DOLMANS INSURANCE BULLETIN

Welcome to the January 2022 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

Agency Worker Accidents - The Importance of Good Documentation

R L v Rhondda Cynon Taf County Borough Council

Many Local Authorities engage the services of agency workers, particularly for seasonal work. The importance of clearly documented records, particularly training records, for these agency workers is paramount and was highlighted in the recent case of *RL v Rhondda Cynon Taf County Borough Council*, in which Dolmans represented the Defendant Local Authority.

Background

The Claimant was employed through an employment agency as a grasscutter with the Defendant Local Authority. It was alleged, however, that the Claimant was under the control of the Defendant Local Authority.

The Claimant alleged that he was using the Defendant Local Authority's sit on mower, on uneven terrain, in wet conditions, when his foot slipped on a worn pedal, causing him to lose control of the mower which toppled into a ditch, thereby causing him to sustain personal injuries.

The Claimant alleged that he was permitted to use the sit on mower, which was disputed by the Defendant Local Authority. The Claimant was an experienced grasscutter, having worked for the Defendant Local Authority previously on a seasonal basis, and would use mainly grass strimmers when undertaking his duties.

Workplace Regulations

The Claimant alleged that the Defendant Local Authority had been negligent and that although he was not employed by them, the Defendant Local Authority still owed a duty under the Management of Health and Safety at Work Regulations 1999, in addition to the Provision and Use of Work Equipment Regulations 1998.

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A robust Defence denying liability was filed and served on behalf of the Defendant Local Authority. It was argued that the Claimant was working beyond his permitted remit at the time of his alleged accident. The Claimant was not authorised to use the sit on mower and was, therefore, arguably the author of his own misfortune.

The Claimant accepted in his Particulars of Claim that he was not employed directly by the Defendant Local Authority and, as such, no admissions were made as to the relevance of the Regulations in this particular matter. Notwithstanding this, the Claimant's alleged accident occurred in 2017, well after the Enterprise and Regulatory Reform Act 2013 in any event, and the Defendant Local Authority, therefore, denied that the alleged breaches of the said Regulations gave rise to an actionable claim in damages; the legal and evidential burden being upon the Claimant to prove common law negligence.

Readers will recall that Section 69 of the Enterprise and Regulatory Reform Act 2013 served to increase the burden on Claimants pursuing claims for damages arising from workplace accidents, as this sought to negate the effects of the 'Six Pack' of Regulations that had previously effectively imposed strict civil liability upon employers for certain work accidents.

Witness Evidence and Documentation

As well as his own evidence, the Claimant relied upon witness evidence from a former employee of the Defendant Local Authority who allegedly witnessed the Claimant's accident. Both were vigorously cross-examined at Trial.

Evidence was adduced by several witnesses on behalf of the Defendant Local Authority, including the Team Manager, Supervisor and Chargehand who was also employed through the same agency. The Defendant Local Authority's witnesses relied upon several documents which were exhibited to their Witness Statements.

From their witness evidence, it was apparent that the Claimant, like all placements made through the agency, received induction training from the Defendant Local Authority at the start of each season.

The Defendant Local Authority kept good records, which included the Claimant's training records. It was clear from these that the Claimant had not received training to use the sit on mower, for the simple reason that he was not authorised to use the same. The induction sheet, which the Claimant had signed, clearly stated that only trained and authorised personnel were permitted to drive the Defendant Local Authority's vehicles or operate machinery.

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Risk Assessments and Safe Method of Work sheets were provided during induction training and subsequently kept in a pack within the works van which the Claimant used. Again, these were relied upon by the Defendant Local Authority in support of its Defence.

The site induction training also covered the reporting of accidents and blank copies of Accident Report Forms were provided. However, the Claimant never completed an Accident Report Form following his alleged accident.

There had been no previous problems with the sit on mower which the Claimant was using at the time of his alleged accident. The Chargehand confirmed that the pedal was not worn, as was alleged by the Claimant, and that both the Chargehand and other authorised workers had used the sit on mower following the Claimant's alleged accident without any problems.

The Chargehand confirmed that the Claimant had a schedule/routine to follow on the day of his alleged accident, as he had done many times previously, and which in no way included use of the sit on mower.

Given the nature of the work, the grasscutters were spread out over a relatively large area, which was not conducive to one-on-one supervision. However, all were experienced workers, had received appropriate training and had to be able to work alone. Unfortunately, the Claimant had decided to take matters into his own hands and use the sit on mower on the day of his alleged accident when he was not authorised to do so and without the Defendant Local Authority's knowledge.

There had not been any previously reported complaints and/or accidents involving the sit on mower, which was in good working order. The Chargehand gave evidence that he had used the sit on mower many times before and after the Claimant's alleged accident without any problems.

The grass cutting equipment (including the sit on mower) had been provided by a reputable third party hire company which maintained and serviced the equipment. Although the Defendant Local Authority had inspected the sit on mower immediately following the Claimant's alleged accident and found no mechanical faults, an engineer was also called from the third party hire company and the sit on mower was found to be in good working order. In particular, there was no finding that the pedal was worn, as alleged by the Claimant.

No repairs to the sit on mower were required following the Claimant's alleged accident, other than a few minor dents to the bodywork. However, these did not affect performance and the sit on mower continued to be used for the rest of the season without any repairs needed.

The sit on mower was fitted with a seatbelt, although it appeared that the Claimant was not wearing this at the time of his alleged accident.

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Judgment

The Judge, who heard the Trial remotely, preferred the Defendant Local Authority's evidence.

The Trial Judge was clearly impressed by the Defendant Local Authority's documentation, as he accepted, in particular, the Defendant Local Authority's position regarding the Claimant's induction training and records. Indeed, the Trial Judge held that the Claimant had a duty to read the pack that was available in the van, although it was apparent that he had not done so.

The Trial Judge found that the Defendant Local Authority's witnesses were clear and consistent. There was a designated driver for the sit on mower, but the Claimant chose to use this without authority and appropriate training.

In dismissing the Claimant's claim, the Trial Judge did not accept that the pedal was damaged or defective, finding that this was an accident that occurred on equipment that the Claimant should not have been using, and that the Claimant's failure to read the pack was not the fault of the Defendant Local Authority.

Comment

The time spent sourcing the Defendant Local Authority's relevant documents and obtaining appropriate witness evidence paid dividends, as these were obviously crucial to the successful outcome in this matter. The Defendant Local Authority's proficiency in keeping such clear and concise documentation greatly assisted the Trial Judge in reaching his decision.

The Trial Judge clearly preferred the Defendant Local Authority's evidence and, in finding that the Claimant was basically the author of his own misfortune, did not need to dwell upon the arguments regarding any Workplace Regulations, alleged negligence and the extent of any duty owed to the Claimant as an agency worker. No doubt, however, these arguments will surface again in a future case and the Court asked to decide upon the same.

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RECENT CASE UPDATES

Amendments - Claim Forms - Extensions of Time - Electronic Service

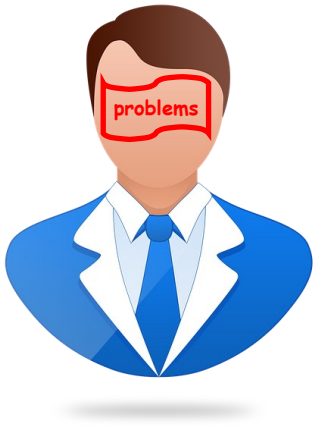
Ideal Shopping Direct Limited & Others v Mastercard
[2022] EWCA Civ 14, [2022] 1 WLUK 53

The decision of the High Court in this case, considered in the January 2021 edition of the Dolmans' Insurance Bulletin, found that service of an unsealed Amended Claim Form was held not to constitute good service. The Court of Appeal has upheld that decision.

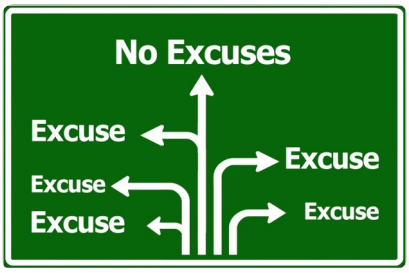
As a reminder, the underlying cases were 16 claims for breaches of competition law alleged to have been committed by Visa and Mastercard. The parties had agreed that it was appropriate to await the outcome of litigation before the Supreme Court concerning similar claims and agreed an extension of time for service of the proceedings. Following the handing down of the Supreme Court Judgment, the Appellants' Solicitors made amendments to the original Claim Forms and filed them electronically under the Electronic Working Pilot Scheme set out in CPR PD 510. They sent unsealed Amended Claim Forms electronically to the Respondents' Solicitors, on the 'deadline day' for service, before receiving notification that the Claim Forms had been accepted by the Court. Sealed Amended Claim Forms were served within 9 days of the deadline.

The Court found that the sending of the unsealed Amended Claim Forms did not constitute good service and the forms were out of time. It declined to grant relief under CPR r.6.15, r.6.16 or r.3.10.

The Court of Appeal held that the Claimants and their Solicitors could have avoided the problem by sending the Amended Claim Forms earlier than the last day of permitted service, seeking an extension of time, serving the original Claim Forms, then the amended forms once they had been sealed, asking Court staff to expedite acceptance or applying for an extension of time under CPR 7.6(2). The problems faced by the Claimants had been caused by their Solicitors' mistaken belief that service of an unsealed Claim Form would be good service.



The general rule is that a Claim Form must be sealed before it can be validly served, and any abrogation would need to be 'expressly stated' in the Practice Directions. It made no difference that what were to be served were Amended Claim Forms. Nor was the general rule that a Claim Form had to be sealed before it could be validly served in some way abrogated under PD 510. The pilot operated within the CPR and subject to the applicable procedure. The unsealed documents were not 'Claim Forms' and no Claim Form had been served on the Respondents within the period for service.



The Claimants' Application under CPR 3.10 was asking the Court to treat service of the unsealed Amended Claim Forms as good service and to dispense with further service. Those were matters for which r.6.15 and r.6.16 were applicable, but the Appellants' Application under those provisions had been refused. The Appellants were asking the Court to do the very thing which *Vinos v Marks & Spencer PLC [2011] 3 All ER 784, [2000] WLUK 153* and the line of authority which it followed did not permit. The Claimants were seeking permission from the Court to override a specific provision without good reason being shown, and this caveat could not be relied on to 'bypass' the requirements of service.

Appeal dismissed.

The extensions of time agreed by the Visa Respondents were expressed to be in consideration of an undertaking given by the Appellants' Solicitors, "*Not, at any point in the future, to discontinue, withdraw or otherwise bring to an end the proceedings and issue a further claim (or claims) in substantially the same or equivalent form*". The Court found that they had not brought proceedings to an end by mistakenly failing to serve their Claim Forms in breach of this undertaking.

On a cross-appeal by Visa, the Court of Appeal upheld this. It was held that the words of the undertaking entailed something deliberate rather than inadvertent. The Appellants' Solicitors had genuinely, but mistakenly, thought that service of the unsealed Amended Claim Forms would be good service. There was no question of intending to bring the proceedings to an end. Any fresh proceedings would not be in breach of the undertaking.

Clinical Negligence - Psychiatric Harm - Secondary Victims

Paul v Royal Wolverhampton NHS Trust; Polmear v Royal Cornwall Hospital NHS Trust; Purchase v Ahmed [2022] EWC Civ 12

In these conjoined Appeals, the Court of Appeal considered whether Claimants who had sustained psychiatric injury after witnessing the death or other horrific event suffered by a close relative because of earlier clinical negligence could claim damages for that psychiatric injury. In each case there was a gap in time between the clinical negligence and the horrific event. The first Appeal in *Paul* was considered in the June 2020 edition of Dolmans' Insurance Bulletin.

The Court of Appeal found for the Defendant in each Appeal, striking out the claims on the basis that it was bound by its decision in *Taylor v A Novo (UK) Ltd [2013]*, which provided that such claims could not succeed where the psychiatric injury was caused by a separate event removed in time from the original negligence, accident or a first horrific event. However, the Court doubted the correctness of this approach and considered that the issues merited consideration by the Supreme Court. The Claimants have sought permission to Appeal to the Supreme Court.

RECENT CASE UPDATES

Costs - Additional Liabilities - Shortfall

BCX v DTA
[2021] EWHC B27 (Costs) 16.12.21

The Claimant's Solicitors represented a man who suffered a head injury in 2017 and whose claim settled pre-trial for a lump sum payment of £1.3 million. The Claimant was a protected party.

The Court approved the damages and also ordered "*Unless the Claimant's Solicitors waive their entitlement to be paid by the Claimant such shortfall in the costs recovered inter partes as they may otherwise be entitled to under the terms of their retainer, there be a Detailed Assessment of the Solicitor/Client costs incurred on behalf of the Claimant and of the amount which it is reasonable for the Claimant's Solicitors to recover from the Claimant in all the circumstances such costs to be assessed on the basis provided for in CPR 46.4 and CPR 46.9.*"

The costs payable by the Defendant were agreed at £330,000. The Claimant's Solicitors had not waived their entitlement to claim further costs against the Claimant and, as such, they sought a total sum of £160,000, which included a £95,000 'shortfall' in relation to profit costs and a success fee of £63,000 (not recoverable from the Defendant) and £1,900 (an ATE premium). The Application, in effect, was for a deduction from the damages received by the Claimant as there appeared to be no other source of payment of the costs.

The Court had to determine what sum was payable.

The Judge highlighted concerns with the Bill of Costs, which had been prepared by the Claimant's Solicitors, that formed the basis of the 'shortfall' deduction, including the number of Fee Earners with conduct, the hourly rates and the amount of time claimed to have been spent on the time. Ultimately, the Judge assessed the costs in the sum of £275,000, plus 15% success fee on Solicitors' costs, plus premium, resulting in an assessment which was £30,000 less than the figure the Defendant had already agreed to pay.

The outcome of the decision (albeit provisional) was that there was no shortfall to be taken from the Claimant's damages and, presumably, that the balance of the costs should be repaid to the Defendant.

RECENT CASE UPDATES

Costs - Recovery of Court Fees - Mitigation of Loss

Gibbs v Kings College NHS Foundation Trust
SCCO 22.11.21

The Court was required to assess a Bill of Costs following a clinical negligence action. The Claimant was in receipt of State Benefits and too ill to work, indicating that he may be eligible for a remission of Court fees. The Defendant disputed the Court fee paid by the Claimant (£10,000) on the grounds that remission should have been sought.

Time entries in the Claimant's Bill of Costs revealed that consideration had been given to a potential application for fee remission. The Defendant submitted that if an application had been made and granted, but the Claimant had elected to pay the fee, then it was not reasonably incurred and, therefore, not recoverable.

It was submitted on behalf of the Claimant that there was no requirement for a Claimant to mitigate their loss by reliance on the public purse. The Claimant relied upon *Ivanov v Lubbe* (a County Court decision) in asserting that it was reasonable to pass on the costs of the Court fee to the Defendant.

Master Rowley, however, found that there was no evidence in *Ivanov* to suggest an unexpected shortfall to the Court service. He took the view that Parliament would expect all those who qualified for a fee remission to use it and, therefore, be alive to the extent of the likely cost. It had been open to Parliament to require paying parties to reimburse the State for fees where the Claimant had been entitled to a fee remission.

Pursuant to CPR 44.3(2), the Court will only allow costs which are proportionate to the matters in issue and resolve any doubt as to whether costs were reasonably and proportionately incurred in favour of the paying party. Master Rowley concluded that there was clearly doubt as to whether or not the Court fee in this case had been reasonably incurred.

A comparison between mitigation of loss and damage and the reasonable incurrence of fees and expenses was not borne out. Litigating parties are meant to 'mitigate' legal spend in the manner propounded by Mr Justice Leggatt in *Kazakhstan Kagazy Plc & Others v Zhunus & Others [2015] EWHC 401* – that being the 'lowest amount' which could reasonably be spent in order to conduct a claim proficiently, with any expenditure over this level not recoverable from the other party.

Incurring a Court fee which did not need to be incurred resulted in escalating costs which would not be recoverable between the parties.

RECENT CASE UPDATES

Employers' Liability - Vicarious Liability - Practical Jokes

Chell v Tarmac Cement and Lime Limited
[2022] EWCA Civ 7

The Claimant, 'C', was employed by a company called Roltech Engineering Limited. At the material time, he was working at a site operated and controlled by the Defendant, 'D'. As C bent down to pick something up, a fitter, 'F', employed by D, put two pellet targets on a bench close to C's right ear and hit them with a hammer, causing a loud explosion. C suffered injury in the form of a Noise Induced Hearing Loss in his right ear and tinnitus. C brought a claim for damages, alleging that D was vicariously liable for the actions of the fitter and was negligent for breaching its duty to take steps to prevent a foreseeable risk of injury. Both claims were dismissed at Trial and on Appeal. That first Appeal was considered in detail in the December 2020 edition of Dolmans' Insurance Bulletin and readers are referred thereto for full details of the case.

C appealed to the Court of Appeal. The Appeal was dismissed and the findings of the first Appeal Judge upheld. The findings of fact at Trial demonstrated that there was not a sufficiently close connection between the act which caused the injury and the work of F so as to make it fair, just and reasonable to impose vicarious liability on D. On no basis could it be said that F was authorised to do what he did by D. Nor was his act an unlawful mode of doing something authorised by D. The pellet target was not work equipment, hitting pellet targets was no part of F's work, such an activity in no way advanced the purposes of D and that activity was in no sense within the field of activities authorised by D. D was not vicariously liable for the actions of F.

As regards to the alleged breach of D's duty of care, C had to show that there was a reasonably foreseeable risk of injury to C by reason of the actions of F. Whilst horseplay, ill-discipline and malice can provide a mechanism for causing such a reasonably foreseeable risk, that was not made out on the facts of this case. Even if a foreseeable risk of injury could be established, on the facts of this case, the only relevant risk which could have been included in an assessment was a general one of risk of injury from horseplay. Common sense decreed that horseplay was not appropriate at a working site. It would be unreasonable and unrealistic to expect an employer to have in place a system to ensure that their employees did not engage in horseplay. In relation to the contention that there should have been an investigation following a prior report by C of tensions between D's fitters and Roltech's fitters, this was not made out on the facts. Accordingly, even if any duty of care arose, there was no breach of duty by D.

RECENT CASE UPDATES

Police - Duty of Care - Assumption of Responsibility

Tindall v Chief Constable of Thames Valley Police [2022] EWCA Civ 25

The Claimant, 'C', was killed when a vehicle being driven in the opposite direction went out of control on black ice and collided head on with C's vehicle. Approximately an hour earlier, there had been another accident caused by the black ice, in which K had lost control of his car. K's car rolled over and ended up in a ditch. Whilst waiting for the emergency services, K began to warn other vehicles by signalling for them to slow down. Police Officers arrived on the scene. Whilst they cleared debris from the road, they put up a 'Police Slow' sign. The Ambulance Service arrived and K was taken to hospital. Having cleared the road, the Police Officers left the scene, taking their sign with them. C's accident occurred about 20 minutes later. C alleged that the Police Officers' conduct was negligent. The Defendant, 'D', applied to strike out the claim as disclosing no reasonable cause of action or, alternatively, for Summary Judgment.

At first instance, D's Application was unsuccessful. The first instance Judge dismissed the Application on the basis that whilst there is, generally, no positive duty to protect individuals from harm, if a Public Authority takes steps which create or make worse a source of danger, they may be held to come under a duty of care towards those foreseeably affected. In this case, the Police actively attended, placed a warning sign, arranged removal of a person who was engaged in warning traffic, then removed the warning sign after having taken only minimal steps (sweeping the road of debris) to render the road safe. The first instance Judge concluded that the argument that the Police made matters worse was not bound to fail. It was also arguable that the Police had taken control and assumed responsibility.

D appealed.

For the purposes of the appeal, D accepted that, but for the arrival of the Police, K would have continued his attempts to alert other road users. C accepted that it was simply the arrival of the Police on the scene that influenced K to go in the ambulance. The Police did not say or do anything to encourage K to stop his attempts or to go in the ambulance, nor did they direct or in any way coerce him to stop what he was doing or to leave.

The Court of Appeal allowed D's appeal. The Claimant's case at its highest was that the arrival and presence of the Police caused K to assume (privately) that they would act in a certain way, which influenced him to decide for himself to go to hospital in the ambulance. That was not a proper basis for holding that the Police came under a private law duty to prevent road users from suffering harm. The submission that the Police made matters worse by reference to the departure of K was rejected. As regards the transient intervention of putting out the 'Police Slow' sign and then removing it, this was a paradigm example of a Public Authority responding ineffectually and failing to confer a benefit that may have resulted if they had acted more competently. The Police did not make matters worse, they left the road as they found it. The facts of this case fell squarely within the principles that apply when a Public Authority acting in pursuit of a power conferred by statute fails to confer a benefit. Further, the proposition that the Police had assumed responsibility so as to give rise to a duty of care to prevent harm was unarguable. What occurred was a transient and ineffectual response by Police Officers in the exercise of a power. It did not involve any assumption of responsibility to other road users in general, or to C in particular, for the prevention of harm caused by a danger for the existence of which the Police were not responsible.

RECENT CASE UPDATES

Road Traffic Accidents - Duty of Care - Highways Authorities - Occupiers' Liability

Brown v South West Lakes Trust
[2022] EWCA Civ 18, [2022] 1 WLUK 113

The Claimants were the husband and children of a woman, 'B', who had died in a road traffic accident. After driving around a bend in the road, B's car had crossed into the oncoming lane, driven over a grass verge and through a wire fence, before going down a bank and into a reservoir where B drowned.

Fatal accident claims were brought against three Defendants:

(1) South West Lakes Trust, 'D1' - a charity which leased part of the reservoir and was an occupier;

(2) South West Water, 'D2' - the owner of the reservoir;

(3) Cornwall Council, 'D3' - the Highway Authority with responsibility for the road.

The claim was brought under the Occupiers' Liability Act (OLA) 1957 and 1984 in respect of all three Defendants and under the Highways Act 1980 against D3.

The Claimants alleged that D1 and D2 had a duty to provide a secure barrier or a warning about the reservoir. Against D3, it was alleged that the sweeping lefthand bend in the road across the southern end of the reservoir had been negligently designed because it was too tight for drivers to negotiate safely. There had been a history of incidents of drivers losing control of their vehicles at this location. It was alleged that the Defendants knew, or ought to have known, that there was a risk of vehicles leaving the road at this point.

An Application to strike out the Claimants' claims, on the basis that the Particulars of Claim did not disclose reasonable grounds for bringing the claims and that there was no real prospect of success, was successful. The Claimants appealed.

In respect of D1 and D2, the Claimants submitted that the depth of the water in the reservoir gave rise to a *"danger due to the state of the premises"* for the purposes of Section 1(1)(a) of the 1984 Act. As such, it was argued that the risk of driving into the water was one against which D1 and D2, as occupiers of the reservoir, might reasonably have been expected to offer protection under S.1(3)(a). The Court of Appeal rejected this and held that the claims against D1 and D2 were bound to fail because there was no basis for showing that a duty existed to the deceased. The danger in this case arose because B's car left the road and entered the reservoir, not because the premises were inherently dangerous.

Even if there had been a risk of suffering injury by reason of any danger due to the state of the premises, it was not a risk in respect of which the occupiers might reasonably have been expected to afford the Claimants some protection. The duties of those occupying properties bordering the highway did not extend to preventing drivers from driving off the highway onto their land.

In respect of D3, the Court of Appeal found that although the Particulars of Claim were not as focused as they might have been and the pleading did not contain some of the detail that might be expected in a claim for misfeasance on the part of the Highway Authority, that did not mean the claim did not disclose a reasonable cause of action and have a real prospect of success. If the Highway Authority had constructed a highway with a bend which was more acute than that recommended by prevailing standards for reasonable, prudent and competent builders of highways, and the acuteness of the bend was the cause of the accident, then the claim might have a real prospect of success, subject to contributory negligence. Accordingly, the Judge had been wrong to strike out the claim in respect of the negligent design and construction of the highway.

The claims for failing to maintain the highway and for failing to exercise powers to erect a crash barrier remained struck out and dismissed.

Sexual Abuse - Limitation - Vicarious Liability

TVZ & Others v Manchester City Football Club Limited [2022] EWHC 7 (QB)

The 8 Claimants were sexually abused by a football coach, 'B', in the 1980s. At the time of the abuse, the Claimants were aged between 10 and 14 and played in youth football teams coached by B. The Claimants claimed damages for psychiatric injuries suffered as a result of the abuse against the Defendant Football Club (MCFC), alleging that MCFC was vicariously liable for the abuse. The primary limitation had expired in all of the claims between 25 and 29 years ago and the Judge also had to consider whether to exercise discretion to disapply the time limit for bringing a claim under s.33 of the Limitation Act 1980.

Limitation

The Judge considered that each of the Claimants had a good and cogent explanation for the delay in bringing proceedings, and had there been no significant impact on the cogency of evidence it would have been fair to disapply the time limit. However, in this case, the issue of vicarious liability was highly fact sensitive in terms of the relationship between B and MCFC. There was little or no documentary evidence on the issue. A likely key witness on the issue was deceased. B's own evidence was not credible. Had the claims been brought in time, it was likely that clear, confident and reliable conclusions could have been reached about the relationship. The ability to do so was now badly compromised. The Judge concluded that on the circumstances of this case, it was not equitable to disapply the time limit. The claims were accordingly dismissed.

Vicarious Liability

In case the decision on limitation was wrong, the Judge dealt with the issue of vicarious liability. The Claimants alleged that B worked as a scout for MCFC and that the various youth football teams he ran were 'feeder' teams for the Defendant which MCFC engaged B to run to spot young footballing talent. It was submitted that the relationship was one of employment or akin to employment and that MCFC caused or permitted B to hold himself out as a representative of MCFC, which enabled B to take advantage of and abuse the Claimants. MCFC averred that that it had connections with a number of local scouts in the 1970s/1980s, but they were never contracted to MCFC. B was a scout for MCFC from about 1975. It was alleged that any ties between MCFC and B were severed in 1979. B was involved in coaching young boys and ran a number of football teams thereafter, but he had no connection to MCFC. Vicarious liability was denied.

In relation to stage 1 of the test for vicarious liability – whether there was a relationship 'akin to employment' – the Judge found that there was not. B's relationship was that of a volunteer football coach who ran a number of junior teams (including teams with a connection to MCFC) and who, in that context, acted as a volunteer unpaid scout, recommending players to MCFC for them to consider taking on as associated schoolboys and assisting MCFC in the conduct of trial games. That was B's enterprise, undertaken at his own risk, which MCFC did not control, but was a relationship of mutual benefit to MCFC and B.

Given the above finding, this was not a doubtful case and it was not necessary to consider the five incidents identified in *Various Claimants v Catholic Child Welfare Society [2012] ('Christian Brothers')*. Nevertheless, the Judge went on to do so and found that they did not indicate the relationship was akin to employment.

In case the findings above were wrong, the Judge also went on to consider stage 2 of the test for vicarious liability – whether B's assaults were so closely connected with acts he was authorised to do that they may fairly and properly be regarded as done by him while acting in the ordinary course of the Defendant's business. The Judge found that they were not.

Accordingly, MCFC was not vicariously liable for B's acts of abuse.

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- 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**