Issue and Service

Atha & Co Solicitors v. Liddle [2018] EWHC 1751

When drafting a claim form, a solicitor's misstatement of the value of claim amounted to an abuse of process. However, the striking out of the claim was not justified where a delay in issuing the claim was entirely unconnected with the abuse.

Issue and Service

Atha & Co Solicitors v. Liddle [2018] EWHC 1751

49. …if taken literally, the words "done all that was in his power to do" would cover not just cases of abuse of process but every instance of a procedural peccadillo perpetrated by a claimant regardless of how trivial it may be and regardless of the consequences, if any.

50. Accordingly, and notwithstanding the legitimate considerations of judicial comity, I decline to follow the reasoning in Lewis to the effect that a party must have done all in its power to do get the court fee correct as a prerequisite to the brining of a claim even where such discrepancy has had no impact whatsoever upon the timing of the issue of the claim form.

Issue and Service

Grant v. Dawn Meats (UK) [2018] EWCA Civ 2212

The period of a stay of proceedings did not count towards the time limit required for service of a claim form. During the period of a stay, no steps in the action, by any party, were required or permitted.

When the stay was lifted or it expired, the position as between the parties was the same as it was the moment the stay was imposed.

Issue and Service

Pennine Acute Hospitals NHS Trust v. De Meza [2017] EWCA Civ 1711

A judge had erred in disapplying the limitation period in respect of a clinical negligence claim. He had failed to take into account the weakness of the claim. There was prejudice to the defendants arising from the 28-year delay between expiry of the primary limitation period and the bringing of the claim in that records had been destroyed and memories would be unreliable.

Parties and Pleadings

Sabri v Imperial College Healthcare NHS Trust 19/12/17 (QBD)

The court terminated the appointment of a protected person's litigation friend on the application of the legal team acting for him in his claim for damages for catastrophic personal injury against an NHS Trust. The claimant's litigation friend was his sister who had selflessly cared for him since his injury, but she had refused to accept that periodic payments rather than a lump sum would be in her brother's best interests and had placed his legal advisers in an impossible position.

Parties and Pleadings

Ellis (a child) v. Kelly & Ellis [2018] EWHC 2031 QB

An eight-year-old child who had been allowed to use a playground without adult supervision and who had been hit by a speeding car as he ran across a road close to a pedestrian crossing was not contributorily negligent for his serious injuries. His previous experience was that cars would stop at the crossing and at his age he was unable to judge that the car was travelling too fast to stop. A contribution claim against his mother failed; holding her responsible would impose far too high a standard on an ordinary parent making ordinary parenting decisions about child safety.

Parties and Pleadings

Ellis (a child) v. Kelly & Ellis [2018] EWHC 2031 QB

- Fears that action will be taken against the family home to meet any liability
- Encourage an over-cautious approach interfering in parents' assessments of allowing children some freedom
- Parent cannot act as litigation friend: inhibit rather than facilitate settlement
- Attack on the claim for gratuitous care may not be in an insurer's interests, because the alternative is professional care
- Real caution should be exercised both by courts and insurers

Parties and Pleadings

Wrightson v. Flor Projects Ltd & others 22/10/18 (QBD)

An improperly pleaded personal injury claim was struck out where a claimant, who had suffered internal injuries six years earlier after drinking bleach which had been left on his desk in an unmarked bottle by a cleaner, had failed to take steps to obtain disclosure which would have enabled him to plead his case. Pleadings had to be a precise statement of fact which allowed an opponent to know the case it had to meet.

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Parties and Pleadings

Simmons v. City Hospitals Sunderland NHS FT 10/10/18 (QBD)

The court allowed a claimant to reamend her particulars of claim six months before trial in her medical negligence action against a hospital following the mismanaged treatment of her caesarean wound. The amendments did not introduce new material or substantially recast her case, and while the hospital would be under pressure to respond within a tight time frame, the trial date was still achievable and the balance was in favour of allowing the claimant to put her case fully.

Admissions and Judgment

Wood v. Days Healthcare UK Ltd & others [2017] EWCA 2097

A judge had erred in refusing a defendant permission to withdraw an admission of liability in a personal injury action. The fact that the value of the claim had increased significantly since the admission was made and the fact that summary judgment had been entered against other defendants justified permission being given to withdraw the admission.

Admissions and Judgment

Hewes v. West Hertfordshire Hospitals NHS Trust [2018] EWHC 2715

A master had erred in granting summary judgment at a point in proceedings when the parties had not exchanged expert evidence. There would be few cases where a summary judgment application could properly be contemplated before the relevant experts' reports had been exchanged and, in most cases, until after the experts had discussed the case and produced a joint statement.

Budgeting and Costs

Page v RGC Restaurants Ltd [2018] EWHC 2688

A party who had been subjected to a sanction under CPR r.3.14 for failure to include preparation for trial and trial in his costs budget succeeded in having the sanction lifted in relation only to those parts of the agreed budget as dealt with the position up to those phases. His advisers had genuinely considered that a second costs and case management conference would take place and had mistakenly thought that it was appropriate to file a budget which left over the trial phase for later consideration.

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Budgeting and Costs

Culliford v. Thorpe [2018] EWHC 2532

There was no rule that once a costs order had been sealed, no application could thereafter be made for a payment on account of costs. Although CPR r.44.2(8) contemplated that the court would decide whether to order a payment on account when making the costs order, it did not exclude the possibility of it doing so at a later date.

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Budgeting and Costs

Cartwright v. Venduct Engineering Ltd [2018] EWCA 1654

A defendant can enforce an order for costs out of damages payable to the claimant by another defendant. However, where the damages were payable to the claimant under the schedule to a Tomlin order, r.44.14(1) could not apply, as the schedule was not part of the court's order but merely reflected agreement reached between the parties.

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Budgeting and Costs

Mabb v. English [2017] EWHC 3616

There was no inherent unfairness in a claimant filing a notice of discontinuance in a personal injury action so as to avoid the effect of CPR r.44.15, namely that if the claim were struck out instead, the exception to qualified one-way costs shifting would apply and the defendant would be entitled to his costs.

Disclosure and Evidence

Brown v. Alexander 30/7/18 QBD

In a personal injury action, progress reports provided in the course of a rehabilitation scheme funded by the defendant's insurers were not subject to legal professional privilege. The terms of the Rehabilitation Code made it clear that only the immediate needs assessment was privileged, and that privilege was not extended to the subsequent case management process.

Disclosure and Evidence

Manzi v. Kings College Hospitals NHS FT [2018] EWCA 1882

The trial judge was correct in declining to draw an adverse inference against the defendant for deciding against calling witness evidence from a doctor involved in the claimant's clinical negligence claim. There was a discretion as to whether an adverse inference should be drawn; the absent witness was not central to the case; and the claimant should have asked for a specific direction about that witness earlier in the proceedings.

Disclosure and Evidence

Kimathi v. Foreign & Commonwealth Office [2018] EWHC 2066

The court declined to exercise its discretion under the Limitation Act 1980 s.33 to allow a personal injury claim in the Kenyan torture group litigation to proceed some 56 years after the primary limitation period had expired. It was not fair and just in all the circumstances to expect the Foreign Office to meet the claims on the merits. The court noted that the claimant had not given evidence of the reasons for his delay; it was not enough that the reasons were clear from the pleadings, as statements of case were not evidence, even where verified by a statement of truth.

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Disclosure and Evidence

TW (a child) v. Royal Bolton Hospital NHS FT [2017] EWHC 3139

A midwife who had taken a phone call from a mother in labour had, given the information relayed to her, been negligent in not inviting the mother to come into hospital to be assessed. In the absence of any records from the Defendant concerning the call in question, the court should judge the Claimant's case on what was said "benevolently" and the Defendant's case "critically"

Experts

Obi v. Patel 8/10/18 QBD

Permission to rely on expert evidence in a PI quantum trial arising out of a road traffic accident was refused where the defendant had delayed, for tactical reasons, notifying the claimant of his intention to use expert evidence, and the case could be properly run on the basis of the existing evidence.

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Experts

Ryan v. Resende [2018] EWHC 2145

A personal injury claimant was given permission to adduce expert evidence on care and occupational therapy at trial. Whether such care was required, and to what extent, was a significant issue, and contrary to a master's decision at a case management conference, the other medical experts would not be able to provide clear evidence on that aspect of the case.

Experts

Liddle v. Bristol City Council [2018] EWHC 1094

The court allowed a claimant in a personal injury action to rely on a report written by an expert in forensic collision investigation despite the fact that a court order specified the appointment of an engineer where her report would be of use to the court during trial in determining causation and where the defendant would have the opportunity to adduce similar evidence in reply before the trial date.

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Experts

Whiting v First/Keolis Transpennine Ltd [2018] EWCA Civ 4

A judge had been entitled to conclude that severe injuries suffered by a claimant during a railway station accident had not been caused by the negligence of the train company or its train guard. The judge's findings of fact were not perverse as controverting the agreed expert evidence or because they were unsupported by the overall evidence.

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Experts

Wright v. First Group PLC [2018] EWHC 297

A trial was adjourned to allow a claimant to instruct a new expert following a road traffic accident, where his expert had changed his opinion following a joint meeting of the experts. Although it was very close to the trial date and litigants did not have a right to change experts simply because the expert had said something disadvantageous to them, in the instant case there was a lack of clarity regarding the expert's view, meaning that the claimant would have an unjustified disadvantage if forced to proceed on the basis of the current expert evidence.

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Experts

D (a child) v. Chapman [2017] EWHC 3690

A master had not erred in allowing a claimant in a personal injury case to rely on supportive new expert medical evidence, after she had received unfavourable expert reports, on condition that the unfavourable opinions were disclosed. While the claimant was expert shopping, she had good reason to seek a second opinion in a high value case which was complex and where causation issues were highly controversial.

Part 36

Bentley Design Consultants Ltd v. Sansom [2018] EWHC 2238

The Claimant claimed breach of contract in relation to the construction of 2 properties. The claim initially related to plot 1 and was for £35,000. He issued proceedings and made a part 36 offer to settle 'the whole of the claim' for £25,000 which was rejected by the Defendant. He subsequently amended the Particulars of Claim to include a claim in respect of plot 2, which was worth substantially more than plot 1. The Defendant then purported to accept the offer of £25,000 in settlement of 'the whole of the claim'. The court rejected the Defendant's argument that the effect of part 36 was that the offer that was made to accept a sum in settlement of "the whole of this claim" became, on amendment of the Particulars of Claim, an offer to settle the claim subsequently made in respect of plot 2 (under a separate contract for works to a separate property).

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Part 36

Holmes v. West London Mental Health Trust 29/6/18 QBD

Costs in a clinical negligence claim were awarded to a patient on the indemnity basis after the expiry of her part 36 offer where a mental health trust had refused her part 36 offer and then accepted it one year later, unnecessarily prolonged litigation when the patient was mentally fragile, and its general conduct of the litigation had been out of the norm.

Part 36

James v. James and others [2018] EWHC 242

Where a document purporting to be a Part 36 offer contained a costs term that was inconsistent with that provided in CPR r.36.13, the offer could not be classed as one which fell within the scope of Pt 36

Part 36

JMX (a child) v. Norfolk & Norwich Hospitals NHS FT [2018] EWHC 185

In determining the costs consequences of a claimant achieving an award of damages in excess of a part 36 offer which the defendant had declined to accept, the court determined that an offer to accept 90% of the value of the claim had been a genuine attempt to settle the proceedings for the purposes of CPR r.36.17(5)(e). An argument that an assessment of the risks of litigation at only 10% could not be a genuine attempt to settle was one which could hardly ever succeed.

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Part 36

Bottrill v. Thompson [2017] EWHC 3815

A successful claimant was entitled to his costs on the indemnity basis in the exercise of the court's discretion against a defendant where the defendant had rejected an extremely generous part 36 offer which would have ended the proceedings, and had stuck to arguments that could not be maintained. However, the claimant could not rely on the part 36 offer for the purposes of CPR 36.17 as the offer had subsequently been expressly withdrawn.

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