DOLMANS INSURANCE BULLETIN

Welcome to the July 2026 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:

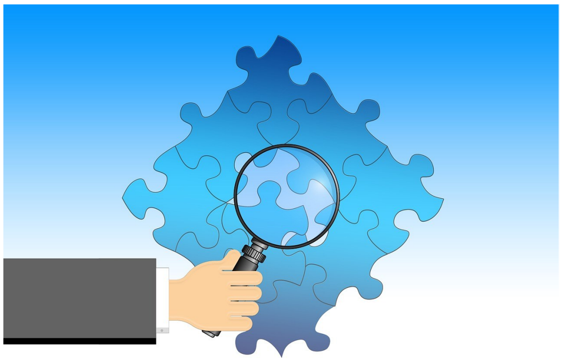
Justin Harris, Senior Partner, at **justinh@dolmans.co.uk**

REPORT ON

Preliminary Findings on Factual Causation and Dangerousness

GJ v Merthyr Tydfil County Borough Council

In civil matters, the claimant has the burden of proving factual causation and dangerousness on a balance of probabilities.



In some cases, it is apparent from the outset that the claimant is likely to face difficulties in reaching this standard of proof. It is important to continually monitor this after disclosure and exchange of witness statements particularly.

Unless the claim is discontinued in the meantime, the claimant will be cross-examined at trial. If appropriate, the trial judge can be invited to make a preliminary finding at that stage and prior to the defendant adducing their own oral evidence.

Such a situation arose in the case of *GJ v Merthyr Tydfil County Borough Council*, in which Dolmans represented the Defendant Local Authority.

Background and Allegations

The Claimant alleged that he was attending a skatepark which was effectively occupied and maintained by the Defendant Local Authority at the time of his alleged accident. The Claimant alleged that he was descending a ramp on a scooter, when a wheel of the said scooter caught on a protrusion which brought the scooter to an abrupt stop and caused the Claimant to fall to the ground. As a result, the Claimant allegedly sustained personal injuries and suffered various losses. The Claimant was an adult at the time of the alleged accident.

It was alleged that the ramp was dangerous and posed a foreseeable risk of harm to users. As such, the Claimant alleged that the Defendant Local Authority was negligent and/or in breach of the Occupiers' Liability Act 1957.

Defence

The Defendant Local Authority denied liability. The skatepark was scheduled for regular inspection and maintenance, as well as having a reactive system in place. The ramps were of metal construction and any repairs were undertaken by an experienced fitter.

Independent inspections of the skatepark were also undertaken and no issues were raised with the Defendant Local Authority's system or repairs and no dangerous issues raised regarding the ramp in question at the time of the relevant pre-accident independent inspection. In addition, no actionable defects or issues were noted during the Defendant Local Authority's inspection of the ramp prior to the date of the Claimant's alleged accident. No dangerous issues were noted.

The Defendant Local Authority had no record of any complaints in relation to the alleged defect or any similar issues with the ramp during the 12 month period prior to the date of the Claimant's alleged accident. The Defendant Local Authority had no record of any other accident occurring as a result of the alleged defect or any similar issues at the location of the Claimant's alleged accident during the 12 month period prior to the date of the same.

Evidence

The Defendant Local Authority served copies of relevant documents and detailed witness statements from appropriate personnel in support of the above Defence. In addition, a witness statement was obtained from an agency that had undertaken a search of the Claimant's social media accounts.

It was apparent from the Claimant's disclosure and witness evidence that there were inconsistencies within the Claimant's pleaded case. The Claimant's copy medical records indicated that the Claimant had allegedly fallen from the top of the ramp, contrary to his pleaded case. In addition, the Claimant disclosed various photographs which showed different ramps and repairs. It was apparent from the Claimant's photographs of the alleged ramp that the wheel of the scooter could not have come to an abrupt stop if descending the ramp, as alleged. There was a very small difference in levels at the edge of the ramp where the metal structure was attached to the ground, but it was argued that this was not dangerous and would only have been relevant if the Claimant had been travelling in the opposite direction to that pleaded anyway.

Trial, Cross-Examination and Tactics

It was, of course, for the Claimant to prove that the accident occurred in the circumstances alleged, that the alleged defect had caused the accident and that the said defect was dangerous.

Although there appeared to be enough evidence on paper to cast sufficient doubt upon the Claimant's case, it was decided that the Claimant should be cross-examined and a decision made as to whether or not the Trial Judge should be invited to make a preliminary finding upon factual causation and dangerousness.

The Claimant was thoroughly cross-examined. It transpired that at the time of the alleged accident, the Claimant was riding a scooter that was normally ridden by a young family member but which could be adjusted to the Claimant's size. The Claimant alleged that this was not, therefore, a child's scooter, but could also be ridden by adults.

The Claimant gave evidence that the back wheel of the scooter caught the alleged protrusion, but this did not make sense as the front wheel would have initially come into contact with the alleged protrusion. The Claimant then stated this could be wrong and that he could not remember the circumstances of the alleged accident exactly. Indeed, many of the Claimant's responses under cross-examination were that he did not know or could not remember. Even when cross-examined as to the actual ramp and the alleged cause, the Claimant was somewhat vague.

Faced with such weak oral evidence and coupled with the inconsistencies within the Claimant's written evidence, it was decided that there was sufficient scope for the Trial Judge to make a finding on factual causation and dangerousness, before hearing the Defendant's oral evidence.

Judgment – Preliminary Issue

The Trial Judge was invited to determine, as a preliminary issue, whether he could be satisfied as to how the Claimant's accident had occurred, if there had been a defect present and had it been a real source of danger.

The Trial Judge took note of the various uncertainties introduced within the Claimant's oral evidence under cross-examination. The Claimant could not be sure of the actual ramp which he allegedly rode down and could not even say whether the photographs adduced showed the condition of the ramp at time of the alleged accident.

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The Trial Judge took judicial note that the scooter which the Claimant was riding at the time was unlikely to be suitable for an adult, despite the Claimant's statement to the contrary.

The Claimant was unsure which wheel caught on the alleged protrusion following cross-examination as to the same and the Trial Judge could see no way how the alleged protrusion could have caused the wheels to stop abruptly when the Claimant was travelling down the ramp.

The Trial Judge advised that he had considered the evidence carefully and given as much latitude as possible, but it was not enough for the Claimant to say that there was no other explanation for the cause of the alleged accident. The Claimant had to make a positive case for factual causation and dangerousness, but had not reached the required standard.

As such, the Claimant's claim was dismissed and the Trial Judge made no finding of fundamental dishonesty.

Comment

It should be noted that the Trial Judge in this particular matter was invited to make a preliminary finding as to factual causation and dangerousness. Although this was not worded at the time as a submission by Counsel for the Defendant Local Authority that the defence had no case to answer, the objective was effectively the same.

When making a submission of no case to answer, the defendant risks being precluded from calling their own evidence. The defendant needs to be aware of these risks and as certain as possible therefore that the claimant is unlikely to prove factual causation and dangerousness.

After careful consideration of the weaknesses in the Claimant's written and oral evidence in the above matter, the correct decision was made to invite the Trial Judge to make a preliminary finding, which resulted in substantial savings in damages and costs for the Defendant Local 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**

CASE UPDATES

Costs - Part 36 - Successful Party

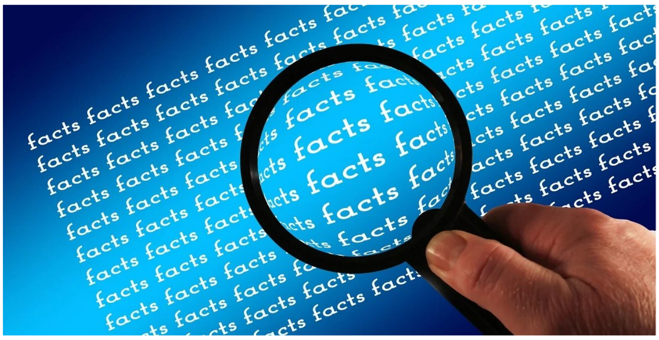
The Wine Enterprise Investment Scheme Limited v Crowe UK LLP [2026] EWHC 1662 (Ch)

The Claimant ('C') brought a professional negligence claim against its auditors. The claims related to 7 audit years and ranged from £8,423,962 at their highest to £3,352,635 at their lowest value. C recovered £101,965.95, plus interest, comprising a total of c. 1.6% of £8,423,962.

The Defendant ('D') had made a Part 36 offer in the sum of £3.175m on 4 February 2025. D had also made a costs inclusive Calderbank offer on the same date in the sum of £3.78m. Those offers were not accepted.

One of the issues before the Court was the recoverability of the costs up to the expiry of the relevant period for acceptance of D's Part 36 offer. The Court noted that CPR 44.2(2) provides that if the court decides to make an order about costs: (a) the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party; but (b) the court may make a different order.

C submitted that it was the successful party because D had to pay it money. In accordance with the Part 36 regime, the appropriate way for D to protect itself against an adverse costs order was to make a Part 36 offer and unless and until D did so, D was exposed to an adverse costs order. C relied upon the Court of Appeal's decision in *Fox v Foundation Piling Ltd [2011]* to this effect.



D contended that the test for identifying the successful party is derived from *Roache v News Group Newspapers Ltd [1998]* and requires a judge to look closely at the facts of the particular case and ask which party, as a matter of substance and reality, has won. D submitted that, applying that test, it had won.

D's position in relation to the decision in *Fox* was that it had been correctly held in *Magical Marking Ltd v Ware & Kay LLP [2013]* that, as the question of who was the successful party in *Fox* had become common ground and did not have to be decided by the Court of Appeal, that decision could not be taken as detracting from the consistent line of Court of Appeal authority on the correct approach to the question of who is the successful party, beginning with *Roache* and ending with *Medway PCT v Marcus [2011].*

CASE UPDATES

The Judge noted that a consideration which featured in the decided cases was whether the claimant would have brought the claim for the recovery that the claimant actually achieved. Another consideration was whether the subject matter of the recovery was what the claim was truly about or whether it was, in truth, incidental or adventitious.

The Judge concluded that it was clear from the decisions in *Magical Marking* and *Brent LBC v Davies [2018]* that C's reliance on *Fox* was misplaced and D's approach was correct. In a case like this, where C had only recovered about 1.6% of its original claim, the Court was entitled to ask itself 'who was essentially the winning party?'.

On the facts of this case it was clear, and conceded by C, that it would not have brought the claim in order to recover in the order of £139,000. It was not realistic to ask whether C could have recovered this sum without fighting through to a finish as a claim for around £139,000 would never have assumed the form of the present claim and it was unlikely it would have been defended. D substantially denied C the prize which it fought the claim to win. Further, C advanced seven separate causes of action against D in respect of 7 audit years. C made no recovery in respect of six of those separate causes of action.

Accordingly, the Judge found that C was not, in substance, the successful party. The outcome could properly be described as a Pyrrhic victory. Taking all relevant factors into account, the Judge held that D was clearly, in substance, the successful party, but it was right to reflect that D's defence was not entirely successful. C was ordered to pay 85% of D's costs of the proceedings up to the date of expiry of the Part 36 offer.

C was further ordered to pay D's costs from the date on which the period for acceptance of D's Part 36 offer expired and interest on those costs.

Judicial Review - Court Office Staff - Issue

R (on the Application of Cakebread-Snow) v Durham County Court [2026] EWHC 1758 (Admin)

In refusing the Claimant's Application for Judicial Review, the Judge held that a Court Officer had acted lawfully in not issuing a claim and referring the documentation to a Judge for directions.

The Claimant ('C'), a Litigant in Person, attended Durham County Court at 3:30pm on a Friday with a Claim Form for issue, together with Particulars of Claim, a number of completed Application forms and a substantial amount of evidence and other paperwork. The Claim Form was signed and dated and identified three Defendants, with their addresses for service. Brief details of the claim were identified.

C's account was that court office staff declined to issue the claim there and then on the basis that it would take too long to do so that afternoon and it appeared a full set of copy documents had not been provided. C returned to the office the following Monday with a further copy of the documents, whereupon he was advised that that was not required but the claim had not been issued and the paperwork had instead been referred to a Judge for directions.

A District Judge concluded that the Particulars of Claim failed to comply with CPR 16.4(1) by not constituting a concise Statement of Facts and made an Order, without a hearing, including that the '583 page Claim Forms' were to be returned to C for editing and resubmission. C applied to the County Court for the Order to be set aside and issued a claim in the High Court for Judicial Review.

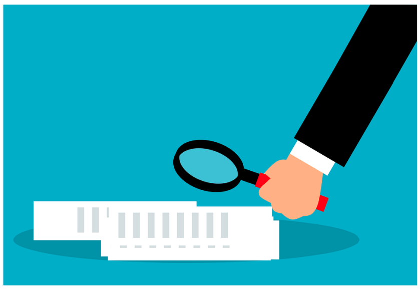
C's Application to set aside the Order was granted. The Judge noted that much of the evidential material provided with the Claim Form was premature. Directions were made for C to file an amended Claim Form and Particulars of Claim for service, and that the extraneous material be returned to C. C appealed against this Order. This appeal was ultimately stayed pending determination of the Judicial Review proceedings.

C's Application for Judicial Review sought that the original Order be quashed and a mandatory Order made that the claim be issued in its original form, in full, and as already filed with Durham County Court. C submitted that there was no provision within the CPR for a court to refuse to issue a claim that is properly filed with the requisite fee.

It was agreed that court staff do not have a general discretion to refuse to issue a Claim Form. The Judge considered, however, that there was no legal duty for court offices to provide a same day service for the issue of claims, such that they act unlawfully if they do not do so. Accordingly, the court office did not act unlawfully in telling C on the Friday that it did not have capacity to process the documentation there and then.

CASE UPDATES

Further, the Judge concluded that court offices do not have an automatic job when asked to issue a claim requiring them to do no more than stamp whatever is put before them. There is a proper compliance dimension to their role requiring court staff to address, at least at some threshold level, whether something is an issuable claim.



On the facts of this case, the Court Office was faced with an N1 Claim Form which was, on its face, unexceptional, but which attached or incorporated a large amount of other material. This engaged the Office's proper and lawful function of applying a degree of compliance scrutiny to the request to issue the claim. The Judge concluded that the Court Office did not act unlawfully in consulting a Judge before taking the decisive step of issuing or declining to issue the claim.

The District Judge then made an Order directing the documentation be returned to C for editing and resubmission. That Order was binding on the Court Office who were, thus, prevented from issuing the Claim Form. Accordingly, the fact that C's claim remained unissued was not attributable to any unlawful act or failure on the part of the Court Office.

In relation to C's challenge of the decisions of the Judges, the initial Order made by a District Judge had already been set aside. When it was set aside, the Order ceased to have operative legal effect and, thus, had no operative legal effect with which Judicial Review proceedings could now engage.

With regards to the decision making in relation to the second Order, on the facts of this case, there was not something missing from the claim as tendered or any ambiguity of intent, the form compliance issue was potential and substantial superfluity. Properly analysed, this comprised two compliance questions; first, was the composite bundle of documentation tendered by C a 'claim' in proper form capable of being issued and, second, if not, did it nevertheless contain, within its superfluity, a claim in proper form capable of being issued as such if shorn of superfluous material.

It was concluded that, on the first question, the Judge making the Order had decided that the 583 page claim C had tendered was not a form compliant 'claim' issuable in that form. There was no truly exceptional failure or frustration or corruption of the judicial process in that decision justifying interference on a claim for Judicial Review. C could, and had, appealed the Order.

On the second question, the Judge who made the second Order had found that the N1 Claim Form and Particulars of Claim (with the extraneous material removed) were issuable, albeit in a form different from that which C sought to insist upon. That decision was not susceptible to Judicial Review and was, in fact, helpful to C as it preserved his position on limitation (as the claim was 'brought' when received by the court).

Accordingly, the claim for Judicial Review was dismissed.

CASE UPDATES

Occupiers' Liability - Duty of Care - Ministry of Defence / Armed Forces

ZZZ v Ministry of Defence
[2026] EWCA Civ 875

The Court of Appeal has upheld a finding of liability in full against the Ministry of Defence after an 18 year old soldier sustained a significant brain injury when he fell over a low landing balustrade in barracks. The detailed Judgment of the Court of Appeal sets out the proper limits of appellate intervention, the status of a visitor under the Occupiers' Liability Act 1957, the relevance of current standards to older premises, causation in falls from height and the evidential burden on a defendant alleging contributory negligence.

Background

The Claimant, an 18 year old rifleman who was required to live in Army accommodation, fell from a second floor landing to the ground floor. The accident happened after the Claimant had been out drinking and during an altercation with another soldier on the landing. He suffered serious injuries, including a significant brain injury.

The landing was guarded by a balustrade. The balustrade was approximately 900mm high. At first instance, HHJ Simon, sitting in the High Court, found the Ministry of Defence liable.

The Ministry of Defence appealed.

Grounds of Appeal

There were 6 grounds of appeal submitted by the Ministry of Defence:

(1) The Judge's findings that the event was a frolic and involved no great force were unsupported by the evidence.

(2) The Claimant had breached Army rules or committed criminal offences and had, thereby, ceased to be a lawful visitor.

(3) The claim was barred by illegality.

(4) The Judge had wrongly treated the balustrade as a danger, applying modern standards retrospectively and reasoning with hindsight.

(5) Causation had not been established because the Claimant's expert could not exclude the possibility that the Claimant would have fallen over a 1100mm balustrade if subjected to a forceful push.

(6) The Judge ought to have made a substantial deduction for contributory negligence, with the Ministry of Defence contending for a reduction of 75%.

CASE UPDATES

Limits of Appellant Intervention - An Appeal is not a Re-run of the Trial

The first ground of appeal challenged the Trial Judge's findings about what occurred on the landing. The Court of Appeal began with the restraint required of an appellate court when reviewing findings of fact and evaluative conclusions: *Fage UK Ltd v Chobani UK Ltd [2014] EWCA Civ 5* and *Prescott v Potamianos [2019] EWCA Civ 932*, emphasising that the appellate court does not undertake the factual balancing exercise afresh. The issue was not whether the Appellate Judges might themselves have reached a different view. The question was whether the Trial Judge's decision was undermined by an identifiable flaw.

The Circumstances of the Accident

The precise mechanism of the fall was disputed. The Claimant's accounts varied. Statements taken from fellow soldiers described playfighting or a "friendly drunk fight", involving grappling, a headlock and an attempt by the other soldier to break free. The Claimant came into contact with the balustrade, pivoted over it and fell to the ground floor.

In the High Court, HHJ Simon found that the incident occurred during a "frolic", by which he meant something akin to playfighting exacerbated by alcohol, rather than a malicious assault. He regarded the Claimant as credible, in the sense that he was doing his best to tell the truth, but unreliable in his recollection of significant events. He preferred the broad account emerging from the contemporary witness statements.

The Court of Appeal held that the findings made by the Judge had been open to him, despite the inconsistencies in the various accounts provided. The Court of Appeal described the case as a classic example of an incident about which the evidence was inconsistent and in respect of which it was the primary function of the Trial Judge to make the necessary assessments. The Judge had paid close attention to the evidence and recognised the inconsistencies. Although different findings might have been available, the Court was not compelled to overturn those which he made, "not by a long chalk". His findings had been open to him.

The Status of a Visitor Under the Occupiers' Liability Act 1957

The Ministry of Defence argued that the Claimant's conduct contravened Army rules or amounted to criminal conduct, taking him outside his express or implied licence to use the premises. It alleged potential offences under the Armed Forces Act 2006 and affray under the Public Order Act 1986. The Court rejected both the factual premise and the proposed legal principle, and held that the Claimant had not put himself outside the terms of Section 2 of the Occupiers' Liability Act 1957 Act by his conduct.

In any event, the Court of Appeal held that, based on the Judge's findings, the Claimant had not committed the offence of affray or any offence, and his behaviour did not amount to disorderly conduct or conduct likely to bring discredit to HM Forces. The Claimant was responding to horseplay initiated by the other soldier in a way which was consistent with the Claimant's military training in de-escalating potentially aggressive behaviour. There was no proper basis for finding that he had committed a disciplinary or criminal offence. There had been an investigation, but no prosecution or disciplinary proceedings followed.

There was, therefore, no factual basis to assert that the Claimant was a trespasser when he was on the landing. Such a finding would be perverse: he was on the second floor because the room that he was required to occupy was there; *James v White Lion Hotel [2020] P.I.Q.R. P10, [2020] 1 WLUK 39* applied.

Another difficulty for the Ministry of Defence was in identifying the extent of the premises where the Claimant was to be regarded as a trespasser. It could not have been the barracks as a whole, or his room, since the Claimant was still required to live there. Nor could it have been the case that he was a trespasser on the landing just for the period when the incident took place. That would mean that although the Ministry of Defence owed no duty to him in relation to the balustrade during the incident, it would have owed him a duty the following morning. The common duty under the 1957 Act was not so ephemeral; *White Lion Hotel v James [2021] EWCA Civ 31, [2021] Q.B. 1153, [2021] 1 WLUK 111* applied. The Court of Appeal held that a lawful visitor does not become a transient trespasser.

Accordingly, the Court of Appeal held that the Ministry of Defence owed the Claimant the common duty of care under the 1957 Act throughout.

DOLMANS SOLICITORS

CASE UPDATES

Safety of the Balustrade

The barracks' accommodation building dated from about 1939 and had originally been constructed as a place to treat the sick rather than for use as soldiers' accommodation. The balustrade was approximately 900mm high. Modern guidance for guarding to common landings indicated a height of 1100mm. It was common ground between the parties' experts that the Building Regulations were not retrospective and had not been triggered by refurbishment works that had been carried out.

The Court of Appeal did not treat the modern guidance as imposing a direct statutory obligation to reconstruct every balustrade in an older building. Instead, it treated modern regulations and standards as evidence of accumulated professional knowledge and practical experience about sensible safety precautions. The Building Regulations represented the consensus of current professional opinion about appropriate design and construction. Conversely, compliance with standards applicable at the date of construction did not mean that a building could never subsequently be assessed as presenting an unacceptable risk.

An employer or occupier must keep safety under review by reference to:

(1) the present use of the building;
(2) the characteristics of its users;
(3) changes in professional knowledge;
(4) the likelihood and gravity of injury; and
(5) the availability and cost of precautions.

A feature which was lawful when constructed may, nevertheless, present an unacceptable risk many years later, particularly where the use of the premises has changed, the exposed population is different or a straightforward and inexpensive improvement is available.

There was evidence to support a finding that the balustrade was dangerous:

- The balustrade was approximately 900mm high, which was around 200mm below modern guidance for common landings.
- Photographs demonstrated its height relative to the Claimant, who was tall but, as the Court noted, not "freakishly tall". The Army's own witness accepted that the risk shown by the photographs was obvious. Alcohol and horseplay among young soldiers were known features of life in the accommodation.
- The post-accident risk assessment categorised the likelihood of a fall as "common, regular or frequent occurrence" and the potential severity as including fatalities or major injury. The Ministry of Defence's learning account concluded that the balustrade had not been high enough to prevent the fall. A subsequent Authority Notice of Change recorded that low balustrades across the retained estate posed a severe risk of occupants falling over them.
- The relevant remedial works were modest. Raising the balustrade was achievable at minimal cost.

Whilst nobody had identified the balustrade as dangerous before the accident, that was not determinative. The correct question was not whether the Ministry of Defence did recognise the danger, but whether it *should* have recognised it. The purpose of a risk assessment is to identify foreseeable risks before injury occurs.

The Court of Appeal held that the Judge had plainly been right to hold that the state of the balustrade constituted a danger which gave rise to an unacceptable risk of injury and that the Ministry of Defence was in breach of the duty which it owed. The Ministry of Defence should have recognised the danger which the balustrade posed. The pre-accident risk assessment was inadequate. The low balustrade was an inherently unsafe feature.

Causation

The Court of Appeal held that the Judge had been entitled to accept the evidence of a building surveyor and expert in falls who had indicated that if the balustrade had been higher, the risk of the soldier falling over and suffering injury would have been materially reduced. Accordingly, the Judge had been entitled to find that causation was established.

Contributory Negligence

The Ministry of Defence argued that fighting or playfighting near an open stairwell was objectively reckless. It submitted that the Claimant had voluntarily returned to the landing when he could have walked away and so the Claimant had failed to take reasonable care for his own safety. The Ministry of Defence sought a reduction on the grounds of contributory negligence of 75%.

The Court of Appeal accepted that, on the evidence, it appeared that the interaction between the Claimant and the other soldier was swift and short. The burden of proving contributory negligence rested upon the Ministry of Defence. The Court of Appeal could not have the necessary confidence in the fine detail of what happened to justify reversing the Judge's decision on that issue.

Outcome

Appeal dismissed.

CASE UPDATES

Personal Injury Claims - DCP - Incorrect Service

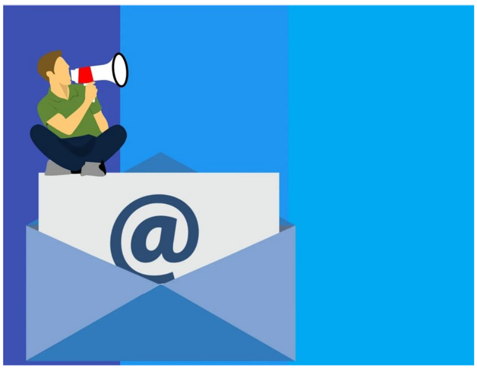
Day v Great Lakes Insurance SE
[2026] 2 WLUK 893

The Claimant's personal injury claim arising from a road traffic accident was automatically dismissed under CPR PD 51ZB after she failed to use the correct email address for service within the Damages Claims Portal (DCP), despite having been warned in advance that use of an incorrect address would not constitute effective service and having received the correct address well before the service deadline. The Court refused a late oral Application under CPR r.6.15 for retrospective validation of service, finding that the rule would not apply or should not be invoked in circumstances where automatic dismissal had already taken place without further order.

Background

The Claimant had been involved in a road traffic accident on 27 July 2021. She sought damages for personal injury, credit hire and other losses. Liability was admitted by the Defendant. The limitation period for the issue of the personal injury claim expired on 26 July 2024.

On 3 July 2024, the Defendant's solicitors (DWF) emailed the Claimant's solicitors specifying that service via the DCP required DWF's written confirmation, reference and the correct email address for service. They warned that attempting to serve via the DCP without those details would not constitute effective service.



On 16 July 2024, the Claimant submitted her form to the DCP and emailed DWF requesting an email address to serve proceedings. The correct email address for service was provided on 29 July 2024. The deadline for valid notification and service on the Defendant was 16 November 2024.

On 31 October 2024, the Claimant attempted service of the Claim Form but used the wrong DWF email address.

On 14 November 2024, the Defendant filed an Acknowledgement of Service challenging jurisdiction. On 21 November 2024, the Defendant sought declarations that: (i) service had not been properly effected within the DCP; (ii) the Court lacked jurisdiction to try the claim; and (iii) the claim should be struck out.

On 1 May 2025, the claim was automatically dismissed on the DCP due to inactivity pursuant to CPR PD 51ZB para.6.7.

CASE UPDATES

On 5 September 2025, the Claimant applied to have the claim reinstated and transferred out of the DCP with immediate effect pursuant to CPR PD 51ZB para.8.1. On the day of the hearing of the Claimant's Application, the Claimant made a late oral Application under CPR r.6.15 for retrospective validation of service.

Held

The Claimant had failed to appropriately notify her intention to claim pursuant to CPR PD 51ZB para.1.9(2)(a).

The Claimant then inserted the incorrect service email address for the Defendant into the DCP. Accordingly, there was no proper notification of the claim or its details, so effective service of the claim, in accordance with the DCP procedure, did not occur.

Despite the fact that the Defendant provided the correct address on 29 July 2024 and the deadline for a valid claim notification or service was 16 November 2024, the Claimant failed to take any action to correct DWF's email address. In addition, no application was made by the Claimant to substitute retrospectively the service within the provision of CPR r.6.15.

It was held that the Claimant's claim was, and remained, automatically dismissed under CPR PD 51ZB on 16 November 2024 due to the failure of valid service.

The Court was not satisfied that the provisions of CPR r.6.15, even if they were arguable, would apply and/or should be invoked, upon the facts of the case.

There was Judgment for the Defendant accordingly.

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

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- 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

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Melanie Standley at **melanies@dolmans.co.uk**