



#HardwickeBrew Your Takeaway Cup

These notes follow the #HardwickeBrew given by Hardwicke's Clinical Negligence and Personal Injury Team on 15 May 2020 which looked at an update on remote hearings including experiences of a trial using the CVP platform, and the impact of Covid-19 on part 36 offers and future loss of earnings claims.

Remote Hearings and witness handling

The technology works well for more straightforward hearings/trials, but it will be challenging to conduct trials where extensive oral evidence is required, or where there may be allegations of fundamental dishonesty. Hearings take longer and require careful preparation.

If preparing bundles that go beyond one pdf file, ensure that they are labelled e.g. 'Trial Bundle Pages 180 – 360'. Consider bespoke/selected bundles for witnesses that are not parties to the case to minimise the risk of seeing confidential documents.

Consider sending witnesses this paper and video guidance to help them to prepare for giving evidence: <https://hardwicke.co.uk/wp-content/uploads/old/docs/public/Top%20tips%20for%20being%20an%20effective%20witness%20in%20civil%20proceedings%202015.pdf>

Costs and Part 36 offers

- If acceptance of a Part 36 offer is delayed because of Covid-19 factors (ie delay of medical examination) communicate to other party/ask for extensions/write letter which can be used to argue later that imposition of Part 36 consequences would be unjust in the circumstances

- **Morrow v Shrewsbury Rugby Union Football Club Ltd** [2020] EWHC 999 (QB) - claimant's costs reduced by 15% because of (not dishonest) exaggeration of value of claim
- **Wales v (1) CBRE Managed Services Ltd (2) Aviva Administration Ltd** [2020] EWHC 1050 (Comm) - successful defendants recover only a percentage of their costs due to unreasonable failure to mediate.

Future loss of Earnings claim and Covid19

Compare and contrast these two decisions:

- **Irani v Duchon** [2019] EWCA Civ 1848 – in which a (significant) Blamire award was imposed and
- **Inglis v MOD** [2019] EWHC 1153 (QB) in which the claimant (who had a hearing deficit) was given a full OT7 disability award although he had no actual loss of income because his income remained the same. [This scenario was also the same in the (excellently argued) case of **Sharma v Noon Products** (2011) QBD which was decided in the early days of the Ogden tables disability discount.

It seems improbable that these awards would be the same if made today. **Covid-19** is likely to have a number of impacts on FLE claims; all of which are probably adverse to claimants and the awards they can assume they would otherwise have.

Covid19 has made (at least) four major changes in almost every sector of the workforce:

1. The long-term security of the workforce may well be under question

Furloughing will be, in many instances, a precursor to dismissal or redundancy. The Government extension to the scheme was to head off hundreds of thousands of people (at least) being made unemployed. The retail, travel and airline sectors are going to be massively affected.

2. The viability of the employer may well be under question

Companies that seemed to be safe as houses are now teetering on closure – **Virgin Airways**, for example.

3. The restored business may look very different

Those companies that survive the current situation, will look very different on the other side. They are almost universally be fewer employees, in-work benefits will be placed under scrutiny, salaries may be reduced as well as working hours. Business which have moved online are unlikely to move away from that model.

4. The lockdown may well be re-imposed

Whenever these current restrictions lift, there is no immediate prospect of Covid19 going away. Now that this Rubicon has been crossed, governments will be ready to do the same again when it reemerges next winter or next year.

5. ONS tables

What will the National Income statistics look like, when next published? Incomes across the board are likely to be reduced, which may be a first where wage growth goes into reverse.

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