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Has fire service liability been extinguished in Scotland

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Legislation:

[Fire \(Scotland\) Act 2005 \(c.5\)](#)

Cases:

[A J Allan \(Blairnyle\) Ltd v Strathclyde Fire Board \[2016\] CSIH 3; 2016 S.L.T. 253 \(IH \(Ex Div\)\)](#)

[Burnett v Grampian Fire and Rescue Service \[2007\] CSOH 3; 2007 S.L.T. 61 \(OH\)](#)

[Gorringe v Calderdale MBC \[2004\] UKHL 15; \[2004\] 1 W.L.R. 1057 \(HL\)](#)

[Mackay v Scottish Fire & Rescue Service \[2015\] CSOH 55; 2015 S.L.T. 342 \(OH\)](#)

[Aitken v Scottish Ambulance Service \[2011\] CSOH 49; 2011 S.L.T. 822 \(OH\)](#)

*Jur. Rev. 201 Introduction

Following the decision of the Inner House in [AJ Allan \(Blairnyle\) Ltd v Strathclyde Fire Board](#),¹ the legal issue of determining when a fire service can be held liable for negligence has been clarified. Whereas there had been previous decisions of the Outer House approving of the proposition—that a fire authority could be liable for negligently dealing with a fire for which they had assumed responsibility²—there is now binding Scottish authority that the duty is

"to take care not negligently to add to the damage which [a party] would have suffered if the fire service had done nothing; in other words, not negligently to inflict a fresh injury".³

This article considers the history and development of the law and the extent to which the apparent narrowing of liability is absolute.

At the start, I should declare a particular interest. For six years I have served as a retained fire fighter. I attend a broad range of incidents which the fire service is generally known to respond to; some of which incidents are specifically envisaged in the governing legislation, the [Fire \(Scotland\) Act 2005](#). However, we also assist at medical emergencies and, since late 2015, my station has piloted a nationwide scheme to attend cardiac arrest incidents if we could attend sooner than an ambulance. Accordingly, in light of the [Allan](#) decision, the liability of rescuers (in a general sense) is of particular resonance given the evolving role of the modern day fire service.

Allan and its background

In [Allan](#), the fire service was called to tackle a fire in an outbuilding which adjoined a farmhouse, both of which were owned by the first pursuer. It appears that the fire was caused by combustion products leaking from a chimney and igniting roof timbers (at least some of which were rotten). After conducting firefighting operations, the defenders' employees undertook a visual inspection of ***Jur. Rev. 202** the properties, concluded that the fire was extinguished, and then they left. The next night the fire is said to have "re-ignited", as a consequence of which the farmhouse was destroyed. The pursuers sued the fire authority.

Since at least the 1952 case of [Kilboy v South Eastern Fire Area Joint Committee](#),⁴ it has been held that a fire authority can be vicariously liable for acts of negligence of its employees so long as they are "acting in the course of and for the purposes of their duties".⁵ Since then, courts north and south of the border have determined claims against fire services. Indeed, the facts in [Allan](#) were not unique; the Court of Session had previously considered similar actions in *Jackson v Lothian and Borders Fire*

Brigade,⁶ [Duff v Highlands and Islands Fire Board](#)⁷ and [Burnett v Grampian Fire and Rescue Services](#).⁸ Accordingly, on the face of it [Allan](#) was not likely to develop the law in this area.

Of the aforementioned cases, the 2007 case of [Burnett](#) stands out as a comprehensive treatment of the liability of the fire service at that time. [Burnett](#), like [Allan](#), concerned a failure by the defenders' employees to fully extinguish a fire which they had attended. The fire continued to smoulder in a void between two flats and subsequently caused substantial damage to the pursuer's flat. At debate, the defenders sought to have the pursuer's case dismissed on the grounds that it was irrelevant. The defenders relied on English authorities to argue, inter alia, that their statutory duty (under the previous legislation, the [Fire Services Act 1947](#)) did not impose a duty of care, nor was there a concurrent duty in the exercise of their statutory duties. They also argued that, for policy reasons, there should be no findings of sufficient proximity and that it would not be fair, just and reasonable to impose a duty on them. Lord Macphail repelled the defenders' preliminary plea seeking dismissal. He concluded:

"I have therefore reached the view that, in the circumstances averred by the pursuer, the defenders, having responded to a call to the fire in flat 2R, owed to the pursuer a common law duty of care not only to take all reasonable steps to extinguish that fire but also to take all reasonable steps by way of the measures averred to establish whether circumstances existed which, if not eliminated, constituted a risk either of a re-ignition of the fire in, or of its extension to, the pursuer's flat above. Those duties to the pursuer arose from the fact that it was reasonably foreseeable that the pursuer's flat and its contents would be exposed to the immediate and direct hazard of the spread of the fire from flat 2R; and from the proximity of the relationship between the pursuer, as the owner of his flat, and the defenders' firefighters who, in the exercise of their skills in the course of carrying out the defenders' statutory functions, forced entry to it in order to check that the fire had not **Jur. Rev. 203* spread upwards to it and would not be a source of any damage to it. In these circumstances it is in my opinion fair, just and reasonable to treat the firefighters, for whose conduct the defenders are vicariously liable, as subject to the common law duties of care averred by the pursuer."⁹

This conclusion appeared to apply, in a focussed manner, the wider observation of Lord Keith in [Kilboy](#):

"I should doubt whether there is any method by which the authority could free itself from liability for the negligence of persons expressly or impliedly authorised by the authority to deal with fires in the manner in which they carry out that task."¹⁰

In approaching his decision, Lord Macphail had noted:

"In my opinion the observance of a common law duty of care to the pursuer in the circumstances of this case is not inconsistent with the defenders' due performance of their statutory duties, nor is it liable to discourage it."¹¹

Like [Burnett](#), the earlier case of [Duff](#) concerned a fire which was found, following a proof before answer, not to have been fully extinguished. However, on the evidence, Lord Macfadyen found that no negligence had been proved in relation to the failure of the firefighters to discover the remaining pocket of combustion. In [Duff](#), the defenders also advanced a number of attacks on the relevancy of the pursuer's case. These attacks included an argument, as with [Burnett](#), that there was no statutory duty to fight a fire or to exercise reasonable care in so doing. Lord Macfadyen rejected such argument, holding that the extent of a statutory duty would not necessarily be determinative of a common law duty of care. He concluded:

"Had it been necessary for me to do so I would have ... held that the defenders, by attending the chimney fire and fighting it, placed themselves under a duty, owed both to [the proprietor] and to the pursuers, to exercise reasonable care to extinguish the fire."¹²

This comment would come to be reconsidered in due course.

Legislative developments

[Duff](#) and [Burnett](#) were decided when the respective fire services were governed by the [1947 Act](#). By the time that [Allan](#) came to be determined, the legislative **Jur. Rev. 204* framework for fire and rescue services had changed, following the enactment of the [2005 Act](#).

Under the [1947 Act](#), the specific legislative scope of fire services¹³ was relatively limited; being confined, in [s.1](#), to making provision for fire fighting:

(1)

"It shall be the duty of every fire authority in Great Britain to make provision for fire-fighting purposes, and in particular every fire authority shall secure—(a) the services for their area of such a fire brigade and such equipment as may be necessary to meet efficiently all normal requirements; ... and (e) efficient arrangements for ensuring that reasonable steps are taken to prevent or mitigate damage to property resulting from measures taken in dealing with fires in the area of the fire authority"

Under [s.3\(1\)](#) (entitled supplementary powers of fire authorities) there was power:

"... (e) to employ the fire brigade maintained by them, or use any equipment so maintained, for purposes other than fire-fighting purposes for which it appears to the authority to be suitable and, if they think fit, to make such charge as they may determine for any services rendered in the course of such employment or use."

Presumably this was the basis under which the fire service rendered humanitarian assistance until the subsequent legislation was enacted.

In contrast to the [1947 Act](#), the [2005 Act](#) recognises that the role of the fire service encompasses a response to more than just fire fighting.¹⁴ For example, under [s.10\(1\)](#): "SFRS¹⁵ must make provision for the purpose of—(a) rescuing persons in the event of road traffic accidents in its area" In addition, under [s.11](#), the Scottish Ministers may confer additional emergency functions on the Scottish Fire and Rescue Service. This they have done, through the [Fire \(Additional Function\) \(Scotland\) Order 2005](#).¹⁶ The said order requires the Scottish Fire and Rescue Service to "make provision for": (i) chemical, biological, radiological or nuclear incidents¹⁷; (ii) search and rescue¹⁸; (iii) serious flooding¹⁹, and (iv) serious transport incidents²⁰. With the exception of the first of those **Jur. Rev. 205* emergencies, where the specified purpose is to protect the environment, the purpose of the latter orders is to protect affected *persons* "from serious harm".

As regards the core function of firefighting, [s.9 of the 2005 Act](#) specifies particular duties beyond the rather general enactment of [s.1 of the 1947 Act](#). [Section 9](#) provides:

(1)

"SFRS must make provision for the purpose of—(a) extinguishing fires in its area; and (b) protecting life and property in the event of fires in its area.

(2)

In making provision under subsection (1) SFRS must in particular— ... (e) make arrangements for ensuring that reasonable steps are taken to prevent or limit damage to property resulting from action taken for the purpose mentioned in that subsection."

A further contrast between the specification of the two legislative regimes, is exemplified by [s.25\(1\) of the 2005 Act](#) which provides that an employee on duty may:

...(a)

"if the employee reasonably believes that a fire has broken out, do anything the employee reasonably believes to be necessary for the purpose of—(i) extinguishing the fire; or (ii) protecting life or property;

(b)

if the employee reasonably believes that a road traffic accident has occurred, do anything the employee reasonably believes to be necessary for the purpose of—(i) rescuing people; or (ii) protecting them from serious harm;

- (c) if the employee reasonably believes that an emergency other than a fire or road traffic accident has occurred, do anything the employee reasonably believes to be necessary for the purpose of carrying out any function conferred on SFRS in relation to the emergency; and
- (d) do anything the employee reasonably believes to be necessary for the purpose of preventing or limiting damage to property resulting from action taken as mentioned in paragraph (a), (b) or (c)."

It is readily apparent from the foregoing sections of the [2005 Act](#) that a specific purpose of the Scottish Fire and Rescue Service is to protect and/or limit harm to persons and, in some cases, property. In passing, there appears to be something of a tension between [s.9\(2\)\(e\)](#) which imposes obligations on the service, and [s.25\(1\)\(d\)](#) which affords a discretion on employees, albeit in terms of taking action as opposed to refraining from taking action. That tension may, in my view, be more than just academic, given that the fire service is vicariously liable for its employees. As Lord Macfadyen opined in [Duff](#): "It is going too far in my view to suggest ... that operational judgement should be immune from challenge."²¹

***Jur. Rev. 206**

However, whereas the provisions under the [2005 Act](#) are clearly more specific and relevant to the increased role of the fire service, as far as liability is concerned, the provisions of the [2005 Act](#) were observed to be "to the same effect as [the [1947 Act](#)]"²².

Allan at first instance²³

[Allan](#) proceeded to a debate before Lord Brailsford at which the defenders sought to have the case dismissed as irrelevant. The pursuers' position was that a common law duty of care arose from the fire service assuming responsibility for extinguishing the fire in that case. The pursuers relied on [Burnett](#) (which was accepted as being factually indistinguishable) and certain of the cases pled in support of the pursuer in [Burnett](#). Much of the discussion before Lord Brailsford centred upon the House of Lords case of [Gorringe v Calderdale MBC](#).²⁴

[Gorringe](#) is one of a number of authorities from England which considers the extent of duty on public authorities. It concerned, inter alia, the liability of a public authority responsible for a road on which a sign had been removed. [Gorringe](#) has played an important role in developing the area of public authority liability, although certain of the speeches are difficult and therefore appear open to alternative interpretation. The following speech of Lord Hoffmann was cited as authority in support of the pursuers in [Allan](#) having found favour in [Burnett](#):

"We are not concerned with cases in which public authorities have actually done acts or entered into relationships or undertaken responsibilities which give rise to a common law duty of care. In such cases the fact that the public authority acted pursuant to a statutory power or public duty does not necessarily negative the existence of a duty."²⁵

In [Burnett](#), Lord Macphail interpreted the ratio of [Gorringe](#) by considering the underlying Australian case of [Sutherland Shire Council v Heyman](#):

"[I]t has been generally accepted that, unless the statute manifests a contrary intention, a public authority which enters upon an exercise of statutory power may place itself in a relationship to members of the public which imports a common law duty to take care."²⁶

And in [Allan](#), Lord Brailsford followed a similar approach; holding that the defender's actions were ***Jur. Rev. 207**

"properly to be categorised as the assumption of a responsibility to exercise reasonable care in dealing with the situation which pertained. That is consistent with the pursuer's analysis that although the defenders were acting pursuant to a general statutory duty the common law duty of care pled did

not arise from that general duty. The common law duty of care arose from the assumption of responsibility for tending to the fire situation which the defenders discovered and commenced to deal with".²⁷

In September 2014, therefore, [Allan](#) was allowed to proceed to proof before answer. The defender's subsidiary challenge—that the pleadings did not meet the proximity and fairness tests set out in [Caparo Industries Plc v Dickman](#)²⁸ — was also rejected; Lord Brailsford endorsed the decision on these matters in [Burnett](#).²⁹

Development through Mackay

In May the following year came the next challenge to fire service liability; the case of [Mackay v Scottish Fire and Rescue Service](#).³⁰ The facts in [Mackay](#) differ to the preceding cases; in [Mackay](#) the pursuer sought reparation for injury caused by ice and guttering which fell from a roof that had previously been inspected by the defenders. The pursuer's case against the fire service relied upon the defenders having acted under discretionary powers afforded to them, particularly [s.13](#) (power to respond to other eventualities) and [s.14](#) (provision of other services). [Section 14](#), in particular, is of relevance to this article as regards a *potentially* wide exposure of liability to the fire service. It provides:

(1)

"A relevant authority may provide—(a) the services of any persons employed by it; or (b) any equipment maintained by it, to any person for any purpose that appears to the authority to be appropriate."

As with [Allan](#), the defenders sought dismissal of the case; the fire service argued that there was insufficient proximity and no assumption of responsibility.

Lord McEwan analysed a number of cases concerning the development of public liability (some of which had been cited in the foregoing cases). There are a couple of interesting points of note. First, Lord McEwan commented upon the harmonisation or "common course" of law between Scotland and England in this area³¹; a sentiment which would be approved of by the Inner House decision in [Allan](#). Secondly, there is an express observation about the development of the law: **Jur. Rev. 208*

"[Michael](#)³² is a clear break on the creeping extension of liability on public bodies unless clearly justified on the facts of the case and binding authorities."³³

The distinguishing feature in [Mackay](#) of course, was that the fire service was not acting under a statutory *duty*, but under statutory powers. The case was dismissed.

Allan before the Inner House

The decision of the Lord Ordinary in [Allan](#) was reclaimed to the Inner House. An Extra Division³⁴ pronounced its decision in January 2016 allowing the reclaiming motion. It is an important and thorough decision with the benefit of three opinions. In summary, the division held that there was no breach of duty of care by the fire service and there was no assumption of responsibility. The decisions in [Duff](#) and [Burnett](#)—which had underpinned [Allan](#) in the Outer House—were disapproved of.

Apart from the clear pronouncement that "the fire service owed a duty of care to the general public, including the pursuers ... but that duty was to take care not negligently to add to the damage which the pursuers would have suffered if the fire service had done nothing; in other words, not negligently to inflict a fresh injury"³⁵ there are a number of other comments which are worthy of note.³⁶ For the purposes of this article, there is one particular matter of interest. It concerns the judicial distinction as between certain of the emergency services. The point is of interest against the background of the evolving nature of the modern day fire service.

In [Allan](#), each of the opinions approved of English authorities which have differentiated the roles and distinguished the liability of the principal emergency services.³⁷ The distinction derives from a handful of cases, [Kent v Griffiths](#)³⁸ foremost among them, where the role of the ambulance service has been

distinguished. In [Allan](#), Lady Dorrian endorsed [Kent](#) and said this:

"the duty [of the ambulance service] becomes one owed not to the public at large but one specifically aimed at one individual. The same does not apply to the fire service. The duty prayed in aid here remains to the public at large".³⁹

***Jur. Rev. 209** In Scotland, the liability of the ambulance service was considered at debate in [Aitken v Scottish Ambulance Service](#),⁴⁰ a case concerning a delay in dispatching an emergency ambulance. [Aitken](#), like the aforementioned Scottish fire cases, considered the interplay between statutory and common law duties. Ultimately the Lord Ordinary, Lord Mackay, allowed the pursuer a proof before answer, refusing to dismiss the pursuer's claim and holding that a [Caparo](#) duty might exist, which could only be determined after evidence.

Comparative treatment

As noted from [Mackay](#), and endorsed by the Inner House in [Allan](#), there is a harmonisation of approach between Scots law and English law in this wider subject matter. Lady Paton observed in [Allan](#)

"the line of English authority relevant to the liability of public bodies including fire services ... is well established and of considerable authority. It would be unfortunate to adopt a different approach north of the border".⁴¹

Indeed [Allan](#) analysed a number of English cases concerning public authority and fire service liability. The 1997 case of [Capital and Counties Plc v Hampshire CC](#)⁴²—which [Burnett](#) did not follow—is paid particular attention: being an important milestone in the development of the liability of fire services. The decision in [Capital and Counties](#) ultimately underpins the ratio that the duty of the fire service is not to make things worse.

Of course, inadequately extinguished fires and litigation ensuing from that, is not confined to the UK. The case of [Moran v O'Donovan](#)⁴³ exemplifies how Irish law has dealt with the issue of liability. Under the Irish Fire Services Act 1981, s.36 confers a wide immunity from liability:

"No action or other proceeding shall lie or be maintainable ... against a fire authority ... for the recovery of damages in respect of injury to persons or property alleged to have been caused or contributed to by the failure to comply with any functions conferred by this Act."

In [Moran](#), the plaintiffs sought reparation for damage caused to their property. They sued the fire authority (as a co-defendant) on the basis that its employees had acted negligently in failing to fully extinguish a fire in adjoining property. There is, accordingly, some similarity as with the factual situation in [Duff](#) and [Burnett](#). Arguably in [Moran](#) the plaintiffs' allegations of negligence went further. ***Jur. Rev. 210** Their position was that negligence had been established by the fire service failing to "provide a watch on the plaintiff's side of the party wall".⁴⁴

The plaintiffs sought to distinguish between (first) a failure to comply with a statutory function and (second) a claim brought at common law citing negligence in performing the statutory function. Their action was based on the second case. However, the court held that the clear meaning behind s.36 was (in terms of the functions of that Act) to "confer an immunity in the widest sense possible".⁴⁵

Unlike the Irish statute, there is no blanket immunity under the [2005 Act](#). I find that somewhat surprising, given that elsewhere in the [2005 Act](#) there is a disclaimer of liability, which is confined to [Pt 3](#): fire safety.⁴⁶ Of note, the absence of a total immunity within the then fire legislation, was specifically commented upon in [Burnett](#).⁴⁷

Conclusions

With the decisions of [Mackay](#) and now [Allan](#), there is a narrowing in the scope of liability of the fire service in Scotland. That approach is reasoned, in part, by public policy issues:

"... it would be unfortunate if a defensive approach were to be adopted by the fire service as a result of an appreciation that their efforts might be followed by actions for damages".⁴⁸

I respectfully agree with that comment (having noted my interest at the outset). It recognises the dynamic and pressurised situations which arise in serious, and often time critical, emergency

incidents. But I appreciate that there is an interesting counter argument: that the fire service, being a public body paid for by taxpayers, should not receive any distinct treatment in law.

One potentially troubling issue is the approach to be taken when the fire service's actions are not within its core legislative areas. Whereas in [Allan](#) and the preceding *fire* cases, the respective fire services were responding to incidents as part of their primary statutory purpose, what will be the position in law if injury to property (or person) is caused by firefighters attending at a medical emergency? In that situation, the fire service would probably be acting in a role closer to the [Mackay](#) case, i.e. under [s.13 of the 2005 Act](#). How would that sit with the rationale of [Kent](#) and [Allan](#): that the liability of the ambulance service is established by their assumption of responsibility to an *individual*, as opposed to the public at large. Absent blanket immunity (as seen from the equivalent Irish **Jur. Rev. 211* legislation) will identifying duties within the evolving roles of the fire service be a matter for proof, such as in [Aitken](#) ?

Accordingly, while the decision in [Allan](#) is clear, this subject remains an evolving area of our law. For my part, and in conclusion, I respectfully agree with Lord Drummond Young's comment:

"The critical point is that rules derived from existing case law should not be applied mechanically to new situations: instead it should be asked whether, as a matter of policy directed to the specific situation under consideration, a new analysis is required."⁴⁹

**Jur. Rev. 212*

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Jur. Rev. 2016, 3, 201-211

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1. [AJ Allan \(Blairnyle\) Ltd v Strathclyde Fire Board \[2016\] CSIH 3; 2016 S.L.T. 253](#). See also the case comment by EJ Russell in S.L.T. 2016, 20, 99–111.
2. Some of which are considered in this article.
3. [AJ Allan \(Blairnyle\) Ltd v Strathclyde Fire Board \[2016\] CSIH 3; 2016 S.L.T. 253](#) at [32].
4. [Kilboy v South Eastern Fire Area Joint Committee, 1952 S.C. 280; 1952 S.L.T. 332](#).
5. [Kilboy v South Eastern Fire Area Joint Committee, 1952 S.C. 280](#), per Lord Keith at 287.
6. [Jackson v Lothian and Borders Fire Brigade Unreported 28 February 1986 OH](#), Lord Murray.
7. [Duff v Highlands and Islands Fire Board, 1995 S.L.T. 1362](#).
8. [Burnett v Grampian Fire and Rescue Services \[2007\] CSOH 3; 2007 S.L.T. 61](#).
9. [Burnett v Grampian Fire and Rescue Services \[2007\] CSOH 3; 2007 S.L.T. 61](#) at [73].
10. [Kilboy v South Eastern Fire Area Joint Committee, 1952 S.C. 280](#) at 288.
11. [Burnett v Grampian Fire and Rescue Services \[2007\] CSOH 3; 2007 S.L.T. 61](#) at [41].
12. [Duff v Highlands and Islands Fire Board, 1995 S.L.T. 1362](#) at 1364.
13. Using this term neutrally: strictly speaking the duty was on the authority, as responsible for a brigade. An obvious distinction with later legislation is the change in name to fire and rescue service.
14. It is generally reported by Her Majesty's Fire Service Inspectorate that incidents of fires are reducing whereas the incidences of so called "special services" such as road traffic collisions, other types of rescue, flooding, etc. is increasing.
15. Scottish Fire and Rescue Service.
16. [Fire \(Additional Function\) \(Scotland\) Order 2005 \(SSI 2005/342\)](#).
17. [Fire \(Additional Function\) \(Scotland\) Order 2005 \(SSI 2005/342\) art.3](#).
18. [Fire \(Additional Function\) \(Scotland\) Order 2005 \(SSI 2005/342\) art.4](#).

19. [Fire \(Additional Function\) \(Scotland\) Order 2005 \(SSI 2005/342\) art.5.](#)
20. [Fire \(Additional Function\) \(Scotland\) Order 2005 \(SSI 2005/342\) art.6.](#)
21. [Duff v Highlands and Islands Fire Board, 1995 S.L.T. 1362](#) at 1363.
22. [AJ Allan \(Blairnyle\) Ltd v Strathclyde Fire Board \[2016\] CSIH 3; 2016 S.L.T. 253](#) at [24].
23. [AJ Allan \(Blairnyle\) Ltd v Strathclyde Fire Board \[2014\] CSOH 135.](#)
24. [Gorringe v Calderdale MBC \[2004\] UKHL 15; \[2004\] 1 W.L.R. 1057.](#)
25. [Gorringe v Calderdale MBC \[2004\] UKHL 15; \[2004\] 1 W.L.R. 1057](#) at [38].
26. [Burnett v Grampian Fire and Rescue Services \[2007\] CSOH 3; 2007 S.L.T. 61](#) at [41]. [\[1955–95\] P.N.L.R. 238; 157 C.L.R. 424; \(1985\) 60 A.L.R. 1](#); Lord Macphail relied on the following quote from [Sutherland](#).
27. [AJ Allan \(Blairnyle\) Ltd v Strathclyde Fire Board \[2014\] CSOH 135](#) at [25].
28. [Caparo Industries Plc v Dickman \[1990\] 2 A.C. 605.](#)
29. [AJ Allan \(Blairnyle\) Ltd v Strathclyde Fire Board \[2014\] CSOH 135](#), at [27].
30. [Mackay v Scottish Fire and Rescue Service \[2015\] CSOH 55; 2015 S.L.T. 342.](#)
31. [Mackay v Scottish Fire and Rescue Service \[2015\] CSOH 55; 2015 S.L.T. 342](#) at [30].
32. [Michael v Chief Constable of South Wales \[2015\] UKSC 2; \[2015\] A.C. 1732; \[2015\] 2 W.L.R. 343.](#)
33. [Mackay v Scottish Fire and Rescue Service \[2015\] CSOH 55; 2015 S.L.T. 342](#) at [37].
34. Lady Paton, Lady Dorrian and Lord Drummond Young.
35. [AJ Allan \(Blairnyle\) Ltd v Strathclyde Fire Board \[2016\] CSIH 3; 2016 S.L.T. 253](#) at [32].
36. See the 27 page decision in full.
37. See [AJ Allan \(Blairnyle\) Ltd v Strathclyde Fire Board \[2016\] CSIH 3; 2016 S.L.T. 253](#) at [29], [56], [82].
38. [Kent v Griffiths \[2001\] Q.B. 36.](#)
39. [AJ Allan \(Blairnyle\) Ltd v Strathclyde Fire Board \[2016\] CSIH 3; 2016 S.L.T. 253](#) at [56]. 5216.
40. [Aitken v Scottish Ambulance Service \[2011\] CSOH 49; 2011 S.L.T. 822.](#)
41. [AJ Allan \(Blairnyle\) Ltd v Strathclyde Fire Board \[2016\] CSIH 3; 2016 S.L.T. 253](#) at [31].
42. [Capital and Counties Plc v Hampshire CC \[1997\] Q.B. 1004.](#)
43. [Moran v O'Donovan, \[2007\] IEHC 200; 2010 3 I.R. 417.](#)
44. [Moran v O'Donovan, \[2007\] IEHC 200; 2010 3 I.R. 417](#) at [6].
45. [Moran v O'Donovan, \[2007\] IEHC 200; 2010 3 I.R. 417](#) at [26].
46. See [2005 Act s.69\(1\)](#): "... nothing in this Part shall be construed as conferring a right of action in any civil proceedings (other than proceedings for recovery of a fine)."
47. [Burnett v Grampian Fire and Rescue Services \[2007\] CSOH 3; 2007 S.L.T. 61](#) at [40].
48. [AJ Allan \(Blairnyle\) Ltd v Strathclyde Fire Board \[2016\] CSIH 3; 2016 S.L.T. 253](#) at [28].
49. [AJ Allan \(Blairnyle\) Ltd v Strathclyde Fire Board \[2016\] CSIH 3; 2016 S.L.T. 253](#) at [97].