DOLMANS INSURANCE BULLETIN

Welcome to the June 2019 edition of the Dolmans Insurance Bulletin

In this issue we cover:

REPORT ON

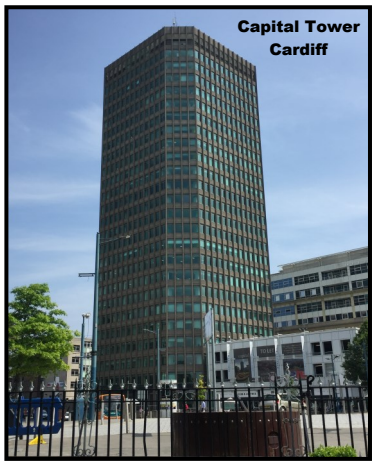
- Design features - failing to maintain the highway? - *Darren Lewis v Pembrokeshire County Council*

FOCUS ON

- Where are we now in 'failure to remove' claims: - *Poole Borough Council v GN & Another [2019] UKSC 25*

RECENT CASE UPDATE

- Child sexual abuse - part 36 offers - interest
- Civil procedure - CPR
- Civil procedure - service - relief from sanctions
- Insurance - road traffic - private land - EU directives



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**

DOLMANS SOLICITORS

DOLMANS REPORT ON

DESIGN FEATURES - FAILING TO MAINTAIN THE HIGHWAY?

Darren Lewis v Pembrokeshire County Council

There are many highways throughout the country that incorporate 'design features'. Claimants are often quick to argue that these 'design features' can constitute defects caused by a failure to maintain the highway and that, as a result, Highway Authorities are in breach of Section 41 of the Highways Act 1980.

Such arguments were successfully defeated by Dolmans on behalf of the Defendant Authority in the case of *Darren Lewis v Pembrokeshire County Council* which was heard recently in the Swindon County Court.

Background

The Claimant alleged that he was taking part in a 112 mile bicycle race in Tenby when he fell off his bicycle whilst overtaking other cyclists in the race, causing him to suffer personal injuries.

The Claimant's pleaded case on the facts was somewhat vague and did not specify the exact defect that had allegedly caused the accident; reference being made within the proceedings to a groove in the carriageway and/or a pothole as being the relevant cause.

The Claimant alleged that the groove constituted a dangerous defect, that the Defendant Authority had failed to maintain the carriageway and was, therefore, in breach of Section 41 of the 1980 Act. It was also alleged that the Defendant Authority was negligent.

Factual Causation

As usual, the Claimant had to initially prove that his accident had occurred in the circumstances alleged and the precise cause of his alleged accident.

Although it was accepted that the Claimant had suffered an injury when he fell from his bicycle during the event, the Defendant Authority reiterated that the Claimant was obliged to prove the precise cause of the incident, particularly given the vagueness of the Claimant's pleaded case.

The Claimant's Claim Notification Form was as vague as his pleadings; as were the Claimant's contemporaneous ambulance records. In giving oral evidence at Trial, the Claimant attempted to clarify the circumstances of his alleged accident, stating that a groove in the carriageway locked the wheels of his bicycle and a pothole then caused his front wheel to turn, causing him to fall to the ground. The Claimant averred that the groove led directly into the pothole.

Prior to exchange of Witness Statements, the Claimant had given various accounts that were similar, but not exactly as proffered through his witness evidence. All of these accounts made reference to the alleged groove and/or pothole as being causative to varying degrees.

Breach of Duty

The Defendant Authority maintained that there was no freestanding duty in common law to maintain the highway and that its duty arose pursuant to the statutory regime only. It was argued that the only exception to this might arise where a Highway Authority created a hazard positively (ie – misfeasance), although this did not apply in this case.

Given that the Claimant's allegations that the groove and/or pothole had caused his alleged accident, it was incumbent upon the Defendant Authority to address any potential breach of duty in both scenarios. The Defendant Authority was able to do this with the assistance of written and oral witness evidence by its Highways Inspector and Highway Maintenance Manager.

The Alleged Groove

The carriageway where the Claimant's alleged accident occurred was constructed in the 1950/1960s from concrete slabs at a crossing point for military vehicles. The gaps between the slabs and the groove were necessary expansion joints forming part of the design. The Defendant Authority argued, therefore, that the groove was not a defect and did not arise from a failure to maintain the highway.

The Trial Judge was referred to the Court of Appeal decision in *Thompson v Hampshire County Council [2004] EWCA Civ 1016*, where Rix LJ made clear that under Section 41 of the 1980 Act, the Highway Authority was not responsible for the highway layout and does not owe a duty under Section 41 to improve the highway.

The Defendant Authority submitted, therefore, that the claim must fail in law if the Court accepted that the cause of the Claimant's alleged accident was the groove/expansion joint.

The Claimant had adduced some relatively poor quality photographs of the location, which did not include any measurements of the depth of the groove, but did show the width of the groove. Although there were some 5,000 participants in the cycle race, there was no evidence of any other incident on this particular stretch of the carriageway.

The Highways Inspector had inspected the carriageway the day before the event and the event organisers had risk assessed the route; with neither having noted any defects and/or potential hazards at the time. In addition, there were no records of any similar accidents and/or complaints at that location during the 12 month period prior to the date of the Claimant's alleged accident.

Hence, if the Court was minded to reject the Defendant Authority's initial submission and find that it did, in fact, owe a duty pursuant to Section 41 of the 1980 Act in relation to the groove, the Defendant Authority argued that the location was not dangerous and that the Claimant had failed to prove breach of any such duty in any event.

It was argued that the fact that the Claimant may have had an accident, caused in whole or part by the groove, was not evidence of breach of duty or dangerousness and that the Claimant was required to prove that the part of the highway that caused his accident was not reasonably safe; in the sense that in the ordinary course of human affairs, danger may reasonably have been anticipated from its continued use by the public. In this regard, the Defendant Authority relied upon the decisions in *Mills v Barnsley [1992] PIQR 291*, *James v Preseli [1993] PIQR 144* and *Hilliard v Surrey County Council [2018] EWHC 3156 (QB)*.

The Alleged Pothole

It was for the Claimant to prove that the alleged pothole constituted a defect that placed the Defendant Authority in breach of Section 41 of the 1980 Act. It was again submitted, however, that the Claimant's photographs of the alleged pothole, with a lack of appropriate measurements, offered little assistance as to whether this posed a foreseeable danger and the Court was reminded that no actionable defects were noted during the pre-accident inspections of the area.

Section 58 Defence

It was conceded that if the Claimant succeeded in proving a causative breach of Section 41 of the Act in respect of the groove and/or the pothole, then any Section 58 Defence would be likely to fail, particularly in light of the Highways Inspector's inspection the day before the event.

Judgment

The District Judge preferred the Defendant Authority's arguments, finding that there was no duty upon the Defendant to repair/close the groove/gap and that the Defendant Authority was not in breach of the Highways Act 1980 in this regard.

Although the District Judge found that the Claimant was a credible and honest witness, he had not done enough to convince the Judge that the alleged pothole (as opposed to the groove/gap) had caused his accident.

The District Judge, therefore, dismissed the Claimant's claim and ordered the Claimant to pay the Defendant's costs, although these were not to be enforced without permission of the Court as this was a QOCS matter.

Conclusion

By alleging that his accident was caused by the groove and/or the pothole, it could be argued that the Claimant may have been edging his bets; in the event that the Court found, as it did, that there was no breach of duty in relation to the groove, then he could argue in the alternative that the pothole constituted a defect and that there had been a failure to maintain the highway.

However, faced with a lack of evidence by the Claimant in support of this and compelling evidence adduced on behalf of the Defendant Authority, the Judge was not convinced that the pothole was causative in any event.

Tom Danter
Associate
Dolmans Solicitors

For further information regarding this article, please contact
Tom Danter at **tomd@dolmans.co.uk**
or visit our website at **www.dolmans.co.uk**

WHERE ARE WE NOW IN 'FAILURE TO REMOVE' CLAIMS?

Poole Borough Council v GN & Another [2019] UKSC 25

The Supreme Court finally delivered its Judgment in *Poole Borough Council v GN & Another* on 6 June 2019, unanimously dismissing the Claimants' appeal on the basis that the Particulars of Claim in the proceedings did not disclose any recognisable basis for a cause of action. However, the facts of this case were far removed from the typical 'failure to remove' type claim and it is, therefore, necessary to consider the Judgment in greater depth to understand its application more widely.

The Factual Background

It should be borne in mind that because this case arose out of a strike out application, it is based on the limited matters that were set out in the Particulars of Claim. In summary, it was alleged that in 2006, the Claimants and their mother were placed, by the Council, in a house adjacent to another family who, to the Council's knowledge, had persistently engaged in anti-social behaviour. GN was then aged 7. CN was aged 9, is severely mentally and physically disabled, and requires constant care.

The Council made extensive adaptations to the house to meet CN's needs and provided a care package through its Child Health and Disability Team, and CN had an allocated social worker. The family were subjected to harassment and abuse by the neighbouring family, including vandalism of the mother's car, attacks on their home, threats of violence, verbal abuse and physical assaults on GN and his mother. These incidents were reported to the Council and various measures were taken against the neighbouring family, but the harassment continued.

In 2008, GN expressed suicidal ideas and, in September 2009, ran away from home leaving a suicide note. A social worker carried out an Initial Assessment and recommended that a Core Assessment should be carried out. That was completed in February 2010 and GN was allocated the same social worker as CN. In May 2010, a Children's Services Manager acknowledged that the Initial Assessment had been flawed. A Child Protection Strategy Meeting was held in July 2010, when it was decided that GN's risk of harming himself should be managed via a Child in Need Plan. In November 2010, the Council concluded that its Core Assessment had also been flawed and a revised assessment was commenced. Following its completion, in June 2011, a Children Act 1989 s.47 investigation was carried out, resulting in a Child Protection Conference at which it was decided to make GN the subject of a Child Protection Plan.

In the meantime, the Claimants' mother had involved her local Councillors and MPs, prompting media coverage. This resulted in the Home Office commissioning an independent report which was critical of the Police and of the Council's failure to make adequate use of powers under the anti-social behaviour legislation. The family was, ultimately, moved to a new home in December 2011. It was alleged that the abuse and harassment that the Claimants suffered between May 2006 and December 2011 caused them physical and psychological harm.

Route to the Supreme Court

Proceedings were issued in 2012 by the Claimants and their mother against the Council, the Police and Poole Housing Partnership Limited. Those proceedings were struck out as no Particulars of Claim were served. Further proceedings were issued by the Claimants and their mother in 2014 with the Council as the sole Defendant. Master Eastman struck out the claims, relying on *X v Bedfordshire County Council [1995]*, on the basis that no duty of care arose out of the statutory powers and duties under the Children Act 1989. The Claimants appealed (their mother did not appeal against the striking out of her claim) submitting that Master Eastman had erred in relying on *X v Bedfordshire* as he had overlooked subsequent cases, including *D v East Berkshire Community NHS Trust [2003]* in which the Court of Appeal effectively held that the public policy objections to the existence of a duty of care set out in *X v Bedfordshire* no longer applied following the implementation of the Human Rights Act 1998.

The appeal was heard by Slade J. The principal issue before her was whether or not *D v East Berkshire* had been overruled by the subsequent decisions of the House of Lords in *Mitchell v Glasgow City Council [2009]* and the Supreme Court in *Michael v Chief Constable of South Wales [2015]*. Slade J held that it had not and she allowed the Claimants' appeal. The Defendant appealed.

The Court of Appeal delivered its Judgment on 21 December 2017 and turned child abuse litigation 'on its head' by holding that *D v East Berkshire* was no longer good law. Accordingly, the legal position effectively reverted to *X v Bedfordshire*. The Claimants appealed to the Supreme Court.

The Supreme Court's Decision

In answering the question whether local authorities may be liable for breach of a common law duty of care in relation to the performance of their functions under the Children Act 1989, the Supreme Court restated the distinction between a duty to take reasonable care not to cause injury and a duty to take reasonable care to protect against injury caused by a third party. A duty of care of the latter kind would not normally arise at common law in the absence of special circumstances.

The Supreme Court set out the following general principles:

- Public authorities may owe a duty of care in circumstances where the principles applicable to private individuals would impose such a duty, unless such a duty would be inconsistent with, and is, therefore, excluded by, the legislation from which their powers or duties are derived;

- Public authorities do not owe a duty of care at common law merely because they have statutory powers or duties, even if, by exercising their statutory functions, they could prevent a person from suffering harm; and

- Public authorities can come under a common law duty to protect someone from harm in circumstances where the principles applicable to private individuals or bodies would also impose such a duty, as, for example, where the authority has created the source of danger or assumed a responsibility to protect the Claimant from harm, unless the imposition of such a duty would be inconsistent with the relevant legislation.

The Court held that *X v Bedfordshire* can no longer be regarded as good law insofar as it ruled out on grounds of public policy the possibility that a duty of care might be owed or insofar as liability for inflicting harm on a child was considered to depend upon an assumption of responsibility. Whether a local authority or its employees owe a duty of care to a child in particular circumstances depends on the application in that setting of the general principles. Applying those principles to this case the Supreme Court:

- Began by considering whether this case was one in which the Defendant was alleged to have harmed the Claimants or one in which the Defendant was alleged to have failed to provide a benefit to the Claimants, for example, by protecting them from harm. The Court found that the case fell into the latter category. Accordingly, it was necessary for the Claimants to establish one of the exceptions to the general rule that a duty to take reasonable care to protect against injury caused by a third party would not normally arise.

- It was suggested in argument that a duty of care might have arisen on the basis that the Council had created the source of danger by placing the Claimants' family in housing adjacent to the neighbouring family, but the Court confirmed this argument could not be sustained as there is a consistent line of authority holding that landlords (including local authorities) do not owe a duty of care to those affected by their tenants' anti-social behaviour.

- The Claimants' claim was, therefore, based on an assumption of responsibility. An assumption of responsibility is an undertaking that reasonable care will be taken, either express or, more commonly, implied, usually from the reasonable foreseeability of reliance on the exercise of such care.

- On the facts of this case, there had been no assumption of responsibility. "*The Council's investigating and monitoring of the Claimants' position did not involve the provision of a service to them on which they or their mother could be expected to rely. … Nor could it be said that the Claimants and their mother had entrusted their safety to the Council, or that the Council had accepted that responsibility. Nor had the Council taken the Claimants into its care, and thereby assumed responsibility for their welfare. … In short, the nature of the statutory functions relied on in the Particulars of Claim did not in itself entail that the Council assumed or undertook a responsibility towards the Claimants to perform those functions with reasonable care. … It is of course possible, even where no such assumption can be inferred from the nature of the function itself, that it can nevertheless be inferred from the manner in which the public authority has behaved towards the Claimant in a particular case … Nevertheless, the Particulars of Claim must provide some basis for the leading of evidence at trial from which an assumption of responsibility could be inferred. In the present case, … the Particulars of Claim do not provide a basis for leading evidence about any particular behaviour by the Council towards the Claimants or their mother, besides the performance of its statutory functions, from which an assumption of responsibility might be inferred.*"

- The claim that the Council was liable on the basis of vicarious liability for the negligence of its employees also depended on whether the social workers assumed a responsibility towards the Claimants to perform their functions with reasonable care. The Court found they had not. There was no suggestion that the social workers provided advice on which the Claimants' mother would foreseeably rely or that they had undertaken the performance of some task or the provision of some service for the Claimants with an undertaking that reasonable care would be taken.

Implications

The general rule is that no duty of care is owed to take reasonable care to protect against injury caused by a third party. In order to establish a duty of care, Claimants in 'failure to remove' claims will have to show that one of the exceptions applies. In such claims this is most likely to be that there has been an assumption of responsibility. It is clear that once a child has been taken into care, the local authority assumes a responsibility for the welfare of the child (*Barrett v Enfield London Borough Council [2001]*). However, the question of what, short of taking a child into care, may be sufficient to constitute an assumption of responsibility remains a 'grey area' and each case will turn on its particular facts.

Many cases involve children who have been accommodated by the local authority with their parents' consent and no care proceedings have been issued. Will this be sufficient to establish an assumption of responsibility akin to *Barrett*? It remains a moot point, but there are risks that a duty of care could be established in such circumstances.

The mere exercise of the statutory functions will be insufficient. On the facts in *Poole Borough Council v GN*, the investigation and monitoring by the Council's Social Services Department, assignment of social workers to the Claimants, the various assessments of their needs, meetings at which the appropriate response to GN's behaviour was discussed and the Child Protection Plan were held to be insufficient.

Whilst there will, undoubtedly, be further cases before the Courts regarding the existence or otherwise of an assumption of responsibility, the onus is now firmly on Claimants to identify the particular behaviour by local authorities, beyond the performance of their statutory functions, from which they allege an assumption of responsibility may be inferred.

Amanda Evans
Partner
Dolmans Solicitors

For further information regarding this article, please contact
Amanda Evans at **amandae@dolmans.co.uk**
or visit our website at **www.dolmans.co.uk**

DOLMANS RECENT CASE UPDATE

Child Sexual Abuse : Part 36 Offers : Interest

FZO v (1) Andrew Adams (2) Haringey London Borough Council [2019] EWHC 1286 (QB)

The First Defendant, the Claimant's former PE teacher, had groomed the Claimant for sexual activity from when he was 13 years old during the 1980s. The abuse continued for 4 years whilst he was a pupil at the school and for a further 4 years after he left until 1988. It was not until 2011, when the Claimant suffered a breakdown, that he came to understand that he had been abused. He suffered PTSD as a result of the abuse and had been unable to work since his 2011 breakdown. The Claimant brought a claim in respect of this historic sexual abuse against the First Defendant teacher, for whom the Second Defendant local authority was vicariously liable.

In the Trial of 2018, the Court found in the Claimant's favour. The instant case dealt with the assessment of damages.

The Court assessed general damages at £85,000, taking into account the psychiatric effects of the abuse, immediate effect of the abuse when it was perpetrated, its effect in the meantime and the onset of his complex PTSD. The Claimant was also awarded past loss of earnings and future losses. The total award was £1,112,000.

An issue arose in relation to the interest payable on the sum awarded. As the Claimant had made a Part 36 offer to accept a sum which was less than the sum awarded, the Defendants were to pay the additional sum of £75,000 under CPR r.36.17(4)(d); a rule which allows the Court to award an additional amount capped at £75,000 as part of Part 36 costs consequences. Rule 36.17(4)(a) allowed for interest to be paid on the whole or part of any sum of money (excluding interest) awarded. The Court found that no interest was payable on the additional £75,000 as this did form part of the sum awarded; if interest were payable on that amount, the rule would have said so.

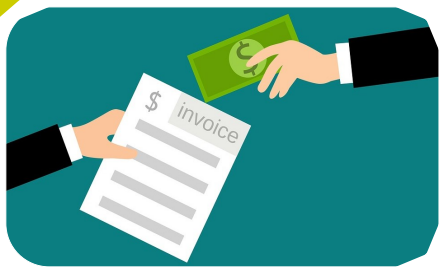
Civil Procedure - CPR

(1) Jofa Ltd (2) Joseph Farah v (1) Benherst Finance Ltd (2) Chestone Industry Holding (2) [2019] EWCA Civ 899

The Court of Appeal has re-stated principles concerning costs in Norwich Pharmacal Orders. Such Orders can require a third party, who is not a party to Court proceedings, but who must be, innocently or not, mixed up in the wrongdoing to assist a party to those proceedings (the Applicant) by providing information or documents in respect of the (intended) proceedings. The usual costs rule is that the party seeking the information bears the costs and expenses incurred by the third party in complying with the Order and in providing that information.

DOLMANS RECENT CASE UPDATE

The Appellants, a small company and its sole director, appealed against a decision that they should pay a proportion of the Respondents' costs of applying for a Norwich Pharmacal Order against them.



The Respondents had allegedly been defrauded by the project manager of a property development scheme in which they had invested. The project manager had made various cash calls supported by invoices, some of which were apparently provided by the Appellants. The Appellants were threatened with prosecution. The Appellants stated that they had not provided the invoices in question and knew nothing about the alleged fraud.

The Respondents' solicitors then sent a letter before action requesting numerous documents, including bank statements. The Appellants failed to respond. The Respondents then issued an Application for a Norwich Pharmacal Order. The Appellants agreed to co-operate with the Respondents' enquiries, provided they were fully reimbursed for their costs.

The Judge made a Norwich Pharmacal Order requiring the Appellants to disclose the documents sought by the Respondents. The Judge concluded that the usual order was for no order to be made for costs, but it was appropriate to make a costs order against the Appellants because of the history of extensive discussions which had proved fruitless.

The Appellants appealed.

The Court of Appeal disagreed with the Judge and allowed the appeal. In doing so, it provided costs guidance in relation to obtaining Norwich Pharmacal Orders:

(1) Normally, the Applicant should pay the costs of the party ordered to provide disclosure, including the costs of the Application. It would not normally be just to award costs against a Respondent who had simply required the Applicant to justify the grant of an Order;

(2) The starting point was that a person from whom disclosure was sought did not owe a legal duty to a person seeking information without a Court Order. It was entitled to keep its documents private;

(3) An Applicant should normally recover its costs from a wrongdoer, not an innocent party, which itself had no means of recovering these from a wrongdoer;

(4) That did not mean that a party which might have committed a crime or tort and which resisted disclosure that would evidence its complicity would never be required to pay the other party's costs.

There was no justification for departing from the general rule to the extent of ordering the Appellants to pay a proportion of the Respondents' costs. The Judge's Order was set aside and substituted with no order as to costs.

DOLMANS RECENT CASE UPDATE

Civil Procedure - Service - Relief from Sanctions

Woodward & Another v Phoenix Healthcare Distribution Ltd
[2019] EWCA Civ 985

The Claimants appealed against a decision overturning an Order retrospectively validating service of a Claim Form under CPR r.6.15(2) on the solicitors for the Defendant.

The central question that the Court of Appeal was asked to consider was in what circumstances is it appropriate, on an Application for retrospective validation of service, to allow a Defendant to take advantage of a mistake on the part of a Claimant giving rise to defective service where any new claim would be time barred?

The Claimant sought to bring proceedings against the Defendant by way of a Claim Form issued on 19 June 2017 in relation to a claim for breach of contract and misrepresentation. The claim was valued in excess of £5 million. The 6 year limitation period for the claim expired on 20 June 2017. Pursuant to CPR r.7.5(1), the Claim Form had to be served no later than midnight on 19 October 2017.

On 17 October 2017, the Claimants' solicitors sent the Claim Form, Particulars of Claim and a Response Pack by first class post to the solicitors for the Defendant. However, neither the solicitors for the Defendant, nor the Defendant themselves, had notified the Claimants that they were authorised to accept service.

The Defendant's solicitors deliberately did not inform the Claimants until after the expiry of the deadline for service that they were not instructed to accept service and, therefore, the service was defective.

The Claimants' solicitors successfully applied for retrospective validation of service under the Court's discretion pursuant to r.6.15(2) on the basis that the Defendant's solicitors could have informed the Claimants that they were not instructed to accept service, in which case they could, and would, have served the Defendant in time. That decision was reversed on appeal.

The Court of Appeal held that the Judge had been correct to interfere with and overturn the Master's original decision:

- The Master's reasoning that there had been a breach of CPR r.1.3 occasioned by the failure of the Defendant's solicitors to warn the Claimants was inconsistent to the Supreme Court's finding in *Barton v Wright Hassall LLP [2018] UKSC 12* that there was no positive duty to advise an opposing party of its own error.

DOLMANS RECENT CASE UPDATE

- The reasoning in *Denton v TH White Ltd [2014] EWCA Civ 906* (to the end that it is inappropriate to take advantage of mistakes made by opponents) is significantly less important on an Application under CPR r.6.15 when compared to an Application for relief from sanctions.

- The Judge had been correct to dismiss the Master's analysis of the Defendant's behaviour as technical game playing. The Defendant's solicitors had researched the authorities and advised the Defendant before taking instructions. That was not playing technical games and was different from a situation where a Defendant had deliberately obstructed service; *Abela v Baadarani [2013] UKSC 44* distinguished.

It was acknowledged that the position may be different where one party has contributed to another's mistake, but CPR 1.3 cannot be said to encompass a duty to further the overriding objective by warning an opponent of a procedural mistake. Further, in the instant case, the Claimants had courted disaster by leaving service of the Claim Form until the last moment. It had been unreasonable to delay and run the risk of failing to serve within the period of validity of the Claim Form.

Insurance - Road Traffic - Private Land - EU Directives

Motor Insurers Bureau v Michael Lewis (a Protected Party by his Litigation Friend, Janet Lewis)
[2019] EWCA Civ 909

The Court of Appeal upheld the finding of Mr Justice Soole that the Motor Insurers Bureau (MIB) was liable to indemnify the driver of a vehicle that was being driven "off road".

The Respondent had been walking on private land when a farmer had pursued him in his uninsured 4x4 vehicle. The farmer drove along a public road into a field when he collided with the Respondent, causing him serious injury. It was not disputed that the farmer was liable for the accident, but the MIB contended that it did not have a contingent liability pursuant to the Uninsured Drivers Agreement 1999 because the accident and injuries were not caused by or arising out of the use of a vehicle on a road or other public place under the Road Traffic Act 1988 s.145.

DOLMANS RECENT CASE UPDATE

At first instance, the Judge held that the MIB were liable to indemnify the Claimant and that Article 3 of Directive 2009/103 had direct effect to the extent of at least the minimum requirement of 1 million euros per victim in Article 9 and that the MIB was an emanation of the state. The MIB appealed.

The Court of Appeal held that the Judge's conclusions on direct effect and emanation of the state were correct and that there was no doubt that the MIB required insurance cover to be in place for the use of vehicles on private land. Where the insurance requirement was not met, the guarantee body, which Article 10 of the Directive required each Member State to establish, was liable to meet the claim.

The UK government had made full use of any discretion by delegating the Article 10 task to the MIB. Compliance with Article 3 was not a matter for the discretion of the Member State. Accordingly, Article 3 was unconditional and precise so that it was capable of having direct effect and, since Article 3 and Article 10 were co-extensive, it followed that Article 10 was also capable of having direct effect.

It was clear from the Judgment in *Farrell v Whitty* that the compensation body was intended to protect and compensate victims by remedying the failure of the Member State to fulfil its obligation under Article 3 to ensure that civil liability in respect of the use of motor vehicles was covered by insurance. That obligation included the use of vehicles on private land.

Appeal dismissed.

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

Amanda Evans at **amandae@dolmans.co.uk** or
Judith Blades at **judithb@dolmans.co.uk** or
Teleri Evans at **telerie@dolmans.co.uk**

DOLMANS

TRAINING OPPORTUNITIES

At Dolmans, we want to ensure that you are kept informed and up-to-date about any changes and developments in the law.

To assist you in this, we can offer a whole range of training seminars which are aimed at Local Authorities, their Brokers, Claims Handlers and Insurers.

All seminars will be tailored to make sure that they cover the points relevant to your needs.

Seminars we can offer include:

- Apportionment in HAVS cases
- Bullying, harassment, intimidation and victimisation in the workplace – personal injury claims
- Conditional Fee Agreements and costs issues
- Corporate manslaughter
- Data Protection
- Defending claims – the approach to risk management
- Display Screen Regulations – duties on employers
- Employers' liability update
- Employers' liability claims – investigation for managers and supervisors
- Flooding and drainage – duties and powers of landowners and Local Authorities for drainage under the Land Drainage Act 1991. Common law rights and duties of landowners in respect of drainage
- Flooding and drainage – duties and powers of Highway Authorities for drainage and flooding under the Highways Act 1980. Consideration of case law relating to the civil liabilities of the Highway Authority in respect of highway waters
- Highways training
- Housing disrepair claims
- Industrial disease for Defendants
- The Jackson Reforms (to include : costs budgeting; disclosure of funding arrangements; disclosure of medical records; non party costs orders; part 36/Calderbank offers; qualified one way costs shifting (QWOCS); strikeout/fundamental dishonesty/fraud; 10% increase in General Damages)
- Liability of Local Education Authority for accidents involving children
- Ministry of Justice reforms
- Pre-action protocol in relation to occupational disease claims – overview and tactics
- Public liability claims update

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