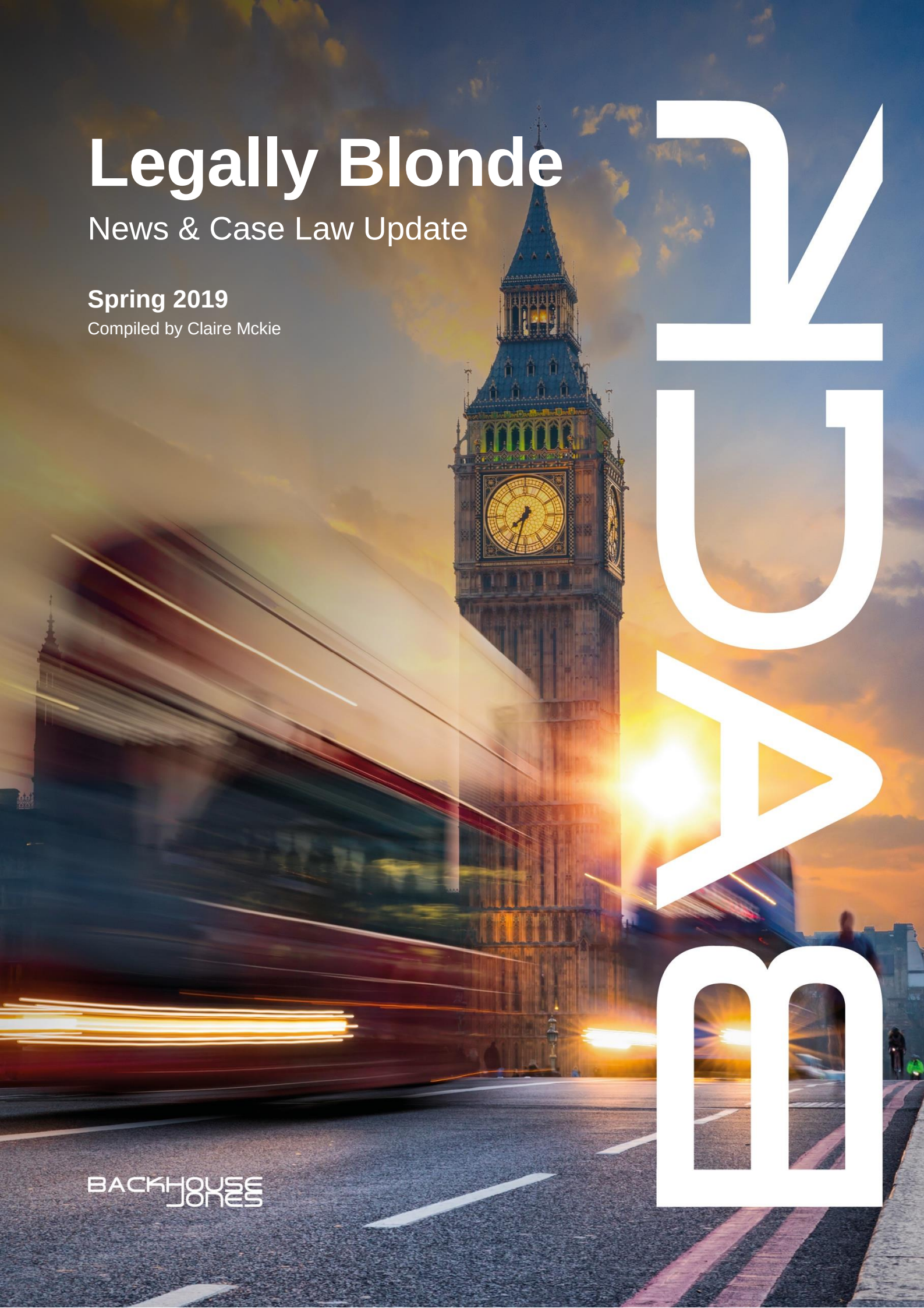
Legally Blonde

News & Case Law Update

Spring 2019

Compiled by Claire Mckie



BACKHOUSE JONES

Lewis v (1) Tindale (2) Motor Insurers Bureau (3) Secretary of State for Transport (2018) EWHC 2376(QB)

The Claimant was grievously injured whilst walking on private land when he was hit by an uninsured vehicle being driven by Mr Tindale. By an earlier order, Mr Tindale was debarred from defending the claim but the MIB had denied any liability as the injuries were not caused by the use of a vehicle on a road or other public place pursuant to the Road Traffic Act Section 45. The case of Venuk made an unequivocal decision that such insurance extends to the use of vehicles on private land. The MIB was an emanation of the State unless the Directive could be directly applied. In conclusion, the MIB was liable for minimum cover of €1,000,000.00 per victim.

Obi v Patel Anor 8 October 2018

The Claimant was been a victim of a Road Traffic Accident and liability was not disputed. The injuries the Claimant sustained were serious. The Defendant issued an application to obtain three separate experts reports with regards to the Claimant's claim. It was held that the Defendant's conduct had gone against the spirit of modern litigation. He had not put the Claimant on notice that they intended to get the expert reports instead remaining silent at both Case Management Conferences. Whilst the evidence the Defendants sought to rely upon might have had a significant impact on the value of the claim, an experienced trial Judge could deal with the matter based on the existing evidence. Further, such applications had to fit with the over-riding objective. There was no justification for the delay save for a tactical approach.

Surrey County Council v Hilliard 2018

The Claimant had taken part in a closed road cycle. The Claimant alleged that a depression in the road of at least 30 mm caused the Claimant to fall off his bicycle and suffer personal injury. The cycle ride organiser had carried out an inspection of the road and reported defects to Surrey County Council. Anything over 40 mm was to be repaired and other defects were to be monitored for deterioration. The Claimant alleged that the Defendant Local Authority was in breach of Section 41 of the Highways Act 1980 in that it failed to maintain the Highway and it was liable to pay damages. The Local Authority appealed against the decision and it was concluded that the District Judge had not evaluated all the relevant evidence and had placed undue weight on a report into the state of the road that had been commissioned for a different purpose and, as such, the Appeal succeeded and the Order was set aside.

Clive Bellman v Northampton Recruitment Limited 2018 EWCA Civ 2214

The Defendant Company organised a Christmas party for staff and their partners. After the party, the Managing Director arranged for taxis to take some of the attendees to a nearby hotel where they were staying at the Company's expense. At this party the Managing Director punched an employee twice. The second punch knocked the employee to the floor where he hit his head and sustained a serious brain injury. The issue was whether the Company was vicariously liable for the Director's actions. The High Court found that it was not because the hotel drinking session was entirely independent of the Christmas party and unconnected to the Company's business. On Appeal, however, it was held that the attack arose out of a misuse of the position entrusted to him as a Managing Director. The Company should be vicariously liable for his actions.

Bentley Design Consultants Limited v Sansom 2018 EWHC 2238

It was held that a Part 36 offer made by the Claimant could not be held to cover matters that the Claimant added to the action after the Part 36 offer was made. Despite the Part 36 offer being made in relation to the whole claim and was not withdrawn only part of the claim was compromised. The decision was upheld on appeal.

Sir Cliff Richard v BBC and Chief Constable of South Yorkshire Police 2018 EWHC 2504

It was held that a Part 36 offer can be communicated to the Trial Judge where the Part 36 offer has been accepted even if the case had not concluded. CPR 36.16 provides that the existence and terms of a Part 36 offer must not be communicated to Trial Judge until the end of a case however the Court nevertheless had a discretion to refuse disclosure depending on the relevance of the information and prejudice caused by its disclosure. There is no longer a Part 36 offer but a binding agreement and CPR 36.16 does not apply to that situation.

EUI Limited v (1) Stephen Dodd (2) Adam Tyrrell (3) Mark Fitzpatrick (2018)

The Defendants had been involved in a fraudulent insurance claim arising out of a staged motor vehicle accident in June 2012. This had been facilitated by an organisation. The Defendants were present at the scene and had participated in the attempted fraud. A statement of truth had been signed. Taking into consideration; the delay between the time of the accident and the contempt proceedings, and the fact that the Claimant had not gone to trial and no evidence had been given on Oath and the full and early admissions made by the men who had sought to purge their contempt, and that they had been of good character previously and the fraud had been isolated, whilst they were committed to prison for contempt of Court the sentences were reduced. Two were jailed for 6 months and the other who had not signed a statement of truth during the course of the fraudulent claim proceedings, for 4 months.

Abellio London Limited v Amrik Singh Ahuja and Jamkit Ahuja 2017 EWHC 3818

The Applicant bus company had collided with a vehicle in which respondents were passengers. They claimed damages for whiplash, injuries and signed statements claiming that they had sustained severe pain in the neck, shoulders and lower back which had continued for a substantial period after collision. The bus had been fitted with CCTV and recording of the incident showed the collision to be minor. The claim was dismissed and they were found to be fundamentally dishonest. Contempt proceedings were brought 14 months later. The First Claimant was sentenced to 6 months in prison and the Second Claimant was sentenced to 28 days suspended sentence.

AXA Insurance Plc v Masood (2019)

The Claimant had injured his back whilst lifting furniture at work. He issued proceedings claiming that his employer had breached its duty of care. The employer's insurers admitted breach of duty. Part of the Claimant's claim was a loss of earnings in the sum of £214,000.00. However, surveillance taken of the Claimant showed that he was working in a fast food takeaway shop. The proceedings were eventually dismissed due to the Claimant's failure to provide a reply to an amended defence and the Defendant made an application for contempt proceedings. The Court had no hesitation in concluding that the Claimant had deliberately lied to its financial gain. He had not sought to provide an explanation, nor an apology and had not sought to purge his contempt. Considering the quantum of the potential claim, the Court committed him to 16 months custody.

Kelly Wallett v Michael Vickers 2018 EWHC 3088

The Claimant was the partner of a man killed in a car accident. She appealed against a finding that her claim for damages was barred by the principal of ex turpi causa as her partner had been engaged in a criminal joint enterprise at the time of the accident.

The Claimant's partner had been driving alongside another vehicle on a dual carriageway at almost twice the speed limit attempting to be the first to reach a point where the road narrowed to a single lane. Both cars refused to give way to each other. It was found that the deceased driver had made a material contribution to the fatal injuries sustained but the claim was barred by the principle of ex turpi causa because the parties had been engaged in criminal joint enterprise and dangerous driving.

In cases where the Claimant was only an accessory, as in the case of the passenger, the ex turpi causa principle only applies if he could be fixed with responsibility for the criminal conduct pursuant to the principles of joint enterprise. The index case was different was because both the deceased and the Defendant were guilty of dangerous driving as principles. The question was whether the deceased was a party to a joint enterprise for the Defendant to drive dangerously.

Ultimately, the Recorder had been wrong to find that the driver who died in a crash whilst speeding had been engaged in a criminal joint enterprise of dangerous driving with the driver of another car which barred a damages claim by the deceased partner on the grounds of ex turpi causa. The usual principles of contributory negligence would apply and in this case the deceased bore a greater responsibility for the collision both in terms of blameworthiness and causative potency. He had been responsible for his decision to drive dangerously and it was incumbent on him to maintain control of his vehicle in which he failed to do so. Damages would be reduced by 60%.

Hosking v Apax Partners LLP 2018 EWHC 2732

The Chancery division of the High Court awarded indemnity costs against Claimants who suddenly and without explanation discontinued their case 4 days into a 6-week trial.

Ketchion v McEwan 2018

The Claimant claimed following an RTA and the Defendant defended and counterclaimed for personal injuries. The Claimant won and the Defendant lost. In the first instance the Claimant was entitled to fixed costs. However, those fixed costs could not be enforced without permission of the Court because the Defendant had QOCS protection. The Claimant appealed stating that a

proper interpretation of CPR 44.13 is that there reference to proceedings is in relation to both the claim and the counterclaim and that since it is expressly stated that the Claimant includes the person who brings the counterclaim it follows that the Defendant/ Counter-claimant has the protection of QOCS. Therefore, in this case an unsuccessful counterclaiming Defendant appeared to have the benefit of QOCS protection in the entire action brought against them.

Wareing v McDonell 2018 EW Misc B11

However, the below is a wholly contrary Judgment. The Claimant claimed damages for personal injury. The Defendant counterclaimed for personal injuries. At the trial, the Judge gave judgment for the Claimant and dismissed the counterclaim. The Defendant asserted that he had the benefit of QOCS protection. 44.13 was considered, and it was held that insurers of Defendants to claims for personal injury arising out of Road Traffic Accidents would be incentivised to encourage counterclaim for damage for personal injury even if the counterclaim is unsuccessful there would be no liability to costs. Access to justice would be reduced. It would be surprising if any solicitor continued to act once the counterclaim is intimated as they would be unlikely to recover any costs.

Therefore, there was no cost protection for a Defendant who had unsuccessfully defended a claim for personal injuries simply by virtue of having counterclaimed for his own personal injuries.

Farrington v Menzies – Haines (2019)

The Claimant was injured whilst riding a motorbike when the Defendant drove his car out from a junction into the Claimants path. Primary liability was admitted but the remaining issue of contributory negligence due to speed and causation of precisely what damages or injuries were attributable to the accident. In the meantime, the Defendant was making interim payments in respect of treatment and had received £260,000.00 already in total. The Claimant made an application for an interim payment of £450,000.00, however, the Defendant had concerns over the injuries which were still ongoing and whether they were causative of the accident. It was held that the objective of an interim award was to ensure that the Claimant was not kept out of his money while avoiding any risk of overpayment. In this case there were genuine and substantive challenges to causation, and it was quite possible that the Claimant would not receive any more than what he had already received. On that basis the application for an interim payment was refused.

Dr Carol Beardmore v Lancashire County Council (2019)

The Claimant had been injured in a slipping accident. When she applied for her costs a dispute arose as to whether disbursements were recoverable in relation to the fees charged by a medical agency for obtaining medical records which had been used in the case. In the first instance the Judge found that CPR Rule 45.29i(2A)(c) provided for a recovery of an agency fee in road traffic accident cases but that rules did not provide for the recoverability of such fees as disbursements in pl/employers liability cases. It was held that in a public liability case the appropriate measure for the disbursement recovery was the reasonable and proportionate cost of obtaining the medical records and therefore the medical agency fees was allowed.

Cameron v Liverpool Victoria Insurance Company Limited (2019) UKSC 6

The driver of the car at fault was never identified, but its registered keeper was. An insurance policy covered one named individual, but not the registered keeper to drive the car. The motorist issued proceedings against the keeper erroneously, believing him to be the driver. When it became clear that he was not, she added the insurer as a Defendant seeking a declaration under the Road Traffic Act 1988, section 151, that it was obliged to satisfy and unsatisfied judgement against the keeper. As this was incorrect, the Claimant applied for permission to amend the Claim Form and Particulars of Claim by removing the First and Second Defendant and substituting it to "the person unknown driving vehicle (registration number) who collided with vehicle (registration number) on (date of accident)". The District Judge dismissed the application. The Court of Appeal reversed that decision holding the Court the discretion to permit an unknown person to be sued when the driver could not be identified. Ultimately it was held that the description did not identify anyone, service on the driver would be impossible, breaching the fundamental principle that a person could not be made subject to the Court's jurisdiction without having such notice of the proceedings as would enable them to be heard.

JLE v Warrington and Halton Hospitals NHS Foundation Trust (2018) EWCA Civ 2849

The Claimant's cost bill totals approximately £615,000.00 and they made a part 36 offer of £425,000.00 including interest and that offer was not accepted. Costs were amended at approximately £421,000.00 but with interest this came to approximately £431,800.00 being approximately £6,000.00 more than the Claimant's offer i.e. that is the offer was beaten by around 1% of the bill. It was accepted that the fact that it was only the interest that meant the Claimant beat its own offer was irrelevant. The Defendant contended that it was unjust to award the additional 10% (around £43,000.00) and it should be considered separately to the other part 36 bonuses, The Master agreed. The Master held that it was appropriate to disallow the 10% uplift under CPR 36.17(4)(d) as it was disproportionate to the margin by which the offer has been beaten.

Cox v Pace, Birmingham County Court, 23 October 2018

A Deputy District Judge held that a counter offer within the portal process did not amount to a rejection of the original offer thus treating the portal rules as self-contained code same way as part 36.

SPI North Limited v (1) Swiss Post International UK Limited (2) Asendia UK Limited (2009) EWCA Civ 7

The Claimants stated that pursuant to CPR Rule 16.5(1)(b), the Defendant's in their defence should

detail which of the allegations they were unable to admit or deny and which they required the Claimant to prove. An application was made to strike out the defence based on 13 alleged breaches of Rule 16.5 arising from nominal admissions which the Claimant asserted that the Defendants would or at least might have been able to admit had they taken reasonable steps to contact former employees. The Judge found that the Rule 16.5 did not require the Defendant to make reasonable enquiries of third parties before it said it could be unable to admit or deny a particular allegation and that the Defendant could properly make a non-admission based on its own knowledge. Permission was granted to appeal, and the Claimant appealed the decision however, the appeal was dismissed and that in the Defendant was not obliged to make reasonable enquires of third parties before pleading that it was unable to admit or deny.

Horler v Rubin and others (2019)

The power to strike out the Claimant's claim for failing to provide the witness statement in line with the Court order. The applicable test was that in rule 3.9 and in Denton v TH White Limited, the Court will bear in mind that although the Claimant had been a litigant in person for much of the proceedings, that did not justify a lower standard of compliance with the rules. It was established that the breach was serious and significant. The explanation for the breach was that there had been an honest mistake and it might not have been unreasonable. The Claimant had not realised the need to serve witness statements. The third stage was to look at all of the circumstances of the case and it was held that there was an initial error and it had been an honest misunderstanding. The Claimant was granted relief and sanctioned.

News

- The lowest number of Personal Injury claims has been recorded since the final quarter of 2011. There has been a 20% fall on the same period in 2017. The MOJ said the decrease can be attributed to a change in Civil Procedure Rules on holiday package gastric illness claims as well as whiplash reform.

- The Civil Liability Bill has been passed in Parliament, however it is still waiting for Royal Ascent. It is likely the discount rate will be changed upon the passing of this Bill.

- The MOJ has confirmed that a consultation paper on fixed costs in cases worth up to £100000 will be out by summer.

- Please always consider making a section 20 report to the DVSA following an incident. This needs to be done as soon as reasonably practical after the incident.

https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/755238/report-to-dvsa-of-an-accident-involving-a-public-service-vehicle.pdf

BACK

BACKHOUSE JONES

marketing@backhouses.co.uk
backhousejones.co.uk

The North
Backhouse Jones

The Printworks
Hey Road
Clitheroe, Lancashire
BB7 9WD

The South
Backhouse Jones

22 Greencoat Place
London
SW1P 1PR