court circular

ZURICH MUNICIPAL

THE LATEST JUDGMENTS AND WHAT THEY MEAN TO YOU

September 2014

Welcome to the September 2014 issue of Court Circular.

Readers can go directly to any article simply by clicking on the heading in the Contents list below. Claims involving our customers are clearly marked in the subject heading, with subjects being colour-coded for swift identification of particular areas of interest. At the top of each page icons may be used to contact us, to email the publication to a colleague, to navigate and to print.

We begin this edition with employers' liability, featuring a teaching assistant's alleged injury from pushing a pupil in a wheelchair *(Sloan)* and a judgment cautioning of the importance of risk assessing specific changes to a place of work *(Kaur)*.

Continuing with employers' liability, we examine two occupational stress claims – one focussing on causation and the other on foreseeability *(Bailey and Daniel)*.

We then feature a motor claim, where the Court of Appeal reminds motorists of the potential consequences for failing to check for traffic that ignores red traffic signals at junctions *(Gray)*. A highways claim revisits the well-known principle regarding failure to exercise a statutory power *(McCabe)*.

We also include a slightly unusual ruling regarding an unfortunate injury to a child in foster care *(Whelan)*, and an interesting and important officials' indemnity claim concerning organisations giving accurate references concerning their ex-volunteers *(Cocallis)*.

Our Police Service customers will be interested in the rare case of false imprisonment, for a few seconds, being compensated with nominal damages *(Walker)*. We again include rulings on fraud, one of which by a court sentencing the defendant, in his absence, to prison *(Carton)*.

There is a clear reminder from the Court of Appeal on limitation and the factors a court should consider when deciding whether to allow a claim to proceed *(Malone)*, and many other interesting rulings in the above mentioned areas, as well as in occupiers' liability, health and safety at work, housing, and damages.

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CONTENTS

EMPLOYERS' LIABILITY

ZURICH claim

INJURY TO LEARNING SUPPORT ASSISTANT WHILE PUSHING WHEELCHAIR

Sloan v The Governors of Rastrick High School, **29.07.14, Court of Appeal**

The claimant, C, was employed by the defendant, D, as a learning support assistant. The school is a mainstream secondary school in which approximately 40 pupils have special educational needs, and eight use a wheelchair.

C's employment with D began in September 2008. Her role included pushing pupils in wheelchairs. She attended two days of training, shadowed another assistant for three days then worked on her own. Eleven days later she allegedly sustained an injury when pushing a pupil in his wheelchair.

C's GP signed her off work for a week and prescribed pain relief. She returned to work for two weeks, was then absent for another week for unrelated reasons and, shortly after returning, she resigned.

C claimed damages from D, alleging she sustained a soft tissue injury in her cervical spine and right shoulder, caused by pushing pupils in wheelchairs. She claimed that, in breach of the Manual Handling Operations Regulations 1992, D failed to avoid the need for C to undertake a manual handling operation that risked injury to her, failed to carry out a suitable risk assessment, and failed to take steps to reduce, to the lowest level reasonably practicable, the risk of her being injured while carrying out the task. She said D could, for example, have provided power-assisted wheelchairs.

At trial, the Recorder held C had suffered a strain but any other symptoms were constitutional. Also, C had not overcome the burden of proving D had breached its duty to her.

C appealed, contending, among other things, that the Recorder wrongly approached the burden of proof.

The Court of Appeal held the Recorder incorrectly approached the burden of proof but this did not warrant over-turning the judgment. The Court confirmed the employer must prove it had taken appropriate steps, regarding the manual handling operation, to reduce the risk of injury to the lowest level reasonably practicable, and, if it had not done so, to prove the employee's injury did not result from that failure. The Court held D had taken the requisite appropriate steps.

D had also complied with its duty under the Regulations to carry out a proper risk assessment of the task. The Court noted the Recorder considered C had given "an exaggerated account" of her symptoms to her medical expert.

The Court held there was no substance to any of C's grounds of appeal, and the appeal was dismissed.

comment

This robust judgment demonstrates the importance of analysing the circumstances of the incident and being able to produce evidence rebutting allegations of failure in training, risk assessments, and reducing the risk of injury. As readers will be aware, since 1st October 2013 strict liability has been removed for breaches of the "six-pack" regulations occurring after that date so that, since then, claimants have to prove their injury or loss was caused by their employer's negligence.

This judgment also provides another example of the importance of scrutinising a claimant's GP records, which can undermine claims as to the existence or extent of ongoing symptoms. Please click here for full judgment.

EMPLOYERS' LIABILITY

ZURICH claim

CLEANERS – NEEDLESTICK INJURY – CARPET TILES

Kaur v Walsall Metropolitan Borough Council, **08.07.14, Walsall County Court**

The claimant, C, was employed by the defendant, D, as a school cleaner. As C was sweeping the textiles classroom floor after a sewing lesson, C, wearing trainers, stepped on a needle stuck vertically in the floor. The eye of the needle pierced her foot, causing an injury from which C largely recovered after four weeks.

C claimed damages from D, alleging her injury was caused by D's breach of duty. Her allegations included breach of the Workplace (Health, Safety and Welfare) Regulations 1992 by failing to maintain the workplace in an efficient state, and breach of the Management of Health and Safety at Work Regulations 1999, by failing to carry out a suitable risk assessment of C's work.

C also alleged negligence, alleging D failed to remove the needle or warn C of its presence, failed to collect needles at the end of the class and failed to inspect the room after the lesson.

D denied liability, contending that the incident did not amount to a failure to maintain the workplace in an efficient state. D said the textiles classroom floor was changed in 2010 from linoleum to highly durable carpet tiles, "Burmatex (4200 sidewalk)", widely used in schools, commercial premises and public buildings.

D further argued it had carried out a suitable risk assessment and cleaners, including C, were provided with appropriate personal protective equipment, including footwear. D also argued that C's job included removing debris, including needles, from the classroom floor and she had undergone appropriate health and safety training. D alternatively alleged C's contributory negligence, in C failing to look where she was stepping.

The judge noted C's health and safety training and that D's risk assessment, regarding 'sharps', only concerned items in waste bins.

The judge held D had failed to take sufficient steps to protect C from the risk of injury. Changing the flooring from linoleum to carpet tiles created an obvious and specific risk. This, the judge held, should have been risk assessed because carpet tiles increased the risk of injury as it was foreseeable that needles and pins could present a hazard by standing upright in carpet. The judge also said C should have been wearing footwear that could resist puncture.

The judge held D liable for failing to take reasonable care for C's safety. C was awarded £1,000 general damages, 28 hours of care at £6.74 per hour, travel expenses, and costs. The judge refused to make an award for "miscellaneous expenses".

comment

This fortunately minor incident nonetheless alerts customers to the importance of risk assessing specific risks that might be created through change. Here, the judge said the change of *type* of flooring was the "trigger point" creating the specific risk that pins and needles might fall and land upright in the carpet tiles. Generally risk assessing 'sharps' only in waste bins was an insufficient assessment of the risk of sharp items in the textiles classroom. Further, suitable training and protective footwear should have been provided for the specific new risk created by the changed flooring.

EMPLOYERS' LIABILITY

OCCUPATIONAL STRESS – ABSENCE OF CAUSATION

Bailey v Devon Partnership NHS Trust, **11.07.14, High Court**

The claimant, C, was employed by the defendant, D, as a Child Psychiatrist. In 2008, after working for D for nearly six years, C suffered heart failure, possibly caused by stress. She also suffered a thyroid condition, a transient ischaemic attack and a depressive episode. She was consequently absent from work for a year.

C agreed with D a phased return with her hours and workload reduced. Approximately seven months later, in 2010, C suffered a further depressive episode and went on long term sick leave, retiring on medical grounds in 2011.

C claimed damages from D, alleging her depressive episodes in 2008 and in 2010 were caused by D's negligence and breach of duty to her. Her allegations included that, in the few months before her first illness in 2008, the demands on her substantially increased. She further alleged D failed to carry out a suitable risk assessment, in breach of Regulation 3 of the Management of Health and Safety at Work Regulations 1999.

The court acknowledged that the law as to liability for occupational stress is encompassed in the leading House of Lords judgment in *Barber v Somerset County Council* (*Court Circular*, May 2004). For an employer to be liable, it must have foreseen indications of impending harm to its employee's health from stress at work, and the indications must have been such that a reasonable employer would have done something about the situation.

Further, an employer is under a duty to assess the risk of harm from stress at work. Here, D had failed to carry out a risk assessment, and failed to implement its own policy for assessing employees' stress. At the very least, D should have instructed C to complete D's stress assessment form which D should then have assessed. However, had C completed the form, this would not have averted C's illness in 2008 which, the court held, D could not have foreseen.

The court held that C would have been reticent about giving full information about her health – an analysis of any of her disclosures about stress would have emphasised external problems, and she had concealed from D her treatment of anti-depressant medication and psychotherapy.

The court held C's stress was caused by multiple factors. A reduction in her workload would not have averted her illness in 2008, but D breached its duty to C on her return to work afterwards. C was not fit to return, she could not cope, but D left C to decide how to address her difficulties. But any reasonable changes would not have prevented her further illness. Therefore, although D had breached its duty to C, this did not cause her further illness. The claim failed.

comment

This unsuccessful workplace stress claim focusses on the importance of a claimant establishing causation and of a defendant demonstrating it did not cause the illness in question. Workplace stress claims contain inherent difficulties for claimants regarding causation because an individual may experience stress from multiple factors and may even conceal their problems from their employer, as here. The importance is therefore emphasised for defendants to scrutinise issues concerning causation, particularly where there may be vulnerability as to breach of duty.

EMPLOYERS' LIABILITY

OCCUPATIONAL STRESS – FORESEEABILITY

Daniel v Secretary of State for the Department of Health, **28.07.14, High Court**

The claimant, C, was employed in London by the Defendant, D, as Cancer Research Network Manager. She had worked for D since 2002 when she and her line manager, K, set up the network.

C claimed damages from D, alleging she suffered psychiatric injury caused by stress at work through being bullied by one of D's professors, G. She alleged D knew about the bullying but failed to take sufficient steps to deal with it. C said she told K about it in 2004 but K did not provide adequate support.

C further alleged that, from October 2005, she was heavily overworked but D negligently allowed her workload to continue.

Unbeknown to D or K, C suffered from bipolar disorder, a mental health condition.

D denied liability.

The court considered whether there was a risk, foreseeable to D, that C would suffer psychiatric injury from stress at work, and whether any impending harm to C's health, due to that stress, was plain enough for a reasonable employer to realise they should do something about it.

The court considered the leading House of Lords' judgment in *Barber v Somerset County Council* (as referred to in *Bailey*, above). The court held that, to succeed in her claim, C would have to prove foreseeable injury to her mental health by D being aware of indications of C's impending breakdown rather than stress alone.

The court rejected C's allegations that G's conduct was sufficiently offensive, oppressive or unacceptable, so as to amount to bullying.

With regard to C's increased workload, she took this on willingly without complaint and was well paid for it.

The court held it was important to note that C did not reveal to D her pre-existing mental health condition, possibly because C did not wish to appear weak to D. The court held there were no indications to alert D to impending harm to C's mental health, nor did C complain of impending harm, and therefore no reason for D to realise they should do something to avert the risk.

The court held C's breakdown was not foreseeable to D; it came as a surprise to them, which was understandable, given C's concealment from them of her pre-existing condition.

The claim was dismissed.

comment

This unsuccessful occupational stress claim illustrates the importance of a defendant being able to provide evidence that an employee's alleged mental health injury did not arise from risk factors that the employer should or could reasonably have foreseen. As in *Bailey*, above, where an employee deliberately conceals key information about their true mental health, the employer may rely on this in support of its defence to allegations that it failed to notice indications of impending harm to the employee, which the employer should have acted to avert. Please click here for full judgment.

EMPLOYERS' LIABILITY

MESOTHELIOMA – FAILING TO PROVE NEGLIGENCE

Abbott (Administratrix of D Abbott, Deceased) v Cannock Chase District Council, **15.05.14, High Court**

The claimant, C, is the widow of H who was employed as a bricklayer by the defendant council, D, during the 1970s. In January 2014, H died from mesothelioma.

Before his death, H told C that, during his employment with D, he had been exposed to asbestos dust and fibres. C recorded H's allegations in a written note that formed the basis of C's claim. In essence, H alleged that, during his employment, he was required to make an asbestos paste and apply it to the ceiling of a brick building in a cemetery, spending approximately one week on the task.

The court considered evidence from others who had worked at the cemetery at the time, as well as expert evidence from asbestos surveys of buildings at the cemetery. The court noted three separate asbestos surveys indicated that no asbestos was present in the area and the ceiling had not been altered since H had worked there.

The court held that, in the absence of evidence showing H had worked with asbestos, and despite H's genuine belief that he had used asbestos, this had not been the case. The claim was dismissed.

comment

This judgment demonstrates that a claim alleging an employee was wrongly exposed to asbestos can be defended if there is no or insufficient evidence of exposure or, if there were exposure, that there was no breach of duty.

MOTOR

COLLISION AT JUNCTION – DUTY TO CHECK FOR DRIVERS IGNORING RED TRAFFIC SIGNAL

Gray v Botright. **09.7.14, Court of Appeal**

The appellant, G, had driven to a junction controlled by 11 traffic lights. When the lights turned green in his favour he proceeded, turning right as intended. He did not check whether any vehicles were approaching from where the lights were red against them. At the same time the respondent, B, drove through the red light, resulting in his and G's car colliding.

G sustained injuries in the collision. He claimed damages from B, alleging B's negligence caused the accident. The trial judge dismissed his claim, finding G negligently failed to check for traffic disobeying the red light, and that B had not been travelling much in excess of the 30mph speed limit. The judge said that if he was wrong, he would have awarded damages of £2,800.

G appealed both the judge's reasoning and the level of damages.

The Court of Appeal held G positively chose not to look for traffic disobeying the red lights when he turned right. To assume no cars would be approaching was "sheer folly". However, B's actions created the danger which the lights were designed to prevent. B should not have disobeyed the red light but, having done so, he should have slowed down when seeing G in his path as the onus was then on him to pay particular care regarding other traffic.

The Court held both parties equally negligent. Liability was apportioned accordingly and G's appeal on damages was dismissed.

comment

This is a somewhat cautionary ruling from the Court of Appeal, warning motorists not to assume that all drivers will halt at red traffic lights. Failure to check for traffic 'jumping' red lights, when a driver is correctly proceeding through green lights, may render the correctly proceeding driver partly negligent if a collision occurs.

HIGHWAYS

TRIP – EVIDENCE OF ADEQUATE INSPECTION SYSTEM

Bishop v Walsall Metropolitan Borough Council, **23.04.14, Walsall County Court**

In mid-August 2011, the claimant, C, was walking in a pedestrianised shopping area in Willenhall when she tripped over a protruding paving stone. She fell, sustaining shock and a fractured wrist.

C claimed damages for her injuries from the defendant highway authority, D, alleging negligence and breach of duty under s.41 of the Highways Act 1980 (the Act). Her allegations included that D allowed the paving stone to present a danger to pedestrians by becoming unstable, rocking and defective. C alleged D failed to repair the defect, failed in its duty to maintain the highway, and exposed her to a foreseeable risk of injury.

D denied liability, relying on its statutory defence under s.58 of the Act. It said it maintained the area sufficiently, carrying out a two-monthly inspection. On inspection at the end of June 2011 the area was not regarded as carrying a defect of intervention level. In mid-July the area was logged for slabs to be repaired swiftly. Due to a water leak, the repairs were postponed to September, after the water leak was repaired. D also argued contributory negligence by C failing to take care for where she was walking.

The judge held the area was defective and dangerous to pedestrians. D had not taken all reasonable care in the circumstances – its inspection and repair system was inadequate. The court held the defect, in a busy pedestrianised area, should have been urgently repaired in July. The claim succeeded. The court awarded C damages of £16,860 and costs.

comment

This illustrates that, despite the pressures on highways authorities, it is important to be able to demonstrate the operation of a suitable inspection, maintenance and repair regime to be able to rely on s.58 of the Act to defend allegations of breach of the s.41 duty.

HIGHWAYS

STREET LIGHT – FAILURE TO MAINTAIN – NO DUTY OF CARE TO INJURED PEDESTRIAN

McCabe v (1) Cheshire West and Chester Council and (2) BAM Nuttall Ltd, **26.06.14, Chester County Court**

One night in October 2009, the claimant, C, was walking his dog along a public footpath in Elton, near Chester. The path included steps leading to a lower section of the path. As C walked down the steps, he fell, sustaining injuries. There were no other witnesses.

C claimed damages from the first defendant highway authority, D1, and from the second defendant lighting contractor, D2. He alleged his accident was caused by their negligence in failing to maintain lighting in the area. He said the streetlamp that would have lit the steps had not been illuminated at the time of his fall and the steps therefore presented a foreseeable hazard to pedestrians. D1 had installed the lamp and had, C alleged, negligently failed to maintain it.

D2 discovered the faulty lamp ten days before the accident. D1 received D2's report of the fault a week before the accident and, three days before it, instructed D2 to repair the fault. D2 said the lamp was repaired on the day of the accident, so would have been working that night.

The judge examined D2's repair records and held that, although a lamp was probably repaired that day, it was not the lamp in question, a mistake which occurred due to D1 mislabelling the lamp posts.

The defendants contended that, generally, a claim cannot be made, alleging negligence or breach of statutory duty, against a statutory body which fails to exercise a statutory power. Therefore, if D1 owed no duty to C, neither did D2, being only D1's contractor.

The judge considered whether a duty of care was owed by either defendant to C, noting C had not alleged breach of statutory duty. Street lighting is provided by a highway authority in accordance with its statutory power, rather than duty, under s.97 of the Highways Act 1980 (the Act).

The judge referred to relevant case law, including the well-known House of Lords' judgment in *Gorringe v Calderdale MBC*, where the defendant was held not liable in negligence for failing to exercise its power to repaint a warning sign on the road. The judge also considered the Court of Appeal judgment in *Yetkin v Newham LBC*, where the defendant was held liable for creating the danger in question – planting vegetation near a pedestrian crossing (*Court Circular*, May 2004 and September 2010, respectively).

The judge held that the drop in levels in the footpath was actually made safer by D1 installing steps. The inoperative lamp post did not positively create or increase the danger, nor did the mislabelling of it for repair.

The judge held D2 owed no higher duty than D1 to provide the lamp post and could not be held negligent for repairing the wrong lamp. The claim was dismissed.

comment

This reaffirms that there is generally no liability on a statutory body which fails to exercise a statutory power, so long as its failure does not positively create or contribute to the danger in question (as in *Yetkin*, above). Failing to maintain the lamp post did not create or increase the danger that already existed; the failure amounted to nonfeasance rather than misfeasance.

HIGHWAYS

LAMP POST REPAIR – GAP BETWEEN PAVING SLABS – TRIP

Oliver v Birmingham City Council, **09.05.14, Birmingham County Court**

On a dark evening in March 2010, the claimant, C, was walking along a pavement on which works had recently been carried out concerning a new lamp post. C tripped and fell in a gap between the slabs of the pavement, sustaining a fractured ankle and various soft tissue injuries. She was aged 37 at the time. There were no other witnesses.

C claimed damages for her injuries from the defendant highway authority, D. She alleged breach of duty under s.41 of the Highways Act 1980 (the Act). Her allegations included that the pavement had been left in a dangerous state of disrepair following the lamp post works with the slabs being left spaced apart, that D had not operated a suitable inspection system so that the defective area was inspected and noted as needing repair, and that D knew of the defective area by reason of it having been reported to them some two weeks earlier.

D denied liability. It contended that it had no record of the lamp post works. D disputed how the injuries were sustained, referring to C's medical records recording she fell while running on gravel. D relied on its statutory defence under s.58 of the Act, saying the area was subject to a reasonable inspection for its classification – a twice yearly walked inspection, the last taking place six weeks before the accident. D had not received any complaints about the area in the preceding 12 months, and it did not know, nor could it have known, of the condition of the pavement as C's photographs indicated.

The judge agreed there were inconsistencies between C's medical records and her version of the accident, as well as regarding other matters. The judge referred to the Court of Appeal's ruling in *Bell v Havering LBC* (*Court Circular*, September 2010) in which the Court said (at paragraph 32) "one has to view with some caution less significant inconsistencies".

The judge accepted C's account. He refused to find any contributory negligence of C, but said that, had the accident occurred in daylight, he would have done so, as the gap between the stones would have been visible. At night, however, there may have been shadows.

The claim succeeded. C was awarded nearly £12,000, including £10,500 as general damages for her injuries.

comment

This illustrates how a court may regard inconsistencies in a claimant's evidence as insignificant to the extent that the claimant's allegations are not tarnished. The defendant highlighted several seemingly serious inconsistencies between the claimant's account of her accident, her medical records, and her drinking habits, but the judge found that her evidence provided what he regarded as plausible explanations. This judgment demonstrates the difficulties for a defendant in claims containing conflicting evidence, showing that conflicts or inconsistencies must be significant and not reasonably explainable before a court will find the balance of credibility weighing in the defendant's favour.

OCCUPIERS' LIABILITY

ZURICH claim

SPORTS CENTRES – SLIP ON DAMP FLOOR

Swinfield v Leicester City Council, **02.04.14, Leicester County Court**

The claimant, C, visited a circuit training class at a sports centre run by the defendant, D. During the class, C slipped and fell, causing her injuries for which she claimed damages from D. She was aged 44 at the time of the accident.

C alleged D's breaches of duty to her, under the Occupiers' Liability Act 1957 (the Act), caused her injuries. Her allegations included that D caused the floor to be wet which created a hazard to C, that D failed to operate a suitable inspection or cleaning system, failed to provide a suitable surface for the activity, and failed adequately to supervise or instruct its employees.

D denied liability, contending that the sports hall, where the class took place, was subject to regular checks, risk assessments and daily cleaning. D said the floor is inspected before each class and two attendants ("spotters") are present during the class to mop up as required during the session. It argued the material C slipped on was sweat, not water from outside. Further, an anti-slip coating was applied to the floor approximately two years before the accident.

D also or alternatively argued contributory negligence of C, saying she failed to look where she was stepping.

On the day of the accident it had been snowing, resulting in visitors, who had entered via the emergency exit, bringing water from their footwear into the sports hall. The court noted that D's post-accident risk assessment had identified that, if the floor surface became wet, there was a risk of slipping. D accepted that it was reasonably foreseeable that, when water was on the floor, there was a risk of a person slipping.

The court held there was no evidence that the two "spotters" in attendance took any action regarding the water on the floor, or that they had been trained to mop up. The court also held there was no mat outside the hall and that, had one been in place, it would have soaked up much of the water, substantially reducing the risk of injury.

The court held that, while D had a system in place to deal with water on the hall floor, it did not properly operate that system.

The judge rejected the allegations of contributory negligence and held in favour of C, awarding her damages of £2,250 plus interest and costs.

comment

This provides an example of the potential difficulties created where there is insufficient evidence as to the cause of a person slipping. Here there was no clear evidence that the material on which C slipped was water, but also insufficient evidence that it was sweat, as D argued. The court considered D's cleaning and inspection system, ruling it had not been properly operated on the day of C's accident and that, on balance, the material on the floor was probably water. This highlights the importance of recording as much information as swiftly as possible post-accident, and of being able to demonstrate that an inspection system had properly been in operation at the time of the accident.

OCCUPIERS' LIABILITY

ZURICH claim

GROCERY STORES – MOVING WALKWAYS – TRAVELATOR

Lafond-Pendenque v Makro Wholesalers Ltd, **03.07.14, Brentford County Court**

The claimant, C, and her friend visited a 'cash and carry' store in London, occupied and operated by the defendant, D. C was a regular visitor to the store. C loaded her shopping into one of D's trolleys. The store contained a moving walkway known as a 'travelator'. C stood on the travelator with her trolley and as she reached the end, she said the front wheels of the trolley became caught in the groove between the end of the travelator and the store's floor. As this happened, C's abdomen struck the trolley's handlebar, the trolley fell over and C fell on to it, sustaining injuries.

C claimed damages from D, alleging her injuries were caused by D's negligence and breach of duty under the Occupiers' Liability Act 1957. Her allegations included failure to maintain the travelator in good repair, allowing it to become defective, and failure to warn C of the defect.

D denied liability, contending the travelator was inspected and maintained sufficiently and no defects were found on inspection after C's accident. D provided evidence of warning signs giving customers instructions as to the safe and correct use of the travelator, both when entering on to and leaving it. D also said it had no record of any similar incidents, complaints or 'near misses' in the twelve months preceding C's accident.

D further gave evidence that the travelator was inspected daily by D and monthly by an independent engineering contractor. D's trolley porter inspected the trolleys daily and D's contractor inspected them every six months. D said it understood C walked with the aid of a walking stick and she could have requested store staff assist her with using the travelator.

At trial, C said she had not seen the warning signs at the start or the end of the travelator and that, had she seen them, she would not have used it.

D's witness, one of its employees, said that, as the sign stated, the trolley must be loaded on to the travelator correctly. He said the travelator had a groove mechanism which locked into place with the grooves of the trolley's wheels so that the trolley needed to be correctly positioned to ensure it did not move on the travelator.

The judge accepted the accident occurred, but declined to find it was caused by any breach of duty by D. He held that the travelator was not defective. The claim was dismissed.

comment

This highlights the importance of an occupier being able to satisfy the court that it had taken all reasonable care to ensure visitors were reasonably safe. When occupiers allow visitors on to their premises and the premises allow visitors to use specific equipment to negotiate the premises, the occupier must take reasonable care to ensure visitors are informed as to how to use the equipment safely. Here, the occupier provided evidence of suitable notices at the entrance and exit to the travelator, of proper inspection, maintenance and repair systems, and records over the preceding year showing no similar incident or complaint.

SCHOOLS

ACCIDENT TO PUPIL DURING LESSON – SWIVEL CHAIRS

CMG (a minor, by the child's father and litigation friend) v Rhondda Cynon Taf County Borough Council, **06.02.14, Blackwood County Court**

The claimant, C, was a pupil at a primary school for which the defendant local education authority, D, was responsible.

In 2011, when C was aged 11, C was in a school lesson when the class teacher instructed C and other pupils to sit on the floor behind a chair on which another pupil, P, was sitting. The chair was a swivel chair on castors. P was undertaking research on a computer and passed information to the pupils seated behind him on the floor.

C complained to the teacher that P was deliberately making the chair collide with C. P leaned over from the chair to pass some information to the other pupils, but it fell over, injuring C's finger.

Through C's father, C sought damages from D for the injury, alleging negligence. C's allegations included that the teacher was not paying sufficient attention to P behaving mischievously, that the class was inadequately supervised, and that D knew or should have known of a foreseeable risk of injury to pupils sitting in an allegedly dangerous area on the floor behind a pupil on a swivel chair.

D denied liability, contending it took all reasonably practicable steps to avoid injury to C and any other pupil. The floor and the chair were fit for their intended purpose, the class was sufficiently supervised, with one teacher for the 11 pupils in the class, and D had no record of any similar incident in the preceding 12 months before the accident. C had not complained of any injury at the end of the class or during the rest of the day and the teacher had regarded the accident as so minor as not needing to be recorded in the school's Accident Record Book.

The judge held that the chair accidentally fell over when P leaned over. The staff-to-pupil ratio was sufficient and the teacher could not be criticised for deciding not to complete the Accident Record Book as "no real harm" had occurred. The floor behind the chair was not a dangerous area for C to have sat.

Further, the accident had not been reasonably foreseeable – P had only lost his balance when leaning over in the chair. The judge said it was not reasonably foreseeable that this type of chair would fall over when P leaned over in it.

The judge held this was a pure accident with no one to blame. The claim was dismissed.

comment

This illustrates that a defendant's decision not to complete an accident record log of a trivial incident, will not necessarily contribute to a general picture of liability as alleged. The accident here was assessed by the teacher as so minor that it did not warrant being recorded. Further, C had neither complained about any injury during the rest of the day nor left school early. The judge rejected C's allegations, regarding them as either insignificant or not amounting to any breach of duty. He also lamented the fact that D even had to address this incident as a claim.

SCHOOLS

ZURICH claim

SPORTS – INJURY DURING JUDO SESSION

Jones v Walsall Metropolitan Borough Council, **20.06.14, Birmingham County Court**

The claimant, C, was a pupil at a school for which the defendant, D, was the local education authority. At the end of a school day, C attended a judo class. She was a novice but was paired with a boy, B, who was more experienced. The instructor, M, instructed the pair to engage in a "fight" exercise, during which C suffered fractures to her left arm. She was aged 16 at the time.

C claimed damages from D for her injuries, alleging they were caused by M's negligence, for which D was vicariously liable. C's allegations included that M failed to train or instruct C correctly, he allowed C to engage in the exercise before she had demonstrated to M she was competent and confident to do so, he incorrectly instructed C as to appropriate moves and throws, given her inexperience, and wrongly instructed her in how to fall correctly for the particular exercise.

D denied liability, contending that C had been instructed correctly. D alternatively argued contributory negligence of C by, among other things, failing to listen to and watch M's instruction before the exercise began, failing to carry out the instruction during the exercise, failing to tell M she did not understand the instructions, and failing to take sufficient care for her own safety.

The judge commented that the law did not provide much help as to the correct approach in this situation – a novice student injured in a judo class. He said the correct approach would be to consider how a reasonable judo teacher would have conducted the exercise and whether M's standard of instruction fell short so as to cause C's injury.

During the trial, the judge noted inaccuracies in C's witness statement, such as C conceding she had been given more instruction than her statement indicated. Expert evidence did not criticise M's method of teaching at the session and, there was no evidence B's conduct, though perhaps over-enthusiastic, resulted from any negligence of M. M had asked the pupils if they were all right or concerned about any aspects during the class and, at trial, C admitted that even if she had not been all right, she would not have said so at the time.

The judge held C's accident did not result from M's negligence. The claim was dismissed.

comment

This emphasises the importance of retaining records of accidents and of witnesses being able, as far as possible, to provide clear and consistent evidence at trial, including where an accident occurred several years previously. A claimant's witness statements, despite carrying statements of truth, may nonetheless contain significant inaccuracies or omissions.

Further, the court confirmed that where an accident occurs in circumstances for which there is little case law or judicial authority to assist the parties and the court, the correct approach to assessing whether it occurred, to any extent, through any breach of duty by the defendant would be to consider how a reasonable person, in the defendant's position, would have acted. Expert evidence could assist the parties and the court by clarifying or explaining preferred or accepted techniques, approaches or systems in the particular circumstances.

PUBLIC LIABILITY

ZURICH claim

FOSTER CARERS – FIRE AT FOSTER HOME – CHILDREN ACT 1989

Whelan v (1) Milton Keynes Council and (2) Barr, **16.07.14, Peterborough County Court**

When aged 14, the claimant, C, in the care of the first defendant, D1, was placed with the second defendant foster parent, D2. Another boy, X, of similar age to C, was also placed with D2.

D2 was having an extension built to her home. C said he and X were alone in the property and that petrol cans were in the garage, one without its lid, and some petrol had spilled on to the floor. C said X, while alone in the garage, had discarded a lit match near the open petrol can, igniting the spilled petrol. C said as he entered the garage, the petrol cans exploded, engulfing him in flames. He sustained extensive burns.

C claimed damages from the defendants, alleging negligence and breach of duty under s.22 of the Children Act 1989 (the Act). He alleged that D1 failed to inspect D2's property before placing him there, failed to ensure it was a suitable and safe home, and failed to assess D2 as a suitable foster carer.

C's allegations against D2 included that she failed to supervise C or X properly, and stored petrol unsafely.

D1 denied liability, disputing C's right under the Act to bring a private law claim. D1 denied the other allegations and argued contributory negligence of C, relying on police evidence that C said he was sorry and should not have been "messing around with fire".

D2 also denied liability, saying she did not leave C and X alone, and petrol was stored in the locked shed, not the garage.

At trial, the judge said the evidence was unclear as to how the accident occurred as C had given various accounts. The judge found C's evidence inconsistent and unreliable. He said that what probably occurred was that the builders stored their equipment, including petrol, in the shed and locked it. The boys gained access to the shed, took the petrol to the garage and ignited it.

The judge said it is normal for householders to store petrol in a shed to use, for example, in petrol lawnmowers. D2 did not store the petrol unsafely, nor did she leave C alone. C and X had been left in the village and told to wait there for her, but they disobeyed her.

C belatedly argued D1 owed C a non-delegable duty of care, under the principles set out by the Supreme Court in *Woodland v Essex County Council* (*Court Circular,* January 2014). In that ruling, the Court gave guidance as to the circumstances under which a public authority would owe a non-delegable duty. The court considered that ruling but held D1 had not breached any duty to C. The claim was dismissed.

comment

This again illustrates the importance of cross-checking claimants' statements, as the claim progresses, with the initially pleaded allegations and statements made to expert witnesses. The claim also briefly referred to the important Supreme Court judgment in *Woodland*, as above, providing a reminder of the circumstances under which a public authority may owe a non-delegable duty of care.

OFFICIALS' INDEMNITY

ZURICH claim

REFERENCES – VOLUNTEERS

Cocallis v North Tyneside Council, **08.07.14, North Shields County Court**

The claimant, C, worked for the defendant, D, as a volunteer at one of D's children's nurseries. C was engaged for one day a week for two months during the summer of 2009. He said that during this time he completed 50 hours' voluntary service for D.

Just over two years later, C successfully applied for a post with a local NHS Trust, subject to satisfactory references. C stated the nursery as a referee. The nursery's assistant manager, N, provided a reference stating that C worked as a volunteer at the nursery for three weeks, he left because he was unsuitable, and his overall job performance, ability to get on well with others, level of attendance at work and attitude to work were poor. The NHS Trust subsequently withdrew its job offer.

C claimed damages from D, alleging the reference was untrue and unfair, causing him financial loss. C alleged D owed him a duty, when providing a reference as to his volunteer work, to exercise reasonable care and to take reasonable steps to ensure the reference is true, fair and accurate.

D accepted it owed a duty of care as alleged, even though C was only a volunteer, but it asserted that the reference given was true, fair and accurate. D disputed that C's job offer was withdrawn as a consequence of the reference or that C suffered any consequential financial loss. D relied on reports of C's behaviour at the nursery, citing one incident in particular where C allegedly shouted at some children.

C produced a log indicating he had attended as he had claimed, and he denied D's allegations, including the alleged incident of him shouting. D's witnesses confirmed D's allegations.

The court held that a former employer who provides a reference, despite no obligation to do so, owes a duty of care to the person concerned to give a true, fair and accurate reference. C must prove D has breached that duty and that the breach caused his losses.

The judge regarded C's evidence at trial as unreliable, but also said there "were some issues" with the evidence of D's key witness. The judge noted C was the first volunteer the nursery had taken on, but he found it surprising there was no record of the alleged incident of C shouting.

However, the judge largely accepted D's evidence, except regarding the comment as to his attendance, which the judge said could have been recorded as "satisfactory". The judge held the reference was otherwise true, fair and accurate and the claim was dismissed.

comment

This successfully defended Officials' Indemnity claim, alleging a reference for a volunteer was unfair, nonetheless stresses the importance of organisations, who engage volunteers, retaining records of the attendance and general conduct of its volunteers. This includes even where volunteers attend for a short duration, so that if the organisation later agrees to provide a reference, the organisation can be confident the reference is true, fair and accurate. In particular, a record should be retained of particular incidents involving volunteers' undesirable or inappropriate conduct, particularly where the organisation's functions concern the welfare of vulnerable persons.

POLICE

ARREST – REASONABLE GROUNDS – ARRESTING FELLOW OFFICER

Alderson v Chief Constable of Kent Police, **20.06.14, Canterbury County Court**

The claimant, C, was a police constable with the defendant police force, D. C commenced service with D in 1988 and retired in 2013 on medical grounds.

One Friday in June 2009, after work, C spent the early part of the evening in a pub with friends. On returning home he had an argument with his teenage son over a minor matter. The argument worsened and C's wife, W, telephoned 999, requesting the police, saying C was shouting and threatening her. She said C had gone to retrieve his shotguns and that she was taking the children to a neighbour. Two officers soon arrived and, after discussing matters with both C and W, they decided no offences had been committed. However, they removed C's guns and C left to spend the night at the home of a friend and fellow officer.

The officers then questioned W to assess any risk to her as this was a domestic incident. W mentioned an incident a few months earlier where C had allegedly assaulted W. As a result of this disclosure, D's officers arrested C on suspicion of assault causing actual bodily harm. C was detained overnight, questioned the next day, and then bailed. Approximately two weeks later he was told no further action would be taken against him over this incident.

C claimed damages from D, alleging wrongful arrest and false imprisonment.

The court considered police powers to arrest an individual, under s.24 of the Police and Criminal Evidence Act 1984 (PACE) (amended by the Serious Organised Crime and Police Act 2005) and Code G of the Code of Practice under s.67 of PACE.

S.24(4) of PACE, as amended, provides a single code of arrest powers. For a lawful arrest, the arresting officer must prove that, on the information known to him, he or she had reasonable grounds for believing that the arrest was necessary for one of the reasons in s.24(5).

The court also considered the Court of Appeal's guidelines for lawful arrest, in *Hayes v Chief Constable of Merseyside Police*, (*Court Circular*, September 2011). In that judgment, the Court set out a two-stage process that should be followed before an arrest is made: first, the officer believes the arrest is necessary for one of the reasons in s.24(5); second, the officer's belief is objectively reasonable, given the information available to him at the time.

The court held the arresting officer objectively had reasonable grounds for believing it was necessary to arrest C, considering the potential risk of harm to W. The claim was dismissed.

comment

This unsuccessful claim of wrongful arrest and false imprisonment was complicated by the arrest being of a fellow police officer and arising in a slightly unusual manner – the officer's wife alleging a separate incident had occurred several months before that for which she had telephoned for emergency assistance. The court acknowledged the difficulty involved in deciding to arrest a fellow officer in these circumstances, but the arrest was held to comply with the Court of Appeal's guidance in *Hayes*, above, and the amended s.24 of PACE, and was therefore lawful.

POLICE

FALSE IMPRISONMENT – NOMINAL DAMAGES FOR BRIEF DETENTION

Walker v Commissioner of Police of the Metropolis, **01.07.14, Court of Appeal**

In 2008 officers from the defendant police force, D, attended the home of a woman who had called the police, complaining that the claimant, C, who was her partner, had hit her. C was arrested for suspected affray and for assaulting a police officer. He was detained in custody for several hours, then released.

At trial, C was acquitted. The judge held C's initial detention was unlawful because one of D's officers, O, had briefly restricted C's movements in a doorway, without intending to arrest him. The judge held this amounted to unlawful detention for a few seconds.

Nearly two years later, C claimed damages from D, alleging false imprisonment, assault and malicious prosecution.

At the initial trial, the court noted the parties' differing accounts of events leading to C's arrest. C alleged O blocked him in at the doorway to the property, assaulted him, and that other officers helped O carry C into the police van.

D contended that O arrived at the property and stood in the doorway to make initial enquiries of C. O said he asked C to calm down, he did not touch him, but he made it clear to C that he was not free to move. D said C pushed O who then told C he was being arrested for a public order offence. O said he did not have sufficient time to be more specific as C became aggressive, biting O on his arm and finger.

The court preferred D's evidence, ruling the detention, for a few seconds only, was justified and within the scope of O's duties. The claim was dismissed. C appealed.

The Court of Appeal held C would have understood he was being arrested for his conduct, O had warned C he might be arrested if he did not control his behaviour, and O told C the arrest was for a public order offence. C had therefore been lawfully arrested for a public order offence.

With regard to whether C had been unlawfully imprisoned, the Court held O had wrongly detained C for a brief period of time – a few seconds. For this brief and "technical" imprisonment, the Court awarded C nominal damages of £5.

The appeal was allowed to that extent only.

comment

The Court of Appeal said it hoped this decision would not inhibit sensible policing, but it stressed the importance of avoiding unlawful detention, for even a few seconds. One appeal judge commented that the defendant could have included in its defence an argument that its officer had acted as he had, having apprehended an imminent breach of the peace. However, the defence was not argued in that way. The Court said this was an unusual incident and it did not think there would be many cases where police, in these difficult situations, would be at risk of a ruling such as this.

FRAUD

ZURICH claim

EXPOSING FRAUDULENT PERSONAL INJURY CLAIM

Carton v Madden (trading as The Anchor Bar), **11.04.14, High Court (NI)**

The plaintiff, P, said that while he was at the defendant's nightclub in 2008, celebrating his birthday, he slipped and fell, injuring himself. He also alleged the club's door staff then aggressively evicted him from the premises.

P claimed damages from the defendant, D, alleging the accident was caused by D failing to operate an adequate system of maintenance and inspection. He also argued D was vicariously liable for the way its door staff evicted him from the club. P, whose job was selling ice cream from a van, claimed the accident stopped him working for nearly two years.

D denied liability, contending that no report of the alleged incident was made to them and they only learned of it on notification that P was making a claim for damages. D also disputed the incident even occurred as P had been barred from its premises.

Further, there were no other witnesses. The door staff had no recollection of the incident but said they would have remembered due to the alleged attendance of an ambulance to treat P.

The hospital notes recorded that P "fell down stairs while intoxicated". He had apparently sustained a fractured ankle.

Damages were agreed at £60,000 subject to liability.

P produced photographs allegedly showing him sitting outside the club soon after the accident, but these were found to have been taken years later, from the exterior colour of the premises in the photographs not being the colour they were in 2008.

The trial began but was adjourned for several weeks, during which time D were asked if they would be prepared to settle. D were asked if they would consider £10,000, then £5,000 and, finally, £1,000.

In those circumstances, D's suspicions increased as to the claim being fraudulent. Its enquiries revealed P had previous convictions relating to drugs and forgery, and he had repaid £127,000 in 2007, relating to the proceeds of crime.

When the trial resumed, the judge said P's criminal record "demonstrates his dishonesty and willingness to break the law if it is to his financial advantage."

The judge held P had failed to prove, on balance, that he slipped as alleged. The judge found P had probably fallen down stairs under the influence of drugs and/or alcohol.

The claim was dismissed.

comment

The exposure of this claim as fraudulent again reiterates the importance of being alert to weak or contradictory evidence that can suggest a claim is not genuine. Fraudulent claims will contain their own particular discrepancies and features indicating that they are non-genuine, emphasising the need to examine evidence closely. History of a significant and relevant criminal record may also indicate the need for additional vigilance.

FRAUD

COMMITTAL TO PRISON FOR PURSUING FRAUDULENT ACCIDENT CLAIM

Liverpool Victoria Insurance Company Ltd v Thumber, **High Court, 15.07.14**

The applicant insurance company, LV, applied to the High Court to commit the respondent, T, to prison for contempt of court.

T alleged that, while driving, his car was involved in a collision with another car, resulting in T's car being written off. T said his car was worth £6,000. He claimed he consequently had to hire a replacement car, incurring hire charges of approximately £130,000. He also alleged he suffered whiplash injuries in the alleged collision.

T claimed damages from the driver of the other car and from the driver's insurer, LV. LV filed a defence alleging the claim was fraudulent.

On the day the trial was due to start, T discontinued his claim and the court ordered him to pay costs on the indemnity basis. LV then applied for T's committal.

T was granted an adjournment of the hearing, after saying he only had a week's notice and needed time to obtain legal advice and representation. He was told that any further adjournment would only be granted if T provided medical evidence that he was seriously ill.

Ten days before the new hearing date, T arranged for a doctor's certificate to be sent to the court, stating he was suffering from a depressive episode and was unfit for work. T's brother said T's mental health had deteriorated to the extent that he might be hospitalised.

The court considered whether to adjourn the hearing again or whether to commit T to prison.

The High Court held that, if T were unfit to attend court, the doctor should have said so on the certificate. T might have been depressed but that was insufficient to excuse his attendance at the committal hearing. The court refused a further adjournment.

The judge then considered the evidence regarding the alleged accident, finding that the damage to the two cars was inconsistent with the collision that T alleged had occurred. The judge said T and the driver of the other car were linked by a third party.

The judge said there was "powerful" evidence of fraud and dishonesty in T's claim and it was the excessive car hire claim that was T's downfall. The judge held the claim was clearly fraudulent, it was supported by false witness statements and, had it proceeded to trial, T would have continued his false claim, attempting to obtain money by committing perjury.

The judge held T was in contempt of court for knowingly giving false evidence in his statements. T was sentenced, in his absence, to twelve months' imprisonment.

comment

This is a robust demonstration of the courts' continued intolerance of fraud. The judge was unmoved by the claimant excusing his attendance on the grounds of a medical certificate stating he was unfit for work. The doctor had not said he was unfit to attend court. The importance of scrutinising evidence, particularly in high-volume claims, remains high, with inconsistencies, contradictions or unusual elements of a claim (here the excessive hire claim) being among the many indicators of possible fraud.

HEALTH & SAFETY PROSECUTION

EMPLOYER LIABLE WHERE EMPLOYEE CREATES RISK OF DANGER

Polyflor Ltd v Health and Safety Executive, **18.07.14, Court of Appeal (Criminal Division)**

The appellant company, P, manufactures vinyl flooring. One of its employees, E, was attending to a part of one of the machines after it had become blocked with vinyl, as sometimes occurred. After the blockage had been removed, E's colleague said the machine's rollers needed to be re-tracked. E obtained permission, from the person in charge at the time, S, to run the machine, without the protective guards, for the rollers to be tracked.

S issued a permit to E which carried no safety advice nor indicated any precautions to be taken. E believed the rollers were rubbing so he inserted a spanner into the machine. The spanner became caught, E could not let go in time, and he consequently sustained a fractured arm.

P was prosecuted by the Health and Safety Executive, the HSE for failing, so far as reasonably practicable, to ensure the health and safety of its employees, in breach of s.33(1)(a) of the Health and Safety at Work, etc. Act 1974 (the Act).

At trial, E accepted he had acted foolishly. P made a submission of no case to answer on the basis that the evidence neither supported the HSE's case that P had breached its duty, nor showed the nature of the accident proved the existence of a risk created by the system of work.

P was convicted in Manchester Crown Court after the judge held there was a case to answer as the risk was created by using the machine without guards.

P appealed, arguing it had not breached its duty.

The Court of Appeal held that, once the HSE had provided evidence that an employee was exposed to a risk, the onus shifted to the employer to prove, on balance, that they had done all that was reasonably practicable to ensure its employee was not exposed to the risk. The HSE did not have to prove an accident was foreseeable, nor was causation a part of the offence under s.2(1) of the Act.

Further, a material risk, amounting to an offence under the Act, included a risk caused by the carelessness of an employee. P's employees had been exposed to a clear, obvious and material risk to their health and safety, by operating the machine without its guards. This operation was carried out under a permit issued by S, on behalf of P. The permit, carrying no safety advice, constituted a system of work that exposed E to a clear and material risk of injury.

The appeal was dismissed.

comment

This cautions employers that they may be prosecuted for health and safety offences where an employee is injured through a system of work that exposes the employee to a clear risk of danger, in spite of the injured employee's own concession that his injury was due to his own folly. If there is a system of work in place that is alleged to amount to a system creating a risk to the health and safety of employees, the employer may, of course, submit, in defence, that it took all reasonably practicable steps to avert the risk in question. Please click here for full judgment.

CIVIL PROCEDURE

LIMITATION – NOISE-INDUCED HEARING LOSS

Malone v Relyon Heating Engineering Ltd, **02.07.14, Court of Appeal**

The claimant, C, worked for the defendant, D, for 27 years. His job involved using power tools such as grinders and hammer drills. He said he was exposed to excessive noise for up to eight hours daily.

C became aware, from the 1990s, that his hearing was impaired and an explosion at work in 2000 resulted in his suffering from moderate tinnitus.

In 2008, D went into liquidation. In 2009 C notified D's insurers of his intended claim for damages, alleging noise-induced hearing loss caused by exposure to excessive noise at work, in breach of D's duty to provide him with suitable protective equipment. In 2010 D was dissolved.

In 2011, C issued his claim. He accepted that, under sections 11 and 14 of the Limitation Act 1980 (the Act), he knew by the end of January 2001 that he could make a claim. D argued the claim should have been commenced within the next three years.

The judge held that the cause of action accrued until C's final day of employment in 2004. His claim should have commenced by 2007 but the judge permitted C to proceed.

D appealed, contending C knew from the 1990s that his hearing was impaired and that the explosion at work in 2000 left him with moderate tinnitus.

The Court of Appeal held that, as well as the delay between 2007 and 2009, a second delay occurred between 2004 and 2009, for the pre-2001 damage. C's delay created difficulties for the parties to obtain evidence as to excessive noise levels at work and the hearing protection provided. D went into liquidation in 2008 and was dissolved in 2010. The relevant occupational health and noise level records were destroyed by the time C issued his claim. Therefore, the Court held, there would be difficulties with obtaining evidence as to whether C's hearing loss was caused by noise at work, and there was little direct evidence from witnesses as to the working conditions.

The Court overturned the judge's decision to waive limitation. The Court refused to exercise its discretion, under s.33 of the Act, to allow C's claim to proceed.

comment

The Court of Appeal has highlighted the factors it will take into account when deciding whether to allow a claim to proceed out of time. Here, the prejudice to D, in allowing the claim to proceed, would have outweighed the prejudice to C in disallowing it, for there was little remaining relevant evidence and no good reason for C's "inordinate" delay.

The Court stressed that, when deciding these applications, consideration should be given not only to the delay since the limitation period expired, but also to the delay, and the reasons for it, since a claimant knew a claim could be made. The Court has also reiterated that hearing loss may be a divisible injury where damage may occur at different times, allowing liability to be apportioned accordingly. Please click here for full judgment.

HOUSING

ZURICH claim

DEFECTIVE PREMISES – HANDRAIL FALLING SHORT OF FULL STAIRCASE

Young v Birmingham City Council, **Birmingham County Court, 09.05.14**

The claimant, C, resided as a tenant in a flat in a block owned by the defendant, D. As C walked down the communal stairs, he slipped and fell down the last three steps, sustaining injuries. The handrail fell short of the final three steps but C was holding it at the time he slipped.

C claimed damages from D for his injuries, alleging negligence and breach of duty under the Defective Premises Act 1972 (the Act). His allegations included that D failed to maintain and repair the handrail, in breach of its duty under s.4 of the Act.

D denied liability. Its defence included that no complaints had been made specifically about the handrail falling short of the last three steps.

The judge considered the evidence and held that the handrail was not defective for the purposes of the Act. The judge said no difference would have been made to C's fall, had the handrail continued the full length of the stairs, because C was still holding it when he fell. Further, D could not have known of a potential hazard created by the handrail falling short, as no complaints had been made about it to D. The claim was dismissed.

comment

This demonstrates the importance of both checking how an accident occurred, when a defect is alleged to have caused or contributed to it, and of maintaining records of complaints about specific issues. Here, the defendant could not be said to have known about any hazard concerning the handrail as no complaints had been made specifically about its not extending along the full length of the stairs.

DAMAGES

KNEES – FUTURE BILATERAL TOTAL KNEE REPLACEMENT – FOREIGN VISITOR

Rossum v Solent Blue Line Ltd, **15.05.14, Southampton County Court (Approved settlement)**

In 2010, the claimant, C, a citizen of the USA, was visiting England. He was a passenger on a bus, operated by the defendant, D. The bus was involved in a road traffic accident, resulting in C sustaining injuries to both his knees. He was aged 60 at the time.

C claimed damages from D for his injuries, alleging they were caused by D's driver's negligence. D conceded liability.

C sustained significant and permanent soft tissue injuries to both his knees. Medical experts considered C would probably require a total knee replacement in both knees at a future time. He would have to pay privately in the USA for this procedure.

C had an extensive pre-existing medical history but he argued this had not contributed to his knee injuries. D accepted this to a certain extent.

The parties agreed a settlement totalling £125,000, the US dollar equivalent being $212,500 at the time of settlement. This sum included general damages of £40,000 for pain, suffering and loss of amenity, £75,000 for the future bilateral knee replacement procedure, and special damages of £10,000 for past medical expenses.

DAMAGES

FINGERS – LIGAMENT DAMAGE

JDC v Tulketh Leisure Ltd, **12.03.14, Settlement**

In 2012, the claimant, C, visited a hotel owned by the defendant, D. She went to the ladies' lavatories which were accessed through two doors. As she pushed the second door, C said it suddenly slammed shut, catching the middle and fourth finger on her right, dominant, hand, resulting in ligament injuries. She was aged 51 at the time.

C claimed damages from D for her injuries, alleging negligence and breach of duty under the Occupiers' Liability Act 1957. Her allegations included failure to fit a slow-release mechanism to the door and knowingly exposing C to a foreseeable risk of injury.

Liability was conceded.

C's injuries were treated at hospital where her fingers were "buddy-strapped", i.e. strapped together to support and protect each other. She experienced pain and discomfort for five days during which time she could not carry out her normal activities. C required help with domestic chores for six weeks after the accident. The pain gradually decreased and had largely resolved after eight months.

C settled her claim by accepting a total of £2,500, of which her solicitors estimated £2,215 were general damages for pain, suffering and loss of amenity and the balance for miscellaneous special damages.

Zurich Municipal
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