DOLMANS INSURANCE BULLETIN

Welcome to the September 2026 edition of the Dolmans Insurance Bulletin

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Steps, schools and the Occupiers' Liability Act 1957

SH v Vale of Glamorgan Council

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If there are any items you would like us to examine, or if you would like to include a comment on these pages, please e-mail the editor:

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REPORT ON

Steps, Schools and the Occupiers' Liability Act 1957

SH v Vale of Glamorgan Council

Steps in pathways can pose particular hazards to pedestrians, particularly when these pedestrians fail to pay adequate attention to their surroundings and any control measures that might be present.

This was considered in the case of *SH v Vale of Glamorgan Council*, in which Dolmans represented the Defendant Local Authority.

As the Claimant's alleged accident occurred in school grounds, the Trial Judge in the said matter had to pay particular attention to the circumstances and control measures in place.

Background and Allegations

The Claimant alleged that she was visiting the Defendant Local Authority's school to collect her unwell grandson early therefrom and that she was directed to leave the school building via a fire exit from the classroom where the Claimant's grandson was situated.

As the Claimant was leaving the classroom with her grandson, she fell down a step located at the end of an external pathway leading from the fire exit door to the school grounds. As a result, the Claimant allegedly sustained personal injuries.

It was pleaded that the Claimant's alleged accident was caused by the Defendant Local Authority's negligence and/or breach of Section 2 of the Occupiers' Liability Act 1957.

The mechanism of the Claimant's alleged accident was not challenged, but it was argued on behalf of the Defendant Local Authority that the relevant exit and step were not dangerous and that there had been no breach of duty on the Defendant Local Authority's part. It was also argued that the Defendant Local Authority was not negligent and that the Claimant was not paying attention at the time of her alleged accident.

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Claimant's Evidence and Cross-Examination

The Claimant gave evidence that she did not see the step and was not expecting there to be a step at the end of the pathway. It appeared that the edge of the step had previously been painted, but that the paint had faded over time.

The Claimant advised, again under cross-examination, that she was concentrating on her grandson at the time of her alleged accident.

There were handrails either side of the pathway and tactile paving present, but the Claimant stated that she did not notice these features. It was also apparent from photographic evidence that there was a distinct difference in coloured tones between the surface of the pathway and the ground at the base of the step, but again the Claimant did not notice the same.

The Claimant admitted, under cross-examination, that the school was otherwise generally safe.

Defendant Local Authority's Evidence

A representative from the Defendant Local Authority's Health & Safety Department and the school's Head Teacher gave evidence on behalf of the Defendant Local Authority.

The school, including the location of the Claimant's alleged accident, was inspected and monitored daily. There were no issues, hazards and/or defects noted at the location of the Claimant's alleged accident during the daily inspection on the day of the Claimant's alleged accident.

The location of the Claimant's alleged accident, being a fire exit, was also subject to fire drills each term. These involved pupils and no issues or incidents were reported during any pre-accident fire drills.

There was also a reactive system of inspection and maintenance in place. The Defendant Local Authority had no record of any similar complaints and/or accidents relating to the location of the Claimant's alleged accident during the 12 month period prior to the date of the same.

Various control measures were provided to assist persons at the location of the Claimant's alleged accident, including handrails and tactile paving as referred to above. It was argued, therefore, that these, along with the different coloured tones of the surfaces as also referred to above, were sufficient control measures and that there was no need to paint the edge of the step anyway.

It was argued that the Defendant Local Authority took all reasonable care to ensure that pupils and other visitors to the school were reasonably safe.

The Claimant argued that other steps in the school grounds were edged with yellow strips, not painted.

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The Defendant Local Authority responded that the step at the location of the Claimant's alleged accident was originally painted as a precautionary measure for visually impaired pupils previously attending the school. It appeared, however, that there were no visually impaired pupils at the school at the time of the Claimant's alleged accident and the step would not normally have been used by visitors to the school, unlike the other flights of steps referred to by the Claimant at the entrances to the school grounds which were in regular use and were, therefore, edged with yellow nosing strips.

The step at the location of the Claimant's alleged accident was at a fire exit that was not used regularly; the Claimant having used the same on the day of her alleged accident to take her unwell grandson home without having to walk through the whole school.

Submissions

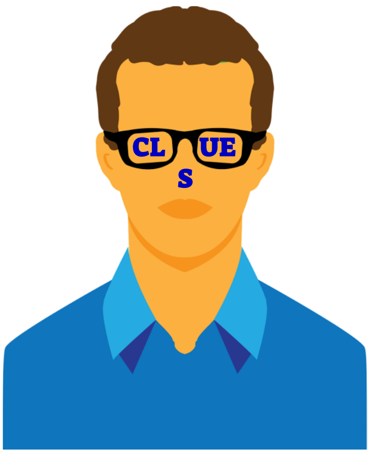
Counsel for the Claimant argued that the relevant step posed a real source of danger to visitors to the school.

It was agued that the painted edge of the step had faded and that a yellow nosing strip should have been utilised, as on other steps in the school grounds. It was further argued that there was a reasonable expectation that all steps within the school grounds were edged yellow and that the Defendant Local Authority had breached its duty of care.

The defence argued that the step did not pose a real source of danger.

Although this was not a highways matter, the defence cross-referenced the Court of Appeal decision in *Dean and Chapter of Rochester Cathedral v Debell (2016) EWCA Civ 1094*, where it was argued that it was not enough for the Court to find that the defect posed a foreseeable risk to users of the highway in that particular matter. The risk must be such as to create a real source of danger, borrowing the language of Dillon LJ in *Mills v Barnsley MBC [1992] 1 P.I.Q.R. 291*.

It was argued, therefore, that the assessment of dangerousness must also take into account the nature of the location of the Claimant's alleged accident and that the relevant step was something that everyday pedestrians might face, being an unremarkable scene.



There were appropriate control measures in place, including handrails and tactile paving. It was argued, therefore, that there were a number of visual clues which would have warned the Claimant, had she been paying attention at the time of her alleged accident.

It was argued that the relevant step was not unusual, being an everyday type of risk and not a real source of danger. The step was not part of a flight of steps, was not located at or near a main entrance and did not, therefore, require yellow nosing strips. The said step and fire exit were not used regularly and there had been no previous complaints and/or accidents regarding the same. It was argued that the Defendant Local Authority had a reasonable system in place and that, accordingly, there had been no breach of duty.

Judgment

The Trial Judge also referenced the Court of Appeal's decision in *Dean and Chapter of Rochester Cathedral v Debell (2016)*, as had been previously cited on behalf of the Defendant Local Authority.

The Trial Judge accepted the adequacy of the Defendant Local Authority's various control measures and safety features, particularly the handrails and tactile paving. In addition, it was accepted that there were different coloured tones between the surfaces of the pathway and ground at the base of the step.

As such, the Trial Judge found that the Claimant was not looking where she was going and failed to make use of any of the safety features present, or even to have noticed the same.

In dismissing the Claimant's claim, the Trial Judge held that the exit and step were not dangerous and that the step was not a foreseeable hazard.

Comment

The Trial Judge gave careful consideration to the circumstances and background to the Claimant's alleged accident, in addition to the Defendant Local Authority's arguments regarding the various control measures in place and reasons for there being no need for any yellow nosing strip or paint on the edge of the particular step.

Having taken account of all aspects, including relatively little use of the exit, the Trial Judge was satisfied that this particular step was not a foreseeable hazard and that the control measures already in place were adequate.

Any cases involving steps will, of course, be decided upon their own facts. The decision in the above matter illustrates, however, that with focused witness evidence and robust supportive arguments, successful outcomes are possible even where steps are located in schools.

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CASE UPDATES

Damages - Young Children - Lost Years - Accommodation

JBX v Frimley Health NHS Foundation Trust
[2026] EWHC 2294 (KB)

In the February edition of Dolmans' Insurance Bulletin, we reported on the Supreme Court's decision in *CCC v Sheffield Teaching Hospitals NHS Foundation Trust* in which it was held that 'lost years damages' can be recovered in cases where the claimant is a young child. This High Court judgment provides a useful illustration of how the courts may approach the application of such claims.

This was a clinical negligence claim in which liability and causation were admitted. The Court was required to determine two heads of loss, future care and accommodation and the Claimant's lost years income.

As a result of the Trust's admitted negligent hospital treatment, the Claimant, at the age of 8, stopped breathing, suffered a cardiac arrest and, as a result, a hypoxic brain injury. At the time of the hearing, the Claimant was age 17 and living in a residential rehabilitation centre for severely disabled children, where he could remain until he reached age 19. The parties were agreed that the Claimant's life expectancy was now 25½ years. The Trust admitted that had the Claimant received appropriate treatment, he would have led a fully independent adult life.

Future Care and Accommodation

For the purposes of the hearing, the parties had agreed quantum on seven different potential scenarios. The Claimant's preferred option was to live in his own home with care provided by Libertatem care agency 24 hours a day, seven days a week and on a two-to-one basis. The Claimant submitted that the test was whether the sought for regime was reasonable, not whether it was in the Claimant's best interests.

The Trust's preferred option was for the Claimant to live in a neuro-rehabilitation unit with an in-house package of therapies. Their position was that the Claimant had not shown that the home-based model was safe and, therefore, reasonable to meet his complex condition and needs. For that reason, the reasonable course was for the Claimant to live at an adult neuro-rehabilitation unit.

The Judge confirmed that the issue was whether the treatment chosen and claimed for by the Claimant was reasonable. In considering this, the first question was whether the Claimant would incur the costs of buying and adapting a home and setting up a Libertatem operated care arrangement. The second question was whether this option was reasonable.

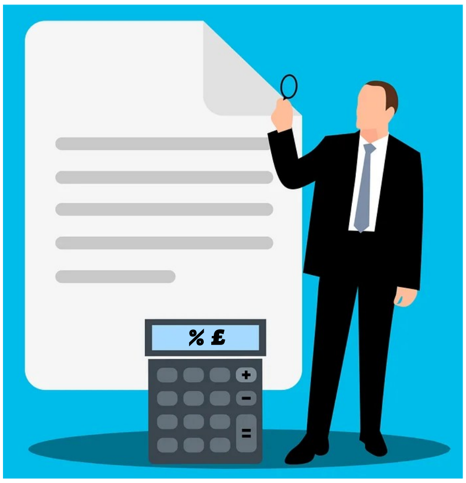
On the first question, the Judge had no doubts that the Claimant's parents' reservations about residential care were sincere and was satisfied that, if enough money was available, a house would be bought and adapted for the Claimant and appropriate care arrangements put in place.

As to whether this option was reasonable, on the expert evidence the Claimant's clinical needs were and would remain profound and complex. On the evidence, the Judge was not satisfied that the proposed domiciliary option would be able to respond effectively to a medical crisis or would provide adequate support for the Claimant's profound and challenging clinical needs. The Judge concluded that the Claimant had not established that his preferred option would meet his reasonable needs.

Accordingly, damages were awarded on the basis of the Trust’s preferred option for the Claimant to live in a neuro-rehabilitation unit with an in-house package of therapies.

Lost Years Income

The Claimant sought damages for his loss of earnings and pension in the ‘lost years’, the period between the date of his expected death (agreed as 25½ years of age) and the date of his death had he not been injured (normal life expectancy).



To determine this required, first, an assessment of the Claimant's likely annual income over his lifetime (net of tax and National Insurance); secondly, calculation of the multiplicand by making an assessment of the percentage of the Claimant's income which he would have spent on his personal living expenses and deduct that from the net income figure; and finally, application of a multiplier from the Ogden tables which is discounted to reflect early receipt.

- **Likely Annual Income**:

The Claimant relied on Lord Reed's judgment in *CCC* to the effect that if there is no evidence of a claimant's likely earnings, the court may have to rely on average earnings figures from the Annual Survey of Hours and Earnings ("ASHE"). However, a claimant may contend that they would have earned more than average earnings by relying upon educational achievements; their family's educational and occupational achievements, and their geographical situation (whether the family lives in an area of high employment or unemployment).

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Reliance was placed on the Claimant's father's career as a sales manager in a large international IT company in the city and his brother's hopes to secure a position in sales in due course. The Claimant's father's annual gross earnings in the last 3 years ranged from c. £160,000 to £221,0000. His father and grandfather had also both worked in sales. It was submitted that the Claimant would have followed in his father's family's footsteps and followed a career in sales, eventually achieving the same salary as his father.

Further, the Claimant's case assumed that he would have retired at the age of 70 because the statutory retirement age was likely to have increased by 2079.

The Trust's position was that it was appropriate to apply average figures rather than the Claimant's father's earnings which, in any event, were unsupported by the evidence. Further, the Trust's calculation assumed the pension age would be 68.

The Judge noted that as the Claimant was only 8 years old when he sustained his catastrophic injury, for obvious reasons, there was no evidence about his pre-injury thinking about his future career preferences or much meaningful evidence of his likely pre-injury earning capacity. Whilst the Claimant's father may have wanted the Claimant to continue the longstanding family tradition of a career in sales, the Claimant's brother had not done so thus far. On the limited evidence available in this case, the Judge was not satisfied that there was enough to allow him safely to assess the Claimant's likely earnings on the basis of his father's career in sales. In the circumstances, the Claimant's likely loss should be assessed on the basis of the most recent ASHE data on net average salaries.

However, the Judge preferred the Claimant's position that calculations should proceed on the basis of a retirement age of 70.

- **Living Expenses**:

The Claimant submitted that a conventional average discount over a lifetime of 50% has been made by the courts.

The Trust disagreed, submitting that there was no conventional approach to the discount in child claims because they were not allowed before the *CCC* decision. Relying upon comments by Lord Burrows and Lord Stephens in *CCC*, the Trust contended that the discount may be (a) high to reflect the degree of uncertainty involved and (b) rough and ready (but not arbitrary), and caution should be applied against using a simple or conventional discount. The Trust argued that a discount of 90% was appropriate given that the Claimant's future career was highly speculative and the likely higher living expenses in the South-East of England.

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On the facts of this case, the Judge considered that relevant factors included that it was reasonable to suppose that the Claimant would have remained in the South-East of England and, in the area where his mother lived, the unemployment rate is lower than the national average. Even allowing for the novel nature of the exercise in child claims, the Trust's proposed discount of 90% was out of kilter with the general range of discounts applied in recent years. The Judge concluded that the appropriate discount was 50%.

On the basis of the Judge's findings, the parties were to reach agreement on the multiplier following the handing down of judgment.

Employers' Liability - Vicarious Liability - TUPE - Transfer of Liabilities in Tort

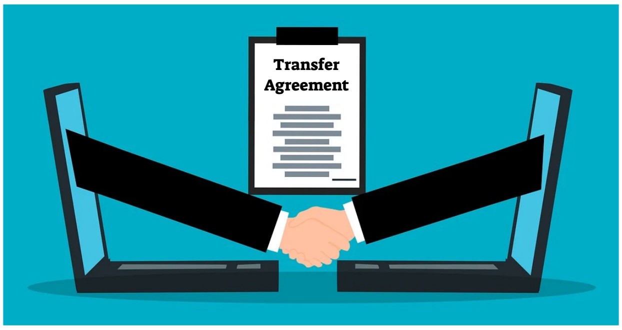
ABC v Huntercombe
[2026] EWCA Civ 1161

The Court of Appeal has confirmed that an employer's vicarious liability to a third party for the alleged torts of its employees does not transfer to a new employer under the Transfer of Undertakings (Protection of Employment) Regulations 2006 ("TUPE"). The decision provides important clarity on the scope of Regulation 4(2)(a).

Background

This claim was the first of a group of claims brought by dozens of patients who were minors when they were detained at hospitals operated by the Huntercombe Group ("Huntercombe"). ABC was a patient at Huntercombe Hospital, a privately run psychiatric facility owned and operated by Huntercombe. ABC alleged that, during a 4 month period at the hospital in 2018/2019, she was mentally and verbally abused by staff and restrained on over 200 occasions.

The hospitals operated by Huntercombe were transferred to AYP in March 2021 under the terms of a transfer agreement, with existing members of staff being transferred to AYP under the TUPE Regulations. Under the terms of the transfer agreement, Huntercombe agreed to indemnify AYP in relation to any liabilities relating to the period prior to the transfer agreement. All relevant events giving rise to ABC's claim occurred before the transfer.



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ABC initially intimated their claim against Huntercombe only. They subsequently amended their Particulars of Claim, when it was discovered that Huntercombe was in liquidation, to allege that AYP was liable for all torts carried out in the pre-transfer period by clinicians and other members of staff whose employment subsequently transferred from Huntercombe to AYP.

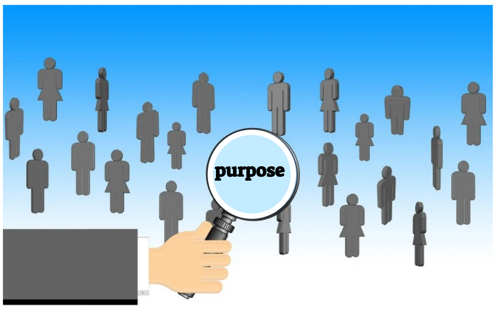
A trial took place in April 2025, when it was held that the TUPE Regulations did not have the effect of transferring liability to AYP ([2025] EWHC 1000 (KB)). ABC appealed the decision.

The appeal turned on regulation 4 of the TUPE Regulations, which provides that when a relevant TUPE transfer of an employment contract occurs "*all the transferor's rights, powers, duties and liabilities under or in connection with any such contract shall be transferred by virtue of this regulation to the transferee".* It has long been established that this regulation serves to transfer a liability in tort which a transferor employer has to a transferring employee. In *Bernadone v Pall Mall Services Group [2001] ICR 197*, the Court of Appeal held that a liability owed by an employer to an employee in tort was a liability which arose "in connection with" an employment contract. As a result, the new transferee employer was liable to the employee instead of the former employer.

ABC argued that the regulation also applied to public liabilities which an employer owed to non-employee third parties. ABC contended that the liability which Huntercombe had to them was also a liability arising "in connection with" an employment contract. Huntercombe was only liable for the events which had occurred because of the doctrine of vicarious liability; a doctrine which explicitly required a close connection between the act in question and the contract of employment. ABC submitted that the natural and ordinary meaning of the words of the regulation would result in liability transferring and that the Court should give effect to this meaning.

Judgment

The Court of Appeal unanimously dismissed ABC's appeal.



Lord Justice Coulson, delivering the leading judgment, determined that when interpreting regulations intended to implement a European Directive, the correct starting point for the process of construction is to focus on the purpose of the Directive rather than the words of the regulations (*Schulte v Deutsche Bausparkasse Badenia AG [2003] All ER (EC) 420; Swift v Robertson [2014] UK SC 50*). Once that purpose is identified, the court must strive to give it effect and is not constrained by the conventional rules of construction or by the literal words used in the regulation under consideration. The primary purpose of the Acquired Rights Directive in this case was the safeguarding of employee rights in the event of a change of employer.

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It was held:

- Given the purpose of the Directive, regulation 4(2)(a) does not extend to liabilities owed by the transferor to third parties. It was conceded that an employee has no relevant right against the transferor in respect of the transferor's vicarious liability to a third party claimant. Vicarious liability is a "secondary liability, parasitic always on the direct liability of the employee to the third party" – a legal construct to enable a claimant to recover against a better funded employer, rather than a right belonging to any employee.

- Vicarious liability provides no “protection” to the employee. The Court rejected the argument that vicarious liability protects employees in a practical sense. “*An employee is not entitled to expect his employer to bear the brunt of any claim brought by a claimant arising out of his or her acts and omissions*”.

- The phrase “in connection with” had to be interpreted in light of the purpose of the Directive. What constituted a relevant connection for the purpose of the regulation depended on whether there was a relevant right on the part of the employee under his employment contract. In this case, there was not.

- Regulation 4 fell to be construed in the context of the regulations as a whole. Regulation 11 sets out detailed provisions as to the information on existing and potential claims by employees which a transferor is obliged to provide to a transferee. By contrast, there is nothing in the regulations addressing claims made by third parties. If Parliament had intended that liabilities for such third party claims was to transfer, then it would have implemented similar provisions relating to the passing of information in third party claims, so as to protect the transferee. The entire focus of the regulations is on employees' enforceable rights, rather than the rights of third parties.

- More generally, it was counterintuitive to conclude that the regulations would enable a third party to pursue a transferee in relation to events about which the transferee knew nothing and in relation to which the transferee had no involvement or control. There was no clear wording in the regulation authorising this departure from ordinary principle and no policy grounds which could justify such an arbitrary outcome.

The Court reviewed the existing case law and found it to be entirely consistent with its analysis. It was notable that in the more than 40 years since the introduction of the TUPE Regulations, no authority (other than *Doane v Wimbledon Football Club [2007] WL UK 2*) had ever suggested that they had the effect which ABC contended for. If ABC's position was correct, one would have expected the courts to have reached this outcome previously.

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Highway Authorities' Powers and Duties - Cycle Tracks - Duty of Care

Transport for London v (1) Cairn Young (2) Egon Upitis [2026] EWCA Civ 1095

This appeal concerned two County Court personal injury actions arising out of cycling accidents on a section of cycle track which formed part of 'Cycle Superhighway 6'; a cycle route which was constructed by Transport for London. The accidents occurred some months apart, but in similar circumstances. Each Respondent was an experienced cyclist who collided with a raised kerb which separated the carriageway from the cycle track because they mistook the kerb for a white line on the road and did not notice that the cycle tack was raised above the height of the carriageway.

The two claims were tried together and the Respondents succeeded on the basis that Transport for London had created a reasonably foreseeable risk of injury and could have taken measures to mitigate the risk. The Court was told how confusion over the stepped cycle track and different carriageway heights in the road had perplexed both riders at night so that the front wheel of each Respondent's bicycle struck the kerb, causing both to fall off and suffer injuries. The Judge found that the surface of the stepped track appeared very similar to the carriageway and that the kerb looked similar to a white road marking, and when approaching from one direction it would be easy to mistake it for a continuous white line. It was, therefore, reasonably foreseeable some cyclists would make that mistake.

Contributory negligence allegations succeeded against both Respondents of 70% and 65% respectively.

Transport for London appealed the finding of primary liability.

The Court of Appeal was required to address issues in relation to the nature and scope of the duty owed by a Highway Authority or road designer when it has created a feature on the highway; the obviousness of the hazard; the relevance of the risk only present to a negligent road user; and the extent to which the Judge was entitled to find breach of duty by reference to potential mitigating measures, in particular the possibility of installing a row of wands along the kerb.

The appeal was transferred to the Court of Appeal on the basis that it potentially involved legal issues of wider importance and consideration of a possible tension between Y*etkin v Mahmood & London Borough of Newham [2010] EWCA Civ 776; [2011] QB 827* and other authorities.

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Decision

The appeal was successful.

- **Duty of Care: Legal Framework**

The Court of Appeal held that there was no tension or inconsistency between *Gorringe v Calderdale MBC [2004] UKHL 15, [2004] 1 W.L.R. 1057, [2004] 4 WLUK 58* and *Yetkin v Mahmood [2010] EWCA Civ 776, [2011] Q.B. 827, [2010] 7 WLUK 383* because they addressed different situations.

The case authorities distinguished between two kinds of case:

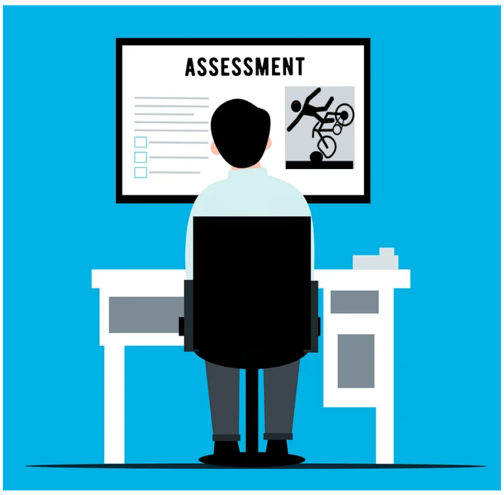
(i) Where the complaint was that the Highway Authority had failed to improve the highway, warn of an ordinary feature of it or exercise a statutory power to make the road safer, as illustrated in *Gorringe;* and

(ii) Where the Highway Authority, by a positive act, had created or materially contributed to a danger on the highway, as illustrated in *Yetkin*.

Gorringe rejected a general common law duty to improve the highway or warn of ordinary and obvious hazards arising from the highway as found, whereas *Yetkin* confirmed that, where the Highway Authority had created or materially contributed to the relevant hazard by a positive act, it might be liable if it failed to take reasonable care.

The Court of Appeal held it was important not to elide duty and breach. Even where a duty was owed because the Highway Authority had created the relevant feature, liability did not follow simply because injury was foreseeable. The duty was to take reasonable care, not to eliminate all foreseeable risk.

The Judge, therefore, had to decide whether the risk posed by the layout and features of the stepped cycle track was such that the Appellant was reasonably required to take additional steps to mitigate it. That called for an evaluative assessment, taking into account all relevant circumstances, including the magnitude of the risk, the gravity of possible injury, the social utility of the facility, any applicable standards and guidance, the professional judgement involved in the design, the history of accidents or complaints, and the cost, practicality and potential disadvantages of further precautions.



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- **Application to the Claimants' Claims**

The Judge's summary of the duty owed was correct; the Appellant owed a duty of reasonable care to all road users, including careless cyclists, in relation to reasonably foreseeable dangers arising from the design and construction of the cycle track; *Yetkin* applied.

The Judge's finding that a reasonably careful cyclist would have understood that the kerb was not a painted lane marking which could safely be crossed was significant; it meant that liability depended on whether reasonable care required the Appellant to take further steps to guard against a risk arising principally from inattentive or mistaken use.

The Court of Appeal held that the Judge had moved too quickly from foreseeability of harm, onto the availability of a further precaution, onto his finding of breach. He had not sufficiently explained why the risk – assessed against the high volume of use, the design purpose of the stepped cycle track, the applicable guidance, the prior audit consideration and the consequences of a barrier solution – made it unreasonable for the Appellant not to install wands. His treatment of the scale of the risk in proportion to the use of the route was limited; he had merely distinguished the facts of this case from those in *Tomlinson v Congleton BC [2003] UKHL 47, [2004] 1 A.C. 46, [2003] 7 WLUK 986* without engaging with the principle that degree of risk was a factor to be weighed separately from the potential seriousness of outcome; *Tomlinson* considered.

Accordingly, the Judge had erred that although the Appellant owed a duty of reasonable care, this did not require it to guard cyclists against every foreseeable risk arising from error or confusion. The exercise required should have been fact sensitive and evaluative.

The Court of Appeal ordered a fresh hearing before a different circuit judge (although the parties were encouraged to consider alternative dispute resolution). It was held that the case was not one which raised novel points of law or was likely to set a precedent for other claims. The claims were ordinary personal injury claims depending on the application of established principles to the facts and concerned the particular location where the Respondents' accidents had occurred only.

DOLMANS SOLICITORS

CASE UPDATES

Sexual Abuse - Vicarious Liability

TWG v The Scout Association
[2026] EWHC 2192 (KB)

Between 1966 and 1969, the Claimant was a member of a Scout group where 'G' was an Assistant Cub Scout Leader. G came to know the Claimant at the weekly Scout group meetings and, on a series of occasions, he followed the Claimant on his walk home and sexually assaulted him. At the time of the assaults, the Claimant was age 10. G was 7 years older. The Claimant brought a claim for damages for the assaults on the basis that the Defendant was vicariously liable for G's sexual assaults on him.

The Claimant reached age 18 in 1976. Proceedings were issued in March 2024. At the time the proceedings were issued, they were, therefore, c. 44 years out of time. A limitation defence was raised. At the hearing in March 2026, limitation remained a live issue and the Court was addressed on whether the section 33 limitation discretion should be exercised in favour of the Claimant.

However, following the conclusion of the evidence and submissions, but before judgment was handed down, the law changed with the coming into force of s.96 of the Crime and Policing Act 2026 removing the 3 year limitation period in England and Wales for civil personal injury claims attributable to child sexual abuse (reported on in the Focus On article of the August 2026 edition of Dolmans' Insurance Bulletin). Accordingly, the claim was no longer subject to the limitation regime which existed at the time of trial and the Claimant no longer required the Court to exercise the discretion formerly conferred by section 33. In supplementary submissions, the Defendant did not seek to contend that a fair hearing was impossible. Accordingly, any limitation issues fell away.

The Parties' Positions on Vicarious Liability

The Claimant's case as to vicarious liability was that G was only able to perpetrate repeated assaults as a result of his status as Assistant Leader in the Cub Scout pack and the relationship that he had formed with the Claimant at its meetings. Those meetings also afforded the opportunity for the assaults to take place.

The Defendant denied vicarious liability on the basis that there was no close connection between G's role as an Assistant Cub Scout Leader and the activities he was authorised to undertake on behalf of the Defendant and the circumstances of the assaults. The Defendant admitted that it was responsible for the Claimant's safety and welfare during his attendance at Scout activities, but denied this responsibility extended to his journeys to and from Scout activities or it was responsible for the travel arrangements of Cub Scouts attending meetings.

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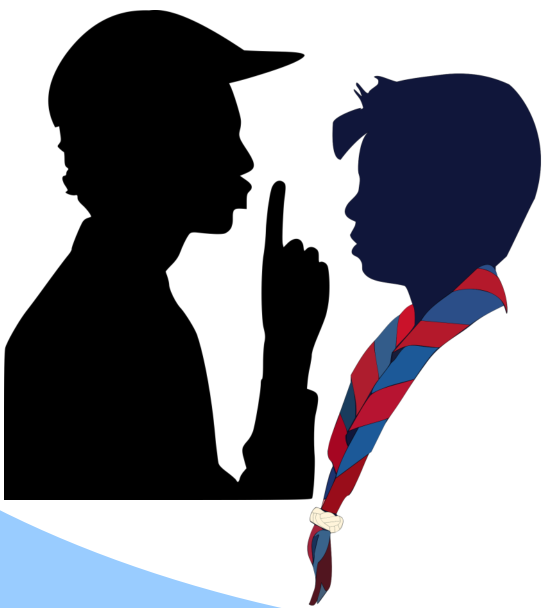
In considering vicarious liability, case law makes clear that the first stage is concerned with the nature of the relationship between the defendant and the wrongdoer. The second stage requires an evaluative assessment as to whether the tort was so closely connected with the acts which the tortfeasor was authorised, entrusted or expected to perform that it is fair and just to impose liability upon the defendant. The ultimate question remains whether the wrongdoing can fairly and properly be regarded as having been committed in the course of the relevant employment or quasi-employment.

In this case, the parties were agreed that the relationship between G and the Defendant satisfied the first stage of the analysis. The sole issue was whether the assaults were sufficiently closely connected with G's role as Assistant Cub Scout Leader to satisfy the second stage of the test.

The Defendant submitted that application of the test in *Trustees of the Barry Congregation of Jehovah's Witnesses v BXB [2023]* requires a close connection between the authorised activity of the tortfeasor and the commission of the tort which it is sought to make the defendant vicariously liable for. In this case, G was an Assistant Cub Scout Leader helping the Group Leader at the Cub Scout meetings. That did not include any pastoral role or any responsibility for the Claimant coming to or from the Scout hut. The assaults took place after the Scout meeting, away from the Scout hut and not during any activity which G was authorised to carry out as part of his role. At most, this was a case where attendance at the Scout group afforded an opportunity for the offending, but that was insufficient to establish vicarious liability. G's role merely created the opportunity to encounter the Claimant and the relevant assaults occurred only after the scouting activities had concluded and whilst the Claimant was making his way home.



The Claimant submitted that this was not a case in which the tortfeasor merely encountered the Claimant through scouting and thereafter embarked upon a wholly separate course of conduct unconnected with his authorised role. Rather, G's position as Assistant Cub Scout Leader provided him with authority over the Claimant, entrusted him with responsibility for children within the Cub Scout movement and enabled him to establish the relationship of trust and confidence which made the initial abuse possible and gave him the power and opportunity to continue it whilst intimidating the Claimant into not divulging that he had been assaulted. The fact that he did not do so was an indication of the fact that he had been selected as a compliant victim which itself depended upon the contact and knowledge which G acquired from his position in the Scout group.

CASE UPDATES

The Judge's Findings

The Judge noted that authorities have emphasised that in cases involving the sexual abuse of children, particular significance commonly attaches to the conferral of authority, trust, responsibility and power over the victim. The authorities, therefore, focus not merely upon where or when the abuse occurred, but upon the relationship which enabled it to take place.

On the facts of this case, the Claimant was known to G because he was a Cub Scout under his supervision. G occupied a position of trust and authority by virtue of his role as Assistant Cub Scout Leader. It was a that role which enabled him to form the relevant relationship with the Claimant, to gain his confidence, to acquire knowledge of his circumstances and movements, and ultimately to obtain access to him. The Judge accepted the Claimant's evidence that G used that position on the first occasion to present himself as a trusted adult who would ensure that the Claimant got home safely after the meeting.

The assaults were not isolated or spontaneous acts. They occurred repeatedly over a period of time. The opportunity for each assault arose directly from a relationship that had been established and nurtured through G's role within the Scout movement. The Claimant was targeted because he was a child over whom G exercised the authority and influence which that role conferred. The abuse was, therefore, an abuse of the very position with which G had been entrusted.

Whilst the assaults did not occur at Cub Scout meetings or on Scout premises, that was not determinative. The critical question was whether the wrongdoing was sufficiently closely connected with the functions entrusted to the tortfeasor. Here the relevant chain of events began at Cub Scout meetings, arose from the relationship established there and depended upon the authority, trust and opportunity that G derived from his role as Assistant Cub Scout Leader. As a matter of fact, the assaults only occurred within close proximity to the Scout hut, after Scout meetings and within minutes of the Claimant making his way home.

Accordingly, the Judge concluded that the connection between the abuse and G's authorised role was sufficiently close to satisfy stage 2 of the vicarious liability test. The abuse represented a misuse of the authority, trust and opportunity entrusted to G by the Defendant, and the Defendant was found vicariously liable.

The Judge went on to assess damages in the total sum of £95,500.

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

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