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*(subject to editorial corrections)**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

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QUEEN'S BENCH DIVISION

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(1) APPEAL FROM THE COUNTY COURT DIVISION OF ARMAGH AND SOUTH DOWN

No. 14/076401/01/A01

BETWEEN:

ANN KERR

Plaintiff/Appellant;

-v-

CONOR TOAL

Defendant/Respondent.

(2) APPEAL FROM THE COUNTY COURT DIVISION OF CRAIGAVON

No. 14/063755/01/A01

BETWEEN:

DECLAN GORDON

Plaintiff/Appellant;

-v-

VERA BEST AND IAIN BEST

Defendants/Respondents.

(3) APPEAL FROM THE COUNTY COURT DIVISION OF ARMAGH AND SOUTH DOWN

No. 14/035226/A01

BETWEEN:

MARGARET GREGORY

Plaintiff/Respondent;

-v-

OLIVIA CASHEL O'FARRELL

Defendant/Applicant.

(4) APPEAL FROM THE COUNTY COURT DIVISION OF ARMAGH AND SOUTH DOWN

No. 14/062234/02/A01

BETWEEN:

JOHN CHADWICK

Plaintiff/Appellant;

-v-

PAWEL KACZOR

Defendant/Respondent.

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BURGESS J

Background

[1] This ruling addresses a number of issues in four separate appeals arising in damage only cases in respect of claims for the hire of replacement vehicles under credit hire agreements from Crash Services.

[2] Three of the appeals relate to orders made by the District Judge or Deputy District Judge in relation to the serving of interrogatories and/or orders for the discovery of documents: and in the fourth case where an order is sought for a Reply to Notice for Further and Better Particulars served after the decision of the District Judge which is now under appeal.

[3] I am grateful to all counsel for their written submissions and for their helpful representations made before me in court. If I do not refer to every aspect raised by them it is not because they have not been read and carefully considered.

[4] I believe it is fair to say that there are few other issues that have given rise to as many disputes and court rulings as those around the issue of car hire after accidents, including the cost, the duration of hire, the need for hire and the necessity to engage in such credit arrangements. Notwithstanding that history, the court again has been asked both to give guidance generally, and as to a practical approach to the issue of "impecuniosity", from which guidance different approaches may be adopted by plaintiffs' legal representatives and defendant insurance companies.

[5] Each side calls in aid the general principles and philosophy of the District Court and the County Court – of a speedy and cost effective process –engaging with what they say they are entitled to under the Rules only when necessary. Unfortunately, if these cases reflect that aspiration on the part of each party, they seem to look to the other to engage with it while at times forgetting it is a mutual approach.

[6] Inevitably there will be a degree of facts specificity which would prevent this court laying down overarching procedures and approaches for every case, and the court is also mindful that it is neither a rule making body, nor am I empowered to issue Practice Directions. Nevertheless I have decided that there are certain approaches which should inform my decisions in these cases, and in setting those out hopefully allow a practical approach to be considered and taken.

[7] One last general introductory remark. During argument each side pointed to the question of costs and the need to save costs. It is worth remembering that while such costs more often than not eventually are borne by the Legal Aid Fund and/or the insurance business, in reality it falls to be met by the general public through taxation or insurance premiums. It is therefore incumbent on all parties when deciding what to ask for or what to give that they should not simply pay lip service to those principles of speed and cost saving.

Principles

[8] I will first set out the general principles guiding the court in relation to all of these matters before the court, and generally as they affect the issues raised in each of them. The court has the advantage of the decision in *Zurich Insurance Plc v Sameer Umerji* [2014] EWCA Civ. 357. The case itself is not on all fours with any of the matters before this court, but in dealing with the issues raised in it, the court set out principles which are relevant. At paragraph [9] stated:

> "[9] There is now a plethora of cases both reported and unreported, about the recoverability of credit hire

charges in circumstances such as these. I need not review them in any detail. For the purpose of the issues in present appeal I need only note the following points:

(i) A claimant whose car has been damaged as a result of the defendant's negligence is entitled to recover for the cost of hiring a replacement vehicle to the extent, but only to the extent, that it was reasonable for him to incur that expenditure. If authority is needed for so basic a proposition, it can be found in the speech of Lord Hope in *Lagden v O'Connor* [2004] 1 AC 1067 at para [27] (pp. 1077-8).

(ii) The issues of reasonableness is conventionally assessed by reference to three elements labelled 'need', 'rate' and 'duration'. At the risk of spelling out the obvious, the first question is concerned with whether the claimant needed a replacement vehicle for all or any part of the period claimed for: he might, for example, have been ill or abroad. 'Rate' is concerned with whether the claimant has paid an excessive hire rate. In practice an issue about rate will generally arise in a credit hire case, and the question will be whether the claimant can recover the cost of credit hire rates – which are substantially higher, to reflect the credit element and the other services provided by the hirer – rather than straightforwardly hiring a replacement vehicle at 'basis hire rate': see (3) below. The third question is concerned was whether the period of hire was longer than necessary. In practice that means whether the claimant should reasonably have had his or her original vehicle repaired sooner or, if it was a write-off, should have bought a replacement sooner (there could in principle also be a question whether the claimant has hired an unnecessarily expensive type of car: that could be treated as an aspect of need or rate or as a separate question).

(iii) In *Lagden v O'Connor* the House of Lords (by a majority) held that where a claimant is not in a

> financial position to pay hire charges on an ordinary upfront basis – in the jargon, where he is impecunious – he should be entitled to recover credit hire rates. Both Lord Nichols and Lord Hope gave some guidance as to how to decide whether a claimant was indeed impecunious, but I can ignore that aspect for present purposes.
>
> (iv) Although *Lagden v O'Connor* was concerned with the issue of rate, the decision was avowedly based on the general principles of the law of damages. In principle, therefore, impecuniosity might also justify a higher level of award with regard to the element of duration – that is, where a claimant hires a replacement car for longer than he otherwise might because of his inability to pay promptly for repairs or to buy a replacement vehicle."

[9] It is to state the obvious that the sooner a defendant's insurance company are advised about the damage to the car, and the sooner that the insurance company inspects the car, the sooner either repairs can start or a new car acquired. Therefore there is an obligation on both parties to act expeditiously in order to minimise cost particularly in the context of "duration" of the hire. That will be a matter of fact in individual cases if there is a dispute as to duration.

[10] In a comprehensive skeleton argument on behalf of each of the plaintiffs Mr Conor Cleland BL states in his opening submission at paragraph [10] that:

> "[10] These applications by the defendants are a rehearsal of previous attempts by defendants to impose onerous obligations on plaintiffs in cases that are very small, and relatively small, value, as already adjudicated on by this honourable court in the case of *Foote v Quinn* (2010) NIQB 87 (hereinafter called '*Foote*'). As McCloskey J stated in *Foote* at paragraph [1]:-
>
> > 'The main question arising in all four cases is whether it is fair, reasonable and proportionate to subject the Plaintiff to the burden of answering on oath extensive interrogatories and/or making discovery of particular documents'."

[11] The court takes as its starting point the obligation falling on all parties who call in aid the principles of the District Court and County Court – to provide a speedy and cost effective system. The most speedy and the most cost effective system is not to get involved in court at all, an approach encouraged by the courts. That is predicated on a proper exchange and disclosure of information in order to allow proper and reasonable attempts to be made by both parties to resolve issues without the necessity of engaging in the court system. We are dealing in these four cases with the question of whether or not a plaintiff is going to claim that as a result of being impecunious he could not afford to go to the ordinary market and obtain a car. Instead, because of that impecuniosity, he required to enter into a credit hire agreement. It is accepted by the defendants that if the plaintiff was impecunious, he is entitled to enter into a credit hire agreement. The likelihood, given the relatively modest amounts in question, would be that such rates and additional costs would be accepted. On the other hand if impecuniosity is not claimed, then it is open to the defendants to raise the issues of the daily rate charged under that arrangement.

[12] The questions of need and duration will be fact specific and potentially open to argument, but in this respect I refer to the point (4) in paragraph [9] above in the judgment of Underhill LJ in *Umerji*.

[13] Addressing therefore the question of whether or not impecuniosity is an issue in the case, and adopting the approach of the McCloskey J in *Foote,* I believe a number of points can be made:

(a) The plaintiff through his solicitor is the person best placed to know whether or not he can meet the cost of hiring without engaging in a credit hire agreement. He knows his income and outgoings. During argument counsel referred to having to go back after a period of time to obtain information because this issue is raised. That is an argument which finds no favour with the court. The solicitor will know that the issue undoubtedly will arise in credit hire agreement cases, and when he takes his instructions the information to inform the above matters of income and outgoings will be easily addressed and obtained in circumstances that could never be regarded as onerous or burdensome. It will also be straightforward to obtain information as to whether there are any geographical issues that might inhibit a plaintiff in terms of hiring a car – he may live in a location where car hire is not easily available. In addition the reaction of any plaintiff will be to ascertain whether the car can be repaired, and when, or if it cannot be repaired, that he will have to consider getting a new car. It is in the plaintiff's hands to institute the process of making a claim against the defendant (and through him or her, the insurance company).

(b) I accept that it may not be possible to have all information available in respect of the hire of a car at the time of writing the opening letter.

Nevertheless it would be open to the plaintiff's legal representative to set out issues in and around need, the type of car and the position, if then known, in relation to repairs/write off. However as time progresses it will be open to the legal representative of the plaintiff to ascertain his client's financial position vis a vis the cost of hiring the car, and it should be possible in a relatively short period of time to indicate not just if the question of impecuniosity arises, but also give a brief outline of his client's income and outgoings. As to the degree of information I will refer to this below in a different context.

(c) I see nothing onerous or difficult in being able to say at the outset or at some point before proceedings if impecuniosity is being raised and the basis for it being raised. If it is, then not only is there the potential of saving time and money in the insurance company seeking reports as to base hire rates, but also the possibility of an early resolution of the case without legal proceedings at all. If the plaintiffs call in aid the processes of the District Court and the County Court, then there is a requirement for them to adopt an approach which is in keeping with that principle.

[14] Without such an approach we have a nonsensical position. The plaintiff says – "prove our rates are unreasonable (with the cost and time involved in that process) and then we will tell you if our client is impecunious". In adopting that approach it invites both legal proceedings and in those proceedings the potential request for interrogatories. Such an approach then goes on to say – "by the way we will not be giving you any relevant financial information as to the position of the plaintiff until he or she appears in court with the relevant documents" – again giving rise to the necessity of legal proceedings and the potential of adjournments and unfairness. This latter aspect of such an approach also involves legal proceedings and inherent in that an application for discovery to establish the basis of answers to questions everyone knows are going to be asked. The result is of course more costs.

[15] I have been asked as to how this particular aspect of any claim can be approached. In general terms if both parties genuinely embrace the concept of speed and cost saving, then in the opening letter as much information should be given in relation to car hire and the issue of impecuniosity, if raised, and if not then available, as quickly thereafter as possible. Insurance companies should react expeditiously on being advised of the claim to allow work to be undertaken or the issue of in terms of inspecting the car and giving guidance as to whether or not.

[16] That general approach increases the potential that proceedings will be avoided, but even if proceedings are required because of genuine differences, any points in relation to car hire will have been identified, the issues joined, and in that way the need for interrogatories and indeed for discovery is avoided.

[17] I referred earlier to the information that could be reasonably requested by a defence insurance company where the issue of impecuniosity arises. I will be able to deal with the specifics of the interrogatories and the applications for discovery under each of the cases now under consideration, but perhaps three general points could be made:

(a) It is often asked in interrogatories whether or not a plaintiff has access to the internet. Presumably that can only be on the basis that he has the capacity to make reasonable efforts to obtain rates. However the idea of a plaintiff embarking on the sort of enquiry undertaken by the defence (which in one of the cases with which we are dealing runs to 157 pages) is to make demands which would be considered totally onerous and burdensome – with or without such access. Given the relative modest amounts involved in cases such as those with which we are dealing, only a reasonable enquiry whether by internet or by ringing around would be required. Therefore as a general interrogatory I would regard it as unnecessary to raise or answer as it does not meet the test. In any case it would be open in cross-examination of the plaintiff should it reach that particular stage whether or not it is available and can inform the decision of the court as to whether reasonable steps had been taken.

(b) Interrogatories are raised in each of the cases as to whether or not the plaintiff has a credit card. Inherent in such a request is the assertion that if indeed he has such a card he should utilise it in order to be able to hire a car immediately without going to a credit hire company. The limit on any card is also sought. However there is a fundamental flaw in such a request. What is the plaintiff to do? If he or she has a credit card it would be available for a range of purposes. Any demand made on it in respect of car hire will limit the use to which a plaintiff can then use his credit, which if needed, will require him seeking it from another source – with the attendant costs involved, even assuming it would be available. If the credit card is used for car hire it is normally swiped but the actual cost is not deducted until the car is returned. What if the limit has been reached? What if the plaintiff is not in a position to meet his monthly bill in full? That would affect his credit rating. Even if a small amount is paid, which is a normal provision for most credit cards, interest will be running on the balance at a very substantial rate. Is that to be recovered?

The concept of a form of borrowing from a different source in place of one under a credit hire agreement does not bear examination and I see no reason why access to borrowing powers should be regarded as relevant to the question of a plaintiff's ability or inability to pay.

(c) Questions are asked as to whether a plaintiff has stocks and shares. Inherent in this request presumably is that they can be sold in order to generate cash in order to pay the bill. Share prices can go up and share prices can go down. Realisation of shares involves transaction costs. If having sold them, reimbursement is then made and the plaintiff decides to reinvest, transaction costs again will be incurred and a potential loss if prices have gone up. There is no indication that the defendant insurance companies would undertake to indemnify the defendant against all such costs, and even if they did it introduces a process which by its very nature will probably engage the parties in further dispute. Such interrogatories are therefore in the opinion of the court totally misplaced.

(d) Questions are asked if the plaintiff has a mortgage. While that might disclose a monthly liability, it might suggest the question is aimed at the possibility that the house is an available asset for this purpose. Is it seriously suggested that a plaintiff should go to his bank or building society for a further advance with the legal costs and borrowing costs involved in that? And if it is to reflect an outgoing, what about all the other outgoings? Such a question is misplaced.

[18] I believe the question of impecuniosity should be informed by the ability of a plaintiff to be in a financial position to meet a bill from his available cash assets and only then those cash assets that are not required for everyday living and potentially one-off bills that all of us face. Any argument that recourse should be had to other assets is misplaced and, as stated, introduces complications and potential areas of friction and dispute which everyone is seeking to avoid.

[19] Just as the plaintiff who genuinely embraces the context of speed and cost saving should make a full disclosure of his or her claim and the basis of it in relation to car hire, so insurance companies need to take a practical and reasonable approach which, for the reasons I have stated above and will state in relation to each individual case below, they singularly have failed to reflect in the cases before me.

[20] At the end of the day the court is rather tempted to suggest that all of this is common sense. If each party put themselves in the shoes of the other, and were genuinely concerned to reach a proper settlement as quickly as possible, the answers present themselves without the guidance of the court. Instead the court is tempted to believe that a siege mentality seems to have grown up for which all parties bear responsibility. It is of course open to either or both of the parties to continue down the litigation route and to make their applications with all of the arguments and costs that will involve. Where a court can intervene is through its discretion in relation to costs, and the exercise of that discretion will undoubtedly be informed by the attitude of the parties to the issues giving rise to interlocutory matters. The credit hire agreement approach is recognised by the courts as not unreasonable and

necessary given the financial situation of a plaintiff. Nevertheless it has to be approached responsibly, and if it is then there is no potential prejudice in giving information as to why it was needed, why it was needed for that length of time and why it was adopted – namely because of the financial situation of the plaintiff.

[21] I then turn to each of the individual cases which I will deal with briefly given the above strictures.

Kerr v Toal

[22] This is an appeal from the District Judge's interlocutory decision dated 14 November 2014. The plaintiff claimed for the loss and damage suffered by her as a result of a road traffic accident on 22 June 2014, namely recovering of her vehicle, repair and credit hire costs, and the cost of a replacement child's car seat. The plaintiff hired a replacement vehicle from Crash Services for ten days, at £67.29 plus VAT per day. The hire agreement and the rental invoice showed a total credit hire cost of £998.28 inclusive of VAT. The issue in the appeal is whether the plaintiff should be required to answer the defendant's notice for interrogatories served on 28 October 2014.

[23] Proceedings were issued by civil bill claiming £2,500 on 30 July 2014. The court has not been furnished with any of the correspondence leading up to the issue of those proceedings. The defendant served the Notice to Defend on 19 August 2014 together with a detailed Notice for Further and Better Particulars which included detailed questions in relation to the car that had been damaged, the damage that had been caused, and details of hire. On 1 September 2014 the plaintiff's solicitor served the reply to the Notice for Further and Better Particulars, attaching inter alia an invoice in respect of the hire costs. In turn on the same date they served a Notice for Further and Better Particulars from the defendant which included a request to deliver full and proper particulars of any defence in relation to any aspect of the plaintiff's claim for special loss. By Notice dated 3 October 2014 the defendant's legal representatives replied to that Notice for Particulars simply stating that all individual aspects of the claim together with an alternative basic hire rate calculation running to one page. This showed a daily rate of between £32.68 and £49.

[24] On 22 October the solicitors for the defendants served a Notice of Production of all documents relating to matters in question in the action.

[25] Stopping at that point there is nothing to indicate that any issue in relation to impecuniosity had been raised by the defence, nor by the plaintiff's solicitors. However on 28 October 2014 the defendant's solicitors sent Interrogatories to the plaintiff's solicitors seeking a response within 14 days and it is clear, without being specifically raised, that they were seeking information which would inform a decision in relation to impecuniosity. On 29 October 2014 the plaintiff's solicitors indicated that the Certificate of Readiness had already been lodged and that the "pleadings in this case have closed and thus interrogatories have been served out of

time". However in addition to the timing of service they gave a detailed response expressing their approach generally to the use of interrogatories which they regarded as a fishing expedition, and was wholly speculative. They concluded in their letter that for the reasons stated they would "formally object to the interrogatories .. served". Application was then made to compel replies giving rise to the decision of the learned District Judge.

[26] This is a slightly unusual case in that in the affidavit grounding the application for answers to the Interrogatories it was stated "that it would be both an unnecessary imposition in relation to costs and a pointless exercise for the defendant to obtain Basic Hire Rate evidence in instances in which the plaintiff is impecunious". However served with those papers were 157 pages seeking to identify the basic hire rate – namely the cost involved had already been incurred. The only question therefore left was whether or not the plaintiff was claiming to be impecunious, and that would have been perfectly apparent to the plaintiff's solicitors on receipt of the application and the affidavit grounding that application.

[27] The point raised in the correspondence in relation to the role of the Certificate of Readiness is misplaced. The purpose of the Certificate is to notify the office that the plaintiff is ready to proceed in the matter, and that to the best of his or her knowledge and belief there are no interlocutory matters outstanding. Of course it is not expected that a plaintiff could know of some other interlocutory matter which a defendant intends to raise or indeed any other reason why a defendant is not ready for trial. In such circumstances the Rules make provision for the defendant to apply to the court for such matters to be dealt with and a new date fixed.

[28] Therefore in this case, given the above factual background on 14 November the learned District Judge ordered that the plaintiff be required to provide answers to all of the interrogatories within seven days and ordered that the defendant be awarded the costs of the application. Following the principles I find myself differing from the view of the learned District Judge in that I regard many, if not most, of the Interrogatories do not meet the criteria for the granting of leave to serve interrogatories. Instead I would direct as follows:

(a) That within seven days of the date of this Order the plaintiff's solicitors should advise the defendant's solicitors as to whether or not the plaintiff claims impecuniosity as the reason for him entering into the credit sale agreement with Crash Services:

(b) If the answer to (a) is "no" then no further interrogatories require to be answered.

(c) If on the other hand the answer to question (a) is "yes" then the plaintiff should within 14 days of the date of this judgment serve on the defendant's solicitors the following information together with the documentation supporting same.

(i) The plaintiff's earning details for the three months up to the date of the accident, 22 June 2014:

(ii) The plaintiff's bank statements for the three month period up to the date of the accident on 22 June 2014:

(iii) Details of any savings account as at 22 June 2014:

(iv) Details of all the plaintiff's outgoings and liabilities at the date of the accident.

[29] I will hear any application in relation to costs but am minded to reserve the costs to the District Judge hearing the action.

Gordon v Best

[30] This is an appeal by the plaintiff from the District Judge dated 18 September 2014. The plaintiff claimed for loss and damage suffered by him as a result of a road traffic accident on 25 April 2014 to include vehicle repair, credit hire costs and temporary insurance costs. The plaintiff hired a replacement vehicle from Crash Services for 23 days at £198.99 plus VAT per day. The hire agreement and the rental invoice set out the plaintiff's total credit hire costs of £5,877.92 inclusive of VAT. The learned judge made an order for the delivery of specific documents set out in the defendant's application dated 29 August 2014. These included three months bank statements, three months credit card statements and details of earnings for three months prior to the accident date. The court has not been furnished with the letter of claim but by letter dated of 6 May 2014 in response to a question as to whether impecuniosity would be raised the plaintiff's solicitors replied in the following terms:

> "The plaintiff does not intend to rely on impecuniosity at this juncture."

I find no fault with this reply on the basis that so soon after the date of the accident there would have been little knowledge as to the full potential extent of liability for the hire of a car, which we now know through Crash Services was just short of some £6,000. On the basis of figures produced by the defence the hiring would still have exceeded some £3,000. However at that date the issue of impecuniosity would undoubtedly have been in the mind of the plaintiff's solicitors.

[31] By letter dated 7 August 2014 the solicitors for the defendants asked the plaintiff's solicitors to confirm in writing whether the plaintiff would make the case at the hearing of the action that he was impecunious. If he did, the plaintiff's solicitors were asked to furnish documents in support of that argument and requested information on the three matters eventually decided upon as being

required by the District Judge. On 8 August 2014 the plaintiff's solicitors replied in the same terms as in May, namely that "the plaintiff does not wish to rely upon impecuniosity at this juncture". Any reading of that reply (confirmed on 22 August 2014) would mean that the argument would still be left open. As a consequence the defendant's solicitors sought specific discovery of the three identified documents.

[32] As with the previous case it is somewhat incongruous that the application had attached to it a very substantial amount of information to establish the basic hire rate. Therefore the defendant's solicitors had already embarked on that particular task presumably on the basis that impecuniosity may not be relied upon.

[33] This is not a fishing expedition but a request for details to be provided to substantiate any such claim. It is right, as I have stated above, that the plaintiff could give answers to all of this at the hearing but it invites a hearing and argument on the point (with the costs attached) and the potential of the postponement if the learned judge hearing the action believes that in the interest of fairness the plaintiff should furnish such documents in order to allow a decision to be made. The other alternative of course is for the plaintiff to have the documents with him at the hearing, which makes any objection to producing them at this stage of no merit.

[34] Therefore the order in this case will be as follows:

(a) Within seven days of the date of this order the plaintiff's solicitors will advise the defendant's solicitors if the plaintiff intends to rely on his impecuniosity in relation to entering into the credit hire agreement:

(b) If the answer to that is "no" then no discovery requires to be made:

(c) If however the answer to question (a) is "yes" then I amend the order of the learned District Judge to exclude the requirement to serve details regarding credit card but confirm the order in relation to the other two matters, namely details of his earnings, any savings account and his bank statements for the three month period up to the date of the accident on 25 April 2014.

As with the previous case I am minded to reserve costs to the District Judge.

Margaret Gregory v Olivia Cashel O'Farrell

[35] The interlocutory issue in this matter has arisen after the decision in the District Judge's Court dated 13 June 2014. The plaintiff had claimed for loss and damage suffered by her as a result of a road traffic accident on 18 January 2014 in which she claimed credit hire costs, vehicle recovery, storage costs and the replacement of a child's car seat. The plaintiff hired a replacement vehicle from

Crash Services for 46 days at £53.48 plus VAT per day. The hire agreement and the rental invoice set out the plaintiff's total credit hire costs at £3,564.10 including VAT. In the lower court the District Judge awarded hire costs for £3,198.19 the full credit rate but with a reduction in the duration of hire. The defendant has appealed that award and five months after the hearing before the District Judge has now served a second Notice for Further and Better Particulars. The issue is whether this court should require the plaintiff to provide replies to that Notice.

[36] The civil bill was issued in this matter on 2 April 2014. The defendant served a Notice for Further and Better Particulars on 16 April 2014 but none of the questions addressed the potential basis of an argument of impecuniosity. Amongst the papers was a witness statement on behalf of the defendant from a Mr B A J Simpson dated 28 May 2014 purporting to give evidence as regards the basic higher rate. During the course of the hearing the plaintiff gave evidence and gave details of her earnings and benefits - both in terms of child benefit and tax credits. Questions were asked as to her bank account (which appears to have been in overdraft) and whether she held a credit card (which she did, with a limit of £900).

[37] The second Notice for Further and Better Particulars now seeks details of wages and the plaintiff's employers for a period of one year prior to the date of the incident: details of income and employers from the date of the incident to the date of the answering of the Notice now served: details of any State benefits received including child benefit and tax credits: details of credit cards: and details of any savings account.

[38] The time to assess whether a plaintiff is able to discharge any account or undertake the liability for that account is the date of the accident and in the period shortly thereafter. That is when they would be faced with the question as to whether it could be paid by them. I see no role for details of income in the year prior to the incident and regard that as more than a fishing exercise, and a fishing exercise for something that will have no relevance. As to the request for details since the date of the incident, what she is earning in January or February 2015 is irrelevant as to her ability at the date of the accident and the short time thereafter to assess whether or not she could afford to hire a car from her means. All other matters were the subject of evidence given by her. One suspects that an application may well be made in respect of discovery in relation to wages and any benefits and the plaintiff's solicitor should perhaps have regard to that.

[39] In all of the circumstances I find no merit in the requirement for a Notice for Further and Better Particulars of Evidence that has already been the subject of direct examination, cross-examination and assessment by the learned District Judge. The order of the court therefore is that the application for replies is refused. Costs will be award to the plaintiff/respondent.

John Chadwick v Pawel Kaczor

[40] This is an appeal from an interlocutory decision of the learned District Judge on 14 November 2014. The plaintiff claimed loss and damage suffered by him as a result of a road traffic accident on 15 April 2014, in respect of vehicle repair and credit hire costs and also vehicle recovery and storage costs. The plaintiff hired a replacement vehicle from Crash Services for 30 days at £56.84 plus VAT per day. The hire agreement and rental invoice set out the plaintiff's total credit hire costs of £2,376.24 inclusive of VAT. The appeal is whether or not the plaintiff should be required to answer the defendant's notice for interrogatories served on 24 October 2014.

[41] The civil bill was issued on 16 June 2014. The court has not been supplied with any inter partes correspondence prior to that date. On 22 July 2014 a Notice for Further and Better Particulars was served seeking a range of details, but as in other cases without any specific questions seeking information which would inform whether the plaintiff was impecunious at the time of the accident. The plaintiff replied to the Notice of Further Particulars on 31 July 2014 and on the same date served a Notice for Further and Better Particulars on the defendant asking for details of any defence to claim for special loss. On 29 August 2014 the defendant's solicitors replied stating that all of the headings were in dispute and attached a report from their own engineers regarding vehicle repairs, but no other document in relation to vehicle hire charges. At that date therefore there was nothing to indicate that the defendant had enquired if the plaintiff was claiming to be impecunious so as to apply for a credit car hire. A list of Interrogatories was sent on 24 October 2014 and on 6 November 2014 a reply was sent indicating that the pleadings were closed, the Certificate of Readiness had been lodged on 14 October 2014 and no answers would be given to the enquiries. This was on the same basis as the first case referred to above.

[42] No information has been given as to the basis of the learned District Judge's decision that the plaintiff was obliged to answer all of the Interrogatories contained in the Notice. This was an exhaustive list of interrogatories in line with that served in the previous case of Kerr v Toal.

[43] For the same reasons I have given in that case the order in respect of this case will be that set out at paragraph [34].

I am minded to make the same order as to costs.

Conclusion

[44] The court reiterates its view that over and above the rights of parties afforded to them under the Rules of Court every effort should be made to achieve an early agreement when dealing with commercial matters such as car hire and damage to property. To achieve that end there has to be a free flow of information and a practical engagement between all parties. It may be that at some stage the County Court Rules Committee may wish to visit this matter with a view to a change in the

Rules. As I have indicated in the four cases with which I am dealing there was a significant failure on all parties either to ask the right questions or give the right information, and to do so in a timeous manner. While the court has of course the ultimate right to visit the result of such failures in the costs that it awards, it would encourage parties to avoid those costs in the interests of their clients and the public at large. For that reason the procedures and approach set out above represent this court's view as to how that could be best achieved and which, if pursued in a bona fide manner, could save an enormous amount of time, including court time.