree Surveys was the first survey of its type in this level of detail.

45. Trees inspected were over 6 inches in diameter. Mr. Dyer-Slade clarified in evidence that the details of the project changed from initial email correspondence with the third defendant to being one that related only to high-risk zones rather than also to medium risk zones. As a result, all trees were to be visually inspected and tagged. In any event, the relevance of the emails is minimal as it is not in dispute that Mr. Power did inspect tree 572 and that by the time of the inspection he had surveyed around 6,000 trees and a total of around 15,000 trees during his employment by Tree Surveys. Simon Holmes gave evidence that he thought that Mr. Power was responsible for the inspection of all the trees in Rye Common.

46. Mr. Dyer-Slade provided evidence concerning the overall risk assessments of the trees surveyed. 5,266 were given a risk assessment of between 0 and 2 by the surveying arboriculturist; 14,286, including the tree that caused the accident, were given a risk assessment of between 3 and 6; 2,768 were given a risk assessment of between 7 and 10; and 765 were given a risk assessment of between 11 and 16. Following the completion of the survey each of the sites' managers made arrangements for work to be carried out to the trees, starting with those trees which had been given the highest risk assessments and working downwards towards those which had been given the lowest. At the time of the accident on 6 June 2017, the work to those trees having a risk assessment of 16, 15 and 14 had been completed and HCC was carrying out work on those trees with a risk assessment of 12 (there was no score 13). All the trees surveyed, including tree 572 were in high-risk zones.

47. Tree 572 was one of hundreds of trees growing alongside the A287. Due to its proximity to the highway, it also was subjected to a regime of inspection operated by HCC's Highways Department. That department's inspection system comprised (1) a monthly driven inspection by highways inspectors whose primary function is to look for defects in the road surface, but who also report if they notice any dangerous defect in a roadside tree; and (2) periodic inspections by an arboriculturist, carried out on foot. Criticism was made by Mr. Barrell as to the adequacy of drive by inspections. However, the National Tree Safety Group Common Sense Risk Management of Trees Guidance sets out "drive-by" inspections as an accepted type of formal inspection which is a

reasonable risk assessment in certain circumstances (page 50). In this case, drive by inspections were supportive of the inspections carried out on foot. They were not a stand-alone risk assessment mechanism which likely would have been inadequate. Complementing the inspections by the arboriculturists on foot and accepting their limitations, the drive by inspections were a sensible addition to the risk assessments of the trees which included tree 572.

48. Mr. Soffe carried out his inspection of trees including tree 572 on 10 February 2016. Mr. Soffe is a tree surveyor who has worked for HCC since 2013 as an arboricultural inspector. He has 24 years in the arboricultural industry. He was awarded the Lantra certificate in 2007.

49. Mr. Soffe described the methodology of a VTA. He was questioned as to why Mr. Power identified more trees in November 2016 that needed work than Mr. Soffe had identified in February. He replied that Mr. Power might have been picking up trees that he would not have considered at the same level of risk. Of course, storm Angus had occurred between the two inspections and so it is a reasonable inference that there might have been damage that had occurred after Mr. Soffe's inspection. Also, it is common-sense that trees are living and may change in condition over time. I do not read across Mr. Power's inspections to Mr. Soffe's inspections and conclude that Mr. Soffe's professionalism was lacking. He too made recommendations and observations on trees that he inspected.

50. Mr. Soffe said that trees grow safely in the manner of 572 for decades. He rejected that there were no structural roots for 572 as was suggested to him and said that tree 572 would not have got to the size it was without such roots. He also described how trees adapt and grow around features. He had no concern with the lean of 572. He had no specific recollection of the ditch but said that he would have been aware of it. Mr. Soffe also was questioned as to why he did not probe - which, it was suggested by Mr. Davies, would have revealed that there were no structural roots to the south of tree 572. Mr. Soffe disputed that there were no roots and gave evidence that he saw nothing that would have required probing.

51. Mr. Soffe had recorded trees that he considered had "stem defects" and were "wind throw leaning towards the road". He recommended the felling of those trees (larch trees). He also noted dead wood on oak trees with recommendations to remove the deadwood and also to fell trees. He recorded a sorbus tree (mountain ash) where the stem had shifted over the layby, and he considered it unstable. He recommended that the tree be felled. Mr. Soffe was not required to use the HCC matrix, but the works were all given a priority of 6 months. His inspections were highlighted by Mr. Weddell and were not suggested to show a negligent methodology by the Claimant.

52. Conrad Jones was a highway inspector responsible for the monthly driven inspections on the A287. On 24 May 2017 he carried out the last inspection before the accident. He did not notice any risk from tree 572. Also, on 6 June 2017 at about 6am he drove to work along the westbound carriageway of the highway; and so about one hour before the accident. He did not notice anything

unusual. He had last attended a Highways Inspector Register refresher course on 15 March 2017.

Tree Inspection of tree 572 November 2016

53. On 22 November 2016, Mr. Power undertook a Tree Inspection on foot that included tree 572 in relation to which he noted:

    a. In relation to maintenance; *'Remove deadwood over 25mm diameter, crown lift over highway and monitor basal area annually*';

    b. In relation to considerations; '*Lower crown encroaching onto highway with deadwood throughout, tree growing on ditch embankment with exposed roots*';

    c. The likelihood of tree failure was assessed as '2/4' upon the First Defendant's Risk Matrix meaning '*Somewhat likely*';

    d. The likelihood of tree failure causing damage was assessed as '3/4' upon the First Defendant's Risk Matrix meaning '*Likely*';

    e. Tree 572 was given an overall Priority Rating of '6/16' upon the First Defendant's Risk Matrix. The area in which tree 572 was located was noted to be '*High Target Area*'.

    f. Mr. Power tagged tree 572.

54. Mr. Power did not use a probe and gave evidence that it was not necessary and that he used a probe to detect decay. He stated that a probe or screwdriver could be stuck into the ground to feel for roots but that the method was not reliable as another object could be struck which was not a root and so give a false reading. Mr. Power gave evidence that he inspected the tree in line with the parameters of a VTA and there was nothing visible that required further investigation. He said that he did not probe in the soil with a screwdriver or a probe as it would not have given him accurate information about roots. Mr. Power gave evidence that he had looked at the root system and had seen no indication of decay. This was a tree, he said, that had stood there for 40 - 60 years and adapted to its environment. Mr. Power did not rule out that he might have scraped the area with his boot, looking for fungal bodies or broken roots.

55. And so, the fourth defendant assessed tree 572 as safe and made recommendations for non-major, non-urgent works. Tree 572 was the only tree inspected by Mr. Power that failed, albeit with devastating consequences. Mr. Power gave evidence that this is the only tree that had failed in his career of tree inspections. He described in his witness statement how he felt numb at hearing the news of the tree failure and fatality and how he went straight to the site. He took some photographs of the remains of tree 572. It showed no signs of decay. He considered that it had fallen due to the severe weather conditions.

56. Mr. Power did not seek to minimise the failure of one tree but rather pointed to it as evidence of his competence: one failure out of an extensive career. It

appeared to me when Mr. Power gave evidence that he continued to be upset at the failure of the tree and its consequences. As a witness, I was impressed by Mr. Power's knowledge of the species of cherry tree that was tree 572. I also considered that he exhibited care for the trees he inspected as well as balancing risk they might pose.

57. Thus, the tree was inspected twice by professional arborists in the 16 months prior to the accident, neither of whom identified any significant risk of it falling and causing an accident, and 18 times by highways inspectors who noticed nothing about it that called for further investigation.

58. The works recommended by Mr. Power were not carried out by the time of the accident. Further, Jonathan Dyer-Slade gave evidence that he could not say whether works on 572 would have been reached before the accident even if it had been scored 12/16.

59. Tree 572 was inspected after extreme weather as it was two days after storm Angus which I was told recorded gusts of 69-81 mph, thought to be the highest wind speeds since 1990. On the Beaufort scale, specification on land is described as "widespread structural damage" and "devastation". And yet tree 572 showed no visible effects of storm damage. If it was as unstable as Mr. Barrell considered it was - and had been unstable at the time of Mr. Soffe's inspection - there was no explanation as to how it remained anchored through storm Angus; other than that, it was securely anchored at the time of both Mr. Soffe's and Mr. Power's inspection. This would also support the evidence of both Mr. Soffe and Mr. Power that there were no visible signs that it was at risk of failing.

60. As to the timings of carrying out operational works on trees, there was some vagueness in the evidence. Mr. Dyer-Slade was asked about a document headed "Emergency Works" from HCC's Highways Department. It lacked dates. Since the accident, evidence was given by Mr. Weal that the Countryside Department and Highways Department work together well and share information. This appears to be an improvement sadly triggered by the accident. But an improvement. Mr. Dyer-Slade was referred to an HCC document dated 19 October 2017. He confirmed that HCC would not carry out works solely in accordance with data from the third and fourth defendants but there would be input from HCC. He stated that even if tree 572 had been categorised as 12/16 he could not say that it would have been actioned before the accident in June 2017.

61. Mr. Holmes supported Mr. Power in his evidence in that he did not place particular significance on the absence of a buttress root towards the ditch. He accepted that wind speeds were recorded as 40mph and that on the Beaufort scale that speed might not uproot a tree but that the failure of tree 572 could have been due to a number of factors. For completeness, the Farnborough weather station recorded the wind speed as 20mph and a gust speed of 32 mph at 7am on 6 June. This would have placed it in the category of "strong breeze" on the Beaufort scale. Also, on 6 June 2017 there was a severe weather warning of strong to gale force west north-westerly winds with likely gusts of 40mph - 50mph. The warning included to expect "some trees perhaps uprooted"

(appendix 3 report Dr. O'Callaghan). It appears that the winds were not as strong as forecast.

62. Considerable reliance was placed by the Claimant upon Mr. Power's survey of another cherry tree, namely tree 575, which has been growing next to tree 572. Mr. Power had said in his witness statement that he considered tree 575 to be unbalanced, growing over the highway and likely to fail. He recommended that it be felled. At the start of his evidence in chief, he changed his explanation for recommending felling as being that the removal of branches from the tree would have left wounds which create issues for this species of tree. And so, it was a tree management recommendation to fell in order to avoid long- term issue. He distinguished the work required on tree 575 as being to remove parts of the branches rather than the whole branches. The Claimant considered that this change in evidence substantially undermined Mr. Power's credibility. Mr. Power explained that he reconsidered his evidence after he had seen the Google Streetview photographs relied upon by Mr. Barrell. He was cross-examined on the basis that management was not a matter for him. However, Ms. Peck pointed to the LANTRA Professional Tree Inspection Workbook which specifically refers to management as being within the remit of inspections: "undertaking a safety inspection/survey and making management recommendations based on those findings" (page 23 and chapter 10). I considered Mr. Power a credible witness for reasons I set out later. In addition, his evidence is supported by two independent arboriculturists.

The Accident

63. Detective Sergeant Plews was travelling along the A287 between 7.05 and 7.15am. He saw the tree (tree 572) fallen upon a silver Citroen Xsara car. He approached the car and found Mr. Hoyle in the driver's seat. He was wearing his seatbelt. The ignition was still on, and music was playing. He checked for signs of life and considered that he was dead. By coincidence, at about 7.15am Consultant Anaesthetist Dr. Andrew Wade was stopped in the traffic on the opposite carriageway. Dr. Wade checked Mr. Hoyle and confirmed that sadly he had died and there was no resuscitation that could be attempted.

64. DS Plews did not attend court but provided a statement at 10.30 am on 6 June 2017. CPR Part 32 PD 27.2 applies and the Civil Evidence Act 1995 section 4(2) (b) - (f) applies in considering weight to be applied to this evidence. The witness was a police sergeant and providing evidence from his own knowledge and observations.

65. He described the weather conditions as torrential rain. Dr. Wade also provided his evidence through a statement. He stated that the weather was terrible and that it was raining heavily and there was a "blustery" wind. Both witnesses described in their statements seeing patches of standing water on the road.

66. Hampshire Police investigation at the scene (report 27 June 2017) found that the tree had fallen onto the car rather than the car driving into the tree. The front of the roof had been peeled rearwards and the accident was about 16 metres beyond a gated track entrance.

67. Mr. Davies's case appeared at times to seek to minimise the extent of the rain on 6 June 2017. However, I accept the evidence Dr. Wade and DS Plews. They have no reason to misrepresent the weather. Indeed, they would have paid particular attention to it in light of the fallen tree and being at the scene trying to process how this could have occurred. In fact, this was what DS Plews would have been trained to do in his work. Also, standing water can be seen clearly in the police photographs that were produced for the court.

68. There was no evidence to indicate that the car had been moving in excess of the speed limit. Absolutely no blame should be attached to Mr. Hoyle. Nor has there been. The road was in a reasonable state of repair. It was likely that Mr. Hoyle became aware of the falling tree 572 moments before it hit the car as the evidence indicated that the brakes were applied at impact. The police report referred to a small amount of standing water on the exposed ground around the tree roots. Mr. Hoyle's father had the painful task of formally identifying his son at Basingstoke hospital later that day.

69. Shortly after the accident, arborist, Mr Ripley was sent by HCC Highways Department to look at the fallen tree. He arrived at the scene at 11.45am. He was told that tree 572 had heaved out of its position and rocked back into its hole. He examined the roots, base plate, and trunk. He found no fruiting bodies or other external signs that the tree was in distress. The branches had been cut by the time Mr Ripley arrived at the site, but he was informed by the tree team that the branches had shown vigorous health. He took some photographs and all experts agreed that there were no signs of decay. Importantly, Mr. Ripley gave evidence that the tree had rocked back into the hole and that he was told by the tree team on the site that "the hole had been full of water". Mr. Ripley concluded that the tree 572 had root heaved from very wet ground during windy weather.

70. On 17 January 2022, the week before the commencement of this trial, Mr. Ripley went back to the scene. He looked for structural roots growing down the side of the ditch. He took a photograph of a structural root that he located. He did not dig through the ditch. He said that it did not take him long to find the root. Mr. Ripley was subjected to some criticism for going to the site. However, I consider that his explanation was reasonable. He was curious to check the site. He knew that the trial was imminent, and he would be questioned about tree 572. Mr. Ripley easily discovered a structural root to the south of tree 572 which had not been located by Mr. Barrell's method of minor excavations. It is evidence which adds to the structural roots located by Mr. Barrell along the side of the dich. It is evidence that the tree was anchored. In so far as the Claim has been founded on the fact of lack of structural roots to the south of the tree, this is incorrect.

Expert Evidence

71. I heard evidence from three arboricultural experts, Mr. Jeremy Barrell (Claimant), Dr. Martin Dobson (third and fourth defendants) and Dr. Dealga O'Callaghan (First Defendant).

72. Dr. Dobson and Dr. O'Callaghan were largely in agreement and in agreement in disagreeing with Mr. Barrell. I do not need to resolve every disagreement

between the experts but rather focus upon the structural condition of tree 572 at the time of its failure, the nature of the VTA, the potential for tree 572's failure at the time of inspections by Mr. Soffe and Mr. Power, the HCC Priority matrix score and the cause of tree 572's failure. As set out below, I prefer the evidence given by both Dr. Dobson and Dr. O'Callaghan to that of Mr. Barrell where there is disagreement. Also, in cross-examination Mr. Barrell did not maintain that the asymmetry of the crown of tree 572 was an obvious defect.

Structural Condition of Tree 572

Asymmetry

73. Starting with the joint statement, the experts do not agree on the degree of asymmetry of tree 572. Mr. Barrell considered that the whole crown was severely asymmetrical towards the road. Dr. O'Callaghan and Dr. Dobson consider that the crown was asymmetrical, but the main branches were largely vertical. Dr. Dobson considered the lean to be very slight (page 478/§3).

74. In cross-examination, Mr. Barrell agreed that the lean of tree 572 was slight. He relied on Google Streetview photographs from 2009, 2010, 2012 and 2016 to provide evidence that the crown was severely asymmetrical. Mr. Barrell accepted from the time of his report that there is a limitation on the reliability of the images due to distortion caused by a wide-angle lens (page 290), but he gave evidence that it was possible to make adjustments by comparing to features which were vertical - such as signposts. There also were photographs taken by the police at the scene. I found the police photographs to be more useful in examining the branches of tree 572 and they were relied upon by Dr. O'Callaghan and Dr. Dobson to show that the branches of tree 572 appear to grow up in a more vertical direction and also towards the woodland as well as across the road; like almost all the other trees lining the road. Dr. Dobson also analysed the Google Streetview images to show that the tree had self-corrected so that the larger branches higher up the tree had become largely vertical (Dobson report page 447).

75. In any event, Mr. Barrell gave evidence that the presence of a lean and asymmetrical crown did not mean that there is a problem with the tree. He said that it only meant that the tree required a closer look. And so Mr. Barrell's evidence in court was not as he had set out in his report: that the tree had a severe crown asymmetry which was an obvious defect. He appeared to align much more with the evidence of Dr. O'Callaghan and Dr. Dobson that many trees have asymmetrical crowns, and they are unlikely to be hazardous because of that feature (page 486/§22).

76. Mr. Power had observed that the crown was asymmetrical and did not consider it to be hazardous. Dr. O'Callaghan considered that to be a reasonable conclusion. Dr. Dobson considered that tree 572 had not presented "a real risk" and concluded that both inspection and reporting of tree 572 was competent such that he would have expected any other competent inspector to have formed a similar opinion and provide a similar recommendation. In his report he also said:

> "Almost all trees which grow on a woodland edge have an asymmetric crown form as branches grow towards light. Many of these trees also display a lean, as is the case for the woodland edge trees alongside the A287 (Figure 10). If trees which have an asymmetric crown, and also lean, are regarded as posing a real risk then the implication is that all woodland edge trees next to roads, paths, houses etc would need to be felled as a matter of course. As soon as the outer line of trees was removed the newly exposed woodland edge trees would grow into the available air space ultimately producing trees with asymmetric crowns and these in turn would need to be felled until there was a gap beside every road equivalent to the height of the tallest tree. In my opinion this would be disproportionate and unnecessary and could result in widespread destruction of highway trees, woodland habitats, and public amenity, with little benefit in terms of public safety." (page 448/§5.18).

Roots

77. The three experts agreed that there were significant structural roots growing towards the road that were obvious because of the buttressing on the roadside of the trunk and that there was no similar buttressing on the opposite side towards the ditch. They agreed that there was no evidence that there were significant structural roots growing under the ditch (page 478/§4). However, in oral evidence, it was made clear that this did not mean that there were not significant structural roots under the ditch (see §80 and §81 below).

78. Mr. Barrell gave evidence that he was genuinely concerned that Mr. Power had not noted the lack of a buttress root at the back of the tree towards the ditch. When asked whether he was saying that no reasonably competent tree inspector would have inspected the tree and not flagged up that the tree was likely to fail, he said that a concern should have been flagged. He did not go as far as to state that it was obvious to an inspector that it would fail. In cross-examination by HCC, Mr. Barrell also did not criticise the opinions of Dr. O'Callaghan (or Dr. Dobson) as being unreasonable.

79. Mr. Barrell in cross-examination on behalf of the third and fourth defendants also gave evidence that the presence of a buttress root did not necessarily equate to anchorage. However, he said that it was not normal for there to be supporting roots without the sign of a buttress root. He also placed importance on lack of broken roots in the ditch.

80. He said that he would have expected a competent tree inspector to report the presence or absence of a buttress root. However, in his report, he did not note the presence of buttress roots at the side and front of the tree. Dr. O'Callaghan gave evidence that he did not consider the presence of the buttress roots significant. He said that trees produce large buttresses and anchor roots into the prevailing winds. He said that a tree might not put down buttress roots on the woodland side if it was protected on that side from the winds. He said that trees produce more buttress roots on the lean side and that the tree self-optimises. He did not agree with the evidence of Mr. Barrell that the root plate showed only

soil and pointed out structural roots that had been sheared. Dr. O'Callaghan gave evidence about the biology of a tree and that it would invest its energy into the side where it was exposed to the winds and other forces rather than on the side where other trees gave it protection. Dr. O'Callaghan repeated this evidence in different ways through extensive and careful cross-examination by Mr. Davies on behalf of the Claimant. There was no literature put to him to suggest that he was wrong. Ultimately, Dr. O'Callaghan's view was that if tree 572 had needed a buttress root towards the ditch it would have formed such a root. The ditch was no barrier to the tree putting the wood in the soil where it was needed. He said:

> "The presence of the ditch was not limiting. It (buttress root) could have formed down and into the ditch. Trees allocate resources to keep them alive and upright. As the tree gets bigger it compensates and produces more wood. It might get to the point where it crashed over. It's like we all are going to die at some point".

81. Dr. Dobson gave evidence that he found 4 structural roots on the tension side (photographs in his report page 442) and Mr. Ripley found a fifth root. Dr. Dobson stated that he saw no evidence that there were no roots across the ditch. He was satisfied that there were likely roots under the ditch as he had seen them down the bank. When cross-examined, Dr. Dobson stated that the ditch did not provide an obstacle to rooting and the roots from tree 572 down the bank of the ditch would have gone somewhere.

82. There was some evidence concerning the root plate and whether it had pivoted or rotated out the ground. Dr. Dobson did revise his opinion and agreed with Mr. Barrell but Dr. Dobson did not consider it significant (joint statement §2.6). Indeed, all experts agreed that it was not the weight of tree 572 alone that caused it to fall. In oral evidence, Mr. Barrell described weather conditions as being a "trigger".

83. It was not challenged that Dr. Dobson is one of the foremost experts in roots in the country. Significantly, he said that lack of roots on the tension side would not have bothered him if he had inspected tree 572. He said that there are many trees next to walls or rivers that have a totally asymmetrical root system. He said that tree 572 had roots going in three directions and possibly in a fourth direction.

84. In summary, Dr. Dobson did not consider that the failure of tree 572 meant that it had a structural defect. He rejected a straight comparison between tree 572 and tree 575 (which remained standing and had a buttress root towards the ditch). Dr. Dobson referred to tree 575 as having survived despite having a "phototropism to the main stem growing towards and over the highway." Dr. O'Callaghan gave evidence that the non-failure of tree 575 could not be analysed as due to it having a buttress root growing towards the ditch. He said that it was likely that tree 575 was moderately exposed to wind from the north and so had put a root in that direction. He considered that there might be differences in the soil. Dr O'Callaghan notes at paragraph 3.1.7 of his report that the British Geological Survey describes superficial soil deposits at this

location as 'Alluvium - Clay, Silt, Sand and Gravel'. Further,in his oral evidence he explained that localised areas "might be exclusively sand or sand and clay which drains more easily and account for variable sand conditions".

85. Dr. O'Callaghan accepted that there had not been a soil analysis for the sites of the two trees. However, he was entitled to give this evidence in response to cross-examination about potential differences between trees 572 and 575. The point he was making was that the trees and conditions were different. They could not be directedly compared. Indeed, I find that Mr. Power's reporting as documented, demonstrated an individual approach to each tree in keeping with inspection by a competent tree inspector.

86. Dr. O'Callaghan didn't regard the lack of snapped roots in the ditch as significant; rather the roots may have broken at a different point as the tree uprooted. This evidence is logical and was not challenged in cross-examination by the Claimant.

Ditch

87. The Claimant's pleaded case that the ditch was about 70cm to 100cm deep was not made out in evidence. Mr. Barrell had stated in his report that he estimated the ditch to be "between about 40-50 cm depth at its shallowest, down to a maximum of about 70-90 cm depth in places" [283/274].

88. In the joint statement the experts agree that "measuring the depth of the ditch is difficult because of the disturbed nature of the surroundings, but we believe that it is likely to have been about 30-50 cm deep. It is variable in width but is generally less than 1 m wide. We agree that the ditch sits in a clay soil that is poorly draining and has been present for many years. We have seen no evidence of recent clearance or maintenance."

89. The ditch itself does not appear to have been as remarkable or significant as first asserted by the Claimant.

Adequacy of Inspection of tree 572

90. It was agreed that walked visual checks must view trees from a distance and close-by and through 360 degrees if access allows. The issue of disagreement was that Mr. Barrell considered that Mr. Power should have probed in the ditch to check whether tree 572 had roots at the tension side of the tree but Dr. O'Callaghan and Dr. Dobson considered that probing the base of a ditch would not form part of a visual tree inspection.

91. As referenced above, the primary document relied upon by HCC is the HSE SIM for the minimum standard of an appropriate tree check. It is a quick visual check for obvious signs that a tree is likely to be unstable. I take into account that the HSE document is produced in relation to enforcement in criminal proceedings. I therefore consider the civil duty by applying the publications referred to above and relied upon by the Claimant.

92. The ISA guidance referred to by Mr. Barrell in his report is best management guidance. For a level 2 assessment (although there is some dispute whether the VTA is level 1 or 2) [1366/1354]:

> "simple tools may be used for measuring the tree and acquiring more information about the principals (sic) it or any potential defects. However, the use of these tools is not mandatory unless specified in the scope of the work. Measuring tools may include a diameter tape, clinometers or a tape measure. Other inspection tools include binoculars, magnifying glass, mallet, trowel, shovel, or probe".

93. There is no literature to support the requirement for minor excavations on a visual tree inspection. FC Hazards from Trees at [308/299] states "It is sufficient initially to look for external signs that may indicated that a hazard exists. If no significant hazard is revealed, further action is not generally required until the next inspection"

94. However, on the facts of this case I find that the evidence does not show that there was any structural aspect of tree 572 that was an obvious or at least visible defect such as might have invited further investigation. Indeed, the evidence does not show on the balance of probabilities that tree 572 suffered a defect at all.

95. Dr. Dobson and Dr. O'Callaghan do not consider that there were any obvious signs that the tree was likely to be unstable such as to attract the investigation of additional probing.

96. The Claimant attacked the credibility of Mr. Power due to a change he made when he gave evidence in court to what he had written in his witness statement. I referred to this contention above (§62). In paragraph 43 of his statement, Mr. Power had stated that he recommended that tree 575 be felled as he had felt that it was unbalanced and growing towards and over the highway and likely to fail. At the start of his evidence in chief Mr. Power said that upon further reflection and having seen photographs of tree 575 he was not concerned about Tree 575 failing but was making a management recommendation as removing branches from the tree would leave wounds causing the tree to be susceptible to long term problems. He emphasised that this was the nature of a cherry tree; they did not cope with entire branches being removed. This was not challenged by the Claimant and therefore the explanation retained undisputed logic. Whilst considering the concerns raised by the Claimant, my assessment of Mr. Power was that he was a straightforward and honest witness; not one trying to manipulate evidence about one tree as he had anticipated it might impact on the other tree. His evidence about tree 572 remained consistent. Mr. Power appeared to me to conscientious in relation to the trees that he inspected. In my view, he remained upset that tree 572 had failed; a reflection of his responsible approach to his work.

97. I find that Mr. Power carried out a visual check in keeping with both his contract with HCC and also publications as to required extent of visual checks. As a matter of logic, it can be deduced that Mr. Power inspected the whole of tree

572 as he reported on its features from crown to roots. He also noted its location and by inference its anchorage as he noted the ditch. Mr. Power did not carry out probing around the root system of the tree as there was nothing that concerned him beyond his reporting.

98. Dr. Dobson and Dr. O'Callaghan considered that probing the base of a ditch would not form part of a visual tree inspection and they would not expect an inspector to get into a ditch. Whether an inspector should get in a ditch or not seemed to me, on the evidence, to be driven by whether there was a potential issue with the tree. Here Mr. Power did not see an issue.

Potential for the tree's failure and Matrix

99. Mr. Barrell disagreed with Mr. Power's matrix score. Considering the score of likelihood to cause damage, Mr. Barrell would have scored 4 rather than 3. All experts expressed concern that Mr. Power scored all trees the same irrespective of their distance from the road. Whilst Mr. Power justified this in evidence that a tree further from the road could cause a toppling effect onto the road, it seems logical that those alongside the road would be more likely to cause damage as there would not be uncertainty as to whether they would reach the road. However, at the time that Mr. Power submitted his surveys, HCC did not challenge Mr. Power's identical scores in this category. Neither did Tree Surveys. Mr. Barrell also said in evidence that he found the matrix confusing and did not himself use a matrix. The likelihood of failure undoubtedly was the entry that would attract the attention of HCC. Further, Mr. Power was aware that he could have raised alarm through other methods of communication outside the matrix such as through "urgent actions" emails. Ultimately, the evidence was that Mr. Power did not consider tree 572 as a tree in a category other than "somewhat likely" to fail.

100. Mr. Barrell would have scored the tree 572's likelihood of failure as "likely or very likely". He would have scored it 12/16 or 16/16. Dr. O'Callaghan gave evidence that he would have scored the tree the same as Mr. Power. Dr. Dobson's score would have been slightly higher at 8/16.

101. Tree 572 was in a high-risk zone, and I need to consider whether Mr. Power was competent in his assessment of the tree as only "somewhat likely" to fail.

102. Dr. O'Callaghan's opinion was that Mr. Power reasonably concluded that tree 572 did not pose an unreasonable level of risk of failure. Dr. Dobson's opinion was similar to that of Dr. O'Callaghan and stated in the joint report (page 482): "In view of the very strong buttressing on the road-side of the tree he made a reasonable judgement that the tree posed no unreasonable risk of failure." Mr. Barrell's opinion was that asymmetrical root spread is not necessarily a defect but can reasonably be considered a structural defect when extreme as he considered it to be for tree 572. However, Dr. Dobson and Dr. O'Callaghan disagreed that root asymmetry was necessarily a defect as trees are self-optimising structures that grow in response to stresses and adapt to stresses placed upon them by the surrounding environment (joint report page 486/§23). Dr. Dobson's view was that he would not have regarded the root system of tree

572 as structurally defective. He was not challenged that he has specialism in roots. I found Dr. Dobson's opinion one which I was able to place considerable weight upon in my assessment of this part of the evidence.

The Cause of tree 572's failure

103. The experts agree that contributory factors in the failure of tree 572 were the asymmetrical root architecture, the asymmetrical crown, the wet ground conditions, and wind. However, they disagree as to the contribution of each of these factors.

104. Dr. Dobson did not consider that the tree would have failed in the absence of heavy rain and strong winds and the asymmetry of the crown and roots influenced the failure and direction of fall. Dr. O'Callaghan's opinion was that the waterlogged soil and the weight of the asymmetrical crown caused the root plate to slip and the weight of and direction of the crown pulled the tree towards the road causing the failure. He also did not discount contribution of wind. Mr. Barrell considered that the underlying causes of failure were the asymmetrical crown and the asymmetrical root distribution with the wet soil and the wind as secondary contributory factors (page 479). Mr. Barrell's opinion in the joint report did not emphasise severity of asymmetry of roots or crown as he did in his original report. He also had been influenced by lack of other tree failures in the area in his minimising the effect of the weather. However, HCC did produce a spreadsheet of emergencies reported to HCC on the same day as the accident. There were 51 emergencies of which 47 were tree related.

105. During the trial, the Claimant disputed the admission of the spreadsheet as it is undated. Whilst it might easily have been resolved, even if I ignore this evidence, Dr. O'Callaghan's points remain logical that every tree is different. They are living and cannot be compared in the same way as inanimate products off a production line. And so, a healthy tree may fail due to a combination of factors. There also could be no sensible dispute that the weather conditions on 6 June were unseasonably severe. In these circumstances, the lack of broken branches from other trees strewn around the section of the road of the accident has limited weight. Trees withstand wind conditions in different ways. There is considerable evidence of excess water. And the clay type soil is not in dispute.

106. In cross-examination, Mr. Barrell said that the wind and rain would have been a trigger for the failing of the tree 572. Dr. Dobson remained of the opinion that a localised strong gust could have contributed to the tree's fall.

107. Dr. O'Callaghan also gave evidence that he considered that even with the reduction of the crown ahead of 6 June, the tree might still have failed. Dr. Dobson considered that the works may have reduced the likelihood of failure. However, he gave evidence that a sudden strong gust can blow over a healthy tree which is reasonably well anchored. He did not rule out that this could be at a speed of only 40mph. Dr. O'Callaghan considered the waterlogged conditions to be more significant. I add that I invited the Claimant to further consider whether he wished to make submissions upon the time it took HCC to reach works on tree 572. He declined to add anything further in his subsequent

additional detailed written submissions. There was no evidence before me that the time required by HCC was unreasonable.

108. Finally, although not called as an independent expert, I attach weight to the evidence of Mr. Ripley who also was an experienced arboriculturist. He was on the scene and actually saw tree 572. He thought it was in good health before it failed. He did not agree with suggestions put to him that the lack of a buttress root towards the ditch was an obvious defect in a tree. He - like Dr. Dobson and Dr. O'Callaghan - pointed to support provided by the buttress roots to the right and left of tree 572. He also doubted that crown lifting would have prevented the failing of tree 572 as he said that only 2 branches drooped so low as that they would have required pruning.

Negligence

109. In so far as the common law duty of care applied, it was common ground between Claimant and defendants that the relevant legal principles are correctly summarised by Coulson J as he then was in *Stagecoach South Western Trains v Hind and Steel* [2014] EWHC 1891 [68] as applied to local authorities in *Witley Parish Council v Cavanagh* [2018] EWCA Civ 2232. At paragraph 26 the principles are reiterated (omitting references to earlier cases):

> "Accordingly, I consider that the principles relating to a landowner's duty in respect of trees can be summarised as follows:
>
> (a) The owner of a tree owes a duty to act as a reasonable and prudent landowner;
>
> (b) Such a duty must not amount to an unreasonable burden or force the landowner to act as the insurer of nature. But he has a duty to act where there is a danger which is apparent to him and which he can see with his own eyes;
>
> (c) A reasonable and prudent landowner should carry out preliminary/informal inspections or observations on a regular basis;
>
> (d) In certain circumstances, the landowner should arrange for fuller inspections by arboriculturists. This will usually be because preliminary/informal inspections or observations have revealed a potential problem, although it could also arise because of a lack of knowledge or capacity on the part of the landowner to carry out preliminary/informal inspections. A general approach that requires a close/formal inspection only if there is some form of 'trigger' is also in accordance with the published guidance referred to in paragraphs 53-55 above.
>
> (e) The resources available to the householder may have a relevance to the way in which the duty is discharged."

The Duties owed by Professional Tree Inspectors

110. The standard of care expected of the tree inspector is the standard of an ordinarily skilled tree inspector: *Bolam v Friern Hospital Management Committee* [1957] 1 WLR 582. The *Bolam* Test applies to professional tree inspectors. It was recently considered in the High Court in *Parker v The National Trust* [2021] EWHC 1589 QB. In that case a branch fell onto the claimant when visiting a park. The Court concluded that the defect was not visible from ground level and that an aerial inspection had not been warranted.

111. As in *Parker* I must consider whether the inspection of tree 572 was carried out with such care as was reasonable in the circumstances of the tree in its location. This duty and standard also was considered in *Bowen v The National Trust* [2011] EWHC 1992 (QB).

112. I was referred to *Poll v Viscount Asquith of Morley* [2006] EWHC 2251 where HHJ MacDuff (as he then was) considered a claim by a motorcyclist who collided with a tree that had fallen from the defendant's estate. Mr. Barrell (for the claimant) and Dr. O'Callaghan (on behalf of the defendant) also were experts in that case. The central issue was whether the material defect with the tree, a fungal bracket, should have been discovered during a competent pre-accident inspection. The Claimant relies on this case to support his submission that a proper visual inspection would have involved using a hand or tool to scrape between the ground and the stem. However, the facts of *Poll* are different in that it related to a multi-stemmed ash and Dr. O'Callaghan conceded in that case that a competent inspector searching for disease would have found the bracket. The Judge also found without the concession that an inspector would have been looking for a fungal bracket on a tree of this type.

113. The third and fourth defendants emphasise that the Court has spent 4 days considering evidence relating to a visual inspection lasting 5-10 minutes. As *per* LJ Laws in *Ahanonu v SE London and Kent Bus Company Limited* [2008] EWCA Civ 274 :

> "[t]here is sometimes a danger in cases of negligence that the court may evaluate the standard of care owed by the defendant by reference to fine considerations elicited in the leisure of the court room, perhaps with the liberal use of hindsight. The obligation thus constructed can look more like a guarantee of the claimant's safety than a duty to take reasonable care" (paragraph 23).

114. I bear this danger in mind. Ms. Peck on behalf of defendants three and four also underlined that the Claimant must show that no responsible body of competent professional tree inspectors would have come to the conclusions and made the recommendations made by Mr. Power. She referred to *Bolitho v City & Hackney Health Authority* [1998] AC 232 (1997) HL and drew the court's attention to Brown-Wilkinson LJ; which can be read across from a medical context to the current context:

> "… there are cases where, despite a body of professional opinion sanctioning the defendant's conduct, the defendant can properly be held liable for negligence (I am not here considering questions of disclosure of risk). In my judgment that is because, in some cases, it cannot be demonstrated to the judge's satisfaction that the body of opinion relied upon is reasonable or responsible. In the vast majority of cases the fact that distinguished experts in the field are of a particular opinion will demonstrate the reasonableness of that opinion. In particular, where there are questions of assessment of the relative risks and benefits of adopting a particular medical practice, a reasonable view necessarily presupposes that the relative risks and benefits have been weighed by the experts in forming their opinions. But if, in a rare case, it can be demonstrated that the professional opinion is not capable of withstanding logical analysis, the judge is entitled to hold that the body of opinion is not reasonable or responsible.
>
> I emphasise that in my view it will very seldom be right for a judge to reach the conclusion that views genuinely held by a competent medical expert are unreasonable. The assessment of medical risks and benefits is a matter of clinical judgment which a judge would not normally be able to make without expert evidence. As the quotation from Lord Scarman makes clear, it would be wrong to allow such assessment to deteriorate into seeking to persuade the judge to prefer one of two views both of which are capable of being logically supported. It is only where a judge can be satisfied that the body of expert opinion cannot be logically supported at all that such opinion will not provide the benchmark by reference to which the defendant's conduct falls to be assessed".

115. And so, I consider whether the opinions of Dr. O'Callaghan and Dr. Dobson have been shown by the Claimant to be unreasonable and illogical.

Duty of Care owed by Defendants 3 and 4

116. Ms. Peck submitted, predominantly through written submissions after the conclusion of her oral submissions that Mr. Power and Tree Surveys did not owe a duty of care in this case to the Claimant.

117. I was referred to *Robinson v Chief Constable of West Yorkshire Police* [2018] UKSC 4 and Lord Reed: the exception to the general rule that a party owes no duty for harm caused by third parties applied where the defendant 'has created a danger of harm which would not otherwise have existed' (paragraph 37).

118. In *Poole Borough Council v GN* [2019] UKSC 25 Lord Reed considered 'pure omissions':

> "In this context I am intentionally drawing a distinction between causing harm (making things worse) and failing to confer a

> benefit (not making things better), rather than the more traditional distinction between acts and omissions, partly because the former language better conveys the rationale of the distinction drawn in the authorities, and partly because the distinction between acts and omissions seems to be found difficult to apply" [paragraph 28]

119. I also considered three recent decisions of the Court of Appeal namely *Begum v Maran (UK) Ltd.* [2021] EWCA Civ 326, *Rushbond v JS Design Partnership LLP* [2022] PNLR *and Tindall v Chief Constable of Thames Valley Police* [2022] EWCA Civ 25. Ms. Peck submits that the third and fourth defendants did not assume responsibility for the works to tree 572 and did not make the condition of the tree worse. In relation to proximity, I consider *Begum v Maran (UK) Ltd* [2021] EWCA Civ 326 where Males LJ at [128] cited Lord Hoffmann's decision in *Sutradhar v National Environmental Research Council* [2006] UKHL 33 at [38]:

> ". … It may or may not be possible now to subsume liability for negligent statements together with other conduct causing physical injury under a single principle. But that principle is not that a duty of care is owed in all cases in which it is foreseeable that in the absence of care someone may suffer physical injury. There must be proximity in the sense of a measure of control over and responsibility for the potentially dangerous situation. Such a principle does not help the claimant. In *Perrett v Collins* [1988] 2 Lloyd's Rep 255 the inspector had complete control over whether the aircraft flew or not. If he refused a certificate it could not fly. The purpose of the system of certification established by the Air Navigation Order 1989 was equally clearly the protection of persons who might be injured by unairworthy aircraft and therefore placed responsibility for affording such protection upon the inspector. For my part, therefore, I have no difficulty with the proposition that the inspector owed a duty to potential passengers to exercise due care and this may be why *Perrett v Collins* has not been reported in the official series of law reports. (Compare also *Clay v AJ Crump & Sons Ltd* [1964] 1 QB 533 in which an architect had complete control over whether a dangerous wall was left standing and *Watson v British Boxing Board of Control Ltd* [2001] QB 1134 in which the Board had control over the medical services provided at boxing matches.) But the claimant does not come even remotely within the principle stated by Hobhouse LJ. The BGS had no control whatever, whether in law or in practice, over the supply of drinking water in Bangladesh, nor was there any statute, contract or other arrangement which imposed upon it responsibility for ensuring that it was safe to drink. Lord Brennan said that while it was true that the BGS had no control over or responsibility for the water supply, they had control over and responsibility for their report. But this emendation of Hobhouse LJ's principle would turn it into complete nonsense.

> Everyone has control over and responsibility for their own actions. The duty of care depends upon a proximate relationship with the source of danger, namely the supply of drinking water in Bangladesh".

120. Ms. Peck distinguishes the case of *Perrett v Collins* and submits that defendants three and four did not have any control over the outcome of the survey. The Claimant relied upon *LE Jones (Insurance Brokers) Ltd v Portsmouth City Council* [2003] 1 WLR 427 on the question of duty. However, the facts were significantly different in that the Defendant in that case, Portsmouth Council was contracted in the following way:

> "The city council shall act as the agency of the county council in the management of the highways … 'Management' for this purpose shall comprise … (7) The control, ordering and supervision of routine maintenance as defined in the second schedule in accordance with such policies and standards as may from time to time be established by the county council. By schedule 2, "routine maintenance" included "grass cutting, hedge trimming, maintenance of trees and shrubs".

121. The claim arose from an alleged failure by Portsmouth to perform that contract. The Claimant was a property owner with property which was damaged and situated in the vicinity of trees which were not maintained. Dyson LJ at paragraph 15 "As for negligence, I do not understand on what basis it can be said that Portsmouth did not owe the claimant a duty to perform its function of tree management with reasonable care. Mr Bebb boldly submits that the only duties owed by Portsmouth were to HCC, and that only HCC owed a duty of care in tort to persons who foreseeably suffered damage as a result of inadequate tree management. I do not agree. The mere fact that Portsmouth owed a contractual duty to HCC does not mean that it owed no duties in tort to anyone else. On the facts of this case, the judge found that the damage suffered by the claimant was reasonably foreseeable. There was sufficient proximity between Portsmouth and the claimant to give rise to a duty of care in tort. In my view, it is also just and reasonable that, as the judge held, Portsmouth should be potentially liable in negligence to the claimant for the damage caused by the trees".

122. Further at paragraph 12 "In my judgment, it is not necessary to decide whether Portsmouth was an occupier of the highway in this case. What matters is that it had the right and duty to maintain the trees, and that this included, where necessary, the right and duty to reduce their height so as to prevent damage being caused to nearby properties. The agency agreements gave it sufficient control over the trees, both in fact and in law, to prevent any nuisance from occurring, and to eliminate any nuisance that did occur." Ms. Peck submitted that Defendants three and four did not have this right or duty. The matrix was processed and acted upon by HCC.

123. For a duty of care to arise, sufficient proximity between claimant and defendant is required: see, for example, *Caparo Industries PLC v Dickman* [1990] 2 AC

605. I also considered *Harrison v Technical Sign Company Ltd* [2013] EWCA Civ 1569.

124. The third and fourth defendant need to have a measure of control over, and responsibility for, the safety of road users: *Perrett v Collins* [1999] PNLR 77.

125. The existence of a contractual duty to HCC does not automatically remove a duty of care to road users. A duty of a tree surveyor to the road user previously has been recognised by the courts; as accepted by defendants three and four. However, in each case it is necessary to look at the scope of the work to determine the extent of the duty of care.

126. In oral submissions, Ms. Peck focused on the facts of this case and relied upon the lack of evidence of any structural defect to tree 572 or such that the Claimant had proved. If there was such a defect, she focused on insufficient evidence that the third and fourth defendants had acted in any way other than the reasonable and competent tree inspectors. I consider strength in those submissions such as it is not necessary for me to decide whether defendants three and four owed a duty of care seven months after Mr. Power's inspection to Mr. Hoyle. On any view of the evidence, the claimant cannot show that there was an emergency in relation to the safety of tree 572 which was ignored by Tree Surveys and Mr. Power such as to create a duty of care.

Highways Act 1980

127. The Highways Act 1980 provides that the Local Authority for a highway maintainable at public expense is under a duty to maintain the highway (section 41(1))

128. "Maintenance" includes repair and "maintain" and "maintainable" are to be construed accordingly (section 329). Section 58 provides a special defence:

> "(1) In an action against a highway authority in respect of damage resulting from their failure to maintain a highway maintainable at the public expense it is a defence (without prejudice to any other defence or the application of the law relating to contributory negligence) to prove that the authority had taken such care as in all the circumstances was reasonably required to secure that the part of the highway to which the action relates was not dangerous for traffic."

129. Mr. Weddell's position is that section 41 of HA does not apply to HCC in this case. He did not therefore seek to rely upon the statutory defence. In summary, he maintained that trees are not the fabric of the highway. Rather, they are decoration. In addition, this case is not a nuisance action such as in *Hurst and Another v Hampshire County Council* [1997] EWCA Civ 1901.

130. Section 41A of HA came into force to extend the duty to "ensure so far as reasonably practicable, that safe passage along a highway is not endangered by snow or ice". It came into force after the decision of *Goodes v East Sussex County Council* [2000] 1 WLR 1356.

131. The scope of the duty was considered by the Court of Appeal in *Mott v MacDonald Ltd v Department of Transport* [2006] EWCA Civ 1089. It held that *Burnside v Emerson* [1968] 1 WLR 1490 remained good law: "the duty …is…not…merely to keep a highway in such a state of repair as it is at any particular time, but to put it in such good repair as renders it reasonably passable for the ordinary traffic of the neighbourhood at all seasons of the year without danger caused by its physical condition" (Lord Diplock page 1496-1497). The Claimant argues that the presence of standing water can give rise to a breach of duty under section 41 HA 1980 and so draws parallels to fallen trees. However, as outlined in written submissions by Mr. Davies, this flooding was due to lack of maintenance rather than weather which would mean that the danger linked to the highway was transitory. The Claimant accepts that if a fallen branch or tree is due to weather rather than lack of maintenance, then there would be not liability attached to the local authority. However, if the tree fell because of lack of maintenance, Mr. Davies submits that section 41 of HA applies.

132. In this case, it is only necessary for me to address these arguments to a limited extent. I observe that extending section 41 to relate to trees or branches which fall on highways and then are urgently removed would have the effect of repeatedly placing local authorities in breach. No local authority could avoid it. This is not consistent with *Haydon v Kent County Council* [1978] QB 343 which is authority for the proposition the authority would only be in breach if sufficient time had elapsed to make it unreasonable for the authority to have failed to take remedial measures.

133. It is not necessary for me to decide the applicability of section 41 HA 1980. However, if I had been required to do so, I would not have considered that it applied in this case. The fallen tree 572 was not part of the fabric of the highway and it was transitory. It was cleared from the road within a short time of its failure. And its failure was not due to lack of maintenance by HCC, if this is an appropriate consideration.

Issues and Findings

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 Mr. Power in November 2016?

134. In my view the evidence does not support the Claimant's case that tree 572 was structurally defective at all. It is agreed that tree 572 was healthy before it failed. Dr. Dobson and Dr. O'Callaghan considered the root system and crown to indicate a tree that had adapted to its growing conditions. They did not consider that there were visible signs that the tree was a risk of failing. Mr. Barrell disagreed but did not point to any illogicality in their evidence. He also accepted that the prevailing weather conditions contributed to the failing of tree 572. There were no visible signs to Mr. Power that tree 572 was vulnerable to excessive wind and rain. It had survived undamaged through Storm Angus which was two days before Mr. Power's inspection in November 2016.

135. The Claimant has not proved that tree 572 lacked structural roots towards the ditch. Indeed, there was evidence of roots along the bank of the ditch and growing in the direction of the ditch. The tree was supported by a very large

buttress root on the roadside. Dr. Dobson makes the point that the large buttress root indicates that the tree had adapted to the asymmetry of its crown and its root system, and that he would not have regarded the root system as structurally defective (joint statement paragraph 23). His evidence was not challenged by the Claimant as being incorrect. Dr. Dobson possesses the expertise in relation to roots and his evidence carries considerable weight. Both Dr. Dobson and Dr. O'Callaghan did not change their evidence in material regards from their reports. However, I found that Mr. Barrell's evidence moved away from his original report and more towards the position of Dr. Dobson and Dr. O'Callaghan in the joint report.

136. The weight of the evidence as a whole leaves me in no doubt that the condition of tree 572 was not such as would have put a reasonably competent arboricultural inspector on notice that this tree would fail within the next 12 months, or that more detailed investigations were required. At minimum, the claimant has not proved on the balance of probabilities that tree 572 actually was at risk of failing or that that risk was visible to an ordinarily skilled tree inspector.

(ii) Was there a defect or a combination of defects in tree 572 that created a risk of it falling that were present and visible to Mr. Soffe in February 2016

137. As above, I do not find it proved that there was a defect or combination of defects such that created a risk of tree 572 falling. The evidence from the experts in the trial was that all trees have defects. The manner of tree 572's growth was described by Dr. O'Callaghan as a tree that self-optimised; growing towards light and sprouting buttress roots to the compression side where they were needed by the tree for stability. It follows that I find that there is no evidence of negligence of the inspection carried out by Mr. Soffe. The fact that Mr. Power was more detailed than Mr. Soffe in his observations of the tree does not equate to Mr. Soffe being negligent. There was no evidence as to whether the deadwood in tree 572 (agreed not to be evidence of decay) observed by Mr. Power in November would have been present in February. Mr. Soffe's records demonstrate that he carried out his tree inspections with care and skill. There is no evidence to show that Mr. Soffe should have had concerns about tree 572 in February 2016. Reference was made to a dead tree that was not referred to in February 2016 but referred to by Mr. Power in November 2016. However, as a matter of common-sense, the tree may have died between February and November 2016.

Was HCC/Mr. Power's visual assessment of tree 572 such that no competent body of inspectors would have failed to identify the state of risk contended to exist?

138. The evidence points strongly to the visual assessments not only being competent but having been conducted with care. At the very least the Claimant has not proved that the weight of the evidence contradicting Mr Barrell as to the scope of a Visual Tree Inspection is illogical. I do not find that tree 572 exhibited signs of being at a risk of failure.

Was Mr. Power's completion of HCC's matrix such that no competent Tree Inspector would have completed it in this way?

139. Dr. O'Callaghan and Dr. Dobson agreed in general terms with Mr. Power's Matrix scoring. I refer to more detail above in my analysis of the evidence of the experts in support of my finding that the Claimant has not proved that no competent tree inspector would have scored tree 572 as Mr. Power scored the tree.

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

140. Without rehearsing the opinions of the experts as set out above, Dr. O'Callaghan provided a pithy summary in evidence when he said that it was usually a combination of factors that caused the tree to fail.

141. The Claimant has not proved that tree 572 suffered from a structural defect prior to its failure. I do not therefore find any breach of duty of care on the part of any of the defendants. In the circumstances, it is not necessary to determine the issue of proximity and duty of care of defendant three and four to Mr. Hoyle.

142. In relation to the matrix, even if Mr. Power had scored the tree at a higher risk, I am satisfied that HCC would not have started work on the tree prior to the accident. The evidence conflicted as to whether this work would have prevented the failure of the tree, but the claimant has not shown that it would have prevented its failure. Finally, Mr. Barrell, save for one answer in re-examination, agreed with the recommendations of work by Mr. Power. He had not opined that tree 572 required felling.

143. I find that the inspectors relied upon by HCC had used all care expected of reasonably competent tree inspectors.

144. I also find that the evidence of Mr Ripley who attended the scene significant. He said that tree 572 had root heaved from very wet ground during windy weather. He also spoke to the tree team on site and was informed that the hole had been full of water. His conclusion is in general supported by all three experts. The disagreement on significance of root and crown are analysed above. In summary, the Claimant has not shown that the tree was defective and has not shown that, if it was defective, it was such that no competent body of tree inspectors would have failed to identify the defect.

145. In light of my findings that the defendants were not negligent it is not necessary to consider whether section 41 HA applies in this case. However, if required, I would likely have found that it did not apply to this case.

Conclusion

146. 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 that he was passing.

147. It is understandable that the 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.

148. The law ties compensation to negligence. And I cannot find the defendants 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 that no one was to blame.