



## The Personal Injury and Medical Law Teams' Newsletter

*November 2011*

**In the run up to Christmas the good news is that the Government has bowed to the inevitable and deferred the implementation of the public funding provisions of the LASPO Bill and tendering for contracts.** Previously timetabled to become law by October 2012, funding aspects have been deferred to April 2013.

**Asbestos claims** – the digest of **Williams v University of Birmingham** (included in the October 2011 PIMLU) is re-included with a table of cases considered in the judgment. This should be considered in the context of the 'trigger' litigation which is currently before the Supreme Court in **O'Farrell v Humphries & Glasgow Ltd.** *Deirdre Goodwin* comments.

**Costs** continue to dominate reported decisions and *Sinclair Cramsie* provides in-depth analysis on the Court of Appeal's ruling in **Motto v Trafigura** where the principles applicable to detailed assessments were considered.

Similarly the **Legal Services Commission** has scored a significant victory: in **Legal Services Commission v Henthorn** the Court of Appeal held that limitation for recoupment of overpayments from solicitors and counsel runs from the date of assessment by a costs judge and not the date when the case is completed. Relevant documentation will now have to be kept for several decades. *Deirdre Goodwin* comments

### **Other matters of interest include:**

- **Assessment of Damages** - the balance between a pre-existing condition and acceleration or 'egg-shell' skull was addressed by the Court of Appeal in **Smithurst v Sealant Construction Services Ltd.** Digest and comment by *Dan Hobbs*.
- **Interim Payments** – the tension between awarding significant interim payments and not thereby fettering the trial judge's discretion to make PPO awards is given another airing in **Crispin v Webster** with the court disallowing in its entirety an application for funding accommodation for a tetraplegic, as not to prejudice what the trial judge may consider to be a suitable 'suitable yardstick'. *Deirdre Goodwin* questions whether this is an extension too far of the principle in *Eeles*.
- In respect of application for **Interim Payments** in **Employers Liability** claims, *Paul Gurnham* reviews the decision of the Court of Appeal in **Berry v Ashtead Plant Hire Co & Ors** and the meaning of 'defendant' within the test to be applied under CPR 25.7(1)(e).
- **Judicial Review** – is being used to challenge alleged misuse of a DNR directive: **Tracey v The Cambridge University Hospitals NHS Trust and another** and in **R (on the application of TA) v North east London NHS Trust** a court declines to allow an ex-husband access to his former wife's psychiatric report and records in a contested custody claim. *Deirdre Goodwin* comments.
- **Occupiers Liability** – A slipping accident on a cruise ship is considered in **Dawkins v Carnival** where the Court of Appeal found the Defendant to be in breach of its duty of care. *Richard Williams* comments.

We welcome **Daniel Hobbs** to Chambers and to the team. Called in 1998, Daniel is highly experienced in all areas of personal injury law acting for both claimants and defendants and has recently given an external joint seminar with Tim Brown of the Employment Team on Disability and the Ogden Tables. This was in addition to the highly successful in-house seminar held at 13KBW on 29<sup>th</sup> November when *Adrian Higgins* spoke on the changed landscape of expert witnesses and *Deirdre Goodwin* spoke on the Ogden Tables: *A rational approach or lies, damn lies and statistics – a review of recent developments and caselaw*. For copies of these papers, please apply to Kevin Kelly on [kkelly@13kbw.co.uk](mailto:kkelly@13kbw.co.uk).

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