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## Costs

***Distinctive Care Ltd v Revenue and Customs Commissioners*** [2019] EWCA Civ 1010, [2019] All ER (D) 107 (Jun)

The appellant appealed against HMRC's decision to issue it an information notice under the Finance Act 2008, which HMRC subsequently withdrew. The Court of Appeal, Civil Division, held that HMRC had not acted unreasonably in its conduct of proceedings such as to engage the costs jurisdiction under the Tribunal Procedure (First-tier Tribunal) (Tax Chamber) Rules 2009.

## European Union

***Hakelbract and others v WTG Retail BVBA*** C-404/18, [2019] All ER (D) 121 (Jun)

Article 24 of Directive (EC) 2006/54 should be interpreted as meaning that it precluded national legislation under which, in a situation where a person who believed to be discriminated against on grounds of sex had lodged a complaint, an employee who had supported that person in that context was protected from retaliatory measures taken by the employer solely if that employee had intervened as a witness in the context of the investigation of that complaint and that that employee's witness statement satisfied formal requirements laid down by that legislation. The Court of Justice of the European Union so held in a preliminary ruling in proceedings concerning the award of compensation to the second applicant as a result of her dismissal.

## Family proceedings

***Re A Child (Threshold: Inflicted Injury and Domestic Abuse)*** [2019] EWHC 1511 (Fam), [2019] All ER (D) 110 (Jun)

In respect of a child (A), who was the subject of an interim care order, the only realistic option was for him to go to live with his father. Accordingly, the local authority's proposal for such a transition was approved. However, the Family Division ruled that the position in relation to A's sibling required further assessment of family members and of the mother which, it held, would be the subject of further consideration.

## Injunction

***Birmingham City Council v Afsar and others*** [2019] EWHC 1560 (QB), [2019] All ER (D) 119 (Jun)

The claimant local authority succeeded, to the extent indicated in the judgment, on its application for interim injunctions against the defendants, who were engaged in protests outside a primary school. The defendants, who were mainly of the Muslim faith, were opposed to pupils at the school being taught about certain matters relating to sexual behaviour, sexuality and gender. The Queen's Bench Division, in granting the injunctions in a modified form, held that the authority had demonstrated that it would probably succeed at a trial in showing a risk that, unless restrained, the defendants would cause protest or demonstration which was unlawful and actionable. It held that, on the facts, interim injunctions were appropriate.

## Insolvency

***Promontoria (Chestnut) Ltd v Bell and another*** [2019] EWHC 1581 (Ch), [2019] All ER (D) 111 (Jun)

The deputy judge had correctly concluded that the third-party charges provided by the respondents for the indebtedness of a company (of which they were directors and shareholders) to the creditor company were security in respect of the debt upon which the statutory demands had been based, within the meaning of r 6.5(4)(c) of the Insolvency Rules 1986, SI 1986/1925, interpreted in accordance with its underlying rationale and purpose. Accordingly, the Chancery Division dismissed the creditor's appeal against the deputy judge's decision to set aside the statutory demands served by the creditor against the respondents.

## Negligence

***Al-Najar (a protected party by her litigation friend) and others v Cumberland Hotel (London) Ltd*** [2019] EWHC 1593 (QB), [2019] All ER (D) 116 (Jun)

While the defendant, the Cumberland hotel, had owed the claimant guests a duty to take reasonable care to protect them at its hotel against injury caused by the criminal acts of

third parties and, notwithstanding that a criminal attack on three of the claimants at the hotel by a third party (S) had not amounted to a new intervening act which had broken the chain of causation, and had been reasonably foreseeable to the hotel, the likelihood of such an attack occurring had been extremely low. Accordingly, the Queen's Bench Division held that breach of duty had not been established and that the Cumberland hotel was not liable to the claimants for the attack that S had carried out.

## Summary judgment

***TPKN v Ministry of Defence*** [2019] EWHC 1488 (QB), [2019] All ER (D) 132 (Jun)

The claimant, who alleged that a member of the British army (TS) had raped and sexually assaulted her while she had been serving in the Royal Navy in Gibraltar, succeeded on her appeal against a master's decision: (i) granting the defendant Ministry of Defence (MOD) summary judgment on the claimant's personal injury claim, on the basis that she had no real prospect of successfully establishing that the MOD was vicariously liable to her for TS's offences; and (ii) striking out part of her amended particulars of claim, on the basis that they did not disclose any reasonable grounds for bringing a claim of misfeasance in public office. The Queen's Bench Division held that, in circumstances where the MOD had accepted that the relationship between it and TS was capable of giving rise to vicarious liability, the master had erred in failing to give appropriate weight to the combination of all the matters the claimant had relied on, which, in the court's judgment, did give rise to a real prospect of establishing vicarious liability. Further, the court ruled that the master had erred in striking out part of the claimant's amended particulars of claim where there had been no argument before him about whether, in committing the tort of misfeasance in public office.

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