Mistake and the MOJ Portal

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Mistakes made by practitioners in the MOJ Low Value Claims Portal continues to provide a ripe source for satellite litigation.

As long ago as September 2014, the case of *Draper v Newport* went before District Judge Barker sitting at the County Court of Birkenhead. The only issue to be resolved was whether or not the common law doctrine of mistake would apply to cases in the portal. In this case, the Claimant's solicitor accidently accepted the Defendant's offer in the portal, which was not intended. District Judge Barker considered the nature of the portal and he determined that it would fundamentally undermine the portal if common law mistake was allowed to apply. In the circumstances, the Claimant was bound by the acceptance of the offer.

The issue came back before the Courts in the case of *Fitton v Ageas,* before HHJ Parker sitting in the County Court at Liverpool on 8 November 2018. In *Fitton*, the Claimant's solicitor accidently made a gross offer of £2,500 when they had intended to put forward an offer of £3,900. The offer was swiftly accepted by the Defendant.

Fitton was initially decided in favour of the Claimant by the Deputy District Judge who found that there was no settlement because there was no meeting of the minds. HHJ Parker disagreed. The Judge was concerned that applying the doctrine of mistake would likely open up the risk of disproportionate satellite litigation and have a real risk of undermining the certainty, speed and cost of which the portal was designed to provide. HHJ Parker did go on to say that whilst the decision might lead to *"rough justice"* the overall benefits of the system would far outweigh the negatives.

In June 2020 District Judge Johnson sitting at the County Court at Liverpool was asked to consider the issue in the consolidated proceedings of *Zommers v Litham* and *Lis v Rogers*. In *Zommers*, the Claimant intended to put forward an offer of £23,519 at Stage 2, but accidently recorded an offer in line with Ageas' previous offer of £12,758. In *Lis*, the Claimant's solicitor put forward an offer of £1,000 when they had intended to seek up to £10,000.

In both cases, the Claimants argued that the doctrine of mistake was applicable to settlements reached in the portal and that by reason of the unilateral mistakes, any settlements were voidable by Claimants. DJ Johnson disagreed and noted that the matter had been before the Court on previous occasions and that Judges in the County Court had agreed with her, that the portal was a self-contained or freestanding code and that previous judicial decisions had refused to import common law contractual principles into it. The Judge therefore bound the Claimants in both cases, by their mistake.

However, in contrast, His Honour Judge Davey, sitting at the County Court of Bradford, in the case of *Harris v Browne*, took a more lenient approach.. HHJ Davey was hearing an appeal on the matter from the earlier decision of District Judge Hickinbottom. In the case of *Harris*, a third offer at Stage 2 was put forward by the Claimant in which accumulative heads of loss claimed a total of £8,395 but the global offer box showed only £6,115. The global figure was accepted by the Defendant. The Claimant's solicitor argued at the first hearing that she had been unable to change the figure in the global offer box and in an email had explained this to the Defendant. The Claimant argued, and DJ Hickinbottom accepted, that there had been a unilateral mistake in the formation of the settlement agreement and so that, if the common law principles applied, it was void. The Judge however ruled, that as the RTA protocol and the portal were a standalone statutory creation which was "rough and ready", that the settlement should be upheld.

HHJ Davey disagreed. On granting the appeal, he stated that nowhere within the original ruling of DJ Hickinbottom was there any reference to the overriding objective. In his Judgement, on the facts of the case, the overriding objective determined that to bind the Claimant to the lower figure would be unjust.

It is possible to distinguish *Harris* on the basis that the Claimant's Solicitor sent an email to the Defendant with a breakdown of the offer and informed them of the mistake. The Defendant was therefore aware of the mistake before accepting the offer. The Defendant sought permission from the Court of Appeal to pursue an appeal against the findings of HHJ Davey, but that has been refused.

As has remained the case for some time, practitioners must be alive the dangers of making a mistake when submitting a Stage 2 offer and parties who use the portal should take care before submitting offers, to avoid the potential of being bound by their mistake.

Our casualty injury team deal with cases such as this on a regular basis. For more information or advice, please contact one of our experts.

Authors

William Swift

Manchester
+44 (0) 161 934 3109
wswift@dacbeachcroft.com

Cassandra Mitchell

Bristol
+44 (0)117 918 2108
cmitchell@dacbeachcroft.com

DAC BEACHCROFT