

ISSUE 06

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# A View from the Bridge

The Newsletter from  
The Conway Accident Law Practice



**CONWAY**

Accident Law Practice

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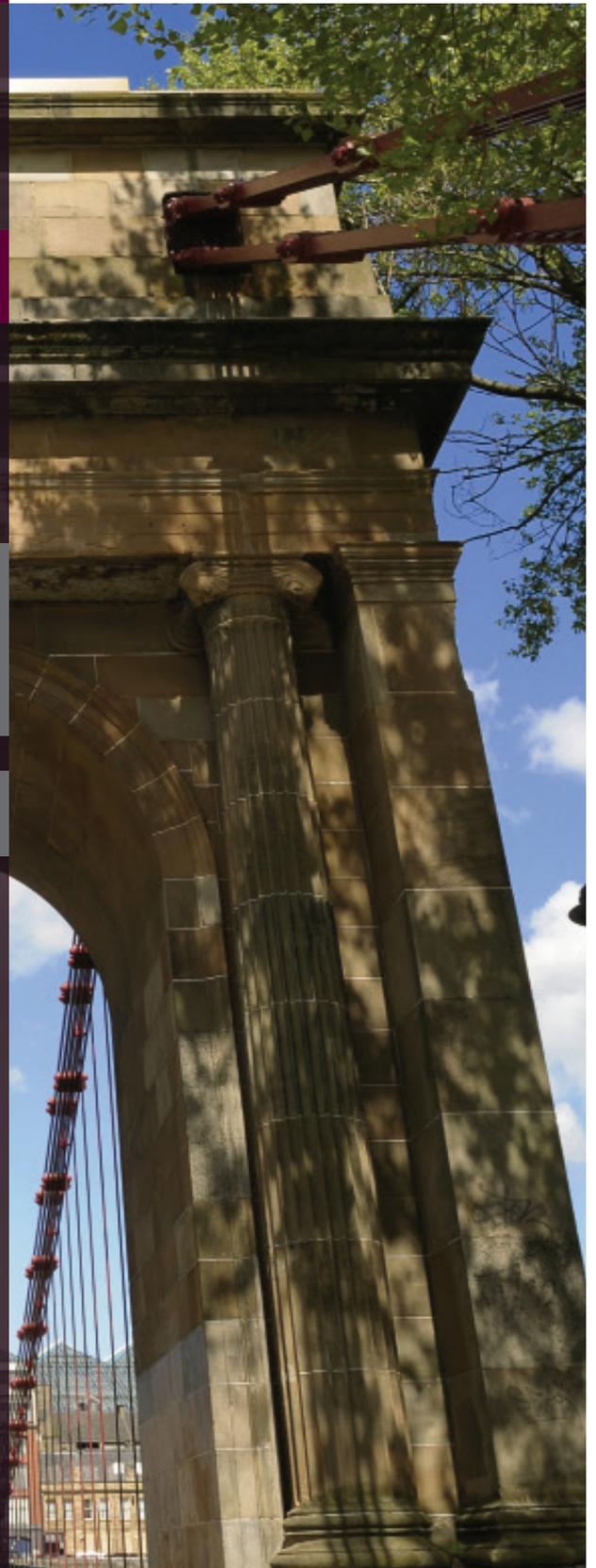
What is our legal position  
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### CASEWATCH 2018

#### Get in touch

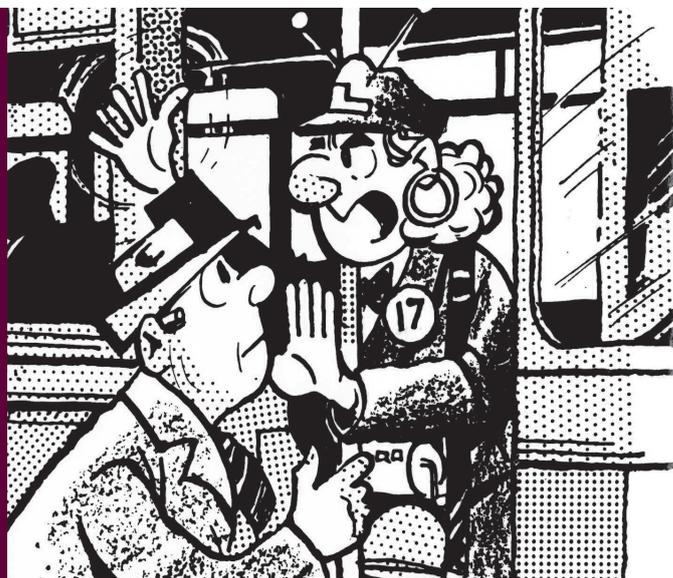
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# On the Buses

*“Any person beyond the age of 26, who travels by bus, is a failure.” So it is widely believed, said Mrs. Thatcher. Her redoubtable Press Secretary, Bernard Ingham always denied the remark. But it is so quintessentially Thatcherite that if she didn’t say it, you feel that she wishes that she had.*



## What, as occasional failures, is our legal position when we take a bus journey?

We might not know that we are entering into a legal contract, but that is what we are doing.

We are agreeing that in exchange for payment of a bus fare the bus company will take reasonable care to carry us safely to our destination. But what does the law say when something goes wrong and we are injured in the course of that journey? Who is liable and what can we as passengers do?

Most of the cases involve moving off before passengers are seated; accelerating too sharply; braking too harshly.

## Moving Off Before Passengers Are Seated

There is a widely held belief that the driver should wait until all passengers are safely seated before moving off. This is not the law. The leading case is *Fletcher v. United Counties Omnibus Co. Ltd* [1998] P.I.Q.R a decision of the Court of Appeal in England. The plaintiff suffered a thoracic injury when she fell on her way to a seat as the bus driver moved off. The bus had to carry out an emergency stop because of the actions of an unnamed vehicle. There was no criticism of the actions of the driver. The other vehicle was untraced. At first instance it was held that the driver should have waited until all passengers were seated

before moving off. There was a 30% deduction for contributory negligence for failing to use the bus handholds. The Court of Appeal did not agree. Standing passengers were already admitted, and bus schedules would be dramatically affected if this *dictum* were to be the law. Drivers do not have to wait until everyone is seated as long as they move off at a reasonable speed. The plaintiff in that case was 22 years old. There is probably an exception where the passengers involved are elderly or infirm, or perhaps children. Lady Stacey held as much in the Scottish case of *Steel v. McGills Bus Services Ltd* [2015] CSOH 5 finding liability where the driver moved off before an elderly passenger was seated.

Welcome to the sixth newsletter of The Conway Accident Law Practice.

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## Emergency Braking Caused By Other Vehicles

The normal rules of road safety liability, namely the Highway Code, will apply. Where an emergency is created by another vehicle, the driver will not normally be liable.

## Emergency Braking To Avoid Dogs

In the old Scottish case of *Sutherland v. Glasgow Corporation [1951] S.L.T. 185* it was held that a tram driver's duty was to knock down the dog rather than risk passenger safety by emergency braking. We are rather more tender hearted today and it is unlikely that this would be followed. In the unreported case of *Phillips v. Glasgow FirstBus 2008* where emergency braking caused passengers to be injured with the dog unscathed, decree of absolutor was granted.

## Practice Points

Bus companies are increasingly well organised to defend these claims. Relying no doubt on their driver's report, a third party intimation of the claim will very frequently be met with the response that a third party is involved. Invariably, that vehicle has driven off, with no identification details.

### 1. Ask for the CCTV footage

Most buses now have a number of cameras fitted. The company is a Data Controller in terms of the Data Protection Act and you should be entitled to view the footage, certainly any footage where you are the subject.

### 2. Ask for the Telematics

These are the "Black Box" fittings with a GPS tracking device. This shows the locations, length of driving time, rapidity of acceleration, and harshness of braking.

### 3. Ask for the company guidelines for drivers.

In the case of Steel the pursuer's agents recovered the Standing Driver instructions. These confirmed that their driver should wait until the elderly passengers were seated before moving off.

### 4. If all else fails, contact the MIB.

The Untraced Drivers's Scheme is there to assist where the accident has been caused by the fault of untraced third parties. The MIB will take over the investigation of the claim and will pay out common law damages where the driver is genuinely not at fault. You should note to involve the MIB at an early stage if liability is disputed by the bus company, and the allegation is fault of an untraced driver. ■

2018

## CASEWATCH

### Graham Daly -v- David Heeps And Another [2018] SCEDIN01

Experts again!

Ever since Lord Reed produced his masterclass on the law relating to expert evidence in the case of *Kennedy -v- Cordia* [see newsletter Issue 03.], expert evidence has been under the spotlight as never before.

In particular, the courts are increasingly jealous of intrusions by experts into areas where the expert is not really exercising any particular skill.

The above case related to a road traffic accident involving a 4 x 4 vehicle and a cyclist. The well-known road traffic expert, J. McCartney, gave evidence, partly based on his viewing of dashcam footage, but also on his visit to the locus and measurement from fixed points.

As a question of admissibility it was held that the witness could not opine on what the dashcam footage showed. He was in no better position than the judge, was not exercising any particular skill, and his evidence was accordingly inadmissible.

On the other hand, his estimate of speed based on the footage and his actual measurements could not have been undertaken by the judge and were both admissible and accepted.

A useful reminder for practitioners to be aware that experts' opinions are restricted, both to matters out-with judicial knowledge and separately based on their particular technical expertise.

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**Commissioner of Police of the Metropolis (Appellant) v DSD and another (Respondents) [2018] UKSC 11**

The recent Oscar nominated (and it should have won) "Three Billboards Outside Ebbing Missouri" takes as its theme the failure of the local police to bring the perpetrator of a brutal rape and murder to justice.

In the UK between 2003 and 2008, John Worboys, the new infamous black cab driver, committed serial sexual offences against women, including rape. DSD was one of his first victims in 2003. NBV was assaulted in 2007 after which Worboys was arrested, but then released without charge. Worboys was later convicted of 19 serious sexual offences, including the assault on NBV.

The police investigation was marred by repeated and fundamental errors.

1. Reception staff failed to take relevant witness names and vehicle registration details.
2. The police failed timeously to interview a critical witness "Kevin" who could have lead them directly to Worboys.

3. They failed to collect CCTV evidence.
4. They failed to respond to repeated complaints about Warboys between 2003 and 2008.
5. They failed to carry out searches.

Criminal injury payments had been made to both individuals, but both the High Court and the Court of Appeal had held that the police should be liable in damages to the claimants by reason of breach of Article 3 of the European Convention on Human Rights [ECHR] which provides that no one should be subjected to torture or inhuman or degrading treatment or punishment.

It has long been the UK wide law (*Hill v Chief Constable of West Yorkshire*) that the police are under no common law duty to victims in respect of failures to carry out proper investigation.

This judgement does not alter that position. Instead, it analyses the Strasbourg decisions on Article 3 and finds that states and institutions like the police have a duty to set up effective prosecution systems for cases of violent crime. Further, states have a positive duty to enact criminal provisions effectively

punishing rape, and to apply them in practice through effective investigation. This duty is not just systemic, it is also operational i.e. the authority may be liable for the casual negligence of police officers carrying out the investigation, if it is on a sufficiently serious scale.

The Supreme Court was careful to state that liability will only arise where there has been significant and egregious failures, and only in relation to the investigation of serious and violent crimes against the person.

So, despite the jeremiads of some commentators, this case does not open the floodgates. If Mildred Hayes (Frances McDormand) had lived in the UK, she would not have a claim under the ECHR for the failure of the saintly Chief Willoughby (Woody Harrelson) to find the culprit who murdered her daughter. He had done all he reasonably could.

So, there will not be an avalanche of claims against the police. But the case does send a clear message to the authorities that society will no longer tolerate investigative indifference and incompetence in relation to serious and violent crime, and particularly in cases of rape. ■

