DOLMANS INSURANCE BULLETIN

Welcome to the February 2020 edition of the Dolmans Insurance Bulletin

In this issue we cover:

REPORT ON

- Health and Safety Prosecutions, the Definitive Guideline and the Public Sector Adjustment of Fines - *R (HSE) v Central Bedfordshire Council*, 4 February 2020, Luton Magistrates' Court

RECENT CASE UPDATE

- Civil procedure - costs - conduct - indemnity basis
- Costs - fixed costs - Court fee remission
- Employers' liability - reasonably practicable test - contributory negligence
- Late service - relief from sanctions - striking out - Witness Statements
- Vicarious liability - limitation - sexual abuse

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, Partner, at **justinh@dolmans.co.uk**

DOLMANS REPORT ON

HEALTH AND SAFETY PROSECUTIONS

THE DEFINITIVE GUIDELINE AND THE PUBLIC SECTOR ADJUSTMENT OF FINES

R (HSE) v Central Bedfordshire Council

4 February 2020, Luton Magistrates' Court

The Definitive Guideline for Sentencing in respect of Health and Safety Offences ("DG") appears to contain an explicit 'entitlement' for public sector organisations in regard to a reduction in fines; it states:

"Where the fine will fall on public or charitable bodies, the fine should normally be substantially reduced if the offending organisation is able to demonstrate the proposed fine would have a significant impact on the provision of its services."

There has been considerable debate as to what this indication in the DG actually means in the context of public sector organisations and, moreover, what evidence is expected to be deployed by such organisations at sentencing in order to maximise their opportunity to secure a just and proportionate sentence, such that their future provision of services to other local service users is not jeopardised.

Previous sentencing decisions in cases like *R (HSE) v Havering Borough Council [2017] EWCA Crim 242* have served to cause considerable anxiety as to the impact of the DG in public sector circumstances, particularly given the wider demands on public sector resources and, therefore, the immediate impact upon local authority service users by a significant regulatory fine. There have been a number of cases, following in the wake of *Havering*, where very significant regulatory fines have been imposed on public sector organisations, consistent with the terms of the DG.

Recently, Dolmans had cause to represent a public sector client in a sentencing environment where these issues were front and centre in the sentencing debate.

DOLMANS REPORT ON

On 4 February 2020, Central Bedfordshire Council (represented by Dolmans' Peter Bennett) was sentenced in Luton Magistrates' Court for breaches of the Work at Height Regulations, leading to serious injuries sustained by a school caretaker who, in December 2017, fell more than 2 metres from a school roof/stepladder whilst trying to retrieve a training shoe belonging to a school pupil. The caretaker had been sent to retrieve the said training shoe, which had been thrown onto the roof at the school by another pupil, just before time for the pupils to be collected from school and taken home for the end of term. He had gained access to the single storey roof using a long stepladder, which was the normal apparatus for such an activity at the school. However, by common consent, this was not a suitable piece of equipment and, moreover, whilst the caretaker had received ladder and working platform training in the past, this was some considerable time ago and his PASMA training certificate had expired by the time in question. Moreover, there was no specific risk assessment for the work in question and the generic work at height risk assessment was wholly inadequate for the risks involved.

The caretaker was distracted by a member of staff during the course of his efforts to retrieve the training shoe and fell from the height of the single storey roof to the ground below, striking a metal barrier erected adjacent to a nearby entry door (to protect the edge of a wheelchair ramp) on his way down. Serious multiple injuries were caused, including 8 broken ribs, a punctured lung and a torn liver. The injured person spent a significant period of time, over Christmas 2017, in hospital and, in particular, in the high dependency unit. He subsequently retired from his employment with the council and his civil claim for damages is outstanding.

At the point of our instruction in July 2018, the council had already dealt with 2 Improvement Notices served by the Health and Safety Executive. These Improvement Notices related to the alleged lack of planning and safe system of work in relation to the activity of retrieving pupils' shoes from the school roof. We were initially consulted in relation to a proposed PACE interview to deal with work at height within schools generally.

A prosecution was eventually instigated against the council arising out of the December 2017 incident in August/September 2019, leading to the aforementioned sentencing hearing before District Judge Leigh-Smith in Luton Magistrates' Court. Central Bedfordshire Council had, on advice, indicated a desire to plead guilty at a preliminary hearing in October 2019. Sentencing was then deferred to February 2020, in part, to give the council an opportunity to consider its position financially, as February was the usual point in the financial year when budgets were considered and fixed for the succeeding financial year.

DOLMANS REPORT ON

Detailed mitigation evidence was compiled on behalf of the council, in regard to which there was full and excellent engagement by senior members of the council's management team. This evidence included a very detailed Witness Statement from the Director of Resources regarding the impact a fine would have on the council's delivery of services to the public, consistent with the proviso as to the same contained in the Definitive Guideline (see above).

In addition, this Witness Statement dealt with the savings which the council had been required to make over the course of the last 8 to 10 years and other unique challenges faced by the council as to the delivery of adult social care in the context of the locality; where the ageing population was growing well above the national average and there were further challenges to the council in terms of the generation of income generally.

Additionally, a detailed Witness Statement and circa 130 pages of exhibits was provided in regard to the council's approach to health and safety in schools generally in order to demonstrate that this incident was an aberration within an overall robust and well thought out system for the provision of advice and support to schools, albeit recognising that the council (like many health and safety functions) was an enabling function, not a day-to-day oversight and management function.

The prosecution, by reference to the DG and the size of the council's annual revenue budget (placing it firmly in the "large organisation" category) contended for a starting point in respect of a fine of £600,000, with an overall fine range of £300,000 to £1.5 million.

This was based on an analysis of medium culpability, medium risk of harm and/or category A harm (risk of death) (ie – a category 2 case). The prosecution also indicated that the Sentencing Judge should consider whether to move up within the sentencing range to allow for the fact that the breach had also been a significant cause of harm. All of this analysis was perfectly appropriate and expected given the impact of the annual revenue budget of the council (on evidence, circa £196 million net) and the requirements of the DG.

The District Judge, inevitably, heard from both parties at the sentencing hearing. Counsel for the council had provided a detailed Summary of Mitigation document in support of lengthy submissions as to sentence and mitigation on the day.

DOLMANS REPORT ON

The District Judge found that the incident did involve medium culpability and a medium risk of harm, but level B harm, rather than the level A harm contended for by the prosecution. This resulted in an immediate adjustment to the sentencing parameters provided by the DG. On this basis, the case became a category 3 case, giving rise to a starting point for a fine of £300,000 and an overall fine range of £130,000 to £750,000.

Based on the significant mitigation evidence provided by the defence, the District Judge accepted that it was proper for him to move to the lowest end of this range, and then move significantly below that point. He actually established a starting point for a fine at £50,000 (due to the impact that a mathematically calculated fine would have on the provision of council services in light of the evidence provided by the Director of Resources). Applying further mitigating factors, he arrived at a figure (subject to reduction for early guilty plea) of circa £14,000. Applying the conventional one third deduction for early guilty plea, this produced a net fine of **£9,380.00**.

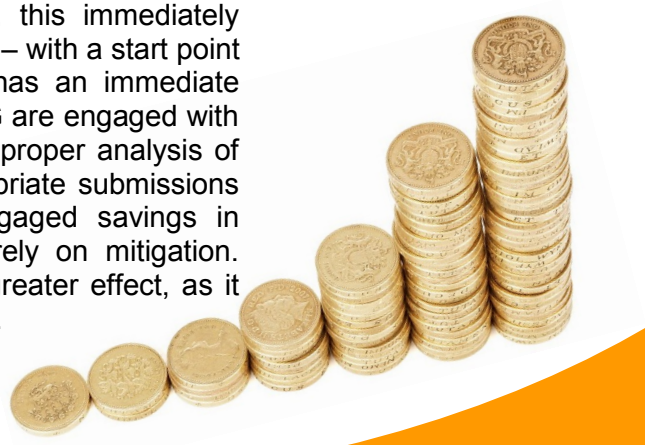
Analysis and Comment

A number of factors are worthy of particular consideration in this case:

- The fine range suggested by the prosecution – £300,000 to £1.5 million – with a start point of £600,000 – is perfectly reasonable and, indeed, is required by the Definitive Guideline in the context of a "large organisation", which Central Bedfordshire Council most certainly is. **In that sense, this fine range was the correct fine range and nothing which the prosecution suggested in that regard was untoward at all. The fine range above is the "expected" fine range.**

- Inevitably, the figures above are informed by the prosecution analysis of the offending. Any element of that analysis which is not accepted by the Sentencing Judge, conceivably, has an impact on ultimate sentencing parameters and, therefore, sentence. Thus, the above figures were based on medium culpability, medium risk of harm and/or level A harm (ie – a category 2 situation). However, the Judge found medium culpability, medium risk of harm and/or **level B harm**, which takes this down to a category 3 situation.

- By being category 3 rather than category 2, this immediately reduces the fine range to £130,000 to £750,000 – with a start point of £300,000 (for a large organisation). This has an immediate impact on fines before the other parts of the DG are engaged with regard to mitigation. Put simply, a careful and proper analysis of the factual circumstances, supported by appropriate submissions from counsel at sentencing, immediately engaged savings in terms of the fine without having to rely entirely on mitigation. Mitigation evidence would then be applied to greater effect, as it were, to the lower parameters thereby achieved.



- The powerful mitigation provided by the defence (as above) comprised 2 themes:

  - The materials that the council's health and safety team provided, which enabled us to make a concerted attack on the proposition that this school had no idea what it was doing with regard to health and safety, and, moreover, emphasise the council's good and structured approach to health and safety generally (within an overall definition of an enabling facility, not a day-to-day management facility).
  - The excellent and powerful Witness Statement from the council's Director of Resources, which provided clear indications, with appropriate figures and examples, of the impact that a large regulatory fine would have on the provision of services by Central Bedfordshire Council. This Witness Statement, and the active engagement of the Director of Resources in its preparation, was absolutely critical. Deliberately, a significant amount of time was spent on getting this evidence absolutely right before sentencing. This included deferring sentencing to a point when the next annual revenue spend (for 2020-2021) was clearer.

- As a result of that mitigation, and the detailed explanations provided by Bernard Thorogood of counsel (defence counsel) as to the Guideline being a guideline "not a tramline", as the Court of Appeal have put it in previous cases, meant that the District Judge felt confident in stepping outside the one dimensional parameters of the DG in isolation (advocated by the prosecution) in order to achieve a just and proportionate sentence having regard to the factors and constraints applicable to the council in the 'real world'.

- This was (is) a reasonable and proportionate fine imposed by a Judge fully engaged with the evidence provided. However, the nature of the injuries sustained argued strongly (see below) for a movement up within the fine range, so a 'raw fine' (ie – before early plea discount) in excess of £1m could have been applied here without any real deviation from the DG.

- This was not a 'lucky escape', it was the result of concerted efforts by all concerned, including the legal team; albeit the legal team are only as good as the material provided to them, and we were provided with exemplary material in this instance.

Clearly, like any sentence, there is always a significant degree of latitude available to a particular Sentencing Judge who must form their own view of the material put before them and the facts of the case in question; however, perhaps the biggest issue, as the legal representative, to get across to duty holders is that proper, experienced representation enhances the chances of a good outcome, as is illustrated by the outcome achieved in this matter. This outcome is clearly at the upper end of what can be achieved (because of the strength of the mitigation evidence deployed), but an expert and structured response to regulatory intervention of this nature is critical to management of the impact of the eventual fine in what continues to be financially difficult times for the public sector at large.

Peter Bennett
Partner
Dolmans Solicitors

For further information regarding this article, please contact
Peter Bennett at **peterb@dolmans.co.uk**
or visit our website at **www.dolmans.co.uk**

DOLMANS RECENT CASE UPDATE

Civil Procedure - Costs - Conduct - Indemnity Basis

Basia Lejonvarn v (1) Peter Burgess (2) Lyn Burgess
[2020] EWCA Civ 114

In the substantive case, Mr and Mrs Burgess had claimed damages from the Defendant, an architect, who had been a friend of theirs, for breach of contract or negligence regarding work done on their garden landscaping project. The Defendant had provided help to Mr and Mrs Burgess free of charge.

Shortly after proceedings began, the Defendant made a Part 36 Offer of £25,000. This was rejected.

At a trial of preliminary issues, the existence of any contract was rejected. It was, however, found that the Defendant had owed the Claimants a duty of care, but the Court of Appeal held that the Defendant had provided very few services and had not been negligent in any of them. The entire claim was dismissed.

Despite losing in the Court of Appeal, the couple then brought a new case described as "diametrically opposed" to their original claim. They failed again when the new case went to Trial.

In the High Court, the Defendant was awarded costs on the standard basis. The Defendant sought an assessment on an indemnity basis before the Court of Appeal.

It was held that the Judge had erred in not addressing the issue of whether a reasonable Claimant would have concluded that the claims were so speculative, weak or thin that they should no longer be pursued; *Excelsior Commercial & Industrial Holdings Ltd v Salisbury Hamer Aspden & Johnson (Costs) [2002] EWCA Civ 879*. It was not the right test to focus on whether the claims were *"hopeless"*. It was held that not less than one month after the handing down of the Court of Appeal Judgment, the Claimants should have realised that the remaining claims were so speculative that they should not be pursued.

Even though the Defendant had beaten her Part 36 Offer, a Defendant had no automatic entitlement to indemnity costs. However, the fact that a Defendant had beaten their own offer was plainly important in the exercise of the Court's discretion under CPR Pt 44. The Defendant had acted sensibly and proportionately at the outset; the Claimants had not. Their failure to accept or beat the offer had been a separate element of their conduct which was out of the norm, which justified indemnity costs.

DOLMANS RECENT CASE UPDATE

The Defendant's final costs bill was £724,265, compared with her approved costs budget of £415,000. It was argued that the award of indemnity costs would reward the Defendant for failing to remain within the budget. However, it was held that whilst the costs budget would in many cases be the appropriate starting point for the final assessment, the budget and assessment were different figures produced by different considerations with different purposes. If there was an indemnity costs order, then prima face any approved budget became irrelevant. The assessment of costs on an indemnity basis was not constrained by the approved costs budget.

The Defendant's Appeal was allowed, although the Court of Appeal declined to award indemnity costs dating back to when the Defendant's Part 36 Offer was made, but instead set them from a month after the first Court of Appeal Judgment, which should have seen an end to the proceedings. It was unreasonable for the Claimants to pursue their claim after this date and not accept the Part 36 Offer.

Costs - Fixed Costs - Court Fee Remission

Anayot Ivanov v Steven Lubbe
[2020] CC (Central London)

The Court was required to determine issues concerning the fixed costs regime in CPR Pt 45 IIIA in a case which had begun in the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents and ended when the Appellant accepted a Part 36 offer in subsequent Part 7 proceedings.

The parties had agreed costs, except for the issue fee. The Respondent argued that the Appellant would have been entitled to fee remission in respect of the Court issue fee on the basis that he was unemployed, and, in failing to do so, the fee had been unreasonably incurred. The Appellant issued an Application seeking payment of this outstanding disbursement.

A District Judge dismissed the Application, ruling that the issue could only be determined by Detailed Assessment proceedings and not via a freestanding Application.

On Appeal, the Judge held that the Appellant had followed the correct procedure by making an Application as opposed to invoking the assessment procedure. The Court's discretion under the fixed costs regime simply provided for the costs consequences flowing from acceptance of a Part 36 offer; it did not make an order. Thus, there was no right to begin Detailed Assessment proceedings. Further, fixed costs are quantified in accordance with Tables 6B to 6D, and so there was no need for assessment. Therefore, a party seeking to invoke the Court's costs jurisdiction had to do so via an Application under CPR 23.

DOLMANS RECENT CASE UPDATE

In deciding whether to award the Court fee, the Court was assessing costs under the regime in Rule 44.3. That rule made it clear that the burden of proof was on the receiving party to satisfy the Court that the costs were reasonable and proportionate. The Court expected litigants of modest means, even unrepresented litigants, to apply for fee remission. However, there were strong public policy grounds for allowing fee exempt Claimants to claim their Court fees from Defendants rather than from the public purse. There was still a loss where fee remission was utilised. In principle, it was not unreasonable for the Appellant to pass the costs of wrongdoing to the Respondent. The Respondent was, therefore, ordered to pay the fee.

Appeal allowed.

Employers' Liability - Reasonably Practicable Test - Contributory Negligence

Lee Walsh v CP Hart & Sons Limited
[2020] EWHC 37 (QB)

This case serves as a reminder of the requirements for the test of reasonable practicability in accident at work claims.

The Claimant had fallen off the back of a vehicle whilst making deliveries. The vehicle had a tail lift which could be raised or lowered to lift items into or out of the van. The tail lift had been lowered by the Claimant himself (whilst positioned inside the van). Whilst waiting for a pallet truck to return to collect the next pallet from the Claimant's vehicle, the Claimant stepped backwards, or lost his footing, and fell approximately one metre to the ground, striking his head and sustaining serious head injuries.

The risk assessment identified working at height and operation of the tail lift were high risk hazards. The Claimant argued that the employer had breached Regulations 4 and 6 of the Work at Height Regulations 2005 in failing to ensure there were suitable and sufficient measures to prevent, so far as reasonably practicable, any person falling a distance liable to cause personal injury. Such measures, it was argued, should have ensured that the tail lift was always raised if a worker was in the back of the vehicle and that employees should have been trained to always return the tail lift to the raised position when anyone was inside the back of the vehicle.

At first instance, the Judge found there to be no breaches of the Regulations, in that it would not have been reasonably practicable to raise the tail lift when the back of the lorry was occupied, and that the test was a simple balancing exercise, which he weighed in the Defendant's favour.

The Claimant appealed the dismissal of his claim. He submitted that the Judge wrongly treated the test of reasonable practicability as involving a simple balancing exercise, rather than one in which a measure was only not reasonably practicable if there was gross disproportion between the quantum of risk and the sacrifice involved in taking that measure.

On appeal, the High Court agreed with the Claimant. The Judge, at first instance, had misdirected himself in considering the question of whether instructing employees only to work or remain in the back of the vehicle if the tail gate was in the raised position was "reasonably practicable" within the meaning of Regulation 6(3). The starting point for the test was the decision in *Coltness Iron Co Ltd v Sharp [1938]*, considered in *Marshall v Gotham Co [1954]*. *Marshall* stated that the test of what was "reasonably practicable" depended on a consideration, in light of the whole circumstances at the time of the accident, of whether the time, trouble and expense of the precautions suggested were, or were not, disproportionate to the risks involved. In the instant case, had the Judge appreciated that the risk was high because of the potential for serious injury or death, that would have put into context the reasonable practicability of the measure of ensuring the tail gate was in the raised position when workers were in the back of the vehicle. The starting point was whether the measure in question was practicable. If it was, the Court should consider whether it was "reasonably" practicable, namely, whether the employer could show that the cost and difficulty of the steps that it would have to take so substantially outweighed the quantum of risk involved as not to be reasonably practicable. The mere balancing act undertaken by the Judge did not address the concept of "reasonable practicality". The Judge, therefore, misdirected himself in relation to the test to be applied and wrongly decided that the measure was not reasonably practicable.

However, the High Court reduced the level of damages to reflect contributory negligence at 50% on the basis that he had opened the tail lift himself.

Appeal allowed.

Late Service - Relief from Sanctions - Striking Out - Witness Statements

Syed v Shah
Ch D [2020] Lawtel [2020] 2WLUK 15

The Claimant had brought proceedings seeking a declaration against the Defendant that she was the beneficial owner of a property and that legal title should be transferred to her.

Witness Statements were required to be exchanged within the proceedings by 29 March 2019. The Claimant served her Witness Statements 28 days late. She applied for relief from sanction. The Application was refused.

On Appeal, it was held that it was clear that the Claimant's claim was heavily dependant on oral evidence and the importance of Witness Statements was clear. It was not a case of inadvertence, but a deliberate decision by the Claimant to take the risk that the Defendant would settle her claim, without taking steps to adduce the evidence required to win the claim. The Claimant had then benefitted from being able to scrutinise the Defendant's Witness Statement and tailor her evidence accordingly.

It was clear that the Judge had considered the prejudice to the Claimant in ending her claim. The Court had to look at the balance of prejudice in all the circumstances of the case and the need for litigation to be effective at a proportionate cost. The Judge had considered proportionality.

There were no grounds to interfere with the Judge's decision. He had carried out a clear balancing exercise, which had led to a robust decision that he was entitled to make.

Appeal dismissed.

Vicarious Liability - Limitation - Sexual Assault

BXB v (1) Watch Tower and Bible Tract Society of Pennsylvania (2) Trustees of the Barry Congregation of Jehovah's Witnesses [2020] EWHC 156 (QB)

The Claimant, B, was baptised as a Jehovah's Witness in 1986. She and her husband, who was also a Jehovah's Witness, became friendly with another couple within the congregation, Mr and Mrs S. Mr S was a 'ministerial servant', a member of the congregation with special responsibilities, who became an 'elder', one of the spiritual leaders of the congregation, in 1989. In April 1990, the two couples went door-to-door evangelising. The two couples returned to the home of Mr and Mrs S where, in a back room, Mr S raped B.

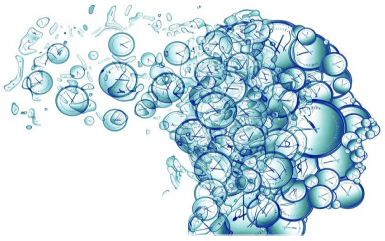
B did not report the rape immediately. In 1991, B discovered that Mr S had been sexually abusing a girl under the age of 14, CXC, who was also a member of the congregation. B reported both matters to the elders. The elders appointed investigators and a 'judicial committee', consisting of elders from a nearby congregation, was convened. There was a hearing at which B was asked questions in the presence of Mr and Mrs S. Mr S denied the allegations. The judicial committee found the allegations not proven.

In 2014, Mr S's offences were investigated by the police. There was a contested trial, at which B gave evidence. Mr S was convicted of raping B and of 7 counts of indecent assault against CXC and another individual, and was sentenced to 14 years imprisonment.

B suffered episodes of depression and PTSD. In June 2017, she issued proceedings alleging that the Defendants were vicariously liable for the rape committed by Mr S and that the Defendants were liable in negligence for the failure of the elders to adequately investigate her allegation. Whilst it was accepted that Mr S had raped B, liability was denied and a limitation defence raised.

DOLMANS RECENT CASE UPDATE

Limitation



Both the vicarious liability and the investigation claims were time barred with the limitation period in respect of the vicarious liability claim having expired more than 24 years previously. The Judge accepted B's evidence regarding the reasons for her delay, including that immediately after the rape she did not report it because she had been taught to forgive a 'brother' who was truly repentant and because she was terrified of bringing shame on Jehovah's name. After she reported the incident to the elders, she felt humiliated, upset and ashamed by their investigation and its outcome, and felt she would not be believed if she reported the matter to the police. The criminal trial in 2014 precipitated a significant psychiatric injury.

A Letter of Claim was sent in March 2015, following which the Defendants were able to carry out some investigations. The Judge ascribed no great significance to the delay between the Letter of Claim and the issue of proceedings in 2017. Whilst some potential witnesses were deceased, key participants remained available. The Defendants had interviewed some of the deceased witnesses, but maintained privilege over the notes of the interviews. The Judge noted that whilst that was their right, having elected to do so, the Defendants "*were hardly in a good position to assert that they were materially prejudiced by the delay"*. In all the circumstances, the Judge was unable to conclude that extending time would cause significant prejudice to the Defendants and held that it was equitable to allow the action to proceed in respect of both the vicarious liability claim and the investigation claim.

Vicarious Liability

The Judge considered precedent case law and applied the two stage test. The first question was whether the relationship between the Defendants and Mr S was capable of giving rise to vicarious liability. Applying *Cox v Ministry of Justice [2016]*, the key questions were (i) whether Mr S carried on activities as an integral part of the 'business' activities carried on by the Defendants and for its benefit and (ii) whether the commission of the rape was a risk created by the Defendants by assigning those activities to Mr S? The Judge concluded that the answer to both questions was *"yes"*.

Elders are the spiritual leaders of the congregation and the principal conduit through which the teachings of the faith are disseminated. *"An elder is as integral to the 'business' of a congregation of Jehovah's Witnesses as a priest is to the 'business' of the Catholic Church"*.

As regards creation of the risk, the Judge found that *"Any organisation that confers on its leaders' power and authority over others creates a risk that those leaders will abuse that power and authority …. Where an organisation makes rules for all aspects of its adherents' lives and sets its leaders up as moral and spiritual exemplars, it imbues those leaders with power and authority even outside the confines of their religious activities"*. The Judge considered that sexual abuse is almost always a form of abuse of power. Perpetrators often abuse their power to engineer a situation in which the abuse can occur and *"Any organisation that confers on its leaders' power over others creates the risk that they will abuse it in that way"*.

The second stage of the test required consideration of whether there was a close connection between the relationship between the Defendants and Mr S and the act of abuse. The Judge noted that B was an adult married woman and it was her decision to associate with Mr S, despite prior concerns about his behaviour (eg – greeting women members of the congregation by kissing them on the lips). Further, the rape did not occur while Mr S was performing any religious duty.

However, the Judge considered that Mr S's status as a ministerial servant, and subsequently as an elder, was an important factor in why B and her husband started to associate with Mr and Mrs S and the association continued. B and her husband discussed their increasing concerns about Mr S's behaviour (eg – flirtation with B, sexual innuendos) with Mr S's father, a senior elder, who responded that Mr S was suffering from depression. He requested that they provide Mr S with extra support. This made it difficult for them to break off the friendship.

The Judge found that the Defendants created, or significantly enhanced, the risk that Mr S would sexually abuse B by creating the conditions in which the two might be alone together by (i) Mr S's father's implied instruction that B continue to act as Mr S's confidante (an instruction which carried the authority conferred by the Defendants because of his position as an elder) and (ii) investing Mr S with the authority of an elder, thereby making it less likely that B would question his motives and emboldening him to think he could act as he wished with little fear of adverse consequences.

The rape occurred after the two couples had been out performing religious duties. The rape, thus, took place in circumstances closely connected to the carrying out by Mr S and B of religious duties and at a venue, Mr S's home, which was 'approved' by the elders of the Barry Congregation.

The evidence suggested that the rape had been precipitated by Mr S having formed the belief that there had to be an act of adultery in order to generate scriptural grounds for him to divorce his wife. The Judge considered that Mr S's mindset in this respect, *"in which he appeared to have equiparated rape and adultery"*, was closely bound up with his position as an elder.

In all the circumstances, the Judge concluded that the rape was sufficiently closely connected to the positions of Mr S and his father as elders to make it just and reasonable that the Defendants should be held vicariously liable for it.

Accordingly, the Judge found the Defendants liable to B for any damage that she could show was caused by the rape, including the investigation and hearing which were either the natural sequelae of the rape or matters which did not break the chain of causation. It was, therefore, unnecessary for the Judge to consider the investigation claim, although he made some obiter findings. B was awarded £62,000 by way of general damages. The claim for special damages failed on the evidence.

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

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

DOLMANS
SOLICITORS

DOLMANS

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**