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

Securing Discontinuance in a Highways Matter

MH v Central Bedfordshire Council

Defendant Local Authorities face many highways claims and not all such claims are the same of course. Alleged defects can differ considerably and sometimes a particular aspect of an alleged defect can assist a defendant Local Authority in its defence. Experienced highways personnel can often pick up something from a claimant's photographs, for example, that assists a defendant Local Authority and which would not, of course, have been a claimant's intention when disclosing any such photographs.

Such a scenario arose in the case of *MH v Central Bedfordshire Council*, in which Dolmans successfully represented the Defendant Local Authority.

Background and Factual Causation

The Claimant alleged that he was walking from his vehicle along the carriageway, when his foot caught in a pothole causing him to fall and sustain personal injuries.

The Claimant was put to strict proof as to the circumstances of his alleged accident, the burden being upon the Claimant to prove that his accident occurred in the circumstances alleged. Following consideration of the Claimant's copy medical records however, it was apparent that there were no obvious inconsistencies in the Claimant's version of events and that the Claimant was, therefore, likely to prove that his accident occurred in the circumstances alleged.

Breach of Duty

The Claimant alleged that the Defendant Local Authority was negligent and/or in breach of Section 41 of the Highways Act 1980, the burden of proof being upon the Claimant. In order for the claim to succeed, the Claimant would need to satisfy the court that the location of the alleged accident was dangerous.

Dangerousness

As in most cases of this type, the Claimant disclosed photographs of the alleged pothole that apparently showed the same to be in a dangerous state, although the evidential burden was upon the Claimant to prove dangerousness. The Defendant Local Authority's highways personnel were able to provide observations upon the Claimant's photographs suggesting that the relevant location was not dangerous.

According to these witnesses, the Claimant's photographs showed that the surface/wearing course had eroded, but not the binding course below this, which remained intact. The Defendant Local Authority's witnesses were, therefore, able to say with confidence that the depth of the pothole shown in the Claimant's photographs was below the binder course level, which was within the Defendant Local Authority's relevant intervention level.

From the Claimant's own photographs therefore, the Defendant Local Authority's witnesses considered that the carriageway at the location of the Claimant's alleged accident was not dangerous to users of the same.

Section 58 Defence – Part One: Network Maintenance Management Plan

Whereas the burden to prove factual causation and breach of duty/dangerousness lay upon the Claimant, the burden to prove a Section 58 Defence under the Highways Act 1980 shifted to the Defendant Local Authority.

The Defendant Local Authority was able to rely upon its Network Maintenance Management Plan, which was already in the public domain and supported the Defendant Local Authority's system. The Defendant Local Authority's said Network Maintenance Management Plan was exhibited to the Defendant Local Authority's witness evidence and indicated that the Defendant Local Authority had an appropriate risk-based system in place at the time of the Claimant's alleged accident.

It was explained in witness evidence that the various categories of highway were based on general aspects of the relevant area and took into account whether there were obvious generators of traffic, including pedestrians and/or vehicles. The investigatory/intervention criteria and response times were determined following consideration of the type of defect and reflected the different types of traffic on the highway, including the likelihood of any risk. Highways Inspectors considered all apparent defects to see whether they met the relevant investigatory/intervention criteria. If they were actionable, they would be recorded and repairs requested.

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Section 58 Defence – Part Two: Scheduled System of Inspection/Maintenance

Although having an appropriate Network Maintenance Management Plan is an excellent start, the Defendant Local Authority would need to show how the said Plan translated on a practical level.

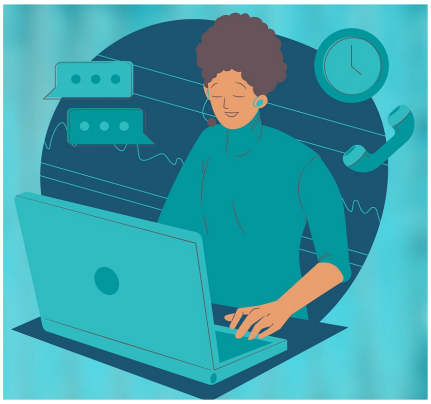
The Defendant Local Authority gave written evidence that where the location of the Claimant's alleged accident occurred was inspected on a six-monthly basis at the time of the Claimant's alleged accident by driven slow moving vehicle.

These scheduled inspections were undertaken on time and no actionable defects were noted at the location of the Claimant's alleged accident during the last scheduled inspection of the said location prior to the Claimant's alleged accident.

Inspectors would apply reasoned professional judgement during highway inspections. Where a Highways Inspector considered that a possible defect may potentially surpass relevant investigatory/intervention levels prior to the next scheduled inspection, then a Highways Inspector would mark any such defects for repair at the earliest opportunity and irrespective of the fact that they may be below/within the relevant investigatory/intervention level at the time of inspection.

It was also confirmed that it was the Defendant Local Authority's policy to conduct necessary repairs of actionable defects without being constrained by financial considerations.

Section 58 Defence – Part Three: Reactive System of Inspection/Maintenance



In addition to a scheduled inspection regime, the Defendant Local Authority had a reactive system of highway inspection and maintenance in place. Again, this was dealt with within the Defendant Local Authority's witness evidence. The Defendant Local Authority had a database where all complaints and reports of potential highway defects were logged and forwarded to the appropriate Highways Officer. Each complaint or report was investigated and an inspection/assessment carried out. Repairs were then undertaken, if necessary.

The Defendant Local Authority had no record of any complaints relating to the location of the Claimant's alleged accident during the twelve-month period prior to the date of the same. The Defendant Local Authority also had no record of any other accidents occurring at the location of the Claimant's alleged accident during the twelve-month period prior to the date of the same.

The Defendant Local Authority also argued that the lack of any reported complaints and/or accidents suggested that the relevant location was not dangerous, in addition to the evidence referred to above relating to the Claimant's photographs.

REPORT ON

Discontinuance

The Claimant filed and served a Notice of Discontinuance shortly following exchange of witness statements and prior to trial.

Comment

Despite serving witness evidence from two witnesses in support of his claim, the Claimant was obviously overwhelmed by the strength of the Defendant Local Authority's Defence and witness evidence.

It would have been obvious following consideration of the Defendant Local Authority's witness evidence that not only would the Claimant have faced difficulties in proving dangerousness, but that the Defendant Local Authority's Section 58 Defence was likely to succeed.

By securing a discontinuance of the claim, the Defendant Local Authority not only avoided having to pay any damages whatsoever to the Claimant, but also benefitted from substantial costs savings, including trial costs.

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CASE UPDATES

Fixed Recoverable Costs - Fast Track - Strike Out - Multiple Defendants - Litigants in Person

MIL Collections Limited v My Shop 4 Limited & Others
[2025] EWCC 38

The Claimant ('C') is a company whose business includes the purchase and recovery of debts. In late 2024, C purported to take an assignment of debts owing by commercial entities to Eon. C began issuing claims to recover the debts.

The 13 Defendants in this case ('D') all put forward a defence that the Particulars of Claim were deficient, D were customers of Eon pursuant to a deemed contract under statute, the terms of that deemed contract limited Eon to charging a certain rate of electricity and C was seeking to recover sums in excess of those Eon was entitled to charge under contract. The claims were consolidated and an Unless Order made for C to file Amended Particulars of Claim by 13.05.25. The consolidated claim was allocated to the Fast Track, Band 1, but the Order recorded that since the claims were consolidated and would be listed for in excess of 1 day, there may be exceptional grounds upon which more than the fixed costs provided for under Table 12 of PD 45 may be awarded.

C filed Amended Particulars of Claim, but the Judge considered these were deficient and listed a hearing on 21.05.25 to consider whether the claim had been or should be struck out.

On 19.05.25, the court sent out a notice listing the case for trial on 14&15.07.25. Until this time, all parties had been litigants in person. On 19.05.25, solicitors came on the court record for D12 and D13.

At the hearing on 21.05.25, C accepted that there had been a breach of the Unless Order and the claim had been automatically struck out on 13.05.25. C made an unsuccessful application for relief from sanction. The costs of this were dealt with at the hearing. D made further applications for costs as follows:

- D12 and D13 sought fixed costs pursuant to CPR 45.44 and Table 12 of PD 45 following the strike out of the claim;
- D1 to D11 each sought two thirds of the fixed costs in Table 12 pursuant to CPR 45(2)(a).

CASE UPDATES

In determining those costs, the Judge addressed the following issues:

(a) Do the fixed costs in Table 12 PD 45 apply where a claim is struck out pursuant to an Unless Order?

It was common ground that as this was a debt claim issued after 01.10.23 and was allocated to the Fast Track, the fixed costs regime in CPR 45 Part VI applied in principle. Pursuant to CPR 45.44, the only costs allowed were the fixed costs in Table 12 and disbursements set out in Section IX. Table 12 sets out the costs with reference to the band to which the claim was assigned (in this case Band 1 of the Fast Track) and the stage at which the proceedings conclude.

C's position was that Table 12 did not apply in the circumstances in which this claim concluded. There had been no settlement, discontinuance or disposal at trial (the stages in Table 12). C submitted that to the extent fixed costs applied at all, Table 1 applied. CPR 45.8 deals with the costs of pre-action and interim applications, and provides that Table 1 applies to those. Table 1 provides that the fixed costs payable in an interim application (other than for summary judgment) in a Fast Track, Band 1 claim are £333.

The Judge rejected the contention that Table 1 applied. CPR 45.8 concerns orders for the costs of a pre-action or interim application (Judge's emphasis) as distinct from any other costs award in respect of the claim more generally. The costs in Table 1 are additional costs which a party is entitled to reflecting the additional work generated by the interim application.

The Judge did not accept C's submission that Table 12 contained an exhaustive list of the circumstances in which it applied. The rules must be construed widely and purposefully. On such a construction, the words 'settles or discontinues' in Table 12(B) should be read to mean any means by which the case might conclude after issue of proceedings but before trial, including strike out.

Accordingly, D was entitled to fixed costs under Table 12(B) with reference to the stage of proceedings at which the strike out took effect.

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(b) What was the applicable stage under Table 12?

Once a case has been issued there are 4 stages, 3 of which are in Section B of Table 12: (1) up to allocation; (2) from allocation to listing for trial; (3) after listing but before trial. In this case, an Order was made on 28.04.25 allocating the claim and ordering a trial be listed on the first available date after 24.06.25; the claim was automatically struck out on 13.05.25; notice listing the case for trial was issued on 19.05.25.

D12 and D13 sought to draw a distinction between the 'listing' of a trial and the 'fixing' of a trial, thus arguing the case was struck out after listing at stage B(3). The Judge did not accept this, noting that the difficulty with the submission was that the first case management order in most Fast Track cases will provide for both allocation and provision for the trial to be listed within a window or on the first available date after a particular date, and would mean that the stage between allocation and listing would be non-existent in most cases, which could not have been the intention.

The Judge concluded that the trial was listed on 19.05.25. The case concluded by automatic strike out before this date on 13.05.25. The applicable stage in Table 12 was, therefore, B(2).

(c) Multiple Defendants

The Judge noted that CPR 45 Part VI is ambiguous as to whether, where there are multiple Defendants, there is an entitlement to multiple sets of fixed costs.

Taking into account the principles which would ordinarily apply in respect of costs, the context of the remainder of Part 45 and reading Table 12 in a way that is consistent with the purpose of the Fast Track fixed costs regime, the Judge concluded that in a case to which Part VI of Part 45 applies, in which there are multiple Defendants, each Defendant is entitled to their fixed costs as set out in Table 12, subject to the court's discretion to make an order under CPR 44.2(6)(a) that a party pay only a proportion of another party's costs.

When considering whether to exercise the discretion under CPR 44.2(6)(a), the court should take into account the matters in CPR 44.2(4), including the conduct of the parties.

On the facts of this case, including that the claims began as separate claims which were consolidated as a result of an order on the court's own motion for reasons of efficient case management (C would have been aware when issuing each claim that it would be liable for D's fixed costs; and the claims were struck out for C's breach of an Unless Order made against a background of C issuing claims when it held insufficient information and documents to assess the merits of or properly plead the claims), an order under CPR 44.2(6)(a) to alleviate the consequences of the fixed costs regime was not appropriate.

Accordingly, the Judge ordered that each Defendant was entitled to an award of fixed costs.

(d) Unrepresented Defendants

CPR 45.4 deals with the costs of litigants in person and provides that costs allowed shall not exceed two-thirds of the fixed recoverable costs. This case was struck out on 13.05.25, at which time all of the Defendants were litigants in person. Each Defendant was, therefore, entitled to up to two-thirds of the costs specified in Table 12(B)(2) (i.e. £1,720.67). That is a limit, not a fixed entitlement. Accordingly, it was necessary to carry out an assessment of D's costs pursuant to CPR 46.5.

In respect of D12 and D13, a Witness Statement from their solicitors confirmed that prior to coming on the court record on 19.05.25, the solicitors had been assisting them, and D12 and D13 were liable to pay the solicitors' firms' fixed costs pursuant to Table 12. Accordingly, D12 and D13 were each awarded fixed costs, subject to the cap of £1,720.67.

The position for D1 to 11 was less straightforward. They had no liability to pay any solicitors and there was no evidence of financial loss by these Defendants in responding to the claims or any statement of costs. The Judge assessed the costs recoverable by D1 to D11 at £133 each (7 hours at £19 per hour).

The total costs award against C in respect of the striking out of the consolidated claim was, therefore, £4,904.34.

CASE UPDATES

Highway Verges - Section 41 - Section 58 - Highways Act 1980

Demetrios Karpasitis v Hertfordshire County Council
[2025] EWCA Civ 788

This appeal concerned a cycling accident. On 22 April 2020, the Claimant rode his bicycle into a hole in a grass verge. He fell from his bicycle and suffered a significant injury to his cervical spine. The verge formed part of the highway. Part of the adjacent path was signposted as a shared footpath and cycle path. From a certain point, the path narrowed from 2.5 metres to approximately 1 metre in width. There was no sign denoting any changed use of the path. It was whilst the Claimant was travelling along this section of the path that he encountered a jogger and took the decision to overtake the jogger. This required him to cycle on the grass verge to the right of the path.

A trial on liability took place in the High Court in March 2023, the outcome of which we have previously covered within the November 2023 edition of the Dolmans' Insurance Bulletin. The Claimant's claim was dismissed.

The Judge found that the presence of the hole in the verge breached the statutory duty under Section 41 to maintain the highway in that the duty to maintain under the Highways Act requires the Highway Authority to ensure that the highway is safe for users who are using it in a manner that is reasonably foreseeable. The Judge held that riding on the grass verge was capable of constituting a normal use of the grass verge.

It was held that the Defendant Highway Authority had made out the statutory defence under Section 58 of the Highways Act 1980. In support of the Section 58 Defence, the Defendant had called evidence confirming that the grass had been cut on the verge a few weeks prior to the Claimant's accident and that the path was inspected every 6 months, which included the grass verge. The path and verge were last inspected a few months before the Claimant's accident.

The Judge relied on the evidence of a Highways Inspector employed by Ringway, who had been contracted by the Defendant to carry out inspections, maintenance and repair of its highways network. The Highways Inspector had retired prior to trial and did not give oral evidence in court. He was unwilling to do so. A hearsay notice was served by the Defendant, but the Defendant subsequently decided not to rely upon this evidence.

Instead, the Defendant relied upon the evidence of another employee who gave oral evidence that if the Inspector had seen a hole he would have reported it as a category 2 defect not requiring urgent attention. This contradicted the evidence of the Highways Inspector in his Witness Statement that if he had seen a large hole in the grass verge, he would have reported it as a category 1 defect needing urgent repair. Further, GPS data from the Inspector's vehicle suggested that he had driven his vehicle along the relevant road for about 10 minutes, during which time he had only stopped once for 3 minutes, which undermined his evidence that he had carried out a walked inspection.

The Judge dismissed the common law claim on the basis that the Defendant had taken no positive act which gave rise to a duty of care.

The Claimant appealed on two grounds:

(1) The Judge erred in finding that the Defendant Highway Authority had established the statutory defence afforded by Section 58 of the Highways Act 1980.

(2) The Judge erred in finding that there was no common law duty to sign the end of the cycle path.

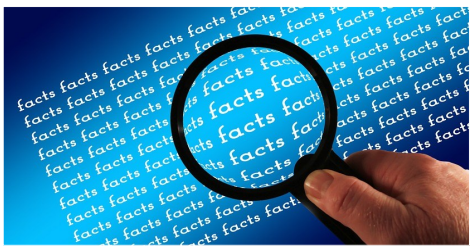
Decision

The Claimant's appeal was allowed. The following findings were made:

(1) The foreseeability of cyclists riding on the verge was clearly relevant to what constituted ordinary traffic. In all the circumstances, a cyclist using the grass verge to pass another highway user was foreseeable and represented the ordinary use of the highway for the purposes of the duty under Section 41 to maintain it and the Judge was correct to find that it was foreseeable that a defect of the dimensions described in evidence would cause injury to a cyclist. The defect was dangerous to ordinary traffic and represented disrepair of the highway.

(2) The Judge should have treated the assertion in the Witness Statement from the Defendant's retired Highways Inspector that he carried out a walked inspection in February 2020 as "manifestly incredible" given GPS data from his vehicle.

The Judge's approach had overlooked a basic principle of fact-finding that he should start by looking at contemporaneous documents, especially those from an impartial source, before considering what witnesses had to say about them. The Witness Statement of the Inspector did not address the GPS document at all. The GPS data demonstrated an "overwhelming" prima facie case that the Inspector had not carried out a walked inspection.



(3) Without the evidence from the Highways Inspector, the whole basis of the statutory defence under Section 58 unravelled. Where the Inspector's evidence was capable of belief was his assertion that if in the course of walked inspection he had seen a hole in the verge of anything like the dimensions of the hole into which the Claimant rode he would have categorised it as requiring urgent attention. On that basis, the Judge ought to have held that the Defendant had failed to establish their statutory defence to the claim based on Section 41.

(4) In light of these findings, it was not necessary to consider whether the Judge was right to reject the alternative claim based on common law negligence.

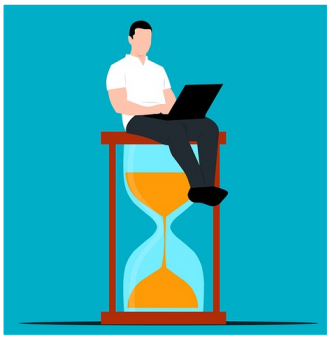
At the original trial, the Claimant had been found to be 33% contributory negligent, had he succeeded on primary liability. The court held that there is a long line of authority, culminating in the Supreme Court decision in *Jackson v Murry [2015] UKSC 5*, that it is extremely difficult to upset a Judge's apportionment of primary liability and contributory negligence. This was not one of those exceptional cases where such an alteration would be justified.

Accordingly, the Claimant's appeal was allowed and there was Judgment for the Claimant for damages to be assessed, subject to a deduction of 33% for contributory negligence.

Pre-Action Protocol for Low Value RTA Claims - Part 8 Proceedings - Stay - Jurisdiction to Order Compliance with Protocol

(1) MH Site Maintenance Services Limited
(2) Markerstudy Insurance Services Limited v Watson
[2025] EWCA Civ 775

The court was required to consider whether a court has jurisdiction to make directions in connection with a claim within the Pre-Action Protocol for Low Value RTA Claims ('the PAP') where a claimant has also commenced proceedings under CPR Part 8 to protect the claim against a limitation defence.



The Claimant ('C') was involved in a road traffic accident on 16.09.19 with a vehicle driven by an employee of the First Defendant. The Second Defendant was the relevant insurer. C began the PAP process by a CNF dated 17.07.20. The Defendants (D) admitted liability on 30.07.20. That completed Stage 1 of the PAP process. Stage 2 required preparation of a Settlement Pack by C, to include a medical report. No Settlement Pack was produced. The first medical examination did not take place until 11.01.23 and a draft medical report was received by C on 05.05.23. In the meantime, because the limitation period expired on 16.09.22, C issued a Part 8 claim on 06.09.22. The PAP provides that where compliance with the PAP is not possible before the expiry of the limitation period, a claimant may start Part 8 proceedings and apply for a stay whilst the parties follow the PAP.

CASE UPDATES

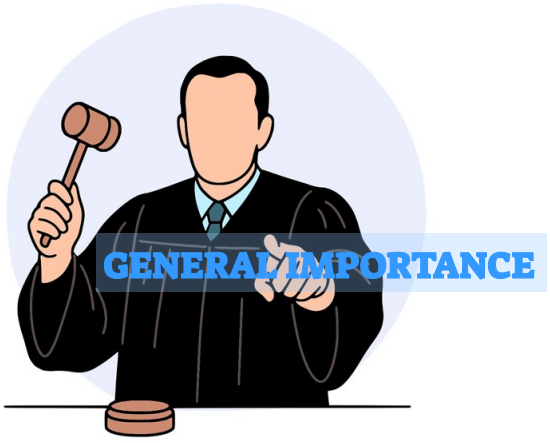
On 13.09.22, an Order was made staying the Part 8 claim until 16.09.23 on terms that unless C applied by letter to lift the stay and proceed to a Stage 3 hearing or transfer the matter to Part 7 by 16.09.23, the claim would be struck out.

As no progress was made, on 13.06.23, D applied for an Order lifting the stay and that unless the Settlement Pack was provided within 21 days, the Part 8 claim be struck out. D's position was that the court had the jurisdiction to make such an order under CPR 3.1(2)(p), which provides that a court may take any step or make any order for the purpose of managing the case and furthering the overriding objective. The DDJ hearing the application was of the view that the court was not managing the proceedings under the PAP. The proceedings were stayed and the court had no role in ordering steps within the PAP. The DDJ noted he could lift the stay and transfer the case to Part 7, but that was not what D wanted as the claim would then exit the portal. D appealed.

On 16.01.24, D's appeal was dismissed on the basis that the court had no power to compel parties to progress claims in the PAP. D made a further appeal.

In the meantime, C had applied to lift the stay and transfer the proceedings to Part 7. An Order was made to that effect on 23.02.24.

By the time of the hearing of D's further appeal by the Court of Appeal, the Part 7 proceedings were due for trial in a few weeks. In the circumstances, C's position was that the appeal was academic. The Court of Appeal disagreed. The issue of jurisdiction was a point of general importance. Further, the issues were likely to have potentially significant costs consequences later in the case and C had already been found at an earlier hearing to have unreasonably removed the claim from the PAP, so was relying on his own unreasonable conduct to argue the appeal was academic which was impermissible.



The court held that the Judges below did have jurisdiction to make an order requiring C to comply with his obligations in respect of provision of the Stage 2 Settlement Pack and they were wrong to find otherwise.

CASE UPDATES

The PAP process is self-contained and not ordinarily subject to the court's jurisdiction. It is aimed at avoiding the commencement of proceedings. Co-operation is the key element. '*Each side needs to keep the other informed of progress, next steps and likely issues. The PAP does not work when a claim is started and then covered in a blanket of silence and inactivity'.* If things go wrong, a defendant probably cannot issue freestanding court proceedings to seek orders to progress matters. However, when a claimant expressly invokes the jurisdiction of the court by issuing a Claim Form, the position changes. The court then has jurisdiction to deal with the Part 8 claim in accordance with the CPR.

When protective proceedings are issued under Part 8, the court will usually grant a stay on an ex parte basis for administrative convenience, with liberty to apply. Any debate about whether or not there should be a stay and, if so, for how long is a debate about the parties' non-compliance with the PAP and, accordingly, the granting of a stay, and the fixing of the period for the stay, are simply indirect ways of regulating the parties' conduct under the PAP. C submitted that whilst the court could make such indirect orders, it could not make direct orders ordering a party to take steps within the PAP. The court held there was no rational justification for such a distinction.

It was not necessary for the purposes of the appeal to consider the detail of the order that had been sought by D as the claim was no longer in the PAP. The court commented that the precise order sought by D in this case was likely too draconian as 21 days was too short and an unless order too extreme. However, some form of order requiring compliance with Stage 2 should have been made.

The court rejected C's 'floodgates' argument that if the appeal were allowed it would greatly add to the workload of DJ's as they would be having to police the PAP process. It would only be where there had been a wholesale failure to take any necessary steps under the PAP and there were now Part 8 proceedings that a party may seek directions designed to ensure progress within the PAP process. It should only be in exceptional cases that the court would be required to make such orders.

The court concluded that the Judges below were wrong. Once Part 8 proceedings are up and running, the court has all the powers identified in CPR 3.1(2) and has an express power under the general Practice Direction in connection with Pre-Action Conduct and Protocols to order compliance with the PAP, and is obliged to take such matters into account in any event when granting or reconsidering a stay or making the stay conditional.

Accordingly, D's appeal was allowed.

CASE UPDATES

Substitution of Defendants - CPR r.16.6(3) - Notice of Discontinuance - CPR r.38.5

1st Option Consulting Services Limited v Rutherford
[2025] EWHC 1646 (KB)

The underlying claim was a professional negligence claim. There was some confusion as to who the correct Defendant was because accounting services had been provided to the Claimant over the years by affiliated firms who had undergone name changes. The 2016 accounts, which were the subject of the claim, were prepared by 1st Option, rather than the Defendant against which proceedings had been issued. When this became clear in 2023, the Claimant applied for an Order under CPR r.16.6(3)(a) to substitute 1st Option as the Defendant within the proceedings. However, before the substitution application was heard, the Claimant served a Notice of Discontinuance on the Defendant.

Following the hearing of the substitution application, the Recorder found that the original Defendant within the proceedings had been named in the Claim Form by mistake and 1st Option was the correct Defendant. The Recorder allowed the substitution of the Defendants. The Recorder rejected 1st Option's argument that the discontinuance of the claim against the original Defendant prevented it from being substituted into the claim.

1st Option appealed, primarily on the ground that substitution was impossible because the original Defendant was no longer a party in the proceedings due to the Notice of Discontinuance.

Decision

The appeal was allowed.

Applying CPR r.38.5, the Notice of Discontinuance had taken effect on the date that the notice was served on the original Defendant. The claim had been brought to an end on that date (r.38.5(2)).

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When the Claimant's application to substitute 1st Option as the Defendant was heard in July 2024, the original Defendant was no longer a party to the claim. As such, 1st Option could not be substituted for it.

The Recorder had erred in making the substitution order. The clear effect of CPR r.38.5 was not changed by the fact that costs issues could still be raised (CPR 38.5(3)), that the Notice of Discontinuance could have been set aside on an application by the original Defendant, or that the Claimant could have applied to do so.

The use of the past tense in CPR 19.6(3) which referred to a party named in the Claim Form by mistake was not significant and simply reflected that the mistake occurred in the past. The important word was "party". When the Notice of Discontinuance took effect, the original Defendant was no longer a party to the claim (save for limited purposes in CPR 38.5(3) and CPR 38.4). 1st Option could not be substituted for a non-party.

The conclusion reached on the appeal was supported by the following propositions:

(1) Discontinuance took effect even if the party serving the notice did not realise what its effect would be or intend that effect – *Kazakhstan Kagazy Plc v Zhunas [2016] EWHC 2363 (Comm)* applied.

(2) The CPR drew a clear distinction between the substitution and addition of a party.

(3) When claimants discontinued, time ran against them for limitation purposes even if they were later permitted to rejoin the proceedings – *Sayers v SmithKline Beecham Plc (Withdrawal of Funding for Group Personal Injury Action) [2004] EWHC 1899 (QB)).*

(4) Discontinuance had always been designed to have a fundamental and final effect, subject to certain limited exceptions.

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

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- Employers' liability claims – investigation for managers and supervisors
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- Highways training
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- Industrial disease for Defendants
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- Public liability claims update

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