DOLMANS INSURANCE BULLETIN

Welcome to the August 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

Small Claims, Mediation and Discontinuances

GD v Monmouthshire County Council

Readers will be aware that Small Claims matters, particularly those pursued by Litigants in Person, can present various challenges, which can increase costs disproportionately.

These Small Claims matters are usually referred through the Court system for a mediation appointment at an early stage, in the hope that an amicable settlement can be reached or discontinuance achieved.

It is important, therefore, to provide a firm response from the outset, in the hope that this will prevent the matter proceeding further.

In the case of *GD v Monmouthshire County Council*, in which Dolmans represented the Defendant Local Authority, and although not referred for a mediation appointment, the desired effect was achieved at an equally early stage following an appropriately pleaded Defence.

Background and Allegations

The Claimant alleged that her vehicle came into contact with a pothole in the Defendant Local Authority's carriageway, causing both tyres on the passenger side of her said vehicle to burst. As a result, the Claimant alleged that such tyres had to be replaced at a cost of almost £1,000.00.

The Claimant alleged that the Defendant Local Authority's inspection regime for the said carriageway, which was adopted, was insufficient and effectively questioned the Defendant Local Authority's relevant system.

The alleged pothole had been noted for repair prior to Claimant's alleged accident, with such repair to be undertaken within an appropriate response time. The Claimant's alleged accident occurred within the said response time, whilst repairs were awaited.

The Claimant alleged that the Defendant Local Authority's system, including inspections and risk categories/assessments, was flawed and/or unreliable. The Claimant alleged that the relevant pothole was dangerous and/or in a high-risk position.

Although the Claimant was a Litigant in Person, she had undertaken sufficient research to make reference to the said system and the appropriate Code of Practice.

REPORT ON

Defence

A robust Defence was filed and served on behalf of the Defendant Local Authority.

No admissions were made as to the circumstances of the Claimant's alleged accident, including the Claimant's alleged timeline and measurements of the alleged pothole. The Claimant was put to strict proof as to the same. Causation was denied accordingly.

It was also denied that the Defendant Local Authority, its servants and/or agents were negligent and/or in breach of any statutory/other duty and/or any Code of Practice, as was alleged.

The Defendant Local Authority had both a scheduled system of inspection/maintenance and a reactive system in place at the time of the Claimant's alleged accident. It was averred that the alleged defect was accurately classed by the Defendant Local Authority and that the relevant Code of Practice, including any National Standards, was complied with.

It was contended that the Defendant Local Authority had taken all reasonably practicable steps to comply with its statutory obligations. The carriageway where the Claimant's alleged accident occurred was the subject of a regular system of maintenance and driven inspections on a regular basis, in addition to a reactive system, at the time of the Claimant's alleged accident.

A pothole was correctly categorised for repair during the Defendant Local Authority's last scheduled inspection prior to the Claimant's alleged accident, with an appropriate response time, which was also correct in the circumstances. It was reiterated that the Claimant's alleged accident occurred within the said response time.

The Defendant Local Authority had no record of having received any complaints relating to the location of the Claimant's alleged accident during the 12 month period prior to the date of the same and had no record of any other accidents at the said location during the same 12 month period.

As such, the Defendant Local Authority reserved its position to rely upon Section 58 of the Highways Act 1980, in the event that the Claimant proved factual causation and dangerousness.

In addition, contributory negligence was alleged on the Claimant's part and quantum was disputed.

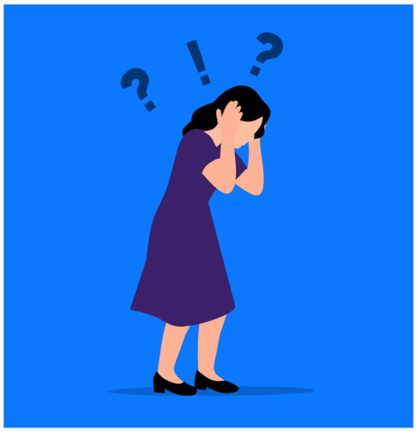
Allocation and Discontinuance

The matter was allocated to the Small Claims Track and listed for a Small Claims Track Hearing.

Although the Court provided various directions, the matter did not proceed that far as the Claimant discontinued her claim prior to the same.

Comment

Somewhat unusually for a Litigant in Person, the Claimant in this matter had pleaded her case in a precise and coherent manner. It was clear, however, that the Defendant Local Authority had an appropriate system in place and adhered to the relevant Code of Practice.



Being faced with a robust Defence in support of the above, the Claimant clearly decided that it was unlikely that her case would succeed and discontinued her claim accordingly.

It is unclear as to why the above matter was not listed for a mediation appointment, as is now usually the case for similar Small Claims Track matters. However, the relatively early discontinuance in this matter had the same effect, with substantive costs being saved by avoiding the need to comply with Court directions.

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FOCUS ON

Limitation - Child Sexual Abuse

KHX v Isle of Wight Council
[2026] EWHC 1949 (KB)

On 29 June 2026, section 96 of the Crime and Policing Act 2026 came into force, removing the 3 year limitation period in England and Wales for civil personal injury claims attributable to child sexual abuse.

The changes implement the recommendations of the Independent Inquiry into Child Sexual Abuse in relation to limitation.

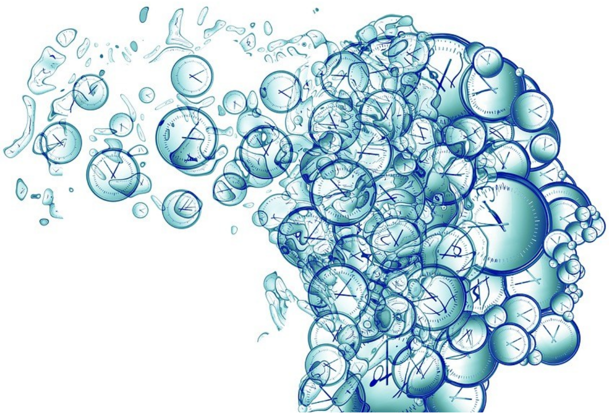
Section 96 amends the Limitation Act 1980 by inserting new provisions 11ZA and 11ZB.

Section 11ZA disapplies the time limits in the Limitation Act 1980 to actions to which s.11ZA applies. The section applies to any action for damages for negligence, nuisance or breach of duty which meets the three conditions set out in the section. The conditions are as follows:

(1) That the damages claimed by the claimant consist of or include damages in respect of personal injuries to the claimant.

(2) That the claimant was under 18 on the date on which the cause of action accrued.

(3) That the act or omission to which the claimant's personal injuries were attributable constituted sexual abuse.



Whilst there is now no limitation period for claims falling within s.11ZA, pursuant to s.11ZB, where an action to which s.11ZA applies is brought after the expiration of the time limit that would otherwise have applied (disregarding the possibility of disapplication under s.33), the court must dismiss the action if the defendant satisfies the court that it is not possible for a fair hearing to take place. It should be noted that the burden of proof is, thus, on the defendant to establish that a fair trial is not possible.

The changes have retrospective effect, applying to actions brought, and causes of action accrued, before (as well as after) the section came into force, except where a claim was settled by agreement between the parties or determined by a court before the section came into force.

FOCUS ON

KHX v Isle of Wight Council [2026]

On 30 July 2026, Ms Justice Obi gave judgment in *KHX v Isle of Wight Council [2026]*, which appears to be the first case in which the new limitation provisions have been considered.

The Claimant (KHX), whilst a child in the care of the Defendant ('D') in the 1980s, was placed in a Children's Home ('the Home'). KHX brought a personal injury claim against D, alleging that whilst resident at the Home he was subjected to physical abuse by MB and sexual abuse by LM, both of whom were employed by D as residential care workers. It was agreed that if KHX proved the alleged abuse, D would be vicariously liable.

The proceedings were issued in October 2024. A Defence was served in February 2025, in which liability was denied and a limitation defence raised.

The judgment concerned both limitation and liability. In relation to limitation, D accepted the allegations of sexual abuse fell within s.11ZA and did not seek their dismissal pursuant to s.11ZB. The parties took opposing positions on whether s.11ZA also applied to the allegations of physical assault by MB.

The issues for determination in relation to limitation in respect of the allegations against MB were, therefore;

(1) Which limitation regime applied to the physical abuse allegations against MB – sections 11ZA and 11ZB of the Limitation Act 1980 or sections 11 and 33 of the 1980 Act?

(2) If s.11ZA applied, should the allegations be dismissed pursuant to s.11ZB?

(3) Alternatively, if s.11 applied, should the discretion under s.33 be exercised?

KHX submitted that s.11ZA applied to the proceedings as a whole. The section repeatedly uses the word 'action'. As this action included allegations of child sexual abuse, the conditions in the section were satisfied and limitation was consequently removed, not merely in respect of the sexual abuse allegations but for all claims advanced within the proceedings, including the allegations of physical abuse against MB. KHX relied on previous authority relating to s.11, *Azaz v Denton [2009]*, which found that the entirety of mixed claims, including non-personal injury causes of action, should be considered under s.11 if part of the claim was for personal injury.

D submitted that s.11ZA is directed to claims for personal injury attributable to child sexual abuse and condition 3 prevents the section applying to distinct allegations of physical abuse merely because they are pursued alongside allegations of sexual abuse.

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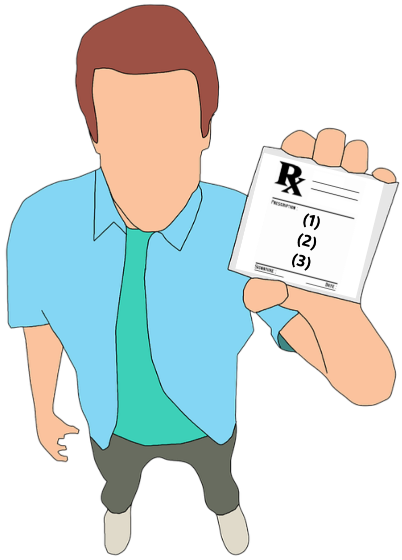
Whilst noting there was some attraction to KHX's submission, the Judge considered this diminished when s.11ZA was read as a whole. Whilst the word 'action' was repeatedly used and condition 1 used the phrase '*consist of or include'*, those features did not dispense with the separate requirement of condition 3.

The Judge noted that although advanced as a single set of proceedings, the claim comprised two analytically distinct allegations against two different alleged tortfeasors. Each depended upon different conduct, different evidence and different factual findings. The allegations against MB consisted of physical assaults and did not constitute sexual abuse. The fact that those allegations were pursued in the same proceedings as allegations of sexual abuse did not of itself satisfy condition 3.

The Judge said '*Parliament did not provide that the section 11ZA applies whenever proceedings include an allegation of child sexual abuse. Rather, it prescribed three cumulative conditions, each of which must be satisfied. Condition 3 is critical. Parliament required not merely that the action include a claim for personal injury, nor even that it include a claim involving child sexual abuse. It required that the act or omission to which the claimant's personal injuries were attributable constituted sexual abuse. In my judgment, that requirement is inconsistent with a construction whereby distinct allegations of physical abuse are brought within section 11ZA solely because they are advanced alongside allegations of sexual abuse*.'



With regard to the decision in *Azaz*, the Judge commented that it concerned the operation of s.11 and not s.11ZA, which was enacted for a distinct purpose and contains an additional condition not found in s.11. Whilst *Azaz* assisted in identifying the significance of the word 'action', it could not override the express language Parliament chose to enact in condition 3.

Standing back and reading the provision as a whole, the Judge was '*satisfied that Parliament intended to remove limitation in relation to claims for personal injury attributable to child sexual abuse. It did not intend to remove limitation from distinct allegations of physical abuse merely because they are pursued within the same proceedings as allegations of sexual abuse*.'

The Judge concluded that sections 11ZA and 11ZB did not govern KHX's allegations of physical abuse against MB. Those allegations remained subject to sections 11 and 33 of the Act.

FOCUS ON

Having concluded that the physical abuse allegations were subject to sections 11 and 33, the Judge went on to consider whether to exercise the s.33 discretion to permit that part of the claim to proceed, notwithstanding the expiry of the limitation period. On the circumstances of this case, the Judge concluded that it was equitable to disapply the limitation period.

However, in relation to liability, the Judge was not satisfied, on the balance of probabilities, that MB committed the physical assaults alleged or that LM sexually assaulted KHX. Accordingly, KHX's claim was dismissed.

This decision underlines that the intention of Parliament was to remove the limitation period for child sexual abuse claims only and this does not extend to distinct physical abuse allegations merely because they form part of an action in which child sexual abuse is also alleged.

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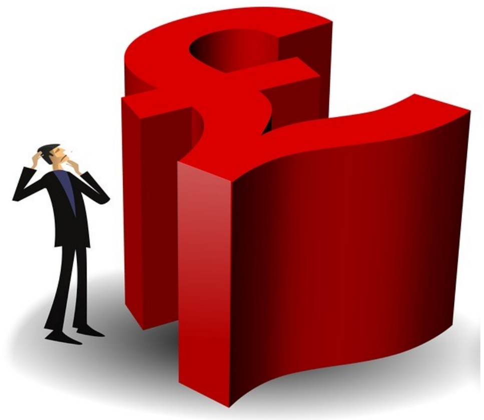
CASE UPDATES

Costs Budgets - Revisions - Significant Developments

Mr Ndifreke Bassey v Mr Shanardo Whittaker & Others
[2026] EWHC 2126 (KB)

This was a serious personal injury claim (the Claimant being a protected person who lacked capacity to conduct the litigation) where liability was conceded and judgment entered at a Case and Costs Management Hearing in December 2024. Directions were set for the quantum element of the claim and the Claimant's incurred and estimated costs were approved at just over £1,000,000. The Defendant's budget of £341,382 was agreed.



At a hearing in November 2025, a District Judge varied the case management directions and, while formally stating that these did not constitute significant developments, ordered the parties to file and serve Precedent Ts to take account of the increased costs they would generate. As a result, the Claimant sought an extra £238,350.

The Defendant appealed, raising questions concerning the meaning and effect of CPR 3.15A. In particular, whether the court can revise costs budgets even if there have been no significant developments since costs budgets were filed.

CPR 3.15A deals with revisions to costs budgets. It is headed, "Revision and variation of costs budgets on account of significant developments ("variation costs"). It provides:

"(1) A party ("the revising party") must revise its budgeted costs upwards or downwards if significant developments in the litigation warrant such revisions.

(2) Any budgets revised in accordance with paragraph (1) must be submitted promptly by the revising party to the other parties for agreement, and subsequently to the court, in accordance with paragraphs (3) to (5).

…

(5) The court may approve, vary or disallow the proposed variations, having regard to any significant developments which have occurred since the date when the previous budget was approved or agreed, or may list a further costs management hearing."

In allowing the appeal, the 2021 ruling of Master Kaye in *Persimmon Homes v Osborne Clarke 2021 EWHC 831 (Ch)* was approved.

Decision

"Significant developments" is not defined in the CPR. It is, however, obvious that the word "significant" in CPR 3.15A is a qualifier, and it indicates that not every development in litigation will justify revisions to the costs budget. Assistance on the meaning of "significant developments" can be obtained from the judgment in *Persimmon Homes*, where Master Kaye referred to the commentary in the third supplement to the White Book [2020] at 3.15A.1[148], which states:

"*The term "significant developments" is not defined. It appears to include any event, circumstance or steps which is of such a size and nature as to go beyond the events, circumstances and steps which were taken into account, expressly or impliedly, in the budget previously approved or agreed. A development is taken into account impliedly if it is something that was or should reasonably have been anticipated by the applicant for revision at the time of the previously approved budget".*

Costs budgeting is necessarily broadbrush, and so the fact that some estimates and assumptions change as a result of future developments does not mean that those developments are significant developments. It would not be in the interests of justice or the overriding objective if there was scope for constant tinkering with costs budgets if there are developments in the litigation. The "significant developments" test is satisfied if the development or developments is or are something that was not and could not reasonably have been anticipated by the applicant for revision at the time of the previously approved budget.

The key question, therefore, is what was *"an obvious possibility at the time of the costs budgeting exercise"*? In this case, the Court held that the Claimant should have known it was a possibility that further expert reports and quantum statements might be required. It also ought to have been obvious at the time of the costs budgeting exercise at the original Costs and Case Management Hearing that new therapies and rehabilitation may be required, particularly as the Claimant was aware of a potential change to accommodation and instruction of a new case manager at the time the costs budget was prepared. The Claimant ought to have known that the experts would need to comment on the impact of new rehabilitation and therapy in any event. As such, the District Judge was entitled to hold that the extra work by the experts should have been known, or reasonably anticipated, when costs budgets were originally prepared. The decision of DJ McLoughlin that there had been no significant developments for the purposes of CPR 3.15A was held to be well within the generous ambit within which a reasonable disagreement is possible.

Illustrative examples of significant developments may include attendance of experts to give oral evidence at trial or the use of surveillance evidence. These were, however, not relevant to the Claimant's claim.

This decision confirms that, ultimately, the court does not have the power to vary costs budgets if there have been no significant developments. If the parties agree that there has been a significant development, it is unlikely that a judge would go behind that agreement. The judgment does leave open the possibility that the court *may* have the power to vary costs budgets where the parties agree to that course of action, even if there is no significant development, however no ruling on this point was given.

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CASE UPDATES

Costs Orders - Small Claims Track - Unreasonable Behaviour

Orton v Barclays Bank UK PLC
[2026] EWCA Civ 1025

The Claimant brought a claim against Barclays Bank which was worth approximately £2,750 plus interest. The claim was allocated to the Small Claims Track.

During the proceedings, the Defendant repeatedly invited the Claimant to discontinue his claim and imposed deadlines for doing so, warning that costs would otherwise be sought. 12 days before trial, the Claimant discontinued his claim. His solicitor explained that this was a commercial decision, having reviewed the evidence. Instructing Counsel would effectively absorb the value of any recovery.

The Defendant sought to recover their costs under CPR 27.14(2)(g), arguing that the Claimant had behaved ‘unreasonably’. The District Judge agreed and awarded the Defendant £2,132.88. That decision was upheld on the first appeal to a Circuit Judge.

On appeal to the Court of Appeal, the Court considered the approach to be taken to the "unreasonable behaviour" provision under CPR r.27.14(2)(g).

Held

It was clear from the reference in CPR 27 to "the special procedure" for dealing with claims allocated to the Small Claims Track that the track was designed to be different. A key part of that special procedure was the establishment of a "costs neutral" environment. That extended to disapplying the costs consequences of discontinuance under CPR r.38.6(1) and disapplying Part 36. It followed that in a Small Claims Track case, the "unreasonable behaviour" provision under r.27.14(2)(g) should not be construed widely.

Guidance was provided by the Court (based upon case authorities) with regards to establishing unreasonable behaviour:

- All the facts had to be considered, including the context of the Small Claims Track.
- The burden was on the party alleging unreasonableness to establish it.
- The circumstances that would qualify were as set out in the "acid test" in *Ridehalgh v Horsefield [1994] Ch.205 [1994] 1WLUK 563*, namely circumstances which did not permit of a reasonable explanation.
- Vexatious behaviour would usually be unreasonable, but withdrawal or unsuccessful pursuit of a claim should not itself be considered as unreasonable.
- The undesirability of deterring parties from using the Small Claims Track should be borne in mind.

An important feature of the Judgment also concerned the correspondence sent by the Defendant to the Claimant in relation to the invitation for a discontinuance. The Court of Appeal rejected the characterisation of the Defendant's letters as "settlement offers" rather than an invitation to discontinue. The Court found that the District Judge had proceeded on the erroneous basis that both parties had made settlement offers and that the Claimant had failed to accept the Defendant's final "drop hands offer".

The Court also rejected the suggestion that the Claimant's decision to discontinue shortly before trial was inherently unreasonable. The Small Claims Track is a fundamentally different jurisdiction and starts from an entitlement not to pay the opposing party's costs. The Court, therefore, considered that detailed interrogation of a party's explanation, or additional concepts such as "seriousness" and "significance" (as per the *Denton* guidelines), were inappropriate. The existing rule and limited appellate guidance were sufficient.

Appeal allowed.

Fatal Accidents Act 1976 - Previous Claim - Concurrent Tortfeasor - Full Satisfaction

Ritchie v The Royal Wolverhampton NHS Trust
[2026] EWCC 50

The Court dismissed a claim under the Fatal Accidents Act 1976 (FAA) by a widow following her husband's death finding that his earlier 'in life' settlement against a concurrent tortfeasor provided full satisfaction for the harm he suffered.

The deceased underwent heart valve repair surgery at the Defendant's hospital in March 2015. During the procedure, he contracted Mycobacterium Chimaera (MC) mitral valve endocarditis from a contaminated heater cooler unit. The unit was manufactured by a company ('the Company') and used by the Defendant ('D'). The Deceased became symptomatic in 2018 and was diagnosed with MC infection in 2021.

The Deceased instructed solicitors in 2021, who advanced a product liability claim against the Company. In July 2022, settlement was agreed in sum of £250,000 damages and a Settlement Agreement entered into. The Deceased died in October 2022. C claimed that during the inquest into the death, a number of failings came to light in relation to the care provided by D. C argued that but for these failures, the Deceased would have survived a further 2 years than he did and his pain and suffering would have been ameliorated earlier.

C submitted a Letter of Claim to D. After considering the Settlement Agreement, D responded that the Settlement Agreement with the Company was full and final, fixing the full measure of the Deceased's (and thus C's) loss.

C issued proceedings, including a claim for bereavement damages, funeral expenses and a claim for financial dependency representing C's case that as a result of D's negligence, the Deceased had died 2 years earlier than he otherwise would have done. The total claim was in the region of £35,000. D applied to strike out the claim and/or for summary judgment.

D's position was that existing case law was clear that where a claimant has pursued to judgment or settlement a claim for damages for an injury which subsequently proved to be fatal, their dependants have no right of action under the FAA. Where a settlement has been reached which is in full satisfaction of the harm done to a claimant, this has the effect of extinguishing the claimant's loss and with it any claim for damages against another defendant in respect of the same harm.

Whilst C accepted that to come within the scope of s.1(1) of the FAA it was a requirement that the Deceased was able to maintain a cause of action at the time of his death, C's position was that even the tiniest of potential losses remaining uncompensated by the Settlement Agreement was sufficient to trigger s.1(1).

The Judge confirmed that he was bound by existing legal authorities, which concluded that settlement against one concurrent tortfeasor (here, the Company) does not automatically release another concurrent tortfeasor (here, D) from liability, but it may do so if the claimant achieved full satisfaction of the tort against the first tortfeasor. Full satisfaction is not the same as full value. The Court was required to consider the Settlement Agreement to determine whether the settlement reached between the Deceased and the Company demonstrated that the parties intended that the agreed sum should be in full satisfaction of the wrong done to the Deceased by virtue of his MC infection. What the Court should not embark upon is a detailed inquiry that seeks to value the Deceased's claim to calculate whether the Court would have awarded more or less or the same had the action against the Company been fought to trial.

In relation to whether the Settlement Agreement constituted full satisfaction of the harm caused due to the MC infection, D argued that it did. C submitted that the Court could not be satisfied that the Deceased did receive full satisfaction for his claim and C had not received full satisfaction for her loss as she had not been able to claim her bereavement award and her rights should not be excluded by a settlement agreement she was not a party to.

CASE UPDATES

The Judge noted that in considering whether the Deceased had received full satisfaction for his loss, it was not a forensic exercise in counting pounds and pence but instead one must look at the factual matrix of the settlement reached.

On the evidence available, the Judge rejected the submission that the knowledge about a second potential tortfeasor only came about after the Deceased's death. Further, the Judge was satisfied that the Deceased did receive full satisfaction in this case within the Settlement Agreement. The reasons for this included that his claim advanced against the Company was for all of the losses that could be recovered by way of an 'in life' claim, including a claim for lost years. D's inactions did not create additional loss, they allegedly failed to relieve the suffering caused by the Company's actions for which a claim was presented to the Company covering all of those losses. The Deceased's claim included a reduction in life expectancy of 7 years and the period of 2 years loss of life expectancy advanced by C was already subsumed within the 7 years advanced in the initial claim. The Settlement Agreement was expressed to be in full and final settlement and clearly excluded any further claim under the FAA or the Law Reform (Miscellaneous Provisions) Act 1934 against the Company, indicating that the Deceased appreciated that no further claim could be advanced against the Company once he died and suggesting it was intended that the 'in life' settlement would compensate him for all of his losses. Whilst the settlement was below the figure initially claimed in the Deceased's Schedule of Loss, that did not mean he did not receive full satisfaction. Several of the heads of loss in the Schedule were pleaded optimistically and would inevitably have been reduced at trial.

Accordingly, C could not avail herself of s1(1) of the FAA and could not bring a further claim for further losses.

The Judge concluded that there were no reasonable prospects of C succeeding on the claim due to the finding that the Deceased had received full satisfaction of his claim and, thus, an essential element of the cause of action was missing. In those circumstances, the appropriate course was to enter summary judgment against C and dismiss the claim.

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

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- Industrial disease for Defendants
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