motoring news

Headlight

welcome

to 'Headlight', Dolmans Solicitors' motoring news bulletin.
In this edition we cover:

case summaries

- **hire - impecuniosity**

  Holt v Allianz Insurance plc [2023]

- **mixed injury tariff claims**

  Rabot v Hassam and Briggs v Laditan [2023]

- **pedestrian**

  Zanatta v Metroline Travel Limited [2023]

- **road traffic accident portal - unilateral mistake**

  Doyle v NFU Mutual Insurance [2023]

articles

- **recovery of NHS charges: tariff and cap increase from 1 April 2023**
- **fixed costs in the intermediate track**

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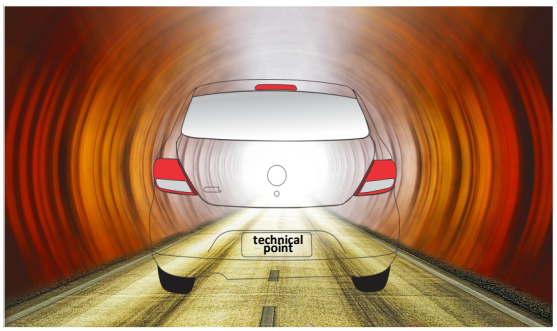
Holt v Allianz Insurance plc [2023]

This case concerned a road traffic accident which occurred on 16 July 2020, where liability was admitted by the defendant, with their insured driver being responsible for the accident. On 4 September 2020, Auxilis, on behalf of the claimant, presented the defendant with a demand for payment of £10,387.50 in respect of credit hire charges. The defendant requested confirmation as to whether the case concerned impecuniosity and requested disclosure of documentation for impecuniosity. Auxilis refused, so the defendant made an application for Pre-Action Disclosure. The application was heard on 18 October 2021 and handed down on 3 December 2021 by HHJ Harrison. The application was granted and subsequently appealed.



The appeal was allowed according to Mr Justice Andrew Baker on a finding that the likely party to any subsequent proceedings was the insured and not the defendant. However, it was acknowledged that this was a narrow technical point which could be resolved simply by bringing future applications in the name of both the insurer and the insured.

This ruling means that financial disclosure should be provided following a reasonable request and this can be ordered pre-action.

Rabot v Hassam and Briggs v Laditan [2023]

The claimants in both cases suffered whiplash and other injuries from road traffic accidents. The cases were of a "mixed injury" element, being those cases that involve a whiplash injury covered by the tariff set within the Whiplash Injury Regulations 2021 and injuries that fall outside the scope of those Regulations, which are assessed using more traditional common law methods, usually with reference to the Judicial College Guidelines and relevant case law.

The cases had both been assessed at first instance by DJ Hennessey in Birkenhead County Court. DJ Hennessey's approach had been a 3-stage approach to valuing such cases. Firstly, the value of the whiplash injury in line with the fixed tariff and, secondly, the value of the non-whiplash injury in line with common law and the Judicial College Guidelines. The final stage would be to add the two valuations together, but take a step back to account for any overlap in the two valuations.

Rabot had suffered various tariff injuries including whiplash, alongside soft tissue injuries to the knees for which no tariff applied. The tariff award at first instance was assessed at £1,390 and the non-tariff £2,500, totalling £3,890.

DJ Hennessy, then stepped back to consider whether adjustment was necessary, applying the 'totality principle' identified by LJ Pitchford in *Sadler v Filipiak*. Following this application, Rabot's overall award was reduced to £3,100.

Briggs suffered tariff-caught soft tissue injuries, alongside non-tariff caught elbow, knee and hip injuries. The tariffed injuries amounted to an award of £840, with non-tariff at £3,000. DJ Hennessy, stepping back and identifying an overlap between the two sets of injuries, reduced the award by £1,040, to give a total of £2,800.

Both claimant's appealed and the question for the court to determine was what approach should be taken when coming to assess a combination of tariff and non-tariff injuries where a given claim involves both.

The Court of Appeal was divided, but held by majority that the assessments at first instance were correct. However, the Court of Appeal did apply one caveat, namely that when accounting for overlap the discount could not take the valuation below that which would have been awarded for the non-tariff element of the injury if this had been the only injury the claimants had sustained.

Therefore, the total award would be no lower than what the Pain, Suffering and Loss of Amenity would have been in a given case for the non-tariff injuries by themselves. In other words, a claimant cannot walk away with a lesser sum by bringing both claims together. This meant the Briggs reduction took the damages below the amount for the non-tariff element and so the Court of Appeal increased the overall award to £3,500.

Zanatta v Metroline Travel Limited [2023]

This claim involved a road traffic accident in which the claimant, shortly before the accident, stepped out in front of the defendant's double-decker bus without looking in the direction of the bus driver's approach. The bus driver swerved to avoid the claimant, but collided with a traffic island and then the claimant, causing serious, life-changing head injuries. It was the claimant's case that the bus driver, having noted the presence of the claimant some 90 metres prior to the impact point, should have taken "effective measures" to avoid an accident. The defendant's case was that the bus driver, having slowed the bus and covered their brake when they first became aware of the claimant, actually took more precautionary measures than the average driver.

The judge at first instance dismissed the claim and commented that had they found for the claimant they would have made a reduction of 70% for contributory negligence. The claimant appealed alleging that, amongst other things, the judge was wrong to rule that they had failed to prove their case.

The Court of Appeal dismissed the claimant's appeal and held, among other things, that the judge's reasoning had reflected the reality of that fast-moving incident and what could and should be expected of a driver exercising reasonable care.

Further, the judge had not made incorrect findings of fact about the distance between the bus and the claimant. On the contrary, they had been careful not to make precise findings as to distance and had recognised the danger of artificial reconstruction by witnesses when trying to forensically describe a fast-moving and sudden incident.

Doyle v NFU Mutual Insurance [2023]

This claim involved a claimant who brought a claim under the Road Traffic Act Protocol for Low Value Claims. The claimant had previously made a number of offers in excess of £3,000 to settle the claim. The defendant made its own offer of £2,600 to settle the claim, which was rejected by the claimant. However, when setting out reasons for why the defendant's offer was rejected, the claimant forgot to amend the global offer and agreed settlement boxes which retained the defendant's offer of £2,600. This led the defendant to argue that the claimant had made an offer of £2,600 and the defendant accepted it. The issue before the court was whether there was a binding settlement.

The judge held that the doctrine of unilateral mistake does apply in the Protocol and was of the view that to conclude otherwise would give rise to the risk of perverse and wholly unfair results which would undermine rather than give effect to the overriding objective.

However, if it is not obvious to the objective onlooker that an error has been made and that assessment is made at the time of the purported settlement and not with any later information or development, then the settlement stands regardless of the error. As such, the doctrine of mistake only aids in those cases where the other side is, in effect, seeking improperly to take advantage of the error.

recovery of NHS charges: tariff and cap increase from 1 April 2023

The 1st of April 2003 saw the usual increase in recoverable NHS charges against compensators, with outpatient charges increasing from £766 to £788, inpatient charges increasing from £941 to £968 and ambulance charges increasing from £231 to £238. The overall cap has increased from £56,260 to £57,892.

The full table is below:

treatment and ambulance journey charges

accident date (on or after)	out-patient	in-patient	cap	ambulance charges (per person / per journey)
pre 02.07.97	£295	£435	£3,000	
02.07.97	£354	£435	£10,000	
01.01.03	£440	£541	£30,000	
01.04.03	£452	£556	£33,000	
01.04.04	£473	£582	£34,800	
01.04.05	£483	£593	£35,500	
01.04.06	£505	£620	£37,100	
29.01.07	£505	£620	£37,100	£159
01.04.08	£547	£672	£40,179	£165
01.04.09	£566	£695	£41,545	£171
01.04.10	£585	£719	£42,999	£177
01.04.11	£600	£737	£44,056	£181
01.04.12	£615	£755	£45,153	£185
01.04.13	£627	£770	£46,046	£189
01.04.14	£637	£783	£46,831	£192
01.04.15	£647	£796	£47,569	£195
01.04.16	£665	£817	£48,849	£201
01.04.17	£678	£833	£49,824	£205
01.04.18	£688	£846	£50,561	£208
01.04.19	£725	£891	£53,278	£219
01.04.20	£743	£913	£54,566	£224
01.04.21	£744	£915	£54,682	£225
01.04.22	£766	£941	£56,260	£231
01.04.23	£788	£968	£57,892	£238

fixed costs in the intermediate track

Readers will recall from our article 'the costs year ahead' in the autumn-winter 2022-2023 edition of Headlight that we referenced the expected extension to fixed recoverable costs and the introduction of an intermediate track which are due to come into being in October 2023. We now have the draft changes to the Civil Procedure Rules (CPR) agreed by the Civil Procedure Rule Committee (CPRC) on 31 March 2023, although the rules have not yet been made by the CPRC nor approved by MoJ ministers. They were published on 20 April 2023 with the intention of providing those who will use the new rules, primarily judges and lawyers, with as much notice as possible of the new arrangements.

There have been substantial changes to Part 45 (Fixed Costs) which has been largely re-written. A new Practice Direction (PD) 45 sets out the relevant tables of costs.

Changes have been made to Part 26 (Case Management – Preliminary Stage) and PD 26, as well as Part 28 (The Fast Track) and PD 28. Changes have also been made to Part 36 (Offers to Settle). Consequential changes have also been made to other Parts.

In the fast track, there will be four complexity bands (1 to 4 in ascending order of complexity) with associated grids of costs for the stages of a claim (see Table 12 in PD 45).

This article will concentrate on the new intermediate track intended for less complex multi-track cases under £100,000 damages and where a trial would last less than 3 days. It is in effect a hybrid of the fast track and multi-track. There will be new standard directions for the intermediate track. The parameters for the intermediate track were set out in our article as referred to above.

In the intermediate track, there will be four complexity bands as below:

Complexity Band			
1	2	3	4
Any claim where: (a) Only one issue is in dispute; and (b) The trial is not expected to last longer than one day; Including: (i) PI claims where liability or quantum is in dispute; (ii) Non-PI road traffic claims; and (iii) Defended debt claims.	Any less complex claims where more than one issue is in dispute, including PI accident claims where liability and quantum are in dispute.	Any more complex claims where more than one issue is in dispute, but which is unsuitable for assignment to complexity band 2; Including NIHL and other EL disease claims.	Any claim which would normally be allocated to the intermediate track, but which is unsuitable for assignment to complexity bands 1 to 3; Including any PI claim where there are serious issues of fact or law.

It will be noted that band 1 is the most simplistic and band 4 the most complex. Current expectation is that the majority of cases will fall within band 2 or band 3.

All parties are encouraged to agree the complexity band and must notify the court of their view on that issue when submitting a Directions Questionnaire.

The court will retain the discretion to assign the claim to the complexity band which it feels is most appropriate and or to the multi-track, irrespective of the views of the parties.

The amount of fixed costs is directly linked to the stage at which proceedings have reached and the allocated complexity band, and are found at Table 14 in CPR 45.50 which is set out below:

	Complexity Band			
Stage	**1**	**2**	**3**	**4**
S1 From pre-issue up to and including the date of service of the defence.	£1,600 + an amount equivalent to 3% of the damages.	£5,000 + an amount equivalent to 6% of the damages.	£6,400 + an amount equivalent to 6% of the damages.	£9,300 + an amount equivalent to 8% of the damages.
S2 Specialist legal representative providing post-issue advice in writing or in conference or drafting a statement of case.	£2,000	£2,000	(a) £2,300; or (b) £3,500 if counsel is also instructed to draft a defence to a counterclaim.	(a) £2,300; or (b) £3,500 if counsel is also instructed to draft a defence to a counterclaim.
S3 From the date of service of the defence up to the earlier of the date set for CMC or the order giving directions under 28.2.	£4,000 + an amount equivalent to 10% of the damages.	£7,700 + an amount equivalent to 12% of the damages.	£9,100 + an amount equivalent to 12% of the damages.	£13,000 + an amount equivalent to 14% of the damages.
S4 From the end of Stage 3 up to and including the date set by the court for inspection of documents.	£4,600 + an amount equivalent to 12% of the damages.	£9,400 + an amount equivalent to 14% of the damages.	£11,000 + an amount equivalent to 14% of the damages.	£16,000 + an amount equivalent to 16% of the damages.
S5 From the end of Stage 4 up to and including the later of the dates set by the court for service of witness statements or expert reports.	£5,200 + an amount equivalent to 12% of the damages.	£11,000 + an amount equivalent to 16% of the damages.	£12,000 + an amount equivalent to 16% of the damages.	£20,000 + an amount equivalent to 18% of the damages.

Complexity Band				
Stage	**1**	**2**	**3**	**4**
S6 From the end of Stage 5 up to and including the date set for the pre-trial review or up to 14 days before the trial date, whichever is earlier.	£5,900 + an amount equivalent to 15% of the damages.	£15,000 + an amount equivalent to 16% of the damages.	£16,000 + an amount equivalent to 16% of the damages.	£24,000 + an amount equivalent to 18% of the damages.
S7 Specialist legal representative advising in writing or in conference following the filing of a defence.	£1,400	£1,700	£2,300	£2,900
S8 From the end of Stage 6 up to the date of the trial.	£6,600 + an amount equivalent to 15% of the damages, less £580 if that party did not prepare the trial bundle.	£17,000 + an amount equivalent to 20% of the damages, less £870 if that party did not prepare the trial bundle.	£19,000 + an amount equivalent to 20% of the damages, less £1,120 if that party did not prepare the trial bundle.	£29,000 + an amount equivalent to 22% of the dam-ages, less £1,400 if that party did not prepare the trial bundle.
S9 Attendance of a legal representative (other than the trial advocate) at trial per day, less an amount equivalent to 50% per day where, on any day, the trial lasts no more than half a day.	£580	£870	£1,200	£1,400
S10 Advocacy fee: day 1.	£3,200	£3,500	£4,000	£5,800
S11 Advocacy fees for subsequent days, less an amount equivalent to 50% per day where, on any subsequent day, the trial lasts no more than half a day.	£1,400	£1,700	£2,000	£2,900

Complexity Band				
Stage	**1**	**2**	**3**	**4**
S12 Handing down of a reserved judgment and consequential matters, where dealt with separately from the trial.	£580	£580	£580	£580
S13 Alternative Dispute Resolution: additional fee payable once only where a mediation or joint settlement meeting takes place.	£1,200	£1,200	£1,200	£1,200
S14 Alternative Dispute Resolution: additional fee payable once only for specialist legal representative attendance at a mediation or joint settlement meeting covered by S13.	£1,400	£1,700	£2,000	£2,300
S15 Approval of settlement for child, unless the settlement is approved at trial.	£1,200	£1,400	£1,700	£2,000

The figures in stages S1, S3, S4, S5, S6 and S8 are cumulative total costs incurred up to and including that stage.

S2, S7 and S9 to S15 are separate sums that can be claimed if those steps have been carried out.

Disbursements can be claimed in addition if they have been reasonably incurred and are not already covered in the stages above.

It is proposed the figures will be reviewed every 3 years.

If there are any topics you would like us to examine, or if you would like to comment on anything in this bulletin, please email the editor:

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