DOLMANS INSURANCE BULLETIN

Welcome to the August 2025 edition of the Dolmans Insurance Bulletin

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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:

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REPORT ON

The Successful Defence of a Claim Under the Animals Act 1971

K v Cardiff Council

Introduction

Dolmans were recently successful in defending Cardiff Council against an action brought against Cardiff Dogs Home pursuant to the Animals Act 1971 ("the Act") and common law negligence. The Claimant claimed damages for injuries suffered when he attempted to separate his puppy, a Staffie, after they were attacked by a Staffordshire Bull Terrier rescue dog who was being walked by a volunteer of Cardiff Dogs Home.

Dolmans were assisted in the defence of the Claimant's claim by Counsel, Mr Jonathan Lindfield, of St John's Chambers who has a particular interest and knowledge of the Animals Act 1971, and who was instructed from the outset of the proceedings, drafted a detailed Defence to the Claimant's claim and provided an Advice on Liability ahead of representing the Council's interests at Trial.

The Facts

The incident occurred in November 2023, when the Claimant was walking his dog, Angel, along the Ely Trail. Angel was off the lead initially. As the Claimant walked along, he encountered a volunteer, who was taking part in a corporate dog walking day at Cardiff Dogs Home, walking a 7-year-old Staffordshire Bull Terrier, called Champ, in the opposite direction. Upon seeing the volunteer approaching with Champ, the Claimant put Angel on the lead.

There was a dispute about what exactly was said between the two dog walkers before the incident. The Claimant's case was that he had asked the volunteer if it was ok for Angel to "say hello" to Champ and the volunteer, in response, indicated that it was okay. This was disputed by the Council on the basis of the contemporaneous Accident Report/Investigation and discussions which had taken place with the volunteer after they had returned to Cardiff Dogs Home, which indicated that the volunteer's position was that they had told the Claimant that they "didn't know" whether it was ok for Angel to approach Champ as they had only met Champ that day. (Unfortunately, despite extensive attempts to contact the volunteer who was walking Champ on the day in question, all correspondence went unanswered and, therefore, we were unable to secure any direct witness evidence from the volunteer on this issue).

In any event, when the dogs did interact, Champ bit Angel on the head. In attempting to separate the dogs, the Claimant suffered an injury to his right index finger and wrist.

The exact mechanism of how the Claimant came to suffer injury was also in dispute. In that regard, the Claimant's own case was inconsistent:

- The Claimant's pleaded case was that *"the dog and its lead caused him injuries".*
- The Claimant's medico-legal expert reported: *"Mr K is not sure how he injured his finger but thinks it possible it was caught up in the dog lead".*
- The Claimant's witness evidence was that *"I was forced to punch him [Champ] to try and loosen its grip on Angel and in doing do my right index finger became entangled in the leads (sic)".*

Causation was, therefore, very much in issue.

On behalf of the Council, it was asserted that the Claimant punched Champ on the head and this is what was likely to have caused his injuries. This was based upon the account contained within the Accident Report/Investigation completed following the Claimant's accident and supported by witness evidence obtained from a member of staff from Cardiff Dogs Home who spoke to the Claimant on the day of the incident. Therefore, the Claimant's injury was not caused by Champ's behaviour, but by the Claimant punching Champ in the head.

The Law

The Claimant's claim was brought under 2 broad causes of action:

- Strict liability under the Animals Act 1971.
- Common Law negligence.

- **Animals Act 1971**

It was not in dispute that the Council was Champ's "keeper" for the purposes of the Act at the material time.

The Act imposes strict liability upon keepers of dangerous animals where those animals have caused damage, but only where the relevant statutory criteria are made out. It is a claimant's burden to prove them all. The leading case on the application of the Act is *Mirvahedy v Henley [2003] UKHL 16*.

The "backbone" of any Animals Act claim is that a claimant needs to identify a characteristic of the animal which it says makes the animal dangerous. That characteristic can either be one that is abnormal in the species (and with dogs that translates to "breed", for example, a particularly aggressive dog in a breed which is not known for being aggressive) or one which is normal but only manifests at certain times or in certain circumstances (the "classic" example is an animal defending its young when they are small). An abnormal characteristic can also manifest only at certain times and circumstances, but it will still be "abnormal". Essentially, a keeper will not be held liable for an animal acting normally in normal circumstances.

Champ was a dog and so did not belong to a dangerous species. Therefore, for the Claimant's case, the relevant section of the Act was Section 2(2), which provides for the circumstances in which liability attaches for non-dangerous species.

The relevant statutory criteria, all of which the Claimant was required to prove, can be summarised as follows:

- Section 2(2)(a): Champ was, unless restrained, either likely to cause injury **or**, if Champ did cause injury, it was likely to be severe.
- Section 2(2)(b): The fact of injury being likely or of its being severe was due to characteristics of Champ which were either not normally found in other Staffordshire Bull Terriers or are not normally so found save in particular times or in particular circumstances.
- Section 2(2)(c): The Council were aware of those characteristics.

The Court of Appeal in *Curtis v Betts [1990] 1 WLR 459* made it clear that the court needs to go through these criteria step by step. Further, the court's findings on each limb needs to be consistent (i.e. the same characteristic relied upon under S.2(2)(b) must be the same one as giving rise to a likelihood of injury or of its being severe under S.2(2)(a)). In the Claimant's case, whilst it was not clear in the pleadings, the Claimant, in his Reply to the Defence, seemed to state that the characteristic relied upon was Champ's "*propensity to become highly stimulated in the presence of unfamiliar dogs such that it becomes aggressive towards and/or would bite them*". The characteristic relied upon was, therefore, seemingly one of aggression towards other dogs.

S2(2)(a) - The Likelihood of Injury/It's Being Severe

"Likely" means "reasonably to be expected".

On the evidence obtained by Dolmans, there was simply no evidence that Champ was likely to cause injury at all, let alone when exhibiting a particular characteristic. The Claimant did not know Champ before encountering him on the relevant date, so could not speak to any past behaviour. The witness evidence and the veterinary records which were provided by Cardiff Dogs Home supported the position that Champ had never caused injury before and was a docile dog.

In the alternative, if Champ did cause injury when manifesting a characteristic, there was little evidence that any injury he caused was likely to be severe. Whilst it was acknowledged that it may be said that any dog is *capable* of causing severe injury, for the purposes of the Act, the court must find that it is *reasonably to be expected* that the damage will be severe as a result of a characteristic being manifested.

As above, the characteristic relied upon by the Claimant seemed to be *the propensity to be aggressive towards other dogs when highly stimulated*. The defence argued that if Champ did exhibit that characteristic relied upon, then any risk was to *other dogs*. There was no good evidence that there was any such likelihood of injury or severity of injury to other people *arising out of that characteristic*. There was no link to be made, therefore, between the injury to the Claimant and the characteristic relied upon.

The Claimant was required to identify, plead and prove both what characteristic they relied upon **and** that it was in fact being manifested at the material time. The Claimant's pleading on this issue was not clear.

The case of *Hunt v Wallis [1994] PIQR P128* makes it clear that where there is an identifiable breed of animal, with known and identifiable characteristics, the comparison exercise should be made between animals of that breed/ subspecies. Champ, therefore, was comparable with others of his breed. To that extent, the Claimant brought no expert evidence either as to the characteristics of Staffordshire Bull Terriers generally, or, of Champ specifically.

S2(2)(c) - D's Knowledge of the Characteristic

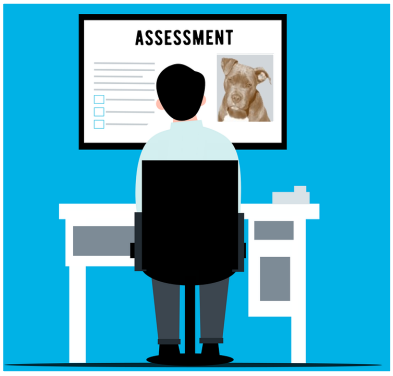
The evidence obtained from the employees of Cardiff Dogs Home was that Champ had never attacked another dog before, had never displayed aggressive characteristics, had never bitten anyone before and had been good around staff and strangers. There had been no reason for Cardiff Dogs Home to believe that he had any characteristic which was likely to cause harm in any circumstance.

Liability was, therefore, denied on behalf of the Council under the Act. Firstly, on the grounds of causation - it was not the manifestation of any characteristic of Champ which caused the Claimant's injury. The injury was not inflicted by Champ upon the Claimant; the injury was a by-product of the Claimant attempting to separate the dogs when the incident happened and him punching Champ on the head. Any characteristic which was being manifested by Champ was not a danger to the Claimant so could not be causatively relevant. Secondly, the Claimant's claim under the Act had to fail as the Claimant's case did not overcome the strict hurdles of Section 2 of the Act.

REPORT ON

- **Common Law Negligence**

The investigations which Dolmans conducted with the employees of Cardiff Dogs Home identified that the Home sets itself a high standard for those that walk its dogs. It was clear from the evidence obtained that Cardiff Dogs Home was a conscientious and careful business who do their best to take in dogs for the purposes of their re-homing. They socialise them, get them walked and use volunteers to help them do so.



Champ was fully assessed by staff when he arrived at Cardiff Dogs Home before he was allowed to be walked by volunteers. The Home also train volunteers and give them full instructions and induction before sending them out with their dogs. Their position was that they would not have let members of the public walk dogs that they knew to be a danger. The Home also fully risk assessed the task of dog walking, with suitable control measures and policies in place.

However, the policy of Cardiff Dogs Home for its dog walkers (described as the "Golden Rule") was not to allow *any* interaction between dogs. Volunteers were instructed not to let the dogs come into any contact with other dogs, and to turn around, walk the other way and tell people not to approach if they were so approached. This was drilled into its volunteers and they were given a full briefing before sending them out dog walking. It was conceded at Trial that the volunteer did not follow this guidance.

Nonetheless, it was asserted, on behalf of the Council, that if the volunteer for Cardiff Dogs Home was found to have fallen short of the standard by Cardiff Dogs Home's "Golden Rule", this was not the same standard as negligence. Cardiff Dogs Home was seeking, by its policies, to prevent *any* incident between dogs, whereas the law is concerned only with the prevention of *reasonably foreseeable* harm. There was no reason to think that Champ would cause any injury, and it was submitted that to let seemingly docile dogs interact with each other could not be negligent. On the evidence available, Cardiff Dogs Home simply did not reasonably foresee that Champ presented a risk of injury to *anybody*, otherwise it certainly would not have let a solo volunteer walk him unsupervised or at all.

In any event, the documentary evidence available, supported by the witness evidence provided by employees of Cardiff Dogs Home who spoke with the volunteer after the incident, was that the volunteer was acting in a way which ought to have put the Claimant on notice that he should not have approached. The volunteer had kept Champ as close to the wall as they could, on a very short lead, and grabbed his collar to keep him under control. Unfortunately, the dogs were already too close and so this did not prevent the interaction/attack.

Ultimately, all the evidence throughout Cardiff Dogs Home's ownership of Champ was that he presented no danger to members of the public, or anyone else, and so there was no reasonable foreseeability of harm which it was reasonable to guard against. Even if there was a foreseeable risk of injury to *other dogs*, that was not a foreseeable risk of injury to other people; *Whippey v Jones [2009] EWCA Civ 452*.

REPORT ON

Trial

The Claimant's claim proceeded to Trial on 13 May 2025 at Cardiff County Court.

The Claimant's claim was dismissed at Trial.

The key findings were:

- Champ had never behaved in this way before and did not possess any aggressive characteristics.
- Even if he did, Cardiff Dogs Home had no knowledge that he did.
- Cardiff Dogs Home's initial and ongoing assessments of Champ proved him to be fine to be walked, fine to be walked by volunteers and he had been walked successfully without issue some 150 times before this incident.
- There was a material difference between Cardiff Dogs Home's own internal policy (and their "Golden Rule") and the standard of care to be applied in negligence. With no previous behaviour or any indication that Champ might act that way in being allowed to interact with another dog, there was no reasonable foreseeability of harm, such that no negligent liability could arise.

The Judge agreed that the Claimant's claim under the Animals Act 1971 was not made out.

In addition, the Judge found that there was no negligence and no foreseeability of harm.

Further, the Claimant accepted at Trial that they had in fact punched Champ several times in attempting to separate the dogs, which the Judge found was the likely cause of the injury sustained.

Comment

This was a challenging case for Cardiff Dogs Home, who did not have the benefit of lay witness evidence from the volunteer who was directly involved in the accident, and a volunteer who admittedly had not done what they were supposed to do. However, the witness evidence which was prepared by Dolmans on behalf of Cardiff Dogs Home, and the contemporaneous documentation, was able to highlight and prove their assessment and monitoring of Champ, which was vitally important evidence at Trial. The contemporaneous records of the attack and Champ's behaviour were crucial to the Judge's decisions.

REPORT ON

Further, the defence was able to focus on the lack of expert evidence adduced by the Claimant to support their contentions under the Animals Act, together with a thorough review of the Claimant's medical records which highlighted the key causation issue.

This case highlights generally the importance of being able to establish both the characteristic relied upon for S.2(2)(b) of the Act and also a defendant's knowledge for the purposes of S.2(2)(c).

The case also highlighted the key and important difference between a defendant's own internal policies and the standard of care in negligence. Whilst Cardiff Dogs Home sets itself a high standard for its dog walkers, in the absence of any reasonable foreseeability of harm, allowing the dog to be walked by a volunteer, and allowing Champ to interact with another dog, was not negligent. The policy was designed to avoid *any* risk, not just that which was reasonably foreseeable. The remote *possibility* of harm is not the same as that which is reasonably foreseeable. A defendant setting itself a high standard cannot make it *more likely* that it will be found to be negligent for someone not doing it.

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CASE UPDATES

Allocation - Fixed Recoverable Costs Regime - Intermediate/Multi-Track

Samantha Holland v Zurich Insurance Company (UK) Limited (Appeal No 66 of 2024)

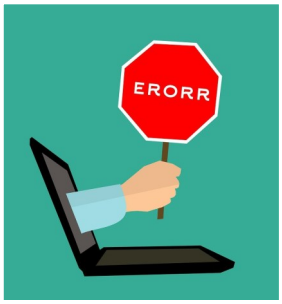
This was an appeal by the Defendant regarding the application of the new procedural rules governing the Intermediate Track and whether those rules applied to proceedings where there had been a personal injury claim which had settled (in the sum of £520) and where the cause of action arose prior to 1 October 2023 but the claim was issued after that date. After the Claimant's personal injury claim was settled, there were other financial claims which were being pursued in respect of substantial credit hire charges (non-protocol vehicle costs).

Initially, both parties proposed allocation to the new Intermediate Track based on the value of the claim (which was limited to £91,000). However, at the allocation hearing, Counsel for the Claimant argued that the new Intermediate Track rules did not apply because the claim had included a personal injury claim and the cause of action had arisen before 1 October 2023. Counsel for the Claimant contended that the matter should be allocated to the Multi-Track.

Counsel for the Defendant did not challenge the position put forward in respect of the non-application of the Intermediate Track rules, but contended that the matter was sufficiently straightforward for it to be allocated to the Fast Track.

The Deputy District Judge agreed with the Claimant's submissions and allocated the Claimant's case to the Multi-Track.

The Defendant appealed.



Grounds of Appeal

The Defendant asserted that the Deputy District Judge:

- Erred in law, having wrongly concluded that the rules governing allocation, which include the introduction of the Intermediate Track, did not apply to the Claimant's claim;
- Erred in fact and/or law, having wrongly concluded that the claim included a claim for personal injury.

It was acknowledged that the Defendant sought to pursue an appeal on a basis that was not argued at first instance, namely the rules application point. The decision in *Notting Hill Finance Limited v Sheikh [2019] EWCA Civ 1337* was relied upon, and the appeal Judge was satisfied that the threshold for the exercise of the discretion does not require any exceptionality, and that an important consideration was the nature of the hearing. The Claimant's detriment in this case was considered to be minimal and, on appeal, Counsel for the Claimant was able to argue the rules application point fully suffering no prejudice. The appeal Judge had no doubt that this was an appropriate case in which the discretion should be exercised.

CASE UPDATES

Held

- For the purposes of the transitional provisions of the Civil Procedure (Amendment No 2) Rules 2023, a "*claim for personal injuries*" only arises where proceedings have actually been commenced seeking an award of damages for personal injury. Since the personal injury element in this case had already been resolved by agreement *before* the proceedings were issued and there was no prayer for personal injury damages in the Claim Form or Particulars of Claim, it was not a personal injury claim within the meaning of the rules.

- The definition of 'personal injury' in Rule 2 of the Civil Procedure Rules (CPR) states: *Claim for personal injuries' means proceedings in which there is a claim for damages in respect of personal injuries to the claimant or any other person or in respect of a person's death, and 'personal injuries' includes any disease and any impairment of a person's physical or mental condition.*

- The absence of a prayer for personal injury damages, a statement of value (as mandated by CPR 16.3) and a medical report (as required by Practice Direction 16 PD.4) further solidified the court's view that a personal injury claim was not being pursued in these specific proceedings.

- The court highlighted the clear distinction in CPR 26.9 between damages for pain, suffering and loss of amenity (personal injury damages) and other heads of damages. The mere historical background of an injury does not automatically qualify all other claims as part of a personal injury claim.

- The introduction of the Intermediate Track in October 2023 aimed to bring a vast number of cases, particularly low-value RTA claims, into the fixed costs regime, reserving the Multi-Track for only the most serious and complex claims. The transitional provisions were designed to avoid injustice for existing personal injury claims, but this protection was deemed unnecessary for settled whiplash claims processed via the portal.

- In relation to the implications for QOCS, the court noted that where a residual claim primarily comprises non-protocol vehicle costs, it is *"highly unlikely"* that a claimant would be personally responsible for adverse costs, particularly if their legal advisors were pursuing recovery for the benefit of a credit hire company.

In all the circumstances, the appeal Judge concluded that the Deputy District Judge was wrong in law to find that the Claimant's claim included a claim for personal injuries and that the Intermediate Track was not open to him.

There was no particular complexity to the Claimant's claim and so the value was clearly within the Intermediate Track limits, and so the case was so allocated, with assignment to complexity Band One.

CASE UPDATES

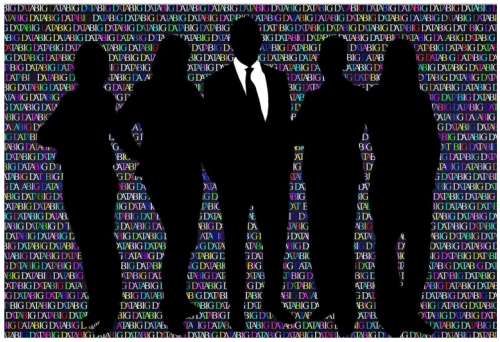
Data Processing - Data Subject's Rights - Personal Injury Claims

Kul v DWF Law LLP
[2025] EWHC (KB)

The Claimants brought proceedings based on the processing of their personal data by DWF LLP in personal injury litigation arising from road traffic accidents.

DWF acted for a number of insurers who were substantive defendants to road traffic accident claims brought by individuals represented by the same firm of solicitors. As part of their claims, the Claimants' solicitors obtained reports from a psychiatrist containing personal information about them and their injuries, including special category data.

A few months before the trials of the claims were due to take place, following investigations into alleged dishonesty in the injury claims, DWF's then Head of Organised Fraud made a Witness Statement which contained an analysis of claims data provided to DWF by insurers in which the Claimants' names appeared. An analysis collected evidence of 'patterns' in claims involving the Claimants' solicitors. The data from which the conclusions of the analysis was drawn was exhibited in a spreadsheet and included the names and ages of the Claimants and details of any psychological or psychiatric referral. The information in the spreadsheet was not redacted in any way.



DWF denied a breach of the UK GDPR. It was contended that the data processing fell within the exemptions under Regulation 2016/679, supplemented by the Data Protection Act 2018, as being necessary for the purpose of the legal proceedings.

The Claimant submitted that the processing was not necessary, that the data had limited value in relation to the identified objective and that the processing lacked transparency.

Held

The Claimants' claims were dismissed.

The Judge was satisfied that DWF had undertaken the data processing '*for a specified, explicit and legitimate purpose, carried out in performance of the defendant's professional (and regulatory) obligations to its clients, for the public interest task of ensuring the proper administration of justice, and for the purpose of the legitimate interests of the defendant's clients'*. According to the Judge, DWF acted as part of its duty to its clients and in support of the public interest by ensuring proper justice administration.

CASE UPDATES

The Judge did not consider that the Claimants were 'deceived or misled'. If they had looked at DWF's website '*they would have been advised of the potential use of their personal information in order to perform services for its clients, and that elements of that information might be disclosed to third parties'*. Even allowing for the fact that the Claimants might reasonably not have taken that step, the Judge was satisfied that they would have been aware that information disclosed in (proposed) litigation would be the subject of scrutiny and investigation by the lawyers acting for the insurer defendants and would be utilised in open court proceedings.

There was no unfairness which arose from the processing involved in the creation of the Witness Statement '*and its very limited disclosure by the defendant*', and the use of names was '*necessary*' when the Statement was disclosed to the Claimant's solicitors and the court.

Motor Finance Commission - Fiduciary Duty

Hopcraft v Close Brothers Limited; Johnson v FirstRand Bank Limited (London Branch) t/a MotoNovo Finance; Wrench v FirstRand Bank Limited (London Branch) t/a MotoNovo Finance
[2025] UKSC 33

In these three conjoined appeals, the Supreme Court delivered its Judgment concerning issues about the lawfulness or otherwise of the payment of commission by finance lenders to motor dealers in connection with the provision of finance for the hire purchase of cars where that commission is either not disclosed, or only partly disclosed, to the hirers of the cars.

The Claimant customers brought claims against the lenders seeking rescission of their finance contracts and/or damages. In each case, the car dealer had obtained an offer of finance from a lender to enable the customer to buy a car, the dealer had sold the car to the lender who had entered into a hire purchase agreement with the customer, and the lender had paid an undisclosed commission to the dealer for the introduction of the hire purchase business. The provision of finance on such terms is a regulated activity under the Consumer Credit Act 1974 ('CCA').

The customers claimed that the commissions amounted to bribes or to secret profits received by the dealers as fiduciaries. They each claimed payment of an amount equivalent to the commissions from the lenders under the tort of bribery. Two claimed, in the alternative, compensation from the lenders for dishonest assistance in the dealers' receipt of secret profits. They had all claimed to re-open their hire purchase agreements under s.140A of the CCA on the basis that they gave rise to an unfair relationship, but only Mr Johnson's (J') claim in this respect survived for determination on this appeal.

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In the Court of Appeal, the claims had succeeded. The Court of Appeal held that the dealers undertook a fiduciary duty to their customers when acting as credit brokers in obtaining offers of hire purchase finance from the lenders; the dealers also undertook a duty to act in a disinterested manner in obtaining offers of hire purchase finance sufficient to engage the tort of bribery; in three of the four transactions in issue the commissions were secret so that they were bribes; in the fourth transaction there was sufficient disclosure to prevent the commission being secret but not a sufficiently informed consent by the customer to prevent it being an unauthorised profit received by the dealer in breach of fiduciary duty in respect of which the lender was liable as a dishonest assistant; and in the fourth transaction there was an unfair relationship between the lender and the customer sufficient for the hire purchase agreement to be re-opened under the CCA. The lenders appealed to the Supreme Court.

The Supreme Court stated that the tort of bribery and the equitable claim based upon dishonest assistance in a breach of fiduciary duty treats the payment and its receipt as objectionable because it tends to corrupt, undermine or at least conflict with some duty or obligation arising out of a relationship between the recipient of the payment and a third party to whom the duty or obligation is owed. A central issue was whether the factual context of these claims required or permitted the implication of a no conflict duty which would be breached by the making and receipt of the payment.

Common to the appeals was the relationship between the dealer and the customer, during the course of which the dealer selected for the customer a suitable hire purchase finance package from among a panel of lenders. Viewed separately from the marketing and sale of the car, the service of selecting a finance package for the customer ('credit brokerage') may, on particular facts, be sufficient to import a necessarily implied no conflict duty. The Court of Appeal had concluded that such a duty was to be implied in each of these claims.

On appeal to the Supreme Court, the lenders submitted that the credit brokerage service provided by the dealers could not be viewed in isolation from the general relationship between dealer, customer and lender in the three-cornered transaction of which the finance package is only a part. Viewed in that way, the dealer never loses its status as seller and acts, and is expected and entitled to act, in its own interests as an arm's length seller throughout. A no conflict duty (or any other duty which would make undisclosed commission payments by the lender to the dealer objectionable in law or in equity) would be incompatible with the continuing arm's length relationship, which persists until the transaction is completed, so that no such duty is to be implied.

CASE UPDATES

The Supreme Court reviewed and clarified the law in relation to bribery. In particular, the Court held that liability for bribery, at common law as well as in equity, is dependent on the recipient of the bribe being a fiduciary. A lesser 'disinterested duty' is not sufficient.

In assessing whether the dealers owed fiduciary duties to the Claimants, the Court noted that the typical features of the transactions in these cases included that each of the three participants were separately engaged at arm's length from the other participants in the pursuit of a separate commercial objective of their own. Inevitably the pursuit of each of their separate objectives had the propensity to come into conflict with the pursuit of the others. Neither the parties themselves nor any onlooker could reasonably think that each of the participants to such a negotiation was doing anything other than considering their own interests. The dealer was not providing credit brokerage as a distinct and separate service from the sale transaction. At no time in the negotiation of any of these transactions did the dealer give any kind of express undertaking or assurance to the customer that in finding a suitable credit deal for the customer it was putting aside its own commercial interest in the transaction as a seller. The dealer was not an agent for the customer in the negotiation of the finance package with the lender.

The Court concluded that these typical features of the transactions did not give rise to a fiduciary duty. The typical features were incompatible with the recognition of any obligation of undivided or selfless loyalty by the dealer to the customer when sourcing and recommending a suitable credit package. The continuing status of the dealer as an arm's length party to a commercial negotiation pursuing its own separate interests was 'irreconcilably hostile' to the recognition of a fiduciary obligation owed to another party in that negotiation. '*No reasonable onlooker would think that, by offering to find a suitable finance package to enable the customer to obtain the car, the dealer was thereby giving up, rather than continuing to pursue, its own commercial objective of securing a profitable sale of the car*'.

Accordingly, as the dealers did not owe fiduciary duties to the Claimants, the claims in the tort of bribery and the equitable claims based upon dishonest assistance in a breach of fiduciary duty failed.

In relation to J's claim that the relationship between him and the lender, FirstRand, was unfair pursuant to s.140A of the CCA, the Court stated that the test of unfairness under s.140A permits courts to take account of a very broad range of factors and is highly fact sensitive. On the facts of J's claim, there were three relevant factors. The size of the commission paid by the lender to the dealer was significant, amounting to 25% of the advance of credit and 55% of the total charge for credit; the fact that the undisclosed commission was so high was a powerful indication that the relationship between J and the lender was unfair.

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It was highly material that the documents provided to J did not disclose the existence of a commercial tie between the lender and the dealer in which the lender had a right of first refusal and gave the false impression the dealer was offering products from a select panel of lenders and recommending a finance product that best met the customer's individual requirements. Whilst J did not read any of the documents provided by the dealer, J was commercially unsophisticated and it was questionable as to what extent a lender could reasonably expect a customer to have read and understood the detail of such documents and no prominence was given to the relevant statements in the documents. On the facts, the Court held that the relationship between J and FirstRand was unfair within s.140A and the commission should be paid to J with interest.

Following the Judgment, the Financial Conduct Authority announced it would consult on an industry wide scheme to compensate motor finance customers who were treated unfairly. It intends to publish the consultation by early October and finalise any scheme in time for people to start receiving compensation next year.

Strike Out - Non Compliance with Court Order - QOCS

Read v North Middlesex Hospital Trust
[2025] EWHC 1603 (KB)

The Claimant ('C') issued clinical negligence proceedings. C initially acted in person. An Order was made for C to better particularise his claim, failing which it would be struck out. C appealed against this Order. By the time of the appeal hearing, he was legally represented. The appeal was compromised by a Consent Order on terms that C would file and serve Amended Particulars of Claim setting out further and better particulars of his allegations of breach of duty and causation by 15.12.23, in default of which the claim would be struck out.

C served Amended Particulars of Claim in time. However, D submitted these failed to set out a sufficiently detailed case and made an application for the claim to be treated as automatically struck out on the grounds that the Amended Particulars of Claim failed in substance to satisfy the terms of the abovementioned Consent Order or, in the alternative, the Amended Particulars of Claim should be struck out pursuant to CPR 3.4(2)(a) or (b) (i.e. the statement of case disclosed no reasonable grounds for bringing the claim or was an abuse of the court's process or otherwise likely to obstruct the just disposal of the proceedings). C (on the assumption that the Amended Particulars of Claim were sufficient to comply with the Consent Order) cross-applied for permission to re-amend his claim.

CASE UPDATES

The Judge concluded that the Amended Particulars of Claim were insufficiently particularised and, therefore, did not satisfy the requirements of the Consent Order as they did not provide 'further and better particulars' of C's allegations of breach of duty and causation. C had substantively breached the intention of the Consent Order and the claim was automatically struck out. As there was no application by C for the claim to be reinstated, the claim was at an end.

In relation to costs, there was disagreement between the parties as to whether, in these circumstances, CPR 44.15 was engaged such that QOCS was disapplied.

CPR 44.15 allows orders for costs against a claimant to be enforced to the full extent without the permission of the court where proceedings have been struck out on grounds that (a) the claimant has disclosed no reasonable grounds for bringing the proceedings; (b) the proceedings are an abuse of the court's process; or (c) the conduct of the claimant is likely to obstruct the just disposal of the proceedings.

C submitted that the conclusion that his claim had been struck out for non-compliance with a Court Order meant that the claim had been struck out pursuant to CPR 3.4(2)(c). CPR 44.15 only contemplates cases struck out in circumstances in CPR 3.4(2)(a) and (b). Strike out pursuant to CPR 3.4(2)(c), therefore, did not fall within the meaning of any of the 'grounds' described in CPR 44.15 and QOCS protection was retained.

D submitted that the underlying reasons and, therefore, the 'grounds' for concluding that C's claim was automatically struck out, fell within the very substance contemplated by CPR 44.15. The condition in the Consent Order (to serve 'further and better particulars'), which C had failed to comply with, was obviously to avoid the wrongs contemplated in CPR 3.4(2)(a) and (b). In beach, CPR 44.15 was, therefore, engaged.

The Judge rejected C's restrictive interpretation of CPR 44.15. The 'grounds' in CPR 44.15 merely refer to the underlying reasons why a claim came to be struck out. A claim can be struck out in various procedural ways. CPR 44.15 encompasses those wide reasons and then classifies those relevant for the purposes of QOCS disapplication. Those reasons are not exclusively those listed at CPR 3.4(2). CPR 44.15 '*obliges the court to determine the actual, substantive reason(s) why a claim was struck out in order to then decide whether QOCS have come to be disapplied. It is not to be read within the exclusive prism of rule 3.4(2)(a) and (b)*.' Accordingly, CPR 44.15 was engaged and QOCS protection was disapplied.

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

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