DOLMANS INSURANCE BULLETIN

Welcome to the May 2019 edition of the Dolmans Insurance Bulletin

In this issue we cover:

REPORT ON

- Back lanes : Reactive inspections and the Section 58 Defence - *Terrance Bartlett v Rhondda Cynon Taf County Borough Council*

RECENT CASE UPDATE

- Civil procedure - fundamental dishonesty - Section 57 Criminal Justice and Courts Act 2015
- Civil procedure - Part 36 Offers - validity of offers
- Contempt of Court - committal proceedings
- Costs - funding arrangements - non-party Costs Orders
- Fixed costs - cases over £25,000 - exceptional circumstances
- Health and safety at work - noise

A DATE FOR YOUR DIARY

Dolmans' Defendant Litigation Team's ever popular
Key Note Seminar
will be held on
Tuesday, 18 June 2019
at the Vale of Glamorgan Resort

Should you require details and/or a registration form for this seminar, please contact kerenj@dolmans.co.uk

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

DOLMANS REPORT ON

BACK LANES : REACTIVE INSPECTIONS AND THE SECTION 58 DEFENCE

Terrance Bartlett v Rhondda Cynon Taf County Borough Council

The South Wales valleys are strewn with many lanes that allow access to the rear of several properties and other areas. Usually these lanes are relatively little used, especially when compared to other categories of highway. As such, they tend not to be the subject of scheduled inspections and/or defined intervention levels. Potentially, this can cause some difficulty when a Highway Authority seeks to rely upon a Section 58 Defence.

This situation was overcome, however, in the recent case of *Terrance Bartlett v Rhondda Cynon Taf County Borough Council*, which was heard before a District Judge sitting in the Pontypridd County Court, and where Dolmans represented the Defendant Authority.

Allegations

The Claimant alleged that on 1 January 2016 at approximately 2:30am, he was walking along a carriageway (in a lane) that was owned by the Defendant Authority, when he tripped in a pothole causing him to fall and sustain personal injuries. It was alleged that the Defendant Authority was in breach of Section 41 of the Highways Act 1980 and that it was negligent. In addition, the Claimant alleged that the defect constituted a nuisance. The Claimant also alleged that there was insufficient street lighting in the area.

Categorisation of 'Back Lane'

The carriageway at the location of the Claimant's alleged accident was classed by the Defendant Authority as a 'back lane' and was not subject to a scheduled system of inspection and maintenance, but was inspected by a Highways Inspector on a reactive basis. There was no defined intervention criteria for 'back lanes', but the Highways Inspector applied reasoned professional judgement during any inspections of these 'back lanes'.

There were no records of any complaints and/or accidents at the location of the Claimant's alleged accident during the 12 month period prior to the date of the same. Hence, there had been no need to inspect the 'back lane' on a reactive basis during this period.

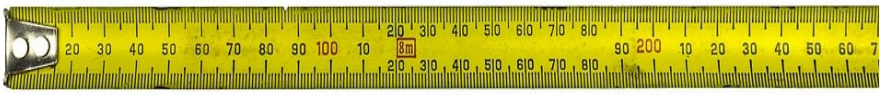
Dangerousness – The Highways Inspector's Evidence

The Claimant did not plead any measurement of the alleged defect. Although he disclosed photographs that showed some measurements, none were decipherable.

Notification of the Claimant's alleged accident was not received by the Defendant Authority until 11 May 2016, following which the Highways Inspector inspected the relevant area on a reactive basis and noted a maximum difference in levels of 60mm.

The Highways Inspector gave evidence that he then requested a Category 1 repair as a matter of prudence in light of the Claimant's alleged accident, albeit that the alleged defect was within the intervention level for a 'local access road' which had a higher categorisation level than a 'back lane' and was used much more frequently than a 'back lane'. The Defendant Authority argued, therefore, that the location of the Claimant's alleged accident was not dangerous.

The Highways Inspector pointed out that his measurement was undertaken following the winter weather and over 5 months after the date of the Claimant's alleged accident. The alleged defect would, therefore, have deteriorated between the dates of the Claimant's alleged accident and his inspection.



Bolstering the Highways Inspector's Evidence

Although there was no scheduled system of inspection and maintenance in place and no defined intervention levels for 'back lanes', a Witness Statement was obtained from the Defendant Authority's Highway Infrastructure Manager which clarified that the measurement taken by the Highways Inspector over 5 months after the date of the Claimant's alleged accident was even then still within the intervention level for Category 1 defects on 'local access roads' and at the County Surveyor's Society of Wales (CSSW) recommended intervention criteria (Category 2) for a 'local access road'.

The Highway Infrastructure Manager reiterated that 'back lanes' are used much less frequently than 'local access roads', and even then tend to be used mainly by local residents, and that it would be reasonable to apply a less stringent regime to lower categories of highway. He argued that this is consistent with the principle of less stringent intervention criteria for lower category highways; as illustrated by the CSSW recommended intervention criteria.

The Highway Infrastructure Manager was also able to confirm that the Defendant does not have any duty to illuminate the area in question in response to the Claimant's allegation as to insufficient lighting and that, where safety defects are identified, it is the policy of the Defendant Authority to conduct necessary repairs without being constrained by financial considerations.

DOLMANS REPORT ON

Judgment

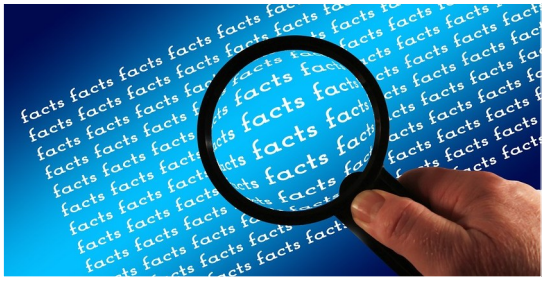
There were various causation issues that the Claimant had to overcome and the Claimant called witness evidence in an attempt to corroborate his version of events, although none of his witnesses appeared to be independent. The District Judge found that although an accident had occurred at the location, the Claimant's balance had been affected and he was aware of the pothole in any event. The District Judge found that the area was adequately lit and that the Defendant Authority had no duty to illuminate the lane in any event.

Counsel for the Claimant had argued at Trial that the lane should be classed as a footway, rather than a carriageway, presumably as the safety defect criteria for a similar footway would be lower than its counterpart carriageway. However, the District Judge agreed with the Defendant Authority's evidence that the lane was a carriageway and was subject to low usage by pedestrians.

The District Judge accepted that the alleged defect had deteriorated when the Highways Inspector inspected the area some 5 months after the date of the alleged accident and was satisfied that the alleged defect at the time of the alleged accident was below 60mm. There was no evidence from the Claimant to counter this and the District Judge did not consider that the alleged defect constituted an actionable hazard, finding that it was incumbent upon the Claimant to prove that an actionable defect was in existence at the time.

Having considered the evidence by the Highways Inspector, and the Defendant Authority's Highway Infrastructure Manager in particular, the District Judge accepted that a reactive system was reasonable and that the Defendant Authority would be able to rely upon its Section 58 Defence accordingly.

The claim was dismissed and the Claimant ordered to pay the Defendant's costs, but not to be assessed or enforced without permission of the Court as this was a QOCS matter.



Conclusion

It is pleasing that the District Judge was prepared to look beyond the facade of a reactive system and take all factors into account when finding that the Defendant Authority was entitled to rely upon its Section 58 Defence. Obviously, the success or otherwise of such matters will depend upon the specific facts of the case and the ability to favourably compare the appropriate criteria to more frequently used 'local access roads' in this particular matter was important.

With this in mind, a robustly pleaded Defence, along with strong witness evidence by the Highways Inspector and the Defendant Authority's Highway Infrastructure Manager, undoubtedly played a pivotal role in assisting the District Judge to reach his conclusion.

The result was even more pleasing when taking into account that the Claimant had previously made a Part 36 offer regarding liability on a 75/25 basis in his favour, which presented a potential costs risk to the Defendant Authority, and that he had intimated a desire to get the matter reallocated to the Multi Track from the Fast Track.

Hence, the successful outcome in this particular matter not only reaffirmed the Defendant Authority's position as to its regime in relation to 'back lanes', but also represented a substantial saving financially for the Defendant Authority.

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**

DOLMANS RECENT CASE UPDATE

Civil Procedure - Fundamental Dishonesty -
Section 57 Criminal Justice and Courts Act 2015

Sudhirkumar Patel v (1) Arriva Midlands Limited (2) Zurich Insurance plc
[2019] EWHC 1216 (AB)

The Defendants' argument that the Claimant was fundamentally dishonest was accepted by the Court and the Claimant's claim was struck out pursuant to section 57 of the Criminal Justice and Courts Act 2015.

The Claimant pedestrian was struck by a bus owned by the First Defendant in January 2013. As a result of the collision, he went into cardiac arrest and was left unconscious. He was later diagnosed with subarachnoid haemorrhage (a bleed on the brain). At the time of filing the claim, it was claimed that the Claimant was significantly disabled.

The Claimant's expert, a neuropsychiatrist, found the Claimant to be almost entirely unresponsive and without arm or leg movement. The Claimant was a protected party and his son and Litigation Friend told the expert that the Claimant did not communicate and required complete care. Although the expert found no neurological reasons for the Claimant's condition, he diagnosed him as having a severe conversion disorder and assessed him as lacking capacity to litigate.

Similarly, the Defendants' neurologist found the Claimant in bed, mute and unresponsive, but was unable to clinically distinguish between a subconscious conversion disorder and a feigned disability.

In between the parties' experts visiting the Claimant, the Defendants secretly instructed surveillance operatives. They obtained video evidence of the Claimant walking unaided without difficulty and with a normal gait, talking, negotiating road crossings, reading and displaying manual dexterity (getting into and out of the passenger seat of a car unaided, bending over, shaking hands, stepping out of harm's way and using door keys).

Immediately after the video footage was disclosed, the Defendants' expert declared that the severe conversion disorder diagnosis could be ruled out and his opinion was that the Claimant's disability was feigned. The Defendants amended their Defence to plead that the claim should be struck out pursuant to Section 57 of the Criminal Justice Act 2015 on the basis of fundamental dishonesty of the Claimant and his Litigation Friend.

The Claimant filed no further report from his expert following the surveillance evidence. He did, however, file evidence from his family and friends saying that his condition was variable and he was less independent and talkative than before the collision.

DOLMANS RECENT CASE UPDATE

Upon hearing the Defendants' Application, although the Claimant had conducted the case on the basis that he had no capacity, the Judge held that, based upon the witness and surveillance evidence, the Claimant did have capacity.

It was submitted on behalf of the Claimant that the Defendants' Application was premature and that the Application should not be determined until all matters relating to quantification of the claim were tested and findings made at a quantum trial. This, however, was rejected by the Judge.

The Claimant also submitted that it was impossible for the Court to make a finding of fundamental dishonesty on the basis of untested Witness Statements from family members and friends stating that the Claimant had serious difficulties and that those difficulties were variable, ie - he had good days and bad days. To do so, the Court must be satisfied that all of those witnesses are lying, without testing the evidence. This submission was also rejected. It was held that the family's and friends' evidence supported the Defendants' case; they described the Claimant's condition in a way wholly at odds with his presentation to the experts and with what the son had told them. The Court did not consider that any further medical evidence was required, but found that the Claimant had had ample opportunity to obtain further evidence to support the original diagnosis, but had not done so. The Court inferred from the lack of any updated evidence from the Claimant's expert that any evidence that the expert would give would not support the Claimant's case. The diagnosis was untenable. The disability was feigned.

The Judge's findings were robust:

(1) The Claimant was dishonest. The Claimant had known that he could support himself, walk, communicate and manage for himself, but he had presented to the experts that he could not. Even if the disability was not feigned, the Claimant should have corrected the untrue information about his disabilities presented to the experts.

(2) The Claimant was fundamentally dishonest. The case was not one of exaggerating disability, but of faking it. The conversion disorder was the fundamentally dishonest part of the claim. It was the bulk of the claim by value. The remaining honest part concerned the cardiac arrest and brain injury, from which there appeared to have been a good recovery. The dishonesty had significantly and adversely affected the Defendants.

(3) There was no substantial injustice in dismissing the entirety of the claim. The Claimant himself had been fundamentally dishonest and was presumed to have capacity.

DOLMANS RECENT CASE UPDATE

The Claimant's claim was dismissed in its entirety and the Claimant and his Litigation Friend were ordered to pay the Defendants' costs on an indemnity basis. The Claimant was ordered to pay £50,000 on account of costs within 3 weeks. Permission to appeal was refused.

On further Application by the Defendants, the Judge confirmed that she was satisfied to the criminal standard of proof that the Claimant and his Litigation Friend were dishonest and that dishonesty would have materially affected the case (such a finding being necessary for any future Application to commit the Claimant and his Litigation Friend for contempt of court).

Civil Procedure - Part 36 Offers - Validity of Offers

Calonne Construction Limited v Dawnus Southern Limited
[2019] EWCA Civ 754

The Court of Appeal has upheld a finding that a Defendant's Part 36 Offer, which related to both a claim against it and a proposed counterclaim which had yet to be pleaded and which provided for interest to accrue at 8% following the expiry of the 'relevant period', was a valid offer and the terms of the offer did not breach the requirements of CPR Part 36.

The Claimant's claim arose out of refurbishment works carried out at a residential property which were subject to delays and caused water ingress at the property. The Claimant sought declarations as to the sums due under the contract and damages for defective and incomplete work.

The Defendant made an early offer to settle the claim, which was purported to be a Part 36 Offer, indicating that it would accept £100,000 in settlement of both the claim and its unissued counterclaim. The offer also indicated that the settlement sum included interest until the expiry of the relevant period, but that, thereafter, interest would be added at 8% per annum.

The offer was not accepted and the claim proceeded to Trial. By that stage, most of the claim was agreed. Where disputes remained, the Judge found in favour of the Defendant and, accordingly, the Judge found that the Part 36 Offer had been beaten. The Claimant was ordered to pay a proportion of the Defendant's costs.

The Claimant appealed, submitting that the Defendant's Part 36 Offer was not valid. The appeal was rejected by the Court of Appeal.

It was held that the fact that the Defendant's offer included a counterclaim that had yet to be pleaded did not render the offer invalid. The express purpose of CPR Part 20 was to enable counterclaims and other additional claims to be managed in the most convenient and effective way. A counterclaim was treated as a claim for the purposes of the CPR, except as expressly provided in Part 20, and nothing in that Part excepted Part 36 from those provisions. Given that parties could make Part 36 Offers at any time, and even before the commencement of proceedings, it could not be right to say that a Part 36 Offer could not be made in relation to an as yet unpleaded counterclaim. In the instant case, there was no uncertainty about the nature and the extent of the counterclaim (but even if there were, it could be addressed by a request for clarification under R.36.8).

It was also held that the provision for interest after the expiry of the offer did not render a Part 36 Offer invalid. There was nothing in Part 36 to preclude the inclusion of provision for interest. There was also nothing which expressly precluded the inclusion of terms in addition to the requirements in R.36.5(2), and R.36.2(2) expressly preserved the ability to make an offer to settle in whatever way the party chose, subject to specified costs consequences.

Appeal dismissed.

Contempt of Court - Committal Proceedings

Zurich Insurance plc v Romaine
[2019] EWCA Civ 851

The Defendant, 'R', had worked as an engineer in the 1970s/80s for a company insured by the Claimant insurance company, 'Z'. R brought a claim for damages for noise induced hearing loss limited to £5,000. The proceedings were supported by a medical report in which the expert stated that R "*has not had any noisy hobbies*". Liability was disputed. Z obtained R's medical records which contained entries suggesting that R was a professional singer. Z served a Part 18 Request for Further Information referring to the entry in the medical records and raised a number of questions, including whether R was or had been a professional singer, whether he played an instrument, whether he performed in a live band and, if so, the frequency with which he practiced.

R's responses denied he was, or ever had been, a professional singer, denied he performed with a live band, confirmed he had played acoustic guitar for soft music when he was about 19 years old, but only did so now on a very rare occasion, and it was not noisy. The Part 18 Response contained a Statement of Truth and was signed with R's electronic signature. R subsequently served a Witness Statement repeating these responses and stated that he did not ride a motorcycle, nor did he participate in or attend motorsport events. The Witness Statement also contained a Statement of Truth and was signed with R's electronic signature.

DOLMANS RECENT CASE UPDATE

Z commissioned an intelligence report on R, which, via Facebook searches, established that R had ridden motorcycles, he had an interest in motorcycles, fast cars and guitars, he was in a live rock and roll band of which he was the lead singer and in which he also played electric guitar, the band performed regularly at pubs, clubs and larger events and rehearsed regularly. The report was served on R's solicitors. An Application was made to strike out R's claim on the grounds of fundamental dishonesty. R served a Notice of Discontinuance.

Z issued committal proceedings contending that R was guilty of Contempt of Court for making a false statement in a document verified by a Statement of Truth. R contested the Application, submitting a statement to the effect that the signatures on the documents were inserted without his instructions and that he had not seen the Part 18 Response or Witness Statement before they were served. The Application for permission to commence contempt proceedings was dismissed on the grounds that the documents were not signed by R, so it was not a sufficiently strong case, there was no evidence that R was warned that he may have committed a Contempt of Court such as to merit an Application for committal and it was not in the public interest for committal proceedings to be brought where R had discontinued at an early stage. Z appealed.

The Court of Appeal allowed the appeal. The Court confirmed that an electronic signature is sufficient to validate a document as belonging to its apparent author. There was, thus, a good prima facie case. The issues raised by R were not for determination at the permission stage.

The Judge had erred in taking account of the irrelevant matter of the absence of a warning given to R that if he brought a claim based on false statements, he ran the risk of committal proceedings. Whilst the absence of a warning could be relevant in some cases, that was not the case where the alleged contemnor had commenced the claim himself; "*whilst the CPR do not provide (or allow) for a penal notice to be attached to a Statement of Truth, it is difficult to conceive of circumstances where a Claimant can be heard to say that he was prejudiced by the absence of a warning about the risks of contempt proceedings if he, himself, has been responsible for bringing a fraudulent claim*".

Whilst R's early discontinuance was a relevant factor, the analysis went deeper than that. The Judge had not taken into account the relevant matter of the mischief that early discontinuance of claims represented in the hands of unscrupulous Claimants and lawyers bringing false insurance claims.

DOLMANS RECENT CASE UPDATE

Costs - Funding Arrangements - Non-Party Costs Orders

Julie Anne Davey (Applicant) v (1) James Money (2) Jim Stewart-Koster (Joint Administrators of Angel House Developments Limited) (Respondents / Section 51 Applicants) & Chapelgate Credit Opportunity Master Fund Limited (Section 51 Respondent) : Dunbar Assets plc (Claimant / Section 51 Applicant) v Julie Anne Davey (Respondent) & Chapelgate Credit Opportunity Master Fund Limited (Section 51 Respondent)
[2019] EWHC 997 (Ch)

This Judgment was principally concerned with the potential Application of the so called “Arkin cap” to limit the extent of non-party Costs Orders against a commercial litigation funder.

The Applicants (Messrs Money and Stewart-Koster and Dunbar Assets plc), who had successfully defended a serious claim made against them by the Claimant (Davey) in the main action, applied for a non-party Costs Order against the Respondent (Chapelgate Credit Opportunity Master Fund Ltd), who was the Claimant's commercial funder.

The Claimant had been ordered to contribute £3.9 million towards the Applicants' costs. The Respondent did not resist a non-party Costs Order, but contended that its total liability should be limited to £1.2 million; being the maximum of the funding that it had provided to the Claimant and relying upon the principle derived from *Arkin v Borchard Lines Ltd (Costs Order) [2005] EWCA Civ 655*, known as the "Arkin cap".

On the issue of whether the Respondent’s liability extended to costs pre-dating the funding agreement, the Court found it did not. Here the Respondent simply supported the litigation, which was distinct to being a litigating party. Costs incurred prior to the date of the funding agreement had been incurred without the Respondent’s involvement and, therefore, the Costs Order against it would be confined to costs incurred after that date.

On the issue of whether the principle under Arkin applied, the Court found that this principle was not a rule or guideline to be applied mechanistically in every case involving commercial funders, but merely an "approach" which might be useful to other Judges when exercising their discretion in similar cases. The instant case was an example of when it would not be appropriate to apply the Arkin cap.

The reasons why it was considered unjust to apply the Arkin cap in the Respondent's favour included:

(a) C had approached its involvement in the case as a commercial investment;

(b) Whilst the Respondent had not had conduct of the case, it entered into the funding agreement after exchange of Witness Statements and, therefore, had had every opportunity to investigate and assess the type of allegations being made;

(c) The Respondent would have known that the Applicants' costs were likely to be very substantial and more than they were willing to invest in the litigation, plus that the Claimant was unlikely to be able to pay them;

(d) The evidence showed that the Claimant's access to justice had been a less important factor to the Respondent than its return on its commercial investment;

(e) The Court rejected the Respondent's submission that a failure to apply the Arkin cap would deter future commercial litigation funding.

Accordingly, Arkin was distinguished and the Respondent was ordered to pay costs incurred after the date of the funding agreement.

Fixed Costs - Cases Over £25K - "Exceptional Circumstances"

Carl Ferri v Ian Gill
[2019] EWHC 952 (QB)

Here, the Court considered whether fixed costs should be applied to a case which had started in the portal, but settled for more than £25,000.

The Appellant, 'F', appealed against a Master's decision that the Respondent's, 'G', costs should be subject to a Detailed Assessment.

G sustained injury when he collided with F's open car door whilst riding his bicycle. His solicitors obtained a GP report which anticipated a full recovery within 4 months. A Claim Notification Form was prepared under the pre-action protocol for low value personal injury claim. Liability was admitted with no allegation of contributory negligence made and an offer of settlement was put forward in the sum of £1,500. G then instructed new solicitors, who obtained a report from an orthopaedic surgeon, who diagnosed a more serious injury. The new solicitors stated that the claim was not suitable for the protocol due to the seriousness of the injury, ongoing loss of earnings and the need for further private treatment.

The claim settled for £42,000 without the issue of proceedings.

G sought for more than the fixed recoverable costs under CPR Pt 45 and issued Part 8 proceedings. Rule 45.29J(1) provided that if it considered that there were "*exceptional circumstances making it appropriate to do so*", the Court would consider a claim for costs which was greater than the fixed recoverable costs. At first instance, the Master found that the test of exceptionality was a "*low bar*" because the portal was intended to deal with simple cases "*which would typically be fast track cases*" and that this case was "*on balance outside the general run of such cases*". Accordingly, she held that costs were subject to Detailed Assessment.

G appealed.

The Appeal Court disagreed with the Master's findings and held that the test was a high bar and required the Court to consider whether a case was exceptional in the context of cases that had left the low value protocol and were subject to the regime in CPR 45 section IIIA. Further, the fixed costs regime provided certainty and solicitors should take the rough with the smooth in a 'swings and roundabouts approach'. The test of 'exceptional circumstances' required a strict, not a 'low bar', approach.

The Appeal was allowed and the case was remitted for reconsideration by a different Master.

Health and Safety at Work - Noise

Goldscheider v Royal Opera House Covent Garden Foundation [2019] EWHC 687 (QB)

The Claimant, 'C', was a professional viola player employed by the Defendant, 'D'. D's orchestra played in a pit half covered by a stage. Ear plugs were available. These caused difficulties hearing other players and players had been told to wear them at their discretion. In 2012, the orchestra begin rehearsals for Wagner's Ring Cycle. The conductor planned a different pit configuration for artistic reasons, which placed the violas immediately in front of the brass section. C was immediately in front of the principal trumpet. C and the adjacent viola player complained about the noise during the lunch break. Noise dosemeters were attached to his shoulder for the afternoon, but they did not provide live readings. After the afternoon rehearsal, C felt ear pain and dizziness, and was diagnosed with high frequency hearing loss as a consequence of acoustic shock. C was unable to return to work.

The Judge gave Judgment for C, holding that D had breached its duties under the Control of Noise at Work Regulations 2005. D had failed to carry out an adequate risk assessment, failed to do everything reasonably practicable to eliminate the risk of noise exposure, failed to designate its orchestra pit as a mandatory hearing protection zone and failed to train orchestra members about the risks. D could not compromise its standard of care for artistic considerations.

D appealed, submitting that the Judge had been wrong not to accept its evidence that it had taken all reasonably practicable steps to reduce the risk of noise exposure for the purposes of Regs. 6(1) and (2) of the 2005 Regulations; that under s.1 of the Compensation Act 2006, the deterrent effect of liability for a breach of statutory duty might discourage a desirable activity; and the Judge had failed to properly determine causation.

The Court of Appeal dismissed the appeal. The critical issue was whether D had reduced exposure to as low a level as was reasonably practical and, in particular, had taken all reasonable steps to reduce it below the statutory upper occupational exposure limit of 85dB. Following C's complaints, the noise levels were recorded at 91dB. At a subsequent rehearsal, after C had left, the orchestra was rearranged to give a one metre space between the violas and the brass section and the brass section was split up. Noise levels were recorded at 83dB. D submitted that the reduction was because the conductor was rehearsing less noisy sections during that rehearsal and it was a stop/start rehearsal, but the Court did not accept this as D had provided no detailed evidence in support. The changes effected had not caused any reduction in the artistic standard of the public performances. Accordingly, D had failed to prove that all reasonably practicable steps had been taken.

S.1 of the 2006 Act did not assist D. Had the evidence demonstrated that nothing more could have been done to reduce noise without D having to abandon the Wagner repertoire it might have done, but that was not the situation.

In relation to causation, C had shown that he had been exposed to noise likely to cause injury and that a noise induced injury had been sustained. It was open to D to show that the breach was not causative of the injury, but D had failed to do so.

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

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

DOLMANS

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**