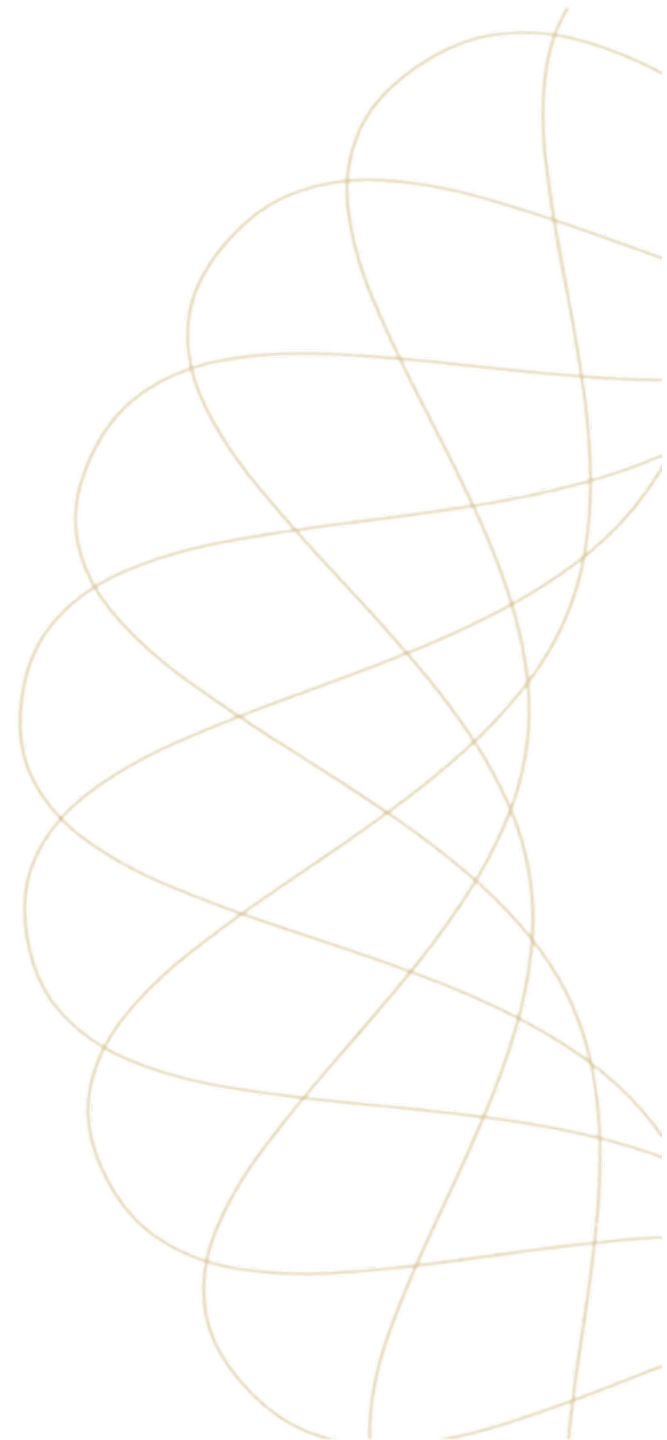


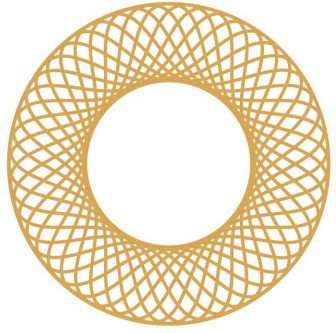
Outer Temple

Travel Law Conference

Manchester

25 April 2024





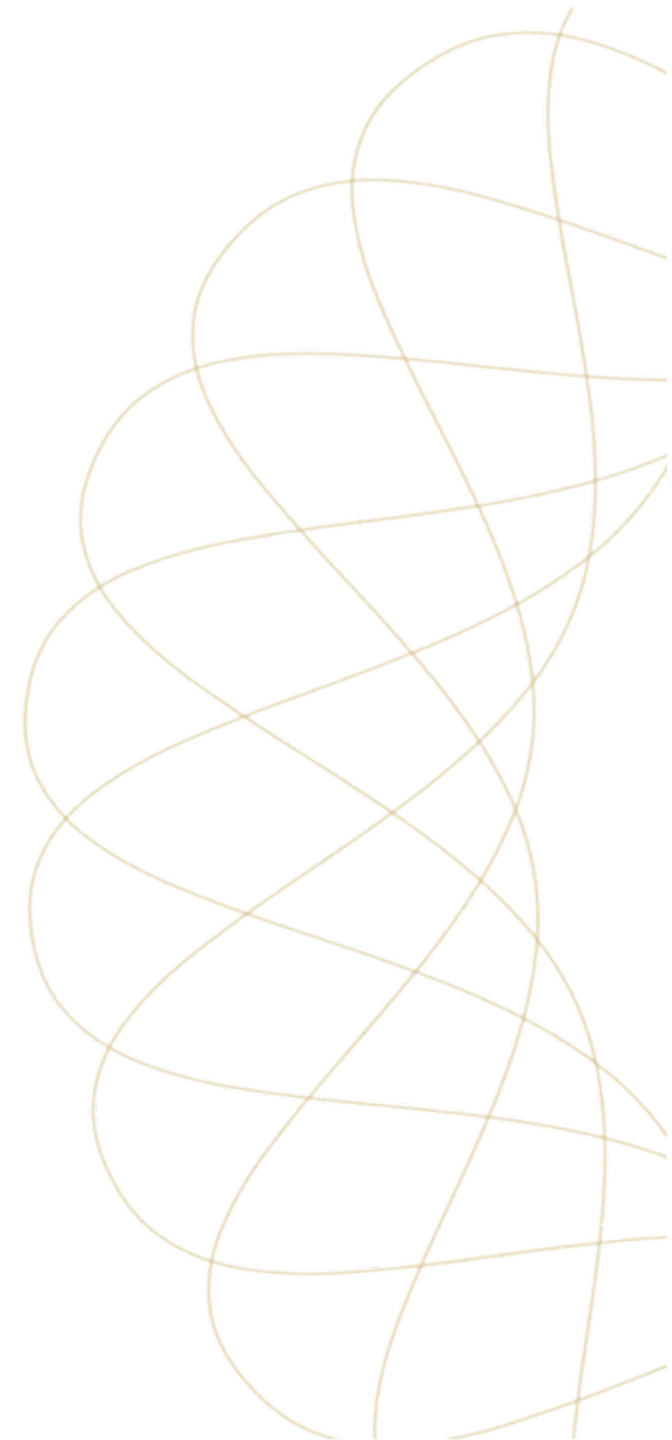
Outer Temple

Supplier, contracts and indemnities: Packages from a defendant perspective

Sarah Crowther KC

Sara-Jane Eaton

Craig Evans



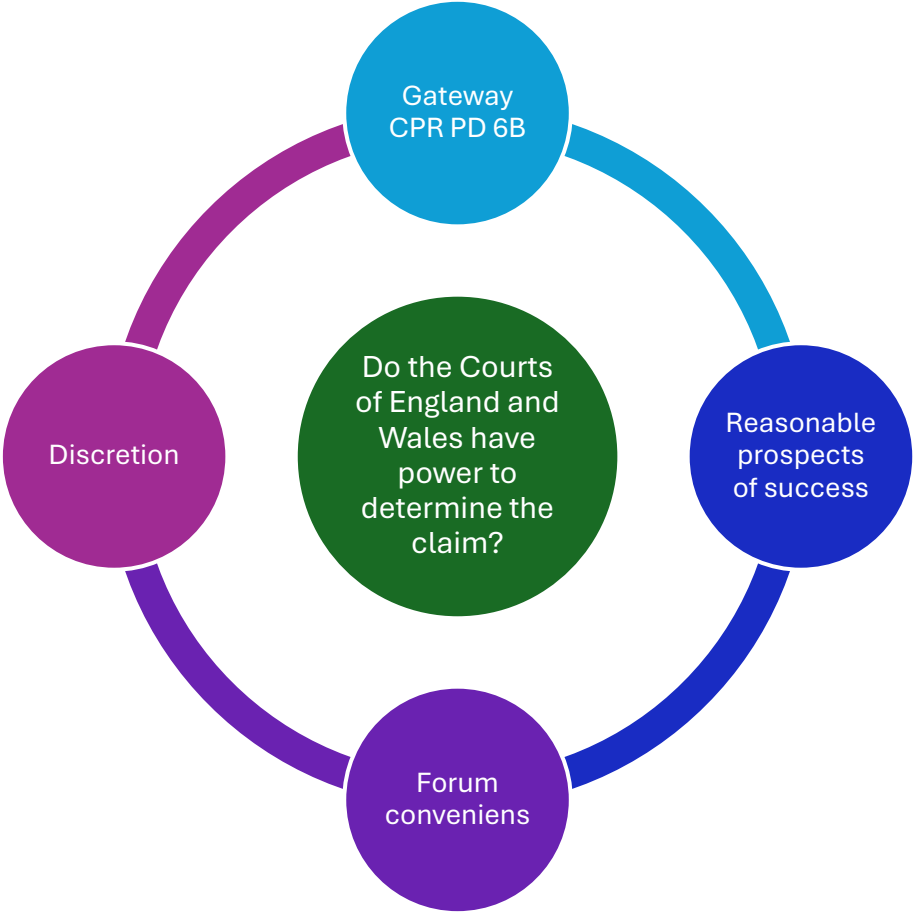
Jurisdiction in third party claims in travel cases

Sarah Crowther KC

Outer Temple Chambers

25 April 2024

Jurisdiction



Contracts

Ground PD6B 3.1 (6)

- A claim made in respect of a contract where the contract –
- (a) was (i) made within the jurisdiction or (ii) concluded by the acceptance of an offer which was received within the jurisdiction
- (b) was made by or through an agent trading or residing within the jurisdiction or
- (c) is governed by the law of England and Wales
- (7) breach of contract committed within the jurisdiction.

Tort

CPR 6B para 3.1 Ground (9)

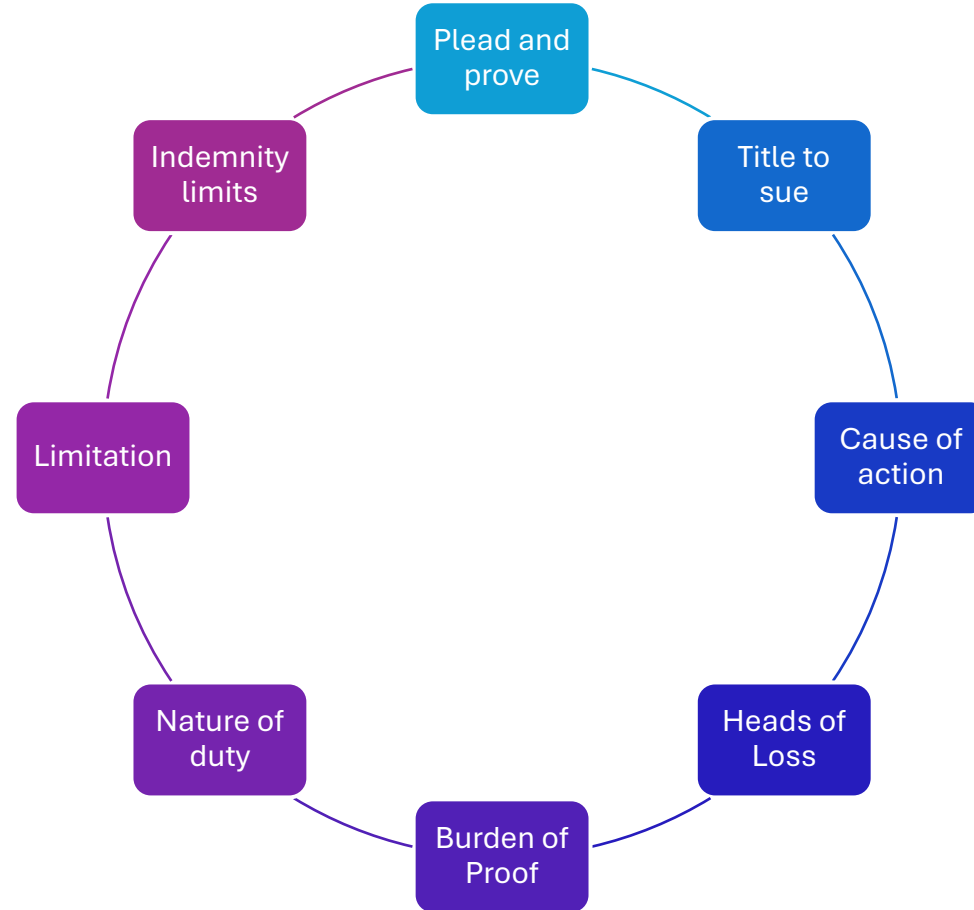
A claim is made in tort where-

- (a) damage was sustained, or will be sustained, within the jurisdiction;
- (b) damage which has been or will be sustained results from an act committed, or likely to be committed, within the jurisdiction; or
- (c) the claim is governed by the law of England and Wales.
- *Brownlie v Four Seasons* [2021] UKSC 45

Additional Claims

- (4) A claim is an additional claim under Part 20 and the person to be served is a necessary or proper party to the claim or additional claim.
- CPR Part 20 an additional claim means any claim other than a claim by the claimant against the defendant: includes a claim by D against TP for contribution or indemnity
- **C H Offshore Ltd v PDV Marina SA [2015] EWHC 595 (Comm)**

Foreign law evidence: issues to consider



Jurisdiction in third party travel claims

- Sarah Crowther KC
- 25 April 2024



CLYDE & CO

A Practical Look at Tour Operator and Supplier Contractual Issues

- April 2024

Agenda

- Supplier/TO contract considerations
- When should a supplier take conduct of a claim
- When should a supplier not take ownership
- Case example

Supplier contract pitfalls

- **A good indemnity clause should constitute the principal foundation of any additional claim.**
1. Ensuring strong indemnity clauses to secure prospects of future recovery to ensure that any and all allegations of improper service can be recovered from the supplier - *X v Kuoni Travel* [2021] UKSC 34
 2. Ensuring that your preferred choice of law and jurisdiction is provided for *Jong v HSBC Private Bank (Monaco) SA* [2015] EWCA Civ 1057. *Soldiers, Sailors etc. (Roberts)* [2023] AC 597 (Sup Ct)
 3. 'Bed bank suppliers'
 4. Implementing a clear claims-handling procedure with the supplier



When should a supplier take ownership?

Suppliers should, in every case, notify their public liability insurers

A supplier's insurers may wish to control any claim made against the Tour Operator, given they could end up being the final paying party

Liability dispute or a high value of a claim are factors when insurers want control to protect their position

Effective Claims Handling protocol between TO and Supplier

When should a supplier not take ownership?

The value of a claim will exceed their insurance liability indemnity limit

Where there have been late notifications to the supplier of claims

Where the supplier has not been included in claims handling relevant to their potential contractual liability

When doing so would unnecessarily increase the costs of the case

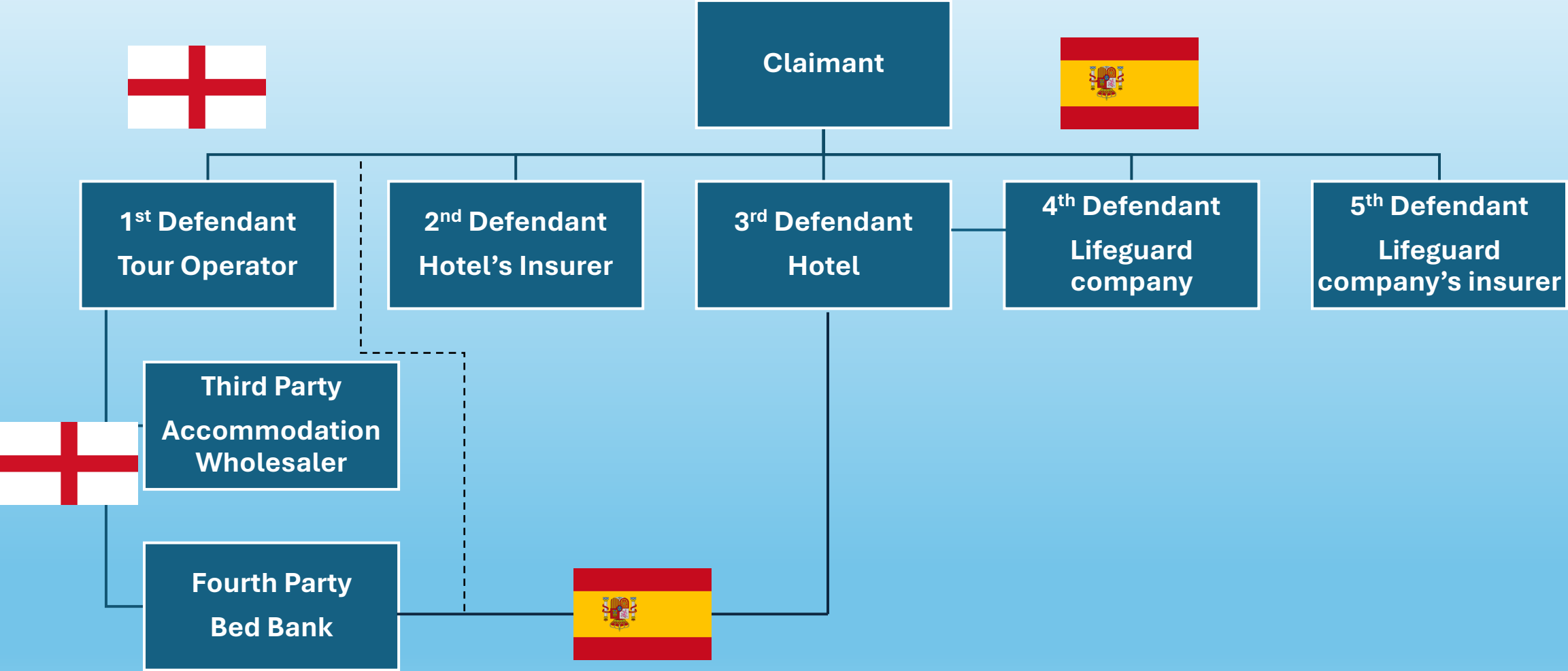
Who's claim is it anyway? A case study

- **Background**

- A young girl on holiday in Spain with her family. Suffered a significant brain injury after being submerged under water for a substantial period of time unnoticed by her father and the lifeguard on duty at the hotel pool
- The litigation involved multiple parties, including the tour operator and the subsequent companies involved in the booking process
- There was an intricate and complex relationship between the parties linked by various indemnity agreements
- Split Applicable law based on the various Defendants:
 - Package Travel Regulations
 - Article 4(1) Rome II



Who's claim is it anyway? A case study



Effect on the Main Claim



- Enforceability arguments can significantly delay a claim especially if more and more parties are added to pass and spread the risk of the claim down the chain.
- They can involve substantial additional litigation to determine who is and is not responsible for the initial claim.
- Any hearing or point in the litigation is extrapolated by the number of parties involved.
- Costs for all parties are significantly increased.
- **Get the contract right at the onset and ideally have a clear claims handling protocol incorporated.**



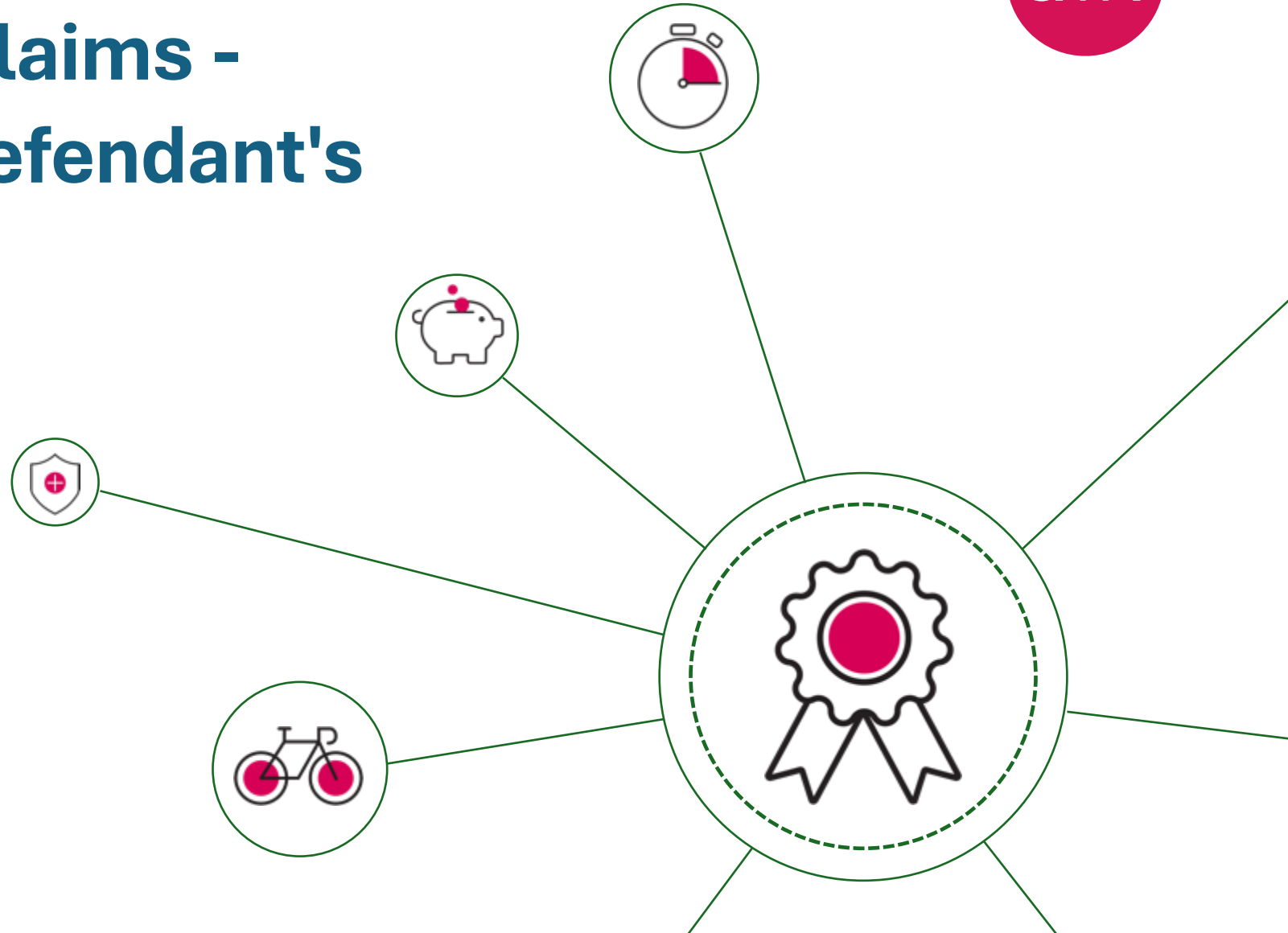
- Craig Evans
- Partner, Manchester
- +44 (0) 161 240 2609
- craig.evans@clydeco.com

Clyde & Co LLP accepts no responsibility for loss occasioned to any person acting or refraining from acting as a result of material contained in this summary. No part of this summary may be used, reproduced, stored in a retrieval system or transmitted in any form or by any means, electronic, mechanical, photocopying, reading or otherwise without the prior permission of Clyde & Co LLP.
© Clyde & Co LLP 2024

Rights of redress and contribution claims - an update and a Defendant's perspective

- Sara-Jane Eaton

dwfgroup.com



- On The Beach and Ors v Ryanair UK Limited and Ryanair DAC
- (a company incorporated in the Republic of Ireland) [2023] EWHC 2694

- GBP2 million plus dispute between three online travel agents and Ryanair over flight refunds for package holidays – a landmark decision setting out the right of package travel organisers to obtain refunds from airlines and other third parties following cancellations



- The Soldiers, Sailors, Airmen and Families Association - Forces Help
- & Anor v Allgemeines Krankenhaus Viersen GmbH [2022] UKSC 29
- Not a travel case but one of clinical negligence/birth injury
- Important question of whether Civil Liability (Contribution) Act 1978 (the 1978 Act) has overriding effect
- The case involved a brain injury alleged to have been sustained through the negligence of a midwife at a German hospital by the claimant whose father was stationed in Germany while working for the UK armed forces.
- It was accepted that German law would apply to the alleged negligence claim against the company that operated the hospital but it was held that the 1978 Act did not have mandatory overriding effect
- Claimants could not avail themselves of English law to seek contribution and the claims were therefore time-barred under the applicable German law.

On the Beach Limited and ors v Ryanair UK Limited

Three online travel agents operating websites for booking travel services offered by third parties such as airlines. On the Beach and ors paid by corporate payment card and sought redress of over £2 million under Regulation 29 of Package Travel and Linked Travel Arrangements Regulations 2018

Right of redress

- 29. Where an organiser or, in a case under regulation 27, a retailer—
 - (a) pays compensation,
 - (b) grants a price reduction, or
 - (c) meets the other obligations incumbent on the organiser or the retailer under these Regulations,the organiser or retailer may seek redress from any third parties which contributed to the event triggering compensation, a price reduction or other obligations.
- Was it the intention of the legislature to create a brand new cause of action beyond the contractual and non-contractual rights which already exist between the parties?
- Will Regulation 29 be affected by the Department of Business and Trade's call for evidence in relation to the Package Travel Regulations reform?

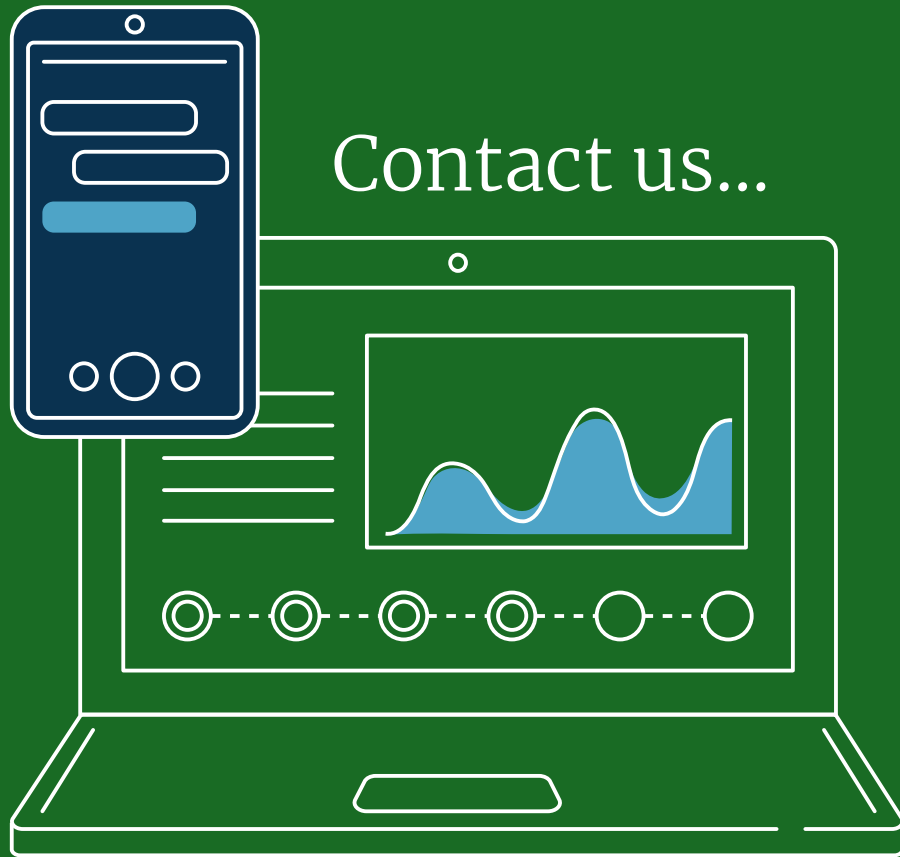
What keeps Tour operators and their insurers awake at night?

The travel industry and key stakeholders have been troubled by the outcome of the case of the UK's Supreme Court decision in *X v Kuoni* [2021]

Is it right that they should be liable for such events beyond their control, perpetrated by third parties with such wide interpretation and yet the defences open to the organiser regarding what falls outside the scope of the package are to be construed narrowly?

Essential that package organisers tighten up their supplier agreements but how could Claimants and their representatives assist?

- providing fully particularised claims which are accurately pleaded, avoiding inflated claims, ensuring no fundamental dishonesty/exaggeration
- providing key information upfront on claims **and** costs
- higher chance of successful outcomes in ADR.



Contact us...



- Sara-Jane Eaton
- **Partner and Head of European Group International Claims & Travel**
- T +44 20 7280 8827
- M 07912 540 672
- E Sara-Jane.Eaton@dwf.law



DWF is a leading global provider of integrated legal and business services.

Our Integrated Legal Management approach delivers greater efficiency, price certainty and transparency for our clients.

We deliver integrated services on a global scale through our three offerings; Legal Services, Legal Operations and Business Services, across our eight key sectors. We seamlessly combine any number of our services to deliver bespoke solutions for our diverse clients.

© DWF, 2023. DWF is a global legal services, legal operations and professional services business operating through a number of separately constituted and distinct legal entities. The DWF Group comprises DWF Group Limited (incorporated in England and Wales, registered number 11561594, registered office at 20 Fenchurch Street, London, EC3M 3AG) and its subsidiaries and subsidiary undertakings (as defined in the UK's Companies Act 2006). For further information about these entities and the DWF Group's structure, please refer to the Legal Notices page on our website at www.dwfgroup.com. Where we provide legal services, our lawyers are subject to the rules of the regulatory body with whom they are admitted and the DWF Group entities providing such legal services are regulated in accordance with the relevant laws in the jurisdictions in which they operate. All rights reserved. This information is intended as a general discussion surrounding the topics covered and is for guidance purposes only. It does not constitute legal advice and should not be regarded as a substitute for taking legal advice. DWF is not responsible for any activity undertaken based on this information and makes no representations or warranties of any kind, express or implied, about the completeness, accuracy, reliability or suitability of the information contained herein.

dwfgroup.com