



PUMP COURT
CHAMBERS

Fundamental Dishonesty

Hannah Tickle - New Practitioners Webinar
Series

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Dishonesty

Ivey v Genting Casinos UK Limited [2017] UKSC 67. Lord Hughes, at [74]:

"When dishonesty is in question, the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest

Back to Basics

Fundamental

Howlett v Davies [2017] EWCA Civ 1696. Court of Appeal approved HHJ Moloney QC's summation at [44] and [45]:

"44. It appears to me that this phrase in the rules has to be interpreted purposively and contextually in the light of the context. This is, of course, the determination of whether the claimant is 'deserving', as Jackson LJ put it, of the protection (from the costs liability that would otherwise fall on him) extended, for reasons of social policy, by the QOCS rules. It appears to me that when one looks at the matter in that way, one sees that what the rules are doing is distinguishing between two levels of dishonesty: dishonesty in relation to the claim which is not fundamental so as to expose such a claimant to costs liability, and dishonesty which is fundamental, so as to give rise to costs liability.

45. The corollary term to 'fundamental' would be a word with some such meaning as 'incidental' or 'collateral'. Thus, a claimant should not be exposed to costs liability merely because he is shown to have been dishonest as to some collateral matter or perhaps as to some minor, self-contained head of damage. If, on the other hand, the dishonesty went to the root of either the whole of his claim or a substantial part of his claim, then it appears to me that it would be a fundamentally dishonest claim: a claim which depended as to a substantial or important part of itself upon dishonesty

Criminal Justice and Courts Act 2015 - Section 57(1)-(4)

(1) This section applies where, in proceedings on a claim for damages in respect of personal injury (“the primary claim”) —

(a) the court finds that the claimant is entitled to damages in respect of the claim, but

(b) on an application by the defendant for the dismissal of the claim under this section, the court is satisfied on the balance of probabilities that the claimant has been fundamentally dishonest in relation to the primary claim or a related claim.

(2) The court must dismiss the primary claim, unless it is satisfied that the claimant would suffer substantial injustice if the claim were dismissed.

(3) The duty under subsection (2) includes the dismissal of any element of the primary claim in respect of which the claimant has not been dishonest.

(4) The court's order dismissing the claim must record the amount of damages that the court would have awarded to the claimant in respect of the primary claim but for the dismissal of the claim.

Criminal Justice and Courts Act 2015 - Section 57(5)-(9)

(5) When assessing costs in the proceedings, a court which dismisses a claim under this section must deduct the amount recorded in accordance with subsection (4) from the amount which it would otherwise order the claimant to pay in respect of costs incurred by the defendant.

(6) If a claim is dismissed under this section, subsection (7) applies to—

(a) any subsequent criminal proceedings against the claimant in respect of the fundamental dishonesty mentioned in subsection (1)(b), and

(b) any subsequent proceedings for contempt of court against the claimant in respect of that dishonesty.

(7) If the court in those proceedings finds the claimant guilty of an offence or of contempt of court, it must have regard to the dismissal of the primary claim under this section when sentencing the claimant or otherwise disposing of the proceedings.

(8) In this section -

- “claim” includes a counter-claim and, accordingly, “claimant” includes a counter-claimant and “defendant” includes a defendant to a counter-claim;
- “personal injury” includes any disease and any other impairment of a person's physical or mental condition;
- “related claim” means a claim for damages in respect of personal injury which is made—
 - (a)
 - in connection with the same incident or series of incidents in connection with which the primary claim is made, and
 - (b)
 - by a person other than the person who made the primary claim.

(9) This section does not apply to proceedings started by the issue of a claim form before the day on which this section comes into force.

Procedure

- ***London Organising Committee of the Olympic and Paralympic Games v Sinfield* [2018] EWHC 51** at [64]:
 - 64. *Where an application is made by a defendant for the dismissal of a claim under s 57 the court should:*
 - a. *Firstly, consider whether the claimant is entitled to damages in respect of the claim. If he concludes that the claimant is not so entitled, that is the end of the matter, although the judge may have to go on to consider whether to disapply QOCS pursuant to CPR r 44.16 .*
 - b. *If the judge concludes that the claimant is entitled to damages, the judge must determine whether the defendant has proved to the civil standard that the claimant has been fundamentally dishonest in relation to the primary claim and/or a related claim in the sense that I have explained;*
 - c. *If the judge is so satisfied, then the judge must dismiss the claim including, by virtue of s 57(3) , any element of the primary claim in respect of which the claimant has not been dishonest unless, in accordance with s 57(2) , the judge is satisfied that the claimant would suffer substantial injustice if the claim were dismissed.*

Examples of Fundamental Dishonesty

- *Molodi v Cambridge Vibration Maintenance Service* [2018] EWHC 1288 (QB)
- *Patel v Arriva Midlands Ltd* [2019] EWHC 1216 (QB)
- *Roberts v Kesson* [2020] EWHC 521 (QB)
- *Elgamal v Westminster City Council* [2021] EWHC 2510 (QB)
- *Muyepa v Ministry of Defence* [2022] EWHC 2648 (KB)
- *Atuanya v Ministry of Defence* [2026] EWHC 758 (KB)

But what does the White Book say?

- **Rule 16.5 - Contents of the Defence 16.5.7.1**

- *It is not a requirement within the rules to plead fundamental dishonesty, although a claimant is entitled to know in advance the facts or proposition on which such a submission might be pursued. Such notification might come by way of various means and an application by the defendant for the dismissal of the claim pursuant to [s.57\(1\) of the 2015 Act](#) does not require any particular formality. If a defendant chooses to plead in their defence fundamental dishonesty, care must be taken to distinguish whether it particularises an already reasonably formulated case that has reasonable prospect of success or is instead simply “reserving” an allegation of dishonesty on a contingent basis. In [Mustard v Flower \[2021\] EWHC 846 \(QB\)](#), Master Davison criticised the defendant for seeking simply to “reserve the right” to plead fundamental dishonesty, commenting that it was not quite correct to label an application under [s.57](#) a “right” and, even if it were, there would be no requirement to have “reserved” the right in advance. The court in the subsequent case of [Covey v Harris \[2021\] EWHC 2211 \(QB\)](#), reviewed various authorities on fundamental dishonesty including the decision in [Mustard](#), noting the latter did not concern an application to plead a positive case. In allowing an application directly to plead fundamental dishonesty that, though late, had been contemplated by an earlier direction, the court had regard to the absence of express obligation to plead fundamental dishonesty, the overriding objective and need for a claimant to know the case to be put and the arguability of the point, even if necessarily still subject to cross-examination.*

Costs

- **Rule 44.16 - Exceptions to qualified one-way costs shifting where permission required 44.16.2**

A claim is fundamentally dishonest if the dishonesty goes to the root of either the whole of the claim or a substantial part of it; “a claim which depended as to a substantial or important part of itself upon dishonesty”: [Howlett v Davies \[2017\] EWCA Civ 1696; \[2018\] 1 W.L.R. 948, CA](#), approving [Gosling v Hailo, 29 April 2014, unrep.](#) (HH Judge Moloney QC). A court may conclude that a claim is fundamentally dishonest even if that has not been pleaded, provided that the claimant has had fair notice of the challenge to his or her honesty and an opportunity to deal with it: [Howlett v Davies](#) (above).

Where a claimant was found to have failed to disclose evidence as to his ability to pay car hire charges, which formed a substantial part of his claim following a road traffic accident, the claim was fundamentally dishonest and the claimant was not entitled to costs protection: [Haider v DSM Demolition Ltd \[2019\] EWHC 2712 \(QB\)](#).

Where a claimant had lied to his medical expert and to the court about the extent of his injuries, the claim was fundamentally dishonest because the extent of the injuries was not merely incidental or collateral but formed the very basis of the claim: [Pegg v Webb \[2020\] EWHC 2095 \(QB\)](#).

For the common law test of dishonesty, see [Ivey v Genting Casinos \(UK\) Ltd \[2017\] UKSC 67; \[2018\] A.C. 391, SC](#), at [74] per Lord Hughes.

For the meaning of “fundamental dishonesty” in relation to the [Criminal Justice and Courts Act 2015 s.57](#), see [London Organising Committee of the Olympic and Paralympic Games v Sinfield \[2018\] EWHC 51 \(QB\)](#).

Substantial Injustice - Case Law

- ***Iddon v Warner* [2021] EWHC 587 (QB)**

103. *I regard Mrs Iddon's dishonesty in this case to be very grave. She lied repeatedly about her injuries, she continued to lie after she had been found out and, most seriously, she persuaded others to lie on her behalf. In my judgment, the culpability and extent of her dishonesty far outweighs any injustice to her in dismissing her claim; the dismissal of this claim seems to me to be exactly the evil to which Parliament directed its mind in enacting [section 57](#). I do not believe that she would suffer substantial injustice if her claim were dismissed.*

104. *Mrs Iddon suffered serious and distressing consequences because of the defendant's breach of duty. Regrettably, she lied about how serious her condition was, and persuaded others to lie to support her account. I feel unable to rely on Mrs Iddon's evidence; I have been forced to look to other sources of information. It may be that the evidence I feel able to rely on is incomplete so that some of the losses Mrs Iddon suffered have not been taken into account. If that is so, she only has herself to blame.*

105. *I conclude that Mrs Iddon has been fundamentally dishonest in relation to her claim. I am not persuaded that she would suffer substantial injustice if I were to dismiss her claim. I record that, but for the dismissal of her claim, I would have awarded Mrs Iddon £70,050.32. Unless the parties can agree an order, I will hear submissions on what orders I should make about costs and about repayment of the interim payments and the interim payment on account of costs.*

Substantial Injustice - Case Law

- **Woodger v Hallas [2022] EWHC 1561 (QB)**

“47. In Iddon , [103] the judge approached the question of substantial injustice by balancing on the one hand, the nature and extent Mrs Iddon's dishonesty, and on the other the injustice to her of dismissing her whole claim, and came down in favour of dismissal on the basis that the former outweighed the latter. Mr Sasse commended this approach and commented that the judge had not undertaken any balancing exercise.

48. Taking the same approach to this appeal, even on the assumption that there was some injustice to this Claimant (which I have found there was not), the same conclusion follows. The sustained nature of his dishonesty; the length of time for which it was sustained; and his involvement of others all make his dishonesty so serious that it would have outweighed any injustice to him.

49. Counsel on this appeal were unable to refer me to any case which has defined the meaning of 'substantial injustice'. I was not wholly surprised by that. To paraphrase US Supreme Court Justice Potter Stewart in Jacobellis v Ohio 378 US 184, 197 (1964) , county court judges will generally, 'know it when they see it'. But in this case, for the reasons I have given, I have concluded that the judge was wrong.”

Substantial Injustice - The White Book (again)

“substantial injustice”

3F-32.6

As to the meaning of “substantial injustice” in subs.(2), in *Williams-Henry v Associated British Ports Holdings Ltd* [2024] EWHC 806 (KB), Ritchie J suggested (at [178]) a non-exhaustive list of factors the courts should consider when deciding whether dismissing a claim would cause substantial injustice:

1. The amount claimed versus the amount of assessed genuine damages: the greater the difference, the more weight this factor will have.
2. The scope and depth of that dishonesty found to have been deployed by the claimant. Ritchie J held that “widespread and gross dishonesty” would weigh more heavily against a finding of substantial injustice than “moderate or minor dishonesty”. Of course, at this stage of the analysis, the court has already decided that the dishonesty is “fundamental”.
3. The effect of the dishonesty on the claim, including costs consequences.
4. The scope and level of the claimant’s assessed genuine disability caused by the defendant. Ritchie J focused here, not on the claimant’s long-term suffering, but on the injustice of taxpayers ultimately bearing the cost of NHS treatment of a dishonest claimant who has not recovered damages.
5. The nature and culpability of the defendant’s tort.
6. The costs consequences if the claim is not dismissed. If the court finds substantial injustice but the genuine damages to be received by the claimant would “be substantially reduced or eradicated by the adverse costs awards, then it is less likely that [substantial injustice] will be caused by the dismissal.”
7. Whether the defendant has made interim payments, how large are these and whether the claimant be able to afford to pay them back.
8. The effect which dismissing the claim have on the claimant’s life: “will she lose her house? Will she have to live on benefits, being unable to work?”

Procedure Points - Heads of Claim

- ***Senay v Mulsanne Insurance Co Ltd* [2024] 5 WLUK 791**

24. In my judgment, there is such a clear indication in relation to the issue which I am considering. This is because an amendment to the bill to achieve precisely what the Defendant contends for in this case was proposed by Lord of Hunt of Wirral as amendment 128. The amendment was rejected by the Minister responsible for the bill in the House of Lords, Lord Faulks. In doing so, his words made clear that the intended meaning and effect of the words of the bill put forward by the Government, and which were enacted, was that the section would not result in the dismissing of claims other than in respect of personal injury and claims related to personal injury, such as claims for property damage and credit hire. In his response to the amendment, Lord Faulks said:

"Amendment 128 was tabled by my noble friend Lord Hunt of Wirral, to whom the House listens very carefully on all things, but perhaps particularly in areas such as this. It would extend the scope of Clause 49 to cover claims for items linked to the personal injury claim. As he has indicated, this could typically include items such as damage to property and the cost of credit hire. The effect of the amendment would be that where the court was satisfied that the Claimant had been fundamentally dishonest, its order would dismiss any such related elements, as well as the claim for personal injury—when, for example, a claim for personal injury is used as a vehicle for other fraud.

I understand precisely what my noble friend says, and I have considerable sympathy for what lies behind the amendment, which is to make the clause as strong a deterrent as possible. However, after careful consideration by my officials and myself, I believe, on balance, that it would unnecessarily complicate the clause, and could have unintended consequences that would not be desirable.

The types of loss that would be caught by the amendment arise primarily in motor accident claims, and in practice payments for such losses are generally made up front by the Claimant's insurer, and are then recovered by them from the Defendant's insurer in the event that negligence is admitted or proved. This means that the amendment could affect subrogated rights between insurers, and could operate to the disadvantage of the Claimant's insurer, who would find it much more difficult to recover such sums. That might in turn have the undesirable consequence of making insurers less inclined to make payments in respect of this kind of loss to genuine victims of accidents for whom, for example, the rapid replacement of a vehicle could be essential.

The complexity of the law on subrogated rights means that the potential for this type of unintended consequence would be high. In any event, I do not consider the amendment necessary. The existing focus of the clause on personal injury claims avoids complexities of this nature, and ensures that the core matter in relation to which the Claimant has actually been dishonest, and where the main scope for dishonest behaviour arises—the personal injury claim—will be dismissed whenever the court considers it appropriate. We are confident that this should provide a sufficiently powerful deterrent to discourage Claimants from seeking to bring fraudulent and exaggerated claims, and believe that the amendment could on balance run the risk of creating uncertainty in the law and would make the clause unnecessarily complex in practice."

Procedure Points

- *Diamanttek Ltd v James* [2016] 2 WLUK 209 - Costs enforcement
- *Jenkinson v Robertson* [2022] EWHC 791 (QB)
- *Thakkar v Mican* [2024] EWCA Civ 552 - Burden of proof

Contact details



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Call: 2023

Hannah currently has a mixed practice spanning Civil, Family and Crime. Hannah has a keen interest in people-focused law and happily accepts legal aid work in both the Criminal and Family jurisdictions. Prior to pupillage, Hannah first worked in Academia, securing a full scholarship and graduate stipend to undertake her Master's Degree whilst researching and teaching in the United States. Hannah was also awarded the Anglo-American Exchange Scholarship from Middle Temple, which allowed her to complete a legal internship in the United States.

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