DOLMANS INSURANCE BULLETIN

Welcome to the February 2026 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

Impecuniosity and Other Issues in Credit Hire Claims

RA v Rhondda Cynon Taf County Borough Council

The Court will usually provide specific directions, including those relating to alleged impecuniosity, in matters where credit hire is claimed.

The importance of compliance with these directions cannot be overestimated, as failure to comply with the same can have a detrimental effect upon a claimant's claim in particular and, therefore, potentially benefit the defendant.

This was apparent in the recent case of *RA v Rhondda Cynon Taf County Borough Council*, in which Dolmans represented the Defendant Local Authority.

Background

It was alleged that the Defendant Local Authority's vehicle collided with the Claimant's parked and unattended vehicle, causing damage.

Liability was admitted by the Defendant Local Authority and an interim payment made in settlement of the Claimant's vehicle which was deemed to be beyond economic repair and a total loss.

However, the Claimant also pursued a claim for credit hire charges in the sum of £21,811.20 over a period of 71 days and collection/delivery charges in the sum of £240.00. Both of these items were disputed and the Claimant issued Court proceedings in respect of the same.

REPORT ON

Court Process and Directions

The matter was allocated to the Fast Track, Complexity Band One, and the usual Court directions were given for disclosure, exchange of witness statements and schedules/ counter schedules.

Given that the Claimant's claim included credit hire charges however, the Court also provided specific directions relating to basic hire rates by way of witness evidence and impecuniosity.

The Claimant was ordered to provide documentary evidence of all income for a period of 3 months prior to commencement of hire until the earlier of 3 months cessation of hire or the repair/replacement of the Claimant's vehicle, together with copies of all bank, credit card and savings statements for the same period and evidence of any loan, overdraft or other credit facilities available to the Claimant.

Likewise, the Claimant was required to file witness evidence in support of her alleged impecuniosity and the need to hire a replacement vehicle.

The Court Order stated unequivocally that a failure to comply with the above would result in the Claimant being debarred from asserting impecuniosity and/or need at trial accordingly.

In addition to need and impecuniosity, the Court was, of course, also required to consider the rate and period of hire.

Impecuniosity – Preliminary Issue

The Defendant Local Authority argued at the outset of the trial that it was for the Claimant to plead and prove impecuniosity and if the Claimant was debarred from asserting impecuniosity for the purposes of rate, then she was debarred from asserting impecuniosity for any purpose, including the period of hire. This is particularly relevant to cases where the vehicle has been written off rather than repaired. The Defendant Local Authority relied upon the decision in *Zurich Insurance PLC v Sameer Umerji (2014) EWCA Civ 357* in support of the above.

The Claimant failed in this particular matter to provide sufficient documentary evidence for the relevant period to prove impecuniosity, as had been ordered by the Court. Impecuniosity was, therefore, dealt with as a preliminary issue and the Defendant Local Authority was successful in arguing that the Claimant be debarred from asserting impecuniosity at trial.

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Need

The Claimant was put to strict proof as to her reasonable need for a replacement vehicle during the period of hire claimed, which was not admitted. The Claimant did not commence hire of the vehicle until 7 days after the date of the alleged accident. The Claimant also delayed purchase of a replacement vehicle after receiving funds and some time following return of the hire vehicle. Hence, the Defendant Local Authority argued that Claimant would have been able to utilise alternative transport methods during the period of hire, as she had done both before and after hiring the alternative vehicle.

As such, it was argued that the Claimant could not satisfy the Court that she had a reasonable need to hire a replacement vehicle for the duration of the hire period.

Period of Hire

The period of hire was also disputed.

The Claimant had refrained to hire the vehicle for some time following receipt of funds to purchase a replacement vehicle, and had not purchased such a replacement vehicle for some considerable time thereafter. The Defendant Local Authority argued, therefore, that it could not be said that this period was reasonably required to enable the Claimant to purchase a replacement vehicle as she did not purchase a replacement vehicle for some time.

There was also a delay in the Claimant's agents forwarding the engineer report to the Defendant Local Authority's insurer and a delay in the Claimant's agents forwarding the vehicle funds to the Claimant.

In the event that the Claimant was not found to be impecunious, it was argued that the Claimant ought to have mitigated any loss of use by replacing the damaged vehicle at an earlier stage. The Claimant's failure to take early proactive steps represented a failure to mitigate this loss. As per *Zurich Insurance PLC v Sameer Umerji (2014) EWCA Civ* 357, it was argued that the Claimant was not entitled to do nothing while waiting for the Defendant Local Authority's insurers to act.

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Rate of Hire

The Claimant was put to strict proof that she and her agents acted reasonably at all times. The same was not admitted and the Defendant Local Authority adduced witness evidence in support of alternative/reasonable basic hire rates. This witness evidence was provided on behalf of a company that provides impartial research into the rates of hire for specific categories of vehicles.

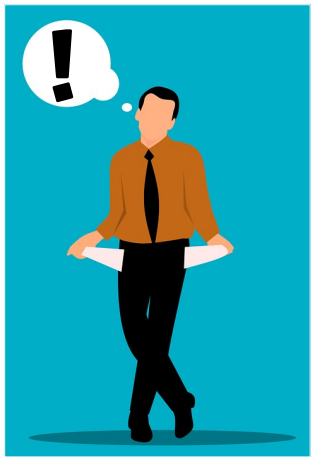
In any event, the Claimant asserted that she was impecunious at the material time, the burden of proving such impecuniosity resting with the Claimant as per *Zurich Insurance PLC v Sameer Umerji (2014) EWCA Civ* 357 as referred to.

As the Claimant was debarred from asserting impecuniosity at trial however, the Defendant Local Authority argued that the Claimant had failed to mitigate her loss by hiring a replacement vehicle on credit terms and, in the event that she could prove that she had a reasonable need for a replacement vehicle which was not admitted, the Claimant's entitlement to damages should be limited to the lowest basic hire rate available on the open market, as per *Stevens v Equity Syndicate Management (2015) EWCA Civ 93*.

Collection and Delivery Charges

The collection and delivery charges were not admitted and the Claimant was put to strict proof that the same were reasonably incurred and reasonable in amount. The Claimant was specifically required to prove that she was unable to make use of low or no cost alternative transport to collect the hire vehicle.

Judgment



As already referred to above, the Trial Judge agreed the Defendant Local Authority's arguments regarding impecuniosity as a preliminary point, despite the Claimant having attempted to make a last-minute application for relief from sanction at trial.

The Trial Judge agreed that the question of impecuniosity also affected other aspects of the Claimant's claim and that, on the strength of the decision in *Zurich Insurance PLC v Sameer Umerji (2014) EWCA Civ* 357, the Claimant was debarred from raising impecuniosity in relation to the period of hire as well as the rate of hire.

The Trial Judge considered, therefore, that the Claimant's hire should be restricted to a reasonable period for a non-impecunious claimant to purchase a replacement vehicle, which the Trial Judge considered to be 42 days in this particular matter. The Trial Judge took account of the fact that the write off value was relatively low, which would have increased the time to locate a suitable replacement vehicle and that the Claimant was a working person living in a relatively rural area.

REPORT ON

The Trial Judge considered the basic hire rates referred to in the Defendant Local Authority's witness evidence to be the appropriate hire rates, being much lower that the hire rates claimed, and particularly as the Claimant did not raise any arguments against the same.

As for need, the Trial Judge agreed that a claimant bears the burden of proving the same and that need is not self-proving, albeit with a relatively low threshold. The Trial Judge was satisfied that there was a need for a vehicle and that it was rare to have a vehicle if someone did not need such a vehicle. The Claimant gave evidence in support of her domestic needs and need for a vehicle to travel to/from work. As such, the Trial Judge held that the Claimant had proved her need for a hire vehicle.

Taking all of the above into account, the Trial Judge awarded damages for hire charges and collection/ delivery charges in the vastly reduced total sum of £2,395.17.

Comment

The Claimant's failure to provide sufficient documentary evidence in support of her alleged impecuniosity had a detrimental effect on the value of her claim, being debarred from asserting impecuniosity for any purpose, including the rate and period of hire.

The Trial Judge took account of the fact that the above had been raised in the Defendant Local Authority's Counter-Schedule of Special Damages, so the Claimant could not argue that she had been ambushed at trial in this regard. In addition, the Claimant had to make a previous application for relief from sanction relating to a different failure to comply with Court directions that was also noted by the Trial Judge.

The Trial Judge considered that the Claimant's hire should be restricted to a reasonable period for a non-impecunious claimant to purchase a replacement vehicle, which was almost half of the time claimed, and was assisted by the Defendant Local Authority's witness evidence in support of alternative/reasonable basic hire rates that were lower than the rates claimed by the Claimant.

The success of the Defendant Local Authority's arguments regarding the above resulted in the Claimant being awarded damages at just over 10% of the amount claimed and, therefore, substantial savings for the Defendant Local Authority in this matter.

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CASE UPDATES

Costs - Points of Dispute - Provisional Assessment Order - Setting Aside

MH v CH (by her Litigation Friend the Official Solicitor)
[2026] EWHC 238 (SCCO)

A provisional Costs Assessment Order was set aside pursuant to CPR r.3.1(7) where the receiving party had failed to lodge all the paying party's Points of Dispute at Court. The paying party did not have to apply for an oral hearing to review the assessment under CPR r.47.15(7) because that provision did not cover a jurisdictional challenge as to whether the provisional assessment had been conducted correctly. Rule 47.15(7) and r.3.1(7) operated in tandem.

A Bill of Costs had been served on MH. It was an accepted fact that MH had served his Points of Dispute by email which comprised four documents:

(a) Precedent G;

(b) A note in relation to the Points of Dispute;

(c) An annotated Bill of Costs;

(d) MH's Skeleton Argument from a prior application in the Court of Appeal.

The receiving party (CH) mistakenly omitted to include MH's annotated Bill and his note when lodging their application for a provisional assessment. The Judge, unaware of the omission, conducted a provisional assessment.

MH applied to set aside the Assessment Order (rather than seek an oral hearing under CPR 47.15(7)) within 7 days pursuant to CPR r.3.1(7) on the ground that the Order was null and void because CH had not lodged MH's full Points of Dispute at Court. Correspondence ensued with the Court as to whether there ought to be an oral hearing as opposed to this application. MH was steadfast in his decision that he wished for the application to be considered as opposed to any request for an oral review.

The issue was whether a party could apply to set aside a provisional Assessment Order pursuant to r.3.1(7) rather than request an oral hearing pursuant to r.47.15(7).

Held

The application to set aside the provisional Assessment Order was granted.

CASE UPDATES

The Court's case management powers were not listed within CPR PD 47 para.14.2(2). Rule 47.15(7) provided that "*any party wishing to challenge any aspect of the provisional assessment must, within 21 days of receipt of the notice, file and serve on all other parties a request for an oral hearing*", failing which "*the provisional assessment is binding upon the parties, save in exceptional circumstances*". The concept of "any aspect" had a boundary defined by the "four corners of the disputes" capable of being resolved within the provisional assessment itself; *Ainsworth v Stewarts Law LLP [2020] EWCA Civ 178, [2020] 1 W.L.R. 2664, [2020] 2 WLUK 211* followed. This conclusion was supported by r.47.15(8)(a), which required an applicant to identify "items in the Court's provisional assessment" that they sought to challenge. Items in the assessment were derived from the itemised objections in the Points of Dispute, which were themselves dependent upon the items within the Bill.

The provisional assessment regime was intended to provide both parties with the opportunity of a low value resolution of their costs dispute by an initial determination on paper. Where the receiving party failed to file the paying party's full Points of Dispute, the paying party was deprived of their right to access the assessment. An oral hearing was the secondary, pre-existing right available to the paying party, and it had unavoidable increased costs associated with it. Those costs were determined by reference to the percentage alteration from the paper determination, which meant that there was an immediate problem where the full objections had not been determined on the paper assessment. Requiring the paying party to proceed immediately to a more expensive oral hearing did not achieve the low value, proportionate aim of the regime.

A review hearing under r.47.15(7) and (8) covered items within the provisional assessment in respect of which an objecting party might wish to seek a review. It did not cover a jurisdictional challenge as to whether the provisional assessment had been conducted correctly. Rule 3.1(7) and r.47.15(7) operated in tandem, with r.3.1(7) being available in respect of challenges external to items in the assessment. This aligned with r.3.1(1) which confirmed that the Court's general case management powers were available in addition to any provided by specific rules; *PME v Scout Association [2019] EWHC 3421 (QB), [2020] 1 W.L.R. 1217, [2019] 12 WLUK 182* considered.

If that decision was wrong, then r.47.15(7) was not engaged in any event because the provisional assessment was not correctly requested or undertaken due to the failure to file MH's complete objections pursuant to PD 47 para.14.3(e).

The provisional Assessment Order was, therefore, set aside. However, due to the atypical nature of the situation, the Judge concluded that it was a proportionate exercise of the Court's case management powers to remove the matter from the provisional assessment process pursuant to CPR 47.15(6) and direct that it proceeds as a detailed assessment. In arriving at this conclusion, the Court had regard to the value of the Bill of Costs and the question of proportionality. However, those issues had to be balanced against the best use of the Court's time along with the issues in the assessment. The Judge concluded that an oral hearing was likely to be requested in any event and, thus, it was more proportionate simply to "grasp that nettle sooner rather than later".

CASE UPDATES

Damages - Lost Years - Young Children

CCC (by her Mother and Litigation Friend MMM) v Sheffield Teaching Hospitals NHS Foundation Trust
[2026] UKSC 5

In a majority Judgment given on 18 February 2026, the Supreme Court overruled the Court of Appeal's decision in *Croke v Wiseman [1982]* and held that 'lost years damages' can be recovered in cases where the claimant is a young child.

The Claimant 'C' suffered a severe brain injury as a consequence of hypoxia during her birth in 2015. The hypoxia resulted from clinical negligence, for which the Defendant Health Authority accepted responsibility. It was agreed that C's life expectancy is 29. At the trial of damages, the parties agreed that if C had not sustained injury she would have had a normal life expectancy, was likely to have gained GCSEs and higher qualifications leading to paid employment, was likely to have worked to the age of 68 and received a pension for the remainder of her life. Her loss of earnings to age 29 was agreed at £160,000. The parties agreed that the Trial Judge was barred from making any award of pecuniary losses during the lost years (i.e. the additional years of life C would have enjoyed if she had not been injured) due to the decision in *Croke v Wiseman [1982]* to the effect that such awards cannot be made in cases where the claimant is a young child. The Judge granted a certificate for a leapfrog appeal to the Supreme Court to enable the correctness of the decision in *Croke* to be reviewed.

The principal issue before the Supreme Court was whether the decision in *Croke* was inconsistent with earlier decisions of the House of Lords in *Pickett v British Rail Engineering Ltd [1980]* and *Gammell v Wilson [1982]*. The correctness of those House of Lords' decisions was not challenged. Accordingly, proceeding on the basis that the reasoning in those cases was not in question on this appeal, all members of the Court agreed that:

- *Pickett* established, and *Gammell* confirmed, that damages for pecuniary losses during the lost years are recoverable in English law.
- *Pickett* and *Gammell* do not restrict lost years damages to claimants who have, or may in future have, dependants.
- Lost years damages are in principle available to claimants who were injured during early childhood, provided that the loss can be proved in accordance with normal principles.
- To calculate damages for the lost years, it is usual to apply a multiplier, derived from actuarial tables (the Ogden Tables), reflecting the number of lost years (i.e. the difference between the claimant's actual life expectancy and the life expectancy which the claimant would have enjoyed but for the injury), but discounted so as to allow for the fact that a lump sum is being given now instead of periodical payments over those years (and also to allow for any contingencies not already taken into account), to a multiplicand reflecting the net annual loss during that period (i.e. the loss of annual income net of tax and after deduction of the claimant's probable living expenses).

CASE UPDATES

The decision of the majority in *Croke* that no award for the lost years should be made where the claimant was a young child was based on the absence of dependants. The Supreme Court held that reasoning was inconsistent with legal principle and with *Pickett* and *Gammell*. The decision in *Croke* was, therefore, incorrect.

Lord Reed, giving the majority Judgment, said '*There is no reason of legal principle why a claimant's ability to obtain an award in respect of his own pecuniary losses should depend on the existence of dependants. The claim for lost years is in respect of the claimant's own loss, not in respect of anyone else's, and his or her right to damages is not in any way dependent on how they might be used … That is not to deny that a rational distinction might be drawn in cases of this kind, for reasons of social policy, between persons with dependants and persons without dependants. However, in the absence of any legal principle which could justify drawing such a distinction, doing so for reasons of social policy lies within the domain of the legislature rather than the courts.'*

The majority rejected the Health Authority's argument that the decision in *Croke* should be upheld on the basis that the assessment of damages for the lost years where the claimant is a young child is too speculative. Damages in tort are compensatory and the claimant is entitled to be placed in the position they would have been in if the tort had not been committed. That general principle applies just as much where the claimant was injured as a young child as where the claimant was injured as an adult. The Court cannot properly exclude the recovery of compensatory damages, as a matter of principle, on the ground of the claimant's age. Where the evidence does not enable the loss to be precisely quantified, the Court must assess damages as best it can on such evidence as is reasonably available.

Developments since *Pickett* and *Gammell* have reduced the difficulties of assessment, for example, the use of actuarial tables and statistical evidence of average earnings. Claimants increasingly rely on evidence about a range of likely outcomes based on their family circumstances and attitudes. In this case, the evidence available about C's family background had enabled the parties to reach agreement on likely qualifications, type of employment and lost lifetime earnings. If it is possible for the Courts to assess a child claimant's lifetime loss of earnings, it was difficult to see why they could not do the same in respect of lost years earnings.

Further, the attempt to exclude claims for the lost years by young children also invited the question of where the line was to be drawn. As the distinction sought to be drawn between claims by young children and claims by older children or adults had no basis in legal principle, the Court could not draw a line. Whatever the age of the claimant, the Court has to assess just compensation as best it can on the material reasonably available.

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Lady Rose, dissenting, concluded that she would dismiss C's appeal on the basis that damages for lost earnings, at least where there is no evidence before the Court as to the claimant's earning capacity or individual characteristics, should be awarded up to the end of the survival period and should not extend to the lost years. Lady Rose considered that there is a principled distinction between adult claimants and young child claimants. For an adult claimant, the Court has before it some evidence of the individual characteristics and abilities of the person whose loss is being compensated. Based on that evidence, the Court can make findings about what that person would have achieved in their working life if their life had not been irrevocably changed by the defendant's negligence.

The Court can then assess the value of what the person has lost. Where the claimant is a child and there is no evidence about how that individual would have grown and developed, the Court is required instead to calculate damages on the basis of assumptions about the child's future abilities, opportunities and earning power, based on factors such as their gender and their family background, including their social class. Lady Rose considered this pushed the Court into '*uncomfortable territory'* and contradicts a fundamental principle of tort law that the loss to be compensated is the loss suffered by the individual claimant. Whilst the Ogden tables assist in determining the appropriate multiplier, they do not assist in determining the multiplicand.

Lady Rose acknowledged that the same difficulties arise in relation to assessing a young child's lifetime loss of earnings, but considered there were good policy reasons for awarding such damages which did not apply to lost years earnings and that difference in approach should not be abandoned for the sake of consistency. A claimant has a need for a sum of money to pay for their care during the survival period and that need is met by the award of lost earnings. A claimant has no such need during the lost years. Lady Rose also referenced the additional burden placed on insurers and the NHS Defendant herein as a policy reason justifying the distinction.

Accordingly, by a majority of four to one, the Supreme Court allowed C's appeal, overruling the decision in *Croke*. C's case has been remitted to the Trial Judge to decide whether C should be awarded lost years damages on the facts of her case and, if so, what the value of that award should be.

Lord Burrows, in his concurring Judgment, commented that a reconsideration of *Pickett* and *Gammell* is called for. As this was unlikely to be taken up by the Legislature, Lord Burrows expressed hope that '*there will be an opportunity in a future case to consider Pickett afresh with a seven-person court and full submissions on its merits and demerits'*.

CASE UPDATES

Fixed Recoverable Costs - Transitional Provisions - Part 8 Costs Only Proceedings - Contracting Out

Collins v The Chief Constable of Thames Valley Police
[2026] EWHC 117 (SCCO)

In relation to a non-personal injury claim that had settled pre-issue prior to 1 October 2023 but costs-only proceedings were issued after 1 October 2023, the Court had to decide whether the Claimant ('C') was entitled to an order for costs to be assessed on the standard basis or fixed recoverable costs ('FRC') as prescribed by CPR 45. Whilst C was ultimately successful in obtaining an order for assessed costs on the facts of this case, the Costs Judge concluded that, on the correct interpretation of the transitional provisions set out in the Civil Procedure (Amendment No.2) Rules 2023, issuing Part 8 costs proceedings may trigger the application of FRCs.

When arresting C, the Defendant's police officers had seized guns found at his home. A Judge made a destruction order that applied to some but not all of the guns. C submitted an application for the return of the remaining guns but was informed that they had been destroyed. C's solicitors wrote a Letter of Claim alleging negligence and/or wrongful interference in respect of the destroyed guns. Liability was not in issue. Expert evidence was obtained as to the value of the destroyed guns.

On 17 January 2023, D made a Part 36 offer of £32,500. The offer was made using Court Form N242A which stated that if the offer was accepted within 21 days, D would be liable for C's costs in accordance with CPR 36.13. Within the 21 day relevant period, C accepted D's Part 36 offer.

The parties were unable to agree costs. Accordingly, on 31 December 2024, C issued Part 8 costs only proceedings. D served an Acknowledgement of Service indicating an intention to contest the making of an order for assessed costs.

The issues for determination by the Court were whether:

(i) FRCs were excluded by virtue of the fact that the substantive claim fell within the scope of CPR 26.9 (10)(e);

(ii) FRCs did not apply as the substantive claim was a non-personal injury claim that settled without proceedings being issued, per the transitional provisions set out in the Civil Procedure (Amendment No. 2) Rules 2023;

(iii) FRCs were ousted by the express terms upon which the substantive claim settled in February 2023.

CASE UPDATES

CPR 26.9(10)(e)(i) provides that a claim against the police which includes a claim for an intentional or reckless tort must be allocated to the multi-track. Pursuant to CPR 45 cases which would normally be, or are, allocated to the multi-track fall outside the scope of FRCs.

The Judge found that on the facts of this case, it fell within CPR 26.9(10)(e)(i). The reference in C's Letter of Claim to wrongful interference with goods clearly suggested a claim in conversion and / or trespass to chattels. The destruction of the guns was self-evidently the consequence of an intentional act on the part of D. C was, therefore, entitled to an order for costs to be assessed on the standard basis.

However, the Costs Judge proceeded to reach conclusions on the other issues raised.

The transitional provisions state that the amendments to the Rules which introduced FRC's only apply (in relation to non-personal injury claims) where proceedings are issued on or after 1 October 2023. C submitted that as this claim settled without proceedings being issued, FRCs had no application. C's position was that the reference to '*proceedings are issued'* meant proceedings in the substantive claim, not any Part 8 costs-only proceedings. D's position was that C's Part 8 costs -only proceedings, which were issued after 1 October 2023, were caught by the 2023 Rules and, therefore, FRCs applied.

The Judge preferred D's position and held that C's Part 8 costs only proceedings issued on 31 December 2024 triggered the application of the FRC regime to the claim. No material distinction should be drawn between the substantive claim and costs only proceedings. There is a single continuing claim which subsists until all elements have been concluded. Accordingly, but for the conclusion that the case fell within CPR 26.9(10(e)(i), the FRC regime would have applied.

Pursuant to CPR 45.1(3), FRCs do not apply where the parties have expressly agreed they should not. C submitted that his acceptance of D's Part 36 offer amounted to an express and effective 'contracting out' of FRCs because the offer, made on the Court Form N242A, included the standard proviso that if the offer was accepted within the relevant period (which it was), D would be liable for C's costs in accordance with rule 36.13, which provides for costs to be assessed on the standard basis if not agreed.

The Judge again preferred D's position. The Judge held that offer and acceptance pursuant to Part 36 cannot be construed as an effective 'contracting out' of FRCs. It invokes a procedural, not a contractual, process and simply confers a right to have costs determined by the Rules. CPR 36.13 (3) includes the proviso '*except where the recoverable costs are fixed by the Rules'*.

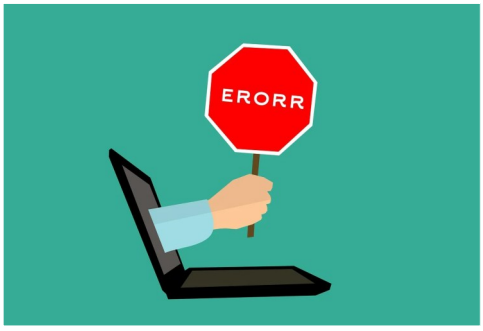
Accordingly, on the facts of this case, the Claimant was entitled to an order for costs to be assessed on the standard basis as the claim fell within CPR 26.9(10)(e)(i). However, if it had not, FRCs would have applied.

CASE UPDATES

Limitation - Mistake in Identity of Defendant - Substitution of Parties

Adcamp LLP v Office Properties PL Limited (in Liquidation) [2026] EWCA Civ 50

The Court of Appeal has given Judgment in two appeals holding that it was not possible to substitute one defendant for another after expiry of the limitation period where the claimant had sued the original defendant in the mistaken belief that they had acquired the liabilities of the proposed new defendant.



The Court has held that the Limitation Act 1980 Part III s.35(6) and CPR r19.6 were not intended to deal with a case where a claim was properly constituted within the limitation period and there later arose a need to substitute either party because of a subsequent transfer of the interest in or liability for the claim. The drafter of the Act had deliberately limited the circumstances in which a mistake could be relied on to those where it was a mistake as to name, not identity.

The Court overruled the longstanding obiter dicta of Leggatt J in *Insight Group Ltd v Kingston Smith [2014] 1 WLR 1448*.

Whilst this decision has provided clarity to defendants, permission to appeal to the Supreme Court has been granted.

The Facts

The first appeal, *Office Properties PL Limited v Adcamp LLP*, was against a decision in January 2025. Office Properties PL Limited ("Office Properties") engaged a firm of solicitors, then known as Pitmans LLP ("Pitmans"), to advise it in relation to a dividend paid and a lease guarantee entered into. In December 2018, the partnership business of Pitmans was acquired by Bircham Dyson Bell LLP, which then changed its name to BDB Pitmans LLP ("BDB"). There was, however, no novation of liabilities from Pitmans to BDB at this point. In 2019, Pitmans changed its name to Adcamp LLP. It was dissolved in 2021, but restored to the register in 2023.

Office Properties issued a Claim Form against BDB in August 2022. It claimed that Pitmans' advice had been negligent, that BDB had assumed responsibility for Pitmans' liabilities and that BDB was, accordingly, liable to compensate Office Properties. The parties agreed, and the Court approved, a number of extensions of time for service of the Claim Form.

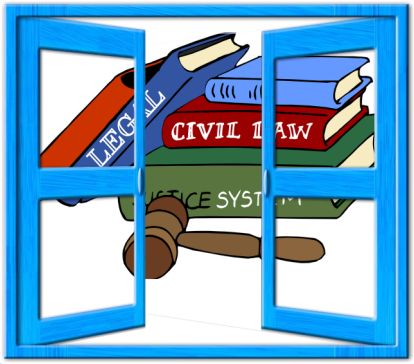
CASE UPDATES

Following receipt of a letter from BDB's solicitors in September 2023, in which BDB denied that there had been any assumption of responsibility by BDB for the acts and omissions of Pitmans, Office Properties amended the Claim Form to add Pitmans (under its new name Adcamp LLP) as the first defendant, re-numbering BDB as the second defendant. In December 2023, the Claim Form was further amended to delete BDB as second defendant. The remaining claim was against Pitmans. As the Claim Form had not yet been served, CPR rule 17.1 permitted these amendments to be made without permission. It was common ground between the parties that Office Properties issued the original Claim Form against BDB in the mistaken belief that BDB had, as a matter of law, assumed responsibility for any liability which Pitmans had to Office Properties.

The Re-Amended Claim Form was served on Pitmans with a deemed service date of 2 September 2024. On 13 September 2024, Pitmans issued an application to disallow the amendments made without permission. The Court had to consider whether it would have allowed the amendment had permission been required.

The second appeal, *Mark William Lee & Another v BDB Pitmans LLP & Another* (the "Lee Appeal"), was against a decision in November 2025. The Claimants, Mr Lee and Kenilworth Claim Limited (in liquidation) (the "Lee Claimants") retained Pitmans to advise on a property transaction in February 2018. The Lee Claimants also contended that Pitmans' advice was negligent. The Lee Claimants issued a Claim Form on 14 February 2024. The sole defendant was BDB, on the basis that BDB was alleged to have assumed responsibility for any liability that Pitmans had to the Lee Claimants upon the acquisition by BDB of Pitmans' business in December 2018. On 4 September 2024, BDB issued an application to strike out the claim, contending that there was no arguable basis on which it could be liable for Pitmans' alleged wrong. On 25 January 2025, the Lee Claimants cross-applied for permission to amend the Particulars of Claim to add particulars of novation, estoppel or acknowledgment, alternatively to substitute Pitmans (under its current name Adcamp LLP) as defendant.

In both appeals, the relevant limitation period for a claim against Pitmans was current at the time of the issue of the original Claim Form (in each case naming BDB as the defendant). The limitation period had, however, expired by the time the amendments were made to add, and then substitute, Pitmans as a defendant.



It was common ground that the case did not fall within the Limitation Act 1980 Part III s.35(6)(a), which provides for the substitution of a party where the original party is included in the Claim Form "in mistake for the new party" (referred to as the "first gateway"). In this case, the nature of the mistake was as to the defendant's identity because of the mistaken belief that BDB had assumed responsibility for Adacamp's liabilities. The issue was, therefore, whether, under s.35.6(b), any claim already made in the original action could not be maintained "by or against an existing party" unless Adacamp was added or substituted as a second defendant (the "second gateway").

The Court of Appeal's Decision

The Court of Appeal allowed the Defendants' appeals.

The Court rejected the Defendants' submission that s. 35(6)(b) was inherently limited to claims that would fail for reasons other than their merits (e.g. for constitutional or procedural reasons). The Court, therefore, implicitly endorsed Leggatt J's formulation of the test to be applied under s. 35(6)(b).

However, that test was not met in these cases, because the two claims were not the same. For the two claims to be the same, the essential facts which had to be averred in each case had to be the same, and this would not be the case where there were two different defendants being sued on two different bases. The cases were, therefore, materially different from *Parkinson Engineering Services Plc (in liquidation) v Swan [2009] EWCA Civ 1366*; and *Irwin v Lynch [2010] EWCA Civ 1153*. These cases concerned the substitution of a new claimant and could not be regarded as equivalent to the substitution of a defendant; that would overlook the fundamental starting point that Parliament had chosen to give a defendant a statutory defence by reason of the passage of time in the Act (*Haward v Fawcetts (a Firm) [2006] UKHL 9* followed).

The Court acknowledged that the effect of this decision might well be that there could never be substitution of a defendant under s. 35(6)(b), despite the Act apparently expressly permitting it, but held that that could be explained by the legislative history. The result is that the distinction between Leggatt J's two categories of case now really matters. Substitution can be permitted in the first type of case, but not the second.

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

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