

The insider

It's all go in the world of civil litigation, writes **Dominic Regan**. But what happens when there's no one at fault to foot the bill?



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Nothing stands still in the world of civil litigation.

The elevation last month of Sir Peter Fraser to the Court of Appeal was well deserved and long overdue. His conduct of the notorious *Bates and others v Post Office Ltd* [2019] civil litigation was brilliant and I think I suggested back then that it alone warranted a place in the Court of Appeal. Fraser LJ is known to his colleagues as 'Iron Man' on account of his appetite for triathlons and endurance sports.

The Metropolitan Police has reported it is 'investigating potential fraud offences' arising out of the Post Office prosecutions in respect of 'monies recovered from subpostmasters as a result of prosecutions or civil actions'. The sublime Tom Little KC of Deka Chambers has oversight of this exercise.

The new wave of King's Counsel has been unveiled. I naively thought that elevation moved the appointee into a new world of milk, honey and money. Not so. On the contrary, a disenchanting silk told me that their professional indemnity insurance premium shot up, as did their expected contribution to the overheads of chambers. Their caring clerk explained that it was not on to immediately hike what could be charged to clients and, of course, a new leader had entered the premier league of advocates, where competition was intense. If you are lucky enough to be appointed, you should grab a

pair of 80 denier tights as quickly as you can.

In February, the Supreme Court is to hear three one-day-long appeals, each of which is modest in value, but all of which have significant ramifications for the masses.

On 6 February, the question of flight delay compensation is to be considered in *Lipton and another v BA City Flyer* [2021] EWCA Civ 454. A flight was cancelled at short notice because the pilot fell ill. As a result, the claimants experienced a delay of 2 hours and 36 minutes. Compensation is payable unless the delay was attributable to 'extraordinary circumstances'. Did this scenario satisfy that test, given that the airline could never have avoided what happened?

Exactly a fortnight later, *Hassam and another v Rabot and another* [2023] EWCA Civ 19 will be heard. It is of importance to those who still deal with lower-value road traffic injury claims. The Whiplash Reforms saw a massive devaluation in general damages which are fixed by a tariff. What is the correct approach to damages where there is an injury outside the scope of 'whiplash'? The majority of the Court of Appeal thought that one would award a further amount based upon mainstream common law principles. The Master of the Rolls dissented and agreed with the insurer, which claimed the starting point to be that all injuries are to be treated as captured by the tariff with, at best, only a modest additional award for pain and suffering exclusively attributable to non-whiplash damage.

On 27 February, Lady Simler will be on the panel that hears *Davies v Bridgend County Borough Council* [2023] EWCA Civ 80. It concerns liability for Japanese knotweed, which tangentially arose in the recent case of *Churchill v Merthyr Tydfil County Borough Council* [2023] EWCA Civ 1416. Knotweed claims are a comparatively new source of litigation, alongside cavity wall insulation disputes. A few firms have piled in, hoping to exploit a new source of income. It will be intriguing to see what the Supreme Court generally has to say.

I anticipate that by February we will see the promised new Rules intended to address some teething problems within the new intermediate track. Brought into being last October, it is no surprise that issues have emerged. Realistically, we could be into 2026 before the ship has steadied. I do not expect the measures to say a word about banding and allocation to track where jungle warfare is probable in these early days.

The lofty promise of fixed recoverable costs for unissued clinical negligence claims that settle for up to £25,000 will go unfulfilled. To announce is one thing, to deliver is quite another. The certainty of a general election before this year is out further hinders any effort to make sweeping rule changes.

Claimant solicitors pursue cases where they have a reasonable expectation of making a recovery on behalf of their client. Our compensation system is based upon fault. Sadly, there are countless incidents where an individual suffers injury that could never be attributed to the failings of another. The victim has needs identical to those who are eligible for damages but has no one to foot the bill. The Frenkel Topping Charitable Foundation was founded in 2015 to help individuals who have suffered life-changing injuries through no fault of anyone. Head and spinal injuries can have dire, life-long consequences. Group CEO Richard Fraser has a brother who at the age of 18 was paralysed from the waist down. If you have a client who might benefit from support, contact the charitable manager, Norma Fraser, at enquiries@frenkeltopping.co.uk.

The legal profession has given massive support to the charity and at the end of last year, No5 Chambers, Kings Chambers and Deka Chambers all hosted training events and provided speakers to raise funds for the charity. Each event was sold out, thanks to the support of lawyers. **NLJ**

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