# Trueman v Aberdeenshire Council

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Aberdeen Sheriff Court, 20th November 2007
Scottish Courts Service decision.

**The facts:** Mrs Trueman sued Aberdeenshire Council under the Occupiers Liability (Scotland) Act 1960, as owners and occupiers of her local park, Burnside Park, Portlethen. Mrs Trueman fell into a burn in the park in the early hours of 1st January 2000, while taking a short cut across the park to visit friends as part of the millennium celebrations, in the course of which she had enjoyed a number of alcoholic drinks. She suffered injuries as a result of which she had to give up her work.

The Council had erected a light demarcation fence parallel to the burn, at the top of the bank, to prevent pedestrians from encroaching onto a planted area between the path and the burn. The fence had been vandalised regularly leaving top and bottom strands of wire exposed. The bottom wire was just a few inches from the ground. As Mrs Trueman was coming up to a bridge across the burn, she mistook where she was in relation to the bridge, stumbled, tripped on the bottom strand of wire and fell down the bank into the stream.

**Decision:** In his decision, Sheriff McLernan said that the Council had a duty under the 1960 Act to care for the safety of people using the park. They had no duty to erect a fence but, once the fence had been constructed, they had a duty to maintain it in a condition that would not cause a danger to people using the park. The Council had failed to take reasonable care to maintain the fence and the exposed wire was a reasonably foreseeable source of danger. The fence had been in a depleted condition for several months.

However, on the issue of contributory negligence, the Sheriff said that Mrs Trueman's own contribution to the accident had been very high. The main reason for her fall was because of her failure to keep a proper lookout where she was going and retain control of her movements. Even if she had not tripped over the wire, she might not have managed to regain her balance after stumbling. He found that she was 80% responsible for the accident, and that the damages would therefore be reduced accordingly. Full damages had been previously agreed at £35,000, inclusive of interest.