DOLMANS INSURANCE BULLETIN

Welcome to the December 2025 edition of the Dolmans Insurance Bulletin

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Section 58 defences and reactive systems

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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

Section 58 Defences and Reactive Systems

DH v Blaenau Gwent County Borough Council

The importance of a Section 58 Defence in highways claims is well recognised and its potential impact upon the outcome of claims arising from accidents on the highway cannot be underestimated.

The burden of proof when raising a Section 58 Defence shifts to a defendant, which must show that it has taken such care, as in all the circumstances was reasonably required, to secure that a highway was not dangerous for traffic. Effectively therefore, a defendant needs to establish that it operated a reasonable system of inspection and maintenance.

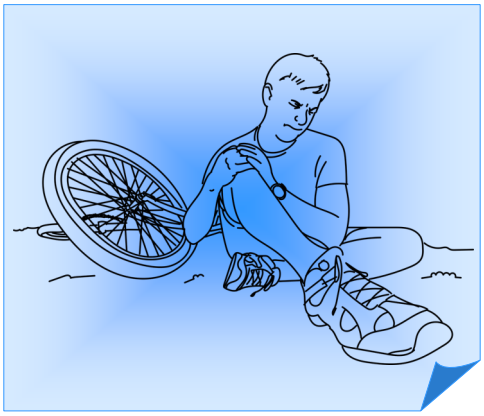
Local authorities will have systems in place for the inspection and maintenance of adopted highways. If reasonable and adhered to, these scheduled systems should assist a defendant local authority in proving that it had an appropriate Section 58 Defence.

However, there will inevitably also be reactive systems in place to compliment any scheduled system and these too will be taken into account when considering any Section 58 Defence.

This was illustrated in the case of *DH v Blaenau Gwent County Borough Council*, in which Dolmans represented the Defendant Local Authority.

Background and Allegations

The Claimant alleged that he was cycling along the carriageway at 5:30am when the front wheel of his bicycle entered a pothole, causing him to fall from his bicycle and sustain personal injuries. The Claimant alleged that the Defendant Local Authority was negligent and/or in breach of the Highways Act 1980. In addition, the Claimant pleaded nuisance.



Although it was dark at the time of his alleged accident, no allegations in relation to lighting were pleaded.

The Claimant's specific allegations included, however, a failure to inspect or to note the alleged defect for repair and a failure to make safe, guard or warn of the alleged defect.

Claimant's Claim and Caselaw

It is useful at this juncture to consider a summary of the relevant caselaw that potentially applied in this matter and is frequently relied upon in other similar highway matters.

The Claimant's claim was brought primarily as a breach of Section 41 of the Highways Act 1980, being the duty to maintain the public highway. It was argued that allegations of negligence in the alternative did not apply, as the Highways Act 1980 duty subsumed any common law duties owed by a Highway Authority in respect highway maintenance. It was also argued that allegations of nuisance added nothing and the Highway Authority's highway duty comes no higher than under the Highways Act 1980.

Before breach was considered, however, it was necessary for the Claimant to establish causation: exactly what caused the alleged accident. It is not sufficient to allege that there were areas of the highway that required repair. It was argued that the Claimant must establish the exact location of the accident-causing defect, otherwise the claim fails at that primary stage. See Court of Appeal in *James v Preseli DC [1993] PIQR P114*.

In terms of the Defendant Local Authority's Section 41 duty, the Court was asked to consider the case of *Dean and Chapter of Rochester Cathedral v Debell [2016] EWCA CIV 1094*, where the Court of Appeal reviewed the highways caselaw over the last thirty plus years to extract the applicable principles informing the approach to setting the Section 41 duty, despite itself being an Occupiers' Liability case.

Elias LJ made the following observations upon the authority's approach to foreseeability of risk and actionable danger:

"It is important to emphasise, therefore, that although the test is put by Steyn LJ in terms of reasonable foreseeability of harm, this does not mean that any foreseeable risk is sufficient. The state of affairs may pose a risk which is more than fanciful and yet does not attract liability if the danger is not eliminated. The observations of Lloyd LJ in James v Preseli Pembrokeshire District Council [1993] P.I.Q.R. P114, a case which applied the test in Mills, are pertinent: "In one sense, it is reasonably foreseeable that any defect in the highway, however slight, may cause an injury. But that is not the test of what is meant by 'dangerous' in this context. It must be the sort of danger which an authority may reasonably be expected to guard against".

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Lord Justice Ralph Gibson to similar effect noted that the test of foresight of harm is liable to result in too onerous a standard of care: *"… it has been established by the decisions of this court that the standard of care imposed by the law upon highway authorities is not to remove or repair all and any defects arising from failure to maintain, such as differences in level or gaps between paving stones, which might foreseeably cause a person using the carriageway or footpath to fall and suffer injury, but only those which are properly to be characterised as causing danger to pedestrians. There is, I think, an apparent element of circularity in some of the formulations of duty or breach of duty which have been advanced. Thus the test of dangerousness is one of reasonable foresight of harm to users of the highway. But in drawing the inference of dangerousness the court must not set too high a standard. Any defect, if its uncorrected presence is to impose a liability, must therefore be such that failure to repair shows a breach of duty …".*

And in relation to Eady J's approach to the *Mills v Barnsley* principles in the case of *Galloway v LB of Richmond Upon Thames (20 Feb 2003)*, Elias LJ stated:

"*… in which he said that Mills had adopted a two-stage test for determining whether an un-remedied state of affairs constituted a breach of duty, namely whether there was foreseeability of harm and, as a second stage, whether a reasonable person would regard it as presenting a real source of danger … The authorities suggest that ultimately it is the test of reasonable foreseeability but recognising the particular meaning which that concept has in this context. The risk is reasonably foreseeable only where there is a real source of danger which a reasonable person would recognise as obliging the occupier to take remedial action. A visitor is reasonably safe notwithstanding that there may be visible minor defects on the road which carry a foreseeable risk of causing an accident and injury*".

And concluded:

"*The judge did not apply the foreseeability test in the appropriate way and that this amounts to a misdirection. There is no recognition in the judgment that not all foreseeable risks give rise to the duty to take remedial action. The judge had to apply the concept of reasonable foreseeability taking a practical and realistic approach to the kind of dangers which the Cathedral were obliged to remedy*".

The Defendant Local Authority submitted, therefore, that the above principles of a '*practical and realistic approach'* to foreseeability apply not only to whether it is reasonable for a highway authority to repair or not, but also to the timeframe for repairs.

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Section 58(1) of the Highways Act 1980 provides for a local authority to have "*taken such care as in all the circumstances was reasonably required to secure that the part of the highway to which the actions relate was not dangerous for traffic*".

For the purposes of considering any Section 58(1) Defence, Section 58(2) states that the Court shall have regard to the matters therein listed. Hence, could the Defendant Local Authority establish that it operated a reasonable system of inspection and maintenance?

Claimant's Evidence

The Claimant sought to rely on photographs taken by an individual who had not provided a witness statement, and the Claimant could only speculate from these as to the depth of the alleged pothole. The Defendant Local Authority disputed that the said photographs accurately assessed the depth of the pothole in any event.

The Claimant relied upon witness evidence by a colleague who did not witness the accident, but claimed to have arrived at the location following the Claimant's alleged accident. He spoke with various other people, but, again, no witness statements were forthcoming from these other people. According to the Claimant's witness, these had told him that the Defendant Local Authority had attended the relevant location to undertake repairs some time prior to the Claimant's alleged accident. The Defendant Local Authority did not accept the accuracy of this hearsay account and maintained that that the documents told a different story, which will be considered further below.

Defendant Local Authority's Evidence

The last scheduled inspection of the carriageway was undertaken some four months prior to the date of the Claimant's alleged accident. Although some defects were noted for repair, none were identified at the location of the Claimant's alleged accident.

The carriageway was scheduled for inspection by foot on a six monthly basis, although there was also a reactive system in place.

Indeed, the Defendant Local Authority had further inspected the carriageway at the location of the Claimant's alleged accident at 2:15pm two days prior to the Claimant's alleged accident, following a complaint made a day earlier. At the time of such inspection, two potholes and a manhole cover that required adjustment were noted at or near to the location of the accident. At that time, the pothole was assessed to be bordering upon the relevant intervention level. As a matter of prudence therefore, the pothole was marked for repair within 48 hours, being the appropriate timescale for repair of such defects. The Defendant Local Authority maintained that the alleged defect would not have warranted a 2 hour repair, as this was reserved for high danger situations.

The Claimant did not allege that the repair should have been completed at a time earlier than the accident occurred. The Defendant Local Authority argued that it could not reasonably be said that this was a defect warranting a shorter repair. The alleged pothole was only at or near to the relevant intervention level. The said pothole was in a carriageway, not a footway, nor near any crossing points and not a designated cycle route. It was very near to the centre of the carriageway and not even in a likely cycling line of travel.

The Defendant Local Authority's documentation indicated that the said pothole was repaired between 8:00am and 8:30am on the morning of the Claimant's alleged accident, so within the 48 hour period since being noted for repair. Readers are reminded that the Claimant's alleged accident occurred at 5:30am, which was, therefore, also still within the 48 hour period for repairs. The Claimant also accepted that the said pothole was repaired shortly after his alleged accident.

The Defendant Local Authority submitted that the relevant documents demonstrated that a system properly and reasonably operated. As such, it was argued that there was no breach of duty.

In addition, the Defendant Local Authority argued that the various and precisely timed repair documents cast doubt upon the Claimant's hearsay evidence referred to above. There had been no repairs undertaken immediately prior to the Claimant's alleged accident. The Claimant's said hearsay evidence inferred that repair of the alleged defect had been missed shortly before the Claimant's alleged accident, which, according to the relevant documents, was clearly incorrect. As such, it was argued that the Claimant's claim on breach of duty was misconceived.

Defendant Local Authority's Submissions and Summary

The Claimant was put to strict proof as to the circumstances and exact cause of his alleged accident.

If the Claimant was able to establish the above, then it was not disputed that the alleged pothole represented an actionable defect.

The Defendant Local Authority argued, however, that it was availed of a Section 58 Defence for the following reasons:

(1) It had a reasonable system of inspection by foot for this unclassified carriageway.

(2) The Defendant Local Authority properly marked the defect for a 48 hour repair in accordance with policy within two days before the Claimant's alleged accident and there was no evidence to suggest that the alleged defect was present some four months earlier at the time of the Defendant Local Authority's previous scheduled inspection.

(3) The alleged defect was then repaired 42 hours after notification, within the 48 hour period, and the Claimant had had his accident 39 hours post inspection, again within the 48 hour repair period.

(4) The Claimant had not alleged that such a period of repair was or would represent a breach. The Defendant Local Authority argued that such an allegation, if made, would have been unsustainable.

(5) It was also noted that the alleged defect was paint marked for repair and that this was a reasonable/ proportionate response to such a defect on such a carriageway under a 48 hour repair order. It was also argued that the Claimant's allegation that the Defendant Local Authority was required to install guards and/or signage would be to apply an unrealistic and impractical standard, which would be at odds with how local authorities respond to non-emergency repairs. Such carriageway defects are typically paint marked.

Judgment

The Trial Judge was satisfied that Claimant's bicycle came into contact with a pothole towards the centre of the road and that the Claimant was cycling towards the centre of the road.

The Trial Judge was satisfied as to the cause of the Claimant's alleged accident and there was no negligence on the Claimant's part in cycling towards the centre of the road, especially given the time of day and lack of other traffic.

Although there was no accurate measurement of the precise depth of the alleged pothole, the Trial Judge found that the said pothole was at the appropriate intervention level and, therefore, was actionable.

Having established factual causation and dangerousness, the Trial Judge, therefore, had to give consideration to the Defendant Local Authority's Section 58 Defence.

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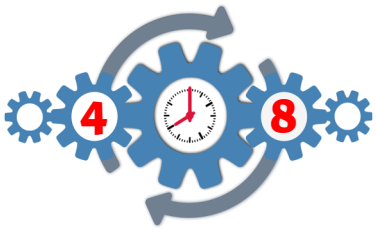
The Defendant Local Authority had a system of scheduled and reactive inspections in place and the Trial Judge referred to the same, including frequency and intervention levels. The Trial Judge indicated that the Defendant Local Authority's system was reasonable and that categorisation of the relevant highway was also reasonable.

The Trial Judge was satisfied that the alleged pothole was not present/actionable at the time of the Defendant's pre-accident scheduled inspection some four months prior to the date of the Claimant's alleged accident and that there was no evidence of the said pothole being present at the time of the said inspection.

The Trial Judge went on to deal with the Defendant Local Authority's reactive system in some detail, and it was apparent that this would be crucial to the outcome in this particular matter given the parties' evidence regarding the alleged defect noted for repair within 48 hours prior to the date and time of the Claimant's alleged accident.



The Trial Judge preferred the Defendant Local Authority's evidence and documentation in this regard, finding that the appropriate repair was undertaken within the said 48 hour period and after the Claimant's alleged accident that also occurred within the said 48 hour period.

The Trial Judge found that the alleged pothole did not require any earlier repair. A 2 hour repair for this pothole would place too onerous a burden upon the Defendant Local Authority.

The Defendant Local Authority's reactive system was reasonable. The Trial Judge was satisfied that the Defendant Local Authority had taken such care, as in all the circumstances was reasonable, and the Defendant Local Authority had made out its Section 58 Defence. As such, the Trial Judge dismissed the Claimant's claim.

Comment

Clearly, the Trial Judge was assisted by the Defendant Local Authority's comprehensive and precisely timed repair documents in finding that the reactive system was reasonable and had been adhered to. This, in addition to the scheduled system of inspection and maintenance led the Trial Judge to find that the Defendant Local Authority had a successful Section 58 Defence.

This was a potentially high value claim, having been allocated to the Multi Track and listed for a liability-only trial initially. There was, however, no need to proceed to a quantum hearing and instruct various expert witnesses given disposal of the claim at the liability stage. The Claimant had also made a Part 36 liability offer on an 80/20 basis in his favour, which had been rejected. Given the dismissal of the Claimant's claim, the Defendant Local Authority did not have to pay any damages and, therefore, made substantial costs savings in this particular matter.

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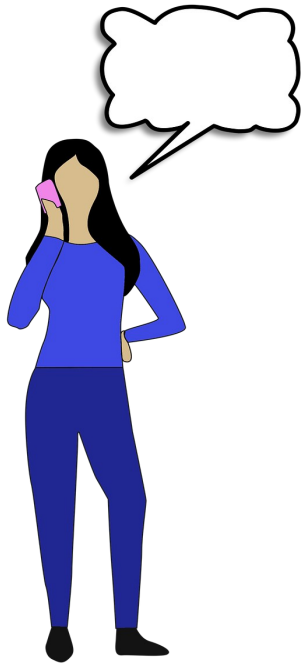
CASE UPDATES

Civil Procedure - Police - Administration of Justice - Civil Contempt

Buzzard-Quashie v The Chief Constable of Northamptonshire Police [2025] EWCA Civ 1397

In this landmark case, the Court of Appeal held The Chief Constable of Northamptonshire Police in Contempt of Court for failing to comply with a Court Order regarding the disclosure of video footage relating to the wrongful arrest of the Appellant.



The Appellant was arrested in September 2021. Days later, she made a complaint by phone to a Police Sergeant who was not involved in the arrest. She alleged wrongful arrest and excessive force. From her phone call, it became apparent that there was video footage available of her arrest, obtained from the Police Officer's body worn cameras. The Appellant requested the video footage be preserved before subsequently seeking to obtain it. The Appellant was initially charged, but the case was discontinued by the CPS.

In addition to the wrongful arrest, the Appellant went on to allege malicious prosecution and again sought to obtain the footage from the body worn cameras to substantiate her claims. Initially she submitted a Subject Access Request (SAR), but after an inadequate response she made a data protection complaint to the ICO. In April 2022, the ICO decided in her favour and wrote to Northamptonshire Police requiring them to revisit the way they handled her request and provide comprehensive disclosure as soon as possible.

There was piecemeal production of the video footage, but Northamptonshire Police stated that generally the footage either did not exist or had been destroyed. In April 2023, the Appellant obtained a Court Order against The Chief Constable of Northamptonshire Police for all of the footage to be produced, together with a witness statement by an officer of the rank of inspector or above explaining why any footage was not available. The footage was not produced. The Order was not complied with by Northamptonshire Police.

In June 2023, the Appellant issued contempt proceedings against The Chief Constable. The case was set down for case management in November 2023, when a Witness Statement was produced on behalf of The Chief Constable, but by then it was months out of time and was provided by a civilian employee, a Data Protection Officer. It was asserted within the Witness Statement that all relevant video footage had been disclosed.

In March 2024, the Appellant's contempt application was heard and dismissed. The Judge accepted The Chief Constable's evidence that all of the footage in existence had already been disclosed. The Judge also held that, in any event:

- there had been no intention on The Chief Constable's part to interfere with the administration of justice, which was a necessary prerequisite for a contempt finding;
- a Chief Constable was not in law personally responsible for acts performed by members of their Police Force, and;
- as there had been no penal notice on the April 2023 Order, that also prevented a finding of contempt.

The Judge ordered the Appellant to pay The Chief Constable's costs. The Appellant appealed to the Court of Appeal.

Prior to the appeal hearing, The Chief Constable sought to rely on fresh evidence in the form of a Statement from a Chief Superintendent which repeated the earlier Statement of the Data Protection Officer that the footage had been "*automatically deleted*" and that all remaining footage had been already disclosed.

Days before the appeal hearing, additional footage was discovered, meaning that all the Statements made to the Court by Northamptonshire Police before then had been false. Faced with this evidence, The Chief Constable conceded the appeal and issued an apology to the Appellant.

The Court of Appeal's Judgment

Ruling on her appeal, Lord Justice Fraser, in the lead judgment, with whom Lady Justice Asplin and Lord Justice Coulson agreed, acknowledged the Appellant's remarkable efforts to obtain all of the video footage. He added that the Appellant "has throughout this extended saga conducted herself in a measured and dignified manner. She has also demonstrated remarkable resilience". Were it not for this, the video footage's existence which had been denied by The Chief Constable on so many occasions was finally discovered just a few days before the appeal hearing. This meant that all the Statements made to the Court on behalf of the Police Force prior to mid-October 2025 were false. This meant that, on the facts, the findings by HHJ Genn [who refused the contempt application] could no longer stand.

Allowing the appeal on all grounds and making a finding of contempt against The Chief Constable, LJ Fraser said a finding of contempt would 'vindicate the requirements of justice', adding that it was 'clear beyond peradventure that the … Order was wholly ignored for many months' and the breach was 'wilfully disobedient'.

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Further, despite The Chief Constable's concession on the appeal, the Court of Appeal took the opportunity to set out in detail the law and procedure relating to contempt proceedings. In summary, the Court of Appeal held:

(1) **Nature of the breach.** For contempt, there is no requirement to show that breaching a Court Order is wilful, deliberate or contumelious, nor to show an intention to interfere with the administration of justice**.** Specific intention to commit contempt was relevant to sanction but was not required to make a finding of contempt; *Cuciurean v Secretary of State for Transport [2021] EWCA Civ 357, [2021] 3 WLUK 224* followed; *Cuadrilla Bowland Ltd v Persons Unknown [2020] EWCA Civ 9, [2020] 4 W.L.R. 29, [2020] 1 WLUK 138* considered. Subjective understanding of the Order by the alleged contemnor was not relevant; *ADM International Sarl v Grain House International SA (formerly Compagnie Agricole de Commercialisation et de Conditionnement des Cereales et de Legumineuses SA) [2024] EWCA Civ 33, [2024] 1 W.L.R. 3262, [2024] 1 WLUK 294* followed. The starting point was whether the Order had been breached. The Order had been wholly ignored by The Chief Constable for many months and when some attempt had been made to comply with it, the maker of the Witness Statement had not been a Police Officer as required and the substantive requirement of a proper search for the footage had not been complied with at all until recently.

(2) **The Chief Constable's accountability**. The Judge had erred in ruling Chief Constables could not, as a matter of law, be liable in contempt for the acts and omissions of their employees. The Chief Constable was the legal personality of their Police Force. The Police Reform and Social Responsibility Act 2011 Sch.2 para.2 stated that a Chief Constable was a corporation sole. There was, therefore, no distinction to be drawn between The Chief Constable himself and those under his direction and control as Chief Constable. He was the correct defendant in the proceedings and the Order had been made in relation to the exercise of his official function. The object of a contempt application brought against a legal personality such as a crown officer or a corporation sole was not so much to punish an individual as to vindicate the rule of law; a Chief Constable could be the proper object of a finding of contempt in relation to failures by their Police Force to comply with Court Orders; *M v Home Office [1994] 1 A.C. 377, [1993] 7 WLUK 309* followed; *Bush v The Chief Constable of Northamptonshire [2024] EWHC 690 (KB), [2024] 3 WLUK 647* overruled.

(3) **Penal notice**. A penal notice is not an essential pre-requisite to a finding of contempt. The presence or otherwise of a penal notice is instead relevant to sanction. CPR 81.4, which specifies a requirement for a penal notice, relates only to contempt committal proceedings and not to the ultimate finding of contempt. The Court had a discretion to commit someone to prison for contempt in respect of breach of an Order without a penal notice. Accordingly, it could not logically be a bar to a finding of contempt for breach of an Order if there were no penal notice attached; *Serious Organised Crime Agency v Hymans [2011] EWHC 3599 (QB), [2011] 10 WLUK 455* approved.

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Costs

The Court of Appeal held that it was wrong in principle in the circumstances of this case for the Appellant to have been ordered to pay The Chief Constable's costs when The Chief Constable had ignored and breached the Court's Order. The Costs Order against the Appellant was, therefore, also reversed, and the matter has been referred to the Independent Office of Police Conduct.

Costs - Indemnity Basis - Interest

Barry v Essex County Council
[2025] EWCC 64 (CC)

This case concerned a personal injury claim following a highways tripping accident in March 2018, in which the Claimant succeeded at trial and beat her own Part 36 offer.

The Claimant served a Bill of Costs for £91,173.92. Costs were agreed at £75,000 (excluding interest and assessment costs). The remaining issue was how to calculate the enhanced interest on post-expiry costs pursuant to Part 36: the 'Aggregate Costs method' (Claimant's approach) or the 'Individual Item method' (Defendant's approach).

The Court held that interest should be calculated using the Aggregate Costs method, rather than calculating interest separately on each individual item of costs from the date that the item was incurred. This meant that interest at 9% per year applied to the whole amount of the post-offer costs, starting from the date the offer expired until judgment. The Court rejected the item-by-item approach as too complex and inconsistent with the purpose of Part 36. The broadbrush approach was favoured to avoid unnecessary complexity. Had the Judge intended an item-by-item method, he would have said so explicitly, as occurred in *McPhilemy v Times Newspapers Ltd [2001] EWCA Civ 933.*

The Court held that the Aggregate Costs method of calculation was consistent with authority, with the policy behind Part 36 and with the practical reality of calculating awards of enhanced interest on post-expiry costs. The Court emphasised that the Aggregate Costs method is simpler, widely used in practice and in line with the punitive purpose of Part 36 enhancements.

CASE UPDATES

Data Protection - Misuse of Private Information - Breach of Confidence - Compensation

FXH & BXH v The Commissioner of Police for the Metropolis
County Court at Central London 14.11.25

The Claimants were foster carers for two children (A and B) who disclosed to the Claimants that they had been the subject of abuse from an older brother in their birth family. The Claimants passed the information on to their Fostering Agency, who informed the Local Authority. This resulted in investigations, which led to family court proceedings in relation to A and B. During the family proceedings, the Local Authority sought disclosure of documents from the Metropolitan Police (the Defendant, hereinafter referred to as 'the Police'). The Police disclosed documents to the Local Authority. One of the documents disclosed contained the Claimants' address. The Local Authority passed the documents on to the birth parents' solicitors, who in turn passed the documents to the birth parents. The Police became aware of the onward transmission of the documents on 22 May 2020.

In the meantime another child, L, had been placed with the Claimants. L made an allegation that BXH had pinched her bottom. All three children were removed from the Claimants. At a subsequent LAC review in early May or June 2020, A and B's birth mother made a threat against BXH to the effect that BXH had put his hands down A's knickers and she (the birth mother) knew where he lived and was going to go round and kill him. When asked if this was a threat, the birth mother responded that it was a promise. The Police were informed of the threat on 2 June 2020.

On 3 June 2020, the Police informed FXH of the threat, but FXH was not told that the birth mother had said it was a promise. FXH was unaware of the data breach at that time and was not told that the birth mother had said that she knew their address.

On 5 June 2020, the Police informed FXH that their address had been included in documents sent to the Local Authority and that the information had been in the possession of the birth mother. FXH's evidence was that the Police Officer recommended the Claimants move to a safe house. This was disputed by the Police Officer.

Enquiries were made via the birth mother's solicitor, who responded that the birth mother had confirmed receiving the documents but had said she had not read them and had now deleted them. This information was passed to the Claimants on 26 June 2020.

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FXH and BXH had to give evidence in the family court proceedings which concluded in May 2021. The family court exonerated BXH of any wrongdoing in relation to the children.

Psychiatric evidence on behalf of FXH diagnosed an adjustment disorder – mixed anxiety and depression with symptoms of moderate severity which would not have occurred without the disclosure of her personal information. Symptoms resolved over 18 months. Psychiatric evidence on behalf of BXH diagnosed an adjustment disorder – prolonged depressive reaction with the primary aetiological factor being the data breach and subsequent threat. BXH's symptoms improved just over two years post incident.

The Claimants pursued claims against the Police in the tort of misuse of private information, for breach of confidence and a claim under the UK GDPR / Data Protection Act 2018.

The Police accepted that they should have redacted the Claimants' address, but disputed liability in respect of the claim under the UK GDPR, submitting that the relevant disclosure was undertaken by the Local Authority and that the Local Authority was the relevant data controller. The Local Authority were already aware of the Claimants' address and, therefore, the disclosure by the Police to the Local Authority did not provide the Local Authority with anything which was confidential from them. It was the Local Authority's processing, rather than that of the Police, which had led to the information coming into the hands of the birth mother.

The Judge disagreed, finding that the Police were the data controllers. The Police processed the data. The Police failed to redact the documents before disclosing them to the Local Authority. The Local Authority did what it was expected to do, it provided the police disclosure to the other parties in the family court proceedings. Whilst the Local Authority might have become a data controller once it received the disclosure, this did not expunge the Police's failure to comply with its data protection obligations.

Whilst s.8 of the DPA 2018 provides an exception permitting disclosure in an official capacity where necessary for the administration of justice, the Judge held that this did not assist the Police as disclosure of the Claimants' address was not necessary.

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The Judge was not satisfied that the Claimants had established, on the balance of probabilities, that the documents were seen by the birth mother. However, the Claimants had established that they had an objectively well-founded fear that the information had been passed to the birth mother and that she had threatened to kill BXH, and this was more than sufficient to amount to damage for the purpose of Article 82 of the UK GDPR. The Judge was satisfied that case law confirmed that the Claimants were not prevented from recovering damages because the well-founded fear did not materialise.

Accordingly, the Judge held that the Police were in breach of their data protection obligations. They could not absolve themselves of responsibility because the data passed through the Local Authority. The fear of misuse of the information was well-founded and, as a result, the Claimants were entitled to recover damages.

In relation to the claim for misuse of private information, the Judge held that the address was private information protected by Article 8. There was a reasonable expectation of privacy and no countervailing reason for making the information public. Similar defences argued as for the DPA claim lacked merit for the same reasons. Accordingly, the claim for misuse of private information succeeded.

Similarly, the Claimants' address was confidential and the Claimants had a reasonable expectation of confidentiality. Breach of confidence was also established.

In relation to their psychiatric injuries, the Judge awarded FXH £10,000 and BXH £13,500. The Judge rejected the Police's argument that there should be no separate award for the loss of control of the data. An additional award of £5,000 for each Claimant was made in this respect.

Special damages were also awarded in relation to the cost of psychological treatment for BXH, costs of installation of a panic alarm and the costs of replacing their car due to their fear the birth mother had known their car.

CASE UPDATES

Part 36 - CPR 36.17 Costs Consequences - Consent Order

Thomas v Secretary of State for the Home Department
[2025] EWHC 3274 (KB)

In November 2024, a Judgment was given finding that the Claimant had been unlawfully detained for a period. The issue of quantum was reserved pending a further hearing of submissions on quantum. Prior to that hearing taking place, quantum was agreed between the parties in the sum of £16,000, but the parties were unable to agree the liability for costs.

A Consent Order was made vacating the hearing, ordering the Defendant to pay the Claimant £16,000 and for the parties to file submissions on costs. Following receipt of submissions, the Judge gave his decision on costs.

Prior to the hearing at which liability was established, the Claimant had made four Part 36 offers, all of which were below the settlement figure of £16,000. The issue between the parties was whether the costs consequences in CPR 36.17 were engaged as a result. The Defendant submitted they were not as they only applied where there had been a 'judgment'. This connoted an independent decision by a Judge following a contested hearing.

The Claimant submitted that the compromise of a claim contained in a sealed Court Order equated to judgment being entered and CPR 36.17 was, therefore, engaged.

The Judge agreed with the Claimant. The mere fact that the word judgment did not appear in the Consent Order was of no consequence when considering the effect of the Consent Order. Whatever the Defendant may have intended, the true effect of the Consent Order was to enter judgment in favour of the Claimant in the sum of £16,000.

There was no argument that it would be unjust for the costs consequences set out in CPR 36.17 to apply and, accordingly, the same were ordered from the date 21 days after the Claimant's first Part 36 offer was made.

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

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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**