DOLMANS INSURANCE BULLETIN

Welcome to the March 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, Partner, at **justinh@dolmans.co.uk**

REPORT ON

Dangerousness in Highways Matters - Considerations by the Trial Judge

AJ v Central Bedfordshire Council

In any claim for damages where breach of Section 41 of the Highway's Act 1980 is alleged, it is well recognised that a claimant must prove dangerousness in order to succeed in any claim involving alleged breach of the Highways Act 1980. If the relevant location is not found to be dangerous, then a claimant's claim will fail.

There are many evidential matters that a trial judge might consider when making any such finding as to dangerousness, which can be adduced by both a claimant and a defendant local authority.

In the case of *AJ v Central Bedfordshire Council*, in which Dolmans represented the Defendant Local Authority, the Trial Judge initially made a finding as to dangerousness after hearing only the Claimant's witness evidence. However, following representations made by the Claimant, the Trial Judge then decided to also hear the Defendant Local Authority's witness evidence and invite written submissions before dismissing the Claimant's claim.

This somewhat unusual approach resulted in the Claimant seeking permission to appeal the Trial Judge's decision, both at the handing down of the Trial Judge's written Judgment and by way of formal application thereafter.

Background / Allegations

The Claimant alleged that she was crossing the carriageway outside a public house when she caught her foot in a pothole, causing her to fall and sustain personal injuries. The said carriageway was part of the adopted highway maintained by the Defendant Local Authority.

It was alleged that the Defendant Local Authority was negligent and/or in breach of Section 41 of the Highways Act 1980. In addition, nuisance was pleaded.

REPORT ON

Defence

The Claimant was put to strict proof as to factual causation, being required to prove the mechanism of her alleged accident and dangerousness. The Defendant Local Authority disputed that the location of the Claimant's alleged accident was dangerous, averring that the alleged defect was not located at a natural crossing point. The Claimant's photographic evidence and measurements of the alleged defect were also disputed.

Notwithstanding the above, the Defendant Local Authority maintained that it had an appropriate Section 58 Defence under the Highways Act 1980. The location of the Claimant's alleged accident was subject to a scheduled system of regular inspections, as well as a reactive system. No actionable defects were noted at the time of the Defendant Local Authority's pre-accident inspection. The Defendant Local Authority had no record of any complaints and/or other accidents relating to the location of the Claimant's alleged accident during the 12 month period prior to the date of the same.

Following notification of the Claimant's alleged accident, the Defendant Local Authority measured a difference in levels at the relevant location that was within the Defendant Local Authority's appropriate intervention criteria. As a matter of prudence, temporary repairs were undertaken at the said location. It was argued, however, that it did not follow that the relevant location was dangerous just because repairs were undertaken at the said location.

Contributory negligence on the Claimant's part was also alleged.

Trial

The matter was allocated to the Fast Track and proceeded to trial before a District Judge.

The Claimant's oral evidence under cross-examination as to the mechanism of her alleged accident was somewhat different to her pleaded case and her contemporaneous medical records. It was argued that the Claimant's uncertainty regarding the mechanism of her alleged accident also restricted her in proving dangerousness. The Trial Judge was amenable to making a finding on mechanism and dangerousness after hearing the Claimant's evidence and as the burden was upon the Claimant to prove the same.

The Claimant argued that although the alleged defect was in the carriageway, this was at a natural crossing point that was utilised by pedestrians visiting the local public house.

After some deliberation, the Trial Judge considered that the alleged defect was not dangerous to motor traffic and that this was the appropriate standard to apply. The Trial Judge also found that the Claimant did not have sufficient evidence to prove dangerousness to the said standard and that his decision might have been different had the alleged defect been in the footway or at a dropped kerb crossing point.

REPORT ON

Counsel for the Claimant immediately indicated that he would seek permission to appeal, despite the Trial Judge clarifying that the standard being applied was that of the reasonable user, including pedestrians and cyclists. In addition, the Trial Judge reiterated that the Claimant did not adduce sufficient evidence to prove dangerousness of the carriageway to a reasonable user.

Somewhat unusually, the Trial Judge adjourned the matter for a short period of time to consider case law that Counsel for the Claimant had encouraged him to revisit. This was despite the Claimant having not filed any Skeleton Argument prior to trial, unlike the Defendant Local Authority.

The Trial Judge then reconvened the trial and effectively held that he should not have been drawn to deal with dangerousness at the earlier stage. It was explained that the Court had not made a ruling on dangerousness. The Trial Judge offered to give an indication on dangerousness and that it was now likely that he would find that the alleged defect was dangerous, given its close proximity to the nearby public house. The Trial Judge stated, however, that he would hear the Defendant Local Authority's evidence and consider all issues thereafter.

The Defendant Local Authority's witnesses gave oral evidence in support of the Defendant Local Authority's Defence, as referred to above.

The trial was then adjourned for written submissions to be filed regarding dangerousness and the Defendant Local Authority's alleged Section 58 Defence in particular.

Judgment

The Trial Judge provided a written Judgment following consideration of the parties' written submissions and dismissed the Claimant's claim. The Trial Judge did not consider that the alleged defect was dangerous after hearing both parties' witness evidence, being located in the carriageway and not at a natural crossing point as alleged by the Claimant.

The Trial Judge found that the Claimant's photographic evidence did not support the Claimant's allegations regarding dangerousness and that the accuracy of the Claimant's measurements of the alleged defect was questionable, preferring the Defendant Local Authority's witness evidence. In addition, the Trial Judge held that the alleged accident was not reasonably foreseeable, particularly as there was a defined crossing point with double yellow lines located a short distance away from the location of the Claimant's alleged accident.

Given that the Claimant had failed to prove dangerousness, the Trial Judge held that no further consideration was necessary and he did not, therefore, deal with the Defendant Local Authority's alleged Section 58 Defence.

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REPORT ON

Application for Permission to Appeal

The Claimant sought permission to appeal at the handing down of the written Judgment, which was refused.

The Claimant, therefore, made a formal application for permission to appeal on the following grounds:

Ground One: The Claimant disputed the Trial Judge's finding in his written Judgment that the alleged defect was not dangerous, particularly given the Trial Judge's indication at trial that it was likely that he would find that the alleged defect was dangerous and that the Claimant had effectively proved her case under Section 41 of the Highways Act 1980.

Ground Two: The Claimant submitted that the Defendant Local Authority's evidence was effectively opinion evidence, which the Trial Judge should not have taken into account when applying the appropriate test under Section 41 of the Highways Act 1980. The Claimant argued that the Trial Judge should have applied an objective test accordingly.

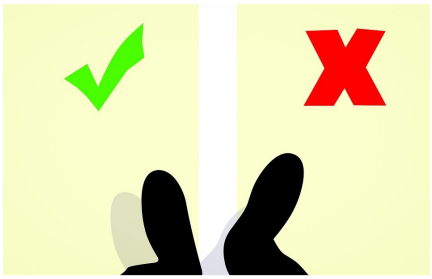
Ground Three: The Trial Judge made his finding after hearing the Defendant Local Authority's oral witness evidence and no sufficient explanation or reason was given by the Trial Judge for having effectively changed his mind regarding dangerousness. It was argued that when the Claimant sought permission to appeal at the handing down of the written Judgment, the Trial Judge refused permission on the basis that the proposed ground of appeal did not have any real prospect of success, without any further explanation.

Permission to Appeal Refused

Permission to appeal was considered and refused by a Circuit Judge in writing given that there was no real prospect of success and no other compelling reason why the appeal should be heard.

REPORT ON

The Circuit Judge summarised her reasons for refusing permission to appeal following the three grounds submitted by the Claimant as follows:



Ground One: This appeared to be ill-founded. Although the Trial Judge had given essentially a summary judgment after hearing only the Claimant's evidence that the defect was dangerous, he set aside this judgment after hearing submissions and found, during the course of the trial, that he had effectively misdirected himself. The Trial Judge then heard the Defendant Local Authority's evidence, invited and received written submissions from both parties, then produced a reserved judgment at a later date that was the subject of the appeal. To the extent the Claimant submitted that the Trial Judge resiled from his decision without explanation, this was also considered to be ill-founded by the Circuit Judge. Indeed, the Trial Judge had stated during the trial that his initial decision was based on the misunderstanding that he was assessing the danger only to vehicles and that it took on a very different character when considering pedestrians who might potentially cross the road at the relevant point.

Ground Two: This was also ill-founded. The Trial Judge's finding on dangerousness was not altered by the Defendant Local Authority's evidence, but by the proper direction and application of the law to the facts, including those found after taking into account all of the evidence, as opposed to the Trial Judge's previous application of the law on a summary basis taking into account only the Claimant's evidence at its highest. To the extent that the Claimant argued that the Trial Judge was bound by his finding in relation to Section 41 of the Highways Act 1980, the Circuit Judge held that this could not succeed in circumstances where a claimant filed written submissions after the hearing on, inter alia, the question of whether there was a breach of Section 41 of the Highways Act 1980 and submitted in those submissions that the court should find that the alleged defect posed a foreseeable danger to pedestrians and, therefore, a real source of danger. The Circuit Judge was satisfied that the Claimant knew that this issue remained outstanding after the hearing and required the Trial Judge's determination in his reserved judgment.

Ground Three: Again, this was also ill-founded. The Trial Judge gave his reasons for changing his mind and rescinding his initial finding after closure of the Claimant's evidence on dangerousness under Section 41 of the Highways Act 1980, namely that he had misdirected himself and so his finding was, effectively, made on an incorrect legal basis. Hence, there was no real prospect of success for arguing that those reasons were not sufficient, as they plainly were.

The Circuit Judge reiterated, therefore, that the Claimant's application for permission to appeal was totally without merit and ordered that the Claimant may not request the decision to refuse permission to appeal to be reconsidered at a hearing.

Comment

The decision in this case illustrates the importance of good witness evidence in support of a Defendant Local Authority's Defence, including its position regarding dangerousness and any Section 58 Defence under the Highways Act 1980 in particular.

Although based upon the Claimant's witness evidence alone the Trial Judge was minded to find that the relevant location was not dangerous, he then appeared to change his mind regarding dangerousness following submissions by the Claimant and reference to case law. However, faced with strong witness evidence on behalf of the Defendant Local Authority and after considering the totality of both parties' evidence, the Trial Judge was persuaded to make his finding that the said location was not dangerous.

Clearly, the Trial Judge preferred the Defendant Local Authority's evidence and this was also accepted by the Circuit Judge who had dealt with the Claimant's application for permission to appeal.

Although the Trial Judge had followed a somewhat unusual course before reaching his decision, it was apparent that he had made the correct decision in finding that the location of the Claimant's alleged accident was not dangerous, thereby saving damages and costs for which the Defendant Local Authority would have otherwise been liable to pay, including potentially substantial costs relating to an appeal had permission been granted to the Claimant accordingly.

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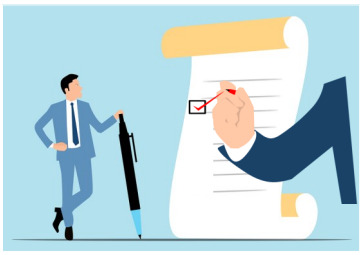
CASE UPDATES

Bill of Costs - Default Costs Certificate - Validity

Daniella Duffy v Birmingham City Council
[2026] EWCA Civ 146



The Court has ruled that a Bill of Costs signed by a solicitor is not invalid merely because the solicitor failed to tick the box expressly certifying compliance with the indemnity principle.

The Appellant Local Authority appealed against a Judge's refusal to set aside a Default Costs Certificate obtained by the Respondent tenant. The Respondent had brought proceedings against the Local Authority relating to disrepair. The parties compromised the proceedings and agreed a Consent Order stating that the Local Authority was to pay the Respondent's costs. The Respondent served a Notice of Commencement of Detailed Assessment and a Bill of Costs totalling just under £27,000. The Bill of Costs was signed by a solicitor, but the solicitor had not ticked the box on the form confirming that the costs claimed did not exceed the costs which the receiving party was liable to pay. The Local Authority did not file any Points of Dispute within 21 days and the Respondent obtained a Default Costs Certificate.

The Local Authority submitted that the failure to tick the relevant box on the form meant that the Bill of Costs was invalid due to the absence of certification of compliance with the indemnity principle and incapable of supporting a Default Costs Certificate.

The Court of Appeal rejected that submission.

A party seeking detailed assessment has to serve a notice of commencement and bill of costs in a required form, as per CPR r.47.6. Under r.47.9, the paying party wishing to dispute any item has to file points of dispute within 21 days, failing which the receiving party could file a request for a default costs certificate. Under r.47.12, a default costs certificate could be set aside as a matter of right or of discretion. CPR PD 47 set out the form and contents of the bill of costs; para.5.21 stated that it had to contain certain certifications, including the item relating to the indemnity principle.

Giving the lead Judgment, Lord Justice Phillips held that while Practice Direction 47 requires appropriate certificates to be included in a bill of costs, the solicitor's signature itself carries implicit confirmation of compliance with the indemnity principle. Relying on authorities, including *Bailey v IBC Vehicles Ltd* and *Gempride Ltd v Bamrah*, the Court reaffirmed that a solicitor signing a bill does so as an officer of the court and is trusted not to claim more than the client is liable to pay. The failure expressly to certify compliance was a defect, but not one that rendered the bill invalid or a nullity. Such errors fall within CPR 3.10, which provides that procedural errors do not invalidate proceedings unless the court so orders.

The appeal was, therefore, dismissed. The Respondent's Bill of Costs had been valid and effective to commence a detailed assessment, and they had been entitled to a Default Costs Certificate when the Local Authority failed to serve Points of Dispute.

CASE UPDATES

Costs - Disbursements - Medical Fees - Interpreter Fees - Breakdown of Fees

JXX v Archibald
[2026] EWHC 630 (SCCO)

Santiago v MIB
[2023] EWCA Civ 838

The Judgment in the case of ***JXX v Archibald [2026] EWHC 630 (SCCO)***, handed down on 17 March 2026, concerned the fees involved when a Medical Reporting Organisation ("MRO") is used in a personal injury or clinical negligence claim to assist with the production of medical evidence. MROs are often used by claimant solicitors in personal injury and clinical negligence work (the Claimant's Solicitors, Slater & Gordon, and Premex presented evidence that the full service offered by MROs plays a crucial role in the personal injury market) and information, by way of Part 18, has often been sought to determine a breakdown of their fees alongside the expert fees when the issue of costs arises at the conclusion of a claim.

Senior Costs Judge Rowley sitting in the Senior Courts Costs Office has provided further consideration of such fees. In his judgment, Judge Rowley accepted that MROs play an important role in the PI market and concluded that there is no requirement for medical reporting agencies to provide a breakdown equivalent to that produced by solicitors in their bill of costs. This is because MRO fees are to be treated as a disbursement rather than outsourced solicitors' work. Judge Rowley confirmed that MRO fees do not contain 'any irrecoverable funding cost' and that a detailed breakdown of MRO fees, which had been argued for by the Defendant in this case, is not required.

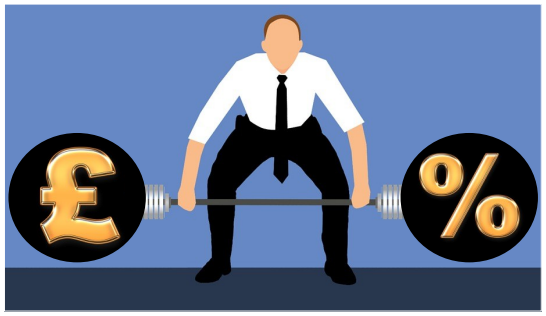
However, Judge Rowley went on to say that the markup on expert fees – effectively the agency's cut – should be limited to no more than 25%. Notably, this was a figure which was not put forward by either side in their evidence. The Court heard that the percentage uplift claimed by the medical agency Premex was either 35% or 45%, while for Medical and Professional Services Limited (MAPS) the markup was anything from 20% to 104%. Judge Rowley said the fees charged by agencies '*plainly reflect variations resulting from ongoing commercial relationships between the solicitors and MROs rather than any case-specific factors. There is nothing wrong with those relationships, but they are not any basis on which to allow any particular percentage between the parties,'* he said.

The case of ***Santiago v MIB [2023] EWCA Civ 838*** raised a similar issue in relation to the principle of recovery of interpreter fees in fixed costs matters, with the Judgment in this case being handed down on 19 February 2026 whilst Judge Rowley was preparing his Judgment in relation to *JXX*. Judge Rowley noted that there were similar arguments run in the *Santiago* case as those raised in *JXX*. Whilst the decision in Santiago is clearly "on similar territory", there are differences between the two cases.

In *Santiago*, the Court previously ruled in favour of the principle of recovery of interpreter fees, but the claim came back before the court in order to address the question of what is a reasonable cost for an interpreter and whether a breakdown of the interpreter fees was required where an agency had been used.

The Court found:

- It is not unreasonable to utilise an agency for the purpose of interpretation / translation services.
- Utilising an agency owned by the solicitor firm is also not unreasonable, in principle. The same overheads and profit would be included in the price which would be payable by the buyer.
- No breakdown is required for interpreter / translator fees where an agency is used as the same is not a service provided by the solicitor and, as such, the fees are to be treated as a disbursement.
- It was rejected that *"the reasonable rate is the lowest rate available or that, having economic muscle which might enable them to negotiate a lower than usual rate, means that the rate which the solicitors in fact paid is not reasonable."*
- Any fee claimed must be reasonable and proportionate as per CPR 44.3.



Mr Justice Moody, therefore, rejected the request from defendants that solicitors should specify the cost of interpreter services when included as part of the wider bill. It was acknowledged that there may be cases where an abuse is suspected or where it is necessary to establish the reasonableness of the fee charged where a breakdown should be required and provided, but no rule of law or practice requires a breakdown in every case where a litigation service is provided through a company.

Limitation - Proceedings 'Brought' - Payment of Court Fees

Siniakovich v Hassan-Soudey and Others
[2026] EWCA Civ 215

The issue for consideration by the Court of Appeal was whether the failure to pay the correct fee for issue of a Claim Form meant that an action was not 'brought' for limitation purposes when the Claim Form was received in the court office. The Court held the answer to that question was 'no'.

The Claimant's ('C') claim is for defamation. The limitation period expired on 28 March 2025. The Claim Form sought damages of £370,000 plus costs. However, the Particulars of Claim also included a claim for an injunction. On 27 March 2025 C's solicitor attempted to file the Claim Form and Particulars of Claim by CE-file. An issue fee of £10,000 was paid. This would have been the correct fee if the claim was only a money claim.

CASE UPDATES

On 7 April 2025 a court clerk informed C's solicitor that the filing had been rejected on the grounds that the appropriate court fee had not been paid because the Particulars of Claim included a claim for an injunction which required an additional fee of £626 as C was making a non-monetary claim in addition to the monetary claim. The solicitor immediately paid the additional fee and re-submitted the Claim Form and Particulars of Claim. An application was also filed seeking relief under CPR 3.10 and/or CPR 3.1(2) and requesting that the claim be treated as issued on 27 March 2025 or to permit retrospective issue.

The Claim Form was sealed and issued by the Court on 8 April 2025 and C's application listed for hearing. At the hearing C's counsel raised a new argument that it had not been intended to include a claim for an injunction in the Particulars of Claim and, therefore, the correct fee had been paid and/or relief from sanctions should be granted pursuant to CPR 3.9.

The Judge hearing the application held that the court fee paid was correct. The root of the issue was that C had filed Particulars of Claim at the same time as the Claim Form which were not checked for accuracy. The Judge concluded that, on a factual basis, the claim was brought on 27 March 2025. The Claim Form and court fee were correct. In relation to relief from sanctions, the error was the incorrect inclusion of injunctive relief in the Particulars of Claim and C's application for backdating should be allowed to reflect the factual reality that the claim was brought in time. The Defendants ('D') appealed.

Upon appeal C put their case in a different way and by the time of the appeal hearing before the Court of Appeal the real issue had become whether a failure to pay the correct fee at the time the Claim Form was received in the court office meant that the action had not been 'brought' on that date for the purposes of the Limitation Act 1980. There was also an issue as to whether the court office was right to calculate the fee on the basis of relief claimed in the Particulars of Claim, but not in the Claim Form, when the documents were filed together and intended to be served together.

The Court confirmed that the court has no jurisdiction to backdate the date on which a claim is 'issued', which is what C had applied for. However, the date of issue was immaterial. For limitation purposes, the key date is the date when the action is 'brought'. The court has no jurisdiction to change the date on which an action is brought either. That date depends on what is required to 'bring' an action.

CASE UPDATES

The Court of Appeal concluded that the Judge's findings of fact were plainly wrong. C had always intended to seek an injunction. The Court was satisfied that the underpayment of the court fee was not deliberate. C's solicitor was in a rush to file the documents before limitation expired and paid a fee based only on what appeared in the Claim Form.

Where Particulars of Claim are filed with the Claim Form, and intended to be read with it, fees are based on what is claimed in the Claim Form and the Particulars of Claim. The court office was correct to require the extra fee and entitled to reject the filing and require re-filing with the correct fee. Pursuant to paragraph 5.4(6) of PD 51O, as it then appeared, which applied to the use of CE-File, as the submission failed 'acceptance', the Claim Form was deemed not to have been issued at the time of payment of the original fee.

However, as to when the proceedings were 'brought', which was the relevant issue for the purposes of limitation, the Court rejected the position taken in some of the relevant case law that there was a legal test requiring the Court to examine whether the Claimant had done all within their power to bring the proceedings. There was no principle to that effect. The question of when an action is brought for the purposes of the Limitation Act 1980 is a matter of substance, not form, and does not turn on the interpretation of the rules of civil procedure and the practice directions. The statute is concerned with action on the part of the claimant. Legal certainty is required, a bright line which is readily identifiable in all cases. What has to be brought within the limitation period is 'an action', in this case an action for defamation. An 'action' means a claim for relief from the court. The document which initiates the action is the Claim Form. In this case C's solicitor had electronically delivered to the court office a Claim Form expressly stating that the action was brought for slander, libel and malicious falsehood, identifying the Defendants and claiming damages. That was correct. The correct fee for a money claim had been paid. The fact C was also seeking injunctive relief in the Particulars of Claim and had failed to pay a further fee for that additional non-monetary remedy did not mean that C had not done all that was necessary and sufficient to commence an action for the causes of action. Failure to pay the full court fee when an otherwise proper Claim Form is delivered to the court office before the end of the limitation period cannot mean that the action is not 'brought' in time.

The Court held that an action is brought when the Claim Form is first delivered to the court office, even if the office legitimately refuses to issue it (or, if filed electronically, it fails acceptance) because the whole of the appropriate fee has not been paid. If a fee is proffered or paid (as it must be in order for the documents to be filed electronically) or a help with fees form is lodged, the action will be brought when the Claim Form is received in the court office. The Court was not addressed on the situation in which no fee is paid or proffered and there is no application for fee remission and preferred to leave consideration of that scenario to a case in which it directly arose.

Accordingly, in this case, C's action was brought on 27 March 2025, within the limitation period. Whilst D's appeal was successful in that the backdating order was set aside, no further order was necessary as the decision of the Court was that C's claim was not time-barred.

CASE UPDATES

RTA Protocol - Allocation to Multi Track - Late Acceptance of Part 36 Offer

Attersley v UK Insurance Limited
[2026] EWCA Civ 217

The first appeal decision in this case was reported on within the April 2025 edition of the Dolmans' Insurance Bulletin.

By way of recap of the facts, the Claimant ('C') claimed damages for personal injury following a road traffic accident. C's claim commenced in March 2018 under the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents ('the RTA Protocol'). Liability was initially disputed. The claim exited the RTA Protocol in April 2018. In April 2019 the Defendant ('D') admitted liability. C issued proceedings in February 2021 claiming damages up to £150,000. On 4 March 2021 D filed a defence admitting liability and made a Part 36 offer of £45,000. In January 2022 the claim was allocated to the Multi Track. In May 2022 D applied to amend its Defence to allege fundamental dishonesty related to quantum. The application was due to be heard in August 2022, but before this occurred C accepted D's Part 36 offer on 8 July 2022.

At a hearing to determine the costs consequences of C's late acceptance of the offer, C submitted they were entitled to costs assessed on the standard basis in accordance with CPR 45.29B (in force at the time); D submitted C was only entitled to fixed costs pursuant to CPR 36.20 (as then in force).

CPR 45.29B was amended following the decision in *Qader v Esure Services Ltd [2016]* to exclude cases started under the RTA Protocol from fixed costs once they are allocated to the Multi Track.

CPR 36.20 applied to claims which no longer continued under the RTA Protocol. CPR 36.20(4) provided that where a defendant's Part 36 offer was accepted after the relevant period, the claimant would be entitled to the relevant fixed costs for the stage applicable at the date on which the relevant period expired.

It was common ground that if C had accepted the Part 36 offer within the relevant period they would only have been entitled to fixed costs. The issue was whether the dicta in *Qader* and the subsequent amendment of CPR 45.29B had the effect of disapplying CPR 36.20.

At first instance it was held that fixed costs applied. On appeal it was held C was entitled to their costs to be assessed on the standard basis up to the end of the relevant period in accordance with CPR 36.13. D appealed to the Court of Appeal.

The Court of Appeal held that the first appeal Judge had misinterpreted the rules. The Judge had decided that the effect of CPR 45.2B was to disapply the fixed costs regime altogether where an ex-protocol claim had been allocated to the Multi Track, so that Section IIIA of Part 45 ceased to apply. The Court of Appeal disagreed, holding that, in a case where on the date on which the relevant period contained in a Part 36 offer expires the claim still falls within the scope of Section IIIA, the consequences of acceptance of the offer are governed by CPR 36.20 rather than CPR 36.13, even in a case which is subsequently allocated to the Multi Track.

The Court considered that was a workable and straightforward interpretation of CPR 36.20. The wording of CPR 45.29B which provides for the application of fixed costs '*for so long as the case is not allocated the Multi Track',* did not require that, where a case is allocated to the Multi Track, it be treated for all purposes as if it had never, at the previous stages, fallen within Section IIIA of Part 45. There is no blanket rule that allocation to the Multi Track disapplies the fixed costs regime in Section IIIA retrospectively and for all purposes. Accordingly, allocation of the case to the Multi Track after the end of the relevant period of a Part 36 offer does not operate to remove the case from the scope of CPR 36.20.

The Court concluded there was, thus, no conflict between CPR 36.20 and CPR 45.29B and no basis for reading CPR 45.29B as excluding the application of CPR36.20. However, if there were a conflict, the more general rules in Part 45 must be read as yielding to the more specific rule in CPR 36.20.

Accordingly, D's appeal was allowed. The first instance decision that CPR 36.20 applied was restored, such that C was entitled to the relevant fixed costs for the stage applicable at the date on which the relevant period expired.

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

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- Display Screen Regulations – duties on employers
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- Employers' liability claims – investigation for managers and supervisors
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- Flooding and drainage – duties and powers of Highway Authorities for drainage and flooding under the Highways Act 1980. Consideration of case law relating to the civil liabilities of the Highway Authority in respect of highway waters
- Highways training
- Housing disrepair claims
- Industrial disease for Defendants
- The Jackson Reforms (to include : costs budgeting; disclosure of funding arrangements; disclosure of medical records; non party costs orders; part 36/Calderbank offers; qualified one way costs shifting (QWOCS); strikeout/fundamental dishonesty/fraud; 10% increase in General Damages)
- Liability of Local Education Authority for accidents involving children
- Ministry of Justice reforms
- Pre-action protocol in relation to occupational disease claims – overview and tactics
- Public liability claims update

If you would like any further information in relation to any of our training seminars, or wish to have an informal chat regarding any of the above, please contact our Training Partner:

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