

DOLMANS INSURANCE BULLETIN

Welcome to the May 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

Limitation and Other Arguments in Subsidence Claims

RS v Vale of Glamorgan Council

Claimants wishing to pursue claims relating to subsidence, including property damage caused by tree roots, have the usual burden of proving their case.

In addition, such claimants must ensure that they do not fall foul of limitation under Section 2 of the Limitation Act 1980.

These and other issues were considered by the Court in the case of *RS v Vale of Glamorgan Council*, in which Dolmans represented the Defendant Local Authority.



Background

The Claimant, being a Litigant in Person, owned a property adjacent to the Defendant Local Authority's adopted footway. The Claimant had lived in the said property since 1982. A large tree had been planted in the footway many years previously. The Claimant alleged that the said tree had a substantial root system which encroached under the Claimant's property, causing subsidence and cracks to a garden/boundary wall and threshold slab under a garden gate. As a result, the Claimant alleged that the garden gate could not be closed. There was also allegedly damage caused to the paving slabs on the adopted footway.

Preliminary Issues

The Claimant issued Court proceedings online, but failed to file and serve Particulars of Claim signed / verified by an appropriate Statement of Truth, contrary to CPR 22.1(1)(a). An Acknowledgment of Service disputing jurisdiction was, therefore, filed on behalf of the Defendant Local Authority and an Application issued to strike out the Claimant's claim in accordance with CPR 22.2(2). The matter was transferred offline.

The Claimant averred that it was an oversight not to have signed / verified the Particulars of Claim with an appropriate Statement of Truth. Given the likelihood that the Court would give such a Litigant in Person the benefit of doubt in the interests of justice, it was agreed to consent to a Court Order that the Claimant be granted permission to rely upon an appropriately signed / verified Particulars of Claim. However, the matter was to be transferred to a local court for allocation and the Claimant was to pay the Defendant Local Authority's costs of the Application.

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Claimant's Claim

The Claimant's Particulars of Claim, as subsequently verified by an appropriate Statement of Truth, confirmed that the Claimant was claiming:

- (1) An Order for removal of the tree to prevent the continuation of the alleged nuisance to the Claimant's property.
- (2) An Order requiring the Defendant Local Authority to undertake works to repair the damaged wall and gate, or payment of damages to cover the cost of such works, which were estimated not to exceed £5,000.00.
- (3) Further or other relief.
- (4) Interest.

Claimant's Evidence

In addition to a Witness Statement by the Claimant, various photographs, Google images and a letter / report from a subsidence specialist were adduced and exhibited to the Claimant's Particulars of Claim.

The said subsidence specialist was instructed by the Claimant before Court proceedings were issued and concluded that damage to the garden / boundary wall had not been caused by subsidence but by the mechanical uplift of the wall due to gradual, physical growth of the alleged tree roots. The content of the said letter / report was not admitted.



In any event, the Claimant did not have permission in the Court directions to rely upon any expert evidence and the subsidence specialist's letter / report was not compliant with Part 35 of the CPR.

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Defence, Tactics and Evidence

It was recommended that the tree be cut down, which it was before the Defendant Local Authority's Defence was filed and served. As such, it was argued within the Defence that the Claimant's claim for an Order requiring removal of the said tree was redundant and should no longer proceed.

With regards to the Claimant's claim for damages, a number of interesting arguments relating mainly to the Limitation Act 1980 were pleaded on behalf of the Defendant Local Authority within the Defence.

A detailed Witness Statement was obtained from a member of the Defendant Local Authority's arboricultural team, who also gave oral evidence at trial / the small claims hearing in this matter. This witness confirmed that the relevant tree had been cut down and, by reference to various Google Street View images, was able to adduce evidence that the alleged damage was present from at least October 2008. The said witness also attended the relevant location prior to making his Witness Statement and reiterated that there had been no deterioration in the alleged damage since at least October 2008, when the earliest relevant Google Street View image was taken. In addition, the Defendant Local Authority's witness was able to confirm that there had been no further root growth after the relevant tree had been cut down and that the remaining tree stump would be removed in due course.

Limitation Act 1980

It was argued within the Defence that in accordance with Section 2 of the Limitation Act 1980, an action founded on tort shall not be brought after the expiration of 6 years from the date on which the cause of action accrued.

It was accepted that in a claim for a continuing nuisance, the cause of action accrues fresh each day that the nuisance continues. However, it was argued that compensation can only be recovered for damage that arose within the relevant limitation period prior to the issuing of Court proceedings. This is because the cause of action in relation to specific damage accrues on the date it is caused.

The claim was issued on 10 December 2024. The relevant limitation period for the Claimant's claim for damages, therefore, began on 11 December 2018.

In his letter / report dated October 2022, the Claimant's subsidence specialist described the damage to the Claimant's garden / boundary wall as being longstanding.

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The Defendant Local Authority had undertaken a thorough examination of relevant Google Street View images of the Claimant's property prior to Court proceedings being issued, from which it was apparent at that time that the alleged damage was present and clearly visible as early as June 2011, and upon further consideration as early as October 2008 as referred to above. These Google Street View images were specifically referred to within the Defence and copies annexed to the same. In any event, it was clear from these various Google Street View images that the alleged damage was caused prior to 11 December 2018 and, therefore, more than 6 years prior to Court proceedings being issued.



It was argued that the Claimant, who had lived at the relevant property since 1982, ought to have been aware of the existence of the said damage at the time that the same arose. As such, it was also argued that the Claimant's claim for damages was statute barred pursuant to Section 2 of the Limitation Act 1980 and was denied in its entirety.

There had been significant correspondence between the Claimant and the Defendant Local Authority prior to Court proceedings being issued and the Claimant was advised by the Defendant Local Authority that his claim was out of time within this pre-action correspondence.

It was admitted that up until the time that the relevant tree was cut down on 29 January 2025, the Claimant had a cause of action against the Defendant Local Authority arising from the continuing nuisance caused by the encroachment of the tree's roots underneath the boundary of the Claimant's property, the extent of which was not admitted. In any event, it was reiterated that the tree had been cut down and the element of the Claimant's claim seeking an Order for removal of the same was redundant.

It was further admitted that if the encroachment of the said tree's roots into the Claimant's property caused the alleged damage, which was not admitted, then the Claimant would have had a cause of action against the Defendant Local Authority in nuisance if the claim had been brought within 6 years of the damage being caused. This period would have started in July 2015 at the very latest, but was likely to have been significantly earlier. The extent of any damage caused by the said encroachment was not admitted and the Claimant was required to prove the same.

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Judgment

The Trial Judge expressed concern at the Claimant's lack of proper expert evidence, having noted that the Claimant did not have permission to rely upon the subsidence specialist's letter / report and that the same was not compliant with Part 35 of the CPR in any event. The Trial Judge also noted that the Defence had not admitted causation of the alleged damage and put the Claimant to proof of the same.

The Trial Judge accepted the argument that whilst the cause of action for a continuing nuisance accrued fresh every day, the limitation period for the claim for damages started on 11 December 2018. He also agreed that the nuisance element of the claim had been satisfied by the felling / abatement of the tree.

The Trial Judge held that the Claimant would struggle to discharge the burden of proving causation without proper expert evidence and that the Claimant could not prove that the alleged damage was caused within the relevant limitation period.

Under cross-examination, the Claimant had provided new oral evidence relating to previous subsidence and the longstanding leaning of the garden / boundary wall that gave potential alternative explanations for the alleged damage.

Whilst the Trial Judge accepted that, based upon the Claimant's own evidence, the alleged damage had become worse during the limitation period, he could not be satisfied that this damage was caused by the tree roots.

Even if he was wrong regarding the above, the Trial Judge accepted the Defendant Local Authority's submission that it was impossible for the Court to quantify the claim for repairs based upon the evidence provided by the Claimant.

The Claimant's claim was, therefore, dismissed and although there was no order as to costs given that this was a Small Claims Track matter, the Order for the Claimant to pay the Defendant Local Authority's costs of the earlier Application stood and such costs were subsequently paid by the Claimant accordingly.

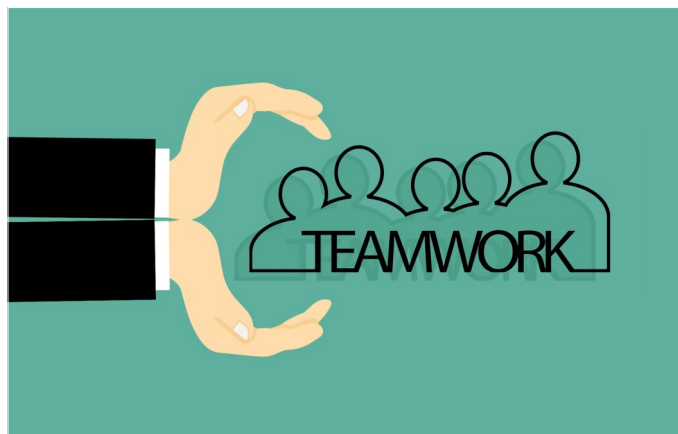
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Comment

Although this matter had been allocated to the Small Claims Track, it was apparent that the Trial Judge had to consider several detailed arguments before reaching his decision.

The Trial Judge was clearly assisted by the Defendant Local Authority's witness evidence and particularly the various Google Street View images which emphasised the Defendant Local Authority's limitation arguments.

The Defendant Local Authority had maintained a robust denial since receiving notification of the Claimant's claim and this was bolstered by the post-issue pleaded Defence and detailed witness evidence, eventually leading to dismissal of the Claimant's claim in the said matter.



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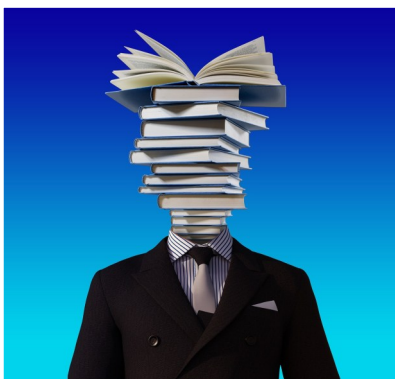
Amended Claim Form - Valid Service

Beckett v (1) Graham (2) Unite the Union
[2026] EWHC 920 (KB)

The first instance decision (reported upon within the May 2025 edition of Dolmans' Insurance Bulletin) that, in the context of the Electronic Working Pilot Scheme, a sealed Claim Form, amended without permission under CPR 17.1(1), did not require re-sealing and filing prior to service has been upheld on appeal.

On 5 June 2024, the Claimant ('C') filed a Claim Form in the Liverpool District Registry using Electronic Working. A PDF of the sealed Claim Form, bearing the Court's seal dated 5 June 2024, was sent by the Court to C's solicitors by email on 6 June 2024. The Claim Form set out a claim for libel. The Claim Form was valid until 5 October 2024. Prior to service, C amended the Claim Form by striking through the claim for libel in red and setting out instead, in red and underlined, a claim for misuse of private information. The words 'Amended Claim Form under CPR 17.1(1) dated 21 October 2024' were written across the top. The amended Claim Form and Particulars of Claim were sent to the Defendant's ('D') solicitors by first class post on 2 October 2024 and were received the next day. On 4 October 2024, C completed a Certificate of Service and uploaded this to CE File with copies of the amended Claim Form and Particulars of Claim. D asserted that there had not been good service as the amended Claim Form had not been filed and/or re-sealed prior to service.

At first instance, the Judge held that there was nothing in the CPR that required C to re-file the amended version of the Claim Form with the Court or have it re-sealed before service. On appeal, D did not pursue the first instance assertion that the amended Claim Form had to be re-sealed before service. The sole issue was whether C was required to file the amended Claim Form with the Court pre-service and have it accepted in order to effect valid service on D. It was common ground that there was no explicit requirement to do so in the CPR and that there was no earlier appellate authority directly on the issue.



D submitted that there was an implied requirement. D relied upon the notes at para 17.1.2 of the 2024 edition of the White Book, which stated that a Statement of Case amended without permission should be filed as well as served. A similar expanded note appeared in the 2025 White Book. Further, D relied upon PD17 para 2.1, which provides how an amended Statement of Case should be endorsed and refers to 'the amended Statement of Case and the Court copy ...', which D submitted envisaged the amended Statement of Case being filed at Court.

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The notes in the White Book did not cite any supporting authority. Further, the Judge noted that they did not distinguish between the situation herein and the different situation addressed by the Court of Appeal in *Ideal Shopping Direct Ltd v Mastercard Inc [2022]* where a claimant sets out their amended claim on a new unsealed Claim Form. In those circumstances, the amended Claim Form would have to be filed and issued by the Court before service as the unsealed form is not a Claim Form.

The Judge concluded that there was no clear or sufficient basis for implying a requirement that a claimant who amends their Claim Form without permission pursuant to CPR 17.1(1) before it is served, by making additions to the text of the sealed Claim Form, must file that amended Claim Form with the Court before it can be validly served.

Accordingly, D's appeal was dismissed.

Applications - Fees - Mistake in Fee Payment

All Seasons Lettings Limited & Another v Pandya & Another
[2026] EWCC 19

An Order had been granted for the Appellants to give possession of disputed premises to the Respondents, with the balance of the Respondents' claim adjourned generally on terms that it would be struck out if it was not restored by a specified date. Prior to that date, the Respondents sent an Application to the Court for the restoration of their claim. A fee of £119 was paid. However, this was the fee required for an application by consent or without notice (where no other fee was specified). The correct fee was £303 for an application on notice. The Court issued the Application despite the discrepancy in the fee. At the hearing, the Appellants argued that the Application had not been made by the specified deadline because of the failure to pay the correct fee. The Deputy District Judge found that although the correct fee was £303, the Application had been properly made and the claim was restored.



The Appellants appealed against the restoration of the claim.

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Held

The Application to restore the claim had been made within the time limit, even though the wrong fee had been paid. The Court had issued the Application even though the fee was incorrect. The Court held that a mistake in the payment of the court fee did not prevent the claim being "brought" for the purposes of the Limitation Act 1980; *Hassan-Soudey (aka Hamilton) v Siniakovich* [2026] EWCA Civ 215 applied.

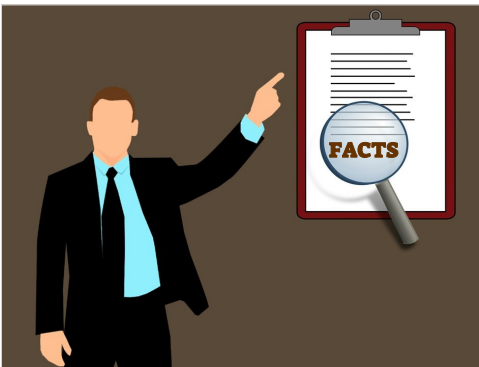
Making an application and paying the fee are two separate events, and there is no requirement that the fee be paid at the same time as the making of an application. Once an application is issued, it is clearly made even if the wrong fee has been paid. When an application is made could not depend on the efficiency of court administration in spotting an underpayment of a fee, or the motivation of the applicant in tendering the wrong fee, or how an application was delivered to the Court, or whether a party required help with fees. Once the Application had been issued, it had plainly been brought even if the wrong fee had been paid; *Hamilton* applied. The Court had ways of recovering the additional fee and dealing with abuse, if required.

Appeal allowed.

Expert Witnesses - Mediation - Unreasonable Conduct - Indemnity Costs

MJS Projects (March) Limited v RPS Consulting Services Limited
[2026] EWHC 884 (TCC)

Following the dismissal of a negligence claim arising out of the design and construction of a container park, the Court ordered the unsuccessful Claimant to pay the Defendant's costs on the standard basis, rejecting the argument that the Defendant's repeated refusals to mediate were unreasonable. The Claimant appealed against the Order.



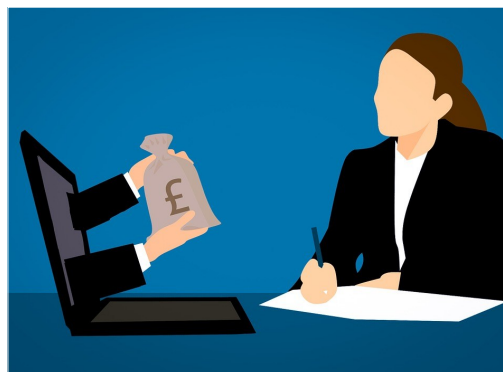
The Defendant argued that there was no reason to depart from the usual order. There was no unreasonable failure to mediate when one looked at the facts of the case. In addition, the defendant sought indemnity costs against the Claimant in respect of the expert evidence phase. The Defendant criticised the Claimant's expert, his work and methodology in giving his expert evidence, and the Claimant's control and instruction of their expert.

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Held

The Judge held that the appropriate order was the usual order, and so the Claimant should pay the costs of the Defendant, to be the subject of a detailed assessment if not agreed. The Judge accepted that the Defendant did not agree to the various suggestions for mediation which were proposed by the Claimant, however it was also accepted that to look at that fact alone was to oversimplify the background to the discussions between the parties in the case.

Noting the Court of Appeal's ruling in *Halsey v Milton Keynes General NHS Trust*, the Judge said: '*Mediation is not the only, nor the preferred, method for parties engaging in ADR. I accept that the Defendant did not agree to the continued suggestions of mediation without having some understanding of the expert evidence. That cannot be described as unreasonable in my judgment. However, other forms of ADR were proposed by the Defendant throughout and, in addition, offers were being made by the Defendant.*'



The Court heard that once the Claimant's expert evidence was available, the Claimant's offer to consider mediation was only weeks before the start of the trial and was offered only on potentially disadvantageous terms to the Defendant. If accepted, the trial date may have been kept, however it was not accepted that the failure to agree to earlier mediation, nor to the last suggestion of mediation on the terms demanded, could reasonably be held against the Defendant. This was not a case where a defendant had refused to engage in ADR at all. The Defendant made various offers to settle, but in light of the dismissal of the claim and the almost wholesale rejection of the Claimant's expert evidence, the Defendant's assessment of the strength of its case was justified. The commercial settlement offer made could accurately be described as generous. The Claimant's refusal to disclose its expert evidence (even on a without prejudice basis) and its apparent failure to instruct its expert to consider all the workmanship issues raised by the Defence would inevitably have had a significant impact on the likely success of any mediation. Even had mediation taken place, it would not have had reasonable prospects of success in this case.

In relation to the Defendant's claim for indemnity costs, however, which was based both on the Court's criticism of the Claimant's expert and also of the Claimant's lawyers for not identifying the inadequacy of their expert's evidence and ensuring that the expert dealt with the issues and applied the correct legal test, this was nonetheless refused for the expert evidence phase, as there had been insufficient material before trial to indicate to the Claimant's legal team that the expert would give evidence in the way he did, and the Claimant's litigation tactics, whilst unsuccessful, did not take the conduct of the action "out of the norm".

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Whilst the Judge accepted that the Claimant had lost the case because they had had no confidence in their expert, the Judge accepted that the Claimant's solicitors had put the correct test in the expert's instructions, and the expert had set out the correct test in his written report and answered questions in a way which would indicate that he was considering the correct test when giving his opinion. When cross-examined, it became apparent that he was not correctly applying the test and had not given consideration to various matters to which he should have given consideration.

It is a high threshold before the Court will exercise its discretion to order costs on the indemnity basis, even in respect of a single phase of the proceedings. The Judge did not accept that there had been sufficient material before trial in the expert's reports to indicate to the Claimant's legal team that their expert was going to give evidence in the way that he did and that the asserted failure to spot the various problems with their expert's evidence was sufficient to pass the high hurdle before indemnity costs were justified.

The Claimant was ordered to pay the Defendant's costs on the standard basis.

Legal Advice Privilege - Intra-client Communications

Aabar Holdings SARL v Glencore plc
[2026] EWHC 877 (Comm)

In ongoing commercial litigation, the Judge was required to consider the scope of legal advice privilege, in particular, the extent to which it applies to internal communications between members of the client group and / or documents created by a member of the client group.



Initially, when giving disclosure, the Defendant ('D') advised the Claimant ('C') that it had approached its disclosure obligations on the basis that the Court of Appeal decision in *Three Rivers (No.5)* [2003] was wrongly decided insofar as the decision is understood as standing for the proposition that legal advice privilege attaches only to communications passing between a corporation's lawyers and employees of the corporation who have been tasked with seeking and receiving such advice on behalf of the client. Instead, D had treated legal advice privilege as applying to all communications made for the dominant purpose of seeking or receiving legal advice. C had challenged this approach as inconsistent with *Three Rivers (No.5)*, firstly, in treating every employee as 'the client' and, secondly, in not confining the privilege to communications between the client and lawyer.

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D then gave further disclosure, from which it subsequently became apparent that whilst no longer maintaining its contention that every employee should be treated as 'the client', D was maintaining entitlement to assert privilege over communications which were not between the client and lawyer but were between members of the 'client group' (as defined in *Three Rivers (No.5)*). C sought disclosure of these documents, asserting that *Three Rivers (No.5)* was binding authority that such documents were not subject to legal advice privilege. C maintained that legal advice privilege only applies to intra-client documents insofar as the documents disclose the substance of a communication between members of the client group and a lawyer made for the dominant purpose of giving or receiving legal advice or the document was intended to be a communication to a lawyer but was not sent.

The Judge considered *Three Rivers (No. 5)* and further relevant case law, and concluded that upon a proper reading of the Court of Appeal's Judgment, the ratio decidendi in *Three Rivers (No.5)* was in relation to non-client documents and there was no binding authority to the effect that legal advice privilege cannot operate in relation to intra-client documents.

In considering the issue of intra-client documents as a matter of principle, the Judge rejected C's position finding no justification for such a restrictive approach. The Judge concluded that the true position, on the authorities, is that legal advice privilege applies to any intra-client document which is sent between or created by members of the 'client group' for the dominant purpose of seeking legal advice.



Accordingly, D was entitled to assert legal advice privilege in respect of intra-client documents, provided that those documents were created with the dominant purpose of seeking legal advice.

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

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