DOLMANS INSURANCE BULLETIN

Welcome to the May 2025 edition of the Dolmans Insurance Bulletin

In this issue we cover:

REPORT ON

Highway Status and Dangerousness - Footway or Carriageway?

AM v Merthyr Tydfil County Borough Council

CASE UPDATES

- **Amended Claim Form - service - electronic working pilot scheme**
- **Applications - contributions - indemnity - limitation**
- **Civil procedure - default judgment - late service - co-defendants - relief from sanctions**
- **Mesothelioma - causation - material increase in risk**
- **Vicarious liability - independent contractors**

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
SOLICITORS

REPORT ON

Highway Status and Dangerousness - Footway or Carriageway?

AM v Merthyr Tydfil County Borough Council

Most adopted highways under the Highways Act 1980 are classified by Local Authorities as either footways or carriageways. This categorisation is important of course as the defect intervention levels for footways and carriageways are usually different. The defect intervention levels for footways are usually much lower than those for carriageways, given that pedestrians are more likely to use footways as opposed to carriageways where vehicles are the main highway user.

There are, however, some carriageways where there are no adjacent footways and pedestrians, therefore, have no choice but to walk in the carriageway. These situations can raise some interesting arguments regarding highway status and dangerousness particularly.

These arguments were raised in the recent case of *AM v Merthyr Tydfil County Borough Council*, where Dolmans represented the Defendant Local Authority.

As well as considering such highway status and dangerousness, the Trial Judge also had to consider factual causation and whether the Defendant had an appropriate Section 58 Defence.

Factual Causation

The Claimant alleged that she tripped due to a pothole in the highway, although her copy medical records referred to an inversion injury on uneven ground. The Claimant alleged that the alleged defect was situated in the footway, despite the said location being categorised as a carriageway by the Defendant Local Authority.

After hearing oral evidence, the Trial Judge found that the Claimant had given a straightforward account of events, in which she confirmed that she had moved to the edge of the highway to allow an oncoming vehicle to pass.

It was accepted that the location was generally uneven and the Defendant Local Authority argued that the Claimant's alleged accident could have occurred anywhere within the said area. However, both the Claimant and her witness were adamant that the Claimant was lying beside the alleged pothole immediately following her fall.

The Trial Judge held that the Claimant had discharged her burden of proof and found that the Claimant's alleged accident had occurred in the circumstances as alleged. Factual causation was proved accordingly.

REPORT ON

Highway Status and Dangerousness

It was admitted that the location of the Claimant's alleged accident was part of the adopted highway and the Defendant Local Authority adduced evidence to support that the said location was classified as a carriageway, despite the Claimant's allegation that the location was a footway.

The Claimant's allegation appeared to centre upon the fact that there were no footpaths at the said location and that pedestrians were permitted to walk along the said highway.

As already stated, it is usual for footways to have defect intervention levels lower than those for carriageways and it would have suited the Claimant, therefore, for the said location to be categorised as a footway. Indeed, the defect intervention level for potholes in the carriageway at the location of the Claimant's alleged accident was 50mm, whereas the defect intervention level for a corresponding footway would have been 30mm.

The Claimant alleged that the defect was 89mm deep and provided photographic evidence of the same, although the Defendant Local Authority disputed the accuracy of the said measurements. If correct, the Claimant's said measurement would, of course, be much higher than the defect intervention levels for both the carriageway and corresponding footway, as referred to above.

It was argued, however, that despite any such measurements, the Trial Judge had to consider whether or not the alleged defect presented a real source of danger.

Whilst quoting the decision in *Debell v Dean and Chapter of Rochester Cathedral (2016)*, the Trial Judge held that foreseeability was not the only criteria to consider when making a finding regarding dangerousness and that not everything constitutes a danger. It was highlighted that the alleged defect was situated on the edge of the carriageway, with sufficient room to avoid it. Although there was no footway at the location and pedestrians were permitted to walk along the carriageway, this was not the usual route for pedestrians to take. There was a high street located in the immediate vicinity.

Notwithstanding this, the Trial Judge found that the evidence supported the fact that the location of the Claimant's alleged accident was a route that pedestrians would take and, indeed, that this was a route that pedestrians were likely to take when walking to and from a nearby supermarket. There were also houses nearby and a library in the area.

Although finding that it was impossible to be precise as to the alleged measurement from the Claimant's photographs, the Trial Judge was prepared to find that the alleged defect would cause a danger to highway users if not repaired and, as such, the Trial Judge was satisfied that the alleged defect was dangerous.

REPORT ON

Section 58 Defence

The carriageway where the Claimant's alleged accident occurred was the subject of a regular system of maintenance and inspection by foot on a 6 monthly basis. A reactive system of inspection and maintenance was also in place.

The last scheduled inspection of the carriageway prior to the Claimant's alleged accident was undertaken 4 months prior to the date of the Claimant's alleged accident, when no defects were noted at the said location.

It was accepted that notes were not made during inspections, unless a defect was actionable, and the Defendant Local Authority argued that this was usual practise. It was not necessary to prove a negative and show that a defect was not present, only to record defects that were present.

The Defendant Local Authority had no record of any complaint in relation to the alleged defect during the 12 month period prior to the date of the Claimant's alleged accident and had no record of any other accident occurring at the location of the Claimant's alleged accident during the 12 month period prior to the date of the same.

The Defendant Local Authority's witnesses, under cross-examination, could not rule out human error during inspections, but were adamant that the alleged defect would not have been missed during any inspection. The Trial Judge accepted that the relevant Highways Inspector was very experienced and found him to be a credible witness. The Trial Judge did not consider that such an experienced Highways Inspector would have missed the alleged defect.

During a drive past of the area following the date of the Claimant's alleged accident, the relevant Highways Inspector for the area noticed a pothole at the location of the Claimant's alleged accident that appeared to have reached, or had almost reached, the relevant intervention level and he, therefore, requested repair of the same. At the time, the Defendant Local Authority had not been notified of the Claimant's alleged accident, so the Highways Inspector was not aware of the same. The Trial Judge considered that this highlighted the relevant Highways Inspector's credibility. The Highways Inspector was aware that the pothole was likely to deteriorate by the time of his next scheduled inspection and took decisive action to ensure that the pothole was repaired before then. Indeed, the Trial Judge held that this action was not consistent with someone who would cut corners, as the Claimant had alleged, and was, instead, supportive of someone who was thorough and sensible at all times.

As such, the Trial Judge held that the Defendant Local Authority had an appropriate system and a Section 58 Defence accordingly, and the Claimant's claim was dismissed.

Comment

Although he did not disagree with the Defendant Local Authority's classification of the location of the Claimant's alleged accident as a carriageway, the Trial Judge considered that this was a route utilised by pedestrians and that the alleged defect would pose a danger to any such pedestrians walking along the said carriageway.

However, the Defendant Local Authority had an appropriate Section 58 Defence. The relevant Highways Inspector's diligence in actioning the alleged defect that was noticed during a subsequent drive past assisted the Trial Judge to find that the same Highways Inspector was unlikely to have missed the alleged defect during his pre-accident inspection of the area.

Tom Danter
Associate
Dolmans Solicitors

For further information regarding this article, please contact:

Tom Danter at **tomd@dolmans.co.uk**
or visit our website at **www.dolmans.co.uk**

CASE UPDATES

Amended Claim Form - Service - Electronic Working Pilot Scheme

Beckett v (1) Graham (2) Unite the Union
[2025] EWHC 993 (KB)

The Court was required to consider, in the context of the Electronic Working Pilot Scheme, whether an amended Claim Form required re-sealing and filing prior to service.

On 05.06.24, the Claimant ('C') filed a Claim Form in the Liverpool District Registry using Electronic Working. A PDF of the sealed Claim Form, bearing the Court's seal dated 05.06.24, was sent by the Court to C's solicitors by email on 06.06.24. The Claim Form set out a claim for libel. The Claim Form was valid until 05.10.24.

Prior to service, C amended the Claim Form by striking through the claim for libel in red and setting out instead, in red and underlined, a claim for misuse of private information. The words 'Amended Claim Form under CPR 17.1(1) dated 21.10.24' were written across the top. The amended Claim Form and Particulars of Claim were sent to the Defendant's ('D') solicitors by first class post on 02.10.24 and were received the next day. On 04.10.24, C completed a Certificate of Service and uploaded this to CE File with copies of the amended Claim Form and Particulars of Claim. D asserted that there had not been good service as the amended Claim Form had not been filed and/or re-sealed prior to service.

The Judge made clear that this case was only concerned with electronic working in the High Court governed by PD 51O. Many of the case authorities relied upon by the parties were decided in relation to the practice relating to paper Claim Forms and wet seals.

Both parties accepted that there is no express provision in the CPR which requires a Claim Form, amended without permission pursuant to CPR 17.1, to be re-sealed prior to service. The Judge considered that the rule was perfectly clear: a Claim Form may be amended '*at any time*' prior to service and the reference to '*Claim Form'* must clearly be to the sealed Claim Form which has been issued.

The Judge further noted that with electronic working, the current practice in the Kings Bench Division is that a sealed Claim Form amended without permission on the sealed copy would not be sealed by the Court. It would just be filed on the Court file. The result of this was that whether such a Claim Form was served before or after filing, the same document would be served and there would be nothing on the face of the amended Claim Form to indicate it had been filed.

The Judge concluded that there is no requirement in the CPR which requires a claimant using electronic working, who has amended a Claim Form without permission under CPR 17.1 by endorsing the issued and sealed version received from the Court, to serve a re-sealed version of the Claim Form. Nor is such a requirement imposed by any of the case law. There is an obligation to file such an amended Claim Form, but this is a requirement of CPR 6.17 (2) to file a Certificate of Service and any documents which have not already been filed with the Court within 21 days of service of the amended Claim Form.

Accordingly, the Judge held that the amended Claim Form was validly served.

Applications - Contributions - Indemnity - Limitation

Mr David Dordoudvash v Zurich Insurance PLC and The Commissioner of the Police of the Metropolis [2025] EWCC 10

The claims in this case arose out of a road traffic accident in August 2017. PC Sehmi and PC Doroudvash were responding to a 999 call. PC Sehmi was driving. PC Doroudvash was the front seat passenger. PC Sehmi was driving at 87mph in a 30mph speed limit road, when he collided with a vehicle driven by Mr Tarnowski. PC Doroudvash and Mr Tarnowski were injured. PC Sehmi was subsequently convicted of causing serious injury by dangerous driving and received a suspended sentence.

Mr Tarnowski issued proceedings in the High Court against PC Sehmi and The Commissioner of the Police for the Metropolis ("the Commissioner"). The Commissioner admitted liability under Section 88 of the Police Act 1996. No argument of contributory negligence was raised. The case settled before trial.

Mr Doroudvash sent a Claim Notification Form to Mr Tarnowski's Insurers, Zurich Insurance PLC ("Zurich"), under the European Communities (Rights Against Insurers) Regulations 2002. Zurich admitted liability in full for the accident.

A Part 8 claim was then issued on behalf of Mr Doroudvash, which was stayed to allow medical evidence to be collated. By the time the medical evidence was collated, it was clear that PC Doroudvash was alleging damages in excess of £200,000. The parties, therefore, agreed that the matter should proceed under Part 7. Zurich sought to withdraw the admission of liability.

CASE UPDATES

Zurich's Application was successful. The District Judge also gave permission to PC Doroudvash to make an application to join the Commissioner as a second defendant. Prior to that hearing, Zurich had already made an Application to seek a contribution or indemnity from The Commissioner.

Zurich's Application

Counsel for Zurich submitted that the reality of the situation was that the Commissioner, in other proceedings, had already accepted full responsibility for the accident. They pointed to proportionality and to the undesirability of different conclusions being reached by different courts.

The Commissioner's position was that there was no proper contribution claim which could be brought as a claim under Regulation 3(2) of the 2002 Regulations as it was not the "same damage" for the purposes of Section 6(1) of the Civil Liability (Contribution) Act 1978. It was, therefore, not possible for Zurich to bring a claim for contribution against the Commissioner.

In allowing Zurich's Application, it was held that the law on Section 1(1) of the 1978 Act was clear and the condition precedent for its application was that is must be the same damage. The damage claimed against Zurich was precisely the damage that PC Doroudvash would have sought had he sued Mr Tarnowski direct. The foundation of the claim was identical. It was difficult to see a clearer case where the damage was the same.

The fact that the right which gives rise to the remedy is different (one under Section 88 of the Police Act 1996 and the other under the 2002 Regulations) was "not the point". The purpose behind the 1978 Act was to do away with such differences.

An insurer in the 2002 Regulations is directly liable to a claimant for the damage caused to an insured driver. There is no difference to the actual damage that the court is considering, rather it is the entitlement to bring the action against a particular person for that damage which is changed by the 2002 Regulations. There is a clear policy reason to support that construction. The whole purpose of the 2002 Regulations was to simplify personal injury litigation arising out of road traffic accidents. The Commissioner's arguments would suggest that the 2002 Regulations could not be used in such situations. That would add an unfortunate additional complexity to these types of cases, increasing costs and using up more court time.

CASE UPDATES

PC Doroudvash's Application

The limitation period had passed by the time that PC Doroudvash had made his Application.

The rules as to joining an additional party into an action after the expiry of the initial limitation period are complex. The Judge held that the Claimant's Application had identified the wrong route. However, CPR 19.6(4) did provide a route for the Claimant. Further, it was appropriate, on the facts, for the Court to exercise its discretion to enable the Claimant to add the Commissioner.

Counsel for the Commissioner sought to argue that an application can only succeed in an application under 19.6(4) where it can be showed that it was necessary to add the new party – as opposed to desirability. However, the Court took the view that the correct approach was to consider desirability rather than the necessity of adding a party. To imply a high threshold for such an application into 19.6(4) was not necessary or desirable.

Rule 19.6(4) simply gives a court discretion as to whether to add a new party. A court must exercise that power judicially. What is required is a consideration of the circumstances of the application, and that would bring into account all the circumstances and the application of the overriding objective. If a court decides under 19.6(4) that the primary limitation period should not apply, it is difficult to see on what basis a court may still refuse permission to add the additional party.

Where a court is not in a position to consider the merits of a Section 33 application at this stage, then the court should go on to consider whether a new party should be added to allow the limitation issue to be litigated. If it would fail, that would be a powerful reason for not adding a new party. The strength or otherwise of a potential Section 33 application could, and perhaps should, be one of the factors taken into account in determining the desirability following the addition.

The final issue was whether to consider an application under 19.6(4) was necessary for there to be an Application before the Court seeking reliance on Section 33. The Court held that there was nothing in the rule which required that. The Court on the Application before it had the power to make an order under 19.6(4)(b). It was desirable to exercise that power in this case.

PC Doroudvash's Application, therefore, also succeeded.

CASE UPDATES

Civil Procedure - Default Judgment - Late Service - Co-Defendants - Relief from Sanctions

Leadingway Consultants Limited v Saab & Another
[2025] EWCA Civ 582

The Claimant issued proceedings against two Defendants.

The First Defendant (D1) did not respond and Judgment in Default was entered in August 2022.

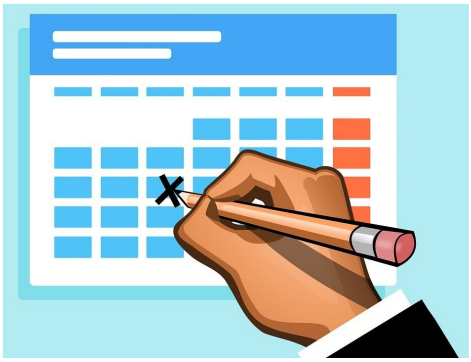
The Second Defendant (D2) was served later and filed an Acknowledgment of Service indicating their intention to dispute the Court's jurisdiction. Extensions of time for filing that Application were granted. An Unless Order provided that unless D2 filed a Part 11 Application within 21 days, he would be debarred and the Claimant would be entitled to apply for Default Judgment. D2's Application was mistakenly filed one day out of time by D2's solicitors.

It was not until the proceedings were served on D2 that D1 engaged with the process and finally issued an Application to set aside the Default Judgment in December 2023 (16 months after Default Judgment had been entered). At around the same time, an Application for relief from sanctions, in respect of the Unless Order made in relation to their Application, was made by D2.

At first instance, both Applications were successful.

In respect of D1's Application, it was held that there was an arguable defence to the claim and that proceedings would continue against D2 in any event. It was accepted that the Application to set aside was not made promptly, but that the Judge used his discretion to allow the whole case to continue.

It was accepted that D2's Application was issued one day out of time due to an 'innocent mistake by a member of the team in counting the days for compliance'. There were other factors in favour of relief. The Judge concluded that it was just to grant relief from sanctions.



The Claimant appealed.

Decision

D1's Application to Set Aside Default Judgment

The primary matter identified as a factor for setting aside the Default Judgment was that there was no real sense of the proceedings or the dispute as a whole being over. This seemed to reference the fact that the Claimant was still seeking to proceed with their claim against D2. D1 argued that this was the correct application of the "co defendant principle" as derived from *Hussain v Birmingham City Council [2025] EWCA Civ 1570, [2005] 11 WLUK 717*, namely that a court was required to attach less weight to promptness in setting aside default judgment where the same claim would continue against a co-defendant in any event.

However, on appeal, it was held that *Hussain* did not establish or purport to establish a "co-defendant" principle. It merely indicated that the weight to be given to the factor of promptness would be rather less where "on any basis" there would be a trial of the same issues. *Hussain* did not support the proposition that a defendant who permitted default judgment to be entered against them could readily succeed in an application to set aside that judgment simply because there were other defendants against whom the claim was made, and to that extent there was no finality. The need to apply promptly to set aside such judgments applied with full force, perhaps more so if the proceedings against the other defendants were progressing in the meantime, and setting aside judgment would involve delay and disruption.

At first instance, the Judge had not identified any factor reasonably capable of outweighing the fact that, at the early stage of the proceedings, D1 had not challenged the Judgment against him for 16 months without any good reason for that failure. The Judge had erred in setting aside the Default Judgment and the appeal against the setting aside of the Judgment was, therefore, allowed.

D2's Application for Relief from Sanctions

The Judge had not erred in their approach to the Application for relief from sanctions. The decision was fully open to him in the exercise of his discretion.

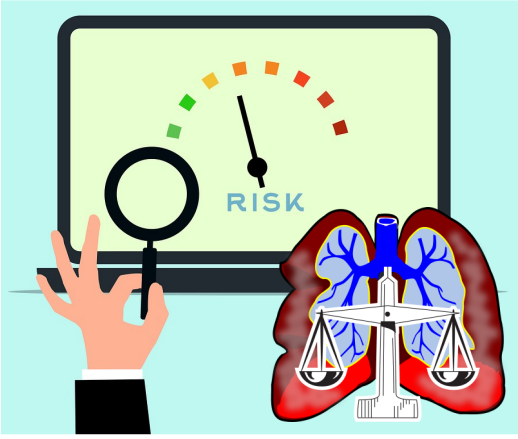
Upholding the High Court's decision to allow the late Application, on appeal the Judge held that "At the end of the day, the Second Defendant was one day late in filing his Application due to the inadvertent mistake of his solicitors". It was held that that mistake was contributed to by the fact that the Unless Order was not in the required form. Although the Unless Order was dated 29.11.23, it was stamped with the Court seal on 30.11.23, with that date showing prominently in the seal at the top right of the document.

This aspect of the appeal was dismissed.

CASE UPDATES

Mesothelioma - Causation - Material Increase in Risk

Johnstone v Fawcett's Garage (Newbury) Limited [2025] EWCA Civ 467



Mrs Johnstone ('J') died from malignant mesothelioma. Her husband ('C') brought proceedings against the Defendant garage ('D') where J had worked in an office for c. 7½ years between 1982 and 1989. Her office was across a yard from the garage's workshop. C's case was that, as a result of her employment, J was exposed to asbestos, such that there was a material increase in risk of her developing mesothelioma. D admitted breach of duty, but denied causation.

C's claim was dismissed at trial.

In reaching his decision, the Trial Judge approached his analysis in three stages:

- The factual evidence at trial was mainly provided by a mechanic, R, who had worked at the garage at the relevant time. The first stage was to calculate R's likely exposure to asbestos. C's expert's (Mr Chambers) estimate of R's exposure was 4.71 f/m-y; D's expert's (Mr Stear) estimate was 1.0 f/ml-y (number of asbestos fibres per millilitre of air over the course of a year). The Trial Judge found that C's expert's approach was not reflective of the factual scenario as he found it to be and concluded that D's calculations were likely to be considerably closer to the actual figure. He, therefore, found R's exposure to be 1 f/ml-y or less.

- The second stage was to calculate J's exposure relative to that of R. Again, the Trial Judge found D's expert's calculation more accurate and concluded that J's exposure was in the region of 0.001 to 0.002 f/ml-y.

- The third stage was to calculate the increase in risk to J of contracting mesothelioma from her exposure at the garage. The Trial Judge preferred the evidence of D's expert (Prof. Jones) and concluded that there was an increase of 0.1% or less in the risk of J developing mesothelioma caused by D, which was such a small increase it did not satisfy the test of materiality.

CASE UPDATES

C appealed. The first four grounds of appeal related to the third stage. The fifth ground of appeal was to the effect that the Trial Judge had erred in refusing to draw an adverse inference against D because of its failure to keep proper air monitoring records and should have done so to dismiss the expert evidence of Mr Stear and find as proved the evidence of Mr Chambers. This 5th ground was dismissed, inter alia, because the inference sought ran completely counter to the findings of fact made by the Judge. The main evidence of fact had come from C's own witness.

In mesothelioma cases a special rule of causation applies. Where a claimant has developed mesothelioma and it is known they were exposed to the risk of inhaling asbestos dust as a result of the negligence of the defendant, then the defendant is liable if they have materially increased the risk of the claim contracting the disease.

The Court of Appeal noted there were three rival approaches in the case to establishing causation. The Court labelled C's approach as the '*exposure / risk approach*' (C contended that an increase in material risk was established because J's exposure to asbestos fibres over the course of her life was materially increased by her exposure to asbestos while working at the garage). C contended that, on this approach, the increase in exposure was between 2% and 4.3%, which was a material increase. D's approach, and the approach adopted by the Trial Judge, was labelled the '*direct risk assessment approach'* (looking at a range of evidence and data sources in order to estimate directly the increase in risk of contracting mesothelioma caused by J's exposure to asbestos while working at the garage). Via a Respondent's Notice, D suggested an alternative approach (which the Trial Judge did not adopt), which the Court of Appeal labelled the '*absolute risk approach'* (relying on expert medical opinion to establish that the risk of exposure from J's time at the garage was insignificant in absolute terms). D submitted that this approach also supported the Trial Judge's conclusions.

C's grounds of appeal included an attack on the methodology used by D's experts and endorsed by the Trial Judge, and argued that the simpler methodology C contended for on causation should have been used and the Trial Judge had failed to adjudicate on which method should be adopted. The Court of Appeal made clear that this appeal was not about deciding whether the direct risk assessment approach is generally a valid and appropriate method. The question before the appeal court was whether the Trial Judge's conclusions were open to him on the basis of the evidence adduced by the parties. The Court of Appeal was satisfied that they were and dismissed the appeal.

The Court did state that the absolute risk approach was not appropriate in proving the special rule of causation. Materiality is a question for a judge. The absolute risk approach would delegate this question to a medical expert.

CASE UPDATES

Vicarious Liability - Independent Contractors

JD Wetherspoon PLC v Burger
[2025] EWHC 1259 (KB)

JD Wetherspoon PLC ('JDW') appealed against the decision of Recorder Shepherd made at trial that they were vicariously liable for the actions of door security personnel provided by Risk Solutions BG Ltd ('RS').

The Claimant, Mr Burger ('C'), had visited a pub operated by JDW and was subjected to a battery by the door security staff. The Recorder found that it was an unprovoked and appalling attack which occurred whilst C was walking away from the pub entrance. A claim for damages for personal injuries was issued by C against JDW and RS. RS did not acknowledge service or file a defence. Judgment in Default was entered against RS, but the Appeal Judge was not told what steps had been taken to enforce Judgment or whether any insurance policy responded to the claim against RS. The litigation proceeded against JDW alone. At trial, the Recorder found JDW vicariously liable and awarded damages of £71,308.67. JDW appealed against the finding that it was vicariously liable.

Case law establishes a 2 stage test for determining vicarious liability. Stage 1 is concerned with the relationship between the defendant and the tortfeasor and whether it is 'akin to employment'. Stage 2 is concerned with the link between the commission of the tort and that relationship – the 'close connection' test. Both stages must be satisfied. Stage 1 does not, however, undermine the traditional position that there is no vicarious liability where the tortfeasor is a true independent contractor in relation to the defendant.

The door staff were provided by RS pursuant to a contractual agreement between JDW and RS which stipulated that RS would be responsible for the direction, management and control of their employees. Under the agreement, RS were required to have EL insurance in place for the actions of the door staff. All door staff were to hold a valid Security Industry Authority licence. JDW had power to remove door staff by making a request to RS in the event of a breach of the agreement. JDW could specify a uniform. The agreement set out standards of service, including that door staff were authorised to restrain persons from causing or threatening injury to JDW's premises, but were required to comply with the law and not use physical force except where there was lawful excuse.

Considering the Stage 2 test first, the Judge found that the Recorder had been entitled to find that the wrongful conduct of the door staff was sufficiently closely connected with their authorised activities to impose vicarious liability. The assault was an excessive and wrongful mode of performing, or purporting to perform, their duties.

However, the Recorder had erred in his approach to Stage 1. The Recorder had found that the relationship between JDW and RS / the door staff was 'akin to employment' and that the tortious conduct occurred in the course of this quasi-employment. JDW submitted the Recorder had focussed on factors such as JDW being responsible for recording hours of work, the integral nature of the work, control over uniform, door staff being part of an established team, power to remove staff and door staff fitting into the pub's hierarchy, and had failed to give adequate regard to the importance of the contractual relationship and the commercial reality of engaging an independent contractor. The Judge agreed. The core question in this case was whether the contractual and working reality of the relationship between JDW and the door staff engaged via RS pointed to a relationship 'akin to employment' or that of a 'true independent contractor' carrying on their own business.

The Judge stated that the starting point had to be the contractual relationship between JDW and RS, which was for the provision of security services by an independent third party. Whilst the factors relied upon by the Recorder were indicative of some interaction and control between JDW and the door staff, these factors were entirely consistent with a business engaging a specialist independent contractor to perform services on its premises for pragmatic commercial reasons.

The contract between JDW and RS was a contract for services, not of service. The contract explicitly stated RS retained control over its employees. The employment relationship was between RS and the door staff. RS maintained responsibility for hiring, training, disciplining and supervising its employees. JDW had no authority over how they went about their operations other than its contractual entitlement to hold them to the services required, and standards, set under the contract. RS was an independent contractor providing a specialist security service. The factors relied upon by the Recorder were features of a standard commercial arrangement for the provision of specialist services by an independent contractor. Accordingly, the Recorder had erred in finding JDW vicariously liable for the actions of the door staff. JDW's appeal was allowed.

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

Amanda Evans at amandae@dolmans.co.uk or
Judith Blades at judithb@dolmans.co.uk

TRAINING OPPORTUNITIES

At Dolmans, we want to ensure that you are kept informed and up-to-date about any changes and developments in the law.

To assist you in this, we can offer a whole range of training seminars which are aimed at Local Authorities, their Brokers, Claims Handlers and Insurers.

All seminars will be tailored to make sure that they cover the points relevant to your needs.

Seminars we can offer include:

- Apportionment in HAVS cases
- Bullying, harassment, intimidation and victimisation in the workplace – personal injury claims
- Conditional Fee Agreements and costs issues
- Corporate manslaughter
- Data Protection
- Defending claims – the approach to risk management
- 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

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**