

“Deceased’s level of risk awareness sufficient to amount to contributory negligence, but does not give rise to a defence under s.2(5) of Occupiers Liability Act 1957”

5th February 2021 [Civil Litigation Team](#) Case Update

[The White Lion Hotel \(A Partnership\) v Deborah Jayne James \(on her own behalf and in her capacity as a personal representative of the estate of her late husband Christopher James\) \[2021\] EWCA Civ 31](#)

At first instance, HHJ Cotter gave judgment for the Claimant in a tragic case involving a young man who fell to his death from an open sash window in his room in the Defendant hotel. The Defendant appealed the decision.

In dismissing the appellant Hotel’s appeal, the Court of Appeal confirmed that there is no absolute principle that a visitor, of full age and capacity who chooses to run an obvious risk, cannot found an action against an occupier on the basis that the latter has either permitted him to do so, or not prevented him from so doing. The Court of Appeal also upheld the finding of the judge at first instance that the finding that the deceased was ‘guilty of blameworthy failure to take reasonable care for his own safety’ gave rise to a determination of contributory negligence, but did not meet the stringent requirements of the test of *volenti non fit injuria* expressly preserved by s.2(5) of the 1957 Act.

For any other enquiries, or to discuss instructing the civil team at Atlantic Chambers please contact clerks@atlanticchambers.co.uk



“The only principle of law is that the Claimant should receive full compensation for the loss suffered as a result of the Defendant’s tort, not a penny more but not a penny less.”

27th October 2020 [Civil Litigation Team](#) Case Update

[Swift v Carpenter \(Personal Injuries Bar Association intervening\)](#)
[\[2020\] EWHC Civ 1295](#)

The Claimant appealed an earlier judgment of Mrs Justice Lambert which had found that, despite accepting there was a reasonable need for alternative accommodation and assessing a figure of damages in respect of £900,000, the binding authority of *Roberts v Johnstone* [1989] QB 878 resulted in a nil award for the Claimant. The Court of Appeal allowed the Appeal, finding in favour of the Claimant. In its judgment the Court of Appeal ruled that a new approach should be taken when calculating accommodation claims as the previous approach in *Roberts* no longer achieves fair compensation for Claimants. Now, *generally*, accommodation claims should be valued at the additional capital cost minus the value of the revisionary interest based on a discount rate of +5%.

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