

WBL Logbook Sheet Template

Learning Outcome and example number e.g. 1.1(1), 1.2(2), 1.2(1) 1.2(2) etc.	Page numbers from portfolio
1.1(2)	
Evidence provided and date of evidence e.g. Letter to client dated 01.01.2020 Telephone attendance note dated 01.01.2020	
Email to client dated 19 May 2021	
Explain how the example meets the learning Outcome and how the evidence shows this	
<p>Applicable Law: Equality Act 2010, Crime and Disorder Act 1998, Public Order Act 1986</p> <p>How the law applies: My client wanted to defend a claim brought against it under the Equality Act 2010 following an altercation between my client's driver and the Claimant in which there was video evidence showing my client's driver using abusive words with reference to the Claimant's ethnic background. This was alleged to have caused the Claimant distress.</p> <p>How the law applies to this matter: In this matter, the letter before claim which was submitted by the Claimant's solicitors pursued damages for alleged breaches under Section 29 Equality Act 2010.</p> <p>Firstly, I analysed Section 29 Equality Act 2010 and found that it related to a service provider not providing a service to a person for reasons of discrimination. When I considered this alongside the circumstances of the altercation I determined that it did not apply because the Claimant was not a service user but a member of the public who had come into contact with my client's driver as a result of a collision. I therefore explained to my client that there were strong grounds for my client to reject the claim that had been pursued under Section 29 Equality Act 2010 because no service was being provided to the Claimant at the relevant time.</p> <p>I then went on to consider the correct law that was applicable to this matter in order to advise my clients of the risks.</p> <p>Having reviewed a video of the altercation, I established that a criminal offence may have been committed by my client's driver under Section 31(1)(b) Crime and Disorder Act 1998 "a person is guilty of an offence under this section if he commits....(b) an offence under Section 4A of the Public Order Act 1986 (intentional harassment, alarm or distress)...which is racially...aggravated for the purposes of this section". As my client's driver used abusive words causing the Claimant alarm or distress and which were clearly made with reference to the Claimant's ethnic background.</p>	

As to how this presented a risk to my client, I went on to consider the case of *Mohamud v WM Morrison Supermarkets PLC* in which the Supreme Court held Morrisons vicariously liable for the actions of its employee in physically attacking a customer. I explained to my client how the Court considers vicarious liability for criminal offences and applying this to my client's case I explained that there was a risk that a valid claim could be pursued and that my client could be held to be vicariously liable for the criminal conduct of its driver.

Reflection and evaluation

Describe what you learnt from the activity you undertook to meet the Learning Outcome. You may want to complete this section at a later date once you have had time to reflect on your practice and experience.

I understand that it is important to fully analyse the full facts of the matter and any and all applicable legislation and relevant case law in order to advise upon the risks to my client.

Supervisor's Name

Please print the full name of the supervisor that supervised the work referred to above within this logbook sheet and the supporting evidence.

[REDACTED]

[REDACTED]

[REDACTED]

Sent: 19 May 2021 18:32

To: [REDACTED]

Cc: [REDACTED]

Subject: [REDACTED]

Hi [REDACTED]

I have taken over conduct of this matter.

Video

I have reviewed the video disclosed by the Claimant and note that the content is concerning and there are of course serious reputational concerns should this be publicised by the Claimant. We have given this matter considerable thought since receiving your instructions and will continue to do so. The allegations are very serious, and although the Claimant's solicitors appear to be somewhat out of their depth with this claim, that may not always be the case and there is potential for this to become a damaging and awkward claim for [REDACTED] to deal with.

Evidence from [REDACTED]

I note that [REDACTED] have not yet been able to secure a witness statement from the driver. Please do let us know if the position on this has changed. Was the driver alone? Has a criminal investigation been pursued against the driver?

Please also confirm whether you have been able to obtain any additional footage from the van.

It will be crucial for us to understand the full background to what led to this altercation, including full details of the road traffic collision which I note is being dealt with by your transport team. We will need to be fully briefed on the claim that they are dealing with in order to establish whether there is any overlap with this case. This case is a personal injury case estimated by the Claimant's solicitors to be in the value of the mutli track (so over £25k but we are extremely dubious about this) – clearly if there was some collision and psychological harm has been suffered, there could be an overlap between whether that harm was caused by the collision or the discrimination side of the claim (or both).

Initial analysis of Letter Before Claim

The LBC pursues [REDACTED] for alleged breaches under Section 29 Equality Act 2010.

This section relates to a service provider not providing a service to a person for reasons of discrimination.

I understand that the altercation between the Claimant and the driver arose from a road traffic accident, which suggests that the Claimant was not a service user, but a member of the public who came into contact with the driver as a result of a collision. Is that correct? If so, there are strong grounds to reject the claim which has been presented under S29 because that relates to discrimination in the course of the provision of services. No service was being provided to the Claimant here at the relevant time as far as we can tell.

Risks

1. Criminal Offence

Whilst there are good grounds to reject the claim under s29, the video actually suggests that a criminal offence may have been committed by the driver, specifically under Section 31(1)(b) Crime and Disorder Act 1998 "a person is guilty of an offence under this section if he commits.... (b) an offence under Section 4A of the Public Order Act 1986 (intentional harassment, alarm or distress)... which is racially...aggravated for the purposes of this section" as the driver used abusive words causing the Claimant alarm or distress and which were clearly made with reference to the Claimant's ethnic background.

2. Vicarious liability

We have given this some careful thought and we must alert you to the case of *Mohamud v WM Morrison Supermarkets PLC* in which the Supreme Court held Morrisons vicariously liable for the actions of its employee in physically attacking a customer. In determining vicarious liability for criminal offences, the Court will consider 1) what function or field of activities has been entrusted by the employer to the employee (i.e. what is the nature of the employee's job) and 2) whether there is a sufficient connection between the position in which he was employed and his wrongful conduct to make it right for the employer to be held liable.

In this particular case, because this incident clearly arose whilst the driver was in the course of his duties driving his van, this could be considered to be in the ambit of his employment. An interaction with the Claimant, as another road user, is within the field of activities assigned to him by [REDACTED]

The risk therefore is that the Claimant's solicitors could shift their sights and put together a valid claim based on a more appropriate cause of action than the Equality Act once we go back and reject their claim under s29.

We should also alert you to the risk that if the case does not settle or is not pursued by the Claimant's solicitor, the Claimant may choose to publicise the video taken which we consider would be reputationally damaging.

Budget

This is clearly out of scope and given the very serious nature of allegations and the clear difficulties that the video evidence creates we will need to prepare a very carefully worded letter in response, once we have analysed the remaining material to be provided by [REDACTED] (as outlined in your email and also our email above).

The WIP so far is £450 and we believe it will take an additional £400 to analyse the further material and prepare a careful response to the other side.

We would therefore suggest an initial budget of £850 for the preparation and sending of the initial response.

The claim may be dropped at that stage, or it may be pursued further, in which case we will revert with a budget increase request.

Please confirm your instructions on the above.

Best wishes

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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