



# Fundamental Dishonesty

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# Pre-existing Law

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## Summers v Fairclough [2012] UKSC 26

C fracture to hand and a serious fracture to his left heel.

Claim: £840,000, recovered £89,000.

C contended - dependent on crutches and incapable of working.

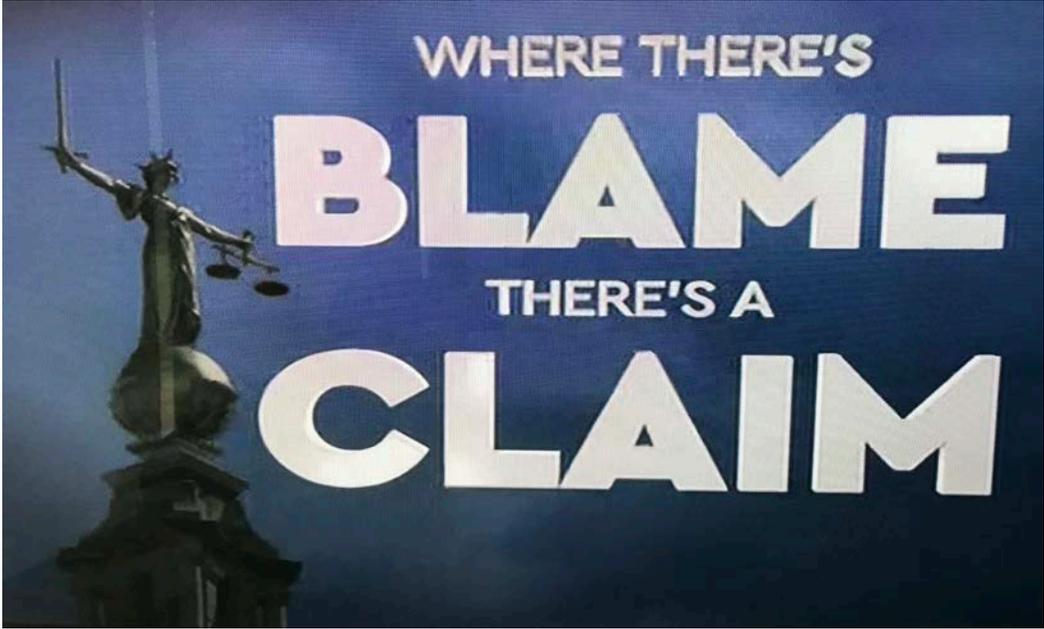
Surveillance conducted both by the defendant's insurer, Zurich Insurance, and by the DWP demonstrated that he was independently mobile and working in a burger van.

Held: power to strike out is to be exercised only where it was just and proportionate to do so, and that was likely to be only in very exceptional circumstances when such application is made at the end of trial.



# The assault on fraud and the compensation culture

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# Battle lines:

## Clause 45: Personal Injury claims- cases of fundamental dishonesty.

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- a. Should dishonest exaggeration put an otherwise genuine claim at risk?
- b. Is dishonesty enough or is more required – i.e. must it also be fundamental to the claim?
- c. Should the Defendant's also carry some jeopardy?
- d. Should the provision be mandatory.
- e. Should there be an additional layer of protection/discretion – substantial injustice.

# A matter of perspective.





# A flavour of the debate - The Lords 23.07.14

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# Section 57 Criminal Justice and Courts Act 2015

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## 57. 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 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.



# Three component parts:

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Dishonesty

Fundamental

Substantial Injustice



# Reported decisions

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**SINFIELD** [2018] EWHC 51 (QB) Knowles J (permission Spencer J)

**MOLODI** [2018] EWHC 1288 (QB) Spencer J

**PINKUS** [2018] EWHC 1671 (QB) Judge Coe QC

**WRIGHT** [2018] EWHC 812 (QB) Yip J

**SMITH** [2019] Judge Hampton

**PATEL** [2019] EWHC 1216 Judge Clark

**KAMARA** [2019] Judge Baucher

**GRANT** [2020] Judge Howell

**PEGG** [2020] EWHC 2095 (QB) Spencer J

**ROBERTS** [2020] EWHC 521 (QB) Jay J

**GARRAWAY** [2020] Judge Simpkins



# What is dishonesty?

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## [Ivey v Genting Casinos UK Ltd \(t/a Crockfords Club\) \[2017\] UKSC 67,](#)

Lord Hughes stated at paragraph 74,

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



# What is fundamental?

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## **LONDON ORGANISING COMMITTEE OF THE OLYMPIC & PARALYMPIC GAMES (In Liquidation) v HAYDN SINFIELD [2018] EWHC 51 (QB) Knowles J para 56**

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.' *Howlett v Davies*



# What is substantial injustice?

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Sinfield – para 65

"Substantial injustice" had to mean more than the mere fact that the claimant would lose his damages for those heads of claim that were not tainted with dishonesty – What will generally be required is some substantial injustice arising as a consequence of the loss of those damages.

Given that this Claimant has suffered a painful injury, and that I have accepted what the Claimant's medical witnesses have told me about that, that he has been required to resist the Defendant's vigorous attempts to avoid responsibility for an accident which it was accepted at the very last moment was entirely the fault of the Claimant's employer, I find that the Claimant would suffer substantial injustice if the claim were dismissed. I do not find that the Claimant has forfeited his right to have his claim determined.



# Examples of dishonesty

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Fabrication - documents

Gross exaggeration - surveillance

Demonstrable untruths – working

Connected lies – accident circumstances.

Multiple inconsistencies – overwhelming volume of evidence.

Combination of the above.



# Practice points

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Advise the Claimant appropriately

Ascertain and remember the narrative to establish consistency.

Pause for thought – consistency

Question everything and If in doubt check.

Beware of absolutes – factual and medical.

Working Schedule.

Remember – its perspective.



# Case study

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C – hip dysplasia – clin neg - liability partially admitted.

Past losses – age 2 – 18 – care etc.

Dispute re efficacy of future hip replacement –

C contends severe disability form age 50 – above £1,000,000.00

D says no significant long term – below £100,000.00

C – asserts wheelchair use outdoors/long distances – surveillance suggests otherwise.

..... only the start .....

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