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

Utility Apparatus in the Highway - Revisited

N P v Vale of Glamorgan Council and Another

Readers will be all too familiar with those cases where a claimant allegedly falls and sustains personal injuries due to defective apparatus in the highway. Both the relevant local authority and the appropriate utility company are usually pursued in the same action by the claimant in such matters.

In the recent case of *NP v Vale of Glamorgan Council and Another*, Dolmans represented the First Defendant Local Authority in such a case.

Although the Claimant's claim failed at the first hurdle, the Claimant having not satisfied the Trial Judge as to the exact circumstances and cause of her alleged accident, the case provides a useful reminder and summary of the issues raised by both local authorities and utility companies in support of their respective defences in such matters.

Background and Allegations

The Claimant alleged that she stepped on an open stop tap cover whilst jogging in the footway, causing her to trip, fall and sustain personal injuries. The said footway was part of the adopted highway and was maintainable by the Defendant Local Authority (the First Defendant). The stop tap cover itself was apparatus owned by the relevant Utility Company (the Second Defendant).

The Claimant alleged that the First Defendant Local Authority was negligent and/or in breach of its statutory duty under Section 41 of the Highways Act 1980.

The Claimant also alleged that the Second Defendant Utility Company was negligent.

REPORT ON

First Defendant Local Authority's Defence

The Claimant was put to strict proof as to factual causation and dangerousness. There had been no previous complaints and/or accidents relating to the relevant stop tap cover, suggesting that the location was not dangerous.

Neither the Claimant nor the Claimant's running partner at the time were able to give any direct or credible evidence about the status of the stop tap cover prior to the Claimant's alleged accident. A resident from a neighbouring property gave evidence that, sometime within 12 to 18 months prior to the date of the Claimant's alleged accident, she allegedly told an unknown man wearing a high visibility jacket undertaking street works that the stop tap cover was frequently open. However, this evidence was somewhat lacking in detail and it was argued that this was insufficient for the Claimant to prove that the First Defendant Local Authority was on notice of any alleged defect.

The First Defendant Local Authority argued that it had in place a reasonable system of walked monthly inspections and that it was not, therefore, on notice of a defective stop tap cover at the location of the Claimant's alleged accident prior to the same. As such, the First Defendant Local Authority argued that it had an appropriate Defence in accordance with Section 58 of the Highways Act 1980.

Indeed, the First Defendant Local Authority inspected the relevant footway on a regular basis, in addition to reactive inspections. Although highway defects were noted at other locations during the First Defendant Local Authority's last scheduled inspection prior to the Claimant's alleged accident, no defects were noted at the location of the Claimant's alleged accident. The First Defendant Local Authority was also able to adduce evidence in support of the fact that it had an effective system of notifying the Second Defendant Utility Company of any issues with its apparatus.

It was argued that the above, coupled with the First Defendant Local Authority's position that there were no previous complaints and/or accidents, was enough to maintain the First Defendant Local Authority's Section 58 Defence accordingly.

REPORT ON

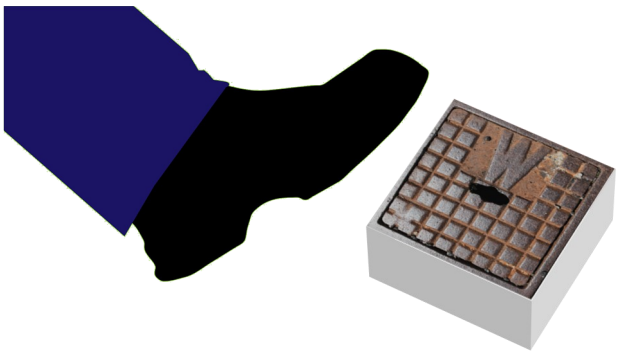
Section 58 Defence – Case Authorities

The First Defendant Local Authority relied upon two County Court decisions in support of its Section 58 Defence, as follows:

Samuel v Rhondda Cynon Taf County Borough Council and Dwr Cymru Welsh Water (2) (LTL 30/01/2014); where Dolmans again represented the First Defendant Local Authority and in which the Trial Judge found that there was no requirement for highway authority inspectors to physically inspect stop covers given the large number of such apparatus in the water network and that visual inspections of such apparatus were sufficient. It was argued that the same reasoning should apply in the current matter.

Any problem with the hinge pins within the stop tap cover, as alleged by the Claimant, would not have been visible to the First Defendant Local Authority's highways inspector in any event when undertaking their walked monthly inspections of the relevant footway.

It was argued that the risk of an injury occurring on a stop tap cover that could not reasonably be seen to be defective, save with a physical examination, was low, and particularly when viewed with the fact that there had been no other reported complaints and/or accidents at the relevant location.



Notwithstanding the above, the highways inspector in the current matter gave evidence that they did attempt to step on as many covers/ apparatus as possible during their inspections, thereby going above and beyond what is reasonably required.

In *Berry v Vale of Glamorgan Council and DWR Cymru Welsh Water (2) [2018] WL 05982429*, the Trial Judge dismissed a claim in which the Claimant allegedly sustained personal injuries on a stop tap cover that had flipped while out running. Indeed, the facts in that case were very similar to the current matter and, again, the Defendants had not been on notice of the alleged defect prior to the Claimant's alleged accident. The Trial Judge made the point that if the Trial Judge's analysis in *Samuel* is accepted that physical inspections are not required for the purposes of determining stop tap cover safety, then the risk posed by such defective covers was of a low order.

The Trial Judge in *Berry* also made it clear that the fact of an accident does not mean that liability ought necessarily to follow.

REPORT ON

Second Defendant Utility Company's Defence and Case Authorities

As frequently occurs in matters such as these, the Second Defendant Utility Company averred that it is entitled to rely upon the First Defendant Local Authority's system of inspection, which had not identified the stop tap cover as being defective prior to the Claimant's alleged accident.

The Second Defendant Utility Company relied upon the decision in *Reid v British Telecommunications Plc (Times - June 27 1987)*, in which Gibson LJ found that the statutory undertaker was not negligent in relying upon a highway authority's system of inspection:

"… In my view, there was nothing to suggest that British Telecom was at fault in relying upon six-monthly inspections by the Highway Authority … I can see no great sense in having the Highway Authority inspect the flagstones around such a manhole cover and having British Telecom inspect the metal frame which supports it … If British Telecom choose to rely upon inspections by the Highway Authority – there being of course no suggestion that they could sensibly dispense with all inspections – British Telecom must be treated, as I see it, as knowing what they should know if the inspections are properly carried out by the Highway Authority at the proper intervals …"

The Second Defendant Utility Company in the current matter supported the First Defendant Local Authority's Defence by agreeing that the latter's system of inspection was reasonable and operating effectively. As such, the Second Defendant Utility Company argued that it could not be found to have been negligent in respect of the stop tap cover and that the claim should be dismissed in its entirety.

The Second Defendant Utility Company also supported reliance upon the decision in *Samuel*; the Trial Judge in that particular matter summarising why a perceived duty to physically examine every stop tap cover is far too onerous and goes beyond the realms of what is reasonably required for the purposes of Section 58 of the Highways Act 1980:

"If the matter is one where that [a physical examination] would have to be undertaken such physical inspection would mean either a manual inspection, i.e. getting down to the pavement and inspecting that and others; alternatively, it would mean standing on it, perhaps with some trepidation … or using a stick or other form of prod or probe … That would include, as was the case in evidence here, having to try not just on one particular part of it with an inspection probe, but on different parts. What might seem adequate or proper on testing one part of a cover might not be the case in another part. That would put a very high burden on anyone so required or so considering undertaking that … If there was to be inspection requiring inspection of all other forms of, in the case of the Second Defendant, coverings, whether it be this type or other types, that would put a huge and, in my judgment, quite unreasonable burden on the Second Defendant to undertake it … To inspect the entire county would be unreasonable. Unreasonable for the Second Defendant and an unfair and unreasonable burden on the Local Authority to inspect within their area."

REPORT ON

Judgment

As already stated, the Trial Judge dismissed the Claimant's claim in the current matter on the basis that the Claimant had failed to prove the exact circumstances and cause of her alleged accident. Factual causation was not, therefore, proved and the Claimant had failed to discharge the appropriate burden.

Although the Trial Judge had no doubt in his mind that the Claimant was doing her best in giving evidence, he considered that the Claimant was effectively having to reconstruct the exact circumstances and cause of her alleged accident on the basis of what she saw after the event. The Claimant did not see the alleged defective stop tap cover prior to her fall and her running partner's immediate thought was that the Claimant *"must have kicked a bin or something"*.

The Claimant accepted that having fallen she looked around for the cause of her fall and it was put to her that the core of her case was, therefore, based upon an assumption, with which she agreed.

Comment

The decision in the above matter illustrates the importance of putting a claimant to strict proof, even when it may seem that the circumstances of the alleged accident are entirely obvious.

It is also a good reminder and summary of the arguments that can be raised by local authorities and utility companies in support of their respective defences.

In this particular matter, the Second Defendant Utility Company was keen to support the First Defendant Local Authority's system as being entirely reasonable. This might not be surprising as the Second Defendant Utility Company relied, of course, upon the First Defendant Local Authority's system.

Faced with such supportive evidence and coupled with strong evidence adduced on behalf of the First Defendant Local Authority, it is difficult to comprehend how the Trial Judge could have found that the First Defendant Local Authority was negligent and/or in breach of its statutory duty under the Highways Act 1980, even if the Claimant had proved factual causation and the Trial Judge needed to consider such issues.

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CASE UPDATES

Application of CPR 3.9 - Relief from Sanctions - The Overriding Objective

Martin Warren v Yesss (A) Electrical Limited
[2024] EWCA Civ 24

The substantive case involved a relatively straightforward claim for personal injury arising out of an accident at work. Liability was disputed. Following a series of interlocutory hearings, including a CCMC and pre-trial settlement meeting, the Claimant applied for permission to rely upon expert evidence in pain medicine (which had been recommended by one of the existing medical experts). It was accepted that the Claimant could, and should, have applied for the expert pain management evidence earlier. The explanation for the delay was that a new file handler had taken over conduct of the case and had, at that (late) stage, identified the need for such expert evidence.

A trial date was not fixed at the time of the Claimant's Application. Therefore, in dealing with the Claimant's Application, the District Judge applied the two-stage test and the overriding objective, and granted the Claimant permission to rely upon the requested expert evidence. The Defendant appealed, asserting that the District Judge had applied the wrong test and the correct test to be applied was relief from sanctions, engaging CPR 3.9 and *Denton*.

A Circuit Judge upheld the District Judge's decision and dismissed the appeal. The Defendant's proposition that CPR 3.9 applied to the case was not accepted; *T (Child) v Imperial College Healthcare Trust [2020] EWHC 1147 (QB*). The lateness of the Application itself did not engage CPR 3.9.

Further, permission to appeal was granted. The Defendant asserted that the Claimant should have had to apply for relief from sanction as a result of breaching the allocation and CCMC Order, CRP 29.4, and paragraphs 3.5, 5.6 and 6.2(1) of PD 29, by failing to apply to rely upon a pain management expert at the original CCMC and by failing to apply for oral expert evidence in its Pre-Trial Checklists. The appeal was dismissed in a reserved Judgment handed down on 19 January 2024.

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Briss LJ delivered the Court's Judgment and summarised the general approach to assessing whether CPR 3.9 applied as follows:

(1) The starting point was to identify whether a Rule, Practice Direction (PD) or Order had been breached. If not, CPR 3.9 did not apply.

(2) If there was a breach, the next step was to identify whether there was any express sanction for that breach in the Rules, PD or any Order.

(3) If there was no express sanction, then, outside the category of cases identified, *FXF v English Karate Federation Ltd [2023] EWCA Civ 891* and the specific recognised instances of implied sanctions identified in *Sayers v Clarke Walker [2002] EWCA Civ 645* and *Altomart Ltd v Salford Estates (No 2) Ltd [2014] EWCA Civ 1408*, CPR 3.9 did not apply. It was only if there was both a breach and a sanction that CPR 3.9 applied.

It was held that just because a Rule, PD or Order provided that a party needed permission to take a step it did not mean that the permission requirement had been imposed as a sanction for breach of something. Briss LJ observed that the need to expand the recognised instances of implied sanctions was likely to be very limited because the *Denton* "ethos" might apply even when CPR 3.9 was not engaged.

In this case, the Claimant had not complied with aspects of two Directions Orders (to attend the CCMC with dates of availability for all witnesses including experts and in not making the relevant Application for oral evidence in their Pre-Trial Checklist), but had not breached CPR 29.4 (by only raising the issue of the new expert after the first CCMC) or PD 29. The fact that the Claimant should have raised the pain management expert issue earlier did not mean that PD 29 had been breached. It was held that the Lower Court had correctly approached the Respondent's Application as one governed by the overriding objective, not CPR 3.9.

In relation to the overriding objective, although it was accepted that the Claimant's failures to raise his request earlier had breached the allocation and CCMC Orders, and that the delay had been very serious (and that some Judges might well have refused the Application), the Judge's decision to allow the Application had not been outside of his wide case management discretion. However, a critical factor was that at the time of the original decision, no trial date had been listed (fortuitously for the Claimant as a result of an error by the Court).

Appeal dismissed.

CASE UPDATES

Negligence - Strike Out - Illegality Defence

Lewis-Ranwell v (1) G4S Health Services (UK) Limited (2) Devon Partnership NHS Trust (3) Devon County Council [2024] EWCA Civ 138

The Defendant public bodies appealed against the refusal of their Applications to strike out the Claimant's claims in negligence on the grounds of the illegality defence.

In 2019, the Claimant, 'C', in the course of a serious psychotic episode, attacked and killed three elderly men in the delusional belief that they were paedophiles. He was charged with murder but found not guilty by reason of insanity. In the 2 days prior to the killings, C had twice been arrested by Devon and Cornwall Police. On the first occasion the arrest was in relation to a suspected burglary. He was released on bail. The second arrest was for assaulting an elderly man whom he believed to be a paedophile. He was again released on bail. During both periods of detention C had behaved violently and erratically and was apparently mentally very unwell. He was seen or spoken to by mental health professionals employed by G4S and the Health Trust. A face to face assessment by a mental health nurse and the need for a Mental Health Act Assessment by a mental health professional employed by the Council were discussed but did not take place.

C commenced proceedings against G4S, the Police, the Health Trust and the Council, alleging that it should have been obvious to all concerned during both detentions that if he were released there was a real risk he would injure other people and that the necessary steps should have been taken to keep him in detention until it was safe for him to be released. The claims are advanced in negligence and under the Human Rights Act 1998 and seek damages for personal injury, loss of liberty, loss of reputation and pecuniary losses. C also seeks an indemnity in respect of any claims brought against him as a consequence of his violence towards others during the relevant period.

The Council, G4S and the Health Trust issued Applications to strike out the claims relying on the illegality defence (ex turpi causa principle); that is the Court will not entertain a claim which is founded on a Claimant's own unlawful act.

By the time of the first instance hearing of the Applications, it was accepted that the Applications could only be pursued in relation to the claim in negligence and not the claim under the 1998 Act. The Applications were dismissed at first instance on the grounds that because of the verdict of 'not guilty by reason of insanity' C did not know that what he was doing was wrong and his conduct did not have the necessary element of 'turpitude'. The Defendants appealed.

CASE UPDATES

As this was a strike out Application the Court had to proceed on the basis that unless the illegality defence applied C had a good claim for negligence and had suffered a serious injury from the Defendants' failures to protect him from the harm he had suffered. It was noted that it is the policy of the law, reflected in the law of negligence, that people in that position should be compensated for their loss. The question was whether that public policy was outweighed by the other considerations of public policy relied on by the Defendants that is 'the consistency principle' and 'the public confidence principle'.

In relation to the consistency principle, two kinds of inconsistency were raised: inconsistency with the criminal law by treating C's conduct as criminal but allowing him to claim damages for the consequences of that conduct and inconsistency with the civil law.

In relation to inconsistency with the criminal law, the Court accepted C's case that the verdict of not guilty by reason of insanity was an acquittal. Accordingly, the law had not treated him as criminally responsible for his actions and there was no inconsistency in allowing him to recover for the loss he had suffered in consequence of them.

As regards inconsistency with the civil law, insanity is no defence to an action in tort. If the estates or dependents of C's victims chose to sue him for damages for their deaths C would be liable; the law would treat him as responsible for his acts. The Defendants submitted that it would be incoherent if the law took a different approach to his responsibility for his acts in the context of claims brought by C for damages against a third party. The Court rejected this argument. The question of the liability of C to his victims for the injury he caused them is self-evidently different from the question of the liability of the Defendants for the loss they have caused C. In the former case, justice requires that the interest of the victim in receiving compensation comes before any question of moral culpability. In the latter, it is C who is the victim of wrongdoing and the question whether he should be denied recovery because the loss was the result of a criminal act has to be considered in that quite different context. This did not mean that it had to be answered in C's favour, only that there was no inconsistency.

The public confidence principle has been defined as being that '*allowing a claimant to be compensated for the consequences of his own criminal conduct risks bringing the law into disrepute and diminishing respect for it because that is an outcome which public opinion would be likely to disapprove*'. It was necessary to go beyond the 'instinctive recoil' and consider what justice required. The Court concluded that '*the considered view of right thinking people would be that someone who was indeed insane should not be debarred from compensation for the consequences of their doing an unlawful act which they did not know was wrong and for which they therefore had no moral culpability'*.

Accordingly, it was held, by a majority, that the illegality defence was not available as a matter of law and the appeal was dismissed.

CASE UPDATES

Striking Out a Defence - Failing to Deal with Allegations - CPR 16.5 - CPR 3.4(2)(b) & (c)

Akbar v Ghaffar and Another
[2024] EWHC 50 (Ch)

Following the filing of a Defence to a claim issued by the Claimant, a Reply was served in which it was alleged that the Defence was "wholly devoid of necessary Particulars and non-compliant with the mandatory rules of the Court"; favoured placing "misconceived and undue criticism upon the Particulars over providing a cogent and substantive response to the claim"; was "startling for the extent to which it contradicts multiple prior accounts given by way of sworn Affidavits and/or Statements of Truth"; and, in the circumstances, "was liable to be struck out in whole or in part and/or attract Summary Judgment in favour of the Claimant".

The Claimant then issued an Application seeking an Order that unless the Defendant served a Defence that was complaint with CPR 16.5 within 14 days, then the Defence should be struck out and Judgment entered on the basis that the Defence was an abuse of the Court's process or was otherwise likely to obstruct the just disposal of the proceedings and that there had been a failure to comply with a Rule, Practice Direction or Court Order.

CPR 16.5 provides:

"(*1) In the Defence, the Defendant must deal with every allegation in the Particulars of Claim, stating:*

(a) which of the allegations are denied;

(b) which allegations they are unable to admit or deny, but which they require the Claimant to prove; and

(c) which allegations they admit.

(2) Where the Defendant denies an allegation:

(a) they must state their reasons for doing so; and

(b) if they intend to put forward a different version of events from that given by the Claimant, they must state their own version.

(3) If a Defendant:

(a) fails to deal with an allegation; but

(b) sets out in the Defence the nature of their case in relation to the issue to which that allegation is relevant,

The Claimant is required to prove the allegation.

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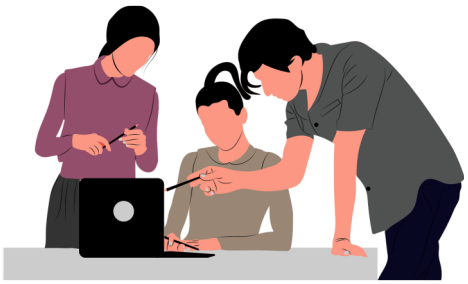
> *(4) Where the claim includes a money claim, the Claimant must prove any allegation relating to the amount of money claimed, unless the Defendant expressly admits the allegation.*
>
> *(5) Subject to paragraphs (3) and (4), a Defendant who fails to deal with an allegation shall be taken to admit that allegation.*

The extent, significance and seriousness of the breaches of CPR 16.5 were considered, paying regard to the *Denton* principles regarding relief from sanction on the basis that these were relevant to Applications to strike out for non-compliance under CPR 3.4(2)(c); *Walsham Chalet Park Ltd v Tallington Lakes [2014] EWCA Civ 1607.*

The Court held that CPR 16.5 was not properly to be regarded as a self-contained code in the sense that the consequences of any breach should be regarded as solely catered for by CPR 16.5(5) providing that a defendant who fails to deal with an allegation is to be taken to admit the same, subject to CPR 16.5(3) and (4). Nothing expressly, or by implication, excluded the application of CPR 3.4(2)(c) to a breach of CPR 16.5 in appropriate circumstances. However, the fact that CPR 16.5(3) and (5) provided as they did was highly relevant to considering whether the discretion to strike out ought to be exercised given that these provisions might, in appropriate circumstances, provide the Claimant with a reasonable and proportionate answer to the failure to comply with CPR 16.5(1) or (2).

Further, the Claimant's submission that a consequence of the breach of CPR 16.5 (1) and/or (2) may be such that the Defence is susceptible to being struck out pursuant to CPR 3.4(2)(b) as an abuse of the Court's process or as being otherwise likely to obstruct the just disposal of the proceedings.

A number of the breaches were considered to be serious breaches involving the Defendants' failing to properly plead to important and significant allegations in the Particulars of Claim. The seriousness of the position had been exacerbated by the fact that an Order, designed to give the Defendants the opportunity to address the deficiencies alleged in the Defence, had not been complied with by the Defendants. The Court found that no good reason had been advanced for the serious breaches of CPR 16.5 which had been identified.



It was noted that it was clearly an important consideration that the present proceedings related to fairly considerable sums of money, exceeding some £4 million, and included serious allegations of dishonesty. As such, it was "undesirable" for them to be dealt with by default, rather than on their merits. However, balanced against this, was the need for effective case management of the proceedings, including the early identification of the issues between the parties as disclosed by their respective pleaded cases. The breaches of CPR 16.5 were seriously affecting the effective case management of the proceedings to the extent that, if they remained uncorrected, they would amount to an abuse of the Court's process or otherwise obstruct the just disposal of the proceedings within the meaning of CPR 3.4(2)(b).

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The Court was persuaded that the circumstances of this case was closely analogous to the decision in *Montlake Qiaif Platform ICAV v Tiber Capital and Others* and that the absence of evidence did not prevent the Court granting declaratory relief. That was a consequence of the Defendants' own default and the Judge found that the granting of declaratory relief was the most effective way of resolving the issues raised by the Application.

The Court accepted that certain paragraphs of the Defence should be struck out under CPR 3.4(2)(b) and (c) because of a serial failure to comply with CPR 16.5 and that the Claimant should be granted Judgment on the relevant claims. However, the Court considered that the Defendants ought to be "allowed one further short, limited opportunity" to remedy the defects. The Court, therefore, ordered that the Claimant was not entitled to enter Judgment until 14 days after the date of the Order. If, within that 14 day period, the Defendants issued and served an Application seeking to amend the Defence, attaching a draft Amended Defence that purported to be compliant with CPR 16.5, then the Claimant's entitlement to enter Judgment would be stayed pending an expedited hearing of the Application to amend and consideration being given at that hearing as to whether or not the stay should be lifted.

Universities - Student Mental Health - Disability Discrimination - Negligence

University of Bristol v Abrahart
[2024] EWHC 229 (KB)

The first instance decision in this case was reported on in the June 2022 edition of the Dolmans Insurance Bulletin.

Briefly, the Claimant's daughter, N, took her own life on 30.04.18. At the time she was a second year student on the Defendant University's MSci degree programme in Physics. She was suffering from depression and Social Anxiety Disorder, the effects of which amounted to a disability for the purposes of the Equality Act 2010. Her conditions substantially impaired her ability to participate in oral assessments, in particular interviews and a laboratory conference which she was required to carry out as part of a mandatory module called Practical Physics 203.

The Claimant's father brought proceedings against the University alleging that it unlawfully discriminated against N contrary to s.15 (discrimination arising from disability), s.19 (indirect discrimination) and s.20 (duty to make reasonable adjustments) of the 2010 Act. Negligence was also alleged. In particular, it was alleged that the University should have removed or adjusted the oral assessment requirements.

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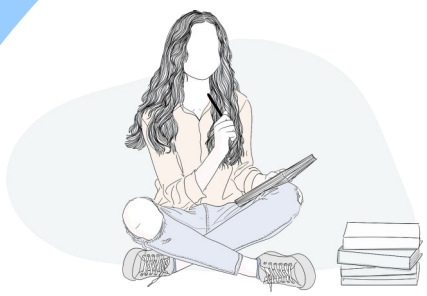
At first instance it was held that the University had breached each of the statutory duties under the 2010 Act and damages were awarded. The claim in negligence was dismissed on the basis that the University did not owe a common law duty of care. The Judge said, however, that if a duty had arisen he would have found it was breached for the same reasons which amounted to breaches of the 2010 Act. The main breach being continuing to require N to give interviews and attend the conference and marking her down if she did not participate when the University knew that she was unable to participate for mental health reasons beyond her control.

The University appealed against the findings of breach of the 2010 Act and the finding that if there had been a relevant common law duty of care that duty was breached. The University submitted that it had no duty to adjust the requirements of Practical Physics 203 because the oral assessments were a 'competence standard' and, thus, fell within the exception under paragraph 4(3) of Schedule 13 of the 2010 Act. In the alternative, the Judge was wrong to find that the University had the requisite knowledge such as to be obliged to make the adjustments that the Judge found would have been reasonable. The disability discrimination claims should have been dismissed on the basis that the University acted reasonably and/or was justified in its approach given the importance of maintaining academic standards and fairness to other students. N had not provided sufficient evidence through the relevant procedures for the University to be in a position to do more than it had done. Further, the Judge did not adopt a reasoned approach to the question of adjustments. The Claimant cross appealed against the finding that there was no duty of care.

The University's appeal was dismissed.

Under s.20 an education institution was required to take reasonable steps to avoid a disabled person suffering disadvantage in relation to a relevant matter because of its provision, criterion or practice (PCP). The duty to make reasonable adjustments under s.20 was an anticipatory one. Education providers were not expected to anticipate the needs of every prospective student but they had to think about, and take reasonable steps to overcome, barriers which might impede people with different kinds of disability.

The existence of the duty did not depend on the education institution's actual or constructive knowledge of N's disability and its effects. The University's knowledge was, however, relevant to the question of breach. Whether the duty, having arisen, had been complied with depended on the reasonableness question, which was an objective question for the Court, considering all the relevant circumstances, including what the institution ought to have known or anticipated.



It was not disputed that N had a disability. On the facts of this case, the PCP that was alleged to put N at a substantial disadvantage was the requirement to be assessed orally by way of interviews and the laboratory conference. In relation to the question of whether these requirements amounted to the application of competence standards or were methods of assessment, the Trial Judge's conclusion that they were methods of assessment was clearly open to him and right on his findings of fact. The duty to make reasonable adjustments therefore arose. There was no dispute that abandoning the requirement for oral assessments would have avoided the disadvantage N was experiencing. The Trial Judge had found that the University had not satisfied him, on the facts of this case, that this was not a reasonable step to take. Whilst it would have been open to another Court to take a different view, this conclusion was clearly open to the Trial Judge and was not wrong.

The Trial Judge's finding that the University had directly discriminated against N was also upheld.

Having reached the above conclusions on the disability discrimination claims, the Judge declined to express a final view one way or the other in relation to the Trial Judge's findings about the claim in negligence.

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- Industrial disease for Defendants
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- Ministry of Justice reforms
- Pre-action protocol in relation to occupational disease claims – overview and tactics
- Public liability claims update

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