



The Personal Injury and Medical Law Teams' Newsletter

January 2012

The dog-days of the pre and post-Christmas hiatus have resulted in few significant decisions or developments in Personal Injury and Medical Law. The December 2011 and January 2012 PIMLU issues have therefore been combined. The Government used the New Year to announce acceleration of implementation of the proposals in the Young report on Health and Safety thereby providing relief from "the monster" of Health and Safety provisions for small business, accompanied by gleeful promises to reduce lawyers' fees in these claims. **LASPO** reaches the Committee Stage in the House of Lords.

Amendment – *Nigel Woodhouse* digests the Court of Appeal decision in **Hayer v Hayer** where last-minute judicial intervention proposing a new defence to be argued in the first instance hearing, was held to have departed from impartiality and resulted in injustice. *Nigel* appeared on behalf of the successful appellant.

Causation is the key issue in clinical negligence decisions on delayed diagnosis and intervention: these include **Hussain v Bradford Teaching Hospital NHS Foundation Trust** (cauda equine syndrome) and **Lyndon v Royal Free Hampstead NHS Trust** (rheumatic fever). Comment by *Deirdre Goodwin* and *Ben Stimmler*.

Costs decisions on **Conditional Fee agreements** continue to treat 'win' as a term of art with the Court of Appeal in **Fortune v Roe** expressing its disapproval of high success fees where liability had previously been admitted: *Sinclair Cramsie* comments.

Insurance and right of recovery under s.151(8) RTA 1988: the European Court interpret the EU Directive as precluding national rules whose effect automatically omits the requirement that the insurer should compensate a passenger who gives an uninsured driver permission to drive; s.151(8) does not constitute an exclusion from compulsory insurance cover: **Churchill Insurance v Wilkinson; Evans v Equity Claims Ltd** – *Stuart Nicol* provides detailed analysis of the Court of Appeal and the CJEU

Other matters of interest include:

- **Data Protection** - the ICO fires a warning shot regarding data protection duties and the heavy responsibility to audit destruction of sensitive and confidential data: **ICO v Brighton and Suffolk University Hospitals NHS Trust**. Digest and comment by *Deirdre Goodwin*.
- **Occupiers Liability** – Santa's elves fail to bring magic to an elderly lady in Santa's grotto: in **Dufosse v Melbry Events Ltd** the Court of Appeal emphasise that having appropriate risk assessments, training and maintenance procedures in place is not enough unless event organisers ensure compliance. *Deirdre Goodwin* comments in the context of the Prime Minister's announcement on the easing of Health and Safety regulation.
- **Interim Payments** – in **TTT v Kingston Hospital NHS Trust** Owen J brings the voice of reason to the *Eeles* test when ordering significant interim payments as not to fetter the trial judge's discretion to make PPO awards. *Deirdre Goodwin* comments and on the redress of the balance lost in *Crispin v Webster*.
- **Quantum** – the settlement in **PG v Betsi Cadwaladr University Health Board** contains an interesting admission of negligent pre-natal foetal anomaly scanning and the approach to damages including an indemnity in respect of the outcome of Special Educational Needs and Disability Tribunal application. *Deirdre Goodwin* comments.

We are continuing our programme of seminars and will announce the dates and topics in the February PIMLU Newsletter.

To be included in the distribution list of the 13 KBW PI and Medical Law Update [PIMLU] or to obtain back copies, please contact Kevin Kelly on kkelly@13kbw.co.uk or dgoodwin@13kbw.co.uk