motoring news

Headlight

welcome

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

case summaries

- **blue light**

  Dordoudvash v Zurich Insurance PLC and The Commissioner of the Police of the Metropolis

- **credit hire**

  Wiltshire v Aioi Nissay Dowa Insurance Company of Europe

- **cycling club liability**

  Hetherington v Fell and Ferryhill Wheelers Cycling Club

- **fixed or standard basis costs**

  Attersley v UK Insurance Limited

- **non-party costs applications**

  Tescher v Direct Accident Management Limited

- **seized vehicles**

  Clarke v Marston Group Limited

- **testing for disorders**

  Clarke v Poole

summer 2025

DOLMANS SOLICITORS

Dordoudvash v Zurich Insurance PLC and The Commissioner of the Police of the Metropolis

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

PC Doroudvash and Mr Tarnowski were injured. PC Sehmi was subsequently convicted of causing serious injury by dangerous driving and received a suspended sentence.

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

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

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

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

Zurich's Application

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

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

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

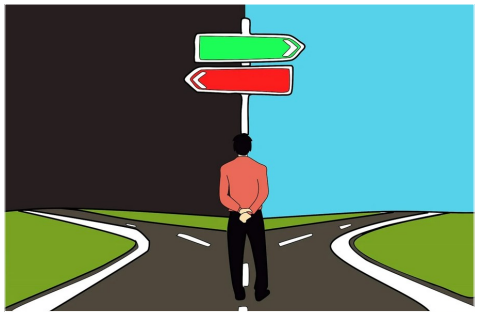
The fact that the right which gives rise to the remedy is different (one under Section 88 of the Police Act 1996 and the other under the 2002 Regulations) was "not the point". The purpose behind the 1978 Act was to do away with such differences.

An insurer in the 2002 Regulations is directly liable to a claimant for the damage caused to an insured driver. There is no difference to the actual damage that the court is considering, rather it is the entitlement to bring the action against a particular person for that damage which is changed by the 2002 Regulations. There is a clear policy reason to support that construction.

The whole purpose of the 2002 Regulations was to simplify personal injury litigation arising out of road traffic accidents. The commissioner's arguments would suggest that the 2002 Regulations could not be used in such situations. That would add an unfortunate additional complexity to these types of cases, increasing costs and using up more court time.

PC Doroudvash's Application

The limitation period had passed by the time that PC Doroudvash had made his application. The rules as to joining an additional party into an action after the expiry of the initial limitation period are complex. The judge held that the claimant's application had identified the wrong route. However, CPR 19.6(4) did provide a route for the claimant. Further, it was appropriate, on the facts, for the court to exercise its discretion to enable the claimant to add the commissioner.



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

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

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

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

PC Doroudvash's application, therefore, also succeeded.

Wiltshire v Aioi Nissay Dowa Insurance Company of Europe

The claimant, Mr Wiltshire, sought over £50,000 in damages, primarily for credit hire, recovery, storage and delivery charges after his vehicle was damaged in a collision. The case turned on whether Mr Wiltshire had knowingly entered into a credit hire agreement and whether the charges claimed were enforceable.

Following the accident, Mr Wiltshire's daughter contacted what she believed to be their insurer, the AA, but was instead connected to Winn Solicitors. She handed the phone to her father, who mistakenly believed he was speaking to his insurer. A replacement vehicle was arranged and Mr Wiltshire was collected from his campsite and taken to the provider's premises to complete documentation. However, he did not sign the credit hire agreements until over a month later, on 13 June 2023. A letter from Winn Solicitors, addressed to "Mrs Philomena Wiltshire", included the relevant agreements, but no explanation was given for the misaddressed correspondence or the delay in formalising the hire.

At trial, Mr Wiltshire's oral evidence diverged significantly from his witness statement, which followed a standard template used by Winn Solicitors. Mr Wiltshire testified that he had no understanding of credit hire, believed he was dealing with his insurer and had not been offered alternative providers. He denied agreeing to any delivery or collection charges, and stated that had he known he was dealing with a solicitor and not his insurer he would not have proceeded with the arrangement.

District Judge Lumb found that Mr Wiltshire had not knowingly selected Winn Solicitors as a provider of legal or claims management services and had not entered into a valid credit hire agreement prior to 13 June 2023. The judge concluded that the agreement could not have retrospective effect and that the claimant was not liable for the charges claimed. The court held that the claimant had demonstrated a genuine need for a replacement vehicle, particularly given the unsuitability of his wife's car, and awarded £1,199 for loss of use based on the basic hire rate for a 3 week period. The judge criticised the procedural failings of the claimant's legal representatives, noting that a proper review of the evidence before issuing proceedings might have avoided trial. The court observed that had the documentation been properly completed, the claim might have succeeded and resulted in a significantly higher award.

Hetherington v Fell and Ferryhill Wheelers Cycling Club

In this case, Mr Hetherington, a young cyclist, was severely injured during a time trial event organised by the Ferryhill Wheelers Cycling Club. The accident occurred on 23 May 2019, when Mr Hetherington, riding eastbound on a dual carriageway, collided with a Mercedes driven by Mr Fell who was turning right across the carriageway into Butterwick Road.

The impact was catastrophic, leaving the claimant with life-altering injuries, including traumatic brain damage and long-term physical and cognitive impairments. Although Mr Hetherington initially brought a negligence claim against Mr Fell, the driver's insurer admitted full liability before trial.

The remaining issue was a contribution claim brought by Mr Fell against the cycling club, alleging that it had failed to conduct an adequate risk assessment and had not implemented sufficient safety measures, such as signage and marshals, to warn drivers of the event. The court heard extensive evidence from lay witnesses, police officers, accident reconstruction experts and risk assessment professionals. Mr Fell maintained that he had not seen any signs or marshals and claimed that the sun and shadows obscured his view of the cyclist. However, the judge found Mr Fell's evidence unreliable, noting that the cyclist had been visible for at least 40 to 60 metres before the collision and that Mr Fell had failed to stop at the give way lines or heed multiple warning signs.

The court then turned to the question of whether the club owed a duty of care in its risk assessment process. It concluded that such a duty did exist, particularly given the trust placed in the club by its members and the foreseeable risk posed by third party drivers. However, the judge found that the club had fulfilled its duty. The risk assessments conducted in 2007 and updated in 2018 were deemed suitable and sufficient. The club had placed signs and marshals at key points along the course, and had even gone beyond the required measures by placing an additional sign at the Butterwick Road junction following a previous accident in 2017.

Expert evidence was divided. Dr Brown, for the claimant, argued that the risk assessment was inadequate and failed to account for the sun's position and the specific hazard of vehicles turning right into Butterwick Road. Professor Ball, for the club, defended the assessment as reasonable and proportionate, especially given the club's status as a volunteer run organisation. The judge preferred Professor Ball's evidence, finding it more grounded in practical reality and consistent with the legal standards applicable to voluntary organisations. Ultimately, the court dismissed the claim against the club. It held that the club had taken reasonable steps to inform road users of the event and that any alleged shortcomings in signage or risk assessment were not causative of the accident.

Attersley v UK Insurance Limited

The claimant had been injured in a road traffic collision in 2018 and initially pursued her claim under the RTA protocol. At the insurer's request, the claim exited the protocol due to a dispute over liability, which was subsequently admitted. In 2021, the claimant issued Part 7 proceedings seeking up to £150,000 in damages. The insurer made a Part 36 offer of £45,000, which was not accepted within the prescribed period. The case was allocated to the multi-track in January 2022 and the offer was accepted in July 2022.

The dispute centred on whether the claimant was entitled to costs assessed on the standard basis or limited to fixed costs under CPR Part 45.

The first instance judge held that fixed costs applied, relying on CPR r.36.20(4) which imposes fixed costs where a Part 36 offer is accepted late in cases governed by Section IIIA of Part 45. The claimant appealed, arguing that once the case was allocated to the multi-track the fixed costs regime was disapplied under r.45.29B and, therefore, r.36.20 could not apply.

The high court allowed the appeal. It held that the fixed costs regime prescribed by Section IIIA of Part 45 does not apply to cases allocated to the multi-track, following the reasoning in *Qader v Esure Services Limited*. The court emphasised that the rules must be interpreted purposively, and that the rationale behind *Qader* was that fixed costs are only suitable for simpler, lower value claims. There was no justification for treating Part 36 offers as an exception to this principle.

The court also noted that the claimant's late acceptance of the offer did not amount to gaming the system, and that it was not absurd for her to recover standard costs in circumstances where the offer was made before allocation but accepted afterwards. The court further held that the plain meaning of r.45.29A and r.45.29B supported the conclusion that fixed costs are disapplied upon allocation to the multi-track. Accordingly, costs should be assessed under Part 44 and not fixed.

The general rule under r.36.13 applies unless costs are fixed by the rules, and since Section IIIA no longer applied, r.36.20 did not override r.36.13. The claimant was, therefore, entitled to standard basis costs.

The insurer also argued that the court should exercise its discretion to limit costs to the fixed level, citing *Williams v Secretary of State for Business, Energy and Industrial Strategy*. However, the court rejected this, noting that there had been no finding of unreasonable conduct by the claimant and no good reason to deprive her of standard costs.

Tescher v Direct Accident Management Limited

The case involved two separate appeals brought by defendants in road traffic accident claims who had sought non-party costs orders against credit hire companies after the claimants either lost or discontinued their claims.

In the first case, the claimant had entered into a credit hire agreement with Direct Accident Management Ltd (DAML) and brought a claim for personal injury and hire charges, the latter comprising the majority of the special damages.

The claim was dismissed and although the claimant was ordered to pay the defendant's costs, enforcement was subject to QOCS. The defendant applied for a non-party costs order against DAML, arguing that it was the real party behind the litigation. The application was refused on the basis that DAML was not sufficiently involved in the conduct of the litigation to justify such an order.

In the second case, the claimant had hired a vehicle from Spectra Drive Limited and brought a claim against AXA Insurance for personal injury and hire charges. AXA alleged that the hire claim was dishonest, pointing to the fact that the claimant had insured another vehicle shortly after the accident. The claimant discontinued the claim and AXA sought to lift QOCS protection and obtain a non-party costs order against Spectra. The judge found no dishonesty and refused the costs order, despite acknowledging that Spectra was the commercial beneficiary of the litigation.

The Court of Appeal allowed both appeals. It held that the jurisdiction to make non-party costs orders was clearly engaged in both cases and that the lower courts had erred in their approach. The court emphasised that where a credit hire company stands to benefit financially from litigation and the claimant is impecunious, the company may be liable for the defendant's costs if the claim fails or is discontinued. The court reaffirmed that the correct approach is to ask whether the non-party costs jurisdiction is engaged and, if so, what order would be just. It noted that in cases where the credit hire claim dwarfs the personal injury element, and where the hire company is the real economic beneficiary, an order for all the costs of the litigation may be appropriate.

The court also clarified that credit hire claims fall within CPR r.44.16(2)(a) as they are brought for the financial benefit of someone other than the claimant. While this does not automatically lead to a non-party costs order, it makes such an order likely under CPR Practice Direction 44. The court found that DAML had tacit control over the litigation and should, therefore, bear the costs. In the case involving Spectra, the court held that the judge had failed to properly consider the legal principles and had exercised discretion on the wrong basis. It restored the deputy district judge's original decision which had ordered Spectra to pay 65% of AXA's costs.

Clarke v Marston Group Limited

The claimant, Ms Clarke, applied for an injunction to prevent Marston Group Limited, a debt recovery company, from disposing of or interfering with a vehicle she claimed to own. She also sought its immediate return. Ms Clarke asserted that she had purchased the vehicle in April 2024, but, in February 2025, a warrant of control was issued against a debtor whose name matched the registered keeper of the vehicle. Based on this information, enforcement agents seized the vehicle in March 2025 while Ms Clarke was driving it.

Ms Clarke was arrested at the scene, allegedly for driving without insurance, a claim she disputed. The vehicle had not had a change of registered keeper since December 2020 and Ms Clarke's documentation included only the front page of the logbook and a non-standard sales invoice. The enforcement company rejected her ownership claim, citing insufficient evidence.

Ms Clarke then issued proceedings seeking the return of the vehicle and £50,000 in damages. The court was asked to determine whether an interim injunction should be granted pending the resolution of the ownership dispute.

Judge Burns applied the American Cyanamid principles, which guide the court in deciding whether to grant interim relief. He found that there was a serious issue to be tried regarding ownership, but that damages would be an adequate remedy if Ms Clarke ultimately succeeded. The court also noted that Ms Clarke had not followed the appropriate procedure under CPR Part 85, which governs third party claims to goods seized under a warrant. While this procedural misstep was not determinative, it weighed against granting the injunction.

The court concluded that the balance of convenience did not favour granting the injunction. The documentation provided by Ms Clarke was incomplete and inconsistent with official records, and the enforcement company would be able to pay damages if required. As a result, the application for interim relief was refused and the matter was transferred to the county court for further case management.

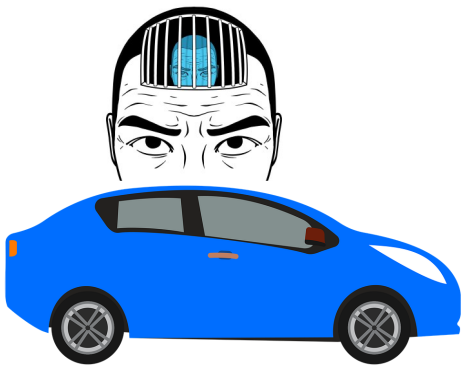
Clarke v Poole

The claimant, Ms Clarke, had suffered a catastrophic brain injury in a road traffic accident, leaving her with profound physical and cognitive impairments. Liability was admitted and her claim for provisional damages was valued at £22 million, with the largest portion allocated for future care and support.

The defendants, however, raised the possibility that Ms Clarke might suffer from a genetic condition known as MD, which causes progressive muscle weakness. They argued that this condition, if present, would significantly affect her life expectancy and care needs, and, therefore, the quantum of damages. They sought to compel her to undergo invasive muscle testing to confirm the diagnosis. Ms Clarke refused, citing the invasive nature of the test, the lifelong implications of a diagnosis and the psychological harm the decision itself could cause her.

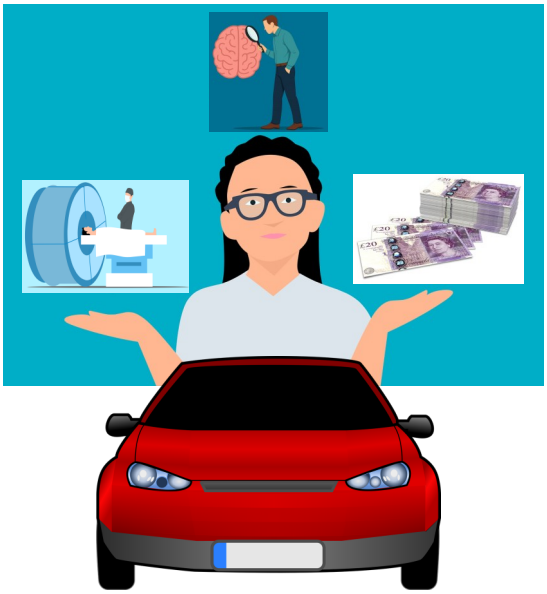
Judge Gargan, at first instance, granted a stay of proceedings until Ms Clarke consented to the testing. He reasoned that the physical risks were modest and that the defendants had a right to defend themselves fully. Ms Clarke applied for permission to appeal, arguing that the judge had failed to properly apply the principle from *Laycock v Lagoe* which holds that a stay should not be granted if a claimant has a real, non-illusory objection to testing.

Ms Clarke also contended that the judge had not adequately considered the impact of the stay on her personal autonomy and mental health. Davies LJ refused permission to appeal, concluding that the judge had correctly applied the balancing test required by *Laycock*.



The Court of Appeal, however, granted permission to reopen the appeal under CPR r.52.30, which allows for such action only in exceptional circumstances to avoid real injustice. The court found that Davies LJ had failed to address all the grounds of appeal, particularly the psychological impact of the forced choice between testing and losing compensation. This omission was significant enough to undermine the integrity of the process. The court emphasised that the correct approach under *Laycock* involves a two-stage test: whether the interests of justice require the proposed medical testing and whether the claimant has provided a substantial reason for refusing it. Judge Gargan's interpretation, which effectively introduced a third stage, was found to be flawed. Whipple LJ, concurring, stressed that *Laycock* implicitly recognises that objections based on personal autonomy carry significant weight and may be determinative. She warned that endorsing a three-stage test would create unnecessary complexity and cost in future cases.

The court concluded that the combination of admitted liability, the severity of Ms Clarke's injuries and the high value of the claim constituted exceptional circumstances. Forcing her to choose between invasive testing and potentially losing millions in compensation, especially when such a choice could harm her mental health, was deemed a grave injustice.



As a result, the Court of Appeal granted permission to reopen the appeal and to appeal the original decision, reaffirming the importance of respecting personal autonomy and mental well-being in the litigation process.

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

Simon Evans at simone@dolmans.co.uk

Capital Tower, Greyfriars Road, Cardiff, CF10 3AG

Tel : 029 2034 5531

www.dolmans.co.uk
