



PUMP COURT

CHAMBERS

Fundamental Dishonesty

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Today's session

- S.57 Criminal Justice and Courts Act 2015
- Interpretation of s.57
- Pleading Fundamental Dishonesty
- Findings of Fundamental Dishonesty
 - Surveillance an social media
- Appeals
- Word of caution

Criminal Justice and Courts Act 2015

- Claimant has succeeded at trial and is entitled to damages
- Defendant's application to dismiss the claim
- Court must be satisfied on the balance of probabilities that C has been fundamentally dishonest
- Relates to the primary claim or a related claim
- Court must dismiss all of the primary claim
- Potential defence for C: suffer substantial injustice if the claim were dismissed
- "Claim" includes counter-claim

Dishonesty

- Definition in *Ivey v Genting Casinos UK Ltd (trading as Crockfords Club)* [2017] UKSC 67
- Subjective test: actual state of individual's knowledge or belief as to the facts (belief does not have to be reasonable but must be genuinely held)
- Objective test: was the conduct honest or dishonest when applying the standards of ordinary decent people
- No requirement for the individual to have appreciated that what they have done is, by those standards, dishonest

Fundamental

- First seen in CPR 44 – QOCS regime
- Howlett v Davies & Anor [2017] EWCA Civ 1696 [at 44 and 45]
- 2 levels of dishonesty – costs liability
- “root of either the whole claim or a substantial part of his claim”

- London Organising Committee of the Olympic and Paralympic Games (in liquidation) v Haydn Sinfield [2018] EWHC 51 (QB)
 - “substantially affected the presentation of his case in respect of liability or quantum”
 - “potentially adversely affected D in a significant way”
 - Context dependent
 - Guidance at para 64

Pleading Fundamental Dishonesty

- Discretion of trial judge
- Not required
- Factors set out in: Howlett v Davies & Anor [2017] EWCA Civ 1696
 - C must be given adequate warning or notice of the issues raised
 - C must have had an opportunity to deal with it
- Mustard v Flower [2021] EWHC 846 (QB)
- Jenkinson v Robertson [2022] EWHC 791

Substantial injustice

- London Organising Committee of the Olympic and Paralympic Games (in liquidation) v Haydn Sinfield [2018] EWHC 51 (QB)
 - The loss of damages in and of itself would not suffice, something more was needed.
- Sudale v Cyril John [2021] (Leicester County Court) [at 25]
 - D's conduct is not a relevant consideration

Findings of Fundamental Dishonesty

- **Molodi v Cambridge Vibration Maintenance Service [2018] EWHC 1288 (QB) (Spencer J)**

“it is essential that the history given to the medical expert is as accurate as possible. This includes the history in relation to previous accidents as this goes to fundamental questions of causation: whether, if there are ongoing symptoms, those are attributable to the index accident or to previous accidents or to some idiopathic condition of the claimant” (at 46).

Findings of Fundamental Dishonesty

- **Susan Richards, Zane McGrann v Edna Morris [2018] EWHC 1289 (QB) (Spencer J)**

“the courts are entitled to expect a measure of consistency and certainly, in any case where a claimant can be demonstrated to have been untruthful or where a claimant’s account has been so hopelessly inconsistent or contradictory or demonstrably untrue that their evidence cannot be promoted as having been reliable, the court should be reluctant to accept that the claim is genuine or, at least, deserving of an award of damages.” (at 67)

Findings of Fundamental Dishonesty

- **Pegg v (1) Webb and (2) Allianz Insurance PLC [2020] EWHC 2095 (QB) (Spencer J)**
 - A judge’s suspicion should be raised when C seeks no medical assistance at all after the index accident (at 25)
 - “Positive lies” told by C to the medical expert and deliberately misleading him by the “deafening silence” as to his medical history (at 25)

Findings of Fundamental Dishonesty

- Surveillance and social media
- Sudale v Cyril John [2021] (Leicester County Court)
- Iddon v Warner [2021] EWHC 587 (QB)
 - Clinical negligence
 - Surveillance recordings showed inconsistencies in symptoms and injuries
 - Objective test applied by trial judge
 - Deliberate steps by C to mislead D and the court

- Difficult to appeal findings of, or findings of no, fundamental dishonesty
- Findings of fact
- Walkden v Drayton Manor Park [2021] EWHC 2056 (QB)
- Michael v IE & D Hurdford Ltd (TA Rainbow) [2021] EWHC 2318 QB

“It is too bold a submission to assert that an inaccurate pleading or defective disclosure statement is synonymous with the respondent’s fundamental dishonesty... There may... be cases where signing an inaccurate witness statement, statement of case or disclosure statement will be evidence of dishonesty... but it does not automatically follow. In this case the respondent was able to provide an honest explanation.”

Word of caution

- Preparation of cases and the need for careful consideration
- Michael v IE & D Hurdford Ltd (TA Rainbow) [\[2021\] EWHC 2318 QB](#)
- Cojanu v Essex Partnership University NHS Trust [\[2022\] EWHC 197 \(QB\) \[at 92\]](#)

“I consider that the incorrect pleading and the failure to quantify the claim properly by the Claimant’s lawyers in the schedule is not in this case a fundamental dishonesty. It was not a dishonesty at all. In addition, on the facts of this case inadequate pleading is not within the mischief which Parliament aimed to prevent by the passing of S.57. Nor is incompetence, carelessness, negligence or mere omission by the lawyers. The section requires proof of the Claimant’s dishonesty not his lawyers’ lack of competence.”



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Thank you



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