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## FOIL Update 19th March 2024



### **Legal Analysis of Hadley v Przybylo: Recoverability of Solicitors' Costs for Case Management Meetings**

In the recent judgement of **Hadley v Przybylo [2024] EWCA Civ 250**, the Court of Appeal deliberated on the recoverability of solicitors' costs associated with attending rehabilitation case management meetings within the ambit of inter-partes costs. The case involved a claimant who suffered catastrophic injuries in a road traffic collision, leading to the implementation of a comprehensive rehabilitation package. Solicitors representing both the claimant and the defendant attended case management meetings throughout the litigation process.

Master McCloud presided over a Costs and Case Management Conference, during which the recoverability of solicitors' costs for attending case management meetings was disputed. The claimant's solicitors sought to include both incurred and future estimated costs for such attendance in the 'Issues / Statements of Case' phase. However, the defendant challenged the recoverability of these costs, arguing that they were "inherently non-progressive" and did not contribute to the advancement of the litigation.

The Claimant's claimed costs for attendance at case management meetings in excess of £130,000 and this was seen as excessive by the court.

In addressing the issue, the Court of Appeal reaffirmed the established test for determining the recoverability of inter-partes costs, as articulated in **In re Gibson's Settlement Trusts [1981] Ch 179 at 184F-G**. The test mandates that costs must (i) provide utility and service in the action, (ii) be relevant to an issue, and (iii) be attributed to the defendant's conduct. Coulson LJ summarised these criteria as utility, relevance, and attributability.

The Court held that attendance at case management meetings satisfied this test, thereby rendering the costs associated with such attendance recoverable in principle. Nevertheless, the Court cautioned against an expectation that the costs of every case management meeting would be recoverable. It emphasized the importance of solicitors maintaining oversight of rehabilitation plans to avoid potential reductions in claim awards due to poor-quality or inadequate rehabilitation efforts, as established in *Loughlin v Singh & Ors* [2013] EWHC 1641.

The Court emphasised that the recoverability of costs for attending case management meetings hinges on their utility and relevance to the case's progression, as well as their direct connection to the claimant's injury. Additionally, the Court stressed the necessity for such costs to be reasonable and proportionate to the amount at stake and the issues in the case.

While the costs of attending case management meetings are recoverable in principle, their recoverability is contingent upon satisfying the established criteria of utility, relevance, and attributability. Solicitors must exercise diligence in assessing the necessity of attendance at each meeting and ensure that costs remain reasonable and proportionate to the circumstances of the case.

The *Thomas Hadley v Mateusz Przybylo* case, with its judicial observations on the Rehabilitation Code and Serious Injury Guide, brings to light critical insights into personal injury law.

Thomas Hadley, represented by his litigation friend Laura McCarry, initiated legal action against Mateusz Przybylo.

The personal injury case was adjudicated in the Court of Appeal with Hadley's status as a protected party necessitating McCarry's representation due to his incapacity.

Notably, judicial observations centred on the Rehabilitation Code and Serious Injury Guide, both of which have been influenced by FOIL:

1. The Rehabilitation Code:

The court assessed the parties' adherence to the Rehabilitation Code's principles, emphasising early intervention and rehabilitation to aid injured parties' recovery.

2. Serious Injury Guide:

Observations scrutinised the Serious Injury Guide's criteria for categorising injuries as "serious," impacting the determination of damages and compensation.

### **FOIL's Contribution:**

FOIL's influence on both instruments underscores its pivotal role in shaping legal frameworks and best practices within the insurance sector:

1. Rehabilitation Code: FOIL's input likely contributed to refining the Rehabilitation Code's guidelines, promoting fair and timely access to rehabilitation services for injured parties.
2. Serious Injury Guide: FOIL's expertise informed the development of the Serious Injury Guide, ensuring consistency and fairness in assessing the severity of injuries and corresponding compensation.

**Implications:**

The case's judicial observations and FOIL's contributions carry significant implications for personal injury litigation:

- 1 the need for proportionality of legal advisor engagement in the case management process.
- 2 the need for case management to be a clinically lead process.
- 3 the need for collaboration and communication between the parties' advisors.

The challenges on points one and two can be minimised if there is better communication about the need for legal advisor involvement in the case management process. Both the rehabilitation code and Serious Injury Guide emphasise the need for collaboration and greater transparency between the parties.

**Conclusion:**

The Thomas Hadley v Mateusz Przybylo case, with its judicial remarks on the Rehabilitation Code and Serious Injury Guide, underscores the importance of robust legal frameworks and industry collaboration in personal injury litigation.

FOIL's contribution to these instruments exemplifies its commitment to advancing legal standards and promoting access to justice for injured parties.

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