DOLMANS INSURANCE BULLETIN

Welcome to the June 2026 edition of the Dolmans Insurance Bulletin

In this issue we cover:

REPORT ON

Service in the Digital Claims Portal: Lessons from Taylor v ARRA Distribution

William Taylor v (1) ARRA Distribution Limited (2) Lidl Great Britain Limited

CASE UPDATES

- **Applications to extend time or relief from sanctions?**
- **Article 5 - deprivation of liberty**
- **Fatal Accident Act claims - recoverability of deputyship fees**
- **Negligence - duty of care - nuisance**

If there are any items you would like us to examine, or if you would like to include a comment on these pages, please e-mail the editor:

Justin Harris, Senior Partner, at **justinh@dolmans.co.uk**

DOLMANS
SOLICITORS

REPORT ON

Service in the Digital Claims Portal: Lessons from Taylor v ARRA Distribution

William Taylor v (1) ARRA Distribution Limited (2) Lidl Great Britain Limited

The Digital Claims Portal ("*DCP*"), governed by Practice Direction 51ZB (which, slightly confusingly, still refers to the DCP as a "Pilot" scheme – whereas it has been compulsory for all parties for approaching 4 years now), has introduced significant changes to the way in which civil proceedings are issued and served. As with any new procedural framework, uncertainties and pitfalls have emerged.

The County Court at Liverpool's recent decision in *William Taylor v (1) ARRA Distribution Limited (2) Lidl Great Britain Limited* provides a stark illustration of the consequences for claimants in failing to update defendant solicitor details on the DCP prior to notification of a claim. The decision confirms that where a claimant is on notice of a change of solicitors, the onus falls squarely on the claimant to update the DCP accordingly, and that a failure to do so can result in automatic dismissal of the claim with no realistic prospect of relief from that sanction.

In the unreported decision in *William Taylor v (1) ARRA Distribution Limited (2) Lidl Great Britain Limited*, Dolmans represented the First Defendant logistics and supply chain company, ARRA, in defence of a claim for damages for personal injury and loss. The Claimant alleged that during the course of his employment by ARRA as a HGV driver on 19 June 2022, he was delivering milk transported in wheeled cages with his nephew / colleague to the Second Defendant's distribution centre in Doncaster when he injured his right knee whilst attempting to turn the cage over a ramp with a lip.

The claim against ARRA began by way of a Letter of Claim dated 13 September 2022. Following investigation, the claim was repudiated on 16 March 2023. ARRA's claims handlers initially instructed solicitors, who wrote to the Claimant's solicitors on or around 10 June 2025 stating that they were instructed to accept service of proceedings on behalf of the First Defendant. However, on 18 June 2025, those solicitors discovered that they had already been instructed on behalf of the Second Defendant and wrote to ARRA's claims handlers to advise them that they could not accept service of proceedings because of a perceived conflict.

ARRA's claims handlers emailed the Claimant's solicitors on 19 June 2025 advising that their nominated solicitors were conflicted and nominating Dolmans to accept service of proceedings. Dolmans emailed the Claimant's solicitors the same day confirming the position and providing an email address for service in the DCP and advising that, in the event that proceedings had already been served at the nominated solicitors, "*I will need the 16 digit URN for the case – are you able to provide a copy of the Claim Form, Particulars of Claim and supporting documents – amongst which will be the URN which I can use to effect Notice of Change.*" Dolmans received a '*read receipt*' by reply.

In the meantime, proceedings had been issued in the DCP on 18 June 2025, as a consequence of which the Claimant was required to notify ARRA of the claim through the DCP before midnight on 18 October 2025 (the "*notification longstop date*").

On 20 October 2025, the first nominated solicitors / Second Defendant's solicitors passed a copy of the Claim Form to ARRA's claims handlers. The claim had not otherwise been notified to ARRA and/or Dolmans and a copy of the Claim Form was not served on them. On 27 October 2025, Dolmans completed the Acknowledgement of Claim Form on the DCP, indicating that ARRA intended to contest the Court's jurisdiction. On 7 November 2025, Dolmans made an application in the DCP for an order that the Court had no jurisdiction and to strike out / dismiss the claim against ARRA on the grounds that proceedings had not been validly notified / served on ARRA within the 4 month validity period of the Claim Form.

On 3 December 2025, the Claimant cross-applied for an order retrospectively permitting service of the Claim Form on ARRA by an alternative method or at an alternative place and, in the alternative, granting relief from sanction and/or that the claim be reinstated / permitted to continue against ARRA.

Both applications were listed for a 2 hour in person hearing in the County Court at Liverpool on 13 March 2026. Dolmans instructed Mrs Rachel Russell of Counsel to attend and represent ARRA at the hearing of the two applications.

REPORT ON

The rules governing the operation of the DCP are set out in Practice Direction 51ZB – "The Damages Claims Pilot". The Claimant's case was that:

- There is no mandatory provision in PD 51ZB that obliges a claimant to swop to a defendant's changed DCP legal representative between issue and service and nor is there a facility for a claimant to notify the DCP of such a change between issue and service.

- If the Claimant had an obligation to serve on Dolmans, that relief from sanction be granted as service on the Second Defendant's solicitors was an oversight on the part of the Claimant's solicitors and no blame should attach to the Claimant.

ARRA's case was that:

- The Claimant was obliged to notify / serve proceedings on Dolmans (CPR 6.7(1)(a)) and this did not happen.

- Proceedings against ARRA only came to their / their claims handler's attention by way of the Second Defendant's solicitors ***after*** the expiry of the notification longstop date.

- Prior to notification, the only party who could alter ARRA's solicitor's details on the DCP was the Claimant (i.e. – his solicitors). The DCP Professional User Guidance provided that "*[a]t any point during the digital journey of the claim, you can amend the email address that is registered to receive notifications from the portal, as well as the solicitor reference and the correspondence address for your firm. N.B. – you will only be able to amend the details for your firm and not for the opposing party. If you require to amend the email address for the defendant prior to notifying the claim, please contact the team on DCPTechSupport@justice.gov.uk*" and further that "*[a] defendant legal representative will not be able to use the Notice of Change function until the claimant solicitor has actioned the 'Notify Claim' step.*"

- CPR 6.15 (service of the Claim Form by an alternative method or at an alternative place) does not exist as a mechanism to rescue litigants for whom there was no barrier to serving proceedings via a permitted method and in time (per *R (Good Law Project) v Secretary of State for Social Care* [2022] EWCA Civ 355). Reliance on CPR 6.15 was not pursued at the hearing by the Claimant's representative (who stated that he did not really '*understand*' that part of the application).

- The Claimant did not take any steps to bring the claim to ARRA's attention, whether at the proper place for service or at another place within the relevant time period. It was unlikely that the claim would have come to ARRA's attention at all were it not for the actions of the Second Defendant's solicitors. The Claim Form did not come to ARRA's attention before the end of the 4 month validity period / notification longstop date.

- The Claim Form had expired by operation of the Civil Procedure Rules, not because of a sanction that had been imposed on the Claimant, and relief from sanctions (together with the attendant caselaw relevant thereto) would not apply.

- Any delay, such as that caused by the Claimant's procedural error, had the potential to cause evidential prejudice. Were the Claimant to be allowed to proceed with this Claim Form, that would deprive ARRA of a limitation defence.

The County Court at Liverpool dismissed the Claimant's application and allowed ARRA's application on the following grounds:

- Whilst PD 51ZB itself was not of much assistance on the issue of validity of notification, the DCP Professional User Guidance was clear that a defendant could not notify any change of solicitor until after notification of the claim and that it was for a claimant to make any changes to a defendant's legal representative by way of the given email address in the Guidance.

- The onus had been on the Claimant, not on ARRA, to notify the DCP of the change in the identity of ARRA's solicitors prior to notifying the claim and the notification to the Second Defendant's solicitors did not amount to notification to ARRA.

- Reading PD 51ZB and the Guidance together, it was plain that if ARRA was not properly notified, then the claim stood automatically dismissed.

- This was not a relief from sanctions situation. Even if it had been, relief would not have been granted. The Claimant's breach was very serious and there was no good reason for it. There was prejudice to ARRA both in the delay in progressing the claim caused by the Claimant's error and also in the fact that ARRA would potentially lose a limitation defence if the claim against them was allowed to proceed. It was in accordance with the overriding objective not to grant relief, noting the requirement to enforce compliance with Rules, Practice Directions and Orders.

In terms of costs, and notwithstanding ARRA's submission that the applications should be treated as freestanding as they postdated the claim being dismissed, the Court found that the Qualified One-way Costs Shifting provisions did operate and that the Claimant shall pay both Defendants' costs of the applications (and for ARRA, the costs of the claim), to be assessed in detail if not agreed, such costs not to be enforced unless damages were recovered by the Claimant against the Second Defendant.

Comment

Had ARRA not identified the irregularity, a Notice of Change and Acknowledgment of Claim Form could simply have been completed on the DCP following receipt of the proceedings from the Second Defendant, and the jurisdiction point would never have arisen.

This case serves as an important reminder that meticulous attention to procedural requirements is essential, particularly when dealing with the relatively new framework of the DCP. Where a claimant is aware of a change of solicitors acting for a defendant, it is incumbent upon the claimant (or their solicitors) to take all necessary steps to update the DCP before notifying the claim. A failure to do so may prove fatal to the proceedings, as, indeed, it did here.

The decision also underscores that CPR 6.15 will not come to the rescue of a party who had every opportunity to serve by a permitted method and simply failed to do so, and that the expiry of a Claim Form by operation of the rules is not a "*sanction*" amenable to relief under CPR 3.9.

Practitioners (and clients) should be alert to this situation, particularly in cases where limitation has expired or is about to expire and there is no margin for error in the service of proceedings.

Jamie Mitchell
Associate
Liability & Disease Team
Dolmans Solicitors

For further information regarding this article, please contact:

Jamie Mitchell at **jamiem@dolmans.co.uk**
or visit our website at **www.dolmans.co.uk**

CASE UPDATES

Applications to Extend Time or Relief from Sanctions?

Pryor v The Commissioner of the Police of the Metropolis [2026] EWCA Civ 650

The Court of Appeal has confirmed that an application to extend time to comply with a Court Order made prior to the deadline for compliance operates to prevent any sanction associated with non-compliance taking effect.

The application is *not* one for relief from sanctions under CPR 3.9 but one to extend time under CPR 3.1.

The Defendant had failed to serve Witness Statements in time. CPR 3.10 (as well as the Directions Order in the case) provides that a failure to do so precludes a party from calling oral evidence from those witnesses at trial. On the day before the agreed, extended date for exchange, the Defendant made an application to extend time to serve Witness Statements. That application remained unresolved until seven months later, which was one week before trial. There was some confusion at the hearing of the application as to whether the application had been made "in time", as the Defendant had erroneously dated it the day after it was made (so after the deadline provided for in the Court Order) and had failed to serve a sealed copy of the application on the Claimant. The Judge treated the application as an application for relief from sanctions and refused to give relief. The consequence of that decision was in effect to bar the Defendant from defending the claim. The Defendant appealed.

The appeal proceeded on the basis that the application was in time. The Claimant maintained, however, that the application was still an application for relief from sanction given that the Defendant remained in default of the direction to serve witness evidence by the required date and that the sanction contained in CPR 3.10 and the Directions Order automatically applied. Relief was, therefore, required.

The Court of Appeal rejected the Claimant's argument and affirmed that determining whether relief from sanction is required depends on the timing of the application for relief:

- An application made **after** a deadline has passed is one for relief from sanctions and to be determined under CPR 3.9.
- An application made **before** a deadline has passed is one for an extension of time and to be determined under CPR 3.1.

There is one caveat to this general rule, and that is where there may be cases where although the application is made in time, the Court still concludes that the *Denton* approach should apply by analogy if not directly; for example *Jalla v Shell International Trading and Shipping Co Ltd [2021] EWCA Civ 1559* – where the case was so close to the line that it was held that the *Denton* approach should be taken.

CASE UPDATES

Article 5 - Deprivation of Liberty

A Reference by the Attorney General for Northern Ireland of a Devolution Issue under Paragraph 34 of Schedule 10 to the Northern Ireland Act 1998 [2026] UKSC 16

The Supreme Court has overruled its previous decision in *Cheshire West [2014]* holding that the 'acid test' established in that case for what constitutes a deprivation of liberty within the meaning of Article 5 of the European Convention on Human Rights has never been adopted by the European Court and is wrong in principle.

The Attorney General for Northern Ireland made a reference to the Supreme Court for determination of whether the Minister of Health for Northern Ireland's proposal to revise the Deprivation of Liberty Safeguards Code of Practice would be incompatible with ECHR Article 5.

In *Storck v Germany (2005)*, the European Court held that a deprivation of liberty for the purposes of Article 5 has three elements:

(i) the 'objective element', ie the person is confined to a particular restricted space for a material period of time;

(ii) the 'subjective element', where there is no 'valid consent' to that confinement, as that concept is used by the European Court; and

(iii) attribution, in other words, the State is responsible, either directly or indirectly, for that confinement.

In *P v Cheshire West and Chester Council [2014]*, the Supreme Court had to determine whether three individuals who lacked mental capacity to consent to their living arrangements were subject to deprivation of liberty within the meaning of Art. 5. All three were living in care settings in the community to which the deprivation of liberty safeguards (applicable to hospitals and registered care homes) did not apply. It was held that all three were subject to deprivation of liberty within the meaning of Art. 5. By a majority, the Court held that the 'acid test' for deprivation of liberty, according to the Strasbourg jurisprudence, is whether an individual is subject to '*continuous supervision and control'* and '*not free to leave'*. The Court held that lack of objections, that the arrangements are the least restrictive possible, that their living arrangements are as 'comfortable' or that their lives as 'enjoyable' as they could be were all irrelevant to the question of whether they were confined, with Baroness Hall stating '*a gilded cage is still a cage'*.

CASE UPDATES

The decision endorsed a position that an individual who lacks mental capacity to consent to their care arrangements is treated as unable to give 'valid consent' to confinement in terms of assessing the subjective element of the *Storck* test.

The Minister of Health for Northern Ireland wished to change the practice in Northern Ireland so that where a person lacks mental capacity to make decisions about their care arrangements, they can give the necessary valid consent through the expression of current wishes and feelings that go beyond mere acquiescence regarding their confinement. The Minister intended to issue a revised Code of Practice to this effect. The Minister recognised that this would adopt an approach contrary to *Cheshire West*. The Attorney General submitted that the decision in *Cheshire West* misinterpreted Strasbourg jurisprudence regarding the meaning of valid consent in Art. 5. The Court was, therefore, asked to decide whether issuing the revised Code of Practice would be an invalid exercise of powers as incompatible with ECHR Art. 5.

The Court recognised that the question in the reference was likely to have implications for all the jurisdictions of the UK and permitted several interventions, including the Secretary of State for Health and Social Care. The Secretary of State's position went further than the Attorney General's, submitting that it was not possible to consider the subjective element of deprivation of liberty under Article 5, and in particular the concept of valid consent, in isolation from the objective element of deprivation of liberty, as the starting point is to identify to what an individual is consenting. The overarching question is whether an individual is deprived of liberty within the meaning of Article 5. This requires consideration of all three elements of the test in combination. The Secretary of State submitted that the law took a wrong turn in *Cheshire West* and went far beyond the Strasbourg jurisprudence in adopting 'the acid test' in place of a multifactorial analysis, and invited the Supreme Court to depart from *Cheshire West*. Joint submissions from Mind, Mencap and the National Autistic Society invited the Court to refuse to determine the reference in the abstract. In the alternative, they submitted that the Court should rule that the Attorney's proposed approach to valid consent for the purposes of Article 5 was not lawful.

The Court held that the majority in Cheshire West did err in their analysis of the Strasbourg jurisprudence and it was important that this error should be corrected. It was, accordingly, appropriate to apply the House of Lords' 1966 Practice Statement (Judicial Precedent) and depart from *Cheshire West.*

CASE UPDATES

Whilst the Attorney General's question was directed at and invited consideration of the subjective element only, the Court agreed with the Secretary of State that the fundamental question is whether the individual has been 'deprived of his liberty' as that expression is used in Article 5, and this requires consideration of all three elements of the deprivation of liberty test taken together. It is not possible to consider the concept of absence of valid consent in isolation. The starting point must be to identify to what an individual is or is not consenting and that inevitably requires consideration of the objective element, regarding the circumstances of the confinement.

In *Cheshire West*, it was common ground by the time the cases reached the Supreme Court that, because they lacked the relevant mental capacity to consent, the individuals concerned could not give valid consent for the purposes of the subjective element of the Article 5 test. The focus of the case was on the objective element and the question of consent was not argued. The Court considered that this was both unfortunate and confused. Deprivation of liberty under Article 5 is an autonomous concept (meaning it arises under the Convention and is governed by principles laid down by the European Court in its jurisprudence, rather than by national law in a Contracting State), and the subjective element in that concept and the notion of valid consent are likewise autonomous concepts. Therefore, it in no way followed from the fact that the individuals did not have legal capacity in domestic law under the Mental Capacity Act 2005 to decide about their living arrangements that they could not give valid consent, in terms of the law under the Convention, in relation to those arrangements for the purposes of determining whether the subjective element of deprivation of liberty was made out or not.

The Court considered the relevant Strasbourg jurisprudence and noted this confirmed that the European Court has continued to apply the multifactorial test in determining when an individual is deprived of liberty. It has never adopted an acid test, either generally or in the more limited context of the living arrangements for those who lack legal capacity. In setting out the acid test, the majority decision in *Cheshire West* went beyond the Strasbourg jurisprudence and departed from the longstanding multifactorial approach to determining when a person is deprived of liberty. The decision was wrong in a number of respects.

Firstly, the acid test is not sufficient by itself to show there is a deprivation of liberty. To determine whether an individual is subject to such deprivation, a court must focus on their concrete situation and must take account of the whole range of factors in the particular case, including the type, duration, effect and manner of implementation of the measures in question. *Cheshire West* created a bright-line test which is too crude in its application and which leads to an over-extensive interpretation of deprivation of liberty on the basis of a misplaced policy concern that safeguards in relation to vulnerable people have to be provided pursuant to Article 5.

CASE UPDATES

The judgments of the European Court show that no single factor is determinative. The approach of the European Court emphasises the importance of taking all relevant factors into account, whereas the decision in *Cheshire West* abandons that. By adopting two factors as an acid test, the majority in *Cheshire West* wrongly isolated a small sub-set of factors and elevated it to a universal test that ignores all other potentially relevant factors.

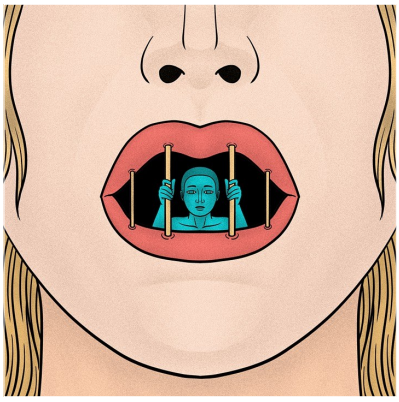
Secondly, the majority in *Cheshire West* was wrong to conclude that a 'person's compliance or lack of objection' is never legally relevant to the question of objective confinement. As the Strasbourg jurisprudence shows, confinement must be established as an objective fact and subjectively there must be an absence of valid consent.

Thirdly, the European Court has emphasised that Article 5 is concerned with the physical liberty of the person and is not concerned with mere restrictions on the liberty of movement. However, the acid test takes no account of the type of setting where an individual receives care and treatment, and draws no distinction between the position of an individual in a category A prison or a high security psychiatric hospital on the one hand and a person supported to live as independently as possible in their own accommodation or in their family home on the other.

Fourthly, the Strasbourg jurisprudence reflects the need for coercion or some externally imposed restrictions on an individual that prevents them from exercising their fundamental right to physical liberty. The acid test in *Cheshire West* takes no account of the innate limitations to which an individual may be subject by reason of their own physical or mental condition. To the extent that the majority assumed that such a person would be subject to a deprivation of liberty under Article 5, the Supreme Court disagreed.

Fifthly, the majority in *Cheshire West* were wrong to discount the potential relevance of the purpose for which measures of confinement were imposed.

Sixthly, the approach taken by the majority in *Cheshire West* equated lack of legal capacity with lack of valid consent (as part of the subjective element of the Article 5 test); and this appeared to have led them to treat the subjective element as not being in play in the three cases. This was wrong. A person may not have mental capacity to make decisions about their care and residence arrangements, but if they have a basic level of awareness and consciousness of their living arrangements that is sufficient to enable them to know and communicate whether they are happy or unhappy with them, they may be treated as able to give or withhold valid consent to confinement by an expression of their wishes and feelings.



Accordingly, the Court declined to follow *Cheshire West* and overruled it, and concluded that the Minister would not be acting incompatibly with Article 5 in issuing the proposed Revised Code.

CASE UPDATES

Fatal Accident Act Claims - Recoverability of Deputyship Fees

Burgess v Sikorski & Another
[2026] EWHC 1245 (KB)

The High Court has considered and determined whether professional deputyship fees are recoverable as damages under the Fatal Accidents Act (FAA) 1976.

Background

The deceased had been killed in a road traffic accident. Liability was admitted, with an agreed liability split of 70/30. The deceased left behind her husband and two adult children, both of whom had moderate learning difficulties and one also suffered from epilepsy. They both lacked capacity to manage their property affairs and finances.

The Court awarded each son £70,448 for past services dependency and £969,708 for future services dependency. As they lacked capacity, the sons were classed as 'protected beneficiaries' under CPR Part 21. Under CPR r.21.11(9) where the amount awarded is more than £100,000, the Court "shall direct the Litigation Friend to apply to the Court of Protection for the appointment of a Deputy, after which the fund shall be dealt with as directed by the Court of Protection". The evidence of the deputyship experts was that professional, rather than lay deputies, should be appointed for each son.

The issue then arose as to whether those professional deputies' fees were recoverable under the FAA.

Claimant's Position

The Claimant argued that deputy fees are a "necessary corollary" to an award for loss of services and are, therefore, recoverable. This is because, using the wording of Jay J in *Rupasinghe v West Hertfordshire Hospitals NHS Trust [2017] PIQRQ1*, what the Act is concerned with are losses which flow from what the deceased did when alive. Using this interpretation, the cost of appointing a financial deputy flows from the need to properly replace the services that the deceased would have provided.

Defendant's Position

It was the Defendant's case that the fees were not recoverable as a matter of law. Under Section 3 of the FAA, the only damages recoverable are such damages, other than damages for bereavement, that "may be awarded as are proportioned to the injury resulting from the death to the dependants respectively". They highlighted that common law rules do not apply to the assessment of damages under the FAA and argued that whether a head of damage is recoverable is purely a matter of statutory construction.

The Court noted an entry in *McGregor on Damages* (22nd Edition), which succinctly outlines, considering relevant case law, what this means in practice for what can be recovered in dependency claims: "*There remains the loss of the pecuniary benefit arising from the relationship which would be derived from the continuance of the life and which may consist of money, property or services: in other words, the value of the dependency. The dependant is entitled, by clear principle of law, to full compensation for the loss of this pecuniary benefit, but, except for funeral expenses since 1934, interest since 1970, and the limited entitlement for bereavement since 1982, to no more.*"

In other words, a dependent cannot claim losses which simply arise as the result of the death, but only those that represent the loss of any kind of future financial benefit the deceased would have provided, subject to specific statutory exceptions.

The Defendant argued that the cost of employing a deputy does not itself represent the loss of a benefit that the deceased would have otherwise conferred on her dependents had she lived and instead arises as the result of her death. As there is no statutory exception for deputyship fees, the Defendant submitted that it followed that these fees were irrecoverable under the FAA.

Held

The Judge accepted that he must identify a pecuniary loss to the dependents, which must be the loss of a benefit in money or money's worth which would have accrued if the deceased had survived; *Malyon v Plummer [1964] 1 Q.B. 330* followed.

The Judge accepted that the sons had suffered a pecuniary loss because they no longer benefitted from their mother's care and support and they were unable to apply those funds to replace her services unless a professional deputy was appointed, pursuant to CPR 21.11(9).

The Judge highlighted that when compensating a dependent for losses they have been deprived of, the Court must give "full compensation" for the loss of that benefit and nothing else (other than funeral expenses and bereavement). The professional administration of a fund awarded for the sons' benefit was not in itself a benefit that the deceased would have conferred on them had she lived.

However, the Judge held that professional deputyship fees were recoverable as damages under the Act for the following reasons:

- The sons had been deprived of the benefits of the deceased's contribution to them as members of the household and the additional care for them by reason of their special needs. That benefit was capable of being estimated in money, or there would be no dependency award at all;
- In deciding what full compensation meant, the Court must take a realistic view of what sum is needed to replace, in practical terms, the identified services that the deceased would otherwise have been providing;
- The sons would not be able to apply the sums awarded to them to replace the deceased's services unless they could also unlock those funds from the Court of Protection, which seemed unlikely to happen unless professional deputies were appointed;

- Given that full compensation appeared to include the costs of allowing dependants to make effective use of funds intended to finance replacement services, the deputy fees were a necessary corollary to ensure support workers were engaged in a way which properly replaced the services which the deceased would have provided;
- The sons' need for professional deputies arose because they had suffered a pecuniary loss, in excess of £100,000 each, by reason of them no longer benefitting from the care and support that the deceased would otherwise have provided; *Chouza v Martins [2021] EWHC 1669 (QB)* distinguished.

As there was no rule that deputyship fees had to stand in some percentage proportion to the fund to be administered and given that the Defendant had not proposed any viable cheaper alternatives to administering the fund, no reduction was made to the deputyship fees on the grounds of proportionality.

Note: This was an issue that neither the parties nor the Court could find previous authorities on, and so the Judge has granted permission for the Defendant to appeal.

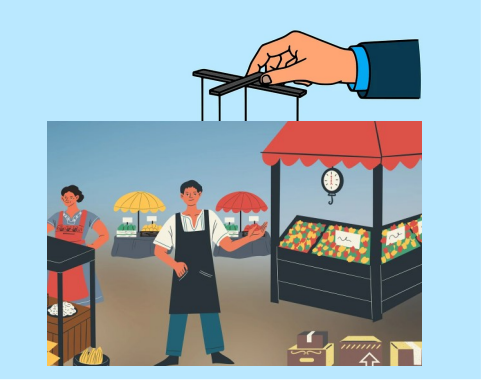
CASE UPDATES

Negligence - Duty of Care - Nuisance

Sintes v London Borough of Tower Hamlets
[2026] EWCA Civ 752

The Claimant ('C') sustained personal injury when she tripped and fell over a number of metal poles in Whitechapel Market. The poles were components of a market stall and had been left unattended, lying horizontally on a trolley. The poles extended from the end of the trolley for at least one metre across a footpath. The poles were not marked to warn of their presence. It was dark at the time of the accident and light levels were low. The Defendant Local Authority ('D') was the licensing authority for the market traders. D was not the relevant highway authority for the footpath. It was not alleged that D was the occupier of the market area. D had not placed the poles there. It was assumed that the poles belonged to and had been placed by an unidentifiable market trader ('T').

C issued a claim for damages against D alleging negligence and nuisance.



At first instance, C succeeded on her claim. The Judge found that D was in control of the market and bore responsibility for waste abandoned in the market area. D was responsible for ensuring that the market was managed and run in a way that did not create a public nuisance on the adjacent footpath and/or owed C, as an ordinary and reasonable user of the adjacent highway, a duty of care not to run or allow the market to be run in such a way as to create a hazard on the adjacent footpath. The poles were a public nuisance. D had had sufficient time to abate the nuisance, but failed to do so.

D appealed on the grounds, inter alia, that the Judge was wrong to impose any duty of care on D in respect of the poles left on the highway by T.

The Court considered that it was plain that this case fell within the general rule that a person has no common law duty to protect another person from harm. C's accident was caused by the tortious acts of an unidentified street trader ('T') who had left the poles in a dangerous position in breach of the terms of their licence and the private law duty of care T owed to C. Under the statutory scheme of the London Local Authorities Act 1990, it would have been unlawful for T to have engaged in street trading at the market without a licence. D's issuing of licences was governed by the statute and the standard conditions in place. There was no suggestion that the standard conditions were inadequate. Had they been complied with, T would not have created the danger. Had D simply issued the licence and done nothing more, the issuing of the licence would not have been sufficient to give rise to a duty of care.

The Judge had placed considerable reliance upon D's Standard Operating Procedures and Process for Market Officers. The Court considered that the Judge had been wrong to do so. The relevant issue was not whether D complied with its Standard Operating Procedures and Process for Market Officers, but whether D had made matters worse by their failure to act differently. D had not.

C was alleging a failure to confer a benefit upon her, that is, that D should have done more to prevent harm caused by T who had left the poles obstructing the highway. C, therefore, had to establish an exception to the general rule to establish a duty of care. On the facts of this case, there was no assumption of responsibility. Nor did D have a special level of control over T. Accordingly, no common law duty of care was owed and the claim in negligence should have been dismissed.

D also appealed the Judge's finding of fact regarding the length of time the poles had been present. The Court was satisfied that the Judge's finding of fact in this respect was plainly wrong. On the contrary, there was insufficient evidence to make any material finding of the duration of the period over which the poles were present.

In relation to nuisance, D did not direct T to place the poles where they did. The licence conditions imposed on T by D forbade them to act as they did. C alleged that the public nuisance was created as a result of the manner in which D 'permitted' the market to be run. The Court considered that what was being contended for by C was effectively a guarantee that D would prevent any breach of the market traders' licence conditions. There was no justification for imposing such an unrealistic, unreasonable and unenforceable obligation upon a Borough Council acting pursuant to its powers under the 1990 Act.

In order to establish that D had adopted or continued the nuisance, C had to establish two prerequisites; knowledge and opportunity. It was not suggested that D knew the poles were there. Given it was not known how long the poles had been there, it could not be asserted that D should have known they were there. In the circumstances, this was fatal to C's case and the claim in nuisance also failed.

Accordingly, D's appeal was allowed.

For further information on any of the above cases updates, please contact:

Amanda Evans at amandae@dolmans.co.uk or
Judith Blades at judithb@dolmans.co.uk

TRAINING OPPORTUNITIES

At Dolmans, we want to ensure that you are kept informed and up-to-date about any changes and developments in the law.

To assist you in this, we can offer a whole range of training seminars which are aimed at Local Authorities, their Brokers, Claims Handlers and Insurers.

All seminars will be tailored to make sure that they cover the points relevant to your needs.

Seminars we can offer include:

- Apportionment in HAVS cases
- Bullying, harassment, intimidation and victimisation in the workplace – personal injury claims
- Conditional Fee Agreements and costs issues
- Corporate manslaughter
- Data Protection
- Defending claims – the approach to risk management
- Display Screen Regulations – duties on employers
- Employers' liability update
- Employers' liability claims – investigation for managers and supervisors
- Flooding and drainage – duties and powers of landowners and Local Authorities for drainage under the Land Drainage Act 1991. Common law rights and duties of landowners in respect of drainage
- Flooding and drainage – duties and powers of Highway Authorities for drainage and flooding under the Highways Act 1980. Consideration of case law relating to the civil liabilities of the Highway Authority in respect of highway waters
- Highways training
- Housing disrepair claims
- Industrial disease for Defendants
- The Jackson Reforms (to include : costs budgeting; disclosure of funding arrangements; disclosure of medical records; non party costs orders; part 36/Calderbank offers; qualified one way costs shifting (QWOCS); strikeout/fundamental dishonesty/fraud; 10% increase in General Damages)
- Liability of Local Education Authority for accidents involving children
- Ministry of Justice reforms
- Pre-action protocol in relation to occupational disease claims – overview and tactics
- Public liability claims update

If you would like any further information in relation to any of our training seminars, or wish to have an informal chat regarding any of the above, please contact our Training Partner:

Melanie Standley at **melanies@dolmans.co.uk**