DOLMANS INSURANCE BULLETIN

Welcome to the September 2025 edition of the Dolmans Insurance Bulletin

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If there are any items you would like us to examine, or if you would like to include a comment on these pages, please e-mail the editor:

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REPORT ON

Accidents at School - Proving Factual Causation and Other Issues

MV v Vale of Glamorgan Council

In any civil claim for damages following an accident it is, of course, for the claimant to satisfy the court as to the circumstances of the alleged accident, on a balance of probabilities, and, therefore, overcome the initial burden of proving factual causation.

Where a claim arises from an accident at school involving a pupil, there will almost certainly be an Accident Report Form on file that details the circumstances of the claimant's alleged accident and provides witness information, etc. The said Accident Report Form will usually have been prepared before any hospital attendance and, in most cases, will, therefore, be the most contemporaneous record of the claimant's alleged accident.

As such, the content of any such Accident Report Form provides vital evidence that will assist the court in reaching its decision regarding factual causation in particular, and can be of assistance to either party in this regard.

This was illustrated in the recent case of *MV v Vale of Glamorgan Council*, where Dolmans represented the Defendant Local Authority.

Background

The Claimant, who was a pupil at the Defendant Local Authority's school at the time, alleged within her Particulars of Claim that she tripped over a log situated in an outdoor educational area within the school grounds, causing her to suffer personal injuries. The log was one of several designed to provide seating for pupils within the said educational area.

REPORT ON

Factual Causation – Various Discrepancies

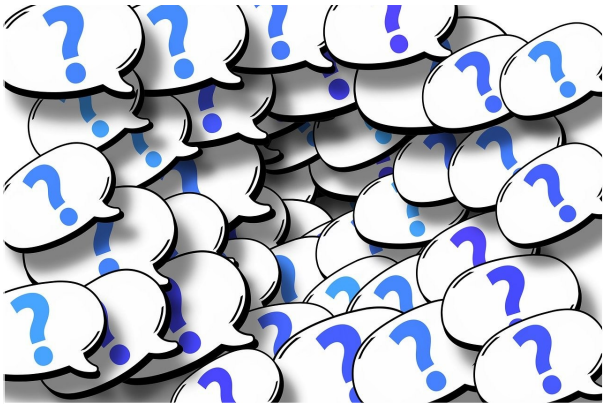
A contemporaneous Accident Report Form was completed stating that the Claimant had fallen on one of the logs. However, following discussions with other staff within the school, it became apparent that the Claimant was running at the time of her alleged accident and that she had tripped over one of the logs as a result. The Accident Report Form was, therefore, updated with this additional information. It was also noted that the relevant area was checked each morning and that pupils were told not to run in the said area.

School staff subsequently met with members of the Claimant's family and went through the Accident Report Form with them. However, these family members introduced another version of events: that the Claimant had actually fallen off a completely different structure within the educational area. Hence, the Accident Report Form was updated further to reflect this other version of events.

The Claimant's copy medical records introduced yet more versions of events, most of which stating that the Claimant was running, tripped and fell at the time of her alleged accident. A Civil Evidence Act Notice was filed and served on behalf of the Defendant Local Authority referring to these various entries.

A further Civil Evidence Act Notice was filed and served referencing accounts and statements that were made by the other staff referred to within the second Accident Report Form referred to above, as these staff members had since left the school and were either not traceable or had emigrated.

Although the Claimant, being a minor, did not give evidence, a member of her family did give evidence and had updated the school staff referred to above that led to the Accident Report Form being updated for a third time. Under cross-examination however, this family member introduced yet another slightly different version of events.



Defence

Notwithstanding the above, the Defendant Local Authority maintained that it had an appropriate Defence in this matter and was not negligent or in breach of any statutory duty. It was alleged that the Defendant Local Authority was in breach of the Occupiers' Liability Act 1957.

REPORT ON

It was denied that the location of the Claimant's alleged accident presented a risk of injury, danger and/or trap as alleged or at all, and it was averred that at all material times the Defendant Local Authority had taken all reasonably practicable steps to comply with any statutory obligations and/or other duties.

Detailed Witness Statements were obtained and served on behalf of the Defendant Local Authority by various school staff and health & safety personnel, in addition to the Civil Evidence Act Notices referred to above.

The location of the Claimant's alleged accident was inspected every morning to ensure that the relevant area was safe for use by pupils. No issues were raised regarding the location of the Claimant's alleged accident following any inspection, including on the morning of the Claimant's alleged accident. There was also a reactive system of inspection and maintenance in place.

Staff underwent appropriate training when required. Pupils were advised not to run and/or climb at the location of the Claimant's alleged accident. The said location of the Claimant's alleged accident was adequately supervised at the time of the Claimant's alleged accident.

The location of the Claimant's alleged accident was risk assessed on a regular basis, including formal risk assessments, and was last formally risk assessed approximately 6 months prior to the date of the Claimant's alleged accident, when any uneven ground and/or any trips, slips and falls were rated as low risks.

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

Judgment

It was not surprising that the Trial Judge expressed difficulty in understanding exactly what had happened at the time of the Claimant's alleged accident.

Indeed, the Judge indicated that there were five different accounts of the Claimant's alleged accident and that although the Claimant's family member had done his best to explain what might have happened, the burden was upon the Claimant to prove the circumstances of her alleged accident and she had failed to do so.

Although he was not required to do so, the Trial Judge, in dismissing the Claimant's claim, went on to consider dangerousness and breach of duty.

REPORT ON

The Trial Judge complimented the Defendant Local Authority's witnesses. He was satisfied that the location of the Claimant's alleged accident was not dangerous and did not present a real source of danger accordingly. The Trial Judge took account of evidence adduced by the Defendant Local Authority's witnesses that the logs were heavy and could not be easily moved by adults let alone by pupils at the school.

In response to the Claimant's assertion that the relevant area should have been fenced off, the Trial Judge accepted that a pond within school grounds, for example, and requiring fencing presented a greater risk than the location of the Claimant's alleged accident. The Trial Judge reiterated that the location of the Claimant's alleged accident in this particular matter was an educational area and not a play area. As this was an area for learning, the Trial Judge held that it would defeat the object of the same if the area was fenced off. Different areas presented different risks. The Trial Judge also took account of the fact that there had been no previous complaints and/or accidents relating to the relevant area when finding that there was no real source of danger.

In dismissing the allegation that the Defendant Local Authority had breached its duty, the Trial Judge also took into account that the caretaker and school staff, to a certain extent, undertook daily checks of the relevant area, that appropriate risk assessments were undertaken, that the area was adequately supervised and that pupils had been sufficiently warned not to run in the relevant area. The Defendant Local Authority, therefore, had an appropriate system in place and had taken reasonable care to ensure that pupils were reasonably safe.

Comment

This matter illustrates the importance of contemporaneous and updated documentation, especially in cases involving schools. Given the lengthy limitation period for claims involving minors, it is sometimes difficult to source historical documents. However, in this particular matter various documents were located with relative ease, including the Accident Report Form with updates, reports and statements by previous school staff and risk assessments.

Counsel for the Claimant had invited the Trial Judge to make a finding as to how the Claimant had injured herself. The Trial Judge was not prepared to do so, but was prepared to make a finding that the Claimant had not proved her case and the copy contemporaneous documents clearly assisted the Trial Judge in reaching his decision.

This case also illustrates that the Trial Judge was prepared to differentiate the risks posed by different areas within a school, a pond for example, presenting a different danger to an educational area within the school grounds, as in this particular matter.

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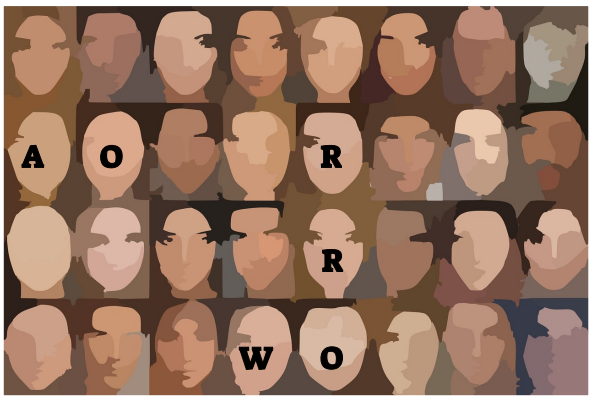
CASE UPDATES

Anonymity Orders - Material Already in the Public Domain

PMC v A Local Health Board
[2025] EWCA Civ 1126

The Court of Appeal allowed the Claimant's ('C') appeal against a Judge's refusal to grant an Anonymity Order in a clinical negligence claim brought by a child.



A Withholding Order (WO) is an order withholding or anonymising the name of a party, including withholding information that would identify the person. A Reporting Restrictions Order (RRO) is an order within court proceedings which has the effect of restricting the reporting of material disclosed during the proceedings, whether in open court or by the public availability of court documents. An Anonymity Order (AO) is an order made within court proceedings which has the effect of both a WO and RRO.

The first instance decision was reported upon within the December 2024 edition of Dolmans' Insurance Bulletin. The first instance Judge refused an AO, concluding that there was no statutory basis for making an RRO in the absence of a WO and the evidence did not support a WO being made because material concerning C was already in the public domain.

The Court of Appeal reviewed the relevant case law and concluded that there is an inherent power in the court derived from the common law to derogate from the principle of open justice in civil or family court proceedings by making, within court proceedings, both a WO and an RRO, where such an order is strictly necessary in the interests of justice. This common law power can be deployed to protect the interests of vulnerable parties. The court must start from the position that very substantial weight must be accorded to open justice. The balance starts with a very clear presumption in favour of open justice, unless and until that is displaced and outweighed by a sufficiently countervailing justification.

Section 11 of the Contempt of Court Act 1981 allows an RRO to be made where it is necessary for the purpose for which the name or other matter was withheld. The WO and RRO, therefore, go hand in hand. For the pre-condition in s.11 to apply there needs to be a common law power to make a WO in the first place and a WO actually made in the proceedings. However, the Court concluded there is no requirement that the WO be made at the beginning of the proceedings.

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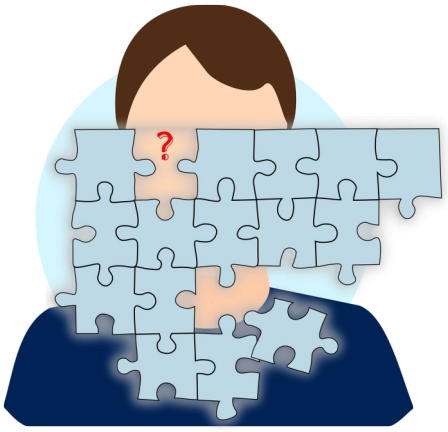
The Court considered the guidance given in *JX MX v Dartford & Gravesham NHS Trust [2015]* in relation to granting Anonymity Orders in approval hearings under CPR 21.10. The Court endorsed the guidance in the main, but recommended some changes. Such applications should be listed anonymously. In cases where the parties are aware that the media or other non-parties have published information about the case or have shown a specific interest in doing so, those non-parties ought to be notified of the court's consideration of the application so they can be heard if they wish. However, in cases where no third party is known to have an existing interest in the case, the media does not need to be notified in advance of an anonymity application being made. The media will become aware immediately after an AO is made because the order is published on the Judiciary's website and they can apply to set it aside if they wish.

In this case, the first instance Judge had been concerned about an order being made after the name of C was in the public domain. The Court considered that the fact that there has been previous publicity is not an automatic bar to the making of either a WO or an RRO, but it is an important factor for the court to take into account. Each case will turn on its own facts. Those making applications for an AO would be well advised to do so as early as reasonably practicable in the litigation process.

The first instance Judge had erred in rejecting the common law power to grant an RRO and in doubting the Court of Appeal's decision in *JX MX*. The Judge had, however, been right to emphasise the critical importance of the common law principle of open justice which should only be departed from where it is strictly necessary to do so in the interests of justice.

On the facts of this case, the Court concluded that an AO drafted in prospective terms was strictly necessary in the interests of justice. The main features in this case justifying such an order were the extreme vulnerability of C and the serious infringement upon C's private and family life in relation to medical details, family circumstances and financial matters that this litigation would involve if the details were reported in the media alongside C's name. Whilst a prospective AO would not prevent the possibility of jigsaw identification, that was not a reason to refuse C a modicum of protection at this crucial stage of his personal injury claim.



Accordingly, C's appeal was allowed.

The Court invited the Civil Procedure Rule Committee to consider how form PF10, which applies to approval applications, should be revised in the light of its Judgment.

CASE UPDATES

Data Protection Act 2018 Claims - Processing - Non-Material Damage

Farley v Paymaster (1836) Limited (t/a Equiniti)
[2025] EWCA Civ 1117

The Claimants, 432 members of a pension scheme administered by the Defendant ('D'), brought claims for infringement of the GDPR in relation to their annual benefit statements ('ABS') being mistakenly posted to out of date addresses. Compensation was sought for injury to feelings and, in some cases, psychiatric injury due to fear of third party misuse of their personal data. Only 14 of the Claimants could show an arguable case that the mis-addressed envelope had been opened and their ABS read. The remaining claims were struck out by the High Court as disclosing no reasonable basis for a claim. Those Claimants ('C') appealed.

The issues before the Court of Appeal were:

(1) Had C set out a reasonable basis for claiming that D's mistake involved infringement of the GDPR ('the infringement issue')?

(2) If so, had C stated a basis for claiming compensation under the GDPR and DPA that was reasonable, with a realistic prospect of success at trial ('the compensation issue')?

(3) If so, were the claims so trivial that they should be dismissed as an abuse of process of the kind identified in *Jameel v Dow Jones Inc [2005]* ('the *Jameel* issue')?

The Court of Appeal concluded:

On the infringement issue, the Judge had been wrong to strike out the data protection claims. C had pleaded a reasonable basis for alleging that D's mistake involved infringement of the GDPR. Proof that the data was disclosed is not an essential ingredient of an allegation of processing or infringement.

In relation to the compensation issues, the claims could not be dismissed as incredible or untenable as D submitted. An allegation of 'distress' is not an essential ingredient of a tenable claim. Nor could the claims be dismissed for failing to meet a threshold of seriousness. There is no such threshold in EU data protection law. Whilst not bound to follow this, the Court held there was no good reason to hold that such a threshold existed in domestic data protection law.

However, D could contend that Cs' fears of third party misuse were not 'well-founded' and, hence, could not qualify as 'non-material damage' for which compensation is recoverable under the GDPR. The question of whether a claim based on the fears alleged may prevail could be determined at this stage, but this would need to be answered on a case by case basis. The case was, therefore, remitted to the High Court to conduct this review.

The claims as a class could not be categorised as J*ameel* abuse, but the question of whether any individual case was abusive would remain for consideration.

CASE UPDATES

Road Traffic - Negligence - Personal Injury

William Brown v Morgan Sindall Construction and Infrastructure Limited [2025] EWHC 2205 (KB)

The Claimant brought a claim for damages arising out of road traffic accident in September 2019 whilst he was cycling home from work. The Claimant was travelling along a cycle lane adjacent to a construction site, operated by the Defendant, Morgan Sindall Construction and Infrastructure Limited. As part of the construction works, the street along which the Claimant was cycling had been closed to motorised vehicles and a different layout of the cycle route established: a two-way cycle lane within one carriageway of the road.

The Claimant's case was that the Defendant had been negligent and/or had created a nuisance on the highway, which had caused his accident. The Claimant asserted that the accident occurred because his bike had collided with the base of a traffic bollard which was on the road, and from which the cylinder wand had been removed, leaving the base an unmarked hazard on the road.

Liability in negligence and/or nuisance was denied. The Defendant denied that even if the Claimant had collided with the base of a bollard placed by them (or their contractors) on the highway and that had caused the accident, liability did not attach to them in respect of it. They contended that the configuration of the traffic management system had been implemented on the advice of a specialist contractor and that which had been implemented was in accordance with that 'approved' or stipulated by London Borough of Hackney Council (LBHC) and Transport for London (TFL). The Defendant also asserted they had complied with the 2013 Safety at Street Works and Road Works Code of Practice (often referred to as the "Red Book").

It was also asserted that the Claimant had significantly exaggerated or alternatively been dishonest, fundamentally so, about the extent of his injuries.

Liability Findings

A very detailed Judgment was handed down by the Court following the conclusion of a 6 day Trial. The pertinent findings from the Judgment are:

The Court was satisfied that the Claimant had fallen from his bike and, on the evidence presented, it was more likely than not that the reason the Claimant came off his bike was that he hit the bollard base, which was missing its cycle wand, in the centre of the two-way cycle lane. The base was the same colour as the tarmac and was not clearly visible to the Claimant.

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The likely reason for the removal of the wand from the base was vandalism/anti-social behaviour which occurred out of hours. The Defendant was aware that this was taking place, and had been since mid-August 2019, and that there was a recurring problem with the cylinder wands being detached from their bases, and that this caused safety risks for vulnerable road users including, specifically, cyclists.

The Defendant, or its contractors, installed Kingpin Cylinders other than in accordance with manufacturer's instructions (because no screw was used to fix the pin into the base) and, when the wands were removed, installed them other than in accordance with manufacturer's instructions. The evidence was that no one had identified the fact, nor had anyone received training about, how to reinsert the wand once detached.

No reasonable or effective system of inspection or monitoring had been put in place in respect of the vandalism; such which there was did not address risks arising when the site was closed but when the cycle lanes were still being used. There was no detailed risk assessment. The Defendant did not draw to the attention of the other stakeholders (LBHC or TFL) the specific risks, nor inform those organisations that, in order to provide the blue light access required (for emergency vehicles), the Kingpin Cylinders were installed other than in accordance with the manufacturer's instructions.

When the Defendant became aware of the vandalism and the risk to cyclists, they did not suggest or prompt discussion about alternatives, nor implement any measures to minimise the risk whilst other solutions were identified. The Court found that there was little, if anything, done by the Defendant between August 2019 and the date of the Claimant's accident to assess or minimise the risk which had arisen and about which they had knowledge.

Therefore, whilst the installation of the Kingpin Cylinders was not negligent, nor a breach of duty (the scheme itself was fit for purpose in theory), the Defendant was negligent in the implementation and maintenance of the use of Kingpin Cylinders. Whilst the choice of the Kingpin Cylinders may have been appropriate if there had been proper consideration of which type of bollard to use, there was insufficient consideration given to the choice of bollard. The bollard was used because it was in stock, not because it was appropriate. In any event, they were installed other than in accordance with the manufacturer's instructions.

The Court also found that the presence of an unmarked and non-reflective base upon the highway was a hazard for vulnerable road users and caused a nuisance to cyclists, in particular. Whilst there was justification for the implementation of a scheme which provided a deterrent to motorists driving on the cycle lane, and to allow for blue light access, there was no justification for the use of cylinders from which the wands could be detached, leaving an unmarked and non-reflective base on the cycle lane. Still less for the use of such a cylinder installed other than in accordance with the manufacturer's instructions.

The fact that it was not precisely clear when the wand was removed from the base unit did not impact liability. This was because of the lack of a reasonable system of inspection: *Janet Dawkins v Carnival PLC (t/a P&O Cruises) [2011] EWCA Civ 1237.*

The Claimant could not be criticised for not noticing the base unit was a danger on the surface of the carriageway. On the specific facts of the case, however, there was some limited fair criticism of the Claimant's positioning within the cycle lane. The Claimant was found to be 5% contributory negligent.

The Claimant's Injury

There was no dispute between the parties that the Claimant's physical injury was a significant one. Neither orthopaedic expert considered that the Claimant was deliberately exaggerating his physical injury, or that he was deliberately malingering.

There was no dispute that the Claimant suffered from depression and PTSD following the accident, although there was significant dispute as to the extent of and degree of those symptoms. Significantly, the Defendant alleged that the Claimant was malingering and had exaggerated his symptoms.

Following a detailed review of the medical evidence however, the Judge preferred the Claimant's own evidence and that of his medical expert, and rejected the allegations of exaggeration/dishonesty and found that the serious accident had had a profound effect on the Claimant's life.

The Defendant was found liable for the Claimant's accident and his alleged injuries.

CASE UPDATES

Service of Proceedings - Reasonable Steps to Serve

Arnold Holdings Limited v Keelys LLP
[2025] EWCC 44

This case concerned an appeal against an Order dismissing the Claimant's application for a retrospective extension of time for service of a Claim Form under CPR 7.3(3)(b).

The Claimant's claim was a claim in professional negligence against the Defendant arising out of advice they gave in relation to a commercial property transaction. The value of the claim was put at £572,500.

Chronology

A Letter of Claim was sent to the Defendant on 6 April 2023.

The day before limitation was due to expire (the Defendant having refused a standstill agreement), a representative from the Claimant's firm of solicitors attended at Court to issue the claim on a protective basis. The Court date stamped the Claim Form 20 June 2023.

The Claim Form was issued on 13 July 2023. The Claimant had until midnight on 13 November 2023 to serve the Claim Form.

In error, the Court purported to serve the Claim Form on the Defendant direct instead of returning the sealed Claim Form to the Defendant for service. The Claim Form served upon the Defendant was a photocopy of the sealed Claim Form.

On 20 July 2023, the Claimant's solicitors received notice of issue from the Court, which confirmed that the claim had been issued on 13 July 2023 and sent to the Defendant, with deemed service having taken place on 18 July 2023. Upon receipt of this notice, the Claimant's solicitors rang the Court to flag the error. The Court staff told them to send an urgent e-mail, which was done.

On 24 July 2023, the Claimant's solicitors wrote to the Defendant to explain the error and invited the Defendant not to treat the Claim Form as served.

On 2 August 2023, the Defendant responded and acceded to this request.

Further attempts were made by the Claimant's solicitors to contact the Court in an attempt to obtain a sealed copy of the Claim Form. However, despite these efforts, the Claimant's solicitors remained without a sealed copy of the Claim Form.

On 4 October 2023, the Claimant's solicitors, whilst attending Court on another matter, spoke to Court staff who said that the file would have to be taken out and a copy of the sealed Claim Form would be sent to them.

On 17 October 2023, the Claimant's solicitors served on the Defendant an unsealed copy of the Claim Form, which had no claim number in the heading, and which did not indicate the issue date. The covering letter did not draw attention to these deficiencies.

On 30 October 2023, the Defendant filed an Acknowledgement of Service, indicating that it intended to challenge jurisdiction.

On 13 November 2023, the time for service of the Claim Form expired.

On 14 November 2023, the Defendant made its application challenging jurisdiction under CPR 11.1.

On 15 November 2023, the Claimant's solicitors made an application to the Court for a retrospective extension of time for service of the Claim Form under CPR 7.6(3) or for an order dispensing with service under CPR 6.16.

On 17 November 2023, the Defendant's solicitors sent the "original" sealed Claim Form as had been received in July 2023.

The applications came before a District Judge in January 2025.

Decision on Applications at First Instance

In relation to the application to extend time under CPR 7.6(3), the District Judge did not accept the submission that a Claimant who has paid a £10,000 issue fee ought to be able to rely on assurances given by the Court that a sealed Claim Form would be sent out in the post. The Claimant already knew that their interaction with the Court had not proved fruitful.

The District Judge considered what would amount to reasonable steps to be taken in the circumstances of the case. These included asking the Defendant, before expiration of the 4 month period, for a copy of the sealed Claim Form which the Court had served directly upon it; or making an application for a stay of proceedings due to the Court's failure to provide a sealed Claim Form or for an in-time application to extend time for service to 14 days after the provision of the sealed copy of the Claim Form.

In all the circumstances, the District Judge was not satisfied that all reasonable steps had been taken. Even if they were wrong on that, the District Judge held that they would not have exercised their discretion to extend time because both of the parties were more than alive to limitation.

Appeal

The Claimant appealed.

On appeal, the decision of the District Judge was upheld. His Honour Judge Singh agreed that the Defendant's indication that it was going to challenge jurisdiction "ought to have flagged to the Claimant and its solicitors, if they did not already know, that there was likely an issue with the service of the Claim Form". While it was "difficult not to have sympathy" with the Claimant, it was "not reasonable" for the Claimant's solicitors to have just relied on the communication with the Court office "because that appears to be all it did do".

The authorities were clear about the jeopardy faced by claimants who "court disaster" by not bringing their claim until the very end of the limitation period and opting not to have the Claim Form served by the Court. It was acknowledged that "Unfortunately, errors and delays do occur, whether due to under-resourcing or otherwise. In some cases, there is nothing a party can do; for example, where evidence has been properly filed in a timely manner but not placed in the Court file, which only becomes apparent at the hearing".

This case, however, was different. It was held that while the Court office clearly made administrative errors, the Claimant was aware of those errors from 20 July 2023 onwards. There were steps which could have been taken, whether by increasing their efforts to engage with the Court or by making an appropriate in-time application to the Court. However, the Claimant's solicitors took none of these steps, at all, between 4 October 2023 and 13 November 2023, other than that they purported to serve on the Defendant an unsealed copy of the Claim Form on 17 October 2023.

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

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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
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- Housing disrepair claims
- 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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