

October 2008

NEWS @ 9

9 GOUGH SQUARE

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Diary dates:

- Manual Handling Seminar
22nd October
- 9th annual Clinical Negligence Seminar
6th November
- Work Accidents at Sea Conference
19th November
- Employment Seminar
20th November

Details of our seminars can be found at www.9goughsquare.co.uk/CPD Training.

Negligence and Human Rights claims against the Police: The end of the road?



Edwin Buckett

The combined appeals of the *Chief Constable of Hertfordshire Police v Van Colle* and the *Chief Constable of Sussex Constabulary v Smith* (2008) UKHL 50 have given the House of Lords the opportunity to consider claims against the police for breach of Article 2 of the Convention of Human Rights (right to life) along with claims in negligence now that 3 years have passed since their last consideration of the latter topic in *Brooks v Commissioner of Police* (2005) 1 WLR 1495. In brief, the police appeals succeeded and their Lordships were able to rehash a principle that had become a little tarnished with age.

The case of *Van Colle* was confined to a claim for breach of Article 2 and the House was unanimous in allowing the police appeal. The case of *Smith* concerned a claim in negligence which produced a 4:1 split between the judges (with Lord Bingham dissenting) and varying levels of anxiety from the majority.

Facts

In *Van Colle*, the deceased, was murdered by a former employee who was subsequently convicted of that offence. The family brought their Article 2 claim against the police on the basis that the police had failed to prevent this occurring when the assailant had previously threatened and intimidated him.

In *Smith*, the Claimant sustained a triple skull fracture and brain damage as a result of being attacked by his former partner who had threatened to kill the Claimant over a prolonged period. The assailant in that case was found guilty of GBH with intent and sentenced to 10 years imprisonment.

In *Van Colle*, the case had proceeded to trial with a judgment in favour of the Claimant for breach of Article 2 and a consequent award of damages

of £50,000 (later reduced by the Court of Appeal to £25,000). In *Smith*, the police had applied to strike out the Claimant's claim following service of the Defence. This application had succeeded before the trial judge but that decision was reversed by the Court of Appeal.

The issue before the Court

This can be summarised as :

Can the victim of a crime of violence obtain redress against the police in circumstances when the police are alerted to a threat that an assailant may kill or inflict violence on the victim – and the police take no action to prevent that occurrence?

Real and Immediate Risk

Van Colle was decided with reference to the definition of Article 2 found in *Osman v U.K.* (1998) 29 EHRR 245 in which it was stated: "it must be established to [the Courts] satisfaction that the authorities knew or ought to have known at the time of the existence of a real and immediate





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risk to the life of an identified individual or individuals from the criminal acts of a 3rd party and they failed to take the necessary measures within the scope of their powers which, if judged reasonably, might had been expected to avoid that risk’.

First, that paragraph has to be judged without the benefit of hindsight but upon what the authorities knew at the time. Secondly, the fact that the deceased was a prosecution witness in a forthcoming trial against his assailant did not place him in a special or distinctive category from the normal potential victim of crime. Thirdly, “ought to have known” means (according to Lord Phillips) “ought to have appreciated on the information available to them” and not what they could or should have acquired had they performed their duties with due diligence.

In broad terms, the question of real and immediate risk needs to be answered by making a reasonable and informed judgment on the facts and circumstances known to police. In this case it produced a negative answer. Lord Hope commented that the test was “not easily satisfied, the threshold being high” and that the murder was the action of a seriously disturbed and unpredictable individual such that the police could not have anticipated it.

Comment

On any viewing, a successful Article 2 claim will be a tall order. Both the facts of Osman and Van Colle showed strong cases to suggest at least, a real and immediate risk yet both failed. Even more extreme cases will be unusual. They may only arise in cases where, for example, a victim is in police protection before he is attacked.

Duty of care?

The Smith case required the Court to revisit the core principle of police immunity arising from *Hill v Chief Constable of West Yorkshire* (1989) AC 53. It was said on Mr Smith’s behalf that a duty of care could be imposed, because Mr Smith had made it clear on a number of occasions that he was being threatened by the assailant who was his former partner. He had clear evidence of this which

the police were slow to look at or respond to.

The majority of the House of Lords reaffirmed the principle in Hill in a modern day context. They said that negligence claims should not be brought against the police because:

- This would inhibit the police in their function of investigating crime;
- It would impede them because they would have to treat every report from a member of the public as giving rise to a duty of care;
- It would lead to defensive policing;
- It would make the police unwilling to take risks;
- There would be no reason why such a principle would not extend to property damage claims which would be wrong;
- It would divert police resources away from investigation;
- It would be difficult to analyse whether a complainant (pre-attack) could be said to be credible and whether a threat was imminent.

That is not to say that exceptional cases will never succeed, however, such a case will have to be truly exceptional especially as Lord Brown stated, “There is nothing exceptional here unless it be said that this case appears exceptionally meritorious on its own particular facts – plainly not in itself a sufficient basis upon which to exclude a whole class of cases from the Hill principle”.

Comment

Negligence cases against the police in an operational context will now be difficult. It will be hard to imagine many cases stronger than Smith on their pleaded facts. Claims brought by the victims of crime (or their loved ones) will fall to be struck out at an early stage. Hill has been restated and is now stronger as there is even more reason why a duty of care should not be imposed for the benefit of those who complain to the police that they are under threat.

Edwin Buckett

APIL Appointments

Andrew Ritchie was elected to be secretary of the Brain Injury SIG of the Association of Personal Injury Lawyers in September 2008. Andrew was an executive committee member of APIL from 1996-1999 and has been active in APIL since the early 1990s. He is delighted to be involved once more in the day to day training of lawyers on brain injury litigation.



Andrew Ritchie

Simon Carr was elected Co-ordinator of the Occupational Health SIG of the Association of Personal Injury Lawyers in September 2008 and recently elected a member of the Executive Committee of PIBA. Simon hopes that the two organisations can work together closely in the future and looks forward to his continuing involvement and assistance in the promotion and development of expertise in personal injury law.



Simon Carr

9 Gough Square has been nominated Barristers Chambers of the Year, and Andrew Ritchie Barrister of the Year, for the 2008 Personal Injury Awards.



Coleman v Attridge Law

Ben Rodgers

Associative discrimination is subjecting someone to less favourable treatment by reason of their association with a person against whom it would be unlawful to discriminate. In **Coleman v Attridge Law and another C-303/06 (ECJ)**, judgment 17 July 2008), the ECJ has stated that associative discrimination is outlawed by Council Directive 2000/78 (the employment equality framework directive).

The litigation so far

Sharon Coleman was a legal secretary at Attridge Law, a well-known London criminal law firm. She is not disabled. Her son was born in 2002 with respiratory problems. He is disabled. She resigned in 2005 and claimed against her former employer for constructive dismissal and disability discrimination. In the London (South) Tribunal, she claimed that her employer had stopped her returning to her previous post after maternity leave, criticised her when she sought time off to care for her son, threatened her with disciplinary action over lateness, refused permission to work from home when her child had to have an operation, and subjected her to harassing comments regarding her son (note that the respondents vigorously deny all of this).

With support from the Equality and Human Rights Commission, Coleman submitted that the Disability Discrimination Act 1995 (DDA) protects her from such discrimination even though she is not disabled, because it should be read so as to outlaw associative discrimination (even though it does not do so expressly). Alternatively, she said, Directive 2000/78 gives her this protection. Croydon bravely referred the matter to Luxembourg forthwith.

The question for the ECJ was, does the employment equality framework directive protect a person who is directly discriminated against or harassed by reason of their association with a disabled person?

Adv.-Gen. Poiares Maduro advised in January that it does. The reader may remember the British media reporting his opinion as a decision of the ECJ (which it was not) which had the effect of giving six million carers the right to flexitime (which it does not). Disability helplines were inundated with calls from carers asking about their new protections. By the time the ECJ decided in July that it agreed with Maduro (by reference to the text of the Directive, rather than the more esoteric sources the AG drew upon), the story was old news.

The result for carers

This decision does not give carers a new right to flexible working time. It merely demonstrates that requests by employees for flexi-time are to be treated equally, whether a disabled person is the reason for the request or not. Note also that this is not to be confused with the more familiar features of disability law: this is not a duty to make reasonable adjustments for carers!

Employers' representatives say that the decision puts employers at risk even where they are not aware that the employee is a carer. This is wrong. As the House of Lords decided in **LB Lewisham v**

Ben joined Chambers on 1st October after the successful completion of his 12-month pupillage at 9 Gough Square, where he was pupil to Vince Williams, Rosina Cottage and Tom Little. A graduate of the University of Bristol (BA 2004) and City University (LLB 2006), he is keen to establish a broad practice in line with Chambers'.



Malcolm (2008) UKHL 43, in order for a "reason" to "relate to" a person's disability, the alleged discriminator must have knowledge of the disability.

Further, employers do not need to give special consideration to requests for flexible working time from employees who care for a disabled person. They merely need to treat such requests in the same way that they would treat a similar request where the time off was not needed for the care of a disabled person.

Wider implications

Although the result for carers can be overstated, this decision does have the important consequence of making associative discrimination illegal under Directive 2000/78. This applies to age discrimination, too. So you don't have to be disabled, young or old to be discriminated against on any of those grounds.

The ET will probably now interpret the DDA so as to give effect to the ECJ's judgment. Mary Stacey, the Chairman when the matter was at Croydon, found it was arguable that the DDA could be read purposively so as to give it the interpretation of EU law which the Claimant wanted (and in July, got). HHJ Clarke in the EAT agreed. So (if the Tribunal finds for her on the hotly-disputed facts), Miss Coleman can win even without a rewrite of the legislation.

But a re-write there will be. The statute book is going to have to change in order to introduce associative discrimination into the Employment Equality (Age) Regulations 2006 and the DDA. An all-encompassing equality bill is to be announced in the Queen's Speech in November, although the text probably won't be out until the middle of next year. Coleman v Attridge requires discrimination rules to change somewhat, and with this field so fluid right now, it is an excellent time to shape things.

Coleman v Attridge, like Lewisham v Malcolm, poses teasing questions about the sort of discrimination our society wishes to prohibit. Answering that question, you arrive at a deeper conundrum: what kind of balance do you want between the employer and the employee?

After our Paralympic heroes this summer scooped more medals than any other nation bar China, it must be hoped that we will have world-beating anti-discrimination laws in 2012.

Ben Rodgers



THE SIXTH EDITION OF THE OGDEN TABLES: A Year On

Catherine Atkinson



The sixth edition of the Ogden Tables was published in March 2007, utilising new research and introducing a new method of calculating future loss of earnings. The new tables have now been used for over a year and this article assesses how they have been interpreted and applied by the Courts. In *Wells v Wells* [1999] AC 945 Lord Lloyd said “I do not suggest that judges should be a slave to the tables. There may well be special factors in particular cases. But the tables should now be regarded as a starting point rather than a check. A judge should be slow to depart from the relevant actuarial multiplier on impressionistic grounds...”. Have the Courts been quick or slow to depart from the new tables and the often very different results that they now produce?

Previous editions of the Ogden Tables were based on Labour Force Surveys from the 1970s and 1980s reflecting a very different economy and labour market to what we have today. New research by Dr Wass and Professor Verrall and his colleagues identified the key factors which affect a person's future working life to be whether they are employed, whether they are disabled, and their level of educational achievement. Their studies found that an unemployed disabled male with no qualifications will only work for 23% of their working life to 65 whereas a non-disabled male educated to degree level would be in work for 92% of their working life to 65. Their research demonstrated that while a quarter of claimants were being overcompensated the majority were being undercompensated. On the application of resulting new tables claimants made disabled by accidents could be awarded significantly greater compensation than under previous

tables. Conversely, claimants found to have been disabled prior to injury could see significantly lower compensation. So has this been reflected in the Courts?

In *Conner v Bradman & Company Limited* (2007) EWHC 2789 (QB) the Claimant's injury led to instability in his knee and necessitated a knee operation which would prevent him from continuing in his profession as a mechanic. The Claimant's intention was to become a taxi driver. The principle issues were whether the Claimant was, as a result of his injury, disabled and if so whether the discount to his residual earning capacity of 0.49, as stipulated by the Ogden Tables, should be applied. HHJ Coulston QC found the Claimant was disabled but considered it likely that he would be able to continue working for more than half of his remaining working life as a taxi driver. The discount of 0.49 was therefore adjusted to 0.655 (half way between the discount of 0.49 applicable to the Claimant as disabled and employed, and the 0.82 discount which would have applied if the Claimant was not disabled). HHJ Coulston QC stated that he was sympathetic to the Claimant's argument that “the Ogden Tables are based on detailed actuarial evidence and should not be the subject of impressionistic ‘tinkering’ by the judge”. However, he also noted that the introduction of the Ogden Tables made it plain that they were not ‘inviolable’. The introduction states that “in many cases it will be appropriate to increase or reduce the discount in the tables to take account of the nature of a particular Claimant's disabilities.

This willingness to adjust the figures in the Ogden Tables has been apparent in other cases before the Courts. In *Hunter v MOD* NIQB 43 (2007) the Court found that the Claimant was disabled as a result of his knee being weak and unstable but found

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that disability to be comparatively modest and therefore adjusted the discount determined by the Ogden tables. The discount was not only increased to the midpoint between that applicable to the Claimant as disabled and that applicable if he was not, but was further increased to reflect a reduction factor of a 36 year old (the Claimant's age at the date of trial) as opposed to that of a 30 year old (the Claimant's age at the date of the accident). This adjustment was made as a result of the Court's finding that the Claimant was medically capable of employment and that he is likely to have been able to find work before the trial if he had looked. Rather than a discount of 0.20, a discount of 0.60 was applied.

In *Leesmith v Evans* (2008) EWHC 134 (QB) the Claimant was a lighting technician whose injuries led to an amputation of his left leg and reduced grip in his dominant hand. His residual earnings capacity discount rate was also varied from 0.54 to 0.60 in consideration of the Defendant's submissions that the degree of disability must be taken into account and that some degree of disability had already been accounted for in the determination of the post-injury multiplicand.

In *Hopkinson v MOD & VT Services Limited* (2008) EWHC 699 (QB) the reduction factor for the non-disabled multiplier was varied because the Court found that the Claimant's good work history implied that



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he would have continued in virtually full time employment until he retired. However, the multiplicand was then reduced by 10% to reflect the risk of unemployment and while the disabled reduction factor was not applied the residual earnings multiplicand was reduced by 50%. The result was the same as would have been achieved by a straight application of the tables, but demonstrates the increased willingness of the Courts to adjust and apply the figures in the Ogden Tables so as to reflect the characteristics of individual Claimants.

Guidance in Kemp & Kemp states that "the relatively low threshold to the definition of 'disabled' will result in the need for poten-

tially significant adjustment depending on the extent of the Claimant's disabilities... on a case-by-case basis." The caselaw so far indicates a willingness to 'tinker' and make adjustments deemed appropriate. However, the basis of determining that a Claimant is more or less severely disabled than the averages represented in the Ogden Tables is unclear. There is no guidance on the levels of disability recorded in the research upon which the Ogden Tables are based. There is no current measurement of severity of disability. Some may be surprised that a manual worker amputee with a reduced grip in their dominant hand was found to be less disabled than the average employed disabled person. Dr Wass con-

tends that if, as suggested in Kemp & Kemp the definition of 'disabled' as too broad, "the impact is to bias the reduction factors upwards (and not downwards) because a wider definition of disability dilutes the impact on employment" (see JPIL 2 2008). The new tables have arguably led to compensation that is much more specific to a Claimant's circumstances. However, the interpretation and application of the new Ogden Tables so far demonstrates wide variations in possible levels of compensation. A year on there still appears to be great uncertainty as to the impact of the new Ogden Tables.

Catherine Atkinson

Legal 500 Client Guide 2008



9 Gough Square's ranking in Legal 500's Client Guide to the legal profession has increased to 20 barrister listings in Personal Injury, Crime: Fraud, Clinical Negligence and Healthcare, Professional Discipline and Regulatory Law (incorporating Police Law) and Health and Safety with a new ranking for its Crime practice.

Personal Injury

In Personal Injury the Guide confirms that few sets match 9 Gough Square for sheer size and level of talent and the claimant-led set has clerks that deliver "reliable and attentive" service. Grahame Aldous QC is described as "approachable and user-friendly", John Foy QC, as the "godfather of occupational disease claims", and the set's juniors tap "deep reservoirs of knowledge". Chief among them is Andrew Ritchie, who has outstanding technical knowledge allied to "tough forensic skills" and a "personal and decisive approach". Likewise, Roger Hiorns climbs a tier for his "clear, respectful" and "thorough" advice. "Quietly brilliant" Christopher Goddard is also recommended, as is Jacob Levy - "a complete perfectionist" and Stephen Glynn who appears in the listing for the first time in recognition of his leading work in asbestos claims. Nick Hillier continues to be highly ranked in this area.

Crime

In Crime 9 Gough Square has "real strength in depth" as they "instil confidence that a client will be thoughtfully yet robustly defended". Rosina Cottage "pays attention to detail and drafts succinctly. Her advocacy can best be summed up as the iron fist in a velvet glove". Simon Carr is highly regarded as a "specialist in sex cases". Tom Little is "particularly strong for cases requiring well-considered cross examination of robust prosecution witnesses, and a keen eye on documentary evidence".

Fraud: Crime

9 Gough Square is ranked in Fraud: Crime and the Guide notes that Andrew Baillie QC successfully prosecuted the Independent Insurance fraud, and "did a fantastic job, with a deadly cross examination". Rosina Cottage is "a strong advocate with a nice style that invites jurors to think for themselves". Fred Ferguson is listed as a Leading Junior in Crime and is rated as "a very experienced fraud junior". Martin Pinfold "moves the prosecution forward in a relentless, yet intelligent fashion. His understanding of investigations from his SFO experience enables him to interact positively with the police". Phillip Henry is listed as a Leading Junior in Criminal Fraud, and is rated as a barrister with "great experience, who takes a good strategic view". Tom Little is again recommended for Fraud: Crime in the Guide.

Clinical Negligence and Healthcare

Duncan Macleod continues to be recommended in Clinical Negligence and Healthcare.

Professional Discipline and Regulatory Law (incorporating Police Law)

The Guide has introduced a new section covering Professional Discipline and Regulatory Law (incorporating Police Law), and at 9 Gough Square it reports "the very experienced Duncan Macleod is "first class" and represented the Metropolitan Police in the inquest into the deaths of Lady Diana, the Princess of Wales and Dodi al Fayed. Other recommended juniors are Vince Williams, Jonathan Loades and Edwin Buckett. Raj Shetty appears in the Guide for the first time in recognition of his extensive Police Law practice.

Health and Safety

Christopher Goddard, is also listed as a leading junior in Health and Safety.



Family Law Case Review

Recently there have been two interesting cases from the Family Division in relation to the law on Adoption. The first in *Re K (Child) (Adoption: Permission to advertise)* Times Law reports April 13, 2007, provides guidance on when a local authority may advertise a child for adoption.

It was held that before a child could be advertised for adoption the local authority had to be satisfied that the child ought to be placed for adoption. It could not be so satisfied until the authority's adoption panel had recommended adoption, and the appropriate officer had decided that the child should be placed for adoption. Mr Justice McFarlane so stated in the Family Division on March 16, 2007, when dismissing an appeal by Brent London Borough Council from Brent Family Proceedings Court who, on December 14, 2006, permitted only an anonymised adoption advertisement in respect of a child who was the subject of an interim care order. His Lordship said that two rival principles were in play: the need to avoid delay and the need to avoid prejudging the question of rehabilitation within the family, coupled with the need to preserve privacy unless it was proportionate and necessary to do otherwise.

Here, the local authority had sought to advertise the child for adoption before assessments of the family had been completed, before the case had been to the adoption panel, and before the local authority had come to a concluded view on whether the child's best interests would be served by rehabilitation to the family or adoption. While it was impossible to hold that the justices had been plainly wrong in rejecting the application for full identifying advertising, the local authority's application was premature and should have been dismissed; consequently the justices' Order would be set aside.

In the second case of *MJ and Another v Neath Port Talbot County Borough Council*, Court of Appeal, Times Law Reports, August 21, 2008, the Court of Appeal decided that a court cannot cure defects in adoption procedure, namely the adoption panel's decision and that any flaws in an adoption panel's decision-making process could not be cured by a subsequent hearing in Court.

This was held in a reserved judgment by allowing an appeal brought by MJ and LB, the parents of a child, M, and setting aside a Placement Order made by Mr Recorder Gareth Jones, in Swansea County Court on February 28, 2008.

Lord Justice Wall said that it was conceded by the local authority, in a frank and welcome acknowledgment, that it had committed a serious error in the process of making its application for a Placement Order under section 22 of the Adoption and Children Act 2002 in relation to the youngest of three children, M. It remained of the utmost importance that the process established by Parliament in the 2002 Act and the consequential regulations was followed, particularly since public access to adoption proceedings was, almost exclusively, restricted to those cases which reached the Court of Appeal.

The parents' case was that the Placement Order in relation to M should never have been made, and that the recorder should have remitted the adoption panel's recommendation that M be adopted to the panel for reconsideration. The recorder was of the view that the information provided to the adoption panel had been deficient. He was of the view, however, that the defects had been rectified in and by the hearing in front of him. He rejected the application to adjourn and remit the adoption panel recommendation to the panel for reconsideration. He then went on to consider the merits of the application for a Placement Order in relation to M, which he granted.

While His Lordship had considerable sympathy for the recorder in the dilemma in which he found himself, he had reached the clear conclusion that the recorder was wrong not to remit the adoption panel's recommendation to that panel for urgent reconsideration. Had he taken that course, the delay would have been minimal and the statutory framework followed. The recorder was wrong for the simple reason that the framework laid down by Parliament could not be by-passed or short-circuited.

An application for a Placement Order could not properly be made by an adoption agency unless the agency decision-



Emma-Jane Mahood

maker was satisfied that the child in question should be placed for adoption, and Parliament had laid down that the decision-maker could not be so satisfied unless he had previously considered the recommendation of the adoption panel.

It therefore followed that if the decision of the adoption panel was flawed in any material respect, then the decision-maker could not properly consider the recommendation and be satisfied that the child in question should be placed for adoption.

What should have occurred was that the recorder should have adjourned the care proceedings relating to M in order for the adoption agency, as a matter of urgency, to reconstitute the adoption panel, and for the panel to reconsider its recommendation in the light of all the information which was available and which should have been before it when it first considered M's case. Had it done so, the matter would have been clarified. The recorder's conclusion that remission would have involved unacceptable delay was untenable. Equally, His Lordship did not think that the recorder was right to consider that the hearing before him had rectified the deficiencies in the process.

What the recorder did was to make an Order under section 22(1) of the 2002 Act in circumstances in which the due process laid down by Parliament had not been followed. That was not the right course to adopt. Any future Court, faced with this same dilemma, should also adjourn to enable the adoption panel to reconsider and for the adoption agency's decision-maker also to reconsider.

Emma-Jane Mahood



When is a Door Not a Door?

Or how the House of Lords will finally save me from having to buy a round

One of the strange things about practice at the Bar is that you can never predict which will be the cases that will really get under your skin. They are rarely the most important and it is most certainly not a requirement that they are most meritorious. They are just the ones that drive you to distraction.

Hammond v Commissioner of Police for the Metropolis (2004) EWCA Civ. 830 was one of those cases. For all those I have bored senseless with this case over the years I apologise for one more telling of this tale of woe. Mr Hammond worked for the police in the garage that repaired and maintained police vehicles. A patrol car was brought in for a service. Mr Hammond decided to change the tyres. He used a standard 'knuckle' bar to loosen the wheel nuts. One nut sheered off as he tried to undo it and his hand struck the concrete floor. He developed regional pain syndrome in his dominant hand and never returned to

work as a mechanic, the only job for which he was trained.

HHJ Simpson, in a moment of clarity and humanity, found liability established with a 50% finding of contributory negligence.

Brooke LJ, May LJ and Eady J had no problem in allowing the appeal on the basis that there was no possible way that the wheel nut could be work equipment as it was something Mr Hammond was 'working on' not 'working with'. The fact that such a ruling meant that no maintenance man or person assembling items of a production line would ever receive the benefit of protection under the Regulations troubled them not at all.

I duly Petitioned the House of Lords who rejected the petition on the grounds that there was a 'line of authorities' supporting the Court of Appeal's position.

For the last four years I have presented a standing offer of a case of champagne to anyone who can identify just one case that fell within this line of authorities.



Simon Carr

liability applied. When, unsurprisingly, they were referred to **Hammond** they collectively shook their heads and stated that it was equally obvious to anyone reading the facts of that case that it had been wrongly decided. How, they posed with a resigned sigh, could anyone say that the wheel nut in Hammond was not work equipment just because Mr Hammond was working on it rather than with it.

As a gentle throw away line they questioned whether Mr Hammond had been 'supplied' with the wheel nut so as to come within the regulations but formed no final view. As Mr Spencer Evans was held to have been supplied with the door closer it may be an issue will not be something that would need to be litigated further.

To finally close this chapter, and allow me to complete my CBT in peace, I record the following; the constitution of the House of Lords that rejected my Petition were fully represented in the most recent case.

It seems therefore, the next one of your CFAs that starts its passage through the appellant system, you may wonder whether it would be better to simply ask the insurers if they want to toss a coin and save some time. Mr Hammond, who retrained after three years in a job that paid him £10,000 less a year, must be smiling as we speak at the irony of it all.

Simon Carr



In Spencer Franks v Kellog Brown & Root Limited (2008) UKHL 46 the House of Lords recently reconsidered these issues. The Claimant was a maintenance engineer on a North Sea Oil Rig. He was sent to repair a 'door closing' device of an external door. As he worked on the device it broke and a spring flew into his eye. The House of Lords, in a commendably short Judgment, stated that it was quite obvious that the door closer was working equipment and that strict

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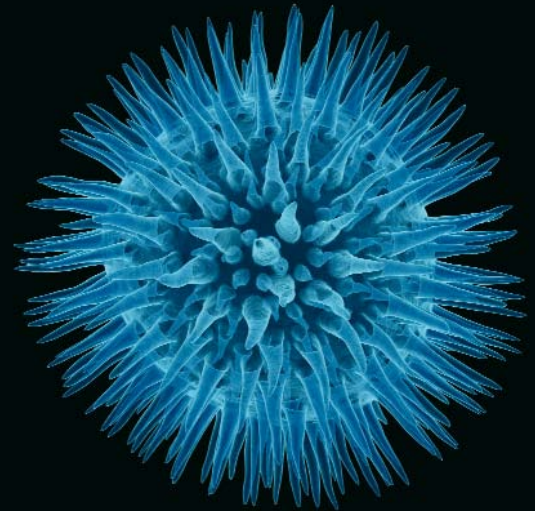
9th Annual

Clinical Negligence Seminar & Legal Update

A full day seminar on 6th November 2008 at The Law Society, Chancery Lane, London.

- How MCA is working in relation to capacity and consent and in relation to detention of patients for their own and others' safety
Claire Royston, Consultant in Old Age Psychiatry
- Healthcare associated infections
Esther Pounder, 9 Gough Square
- Abdominal Aortic Aneurysm - an ideal case for screening?
Clive Quick, Consultant and Vascular Surgeon
- Human Rights Act damages in Clinical Negligence
Adam Dawson, 9 Gough Square;
- Infection prevention and control of MRSA
Karen Egan, Service Manager & Associate Director of Infection Prevention and Control, Leighton Hospital
- Inquests
Perrin Gibbons, 9 Gough Square
- Lessons from the Diana Inquest
Duncan Macleod, 9 Gough Square
- Legal update
Laura Begley, 9 Gough Square
- Court of Protection under the Mental Capacity Act - one year on
Denzil Lush, Master of the Court of Protection
- Trespass to the person in Clinical Negligence
Chris Wilson, 9 Gough Square

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