DOLMANS INSURANCE BULLETIN

Welcome to the May 2021 edition of the Dolmans Insurance Bulletin

in this issue we cover:

REPORT ON

- Needlestick injuries and *de minimis* - *MG v Cardiff Council*

FOCUS ON

- Failure to remove claims - *DFX & Others v Coventry City Council*

RECENT CASE UPDATES

- PL insurance - exclusion clause - deliberate acts
- Section 41 Highways Act 1980 - manhole covers - motorcycles
- Section 57(1) Criminal Justice and Courts Act 2015 - substantial injustice - fundamental dishonesty
- Service of Claim Form - CPR 7.6(3) - relief from sanctions

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**

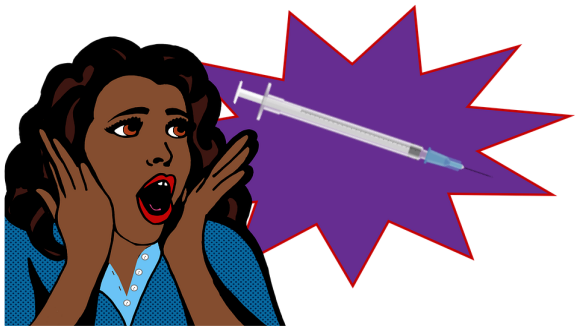
REPORT ON

Needlestick Injuries and *de minimis*

MG v Cardiff Council

The Claimant was employed by the Defendant Local Authority as a cleaner at a homeless hostel in Cardiff. The homeless hostel provided accommodation to rough sleepers and was certainly a challenging environment in which to work as a cleaner. The users of the hostel service, unsurprisingly, led chaotic lifestyles with substance abuse rates at 95%, the majority of whom were intravenous drug users (to the extent that staff at the hostel were instructed to assume that this was the case).

On 28 August 2018, the then 30 year old Claimant was cleaning a recently vacated service user's room in portacabin accommodation when she was struck by a hypodermic syringe needle. The Claimant had attempted to clean a mark on a wall just above a radiator when she came into contact with the needle which was secreted in the top of the radiator. The needle became stuck in her finger and had to be shaken free.



The Claimant was a hardworking and diligent employee, and she was shocked to be struck by the needle. She immediately followed the correct procedure and washed the site of the needlestick and massaged her finger to cause the blood to flow. She reported the incident to the hostel manager, who arranged for her to be taken to the Accident & Emergency Department of the University Hospital of Wales, Cardiff, where bloods were taken and she was prescribed a 28 day course of prophylactic medicine to guard against the risk of infection.

The Claimant claimed damages for personal injury and loss. Proceedings were issued on 12 June 2020, valued at a sum not exceeding £5,000.00, alleging that the Claimant's accident was caused by the Defendant's negligence and breach of the Occupiers' Liability Act 1957. The Claimant relied on a GP report from Dr Anna Ross dated 20 February 2020 as expert evidence. Dr Ross was of the opinion that the Claimant suffered 2 months psychological symptoms, consisting of generalised anxiety and insomnia, related to the superficial injury sustained in the accident. There was no claim for Special Damages.

REPORT ON

In reply to CPR Part 35 questions drafted and served on behalf of the Defendant by us, Dr Ross conceded that the Claimant did not sustain a significant physical injury to speak of, had normal anxiety that she might go on to develop a disease and which did not affect her work, domestic and social activities. Dr Ross stopped short of conceding that the anxiety was not a recognised psychiatric injury and she failed to set out the diagnostic criteria for such a recognised injury and/or state how the Claimant would have satisfied that criteria.

The Defendant denied liability on the ground that it had operated a safe system of work. The risk posed by hypodermic syringe needles in the hostel was an obvious one which had been risk assessed and against which the Claimant had been trained. Service users were provided with sharps boxes and encouraged to use the same through '*House Rules*' and license agreements (more sharps 'cages' were placed around the hostel). Notwithstanding this, the lives of many service users were so chaotic that they would often, simply through force of habit, conceal syringes or needles in their rooms and elsewhere in the hostel. Staff and cleaners were trained to assume that needles lurked everywhere and cleaners were instructed not to put hands in areas that they could not see (e.g. under beds, behind wardrobes, etc), but instead to use a cleaning '*T-bar*'. Room furniture was designed to reduce the likelihood of hidden needles. The hostel was regularly inspected and when a room was vacated, and before cleaners entered, it would be inspected by the hostel staff. The Claimant had been provided with latex gloves for her everyday use. However, wicket-keeper-type needle resistant gloves and litter pickers were available for staff to dispose of any sharps into the sharps boxes if the need arose.

In addition to the above system of work defence, the Defendant contended that the Claimant's physical injury was in effect *de minimis* (i.e. '*de minimis non curat lex*' – "*the law does not take account of trifling matters*") and one that did not cross the threshold variously described in *Cartledge v E Jopling & Sons [1963] AC 758* as '*not insignificant*', '*serious*', '*beyond what can be regarded as negligible*', '*real damage as distinct from purely minimal damage*', and '*material damage*', and Lord Hoffmann's own formulation at paragraph 19 of his Judgment in *Rothwell v Chemical & Insulating Co [2007] UKHL 39* ("the pleural plaques test litigation") as to whether the Claimant was '*appreciably worse off*'. Further, the Defendant contended that anxiety about the risk of developing a disease was not a recognised psychiatric illness and not sufficient damage in its own right (per Lord Hoffmann, at paragraph 17 and Lord Scott at paragraph 66 of *Rothwell*).

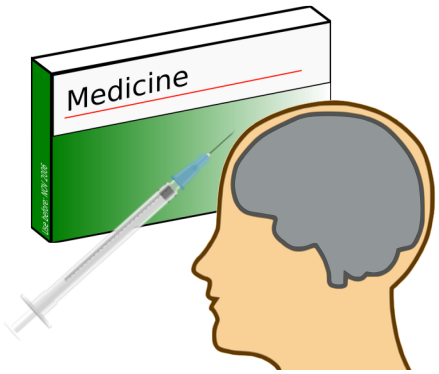
The Claimant served a Witness Statement which, quite bizarrely given the Defendant's case on *de minimis*, did not describe her physical injury nor refer to any physical consequences resulting from it. Nor did the Claimant put forward any evidence on whether suitable gloves were on the market that were more needle resistant. The Defendant relied on Witness Statements from the hostel manager and the Claimant's cleaning supervisors in support of the system of work defence.

REPORT ON

The matter came before Mr Recorder Robert Craven in the County Court at Cardiff on 19 March 2021.

The Judge permitted Counsel for the Claimant to ask her supplemental questions on the circumstances of the accident and to describe her physical injury. The Claimant agreed with Dr Ross' description of the physical symptoms as being negligible or superficial. Under cross-examination, the Claimant conceded that she was trained, etc, and that she was not sure if thicker, more protective gloves would have helped as she needed latex gloves for the work and could not do the cleaning job with thick gloves.

On the *de minimis* point, the Claimant sought to rely on two cases from other jurisdictions: *Fryers v Belfast Health & Social Care Trust [2009] NICA 57* (a decision of the Northern Ireland Court of Appeal) and *McPake v SRCL Limited [2013] CSOH 157* (a Scottish case). In *Fryers*, it was held that the requirement for a course of prophylactic medicine, etc, meant that the trivial injury became significant and compensable. In *McPake*, it was held that though the physical component was trivial, needlestick injuries might be compensable for their psychological impact and consequential losses.



The Judge recognised that there were no binding authorities in the England and Wales jurisdiction on whether the Claimant's injury was compensable. The Judge, noting that the psychiatric component in *Fryers* was a recognised psychiatric injury (an adjustment disorder) and compensable in its own right, held that the Claimant's injury was similar to those in *Fryers* in that he found that: "*The immediate physical aspects of the needlestick injury were so negligible as to be de minimis and not actionable in themselves. Anxiety following an injury is not itself actionable if (as in this case) it does not amount to a psychiatric disease, but where the initial physical injury is actionable, genuine anxiety, such as the Claimant had, is an aggravating factor increasing General Damages. So too in my judgment would be the tests and prophylactic treatment the Claimant underwent, even though these were not damage in themselves, i.e. they would be aggravating factors if there was initial physical damage to aggravate.*"

The Judge then proceeded to ask himself whether putting the original trivial physical injury together with the anxiety was a permissible way of producing an actionable claim, or whether it was contrary to *Rothwell*.

The Judge found that *Rothwell* could be distinguished. In *Rothwell*, the pleural plaques were held to be no injury or damage at all, whereas the needlestick is an injury, albeit a trivial one. Because it is an injury, the consequent anxiety can be combined with it to say, as a whole, there has been compensable damage. The Judge valued such an injury in the sum of £1,750.00.

The Judge, however, appears to have done exactly what the decision in *Rothwell* said he should not do; he aggregated a *de minimis* injury with anxiety to create a compensable injury. The combination of that anxiety, with a physical injury which does not cross the threshold should not be sufficient.

As it turns out in this case, the Judge dismissed the Claimant's claim on the grounds that the Defendant had operated a safe system of work and his comments on the actionability of trivial needlestick injuries, which do not result in a recognised psychiatric injury, are *obiter dicta*.

Comment

Needlestick injuries are a relatively commonplace injury among refuse workers, cleaners, medical professions and law enforcement workers, and it is notable, in that context, that there has been so little judicial consideration of the actionability issue in England and Wales. Rather like pleural plaques, historically, it appears that there is an underlying acceptance that needlestick injuries "must be" compensable.

The fact of the matter might be that needlestick injuries, which do not result in infection or a recognised psychiatric injury (and which would, therefore, be clearly compensable) are of such low value they do not attract the attention of the Appeal Courts or are simply not pursued/are paid off by insurers where there is not is a demonstrable safe system of work.

However, it would be wise to plead *de minimis* in suitable cases as a 'fall back' in case the primary defence does not stand up to close scrutiny. Whilst such a defence, in and of itself, did not persuade the Court to dismiss the claim, the Judge's approach to that aspect (see above) could be subject to criticism in light of the *Rothwell* case, thus providing at least the option of an appeal had the primary issue gone against the Defendant.

This case also demonstrates the need for ongoing review of the evidence in such cases, given our comments above as to the shortcomings of the Claimant's evidence on the crucial points in the case. The shadow of *Rothwell*, albeit firmly an asbestos related disease case, continues to loom large in other areas and it is worth keeping in mind, at all times, in "*trivial injury*" cases.

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FOCUS ON

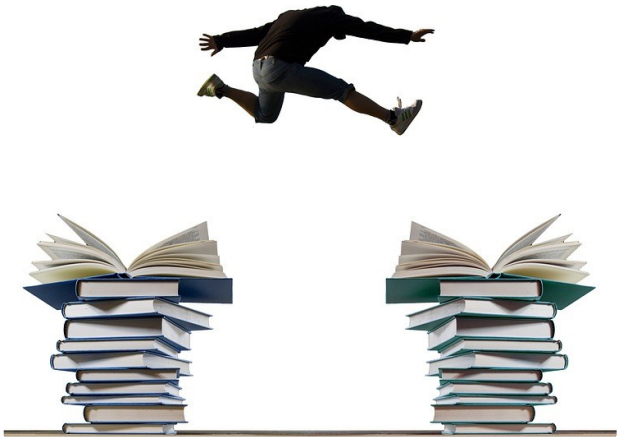
Failure to Remove Claims

DFX & Others v Coventry City Council
[2021] EWHC 1328

High Court QB Division - Judgment - 24/05/21 - Mrs Justice Lambert

Following the 2019 Supreme Court Judgment in *Poole v CN*, Local Authority Children's Services Departments have been waiting for almost 2 years for clarification of the circumstances in which a Local Authority could owe a duty of care to children residing in their area.

This High Court case was decided in the Defendant's favour on all issues. It provides some clarification and now creates a real hurdle for Claimants on the common law duty of care issue. However, the position is not comprehensive, and it remains to be seen as to the extent to which Claimants' Solicitors will continue to pursue negligence and/or HRA claims of this nature.



Allegations

This failure to remove claim was brought in negligence and under HRA Articles 3 and 8.

The Social Services Department of the Council were involved with the 4 Claimant children between 1995 and 2010. It responded to and investigated referrals, monitored and supported the family with direct work, placed them on the CPR and issued proceedings which led to the removal from their parents' care in 2010. The concerns related to the risk that their father posed to them as a Schedule 1 offender convicted of indecency offences towards teenage girls between 1992 and 1997, the risk from other dangerous adults who they were coming into contact with and neglect.

They alleged that they suffered sexual abuse and neglect at the hands of their parents and a family friend (the value of the claims was agreed by the time of Trial ranging between £25,000 and £125,000).

FOCUS ON

Duty of Care

It was alleged that the Council owed the Claimants a duty of care, as it had assumed responsibility for them, on the following specific basis:

(1) It took on some of the work recommended by an expert report, such as monitoring the family and providing services to keep them safe (this report assessed the parents' ability to care for the children and the risks that the father posed).

(2) At a Child Protection Conference in 2002, it assessed that threshold was met and decided that proceedings should be issued.

(3) It took on direct work with the family.

The Judge found that no duty of care was owed.

The Judge considered that this was an 'omissions' claim and the omission alleged was a failure by the Local Authority to exercise a statutory function, which did not of itself give rise to a duty of care. Notwithstanding this, the Judge identified that it was possible for a common law duty of care to arise in the operation of a statutory function case – if there was an assumption of responsibility. The Judge relied upon *Stovin v Wise*, *Gorringe*, *Poole v CN*, *Robinson* and *Michael*.

The Judge identified that for an assumption of responsibility to arise in this case, there must be an act by the Defendant upon which it was reasonably foreseeable that the Claimants would place reliance, such that there was an obligation on the Defendant to exercise reasonable skill and care. The Judge did not accept that there was any such act, or that it would be reasonably foreseeable that the Claimant would rely upon any such act, as the Defendant's assessment of risk in the report would not necessarily be shared with the parents or the children. Further, had proceedings been commenced, the parents would have been separately represented and the children's interests represented by a Guardian.

In summary, the Judge concluded that there was nothing in the nature of s.47 or s.31 that generated a duty of care, and there was nothing else in this case which indicated an assumption of responsibility to exercise those functions with reasonable skill and care. The Council was merely operating a statutory scheme.

The Judge distinguished *Phelps, Barrett and D v Berkshire*, on the basis that the facts were not analogous.

(The Judge made some obiter comments about s.17, as services provided under the same are offered and accepted on a voluntary basis and so different considerations may arise when addressing the issue of reliance. However, if a duty of care were generated by this work, the scope of that duty would be limited to the performing of the direct work competently. There was no such criticism in the case).

Breach of Duty

Although the Judge did not need to consider breach, she went on to do so, considering that even if a duty of care did exist, it was not breached. For the purpose of this summary, we have not gone into these issues as it is fact specific to the particular case.

However, it is worth noting that the Defendant's expert liability evidence of Felicity Schofield was preferred over Ms Maria Ruegger, with the latter's approach described as 'at best overly academic' given her limited professional experience.

Causation

The Judge did not accept that had care proceedings been commenced in 2002 (as the Claimants alleged they should have been), the outcome would have been removal of the children, as much had changed between 2002, and the later evidence that supported removal when proceedings were finally issued in 2009.

HRA Claim

The Judge provided a very brief position on this aspect of the claim. She identified that her conclusion on the absence of any breach in negligence was determinative of the HRA Act claim too. Consequently, she identified that she did not need to make findings on the limitation point and the extent to which the Claimants were at risk of imminent harm.

Conclusion

Whilst the Judge identified that her Judgment was based on the facts of this case, and did not comprehensively rule out failure to remove claims in other circumstances, it is difficult to see what other circumstances would give rise to a duty of care, given the significant events in this case and longstanding involvement of the Local Authority with the family.

Unfortunately, guidance upon the applicability of the HRA to these cases, and how strictly the limitation period will be applied, was not provided. It seems likely that such claims will continue to be pressed forward, potentially in the absence of any negligence allegations.

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RECENT CASE UPDATES

PL Insurance - Exclusion Clause - Deliberate Acts

Burnett v International Insurance Company of Hanover Ltd [2021] UKSC 12

The Claimant, 'C', is the widow of Mr Grant who died following an assault by a door steward at a bar in Aberdeen. The door steward was employed by Prospect Security Limited ('PSL') which had obtained public liability insurance coverage from the Defendant, 'D'. C brought a claim for damages under the Damages (Scotland) Act 2011. PSL was in liquidation. C claimed that D would be liable to indemnify PSL in respect of its vicarious liability for the wrongful acts of their employee and that the right to be indemnified was transferred to and vested in her under the Third Party (Rights against Insurers) Act 2010. D submitted that its liability was excluded under the terms of its Policy, which excluded liability for '*deliberate acts, wilful neglect or default*'. D was unsuccessful at first instance and on appeal. D appealed to the Supreme Court.

The door steward had applied a neck hold to Mr Grant. The cause of death was mechanical asphyxia. The door steward stood trial for murder. The Jury did not accept that he had asphyxiated Mr Grant or caused his death and he was only convicted of assault. The Criminal Trial Judge accepted that the door steward's actions were badly executed, not badly motivated. In the civil proceedings, it was agreed that the door steward had not intended to kill Mr Grant. It was further agreed that the policy was to be interpreted objectively by asking what a reasonable person, with all the background knowledge which would reasonably have been available to the parties when they entered into the contract, would have understood the language of the contract to mean. This involved a consideration of the words used in their documentary, factual and commercial context.

The Court noted that whether the injury was 'accidental' was to be considered from the perspective of the insured (i.e. the employer rather than the doorman). The policy was provided in respect of PSL's business of 'Manned Guarding and Door Security Contractors'. There is a clear risk that door stewards will use a degree of force in carrying out their duties and that vicarious liability for their tortious acts may result. That is a public liability which is inherently likely to arise in connection with such a business. The critical issue between the parties was what was meant by '*deliberate acts'*. D's case was that it meant acts which are intended to cause injury or acts which are carried out recklessly as to whether they will cause injury. C's case was that it meant acts which are intended to cause the specific injury which results in this case death, or at least serious injury, but that on any view it did not include reckless acts.

The Court held that the most natural interpretation of the clause was that it is the act of causing injury which must be deliberate. The Judge's conclusion in the criminal proceedings was inconsistent with there being an intention to injure. There had been no finding of fact by the Lower Courts in the civil claim of an intention to injure or recklessness. Whilst the Court accepted D's argument that '*deliberate acts'* in the exclusion clause of the policy meant an act carried out with an intention to injure, D was unable to establish that there was such an intention on the facts. The Court rejected the argument that '*deliberate acts*' includes recklessness but, even if it did, that did not make any difference on the facts as found. Accordingly, the exclusion clause did not apply.

Appeal dismissed.

RECENT CASE UPDATES

Section 41 Highways Act 1980 - Manhole Covers - Motorcycles

Da Silva v Transport for London in the County Court as Central London 07.04.21

The Claimant brought a claim against Transport for London ("TFL") arising out of an accident on 16 July 2016 when he fell off his Vespa motor scooter. It was the Claimant's evidence that his accident happened as he reached a bend in the road. He was travelling under the speed limit and he slowed as he approached the bend. There was a metal manhole cover situated in the right/outside lane and as the Claimant was negotiating the bend, he rode over the metal manhole cover, which turned out to be very slippery and had sunk into the carriageway. As the Claimant was riding over the cover, he felt his Vespa slip, the back tyre of his Vespa skidded and hit the lip of the road surface, which caused the Vespa to flip forward and propel the Claimant over the handlebars, causing him to sustain injury.

The Claimant's case was that:

(1) TFL was the highway authority for the section of road where the accident occurred, including the manhole cover.

(2) The condition of the manhole cover was such as to put TFL in breach of its statutory duty under Section 41 of the Highways Act 1980 to maintain the highway. It was worn and polished so as to present a danger to road users, particularly those on motorbikes or motor scooters.

(3) That breach caused the Claimant's accident.

TFL accepted the first proposition, but disputed the other two. TFL also contended that the Claimant's accident was due to the Claimant's own negligence.

TFL as Highway Authority

In its Defence, TFL pleaded that the manhole cover belonged to BT. The Judge, therefore, questioned whether a manhole cover which belonged to BT and for which BT was responsible for maintaining at its own expense was within the scope of Section 41. TFL's position was that it was responsible under Section 41 to maintain manhole covers in the highway even if the manhole cover was inserted in the highway by an undertaker and even though the undertaker was responsible for maintaining the manhole and the works beneath it under Section 81 of the New Roads and Street Works Act 1991.

The Judge was satisfied that he could proceed to determine the case on the basis of that concession and that this concession was rightly made; *Roe v Sheffield City Council [2003] EWCA Civ 1, [2004] QB 653* considered/applied.

RECENT CASE UPDATES

Was the condition of the manhole cover such as to constitute a breach of Section 41?

The Court considered the duty under Section 41 and held that there were 3 degrees of risk relevant to the Section 41 duty:

(1) A fanciful risk – one that is a fantastic possibility – one that is not foreseeable.

(2) A risk of injury that is more than fanciful – one that is foreseeable, but which is not a real source of danger.

(3) A risk which is 'reasonably foreseeable' and which is 'a real danger'.

It held that the Section 41 duty only arises when the condition of the part of the highway is such as to create a third degree risk; a real source of danger.

The Claimant produced photographs which were taken in September 2016.

TFL disclosed records which indicated that on 30 August 2017, a computer entry was created which operated as a notice under Section 81 of the 1991 Act. The entry recorded an inspection result which was recorded as "Fall – low risk". It said: "This is to inform you that Transport for London has identified a POLISHED COVER IN C/W at the location in the attached notice". BT replaced the manhole cover the next day.

TFL delegated inspections of the highway in question under a contract known as the London Highways Alliance Contract. Inspections took place monthly. The records of defects identified by these inspections were put in evidence. They did not include any reference to the manhole cover in question. TFL also put in evidence the records they kept of defects reported by members of the public. They did not include reference to the manhole in question.

Documents were produced at Trial which gave guidance on the safety of manhole covers.

It was common ground that the condition of the manhole cover in September 2016 was likely to be very similar to its condition 2 months earlier at the time of the Claimant's accident. The photographs showed that the righthand corner of the manhole cover was polished smooth, with no grip at all. It was suggested that this represented about 15% of the area, which was accepted by the Judge. The rest of the manhole cover had raised rectangular studs, clearly intended to provide grip.

RECENT CASE UPDATES

Considering the safety issues facing motorcycles passing over a metal manhole cover on a bend approaching traffic lights on a busy road, the Judge found that the condition of the manhole cover seemed to be far from unremarkable; per Steyn LF in *Mills*. The Judge did not accept that there was always going to be worn and polished metal manhole covers in the carriageway on the bend of a busy road. The Judge found that given the location of the manhole cover, on the bend of a busy road approaching traffic lights, the appearance of the manhole cover was such as to indicate that it had clearly fallen below the Section 41 standard. The righthand section was so worn down as to be polished flat with no studs at all. The language in the Section 81 notice also supported the Claimant's case.

Whilst it was acknowledged that there was evidence which supported TFL's case - i.e the absence of any record of defect made by the inspectors, the absence of any complaint made by the public, and, most powerfully, the absence of any record of any other accident) - the Judge gave more weight to the evidence which supported the Claimant's case and the information in the documentation produced regarding the safety of the manhole cover to find that the state of the cover recorded in the Claimant's photographs did represent a danger to riders of motor scooters and a breach of Section 41 was established.

Was the Claimant's accident caused by the breach of duty?

The Judge accepted the Claimant's evidence as to the cause of his accident and that the accident was caused by the breach of Section 41 duty.

Contributory Negligence

The Judge did not consider that the Claimant was at fault in driving over the manhole cover, nor in the way he reacted to the slipping of the Vespa on the manhole cover. It was put to the Claimant that he was aware that manhole covers can be slippery and he said that it was not always easy to avoid them, and this one was in the middle of the road. The Judge found that the Claimant was not at fault in riding over the manhole cover, nor in applying his brakes when the scooter started to slide, which would be the instinctive reaction of many riders and drivers.

Judgment for the Claimant.

RECENT CASE UPDATES

Section 57(1) Criminal Justice and Courts Act 2015 - Substantial Injustice - Fundamental Dishonesty

Sudale v Cyril John Limited
[2021] 2 WLUK 623

The Claimant's personal injury claim for damages was dismissed on the grounds of fundamental dishonesty. The Claimant had sustained injuries in an accident at work when he fell from a scaffold tower. The Defendant admitted primary liability, but raised issues of contributory negligence.

With regards to the value of the claim, the true extent of the Claimant's injuries and resulting disability was an issue. The Claimant initially set out a claim in excess of £400,000, later reducing it to just over £230,000. The Defendant relied upon covert surveillance of the Claimant, which showed the Claimant was not suffering symptoms to the extent stated by him in his evidence and his presentation to the medical experts. The Claimant sought to put forward various explanations, but upon seeing the footage, both orthopaedic experts and the Defendant's psychiatrist changed their views.

The Court held that the Claimant had not been contributory negligent. However, the Court found that he had been fundamentally dishonest under Section 57(1) of the Act for pursuing a substantial claim for damages for future care relying entirely upon exaggeration of his symptoms.

The Court assessed the Claimant's damages at £73,959.24. The entire claim fell to be dismissed under Section 57(2), unless the Court was satisfied that the Claimant would suffer substantial injustice as a result. The Claimant argued that it would be substantially unjust to deprive him of his damages because the Defendant had also been fundamentally dishonest in the presentation of its case on contributory negligence. The Defendant's witness had changed their evidence at Trial and the Claimant argued this was comparable to his own conduct, such that there would be 'substantial injustice' should the Claimant's claim be dismissed.

The Court was required to determine whether the test of substantial injustice permitted a consideration of the conduct of the Defendant.

It was held that the ambit of Section 57(2) did not import a consideration of the Defendant's conduct, but referred solely to the Claimant's fundamental dishonesty. Parliament did not intend dishonest conduct by a Defendant to be taken into account in assessing whether there had been substantial injustice to a Claimant; the point had been specifically considered and rejected prior to enactment. The purpose of Section 57 was the deterrence of exaggerated claims brought by Claimants. The exception in Section 57(2) as to those consequences was where a Claimant would suffer substantial injustice. The injustice suffered must be that of the Claimant which extended beyond simply being deprived of the damages that he would otherwise have received. There was no mention of the Defendant's conduct, any benefit to the Defendant or the effect of any conduct of the Defendant on the proceedings as a whole.

If the Court was wrong on the Section 57 application, the Court rejected the Claimant's submissions that conduct by a Defendant falling short of 'fundamental dishonesty' could be taken into account, noting that whilst the Defendant's witness had been 'extremely careless' in his Witness Statement, he was not dishonest. The Claimant's conduct was of a 'wholly different character'.

Even if the Defendant's conduct was characterised as fundamentally dishonest, the Claimant had maintained at Trial that he had continuing symptoms, despite surveillance and medical evidence to the contrary. If the Court was required to balance the conduct of the Claimant and the Defendant, there was no substantial injustice in the operation of Section 57. The entire claim had to be dismissed.

Claim dismissed.

Service of Claim Form - CPR 7.6(3) - Relief from Sanctions

Boxwood Leisure Limited v Gleeson Construction Services Limited [2021] EWHC 947 (TCC)

In a claim for damages relating to the defective design and construction of a leisure centre, the Claimant, 'C', issued proceedings in March 2020. On 7 April 2020, an Order was made extending the 4 month period for service of the Claim Form and Particulars of Claim until 10 September 2020. On 8 September 2020, a Trainee Solicitor at C's Solicitors served the Particulars of Claim, but failed to include the Claim Form. C's Solicitors realised the error on 14 September 2020 and served the Claim Form. The Defendant, 'D', responded asserting that the Claim Form had not been served in time, no application to further extend time had been made under CPR 7.6(3) and the proceedings were, therefore, a nullity. C made an application for relief from sanctions pursuant to CPR 3.9 for failure to comply with the Order dated 7 April 2020 and failure to serve the Claim Form by 10 September 2020, for the Court to exercise its general power, pursuant to CPR 3.10, to rectify an error of procedure comprising C's failure to comply with the Order dated 7 April 2020 and/or that the Order dated 7 April 2020 be varied such that the Claim Form served on 14 September 2020 be regarded as having been properly served.

Pursuant to CPR 7.6 (3), where a Claimant applies for an extension of time for service of a Claim Form after the period for service specified by CPR 7.5 (or an Order for an extension made under CPR 7.6) has expired, the Court can only make an Order if (a) the Court has failed to serve the Claim Form; or (b) the Claimant has taken all reasonable steps to comply with rule 7.5, but has been unable to do so. C could not meet these conditions. The mistake by C's Solicitors resulted in no steps being taken to serve the Claim Form by 10 September 2020. Accordingly, the Court had no power to extend the time for service of the Claim Form. C could not rely on the wide, general powers under CPR 3.10, or the general powers under CPR 3.9, to circumvent the specific conditions set out in CPR 7.6(3) for extending the period for service of a Claim Form.

Application dismissed.

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

If you would like any further information in relation to any of our training seminars, or wish to have an informal chat regarding any of the above, please contact our Training Partner, **Melanie Standley** at **melanies@dolmans.co.uk**