No room for error – The decision in *Mahoney v Royal Mail*

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By Robert John

We are lawyers. Most of us are human, and I am sure we have all made mistakes?

In a decision reported by Crown Office Chambers, the claim of *Mahoney v Royal Mail* had been proceeding through the online claims portal uneventfully and in the usual manner. Liability had been admitted by the Defendant at stage 1 and the parties had been negotiating settlement at stage 2.

The Claimant's initial offer of £5,750 was countered by the Defendant with an offer of £4,000.
The Claimant then made a further counter offer of £550.

The Defendant accepted the offer and paid the relevant sums.

The Claimant disagreed that the claim had been compromised, contending their offer had been an obvious mistake. This eventually led to the issue of Part 7 proceedings, which the Defendant applied to strike out as an abuse of the Court's process on the basis that settlement had already been reached.

Deputy District Judge Dorman, following the earlier decisions in *Draper v Newport* (DJ Baker, Birkenhead CC, 03/09/14) and *Fitton v Ageas* (HHJ Parker, Liverpool CC, 08/11/18) held that the doctrine of mistake was excluded from the online claims portal.

The Judge found that the portal has a self-contained procedural code and as such the rules of common law (in this case the doctrine of mistake) do not apply.

The Judge therefore held that an agreement had been reached and as such the proceedings were struck out as an abuse of process.

The reasoning behind the abovementioned decisions is reported as being twofold: Judges were concerned that applying the doctrine of mistake would: (1) open up the risk of disproportionate satellite litigation; and (2) have a real risk of undermining the certainty, speed and cost which the portal is designed to provide. HHJ Parker in *Fitton* said that while this might lead to 'rough justice' on occasion, the overall benefits of the system far outweighed the negatives.

This reasoning raises some interesting issues.

With regard to the desire to avoid satellite litigation, low value personal injury claims are nothing new. They were vast in number for many years before the portal came into existence. Offers initially going back and forth by letter, and thereafter by email, was the common practice. No doubt such mistakes were being made just as frequently, the odd 'zero' being added or missed off in written correspondence. Yet the Courts have not been swamped with satellite litigation in this regard. Some may ask why, therefore, should the fact that numbers are now being entered into online boxes instead of written correspondence lead to a different result?

In respect of the benefits of a certain and speedy system outweighing the negative of occasional 'rough justice', one might ask what is the point in having a legal system in place if the aim is not to provide justice?

However, ultimately, if the reasoning in these cases prevails and there is no change to the portal's procedural code, we expect that the Claimant's solicitor (or their insurer) will end up paying the difference to their client in order to avoid a professional negligence claim. The Claimant will therefore receive his justice and the Claimant's solicitor will pay for their mistake.

Of course, these are only first instance decisions and as such have no binding effect. However, it seems that the lower courts have made their position on the portal clear.

In reaching his decision in *Mahoney*, the Judge held that the magnitude of the mistake was *"neither here nor there".* Here we are talking about £5,000 and as such we would not expect the matter to be taken any further by way of an appeal (the decision applies to both sides equally, so there is no partisan policy to do so).

If in the future a bigger mistake is made, for example a Defendant offering £25,000 instead of £2,500 then such a finding would be more likely to be appealed. In which case we may end up with a binding decision.

Arguably, if the Court is going to impose a counsel of perfection upon, what is at this level more often junior lawyers or claims handlers (possibly handling hundreds of claims), then the online portal should be updated to include safeguards so that such mistakes cannot happen.

The technology no doubt exists. Google constantly asks us if we meant what we wrote. However, management of the portal is outside of practitioners' hands and therefore creating a firm's own technological safeguards is not possible.

Until then the portal should be used with extreme care as thus far the Courts have been unforgiving.

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