The MASS Insight Magazine

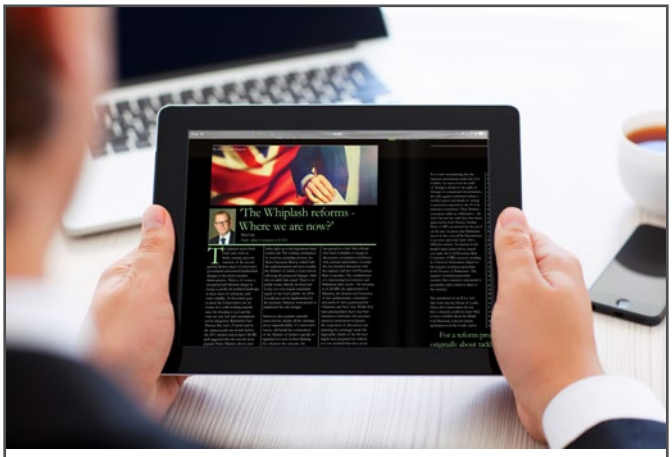
Issue 26 | Autumn 2020

RTA Issues – Now, Next & Beyond

Also in this issue:

Fatals Update

Case Watch – Costs & PI Matters



Going Digital

As the MASS Insight Magazine is now distributed electronically it enables readers to access the excellent content at their own convenience and at multiple times. It will also enable us to expand our distribution and reader base.

All editions are distributed in 'flipgorilla' and pdf format and, the full version is available to MASS members (and their fee earners) on the MASS website. We welcome all readers' comments as to whether they prefer 'electronic' or 'printed' copies.

The MASS Insight Magazine is always packed with relevant and interesting articles for the RTA/PI practitioner, written by experts in their specific field and can also be a useful form of training for fee earners who need to keep up to date with all the latest developments.

If you would like to subscribe or advertise, then we offer both at extremely competitive rates. Please contact the MASS office for more details – office@mass.org.uk.

From everyone at Back Up, I would like to send you a massive thank you for your generous donations earlier this year. They are already being used to support those who are affected by spinal cord injury during this pandemic.

back up

transforming lives after spinal cord injury

2020 has been a challenging year for the world and we know the particular challenges faced by people who have sustained a spinal cord injury during this time. Many have been isolated from their families and loved ones, having to come to terms with their injury by themselves in hospitals which are locked down. Often the first time a family member sees their loved one since sustaining a spinal cord injury is the moment they are discharged home. We know how extremely difficult this must be. However thanks to your help we have been able to be there and provide support for these people, either through online/virtual engagement or our telephone peer to peer mentoring service.

To learn more please visit our website, https://www.backuptrust.org.uk/.
Once again thank you for your support and I look forward to seeing you all next year.

CONTENTS

The MASS Insight Magazine
Autumn 2020

MASS MOTOR ACCIDENT SOLICITORS SOCIETY

EDITOR
Paul Nicholls

CONTRIBUTORS
Jane Loney
Jenny Braunton

DESIGN
Paul Skuse | azurdesign.co.uk

ADVERTISING
Telephone 0117 925 9604
Email office@mass.org.uk

MOTOR ACCIDENT SOLICITORS SOCIETY
www.mass.org.uk
19-20 St Augustines Parade, Bristol BS1 4UL
Telephone 0117 925 9604
Email enquiries@mass.org.uk

MASS Membership

Annual Renewal

It is that time of year again and shortly we will be sending all members a 'renewal form' to assist us in keeping our records accurate and up to date. Please therefore take a few minutes to complete this form. This annual process is important for three main reasons:

- We can invoice you correctly for 2021 membership
- We have up to date contact information for your firm on our website

And – very importantly

- We can direct the public to the correct 'expert' – please make sure you complete the 'specialist area' section

We would appreciate prompt return of your form, preferably via email, as invoices will be issued at the beginning of January.

MEETING YOUR EXPECTATIONS

We really want to know what you value from your MASS membership - what benefits and services you use and what else you would like from 'your' Society going forwards.

Consequently, we will be sending out a short survey soon - again, it will only take a few minutes to complete. Only by getting Members' input can we fully meet your expectations, so please do take this opportunity to give us your feedback. Thank you!

Fatals Injuries Update – Bereavement Award Update

On 1 May 2020 the Fatal Accidents Act 1976 S1(A) "Statutory Bereavement Award" was increased from £12,980.00 to £15,120.00.

Craig Butler
Associate,
Wolferstans Solicitors

Of course, it hasn't been backdated and the increased figure only applies to deaths on after 1 May 2020.

Remember, this is the only (and fixed) amount paid to compensate someone for the emotional effect (shock, loss, pain, grief) of being bereaved of a partner, husband, wife or child due to someone else's negligence.

In the case of Jacqueline Smith v Lancashire Teaching Hospitals NHS Foundation Trust and others [2017] EWCA Civ 1916, the Court of Appeal made a declaration of incompatibility in relation to section 1A of the Act, on the basis that limiting the category of persons eligible for bereavement damages to the wife, husband or civil partner of the deceased was contrary to Article 14 (in conjunction with Article 8) of the European Convention of Human Rights.

In short, qualifying cohabitees had to be included in the list of those entitled to claim the award.

Three years later and the Act is now being dragged into the twenty first century. The Fatal Accidents Act 1976 (Remedial) Order 2020 came into force on the 6 October 2020. The Order inserts the term "cohabiting partner" into the class of people entitled to the bereavement award.

It will, of course, still be necessary to prove that the bereaved cohabitee:

1. Was living with the deceased in the same household immediately before the date of the death; and
2. Had been living with the deceased in the same household for at least two yearsbefore that date; and
3. Was living during the whole of that period as the wife or husband or civil partner of the deceased."

Importantly, again, the effect of the extension is not retrospective and applies only to deaths occurring on or after 6 October 2020 – but the definition does include same sex relationships.

The Act has been "fixed" to an extent – but it remains, in parts, an anachronism.

How, in 2020, can it be right that the award is still not payable to the father of a child who is deemed "illegitimate" and the child's mother receives the full, miserly, figure?

How can children, (under the age of 18 or otherwise) not receive an award to reflect the trauma of losing a parent in a road crash?

It's time the Law Commission revisited the Act and made it fit for purpose in the real world.

EDITORIAL

The Autumn colours always provide a welcome last show of brightness before winter arrives and this year more than ever it is needed. Whilst it appears that the Covid pandemic and all that goes with it may be here to stay for some months yet, we are all trying to retain some degree of normality in our working and personal lives.

The RTA / PI sector is no exception and after the initial dramatic fall in claim numbers through lockdown 1, they are now moving back towards pre-Covid levels. With home working remaining for many, it may be harder to keep abreast of the continual changes and updates in RTA/PI claims. So for this edition will be looking at a number of issues that may be on the horizon.

Following on from the Summer edition – Covid continues to play its part in changing the way we work. We have a valuable insight into how remote hearings are impacting the Court from District Judge Thomas with a few tips on how to make the process a lot smoother.

Jasmine Murphy from Hardwicke also highlights how Covid has changed our transport habits. With more and more people now walking and using bicycles, perhaps unsurprisingly, we are seeing more accidents within this 'vulnerable road user' category. Going forward, added to that sector will be the increased use of E-scooters and where / how they will fit into the claims process.

No doubt alarm bells were raised amongst Claimant solicitors with the recent decision of Belsner v Cam Legal Services Limited, although this is going to be appealed. In the meantime, Andrew Hogan from Kings Chambers provides a helpful and informative insight into solicitor /client costs disputes and how to ensure that they are minimised at best, but hopefully avoided.

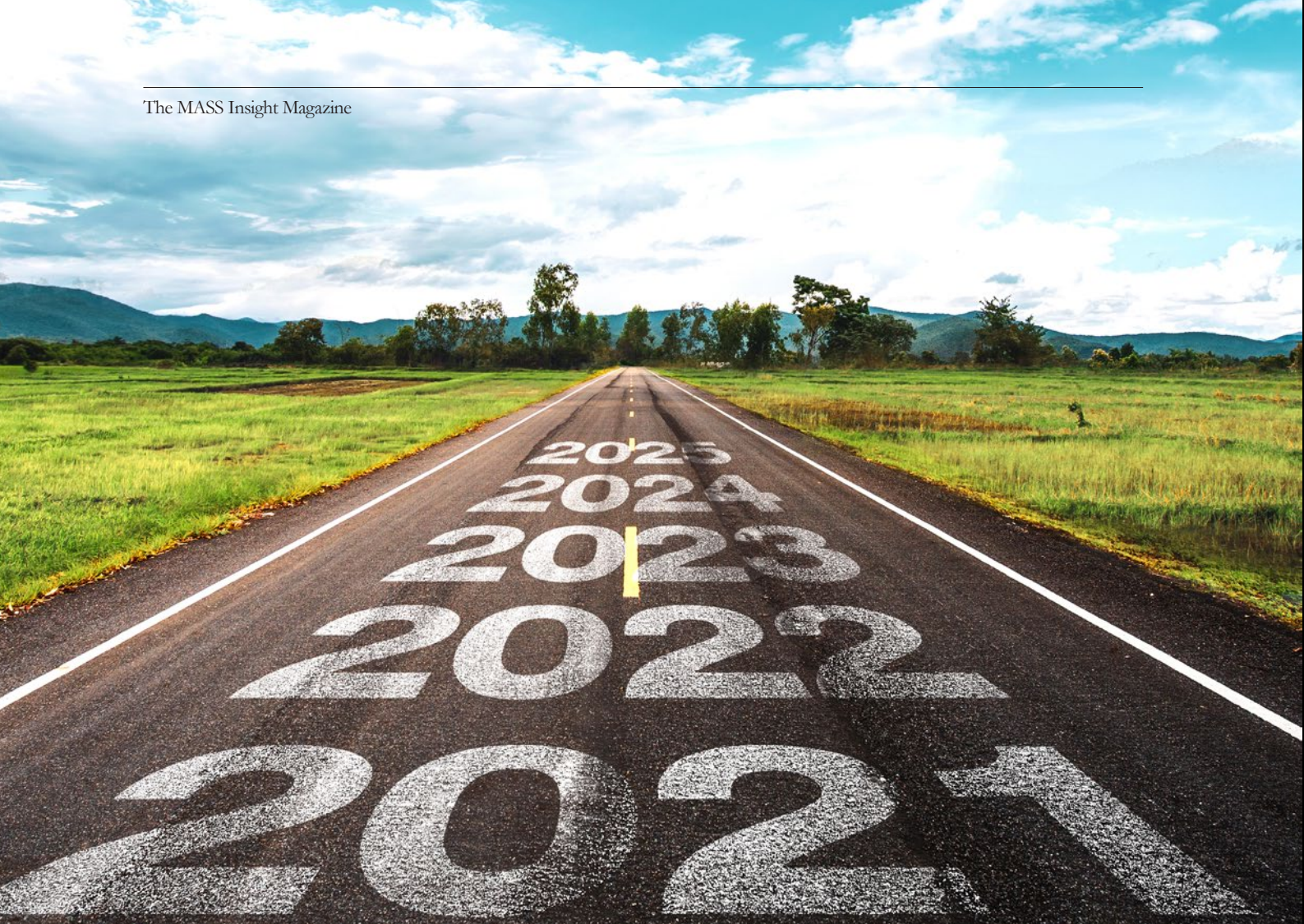
Not only having to contend with a world pandemic, the UK is also facing the huge and significant challenge of leaving the EU and its impact will be felt by RTA practitioners. Motor accidents abroad are a fact of modern life and for decades we have been used to a bilateral agreement with European countries on how these are dealt with through the MIB. Alex Williams of Exchange Chambers discusses whether this will continue from 1st January 2021 onwards.

The development of autonomous vehicles has been progressing in the background and the Government is proposing to introduce them in some form as early as Spring 2021 – but is this too early? With their relevant experience and involvement, Matthew Avery from Thatcham Research and Neil Ingram from Direct Line Group, discuss the impact this will have on the insurance and legal sectors and most importantly if it is going to be safe.

In this edition's case watch feature, Ian Curtis-Rye and Chris Kemp from Lyons Davidson have highlighted 2 important costs cases and 2 personal injury related. As always this provides a very helpful summary of what to be aware of.

Finally, in our regular Q&A to the MASS Management Committee, this time it is the turn of Paul Lewis from George Ide and regional co-ordinator for the South Central region. Coming across from the 'dark side', Paul's experience covers far and wide as well as being a champion at ping pong!

So as 2020 draws to a close, we are all hoping for a brighter and more positive 2021 but in the meantime, MASS wishes all our readers a very Happy Christmas.



Covid, Remote Hearings and the Courts

I have been asked to pen a few words to give some perspective of current working practices from my own perspective as a District Judge.

District Judge Mark Thomas
Newcastle Civil and Family Courts and Tribunal Centre

Before I do that however I should give you all some background about myself so you can understand that I fully appreciate the work you all do. I left school with no formal qualifications and after a few years of not doing very much I started working as Trainee Legal Executive. Fortunately for me I met my now wife who persuaded me to sit some exams. I duly qualified as a fellow and from there I sat the CPE. That allowed me to start my LPC and I was admitted as a solicitor in 2000. After 3 years I transferred to the Bar where I remained until my full-time appointment as a DJ in 2018. I can

I cannot speak for every member of the judiciary but most procedural hearings seem to be capable of being dealt with remotely.

therefore say with some degree of certainty that whatever stage of your career you are at there is a good chance I have been there and done that. I fully understand the pressures and difficulties you all face.

That's enough about me what about you? I never made it to one of the legendary MASS conferences, although my clerk, Mike Stubbs, always seemed to enjoy them. The nearest I came to attending was paying my share of the chambers credit card after Stubbsie had given it a hammering.

I am writing this article as we are about to enter into the third week of the second lockdown and the effect of Covid 19 is obvious for all to see. I know that if this had happened during the time I was still in practice I would have found the disruption to what cashflow I had extremely difficult to overcome. From purely a business perspective I am acutely aware of the need to keep the system going, not churning through the cases presents is a real problem for all concerned in the system. Of course, the parties deserve to have their cases dealt with and for those reasons remote has become routine.

Some hearings are more amenable to remote hearings via BTMeetMe or CVP/Teams and some are less so. I cannot speak for every member of the judiciary but most procedural hearings seem to be capable of being dealt with remotely. Applications, stage 3s and disposal hearings seem to me to be all perfectly apt for remote hearings. The downside of working remotely is that a lower volume of work is completed; the need to have specific listings and the inability to block list means that we get through a reduced numbers of cases in a day. Matters may be different if clients are expected to be involved. The Court of Appeal has given some guidance in relation to how cases are to be dealt with remotely and just yesterday the President of the Family Division issued further guidance in relation to matrimonial finance cases.

At the risk of seeming a tad high brow, Article 6 of the Human Rights Act decrees that everyone is entitled to a fair hearing before the courts, however Article 6 also confirms that the fair hearing must take place within a reasonable time. There is balance to be struck therefore between fairness and timing and my own personal opinion is that we need to get on with it.

So if we are going to get on with it what can the profession do to try to ensure the smooth running of remote hearings? A few points below:

BUNDLES, PART 1: Ensure that the bundle is properly book marked. There is a reason why this comes first; it is the one thing which causes me more wasted time than just about anything else. A bundle that is not book marked properly is the electronic equivalent of carrier bag full of papers.

BUNDLES, PART 2: Only one PDF, not multiple documents all as PDFs. Numerous documents take longer to navigate around as opposed to just one.

CONTACT INFORMATION: Do not give switchboard numbers. This seems quite simple but 9 months on the message has still not got home.

TIMING: Do not leave it too late to file documents and/or contact information. HMCTS are under huge pressure and the nearer the hearing date it is left the more likely it is that the judge won't have them in time for the hearing.

THE JUDGE: Know your Judge, does he/she mind being contacted direct? I regularly contact parties direct before hearings if something is missing. It can cause a minor scare "hello its

District Judge Thomas here, please can I have…". The shock of being telephoned by a judge is palpable but please remember that I want the hearing to go smoothly just as much as everyone else does.

DRAFT ORDER: To be provided in advance in amendable format or volunteer to email one in. We do not have admin support to prepare orders. An order following a contested CMCC might be 4 or 5 pages and an order in a public law case might 8 or 9 pages.

INTERRUPTIONS. Try not to interrupt, you will get your say but it is difficult to listen to more than one person at a time.

In the longer term I cannot see remote working falling back to the levels it was pre-Covid and it is here to stay. I have found working from home for days on end draining and it is at times difficult to switch off. It is easy for me to say it but I believe welfare is very important, both physical health and mental health. I do not pretend to have the answers to those problems and all I can say is look after your own health, look after your team's health and if you are a manager look after your staff.

Finally, I cannot pretend that we get it right all of the time so I shall hark back to the early 1980s, standing on the Gallowgate Terrace at St James Park: "come and have a go if you think you are hard enough". The Judicial Appointments Commission are running virtually rolling competitions for DDJs, Recorders and Tribunal Judges. The training is excellent and there is no need to worry about areas of law you are not familiar with.

On that note may I wish you all the very best for whatever the festive period will look like and here's hoping 2021 will be an improvement on 2020.

Vulnerable road users in the time of Covid-19

One of the upsides of the Covid-19 pandemic has been that the number of people cycling and walking has increased as a result.

Jasmine Murphy
Barrister, Hardwicke

As lawyers, our minds inevitably turn to wondering if this increase in the use of alternative modes of transport will cause a corresponding increase in accidents involving vulnerable road users. This is a category that includes pedestrians, cyclists, mobility scooter riders, horse riders and e-scooter riders.

Prior to 2020, cyclist casualties have remai ned fairly static since 2009, despite an increase in the number of people cycling. The Government's 2019 Annual Report: Reported Road Casualties[1] published in September 2020 showed that there were 100 pedal cyclist fatalities on the roads in 2019, which is very similar to the figures in 2009. There has been an 8% increase in the number of pedal cyclists killed or seriously injured in Great Britain between 2009 (4,098) and 2019 (4,433). However, this is partly explained by a 16% increase in pedal cyclists in Great Britain over the same period. More recently, pedal cyclist casualties were on the downturn, with a 4% decrease between 2018 and 2019.

The UK remains a difficult jurisdiction for cyclist claims. Most other European jurisdictions have presumed liability systems, whereas here, a claimant cyclist, like any other claimant involved in a road traffic collision, has to prove on the balance of probabilities that the defendant driver was negligent. One of the common situations for a vehicle/cyclist collision is a collision where the cyclist is on the inside of a left turning vehicle. These were the facts in ***McGeer v Macintosh [2017]*** EWCA Civ 79 where the claimant cyclist sustained severe injuries while travelling on the inside of an indicating HGV which was turning left at traffic lights while straddling two lanes. The HGV driver was found liable because he failed to carry out a check in his near side mirror before moving off and he was aware of the risks of undertaking cyclists, especially when he was straddling two lanes which could give a misleading impression. The claimant cyclist was found to be 30% contributorily negligent and that decision was upheld on appeal. The causative potency of the HGV was an important factor in determining the relative proportions of liability because its size and bulk were such that it posed a very serious danger to a cyclist in the claimant's position. This case demonstrates that when a split of liability is being considered, the fact that one of the parties is a vulnerable road user will usually be relevant to liability and contribution.

Most of us will have noticed an increase in e-scooters being used on the roads, cycle lanes or pavements. What is believed to be the first death of an e-scooter rider in the UK occurred in July 2019 when TV presenter Emily Hartridge was sadly killed. She lost control after riding her e-scooter over an inspector hatch in the cycle lane and fell into the path of a lorry. At the Inquest in September 2020 the Coroner found that Ms Hartridge lost control because the e-scooter was being unsuitably driven too fast and that one of the tyres was under-inflated[2].

Since July 2020 rental e-scooters have been allowed on roads and cycle lanes, although such rental schemes have been slow to start up. The majority

There has been an 8% increase in the number of pedal cyclists killed or seriously injured in Great Britain between 2009 (4,098) and 2019 (4,433). However, this is partly explained by a 16% increase in pedal cyclists in Great Britain over the same period.

of e-scooters in use in England are privately owned. Consequently, accidents where a pedestrian or another road user is injured by an uninsured e-scooter rider will likely result in an insurance desert. This financial disincentive to bring claims will likely have a knock-on effect on reported decisions involving e-scooter riders. While we wait for such claims to filter through, I anticipate that e-scooter collisions will probably be determined along the same lines as cyclists.

Lack of insurance did not stop the pedestrian claimant in ***Brushett v Hazeldean*** from bringing her personal injury claim in 2019 against an uninsured defendant cyclist[3]. In a case which divided popular opinion[4], the Judge hearing the claim determined that the defendant cyclist was liable to the pedestrian claimant that he hit while she was crossing a road, while she bore 50% of the liability. The evidence was that the cyclist saw the claimant crossing, sounded his airhorn but then accelerated. The Judge found that the claimant was looking at her phone as she was walking, but when she heard the cyclist's horn she reacted by moving backwards. Contrary to the headlines, this decision does not appear to create any new principle of liability. Cyclists owe a duty of care to other road users and the claimant was established crossing the road. The result is likely to have been different if the pedestrian had just stepped off the kerb in front of the cyclist. But as she was established on the road the cyclist should have given way to her and taken into account that pedestrians can react unpredictably.

Likewise, the finding of contributory negligence inevitably followed if the claimant was not paying attention to her surroundings. Of course, pedestrians also owe a duty of care to other road users. This is particularly so when a pedestrian steps off the kerb of a pavement into the carriageway. The Highway Code sets out the standard of the reasonably careful pedestrian as well as other road users. There are even a few reported cases where the pedestrian has been found liable for a collision with a motorbike[5].

If there is an increase in accidents involving vulnerable road users in 2020, some comfort can be drawn from the fact that the Civil Liability Act 2018 excludes vulnerable road users such as cyclists, motorcyclists, pedestrians and horse riders from the reforms (which are yet to come into force).

Although pedestrian fatalities after collisions with a pedal cycle are often reported as headline news, the reality is that such collisions count for a fraction of pedestrian fatalities. For example, in 2019, only 1% of pedestrian fatalities resulting from a collision between a pedestrian and one other vehicle (4 out of a total of 407) were collisions with pedal cycles.

If there is an increase in accidents involving vulnerable road users in 2020, some comfort can be drawn from the fact that the Civil Liability Act 2018 excludes vulnerable road users such as cyclists, motorcyclists, pedestrians and horse riders from the reforms (which are yet to come into force). Hopefully the increase in the Small Claims Track limit to £5,000 for RTA related PI claims will follow suit, but like most things in 2020, we will have to wait and see if that actually happens.

[1] https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/922717/ reported-road-casualties-annual-report-2019.pdf

[2] https://www.bbc.co.uk/news/uk-england-london-53823514

[3] Go to www.clinicalnegligencebarrister.wordpress.com where Counsel for the Claimant, Aneurin Moloney of Hardwicke, sets out the facts.

[4] "Cyclist who hit 'phone zombie' faces £100,000 bill" The Times;"Cyclist forced to pay up to £100,000 to yoga teacher he mowed down when SHE stepped into road whilst on her phone" The Sun; "Why was a law-abiding cyclist who was passing through a green light ordered to pay compensation to a pedestrian who was staring at her phone?" The Independent

[5] ***Eames v Cunningham*** and Capps [1948] 82 Sol Jo 314, ***Barry v McDonald*** [1966] 110 Sol Jo 56.

Solicitor-costs disputes in road traffic personal injury claims

Solicitor and own client assessments of a solicitor's fees under section 70 of the Solicitors Act 1974 used to be rare beasts.

Andrew Hogan
Barrister, Kings Chambers

No more. In this short article, I will consider some of the key issues for a solicitor to consider when she finds herself embroiled in a dispute with a client over fees.

THE RETAINER

It is the retainer which prescribes how charges may be calculated and billed to the client. All retainers should be written retainers, and in most cases the retainer will be a conditional fee agreement supplemented by a client care letter. Clients must also be made aware in writing of their right to make a complaint and details of how to do so. They must also be advised of their right to complain to the Legal Ombudsman. They must further be aware of their right to challenge or complain about a bill, including their rights to an assessment of costs under part III of the Solicitors Act 1974.

Getting the retainer documents "right" will dramatically reduce the scope for confusion or dispute over what charges are properly due from a client.

SUCCESS FEES

A key part of drawing up the retainer is to consider whether a client will be charged basic charges on an hourly rate basis and a success fee, which may be calculated on the basis of risk and be recorded in a risk assessment, or be set at a flat rate, provided informed consent is obtained from the client on how the charge is calculated. In addition, consideration needs to be given to limiting the success fee and limiting the overall deductions from costs through "caps" in the retainer.

The case of **Belsner v Cam Legal Services Limited [2020] EWHC 2755 (QB)** handed down recently, is an important case, which at this stage of its life, a first tier appeal in the High Court, raises more questions than it answers. In that case, a solicitor's right to a success fee was challenged by the client. I have little doubt that the case should go to the Court of Appeal for at least three reasons, as it raises important issues of principle and practice, concerning solicitor-own client costs disputes.

The first reason is that a personal injury solicitor who has been faithfully using the Law Society Model CFA without qualification or modification for the purposes of his case load may now be in some difficulties, on the basis of the analysis set out above, if that turns out to be analysis upheld by the Court of Appeal. But many cases will have different facts which should form a basis for distinguishing this case.

The second is that the scope and application of section 74(3) which appears on its literal wording to apply only to costs in litigated claims in the County Court does not appear to have been raised in this case before the High Court judge and that is significant, as most cases are not issued but settled by negotiation beforehand. It may be, strained statutory construction might be said to apply to section 74(3) to extend its remit to unlitigated cases, but it is not immediately obvious why that should be so.

Thirdly, perhaps the most problematic of the conclusions of the High Court judge is the conclusion that the solicitor's firm owed and breached a fiduciary duty, vitiating the written agreement made when they were negotiating their own remuneration, and before assuming their role as the client's solicitor; that is

Billing a client often causes problems. There is no standard form for a Bill of Costs, on a solicitor-own client basis.

an ostensible fiduciary duty that arose before the fiduciary relationship came into existence.

PRESUMPTIONS

The playing field on a section 70 assessment is not level. The assessment takes place on the indemnity basis, not the standard basis.

Rule 46.9(2) can be used to defeat a claim to costs based on hourly rates where there is no written agreement that these should be paid in a fixed costs case. Rule 46.9(3) and its presumptions can be particularly important when assessing the quantum of a success fee, the level of hourly rates charged, and whether the client should pay hourly rates at all in a low value personal injury claim where only fixed costs may be recovered from the opponent to litigation.

It follows that if the presumptions are engaged, then the scope to dispute any of the fees, is likely to be limited. If the presumptions are not engaged, then the client can argue against a backdrop of the indemnity basis that the costs should be assessed in the normal way, as a matter of the costs judge exercising his discretion as to the reasonableness of particular items or the reasonableness of their amount.

BILLING THE CLIENT

Billing a client often causes problems. There is no standard form for a Bill of Costs, on a solicitor-own client basis, unlike the very detailed rules which prescribe how a Bill should be drawn for an inter partes assessment, contained in part 47 CPR and the Practice Direction 47.

The requirements of a statute Bill of Costs delivered to a client instead are to be derived from a combination of the caselaw and certain provisions of the Solicitors Act 1974. They can be summarized as follows:

(a) A document purporting to be a bill of costs must demand or claim costs

(b) It is for the solicitor to decide the form of the bill they send to the client.

(c) A bill of costs must detail all the costs claimed including those recovered from the defendant and those which are chargeable to the client.

(d) A bill of costs must contain a narrative so that the client knows what he is being charged for or the client must know from the other documents or what he has been already told, what he is being charged for.

(e) The requirements of section 69 of the Solicitors Act 1974 are met.

-The Bill of Costs has been signed.

-The Bill of Costs has been delivered as a Bill of Costs

(f) The bill of costs may be either a gross sum or a detailed bill under section 64 of the Solicitors Act

LOST DOCUMENTS

Sometimes, a client may complain about their bill months after it was sent and paid, and sometimes may seek copies of documents that they have already been provided with for the purposes of disputing the bill.

Solicitors may not be obliged to supply a client with multiple copies of documents she has already had. Solicitors should bear in mind the Law Society Practice Note Who Owns the File on what documents they must furnish to their clients.

In ***Hanley v JC & A Solicitors: Green v SGI Legal LLP [2018] EWHC 2592 (QB)*** Soole J ruled the court had no jurisdiction to make orders under the inherent jurisdiction and/or s.68 in respect of documents which were the property of the solicitor. Nevertheless, it did not follow that solicitors should in all circumstances press their legal rights to the limit, nor that they could necessarily do so with impunity.

TIME LIMITS

A client's right to seek an order for a detailed assessment under section 70 of the Solicitors Act 1974, is circumscribed by time limits. These can be especially important, as if a client simply leaves it too late, to apply for an order for assessment, their application will fail.

It can be seen from the statute, that a client only has an absolute right to an assessment if the application for an order, is made within one month of receiving the bill of costs. Thereafter if the bill is unpaid, the court will, for a period of up to 12 months after receipt of the bill make an order for assessment on such terms as it thinks fit and after 12 months, only when there are special circumstances.

Where the bill of costs has actually been paid, the approach taken by the statute is stricter: only one month after paying the bill special circumstances have to be shown for an assessment to proceed and after 12 months the court has no jurisdiction to order an assessment.

My blog on costs and litigation funding matters can be found at www.costsbarrister.co.uk

Have you been involved in a foreign accident that wasn't your fault? Issue now!

Alex Williams
Exchange Chambers

Two years ago, I wrote an article for The MASS Insight Magazine entitled "Which law: which country?". The article provided an overview of the key issues relating to the choice of law and jurisdiction in foreign accident claims At that time, I wrote confidently that the United Kingdom would leave the European Union on 29 March 2019. I was ultimately disabused of that idea but on 31 January 2020 the UK did leave the EU under the terms of the European Union (Withdrawal Agreement) Act 2020 ("Withdrawal Agreement"). We now find ourselves (just) in the post-Brexit transition period, which will end on New Year's Eve.

This article will seek to provide an overview of the rules that apply during this transition period and what might happen afterwards.

UK-EU TRANSITION PERIOD: 31 JANUARY 2020 – 31 DECEMBER 2020

During the transition period most EU law (including Brussels I (recast), which determines which court will have jurisdiction over a dispute, and Rome II, which ascertains the law that applies to non-contractual obligations and disputes) will continue to apply as it had done prior to 31 January 2020. In addition, although the UK's last judicial member of the European Court of Justice, Eleanor Sharpston, QC, was removed from her position as Advocate General in September 2020, the Court in Luxembourg continues to have jurisdiction in the UK.

Article 66 of the Withdrawal Agreement provides that Rome II shall continue to apply in the UK in respect of events giving rise to damage, where such events occurred before the end of the transition period. As such, the choice of English law to govern events giving rise to damage before 31 December 2020 should continue to be respected across the EU.

Article 67(1)(a) of the Withdrawal Agreement provides that Brussels I (recast) shall apply in the UK in respect of legal proceedings instituted before 31 December 2020. This is reinforced by Regulation 92 of Civil Jurisdiction and Judgments (Amendment) (EU Exit) Regulations 2019. As such, provided proceedings are issued before the end of the transition period, the general rule under Article 4 of Brussels I (recast), namely that "persons domiciled in a Member State shall, whatever their nationality, be sued in the courts of that Member State", will continue to apply.

POST-UK-EU TRANSITION PERIOD: 1 JANUARY 2021

The provisions of Rome II will be retained at the end of the transition period. The substantive rules in Rome II will continue to apply as domestic law to determine the law applicable to non-contractual obligations. Section 3 of the European Union (Withdrawal) Act 2018 provides that "direct EU legislation [which includes Rome II] so far as operative immediately before exit day [transition period completion day], forms part of domestic law on and after exit day [transition period completion day]". As such, there will no material change to the relevant rules for designating the applicable law in non-contractual cases.

However, Brussels I (recast) will cease to apply at the end of the transition period. Section 89 Civil Jurisdiction and Judgments (Amendment) (EU Exit) Regulations 2019, which comes into force at the end of the transition period, specifically revokes Brussels I (recast). So, what, if anything, will replace it?

On 22 August 2017, the Government published a "Future Partnership Paper" entitled "Providing a cross-border civil judicial cooperation framework". The paper sets out the Government's intentions regarding the future relationship with the EU. This includes the intention to "seek an agreement with the EU that allows for close and comprehensive cross-border civil judicial cooperation on a reciprocal basis, which reflects closely the substantive principles of cooperation under the current EU framework", including Brussels I (recast). There is a chance that the UK will be able to reach a specific agreement with the EU as to how jurisdictional matters will be dealt

with, but it seems improbable that the EU will negotiate anything as beneficial as the existing regime.

The Government also set out that it intended to "seek to continue to participate in the Lugano Convention that, by virtue of our membership of the EU, forms the basis for the UK's civil judicial cooperation with Norway, Iceland and Switzerland". The UK applied to join the Lugano Convention 2007, which contains rules on jurisdiction and enforcement of judgments, on 8 April 2020. Iceland, Norward and Switzerland have supported this but the same cannot be said of the EU27. Even if the EU27 indicated that they were in favour of the UK acceding to the Lugano Convention, it is now too late for the accession process to conclude prior to 1 January 2021.

The paper also indicated the Government's intention to accede to the Hague Convention on Choice of Court Agreements (2005) in its own right after the transition period. The UK deposited its instrument of accession to the Hague Convention on 28 December 2018 but withdrew it on 31 January 2020. On 28 September 2020, the UK deposited a new instrument of accession, which will take effect when the transition period comes to an end on 31 December 2020. At present, the Hague Convention is largely inapplicable between the EU member states because Brussels I (recast) takes priority on matters of jurisdiction and enforcement of judgments and it does not contain any rules relating to jurisdiction in situations other than exclusive choice of court agreements; however, as of 1 January 2021 it may play an important role with respect to jurisdiction and enforcement of judgments as between the UK and the remaining EU member states in cases where the parties to the dispute have agreed an exclusive jurisdiction clause.

Despite the Government's indications as to the future relationship with the EU, there remains much uncertainty. The precise terms of the future relationship will depend on what, if any, arrangements can be agreed between the UK and the EU in the short time left until the transition period ends. Until a jurisdictional deal is put in place to replace Brussels I (recast), the lacuna left will be dealt with through the common law rules and CPR6 and CPR PD 6B.

ROAD TRAFFIC ACCIDENTS: MIB

The Protection of Visitors system was introduced by the Fourth Motor Insurance Directive, implemented in the UK by the Motor Vehicles (Compulsory Insurance) (Information Centre and Compensation Body) Regulations 2003, to strengthen the rights of visiting victims of cross-border collisions and simplify their route to compensation. This allowed, for example, a British person injured by a foreign registered vehicle in France to pursue a claim in the UK either through the foreign insurer's representative, or through the Motor Insurers Bureau ("MIB"); the MIB then has a right of recovery.

The Motor Vehicles (Compulsory Insurance) (Amendment etc) (EU Exit) Regulations 2019 remove obligations on the MIB to compensate UK residents who are injured in road traffic accidents in the EEA where there is no insurer or the insurer fails to respond, unless proceedings have been commenced prior to 31 December 2020.

If proceedings are commenced after the transition period, claimants will have to bring their claims against the foreign insurer directly or, in the case of an accident with an uninsured or untraced driver, against the foreign equivalent of the MIB. It must be borne in mind that in some EEA countries the MIB equivalent body only pays compensation to their own residents and to residents of other EEA countries in the event of an accident involving an uninsured or hit and run driver. The UK will cease to be a member of the EEA after the transition period has ended.

The MIB has indicated that "to enable continued access to compensation for UK victims, MIB is working to sign reciprocal agreements with its equivalents in such countries, under which both sides commit to continuing compensation for victims of accidents involving uninsured or hit-and-run drivers in their own country. Claims will have to be brought in the country where the accident occurred and any compensation will be assessed under the law and regulations of that country. If MIB's equivalent in any of the affected countries does not sign a reciprocal agreement by the end of the transition period, there will be no compensation available for UK visitors to that country". The MIB has entered into bilateral Protection of Visitors agreements with a number its EEA counterparts to facilitate the exchange of information, which would enable the MIB and its EEA counterparts to assist victims in obtaining the information they need to make claims in the country where the accident occurred. There are two agreements: one covering victims of insured drivers and one covering victims of uninsured or untraced drivers. Bulgaria, Czech Republic, Italy, Liechtenstein, Lithuania, Malta, Netherlands, Portugal, Slovakia and Spain have not signed the agreement (uninsured / untraced) but have nevertheless confirmed that they will continue to compensate UK-resident victims. The MIB does not appear to have succeeded in securing agreements with France or Romania to ensure the continuation of compensation, on a reciprocal basis, of visitors who become victims of accidents involving uninsured or untraced drivers.

To conclude, in order that claimants can benefit from the current rules, and avoid the inevitable future uncertainty, it is advisable that any ongoing claims with a foreign element be issued and, if possible, served prior to 31 December 2020.

Matthew Avery
Director of Research
Thatcham Research

Neil Ingram
Head of Motor
Product Management
Direct Line Group

Driven to distraction:

Can motorists take their eyes off the road and keep their heads in the game?

Self-driving vehicles could be on UK roads from Spring 2021. We analyse why the Government's proposal puts lives at risk – and what the plans mean for motor insurers and solicitors

As early as this Spring, the UK could welcome the first Automated vehicles onto its motorways. For the first time ever, drivers will be able to take their hands off the wheel and their eyes off the road while the car drives itself.

That's if the government approves the use of Automated Lane Keeping Systems (ALKS), and a safety consultation – due to report back in the coming weeks – concludes that it meets the definition of 'Automated Technology'.

Yet according to two experts that have contributed to the Government consultation, ALKS should not be classified as 'Automated' technology in its current form – and to do so could put lives at risk.

"The Government's plan threatens road safety," Matthew Avery, Director of Insurance Research at Thatcham Research, warns. "Motorists could feasibly watch television in their car from early next year because they believe ALKS can be trusted to do the job of a human driver. But that's not the reality. The limitations of the technology mean it should be classified as 'Assisted' technology because the driver must be engaged and ready to take over."

ANGST OVER ALKS

According to the Government's consultation proposal, Automated vehicle technology must be "capable of safely and lawfully driving itself without being controlled, and without needing to be monitored, when in automated mode," in order to be compliant with the definition of 'Automation' under the Automated and Electric Vehicles Act 2018 (AEVA).

In other words, it must emulate the performance of an engaged, competent human driver. This, according to Avery, is precisely where ALKS falls down.

Thatcham Research has identified three real-world motorway scenarios in which driver intervention would be needed to avoid a collision when using ALKS technology.

"The average driver typically scans the road about 500 metres ahead," Avery explains. "If there's a stationary vehicle on the inside lane of the motorway and you're in the middle lane, you would probably react by slowing down or moving to the outside lane – not just remain in lane and drive past it at 70mph.

"ALKS won't do that. The tech will conclude there's nothing blocking your lane, and will therefore carry on at speed. And if there were an emerging pedestrian getting out of that stationary vehicle, your system couldn't possibly brake in time because at 70mph, you're covering something like 15 metres per second. There's no way it will be able to react. A competent human driver would take the wheel and move out of that lane.

"The problem is these collision avoidance systems are still relatively crude. It's part of Thatcham's DNA to make sure vehicles get safer and help reduce road casualties. But we think ALKS will do the opposite if not introduced properly.

"Responsible manufacturers may go beyond the minimum requirements set out in regulations, by ensuring ALKS is only used in queuing traffic, at limited speeds and in conjunction with good direct driver monitoring systems.

But even these steps aren't safe enough until the regulations allow vehicles to move lanes."

Thatcham Research and the Association of British Insurers (ABI) recently published a document that outlines 12 key principles that technology must meet to ensure the safe transition to automated driving. According to Avery, ALKS only meets two of these 12 principles.

"Any carmaker will tell you that for this system to work properly, a driver must to be there ready to catch it," he says. "We're saying: 'you cannot expect the driver to be ready to re-engage when they're watching TV or immersed in an electronic device'.

"Research shows it takes precious seconds for distracted drivers to cognitively re-engage with an upcoming hazard, take back the steering wheel and deal with it appropriately."

Neil Ingram, Head of Motor Product Management at Direct Line Group, shares Thatcham Research's concerns. "If we're going to start calling ALKS Automated, the technology has got to be as good as a human driver," he explains.

"We feel ALKS is more of a stepping stone product than the finished article. And the trouble is you can't have a gradual implementation of automation. You can't have a system that handles part of the driving task and then throws control back to the driver in certain scenarios as this blurs the lines of responsibility. It must go the whole way – all or nothing – and this means taking a big step forward. ALKS is only a build on Level 2 technology.

"We have no issue with the ALKS systems themselves; we just don't think they meet the threshold of Automation."

CHALLENGES FOR INSURERS AND SOLICITORS

The arrival of Automated Driving means the thorny issue of culpability looms large. The difficulties in establishing who or what is responsible for driving tasks and where the blame lies in the event of an accident will generate unique challenges for insurers and solicitors.

AEVA regulations state that if an Automated vehicle causes an accident while driving itself, the insurer must pick up the tab in the first instance. This means victims get fair and easy compensation, something the Direct Line Group is in favour of while recognising the inherent challenges.

"For the first time, the person behind the wheel switches from being the driver – and therefore the person responsible for negligence – to being the victim in the same way as a passenger," Ingram says. "They too could claim compensation for their injuries.

"The key question is: at what point does the responsibility for driving pass from the human to the machine, as this has significant implications."

To answer this, insurers and claimants will need access to reliable crash data with a time stamp to determine the point at which the collision occurred and therefore who – or what – was driving the vehicle at the time. This will allow insurers to determine whether the driver was responsible, or whether they qualify as a passenger.

"The trouble is, we believe ALKS systems will only detect about 10% of collisions they're involved in on a motorway," Ingram warns. "Our nervousness with ALKS – apart from safety issues – is that when these vehicles are involved in an accident, it will be very difficult for us to meet our obligations under the Act if we can't determine whether the vehicle or the person was driving at the time of an accident. This will result in lots of legal disputes at the claim stage as we try to establish responsibility for an accident or injury."

UNSTOPPABLE FORCE?

According to Avery, the message is clear: "ALKS cannot be classified as Automated even if it's restricted to 37mph and only used in queuing traffic. However, if the Government does allow them to be used on UK roads in Spring 2021, we will do everything we can to ensure these systems are robust and safe. We will be testing these vehicles as part of our insurance rating. ALKS will also be added to our EuroNCAP rating programme, which will incentivise carmakers. If we don't think these systems are safe enough, they won't get good scores – and they don't want that."

Nevertheless, both experts warn that if the Government does classify ALKS as Automated, this could turn out to be a decision the Government comes to regret – and one that could undermine consumer confidence and ultimately uptake.

"If we get the timing wrong and classify vehicles as automated before they are ready, we could end up with high-profile Automated vehicle crashes in the news," Ingram says. "There is a risk of a public backlash and frankly a public rejection of the technology altogether.

"This could put us back decades. Around 85-97% of accidents today are caused by human error, so there is a clear incentive to introduce Automation. But we should be wary of anything that could jeopardise progress, and jumping too soon could prove to be counterproductive."

Case Watch

Revising your budget under significant developments

The recent High Court decision in BDW Trading Ltd v Lantoom Ltd [2020] EWHC 2744 (TCC) involved a £5.3m dispute over stone that was alleged to be substandard. The claimant's budget included an assumption that fewer than 50,000 documents would be collected for disclosure however 250,000 were ultimately collected.

As a result of this the claimant sought a £90,000 increase on their original budget within the disclosure phase of the budget, citing "significant developments". The claimant sought a revision to directions and an increase to the budget and prior to the hearing the defendant agreed an order updating the phase from £90,000 to £ 177,624.16.

The claimant also sought a £55,000 increase for the witness statement phase to cover the additional costs arising from the disclosure phase, again disputed by the defendant. The matter was heard by Kerr J who on hearing the parties submissions concluded that having to collect five times the amount of disclosure than was originally anticipated would have necessitated additional spend in the witness phase and agreed a revision to this phase of £50,000.

This decision underlines two principles when it comes to budgeting. The first is to ensure that when you are drafting a costs budget, assumptions are a key building block and allow a judge, looking back at the costs at a later stage to see what the intention of the party was when the original budget was drafted. The second which is just as important, do not leave the question of costs until the end of the claim. If you are expecting a breach to occur, act during the litigation. This decision provides helpful guidance on what the judge viewed as a significant development and should provide guidance for those seeking to revise budgets where, as can often happen, things change during the litigation.

Enhanced interest and Part 36 sanctions – underlining the correct approach

In the recent court of appeal decision in Telefónica UK Ltd v The Office of Communications [2020] EWCA Civ 1374 the question of enhanced interest under the Part 36 rules was addressed in the event of an offer being beaten pursuant to CPR 36.17(4). The claimant was successful in a claim for £54m arising from a dispute over model network licences. The claimant had previously made an offer close to £1.5m less than the amount awarded and as a result sought the appropriate sanctions under CPR36. In dealing with the issues, the claimant was awarded indemnity costs following expiry of the relevant period (21 days after the offer made made) and £75,000 which is the maximum amount that can be awarded under the "additional amount" pursuant to CPR 36.17(4)(d). The judge however refused to award enhanced interest on either the principal sum awarded or the costs incurred after the expiry of the relevant period.

Considering the appeal, Phillips LJ overturned the lower court decision finding that it was not correct when applying the Part 36 rules to not implement the award and that "The rule provides for the successful claimant (in the terms of CPR 36.17(1(b)) to receive each of the four enhancements and there is no suggestion that the award of one in any way undermines or lessens entitlement to the others." This decision joins a long list of previous ones reminding us the importance of making early offers. In the event of an offer being beaten, CPR 36.17 prescribes the awards that can be made and any introduction of additional factors being considered when applying this rule is not consistent with the current principles and reintroduces principles from Carver v BAA [2009] which is not good law.

Ian Curtis
Divisional Manager Claimant Injury,
Lyons Davidson

Chris Kemp
Senior Associate,
Lyons Davidson

Accidents Abroad

Troke & Allen v. Amgen Seguros Generales Compania de Seguros

The two Claimants were injured in a road traffic accident in Spain. Liability was admitted by the Defendant for the accident. The Claim was issued in England & Wales under Regulation 864/2007.
The calculation of damages under the Regulation were at the Spanish level of awards rather than what the level of damages would have been if assessed under the law of England & Wales. The amount of damages was also not in dispute. A joint expert report on Spanish law provided that where the Defendant insurer had not made an interim payment, in Spanish law the Court had the option to apply penalty interest rates in favour of the Claimant.

Article 20 of the Spanish 50/1980 Insurance Contract Act contemplates a penalty interest where insurers have not made a relevant interim payment within 3 months from the accident. The applicable statutory interest rate is (i) From 28/12/2014 to 28/12/2016 interest will accrue at 6% (2014), 5.25% (2015) and 4.5% (2016) and (ii) From 29/12/2016 until final payment, a flat variable rate of 20%."

No interim payment was made by the Defendant. The Judge at first instance applied an interest rate of 0.5% on special damages and 2% on general damages, which was accepted as having been appropriate if no regard was had to the Spanish rates.

Both parties accepted if Regulation 864/2007 applied to the interest claimed then Spanish law would apply. The Judge, however, decided that the interest claim was a 'procedural' matter and was therefore excluded from the Regulation and awarded interest and the lower rate applicable in England and Wales.
On Appeal, the Judgment was upheld. The case of Maher v. Groupama Grand Est was referred to and it was held that the power to award interest was a discretionary remedy rather than a substantive right claimed from the tortfeasor and therefore it was a procedural matter governed by the law of England & Wales. The Judge had therefore been correct to award interest under Section 69 of the County Courts Act 1984 and not as per the discretionary penalty award which could have been applied under Spanish law.

Litigation Friend

X (a Protected Party) v. Y & C

The Claimant and his brother were passengers in a car driven by the First Defendant and were involved in a high speed road traffic accident with a HGV driven by the Second Defendant. Tragically, the Claimant's brother died as a result of his injuries and the Claimant sustained catastrophic and life-changing injuries. The Claimant's mother was appointed as the Claimant's litigation friend. The solicitors for the Claimant applied to the Court for an Order that the mother be removed as litigation friend and that she be replaced by a professional litigation friend. The application was made on the basis that the mother's conduct of the litigation which was described as being 'extremely difficult' and included a difficulty in accepting the true extent of the Claimant's injuries. According to a statement filed by the Claimant's solicitors, the mother had made several unwise attempts to move the Claimant from one medical treatment centre to another and she had repeatedly refusal to cooperate with authorities.
A settlement offer was made by the Second Defendant and following at a conference with Counsel the Claimant was advised not to accept the offer as further evidence was required. Despite this, the Claimant's mother wrote directly to the Second Defendant's solicitors seeking to accept the offer and also instruct alternative solicitors. In response to the application, the Claimant's mother stated that whilst she did not accept the issues raised by the solicitors, she would agree to step down as litigation friend.
It was held that the Court had a general supervisory role in respect of the conduct of a litigation friend and had the power to replace a litigation friend, if it was considered appropriate to do so. In exercising its supervisory jurisdiction, the Court was not precluded from considering the conduct of the litigation friend over the duration of his or her appointment. The Court granted the application and allowed the appointment of a professional litigation friend in place of the Claimant's mother.

MASS MATTERS

Paul Lewis

Partner, George Ide LLP / MASS Committee Member

Why MASS?

An opportunity to give back and to help to shape/influence the landscape in which we work to the betterment of the accident victim. My firm is a founder member of the Society and I was at the inaugural meeting in Piccadilly, Manchester, 25+ years ago. It's therefore in my blood. RTA law is under attack and has been for as long as I can remember. Insurers have the ear of Government and seem capable of shaping policy for their own financial benefit. Government appears blind to this self-interest. MASS is more important now than it has ever been. The very fabric of what the Society stands for is under threat.

Why the law?

I started in the insurance industry in 1986. There is a natural bridge between insurance and law. I loved the technical nature of the law I engaged with whilst in insurance, particularly litigation and civil procedure, so I travelled across the bridge. I never looked back. I wanted what I did to be about more than just a balance sheet or a case reserve. The thrill of maximising a client's settlement when you know that extra £10,000 will make a significant difference is indescribable. How can that feeling compare with saving a wealthy, multi-national insurer a miniscule percentage of its turnover?

Best win in Court/most important win to date?

Two cases stand out, both early in my career. The first involved an amazing lady who was catastrophically injured in an accident which resulted in her car catching fire. She lost her husband and all four of her limbs. I carried out key work which led to liability being proven. It's exactly what I came to law from insurance to do. The second was a double fatal accident involving vehicles travelling in opposite directions, and colliding at the top of a hill, on the brow of a hill. Both cars were similarly coloured. Various witnesses were plainly confused about which vehicle was travelling in which direction. We knew the vehicle travelling south was at fault. Through diligent enquiries and painstaking evidence gathering, I proved my client's direction of travel by establishing that she must have been driving towards her home when the crash occurred. I did this by demonstrating that her cats, which she adored, were fed, almost religiously, at the same time each day. The accident happened just before feeding time. When the Police gained access to the house later that evening, the cats had not been fed and had devoured a chicken which had been left out for dinner. The defendant insurer accepted that the client would not have been travelling away from her home at this time of day. I subsequently resisted calls to change my name to "Hercule Poirot".

Thoughts on the implications of the Civil Liability Act

A feeling of impending doom that, without proper thought, understanding or consideration the Government will introduce the most sweeping changes to RTA law in a generation. The impact of doing so will deny large swathes of society the opportunity to right and proper redress if they are injured in a road accident. The concept that a LiP will have both the capacity and wherewithal to diligently access and complete forms on an IT Portal is daft and preposterous. I am sure Government is fully aware of this. The removal of an arbitration type safety net from the original, proposed scheme further evidences Government's lack of understanding or care for the public's access to justice. Insurers do not have capacity of the training to sift through those claims which are made. They will routinely deny liability wherever possible, safe in the knowledge that only the most stoical and sophisticated of claimants will have the capacity to issue proceedings. There remains an opportunity to challenge the basis upon which the Act is based, and we must seize that opportunity.

What 3 items would you take to a desert island?

My phone (assuming WIFI!), a comfy pillow for the hammock and my wife (she might read this!). We all need to escape from the inevitable pressures of what we do, probably now more than ever. Time away from the commitment of work is the only way most of us can continue to achieve at the high levels we do, week in, week out.

What's your claim to fame?

Never being caught? Actually, probably when my late father and I won the adult and junior table tennis competitions

at the holiday camp we visited when I was around 10. I received a poxy rosette or similar, and he won a family holiday later in the year where he would compete in the national finals. Our local papers picked up the story but attributed the holiday win to me and included my picture. My father was less than impressed, but I was the school King Pin for weeks.

What's the best and worst piece of advice you have ever received?

Best; in my early years, stretch myself financially. It was the early 90's. Credit was becoming more easily available. I was advised to stretch to afford the mortgage I needed. By doing so I was able to buy a bigger house which appreciated in value better than a smaller property and set me on the property ladder. Worst; don't bother to qualify, it won't help your career. This was advice which suited the person who gave it, not me. It meant I never qualified and, whist this did not stifle my career, it could have done and I have always regretted it.

What would be your first question after waking up from being cryogenically frozen for 100 years?

Please tell me Boris isn't still PM? Alternatively, I would probably want to know about all the technological advances I had missed. Look how far we have come in the past 100 years? Space travel, communications, health, life expectancy. Imagine where we might be 100 years from now? It's fascinating and mind boggling in equal measure.

Superstitions?

None. I am not religious, and I do not believe things happen for a reason. I don't believe in karma or "you receive back what you give". I believe in just being as true and honest as I can in everything I do.

Best ever holiday or place you have visited?

Place, Koh Samui, 25 years ago. Holiday, Italy (Rome) 2016. Koh Samui wasn't as developed as it is now. Only single-story buildings were permitted. Parts of the island were deserted and uninhabited. Food was bought from shacks at the side of the road. It was so peaceful. I loved Rome. We had a beautiful villa about 30 minutes north of the capital. My two boys were young. Rome is a magical place. I love history. We had a great time (if you forget the hellish car hire hall at the airport!).

First car?

Fiat Strada 75 CL. (orange!). A truly terrible car, but it represented freedom and independence, so I will always cherish it.

Favourite song/artist?

Purple Rain/Prince. I loved Prince as I was growing up and was fortunate enough to see him play live at The O2 in London a few years before his death. For me his death was one of those "where were you when you heard" moments. I was in a hotel room, on my own, overlooking The O2 where I had watched him play. I cried.

Favourite book?

I'm not a big reader and never have been. When I read I enjoy sporting autobiographies? I also enjoyed the Chris Evans autobiographies.

Best TV boxset or movie?

Just finished The Fall on Netflix. I can recite Pretty Woman almost line for line (should I have written that?). I love Gladiator, Carlito's Way, Moana and, of course, Purple Rain. An eclectic mix.

Favourite drink?

Lucozade. I have a strange, almost addition to it. It must be responsible for much of my lockdown weight gain. I'm a beer fan and love champagne and English sparkling wine from my local Tinwood.

Favourite food?

Well, this is so mood dependant, isn't it? When out I love venison. At home I love feel good foods such as a lasagne or a cottage pie. If I'm being naughty, then pizza or fish and chips.

What is the first thing you like to do with your free time?

My children. 18 will sit his A-levels next summer and is an immense source of pride. 6 is commencing his football career and is as bright as a button. 3 has just started ballet lessons and is so cute she's almost edible. I love sport and will watch almost anything live on TV. A good snuggle on the sofa with the Mrs and a good film/boxset is a must.

What annoys you?

Inconsiderate and selfish people. There's no need for it. We all have to get along and that favour you've just refused, you will need at some point. seems to be happening more and more now I'm getting older!

Thoughts on Brexit?

Stupid idea, akin to the Civil Liability Act. The consequences will only be understood and felt once it's too late. (Don't get me started)

MOTOR ACCIDENT SOLICITORS SOCIETY
www.mass.org.uk
19-20 St Augustines Parade, Bristol BS1 4UL
Telephone 0117 925 9604
Email enquiries@mass.org.uk

Motor Accident Solicitors Society (a private company limited by guarantee) | Company Number: 10206112. Registered Office: 19-20 St Augustines Parade, Bristol, BS1 4UL. Registered in England and Wales.