# DCPI 1488/2018

[2022] HKDC 216

**IN THE DISTRICT COURT OF THE**

**HONG KONG SPECIAL ADMINISTRATIVE REGION**

# PERSONAL INJURIES ACTION NO 1488 OF 2018

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BETWEEN

KONG SAU HING ALICE（江秀卿） Plaintiff

and

YIP YUEN YEE PAMELA（葉婉儀） Defendant

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##### Before: His Honour Judge Andrew Li in Chambers (Paper disposal)

Date of Plaintiff’s written submissions by letter: 14 January 2022

Date of Defendant’s written submissions by letter: 14 January 2022

Date of Decision: 9 March 2022

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DECISION

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1. This is a decision involving some of the case management directions which I gave back at the 2nd Case Management Conference (“2nd CMC”) held on 3 December 2021 in this case.
2. At the 2nd CMC, I gave certain case management directions, *inter alia*, to ask the parties to agree on taking out some irrelevant materials contained in their respective client’s witness statement(s) as well as some irrelevant documents contained in their client’s respective List of Documents (“LOD”) which managed to find their way in the proposed trial bundles.

*BACKGROUND*

1. In brief, both the plaintiff and the defendant are residents of the same private estate known as ‘Tsui Lai Garden’ in Sheung Shui, New Territories. The plaintiff’s husband and the defendant were respectively the past Chairman and one of the representatives (of one of the blocks) of the Owner’s Committees. This was prior to the Incorporated Owners was formed in September 2019.
2. This case involves an alleged assault committed by the defendant against the plaintiff inside the water meter room in one of the blocks on the estate on 31 July 2015 (“Date of Accident”). It happened during a water sample collection exercise attended by representatives of the Owners’ Committee, some experts and government officials. The plaintiff admitted that she had kicked the defendant’s left knee while inside the water meter room although she claimed that she did so “accidently”. However, 5 to 10 minutes later, after the water samples were collected, the plaintiff was allegedly assaulted by the defendant with the defendant’s “hand and mobile phone”. As a result, the plaintiff allegedly suffered from head, left upper limb and neck injuries. The defendant on the other hand alleged that she was acting in self-defence after she was being assaulted by the plaintiff.
3. In other words, this is not a usual personal injuries (“PI”) case arising out of a motor or industrial accident. Rather, this is a case with a lot of personal grudges and acrimonies which had already been existed between the parties prior to the “accident”. It was also set against the background of a defamation case brought by one of the parties against the other. Hence, to say that there was bad blood already existed between the parties prior to the “accident” perhaps is an understatement.
4. Judging from the documents filed with the Court in the present proceedings, right from the very beginning of this case, the parties have included a lot of irrelevant materials, both in their witness statements and disclosed documents. For that reason, this case was brought to my attention by one of the PI Masters after several rounds of directions given at the Checklist Review (“CLR”) hearings when little progress was made.
5. At the first CMC hearing which took place before me on 27 August 2021 (“1st CMC”), I directed the parties’ legal representatives to try to narrow down the differences between them and to identity the real issues in dispute instead of dragging all the bitter personal disputes into this case unnecessary.
6. At the 2nd CMC before me on 3 December 2021, Mr Neal Clough, counsel instructed by the plaintiff and Mr Alex Lam Chi Chun, solicitor acting on behalf of the defendant, were present at the hearing. They agreed to the above overall approach suggested by the Court in this case, namely, that the contents of the witness statements and documents contained in the proposed trial bundles should be confined to the real issues in dispute between the parties for the alleged assault happened on the Date of Accident. They are, namely, whether the assault took place; if so, whether the defendant was acting in self-defence; whether the plaintiff suffered any injuries as a result of the assault; if so, the extent of such injuries; and what would be the reasonable amount of damages suffered by her.
7. With that in mind, I had, at the 2nd CMC, directed the parties to put their heads together in order to try to identify which paragraphs contained in the parties’ respective witness statements are not related to the real issues in dispute in this case and whether they could be taken out or deleted by agreement. Besides, I asked the parties to try to agree to take out all the irrelevant documents from the proposed trial bundles.
8. Further, I asked the parties to carry out such exercise within a few weeks and to make a joint application by letter by stating which paragraphs in their respective client’s witness statements and/or disclosed documents can be agreed to be taken out and which cannot so that the Court can make a ruling on paper on any of the items which could not be agreed between the parties.
9. For the sake of completeness, I would like to set out the orders / directions I made in the last 2 CMCs so as to put the matter in context.

*Orders made at the 1st CMC*

1. At the 1st CMC which took place on 27 August 2021, I made the following orders in order to narrow down the issues/disputes then canvassed by the parties:-

“1. The parties do lodge with the Court within 7 days from the date hereof a List of Disputed Issues/Opinions identified in the Joint Psychiatric Report of Dr Cheung Hung Kin for the Plaintiff and Dr Law Wun Tong for the Defendant dated 21 December 2019 which they wish the psychiatric experts to further comment on and to produce a Supplemental Psychiatric Report;

2. Upon receiving the List of Disputed Issues/Opinions, the Court will make further directions to the psychiatric expert as to:-

1. holding a without prejudice joint meetings amongst the experts to discuss those issues;
2. come up with a Supplemental Joint Psychiatric Report to explain the difference in their opinion and in particular to the requirements set out in paragraph 87 of Practice Direction 18.1; and
3. to produce a Supplemental Joint Expert Report within 56 days from the date of receiving the List of Disputed Issues/Opinions arising out of the Joint Psychiatric Report.
4. The parties do try to agree on the English translation of the Chinese documents they wish to adduce at the trial within 30 days from the date hereof, failing agreement, the parties should then submit a list of those documents together with the reasons of why those documents need to be translated and whether certified English translation is still required;
5. There will be a 2nd Case Management Conference hearing before the PI Judge on Friday, 3 December 2021 at 9:30 am in Court no. 8;
6. The trial of this action will commence on 19 September 2022 at 9:30 am in Court no. 8 before the PI Judge with a provisional estimate of 5 days (with 20 to 23 September 2022 reserved);
7. There will be a Pre-trial Review hearing on Tuesday, 26 July 2022 at 9:30 am in Court no. 8 before the PI Judge (with 2 hours reserved);
8. All interlocutory applications in this case before the trial will be fixed and heard before the PI Judge;
9. Costs of today’s Case Management Conference hearing be in the cause with certificate for counsel; and
10. Liberty to apply.”

*Orders made at the 2nd CMC*

1. Insofar as those directions are concerned with the above irrelevant matters contained in the parties’ witness statements and documents disclosed, I made the following orders at the 2nd CMC :-

“1. The joint psychiatric expert report dated 21 December 2019 and the supplemental joint psychiatric expert report dated 25 October 2021 prepared by Dr. Cheung Hung Kin (for the Plaintiff) and Dr. Law Wun Tong (for the Defendant) be adduced without calling the makers to give oral evidence at the trial of this action;

2. Each of the parties should review her own witness statements (including her main witness statement and her supplemental witness statement and in the case of the Plaintiff of the witness statement of her witness) and to list out all the passages/paragraphs contained in the witness statements which are not relevant to the issues in dispute, namely the alleged assault incident which happened on 31 July 2015, together with all the documents which are not relevant to the present issues in dispute as contained in the agreed trial bundle index and to submit and exchange the same with the other side within 21 days from the date hereof, i.e. on or before 24 December 2021;

3. Upon receiving the list of the passages/paragraphs of the contents of the witness statements and documents contained in the agreed trial bundle index proposed to be taken out, the parties should endeavor to agree to a joint list of what passages/documents which can be taken out from the witness statements and the agreed trial bundle index and to submit the same for the Court’s approval by way of a joint letter on or before 14 January 2022;

4. The Court will then make a ruling on what passages should be struck out from the parties’ respective witness statements and documents to be taken out from the trial bundle index by way of paper disposal;

5. The parties will prepare the revised witness statements and a new trial bundle index in accordance with the ruling of the Court and to have the same lodged with the Court no less than 14 days before the next Case Management Conference;

6. There will be a further Case Management Conference on 1 March 2022 at 11:30 am in Court no. 8 (with 2 hours reserved) for the purpose of reviewing the revised witness statements and the trimmed down trial bundle index and to decide which remaining documents still need to be translated and if so, who should bear the costs of those translation;

7. The parties should inform the PI Judge in writing within 7 days if any of the above directions cannot be complied with together with detailed explanations;

8. Costs of today’s Case Management Conference be in the cause with certificate for counsel; and

9. There be liberty to apply.”

1. The further CMC which was scheduled on 1 March 2022 was adjourned to a later date due to the deterioration of the COVID situation in Hong Kong.

*DISCUSSION*

*Present issues in dispute*

*The plaintiff’s solicitors dated 14 January 2022*

1. By a letter dated 14 January 2022, the plaintiff’s solicitors (“P’s Solicitors”) wrote to the Court and reported the following:-

(i) By 24 December 2021, the parties had exchanged their respective lists.

1. On 29 December 2021, Messrs Ko & Chow (ie P’s Solicitors) sent their comments on the defendant’s list (“D’s List”) to her solicitors Messrs Kelvin Ng & Co, (“D’s Solicitors”).
2. On 5 January 2022, D’s Solicitors sent to P’s Solicitors their comments on the plaintiff’s list (“P’s List”). D’s Solicitors also replied to P’s Solicitors’ comments on the D’s List.
3. On 11 January 2022, P’s Solicitors sent to D’s Solicitors the following:-
4. a list with the agreed items (both for “Delete” and “Retain” items);
5. a Schedule of P’s List incorporating all the comments of the parties and indicating whether agreement had been reached for each item; and
6. a Schedule the D’s List incorporating all the comments of the parties and indicating whether agreement had been reached for each time.
7. On 12 January 2022, D’s Solicitors wrote to P’s Solicitors stating that the draft Agreed List was vastly incomplete. D’s Solicitors asked P’s Solicitors for a revised list stating that if not received by return they would write to the Court on 13 January 2022.
8. On 12 January 2022, P’s Solicitors wrote to D’s Solicitors seeking clarification as to why it was asserted that the draft List was incomplete and asking D’s Solicitors for their comments or for their draft Agreed List.
9. On 13 January 2022, P’s Solicitors wrote to D’s Solicitors stating that having received no reply they assumed D’s Solicitors’ intention was to write to the Court on 13 January 2022. In that event they said they would have no alternative but to submit the Agreed List signed by them with the 2 schedules to the Court for the Court’s consideration.
10. P’s Solicitors said that having received no reply from D’s Solicitors, they felt “compelled” to submit the Agreed List signed by the plaintiff alone with the 2 Schedules and asked them to be placed before the Court for its consideration.

*Summary of the parties’ agreement from the plaintiff’s perspective*

1. Hence, the following is a summary of the parties’ agreement from the plaintiff’s point of view:-

(a) The Owner’s Committee and the Accounts, Notice and Resolution of the Owner’s Committee

1. The defendant suggests removing them from the defendant’s witness statement and trial bundle index.
2. The plaintiff agrees and the corresponding parts in the plaintiff’s witness statement are removed.

**[Agreement been reached]**

(b) Documents specially discovered from the plaintiff’s employer

1. Both the plaintiff and the defendant agree to retain.

**[Agreement been reached]**

(c) Defamation case and case bundles

1. The plaintiff suggests removing them all from the plaintiff’s witness statement and the documents.
2. The defendant agrees.

**[Agreement been reached]**

(d) Video clips taken by the defendant after the assault

1. The defendant suggests retaining all in her witness statement and the video clip in the trial bundle index.
2. The plaintiff agrees.

**[Agreement been reached]**

(e) The statement given to Police, the brief fact, transcript, case result etc of the bound-over proceedings

1. The defendant wants to remove them from the plaintiff’s and the defendant’s witness statement and the trial bundle index.
2. The plaintiff says that this must be retained as being admissible and relevant.

**[No agreement been reached]**

(f) The Investigation Report and the defendant’s comment in her witness statement

1. The defendant wants to introduce this surveillance evidence by the reference in the defendant’s witness statement and as a “document” listed in the trial bundle index together with the comments of the witness who made the video recording whose identity in unknown.
2. The plaintiff suggests that this issue is dealt with the adjourned CMC.

**[No agreement been reached]**

(g) The chat group conversation and the press articles in respect of the demonstration for buses routes in 2013

1. The defendant suggests retaining all in her witness statement and in the trial bundle index.
2. The plaintiff suggests removing this from both her witness statements provided that the corresponding parts and documents of the defendant’s witness statements.

**[No agreement been reached]**

(h) A video clip obtained by the defendant in YouTube regarding an incident in 2014 not in the presence of the defendant

1. The defendant wants to retain all references in her witness statement and in the trial bundle index.
2. The plaintiff proposes removing references to the video clip in from all witness statement and that the video clip is not included as a “document” in the trial bundle index.

**[No agreement been reached]**

(i) The voluntary works done and/or functions attended by the plaintiff after the assault

1. The defendant wants to retain all references in her witness statement and in the trial bundle index.
2. The plaintiff proposes removing references from all witness statements but has no objection to the article and video clips being introduced in evidence so the trial judge may form his own view. The defendant’s counsel may make submissions as to this evidence – the parties interpretation and comments are inadmissible and unhelpful.

**[Without any comment from the defendant]**

(j) A programme/video clip produced by HK Open TV on 09.08.2020 with the plaintiff’s presence in uniform

1. The defendant wants to retain all references in her witness statement and in the trial bundle index.
2. The plaintiff proposes removing references from all witness statement.

**[No agreement]**

(k) District Board Election of the plaintiff’s husband (articles, video clips etc)

1. The defendant wants to retain all references in her witness statement and retain all documents in the trial bundle index.
2. The plaintiff proposes removing references from all witness statement.

**[No agreement]**

(l) The joint psychiatric expert report dated 21 December 2019 and the supplemental joint psychiatric expert report dated 25 October 2021

1. The defendant says no Court Order has been given for adducing such report.
2. The plaintiff says order has been given in paragraph 1 of the Order of the Court dated 3 December 2021.

**[No Agreement]**

[emphasis supplied]

*D’s Solicitors’ letter dated 14 January 2022*

1. Also, on 14 January 2022, D’s Solicitors wrote to the Court and reported the following matters.
2. According to the defendant, pursuant to this Court’s Order dated 3 December 2021, the parties had endeavoured to agree to a joint list of “paragraphs and passages as well as documents which can be removed from the respective witness statements of the parties and the Trial Bundle Index filed (in the present proceedings) on 12 May 2021” and attempted to submit the “joint list for the Court’s approval by way of a joint letter on or before 14 January 2022” as directed.
3. Basically, D’s Solicitors alleged that P’s Solicitors had, under cover of their letter dated 11 January 2022, sent to them a draft document titled “Agreed List – Delete & Retain” (ie P’s List) purportedly for D’s Solicitors’ approval on behalf of their client.
4. D’s Solicitors however stated that P’s List was “vastly incomplete and improperly prepared”. Broadly speaking, the defendant makes the following allegations:-
5. there were omitted from P’s List a large number of the paragraphs in fact agreed by the parties to be deleted from the respective witness statements of the parties herein; and
6. P’s List contains paragraphs to be retained instead of deleted/taken out by the parties, which is not what the Court had directed.
7. Further, D’s Solicitors alleged that P’s Solicitors had omitted to send them a draft joint letter for their consideration, despite the fact that it is the usual practice for a plaintiff to do so as a matter of course.
8. By a letter dated 12 January 2022, D’s Solicitors had written to P’s Solicitors requesting them for a “proper and complete draft list as well as other documents, ie a draft joint letter to the Court, which should duly comply with the said order for our comment and consideration.”
9. However, P’s Solicitors insisted by 2 letters both dated 12 January 2022 that “*there is nothing being omitted*” in P’s List. D’s Solicitors on the other hand stated that “whilst it is clear as day” to the defendant that a large number of paragraphs agreed to be removed by the parties herein were omitted from P’s List, irrelevant materials were included instead.
10. Therefore, D’s Solicitors decided to prepare their own list of “(A)greed Paragraphs/Passages to be Removed from the Parties’ Witness Statements” (“D’s List”) without further arguments with (P’s Solicitors).”
11. Hence, D’s Solicitors enclosed D’s List in their letter to the Court dated 14 January 2022.

*Decision and Comments of the Court*

1. In my view, it is most disappointing to see that almost 13 years after the rules under the Civil Justice Reform (“CJR”) have come into effect, one can still find in a simple PI case involving a simple alleged assault the parties have totally lost their focus and brought into matters which are totally irrelevant, trivial and petty. It is worth reminding ourselves that the underlying objectives of the CJR as stated under Order 1A, rule 1 of the Rules of the High Court (with equivalent provisions under the same order/rule in the Rules of the District Court (“RDC”)) include, *inter alia*, to increase the cost-effectiveness; to ensure the cases are dealt with expeditiously; to promote a sense of reasonable proportion and procedural economy in the conduct of proceedings; to ensure fairness between the parties; to facilitate the settlement of disputes; and to ensure that the resources of the Court are distributed fairly.
2. In my opinion, what is really disappointing about this case is the fact that the plaintiff has, even with the help of her very experienced and reputed legal advisers, chosen to include a lot of totally unnecessary and irrelevant materials from day one in her claim. This was exemplified by a lengthy – with a lot of irrelevant contents – main witness statement of the plaintiff (17 pages and 56 paragraphs long), followed by an even longer supplemental witness statement which contained more irrelevant and trivial materials (27 pages and 67 paragraphs long). They were aggravated by what I would consider as “totally over the top” discovery process with a lot of unnecessary and irrelevant documents being discovered and subsequently placed in the proposed trial bundles.
3. The plaintiff’s much unnecessary detailed and elaborated witness statements and discovery were followed by an equally lengthy (which also contains a lot of unnecessary and irrelevant materials) main witness statement (13 pages and 60 paragraphs) and later on a less elaborated but equally irrelevant and cumbersome supplemental witness statement (12 pages and 30 paragraphs) by the defendant. An equally elaborate and wasteful discovery process which included a lot more of unnecessary and irrelevant documents was followed suit by the defendant.
4. The above extravagant efforts in a simple PI action have caught the attention of the PI Master who was responsible to give out case management directions at the CLR hearings in the early stage of these proceedings. Therefore, the matter was referred to me for further case management at a relatively early stage in order to put an end to this what I would regard as wholly disproportionate attempts on both sides to exaggerate / inflate the claim (on the part of the plaintiff) and the defence (on the part of the defendant) in the context of this what in any view should be a rather straightforward and relatively modest and simple claim.
5. Hence, on 27 August 2021, at the 1st CMC before me where the plaintiff was represented by Mr Neal Clough, counsel instructed by P’s Solicitors, and the defendant by Mr Alex Lam, solicitor from the firm of solicitors who represented the defendant, one of the first things I asked the parties to do was to agree a list of disputed issues/opinions identified in the joint psychiatric report and to agree on the English translation of the Chinese documents they wished to adduce at the trial within a certain time limit. I also directed the 2nd CMC to be held on 3 December 2021 before me.
6. In order to keep the matter in focus and put down a road map leading to the resolution of this matter, on that occasion, I fixed the trial of this case to commence on 19 September 2022 with a provisional estimated length of 5 days before me. A pre-trial review (“PTR”) was also fixed before me on 26 July 2022 with 2 hours reserved. In the meantime, all future interlocutory application in this case was directed to be fixed before me so as to avoid any unnecessary or duplicated applications and/or potential wasting of judicial resources.
7. Despite of the above directions given by the Court, sadly, the parties were still not able to agree on the deletion / removal of some of the excessive and totally irrelevant contents of the witness statements and/or documents.
8. Given the uncooperative attitude found amongst the parties, the Court has no alternative but to make its own decision regarding the outstanding parts of the witness statements and/or documents which still could not be agreed by the parties and of which it considers as irrelevant and unnecessary in this case. In my view, it was a very unnecessary and time consuming exercise that the Court had to undertake due to the parties’ failure to agree on those matters.
9. In doing so, I have constantly kept in mind the underlying objectives of the CJR. I have also taken into account of the different views of the plaintiff and the defendant, including both P’s List, D’s List and the Agreed List submitted by the parties under their respective letters dated 14 January 2022.
10. I hereby attach the list of contents and/or documents to be taken out of the witness statements and document bundles as Appendix I and Appendix II ruled by the Court with the brief reasons stated therein. Since I have not made any changes to the “Agreed List” made by the parties, it is not attached to this decision.
11. In the circumstances, the parties are directed to take out those irrelevant and/or inadmissible contents from their respective witness statements in accordance with their own agreement and/or the Court’s ruling as contained in the above tables. They are further directed to remove the irrelevant documents from their respective List of Documents and/or the proposed trial bundles. They shall have a new set of fresh witness statements (with appropriate deletions from the original documents) to be filed and served within 28 days from the date of handing down this decision. The existing witness statements of the plaintiff filed on 19 March 2020, supplemental witness statement of the plaintiff filed on 7 April 2021, witness statement of Yu Michelle Sin Ying filed on 7 April 2021, the defendant’s witness statement filed on 11 March 2020 and the defendant’s supplemental witness statement filed on 13 April 2021 shall all be expunged from the trial bundles accordingly. Further, a revised trial bundle index should also be agreed between the parties within 21 days from that date of handing down of this decision with all the irrelevant and/or inadmissible documents to be taken out from the proposed trial bundles. A copy of the revised trial bundles should be lodged with the clerk of the Court within 7 days thereafter for the Court’s inspection and approval.

*CONCLUSION*

1. In conclusion, I would like to stress the importance of parties in a PI case to closely observe and adhere to the underlying objectives of the CJR and try not to lose focus on the real issues in dispute in a case. The Court is here to help litigants to resolve their disputes and not to provide a venue to vent their anger, frustration and bitterness against his or her opponent. It certainly is not a place to settle their personal scores or to get vengeance of their past grievances. Failing to do so will only lead to unnecessary building up of costs and wasting of valuable time of both the parties and the Court.
2. In this case, I regret to see that both sides’ legal representatives seem to have lost sight of the fact that this case involves a very simple alleged assault on the plaintiff by the defendant. The past bitter history of personal disputes and grudges that existed between their lay clients have nothing to do with the real issues in dispute in this case at all. All the mudslinging and throwing of their kitchen sink against each other in my view has no place in a solemn setting of a court proceedings or a trial. In my view, their legal advisers should have exercised more discipline when drafting the witness statements and during the discovery process in order to make sure that all these irrelevant contents and materials should be excluded instead of blindly included them without much thoughts put into them.
3. With respect to both sides’ legal representatives, at least one-third if not as much as half of the contents of their client’s respective witness statements are totally unnecessary or not relevant to the real issues in dispute in this case. Further, the length of their witness statements in my view is unduly excessive and completely disproportionate to the size of the claim made by the plaintiff or the defence raised by the defendant.
4. In my judgment, a litigant, particularly in a PI case in the District Court, should not be allowed to include unnecessary and irrelevant materials in their witness statements and/or disclosed documents. Their lawyers should not put in whatever their clients want them or instruct them to include in their witness statements and/or documents without taking into consideration of the underlying objectives of the CJR and without considering whether those contents or documents should be included in the first place. After all, they are officers of the Court and owe a duty to the Court to ensure the underlying objectives of the CJR are being achieved in every case.

*Costs of including irrelevant materials*

1. In my judgment, this case is a clear example of the failure on the part of parties’ legal representatives in allowing the case to getting completely out of hand. Therefore, I consider that the costs of including those unnecessary contents in the witness statements and/or documents (including the costs of this exercise to try to agree to delete and/or remove them), whether agreed by the parties or ruled by the Court as irrelevant or inadmissible, should not be recoverable as part of the costs in this case. That is to say that no matter which party wins at the end of the day, such costs should be borne by the respective party themselves and cannot be recovered from the losing party. I shall make a note in this case on the court file to the taxing master to ask him or to bear this in mind when he/she deals with the issue of costs at the end of this case. By doing this, I hope lawyers, whether solicitors or counsel, in conducting PI litigation in future will have the underlying objectives of the CJR firmly in mind at all time during the proceedings and to avoid wasting unnecessary time and costs – both to the parties themselves and to the Court – by including totally irrelevant and unnecessary materials in their client’s witness statements and/or documents.

( Andrew SY Li )

District Judge

Letter and tables submitted by Messrs Ko & Chow, solicitors for the plaintiff on 14 January 2022

Letter and tables submitted by Mess Kevin Ng & Co, solicitors for the defendant on 14 January 2022

[Appendix 1](http://lrs.jud.hksarg/doc/judg/html/vetted/other/en/2018/DCPI001488_2018_files/DCPI001488_2018_Appendix_1.docx)

[Appendix 2](http://lrs.jud.hksarg/doc/judg/html/vetted/other/en/2018/DCPI001488_2018_files/DCPI001488_2018_Appendix_2.docx)