DOLMANS INSURANCE BULLETIN

Welcome to the January 2020 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,
Justin Harris, Partner, at **justinh@dolmans.co.uk**

DOLMANS REPORT ON

SUCCESSFUL DISMISSAL OF AN ENTIRE CLAIM PURSUANT TO SECTION 57 OF THE CRIMINAL JUSTICE AND COURTS ACT 2015 DESPITE THE CLAIMANT ESTABLISHING LIABILITY

JG v Newport City Council

The phrase "Fundamental Dishonesty" is now well known to Defendants and their insurers in respect of personal injury claims and the enactment of Section 57 of the Criminal Justice and Courts Act 2015 provides a further weapon in a Defendant's armoury.

Prior to the commencement of the Act, a Claimant who intimated a genuine claim which was either tainted with fraud or related to a fraudulent claim would be awarded damages for the genuine element of their claim, but would be penalised in costs. This applied even if the Court had found that the Claimant had dishonestly supported the fraudulent claim.

The enactment of Section 57 substantially changed that position and provides that if a Court finds that a Claimant is entitled to damages in respect of a claim, but finds (on the application of the Defendant) that it is satisfied, on the balance of probabilities, that the Claimant has been fundamentally dishonest in respect of the primary claim or a related claim, the Court *must* dismiss the *entire* claim, unless it is satisfied that the Claimant would suffer substantial injustice.

The Council, and its insurers, represented by Dolmans, was recently successful in utilising Section 57 when dealing with this recent case.

Background

The Claimant's claim arose out of an accident during her employment as a school cleaner. It was the Claimant's case that she had slipped and fallen, whilst she was carrying out her duties, on water which had been deposited by a colleague.

Proceedings were issued in January 2017. The Claimant alleged that she suffered serious, lasting injuries to her left knee as a consequence of the accident and relied upon medical evidence from Mr Richard Evans, Consultant Orthopaedic Surgeon, who reported that the Claimant was "*In constant pain in her knee … […]. Her knee is uncomfortable as soon as she weight bears. The maximum she can walk is 5 to 10 minutes. She has to walk with the aid of a single walking stick*".

The Claimant's claim was initially pleaded up to £50,000, although at the initial Costs and Case Management Conference, the Claimant's Solicitors successfully applied to have this increased to £310,000; the Claimant's case being that she had been unable to return to work, had been left disabled on the labour market and had ongoing restricted mobility and independence.

Liability Position

The circumstances of the Claimant's accident were in issue, although our investigations were hampered by a lack of witnesses. There were no witnesses to the Claimant's accident and the members of staff who attended upon the Claimant in the immediate aftermath were no longer employed by the Local Authority and/or were not prepared to provide witness statements. Ultimately, the only witness to give evidence on behalf of the Local Authority was the former School Bursar, who was the Line Manager of the Cleaning Supervisor at the school at the material time. Much of her evidence, however, was hearsay.

It was accepted that if there was water present which had been deposited externally by a colleague, then the Local Authority would be vicariously liable for their actions.

Medical Evidence

Permission was sought at an early stage for the Local Authority to obtain their own medical evidence. Mr Pemberton, Consultant Orthopaedic Surgeon, examined the Claimant on 19 December 2017 and reported that the Claimant informed him that her knee "*Will still give way on her. It is painful intermittently […]. Prolonged periods of standing on her feet increases her pain […]. She … still mobilises with a stick when indoors […]. She walks outdoors and indoors with a stick at all times […]. She can operate a washing machine …, but her husband has to hang the washing out as there are steps at the back of her home which she cannot negotiate whilst carrying washing*". The Claimant had walked slowly into the examination room with a right sided limp and had even used the stick when crossing the examination room (which took around three steps).

Both medical experts, therefore, accepted that the Claimant had sustained a significant injury to her knee, which required reconstructive surgery. There was no dispute that for a period of at least twelve months after the accident, up until the date of surgery and for a period thereafter, the Claimant was significantly disabled and had a permanent loss of function in her knee. In due course, this was the position which was set out in an initial Joint Statement prepared by the medical experts.

Surveillance Evidence

Due to the lack of direct liability evidence and the opinion of the medical experts, the Local Authority did not appear to be in a strong position. However, inconsistencies between the Claimant's account of the accident and contemporaneous documents completed at the time caused us to have reservations regarding the veracity of the Claimant's claim.

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Detailed internet and social media investigations were carried out. A Facebook page belonging to the Claimant suggested that the Claimant was working for a wedding planning business and that she was the owner of a company which offered floral arrangements for weddings, for sale or hire. Photographs and videos located online also suggested that the Claimant had attended a number of wedding fayres as an 'employee', or certainly as a representative, of a wedding planning business.

Within the initial Witness Statement served in support of her claim, the Claimant confirmed that one of her hobbies was "crafts" and making fabric flowers, which she hoped to make money from in the future. She indicated that her friend ran a wedding business and she was planning on asking her if she could sell her fabric flowers as part of that business, but the Claimant did not suggest, even when we specifically addressed the issue with her by way of a Part 18 Request for Further Information, that she had earned any money or was 'employed' to any extent in the wedding business at this time.

A decision was made to arrange a period of surveillance of the Claimant, and the Claimant was initially surveyed over a period of two days in February 2018, six weeks after the Claimant had been examined by Mr Pemberton.

The surveillance evidence was a game changer. The Claimant was seen walking outside her property, where she navigated a set of steps, without a stick and without any apparent difficulty at all. The Claimant was seen to spend two and a half hours cleaning her car, which involved her repeatedly bending and carrying a bucket of water around the car and up and down the front steps to her property. The Claimant was seen manoeuvring a wheelie bin from the roadside at the front of her property, up her front steps, before returning to collect her neighbour's bin. She was seen to do all of this without any obvious impediment.

The following day, the Claimant was seen walking down the steps of her property to her car, without a stick, this time carrying a dining chair in front of her. She loaded and unloaded the chair into her car, again without any obvious impediment to her mobility and without using a stick.

The surveillance evidence raised significant questions about the extent of the Claimant's recovery. Upon receipt, an Advice was sought from Counsel as to whether the evidence was sufficient for the Defence to be amended to plead Fundamental Dishonesty. In the meantime, arrangements were made for a further period of surveillance to be carried out. It was considered that if evidence could be obtained that the Claimant was also working in some capacity, this would significantly bolster the overall strength of the evidence.

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The second period of surveillance was deliberately timed to coincide with a major local wedding fayre event. Confirming our suspicions, on 29 April 2018, the Claimant was filmed attending the wedding fayre event and was not only seen carrying boxes and other items from a car into the wedding fayre venue, but was also filmed inside the premises seemingly taking part in the wedding fayre as a representative of her friend's wedding business. Throughout the footage there was, again, no evidence of the Claimant using a stick.

By this date, the Claimant had served an Updated Schedule of Loss, which maintained her significant claim for past/future loss of earnings and care based upon her accounts to the medical experts. As soon as the surveillance evidence obtained on 29 April 2018 was received, we immediately disclosed it to the Claimant's Solicitors, together with the footage obtained in February 2018 and the documentary evidence found on the internet. We put the Claimant's Solicitors on notice that we were seeking Counsel's Advice to amend the Defence to plead fraud/fundamental dishonesty and invited the Claimant to discontinue her claim.

We provided a copy of the surveillance footage to Mr Pemberton, who confirmed that the evidence was "strikingly at odds" with how the Claimant had presented her medical condition to him six weeks earlier. With that confirmation, an Amended Defence was served upon the Claimant's Solicitors on 13 June 2018. Having received no substantive response from the Claimant's Solicitors, an Application seeking permission to rely upon the surveillance evidence was made.

Our Application was heard by His Honour Judge Jarman QC at a Pre-Trial Review on 22 June 2018, ahead of a Trial listed for 26 and 27 July 2018. The Claimant's Solicitors informed the Court that they had not had the opportunity to obtain the Claimant's instructions on the surveillance evidence and submitted that the Claimant would not have the opportunity to deal with/respond to the evidence in advance of the Trial.

His Honour Judge Jarman QC accepted that for the Claimant to have the opportunity to deal with the surveillance evidence, the Trial date could not stand and, on that basis, refused the Local Authority permission to rely upon the surveillance evidence, as, despite its apparent significance, it had been served too late. We immediately sought permission to appeal the decision.

The Appeal

The Appeal was heard by Mr Justice Birss on 11 December 2018, who upheld HHJ Jarman QC's decision and dismissed the Appeal.

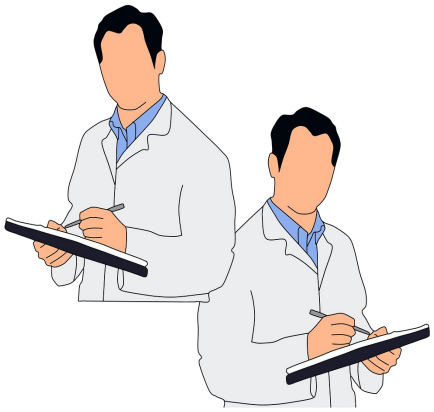
The Claimant's triumph, however, was very short-lived. In an interesting turn of events, Mr Justice Birss queried as to whether, in circumstances where the original Trial date had had to be adjourned to allow the Appeal to be heard, the appropriate step to now take was to make an Order admitting the surveillance evidence into proceedings.

Counsel for the Claimant submitted that this would amount to an abuse of process, and whilst Mr Justice Birss had some sympathy for the Claimant's position, he noted that, on the face of it, the surveillance evidence seemed to falsify the Claimant's evidence in the proceedings. Mr Justice Birss, therefore, allowed the evidence to be admitted into the proceedings as the Claimant now had as much of an opportunity to deal with the evidence as she could ever need. The Local Authority was also granted permission to rely upon the Amended Defence.

We felt certain that the Claimant would now consider discontinuing her claim.

Evidence – Post-Surveillance Evidence

Contrary to our expectations, the Claimant maintained, and continued to pursue, her claim. In essence, the Claimant's case was that what was seen in the surveillance evidence was three of her 'good days'. She maintained that she was not an employee or agent of her friend's wedding business, and she had not earned any money from either that business or her own business selling floral bouquets.



The medical experts prepared an Updated Joint Statement. Mr Evans continued to support the Claimant's case and maintained his original position, although he accepted that the Claimant was seen to be doing more in the surveillance footage than when he had assessed her, such that it appeared that the Claimant would be able to carry out some degree of manual activity for three or four hours a day as a cleaner.

Mr Pemberton maintained that the surveillance evidence was strikingly at odds with how the Claimant had presented her medical condition to him, and indicated that such a variation in the Claimant's presentation could not in any way be attributable to day to day variation in symptomology. In his view, there was no clinical explanation for the discrepancy seen, other than to conclude that the Claimant had deliberately and consciously exaggerated her condition to him for the purpose of gain.

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The Trial

A Trial was listed for 16 to 18 December 2019 before Her Honour Judge Howells.

In advance of the Trial, the Claimant made an offer to settle her claim in the sum of £75,000, but a decision had been made by this stage that the case would be defended to Trial and no offers of settlement would be considered. We notified the Claimant's Solicitors of the position and put them on notice of the potential risks to the Claimant should a finding of fraud/fundamental dishonesty be made against the Claimant, including prosecution for Contempt of Court. The Claimant's Solicitors, however, were undeterred.

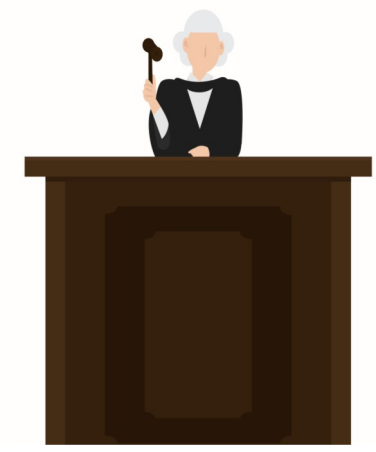
The Claimant attended each day of the Trial, using a walking stick in and around the Court room.

The Claimant was vigorously cross-examined with regards to the circumstances/mechanics of her accident. Despite the issues regarding the Claimant's credibility, HHJ Howells accepted the Claimant's account of her accident and that the allegations of negligence/breach of duty against the Local Authority had been made out. Accordingly, the Local Authority was held to be vicariously liable for the negligence of their employee. The Claimant had established her claim.

However, HHJ Howells found the Claimant's evidence in relation to the surveillance evidence unsatisfactory. She shared Mr Pemberton's incredulity in relation to the Claimant's presentation and found that the surveillance evidence left her with the 'inevitable conclusion' that the Claimant was significantly exaggerating the extent of her symptoms.

In relation to her earning capacity, the Claimant's evidence was also found to be entirely unconvincing and unsatisfactory. It was accepted that the Claimant had failed to respond to the number of opportunities we had provided to her to explain her earnings situation, and the Claimant's lack of candour threw into very grave doubt the Claimant's honesty and integrity as a witness.

The Judge was, therefore, satisfied that we had presented cogent evidence to the Court that the Claimant had, on the balance of probabilities, been dishonest, and that this was fundamental dishonesty. As there was no suggestion that the Claimant would suffer 'significant injustice' if Section 57 were applied, the Claimant's claim was dismissed in its entirety.



The provisions of Section 57 require the Court to assess the damages that the Claimant would have received had she been successful in her claim. HHJ Howell assessed quantum and indicated that, absent her dishonesty, she would have awarded the Claimant the sum of £83,500.

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Comment

This was a very long running claim, with many twists and turns along the way. Despite a lack of strong liability evidence, a robust stance was taken to the claim from the outset and maintained throughout, despite the apparent lack of concern or acknowledgment by the Claimant's Solicitors as to the impact of the surveillance evidence. We gave the Claimant and her representatives every opportunity to understand our concerns regarding the exaggeration of the Claimant's claim and of her potential, but undeclared, earnings, however these were not heeded.

Through detailed internet investigations being carried out, leading to a period of surveillance, a potential fraud was discovered. In the absence of the surveillance evidence, the Local Authority would have approached this case on the wrong basis.

It was acknowledged by HHJ Howell that the dismissal of the Claimant's claim was a draconian step in a case where it was accepted that the Claimant had suffered a significant injury for which the Local Authority were liable. However, it was made clear in the leading case of *London Organising Committee of the Olympic and Paralympic Games (in liquidation) v Haydn Sinfield [2018] EWHC 51* that the creators of Section 57 intended for it to be used to act as a deterrent to dishonest Claimants who wanted to exaggerate their claims.

Our successful Application for the dismissal of the Claimant's claim pursuant to Section 57 resulted in a significant saving for the Local Authority, not only in terms of the assessed damages of £83,500, but also in relation to the Claimant's costs which were budgeted at over £100,000.

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DOLMANS RECENT CASE UPDATE

Appeals - Fixed Costs - QOCS

Wickes Building Supplies Limited v Blair (No.2) (Costs)
[2020] EWCA Civ 17

The Court of Appeal held that the fixed costs regime under CPR Part 45 does not apply to appeals, however, enforcement of the Costs Order was subject to QOCS.

The Claimant, 'B', sustained injuries at work and submitted a claim under the Pre-Action Protocol for Low Value Personal Injury (EL and PL) Claims. Liability was admitted, however the parties could not agree damages. B filed a claim under Stage 3. At the Stage 3 hearing, there was a preliminary issue regarding whether B should be permitted to rely on a statement which had not been served in accordance with the Protocol. The District Judge held B could not rely on it. The District Judge then dealt with the substantive issues and ordered W to pay £2,000 damages, plus costs of £1,080. B appealed, submitting that the District Judge had made a procedural error by allowing the claim to proceed under the Protocol when there had been a finding of fact that B had not complied with the requirements of the Protocol in relation to service of the statement. B submitted that in accordance with CPR PB 8B 9.1, the Judge should have dismissed the claim, allowing B to start fresh proceedings under Part 7. The Appeal was successful and the Appeal Judge dismissed the claim under the Protocol. W appealed to the Court of Appeal. The Court of Appeal allowed W's Appeal, reinstating the Order made by the District Judge.

Whilst the parties agreed that B should pay W's costs of both Appeals, B submitted that this was, and always had been, a claim under the Protocol and, therefore, Part 45 Section III applied and the Court could not award anything beyond the fixed costs. W submitted that the fixed costs regime under Part 45 Section III does not cover Appeals.

The Court held that CPR Rule 52.19(1) gives an Appeal Court a specific discretion to make an Order limiting the recoverable costs of an Appeal in "*any proceedings in which costs recovery is normally limited or excluded at first instance*". Proceedings, at first instance, under the Protocol plainly fall into that category. It followed that the fixed costs regime applicable to proceedings, at first instance, under the Protocol does not apply to the costs of an Appeal. Instead, the Appellate Court has a discretion in such cases to limit the costs recoverable.

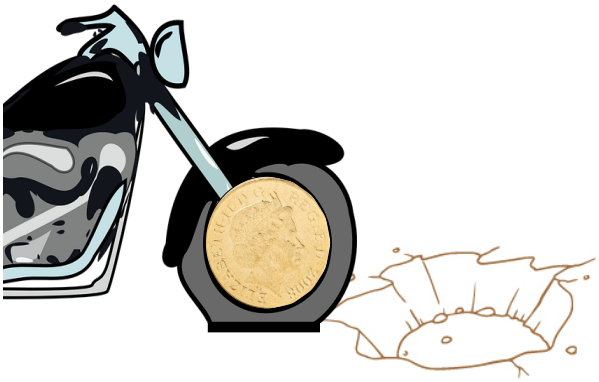
In the circumstances of this case, the Court was not persuaded to exercise its discretion under Rule 52.19 as B's Appeal was wholly unmeritorious and led W to incur unnecessary additional costs. W was, therefore, entitled to its costs of both Appeals to be assessed if not agreed.

However, the Court held that enforcement of that Costs Order was subject to the QOCS regime in CPR Part 44. The Court approved the reasoning of Edis J in *Parker v Butler [2016]*; that the purpose of the QOCS regime is to facilitate access to justice for those of limited means. If a Claimant's access to justice is dependent on the availability of the QOCS regime, that access will be significantly reduced if he is exposed to a risk as to the costs of any unsuccessful Appeal which he may bring or any successful Appeal a Defendant may bring against him. To construe the word "proceedings" as excluding an Appeal would do nothing to serve the purpose of the QOCS regime. The Court, therefore, concluded that any Appeal which concerns the outcome of the claim for damages for personal injuries, or the procedure by which such a claim is to be determined, is part of the "proceedings" under CPR r.44.13.

The Court, thus, held that the Costs Order was not enforceable and approved an agreed Order as to costs prepared by the parties.

Costs - RTA / PL Protocol - Fixed Costs

Bateman v Devon County Council
[2019] Plymouth County Court (unreported)



The Claimant sustained injury whilst riding his motorcycle along a public highway as a result of a pothole. A claim was brought against the Local Authority as the relevant highway authority. Liability was denied, however, after proceedings were served, the case settled.

The issue to be determined by the Judge was whether the Public Liability Protocol - and thus fixed costs - applied to the facts of the case. The Claimant had not submitted the claim through either the 'RTA Protocol' or through the 'EL/PL Protocol' on the basis that on a strict interpretation of those protocols the claim fell into neither.

It was agreed between the parties that the RTA Protocol did not apply because it did not apply to a claim in respect of a breach of duty owed to a road user by a person who is not a road user. It was accepted that the Local Authority was not a road user, and so that Protocol did not apply.

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The Claimant also submitted that the EL/PL Protocol could not apply either since paragraph 4.3 excluded claims for damages arising out of a road traffic accident. A road traffic accident was defined by the RTA Protocol as "*an accident resulting in bodily injury to any person caused by, or arising out of, the use of a motor vehicle on a road or other public place in England and Wales …".* The Claimant argued that on a plain reading of this definition, this was a road traffic accident, therefore, the EL/PL Protocol did not apply. It did not consider there was ambiguity at all in the wording.

Since neither Protocol applied, the Claimant argued that fixed costs also did not apply, and, therefore, costs should be assessed.

The Defendant disagreed. It relied upon the County Court case of *Master Prescott v The Trustees of the Pencarrow 2012 Maintenance Fund [2017]*, submitting that the rules were to be interpreted in a purposive manner. Further, even if fixed costs did not apply directly (as per *Prescott*), they should apply indirectly (as *per Williams v Secretary of State for Business, Energy and Industrial Strategy [2018]*).

At the provisional assessment, the Judge rejected the Defendant's argument that this was not a road traffic accident as meant by the rules and that fixed costs applied.

The Defendant requested an oral review of the assessment.

At that review, the Judge decided that as the interpretation of the rules on this point would affect a number of claims, the matter should be tried by way of a preliminary issue by the DCJ.

The Claimant submitted that *Prescott* (which was not binding) was wrongly decided. When interpreting legislation (including the Protocols in question), the Court must (in applying *Qader - Inco Europe Limited v First Choice Distribution [2000]*) be clear on the following matters before it seeks its own interpretation of the wording:

(a) The intended purpose of the statute or provision in question;

(b) That by inadvertence, the draftsman and Parliament failed to give effect to that purpose in the provision in question;

(c) The substance of the provision Parliament would have made, although not necessarily the precise words Parliament would have used, had the error in the Bill been noticed.

In applying the above criteria, the Court should not merely be persuaded 'on the balance of probabilities', however, instead, must be 'abundantly sure' that the intention contended for was, in fact, the intention of the legislator.

The Claimant argued that the *Inco* criteria must be satisfied before any changes are made to legislation. If not, the Court would have to apply the literal wording of the Protocol, and, in so doing, would have to find that neither Protocol applied and, therefore, was not a fixed costs case.

The Defendant argued that the EL/PL Protocol did apply because the cause of the accident was not another vehicle but a defect in the road, and so the claim did not come within the definition 'of an accident caused by or arising out of the use of any motor vehicle.'

The DCJ found that the reference to 'arising out of' within that phrase clearly meant to denote a broader approach than simply 'caused by'. An accident where someone is injured as a result of driving into a defect in the road includes an accident that 'arises out of' the use of the vehicle. There was a clear link between the two and, therefore, the exclusion within the EL/PL Protocol applied. Accordingly, fixed costs did not apply.

Further, the *Inco* criteria was not satisfied. It was not clear that the intended purpose of the Protocols (as argued by the Defendant) was for them to be 'all-encompassing'. Neither could it be said that Parliament had inadvertently failed to give effect to that purpose. Further, there was no evidence as to what the precise wording or substance of any amendment to the EL/PL Protocol was meant to be. The Court had no policy evidence in front of it to be able to conclude what the intention of the provision actually was. Therefore, in conclusion, the DCJ had no sure foundations for adopting a purposive construction where the literal meaning was clear.

Accordingly, the DCJ ruled that costs were to be assessed in the usual way.

Occupiers' Liability - Falls from Height - Foreseeability - Contributory Negligence - Causation

Deborah Jayne James (on her own behalf and in her capacity as personal representative of the estate of Christopher James, deceased) v White Lion Hotel QBD Lawtel [2020] 1 WLUK 39

The widow and the personal representatives of her deceased husband claimed damages for personal injuries against a hotel partnership after he fell from a second floor window.

It was found that the deceased, a guest at the hotel, was likely to have been sitting on the window sill of the second floor window holding the bottom sash open (either to smoke or to seek fresh air), when he lost his balance and fell. The window sill was 46cms above floor level. The modern standard minimum sill height was 80cms. The sash window was faulty and had to be held open.

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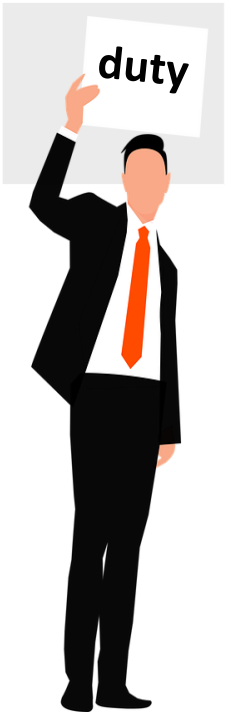

When the partners were prosecuted for offences contrary to Section 3 of the Health and Safety at Work Act 1974, they pleaded guilty on the basis that the window posed a low risk to an adult guest, despite there being no material Health and Safety Executive, local authority or industry standard covering windows in hotels.

It was held that the partners, having pleaded guilty in the criminal trial, had accepted that there was a reasonably foreseeable material risk of harm to adults of falling from the sash window owing to its low position and that a risk assessment would have resulted in the installation of opening restrictors. The relevant circumstances under Section 2 of the Occupiers Liability Act 1957 expressly included "the want of care" which would ordinarily be expected of a hotel guest. It was obvious that sash windows were designed to be opened and guests on upper floor windows might try to smoke out of a window.

There was, therefore, a duty owed to a lawful visitor; a foreseeable risk of serious injury owing to the state of the premises; the risk of serious or fatal injury; no social value of/to the activity leading to the risk; and a minimal cost of preventative measures.

Had the deceased voluntarily chosen to run the risk of an accident? Given the regulatory requirements, a risk assessment would have resulted in preventative action. The defence of volenti no fit injuria at common law only operated where a Claimant voluntarily accepted a risk negligently created by a Defendant's negligence. To argue that if Section 2(5) of the Occupiers Liability Act applied, there was no obligation to act and, thus, no negligence, was in direct conflict with the argument that the duty under Section 2 reflected a mandatory requirement of the criminal law to address a material risk.

Parliament could not have intended that by the interaction of Section 2(2) and Section 2(5) of the 1957 Act, an occupier could fail to take a positive act required by the criminal law and yet be found to have taken reasonable care. The duty under the 1957 Act to exercise reasonable care required compliance with a specific safety requirement of the criminal law.

The action of the deceased in sitting on the window sill did not break the chain of causation. The incident was still as a direct result of the partners' failure to apply window restrictors to the very low window.

Judgment for the Claimant.

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Part 36 Offers - Inclusion of Interest

King v City of London Corporation
[2019] EWCA Civ 2266

The Court of Appeal held that a Part 36 offer must include interest.

The parties had agreed settlement of the claim, with costs to be assessed if not agreed. During Detailed Assessment proceedings, the Claimant, 'K', purported to make a Part 36 offer to accept £50,000 in full and final settlement of his costs. The offer letter expressly stated that the offer '*excludes interest*'. At a Detailed Assessment hearing, K's costs were assessed at £52,470, excluding interest. On the basis that the assessed costs were more advantageous to K than his offer, K argued that the costs consequences set out in CPR 36.17 applied. At first instance, it was held that K's offer was not a valid Part 36 offer as it did not include interest and, therefore, the costs consequences of CPR 36.17 did not apply. K's appeal was unsuccessful. K appealed to the Court of Appeal.

CPR 36.5(4) states that a Part 36 offer will be treated as inclusive of interest. K submitted that this did not impose a mandatory requirement, but merely operated as a deeming provision so that an offer which says nothing about interest is taken to include it. Further, or in the alternative, there could be no objection to an offer excluding interest because CPR Part 36 allows an offer to be limited to part of a claim. K relied on paragraph 19 of PD 47, relating to offers in Detailed Assessment proceedings, which provides that an offer must specify whether or not it includes interest and, unless it states otherwise, the offer will be treated as inclusive. The Court of Appeal dismissed these submissions. Paragraph 19 of PD 47 could not control the interpretation of Part 36 and it pre-dated the current version of Part 36. An offer exclusive of interest would not be an offer relating to 'part' of a claim. Part 36 proceeds on the basis that interest is ancillary to a claim, not a severable part of it. Interest cannot be hived off.

The Court, therefore, concluded that a Part 36 offer cannot exclude interest and the position is no different in the context of Detailed Assessment proceedings. CPR 36.5(4) is mandatory and applies to every species of interest.

K submitted in the further alternative that notwithstanding the terms of his offer, it should be taken to have been inclusive of interest as the offer was described as a Part 36 offer. The Court dismissed this argument; it was inconceivable that CPR 36.5(4) was meant to turn an offer specifically stated to be exclusive of interest into one including interest.

Appeal dismissed.

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- Display Screen Regulations – duties on employers
- Employers' liability update
- Employers' liability claims – investigation for managers and supervisors
- Flooding and drainage – duties and powers of landowners and Local Authorities for drainage under the Land Drainage Act 1991. Common law rights and duties of landowners in respect of drainage
- Flooding and drainage – duties and powers of Highway Authorities for drainage and flooding under the Highways Act 1980. Consideration of case law relating to the civil liabilities of the Highway Authority in respect of highway waters
- Highways training
- Housing disrepair claims
- Industrial disease for Defendants
- The Jackson Reforms (to include : costs budgeting; disclosure of funding arrangements; disclosure of medical records; non party costs orders; part 36/Calderbank offers; qualified one way costs shifting (QWOCS); strikeout/fundamental dishonesty/fraud; 10% increase in General Damages)
- Liability of Local Education Authority for accidents involving children
- Ministry of Justice reforms
- Pre-action protocol in relation to occupational disease claims – overview and tactics
- Public liability claims update

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