

The Judgement between Mr Asif Ahmed and Mr Leon Maclean

<http://www.bailii.org/ew/cases/EWHC/QB/2016/2798.html>

The judgement is an opportunity to critique our practice. If placed in a similar situation would the judgement fall against us in the same way, would our systems allow the same mistakes?

The measure the Judge looked at was to balance if the accident was caused because the defendant didn't exercise reasonable skill and care in providing tuition? (Section 71)

The judgement found:

- The defendant failed to carry out an adequate assessment of the clients skill level at the beginning of the course
- The tuition wasn't tailored to the clients
- The defendant failed to assess if the claimant was able to complete the skills being taught
- The defendant failed to teach the claimant the skills needed to negotiate the obstacle
- The defendant encouraged the claimant to use speed which increased the risk of serious harm

Notes and questions drawn from reading the judgement:

Pre-ride Information

Pre-ride information; how do we gain information on the skills and experience of the clients before we start riding and as we go through the ride? The judgement appears to indicate we should assume a low level of skill until we are able to evidence to ourselves different. Sessions should be tailored to ensure the safety of the least able.

To gain an assessment of skill, the skill should be observed on a suitable safe area, leading to a simulation of more the difficult ground in a less consequential setting. This structured observation can help to prevent over optimism of clients' skill level (section 81)

Understanding Instructions

The Judge noted the lack of recall by the claimant and the other witnesses of what happened and what was actually said to them (section 10, section 31 and section 34) although the judgement acknowledged the four years between the

incident and the court case. It should pose a question: how do we know what the client has heard, the instructions given and what have they understood? Have we overloaded them with information when they are busy worrying about what was going to happen or what the other riders are going to think of them? When we are instruction in a stressful situation for the clients what are they hearing, comprehending and able to enact?

As part of this we should also consider the language we use; the word 'speed', which is mentioned as a factor in the incident, can have many interpretations and the 'challenge by choice' phrase used in many outdoor education circles comes laden with difficulties for instance; peer pressure and the clients real skill and their perception of their skill.

Walking round an obstacle

Do we ensure the clients know and understand walking round is always an option? Is this restated during the course of the session? For instance; when faced with a feature we consider beyond the current capabilities of the clients, do we walk or do we ride it ourselves?

It should be stated at the beginning of the session and reinforced regularly throughout the session.

Attention Focus

Although the Judge did not find the claim the rider should keep focused on a distance 2m ahead of the bike, he did find insufficient instruction was given to the claimant for them to know where to focus to safely avoid obstacles (Section 79).

Attentional focus is something an instructor should know about and understand. Understanding it is variable so being specific about where the client should focus could become a fixation for the client.

Recording of Accidents and Incidents

It was unclear if there was an accident report filled as a record of the incident but noted in Section 2 the booking form the client had filled in had not been retained. The Judge noting a lack of recall from the witnesses (section 10, section 31 and section 34).

It is the law to keep record of incidents or accidents involving employees it would seem prudent to do the same when working with clients.

The Use of Blogs and Social Media

The judgement was formed in part by using the defendant's social media content he had maintained a blog for several years (section 26). The Judge found the defendant '*overly optimistic as to the ability of some of those attending his courses to keep pace with the instruction and training which he provided*' which he evidenced through postings on the blog (section 74).

If you are placing things in social media careful consideration should be given to the image it creates of you.

Technical Advice

The Judge appeared to place greater weight on the expert guidance from the National Interscholastic Cycling Association (NICA) followed by the Mountain Bike Instructors Award Scheme (MIAS) and he appear to place little weigh on the evidence given by British Cycling (section 91, section 92).

Is this because the NICA advice is aimed at the American market where there is regular litigation and so they have their guidance prepared to be used in a court situation?

Wider Questions:

Would the finding be the same in the case of a minor and is it the same under Scottish Law?

How does the person managing the instructor; monitor and ensure the continuing currency of the instructor's qualifications?

The defendant made some minor adjustments to the handlebars pre-ride and although this was not a factor in the judgement but raises the question are instructors/guides competent to make these adjustments?

Are the qualifications systems providing instructor or guides? For example the British Cycling award Level 1 only mention the following:

The one day Level 1 training course includes training and assessment of:

- *essential leader equipment*
- *effective puncture repairs*

- *equipment set-up and safety checks*
- *fundamental mountain bike techniques*
- *bike games*
- *techniques for effective group management*
- *accident and emergency procedures*

They do not include any reference to teaching skills only at Level 2 is there a mention of core mountain bike skills.

As a provider how do we ensure the instructors we are using can instruct a beginner in the skills needed not just guide?