

# Fundamental Dishonesty & Serious Injury Claims

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Speaker: Tom Vonberg

Date: 07 | 03 | 2019

Presentation at APIL North East group meeting on fundamental dishonesty and case law developments with a particular focus on serious injury claims.

# Introduction

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A long time ago  
in a galaxy far, far away....

# Defendant Tactics

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*“...a tactical approach can be adopted. In cases of minor and isolated instances of exaggeration, when considered against the claim overall, the threat of putting forward arguments of fundamental dishonesty may yield vastly reduced settlement whereas before the introduction of fundamental dishonesty, such minor exaggeration was largely an ignored factor”.*

Solicitor writing on DWF’s website

# Section 57 CJ & Courts Act 2015

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## *Personal injury claims: cases of fundamental dishonesty*

- (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 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.*
- (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.*

# Bullseye Bully

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# Porridge

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# Actual Porridge

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*“He consistently maintained that he was unable to drive, unable to lift, unable to pursue a career as a disc jockey, that his earning capacity was seriously reduced and that he required, and would continue to require, a great deal of help from his family in managing day-to-day tasks such as eating, washing and dressing. It is the alleged consequences of his supposed continuing disability which resulted in the gross inflation of his claim... for each of the contempts I have found proved there will be a concurrent sentence of three months’ imprisonment”. Spencer J in Calderdale and Huddersfield NHS Foundation Trust v Atwal [2018] EWHC 961 (QB)*

# Setting Precedent

<u>CASE</u>	<u>PRINCIPLES</u>
<i>Gosling v Hailo</i> (29 April 2014) [2014] 4 WLUK 770	<ul style="list-style-type: none"><li>○ Dishonesty is Fundamental if it goes to the “root” of a claim rather than a peripheral aspect of it.</li></ul>
<i>Howlett v Davies</i> [2017] EWCA Civ 1696	<ul style="list-style-type: none"><li>○ No particular pleading requirements on the Defendant as long as the Claimant is given a fair chance to respond to suggestions of dishonesty.</li></ul>
<i>Ivey v Genting Casinos UK Ltd (t/a Crockfords Club)</i> [2017] UKSC 67	<ul style="list-style-type: none"><li>○ Dishonesty is assessed by the objective standards of the ordinary man but the subjective state of mind of the Claimant.</li></ul>
<i>London Organising Committee of the Olympic And Paralympic Games (LOCOG) v Sinfield</i> [2018] EWHC 51	<ul style="list-style-type: none"><li>○ Section 57 dishonesty is that which “<i>substantially affected the presentation of his case... in a way which potentially adversely affected the defendant in a significant way</i>”.</li></ul>



# Case Law 1

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<u>CASE</u>	<u>PRINCIPLES</u>
<i>Stanton v Hunter</i> [2017] 3 WLUK 797	<ul style="list-style-type: none"><li>○ Claimant fundamentally dishonest for continuing to work when he claimed that he could not.</li></ul>
<i>Keane v Tollafield</i> [2018] 8 WLUK 306	<ul style="list-style-type: none"><li>○ Claimant not fundamentally dishonest in a variable pain case.</li></ul>
<i>McDaid v Walsall MBC</i> [2018] 5 WLUK 171	<ul style="list-style-type: none"><li>○ “<i>Reluctant</i>” finding of fundamental dishonesty.</li></ul>

# Case Law 2

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<u>CASE</u>	<u>PRINCIPLES</u>
<i>David Pinkus v Direct Line</i> [2018] EWHC 1671 (QB)	<ul style="list-style-type: none"><li>○ The “<i>Hollywood</i>” claim.</li></ul>
<i>Razumas v Ministry of Justice</i> [2018] EWHC 215 (QB)	<ul style="list-style-type: none"><li>○ “<i>Substantial Injustice</i>” is “<i>something more</i>” than the Claimant losing out on damages.</li></ul>
<i>Joseph v Commissioner of Police of the Metropolis</i> [2018] 5 WLUK 490	<ul style="list-style-type: none"><li>○ Claimant failed to establish TBI but not found to be dishonest.</li></ul>

# Case Law 3

<u>CASE</u>	<u>PRINCIPLES</u>
<i>Hibberd-Little v Carlton</i> [2018] EWHC 1787 (QB)	<ul style="list-style-type: none"><li>○ £4.4m claim reduced to £41,250 but no finding of dishonesty.</li></ul>
<i>Molodi v Cambridge Vibration Maintenance Service</i> [2018] EWHC 1288	<ul style="list-style-type: none"><li>○ HHJ Main QC overruled and a finding of Fundamental Dishonesty made.</li></ul>
<i>Richards v Morris</i> [2018] EWHC 1289 (QB)	<ul style="list-style-type: none"><li>○ HHJ Main QC overruled again. His retirement was announced soon after!</li></ul>
<i>Wright v Satellite Information Services Ltd</i> [2018] EWHC 812 (QB)	<ul style="list-style-type: none"><li>○ No fundamental dishonesty where the Schedule of Loss had incorporated an unsustainable care claim.</li></ul>

# Practice Points

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# Thank You!

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