St John's Buildings

PICN NEWSLETTER

Welcome to the St John's Buildings Personal Injury and Clinical Negligence Newsletter.

In this edition we have articles from four experienced members of the St John's Buildings team, tackling subjects including supporting families bereaved by suicide, anonymity in personal injury claims involving children, and e-bikes and e-scooters. There is also a Case Law Update.

For those of you who are less familiar with the SJB Personal Injury and Clinical Negligence team, we are a team of 41 expert barristers, ranging in experience from two KCs, right through to our pupil barristers. Our work includes the full range of personal injury and clinical negligence. SJB has five Chambers from which our team primarily operates, covering cases all over the country and beyond. We are clerked by an exceptional team of clerks, led by Senior Clerk Chris Shaw.

I hope that you enjoy the content of this Newsletter and invite you to submit any ideas you have for topics you would particularly like us to address in our next edition. Contact details are available on the back page. We also hope to see you at our online Clinical Negligence seminars during spring. Invitations are being sent out, or you can book online on our website.

Best regards,

Daniel Frieze
Head of Personal Injury and Clinical Negligence

EVERY LIFE MATTERS

BY HENRY VANDERPUMP

YEAR OF CALL: 2007

How legal professionals can better support families bereaved by suicide

Over the years, I have dealt with numerous claims arising from suicide. They represent some of the most traumatic cases I have been involved in. Not every case can lead to a successful civil claim, but in my view, the families and friends bereaved by suicide can at least expect some answers to their reasonable questions. I believe a sensitive and experienced lawyer can help families obtain those answers.

Lawyers can assist during an initial review/investigation by the organisation that was responsible for caring for the Deceased. Typically, large organisations seek the family's involvement, and a lawyer can serve as a point of contact and collate the questions the family wants answered. The processes, delays, and terminology involved in inquests can sound archaic to grieving families. An experienced lawyer can shine some light on what to expect. Representation at an inquest can be a helpful fact-finding exercise. If a decision is taken to bring a civil claim, the involvement of an experienced lawyer is crucial.

EVERY LIFE MATTERS (CONTINUED)

I asked Every Life Matters to contribute their thoughts on what legal professionals can do better when supporting families affected by suicide. They are an excellent charity doing important work in Cumbria, which is a part of the country with some of the highest suicide rates.

Henry Vanderpump, Barrister, St John's Buildings

The difficulties for families bereaved by suicide are numerous and are compounded if their loved one died while under the care of mental health services.

Family members in a place of desperation and needing support from services can feel a whole range of emotions towards services based on the quality of care they feel their loved one received. In my experience, family members often have many thoughts and feelings about the quality of care received. Some examples of areas where families feel let down are:

- Communication with the family – this is especially true when it comes to evaluating the risk of suicide – in only talking to the person who is suicidal, there can be insufficient checking if this is the case with family members. Not enough triangulation of risk.

- Feelings of isolation and stress after an attempt – families can feel they are on their own to manage subsequent attempts.

EVERY LIFE MATTERS (CONTINUED)

- Review of medication and associated risks around a loved one coming off meds - either when doing so can heighten their suicide risk or where swapping or starting meds can increase suicidal thoughts. Seeking timely reviews can be challenging.

- Too many changes in clinical staffing that can lead to their loved one feeling unknown or exasperated by having to tell their story too many times, thus leading to erosion of trust and openness around true thoughts and intentions.

- Inpatient stories where basic risk assessment around removal of means did not take place, such as not taking away a dressing gown cord at admission, that resulted in the person in question using this to take their own life.

In the legal profession, when seeking to challenge services, families need compassionate, easily digestible information and advice on what they can do and on what grounds. It is helpful to have a single point of contact and an initial consultation to discuss their grievances and to let them know, at an early stage, whether their concerns have grounds for complaint.

The emotional energy required when grieving can't be underestimated, and the competing feelings around whether to pursue any legal route, along with concerns about costs and timeframes, can be overwhelming.

Vicki Boggon, Support Worker, Every Life Matters

EVERY LIFE MATTERS (CONTINUED)

Families bereaved by suicide often find themselves navigating overwhelming emotional, practical, and legal challenges at a time when simply getting through each day can feel impossible. The suddenness and trauma of the loss can leave loved ones struggling to make sense of events, while also facing stigma, isolation, or guilt that can complicate their grief. Many families describe feeling "as if they are living through a bomb blast" in the immediate aftermath of the devastation that has been caused, learning to live through "grief with the volume turned up" and uncertain about what happens next, whom to speak to, and how to manage the administrative responsibilities that arrive at the worst possible moment. As a charity, *Every Life Matters* hears time and again how vital compassionate, clear communication is during these early days.

One of the most challenging aspects for bereaved families is the deep need to understand why the suicide occurred. This search for answers is often emotionally charged and complicated by incomplete information; the missing piece of the jigsaw has been taken by the loved one who died. Families may struggle to access medical records, communication logs, or institutional responses that could shed light on the person's final days or months. Delays, fragmented information, or professional jargon can intensify distress. Families frequently tell us that clarity — however difficult the truth may be — is far easier to bear than uncertainty.

Another layer often overlooked is the long-term impact of the investigative process on a family's wellbeing. While the immediate aftermath of a suicide is marked by shock and grief, the months that follow may involve repeated retellings of events, revisiting painful details, and navigating systems that can feel procedural rather than human. This can prolong trauma and hinder the natural progression of mourning. Families tell us that when professionals recognise the emotional toll of these processes — and offer clear points of contact, regular updates, and opportunities to ask questions without judgement — they feel better able to participate in an investigation without being overwhelmed. The simple act of being treated as partners in the process, rather than bystanders, helps families regain a sense of agency at a time when so much feels out of their control.

For these reasons, families involved in investigating the circumstances around a suicide need respectful co-operation from all professionals involved. This includes timely sharing of information, sensitivity in discussing possible contributory factors, swift delivery of all personal possessions, which include suicide notes, back to the families as soon as possible and the acknowledgement of the family's right to question and understand. The legal profession can play a key role in safeguarding transparency, ensuring accountability where appropriate, and helping families feel that their loved one's life — and death — truly mattered. At *Every Life Matters*, we continue to advocate for a system that supports families not only in navigating legal processes but also in finding compassion, clarity, and hope during one of the hardest journeys they will ever face.

Chris Wood, CEO, Every Life Matters

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ACCIDENTS INVOLVING E-BIKES AND E-SCOOTERS

BY KELLY HUTCHINSON

YEAR OF CALL: 2014

Introduction

In recent years, micromobility devices — particularly electrically assisted bicycles ("e-bikes") and electric scooters ("e-scooters") — have transformed urban transport patterns. These micromobility devices bring benefits such as sustainability, affordability, and convenience. However, accidents involving e-bikes and e-scooters can also raise complex legal issues.

This article provides an outline of the current legal framework governing e-bikes and e-scooters in England, and highlights some of the key issues likely to arise in road traffic accident collisions involving such micromobility devices.

E-Bikes

Legal Framework

Section 140 of the Road Traffic Regulation Act 1984 and section 189 of the Road Traffic Act 1988 ("the Acts") provide that an electrically assisted pedal cycle, of such class as may be prescribed by regulations, shall not be treated as a motor vehicle. Those regulations are the Electrically Assisted Pedal Cycle Regulations 1983, as amended in 2015 ("the EAPC Regulations"). Collisions involving e-bikes will therefore fall into one of two categories:

1. Those that comply with the EAPC Regulations
2. Those that do not comply with the EAPC Regulations

1. E-bikes that comply with the EAPC Regulations

By virtue of the EAPC Regulations, electrically assisted pedal cycles that comply with the following requirements will not be treated as motor vehicles for the purposes of the Acts:

- two or more wheels; and
- fitted with pedals capable of propelling the e-bike; and
- an electric motor which:
  - has a maximum continuous rated power which does not exceed 250 watts; and
  - cannot propel the e-bike, when it is travelling, at more than 15.5 miles per hour.

The Pedal Cycles (Construction and Use) Regulations 1983 specify that EAPC compliant e-bikes must meet the following requirements when sold for use, or used, on a public road:

- a plate securely fixed in a conspicuous and readily accessible position showing:
  - the name of the manufacturer;
  - the nominal voltage of the battery; and
  - the continuous rated output of the motor;

OR

- be visibly and durably marked with:
  - the name of the manufacturer;
  - the maximum speed at which the motor can propel the vehicle (specified in miles per hour or kilometres per hour); and
  - the maximum continuous rated power (as defined in the EAPC Regulations) of the motor of the vehicle (specified in watts or kilowatts);

AND

- a battery which does not leak so as to be a source of danger; and
- a device biased to the off position which allows power to come from the motor only when the device is operated so as to achieve that result; and
- braking systems fitted that were designed and constructed in accordance with the EU or British standards prescribed by Regulation 4A.

The Road Vehicle Lighting Regulations 1989, as amended in 2005, set out the requirements for lights and reflectors. The requirements for EAPC compliant e-bikes are the same as those for ordinary pedal cycles.

As EAPC compliant e-bikes are not treated as motor vehicles for the purposes of the Acts, EAPC compliant e-bikes do not require:

- registration with the DVLA;
- vehicle excise duty;
- a driving licence;
- insurance; or
- a motorcycle helmet.

In this regard, an EAPC compliant e-bike is legally akin to a pedal cycle. However, there is one key difference: by virtue of section 32 of the Road Traffic Act 1988, it is a criminal offence for a person under the age of 14 to drive an EAPC compliant e-bike on the road. A person will also be guilty of a criminal offence if they cause or permit a person to drive an EAPC compliant e-bike on the road if they know, or suspect, that person is under the age of 14.

2. E-bikes that do not comply with the EAPC Regulations

Electrically assisted pedal cycles that do not comply with the requirements of the EAPC Regulations ("non-EAPC compliant e-bikes") are classed as motor vehicles. Consequently, the rider of a non-EAPC compliant e-bike would be required to register the vehicle, pay any applicable tax, and insure the vehicle before using the e-bike on a public road. The rider would also need an appropriate driving licence and would need to wear a motorcycle helmet.

Practical considerations in road traffic collisions involving e-bikes

As indicated above, the first issue to determine is whether an e-bike complies with the EAPC Regulations. Practitioners would need to make enquiries with the rider, to establish whether the e-bike does comply with the EAPC Regulations. Practitioners may also consider it prudent to obtain as detailed a description as possible from their client, and any witnesses, of the e-bike (in particular: whether there was a plate/marking indicating compliance, whether the e-bike appeared to be obviously travelling faster than 15.5mph, the extent to which the rider was using the pedals, etc) to assist in determining whether the e-bike appeared to fall outside the scope of the EAPC Regulations.

If the e-bike does comply with the EAPC Regulations, it is legally akin to a pedal cycle. Third party insurance is therefore not mandatory. Practitioners would need to make enquiries with the rider to establish if there is any insurance cover, such as:

- Whether the rider took out any specific insurance covering the use of the e-bike.
- The extent to which any other insurance policies held by the rider (such as household insurance) may cover any damages.
- Whether the rider was riding the e-bike for delivery purposes and whether the delivery company they were working for provided any relevant insurance cover.

In the absence of insurance, any claim against a rider of an EAPC compliant e-bike would need to be directed at the rider of the e-bike. A person seeking to claim against the rider of an EAPC compliant e-bike would not be able to submit a claim to the Motor Insurers' Bureau.

Although the use of a motorcycle helmet is not required when riding an EAPC compliant e-bike, the provisions of the Highway Code and the case law applicable to pedal cycle users and their use of protective helmets are likely to be equally applicable to riders of EAPC compliant e-bikes. Presently, there does not appear to be any specific authoritative guidance on this point.

Non-EAPC compliant e-bikes are classed as motor vehicles. Consequently, the rider of the e-bike is legally required to insure the e-bike. If the e-bike is not insured, the injured party would be able to submit a claim to the Motor Insurers' Bureau.

E-scooters

Legal Framework

Privately owned e-scooters

E-scooters are classed as motor vehicles for the purposes of the Acts[1]. For an e-scooter to be used on a public road, the e-scooter would need to be registered, appropriately taxed, insured, etc.

[1] Chief Constable of the North Yorkshire Police -v- Michael Saddington [200] EWHC Admin 409; [2001] R.T.R.15

ACCIDENTS INVOLVING E-BIKES AND E-SCOOTERS (CONTINUED)

The rider would also need an appropriate driving licence and would need to wear a motorcycle helmet. Presently, it appears only one e-scooter type device has been approved by the DVSA (the Swifty GO GT500), which appears to be formally classified as a stand-on moped. Consequently, it is not possible for most privately owned e-scooters to be registered, taxed, or insured, meaning the use of such privately-owned scooters on public roads is illegal.

Trial e-scooters

The Electric Scooter Trials and Traffic Signs (Coronavirus) Regulations 2020 ("the E-Scooter Trial Regulations") came into force on 4 July 2020. The purpose of the E-Scooter Trial Regulations is to enable a trial of electric scooters and to assess their suitability for use on roads. The trial was due to end in November 2021 but has been extended such that it is now due to end in May 2028.[2] The e-scooter trials are taking place in a number of areas, including: Bournemouth and Poole, Buckinghamshire (Aylesbury, High Wycombe, and Princes Risborough), Cambridge, Essex (Braintree and Chelmsford), Gloucestershire (Cheltenham, Gloucester, and surrounding areas), Liverpool, London (participating boroughs), Milton Keynes, Newcastle, North and North West Northamptonshire (Northampton, Kettering, Corby, Wellingborough, Rushden, and Higham Ferrers), Norwich, Nottingham, Oxford, Salford, Slough, Solent (Isle of Wight, Portsmouth, and Southampton), West Midlands (Birmingham, Coventry), and the West of England Combined Authority (Bristol, Bath, and parts of South Gloucestershire).[3]

For the purposes of the E-Scooter Trial Regulations, an e-scooter means a vehicle which:

- is fitted with an electric motor with a maximum continuous power rating not exceeding 500 watts;
- is not fitted with pedals that are capable of propelling the vehicle;
- has two wheels, one front and one rear, aligned along the direction of travel;
- is designed to carry no more than one person;
- has a maximum weight, excluding the driver, not exceeding 55 kgs;
- has a maximum design speed not exceeding 15.5 miles per hour;
- has a means of directional control through the use of handlebars which are mechanically linked to the steered wheel;
- has a means of controlling the speed through hand controls; and
- has a power control that defaults to the 'off' position.

Private e-scooters cannot be used in the trial/trial areas. It is only e-scooters rented from e-scooter operators appointed by a local authority and with the necessary permissions from the Department for Transport. Trial e-scooters are exempt from vehicle type approval, vehicle registration, and vehicle licensing. However, there are minimum technical requirements for trial e-scooters, which e-scooter operators will need to comply with through the trial's vehicle approval process.[4]

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[2] https://www.gov.uk/government/publications/rental-e-scooter-trials/rental-e-scooter-trials
[3] https://www.gov.uk/guidance/e-scooter-trials-guidance-for-users#trial-areas
[4] https://www.gov.uk/government/publications/e-scooter-trials-guidance-for-local-areas-and-rental-operators/e-scooter-trials-guidance-for-local-areas-and-rental-operators#minimum-technical-requirements-for-e-scooters

ACCIDENTS INVOLVING E-BIKES AND E-SCOOTERS (CONTINUED)

E-scooter operators are also required to:

- provide a minimum of third-party insurance cover;
- ensure that each e-scooter displays a unique identification number; and
- have in-app messaging that states the rules for use clearly, including:
  - the minimum age (which seems to vary depending on the e-scooter provider); and
  - the rule that the person riding the e-scooter must hold a valid driving licence.

By virtue of Regulation 4 of the E-scooter Trial Regulations, which amends the Motor Vehicles (Driving Licences) Regulations 1999, a person riding an e-scooter, as part of a trial, requires at least a relevant provisional licence. Riders will be required to provide their name, driving licence number, and submit a photo of the front of the driving licence when using an e-scooter as part of a trial. E-scooter operators are required to have licence checking software, or customer service team checks, to check the validity of all driving licences.

Local authorities and e-scooter operators should agree a minimum mandatory level of training for all new e-scooter riders, with incentivised offers of more in-depth rider training.

As with EAPC compliant e-bikes, it is not a legal requirement for the riders of e-scooters, as part of a trial, to wear a motorcycle helmet. However, e-scooter operators are advised to consider providing helmets, introducing incentives for riders to use helmets, or encouraging riders to use their own helmets. E-scooter riders are also advised to wear a cycle helmet when using a rental e-scooter as part of a trial.[5]

It is generally permissible to use a trial e-scooter on the road and in cycle lanes.

Practical considerations in road traffic collisions involving e-scooters

The first issue to determine is whether the e-scooter is privately owned or is an e-scooter falling within the E-Scooter Trial Regulations.

When it comes to privately owned e-scooters, practitioners should confirm whether the e-scooter is insured. Unless it is one of the few e-scooter type devices approved by the DVSA, it is highly unlikely that it would be possible to register or insure the e-scooter. The practical effect of this is that the use of most privately owned e-scooters on a public road is illegal. However, as e-scooters are classed as motor vehicles, if the e-scooter is not insured, the injured party would be able to submit a claim to the Motor Insurers' Bureau.

E-scooters falling within the E-Scooter Trial Regulations ought to be covered by appropriate third-party insurance.

As with EAPC compliant e-bikes, the use of a motorcycle helmet is not required when riding an e-scooter as part of a trial. Again, there does not appear to be any specific authoritative guidance on the failure of an e-scooter rider to wear a protective helmet. However, the provisions of the Highway Code and the case law applicable to pedal cycle users and their use of protective helmets are likely to be of some assistance in such cases.

[5] https://www.gov.uk/government/publications/e-scooter-trials-guidance-for-local-areas-and-rental-operators/e-scooter-trials-guidance-for-local-areas-and-rental-operators

General practical considerations

It is outside the remit of this article to provide a detailed analysis of the principles relating to *ex turpi causa*. However, given large numbers of e-bikes and e-scooters are ridden illegally, practitioners will no doubt wish to consider whether it is appropriate to raise an *ex turpi causa* defence. Again, there is presently limited authoritative guidance as to how the courts will approach such defences in cases involving the illegal use of e-bikes and e-scooters. However, in a recent county court case, O'Brien v Ringway Hounslow Highways, the judge determined that, had the Claimant been able to provide sufficient evidence of an actionable defect for the purpose of the Highways Act 1980, the Claimant's claim would have been dismissed on the basis of the *ex turpi causa* defence.

Even if a claimant's illegal conduct is not such to successfully engage the *ex turpi causa*, depending on the circumstances in which the e-bike or e-scooter was being ridden, consideration may still need to be given to whether the claimant's actions could expose them to a finding of contributory negligence [see above specifically in relation to the likely applicable considerations in respect of the failure to use a protective helmet].

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ANONYMITY IN PERSONAL INJURY CLAIMS INVOLVING CHILDREN AND PROTECTED PARTIES: WHERE ARE WE NOW?

BY REBECCA TITUS-COBB

YEAR OF CALL: 2017

Guidance for civil practitioners following PMC (a child) v Cwm Taf Morgannwg University Health Board [2025] EWCA Civ 1126

1. In August 2025, the Court of Appeal handed down its awaited judgment in *PMC*, the latest in a long line of authority which has sought to clarify the proper balance between the principles of open justice and the protection of the private interests of the individual. In *PMC*, that balance was considered specifically in the context of personal injury claims brought by children and protected parties.

Background and issues

2. The previous approach of the civil courts had been shaped by *JX MX (A Child) v Dartford & Gravesham NHS Trust*[1], which endorsed "*a limited derogation from the principle of open justice*" as "*normally necessary in relation to approval hearings to enable the court to do justice to the Claimant and his or her family by ensuring respect for their family and private lives.*" In practice, this led to anonymity orders being routinely made in many Part 21 approval cases, often without the need for formal application.
3. At first instance in *PMC*, Nicklin J undertook a detailed examination of the jurisdictional basis for anonymity orders, in a judgment which appeared to place significant limits on the reach of *JX MX*. Unsurprisingly, the Court of Appeal was asked to resolve issues of real practical importance for practitioners dealing with injury claims brought by children and vulnerable adults.

The facts

4. The facts can be summarised as follows:

[1] [2015] EWCA Civ 96

ANONYMITY IN PERSONAL INJURY CLAIMS INVOLVING CHILDREN AND PROTECTED PARTIES: WHERE ARE WE NOW? (CONTINUED)

a. The Claimant suffered profound injuries due to asphyxia during labour and birth, resulting in cerebral palsy.
b. Liability was admitted by the Defendant Trust.
c. Proceedings were issued in March 2023, with damages pleaded in excess of £10 million; judgment was thereafter entered on liability only.
d. Prior to proceedings, the litigation friend had engaged with the media regarding the claimant's injuries. After issue, the Claimant's solicitors were informed that further reporting was intended in relation to the claim, prompting an application for an anonymity order.

First instance

5. The key issues which arose at first instance were:

a. The effect of prior identification of the party seeking anonymity in the press/public domain on the availability of anonymity orders.
b. The powers available to the court to anonymise a party or restrict reporting where identifying material was already public.
c. Whether reporting restriction orders could be imposed retrospectively.

6. Distinguishing between the elements of anonymity orders which anonymise parties (a withholding order) and the orders which prevent the publication of information likely to lead to identification of the anonymised party (a reporting restriction order), Nicklin J held:
   a. There is no common law power to impose reporting restrictions and such powers must derive from statute. Parliament had legislated only for specific and limited instances (for example under **s.39 Children & Young Persons Act 1933**, or automatic restrictions for complainants in sexual offence cases). There was no general statutory power to impose reporting restrictions, and **CPR 39.2(4)** did not provide one.
   b. In personal injury cases, the right to make a reporting restriction order could only be derived from:
      i. **s.11 Contempt of Court Act 1981**, providing a withholding order is made first; or
      ii. **s.39 Children & Young Persons Act 1933** in the case of children.
   c. A "**late**" application for an anonymity order was likely to be fatal. In cases where an anonymity order had not been applied for at the outset of proceedings and the identity of the party was already in the public domain, an order should not be made - the genie being essentially "out of the bottle" by this point.

ANONYMITY IN PERSONAL INJURY CLAIMS INVOLVING CHILDREN AND PROTECTED PARTIES: WHERE ARE WE NOW? (CONTINUED)

A reporting restriction order was parasitic on a prior withholding order; identification on a court list or in open court would defeat jurisdiction under **s.11**.

d. *JX MX* should be confined to its facts, its dicta arising specifically in the context of approval cases given the court's protective role.

e. On the facts, given the material already in the public domain, an anonymity order would be ineffective. The claimant had not established that derogation from open justice was necessary, and any attempt at anonymity after prior media reporting was "unjustifiable and futile".

The appeal

7. The Claimant appealed. Interveners included the BBC and the Personal Injuries Bar Association.
8. As to the issue of jurisdiction, the Court of Appeal overturned the decision of Nicklin J and considered that there was a **general common law power** to make both a withholding order and a reporting restrictions order. Following on from the Supreme Court's judgment in *A v BBC*[1] and *Abbasi*[2], the court had inherent jurisdiction to make exceptions to the open justice principle in the interests of justice, especially in the case of vulnerable parties.
9. The correct question for determination in applications for anonymity is whether the derogation from the open justice principle is **necessary for the court to do justice in the particular case**.
10. There is no requirement that the claimant's name must have been withheld from the outset of proceedings as a pre-condition to the making of a reporting restriction order.
11. Prior reporting or public identification of the party seeking anonymity would not negate the opportunity to apply for (and be granted) an anonymity order but the order's terms could only be made prospectively, not retrospectively.
12. *JX MX* remains good law and is not confined specifically to approval cases. The Court of Appeal drew a distinction between Part 21 approval cases and non-approval cases (e.g. litigated cases) but the principles in *JX MX* apply to both.

Practical takeaways

- Terminology:
    i. A withholding order has the effect of withholding (anonymising) the names of a party or witness (e.g. XYZ).
    ii. A reporting restriction order has the effect of restricting the reporting of material in proceedings.

[2] [2014] UKSC 25
[3] [2025] UKSC 15

ANONYMITY IN PERSONAL INJURY CLAIMS INVOLVING CHILDREN AND PROTECTED PARTIES: WHERE ARE WE NOW? (CONTINUED)

iii. An anonymity order is an order which both withholds and restricts reporting, encompassing (a) and (b) in an order.

- Anonymity orders are not confined to approval hearings. *JX MX* applies equally to litigated cases involving children and protected parties.

- Prior publication does not bar anonymity, but could be a relevant factor. Relief can only be prospective, not retrospective.

- The media do not need to be notified unless there is known interest in the case.

- On application, there should be some detail of the specific factors/risks associated with the issue of granting anonymity in the claim if possible, though the general facts as to vulnerability/exploitation may speak for themselves to some degree.

- Practitioners should no longer assume anonymity is routinely granted, but late applications are not always doomed. Applications should be justified evidentially and timely where possible.

- The potential for jigsaw identification should be avoided and therefore a request should be made for the court to list the matter as "An Application pursuant to CPR 21.9".

- PF10 has been updated following *PMC* and should be used. It is available at the following link: https://stjohnsbuildings.com/wp-content/uploads/2026/01/PF-10-approved-on-3-October-2025.pdf

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[2] [2014] UKSC 25
[3] [2025] UKSC 15

CASE LAW UPDATE

BY JAMES ELLIS

YEAR OF CALL: 2017

Introduction

The last half of 2025 had a number of decisions impacting on the areas of personal injury and clinical negligence. The below are summaries of cases and are not intended to be legal advice.

Personal Injury

***Stephenson v First-tier Tribunal (Social Entitlement Chamber)* [2025] EWCA Civ 1160**

Stephenson confirmed the proper construction of paragraph 42(b) of the 2001 Criminal Injuries Compensation Scheme ("the Scheme") covering dependant losses for parental, and the phrase "other resultant loss".

Paragraph 42 states:

> *Where a qualifying claimant was under 18 years of age at the time of the deceased's death and was dependent on him for parental services, the following additional compensation may also be payable:*
>
> a. *a payment for loss of that parent's services at an annual rate of Level 5 of the Tariff; and*
> b. *such other payments as a claims officer considers reasonable to meet other resultant losses.*
>
> *Each of these payments will be multiplied by an appropriate multiplier selected by a claims officer in accordance with paragraph 32 (future loss of earnings), taking account of the period remaining before the qualifying claimant reaches age 18 and of any other factors and contingencies which appear to the claims officer to be relevant.*

Mr Stephenson was 29 at the time of the appeal and suffers from Kabuki syndrome. His mother had provided the majority of his care whilst she was alive [2].

CASE LAW UPDATE (CONTINUED)

When Mr Stephenson was seven years old his father killed his mother and was later convicted of manslaughter. After a two-year spell with grandparents, Mr Stephenson and his two siblings moved in with a maternal aunt, Mrs Treacey.

Mrs Treacey's evidence in proceedings was to the effect that she built an extension to her own property of two bedrooms, one downstairs sitting room for Mr Stephenson, and one downstairs bathroom so that the three children could be accommodated. The downstairs toilet was required because Mr Stephenson was incontinent [4]. Following compromise of a civil claim against the NHS Trust, a claim was brought to the Criminal Injuries Compensation Authority ("CICA") on Mr Stephenson's behalf.

It was agreed between the parties that Mr Stephenson would be entitled to a tariff award, child payments, and care. However, the key disagreement to which the final appeal related was the recoverability of the costs of altering the property to accommodate Mr Stephenson. There was also an issue of the award of costs for a Court of Protection deputy which was said to have been awarded by mistake, but the CICA did not seek recompense for this at the subsequent appeals.

The initial sums awarded at the First-tier Tribunal ("FTT") came to £44,210. This was made up of £5,500 for a fatal injury award, £22,000 for loss of parental services under paragraph 42(a) of the Scheme, and £16,710 for the costs of appointing a deputy in the Court of Protection under paragraph 42(b) of the Scheme [10]. However, as the civil proceedings had been settled in the sum of £38,710 and an interim payment of £11,000 had already been made to Mr Stephenson under these proceedings, there were to be no further payments.

The FTT found that for the costs of the extension to be awarded under paragraph 42(b) of the Scheme as "other relevant losses" they must be losses resulting from the loss of parental services [11]. Paragraph 42 being the relevant part of the Scheme for compensation for services provided by the deceased parent to a child under 18.

The extension to Mrs Treacey's property was found not to arise from a loss of parental services and it was noted that an award of this type would significantly widen the Scheme's scope [12]. The Upper Tribunal ("UT") agreed, finding that the costs of an extension fell outside of the Scheme [16].

The appeal grounds included that the UT had misdirected itself on the interpretation of paragraph 42(b) and that the UT had erred in law by determining that accommodation is not a form of parental service.

The Court of Appeal found that the FTT and UT had not misinterpreted paragraph 42(b). Dingemans LJ, giving the lead judgment to which LJ Baker and LJ Bean agreed, found that "other resultant losses" within paragraph 42(b) must mean losses resulting from an act, which in this case was the unlawful killing of Mr Stephenson's mother [35]. Dingemans LJ disagreed with the Appellant's submission that "other resultant losses" means anything that arises from a status as a qualifying claimant. This was because the status of being a qualifying claimant permitted a claim to be brought in principle, the "losses" were what was caused by the unlawful killing [35].

At [38] it was found that the extension was caused by Mr Stephenson's underlying condition as opposed to the unlawful killing and so fell outside of the Scheme. The costs of the Court of Protection deputy fell under the same principle.

Interestingly, at [42] and [43] it was clarified that when paragraph 35 of the Scheme is examined, which permits for adaptations to accommodation caused by an unlawful act within the Scheme, if a minor extension for a wet room was needed this would fall within paragraph 35 and would not amount to a significant widening of the Scheme.

Dingemans LJ provided useful guidance that extensions to properties can be claimed in principle if they are caused by the unlawful act. However, merely having status as a qualifying claimant within the Scheme does not mean all losses, including indirect losses for property alterations, are recoverable.

***MH Site Maintenance Services Limited (2) Markerstudy Insurance Services Limited v James Watson* [2025] EWCA Civ 775**

On 24 June 2025 Coulson LJ provided clarity on the court jurisdiction to case manage claims that remained within the Pre-Action Protocol for Low Value RTA Claims (the Protocol) but proceeded onto Part 8 due to limitation. This had previously been a contentious area with no clear guidelines.

The claim arose from a road traffic accident on 16 September 2019. Limitation was due to expire on 16 September 2022. The claim notification form was dated 17 July 2020 with liability admitted on 30 July 2020. The claim was issued as a Part 8 claim on 6 September 2022, and it was subsequently stayed on 13 September 2022 for 12 months as permitted by PD49F paragraph 16. It came with the usual caveats within the order of automatic strike out unless the Claimant applied by letter to lift the stay and proceed to a Stage 3 hearing or transfer the matter onto Part 7.

CASE LAW UPDATE (CONTINUED)

The draft medical report was only completed on 5 May 2023 following an examination on 11 January 2023. The examination taking place almost four months post expiry of the initial limitation period.

On 13 June 2023 the defendants, likely growing frustrated with the lack of progress, applied pursuant to the courts case management powers under CPR 3.1(2)(p) to lift the stay and include within the order that unless the stage 2 settlement pack was served within 21 days that the claim be struck out.

In the hearing for the application on 5 July 2023 District Judge Baldwin found that he did not have discretion to case manage a claim that remained on the portal at Stage 2 even if it had been issued for limitation and could only transfer to Part 7. His reasoning was that steps within the portal were not steps which fell within CPR 3.1(2)(p) "for the purpose of managing the case".

The Defendant appealed and this was heard before His Honour Judge Wood KC on 16 January 2024. HHJ Wood KC was of the view that the court did not have the power to do as the Defendant requested.

The reasons given were that the Protocol excluded external involvement, whilst the Protocol and the CPR had a close connection the court could not interfere with the Protocol even when a party was not complying. Further, the ability to stay the claim to permit additional time for compliance with the Protocol was prescriptive and was one the Defendant could oppose but this would leave a Claimant with no choice but to transfer the claim to Part 7, the order in the claim stating the claim did not engage the portal process with the court only becoming involved at Stage 3, and "the case" within CPR 3.1(2)(p) could only mean the case before the court and not the pre-action process within the Protocol.

The further appeal was later heard on 10 June 2025 with Coulson LJ giving the lead judgment. The sole issue raised by the defendant was that the previous judges had been wrong to find that the court had no power to make case management directions for a claim at Stage 2 of the Protocol.

At [45] to [61] Coulson LJ found that in the circumstances of a claim being on the portal but having a Part 8 claim issued for limitation, the court did have jurisdiction to make case management directions. This was caveated at [48] with the comment that if a defendant applied whilst still on the portal and prior to the claim being issued for limitation, "*these defendants could probably not have issued freestanding court proceedings to seek orders requiring, for example, the speedy provision of a Stage 3 Settlement Pack*".

The key reason was expressed at [49] as once the claim has been issued on Part 8 this was "the case" within the meaning of CPR 3.1(2)(p) and so fell under the court's case management powers. At [51] Coulson LJ identified that within the protocol there was no automatic right to a stay and the granting of one was a way of the court regulating the parties' conduct within the Protocol. At [53] Coulson LJ included that "*if a party has not taken a step or steps within the PAP, and that is the reason that he or she seeks a stay of the Part 8 proceedings, then there is no sensible reason why that party should not be ordered by the court to take the missing step or steps*".

The caveat referred to above is also identified at [59] in the summary provided for when a court is likely to be able to provide case management in these cases:

> *So as I see it, it is only where, as here, there has been a wholesale failure to take any of the necessary steps under the PAP, and there are now Part 8 proceedings, that one or other of the parties may seek directions designed to ensure progress within the PAP process. It should only be in such exceptional cases that the court will be required to make orders requiring the defaulting party to take the outstanding steps under the PAP. Even then, the court's focus will be on getting the parties to comply with the PAP so that, all other things being equal, the claim remains within the portal and the Part 8 proceedings are ultimately rendered unnecessary.*

This is narrower than may be thought at first, however it provides defendants with an option when faced with the familiar circumstance of a claimant delaying and issuing proceedings seeking stays.

Mazur and Stuart v Charles Russell Speechlys LLP [2025] EWHC 2341 (KB)

Many, if not all, will be familiar with *Mazur* and the impact it has had on the conduct of litigation as a whole, but particularly bulk personal injury litigation.

What began as a straightforward matter of the Respondent originally undertaking legal work for the Appellants in the sum of £54,263.50, and then instructing another firm to recover the sum, Goldsmith Bower Solicitors ("GBS"), spiralled into a challenge to GBS's employee's rights to conduct litigation.

The Appellant's initial application for directions included that the Respondent replace the employee, Mr Middleton, with a qualified solicitor. The hearing was stayed as the deputy district judge considered there was evidence that Mr Middleton was taking part in a reserved legal activity under the Legal Services Act 2007 ("LSA").

The Respondent later applied to lift the stay, in the meantime Mr Middleton's involvement with the case ended and he was replaced by a qualified solicitor. The application, heard before His Honour Judge Simpkiss, was successful but included that the Respondent file an amended Claim Form and Particulars of Claim verified by a statement of truth in the name of the person who was authorised to do so. The evidence at the hearing included that Mr Middleton had undertaken activities such as drafting and submitting the pleadings, under supervision and that the SRA confirmed Mr Middleton had authority to conduct litigation under supervision pursuant to section 21(3) LSA. HHJ Simpkiss also made a costs order against the Appellant.

The judgment was appealed on the ground that Mr Middleton was not entitled to conduct litigation as it was a reserved legal activity under LSA. The initial hearing was adjourned at the end to permit representation from the SRA and the Law Society.

The Law Society's position was a person who was not individually authorised, but who was employed by an authorised entity is permitted to support an authorised person in undertaking reserved legal activities but is not permitted to undertake them [25]. Whether or not a person was assisting in the conduct of litigation was a question of fact and degree [29] and a person assisting in the conduct of litigation must not cross the boundary into conducting litigation [35].

The SRA's position had changed from the hearing before HHJ Simpkiss. They agreed that an unqualified person can support an authorised person in the conduct of litigation but disagreed that an unqualified person could conduct litigation under the supervision of an authorised person or as an employee of a regulated entity [36]. The SRA set out two ways in which a person may be entitled to perform a reserved legal activity. These were as an authorised person under s.18 LSA or an exempt person under s.19 LSA. The SRA disagreed that s.21(3) LSA permitted an employee to perform reserved legal activities as this part was in relation to "regulated persons" as opposed to "authorised persons" as not every regulated person was an authorised person [40]. However, at [42], the SRA did set out that an unauthorised person who assists a solicitor to a significant degree including drafting litigation documents and proofing witness statement, does not conduct litigation as it is the solicitor who exercises final professional judgment.

In essence, Mr Justice Sheldon found that Mr Middleton had not been entitled to conduct litigation under the LSA [48]. A person conducting litigation must be authorised to do so (s.18 LSA) or fall into one of the exempt categories (s.19 LSA). Being employed or supervised was not sufficient [49]. Mr Justice Sheldon's reading of s21(3) LSA was that it did not extend the definition or scope of who was authorised to carry out reserved legal activities, but who was subject to regulated authority [62].

Whether Mr Middleton was conducting litigation under supervision or assisting with the conduct of litigation was not decided [67] and the claim was not struck out. This was because "*the signature of a relevant employee has been added to the Claim Form*" [76], Mr Middleton had been replaced by an authorised person, and there would be significant prejudice to the Respondent.

Permission to appeal has been granted to the Chartered Institute of Legal Executives and is due to be heard on 24 February 2026.

Clinical Negligence

***Read v North Middlesex Hospital Trust* [2025] EWHC 1603 (KB)**

Read, heard before Master Thornett, provided clarity on whether breach of an unless order in clinical negligence can lead to the engagement of CPR 44.15 if a claim is struck out on that basis.

The claim arose from alleged negligence by the defendant failing to carry out a sufficient examination when the claimant attended A&E with back pain on 30 November 2016 and 4 January 2017. The claimant alleged that due to this his later surgery for spinal compression occurred too late and so had only been partly successful leaving him with paraesthesia in both feet and kyphotic deformity. The defendant denied breach and causation.

The claim proceeded with a 16-page Particulars of Claim on 26 June 2020. This was described as not presenting a cohesive statement of case complying with the requirements of CPR 16 [7]. At this time the claimant was a litigant in person.

On 21 October 2020 the county court made an unless order for the claimant to file and serve an updated Particulars of Claim. This was appealed but prior to the hearing the parties agreed an unless order on 16 November 2023 for updated pleading from the claimant and for a condition and prognosis report to be served. In default of either, the claim was to be struck out.

The claimant in updating his pleading had obtained a report from a Consultant Neurosurgeon and Spinal Surgeon. As commented at [14], it is unclear why this was done as this expert is not appropriate for how the claimant would be processed at A&E.

On 12 February 2024 the defendant applied for strike out. The claimant cross-applied to rely upon a re-amended Particulars of Claim on 3 May 2024. They were subsequently heard on 28 March 2025 and 26 June 2025.

Master Thornett was ultimately with the defendant, finding that the agreed order for "*further and better particulars of the allegations of breach of duty and causation of injury*" [17] meant that it should have cogency and supporting evidence sufficient to present reasonable grounds for bringing a claim, which it did not [80]. As such, the claim had stood automatically struck out and the court need not consider the claimant's application but dismissed it in any event [101].

Then came the question of costs and whether QOCS were to be disapplied. The Claimant argued that the finding of non-compliance with the November 2023 order meant that the claim must have been struck out under CPR 3.4(2)(c) (failure to comply with a rule, practice direction or court order) and CPR 44.15 did not contemplate a strike out under this rule, only 3.4(2)(a) and (b) [85] to [88].

The defendant submitted that CPR 44.15 applied independently of the reason for strike out when the grounds listed there came into effect on an objective analysis of the reason for strike out.

At [97] Master Thornett found, following analysis of the previous case law, that:

> *"I am therefore satisfied that "grounds" in rule 44.15 refers to, no more and no less, than the underlying reason explanation why a claim came to be struck out. The way in which a claim can come to be struck out can be procedurally various. Rule 44.15 encompasses those wide reasons and then classifies those relevant for the purposes of QOCS disapplication. Those reasons are not exclusively those listed at r.3.4(2). Indeed, as is commonly encountered in strike out applications, might touch and overlap more than one reason for strike out. Hence the "grounds" under rule 44.15 may straddle one or more of CPR 3.4 (2) (a), (b), (c) or CPR 3.4 (5) or, indeed, other procedural mechanisms. Rule 44.15 obliges the court to determine the actual, substantive reason(s) why a claim was struck out in order to then decide whether QOCS have come to be disapplied. It is not to be read within the exclusive prism of rule 3.4(2)(a) and (b)."*

This was an area without specific authority prior to this judgment and has clarified that CPR 44.15 is to be assessed objectively after consideration of the reason(s) for strike out as opposed to being limited to cases struck out under CPR 3.4(2)(a) and/or (b).

***Tarrant v Monkhouse* [2025] EWHC 2576 (KB)**

Tarrant provides a useful reminder to vet experts prior to submitting their reports and that an expert's understanding of the legal tests is key to their credibility.

Tarrant concerned a clinical negligence claim following a sleeve gastrectomy for weight loss that took place on 24 September 2019 and a subsequent gastroscopy leading to a balloon dilatation procedure 27 November 2019. Following the 27 November procedures the Claimant suffered a sleeve leak and underwent a laparoscopic conversion to the sleeve to a gastric bypass and the insertion of a drain to abdomen on 7 December 2019 with a different surgeon [13]. This caused significant ongoing health problems.

The issues at trial were whether the defendant had breached his duty in failing to provide the claimant with reasonable post-operative care following the 24 September 2019 procedure and whether there had been a breach of duty in proceeding with the balloon dilatation. Causation was also in issue.

The claimant's expert had a number of issues, including being unclear where he had obtained information regarding post-operative care for his report [44], was inconsistent on terminology [47], and he could not give an accurate understanding of the Bolam test and was unable to explain its applicability [51].

At [73] the claimant expert's not having a basic understanding of the legal parameters for his opinion was a key factor in the claimant not being able to prove her case, along with the expert's poor performance in cross-examination [74] & [75].

This serves as a useful reminder to test an expert's evidence thoroughly in conference, particularly prior to service, whenever possible.

***Hakmi v East & North Hertfordshire NHS Trust* [2025] EWHC 2597 (KB)**

Hakmi provided useful guidance on whether claimants can recover their costs for successfully defending an allegation of fundamental dishonesty.

Hakmi was a clinical negligence claim where the claimant alleged that the defendant had breached their duty of care by failing to offer him thrombolysis to treat his stroke on 16 November 2016, the emergency registrar believing Mr Hakmi had not suffered a stroke. The claimant's case was that this had caused him significant disability and ended his practice as a surgeon at the age of 51.

The defendant disputed liability and alleged fundamental dishonesty, their case being the claimant was exaggerating his physical and cognitive injuries. The allegation was first raised in the counter schedule post the medico-legal examinations and assessments. This included that Mr Hakmi had deliberately underperformed at his neuropsychological testing and rehabilitation assessment with the medico-legal experts.

The claim failed on breach of duty as the claimant failed to establish that the views of the treating physicians, this being that the objective signs of Mr Hakmi having a stroke as opposed to the subjective symptoms, were too subtle to warrant a definitive NIHSS score and so thrombolysis would not have been offered. In any event the treatment of thrombolysis would have fallen outside of the generally accepted treatment window of 4.5 hours.

The five requirements for a fundamental dishonesty finding as per *Cojanu v Essex Partnership University NHS Trust* [2022] 4 WLR 33 at [38] were considered. These were set out at [123] of Mr David Pittway KC's (Sitting as a Deputy High Court Judge) judgment as:

> *(i) the section 57 defence should be pleaded; (ii) the burden of proof lies on the Defendant to the civil standard; (iii) a finding of dishonesty by the Claimant is necessary; (iv) as to the subject matter of the dishonesty, to be fundamental it must relate to a matter fundamental in the claim. Dishonesty relating to a matter incidental or collateral to the claim is not sufficient; (v) as to the effect of the dishonesty, to be fundamental it must have a substantial effect on the presentation of the claim.*

At paragraphs [126] to [130], the judgment sets out that the allegation of fundamental dishonesty failed. It was found that whilst Mr Hakmi struggled to not argue his case in cross-examination, he had not tried to mislead the court. The assessment used by the defendant expert was not suitable for all stroke victims, the poor performance on the assessments could be explained by Mr Hakmi's psychological condition at the time of the assessments, and deliberate underperformance would run contrary to his efforts of rehabilitation.

The key point stemming from this case is set out at [132] to [135], as the Defendant was ordered to pay the Claimant's costs of defending the fundamental dishonesty allegation. This was assessed at 15% of the Claimant's costs from when it was first raised in the counter-schedule.

The principle of a costs award is found at [133]:

> *The conclusion that I have reached is that, notwithstanding that the defendants will not be able to enforce an order for costs on the claim, I should make an order that reflects that the defendants failed to establish fundamental dishonesty on the part of Mr Hakmi. I do not accept that to make such an order, where a claimant fails, undermines the costs regime. If anything it is the converse, not to make such an order would give a defendant a free tilt at raising the issue of fundamental dishonesty. The evidence in this case was properly explored at the trial and found increasingly wanting. It would have been open to Mr de Bono to have abandoned the issue after the close of evidence, or indeed earlier, but he did not do so.*

From the judgment, a costs order appears to be necessitated on the defendant pursuing an allegation up to and including final submissions on a case that is "*wanting*". The time of an allegation being abandoned is likely up to interpretation from the end of [133] as costs for the claimant would have been incurred if the matter was not pursued in submissions, and this will likely be a matter raised frequently in 2026.

How this principle will apply on lower value claims in the fast and intermediate track is expected to be a point of significant contention going forward. Defendants raise fundamental dishonesty increasingly frequently, with a key reason being as identified by David Pittsway KC at [133] their free tilt to do so.

For a claim to which fixed costs apply, claimants will need to satisfy the "*exceptional circumstances*" test at CPR 45.9 (formerly CPR 45.12 and CPR 45.29J for causes of action prior to October 2023). This test has a high burden and was considered in Costin v Merron [2013] 3 Costs LR 39 and *Hislop v Perde and Kaur* [2018] EWCA Civ 1726.

In Costin Leveson LJ provided guidance at [6]:

> *I, for my part, have no difficulty in concluding that the exceptional circumstances to which 45.12 refer must be exceptional in the sense that the case is taken out of the general run of this type of case by reason of some circumstance which means that greater costs are in fact incurred than could reasonably be expected to be incurred…*

LJ Coulson considered the test of exceptional circumstances in *Hislop* and at [57] and [58] included that there does not need to be a causative link between the increased costs and the exceptional circumstances.

From the above, in terms of failed allegations of fundamental dishonesty in fixed costs cases, it is at least arguable that they fall outside of the general run of cases given the policy point made at [133] of *Hakmi*. Particularly if the allegation is considered "wanting" by the trial judge. However, fundamental dishonesty is so frequently raised, with the bar for exceptional circumstances being high and the opposing policy point of parties having certainty of the costs in these cases, that it is unclear whether these additional costs will become a regular occurrence of fixed costs cases.

***PMC v Cwm Taf Morgannwg University Health Board* [2025] EWCA Civ 1126**

The Court of Appeal confirmed that in civil and family cases involving children, whilst there was a strong general principle of open justice, the court retained an inherent discretion to depart from that rule. A court is able to anonymise proceedings and make an order

restricting the reporting of material when in the interests of justice to do so. Sir Geoffrey Vos, Master of the Rolls, gave the lead judgment to which Warby LJ and Whipple LJ agreed.

PMC concerned a clinical negligence claim brought by a child via his litigation friend following the defendant admitting negligence in causing the claimant's cerebral palsy. Prior to proceedings being brought there had been at least two media articles regarding the Claimant's case published in 2020 and 2021 [17].

The claim was issued in March 2023. A liability judgment was entered by consent in November 2023. The application for an anonymity order was made in November 2024, using the standard PF10 form. The application was made on the basis that the claimant was unlikely to have capacity on reaching adulthood and publication of the circumstances of the claim, interim payment, and any settlement sum would infringe his article 8 rights [17].

At [2] of the judgment, the terminology of such orders was set out. An order for court proceedings to withhold or anonymise the names of a party or witness, including information that could identify the person was a withholding order ("WO"). A reporting restrictions order ("RRO") is an order restricting the reporting of material disclosed during the court proceedings whether in open court or by the public availability of such documents. An anonymity order ("AO") is both together.

Mr Justice Nicklin heard the application on 6 November 2024 and gave his judgment on 25 November 2024 refusing the AO on the basis that there could be no RRO in the absence of a WO. As there was already material in the public domain concerning the claimant and the claim, the evidence did not support a WO being made.

As part of his judgment, he found that there was an inherent power of the court to anonymise material deployed in open court but this had never extended to reporting restrictions on what happens in open court, following the dictum in *Khuja v Times Newspapers Limited* [2017] UKSC 44, [2019] AC 161 at [18] as opposed to the views expressed by Lord Reed in *A v British Broadcasting Corporation* [2015] AC 588.

Further that he should not follow *JX MX v Dartford and Gravesham NHS Trust* [2015] EWCA Civ 96, [2015] 1 WLR 3647 ("*Dartford*") as it conflicted with the established principles of open justice, had not dealt with an AO when the name of the claimant had been publicised, and had not identified the jurisdiction to make an RRO.

These two findings were the subject of the appeal.

It was noted at [6] of the Court of Appeal judgment that these findings caused uncertainty on the approach to AOs. The form PF10, used to make applications for AOs when a claim is

brought by a child or protected party under CPR 21, was amended due to *Dartford* and this had been approved by the Civil Procedure Rule Committee with its use required when seeking an AO. *Dartford* had involved a personal injury claim where there had been previous proceedings prior to the application for an AO and so the claimant's name had been on public documents when the AO was made. The court in *Dartford* found that the principle of open justice could be departed from when, on an objective test, it was strictly necessary for the protection of the applicant, but with only the minimum level of derogation required to achieve the aim.

This judgment of Mr Justice Nicklin also caused an issue with protecting the identities and material of children and protected parties to court proceedings when their names were already known or had appeared in some form of publication. The judgment appeared to find that if a name of a child was already known, or was present on a public document, that there could be no AO as the identity and some documentation was already public.

On appeal, The Master of the Rolls determined that there is a limited common law power to depart from the principle of open justice [83] and discussed this in greater detail at [84] to [92]. *Dartford* remained good law [106], there was no reason why an AO should not be made under common law powers or s11 of the Contempt of Court Act 1981 even if a WO was not made at the start of proceedings [10]. Further that the terms of AO in this particular case could only be prospective (rather than retrospective) because of the previous publicity but the fact that the claim was publicised did not prevent an AO in the same way that it would not disqualify an AO at an approval hearing [110].

A prospective anonymity order was made as sensitive material and information about the claimant would be shared in open court during the 10-day quantum trial. At [109] the limitations were set out: "*The prospective AO will not prevent the media reporting on the matters of public interest arising in the litigation, such as the events that led to the claimant's injuries and the conduct of the hospital in dealing with them. Nor will the order prevent reporting of the amount of any damages agreed or awarded. Instead, it will prevent the claimant and his family from being further identified in the media as the claimant in the case*".

Additionally, the approach to AOs from *Dartford* was altered slightly at [99] to [101] to include that an application at an approval hearing should be listed anonymously rather than in the name of the child, there had not been a reversal of the burden of proof for an AO, and an application had to be made with there being no presumption of success. The process to follow when considering an AO is set out at [108].

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