
Actions Have Consequences... and Sanctions

Published 28 August 2020

At least, that was the decision of HHJ Gosnall following the Claimant's appeal against the decision of DDJ Ellington in the case of *Mason v Laing* where the claimant, in a claim for soft tissue injury, had failed to disclose the first fixed fee medical report prior to obtaining further medical reports. The automatic consequence of this was that the Claimant was precluded from relying upon or recovering the costs of anything but the first medical report.

The Claimant had been injured in a road traffic accident and the claim was pursued within the RTA protocol. At Stage 2 the Claimant uploaded to the Claims Portal three medical reports; a first report obtained via the Medco portal from a GP, an orthopaedic report and a psychological report.

Somerset Bridge; claims handling agents on behalf of the Defendant's insurers; Southern Rock Insurance Company Limited, served a Stage 2 counter offer objecting to the Claimant's reliance on any reports save the initial GP report. Somerset Bridge argued that the Claimant was in breach of RTA protocol 7.8B: that whilst the GP had recommended a further medical report from an expert in another discipline, meeting the test at 7.8B(2)(a), the second limb of the test at 7.8B(2)(b) had not been met as the first report had not been disclosed prior to obtaining further evidence. Nothing in either the CNF or the GP report elevated the claimant's claim above the definition of a soft tissue injury as provided by RTA Protocol 1.1(16A).

Part 8B proceedings were issued and the Defendant's insurers instructed DAC Beachcroft to defend the matter. DAC Beachcroft worked with Georgina Nolan of Parklane Plowden to prepare the submissions for the Stage 3 hearing. DDJ Ellington held that whilst the reports were uploaded to the Claims Portal sequentially, it did not satisfy the test that the first fixed fee report be disclosed before a further report is obtained and the prescriptive nature of the RTA protocol meant that there was no scope for judicial discretion. The decision that the orthopaedic and psychological reports could not be relied upon resulted in the Claimant's damages being assessed on the basis of the GP report alone and the Claimant was unable to recover the costs of these reports.

On appeal, the decision was upheld by HHJ Gosnall. The protocol is to be applied strictly and prescriptively with no provision for a party to seek relief from sanctions and request the court to exercise discretion under CPR 3.9.

This case is an important one for Defendants and insurers and serves as a clear warning to those who ignore the prescriptive nature of the Pre-Action Protocol. Prejudice is irrelevant once judicial discretion is removed from the equation. The Protocol is intended to ensure that there is a clear and transparent process which discourages satellite litigation and keep costs proportionate to the comparative low value of such claims.

A Claimant who does not heed the aim of the RTA Protocol and chooses not to disclose medical reports in a timely manner, and in accordance with the rules, will be limited to only relying upon the first report. Potentially, this leads to significant savings for Defendants and their insurers, both in terms of damages and costs.

For more information or advice, please contact one of our experts in our [motor injury team](#).

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