Neutral Citation Number: [2025] EWHC 983 (KB)

Case No: QB-2022-002852

IN THE HIGH COURT OF JUSTICE

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21 April 2025

Before :

Benjamin Douglas-Jones KC
Sitting as a Deputy Judge of the High Court

- -

Between :

GEORGE MORRISS	**Claimant**
- and -	
LONDON BOROUGH OF HILLINGDON	**Defendant**

- -
- -

Mr Colm Nugent (instructed by **Bird and Lovibond**) for the **Claimant**
Mr Lee Evans (instructed by **DWF LLP**) for the **Defendant**

Hearing dates: 24, 25 and 26 February 2025

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JUDGMENT

Benjamin Douglas-Jones KC :

Introduction

1. The claimant seeks damages for personal injury arising from a motorcycle accident of 10 September 2019 from the defendant highway authority, the London Borough of Hillingdon ("LBH"). By an order of 20 March 2024 made at a Costs and Case Management Conference, Master Yoxall (sitting in retirement) directed a split trial. The trial of preliminary issues in respect of liability took place before me on 24, 25 and 26 February 2025.

2. The claimant and defendant were represented by Colm Nugent and Lee Evans of counsel, respectively. I am grateful to both counsel for their industry and assistance.

3. The claimant attributes his fall to the front wheel of the motorcycle sliding from underneath him when it made contact with the second of two manhole covers over which a motorcyclist would naturally travel at that part of Falling Lane ("MHC2" and "MHCs"). His case is that the dangerous condition and siting of the MHCs led to his loss of control:

   (i) both MHCs but, in particular, MHC2 were worn and polished so that, in the case of MHC2, its patterned surface was insufficiently raised to be proud of any accumulated dirt, dust or moisture on its surface;

   (ii) the first MHC over which a motorcyclist would travel ("MHC1") was in close proximity to MHC2 and both were sited in the middle of the carriageway so that motorcycle riders would naturally travel over them;

   (iii) the MHCs were sited on a left hand bend with a dangerous fence supported by steel H-posts on the nearside of the road, so that in the event of a motorcycle collision, any injuries would be compounded by the impact with the fence and posts.

The duty under section 41(1) of the Highways Act 1980

4. Section 41 of the Highways Act 1980 ("s.41" and "the 1980 Act") creates a "[d]uty to maintain highways maintainable at public expense." By subsection (1):

> *"The authority who are for the time being the highway authority for a highway maintainable at the public expense are under a duty, subject to subsections (2) and (4) below, to maintain the highway."*

5. Section 329 sets out "[f]urther provision as to interpretation":

> *"(1) In this Act, except where the context otherwise requires—*
>
> ...

'maintenance' includes repair, and 'maintain' and 'maintainable' are to be construed accordingly; …"

6. In *Mills v Barnsley MBC* [1992] 1 PIQR p291, CA ("*Mills*"), at p292-293 Steyn LJ (as he then was) set out (in the context of a case involving an ankle injury sustained after the claimant's heel became caught in a small hole in the road) that the principles were clear:

> *"In order for a [claimant] to succeed against a highway authority in a claim for personal injury for failure to maintain or repair the highway, the [claimant] must prove that:*
>
> *(a) the highway was in such a condition that it was dangerous to traffic or pedestrians in the sense that, in the ordinary course of human affairs, danger may reasonably have been anticipated from its continued use by the public;*
>
> *(b) the dangerous condition was created by the failure to maintain or repair the highway; and*
>
> *(c) the injury or damage resulted from such a failure."*

7. At p295 in the same case, Dillon LJ, in agreeing with Steyn LJ, added:

> *"The liability is not to ensure a bowling green which is entirely free from all irregularities or changes in level at all. The question is whether a reasonable person would regard it as presenting a real source of danger. Obviously, in theory any irregularity, any hollow or any protrusion may cause danger, but that is not the standard that is required."*

8. In *Dean and Chapter of Rochester Cathedral v Mr Leonard Debell* [2016] EWCA Civ 1094, Elias LJ set out:

"9. This particular accident in this case involved a pedestrian using a footpath. Tripping, slipping and falling are everyday occurrences on the roads and pavements. No highway authority or occupier of premises like the Cathedral in this case could possibly ensure that the roads or the precincts around a building were maintained in a pristine state. Even if they were, accidents would still happen; it is part of the human condition. There will always be some weathering and wearing away of roads, pavements and paths resulting in small divots, slopes or broken edges which might provide some kind of risk to the unwary and lead to accidents. The law does not seek to make the highway authority or the occupier of land automatically liable for injuries caused by such accidents. The obligation on the occupier is to make the land reasonably safe for visitors, not to guarantee their safety. In order to impose liability, there must be something over and above the risk of injury from the minor blemishes and defects which are habitually found on any road or pathway. The law has to strike a balance between the nature and extent of the risk on the one hand and the cost of eliminating it on the other.

…

12. It is important to emphasise, therefore, that although the test is put by Steyn LJ in terms of reasonable foreseeability of harm, this does not mean that any foreseeable risk is sufficient. The state of affairs may pose a risk which is more than fanciful and yet does not attract liability if the danger is not eliminated. The observations of Lloyd LJ in James v Preseli Pembrokeshire District Council [1993] P.I.Q.R. P114, a case which applied the test in Mills, are pertinent:

> *'In one sense, it is reasonably foreseeable that any defect in the highway, however slight, may cause an injury. But that is not the test of what is meant by 'dangerous' in this context. It must be the sort of danger which an authority may reasonably be expected to guard against.'*

13. Lord Justice Ralph Gibson to similar effect noted that the test of foresight of harm is liable to result in too onerous a standard of care:

> *'... it has been established by the decisions of this court that the standard of care imposed by the law upon highway authorities is not to remove or repair all and any defects arising from failure to maintain, such as differences in level or gaps between paving stones, which might foreseeably cause a person using the carriageway or footpath to fall and suffer injury, but only those which are properly to be characterised as causing danger to pedestrians. There is, I think, an apparent element of circularity in some of the formulations of duty or breach of duty which have been advanced. Thus the test of dangerousness is one of reasonable foresight of harm to users of the highway.*
>
> *But in drawing the inference of dangerousness the court must not set too high a standard. Any defect, if its uncorrected presence is to impose a liability, must therefore be such that failure to repair shows a breach of duty....'*

...

15. ... The authorities suggest that ultimately it is the test of reasonable foreseeability but recognising the particular meaning which that concept has in this context. The risk is reasonably foreseeable only where there is a real source of danger which a reasonable person would recognise as obliging the occupier to take remedial action. A visitor is reasonably safe notwithstanding that there may be visible minor defects on the road which

carry a foreseeable risk of causing an accident and injury.

16. In the end it is an exercise of judgment for the trial judge whether the danger is sufficiently serious to require the occupier to take steps to eliminate it. Provided the judge has properly directed himself, this court can only interfere if he has reached a judgment which a reasonable judge could not properly reach on the evidence."

Statutory undertaker

9. It was agreed that the MHCs were owned by Thames Water Utilities Limited (trading as "Thames Water") ("TWUL"). TWUL is the undertaker responsible for maintaining the MHCs and the works beneath them under s.81 of the New Roads and Street Works Act 1991 ("s.81" and "NRSWA"). In *Roe v Sheffield City Council* [2003] EWCA Civ 1; [2004] QB 653, the Court of Appeal confirmed that the highway authority remains liable to maintain a highway even though a tram company, which had inserted tram rails into the highway, remained liable to maintain the rails. The parties therefore agreed that the defendant remained liable to maintain the highway, including the MHCs.

The statutory defence

10. Where the claimant proves the three elements required to establish liability as set out by Steyn LJ in *Mills*, the "[s]pecial defence" in s.58 of the 1980 Act may apply:

(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.

(2) For the purposes of a defence under subsection (1) above, the court shall in particular have regard to the following matters:—

(a) the character of the highway, and the traffic which was reasonably to be expected to use it;

(b) the standard of maintenance appropriate for a highway of that character and used by such traffic;

(c) the state of repair in which a reasonable person would have expected to find the highway;

(d) whether the highway authority knew, or could reasonably have been expected to know, that the condition of the part of the highway to which the action relates was likely to cause danger to users of the highway;

(e) where the highway authority could not reasonably have been expected to repair that part of the highway before the cause of action arose, what warning notices of its condition had been displayed;

but for the purposes of such a defence it is not relevant to prove that the highway authority had arranged for a competent person to carry out or supervise the maintenance of the part of the highway to which the action relates unless it is also proved that the authority had given him proper instructions with regard to the maintenance of the highway and that he had carried out the instructions."

Evidence

11. In support of the claim, the claimant relied on the evidence of the claimant himself, his brother, Allan Morriss, Cara Powell, the only reported eye witness to the accident, and Richard Franks, an enquiry agent.

12. The defendant relied on the evidence of five highways (street scene) inspectors, Joseph Blake, Terence Morrison, David Martin, Steven Pitt and Ian Toft, Wayne Greenshield, a Network Operations Manager for Highways at LBH, Jaswinder Matharu, a LBH claims coordinator, Rebecca Bevis a LBH Senior Permit Coordinator in Residents Services and Musab Chaudhary, Litigation Co-Ordinator for TWUL.

13. There was also a notice to admit facts through which jPeg files of three photographs taken by Allan Morriss and inspection report entries were admitted into evidence.

There is reference in the hearing bundle index to “Video Footage embedded in report of PJ Carey”. Both parties agreed that this video would not assist me in relation to any issue I had to decide. In those circumstances, I was not given access to it.

Uncontentious facts

14. The claimant worked as a maintenance manager at Just Taps. On 10 September 2019, between 17:15 and 17:30, he was riding his Honda CBR 650R, registration KE19 DVG (“the motorcycle”) home from work. He had owned the motorcycle for about five months from new. He was an experienced motorcyclist for his age (24 at the date of the accident). He had ridden this route on most days, five days a week for about eight months as part of his commute. He would also ride this route from time to time at weekends as it was close to his home. It was therefore a familiar route. The accident took place in daylight on a dry day with good visibility as the claimant was on or approaching a right-hand bend in Falling Lane, riding in an eastbound direction (“the collision site”). He was wearing a helmet, motorcycle boots, and motorcycle gloves. He lost control of the motorcycle and experienced a high-sided collision with a close boarded timber fence at the near side of the carriageway. The fence was constructed with posts made of galvanised rolled steel "H" sections set flush with its front face.

15. That fence delineated two roads, both called Falling Lane. The road to the north of the collision site (to the nearside of a rider travelling in the same direction as the claimant) was a residential road, with houses on its north side and the fence to the south. The carriageway on which the collision took place was an A-road, one of Hillingdon's main distributor roads that links High Street, Yiewsley in the west to Stockley Road in the east. The road incorporates both businesses and residential properties and also provides access to several other residential roads. There was a grassed play area to the south, immediately opposite the collision site. There was a school to the north. The fence served as a barrier physically stopping children entering the carriageway from the north and discouraging them from entering the carriageway from the south (as there would be no egress on the north side of the carriageway).

16. The width of the road at the collision location was about 7.6 metres. The eastbound lane was about 3.5 or 3.65 metres wide. There were tapering hatched road markings along the centreline of the carriageway. They were about 500 to 600mm wide at the collision site. The fence was set back by about 250mm from the kerb face. The nearside edge of MHC1 was about 1.1 metres from the kerb face. The nearside edge of MHC2 was about 1.4 metres from the kerb face. MHC1 and MHC2 were about 750mm apart. The road was superelevated at 3.7° (superelevation being a deliberate design feature on some bends) by which both sides of the road sloped in the same direction and toward the inside of the bend (the claimant's offside). The radius of the bend was approximately 150 metres. The part of the fence struck by the claimant nearest to MHC2 was approximately 20 metres from MHC2.

17. The claimant was taken by air ambulance to Royal London Hospital. There was little detail in the hearing bundle concerning the claimant's injuries because the trial issues were limited to liability. However, his injuries have sadly been extensive and profoundly life-changing: the claimant suffered injuries to both arms, which have led to his having to undergo an elective amputation of the left arm. The pain has been intrusive. I understand (although I have not seen evidence in relation to this) that the claimant has suffered from psychiatric injury with associated depression.

The claimant's evidence

18. The claimant gave evidence in accordance with § 14 above. He said that he had approached the right-hand bend where the accident occurred. He knew of the MHCs. MHC2 was the one that he always rode over. As he rode over MHC2, his front wheel started to lose traction. The motorcycle's traction control system engaged. The motorcycle righted itself. He and the bike then collided with the fence. He said that the positioning of the MHCs was very unfortunate for motorcycle riders. The claimant said he remembered nothing after the accident until three days later. He was told afterwards that he had attempted to get up after the accident. A lady had come to his assistance. In a detailed letter of claim, written by solicitors, but approved by the claimant himself, it was set out that the accident had been caused by the rear wheel losing traction. That

was incorrect. It was the front wheel. In cross-examination, the claimant confirmed that he had ridden over MHC2 five times a week for eight months as part of his commute and had never lost traction on MHC2 before, although it was a little loose. He attributed the loss of control to the application of new tarmac causing a drastic change in friction between MHC2 and the road surface. He had a definite recollection of the front wheel going over MHC2 but remembered nothing else for three days. The claimant's brother, Allan Morriss, said in evidence that there was a scuff mark on MHC2 and track marks on the road surface to the kerb, where there were scuff marks from the motorcycle's impact with the kerb and fence. It was put to the claimant that Allan Morriss and he had discussed the accident during the claimant's rehabilitation; and that discussion had caused the claimant to "track back" so as to conclude that the accident had been caused by his losing control on MHC2, whereas he in reality had no recollection of how he lost control. The claimant denied that the accident occurred because of rider error.

19. Allan Morriss gave evidence. The claimant was well known in the area because of the motorcycle, which Allan Morriss described as a "rare showpiece". That meant that news spread of the accident so quickly that he had been able to get to the scene about five minutes after it had occurred. The emergency services were there. A large crowd had gathered. The claimant was lying in the road. There was a tyre scuff mark on the MHC near to where his brother was. There was a track on the road surface that led to the kerb and scuff marks on the kerb. There was damage to the wooden fence. His brother's bike was on its left side, close to Otterfield Road. Police at the scene stopped him from taking photographs. He said in cross-examination that he had suggested to the police that the accident had been caused by a MHC; and they had told him that was not what had happened. He had returned five days later and photographed the road and both MHCs with a 24 megapixel camera. He said that in the photographs, one could see scuff marks on MHC2 and a track (skid) mark on the road surface. The marks he described were not visible in the pdf and printed images in the trial bundle. Mr Morriss said they were visible in the original jPeg files. I invited the parties to furnish me with the jPeg files. I duly received those images via a notice to admit facts and invited the

parties' submissions in respect of them. The marks he described were not visible even when one zoomed in within Image "IMG_6629 MHC2", which was a very clear photograph of MHC2 and the fence behind. When he was cross-examined in relation to the police report which recorded "… no apparent skids in road", Mr Morriss said that there were scratch marks on the road. It was put to him that he had "tracked back" and made assumptions as to the cause of the accident. He said that as an engineer (he was a gunsmith), he did not make assumptions. He said that the claimant had only pieced together his memory of the accident after he had taken him back to the accident. It was well known with crash victims that they would only later piece things (i.e. memories of events) together. Allan Morriss said that he had deliberately not put words in the claimant's mouth. During cross-examination, he said that, 15 years earlier, he had lost traction on MHC2 on a motorcycle. He had not thought to mention that before, as he had not seen its relevance.

20. A police report was compiled by Muhammad Shafi (rank not stated) of Hayes Police Station. He recorded:

> *"Witness stated on bodyworn that she saw the rider fall off of the bike and slide down the road and that no other vehicles were involved. She could not say anything regarding the speed of the bike."*

The claimant was not spoken to because of his injuries. Mr Shafi set out his theory as to how the collision had occurred. He set out that there appeared to be marks on the kerb and the fence and his observations concerning the road (see above). Mr Nugent explained that the witness referred to was Cara Powell. She made a witness statement in support of the claim. She did not attend court and her evidence was not tested. In her statement, she said that she had not seen the accident. When she arrived on the scene at about 17:30, the claimant's accident had already occurred and he was lying on his back being attended to by others. She was told that the claimant had skidded on one of the two MHCs and said that they were in a poor condition: they were

> *"... sinking/collapsing into the road, and [I] would try to avoid driving over them because they made a crashing sound if you did hit them and I was worried they would damage my car. ... Also, they were quite shiny and slippery. Sometimes I could feel my car slide on them ...".*

21. On 10 October 2019, the claimant completed a Notice of incident on Public Highway ("notice of incident"). This was the first document in which the claimant recorded an account of the "precise cause of [the] incident": "Poorly situated, uneven and shiny metal manhole covers in the middle of the lane, travelling away from the Cowley Road".

22. Richard Franks acted as an enquiry agent for the claimant's solicitors. He produced photographs of the MHCs from the internet to show their condition in 2008 and 2014. He found a new MHC of the same type as MHC2 and photographed it and measured the raised pattern.

The defendant's evidence

23. There were street inspections of Falling Lane both before and after the accident. These included routine inspections and those triggered by the accident itself.

24. Routine, scheduled street inspections were carried out monthly by street scene inspectors. All street scene inspectors who gave evidence had a NRSWA qualification and up to date LANTRA training. They had all accumulated many years of experience. They worked in pairs, with one inspector driving a Ford Connect (or equivalent) van, with an elevated cab ("the driver") and the other actively looking for hazards in the highway ("the observer").

25. On 19 August 2019 (three weeks before the collision) Joseph Blake (driver) and Terence Morrison (observer) carried out an inspection. Mr Morrison was himself a motorcyclist. His qualifications included a B Eng degree in Civil Engineering, a BA degree in Economics and a HNC certificate in Civil Engineering. The weather was dry.

There was scattered cloud. The temperature was 21°C. Visibility was good. No significant defects were noted. Mr Morrison had historically identified worn or polished MHCs and had raised a works order. He described himself as being trained to look for problems such as shiny and polished MHCs. When the surface of a MHC becomes worn, it might present a danger. Neither of the MHCs were in a condition that merited a repair. Had they been shiny or worn he would have been able to see that. Mr Morrsion described how, in all inspections, every aspect pertaining to the highway is inspected. The driver would proceed at 25 miles per hour with the observer scanning from side to side visually. That would enable the observer to see a defective MHC. He said that, had he seen a defect that might have warranted repair in the future, he would advise that a repair be effected as "a stitch in time saves nine". He was asked to look at a photograph of a MHC in the other carriageway of Falling Lane ("MHC3"), which was obviously far more worn than MHC1 and/or MHC2. Of that he said that 30% of the surface was worn. It was beginning to show wear and he might have raised an observation in relation to it, which would record that the inspector was not entirely happy with it but, had a s.81 notice been issued, TWUL would not have effected any replacement or repair. He had caused a s.81 notice to be raised on Falling Lane in respect of a MHC "near the park". He could not say whether it was MHC3. He said he would avoid riding over MHCs because all ironwork poses a danger to motorcyclists regardless of condition. He was clear about when a hazard would be revealed by an uneven MHC and by potholes. He was less clear about when a worn MHC would become a hazard but said that, as a rule of thumb, when the raised part of the MHC surface was closer than 5 five millimetres to the non-raised part of the surface across the entire surface of the MHC, it would "need looking at by" TWUL.

26. On 17 September 2019, one week after the collision but before the claimant had reported the incident, David Martin (driver) and Steven Pitt (observer) carried out the scheduled inspection on what was a warm and sunny day. As no defects were found, Mr Martin made the entry for the inspection record on this occasion, recording that no significant defects had been found. He recorded "minimal cracking found at time of inspections[;] will monitor over the coming inspections if any change:" this did not

relate to the MHCs. He considered photographs of the MHCs taken two and a half months later and neither thought that the photographs showed a shiny or polished surface, nor did he think they were in need of remedial attention. Mr Martin confirmed that there was no standard against which to assess the wear of a MHC but he might have reported a MHC which was "broken, cracked or sunken – we get a lot of those". He was asked about the reference to "high friction surfacing defects (worn/slippery surface)" in the Well Managed Highways Infrastructure Code of Practice (2016) ("WMHI COP"). His understanding was that it was not applicable to MHCs.

27. Mr Pitt gave evidence in similar terms to Mr Martin. He said that he would make a report if a MHC was worn so that it had no "tread" across its surface at all. However, he would not seek to intervene before then. In his opinion, a partially worn MHC even if on a bend in the centre of a carriageway would not cause a hazard.

28. On 2 December 2019, Ian Toft, a street scene inspector, was tasked to inspect the scene of the accident. His inspection was on foot. He wore personal protective equipment. He said he would have conducted the inspection at a quiet time. He used a set square He stepped out in the road to examine the MHCs more closely. He would return to the footway if traffic advanced. He said that the full inspection may have required several visits. He produced three photographs, two of MHC1 and one of both MHC1 and 2. He sent a contemporaneous email to Jaswinder Matharu, a LHB claims coordinator, in these terms:

> *"Please see photos from site. I'm happy to confirm that the cover is not defective or slippery. There is a tiny lip on the cover edge but no greater than 2-3mm. I could not see any significant damage to the fence."*

29. In his witness statement of 20 June 2024, Mr Toft explained that the reference to the fence in his email to Ms Matharu was included because Mr Toft knew that the claimant had collided with it. He recorded in the statement, at § 2:

"The face of the manhole cover was seen to be in an acceptable condition for use on the public highway. Approximately 95% of the face was entirely as it would be when first installed. The face was coarse with all indelible design fully visible. The cover was dry and free of other foreign materials such as grease, grit or dust. Though there was a small corner of the cover with a minimal amount of wear I deemed it to still be of acceptable condition and would not act as a hazard to road users alone."

30. Later in his witness statement, Mr Toft set out at §§ 11 and 16, the inspector set out that he had examined the MHCs with particular care, considering the risk of future accidents. He specifically checked for two things: whether the MHC was shiny or worn and for any height difference (lip) between the cover and the road surface. It was not shiny or worn and the lip was 2 to 3mm- well below the LBH threshold requiring investigation or repair.

31. When cross-examined about what precisely he had inspected in light of his having focused on MHC1 for the purpose of photographs and his inconsistent use of the singular (see, e.g, §§ 2 and 16) and plural (see, § 11) when describing the condition of the MHCs in his statement, Mr Toft confirmed that he had been tasked to and did inspect the whole road at this section. He said he had taken those photographs as it had been safe to take those with the prevailing traffic conditions. He had looked at both MHCs. In re-examination he said that he had used the "face of his hands" to govern friction and to see if there was a difference in the "level" on the face of each cover. He said that he had used the set square to measure the lip and the height difference between the two components of the MHCs' surfaces.

32. Ms Matharu had no reason to doubt Mr Toft's findings but, out of an abundance of caution, on 10 December 2019, she asked Rebecca Bevis, whose job includes co-ordinating utility works for LBH, whether LBH could issue a s.81 notice to cause TWUL (as statutory undertaker) to inspect MHC2 due to the seriousness of Mr Morriss' accident, to ensure the covers were fit for purpose. S.81(7) allows the highway

authority as a "relevant authority" to issue such a notice to a statutory "undertaker" such as TWUL in such circumstances. On 12 December 2019, Ms Bevis considered Ian Toft's photographs of MHCs 1 and 2. She issued a s.81 notice to TWUL so that TWUL would cause an inspection of the MHC (singular) to be effected on behalf of TWUL. She set out that there was a loose cover in the carriageway. She did not say that the MHC was "smooth and shiny":

> *"... as looking at the photos myself the cover had substantial grip across 90% of the surface area. Thames Water would have immediately issued the section 81 back as not accepted ... ."*

33. Wayne Greenshield is a LBH Network Operations Manager for Highways. He set out in his witness statement of 20 June 2024 what he understood from the Defence expert, Michael Hopwood, to be Department for Transport figures showing that Falling Lane was used by about 18,000 vehicles each day. Each carriageway is used by between 11,000 and 16,000 motorcycles annually. "However, the claimant's accident is the only one involving a motorcycle and the manhole covers at this location." In his evidence, Mr Greenshield pointed out that the figure for motorcycle traffic on Falling Road was far higher than the figure in his witness statement as, in 2019, 99 "two wheeled motor vehicles" were recorded as having travelled on the A408 (of which Falling Lane is part) per day on average, estimated by using the previous year's statistics. LBH's "Highway Safety Inspection Policy and Procedure – Highway Services" (1 November 2018) ("the LBH policy"), LBH's framework for routine safety inspections for highways maintainable at public expense, is set out in accordance with Well Managed Highway Infrastructure - A Code of Practice 2016 ("the code"), includes reference to "high friction surfacing defects (worn/slippery surface)". Contrary to Mr Martin's evidence, Mr Greenshield understood that that part of the policy included areas of anti-skid at pedestrian crossings and traffic lights, as well as ironwork in the road including MHCs.

34. Mr Greenshield was involved in policy creation for LHB (being a member of the body that sets policy, specifically safety inspection policy) and risk-based analysis,

especially regarding resurfacing. Whether MHCs should have an anti-skid coating and decisions concerning individual MHCs were not within Mr Greenshield's purview. He confirmed that there are no specific criteria for worn MHCs. Cross-examined about the risk assessment matrix within the LBH policy, at 6.3 (see Table 8), he said that a risk assessment matrix cannot refer (be applied) to every single piece of road or ironwork. If a defect is identified, a works order is raised. He was asked about the condition of MHC3 and said that it was more than adequate and safe. Mr Greenshield was satisfied that the Council's highway maintenance policy was "entirely consistent" the code.

35. Musab Chaudhary is a litigation coordinator for TWUL. He confirmed that MHCs1 and 2 are textured iron installations rated for vehicle use. They are sufficiently strong to withstand heavy vehicles passing over them on a regular basis. They have a textured or dimpled cover. They are not smooth. He opined that they "… would not present a risk to traffic in either wet or dry conditions." In March 2019 (six months before the accident) tarmac or bitmac around one of the two MHCs was replaced. PJ Keary Ltd, a contractor that specialises in the delivery of street works inspections for utility companies and highway authorities, caused inspectors to attend the site on 16 December 2019. Its inspectors confirmed that MHCs 1 and 2 were not defective. Neither was loose or rocking and "… there was no issue with either of them. The covers were level within their support frames and level with the surrounding vehicle carriageway." Mr Chaudhary added that PJ Keary would have replaced the MHCs had there been "any wearing". The company would have been paid for any such work.

Expert evidence

36. Each party called evidence of a highways design, construction and repairs expert. Michael Widdowson, who was instructed on behalf of the claimant, had been a member of the Institution of Civil Engineers for 50 years. He had been awarded chartered engineer status.

37. Mr Widdowson referred to The Code of Good Practice for Highway Maintenance (Well Maintained Highways) ("the COGP"), national guidance for authorities to define networks and establish network hierarchies. Highway authorities must conduct condition surveys to meet statutory performance indicator requirements. Maintaining adequate skid resistance is critical for safety, especially for motorcyclists, with risks increasing as resistance falls, particularly at "difficult" sites (including bends). No defined threshold exists between safe and dangerous sites. During cross-examination, Mr Widdowson repeated that the collision site was the most dangerous site he had ever seen on a distributor road in 55 years.

38. Authorities must publish a risk-based Skid Resistance Strategy within their Highways Asset Management Plan ("HAMP") informed by risk assessment, defining the network scope, test equipment (e.g., standard road skid resistance measurements (SCRIM) ("SCRIM")), survey method for estimating summer skid resistance (Characteristic SCRIM Coefficient ("CSC")), and Investigatory Levels ("IL") based on HD28/04. At the collision site, MHCs1 and 2 were on the likely path of motorcyclists negotiating the bend.

39. Highway Authorities typically use the Design Manual for Roads and Bridges ("DMRB"). While the A408 distributor road should comply, compromises existed at the collision site, notably a narrow verge (0.25m) and the adjacent hazardous steel fence posts. These constituted a significant hazard, linked to "Killed or Seriously Injured" ("KSI") motorcycle accidents.

40. LBH's safety inspection records (October 2018 to November 2019) showed a compliant system, but inspections only cover structural integrity, not skid resistance. Condition surveys (guided by the COGP, WMHI COP and DMRB CS228) identify fabric deficiencies using SCRIM to measure CSC against the IL. LBH apparently lacks records for Falling Lane condition surveys/maintenance, suggesting outsourced skid management; resurfacing works were likely to be programmed skid improvements. He

stated that A408 resurfacing to enhance skid resistance occurred April 2019. This statement appears to have been an inference as to the reason for the resurfacing.

41. Multiple standards (the Code; DMRB CD534; Institution of Highway Engineering ("IHE"); Transport for London's Urban Motorcycle Design Handbook ("TfL UMDH"); and Road Safety Audits) highlight the importance of maintaining skid resistance, especially on MHCs on bends/riding lines. They recommend avoiding such placements, or using covers with skid resistance similar to the road. DMRB Standard CD534 restricts new MHCs on motorway/trunk road carriageways and requires assessment of existing ones to reduce risks. The new CD534 requires a CSC of 0.60 for high-risk areas. Mr Widdowson did not examine the MHCs (MHC2 or both MHCs were replaced in April 2021) but concluded the CSC of MHC2 was likely to have been below the IL (0.4 to 0.45). MHC2's surface was probably polished by traffic to a slightly less degree than the road, its CSC reducing to below the IL (0.4-0.45) by the accident date.

42. Mr Widdowson concluded that LBH had failed to demonstrate that it had prepared a compliant skid resistance strategy/HAMP, undertaken required surveys/investigations, implemented maintenance, or complied with statutory indicators. He noted research indicates a London-Wide Skid Resistance Policy exists, with W.D.M. Limited having worked with 33 London boroughs. Premark® Anti-Skid, a preformed thermoplastic covering, offers an inexpensive treatment alternative. The MHCs ought to have been coated with such a non-slip coating and the failure to do this was a material factor in the accident.

43. Although authorities have discretion, the sub-standard set-back of the hazardous fence posts posed a danger. He suggested the claimant's injury severity could relate to colliding with the close, rigid post. Given that the polished surface of MHC2 was below the IL and MHC2's position, Mr Widdowson opined that there was reasonable foresight of harm, with a very high risk of instability and skidding. He concluded that LBH had failed in its legal duty by not guarding against this risk. The polished surfaces were an

unexpected danger; the claimant, though familiar with the road, found it difficult to avoid the covers and was unaware of this specific danger. His stability was likely affected, the slip on MHC2 causing the fall and collision.

44. Within the experts' joint statement dated 18 October 2024 there is an example of the type of risk assessment Mr Widdowson would have expected LBH to have conducted. This was a detailed staged assessment of each component of risk at the collision site by reference to the features of the road, fence and position of the MHCs. He had not seen such a risk assessment from the defendant. He emphasised that had such a risk assessment been carried out, anti-skid coating could have been applied. He noted that, on the motorcycleguideline.org.uk website, it is pointed out that highway design and maintenance should take every opportunity to consider steel service covers and consider high skid resistance covers.

45. Michael Hopwood, instructed on behalf of the defendant, had approximately 30 years' experience as a highway engineer. He also visited the collision site (on 11 January 2023- also after MHC2 had been replaced), reviewed evidence, and prepared a peer-reviewed report. There was no evidence that the resurfacing in April 2019 had been to improve skid resistance. He had asked the defendant for documentation explaining the rationale for resurfacing and had received none: it might have been an external body or a different department of the defendant which had been responsible for it. He said that the method described by Mr Toft for assessing the condition of a MHC by conducting a visual assessment and rubbing one's hand over it to feel the difference between the raised pattern and the main surface was a routine way of checking for rounding and MHC skid/slip resistance based on the remaining pattern, as SCRIM surveys do not measure MHCs and there is no mechanism or technical equipment by which MHC skid resistance may be measured accurately.

46. Mr Hopwood concluded MHCs 1 and 2 were shiny but not defective. He would not have expected inspectors to have identified them as dangerous or defective based on the LBH policy intervention levels (which are guides). With MHC3 (which was

markedly more worn than MHCs 1 and 2) he noted that inspectors might disagree in respect of a MHC such as this but, while it was borderline, about 80% of its surface had reasonable skid resistance. He would not have been concerned if one of his inspectors had passed it. He does not consider MHC2 to have been defective at the date of the accident.

47. He noted replacing covers or applying high friction coating are ways to obviate risk when wet. The application of high friction coating would not be down to the whim of an inspector. It would ensure acceptable skid resistance. The 2019 resurfacing would have been an ideal time to consider MHC replacement.

48. Mr Hopwood was not asked to reconstruct the accident speed. He provided his opinion on the calculated "theoretical speed": the speed at which the bend can, in theory, be negotiated by an expert test driver, in a car with a very low centre of gravity, and under ideal test track conditions. Using standard engineering assumptions (0.6g-0.7g lateral acceleration), his calculations suggested a theoretical speed significantly above the 30 mph limit. Repeating the calculations using Mr Widdowson's cited figures (from a Swedish study, 0.4-0.5g for motorcycles; or needing twice car skid resistance, implying 0.3g), the theoretical speeds were still significantly above 30 mph (in the 47 to 60 mph range). He noted these figures were theoretical. They might be based on old tyre types but included the radius and superelevation of the road. His calculations indicated that a very low coefficient of friction (similar to ice, perhaps 0.1) would be needed for loss of control at 30 mph. He stated that an expert could not properly opine that MHCs were more likely to be slippery than the road when the road was dry. A bend could increase a risk to motorcyclists (due to leaning), but the accident occurred on a gentle, superelevated, low-speed bend. The Department for Transport data which showed that over 11,000 motorcycles travelled on the A408 eastbound every year together with the tiny accident history (three incidents in the 20-22 years between 1999-2022) did not suggest a high-risk site. He disagreed strongly with Mr Widdowson's assessment that the site was the most dangerous he had seen on a distributor road. He felt safe during

his site visit. He concluded that, in order to have lost control on MHC2, one would have to be “massively” exceeding the speed limit.

49. A partly worn MHC does not necessarily pose a greater hazard than a new one (although a new one has greater skid resistance). The adjacent fence increased potential harm (a factor in risk analysis) but did not necessarily increase the likelihood of loss of control. A risk assessment uses the terms "foreseeable" or "likely" risk of injury or accident (engineering terms). He had not seen a LBH risk assessment concerning skidding for this site, nor evidence as to whether LBH had considered whether MHC replacement would improve safety.

50. Inspectors assess the condition of the highway as found. The position of ironwork alone cannot amount to a defect but is considered when assessing risk or deciding if a defect needs action. Mr Hopwood’s opinion was that LBH safety inspections appeared compliant with the code’s frequency recommendations. He had not been shown an LBH Skid Resistance Policy (for roads or MHCs), despite asking his client for it. He noted that LBH could adopt the national strategy (although that would not apply to MHCs specifically). He disagreed with Mr Widdowson's statement that LBH had no policy defining highway standards (although he had not seen one specific to design).

51. Mr Hopwood concluded the covers were shiny but not defective.

Parties’ submissions

52. The parties provided extremely helpful and replete written and oral submissions. I summarise what I consider to be the principal arguments advanced by each side. This summary is not exhaustive. That a particular point is not expressly mentioned does not mean it has been overlooked. No disrespect is intended to the thoroughness of the parties' submissions by this approach.

53. The parties invited me to accept that, when assessing risk in accordance with the s.41 duty, the risk from the condition of the highway must be "reasonably foreseeable" and

a "real danger". A mere fanciful risk; or a risk of injury which is more than fanciful - foreseeable - but which is not a "real danger" will not suffice.

54. Mr Nugent submitted that MHC2 constituted a "real danger" under s.41, not merely because it was worn but critically because of its position in the carriageway in a worn state. He relied on the fact that MHC2 was one of two MHCs in the carriageway and in the riding line for motorcycles, on a bend and proximate to the fence and steel H-post, making the consequences of a high sided collision severe. Motorcyclists predictably riding over worn, less skid resistant MHCs on bends are exposed to an increased risk of loss of control. The failure to apply high friction surfacing during the 2019 resurfacing demonstrated a breach of the s.41 duty to maintain the highway safely. As for causation, Mr Nugent submitted the claimant had consistently identified the poorly situated, uneven and shiny MHC as the cause of the accident from the outset. There was no evidence of any alternative cause such as excessive speed (which he emphasised would have been unlikely on the claimant's regular commute), unsafe riding, oil, or obstructions. The police report supported the claimant's case as to causation. The error in the letter of claim was a peripheral detail. As for the statutory defence, Mr Nugent submitted that it was an analogue system in a digital age. The speed of the van during driven inspections only allowed for some 3 seconds' view, which was inadequate for assessing MHC skid resistance. Inspectors lacked clear criteria for worn MHCs and disagreed significantly on whether MHC3 posed a hazard. The system focused on the wear of MHCs, not risk. An effective system would be proactive, requiring knowledge of specific hazards. Therefore, LBH did not take such care as was reasonably required.

55. Mr Evans submitted that the relevant duty on a highway authority is not to have MHCs that are brand new or akin to being brand new. Inspections before and after the accident found MHC2 to be in a safe state. Mr Toft considered all matters relevant to risk shortly after the accident and found no danger. The policy and guidance documents referred to above do not provide a prohibition on MHCs being positioned on a bend. Insofar as causation is concerned, Mr Evans focused on the particulars of claim in which it was

alleged that “The surface of MHC2 in particular was worn to the point where dust or grit (or moisture) on the surface of the cover led to significantly reduced friction between the motorcycle tyre and the metal cover”. He submitted there was no evidence of dust, grit or moisture being on the surface of the MHC. Fundamental contradiction at the heart of the claimants case: he gave evidence to the court that he was commuting every day along falling lane without ever having lost traction on MHC 2 before. As to causation, he submitted it was not credible for the claimant to have remembered the front wheel of the motorcycle passing over the MHC but to have remembered nothing else about the three days after the accident and then to have recalled the detail of the accident after returning to the scene in 2021. As to the statutory defence, Mr Evans submitted that LBH had implemented an adequate system of inspection of the carriageway and of MHC 2. He relied on Mr Hopwood's opinion that the inspection regime was in accordance with good / best practice.

Discussion

56. It is convenient to analyse the issues in the following sequence: (i) whether the condition of MHC2 in its position in the carriageway was a real source of danger at the time of the accident; (ii) causation; and (iii) the statutory defence.

Was MHC2 a real source of danger?

57. In assessing whether MHC2’s condition posed a risk which was at the time of the accident "reasonably foreseeable" and which was a "real danger", I agree with the parties’ suggested approach to risk (see [52] above). I also agree with Mr Nugent that it is appropriate for me to assess that risk by reference to: the Highway Authorities and Utilities Committee Advice Note No 2012/02 and, in particular, the guidance given in respect of replacement of what are termed 'worn/polished covers'; TfL UMDH, in particular, the importance of maintaining skid resistance on riding lines and bends; the WMHI COP, in particular the provisions which concern the maintenance of adequate levels of skidding resistance on running surfaces; DMRB Standard CS228, concerning the degree to which any part of the road surface has become worn or polished as a result of traffic passing over it; and the IHE Guidelines for Motorcycling as regards the

particular hazards to motorcyclists as a result of worn or polished MHCs. I therefore assess the risk against those standards.

58. First, I have seen the very clear photographs of MHCs 1 and 2 taken by Allan Morriss five days after the accident. They show that the raised pattern is not as it would have been when the MHC was new. It is worn and polished to an extent. However, in my judgment there is nothing remarkable about its condition. The raised patterned surface is still materially higher than the principal surface of the MHCs.

59. Second, three weeks before the incident, there was a routine inspection by experienced and qualified inspectors, including Mr Morrison, who was both a motorcyclist and an engineer. They found no significant defects. I accept Mr Morrison's evidence that he was specifically trained to look for shiny and polished MHCs. He confirmed that neither MHC1 nor MHC2 needed repair. I accept his further evidence that had they been shiny or worn, he would have seen that. He contrasted them, in my judgment properly, with MHC3, which he noted was beginning to show wear, suggesting MHCs1 and 2 were in better condition.

60. Third, one week after the incident (but before it was reported), another routine inspection found no significant defects. Mr Martin reviewed photographs of MHC2 and did not believe they showed a shiny or polished surface needing attention. Mr Pitt opined that even a partially worn MHC on a bend would not constitute a hazard unless it had virtually no tread left, which was not the case here. Having considered the evidence of the experts (see below), I accept Mr Pitt's evidence in this regard.

61. Fourth, Mr Toft conducted a detailed inspection on foot specifically of the collision site after being tasked to do so. His contemporaneous email was unequivocal. He acknowledged minimal wear on a small corner of MHC2 but deemed it acceptable and *not* a hazard. I found that his witness statement lacked the detail it should have contained in order to assist the court properly – he should have included the fact that he had applied his hand to the surface, which was omitted from the statement. Nevertheless, I accept his evidence that he had conducted an assessment of friction

through both a visual and a hand-based assessment. He had measured the minor lip (2-3mm) and noted it contemporaneously to have been well below the IL. In my judgment it makes sense that he would have applied his hand to the surface to check the friction of MHC2 as he measured it. I accept his evidence that he did so.

62. Fifth, through the TWUL contractor's inspection, PJ Keary confirmed in December 2019 that MHCs1 and 2 were not defective, not loose or rocking, and that they were level. I accept Mr Chaudhary's evidence that PJ Keary would have replaced them if there was "any wearing" of the MHCs' surfaces.

63. Sixth, Ms Bevis assessed the condition of MHC2, when considering whether a s.81 notice was warranted. She requested that TWUL consider MHC2 out of caution, not due to a finding of any defect by Mr Toft. She independently reviewed photographs and deliberately did not describe the MHC as "smooth and shiny" as she judged it had "substantial grip across 90% of the surface area" and believed TWUL would reject a notice based on shininess alone, indicating it did not meet a threshold of being dangerously slippery in her professional view.

64. Seventh, Mr Greenshield highlighted the very high volume of traffic, including a significant number of motorcycles, which travelled along Falling Lane on a daily basis. Notwithstanding that, the claimant's accident was the only one alleged to have involved these MHCs in any weather. Mr Hopwood also cited the low accident history as evidence against it being a high-risk site. This lack of prior incidents suggests the MHCs did not pose an unusual or unexpected danger to road users exercising reasonable care. This evidence was particularly compelling given that the accident had occurred in dry conditions.

65. Eighth, the claimant's first description mentioned MHCs being "poorly situated, uneven and shiny". While "shiny" featured in this description, it was set out alongside the other descriptors. I will consider the situation of the MHCs in the carriageway below. However, the MHCs were not materially uneven.

66. Ninth, I generally preferred the evidence of Mr Hopwood to that of Mr Widdowson. I accept Mr Widdowson's evidence that, in order to assess whether MHCs are in a dangerous condition, it is necessary to consider where they are in a carriageway and in what sort of road they are embedded. However, without hesitation, I reject his evidence that this was the most dangerous site on a distributor road he had seen in his 55 years' experience. Mr Hopwood's theoretical speed calculations were of some help to me, albeit they need to be approached with caution. They derived from a 2006 paper based on studies with two particular cars of that era. Nevertheless, I am able to accept that the coefficient of friction presented by the surface of MHC2 was far higher than the low coefficient of friction which would be necessary for a motorcycle to lose friction at or below the speed limit and accept his evidence that a partly worn MHC is not necessarily more hazardous than a new one. I found Mr Widdowson's opinion that MHC2 was polished below the IL for skid resistance to be unreliable. He had not examined the MHCs near to the date of the accident and MHC2 had been replaced by the date of his examination. Furthermore, I prefer the evidence of Mr Greenshield and Mr Hopwood, who gave evidence that SCRIM and policies often do not directly apply to, or are not measured on, individual MHCs. Overall, I found Mr Widdowson's evidence to be inappropriately partisan and exaggerated: the evidence concerning the collision site demonstrably showed it was not the extremely dangerous site that he characterised it to be, not least that there had never been a motorcycle accident there before: I am satisfied given his extensive experience that this was exaggerated. He not having seen the MHCs at the time of the accident and not having seen MHC2 at all was not able properly to opine that MHC2 was polished below the IL. He was also willing at times to opine inappropriately on matters of law and collision reconstruction expertise.

67. It follows that MHC2 was repeatedly assessed as being non-defective, having substantial grip, being coarse, and not meeting intervention levels for repair or replacement based on its surface condition. The lack of prior similar incidents further supports the conclusion that MHC2 did not present an actionable danger. Thus, the

overwhelming weight of the evidence supports the correctness of my visual assessment of the MHCs in the contemporaneous photographs. Applying *Mills v Barnsley MBC* the claimant has not satisfied me on the balance of probabilities that MHC2 was in a dangerous condition.

Causation

68. Mr Allan Morriss' evidence is important. It was he who had first suggested that the accident had been caused by a MHC, not rider error. It was a theory he said he had put to the police at the scene.

69. Allan Morriss confirmed that the claimant had had no recollection of the accident until he and the claimant had returned to the scene after the claimant had recovered sufficiently to do that.

70. Allan Morriss was clear that his photographs taken five days after the accident showed a tyre mark on MHC2 and scratch marks on the carriageway. That recollection was undermined by the police report and the photographs themselves. I requested the jPegs to ensure that I had the best evidence against which to assess his unambiguous account as to what the photographs showed.

71. I make it clear that I did not find Allan Morriss' evidence to have been deliberately exaggerated. However, he was clearly doing his best to help his brother in these emotive proceedings and, over the years, parts of his evidence had become exaggerated and distorted. Another clear example of this was his late, and, I find, unreliable, recollection (for the first time in cross-examination) that he had also skidded on MHC2 himself while riding a motorcycle "maybe 15 years ago".

72. Having observed and listened to the parallel and separate responses of Allan Morriss and the claimant to Mr Evans' questions in cross-examination to the effect that they had "tracked back" (i.e. worked backwards) together to theorise as to what might have caused the accident, I am satisfied that, through discussing the accident together as

Allan Morriss spent time supporting his brother, the brothers had become convinced that the MHCs, and MHC2 in particular, were the cause of the accident.

73. The claimant's own evidence warrants separate scrutiny. It is right that a month after the incident the claimant recorded in the notice of incident that his accident was the product of shiny manhole covers in the carriageway. However, his approved account of how the accident occurred set out in the claimant's letter of claim was that the rear wheel of the motorcycle had lost traction which led to his collision with the fence and H-posts. No experienced motorcycle rider reliably recalling the mechanism of his accident would in my judgment have remembered a loss of control through the rear wheel of a motorcycle rather than the front wheel. That, in the context of Allan Morriss' having set out that the claimant had no recollection of the accident until they revisited the site together, is a component of the evidence which persuades me that, while the claimant was doing his best to recall what had caused his accident, his evidence that MHC2 caused the accident was not reliable.

74. I attribute very little weight to Ms Powell's untested evidence. She said in her witness statement that she did not see the accident. Mr Nugent was clear that it had been she who had reported the accident to the police. She had been traced on behalf of the claimant through the police. She told the police that she had seen the accident. Her account given to the police was neutral as to what had caused "… the rider [apparently] to have lost control of the bike and crashed into a fence …".

75. It follows that I am not satisfied therefore to the requisite standard that the accident was caused by a MHC, as opposed to (momentary) rider error unrelated to a MHC, as the claimant navigated the bend immediately before he lost control of the motorcycle. I have reached this conclusion without considering the state of MHCs1 and 2.

76. When I go on to consider my findings in relation to the condition of MHC2 (see [55] to [64] above), they reinforce my conclusion as to causation: they show that it is inherently highly unlikely that a loss of traction as the front wheel of the claimant's motorcycle passed over the MHCs caused the accident.

77. On the basis of the weight of the evidence as a whole, therefore, the claimant has failed to satisfy me on the balance of probabilities that the accident was caused by the front wheel of the motorcycle losing traction on MHC2. The evidence as a whole drives me to the conclusion that the accident probably occurred because of momentary rider error.

The statutory defence

78. As I heard evidence concerning the statutory defence, I consider it below, notwithstanding that it is not strictly necessary for me to do so given my findings above.

79. LBH had a system of routine, scheduled, monthly street inspections. This frequency is compliant with WMHI recommendations for a distributor road such as Falling Lane.

80. Inspections were carried out by qualified, trained (NRSWA and LANTRA, respectively) and experienced inspectors who were specifically looking out for worn and polished MHCs.

81. The inspection method involved two inspectors (driver and observer) in a vehicle designed to aid observation (with an elevated cab), with the observer actively scanning. This method is systematic and has been designed to identify hazards.

82. The policy under which inspections were conducted was considered by Mr Greenshield, as a member of LBH's policy creation body, to be consistent with the WMHI COP. Mr Widdowson acknowledged the inspection system was compliant, although he disputed that its scope was adequate regarding skid resistance on MHCs.

83. I am satisfied from the evidence I heard from the inspectors that, had MHC2 been dangerous, it would have been identified as a concern and the system was such that a s.81 notice would have been raised so that TWUL would have been compelled to assess whether it needed replacing.

84. I reject Mr Widdowson's suggestion that a staged, bespoke risk assessment should have been formulated in respect of individual MHCs to assess their risk by reference to a reduction in the coefficient of friction of a MHC's surface, its position in the carriageway and other surrounding features relative to its position on the highway, in order for a highways authority to fulfil its duty under s.58. In my judgment, such an involved process might be a counsel of perfection for a highways authority but it is unrealistic to suggest that such an approach might be necessary to comply with s.58 where a highways authority will be responsible for maintaining a road network involving thousands, or tens of thousands, of MHCs.

85. While MHCs inherently pose some risk to motorcyclists, as acknowledged by TfL UMDH, which uses the example of a MHC before a bend to show a potential hazard, as acknowledged by Mr Morrison, the standard expected is not one of perfection. MHCs must be structurally sound and not excessively worn or polished to the point of being a dangerous skid hazard, in light of their position in the road.

86. Mr Widdowson suggested that there was a lack of a specific skid resistance policy for MHCs and inferred low CSC. The s.58 defence focuses on the reasonableness of the care taken. LBH demonstrated care through its general inspection regime. The absence of a specific MHC skid policy does not undermine the s.58 defence if the existing system was reasonably designed and applied, and did not identify a danger.

87. It is clear that the inspectors did assess the surface condition visually and through a hand examination in Mr Toft's case. Mr Hopwood confirmed that such examinations are a routine method for assessing the condition of MHCs where SCRIM is not used. This constitutes a method of assessing the relevant characteristics of MHCs.

88. The condition of the MHCs provided evidential support for the effectiveness of the inspections and the statutory defence. MHCs1 and 2 were not broken or loose. They did not have any significantly lipped edge as against the carriageway surface. They were not deemed dangerously slippery upon inspection.

89. The low accident history involving these specific MHCs, despite high traffic volumes, further suggests that through LBH's system for maintaining and repairing the highway, it had taken the requisite care required of it.

90. That there was a divergence of view concerning MHC3's condition does not affect my conclusion in respect of the statutory defence nor does the fact that I accept Mr Widdowson's evidence that an anti-slip coating would have been a relatively inexpensive way of restoring friction to a worn, slippery MHC surface. In my judgment, the nature and frequency of the inspections coupled with the training and expertise of, and methods of inspection employed by, the inspectors are such that I am satisfied, having regard to the factors in s.58(2), that LBH 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, including motorcycles.

91. Having regard, in particular, to all matters listed in subsection (2), the evidence supports the proposition that had I found the highway to have been in such a condition that it was dangerous to traffic; that the dangerous condition was created by the failure to maintain or repair the highway; and that the claimant's injury had resulted from such a failure, I would have found that the defendant had established the statutory defence.

Conclusion

92. It follows that, for all the above reasons, I dismiss the claim. Nothing in my judgment should detract from the tragedy of this accident and I make it clear that I have the utmost sympathy for the claimant.