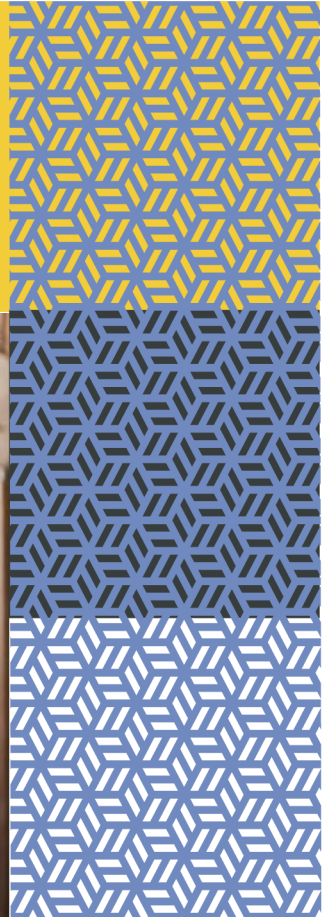
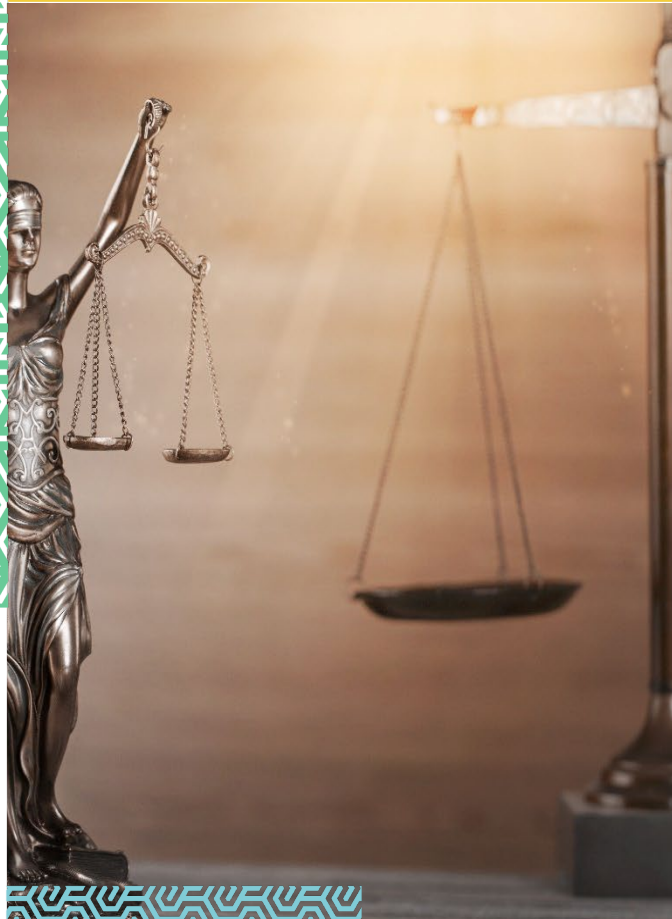
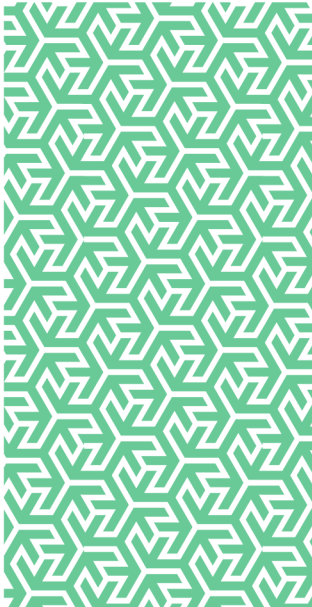


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Risk control
Industry Highlights
August 2023



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Introduction

This short briefing provides a summary of pertinent cases and updates from across the industry. Further detail can be found by clicking on the links included throughout.

Costs

MOJ launches consultation on issues relating to the new fixed recoverable costs regime

The Ministry of Justice (MOJ) has published a consultation on issues relating to the extended fixed recoverable costs (FRC) regime. The consultation opened on Friday 21 July and will close on Friday 8 September 2023.

For further detail: [Update-FRC-July-2023.pdf \(foil.org.uk\)](#)

Road Traffic Accidents

12-year old pedestrian found 40% contributory negligent

The King's Bench Division, in *FLR (a child by her mother and litigation friend) v Chandran*, allowed the claimant's claim for personal injury following a road traffic accident. The claimant was a minor who had been struck by the defendant's vehicle, which had caused serious cognitive and psychiatric injury to the claimant.

The claimant brought proceedings against the defendant on grounds that the injuries were caused by the negligence of the defendant and that had the defendant been driving at a safe and reasonable speed for the prevailing conditions, the injuries would not have happened.

The defendant denied primary liability and had submitted that the claimant had been negligent by stepping into the road at a pedestrian crossing while the traffic light was green for vehicles to proceed.

The court held, among other things, that the defendant had been driving significantly in excess of the reasonable speed for the prevailing conditions. Additionally, the defendant's conduct had demonstrated an approach that fell below the standard of a reasonable competent and experienced driver. Accordingly, the claimant was found to have proved causation, loss, and damage to the requisite civil standard.

For further detail: [\[2023\] All ER \(D\) 34 \(Jul\)](#) requires access to Lexis PSL.

Are interpreter's fees recoverable as a disbursement?

The Court of Appeal, Civil Division, in the case of *Santiago v Motor Insurers' Bureau* [2023] EWCA Civ 838, allowed the appellant's appeal from a decision which had failed to address the recoverability of interpreters' fees and ruled that

a person's lack of linguistic ability could not be regarded as 'a particular feature of the dispute' within the meaning of CPR 45.29I(2)(h). The appellant was a Brazilian national who spoke Portuguese and had a poor grasp of English. He was involved in a road traffic accident and sought damages for personal injuries and financial losses against the respondent. The appellant's witness statement was prepared in Portuguese and the translation was carried out in house by his solicitors.

The issue raised in the appeal was whether the services of an independent interpreter's reasonable fees at trial could be recovered as a disbursement falling under CPR 45.29I(2)(h). The court held, among other things, that it was not bound by *Cham (A Child) v Aldred* [2019] EWCA Civ 1780, [2020] 1 WLR 1276 to adopt an interpretation of CPR 45.29I(2)(h) which was not in accordance with the overriding objective on the different facts that were in play in the present appeal.

Where considerations of access to justice arise, a broader interpretation was necessary to enable the dispute to be determined by the court in accordance with the overriding objective. Accordingly, the independent interpreter's fee (assuming it to be reasonably incurred) was properly regarded as a disbursement falling within CPR 45.29I(2)(h).

See News Analysis: [LNB News 13/07/2023 36](#) requires access to Lexis PSL.

MOJ seeks views on medical reporting process for RTA claims

The Ministry of Justice (MoJ) is seeking views on revisions to the medical reporting process for road traffic accident (RTA) claims valued up to £5,000.

The MoJ is specifically seeking views on: revised qualifying criteria for medical reporting organisations (MROs) and rules for medical staff accepting direct instructions (DMEs); the amount and types of MROs and DMEs represented and unrepresented claimants are offered when searching for providers on the MedCo Portal; the increasing use of unauthorised administration agencies by DMEs; how much fixed recoverable costs are available for medical reports; and improvement of the quality of medical reports and sourcing of these reports for claimants represented by lawyers. This consultation closes on 10 October 2023.

For further detail: [LNB News 19/07/2023 59](#) requires access to Lexis PSL.

Insurance – Motor Vehicle

Car insurance prices in the UK have now reached their highest levels on record, according to figures published on

19 July 2023, amid pressure from regulators on the sector to respond to claims inflation.

See News Analysis: [Car insurance rates hit record amid regulatory pressure](#) requires access to Lexis PSL.

Public Authorities and the State

Claimant's claim dismissed but they had not been fundamentally dishonest

The King's Bench Division, in *Afriyie v Commissioner of Police for the City of London*, dismissed the claimant's claims for assault, battery, and misfeasance in public office against the defendant.

The claimant was stopped by the defendant's officers while driving. An incident developed which resulted in him being 'tasered' by one of them. The claimant claimed that he fell to the ground, hitting his head and was handcuffed thereafter.

The defendant denied all the claims and contended that the claimant had been fundamentally dishonest. The court analysed the evidence for the assault, battery, and misfeasance in public office claims, as well as the dishonesty.

It held, among other things, that: (i) the police officer's belief in the need to use handcuffs, to prevent a violent breach of the peace, was objectively reasonable; (ii) the defendant had proved that if handcuffs had been used, the same would not have constituted a battery; and (iii) the court was satisfied that the officer honestly believed it was necessary to taser the claimant.

Overall, the court dismissed the claimant's claims for assault, battery, and misfeasance in public office on their merits.

See News Analysis: [\[2023\] All ER \(D\) 45 \(Jul\)](#) requires access to Lexis PSL.

Coronavirus (COVID-19)

Coronavirus (COVID-19) losses insurance claim (World Challenge Expeditions v Zurich Insurance)

This decision relating to the recovery of coronavirus (COVID-19) losses under a travel policy is of interest primarily for its consideration of the doctrine of estoppel and its application in the context of insurance claims. The case concerned a claim brought by a travel company against its insurer for refunds paid to its customers as a result of trips cancelled because of the coronavirus pandemic.

Although the insurer was successful in establishing that the policy did not provide coverage for the refunds sought by the travel company, the insurer was estopped from denying

liability for the claim as a result of its course of conduct going back some four years, in which it had led the policyholder to believe such claims would be covered.

The decision shines a spotlight on insurers' conduct and serves as a reminder that liability for claims may not always be governed solely by the terms of the policy.

See News Analysis by Aaron Le Marquer, head of policyholder disputes at Stewarts : [Coronavirus \(COVID-19\) losses insurance claim \(World Challenge Expeditions v Zurich Insurance\)](#) requires access to Lexis PSL.

Business Interruption

High street bakery chain Greggs plc agreed to settle its £150m business interruption claim with its insurance provider, Zurich, after courts ruled that insurers can deduct government support from claims by companies forced to close during coronavirus (COVID-19) lockdowns.

See News Analysis: [Greggs settles £150m coronavirus \(COVID-19\) payout claim with insurer Zurich](#) requires access to Lexis PSL.

Property Insurance – Post-Grenfell Insurance Rules

The Financial Conduct Authority (FCA) revealed that it will implement new transparency rules for leaseholders of high-rise apartment buildings by the end of this year, as the regulator attempts to tackle soaring insurance costs.

See News Analysis: [FCA will implement post-Grenfell insurance rules by end of 2023](#) 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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