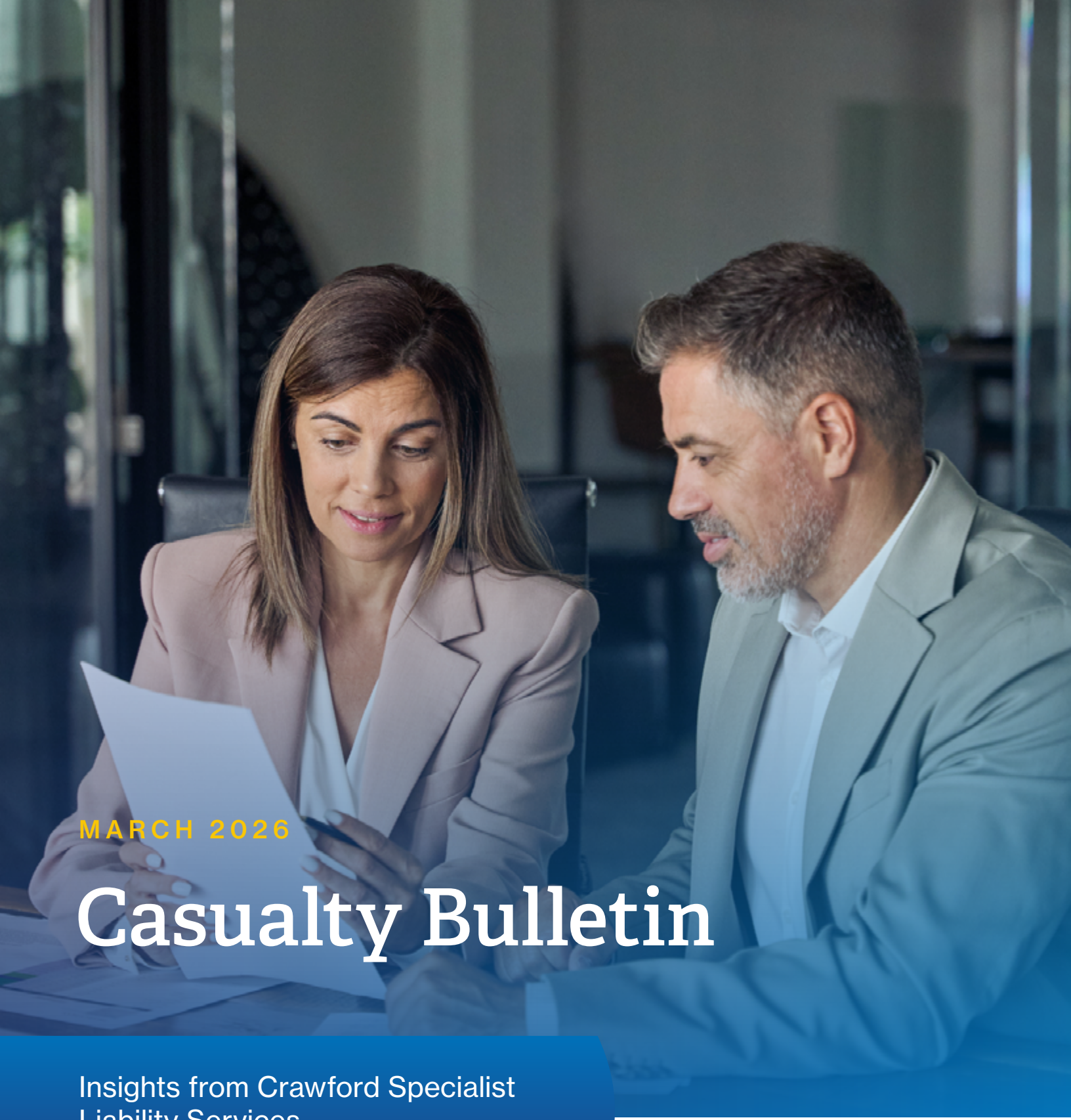

MARCH 2026

Casualty Bulletin

Insights from Crawford Specialist Liability Services

Crawford®

Contents

Introduction

In this edition of our Casualty Technical Bulletin, we highlight three recent 2025 decisions from the High Court in England and the Scottish courts, each offering practical guidance on liability, vicarious responsibility and product safety.

We begin with a High Court decision concerning a cycling club's potential liability when a participant suffered life-changing injuries during a time trial on public roads. The judgment provides helpful clarity on the standard of care expected of volunteer organisations and the application of the Social Action, Responsibility and Heroism Act 2015.

We then examine a significant vicarious liability appeal involving a pub operator and contracted door security staff. The court considered whether the relationship between the parties was "akin to employment" and whether a commercial organisation could be held liable for the acts of independent contractors.

Finally, we review a Scottish decision arising from a residential fire allegedly caused by a defective lithium-ion battery in a smartphone. The case explores the evidential burden under the Consumer Protection Act 1987 and reinforces the importance of forensic investigation in product liability claims.

As always, we hope these cases provide useful insight and practical guidance for those handling complex casualty matters.

HETHERINGTON V RAYMOND FELL AND FERRYHILL WHEELERS CYCLING CLUB (2025) EW HIGH COURT

Standard of Care for Volunteer Organisations

Mr Hetherington was taking part in a cycling time trial on 23 May 2019.

He was a member of a cycling club, Ferryhill Wheelers, whose volunteers were responsible for organising and marshalling the time trial, which took place on public roads including dual carriageways.

The incident occurred on the A689 dual carriageway in County Durham. Mr Fell was driving his vehicle and was intending to turn right into Butterwick Road. However, he did not stop at the Give Way lines and struck the Claimant who was cycling on the carriageway. The Claimant suffered life changing injuries including a traumatic brain injury.

Proceedings were brought against Mr Fell, who initially denied liability for the incident. Ferryhill Wheelers (an unincorporated association) were brought into the proceedings by Mr Fell's insurers by way of Part 20 Proceedings.

Shortly before trial, Mr Fell admitted liability, and the issue to be addressed was the potential liability of the cycling club.

Ferryhill Wheelers had carried out a full risk assessment, organising the event at a relatively quiet time where they knew that traffic would be light. Marshals were wearing high visibility clothing at various points throughout the course, and whilst there was no marshal at the accident location, there were marshals on two roundabouts which the claimant had navigated shortly before the incident. There was also a warning sign on the junction, following an accident at a previous time trial.

The basis of the claim against Ferryhill Wheelers was that the risk assessment was inadequate, and they had failed to place a suitable number of marshals around the course, including at the accident location.

In his judgment, Mr Justice Ritchie dismissed the Part 20 claim against Ferryhill Wheelers. The risk assessment was suitable and sufficient, and the primary cause of the incident was Mr Fell's negligent driving. It was self-evident that a cycling event was taking place, and the club had taken reasonable efforts to ensure that the event was carried out safely.

It would be unjust to impose too high a standard of care on volunteer marshals. The club had followed all suitable guidance issued by the governing body, Cycling Time Trials (CTT).

Mr Justice Ritchie stated *"this was a voluntary organisation carrying out tasks for free, for the benefit of members of society and the standard of care placed upon them in law is not so high that it would discourage such beneficial voluntary activities".*

He also observed that a more reasonable and realistic standard of care should be imposed on volunteers, who should not be subject to the same regulatory requirements as a large corporation.

Comment

This is a commonsense judgment which provides useful guidance for all clubs and associations organising recreational sport and leisure events. One notable feature is that the club relied on the Social Action, Responsibility and Heroism Act 2015. Section 2 of the Act (Social Action) states:

> *"The Court must have regards to whether the alleged negligence or breach of statutory duty occurred when the person was acting for the benefit of society or any of its members."*

The cycling event had considerable social benefits, and the Act was intended to encourage individuals and organisations to organise activities without an unreasonable fear of being sued.

Although the club owed a duty of care to the Claimant and all members of the public when organising the event on public roads, they had met that duty and had no liability for the incident.

J D WETHERSPOON PLC
V BURGER AND RISK
SOLUTIONS BG LTD (2025)
EW HIGH COURT

Vicarious Liability and Independent Contractors

Mr Burger brought a claim following an unprovoked assault which occurred on 5 August 2018.

He attempted to gain entry to a Wetherspoons pub but was denied and subsequently assaulted by two door supervisors. He was walking away from the pub entrance when one of the supervisors jumped on him, while the second joined in the assault, resulting in the Claimant suffering a dislocated hip.

Both supervisors were employed by Risk Solutions, who had been contracted by Wetherspoons to provide door security at the pub in Guildford. In the first instance decision, it was held that the supervisors were acting for the benefit of Wetherspoons business, and they were vicariously liable for the assault.

Wetherspoons appealed and argued that Risk Solutions were bona fide specialist sub-contractors, hence Wetherspoons could not be vicariously liable for their actions.

The supervisors were, to some extent, integrated into the day to day running of the pub. For example, Wetherspoons management could specify what clothing would be worn, but the contract clearly stated that Risk Solutions were independent contractors who had overall control of how security services were deployed.

There were the usual contractual indemnity provisions, requiring Risk Solutions to indemnify Wetherspoons for claims of this nature. However, Risk Solutions did not engage in the proceedings and were effectively uninsured, hence the claim proceeded solely against Wetherspoons.

The court acknowledged that there were multiple factors to be taken into account but the starting point had to be the contract between

Wetherspoons and Risk Solutions. They were a specialist contractor and the supervisors were not so closely integrated into the day to day running of the pub that they became de facto employees of Wetherspoons. They remained employed by Risk Solutions and Wetherspoons were not therefore vicariously liable for the assault.

Comment

It is well established that an employer is vicariously liable for negligent acts carried out in the course of employment. The situation is more complex where an individual is not an employee in the traditional sense, and the injury arises from a deliberate act such as an assault.

A two-stage test has evolved:

- **Stage 1** - what is the relationship between the defendant and the person carrying out the act, and
- **Stage 2** - was the act closely connected with their authorised duties.

The above case was primarily concerned with Stage 1 of that test. The nature of the relationship between Wetherspoons and Risk Solutions was clearly not one of direct employment, but the court had to consider whether it was "akin to employment", a test which has evolved predominantly when considering sexual abuse cases (for example see Trustees of the Barry Congregation of Jehovah's Witnesses v BXB (2023)).

The contractual relationship, and commercial reality of how the security services were deployed at the pub, suggested that this was a contract for services by an independent contractor, rather than a relationship which was very similar to one of employment.

However, if the court had found the relationship was "akin to employment", there is little doubt that the assault was closely connected with the door supervisors' authorised duties. Risk Solutions would no doubt have been found primarily liable, but Wetherspoons were the only solvent defendant. Despite their deep pockets, the court did not consider there was sufficient evidence to hold Wetherspoons vicariously liable for the attack. Risk Solutions were bona fide independent contractors.

DENISE PARK V LG ELECTRONICS AND OTHERS (2025) EDINBURGH SHERIFFS COURT

Proving Product Defect Under the Consumer Protection Act

Damages of almost £150,000 were awarded following a fire at the Claimant's (Pursuer's) home in Coatbridge.

A fire broke out in the living room of the pursuer's home in the early hours of 31 October 2018. Mrs Park and her husband were asleep when the fire broke out and were woken up by the smoke coming from the living room. Fortunately, they managed to escape without serious injury but there was significant damage to the property.

Mr & Mrs Park's Insurers settled the claim and pursued a recovery against LG Electronics. Forensic investigations established that there were three electronic devices left on the sofa overnight, namely a Samsung S7 phone, an LG K8 smartphone and an Acer laptop.

LG argued that there were three potential causes of the fire, and there was insufficient evidence to demonstrate that the fire had originated due to a defect in their phone. However, the forensic evidence concluded that, on the balance of probabilities, the fire had indeed originated from the LG smartphone. There was more extensive damage to the phone when compared with the Samsung phone and Acer laptop.

Sheriff Robert Fife therefore concluded:

- On balance of probabilities, the source of the fire was the LG smartphone.
- There was no evidence of any other potential source of ignition, such as a defective phone charger.

- The court was entitled to conclude that the phone was defective, and as manufacturer, LG Electronics were in breach of Section 3 of the Consumer Protection Act 1987. The safety of the product was not such as persons are generally entitled to expect. The pursuer had therefore met this burden.

The total award was £149,496. The majority was payable to Mr & Mrs Park's Insurers for the subrogated claim, including substantial interest since the claim had been settled in 2020.

Although Mrs Park was not seriously injured, solatium (general damages) had been agreed at £3,500 prior to trial. She had suffered smoke inhalation and a psychological injury as a result of the fire and smoke inhalation.

Comment

Although the case does not break any new ground, there are surprisingly few reported cases under the Consumer Protection Act 1987, despite the legislation being almost 40-years old.

The CPA allows an injured party to pursue the manufacturer directly (or the importer of the product into the EU), rather than having to rely on a contractual claim. On this occasion the phone had been supplied by Mrs Park's employer, hence the claim had to be pursued against the manufacturer.

The case also highlights the need for forensic evidence. There were three potential sources of the ignition, and without the forensic expert's report, the Claimant would not have been able to establish that the LG phone was defective, as there were other competing causes.

It is also a reminder that in Scottish jurisdiction, interest is usually awarded at 8% per annum, which can significantly increase damages.

About the author

Craig leads the technical conduct and quality assurance practices of the UK Liability team, as well as conducting a nominated portfolio of losses for leading UK businesses and insurers.

With 35 years as an injury specialist Craig, routinely investigates and conducts to conclusion complex and fatal personal injury claims in excess of £1M. He is experienced in applying his expertise to injury losses arising in various sectors including manufacturing, construction, ports and docks, accidents abroad and sports/leisure cases. He is familiar with the relevant regulations and statute which are material to the determination and conduct of legal liability in these sectors.

Liability expertise:

- Severe & Catastrophic Injury specialist
- Technical lead on the strategy, settlement, quantum, of fatal accidents
- Invited expert speaker on legal liability and reserving to national seminars
- Referral and technical lead on Fraud
- Head of technical audit
- Author of market Casualty technical bulletins for Crawford

Craig Faulkner FCII CIP
Technical Director

T: +44 7393 236423
E: craig.faulkner@slscrawco.co.uk

For more information, speak with your sales representative or visit our website.

About Crawford & Company®

For over 80 years, Crawford has led the industry through a relentless focus on people and the innovative tools that empower them.

10K employees | **50K** field resources | **70** countries | **$18B** claims managed annually

Crawford®

Learn more at
www.crawco.co.uk