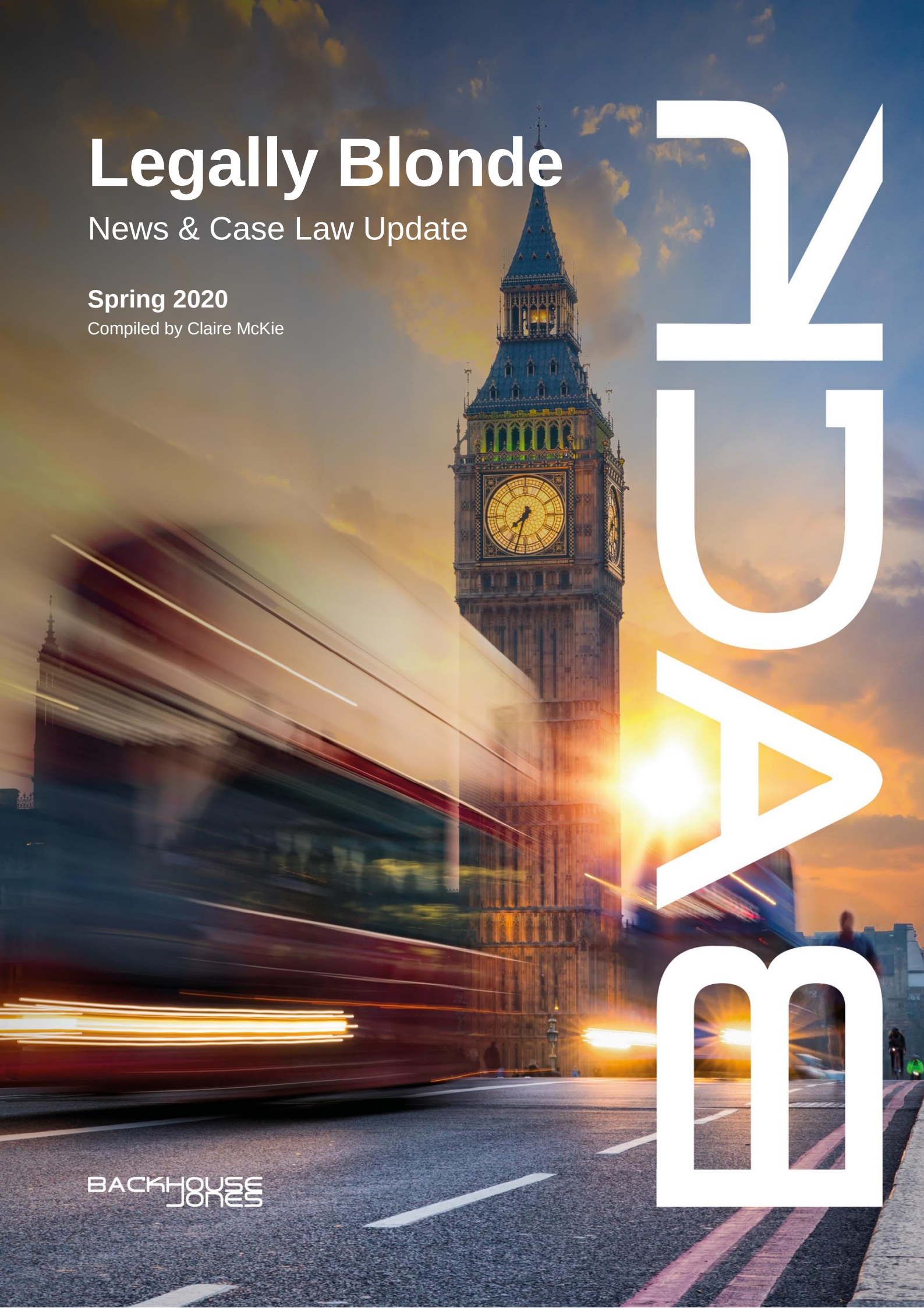

Legally Blonde

News & Case Law Update

Spring 2020

Compiled by Claire McKie

UK

BACKHOUSE JONES

Whiplash reforms update

The implementation of the whiplash reforms has been set back until April 2021. The intention was for the reforms to be implemented in April 2020 but as a result of the Covid-19 Pandemic, it has been agreed that now is not the time to implement significant change.

Wickes Building Supplies Ltd v William Gerarde Blair (No 2) (2020) EWCA Civ 17

Proceedings were brought under the Pre-Action Protocol for Low Value Personal Injury. Damages were awarded and the Appellant made an Application that the claim should have fallen out of the regime after additional evidence was served. The successful applicant applied for an order that the respondent pay the costs of the appeal and the hearing. In this case the Court exercised its discretion and ordered costs to be paid for the Hearing and Appeal. However, enforcement of the costs was subject to qualified one-way cost shifting. Accordingly, the costs order could not be enforced against the respondent.

Lee Walsh v CP Hart & Sons Ltd (2020) EWCH 37

The Claimant fell off the back of a box van while making deliveries. The Claimant alleged that his employer was in breach of work place regulations and measures should have been in place to ensure the tail lift of the box van was always raised. The Judge found that there was no breaches of the Regulations and that it would not have been reasonably practicable to raise the tail lift when the back of the lorry was unoccupied. The Claimant appealed against the dismissal of his claim. It was held on appeal that the Judge had misdirected himself in considering the question of whether instructing employees to only work or remain in the back of the vehicle if the tail gate was in the raised position was reasonably practicable. Having considered whether "reasonably practicable" and that the Claimant had lowered the tail lift and so was aware that it was in the lowered position therefore, the appropriate position for contributory negligence is 50%.

Anjali Pandya v Intersalonika General Insurance company SA (2020)

The Claimant, a UK National domiciled in England, was involved in an accident in 2012 when she was 15 years old while on holiday in Greece. The Defendant argued that the claim was time barred pursuant to Greek Law (the applicable law). It was held that service was necessary to interrupt the imitation period which could not be downgraded by the Civil Procedure Rules.

Mohamed Kamara v builder Depot LTD (2020)

The Applicant had commenced a claim which was ultimately struck out as he was found to be fundamentally dishonest. However, if he had not have been found to be dishonest he would have been awarded 1/3 of his claim. He wished to appeal the decision and applied to extend the deadline to submit an appeal bundle. The respondent applied to strike out the appeal. The Applicant applied to get a transcript which was not available and as a result relief from sanction was granted allowing him extra time to file his appeal bundle as it was accepted that the transcript would be necessary to get a clear view of the issues in the appeal.

Syed v Shah (2020)

The Claimant served her witness statement 28 days late. She made an Application for relief from sanction, but it was refused as the delay was serious

and impacted the trial that was in August. On appeal it was held that it was a deliberate decision by the Claimant to take the risk that the Defendant would settle without taking the steps to adduce evidence to win her claim. She benefited from being able to scrutinise the Defendant's evidence and tailor her evidence accordingly. As such the appeal was refused.

Christopher Robert Gregory v HJ Haynes LTD (2020)

The Claimant brought a claim for injury after being exposed to asbestos during his employment. The Claimant was unable to identify the employer given that the company had been dissolved. It was agreed that limitation would start in 2008 when an asbestos related disease was found and limitation would expire in 2011. Limitation expired but on appeal the limitation period was disapplied as it had expired due to the excusable inability to identify the employer's insurer and although there was delay in issuing proceedings, the delay was not serious enough to the deny the Claimant the opportunity to pursue his claim.

Brian John Morrow v Shrewsbury Rugby Union Football Club LTD (2020)

At trial the Claimant was found to have exaggerated his claim for future loss of earnings, although he was not found fundamentally dishonest. The Claimant applied for his costs of the claim. The basic principles did apply as the Claimant was successful and the Claimant beat the Defendants part 36 offer. However, given the Claimant's conduct the costs were reduced by 15% due to his exaggeration.

Core – Export Spa & Ors v Yang Marine Transportation Corp & Anor (2020)

The Second Defendant applied for relief from sanction to have set aside a default Judgement and relief from sanctions. The Second Defendant failed to file an acknowledgement of service and while there was a reasonable prospect of success it was outweighed by the history of delay and inaction. Relief was therefore not granted.

Neil Carroll v Michael Taylor & Michael Doyle & Emms Taxis & QBE Insurance 2020 EWCH 153

The Claimant had been out drinking with friends. The Defendant taxi driver sought to take advantage of his intoxicated state and drove him to a cash point and stole his debit card and pin. The Claimant was abandoned at the cash point. He decided to walk home and in doing so fell off a motorway bridge. He sued the taxi driver and the taxi driver's insurer. The injuries had not arisen from the use of the taxi and there was no causal link to sue the insurer.

Michael Faulkner v Secretary of State for Business, Energy & Industrial Strategy 2020 EWCH 296

The Claimant brought a personal injury claim alleging that he had sustained injuries whilst at work. Shortly before trial the Claimant filed a notice of discontinuance. The Defendant sought to have the discontinuance set aside so that they could seek to disapply Qualified One-Way Cost Shifting. The Court refused the application and awarded the Claimant the costs of resisting it. The Defendant sought to have the money set off against monies awarded earlier in proceedings. Each case had to be decided on its own facts and the Judge had discretion. The Judge decided here that it would not allow the Defendant to set off any sum against costs award made in favour of the Claimant.

Alan Ryan v Karl Hackett 2020 EWCH 288

The Claimant submitted a claim in accordance with the Pre-Action Protocol for Low Value Personal Injury. Liability was admitted. It was thought that the injuries would resolve over the course of a year but it transpired that it would take much longer. The Claimant requested an interim payment. The Claimant erroneously thought that the interim payment had not been made giving rise to the claim exiting the Portal and Part 7 proceedings being made. A part 36 offer was subsequently accepted. With regards to the costs, the Defendant argued that fixed costs should apply as the claim should have remained in the portal. The Judge declined to award fixed costs stating that the claim became more valuable and would have inevitably left the portal at some point. The Defendant appealed the decision but the Appeal was dismissed.

Credit Capital Corp Ltd v Watson 2020

The Defendant Counsel provided dates of availability for the forthcoming trial. The trial was listed within the unavailable period. An adjournment was sought in the circumstances. Ordinarily this was not a good enough reason to adjourn a trial but on these particular facts the Court granted the Application.

Simon Kelly v Raymond Kelly 2020

The Claimant submitted that upon the Defendant accepting their part 36 offer, they should be limited to 50% costs on the standard basis as he unreasonably refused to enter mediation and had been dishonest. It was held that the Defendant was entitled to costs on an indemnity basis after the expiry of a Part 36, and on the facts of this particular case, his failure to mediate was understandable.

Sagal Adam Warsama v London Fire Brigade 2020 EWCH 718

The Claimant suffered serious injury when the wing mirror of a fire engine struck her on a busy London road. The Claimant was intoxicated and had called the police as a result of a separate incident. When she heard the siren, she stepped out in to the road. The driver of the fire engine was on an emergency call out and stated as she did not believe that Claimant was going to enter into the road, and therefore he did not make an emergency stop. It was held at trial that the driver of a fire engine should have travelled at a more reasonable speed in which case he would have had time to brake.

However, 50% contributory negligence was found against the Claimant whereby she had placed herself in a dangerous position.

Blackfriars Ltd (in liquidation) v Anthony Nygate & Sarah Megan Rayment 2020 EWCH 845

The guidance and legislation is that where possible as many hearings as possible should take place during the COVID 19 pandemic. Therefore, an Application to adjourn a trial due to take place in June was refused. The parties were ordered to explore the technology needed for a remote trial.

Sharaz Srfaraz v Shakeeb Akhtar & ERS Syndicate 2020 EWCH 782

The Claimant and the Defendant and another man got into the Claimant's car after an evening of drinking. The Defendant took the keys from the Claimant's pocket and drove. The Claimant was in the front passenger seat. The car crashed and the Claimant brought a claim for catastrophic head injuries against the insured under S151 Road Traffic Act on the basis that the insurer had a contingent liability to satisfy any Judgement that might be obtained against the Defendant. The insured argued the liability was excluded on the basis that he had allowed himself to be a passenger in the car when he knew the Defendant to be drunk. There was also an argument that the vehicle had been taken unlawfully. It was held that the claim could be brought against the insurer as the car was not unlawfully taken until it was driven off and there was no realistic opportunity thereafter for the Claimant to alight. On the facts he had not allowed himself to be carried in the car.

Tess Garraway v Holland & Barrett Ltd 2020

The Claimant brought a claim for personal injuries against the Defendant retailer. As she was leaving the shop, she struck her head on a metal shutter in the doorway. The shutter had been partly lowered just ahead of closing time. Liability was admitted. The Claimant claimed to have suffered a number of injuries as a result of the accident. They included concussion, the loss of a tooth and ongoing back pain.

The issues were contributory negligence and causation/the assessment of general damages. The appropriate deduction for contributory negligence was 25%. The Claimant would have had a very clear view of the shutter. Further, it would have made a considerable noise as it was lowered and the Claimant should have been aware that it had been lowered. However, there was considerable discrepancy in her account and she was found to be fundamentally dishonest

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