CIVIL PROCEDURE NEWS

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In Brief

Cases

Adare Finance DAC v Yellowstone Capital Management SA [2021] EWHC 2406 (Comm), 26 July 2021, unrep. (Master Dagnall)

Pt 71 examination – whether in public or private

CPR r.71.2(1). The court considered the question whether an examination of a judgment debtor under CPR Pt 71 to aid enforcement of the debt was a "*hearing*" for the purposes of CPR rr.39.1 and 39.2. If it was a hearing to which r.39.2 applied ought it to be held in public or private? If it was not, then the question was whether it ought to be held in public or private by reference to the court's inherent jurisdiction read consistently with the requirements of art.6 of the European Convention on Human Rights. It was noted that the Civil Procedure Rule Committee was considering the issue. **Held**, a Pt 71 examination was not a hearing for the purposes of CPR rr.39.1 and 39.2. A hearing was an event where a judge made either an interim or final decision. A Pt 71 examination did not involve a judge making a decision. Its purpose was to elicit information: ***Slade v Abbhi*** (2020) considered and not followed (at [39]). It was possible, in theory, that part of a Pt 71 examination could become a "*miniature hearing*" in so far as a judge had to make a decision during it (at [40]). As such CPR r.39.2 did not apply to a Pt 71 examination. However, the general principle of open justice applied to the hearing, as did the derogations from it if they were justified on the facts: ***Practice Guidance (HC: Interim Non-Disclosure Orders)*** [2012] 1 W.L.R. 1003 considered. As the Master put it:

> "*[69] ... it seems to me that the principles of open justice do apply and that the general rule should be that part 71 examinations before a master or other judge should be conducted in public, in particular for the following reasons. Firstly, the part 71 examination is part of the work of the courts. The fact that it is being carried out in front of a judge emphasises this, although at first sight it does not seem to me that it makes very much difference whether it is before a judge or a court officer, at least for these purposes. It is part of the work of the court. It is a coercive requirement upon the judgment debtor to provide information and it seems to me that, at first sight from the authorities which I have cited, it is an essential part of the public interest that the public should be able to see what the court is actually doing in terms of continuing the proceedings and dealing with matters between the parties and, moreover, doing so on a coercive basis ...*"

In the alternative, if the hearing did fall under CPR r.39.2 there was no proper basis to hold it in private (at [86]). ***Slade v Abbhi*** [2020] EWHC 2181 (Comm), unrep., ref'd to. (See ***Civil Procedure 2021*** Vol.1 at para.71.6.)

Zavarco Plc v Nasir [2021] EWCA Civ 1217, 5 August 2021, unrep. (Henderson and Warby LJ, Sir David Richards)

Doctrine of merger – declaratory judgments

CPR r.40.20. In a dispute concerning the recovery of a significant sum of money arising from a shareholder dispute the question arose whether the doctrine of merger applied to declaratory judgments. At first instance, Birss J held that, in principle, the doctrine of merger could apply to a declaratory judgment where the declaratory relief is the sole remedy granted (***Civil Procedure News*** No.6 of 2021). In dismissing an appeal from that judgment the Court of Appeal clarified the position regarding the doctrine and declaratory judgments. First, it noted, per Arden LJ in ***Clark v In Focus Asset Management & Tax Solutions Ltd*** (2014), that:

> "*[24] ...*
>
> *[5] Merger explains what happens to a cause of action when a court or tribunal gives judgment. If a court or tribunal gives judgment on a cause of action, it is extinguished. The claimant, if successful, is then able to enforce the judgment, but only the judgment. The effect of merger is that a claimant cannot bring a second set of proceedings to enforce his cause of action even if the first tribunal awarded him less than he was entitled to ..., a single cause of action cannot be split into two causes of action.*"

A cause of action simply referred to "*the various categories of factual situations which entitle[d] one person to obtain from the court a remedy against another*": see in ***Letang v Cooper*** (1965) at 242. While there was no question now of abolishing the doctrine of merger, it was no longer as important a means to control abuse of process. It was not, however, properly capable of extension to new situations now:

> "*[27] The doctrine of merger is a rule of substantive law that is strictly applied. It does not involve the exercise of any discretion by the court. At a time when the means available to the courts to control abusive litigation were significantly*

less than they have since become, merger played an important role ... there is now an extensive range of tools available to control the abuse of the court's process. I cannot think of any circumstances in which those tools would not be sufficient to prevent abuse, even if merger ceased to exist. There is, of course, no question of abolishing merger, but there is no good reason for widening its scope beyond its established bounds ..."

The Court of Appeal acknowledged that the "*scope and limits*" of the doctrine were difficult to identify from the authorities (at [29]). It was, however, clear:

"*that merger applies where an obligation under the cause of action is embodied in, and replaced by, a final order of the court*" (at [31]).

It went on to approve the principle that the doctrine did not apply at all to declaratory judgments:

"[37] A declaration is a quite different remedy from judgment for a debt or damages. It makes sense to speak of a merger of a claim for a debt or damages into a judgment for the payment of a specified sum as debt or damages, so creating 'an obligation of a higher nature'. The lesser right is merged into the higher. The same simply cannot be said of a purely declaratory judgment, which itself imposes no obligation but only confirms the obligation which already exists. As Birss J aptly put it, 'I do not see how a declaration which declares to exist the right which the claimant already had before judgment was given, could be said to extinguish that pre-existing right. It does the opposite.'

[38] It has been stated in all editions of Spencer Bower that the doctrine of merger does not apply to a declaration: see the current edition at para 20.01 and the 1st edition at para 304. No authority is cited for that proposition, but none can be when, so far as known, it has never previously been contended that it does apply to a declaration. It is, however, consistent with the underlying rationale of the doctrine. Moreover, it is hard, indeed I would say impossible, to think of a sound reason why a declaration of legal right or obligation should automatically bar a subsequent claim for enforceable relief.

[39] There is a further consideration as regards declarations. As the authorities demonstrate, merger (or former recovery) is a very longstanding doctrine of the common law. Declaratory relief was an equitable remedy, and declarations as a sole remedy were virtually unknown until the mid-nineteenth century: see Zamir & Woolf: The Declaratory Judgment (4th ed. 2011) para 2-01 et seq. It is clear from judgments given in the early years of the nineteenth century that the doctrine of merger was by then fully formed and well understood. In view of the growth in other means to prevent abuse of the court's process, there is no case for expanding the scope of the rigid doctrine of merger or for applying it to a remedy that was never in the contemplation of the judges who developed it.

[40] On any footing, in my view, Birss J was right to hold that the declaration made in this case did not prevent Zavarco from bringing its second action to recover judgment for the unpaid calls. He considered and rejected the argument that any abuse of process, or unfairness to Mr Nasir, was involved in bringing the second action seeking judgment for payment of €36 million, having previously obtained declaratory relief. In circumstances where Zavarco was intending to operate the forfeiture mechanism in its articles of association and Mr Nasir was contending that his shares were fully paid up, it made good sense to resolve that issue by proceedings for a declaration without necessarily at the same time seeking judgment for the unpaid calls. If Zavarco had been able to sell the shares after forfeiture, it would not have been entitled to judgment for the full amount but only for the amount, if any, remaining after giving credit for the net sale proceeds.

[41] On one matter, I respectfully disagree with Birss J. While he considered that the application of merger to declarations would depend on the terms of the declaration, it is my view that the basis and development of the doctrine shows that it has no application at all to declarations. Of course, depending on the circumstances of the case, a claimant who first seeks only declaratory relief may be precluded, by the other principles designed to prevent abuse, from bringing further proceedings."

King v Hoare 153 E.R. 206; (1844) 13 M. & W. 494, Exq, ***Kendall v Hamilton*** (1879) 4 App Cas. 504, HL, ***Letang v Cooper*** [1965] 1 Q.B. 232, CA, ***Director-General of Fair Trading v First National Bank Plc*** [2001] UKHL 52; [2002] 1 AC 481, ***Clark v In Focus Asset Management & Tax Solutions Ltd*** [2014] EWCA Civ 118; [2014] 1 W.L.R. 2502, ref'd to. (See ***Civil Procedure 2021*** Vol.1 at para.40.20.2.)

- **Les Ambassadeurs Club Ltd v Songbo Yu** [2021] EWCA Civ 1310, 24 August 2021, unrep. (Nicola Davies, Andrews and Birss LJJ)

Post-judgment freezing injunction – risk of dissipation

CPR r.25.1(1)(f). The appellant operates a casino. The respondent, a Chinese businessman, gambled at the casino. During 2018 he was provided with a cheque cashing facility and purchased £19 million of casino chips. The cheques were not paid. The parties reached a compromise regarding the amount due under which the respondent agreed to

pay £16.54 million in instalments. The first payment was not made when due. Consequently, under the terms of the compromise he became liable for the full amount, which was to be paid immediately. Proceedings were then issued at the end of 2018 by the appellant to seek recovery of the sums due. By December 2019, the respondent had made a number of payments and the sum due had reduced to approximately £6.54 million. Summary judgment was later obtained by the appellant. In April 2021 the appellant applied for a post-judgment freezing injunction, which was refused. The appellant appealed from that refusal on the basis that the judge had erred in determining whether there was a real risk of dissipation by the respondent of his assets. **Held**, appeal dismissed: the judge set out the appropriate test and applied it properly. In reaching its decision, the Court of Appeal explained that in assessing whether there was a real rather than fanciful risk of dissipation a comparative exercise was not to be carried out. As Andrews LJ put it:

> *"[35] Whilst I find no difficulty in accepting the proposition that 'real' in this context does mean something which is 'more than fanciful', and lawyers are used to those concepts being treated as two sides of the same coin in other contexts (such as applications for permission to appeal), there is an obvious danger that putting such a gloss on the well-established test will create an impression that the threshold is lower than it actually is. That is why I have considerable sympathy with the response of John Kimbell QC, who, when sitting as a Deputy High Court Judge in Gulf International Bank BSC v Aldwood [2020] 1 All ER (Comm) 334 , was invited to accept that the meaning of 'real risk' could helpfully be illustrated by contrasting it with a risk which was fanciful or insignificant (referring to the Australian case of Mechold , though he was not shown that authority). He said at [173]:*
>
> > *'I am not persuaded that this is a helpful gloss in any event. I consider it is preferable to ask whether I am satisfied that I have been presented with "solid evidence" of a "real risk" of dissipation. It is, as the Court of Appeal put it in Holyoake, a "binary threshold" for the court to apply in each case.'*
>
> *[36] Mr Olliff-Cooper submitted that he was wrong to take that approach, but I respectfully disagree. I share Mr Kimbell QC's reservations. The focus should be on whether, on the facts and circumstances of the particular case, the evidence adduced before the court objectively demonstrates a risk of unjustified dissipation which is sufficient in all the circumstances to make it just and convenient to grant a freezing injunction. Plainly a risk which is theoretical, fanciful or insignificant will not meet that threshold; but the judge should be addressing the question whether he or she is satisfied that the alleged risk is real, and that does not require any comparative exercise to be carried out, or the attaching of some other label to a risk which falls short of the threshold. Judges and practitioners have been addressing the test for many years without the need for such a gloss. I would not wish it to be suggested that henceforth, in every case in which a freezing order is sought, in order to avoid being criticized for making an error of law, the Judge must specifically turn his or her mind to the question whether the risk of dissipation is real 'rather than fanciful'."*

In reaching its decision the Court of Appeal also disapproved of the proposition that a different approach could be taken to determining the risk of dissipation where a freezing injunction was sought post-judgment: Leggatt J in ***Distributori Automatici Italia SpA v Holford General Trading Co Ltd*** (1985) disapproved on this point (at [18]–[19]). ***Distributori Automatici Italia SpA v Holford General Trading Co Ltd*** [1985] 1 W.L.R. 1066, QBD, ***Great Station Properties SA v UMS Holdings Ltd*** [2017] EWHC 3330 (Comm), ***Holyoake v Candy*** [2017] EWCA Civ 92; [2018] Ch. 297, ref'd to. (See ***Civil Procedure 2021*** Vol.1 at para.25.1.25.13.)

- **Su v Lakatamia Shipping Company Ltd** [2021] EWCA Civ 1355, 15 September 2021, unrep. (Arnold and Carr LJJ)

Contempt of court – credit for admission of contempt

CPR Pt 81. Judgment was obtained in 2014 for $37 million against the appellant. The judgment had not been satisfied. The appellant, who was described by the Court of Appeal as a "*serial contemnor*", had been sentenced to two-years imprisonment for 20 contempts of court for what was "*perhaps 'the most serious campaign of contempt in the English courts'*". It was the third time that he had been sentenced to imprisonment for contempt. The appellant appealed against the sentence on the basis that the judge imposed a sentence that was manifestly excessive and that he had erred

> *"in principle by adopting a starting point above two years before allowing for mitigation, alternatively that he failed to pay any or any adequate heed to the mitigation"* (at [2]).

It was argued that a starting point for assessment could never be above the statutory maximum. It was, additionally, argued that the judge erred in failing to take account of mitigating factors, such as an admission of contempt, and that the sentence was outside the range of decisions reasonably available to the judge. **Held**, appeal dismissed. The court's role on an appeal was to review the sentencing decision. It would be reluctant to interfere with it and would only do so if the judge had erred in principle, taken into account immaterial factors, failed to take into account material factors or their decision was plainly wrong (at [18]): see ***FCA v McKendrick*** (2019) at [40]. There was no basis to suggest the judge took as his starting point the maximum sentence, on the contrary:

> *"[21] ... [the judge's] final comments – that he was satisfied that Mr Su's conduct 'merited longer than 24 months' and that Mr Su was 'fortunate' that the law did not permit a greater sentence – were no more than concluding remarks. He was observing that he would have imposed a greater sentence, had he been entitled to do so. This was not a case where the Judge was impermissibly remedying perceived defects in the level of sentence available to him by refusing to award an appropriate discount; rather, he concluded that no discount was appropriate.*
>
> *[22] The Judge's substantive assessment was, in effect, that there was no material mitigation (or discount) available to Mr Su such as to justify a reduction downwards from the maximum sentence of two years. This will explain why he did not consider it necessary to identify the appropriate length of term of imprisonment before reduction - an omission which would in any event not have amounted to an error of law (see Sellers v Podstreshnyy [2019] EWCA Civ 613 at [31]).*"

Furthermore, questions of mitigation were always fact-specific. In considering mitigation:

> *"[24] I reject the submission ... that there is an absolute rule that in all cases where an admission of contempt is made, some credit must be given. Of course in many, if not most, situations some credit will be appropriate; the general rule is that it will be. There is no broad disincentive to contemnors, even the most serious, to accept their breaches. But there may be exceptional cases, such as the present, where the judge is entitled to consider in all the circumstances that credit is not appropriate.*"

The final ground of appeal, that the decision was plainly wrong, was "*hopeless*" (at [32]). ***Sellers v Podstreshnyy*** [2019] EWCA Civ 613, unrep., ***McKendrick v Financial Conduct Authority*** [2019] EWCA Civ 524; [2019] 4 W.L.R. 65, ref'd to. (See ***Civil Procedure 2021*** Vol.1 at para.81.9.)

Practice Updates

STATUTORY INSTRUMENTS

The Coronavirus Act 2020 (Residential Tenancies and Notices) (Amendment and Suspension) (England) Regulations 2021 (SI 2021/994). In force from **1 October 2021**. The Regulations suspend a number of provisions of Sch.29 to the Coronavirus Act 2020. They provide that notice periods for various tenancies are to revert to the period applicable pre-COVID-19. A power is maintained until 25 March 2022, however, to change the notice periods in case that should become necessary again due to the COVID-19 pandemic. The Regulations further replace prescribed notices applicable under ss.8, 21 and 83 of the Housing Act 1988 relating to the Secure Tenancies (Notices) Regulations 1987 (SI 1987/755) and the Assured Tenancies and Agricultural Occupancies (Forms) (England) Regulations 2015 (SI 2015/620). Transitional provisions apply where notices were served before 1 October 2021. The Regulations apply to England only.

The Coronavirus Act 2020 (Residential Tenancies: Extension of Period of Protection from Eviction) (No.3) (Wales) Regulations 2021 (SI 2021/1064) (W.251). In force from **30 September 2021**. The Regulations amend Sch.29 to the Coronavirus Act 2020. They extend the "*relevant period*" concerning the giving of notices seeking possession of residential property from 30 September 2021 to 31 December 2021. The Regulations apply to Wales only.

The Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) (No.3) Regulations 2021 (SI 2021/952) (W.217). In force from **30 September 2021**. The Regulations revoke the Business Tenancies (Extension of Protection from Forfeiture etc.) (Wales) (Coronavirus) (No.2) Regulations 2021 (SI 2021/759) (W.186). They also extend the "*relevant period*" for the purposes of s.82 of the Coronavirus Act 2020, such that re-entry or forfeiture of a relevant business tenancy for non-payment of rent cannot be enforced to 25 March 2022. The Regulations apply to Wales only.

The Court Fees (Miscellaneous Amendments) Order 2021 (SI 2021/985). In force from **30 September 2021**. Part 2 of the Order amends the Civil Proceedings Fees Order 2008 (SI 2008/1053). The Order increases a range of civil court fees to take account of inflation.

PRACTICE GUIDANCE

GUIDELINE HOURLY RATES. On 18 August 2021, Sir Geoffrey Vos MR accepted the Civil Justice Council's recommendations to increase the Guideline Hourly Rates (GHRs) (see ***Civil Procedure News*** No.8 of 2021). This is the first uprating of the GHRs since 2010. The recommendations are applicable as from **1 October 2021** and are set out in the revised and reissued *Guide to the Summary Assessment of Costs*, a copy of which is available here: *https://www.judiciary.uk/wp-content/uploads/2021/08/Guide-to-the-Summary-Assessment-of-Costs-2021-Final1.pdf* [Accessed 6 October 2021].

BUSINESS AND PROPERTY COURTS – REMOTE HEARINGS GUIDANCE. On 15 September 2021, Sir Julian Flaux C and Cockerill J (Judge in charge of the Commercial Court) and O'Farrell J (Judge in charge of the Technology and Construction Court) approved the following guidance concerning the use of remote technology in the Business & Property Courts. The Guidance is to remain in place until further notice and is reprinted below.

Business and Property Courts – Remote Hearings Guidance

Mode of hearing

- *While the mode of hearing is ultimately a judicial decision, the default position for all hearings under half a day will be for such hearings to take place remotely. The Court will consider a live hearing in such cases only if there is a particular reason why an in person hearing is more appropriate. Such hearings include:*
  - *The Chancery Division's Applications Court*
  - *The Commercial Court and Technology and Construction Court's Friday applications lists*
  - *Adjudication enforcement in the Technology and Construction Court.*
- *The approach in relation to longer application hearings and trials will be a matter for decision by a judge on the facts of each case.*
  - *Parties will be asked by the Listing Office to express a preference (supported by reasons), with the final decision as to the appropriate mode of hearing being referred to a judge.*
  - *The decision on whether to make any such direction will always be a discretionary judicial decision. The overall criterion must be the interests of justice in all the circumstances of the case. This criterion will produce a range of different answers in different cases.*
  - *Remote and hybrid hearings may cover a full menu of options, from proceedings that are fully remote and accessible live to anyone who is in possession of a link, down to proceedings to which remote access is afforded to a single participant, everyone else being in court.*

Bundles

- *For the foreseeable future the default format for bundles will be electronic bundles. Hard copy bundles should not be lodged unless they have been requested by the judge hearing the case.*
  - *Parties are reminded of the guidance online (PDF, opens in a new tab). This document sets out the Court's requirements as to default view, resolution and page numbering.*
  - *Parties are particularly reminded that text on all pages must be selectable to facilitate comments and highlights to be imposed on the text by the judge.*

In Detail

EXTENSION OF FIXED RECOVERABLE COSTS

The expansion of fixed recoverable costs has been a goal of civil justice reform since the 1990s. The introduction of such an approach was first recommended by Lord Woolf in the Final Access to Justice Report in 1996, but not acted upon when the CPR was introduced. It was identified as a desirable reform by Dyson LJ (as he then was), while he was deputy Head of Civil Justice from 2003–2006 and then reiterated after he became Master of the Rolls and Head of Civil Justice. Most significantly, the introduction of an expanded fixed recoverable costs regime formed an important part of the overall package of reforms recommended by Sir Rupert Jackson in 2009. Again though, as with Lord Woolf's recommendation 13 years earlier, nothing came of this aspect of the Jackson reforms.

In 2016, however, Sir Rupert was asked to revisit this issue. A supplemental report to his Costs Review (*Review of Civil Litigation Costs: Supplemental Report Fixed Recoverable Costs* (2017)) was published in 2017. Once again, recommendations were made to introduce a fixed recoverable costs regime. Additionally, and as part of that recommendation, a new procedural case track was to be implemented. This intermediate track was intended to apply to lower value multi-track claims, e.g. those with a value of between £25,000 and £100,000. Separately, a further review carried out by the Government examined the case for the introduction of a fixed recoverable costs regime for clinical negligence claims. The Government consulted on Sir Rupert's supplemental report in March 2019. The main focus of its consultation was:

> *"i. Extending FRC [fixed recoverable costs] to all other civil cases in the fast track, up to a value of £25,000 in damages ...;*

ii. A new process and FRC for NIHL [Noise-induced hearing loss] claims ...;

iii. Expanding the fast track to include simpler 'intermediate' cases valued between £25,000–£100,000 in damages ...;

iv. The introduction of costs budgeting in 'heavy' JRs ..."

(See Ministry of Justice, *Extending Fixed Recoverable Costs in Civil Cases: The Government Response* (September 2021) (the 2021 Response) at 12).

Since the March 2019 consultation closed in June of that year there have been no substantive developments, primarily due to the COVID-19 pandemic. On 6 September 2021, however, the Government issued its response to the responses to its 2019 consultation. As it put it (the 2021 Response at 21):

"This consultation response has been delayed by the COVID-19 pandemic, but the need to extend FRC, first proposed by Lord Woolf a quarter of a century ago, is as important and relevant now as ever."

In its response it confirmed that a fixed recoverable costs regime was to be introduced and, as importantly, kept under general review (the 2021 Response at 13). It would implement Sir Rupert's 2017 recommendations, bar the proposal to introduce a new, intermediate case track. That latter proposal had previously been rejected in its 2019 consultation. The rationale for accepting the introduction of such a costs regime was, as the Consultation Response put it, to "... *provide parties with the certainty necessary to make more informed choices throughout the litigation process*, ..." (the 2021 Response at 8). Such certainty would not only promote proportionality of costs but, importantly, access to justice (the 2021 Response at 11). Its conclusions on each of the four main questions were as follows.

Fast Track Claims

The main recommendations that were consulted on concerned FRC in the fast track. The Government have accepted that they should be implemented. As a consequence, FRC will be extended so that they apply to all civil cases up to £25,000. They will be subject to banding relating to their complexity. Four different levels of complexity will apply to six stages of proceedings, including pre-action. Counsels' fees for trial advocacy will also form a separate element to which the banding structure will apply. Specific provision will also be made to enable a 35% uplift to FRC in respect of Part 36 Offers. The uplift would apply to the stage of proceedings during which a relevant period for acceptance of the Part 36 Offer expires and for any stage thereafter.

Noise-Induced Hearing Loss (NIHL)

A new fast-track process for NIHL claims is to be introduced for claims below £25,000. Mandatory pre-action procedures will be added to the current Disease Protocol. As the Pre-action Protocols are not, and cannot be mandatory, this would seem to entail some form of primary legislation to create the vires for the Civil Procedure Rule Committee to introduce a mandatory element to them.

Intermediate Cases

FRC is to be extended, as also foreshadowed in the 2017 consultation, to claims with a value of between £25,000 and £100,000. Rather than create a new intermediate case track, in effect those claims would be brought within the fast track, albeit court fees for such claims will remain as they are currently. Exclusions from this will be established. As the Government confirmed:

"mesothelioma/asbestos, complex PI and professional negligence, actions against the police, child sexual abuse, and intellectual property will be excluded from intermediate cases ..." (2021 response at 14).

Judicial Review

In so far as "*heavy*" judicial review cases are concerned, the proposal to introduce costs budgeting was accepted.

Conclusion

It remains to be seen when the new fixed recoverable costs regime will be introduced. The most likely date would, at the present, seem to be April 2022. That should give the Ministry of Justice and the Civil Procedure Rule Committee sufficient time to finalise the regime. If, and now it seems when, it is introduced the question ought then to be asked whether, and to what extent, it could form the basis of an expansion of before-the-event (BTE) legal expenses insurance. It has often been pointed out that in jurisdictions outside England and Wales, such as Germany (which formed a model for Lord Woolf's original recommendations for the introduction of fixed recoverable costs), the predictability that such a costs regime provides is the basis on which a flourishing BTE insurance market operates. If the Government wishes to take its aim of increasing access to justice at proportionate cost, which underpins its pursuit of fixed recoverable costs, further, then it could consider how it can promote the expansion of that market.

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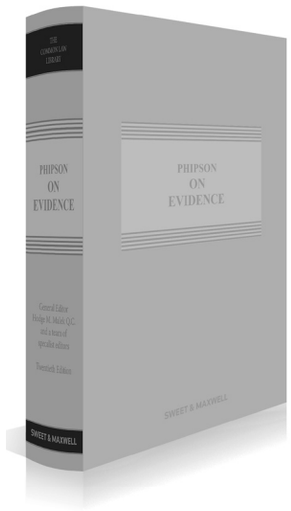

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