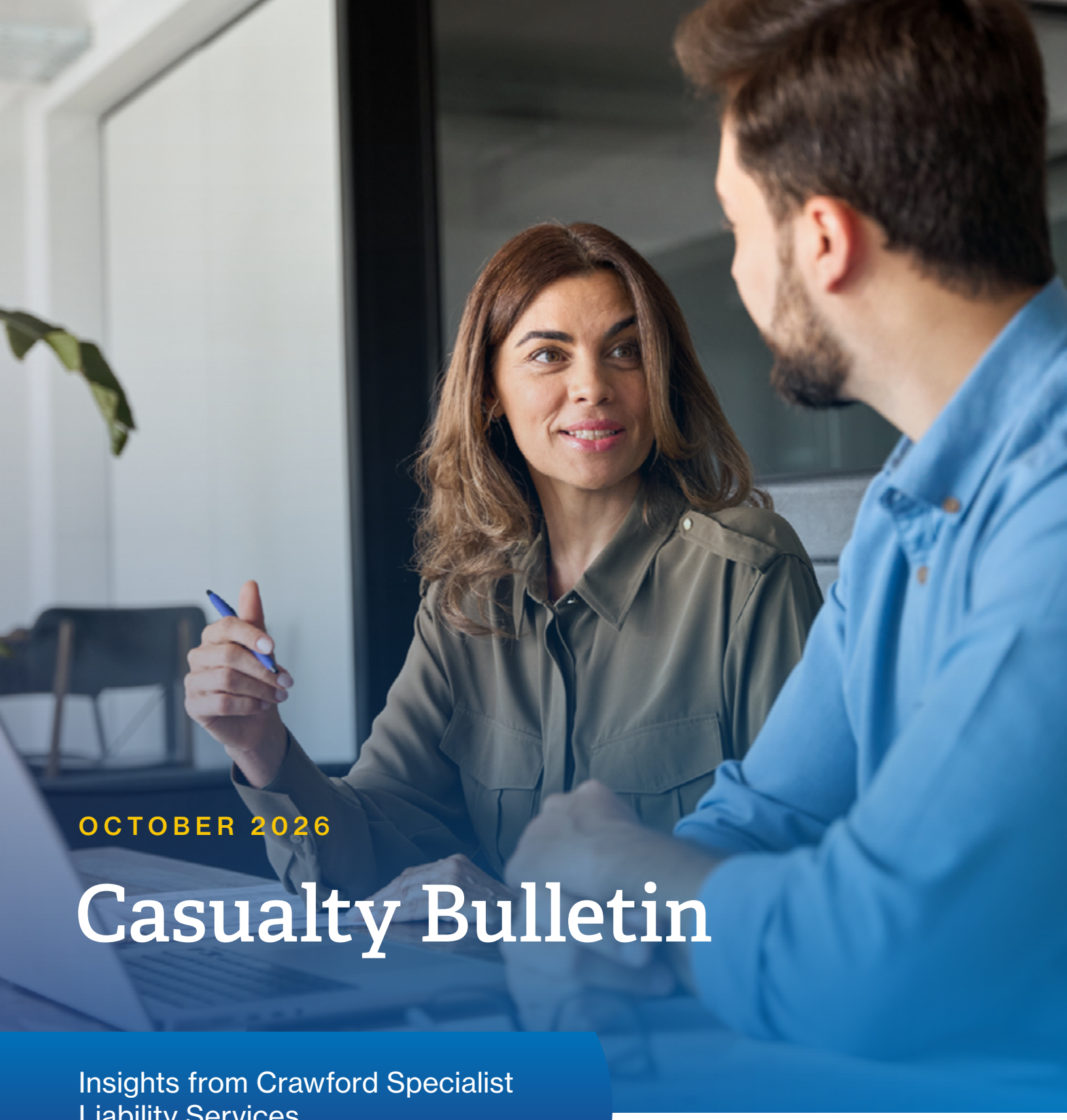


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Casualty Bulletin

Insights from Crawford Specialist Liability Services

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Introduction

In this edition of our Casualty Bulletin, we highlight two important recent cases, the first case dealing with the limitations applied by Courts when dealing with claims for psychiatric injury from individuals who are not physically injured.

We also discuss an interesting judgment which considers the safety of premises for both an occupier and employer where the claimant's actions and behaviour have been irresponsible.

As always, we hope you find the cases to be relevant and would welcome any feedback.





BJS v Cumbria, Northumberland, Tyne and Wear NHS Foundation Trust (2026)

PSYCHIATRIC INJURY, PRIMARY AND SECONDARY VICTIMS

The claimant was a mother who witnessed her son's fall and suffered psychiatric injury as a result. She sought to recover damages as a secondary victim.

The primary claimant in the action (BJS) was a 16-year-old patient receiving treatment for serious mental health difficulties, who had been admitted to hospital because of concerns regarding his mental state and risk of self-harm.

In September 2020, BJS managed to leave the psychiatric ward, climbed over a partition wall and fell several meters onto a concrete surface below. He sustained life-changing injuries including severe brain damage and loss of sight in one eye.

Liability for the primary claimant, BJS, was initially denied but ultimately compromised at 70% by the defendant.

However, the traumatic event was witnessed by BJS' mother, referred to as SXS, who brought a claim for the psychiatric injuries suffered because of witnessing the incident.

The dispute concerned whether SXS could recover damages for the psychiatric harm she had suffered.

Primary v Secondary Victims

As many readers will know, when considering claims for psychiatric injury, claimants are either Primary Victims or Secondary Victims.



A Primary Victim is someone who:

- Is physically injured in an accident or negligent event.
- Avoided physical injury but had a genuine and realistic belief they were at risk of physical injury, even if they did not ultimately suffer any physical injury.

As an example, a person trapped in a burning building who escaped or was rescued before they were physically injured is likely to be regarded as a Primary Victim for any subsequent psychiatric injury.

The position for Primary Victims is straightforward; they can recover damages for psychiatric injury following an actual or perceived risk of physical injury.

A Secondary Victim is someone who suffers psychiatric injury after witnessing injury, death or danger to another person but who was not themselves exposed to physical danger.

Courts have imposed strict control mechanisms on claims by Secondary Victims who suffer psychiatric injury as a result of witnessing harm to another person. The principles have remained broadly unaltered since the landmark cases following the Hillsborough tragedy, where various family members and witnesses to the events and aftermath brought claims for psychiatric injury in Alcock v Chief Constable of South Yorkshire Police (1992).

Only those who meet the following criteria as Secondary Victims can recover damages for psychiatric injury:

- A close tie of love and affection with the primary victim.
- Exposure to a sudden and shocking event or its immediate aftermath.
- A recognised psychiatric injury.
- The injury was caused by witnessing the relevant event.

However, in Paul v Royal Wolverhampton NHS Trust (2024) the Supreme Court held that a Secondary Victim must witness an ‘accident’, defined as an unexpected and unintended external event causing injury to the Primary Victim. Witnesses to a medical crisis resulting from negligent medical treatment or supervision was insufficient.

The question was therefore whether the fall constituted an ‘accident’ within the meaning established by Paul.

SXS argued that witnessing her son fall from height was an accident, or analogous to one, and precisely the type of traumatic event that Secondary Victim law was intended to cover.

The defendant's argument was that this could not be an 'accident' as the son had climbed and jumped or fell from the partition structure as a consequence of his psychiatric condition, therefore it was a medical crisis or emergency.

His Honour Judge Freedman dismissed the Secondary Victim claim.

Some of the Alcock criteria had been met, as the relationship with the Primary Victim was clearly one of close love and affection, the event was traumatic and immediate, and SXS had suffered psychiatric injury because of witnessing it.

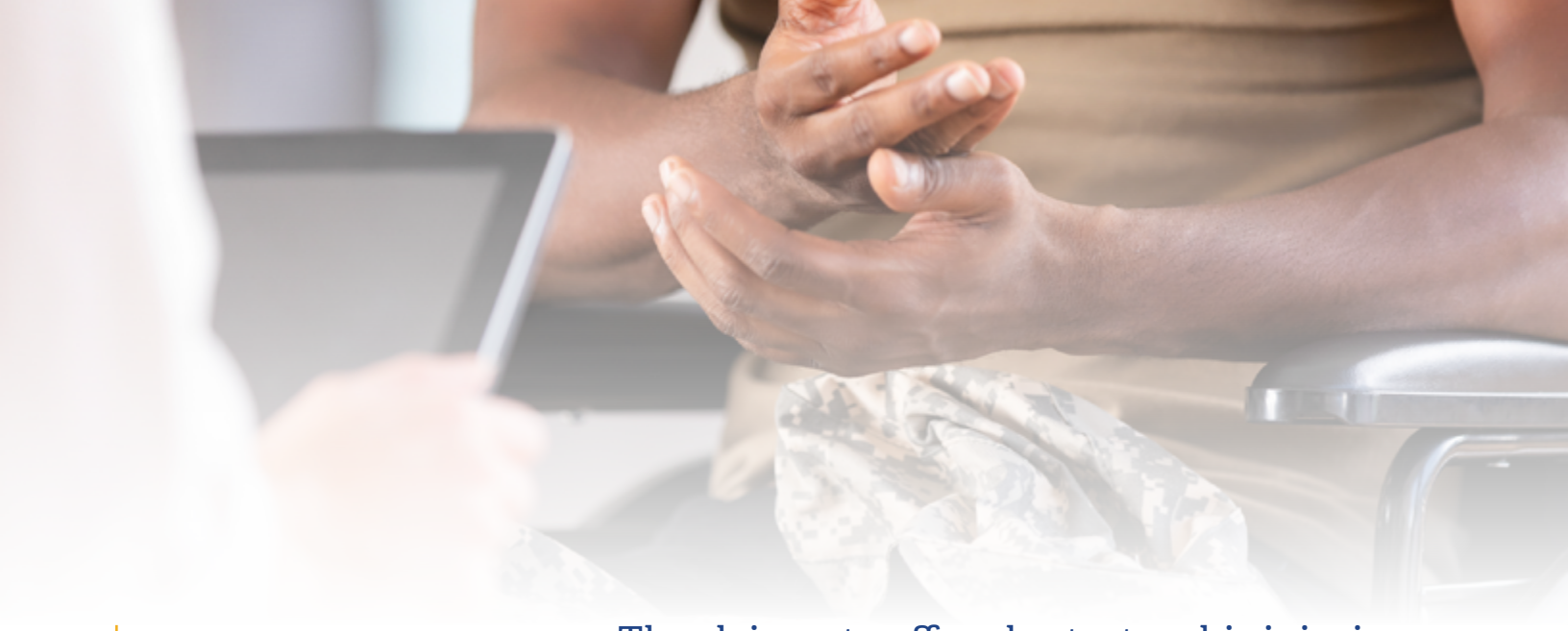
However, the Judge did not consider that this was an accident, preferring the view that this incident occurred due to medical treatment. Following the decision in Paul, the mother was not entitled to damages as her son's injuries did not arise from an accident.

Comment

Whilst this was a good outcome for the Defendant, the judgment could certainly have gone in favour of the claimant. The son's act of trying to escape and suffering injury could have been viewed as an 'accident' rather than due to the treatment he was receiving at the psychiatric hospital but the criteria which limit Secondary Victims from recovering damages were applied very strictly.

The case does illustrate that Courts remain reluctant to award damages to Secondary Victims unless very clear criteria are met.





ZZZ v Ministry of Defence (2026)

OCCUPIERS' LIABILITY, PREMISES SAFETY AND CONTRIBUTORY NEGLIGENCE

The claimant suffered catastrophic injuries after falling from a second-floor landing at his military accommodation, with the condition of the premises becoming a key issue in the claim.

The claimant was an 18-year-old Rifleman stationed at Bulford Army Base in Wiltshire. In March 2019 he suffered catastrophic injuries, including a significant brain injury, after falling from a second-floor landing within the military accommodation block where he lived. The landing was protected by a banister which failed to prevent the fall.

The claimant brought proceedings against the Ministry of Defence both as his employer and as the occupier of the premises. He alleged negligence and breach of the duty imposed by the Occupiers' Liability Act 1957 (OLA 1957).

At the first instance trial, the High Court found for the claimant with no deduction for contributory negligence. The Ministry of Defence subsequently appealed.

The defence argued that the claimant had ceased to be a lawful visitor at the time of the accident.

The evidence suggested that the claimant had consumed alcohol and was engaging in horseplay shortly before the incident. The MoD argued that by taking part in conduct contrary to military rules, the claimant had stepped outside the scope of any licence to use the premises and therefore could no longer rely upon the protections afforded by section 2(2) of the OLA 1957. He had effectively become a trespasser, and the lower duty under The Occupiers Liability Act 1984 therefore applied.



The MoD also challenged the trial judge's factual findings on causation and risk, arguing that the claimant had failed to establish that any defect in the bannister materially contributed to the accident.

The main issue was whether the claimant's behaviour meant that he had become a trespasser rather than a lawful visitor. The Court rejected the MoD's argument. The claimant was on the second floor because he was required to live there by the Army. His drinking and roughhousing did not change this.

The Court rejected the argument that a visitor automatically becomes a trespasser whenever they engage in conduct that an occupier would disapprove of or prohibit. Such an approach would create an unworkable and artificial distinction in many occupiers' liability cases.

The judgment makes clear that an occupier's duty does not simply 'flicker on and off' depending upon momentary misconduct. Instead, the Court reaffirmed that a lawful visitor will ordinarily remain a lawful visitor unless they leave the area they are permitted to use, or act in a way that clearly places them outside their licence.

Expert evidence showed that the bannister was approximately 900 mm high and did not provide a reasonable level of protection against falling. The Court accepted that the balustrade presented a danger creating an unacceptable risk of injury.

Significantly, the Court accepted that modern safety standards and expert opinion could assist in assessing whether an occupier had taken reasonable care, even where the premises were older buildings.

The decision therefore reinforces the principle that occupiers must continually assess whether features of their premises present foreseeable risks, particularly where serious injury could result from a fall from height.

The Court also rejected the MoD's challenge to causation. The trial judge had concluded that the inadequate bannister materially contributed to the claimant's injuries. The Court of Appeal found no basis to interfere with the first instance findings.

The Court noted that, unless there is a clear error of law or reasoning, an appellate court will generally defer to factual findings made at first instance.

The claimant's conduct, including alcohol consumption and horseplay, did not lead to any reduction in damages for contributory negligence. The Court upheld the trial judge's conclusion that the defendant had failed to establish the evidential basis for such a finding.

Comment

The judgment is of interest in relation to occupiers' liability and premises safety. It demonstrates the importance of ensuring that potentially hazardous features of premises do not expose users to foreseeable risks of serious injury.

However, all cases are fact specific, as evidenced by the earlier case of Harvey v Plymouth City Council (2010) where the claimant was running from a taxi to avoid paying the fare (pre-Uber!). He ran down a steep bank, tripped over a chain-link fence and fell over a sheer drop, sustaining serious injuries.

The Court of Appeal overturned the first instance decision. The local authority should have maintained the chain-link fence which had been pressed down and was only around 30cm high, but the claimant's actions were reckless, as opposed to irresponsible in the ZZZ case above.

Members of the public were licensed (i.e. permitted) to be on the premises for recreational purposes, but the claimant's behaviour was outside that permission and there was no breach of the duty under the Occupiers Liability Act 1957.





About the author

As Technical Director, Craig has overall responsibility for the technical output at Crawford Specialist Liability Services in the UK.

He has worked in the insurance industry for over 35 years and specialises in personal injury claims for 30 years. Originally from Newcastle upon Tyne, he worked in London, Dublin and is now based in Manchester.

His area of expertise is in high-value and complex personal injury claims including catastrophic injuries and fatal incidents as well as bullying, stress and harassment cases. He has experience in claims arising from manufacturing, construction, social housing, sports/leisure and travel industries including accidents abroad. Craig also handles claims in Northern Ireland and Scottish jurisdictions.

Craig delivers training and technical sessions both within Crawford and externally, as well as issuing technical bulletins covering recent case law and court judgments.



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