motoring news

Headlight

welcome

to 'Headlight', Dolmans Solicitors' motoring news bulletin.
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spring
2025

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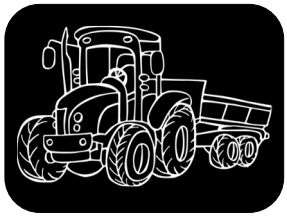
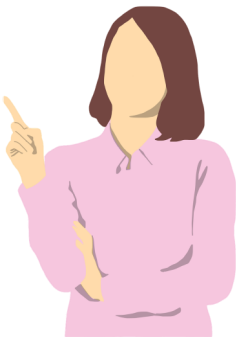
Zavorotnii v Malinowski

The claimant was a passenger in a car driven by the defendant which collided with a stationary tractor and trailer. The claimant suffered serious head and facial injuries and lacked capacity to litigate. The defendant pleaded guilty to careless driving. The driver of the tractor, which was parked without lights overnight, pleaded guilty to allowing a vehicle to remain stationary during darkness without lights. The defendant brought a claim against the insurers of the tractor for an indemnity or contribution, alleging negligence by the driver. The insurers of the tractor denied negligence, arguing that tractors regularly parked overnight on the road near the accident and the defendant should have known that.





The court had discretion under CPR r.44.2 to order a party to pay the costs of a costs management hearing. The claimant presented an overly ambitious costs budget, which verged on being unrealistic. The court allowed £308,909.30 for three phases of the litigation: disclosure, witness statements and experts. This amount was 18.2% over what had been offered by the defendant and 40% below what the claimant had sought.

The defendant argued that the claimant's budget was unrealistically high, and the significant reductions took the matter beyond a typical costs in the case order. The court refused the defendant's application, stating that the claimant had achieved 60% of what they sought so the budget was not entirely unrealistic.

Nicholas Robinson v UK Insurance Limited

The case involved a claimant who brought a claim for damages for personal injury arising from a road traffic accident. The accident occurred on 2 February 2017, when the claimant was riding as a pillion passenger on a quad bike without a helmet. The vehicle driven by the defendant's insured pulled out from a side road, causing a collision with the quad bike. The claimant initially made a claim for an injured shoulder, but later medical evidence stated that the shoulder injury was not related to the accident.

At the original trial, DDJ Masheder found the claimant to be fundamentally dishonest for advancing a claim for a shoulder injury he knew was not accident-related. As such, the claimant was ordered to pay the defendant's costs of £3,104.16, and there was no applicable protection of Qualified One-Way Costs Shifting. The claimant appealed against the finding of fundamental dishonesty.

The appeal took considerable time due to the lack of a transcript of evidence, the retirement of the trial judge, and efforts to obtain a transcript and agree written notes.

The claimant argued that although his oral evidence was inconsistent with the medical evidence and his own witness statement, this inconsistency did not amount to dishonesty. The shoulder injury was documented in the GP notes, and both medical experts had found evidence of restricted range of movement. The claimant further argued that even if it was within DDJ Masheder's discretion to find that he was dishonest, it was wrong in law to find that the dishonesty was fundamental to the claim. The claimant quickly abandoned the shoulder injury claim upon receipt of the medical evidence and limited the claim to £1,500.

The appeal judge, HHJ Baddeley, overturned the finding of fundamental dishonesty, reasoning that the shoulder injury had no bearing on the issued claim. HHJ Baddeley found that the claimant's dishonesty regarding the shoulder injury did not go to the root of the claim and was not fundamental. As such, the appeal was allowed on the ground that the claimant's dishonesty was not fundamental to the claim. The usual Qualified One-Way Costs Shifting (QOWCS) order was substituted for the costs order made by DDJ Masheder.

Smith v AXA Insurance UK PLC & Spectra Drive Limited

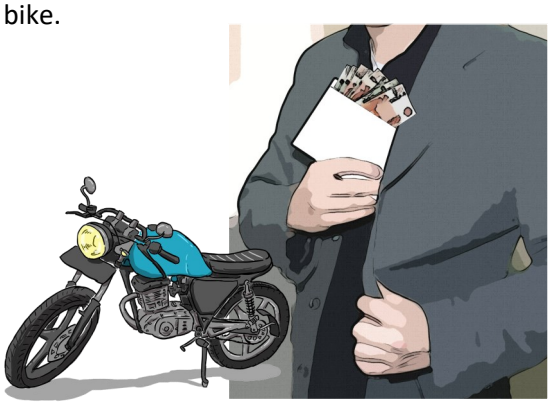
The claimant's vehicle was damaged in an accident and they contacted a claims management company, Spectra, to arrange for a hire vehicle. The claimant made a claim for damages, including hire charges of £11,809.94 and personal injury.

The defendant argued that the claimant did not need a hire car for 3 months as they had insured another vehicle within 10 days of the accident. The claimant subsequently discontinued the case. The defendant sought to set aside Qualified One-Way Costs Shifting protection on the grounds of fundamental dishonesty and also sought a non-party costs order against Spectra. The court rejected the allegations of fundamental dishonesty, finding that the claimant had insured a car after 10 days of the accident, but it was not available until the total loss claim was settled. The District Judge found that the claimant was not fundamentally dishonest, but found Spectra to be a real party to the claim and ordered them to pay 65% of the costs. Spectra appealed.

On appeal, the judge concluded that Spectra would likely be the principal beneficiary of the proceedings, but this alone was insufficient for a non-party costs order. The vehicle hire and personal injury claims were joint causes of the litigation, and Spectra was a cause of increased costs. However, since the claimant was not fundamentally dishonest, the claim would have partially succeeded if it had gone to trial. Therefore, the defendant would have had to bear its own costs and the claimant's if the claim had not been discontinued.

Dormer v Wilson

An accident occurred on 12 April 2017, involving a stolen Yamaha TW125cc Tricity motorcycle. The claimant, a 16 year old, was injured as a pillion passenger when his friend crashed a motorbike after driving through a red light at a crossroad. It was later discovered that the motorbike was stolen, although both the claimant and his friend denied knowing this. The friend claimed that he had bought the bike from someone in a park for £150. The claimant suffered leg and head injuries, and brought proceedings against his friend, the motor insurer of the bike's owner and the MIB. The court had to determine if there was an illegality defence available in tort due to the use of a stolen bike.



Despite the claimant and his friend not being legally old enough to drive a motorbike, the court found insufficient evidence to support an illegality defence. The claimant denied knowing the bike was stolen, suggesting he thought it was a gift from his friend's family. The court found that the Claimant did not have actual or blind-eye knowledge that the motorbike was stolen or unlawfully taken.

The motor insurance policy in place at the time excluded coverage for pillion passengers. The policy stated, '*We will not pay for any damage or loss to your motorcycle or its accessories and will not make any payment in relation to the death or injury to any person for any incident occurring whilst you or any other additional riders are carrying a pillion passenger on your motorcycle*.' The insurer's representatives argued that this restriction did not affect the number of people on the motorbike, as passengers could be carried in a sidecar.

However, the court did not accept this argument since the motorbike in question did not have a sidecar. The court concluded that the exclusion was inconsistent with sections 145(3) and 148 of the Road Traffic Act. The judge interpreted the pillion exclusion to decline cover only for payments to the policyholder driver, not to injured third parties. The court allowed contributory negligence in the claim to reduce the value of the case. The judge considered that 15% was appropriate to reflect the claimant's failure to wear a helmet. This was increased to 20% to also reflect the claimant's voluntary decision to accept a ride into the City Centre when he knew his friend had only had the bike for a few days and was very inexperienced.

Weeks v Generali Seguros

The claimant was involved in a road traffic accident in Spain in 2016 and brought personal injury proceedings for damages in 2017. The parties agreed that Spanish law applied to the claim and liability was not in issue.

The claimant alleged that he had suffered a traumatic brain injury, post-traumatic amnesia, seizures, and memory and concentration disturbances. In 2017, the claimant obtained an expert report from a neurologist, who recommended a higher-resolution 3T MRI scan. This recommendation was repeated in 2019 after the claimant had a regular MRI scan.

In September 2024, trial directions were given and the trial was scheduled for May 2025. The claimant applied for permission to obtain and rely on a further medical expert report from the neurologist in November 2024. The court refused the application, citing no explanation for the delay in making it, which was surprising and disappointing. The matter had to proceed to trial in May 2025 and moving the trial date would likely result in a delay to 2026. There was no clear evidence of any ongoing brain injury sequelae. Existing evidence from a neuropsychologist concluded that the claimant had no impairment on most cognitive functions, and verbal memory weakness could be caused by pain. The court was satisfied that there was no need for further neurological reports, which would likely result in a further need for joint reports and Spanish law evidence.

Joseph Walsh:
Prevention of Future Deaths Report

The investigation into the death of Joseph Walsh began on 30 October 2023 and concluded on 17 December 2024.

Joseph Walsh, aged 19, sustained fatal injuries on 20 October 2023 after losing control of his car and colliding with a brick wall in Halifax.

Postmortem results showed a blood alcohol level of 145mg/dL and cocaine presence of 0.19mg/L1. Police and paramedics attended the scene, but, sadly, Joseph was pronounced deceased at 23:54. Joseph was 18 at the time of his death and had passed his driving test 5 months prior. He was legally carrying five young friends in his vehicle.

The coroner expressed concerns about the lack of legal restrictions on the licenses of young and newly qualified drivers which permits carrying young passengers. The coroner believed young drivers may be more likely to be involved in collisions with similar-aged passengers. The coroner urged the Department for Transport to review the current provisions to prevent future deaths.

The Department for Transport responded to the report stating it is committed to improving road safety and reducing fatalities and injuries on UK roads. Statistics show a significant decrease in fatalities for car drivers aged 17 to 24 years old, from 448 in 1990 to 90 in 2023.

However, young drivers, particularly young men, remain one of the highest fatality risk groups. The Department for Transport stated it is not considering Graduated Driving Licences, but is exploring options to tackle the root causes of road accidents involving young drivers without unfairly penalising them. The Department for Transport noted that drug and alcohol use was a factor in the collision involving Joseph Walsh, but is considering further policy options regarding motoring offences.

If there are any topics you would like us to examine, or if you would like to comment on anything in this bulletin, please email the editor:

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