Welcome

Since our last newsletter there has been a significant change for personal injury claims with the introduction of the Jackson reforms on the 1 April 2013.

The Jackson reforms were put in place to promote access to justice whilst reducing litigation costs. However, as we are still in the early stages it is too soon to see what impact these reforms will have upon the insurance and litigation world.

In order to see a reduction in litigation costs there is now more pressure than ever to actively manage our cases and the costs of those cases. The greatest impact is likely to be on small to medium-sized cases, where there is a risk of costs being disproportionate.

More than ever, insurers and solicitors have to bear in mind proportionality and remember costs that are disproportionate may be disallowed or reduced even if they were reasonably or necessarily incurred.

In this newsletter you will find a range of interesting articles covering a number of topical issues from our specialist legal team, which has recently expanded with the addition of three new lawyers.

Enjoy the read.

Regards

Huw

---

Road Traffic Accidents Involving Emergency Vehicles

Road traffic accidents involving emergency vehicles can be extremely complex as the rules and duties associated with emergency vehicle drivers are different to those that apply to the ordinary driver.

All road users owe a duty of care to other road users and emergency vehicles are no exception. They too are governed by the same principles, but emergency vehicle drivers often have to travel at speed when responding to emergencies, and therefore present more of a hazard to other road users. Emergency vehicles often have to ignore traffic signals and travel in a manner contrary to the rules of the road.

Although it is important that other road users are vigilant for warning lights or sirens there is still an onus on those driving emergency vehicles to take reasonable care.

The Highway Code provides guidance at Section 219 which states:

“Emergency and Incident Support vehicles. You should look and listen for ambulances, fire engines, police, doctors or other emergency vehicles using flashing blue, red or green lights and sirens or flashing headlights, or Highways Agency Traffic Officer and Incident Support vehicles using flashing amber lights. When one approaches do not panic. Consider the route of such a vehicle and take appropriate action to let it pass, while complying with all traffic signs. If necessary, pull to the side of the road and stop, but try to avoid stopping before the brow of a hill, a bend or narrow section of road. Do not endanger yourself, other road users or pedestrians and avoid mounting the kerb. Do not brake harshly on approach to a junction or roundabout, as a following vehicle may not have the same view as you.”

Even though the Courts are willing to be sympathetic to drivers responding to emergencies they will not impose on members of the public a much higher duty of care than would normally be expected of them. Each case will be decided on its individual facts.

As shown in the recent case of Boyle (2013) the standard of care is the same for the emergency services as it is for any other driver unless they are responding to an emergency.

Even if a person was driving in accordance with traffic signals, at an appropriate speed and not in excess of the speed limit they can still be found at least partially responsible if they failed to make appropriate checks before proceeding and note of the warning sirens and/or lights.

Turn inside to read our “Emergency Vehicle Casebook” on the following recent cases involving a fire engine, ambulance and police car:

Purdue v Devon Fire and Rescue Service (2002)
Griffin v Mersey Regional Ambulance Service NHS Trust (1997)
Jonathan Boyle v Commissioner of Police of the Metropolis (2013)
In the Court of Appeal case of *Purdue v Devon Fire and Rescue Service* (2002) the defendant, whose vehicle was a fire engine answering an emergency call, was at trial found wholly liable for injuries sustained by the claimant. The claimant had stopped at a red traffic signal at a junction where he intended to make a right turn. The defendant’s fire engine was approaching the traffic lights from the claimant’s right. The fire engine was approaching along a long stretch of dual carriageway. The road was clear of traffic and visibility was good. The fire engine was using all three sets of its flashing lights but did not have its audible sirens sounding. As the traffic light signal for the claimant turned green the claimant set off and collided with the fire engine. The fire engine had driven through a red signal.

The defendant alleged that the claimant had not moved for some time after his signal had turned to green and that the defendant’s driver had assumed that the claimant had seen the fire engine and was waiting for it to pass. The defendant adduced evidence that the claimant had been facing forward as he moved off and had not looked right or made any eye contact with the defendant’s driver. It was the defendant’s case that the claimant had a clear view of the oncoming fire engine and that the defendant’s driver had no reason to believe that the claimant had not seen him and would pull out.

The trial judge considered that an important issue was whether the claimant had waited before moving once his traffic light signal had turned to green. He found that the fire engine driver had seen the claimant’s car and had noted that the claimant had been looking ahead and had not looked to his right. The trial judge concluded that the defendant’s driver had acted negligently in proceeding through the red traffic light signal because in slowing down as he approached the red light signal he must have suspected that the claimant might pull out. In addition, the defendant’s driver was also negligent in failing to sound the sirens.

On appeal the claimant was found 20% contributory negligent for failing to check to his right before setting off when his traffic light signal turned green.

The above case was referred to in the Court of Appeal case of *Griffin v Mersey Regional Ambulance Service NHS Trust* (1997). In Griffin the claimant was found 60% contributory negligent at trial for failing to check to his right before setting off when his traffic light signal turned green. It was the defendant’s case that there had been no breach of duty in driving above the speed limit as it was 2am, there were no crowds, there was nothing likely to attract crowds, the traffic was minimal and he was driving in the course of his duties.

It was held that the police officer had acted in breach of the duty of care owed to the claimant and that a reasonably prudent driver would have driven about 5 mph slower given that the accident occurred at night in an area where there were likely to be occasional intoxicated pedestrians about.

However, had the defendant’s driver been on the way to an emergency the situation would have been very different. The fact that the defendant’s driver was not required to arrive at his destination with any particular promptness put him in no different position to any other driver. There was no evidence to suggest that had the defendant’s driver been travelling at a lower speed the claimant’s injuries would have been less catastrophic. Accordingly, whilst the defendant’s driver had breached his duty of care by driving slightly over the speed limit, the claimant was not awarded any damages because his claim failed on causation.
Stepping into a contribution?

Recent case law has shown that the Courts are willing to make a finding of contributory negligence against careless pedestrians

Approximately 20-50 million injuries are sustained on the world’s roads each year and 1.3 million are fatal. Of those, almost two thirds are pedestrians (worldbank.org).

Some recent case law has brought pedestrians and contributory negligence in road traffic accidents into the spotlight which should assist in giving motor insurers more confidence to defend claims made by pedestrians.

The Courts’ Approach

Ayres (by his mother & Litigation friend Sue Ayres) v Odedra (2013) EWHC

The Defendant motorist was incorrectly driving in a pedestrian zone when a drunken Claimant stopped in front of her car and dropped his trousers. The Defendant drove into the Claimant causing him significant injury. The Claimant was found 20% contributory negligent because of his drunken state and the fact that he had dropped his trousers prevented him from getting out of the way of the Defendant’s vehicle.

Tavares v Hudson-Rotin (2012) QBD

Similarly, despite the fact the Defendant was driving over the speed limit, the pedestrian Claimant was found to have contributed to the accident by not following the Green Cross Code.

The Defendant was driving through a busy shopping area that she was familiar with at approximately 28/30mph when she collided with the Claimant crossing the road. The speed limit was 20mph. The Defendant’s evidence was that she only saw the Claimant pedestrian about 9 metres before the point of impact, despite expert evidence saying he would have been visible at 33 metres before, and she expected that pedestrians should only cross the road at the nominated crossings.

Despite the Court finding that the Defendant’s actions were negligent, the Claimant was criticised for not looking out and crossing the road despite the Defendant’s vehicle coming towards him and therefore his damages were reduced by 15% for his contribution to the accident.

Paramasivan v Wicks (2013) CA

The 13 year old Claimant was stood outside a shop when without warning he threw an ice cream at a friend and ran into the road, from between two parked cars, in front of the Defendant’s moving vehicle. The Trial Judge found that the Defendant driver should have been travelling more slowly but in the appeal this was found to be unrealistic as the Defendant had in any event only been travelling at 25mph. The Judge in the appeal concluded that the Claimant was old enough to understand the roads and had been careless. The Defendant was only found to be 25% negligent for failing to respond quickly enough to the hazard.

Birch (By His Father & Litigation Friend John Birch) v Paulson (2012) CA

At appeal, the Judge held that a driver could not be expected to give a pedestrian a guarantee of safety and the Defendant motorist in this claim was not responsible for the road traffic accident with the Claimant pedestrian.

The Claimant had been seen by an independent witness walking as if drunk and rocking backwards and forwards at the side of the road and arguing with a friend. The Defendant driver had not seen this behaviour. She saw the Claimant at the side of the road. The Claimant appeared to look directly at her car therefore she had no reason to think he had not seen her and would still step into the road in front of her car. The Defendant was driving within the designated speed limit for the A road on which she was driving.

The Claimant argued in his appeal that the Defendant should have realised that there was a risk ahead and therefore slowed down or swerved away but the Judge found that when comparing the Defendant’s actions to that of a reasonably careful driver, she could not have foreseen that the Claimant would have stepped into the road in front of her.

The question was that of reasonableness and there was no evidence that the Defendant had not shown reasonable care.

Satnam Rehill v Rider Holdings Ltd (2012) EWCA

In this recent case, the pedestrian Claimant stepped into the road at a controlled pedestrian crossing when the pedestrian crossing lights were red. The Claimant was hit by the Defendant’s oncoming bus suffering serious crush injuries.

At the initial hearing and with the benefit of CCTV from inside the bus, the Court found that the Defendant’s bus driver was two thirds liable for not braking in time. The Court found that the bus had been travelling at 4mph and if the bus driver had braked as soon as the Claimant had stepped off the pavement, even allowing 1.5 seconds thinking time for the bus driver, the bus may have touched the Claimant but the wheel of the bus would not have gone over him as it ultimately did.

The Defendant appealed this decision arguing that the Claimant was 80% contributory negligent for stepping off the pavement when the pedestrian lights were red and there was oncoming traffic approaching.

Upon Appeal, the Court considered that the Claimant’s serious injuries did not arise from the initial impact with the bus, but by the wheel of the bus driving over the Claimant. It was accepted that the bus was driving at 4mph and that 1.5 seconds thinking time was reasonable and therefore the Court found that had the bus driver exercised the care of a reasonable driver, he would have braked as soon as the Claimant stepped off the pavement ahead of him which would have avoided anything more than just slight impact. Thus, it was held that the negligence of the Defendant bus driver caused the severity of the Claimant’s injuries. The Claimant, however, contributed to the accident by his lack of care in failing to check the way was clear which the Court stated made a collision inevitable.


The Court held that the pedestrian Claimant’s carelessness was enough to justify some contribution but that it would be wrong to hold the injured pedestrian Claimant more responsible than the Defendant driver and therefore the Claimant was found to be 50% contributory negligent.

Evidence Gathering is Key to Success

The standard of care owed by a motorist remains considerably higher than that of a pedestrian in common law.

Whilst it is rare for a Claimant to be found more responsible than a motorist, these recent cases demonstrate that the Courts appear to be willing to find that pedestrian Claimants could have contributed to the accident, especially when the drivers involved were found to have been driving with reasonable care and attention.
Expanding Motor Unit

The Motor Unit continues to go from strength to strength. The team has recently been joined by Sarah Valentine, David Maclaurin and Shaun Sandison. This takes the number of team members to 20.

David Maclaurin and Shaun Sandison are senior paralegals in the Motor Unit, having come from Berrymans Lace Mawer in Manchester where they had similar roles. Shaun has a particular interest in fraud detection. David specialises in credit hire, with experience of realising savings through challenging credit hire rates. Dealing with personal injury brings a variety of ‘colourful’ claims. One of David’s more memorable cases surrounded defending a personal injury claim made against a young driver who was accused of deliberating knocking down a pedestrian. The pedestrian however, was alleged to have been attacking the driver with a hammer while under the influence of drink and drugs.

Sarah Valentine started as an assistant solicitor in the Motor Unit in April having worked in Langley’s regulatory and corporate defence team within the Commercial Division. Sarah has dealt with a wide range of regulatory matters arising from motoring incidents, from representing and advising individuals in speeding and careless driving offences through to defending individuals and company employees in relation to more serious offences of causing death by careless or dangerous driving. She is currently assisting a partner within the team in defending a civil claim where a 16 year old girl was blinded when an airbag deployed in a RTA.

Credit Hire Update

A recent Court of Appeal case regarding Credit Hire has found that it is appropriate for very large car hire claims to be scrutinised carefully by the court.

In the case of Hardip Singh v Rashed Yaubi [2013] the Appellant’s Rolls Royce sustained a dent to the rear door in the accident. The car, which was worth around £250,000, was sent to expert suppliers to be fixed. The Appellant hired a Bentley for five days and then a Rolls Royce at a daily rate of £2,000. The repairs took 54 days. The total amount claimed by the Appellant for hire charges was £92,953.

Liability was found for the Appellant at Trial. The Appellant gave evidence at Trial that the car, which was owned by his business partnership, was one of a fleet of seven vehicles and was needed to maintain an image of success.

The Trial Judge commented on the warped values of society that the Appellant’s car was considered necessary to maintain an image amongst other things.

The Trial Judge found that there was a lack of evidence to support the argument that the vehicle was needed by the business partnership and dismissed the claim for hire charges.

On appeal the Appellant submitted that there was a serious irregularity by the Judge’s apparent bias as demonstrated by his comments and that the burden was on the Respondent to prove that the Appellant had no use for a replacement car.

It was held that the Trial Judge had expressed views on the values of society openly and frankly, it was appropriate to carefully investigate situations where the party signing the hire form was ordering riches for himself at another’s expense and that the Respondent was entitled to be presented with clear factual evidence of need.

The Appeal was dismissed. The Trial Judge was entitled to find that the need for a replacement Rolls Royce had not been established. The Appellant’s evidence was vague and non specific. If the Appellant had established need, it would have been for the Respondent to show that the need had not been met in a reasonable manner.

To prove that a replacement car was needed by a business it was appropriate to require specific evidence of need, actual use of the vehicle for business purposes before the accident and the use to which the hired vehicle was put to during the period of hire. It was appropriate for very large car hire claims to be scrutinised carefully by the Court particularly when the vehicle is part of a business fleet.

Road conditions in England: 2012 Facts & Figures

- Overall 24% of the local authority principal road network needed further investigation to check whether the existing level of skidding resistance was acceptable over the period 2009/10 - 2011/12. This compares to 25% from the previous three-year period.

- The proportion of the trunk motorway network likely to require planned maintenance within a year has fallen from 6% in 2003 to 3% in 2012, with the proportion for trunk ‘A’ roads falling from 11% to 4% over the same period.

- In 2012, 5% of the trunk motorway network and 13% of the trunk ‘A’ road network required further investigation to assess whether the level of skidding resistance was acceptable.

- In 2011/12, £3.0 billion was spent on the maintenance of local authority managed roads compared to £3.1 billion in 2010/11 and £3.3 billion in 2009/10 (all figures are quoted in 2011/12 prices).

- The Highways Agency spent £0.8 billion on the maintenance of trunk roads and motorways in 2011/12, the same as in 2010/11 (all figures are quoted in 2011/12 prices).

The statistics are drawn from a number of sources, including local authority surveys, TRAFFic-speed Condition Surveys (TRACS) for the Highways Agency’s network, manual surveys for the majority of unclassified roads and skidding resistance surveys.

Source: Department for Transport
Published 28 February 2013