DOLMANS INSURANCE BULLETIN

Welcome to the January 2025 edition of the Dolmans Insurance Bulletin

In this issue we cover:

REPORT ON

Steps - Duties and Warnings

SG v Monmouthshire County Council

FOCUS ON

Guideline Hourly Rate Increase From 1 January 2025

CASE UPDATES

- **Civil Procedure - Issuing Claims - Application to Strike Out**
- **Limitation - HRA - Articles 2 and 3 of European Convention of Human Rights**
- **Police - Omissions - Duty of Care - Article 3 Investigative Duty**

If there are any items you would like us to examine, or if you would like to include a comment on these pages, please e-mail the editor:

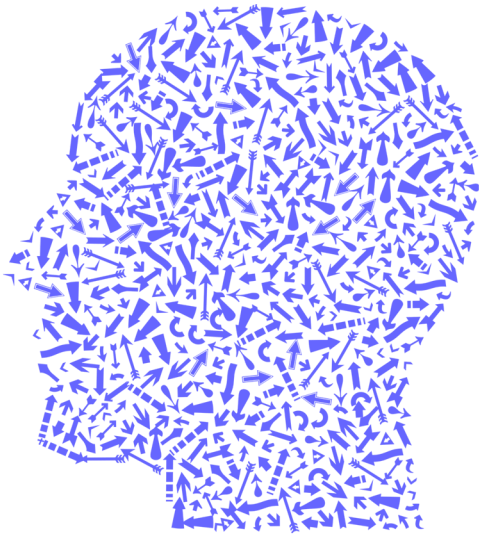
Justin Harris, Partner, at **justinh@dolmans.co.uk**

DOLMANS
SOLICITORS

REPORT ON

Steps - Duties and Warnings

SG v Monmouthshire County Council



Pedestrians, whether on adopted highway or land owned and occupied by a Local Authority, will, undoubtedly, encounter many obstacles and differences in levels when walking on any journey. For example, pedestrians on adopted highway will frequently need to navigate kerbs and other similar features. Likewise, visitors to Local Authority land will also encounter similar features, including steps.

The Claimant in the recent case of *SG v Monmouthshire County Council*, in which Dolmans represented the Defendant Local Authority, encountered such a step and argued that the Defendant Local Authority had breached the Occupiers' Liability Act 1957. The Trial Judge, therefore, had to consider the duty of care owed by the Defendant Local Authority under the 1957 Act. The extent to which visitors should be warned of steps that are obvious was also considered in the said matter.

Background/Allegations

The Claimant alleged that she was entering public toilets, that were owned and controlled by the Defendant Local Authority, when she caught her foot on a poorly maintained step, causing her to trip, fall and sustain personal injuries. The said location was not part of the adopted highway.

The Claimant, therefore, alleged breach of the Occupiers' Liability Act 1984, negligence and nuisance on the Defendant Local Authority's part.

The Claimant's allegations included an allegation that the Defendant Local Authority had failed to warn visitors of the step.

REPORT ON

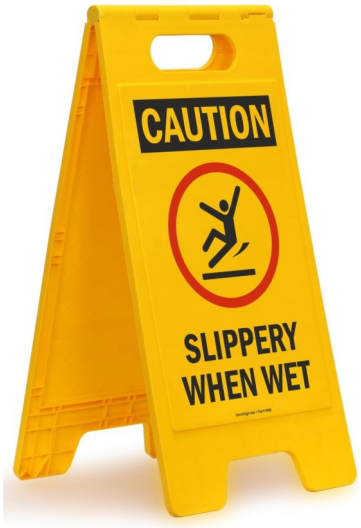
Defendant Local Authority's Arguments and Defence

The Claimant was put to strict proof as to the circumstances of her alleged accident, factual causation being denied.

It was admitted that the Defendant Local Authority, as the occupier of the toilet block, owed a duty to lawful visitors. It was denied, however, that the location of the Claimant's alleged accident was poorly maintained and/or in a dangerous condition.

It was also denied that the Defendant Local Authority, its employees and/or agents were in breach of any statutory duty and/or were negligent. It was denied that the location of the Claimant's alleged accident constituted a danger, trap and/or foreseeable risk of injury.

It was averred on behalf of the Defendant Local Authority that the presence of the step was self-evident, and that anyone exercising reasonable care and attention should have seen the step and proceeded accordingly. It was argued that there was no requirement to provide any warning of the step. The step was not an inherent danger and/or did not pose a foreseeable risk to those paying due care and attention accordingly.



In any event, there was a prominent and brightly coloured sign at the entrance to the toilet block that stated: Caution – Floor Slippery When Wet.

It was denied that the alleged defect constituted a nuisance and/or a danger.

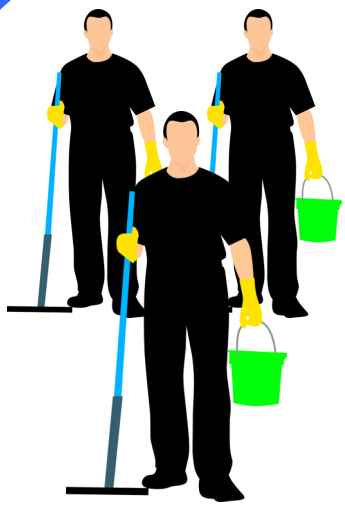
It was argued that the Defendant Local Authority had taken reasonable and sufficient measures to ensure that the location of the Claimant's alleged accident was reasonably safe.

Contributory negligence on the Claimant's part was also alleged by the Defendant Local Authority.

REPORT ON

Inspections, Other Evidence and Submissions

The toilet block was inspected and maintained on a reactive basis, which the Defendant Local Authority considered to be adequate in the circumstances. However, the toilets were cleaned four times a day between Mondays and Saturdays and once on Sundays. It was averred that any defects and/or Health & Safety concerns would be reported accordingly.



Evidence was adduced by appropriate witnesses from the Defendant's Local Authority's Cleaning and Property Services Departments in support of the Defence and the Defendant Local Authority's arguments.

It was accepted that the step was technically in a state of disrepair, but did not constitute a trip hazard or any other hazard.

The Claimant argued that the step could have been painted yellow, at negligible cost to the Defendant Local Authority. Whilst this was accepted in theory, it was argued by the Defendant Local Authority that that there was no real need for this and that it would be unnecessarily onerous and costly to paint every such step throughout the whole of the Defendant Local Authority's area.

In any event, the Defendant Local Authority argued that this was a threshold, rather than a step, and that it would not be natural for pedestrians to step upon the same, as the Claimant had allegedly done at the time of her accident.

The Defendant Local Authority had no record of any complaints and/or other accidents in relation to the alleged defect during the 12 month period prior to the date of the Claimant's alleged accident, despite the fact that the toilets were used regularly by members of the public.

It was submitted that the alleged disrepair was merely wear and erosion, which actually reduced the difference in levels and reduced the alleged trip face. This was not a real source of danger, as was evident from the fact that there had been no previous complaints and/or other accidents. It was argued that the reactive system in place was sufficient and that there was no duty to warn a person of something that they are already aware of, the Claimant having admitted that she was aware of the step.

REPORT ON

Judgment

The Trial Judge reminded everyone of the common duty of care under section 2(2) of the Occupiers' Liability Act 1957 to take such care as in all the circumstances of the case is reasonable to see that a visitor will be reasonably safe in using the premises for the purposes for which the visitor is invited or permitted by the occupier to be there.

The Trial Judge noted that the step was smaller than most kerbstones and that the Claimant was able to negotiate larger kerbstones without any issues. The Claimant was aware of the step, having seen the step from some distance away. The Trial Judge held, therefore, that the step was there to be seen, but the Claimant could not even say under cross-examination at exactly which point she fell and had made various assumptions within her evidence.

The Trial Judge held that although this was an unfortunate accident, it arose due to the Claimant's failure to look where she was going.

In any event, the Trial Judge went on to find that the step was not dangerous, particularly in light of the lack of previous complaints and/or accidents.

Comment

Whilst finding that the step was not dangerous for the above reasons, the Trial Judge was clearly also persuaded by the Defendant Local Authority's argument that there is no duty to warn a person of something that they are already aware of, the Claimant having admitted that she was aware of the step.

The Trial Judge was not persuaded by the Claimant's argument that the step should have been painted yellow or that there should have been a specific notice warning of the step, it having been noted that there was already a notice in place suggesting caution when entering the toilet block due to the possibility of wet floors.

In dismissing the Claimant's claim and after having considered all the parties' evidence, the Trial Judge was satisfied that the Defendant Local Authority had, indeed, taken such care, as in all the circumstances was reasonable, to ensure that the Claimant was reasonably safe in using the premises for the purposes for which she was invited.

Tom Danter
Associate
Dolmans Solicitors

For further information regarding this article, please contact:

Tom Danter at **tomd@dolmans.co.uk**
or visit our website at **www.dolmans.co.uk**

DOLMANS
SOLICITORS

FOCUS ON

Guideline Hourly Rate Increase From 1 January 2025

In December 2024, the Master of the Rolls announced an update to Guideline Hourly Rates (GHRs) with effect from 1 January 2025.

Following a review requested by the Master of the Rolls in 2022, the GHRs were updated for inflation in January 2024 with the figures uplifted using service producer price inflation (SPPI) figures from Q1 2022 to Q1 2023 inclusive. That resulted in a 6.66% increase.

The January 2025 increase updates the figures using SPPI values up to Q1 2024, amounting to a 3.65% uplift.

The new rates from 1 January 2025 are as follows (with the 2024 rates shown in brackets):

Grade	Fee Earner	London 1	London 2	London 3	National 1	National 2
A	Solicitors and Legal Executives with over 8 years' experience	£566 (£546)	£413 (£398)	£312 (£301)	£288 (£278)	£282 (£272)
B	Solicitors and Legal Executives with over 4 years' experience	£385 (£371)	£319 (£308)	£256 (£247)	£242 (£233)	£242 (£233)
C	Other Solicitors or Legal Executives and Fee Earners of equivalent experience	£299 (£288)	£269 (£260)	£204 (£197)	£197 (£190)	£196 (£189)
D	Trainee Solicitors, Paralegals and other Fee Earners	£205 (£198)	£153 (£148)	£143 (£138)	£139 (£134)	£139 (£134)

The GHRs will be uplifted annually by SPPI.

The announcement also highlighted ongoing work of the Civil Justice Council who have established a working group to examine the issue of guidelines relating to Counsel's fees and a new top rate for complex commercial work.

Amanda Evans
Partner
Dolmans Solicitors

For further information regarding this article, please contact:

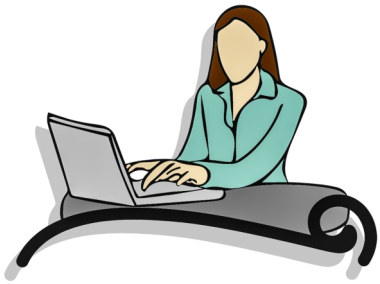
Amanda Evans at **amandae@dolmans.co.uk**
or visit our website at **www.dolmans.co.uk**

CASE UPDATES

Civil Procedure - Issuing Claims - Application to Strike Out

Lawrence, R (on the Application of) v London Borough of Croydon [2024] EWHC 3061

The Court was required to determine the Defendant's Application to strike out the Claimant's claim on the ground that it was out of time.



Background

The Claimant's claim challenged the Defendant's decision to introduce a "Low Traffic Neighbourhood Scheme". There was a 6 week period from the date the Orders were made within which any challenge to the Scheme was required to be made to the High Court. The Claimant e-mailed her Claim Form and supporting documents to kbenquiries@justice.gov.uk, which was the address for claims to be issued in the Kings Bench Division.

However, CPR Practice Direction 54D required the Claim Form to be filed and issued in the Administrative Court Office, which did not receive the Claim Form until 14 days later (and after the 6 week deadline had expired).

The Defendant contended that the High Court did not have jurisdiction to entertain the claim because it was filed (with the correct Court Office) after the statutory deadline.

Decision

The Defendant's Application was dismissed. The Judge held that the Claim Form had been lodged in time. The fact that it was lodged in the wrong division did not mean that it was not issued properly. The Court could simply transfer the matter from one division to another.

The Claimant had made a procedural error in relation to a valid claim. The fact that the Claim Form (which had been lodged in time) was lodged in the wrong division did not mean that it was not issued properly. The Court considered the decision in *Barnes v St Helen's Metropolitan Borough Council [2007] 1 WLR 879*, in which it was held that a claim was "brought" when the Claimant's request for the issue of a Claim Form (together with the Court fee) is delivered to the Court Office. This construction accords with the approach taken in pre-CPR cases.

The Court also had regard to the decision in *Van Aken v Camden Borough Council [2003] 1 WLR 684*, where it was held that an appeal to the County Court pursuant to Section 204 of the Housing Act 1996 had been "brought" in time in circumstances where it had been posted though the designated letter box of the Court Office on the final day of the limitation period, albeit after the office had closed for the day.

CASE UPDATES

In cases where the terms of the relevant provision merely required that the claim etc is, for example, "brought", the question as to whether the claim has been brought in time depends on whether the Claimant has taken the requisite steps to request that the Claim Form be issued, rather than whether the Court Office has responded. Provided a valid claim is filed within the statutory limitation period, the date on which it is acknowledged, accepted or issued does not affect the fact that the claim has been brought in time. The Court saw no reason to adopt a different approach in this case.

The Judge held that the correct date for the filing of the Claimant's claim should be corrected to the date that it was originally (albeit incorrectly) filed. This could, and should, be done under CPR 3.10. There was no prejudice to the Defendant in doing so. Transferring the claim from one court to another did not deprive the Defendant of a limitation defence. Even so, it would be wholly inconsistent with the overriding objective to refuse to correct the error made given that it was a genuine mistake, it had no material impact on the litigation and no other prejudice to the Defendant had been identified.

Limitation - HRA - Articles 2 and 3 of European Convention of Human Rights

Various Claimants v Security Service & Others
[2024] UKIPTrib6

The Claimants' claims arose out of the Manchester Arena bombing on 22 May 2017. The Investigatory Powers Tribunal considered an Application to extend time under Section 7(5) of the Human Rights Act 1998.

Background

In March 2023, Sir John Saunders concluded the Manchester Arena Inquiry and produced a detailed report ("the Inquiry Report"), in which he found that there was a "*significant missed opportunity to take action that might have prevented the Attack*" and that "*there was a realistic possibility that actionable intelligence could have been obtained which might have led to actions preventing the Attack*".

The Inquiry Report led the Director General of MI5 to issue a public apology, in which he stated that "*Gathering covert intelligence is difficult – but had we managed to seize the slim chance we had, those impacted might not have experienced such appalling loss and trauma".*

During the course of the coronial inquest into the deaths resulting from the bombings, Counsel to the Inquest acknowledged (in an explanatory note dated 16 January 2019) that Article 2 of the European Convention was probably engaged.

It was not until 29 February 2024 that the Claimants' claims were issued in the Tribunal. It was alleged that the Defendants had violated Articles 2 and/or 3 of the Convention and that the Claimants were each entitled to damages, together with their legal costs.

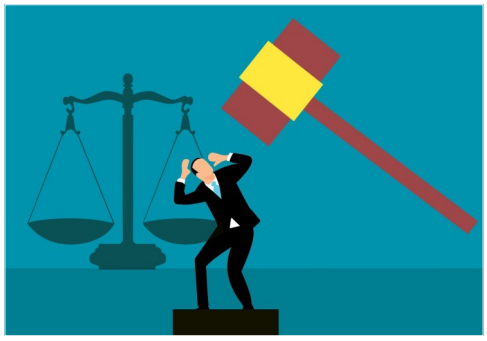
On 1 August 2024, the Tribunal ordered a hearing to consider two preliminary issues:

- Whether the claims ought to have been brought within the 1 year limitation limit under the HRA and the 2000 Act and, if not, whether time should be extended.

- Whether the test for a violation of Articles 2 and 3 of the ECHR in this context is whether '*the relevant authorities knew or ought to have known at the time of the existence of a real and immediate threat to life or of Article 3 ill-treatment from the criminal acts of the third party and failed to take measures within their powers, which judged reasonably, might have been expected to avoid that risk*'.

Findings

The Tribunal reached the conclusion that, in all the circumstances, it would not be equitable to permit the claims to proceed.



The procedural history of the claims provided an important backdrop to the circumstances at the time that the Inquiry Report was published. The Claimants' Solicitors were alive to the limitation issue and had expressly sought the agreement of the Respondents in relation to it, but had not been given those assurances. There was criticism of the Claimants' Solicitors for failing to act with insufficient haste in light of the Respondents' refusal to agree to a limitation moratorium.

It was incumbent upon the Claimants' Solicitors to move with "real expedition" once the Inquiry Report was published. The need to file the claims promptly after publication of the Inquiry Report was not given the priority it needed. It would have been a more sensible approach to issue protective proceedings and, thereafter, to request a stay of the claim to allow final investigations to be completed.

CASE UPDATES

It was acknowledged that there was inevitably some prejudice to the Respondents, even though much of the evidence had already been obtained. It was accepted that the Respondents would inevitably be required by the proceedings to divert time and resources to defending the proceedings rather than their core responsibilities (including the protection of the lives of people in the country by preventing future attacks).

Further, although it was not appropriate to review the merits of the claims at such a preliminary stage, the Tribunal reiterated the primary purpose of a claim under the HRA was to vindicate the Convention rights concerned rather than to obtain monetary remedies. Although there had been no formal declaration by a judicial tribunal to the effect that the Claimants' Article 2 and/or 3 rights had been violated, the fact was that there had been an extensive public inquiry, as well as other reviews, into the underlying events. A public apology had also been issued for the failings of the Security Service. The Tribunal did not consider that the possibility of obtaining declarations that there had been a violation of the Convention rights, and the possibility that there may be some modest awards of damages, should lead to the conclusion that it would be equitable to permit the claims to proceed. This was despite the fact that it appeared that some of the Claimants were actually seeking substantial awards of non-monetary damages for life-changing and psychiatric injuries.

In light of the Tribunal's finding on the limitation issue, it was not necessary for it to consider the Application on the test for imposition of the operational duty under Article 2/3. However, the Court acknowledged that the starting point is to acknowledge that the *Osman* test clearly envisages that either actual or constructive knowledge is enough. Constructive knowledge is the knowledge which the public authority *ought* to have known if it had acted reasonably.

This decision appears to be based upon the public policy which underlies the imposition of a 1 year time limit under the HRA that "*All such claims are, by definition, brought against public authorities, and there is no public interest in these being burdened by expensive, time-consuming and tardy claims brought years after the event*"; *Bedfordshire v Bedfordshire County Council (2014) HRLR 33.*

Police - Omissions - Duty of Care - Article 3 Investigative Duty

Chief Constable of Northamptonshire Police v Woodcock;
and CJ & Others v Chief Constable of Wiltshire Police
[2023] EWCA Civ 13

These appeals, heard together, both concerned issues of whether the Police may be liable in damages for failing to protect a person from harm caused by the criminal actions of a third party. In both cases, the Court of Appeal found in favour of the Police.

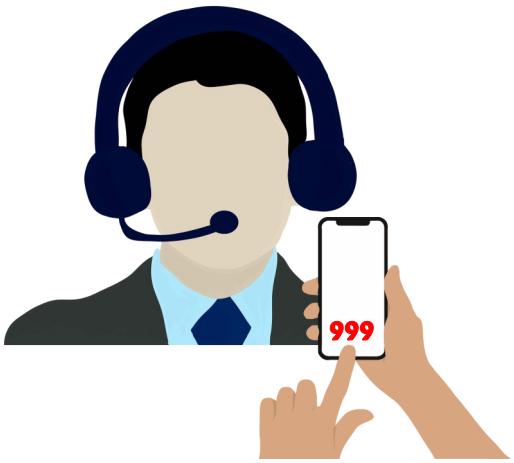
CASE UPDATES

The Facts

Woodcock

Ms Woodcock ('W') had been in a relationship with 'G', during which they had both made complaints to the Police about the other. W's complaints included reports G had threatened to kill her. G was given harassment warnings by the Police. G had also been convicted of assault of W's former husband. W ended the relationship with G and reported to the Police that G had threatened her and her children. G continued to harass and threaten W and attempted to gain access to her home.

The Police attended W's home but G had left. W was advised to lock all doors and windows, keep her mobile phone fully charged, inform neighbours of the situation and, if G came to the house, to get into a locked room and call the Police. W asked for a police officer to remain outside the house. An officer remained until around 3am. Police attempted to trace and arrest G overnight, but could not find him.



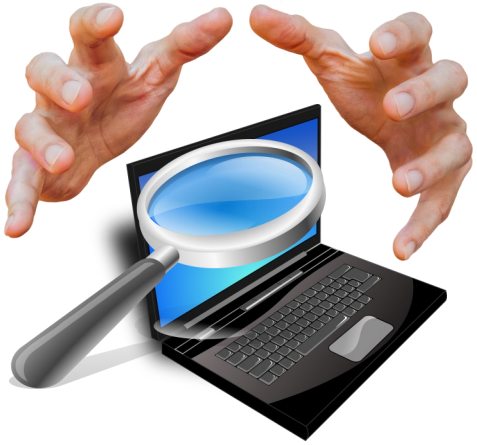
At 7:30am, W's neighbour rang 999 and reported that G was loitering outside, and said she thought G was going to attack W when she left for work at about 7:45am. The neighbour said she was unable to contact W without going over (as she did not have her phone number) and did not want to get involved. The call handler said they would get officers to go straight round. The call was treated as an emergency and an officer was sent at once to arrest G. No call was made to W to warn her. W left the house and was stabbed repeatedly by G, causing serious injuries. The Police arrived shortly after.

W brought a claim for damages for negligence against the Police alleging they owed her a duty of care and breach of that duty in failing to protect her from the attack, arrest G earlier than they did and to warn her G was outside the house. The claim was dismissed at first instance on the grounds that no duty of care was owed.

W's appeal was successful. The Judge held that the Police assumed a responsibility to warn W after the neighbour's call and breached that duty by failing to warn W by telephone.

The Police appealed to the Court of Appeal.

CASE UPDATES



CJ & Others

In 1998, a man, 'BP', was imprisoned for sexual offences against his daughter. After his release, he gave an old laptop to another daughter ('CP'). About a year later, in December 2012, CP found a folder on it containing indecent images of children. CP and her mother reported this to the Police. The laptop was seized and sent for examination to seek to determine when the images were downloaded. The examination was given a middle to low priority, partly as BP was a known sex offender who was being managed by the PPU. The examination was completed in April 2014 and found the images had been created in December 2012, and this had likely been done by CP's brother, 'MP', who had been 16 at the time.

In the meantime, the investigating officer had closed the case on the system, as an open case which was not updated would not look good. On receipt of the examination report, he took no further action.

Between December 2012 and May 2014, MP sexually abused his niece and nephew (CJ and PJ, two of the Claimants). Between May 2014 and July 2015, MP sexually abused three further children (also Claimants herein), having been able to obtain work as a child minder with clear DBS checks. The mothers of two of these children made reports to the Police in April and July 2015, which led to MP's arrest in July 2015. MP pleaded guilty and was sentenced to 10 years imprisonment for sexual offences against children.

The five victims brought proceedings against the Police for damages for breach of their Article 3 ECHR rights. CJ and PJ also claimed damages for negligence. They alleged that the police officer's failings in the original investigation resulted in MP being able to avoid detection and go on to abuse them.

The Judge found that whilst the police officer had acted ineffectually, he had not made matters worse. No common law duty of care was owed.

In relation to the Art. 3 claim, it was agreed that the sexual abuse amounted to inhuman treatment. However, the Judge found that the Art. 3 investigative duty only arose in April 2015, when the first report of a contact sexual offence was received.

The Claimants ('C') appealed to the Court of Appeal.

Court of Appeal's Decisions

Woodcock

The Court held that the Appeal Judge fell into error in finding that the Police were under a duty to warn W of her imminent attack. W's case fell within the scope of the general rules. In particular, the common law does not impose liability in the tort of negligence for omissions or failure to act. In order to succeed, W had to establish one of the exceptions to the general rules. On the facts of this case, the Police did nothing which could be regarded as an assumption of responsibility to warn W or prevent an attack on her by G. They had not promised to warn W of any sightings of G near her home and had not promised to pass on any information they received alerting her to a danger.

W further sought to rely on the interference principle recently confirmed by the Supreme Court in *Tindall v Chief Constable of Thames Valley Police [2024]*, submitting that the police call handler caused the neighbour to refrain from protective action she would otherwise have taken. The Court of Appeal accepted that preventing another from protecting a victim is a form of making matters worse and may give rise to a liability, but there must be evidence both that the Police knew or ought to have known that the other person intended to act protectively and that the other person was deflected from doing so by the conduct of the Police. In W's case, there was no evidence to support either.

W's submissions that the Police had significant control over G because they had decided to arrest him, had searched for him, had information from the neighbour as to where he was and could prevent the danger by passing on the warning to W were also rejected. The Police had no more control over G than they generally have over persons suspected of crime but whom it has not yet been possible to arrest.

Accordingly, the Court found that W's case did not come within any of the established exceptions to the general rule. Nor was there any scope for finding exceptional circumstances such as to justify imposing a duty. The Judge had been wrong to find the Police were under a narrow and specific duty to warn W.

No common law duty of care was owed and the Police's appeal was allowed.

CASE UPDATES

CJ & Others

The Court found that the police officer's serious failings were omissions and failures to act. The general rule that there is no liability for negligent omissions to act applied. None of the exceptions could be established.

In relation to the Art. 3 claim, the Court of Appeal agreed that the images seen on the laptop in December 2012 were not of a level to engage Art. 3. Even if they had been, the Art. 3 rights engaged would have been those of the children depicted in the images (which could not be identified). C argued that their rights became engaged because the protective duty under Art. 3 required an effective investigation of the downloader having regard to the risk that he had a sexual interest in children which might escalate to contact offences. The Court rejected this argument. A generalised future risk would not suffice to engage the Art. 3 investigative duty because it would not satisfy the requirement of a real and immediate risk of ill-treatment in breach of that article.

The first instance Judge had been correct to find that the Art.3 duty was not engaged prior to April 2015 and that the information received at that time about contact offending could not retrospectively transform an earlier investigation of indecent imagery into an Art. 3 investigation.

Once the Art. 3 duty arose in April 2015, MP was promptly arrested. There was no breach.

Accordingly, C's appeal was dismissed.

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

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

TRAINING OPPORTUNITIES

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

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

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

Seminars we can offer include:

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

If you would like any further information in relation to any of our training seminars, or wish to have an informal chat regarding any of the above, please contact our Training Partner:

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