Neutral Citation Number: [2017] EWCA Civ 2097

Case No: A2/2016/2351

IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE HIGH COURT OF JUSTICE
BIRMINGHAM DISTRICT REGISTRY
THE HONOURABLE MRS JUSTICE ELISABETH LAING DBE
2BM 90233

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 13/12/2017

Before:

LORD JUSTICE DAVIS
LADY JUSTICE SHARP
and
LORD JUSTICE DAVID RICHARDS

- -

Between:

WOOD	**Claimant/ Respondent**
- and -	
(1) DAYS HEALTHCARE UK LIMITED **(2) THE SECRETARY OF STATE FOR HEALTH** **(3) SHROPSHIRE COMMUNITY HEALTH SERVICE** **(4) BALLE A/S (T/A F REAC A/S)** **(5) BERWICK CARE EQUIPMENT LIMITED**	**Defendants/ Appellant**

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Christopher Bright QC (instructed by **Messrs Hatchers Solicitors**) for the **Claimant/Respondent**
Shaun Ferris (instructed by **John A Neil Solicitors**) for the **Appellant First Defendant**
The other defendants did not appear and were not represented

Hearing dates: 28 & 29 November 2017

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Approved Judgment

Lord Justice Davis:

Introduction

1. On the 14 June 2010 loss adjusters acting on behalf of Days Healthcare UK Limited ("Days") the prospective defendant in a proposed personal injury claim on behalf of the claimant, Mrs Susan Wood, formally conceded liability. Subsequently in 2012, in circumstances which I will come on to recount, solicitors for Days indicated that they were contemplating seeking to withdraw such admission of liability. On 23 October 2012 the claimant issued proceedings against Days and certain other defendants. On 25 June 2013 Days then, as previously foreshadowed, applied for permission to withdraw the pre-action admission, pursuant to CPR Pt 14. 1A.

2. This application, along with various other applications, came before Mrs Justice Elisabeth Laing, sitting in the Birmingham District Registry. After a lengthy hearing, she among other things, in the course of a detailed reserved judgment handed down on 9 May 2016 dealing compositely with all matters before her, decided that permission to withdraw the admission should be refused. She ordered, instead, that judgment be entered against Days on that admission.

3. Days now appeals against that decision, with leave to appeal granted by Tomlinson LJ. It seeks to say that the judge's conclusion, and reasoning for that conclusion, was flawed.

4. Before us Days was represented by Mr Shaun Ferris. The claimant was represented by Mr Christopher Bright QC. The various other defendants to the proceedings took no part in the appeal.

Background Facts

5. The background can be summarised as follows.

6. The claimant was born on 7 June 1950. She has for a very considerable time been paraplegic and has been reliant on a motorised wheelchair. Latterly she had used a Days "Viper" medical wheelchair.

7. It was to be said by her that she had an accident involving the wheelchair on 26 October 2009. It was said that she had positioned the wheelchair at her desk, having turned off the power, when "without warning there was a loud crack and instantaneously the seat erupted catapulting the claimant forwards and trapping her against her desk." She subsequently gave a more detailed account, to the best of her recollection, in a witness statement dated 20 July 2015.

8. On 4 March 2010 Hatchers, solicitors instructed by the claimant, wrote a detailed letter of claim to Days. After setting out what it was said had happened, the letter stated that subsequent inspection of the wheelchair indicated that a weld below the seat had broken. It was alleged that Days was the producer of the chair. Claims by reference to the Consumer Protection Act 1987 and Sale of Goods Act 1979 were intimated. The injuries alleged to have been caused were described as: "a rotator cuff injury to her right shoulder and [she] has had to use a TENS machine and pain relief to ease her pain, which is ongoing. The claimant also sustained serious bruising to

her rib cage". It was proposed that expert evidence be obtained from a consultant orthopaedic surgeon. Detailed reference was made in the letter to the Personal Injury Protocol. The letter had also stated that Hatchers were acting under a Conditional Fee Agreement, with provision for a success fee.

9. Days referred the matter, via its insurers, to its loss adjusters, Garwyns. On 16 March 2010 Garwyns responded to Hatchers. Among other things, they said: "Please let us know if you consider this to be a fast-track case." (This would, at the time, indicate a limit of £25,000.) They also indicated that they would endeavour to complete their enquiries and respond regarding liability within three months, in accordance with the protocol. Subsequently, they agreed to the instruction by Hatchers of an orthopaedic surgeon.

10. Hatchers responded on 19 March 2010. In the course of that letter they said: "Currently we consider this case will fall into the fast track." It was also said that a schedule of special damages would be produced in due course (it seems that this was not in fact produced until 2013) and that enquiries were being made with the "suppliers of the chair", Shropshire Wheelchair and Posture Service.

11. In that context, Hatchers had previously written to that Service on 17 February 2010, who had responded on 12 March 2010. Hatchers provided Garwyns with copies of these letters.

12. On 12 April 2010 Hatchers wrote again to Garwyns. They stated that they enclosed a letter from Telford and Wrekin Community Health Services dated 30 March, together with photographs of the wheelchair and "the incident report form confirming that there was a failure on the part of the chair." It was also stated that the claimant had not sought medical attention immediately after the accident; she had not gone to the A & E department of a local hospital until 19 November 2009. The incident report itself, dated 27 October 2009, recorded the claimant as reporting that she had suffered "bruising to her torso and right forearm, no medical attention was required or sought after the incident".

13. There was to be a dispute as to just what was in fact enclosed with this letter of 12 April 2010 to Garwyns. At all events, the judge was to conclude that there had not been included in the enclosures a copy of a report, previously provided to Hatchers, known as an MHRA Adverse Incident Report and dated 13 November 2009. This was in due course to acquire great significance: because, after identifying Days as the manufacturer of the wheelchair, the MHRA Report stated: "Frame replaced in 08/2008".

14. What had happened apparently was this. The judge was to find, on the basis of the evidence before her, that there had been supplied a Viper wheelchair to the claimant by the Telford and Wrekin Primary Care Trust and/or Shropshire Community Health NHS Trust (both of those bodies had since been taken over by the Secretary of State for Health and were as such treated collectively by the judge, styling them "D2"). Included in that supply was a seat riser unit. D2 had ordered and bought the chair and seat riser unit from Berwick Care Equipment Limited (who was to become the Fifth Defendant in the proceedings: D5). D5 had itself obtained the chair and riser unit from Days. There was no contract between Days and D2.

15. The judge further found, for the purposes of the hearing before her, that D2 had then replaced the riser unit and wheelchair chassis, modifying the frame of the seat riser unit in the process. This was in 2008, following a complaint from the claimant. The seat riser unit itself had been manufactured by or on behalf of a Danish company called Balle A/S (in due course joined as Fourth Defendant – D4). Whether that particular seat riser unit had been supplied directly by Days to D2 was in issue: it is said by D2 that it was, although it seems that there is no written record in the form of an invoice or order to evidence that. At all events, the judge found that D2 had modified the wheelchair by fitting the (modified) seat riser unit to it in October 2008 and then had reassembled that with what was described as a "replacement chassis", supplied by Days. The judge found that: "It is clear on D2's evidence that its employees assembled the wheelchair which failed in October in 2009."

16. Reverting to the correspondence, on 6 May 2010 Hatchers wrote again to Garwyns, enquiring about their intentions concerning inspection of the chair. Garwyns responded on 3 June 2010, indicating that they were still to determine whether they required further inspection.

17. On 14 June 2010 Garwyns wrote again. They said this:

> "We write further to previous correspondence having now completed our enquiries.
>
> We can confirm that liability is formally conceded and that we will not be advancing any arguments of contributory negligence on the part of your client.
>
> We would now invite you to provide us with your client's medical evidence and schedule of loss, together with supporting documentation."

Just what "enquiries" had been "completed" is not clear on the available evidence.

18. At the end of 2011 Hatchers forwarded a report from a consultant orthopaedic surgeon (Mr Dodenhoff) dated 19 October 2011. By this time the claimant had had surgery to her right shoulder, following which it was said that there had been loss of movement in her right hand. By 15 August 2012 solicitors for Days were expressing concerns about the changing position and about the "notice given of a potential causation issue concerning your client's continuing disability with her hand" and the "significant change in your client's condition" since the expert's report. Days' solicitors amongst other things were also to state that the MHRA Report did not seem to have been supplied to Garwyns, the solicitors themselves having asked for all the reports.

19. On 17 August 2012 Hatchers responded. Among other things they said this:

> "As far as our client's ongoing condition is concerned you are entirely right when you state that there have been significant changes to our client's symptoms since she was examined on 19 October 2011 by Mr Dodenhoff.

> The difficulty is our client has now been left with a right hand with severely reduced function. You will appreciate that for somebody who is wheelchair bound this has had a devastating effect on her life.
>
> Clearly, there will be investigations undertaken in relation to causation. But subject to causation our client's claim has changed entirely in character and amount.
>
> . . . .
>
> If it is established that there is a cause or (sic) link between the original injury and our client's problems then our client's claim will be very substantial and we anticipate we will need the assistance of an Occupational Therapist and a further report from an Orthopaedic Surgeon.
>
> . . . .
>
> We raise these issues because the most recent problems suffered by our client have come relatively recently..."

20. In due course proceedings were commenced on 23 October 2012 with Days and (compendiously put) D2 named as defendants. The claim was pleaded very fully against Days, both in negligence and in contract. The claim against Days as set out in the Particulars of Claim was not founded solely on the admission contained in the letter of 14 June 2010 (although this was duly pleaded). It thus is clear that it had by then been anticipated – correctly – that Days would indeed be seeking to withdraw the admission of liability.

21. It is to be noted that, by the Particulars of Claim, damages "in excess of £300,000", with interest and costs, were sought.

Legal Principles

22. The jurisdiction of the court to give permission for the withdrawal of a pre-action admission is conferred by CPR Pt 14. 1A.

23. For this purpose, matters required to be taken into account (as part of all the circumstances of the case) include, by Practice Direction 14 paragraph 7.2, the following:

> **"7.2** In deciding whether to give permission for an admission to be withdrawn, the court will have regard to all the circumstances of the case, including –"
>
> (a) the grounds upon which the applicant seeks to withdraw the admission including whether or not new evidence has come to light which was not available at the time the admission was made;
>
> (b) the conduct of the parties, including any conduct which led the party making the admission to do so;

> (c) the prejudice that may be caused to any person if the admission is withdrawn;
>
> (d) the prejudice that may be caused to any person if the application is refused;
>
> (e) the stage in the proceedings at which the application to withdraw is made, in particular in relation to the date or period fixed for trial;
>
> (f) the prospects of success (if the admission is withdrawn) of the claim or part of the claim in relation to which the offer [sic] was made; and
>
> (g) the interests of the administration of justice.

24. As made clear by the Court of Appeal in the case of *Woodland* v *Stopford* [2011] EWCA Civ 266, a "wide discretion" is conferred on the court to allow withdrawal of a pre-action admission. Ward LJ said this at paragraph 26 of his judgment, having referred to the factors set out in paragraph 7.2 of Practice Direction 14:

> "These factors are not listed in any hierarchical sense nor is it to be implied in the Practice Direction that any one factor has greater weight than another. A judge dealing with a case like this must have regard to each and every one of them, give each and every one of them due weight, take account of all the circumstances of the case and, balancing the weight given to those matters, strike the balance with a view to achieving the overriding objective. Cases will vary infinitely and the weight to be given to the relevant factors will inevitably vary from case to case. Sometimes the lack of new evidence and the lack of explanation may be the important considerations; in others prejudice to one side or the other will provide a clear answer and in all the interests of justice will sway the balance. It would be wrong for this court to circumscribe the manner of the exercise of this discretion or to give any more guidance than is trite, namely, carry out the task set by the Practice Direction, weigh each of the identified factors as well as all the other circumstances of the case and strike a balance with due regard to the overriding objective."

25. Ward LJ also made clear that to justify a challenge to the exercise of discretion of a judge in this context it must be borne in mind that there had to be some factor vitiating the exercise of discretion; and he also referred to the "generous ambit within which there is room for reasonable disagreement": see paragraph 31 of his judgment. Mr Bright understandably emphasised that.

The judgment below

26. As I have said, the judge had to deal with a number of applications which were before her. One of those was an application by the claimant for summary judgment on

liability against D2 based on breach of contract, which contract was alleged to be constituted by a Part Purchase Agreement of 31 January 2007 between the claimant and D2 and which breach was alleged to have caused injury to her. The judge found in favour of the claimant on this. She entered summary judgment against D2 accordingly. A subsequent attempt by D2 to appeal to the Court of Appeal on this point did not prosper.

27. The judge also had to deal with, among other things, the application of Days to withdraw the admission. It appears that the hearing for that had originally been listed in August 2013. However, the claimant had not agreed with that (as the judge recorded); and it seems that by mutual consent all the various applications ultimately were then listed to be heard together. In the meantime, D4 and D5 had been joined; various experts' reports obtained; detailed witness statements filed; contribution proceedings initiated; and so on. Even so, it is most regrettable that this matter only came before the court for resolution in 2016.

28. At all events, when dealing with the application for permission to withdraw the pre-action admission the judge expressly reminded herself, wholly properly, of the matters (non-exhaustively) listed in the Practice Direction.

29. As to the matter identified in paragraph 7.2 (a) of the Practice Directions, the judge said this:

> "59. The first listed factor is the grounds on which the application is made, including whether there is new evidence since the date of the admission. In my judgment there is no new evidence about the circumstances of the accident. The admission was made after D1 inspected the wheelchair which failed. That inspection would have shown that the wheelchair had a riser unit fitted to it, albeit that it would not have shown (though D1's records might well have shown, and D2's records did show) that it was not the original chassis and riser unit. However, if it is assumed in D1's favour that C's solicitor did not send the MHRA report in April 2010, a reasonably diligent investigator would have realised in April 2010 that an important document was missing, and would have asked for it then. So had the defendant taken reasonable steps to investigate in April 2010, it would have discovered that the 'accident' wheelchair was not the wheelchair which was originally supplied by D1 via D5.
>
> 60. It is true that the potential value of C's claim has increased since 2010; and that is the real ground for the application. But that is a risk which is inherent in any personal injuries claim, and is a reason why it can sometimes be commercially advantageous to try and settle a claim at an early stage. I accept Mr Bright's submission that D1 took a commercial decision to avoid the costs of fighting liability in what it then thought was a low-value claim. I also consider that, as experienced loss adjusters, Garwyn took a calculated risk that the value of the claim might increase after the admission. I do not consider that

> the fact that potential value of the claim has increased since the admission is a good reason for allowing D1 to withdraw the admission."

30. As to the conduct of the parties, the judge found that Days had applied promptly after the proceedings had been commenced and also could not be criticised for any delay thereafter. However, as to the period between the original admission (in 2010) and the first intimation (in 2012) that it might be withdrawn, the judge considered that Days was to blame for that: paragraph 65.

31. The judge noted, understandably, that she was not in a position to make definite findings about Days' thought process at the time of the admission. However, she accepted that it had not seen the MHRA report at that time. She further found:

> "I do not consider that it is likely that Garwyn would have admitted liability if they had read the MHRA report in 2010."

She went on to find that the claimant could not be blamed for that oversight.

32. On the issue of prejudice, if the application for permission to withdraw were granted, the judge said this at paragraph 68:

> "The main prejudice, which would be caused to C is that (leaving to one side the outcome of her application against D2), she would lose a certain claim against D1, and face continuing her claims against D1, D2 and D4, in circumstances where each defendant denies liability."

33. The judge made no express findings of any other material prejudice flowing from the admission if the application for permission to withdraw the admission were granted. It is to be noted that the experts were not saying that they were hampered in their conclusions by reason of the lapse of time: albeit it appears that in the meantime the wheelchair had got into a "terrible state". The judge in effect confined herself on this aspect to saying:

> "C has, putting at its lowest, suffered an intangible prejudice and sense of injustice which comes from having lost the opportunity to inspect the wheelchair immediately after the riser unit failed"

I add that it is not clear to me, from the judgment, that the judge was making any finding of documents having gone missing because of events occurring at the time of or since the admission.

34. As to the prejudice that might result if the application for permission to withdraw the admission were refused, the judge expressly found that Days had a "credible" defence with "reasonable" prospects: and in consequence the claimant's prospects of success were "far from certain". Having so found, the judge said this at paragraph 77 of her judgment:

> "A further factor listed in the PD is the interests of justice. In my judgment, the interests of justice include finality; but also a

> fair outcome. Those two considerations are in tension with each other in this case. It would not be fair to D1 to prevent it from running a good defence to C's claim that D1 was the producer of the 'accident' wheelchair. On the other hand, D1 made an admission on professional advice, having had a good opportunity to investigate the facts and to inspect the accident wheelchair, and should, in the interests of finality, be held to that admission."

35. Finally, the judge adverted to the fact that she had by now granted the claimant summary judgment against D2. As to that, she said this:

> "I should make clear that I do not consider that the fact that I have given summary judgment against D2 on C's contractual claim against D2 is a reason for allowing D1's application to withdraw its admission. C has, in my judgment, reasonably issued claims in contract, under statute, and in tort against D1, D2 and D4. I will consider her claim against D5 below. She had (at least potentially) concurrent causes of action against those defendants, and it was not apparent to her, at least initially, which of them might be liable to her, and if so, on what basis. D1 admitted liability in relation to one of those concurrent causes of action, but then suggested that another defendant might be liable instead. Contribution proceedings are a mechanism by which the defendants can establish, inter se, the extent of their liabilities (or otherwise) in respect of the extent of the injury which C is able to establish flowed from the accident. As a matter of logic, the liability of one defendant which is admitted, proved or established by other means in respect of one cause of action does not extinguish that of another defendant in respect of a different cause of action."

36. In the result, as I have said, she dismissed Days' application to withdraw its admission of liability.

Disposition

37. Whilst I of course respect the fact that this was a discretionary decision of the judge, who is to be accorded a considerable margin of appreciation, I am in no real doubt that the decision to refuse permission to withdraw the admission was erroneous.

38. The first point – by reference to paragraph 7 (2) (a) of the Practice Direction – is that it seems to me indisputable that highly material new evidence *had* come to light. This was in the form of further evidence as to the extent of the injury allegedly caused and, in consequence, quantum. What had been presented in 2010 as "currently" a fast-track claim, involving less than £25,000, had subsequently become in 2012 a claim in excess of £300,000.

39. The judge had said that there was "no new evidence about the circumstances of the accident". That perhaps is in one sense true, if one puts emphasis on the latter words. But as to the new evidence and claims concerning injury, causation and quantum the

judge in paragraph 60 of her judgment effectively dismissed that as a "risk inherent in any personal injuries claim": thereby, in effect, not acknowledging it as relevant new evidence at all. But such matters involve questions of fact and degree. If one is facing a claim reasonably considered to be worth less than £25,000 (it in fact seems Garwyns at the time for internal purposes had put a total reserve, including costs, of £16,250) an increase of a few thousand pounds perhaps may be an acceptable and foreseeable "inherent risk." But a ten-fold increase, to over £300,000, is surely another thing altogether.

40. Moreover, Garwyns had not acted entirely unilaterally in 2010. The description of the injuries provided by the claimant in 2010 and as communicated to them was wholly consistent with this being properly assessed as currently a fast-track claim: a view shared, and communicated, by the claimant's own solicitors. Thus I do not follow why the judge also said that Garwyns took a "calculated risk". True theirs was a commercial decision – but it was a decision (reasonably) based on what was then adjudged to be a relatively modest claim, on the information which the claimant was herself providing at the time. Garwyns had no reason realistically to contemplate the amount of the claim being increased so dramatically as it subsequently was. The statement of Hatchers, the claimant's solicitors, in their letter of 17 August 2012 that "our client's claim has changed entirely in character and amount", was not only fair: it was also accurate.

41. A significant point that troubles me, on the judge's approach, is this. This was, in 2010, being presented as (currently) a modest personal injury claim, suitable for the fast track. Changes in litigation procedures and in the applicable costs regime provided, in 2010 as now, every incentive on grounds of proportionality for parties – and particularly, perhaps, defendants and their insurers – speedily to settle such claims. The Personal Injury Protocol was designed to facilitate that. The judge's stark approach – that a risk of increase in quantum is inherent in any such claim – would in my view tend to discourage speedy admission of liability in (then) small claims; admissions made having regard to considerations of saving costs and of proportionality. It would tend to discourage them for fear of a subsequent withdrawal of admission of liability being refused on the basis advocated by the judge, even where quantum has in the interim enormously and unexpectedly increased. This is precisely one of the points validly made by Judge Purle QC, sitting as a Judge of the High Court, in his decision (in a case on facts to some extent analogous with the present case) in *Blake* v *Croasdale* [2017] EWHC 1336 (QB) at paragraph 28 of his judgment: a point which I would wholly endorse.

42. Moreover, whilst I can accept that the MHRA report was not new evidence on liability, in the sense that the report existed at the time and Garwyns failed (as found) with due diligence to ask for it or consider it, the fact is – albeit due to their own oversight – they did not see it. As the judge herself in terms found, they would not have admitted liability had they seen it. This factor, too, makes the finding of a "calculated" risk being taken difficult to sustain. I appreciate this point relates to liability rather than quantum. Nevertheless, the decision was made in error, albeit self-induced error, in this particular respect also.

43. At all events, in my opinion, the failure of the judge to have any real regard to this new evidence as to injury, causation and quantum, or to give any weight to it, of itself

vitiates the exercise of her discretion. That of itself would entitle this court to interfere. But there is in any case more.

44. For one thing – although it may not of itself be a very material point – I find it difficult to accept the judge's conclusion that Days was to blame for the delay between the date of the admission in 2010 and the first intimation in 2012 that it would be withdrawn. I do not accept this, just because Days had no real reason to re-evaluate the case or admission until it was presented in 2011/2012 with the new case that the claim was now going to be for a far greater figure for far more extensive injury.

45. A further and more major point, however, which, in my view, also vitiates the exercise of the judge's overall discretion is this. In paragraph 77 of her judgment, the judge perhaps seems to have indicated that the overall exercise was to balance the interests of "finality" on the one hand against the interests of a "fair outcome" on the other hand. If that was indeed the test she set herself, then I agree with Mr Ferris that she posed the wrong test. Rather, the Rule and Practice Direction require a global approach, requiring evaluation of all the relevant circumstances in deciding whether it is just and fair to permit a party to withdraw a pre-action admission. That said, I doubt if the judge was in reality intending to pose such a test as Mr Ferris suggested she had. But what is clear, and I agree with Mr Ferris on this, is that the judge clearly was very concerned to seek to uphold the finality – and thereby certainty – of the pre-action admission.

46. On that basis, these questions then arise in this particular case. Why should such a consideration of finality and certainty be of such significance as the judge seems to have accorded it as against Days when the claimant, by virtue of the judge's own decision on the summary judgment claim, by now had the certainty of a final judgment against D2 – a defendant assuredly good for the money? What real prejudice would the claimant suffer if Days' admission of liability were withdrawn when she in any event had a judgment on liability against D2?

47. The judge clearly had appreciated the possible implications of the summary judgment against D2: because she discusses it at paragraph 79 of her judgment. She was undoubtedly correct that the judgment against D2 would not extinguish in law the liability of Days. But that does not meet the point that there was now no obvious reason to hold Days to ist pre-action admission on grounds of finality and certainty, in circumstances where the claimant had an assured judgment against D2. There was no obvious need for the claimant to continue her claims (contrary to what is stated in paragraph 68 of the judgment). Put another way, this was at the least a relevant matter required to be taken into account. Yet the judge wholly discounted it.

48. Mr Bright objected that the summary judgment against D2 might not be assured: there might be a successful appeal, he said. There are, in my view, however, quite a few answers to that.

    (1) The judge never herself advanced that as a reason for discounting the summary judgment against D2.

(2) The judge having granted summary judgment, she should in any event have acted on that basis: she could not, as it were, second-guess her own decision in this context.

(3) All parties had agreed to a procedure whereby these applications came on for hearing at the same time.

(4) If the judge had indeed relied on the summary judgment and it was then reversed on appeal, there was the prospect of seeking to appeal out of time.

(5) Finally, as it happens, the appeal against the summary judgment has in any event been rejected.

49. Mr Bright more or less accepted, when the point was put to him in argument, that, given the judgment against D2, further pursuit of the proceedings against Days would serve no real purpose for the claimant. He suggested, nevertheless, there might still be costs issues. He also suggested that there may still be issues of contributory negligence relevant to liability: a point I found difficult to follow, at all events so far as D2 is concerned, given that (as Mr Ferris pointed out) the judgment against D2 is in contract and given also that D2 had not in any event pleaded contributory negligence. As to Mr Bright's references to the contribution proceedings, I found it hard to identify how those could meaningfully impact on the claimant's position on the issue of withdrawal by Days of the pre-action admission. But be all that as it may, it remains the case that the summary judgment against D2, on the very approach the judge had set herself, was a matter which, in my opinion, was required to be taken into account. But it was not.

Conclusion

50. In my opinion, therefore, the very well presented submissions of Mr Ferris are well-founded. My own view is that the entire "change in character and amount" of the claimant's claim in 2012 (to adopt the language of her own solicitors) should, given all the circumstances, have justified the grant of permission to withdraw the pre-action admission. That conclusion is then reinforced when one has due regard to the existence of the summary judgment against D2. In such circumstances, this court is entitled to interfere and should do so.

51. I would add that, endeavouring to adopt an overall "stand back and consider" approach, I consider that a conclusion that permission should have been given to withdraw the pre-action admission is confirmed. Justice so requires, on the facts and circumstances of this particular case.

52. I would therefore allow the appeal, set aside the judge's order in this respect and grant permission to withdraw the admission. The parties are to endeavour to agree a Minute of Order in consequence.

53. I would also add that I hope that hereafter all the parties can adopt a rather more speedy, pragmatic and proportionate approach to resolving all these various proceedings than thus far seems to be evident.

Lady Justice Sharp:

54. I agree.

Lord Justice David Richards:

55. I also agree.