DOLMANS INSURANCE BULLETIN

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REPORT ON

Third Party Apparatus and Section 58 of the Highways Act 1980

R K v Bridgend County Borough Council

Under Section 41 of the Highways Act 1980, a Local Authority has a statutory duty to maintain the highway and the burden of proof is on the Claimant to show that the Local Authority has breached the same.

Pursuant to Section 58 of the 1980 Act, the burden of proof is, however, on the Highway Authority to establish that it has taken such care, as is in all the circumstances is reasonably required, to secure that part of the highway to which the action relates in not dangerous for traffic.

In order for this so called 'special defence' to succeed, a Local Authority will usually need to demonstrate that it has an appropriate system of inspection and maintenance in place. The Court will also usually consider whether the alleged hazard was foreseeable and whether or not the Local Authority had notice of the alleged defect, whether by way of previous complaints and/or accidents.

Where an action involves apparatus owned by a third party utility company, additional factors are likely to be introduced by the Claimant in an attempt to discredit and overturn the Local Authority's reliance upon the 'special defence' pursuant to the 1980 Act.

This was demonstrated in the recent case of *R K v Bridgend County Borough Council*, in which Dolmans represented the Defendant Local Authority.

Background and Allegations

The Claimant alleged that she was walking along a footway that was part of the Defendant Local Authority's adopted highway, when she stepped on a stop tap cover that was not fixed and flipped, causing her to sustain personal injuries.

It was alleged that the Defendant Local Authority was in breach of Section 41 of the Highways Act 1980 and/or that it was negligent.

The apparatus in question was owned by a third party utility company, although the Claimant did not issue Court proceedings against the utility company; the said company having advised the Claimant's solicitors that it relied upon the Defendant Local Authority's highways inspections.

Claimant's Arguments

The Claimant argued that positively checking manhole covers and the like is more in keeping with a risk based approach, as recommended by the current 'Well Managed Highway Infrastructure Code of Practice', and that the risk of injury from a defective manhole cover is considerable.

In seeking to overturn the Defendant Local Authority's reliance upon Section 58 of the Highways Act 1980, the Claimant sought to rely upon the appeal decision in *Annette Atkins v London Borough of Ealing (2006) EWHC 2515/ (2006) WL 2929561*.

Annette Atkins v London Borough of Ealing

In *Atkins*, the Claimant had stepped onto a manhole cover, as opposed to a stop tap cover in the current matter, which tilted and caused the Claimant to fall into the manhole, thereby sustaining personal injuries.

The Judge, at first instance, gave judgment in the Claimant's favour. The Local Authority appealed the decision on the basis that the Judge, at first instance, ought to have held that the Local Authority had proved that it had taken such care, as in all the circumstances was reasonably required, to secure that the manhole cover, which was owned by a third party utility company, was not dangerous and so was not liable for the Claimant's alleged injuries pursuant to Section 58 of the Highways Act 1980.

The Local Authority in *Atkins* had a system of inspection and maintenance in place, with manholes being subject to visual inspections. The Claimant argued that such visual inspections of manholes was insufficient, particularly as they can be deep, have electrical cables and potentially cause severe physical damage.

Based upon the evidence before the Court in *Atkins*, the Judge held that the Local Authority had failed to prove that it had taken the care required by Section 58 of the Highways Act 1980.

The Local Authority argued that the Judge, at first instance, had placed too high a standard and burden upon the Local Authority. It was argued that the Judge had failed to strike a balance between public and private interests.

On appeal, the Judge found that the Local Authority's system of inspection and maintenance was designed to identify and avoid other hazards, but had no system for checking whether manhole covers were secure and not liable to tilt.

The character of the highway was considered, being a shopping street, and was, therefore, different to a remote country road. It was held that the standard of maintenance in a shopping street should ensure that pedestrians are not at risk of falling into a manhole that could contain cables, pipes and other items.

As for the question of knowledge and whether the Local Authority knew or could reasonably have been expected to know that the condition of the highway was likely to cause damage, there was no evidence adduced that loose manhole covers were so rare that they could not be foreseen.

The Local Authority's system of visual inspection was not designed to identify the defect in the manhole and it was held that when a Highway Authority is unable to prove the cause of a defect such as that which afflicted the manhole cover, that inability is very likely to cause the Local Authority difficulty in discharging the burden of proof laid upon it by Section 58 of the Highways Act 1980.

The Appeal Judge was not persuaded that the Judge, at first instance, had failed to strike the necessary balance between public and private interests or had placed too high a burden on the Local Authority and, therefore, dismissed the Local Authority's appeal.

Defendant's Arguments - Reliance upon *Gary Samuel v Rhondda Cynon Taf County Borough Council and Another*

As in *Atkins*, the Defendant Local Authority in the current matter argued that its highways inspectors are not required to undertake a physical inspection of every stop tap cover during inspections, particularly those owned by third party utility companies, as in this matter, and sought to rely upon the decision in *Gary Samuel v Rhondda Cynon Taf County Borough Council and Dwr Cymru Welsh Water (LTL 30/01/2014)* accordingly. The Defendant argued that visual inspections of such apparatus, which were undertaken during inspections of the footway, were sufficient. The Defendant Local Authority sought to rely upon the decision in *Samuel* from an early stage, having pleaded the same in the Defence.

The Defendant Local Authority argued that this was sufficient to discharge its burden pursuant to Section 58 of the Highways Act 1980 and that the decision in *Samuel* could be distinguished from that in *Atkins* which involved a manhole cover into which the Claimant fell, rather than a stop tap cover as in *Samuel* and the current matter.

REPORT ON

Defendant's Evidence

The Defendant Local Authority's relevant highways personnel gave evidence that the location of the Claimant's alleged accident was subject to walked inspections on an annual basis. The last inspection prior to the Claimant's alleged accident was undertaken just two days prior to the date of the Claimant's alleged accident, when no defects were noted at the said location. It was noted in evidence that stop tap covers could become damaged within a short period of time for a variety of reasons.

It was submitted that highways inspectors are not expected to check/step on every utility cover in the highway, but undertake visual inspections of such apparatus, as referred to above.

Any damaged apparatus noted is reported to the relevant third party utility company by way of Section 81 Notice of the New Roads and Street Works Act 1991, although there were no such Notices issued prior to the date of the Claimant's alleged accident. A Notice was, however, issued following the Claimant's alleged accident.

There were no similar complaints and/or accidents relating to the alleged defective stop tap cover during the twelve month period prior to the date of the Claimant's alleged accident.

In addition, evidence was adduced that each house within the relevant County Borough Council has a stop tap cover and other third party apparatus in the highway, equating to tens of thousands of houses. There had been a previous Freedom of Information request, which indicated that only a handful of stop tap cover issues had arisen from these houses.

In light of the above, it was argued that the Defendant Local Authority had an appropriate Section 58 Defence and liability was disputed.

Judgment

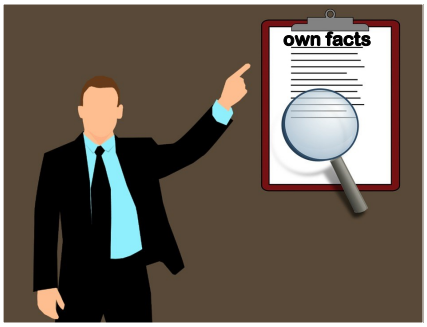
The Judge held that, on a balance of probabilities, the Claimant had proved that her accident had occurred in the circumstances alleged and that the defective stop tap cover was dangerous. However, the Defendant Local Authority had discharged its burden pursuant to Section 58 of the Highways Act 1980, having taken such care in all the circumstances to ensure that users of the highway were safe.

There were no obvious issues with the stop tap cover from the Defendant Local Authority's visual inspections. Had there been any such issues, these would have been reported to the relevant utility company.

The Judge referred to the tens of thousands of houses and apparatus, as evidenced by the Defendant Local Authority's witnesses, and that a Freedom of Information request had identified only a handful of similar issues.

The Judge agreed that the decision in *Atkins* was distinguishable from the current matter, given that *Atkins* involved a manhole in a main thoroughfare and not a stop tap cover, and does not purport to set down a general principle in any event.

The Judge held that the current matter was more aligned to the decision in *Samuel* and dismissed the Claimant's claim.



Comment

The decision in the above matter illustrates how each case will be decided upon its own facts and the importance therefore of a carefully pleaded Defence, supported by appropriate witness evidence, having regard to cases involving similar issues and arguments.

By aligning the Defendant Local Authority's pleadings and witness evidence to the decision in *Samuel*, the Judge was persuaded that the decision in *Atkins* was not relevant to the current matter, and that the Claimant's attempt to discredit and overturn the Defendant Local Authority's Section 58 Defence failed accordingly.

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FOCUS ON

QOCS - Part 36 - Late Acceptance

Two recent cases further demonstrate the difficulties for Defendants in personal injury claims, under the current rules, in enforcing costs orders in their favour where there has not been an order for damages made at trial. However, proposed changes to the rules, reversing the effects of the decisions in *Cartwright v Venduct Engineering Ltd [2018]* and *Adelekun v Ho [2021]*, may soon provide some welcome relief from these difficulties.

Chappell v Mrozek [2022] EWHC 3147 (KB)

The Claimant suffered serious injuries in a road traffic accident in 2016. Liability was admitted. Proceedings were served in 2020. The Defendant served a Defence, accompanied by a Part 36 offer in the sum of £250,000, in May 2020. The offer was not accepted within the 21 day relevant period. The parties thereafter progressed the claim and dealt with directions. In January 2022, the Claimant accepted the Part 36 offer. The parties agreed the usual liability for costs following late acceptance – i.e. that the Defendant would pay the Claimant's costs up to the expiry of the relevant period and the Claimant would pay the Defendant's costs thereafter to the date of acceptance. However, the Claimant's position was that the Defendant was prevented from enforcing any part of that costs liability as a result of the QOCS provisions contained in CPR 44.14. That rule provides that subject to the exceptions to QOCS set out in the rules:

"… *orders for costs made against a Claimant may be enforced without the permission of the Court but only to the extent that the aggregate amount in money terms of such orders does not exceed the aggregate amount in money terms of* ***any orders for damages and interest made in favour of the Claimant*****".** (***our emphasis***)

The Defendant advised the Court that their costs incurred after the offer to the date of acceptance were in the region of £152,000.

Pursuant to CPR 36.14(7), following acceptance of the Part 36 offer, the Defendant was required to pay the settlement sum within 14 days, failing which the Claimant was entitled to enter judgment for the unpaid sum. As a result of the dispute regarding costs, the Defendant did not pay the settlement sum. The Claimant made an Application to enforce the terms of the Part 36 compromise and compel the Defendant to pay the settlement sum. The Defendant made an Application to enforce its entitlement to costs by way of set-off against damages.

The Defendant submitted that Part 36 acceptances should be interpreted as falling with "*an order for damages"* within the meaning of CPR 44.14 or, in the alternative, the Court should make an express order for damages pursuant to CPR 36.14(7), rather than adopting the wording of the rule that there be judgment for the unpaid sum, or pursuant to its inherent case management powers, against which the costs liability could be enforced.

The Judge did not accept that the Part 36 acceptance fell within CPR 44.14. The Judge considered the policy background to the introduction of QOCS and relevant caselaw. The Judge concluded that Government policy statements about the introduction of QOCS provided no hint that Part 36 offers accepted out of time should be subject to enforceable adverse costs set-offs. The Judge considered that Coulson LJ's comments in *Cartwright v Venduct Engineering Ltd [2018]* (a case concerning settlement by Tomlin Order) to the effect that Part 36 settlements did not fall within CPR 44.14 formed part of the ratio of the decision and was, in any event, highly persuasive and reflected in the Supreme Court's decision in *Adelekun v Ho [2021].* The clear message from *Adelekun* was that the Court was not prepared to imply or infer words into Part 44 to expand the scope for enforcement. Those decisions were binding.

As regards the Defendant's alternative submissions in relation to making an express order for damages, the Judge considered it would be inappropriate to do so given the clear statements from the Court of Appeal and the Supreme Court in *Cartwright* and *Adelekun* that any construction of the QOCS rules as currently drafted which may have given rise to unintended consequences is a matter for rule changes by the CPRC and not judicial intervention.

Accordingly, the Judge ordered that the Defendant pay the 'settlement sum' of £250,000 to the Claimant and that the costs order against the Claimant made in respect of late acceptance was not to be set-off against any part of the ordered sums in the Claimant's favour. The Defendant's Application was dismissed.

University Hospitals of Derby & Burton NHS Foundation Trust v Harrison [2022] EWCA Civ 1660

In February 2019, the Claimant brought a clinical negligence claim against the Appellant Hospital Trust ('the Defendant'). In December 2019, the Defendant made a Part 36 offer in the sum of £421,362.88, which included any deductible benefits. The offer stated that if it was not accepted by 27 December 2019 (the expiry of the 21 day relevant period) and further deductible benefits had been paid, the Claimant would require the Court's permission, pursuant to CPR 36.11(3)(b), to accept the offer.

In November 2021, the Claimant indicated that she wished to accept the Part 36 offer. The parties were unable to agree the liability for costs. The matter came before a Judge on 7 March 2022. The Judge made an order giving the Claimant permission to accept the Part 36 offer (pursuant to CPR 36.11(3)(b)). Where such permission is given, CPR 36.22(9) provides that a Court may direct that the amount of the offer payable shall be reduced by a sum equivalent to the deductible amounts paid to the Claimant since the date of the offer.

Pursuant to CPR 36.22(9), the Judge's order provided that "*the Court directs that the net sum payable to the Claimant by the Defendant after deduction of recoverable benefits (£48,206.17) and interim payments is £298,156.16"*. In relation to costs, the Judge made an order that the Defendant pay the Claimant's costs until 27 December 2019 and the Claimant pay the Defendant's costs thereafter, but that the Defendant "*may not set-off or enforce this costs order against the Claimant pursuant to rule 44.14 CPR*".

The Defendant appealed against the Judge's order disallowing set-off or enforcement of the costs order in its favour. The issue for consideration by the Court of Appeal was whether the Judge's Order on 7 March 2022 was "*an order for damages and interest made in favour of the Claimant"* as defined in CPR 44.14.

The Defendant conceded that had the Judge simply given the Claimant permission to accept the Part 36 offer it would not have been an order within CPR 44.14. However, it was submitted that because the Judge had identified the amount to be deducted it was a Court Order awarding a sum of money and, therefore, fell within CPR 44.14.

The Court of Appeal concluded, for five separate reasons, that the Judge's decision was right. The Judgment was given by Coulson LJ. The most important reason was stated to be the Court's finding that a Court making an order under CPR 36.22(9) is not making an order for damages and interest in favour of the Claimant. In granting permission to accept the offer out of time and directing that the benefits, in the amount set out in the CRU Certificate and agreed between the parties, should be deducted, the Judge was not carrying out any evaluation or assessment of what was due or to be paid. He was not, therefore, making an order for damages in favour of the Claimant.

The Judge was merely directing that one part of the offer would be paid to the Claimant and the balance to the DWP. The Judge's direction in this respect was not independently enforceable. If the Defendant did not pay the Claimant the sum due, the Claimant would have to enforce it by seeking judgment pursuant to CPR 36.14 (7). The obligation on the Defendant to pay arose from the CPR and not the Judge's Order.

The Court's other reasons comprised that the Defendant's argument elevated form over substance. Wider policy considerations supported the correctness of the Judge's conclusion. Whilst Coulson LJ accepted that his analogy with Part 36 in *Cartwright* was obiter (contrary to the Judge's view in *Chappell* above that it was part of the ratio), there was a close similarity between a settlement under Part 36 and a Tomlin Order; as with a Tomlin Order, when a Part 36 offer is accepted there is a settlement that is nothing to do with the Court. The case law authorities of *Cartwright* and *Adelekun* supported the Claimant's position. Further, the Court noted that the CPRC are considering changing CPR 44.14 to cover 'agreements to pay' which supported the view that the present rule does not cover 'agreements to pay'.

Accordingly, the Defendant's appeal was dismissed.

Proposed Changes to CPR 44.14

Whilst these two cases demonstrate the continuing difficulties faced by Defendants in personal injury claims enforcing costs orders in their favour in cases that settle, this looks set to change.

Following the decision in *Adelekun*, the Ministry of Justice published a consultation on proposed changes to the QOCS regime. The proposed change to CPR 44.14(1) comprised an amendment to allow enforcement against an order for costs in favour of the Claimant, which was the issue before the Court in *Adelekun* and would reverse the effect of that decision.

The Civil Procedure Rules Committee met on 7 October 2022 to consider the consultation and the responses to it. It was recorded that the Ministry of Justice recommended implementing the rule changes on QOCS, but with one small rule drafting amendment regarding 'agreements to pay'. It was also noted that a further point had been raised, which was not enlarged upon, in relation to 'an additional, clarificatory drafting proposal' submitted, which had still to be considered by the Sub-Committee. It was resolved to agree in principle the proposed redrafted CPR44.14(1), subject to consideration of the aforegoing, with a final drafting proposal to return at / by the December 2022 meeting for final determination.

The exact wording of the proposed amendment is unclear from the October Minutes. The Court in *Harrison* set out that the proposed amendment was as follows:

"*Subject to rules 44.15 and 44.16, orders for costs made against a Claimant may be enforced without permission of the Court but only to the extent that the aggregate amount in money terms of such orders does not exceed the aggregate amount in money terms of any orders for* ***or agreements to pay*** *damages,* ***costs*** *and interest made in favour of the Claimant".* (***our emphasis***)

We shall have to await the publication of the December 2022 Minutes to confirm the final wording. Should the rules be amended as above, the intention would be that the effects of the decisions in *Cartwright* and *Adelekun* would be reversed. It is, therefore, surprising that in *Harrison*, Coulson LJ, in commenting upon the above proposed changes, seemed to suggest that it may be arguable that a settlement under Part 36 may not fall within 'agreements to pay'.

The proposed changes should address the shortcomings of the current rules illustrated by the existing case law, albeit we shall have to await clarification of the exact wording of the changes and when they will come into effect.

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CASE UPDATES

Detailed Assessment Proceedings - Costs of Assessment - QOCS

TRX v Southampton Football Club [2022] EWHC 3392 (KB)

The Claimant, a Southampton youth player in the 1980's, brought a claim relating to alleged sexual and emotional abuse he suffered at the hands of a scout and youth development officer at the club. His claim settled for £4,000, together with his reasonable costs. The costs issues could not be resolved by agreement and became a little acrimonious, which resulted in a long running detailed assessment. The disputes ranged over a number of issues. One of the issues related to whether a paying party can avoid paying costs of the detailed assessment if they have not made a Part 36 offer after the Costs Judge made 'no order' for the costs of the assessment.

The central issue of principle in dispute was whether, and if so to what extent, rule 44.2 (general provisions about the Court's discretion as to costs), rule 36 and the authorities under those provisions concerning costs in main proceedings should apply to rule 47.20 (the costs of detailed assessment). The Claimant submitted that a paying party which failed to use Part 36 should bear the consequences and be ordered to pay all the receiving party's reasonable costs.

Held

The Judge held it was not wrong, in principle, for a Costs Judge to order that a paying party pay none of the receiving party's costs of a detailed assessment, even if they have not succeeded with, or even made, a Part 36 offer. The fact that a Part 36 offer had not been made was a relevant factor, but was not necessarily the most important or *only* relevant factor. *Fox v Foundation Piling Ltd [2011] EWCA Civ 790* and *Global Energy Horizons Corporation v Gray [2021] EWCA Civ 123* had *"some relevance and application to the costs of detailed assessment, but they must be considered through the prism of rule 47.20, which is its own comprehensive code"*.

Depending on the circumstances of each case, it may be unusual to make no order for costs where no successful Part 36 offer has been made by the paying party. But to make a different order would depend on all the other relevant circumstances in the case *"including, as per the rule, the conduct of the parties, the amount, if any, by which the bill of costs has been reduced and whether it was reasonable for a party to claim the costs of a particular item or to dispute that item in question"*.

The Claimant's argument that it was 'wrong in principle' when it is such a fact and circumstance specific assessment was not, therefore, accepted. The Claimant's argument also failed to address the difficulties for litigants in person who may have difficulty navigating the Part 36 regime.

CASE UPDATES

In the instant case, the Judge had identified a number of relevant circumstances, including the very substantial reduction in the bill in almost all areas.

It was acknowledged that, in the absence of a successful Part 36 or other meaningful offer, to make no order for the receiving party's costs seemed 'a little harsh' and would perhaps have "*strayed towards the limit of the wide ambit of the discretion accorded to Judges in matters of costs*". A reduction of less than 100% of the costs of assessment would, however, have been unexceptional in all the circumstances of the case. Where there has been a very significant reduction in the assessed costs from the costs claimed, it may well sound in a percentage reduction to the receiving party's costs.

Personal Injury - Costs - Applicability of the QOCS Regime

Pathan v Commissioner of Police of the Metropolis [2022] EWHC 3244 (KB)

The Claimant brought a claim against the police, initially in false imprisonment and trespass, alleging that her arrest and detention had been unlawful. The claim did not include a personal injury claim. The Claimant, at this time, was a litigant in person. Shortly before trial, and after the Claimant had obtained legal representation, the claim was amended to include a claim for personal injury.

At trial, the claim was dismissed. In relation to the issue of costs, the Judge ordered that the Defendant could enforce 100% of the costs incurred before the amendment of the Claimant's pleaded case. The Judge held that QOCS could not apply to the period before the claim was amended because, until that date, the claim was simply a loss of liberty case and not a personal injury case.

The Claimant appealed.

Held

The meaning of r.44.13(1) was clear; the QOCS regime applied if proceedings included a personal injury claim. That question was to be asked at the time that the Judge was considering what order to make in relation to costs. The proceedings in the instant case included a personal injury claim and so QOCS did apply. The Judge had erred by ruling that QOCS was to be applied only to the proceedings occurring after the amendment; *Achille v Lawn Tennis Association Services Ltd [2022] EWCA Civ 1407*. QOCS applies to the costs of the whole proceedings, even if the personal injury claim was added by amendment.

In any event, it was impossible to conclude that an order permitting enforcement of the pre-amendment costs was the just outcome. It was for the Judge to consider what was just, having regard to the application of QOCS.

CASE UPDATES

QOCS - Notice of Discontinuance - Strike Out

Excalibur & Keswick Groundworks Limited v McDonald [2023] EWCA Civ 18

The Court of Appeal was required to consider whether a Judge had been correct to overturn the setting aside of a Claimant's Notice of Discontinuance and disallowance of QOCS protection.

The Claimant (C) was employed by the First Defendant (D1) as a groundworker. The Second Defendant (D2) was the main contractor who had engaged D1 to carry out works. C alleged that he was climbing up a ladder during the course of his employment when it slipped beneath him, causing him to fall and suffer injury. Proceedings were issued in December 2018. The Particulars of Claim pleaded that the ladder was tied to scaffolding by a piece of string. D1 served a Defence pleading that it did not provide the ladder; it provided a mobile scaffolding tower for the use of its employees. D2's Defence pleaded that ladders were not permitted to be used on site.

In his Witness Statement, C stated that he assumed the ladder was tied on, but subsequently believed it was not. C's GP records contained an entry on 4 May 2016 suggesting that C had tripped over a pavement on the construction site. An entry the following day stated he had fallen off scaffolding.

On the morning of the trial, the District Judge raised issues as to the ownership of the ladder, the inconsistencies between C's pleaded case, his Witness Statement and the GP entries, and asked C's Counsel if C wished to consider his position. The matter was adjourned for 30 minutes and C served Notice of Discontinuance. D applied to set aside the Notice of Discontinuance and to strike out the claim on the grounds that C's conduct had obstructed the just disposal of the proceedings and he was not entitled to QOCS protection. The District Judge set aside the Notice of Discontinuance and disallowed QOCS protection. C appealed. The Judge allowed the appeal and D appealed to the Court of Appeal.

The Court of Appeal noted that the Court has a discretion to set aside a Notice of Discontinuance which should be exercised so as to give effect to the overriding objective of dealing with a case justly and at proportionate cost. Given the breadth of that discretion, coupled with the fact that a Claimant has a right to discontinue at any time, the Judge was right to state that there needed to be powerful reasons why a Notice of Discontinuance should be set aside. Evidence of abuse of the Court's process or egregious conduct of a similar nature was required.

The Court rejected D's contention that the approach should be different in a personal injury claim to which QOCS applies as that would defeat the purpose of the QOCS regime which was an attempt to correct the financial imbalance between Claimants and Defendants in personal injury claims.

D had not alleged C was or might be fundamentally dishonest. What C did, following an intervention by the District Judge, was to recognise inconsistencies between his Witness Statement and pleaded case, weigh up his prospect of success and, having done so, discontinue. This did not begin to provide the powerful reasons upon which a Notice of Discontinuance could or should be set aside.

The Court considered that the essence of a strike out under CPR 3.4(2)(b) is that a Claimant is guilty of misconduct which is so serious that it would be an affront to the Court to permit him to continue to prosecute his claim. The issue was whether C's conduct was of such a nature and degree as to corrupt the trial process so as to put the fairness of the trial in jeopardy. The Court considered that it was not:

"*What this Claimant did was to give a different account in his Witness Statement from that which was contained in the Statement of Case. It was a material inconsistency and one which had the potential to undermine not only his credibility but also the viability of his claim. What it did not do was to demonstrate a determination by the Claimant to pursue proceedings with the object of preventing a fair trial. If this Claimant's conduct is to be regarded as obstructing the just disposal of the proceedings, the same could be said of the conduct of many litigants who present claims for personal injuries".* Whilst it was regrettable that consideration of the differing accounts had not taken place earlier, D could have applied for summary judgment. Had summary judgment been obtained, C would still have been entitled to QOCS protection.

Accordingly, D's appeal was dismissed.

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

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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)
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