DOLMANS INSURANCE BULLETIN

Welcome to the February 2021 edition of the Dolmans Insurance Bulletin

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- Remote trials and hearings since March 2020 - Part 2 - The regulatory and criminal perspective

RECENT CASE UPDATES

- Child protection - failure to remove - duty of care - strike out
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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

Remote Trials and Hearings Since March 2020 - Part 2 - The Regulatory & Criminal Perspective

In the January 2021 edition of the Dolmans Insurance Bulletin, we reported on our experience of remote trials and preparatory hearings since March 2020 in consequence of the Covid-19 pandemic. That article focused upon our experience in the Civil Courts arena, together with how the court system is adapting to the so called "new normal". In this follow up article, we seek to draw together our experiences in the regulatory and Criminal Courts system over the same timescale.

PACE Interviews

Often, one of the first interactions with the criminal justice system for lay clients is an interview under caution pursuant to the Police and Criminal Evidence Act (PACE) and its attendant Codes of Practice.

Fairly shortly into the pandemic (in circa April 2020), an Interview Protocol was published as a partnership document between the National Police Chiefs Council, the Crown Prosecution Service, the Law Society, the Criminal Law Solicitors' Association and the London Criminal Courts Solicitors' Association. This document acknowledged that the signatories to the protocol recognised that remote interviews by video and audio link were not within the current letter of the PACE Code of Practice but *"in the present circumstances of the Coronavirus pandemic they were within the spirit of recent amendments to criminal procedure, law and evidence in the Coronavirus Act 2020."* Thus, the signatories to the protocol regarded such 'remote' interviews as *"a fair, reasonable and proportionate option to be made available to a suspect who has the benefit of legal advice and having been fully informed and advised and … consents to a remote interview"*.

In consequence of the ongoing public health situation, we have conducted remote PACE interviews, particularly in relation to serious road traffic incidents/offences. However, there are instances where remote interviews are declined by the police and where they are simply not appropriate, for example, where the client has a particular vulnerability or the potential offence is very serious. They are most suited where the criminal offence is straightforward and where the client is particularly articulate and able to cope not only with the IT demands, but also has an insight into the offence. This requires a certain amount of preparation before the interview and requires the police to give their briefing/disclosure well in advance of the interview, rather than presenting the same immediately before the interview at the police station.

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The interviews we have conducted have been a combination of fully remote where the client, ourselves and the police officers are all in separate locations, or with the client present at the police station with the police officer and ourselves being remote. Interview rooms at police stations are often very small, such that it is difficult to maintain social distancing in accordance with the regulations, and remote interviews have become a viable alternative, and are likely to remain so, for the foreseeable future.

We are not, currently, aware of any such PACE interviews being conducted regarding regulatory (health and safety or environmental cases). We would be disinclined to permit such an interview except in a case with exceptionally straightforward facts and (equally importantly) very limited reference to documentation. Otherwise, such a remote basis of interaction is, ironically, apt to make the process more difficult, confusing and inefficient. This view is, in part, supported by our experience of witness interviews (non-PACE interviews) by Regulators (see below).

The Regulators (and Investigators) in those cases (health and safety and environmental cases) have not (thus far) shown much (if any) enthusiasm as to such an approach and have, in contrast, tended to operate on the basis of some reduced version of “business as usual”.

We have seen the HSE conduct investigations and interviews (of witnesses) on site in the context of fatal accident investigations. Those interviews have been ‘face to face’, but have been on a socially distanced basis and, moreover, one cannot say that they are the norm either. They have given rise to immediate issues, not the least of which is to ensure that all participants in the room have a separate (pre-agreed and comprehensive) bundle of relevant documents (ideally paginated) because, rather obviously, the normal procedure of handing documents across a table to assist in the interview process simply cannot be made to work in present circumstances.

Our sense of some fatal accident investigations is that they have been ‘furloughed’ (for want of a better expression) until after the initial phase of the pandemic has passed. Our sense is that, often, the approach being taken is a product of individual Inspectors’ views as to the risks involved and their approach in that context. That is to say some Inspectors are content, and willing indeed, to conduct interviews on site (subject to resolving the logistical problems – see above), provided appropriate social distancing measures can be put in place. Others appear content to wait until the situation (overall) has returned to normal.

Inevitably, where witnesses in a regulatory investigation require separate legal representation (as sometimes arises and can be insisted upon by Regulators), this gives rise to a further layer of complexity simply by having a further person in the room, as it were. We have experience of one such case where the logistics became difficult on several levels, but, pleasingly, we were able to accommodate both witnesses and the HSE Inspector, in the end. Very often, consistent with some of the points made in Tom Danter’s initial article, this has been a question of thinking ‘outside the box’ to arrive upon a pragmatic and acceptable solution to the problem(s) in question.

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Inquests

Our experience of inquests, in the current circumstances, also presents something of a mixed picture.

Jury inquests during the pandemic have presented significant logistical difficulties for Coroners and their staff. One of the main difficulties has been problems around jury rooms (particularly as to size and location) and the inability to ensure an appropriately socially distanced environment for jury deliberations. There have also been issues around the size of the Coroner's Court itself, and the ability, particularly in multi-party inquests, to ensure an appropriately socially distanced (and, therefore, safe) environment for all participants.

We were due to conduct a weeklong inquest, arising from a workplace death in September 2019, beginning on 18 January 2021 in the South East Wales Coroner's Court in Pontypridd. This inquest was fixed following a pre-inquest process, which began with an entirely traditional initial pre-inquest review (held in person) in late February 2020. A further (remote) pre-inquest review (via Cloud Video Platform) took place in September 2020 (and worked extremely well), at which point it was clearly anticipated that the inquest in January 2021 would proceed explicitly in person and on a socially distanced basis, with strict limits on the numbers of persons permitted within the courtroom (which was something explicitly discussed as part of the video PIR). However, shortly thereafter, the hearing (which was, we understood, to be the first socially distanced inquest for the South East Wales Coroner) was abandoned and has not, so far, been relisted in 2021.

This reflects both the difficulty presented by jury inquests in terms of social distancing and the worsening situation as to the pandemic (the so called 'second wave' throughout autumn/winter 2020/21). Indeed, our understanding, through wider enquiry, is that jury inquests in health and safety matters are being 'furloughed' on a wide scale basis. We understand from specialist Counsel prominent in this field that any jury inquest of more than a few days duration has been adjourned, effectively, indefinitely. This obviously reflects concerns as to public safety within the Coroners' service generally. Moreover, it immediately impacts health and safety incident derived inquests since an inquest arising out of a RIDDOR reportable incident is mandated as a jury inquest.

There is a sense that the vast majority of substantive (jury) inquests will now likely take place in 2022, or possibly even later than that. However, in a situation which is very indicative of the current crisis, there is very little consistency and much depends on the individual approach of the Coroner in question and their underlying facilities.

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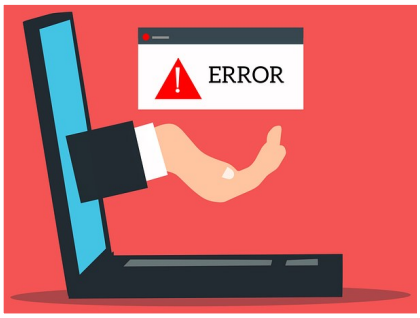
Non-jury inquests, inevitably, present a somewhat different picture. As with jury inquests, the pre-inquest process has worked well via remote platform, although there have been difficulties where the Coroner does not have a bespoke court (e.g. uses a council chamber and, as such, the technology requires setting up on each occasion, presenting occasional IT issues). It is also the nature of significant inquests that there are many interested parties, family members and press involved which puts pressure on the IT links.

We have experienced several inquests being adjourned generally with no return dates and only the broadest indication that they will be heard “sometime in the future”. It is only the very simplest road traffic inquest hearings that have taken place thus far. In the context of such inquests, we have experienced a far greater propensity of pre-inquest disclosure by the Coroner, whereas previously this was not the case and physical attendance was necessary at the inquest, even if only a watching brief was required.



Inevitably, and as hinted at above, preparatory hearings for inquests have continued effectively via appropriate video platform technology. This situation, however, has been far from seamless. Several Coroners use Skype for Business as a video conference platform. It would appear that Skype for Business has a fundamental incompatibility with IOS (i.e. Apple) operating systems, such that participants seeking to join such a video conference from an IOS based device (Apple products) have found themselves unable to join (either audio or video feed). This has led to practitioners joining hearings by telephone, which has not been entirely satisfactory (as audio quality has suffered) and it is always harder to gauge ‘the mood in the room’ in terms of submissions.

On the other hand, video conference hearings (pre-inquest reviews) elsewhere in Wales have progressed largely without difficulty, save that there has been a continual difficulty with numbers of participant ‘slots’ running out in larger inquests where there are significant parties and participants at each hearing.

In one such inquest, we had to travel to the client’s premises and join the video conference from there, appropriately socially distanced in a conference room, so that the four participants on behalf of the client were, in effect, reduced to one (i.e. one internet joining location) and, therefore, preserved the limited numbers of joining ‘slots’ allocated by HM Coroner for the hearing.

Even where technology is available to support the preparatory hearing process and is working well (the obvious example being the case cited above due for inquest in early January 2021), unexpected developments in relation to the pandemic itself can work to very easily thwart the efforts of the parties and the Coroner to make progress. It was quite clearly the aspiration of the Coroner in that case to proceed with the inquest in January 2021 and had it not been for the 'second wave' in autumn/winter 2020, that ambition looked set to be achieved given the care and thought which HM Coroner (and his staff) put into that hearing in advance, and, in particular, to plan the social distancing elements of the hearing.

Other Coroners have simply been unable to even contemplate jury inquests because of the state and size of their jury facilities in the context of the pandemic; which is a reflection of the wide variety of buildings which Coroners operate from. We have experience of one such case being postponed until at least mid-2021 on that basis (incident date is August 2017) and it remains to be seen if even that date is effective in that particular court (because of the nature of the facilities).

Prosecutions

Consistent with the situation discussed above, the position as to prosecutions is inconsistent and (to a degree) contradictory. So much so that it is probably useful to consider the position as to Regulatory Prosecutions (health and safety matters) and Non-Regulatory Prosecutions separately and to avoid confusion on the part of readers.

This dichotomy appears to exist regardless of the significant strides which have been made by HM Courts and Tribunal Service to ensure that the courts' system can continue to function during the course of the pandemic, including, as many readers will be aware, the setting up of a number of so-called Nightingale courts in an effort to resolve the increasing backlog of criminal cases.

It is perhaps most useful to consider Non-Regulatory Prosecutions first, since that is an area in which progress has been made during the pandemic and we have been involved in cases of this nature which have progressed to trial.

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Non-Regulatory Prosecutions

Even within this arena, there are very significant differences between the Magistrates Courts and the Crown Courts, the latter seemingly having adapted better to the pandemic, perhaps due to less cases going to the Crown Court. Even then, current backlogs are estimated to take at least 2 years to clear, despite the introduction of Nightingale courts, which should total 60 by the end of March. The criminal justice system was already under pressure prior to the pandemic. A suggestion by the MOJ that Crown Courts should operate under extended hours, as Magistrates Courts do, has met stiff resistance from the Criminal Bar Association. Delays in reaching a conclusion in any case have a significant effect not only on the professionals dealing with them, but, more importantly, the defendants themselves. After all, as the former Prime Minister William Gladstone observed, “Justice delayed, is justice denied”.

Our experience of matters in the Magistrates Courts has been somewhat chaotic. During the first lockdown, we were dealing with a matter in the Birmingham Magistrates Court where the sentencing, following a guilty plea, was adjourned on no less than 4 occasions over a period of approximately 6 months. A hearing such as this would generally only take between 20 and 30 minutes for simple matters, which perhaps evidences why any matter of substance is subject to even further delay.

Magistrates Courts themselves tend to have a large volume of ‘human traffic’ dealing with many different cases in a single day. There have been many complaints by practitioners that they are being exposed to numerous unknown individuals in an enclosed space where social distancing is often not possible. Whilst progress has been made to make Magistrates Courts safer, including in some cases the introduction of ‘Covid Marshals’, the situation remains far from ideal.

Back on 23 March 2020, all new trials were suspended because of fears that they might contribute to the spread of Covid-19. As a result, an additional backlog of criminal cases has developed. However, as part of the Government’s response to the pandemic, the Coronavirus Act 2020 (CA 2020) and the Criminal Procedure (Amendment No 2) (Coronavirus) Rules 2020, SI 2020/417 made a number of temporary changes to the way in which hearings and trials in the Criminal Courts in England and Wales should be conducted during the pandemic. Obviously, these changes are more evident in the Crown Court where trials are now taking place under special arrangements to maintain the safety of all participants, including jurors. The measures include supporting social distancing and implementing appropriate cleaning standards.

The most significant change is the expansion of the use of live video links and live audio links to enable defendants, witnesses and others to participate in a wider range of hearings.

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Notably, jury selection now takes at minimum twice as long as the pre-Covid era. The shortlisted jury (from which 12 are to be chosen) are now brought into the courtroom in two cohorts. Each potential jury member is separated throughout the courtroom (as opposed to the usual rows they would sit in close together), whereupon they now hear the names of the defendant and people they may hear evidence from, to enable them to raise any knowledge they have of those individuals.

Readers may be aware there are proposals to reintroduce so called “war juries” post-Covid (juries comprised of 7 persons) to seek to clear the case backlog.

The jury seating areas are sanitised in between cohorts and naturally the sitting Judge will go to lengths to reassure all those present as to procedures that have been put in place to ensure their safety.

Provision has also been made to give courts the means to make hearings public by broadcasting cases, thereby addressing concerns that the closure of courts would offend the principle of open justice.

Further measures include:

- Taping off numerous seating areas with ‘do not sit here’ signs so as to support social distancing.
- Increased cleaning procedures in general areas, with door handles and handrails being routinely sanitised to avoid any potential cross spread.
- The wearing of facemasks in all areas.
- Courtrooms being ventilated with doors left open.

The introduction of all these additional measures has added to the backlogs. Recently, we have had a dangerous driving trial adjourned in the Truro Crown Court with an indication it will likely be listed again in 9 months’ time. All the procedural hearings had been dealt with relatively expeditiously, but the trial itself was adjourned due to the court having difficulties with its large backlog, partially caused by a previous Covid outbreak at the court, the necessary measures being put in place restricting the court’s capacity and due to several Judges having to shield.

The picture across England and Wales is, however, mixed as, in January 2021, we dealt with two multi-day trials in Cardiff Crown Court that proceeded on time, with all necessary precautions in place and without any significant delay or difficulty.

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Regulatory Prosecutions

Perhaps unsurprisingly, given the above, progression of regulatory (primarily health and safety) prosecutions during the pandemic has been poor.

Our last health and safety sentencing was entirely "live" in early February 2020.

However, it is evident also that a number of these cases will (if they are to be prosecuted by the HSE) reach that stage much later now. In part that is due to a lack of progress within the Criminal Courts' system as to such cases, and also to a simple lack of investigatory progress due to the pandemic and the impact that has had upon Regulators and their staff.

In that latter context, it will be appreciated that in regard to the HSE, the pandemic itself has presented an immediate logistical issue – that is to say, as the health and safety Regulator in the UK – they have immediately inherited a significant problem in terms of ensuring regulatory compliance with the various forms of guidance issued to employers in consequence of the pandemic and, understandably, significant numbers of their staff have been directed to that purpose, on an ongoing basis.

Anecdotally, we are aware of significant numbers of regulatory prosecutions which are being 'held over' until some sort of normality returns. We understand that the HSE, for instance, has instructed legal staff not to work outside their normal work environment (i.e. at the moment, working from home) and this, clearly, has an impact on cases which would otherwise be progressing through the Crown Courts/Magistrates Courts system.

Given the situation as regards inquests (see above), there is also an argument that a further 'future log jam' is developing as to prosecutions in fatal cases because, traditionally, prosecutions would follow the inquest process and the HSE have always been reluctant to countenance a different order. Even in cases where a provisional view has been taken (as to prosecution), the HSE have tended, always, to reserve the right to (in effect) change their mind following an inquest.

However, technically, there is no requirement for the HSE to wait for the inquest to take place, and, in discussion with regulatory Counsel, there is a view that we may start to see cases, from 2021, progressing regardless of the inquest progression position. Inevitably, this statement is tempered by the usual caveats around individual cases being fact sensitive and what may be regarded as appropriate in prosecution terms in one case, may not be so in another. But, if the HSE, for instance, are satisfied that there is no viable gross negligence manslaughter charge to be brought and the case is simply a Section 2 or Section 3 breach of the Health and Safety at Work Act 1974, they may well proceed (separate from, and possibly ahead of, the inquest). Indeed, there is existing Guidance to Inspectors and HSE Prosecutors which sets out circumstances in which a prosecution can move forward independent of the inquest process, and this may well be used more and more in 2021 and 2022.

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The HSE continues to move forwards with cases for sentencing and continues to publicise the same in terms of sentencing results. However, review of the timelines on most of those cases will confirm that they relate to events some time ago. We are advised, again anecdotally, that for most of 2020, in most instances, informations have been laid before the Magistrates Courts to commence the prosecution process (and avoid issues around delay), but little or no progress is made after that point.

We are explicitly advised of a case involving a virulent infection in a young child at an educational establishment which has been adjourned from January 2021 to (at least) May 2021. That is a non-contested case; it is a matter for plea and sentence only. That case was originally listed in April 2020, it was then adjourned to August 2020 due to the initial lockdown period, thereafter, just before the August hearing, it was adjourned again to a date in December 2020, before being listed again on 25 January 2021, which was then further adjourned (as above) to 24 May 2021. Thus, in essence, for 1 year and 1 month, there has been no progression in a case which is uncontested and, therefore, a plea and sentence situation. We understand that both parties are ready to proceed, but the Crown Court in question is not able to do so (see above).

We are also advised (by the same regulatory Counsel) of a trial currently listed for June 2021 (it was originally listed for June 2020, but adjourned). That trial, if it is further adjourned (which Counsel puts at a 50/50 likelihood), deals with events taking place in 2015 and, if adjourned, will not likely be relisted until 2022.

On a more optimistic note, legal arguments in regulatory cases are still being dealt with, via Cloud Video Platform and others. The immediate difficulty with such hearings is around the marshalling of sometimes significant bundles of documents, both in terms of the assembly of those bundles themselves (having regard to the guidance issued as to such bundles) and the electronic marshalling of the same in a video platform environment, before the Judge. Our experience (and from what we are told by regulatory Counsel) is that technology, even when a hearing is compatible to being dealt with via CVP or similar, is still a limiting factor, with often one or more participant parties (including the Judge) experiencing connectivity issues.

However, the power of CVP hearings, in this context, is clear and, in our view, going forwards, the genie is very much out of the bottle as regards such legal arguments (and preparatory hearings – such as plea and case management hearings), provided the technology can be made to catch up, as it were.

Comment

It is interesting to contrast the overall picture presented by this article with the situation set out in the recent Civil Courts article from Tom Danter. It would be possible to assume that differing approaches, therefore, are at work as between the Civil and Criminal Courts. However, that risks, in our view, potential over-simplification.

Realistically, the underlying picture remains the same. Straightforward matters and hearings are capable of disposal via technology and virtual platforms. The genie (again) is out of the bottle and the limitations which continue in respect of such hearings are best characterised as technology not measuring up to aspiration. Parties and the Government will need to address the aspiration gap here.

However, there will always be types of hearings and cases which are more difficult to progress via the blunt tool of technology alone; these cases will require a return to normality and the ability to properly inhabit legal spaces (whether they are Crown Courts, Magistrates Courts or Coroners' Courts) for all concerned.

Clearly, in that context, however, there will (now), hopefully, be a place for certain types of hearing to be conducted with technological support because, frankly, they are better conducted (for several reasons) on that basis.

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RECENT CASE UPDATES

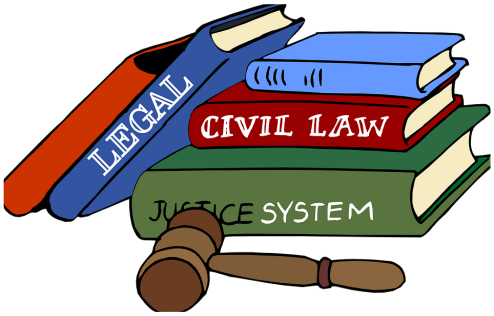
Child Protection - Failure to Remove - Duty of Care - Strike Out

HXA v Surrey County Council
[2021] EWHC 250 (QB)

The Claimant suffered abuse and neglect perpetrated by her mother, 'M', and one of M's partners, 'A'. The Defendant Council's Social Services had extensive involvement with the family from 1993. Numerous child protection investigations were carried out and the Claimant spent periods on the Child Protection Register. In 2007, the Clamant made a complaint to the police about sexual abuse perpetrated by A. In 2009, A was convicted of 7 counts of rape in relation to the Claimant and M was convicted of indecently assaulting the Claimant. The Claimant made a claim for damages for psychiatric and other injuries suffered as a result of child abuse, which it was alleged would have been avoided or lessened had the Defendant's social workers exercised reasonable care for her safety and wellbeing. There was also an allegation that school staff had failed to act upon a report of abuse by the Claimant in 1999. In respect of the allegation against the school staff, the Defendant accepted that it was at least arguable that a duty of care arose and this allegation needed to be determined on the facts. However, in respect of all the other allegations, the Defendant applied to strike out the claim as disclosing no reasonable grounds for bringing the claim given the Supreme Court's Judgment in *Poole Borough Council v GN and CN [2019]*.

The Application came before Deputy Master Bagot QC.

The Claimant accepted that this was a case of failing to confer a benefit (i.e. a failure to protect the Claimant from harm caused by third parties), rather than attempting to allege that the Defendant caused the harm. However, the Claimant sought to distinguish *Poole* on the basis that in that case the harm was coming from outside the home. The Defendant therein was not in a position to protect the children as a Care Order can only be made where the child is exposed to significant harm attributable to lack of parental care. Social Services could not, therefore, be said to have assumed a responsibility to do something which could never lawfully be done. By contrast, in this case, the Claimant was suffering significant harm due to M's lack of parental care and there was arguably an assumption of responsibility. The Deputy Master rejected this argument on the basis that the inability to seek a Care Order in *Poole* went to difficulties establishing breach and causation, not to the existence of a duty of care, and was an additional and stand-alone reason why the claim was struck out, mentioned towards the end of the Judgment. The Deputy Master considered that stripping away this, in his view incorrect, basis for distinguishing *Poole* only served to enhance the binding precedent value on him of *Poole* and the close analogy it provided and also disposed of the argument that a strike out should be precluded because this is a developing area of law.



In seeking to establish an assumption of responsibility on the facts, the Claimant relied on the placing of the Claimant on the Child Protection Register, a decision to seek legal advice about initiating care proceedings and the decision to do 'keep safe' work with the Claimant. The Deputy Master held that these were an attempt to make inappropriate distinctions of the kind deprecated in ***Robinson v Chief Constable of the West Yorkshire Police [2018]*** and were not factual circumstances which could arguably give rise to an assumption of responsibility. Further, the bald assertion of reliance was insufficient. There was no allegation of reliance on any specific act or undertaking of the Defendant.

In the pleaded case, the Claimant had also sought to rely on the other categories of exception where a duty of care may arise mentioned in *Poole* (adding to the danger, failing to control wrongdoers, preventing others from protecting the Claimant), but these were not pressed at the hearing. Nevertheless, the Deputy Master dealt with and disposed of each of them.

Accordingly, the Deputy Master found that the claims against the Defendant arising out of their child protection activities were bound to fail as there was no arguable duty of care and were struck out.

Costs - Detailed Assessment - Part 36 Offers

Natalie Best (Administratrix of the Estate of Phyllis Stuck, Deceased) v Luton & Dunstable Hospital NHS Foundation Trust - 29.01.21

The Senior Courts Office was required to determine two issues in relation to the assessment of costs in a clinical negligence case.

The Defendant accepted a Part 36 Offer out of time in settlement of the Claimant's Bill of Costs. The Detailed Assessment hearing was relisted to consider Summary Assessment of the Claimant's Costs of Assessment. A Summary Assessment of those costs was completed in November 2020. Shortly after the hearing (but still within the allocated hearing time), the Judge received an e-mail stating that the Claimant sought to claim the benefits of a successful Part 36 Offer in relation to the costs of assessment. Counsel for the Claimant conceded that she had omitted to address this issue at the hearing.

(1) Should the Claimant be allowed to raise the issue post-hearing?

As the Part 36 point had been raised within the time originally allocated for the hearing, the Judge concluded that it was fair to approach the issue on the basis that the Claimant did, in fact, do so before the hearing ended. In addition, the Court was not being asked to reconsider an issue already determined as the Summary Assessment figure remained undisturbed. There was no prejudice to the Defendant.

(2) Could the Claimant rely upon a Part 36 Offer as to the costs of the Detailed Assessment?

By virtue of CPR r.47.20(7), Detailed Assessment proceedings were treated as an independent claim. The Judge held that the quantification of the costs of assessment did not fall within "any issue that arises in the claim" for the purposes of CPR.36.2(3).

Prior to the introduction of the Part 36 regime to Detailed Assessment proceedings in 2013, it was already possible to make an offer in respect of the whole, or part of, any issue that arose in a claim. Therefore, if the issues arising on the Detailed Assessment of costs were issues in the claim, it would already have been possible to make a Part 36 Offer in Detailed Assessment proceedings and the 2013 changes would not have been necessary.

The issues within the Detailed Assessment proceedings were set out in the Bill of Costs, Points of Dispute and Replies. These were resolved when the Defendant accepted the Claimant's Part 36 Offer. The award and quantification of the costs of assessment followed, but were not issues in the deemed independent claim.

The costs of the Detailed Assessment proceedings were held to not, for the purposes of r.36.17 (4), fall within "any issue that arises in the claim". The Claimant's submission was "inconsistent with the way in which CPR 36 had been interpreted since well before 2013" and a "decisive obstacle" would be created if that interpretation was correct. To accept it would be to override the Court's obligation to interpret the rules in accordance with the overriding objective.

Judgment accordingly.

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

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- 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

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