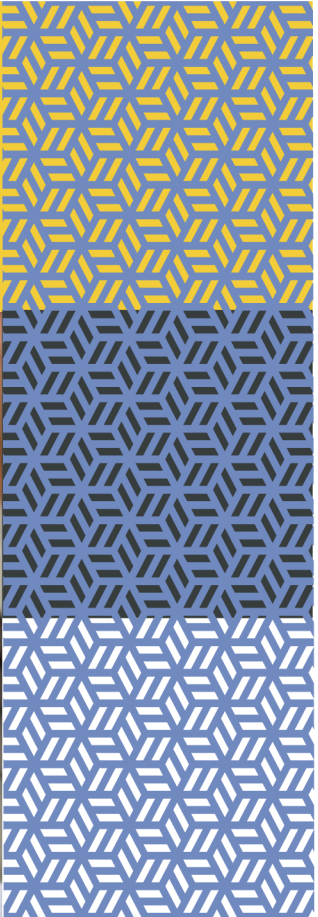
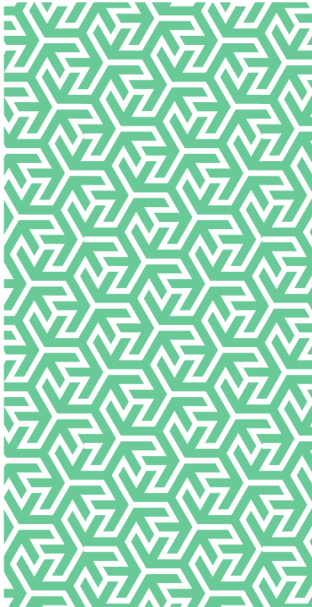


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## Risk control

Summary of Cases and  
Update – June 2023



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# Summary of Cases and Updates – June 2023

## Introduction

This Risk Control document provides a brief summary of pertinent cases and updates from across the insurance industry. Due to these changes additional guidance and client updates may follow in the near future.

## Cases and Updates

### Procedural

#### Civil Procedure (Amendment No 2) Rules 2023

SI 2023/572: These Rules are made to amend the Civil Procedure Rules 1998, SI 1998/3132, which govern practice and procedure in the Civil Division of the Court of Appeal, the High Court and the County Court, to extend the application of fixed recoverable costs (FRC) to most civil proceedings allocated to the fast track and to the newly created intermediate track, which is also established by these Rules. These Rules come into force on 1 October 2023, subject to paragraph 7.18.

For further details see: [LNB News 24/05/2023 62](#) requires access to Lexis PSL.

### Road traffic accidents

#### OIC portal reaches second anniversary

The government's Official Injury Claim (OIC) portal has celebrated its second anniversary. In this time, the portal has received claims from 500,000 people, 50,000 of which have been from unrepresented claimants, and settled 120,000 claims resulting in a total pay-out of £130m from compensators. Executive Director of the Association of Consumer Support Organisations (ACSO), Matthew Maxwell Scott, has provided for the anniversary, 'It is still very early days for the OIC portal after a rushed launch. One thing we have learned is that reforms of this complexity need in future to be implemented only when processes have been properly stress-tested' and that 'consumer awareness of the OIC remains very limited, as evidenced by both low claims numbers and only a tiny minority choosing to use the service as litigants-in-person. Ministers may well see this as a success, but if all it means is that genuinely injured people aren't receiving the compensation they are due, then they might want to temper their celebrations.'

For further details see: [LNB News 31/05/2023 62](#) requires access to Lexis PSL.

#### The first defendant tailgated the claimant's vehicle and undertook it at speed

The King's Bench Division, in the case of *Brown and others v Sestras and others*, held that a Mercedes Benz (the Mercedes), which the first defendant had driven, had

correctly been identified as having been involved in a road traffic accident in which the claimant had suffered life-changing injuries, and that the first defendant's negligent and dangerous driving had caused the accident. The court held that the first defendant had tailgated the vehicle in which the claimant had been a passenger (the Peugeot), undertaken it at speed, and he had cut in front of it in a reckless manner when he had known, or ought to have known, that would have caused the third defendant (the claimant's mother and driver of the Peugeot) to have taken emergency action. Further, the court ruled that the third defendant's driving had not been negligent and that she had not caused the accident. Accordingly, the court found favour of the claimant against the first defendant, who was being indemnified by the second defendant insurer; and the claim and counterclaim against the third defendant and her insurer, the fourth defendant, were dismissed.

For further details see: [\[2023\] All ER \(D\) 89 \(May\)](#) requires access to Lexis PSL.

### Public authorities and the State

#### Police negligence

The King's Bench Division in *Woodcock v Chief Constable of Northamptonshire Police*, in allowing the claimant's appeal, held that one of the exceptions to the general rule that the police were not liable and owed no duty of care for failing to act or failing to prevent harm caused by criminals applied to the present case because special or exceptional circumstances had existed in a limited way, in circumstances where the claimant's then partner (RG), with whom she had been in an abusive relationship, had viciously attacked and stabbed her at least seven times in her chest and body outside her home and in front of her children.

The court held that: (i) applying settled principles to the facts, the judge had erred in rejecting the claimant's pleaded case that the defendant had owed her a civil law duty to warn her; (ii) the circumstances (including the fact that the police had been aware of a long history of domestic abuse and that RG had recently threatened to kill the claimant) had given rise to a common law duty on the defendant to call the claimant once a neighbour had informed the police that RG had been loitering outside her property; and (iii) that the defendant's failure to call the claimant to protect her in the gap before the allocated police officer had arrived at her premises had been a breach of the duty of care. Further, in circumstances where there had been an evidential gap on causation and where the claimant's legal team in the earlier proceedings had not taken the opportunity to call that evidence, the case was remitted to the trial judge (if available) to hear evidence on causation under CPR 52.20(2)(b).

For further details see: *Woodcock v Chief Constable of Northamptonshire Police* [2023] All ER (D) 53 (May) *requires access to Lexis PSL*.

### Catastrophic claims

#### **Court finds no causal link between traumatic brain injury and dementia**

The possible links between traumatic brain injury (TBI) and dementia are of increasing interest to academics, clinicians and lawyers. In the case of *The Executors of the Estate of the late Geoffrey Charles Ivory v Swale Borough Council*, the court had to grapple with the issues in the context of a man who went on to develop dementia in the years following an accident in which he sustained a TBI. The court concluded there was no causal link between the brain injury and dementia. Written by Niall Maclean, a barrister at 12 King's Bench Walk. Niall represented the defendant in *Ivory v Swale Borough Council* throughout proceedings and at trial.

See News Analysis: [Court finds no causal link between traumatic brain injury and dementia \(The Executors of the Estate of the late Geoffrey Charles Ivory v Swale Borough Council\)](#).

### Fundamental dishonesty

#### **Court finds exaggeration of injury was fundamentally dishonest**

By CPR PD 44, para 12.4(c) the court can direct that issues arising out of an allegation of fundamental dishonesty can be determined even after a notice of discontinuance has been served. In this case the court held that there was fundamental dishonesty on the basis of discrepancies between representations the claimant made to the defendant's expert, and surveillance that was carried out both immediately before and after examination. Where explanation of a discrepancy was not credible, the court was entitled to find that dishonest exaggeration enhancing the value of the claim constituted fundamental dishonesty. Written by Marcus Weatherby, partner and serious injury and clinical negligence specialist at Pattinson and Brewer Solicitors.

See News Analysis: [Court finds exaggeration of injury was fundamentally dishonest \(Mantey v Ministry of Defence\)](#).

### Property Insurance

Insurers might not be properly reflecting the increasing cost of natural catastrophe claims in the prices they charge for cover, analysts warned on 16 May 2023 as hurricane season approaches.

See News Analysis: [Insurers not adapting to catastrophe claims, analysts warn](#).

### Home insurance

The Association of British Insurers (ABI) published the results of its latest home insurance premium tracker which revealed that the average price paid for home insurance in the first quarter (Q1) of this year was £315, up 6% on Q1 2022. Despite surges in weather related claims and rising building material costs, this rise in premium was less than the rate of inflation over the last year.

For further details see: [LNB News 18/05/2023 24 requires access to Lexis PSL](#).

## Further information

For access to further RMP Resources you may find helpful in reducing your organisation's cost of risk, please access the RMP Resources or RMP Articles pages on our website. To join the debate follow us on our LinkedIn page.

## Get in touch

For more information, please contact your broker, RMP risk control consultant or account director.

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