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TGC Fraud Update

The Newsletter of the TGC Fraud Team

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Editorial

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Welcome to the latest instalment of the TGC Fraud Update.

The timing and content of this edition neatly demonstrate that fundamental dishonesty (in all its various guises) is here to stay. It is just over 5 years after the introduction of the concept in April 2013, and this edition of the Update is as packed as any, with articles and case reports reflecting the ways that insurers and their legal teams continue to push to the boundaries of the concept and its application.

In this issue:

- Ellen Robertson considers the recent application of s.57 and the importance of schedules of loss;
- Matt Waszak and Elizabeth Gallagher focus on the construction of s.57 and offer some guidance on a potential thorny issue that is yet to be determined;
- James Yapp reviews the recent authorities on CNFs, which will surely have practical implications for claimants' representatives as well as offering a little more certainty for defendant's at trial;
- Paul McGrath discusses the conflicting county court decisions on the quantum of fixed costs for applications;
- I have a look at a recent case on the consequences of discontinuing proceedings shortly before trial without proper explanation.

As always, these articles are accompanied by a further host of recent decisions in the types of cases that we all deal with on a daily basis.

Please do contact a member of the TGC fraud team if you have any queries about any of the items dealt with in this issue, or indeed about any other issues relating to insurance fraud and related matters.

I do hope that the contents of this newsletter are both interesting and useful; as ever I would welcome any feedback from our readers.

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The importance of Schedules of Loss (and of avoiding emotive language)

Ellen Robertson

The High Court has ruled in Edward *Wright v Satellite Information Services* [2018] EWHC 812 that HHJ Pearce was entitled to find a Claimant who had been awarded only £2,100 of a future care claim pleaded at £73,000 was not fundamentally dishonest. At trial in the County Court, the Claimant was awarded £119,165.02 in damages and the Defendant was ordered to pay 75% of the Claimant's costs. The Defendant appealed, contending that the claim should have been dismissed pursuant to section 57 of the Criminal Justice and Courts Act on the basis that the claim was fundamentally dishonest.

Mrs Justice Yip focused upon how the claim for care had actually been presented by the Claimant. The Claimant had not laboured the point in relation to future care in his statements and accepted in cross-examination that he did not require future care. The trial judge had accepted the Claimant's evidence that the Claimant's wife would occasionally do tasks for him such as reaching items out of a cupboard and providing support through her presence when he was showering.

Yip J therefore found that the trial judge's decision not to award the majority of the future care claim stemmed from the conclusion that the care described did not properly sound in damages, rather than a rejection of the Claimant's evidence. She stated she would have been surprised if, when viewed in context, the rejection of the bulk of the future care claim had been found to support a finding of dishonesty, still less fundamental dishonesty.

The appeal was therefore dismissed.

Yip J also considered the question of the schedule of loss, stating "It seems to me that the importance of the schedule of loss is frequently overlooked... The fact that the schedule of loss is required to be supported by a statement of truth highlights the need for it to be readily understandable by the claimant." She criticised the schedule of loss as drafted by the Claimant's solicitors for its failure to set out a sufficient narrative for the Claimant to adequately understand the facts to which he was attesting, describing such a failure as "failing in their duty both to the client and to the court."

The Court gave guidance to Defendants seeking to establish fundamental dishonesty about the need for detailed analysis of the way in which the claim was presented, finding that the use of emotive language by the Defendant's Counsel to be perhaps symptomatic of that lack of analysis. She noted that the Defendant's skeleton argument raised various other inconsistencies which appeared to go beyond the basis upon which permission was granted, but held in any event that the trial judge was entitled to find that "although at times the Claimant gave a misleading impression by focusing on his symptoms when they were at their worst, he had not deliberately attempted to overstate his case."

Fixed Costs: Interim Hearings

Paul McGrath

The fixed recoverable costs set out in CPR 45.29A – 45.29L have already generated a fair amount of litigation. One such matter concerns the amount of recoverable costs for interim hearings. In *Skowron v Rollers Roller Disco Limited* DJ Middleton, sitting in the County Court at Truro considered the costs recoverable under CPR 45.29H where an application had been dealt with on the papers (i.e. without an advocate attending).

CPR 45.29H provides:

'(1) Where the court makes an order for costs of an interim application to be paid by one party in a case to which this Section applies, the order shall be for a sum equivalent to one half of the applicable Type A and Type B costs in Table 6 or 6A.'

Table 6 and Table 6A are included within CPR 45.18. 'Type A' costs means the 'legal representative's costs' and 'Type B' costs means the 'advocate's costs'. Type A is set at £250. Type B is set at £250.

CPR 45.18(4) provides that, subject to CPR 45.24(2) (not relevant to this article), then the Court will not award more or less than the amounts shown in Table 6 or 6A.

DJ Middleton concluded that the rules proscribed that half of Type A and half of Type B were the applicable costs to be awarded, even where an advocate was not instructed. Accordingly, he allowed half of Type A and half of Type B costs.

This decision was being circulated and was commented upon (negatively) in Kerry Underwood's costs blog.

The matter came on again for consideration in *Page v Lovell*. The Defendant's solicitor recognised the importance of the point across the board (though trivial in any given case) and instructed Counsel to argue the point fully. The case was heard by DJ Andrew Holmes sitting in the County Court at Kingston-Upon-Thames on 8 December 2017.

The brief facts of the case are that the parties agreed to set aside judgment and that the Defendant would pay to the Claimant the costs due under CPR 45.29H. However, the parties then disagreed about what those costs should be. The matter thus went to a contested hearing.

The sole question for the Court was as follows: when an application is dealt with by agreement and on the papers (without an hearing) is the Claimant entitled to half of Type A and half of Type B fixed costs, or just half of Type A?

The Defendant submitted that the decision of DJ Middleton was wrong and should not be followed. The Defendant submitted that:

- CPR 45.29H made it clear that the Claimant was only entitled to half of the 'applicable' costs set out in Table 6 for Type A and Type B (see 45.29H);
- Therefore, the first enquiry must be which costs from Type A and Type B are 'applicable' to the application?
- Where an application is agreed and dealt with on the papers, it cannot be said that there has been any advocacy or the use of any advocate. There are no 'advocate's costs'. Accordingly, it is counter-intuitive to award a party the costs of an advocate that have never been incurred;

- If the Claimant's argument was right, and he was entitled to the 'advocate's costs' even though no advocate had been instructed, then the word 'applicable' in CPR 45.29H had to be ignored entirely. That would not be simply a strained construction, but is instead re-writing the rule;
- The Defendant's submission made perfect sense because an uncontested and agreed application would result in an award of £125+VAT, whereas a contested application leading to an attended hearing would lead to a greater award of £250+VAT. The Claimant's submission would mean that a party would receive exactly the same amount whether the application was contested or not and whether or not the costs of an advocate were incurred or not (inconsistent with the scheme more generally).

The Claimant relied on the decision of DJ Middleton and argued that the costs were fixed at one half of both Type A and Type B. They were the 'applicable' costs.

The Defendant Judge accepted the Defendant's submissions and that instead the appropriate costs to be awarded when no advocate appeared was simply one half of the Type A fixed costs, i.e. £125.

The Defendant was thus right to contest the point and was awarded his costs of attending the hearing. The Claimant's own costs entitlement was less than the Defendant's, leaving the Claimant with a balance to pay.

Findings of fundamental dishonesty following discontinuance – lessons from *Alpha Insurance v Roche (1) Roche (2)* [2018] EWHC 1342 (QB)

James Henry

Examples of claimants discontinuing proceedings on the eve of trial are frequently encountered in the world of fundamental dishonesty and QOCS. CPR 38.2 permits a claimant to discontinue his claim at any time. In cases where dishonesty is alleged (or is likely to be alleged at trial) discontinuance can be a mechanism by which a claimant can avoid the costs consequences of adverse finding at trial. That 'escape route' is tempered by 44PD 12.4(c), which provides that *"where the claimant has served a notice of discontinuance, the court may direct that issues arising out of an allegation that the claim was fundamentally dishonest be determined notwithstanding that the notice has not been set aside pursuant to rule 38.4"*. The Judgment of the High Court (Yip J) in Roche has provided authority on the application of that rule and given some guidance on relevant factors that may be taken into account when deciding to determine issues of FD following discontinuance.

Background

The defendant denied that the second claimant was present at the scene of a road traffic accident and alleged fundamental dishonesty. A notice of discontinuance was filed the day before the trial. At the defendant's request the case remained in the court list to allow the defendant to apply for a direction that the issue of fundamental dishonesty be determined. HHJ Gregory refused that application on the basis that to set aside further court time to allow the issue to be ventilated would be a disproportionate use of limited and precious court resources. He went on to find that *"there is nothing, in my judgment, which suggests that there is any particular exceptional quality about this particular case that should cause me to give further directions [on the issue of dishonesty]"*.

The appeal was allowed on the basis that the Judge had applied the wrong test by requiring an 'exceptional quality' to the case before making the direction. Yip J exercised the discretion afresh and, while recognising that the decision was finely balanced, considered it was reasonable for the defendant to be given the opportunity to put forward its evidence and to test the claimants' evidence on the issue of fundamental dishonesty.

Lessons

- PD 44 12.4(c) does not require the case to be exceptional before the court will direct that the issue of fundamental dishonesty be determined. Giving such a direction should be seen to be to be neither routine nor exceptional. The correct approach is to regard the discretion as unfettered, requiring all relevant considerations to be weighed in accordance with the overriding objective.

- Although proportionality is clearly an important consideration, it needs to be recognised that there is a public interest in identifying false claims and claimants in such cases being required to pay the costs.
- Two factors that weighed heavily in the balance in *Roche* (though they will regularly appear in other cases) were the late stage that the claim was discontinued and the complete absence of explanation from the claimants. Yip J noted that any reasonable explanation for the late discontinuance may well have tipped the balance the other way. Although the onus to provide an explanation should be on the claimant who discontinues his case, it would be prudent for those faced with late discontinuances to require an explanation and, in the absence of the same, expect the court to be more willing to direct that issues of fundamental dishonesty be ventilated, notwithstanding the additional time and cost that will inevitably be incurred.

Two further observations

- In appropriate cases the question whether it would be proportionate to use further court time and resources may be avoided by asking the court to determine the issue on the basis of the papers alone. Roche was clearly not such a case, but in sufficiently clear cases courts are likely to be willing to do so. In those circumstances, proportionality may even be considered a factor weighing in favour of a summary determination.
- In *Roche* the issue of fundamental dishonesty was clearly live because of the positive pleading in the defence. In cases where fundamental dishonesty has not been positively pleaded, defendants are more likely to find persuading the court to dedicate further time and resources a considerably more difficult task. In cases where dishonesty has not been pleaded, and there is a likelihood that a notice of discontinuance will be filed, defendants should consider amending their pleadings to ensure that the claimant is on notice of an intention to pursue a finding of fundamental dishonesty at the earliest possible stage. At the very least the issue should be made clear in open correspondence.

The Facts of Life – the importance of a CNF

James Yapp

Judges are often invited to recognise the realities of low-value litigation and to give little or no weight to inconsistencies between a Claim Notification Form ('CNF') and subsequent evidence. Indeed, this is exactly what happened at first instance in the case of *Richards and McGrann v Morris* [2018] EWHC 1289 (QB). HHJ Main QC, referring to CNFs, held that:

"I do not find them reliable documents. They are done shortly. They are all very summarised. They are simplistic documents… and I just ignore them".

Is a Court able to simply write off such errors as "a fact of life" (as the respondent put it in Richards)? A CNF will typically be digitally verified by the claimant's representative by selecting a check-box alongside the following wording:

"I am the claimant's legal representative. The claimant believes that the facts stated in this claim form are true. I am duly authorised by the claimant to sign this statement."

This wording largely summarises Practice Direction 22, para 3.8 which provides that:

"Where a legal representative has signed a statement of truth, his signature will be taken by the court as his statement-

1. that the client on whose behalf he has signed had authorised him to do so,
2. that before signing he had explained to the client that in signing the statement of truth he would be confirming the client's belief that the facts stated in the document were true, and
3. that before signing he had informed that client of the possible consequences to the client if it should subsequently appear that the client did not have an honest belief in the truth of those facts (see rule 32.14)."

The High Court has recently endorsed a stricter approach to interpretation of CNFs. Mr Justice Martin Spencer allowed the Defendant's appeal in Richards and dismissed the claim. In so doing, he expressly disagreed with HHJ Main QC's comments. He held that CNFs are important documents which not only represent the first notification of a claim, but are often the basis for early settlement. Moreover, given that they are verified by a statement of truth, insurers should be able to rely upon their contents.

Indeed, the Judge's view was that a false statement of truth in a CNF could provide the basis for possible contempt of court proceedings under rule 32.14. This will no doubt remind many readers of Mr Justice Warby's less unequivocal footnote in the case of *Liverpool Victoria v Yavuz and others* [2017] EWHC 3088 (QB).

In another judgment handed down on the same day as Richards, Mr Justice Martin Spencer again allowed the Defendant's appeal against judgment. However, in *Molodi v Cambridge Vibration and Aviva Insurance Limited* [2018] EWHC 1288 (QB) he went one step further by substituting a finding of fundamental dishonesty. In making findings regarding the Claimant's dishonesty, the learned Judge placed the CNF at the heart of his reasoning. He referred to:

"fundamental inconsistencies between what the Claimant was saying in his witness statement and evidence, and what he had said in the Claim Notification Form."

No doubt Mr Justice Martin Spencer's robust judgments will be cited by defendants in those cases where the claimant relies upon "the facts of life".

Section 57 of the Criminal Justice and Courts Act 2015: a limited weapon?

Matt Waszak and Elizabeth Gallagher

Intro

Practitioners have been spoiled for choice in 2018 with the flurry of guidance provided from the High Court on how the power conferred by section 57 of the Criminal Justice and Courts Act 2015 should be wielded in practice.

First, there came the decision handed down on 22 January 2018 by Mr Justice Julian Knowles in *London Organising Committee of the Olympic & Paralympic Games v Sinfield* [2018] EWHC 51 (QB), in which members of Temple Garden Chambers acted (see article by James Laughland in Issue VII). That was then followed by the decisions of Mrs Justice Yip in *Wright v Satellite Information Services Limited* [2018] EWHC 812 (QB) (11 April 2018) (see article by Ellen Robertson above) and of Mr Justice Martin Spencer in *Molodi v (1) Cambridge Vibration Maintenance Service (2) Aviva Insurance Limited* [2018] EWHC 128 (QB) (24 May 2018) (see article by James Yapp above). The old adage of waiting for a bus and two (or three!) coming at once could not have chimed more perfectly.

This article is not a summary of those decisions, still less a general practical guide on the application of section 57, which will be all too familiar to practitioners already. Instead, it considers **one issue** that will be of interest to fraud practitioners. Can section 57 be used to dismiss genuine claims for vehicle damage and credit hire which arise from a genuine accident, in circumstances where a claimant is found to have been fundamentally dishonest in their claim for personal injury? The authors are not aware of any written judgment in which that issue has been expressly considered.

The construction of section 57

In **Sinfield**, Mr Justice Julian Knowles summarised (at paragraph 64) the approach the court should adopt in relation to an application for the dismissal of a claim under section 57:

i. First, the court should consider whether a claimant is entitled to damages in respect of the claim. If the claimant is not so entitled, that is the end of the matter although the court may have to go on to consider whether to disapply QOCS pursuant to CPR 44.16.

ii. Second, 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 (as defined under section 57).

iii. Third, if so satisfied then the judge must dismiss the claim including, by virtue of section 57(3), any element of the primary claim in respect of which the claimant has not been dishonest unless, in accordance with section 57(2), the judge is satisfied that the claimant would suffer substantial injustice if the claim were dismissed.

The power conferred under section 57(2) and (3) to dismiss a claim is defined by reference to "the primary claim" and "any element of the primary claim in respect of which the claimant has not been dishonest". "The primary claim" is defined as "proceedings on a claim for damages in respect of personal injury".

On close inspection of its drafting, the phrase "proceedings on a claim for damages in respect of personal injury" is potentially problematic. The phrase appears to be more narrowly drafted than the following construction that might have been used: "proceedings *that include* a claim for damages in

respect of personal injury". The definition of primary claim under section 57(1) could, in turn, be read to suggest that the court's dismissal powers under section 57(3) are limited to the dismissal of the personal injury elements of a claim only, and do not extend to the dismissal of the non-personal injury elements of a claim.

In most personal injury claims, the application of section 57 is unproblematic. Take for example the following situation. A claimant sustains a genuine injury as a result of an accident. The claimant claims for general damages for personal injury, alongside claims for care and assistance, loss of earnings and physiotherapy. In turn, it is uncovered that the claimant has created fake invoices for physiotherapy treatment to support the claim. At trial, while the claimant's entitlement to general damages, and damages for care and loss of earnings is established, it is found that the claimant has been fundamentally dishonest in relation to the physiotherapy claim. On an application by the defendant, it is established that "the claimant has been fundamentally dishonest in relation to the primary claim" (section 57(1)(b)), and all elements of the claimant's claim are dismissed.

Take now a regular situation in a road accident case where a claimant claims general damages for PSLA, alongside claims for vehicle damage and the charges for the cost of hiring a replacement vehicle. Assume in this hypothetical example that all such claims arise from a genuine accident, in which the claimant's car was damaged and the claimant hired a replacement vehicle until his car was repaired. At trial, while the claimant's entitlement to damages for the cost of vehicle repairs and hire is established, it is found that the claimant has been fundamentally dishonest in relation to his claim for general damages. Under section 57, does the court have the power to dismiss the special damages claims in relation to which the claimant has not been dishonest? Do the powers of dismissal conferred by section 57 extend to the elements of a claim which are not elements of a personal injury claim?

That is the million dollar question. In this hypothetical situation, it turns on whether claims for the vehicle repairs and hire charges can be construed as "an element of [proceedings on a claim for damages in respect of personal injury]" (section 57(1) and 57(3)). By appearing to limit the definition of a primary claim to a claim for damages in respect of personal injury, it could be argued that the dismissal powers conferred by section 57 do not extend to the elements of a claim which are not elements of a personal injury claim.

Different judicial approaches

The authors are not aware of any written judgment in which this question of the construction of section 57 has been expressly considered. But even without expressly considering its drafting, how have judges applied section 57 in practice?

The judgment of Her Honour Judge Wall in **Bashir v (1) King (2) UK Insurance,** which was handed down on 11 May 2017, serves as an example of the way in which the court's powers under section 57(3) have been interpreted as extending to the dismissal of claims for vehicle damage and credit hire.

The claimant claimed damages as a result of a road traffic accident. She alleged that her car was occupied by seven people at the time of the accident: herself, four other adults and two children. She called three of the alleged adult passengers to give evidence, all of whom had intimated claims for personal injury by the submission of claims notification forms (CNFs). The defendant's case was that at the time of the accident, the claimant's vehicle was occupied by the claimant, one female adult passenger and one child.

The judge accepted the defendant's version of events in relation to occupancy, holding that (at paragraph 37):

"the claimant was involved in a genuine accident but she has prosecuted her claim dishonestly. She has asserted that passengers were in her car, when I find that they were not. She has called as witnesses in support of her claim her three alleged passengers whom I find were not in the in the car at all".

While accepting that the claimant had a valid claim for repair and excess, the judge used section 57 to dismiss both claims on account of the claimant's fundamental dishonesty.

Discussion

This case serves as an example of the way in which section 57(3) has been interpreted as conferring the power to dismiss the non-personal injury elements of a claim in circumstances where fundamental dishonesty is established in relation to a claimant's personal injury claim or a related claim. It is the authors' view that that purposive interpretation of section 57 has to be the correct one.

At the Committee stage of the passage of the Criminal Justice and Courts Bill in the House of Lords on 23 July 2014, Lord Faulks QC, then the Minister of State for Justice, said:

"At the moment, [section 57] requires the court to dismiss in its entirety any personal injury claim when it is satisfied on the balance of probabilities that the claimant has been fundamentally dishonest, unless it would cause substantial injustice to the claimant to do so".

On a close inspection, section 57 could have been drafted more clearly. Indeed, a more attractive construction of the definition of the primary claim under section 57(1) would have been proceedings that include a claim for damages in respect of personal injury. However, it would simply defeat the purpose of the legislation if the court could not use section 57(3) to dismiss the genuine (non-personal) injury elements of a claim, in circumstances where fundamental dishonesty is established in relation to the primary claim or a related claim. In all cases, the starting point should be that fundamental dishonesty contaminates the entirety of a claimant's claim. With a flurry of cases in 2018 reaching the higher courts, there is, it seems, a degree of inevitability that the application of section 57 will be considered by the Court of Appeal in due course.

Recent Noteworthy Cases

Wilde v Aviva, 14 Feb 2018 & 14 March 2018, Winchester County Court, DJ Stewart

RTA – Fraud – Fundamental Dishonesty

Tim Sharpe (Instructed by Charles Clayton of Clyde & Co) appeared in this case arising from an accident in July 2015 in which the Claimant claimed to have sustained injury and damage to his car when part of the Defendant's vehicle flew over the central reservation and struck his vehicle. The claim was dismissed and the Claimant found to have been Fundamentally Dishonest.

The Claimant was a serving soldier at the time of the collision. He claimed that on the day of the incident he was driving his vehicle southbound on the A1(M). The Defendant's insured was driving a camper van north on the same road when she lost control and collided with the central reservation. The Claimant claimed that the windscreen of the camper van flew out of the van, over the central reservation and struck his car on the oncoming side of the motorway. He claimed his vehicle was damaged and that he sustained injury due to the impact and the application of the brakes. The Defendant's driver admitted breach of duty but said that the windscreen was damaged but did not break, and remained largely in place before being removed and placed into the rear of the van by the driver of the recovery truck. A photograph taken after the collision of the inside of the van showed a section of glass bearing a tax disc stored in the camper section of the van. The Claimant was cross examined about his original pleadings that had claimed the Defendant's vehicle had collided head on with his car. The court accepted that this was not an issue that tainted the Claimant's evidence and the credibility of his evidence on this issue was accepted. However, the Claimant maintained that the entire windscreen hit his car yet altered his position when the photograph was shown to him, claiming that it was only part of the windscreen. The Claimant also claimed that his neck pains had started the next morning while his statement said this was that he was in pain 4-5 days later. The court held that there was no credible evidence that the windscreen or part of it had been propelled into the oncoming side of the motorway and the court was left with grave doubt as to the Claimant's truthfulness. While there was damage to the Claimant's car, it was not consistent with being hit by a windscreen and was more consistent with damage accumulated from the high mileage of the car. Judgment in this case was reserved and on the Defendant's application for a finding that the claim was fundamentally dishonest, the court considered there was no doubt that the claim was fundamentally dishonest. The court noted it was a sad finding to make given the Claimant's job, but having re-read the statement the court felt it was nothing but a tissue of lies, and his case was incredible. The court concluded "if you live by the sword, you die by the sword".

Truman v Weston-Keenan, Leicester CC, HHJ Hampton, 16 February 2018

Ellen Robertson (instructed by Gemma Day of Horwich Farrelly) represented the Respondent/ Defendant who successfully opposed an appeal against a finding of fundamental dishonesty at first instance.

The Appellant/Claimant pursued a claim for personal injury and related losses arising out of a road traffic accident in September 2016. William Irwin represented the Defendant at trial, where the District Judge dismissed the claim and found that the claim was fundamentally dishonest on the balance of probabilities, disapplying QOCS protection. The Claimant appealed on the grounds that the judge was wrong in law in considering expert evidence for which there was no permission, that the judge conflated dismissal of the claim with fundamental dishonesty and that the judge had misdirected himself on the facts.

The Court dismissed the appeal. There had been no permission for the Defendant's forensic engineer's report but the Claimant had put the report in the bundle and took no objection to it prior to or during the trial. The point could and should have been taken at trial and a rehearing of the trial would be disproportionate.

The Court noted that it would always be possible for judgments to be better expressed. It was not necessary in an extempore judgment in a low value fast-track hearing for the judge to expressly direct himself regarding the burden or standard of proof regarding fundamental dishonesty or to direct himself that fundamental dishonesty findings would require more cogent evidence. There was no evidence that the District Judge had conflated the dismissal of the claim and the finding of fundamental dishonesty or that he had misdirected himself on the facts, and it was clear from the judgment at first instance that the District Judge had not found the Claimant to be credible.

Stimpson v Axa, Colchester CC, 22.02.18, DDJ Cooksley

LVI – call recording – finding of fundamental dishonesty

James Henry, instructed by Tim Ibbottson of Keoghs and Neal Westwood at Axa, represented the successful defendant in this causation case.

In this case a significant causation issue was the alleged onset of pain. C spoke to his insurers c.24 hours after the collision and confirmed that he had not sustained any injury. The call recording was made available for the court and C was cross-examined. C maintained that the onset of pain was the day after the call (i.e. 2 days after the accident). He had consistently reported that onset in his witness evidence. His expert had considered the late onset and said that it was consistent with the mechanism of the collision. Therein lay the difficulty for C, who alleged that he was struck from behind at between 10 and 20mph and his car had been shunted forwards. In contrast, D said that the contact between the vehicles was no more than a mild tap. The court preferred D's account and found that C's report to his expert was dishonest. The Judge went on to find that the whole claim had been made up such that it was appropriate to set aside QOCS and make an enforceable costs order.

Woodall v Liverpool Victoria (9th March 2018 – Bath CC – DDJ Whiteley)

Inconsistency – Exaggeration – Fundamental Dishonesty – QOCS

James Yapp (instructed by Rebecca Irving of Horwich Farrelly) acted for the Defendant in this liability-admitted road traffic accident. Unusually, the Claimant disclosed a handwritten (and hand signed) version of his CNF of the morning of trial.

The Claimant gave an account of the accident which differed radically from that reported to the medical expert. The Judge accepted that the report was therefore of little evidential value and that the claim must fail.

He noted the inconsistency between the account of the symptoms in the CNF (neck and shoulder) and the other documents in support of the claim (neck and lower back). Unusually, these other documents included a handwritten version of the CNF which was disclosed on the morning of trial.

The Claimant's evidence under cross-examination was that he was referring to pain "from the mid back upwards". The Judge was satisfied that the Claimant had not suffered a lower back injury and was unable to find an honest explanation for the reference to lower back symptoms in the medical report, Particulars of Claim and witness statement. The Judge considered that his evidence regarding the progression of his symptoms was "inconsistent and confusing".

The Claimant maintained that he had taken two days off work. He was unable to offer a convincing explanation for why his CNF and handwritten CNF both stated that he had not taken any time off work. Indeed, the handwritten CNF specifically included the number "0" in response to the number of days taken off. The Judge was satisfied, based upon the CNFs, that the Claimant had not taken time off work. In any event, he would have drawn an adverse inference from the failure to disclose employment records which were plainly relevant to the issues in dispute.

The reference in the CNF to "discomfort" was also found to be inconsistent with the Claimant's evidence that he suffered 8/10 "intense, dreadful, horrible" pain.

The Claimant's witness statement explained the delay in bringing his claim. He suggested he did not know he could bring a claim. This was shown to be untrue in light of his claims history. He eventually gave four different explanations for the delay, each of which was demonstrably untrue. The Judge found that this untruthfulness was peculiar, not least because the delay in bringing his claim was not in itself suspicious or improper.

The Claim was dismissed as fundamentally dishonest. The Defendant received an order for costs and QOCS protection was displaced.

Ahmed v Minhas (19th March 2018, Birmingham CC, HHJ Marshall)

Exaggeration – Fundamental Dishonesty – QOCS

James Yapp (instructed by Leah Whitehead of Horwich Farrelly) appeared in this case arising from a collision between the Defendant's vehicle and the side of the Claimant's parked car.

The Judge found that the photographs of the damage to the Claimant's vehicle showed scraping and minor dents. He did not accept, as the Claimant suggested, that the Defendant was driving at 30mph. He accepted the Defendant's evidence that the accident occurred at approximately 5mph as she edged between the Claimant's parked car and an oncoming vehicle.

The Judge noted the Claimant's mistaken pleading regarding the accident date. If this accident had impacted upon his life as he suggested, the Judge was of the view that the Claimant would have been able to provide at least the approximate date of the accident. In fact, the date given was wrong by more than six weeks, and on the other side of both Christmas and New Year.

In explaining his failure to report his symptoms to his GP, the Claimant said that the pain was not severe. When taken to his medical report (which stated that the pain was severe), he altered his evidence to state that it had been severe for a short period. He suggested he had not seen his GP because of the appointment system. The Judge did not accept this evidence; the Claimant saw his GP three weeks after the accident regarding unrelated lower back pain and did not report the road traffic accident, indeed the GP specifically recorded "nil else". The Judge found that the Claimant had denied suffering from any other symptoms or injuries when asked by his GP.

In addition, there had been no mention of injury in the text messages which passed back and forth between the Claimant's wife and the Defendant in the days after the accident.

The Claim was dismissed as fundamentally dishonest and an enforceable costs order was made in favour of the Defendant.

Osang v Insurers, 3rd April 2018, Guildford County Court, DJ Beck

Late notification – exaggerated quantum – Fundamental Dishonesty

Tim Sharpe (Instructed by Sarah Potter of Horwich Farrelly) appeared in this case arising from an accident in July 2014 in which the Claimant presented his claim for injuries after a significant delay and which was found by the court to have been fundamentally dishonest.

The Claimant was a serving soldier at the time of the collision. He had previously sustained an injury in 2012 whilst training with HM Forces. The Claimant contended that prior to the car accident his shoulder was improving but that the car accident set him back. Despite seeing two medico-legal experts (a GP and then an orthopaedic surgeon) for the purposes of the index claim, the Claimant did not mention the previous shoulder injury to them, yet reported ongoing pain in the shoulder. The Claimant was discharged from the Army on medical grounds after the car accident and his discharge paperwork referred to his ongoing problems from his shoulder due to the training incident, but made no mention of the car accident. The case was advanced at trial as an exacerbation of the training ground injury. The court found the Claimant's evidence to be riddled with defects, not least that the Claimant had left the experts with the impression that his injuries were due to the car accident. This was wholly different to how he advanced his case at trial, and it was notable that his Army discharge board records made no reference to the car accident at all. The Claimant claimed that the car accident was part of his civilian life while his army issues and training injury were part of his service life. The court rejected this alleged distinction and explanation for the failure to mention the training injury to the experts and the car accident to the Army. The Claimant had given misleading accounts to his experts and the court considered that the training accident was the cause of his symptoms. In its judgment, the court dismissed the claim. The Defendant then sought a finding of Fundamental Dishonesty. The court noted that the Claimant was a degree-level educated man who presented his claim over 2 years after the accident and complained of significant injury from the car accident. The Claimant was on notice from the Defence that his credibility was in issue. The explanations of lack of memory or compartmentalising army and civilian life were not accepted – if the Claimant broke his leg off duty, he would not be fit for service and the distinction was not credible given this Claimant's education. It must have been obvious to the Claimant that this was not a fresh injury but that it was an exacerbation, and the failure to mention the previous injury to two experts was more likely to be the result of dishonesty rather than any other explanation.

Javed & Bhatti v Aviva, Birmingham CC, 06.04.18, HHJ Truman

Fraud – Fundamental dishonesty – personal injuries – telematics

Edward Hutchin, instructed by Keoghs solicitors, represented the successful Defendant insurers in this fraud case.

The Claimants claimed damages for personal injuries and losses allegedly sustained when the Defendant's insured collided with the rear of the vehicle in which they were travelling as it left a roundabout. A defence was filed disputing liability, occupancy and causation. In particular, the Defendant's insured asserted that the Claimants' vehicle had come to a halt unnecessarily, after a lead vehicle had cut across in front of it and driven away at speed. It was therefore alleged that the collision was deliberately induced, and the compensation claims false.

After a trial in Birmingham County Court before HHJ Truman, involving oral evidence from both Claimants and another passenger, and from the Defendant's insured, the claims were dismissed. The Defendant relied on the evidence of its insured driver, but also served evidence from the Claimants' insurers, producing telematics data from the Claimants' vehicle showing that they had not travelled the route alleged, and had travelled twice around the roundabout before stopping prior to the collision. The Judge accepted the Defendant's evidence and held that the claims were fundamentally dishonest, the Claimants' having deliberately induced the collision and lied in court about it. The claims were therefore dismissed and an enforceable costs order, assessed on the indemnity basis, made in favour of the Defendant.

The Defendant's case was underpinned by witness evidence from its insured driver as to the accident circumstances, but the addition of telematics evidence provided a more objective corroboration for the Defendant's allegation of fraud. Whilst not always conclusive, the use of such evidence in appropriate cases can prove a useful weapon in the armoury against fraudulent claims.

Mahmood v Insurers & 2 Ors (costs), 12.04.18, Clerkenwell & Shoreditch CC, DJ Rand

Wasted costs – European Regulations – failure to add driver as a party to proceedings

James Henry (instructed by Karen Mann of Horwich Farelly) represented the successful insurer in this application for a wasted costs order against the claimant's former solicitors.

The substantive proceedings arose from a suspected staged road traffic accident. C alleged she was a passenger in a Mercedes that was hit by another car. She sued the driver and insurer of the 'other car', and brought an alternative claim against the insurer of the Mercedes pursuant to the European Communities (Rights Against Insurers) Regulations 2002. The Mercedes' insurer denied indemnity and denied that C had a direct right of action against it. The insurer explained its reasoning in the defence and told C that if she obtained judgment against the driver of the Mercedes then the insurer would have a liability to satisfy that judgement pursuant to s.151 of the Road Traffic Act 1988. Neither C nor, importantly, her solicitors, ever applied to join the driver of the Mercedes to the proceedings. About a month before trial C's solicitors came off the court record as acting for her. At trial (by which stage C was a litigant in person) C's claim against the Mercedes' insurer was struck out as a preliminary issue as disclosing no reasonable grounds for bringing the claim against the Mercedes' insurer. The court ordered C's former solicitors to show cause why they should not be wholly or partly responsible for the insurer's costs.

At the wasted costs hearing C's former solicitors were represented and sought to argue that the decision of the trial Judge could have been different if C had been represented and put forward proper legal argument on the application of the European Regulations. The insurer submitted that the wasted costs jurisdiction did not exist to re-try decided issues; it is a summary remedy to be used in circumstances where there is a clear picture which indicates that a professional adviser has been negligent. Moreover, it was argued, the parties and their representatives had a duty to the court to further the overriding objective and C's former solicitors were in breach of that duty.

The Judge found that the failure to add the Mercedes driver to the proceedings as a named defendant, particularly in circumstances where it had clearly been raised as an issue, was negligent. C's former solicitors were ordered to pay £20,000 of wasted costs to the defendant insurer.

Erdogan and others v Bourne and Esure Services Ltd, Clerkenwell & Shoreditch CC, 26 April 2018, DJ Swan

Service of proceedings – knowledge of address – Cameron v Hussain – QOCS

Paul McGrath appeared for Esure Services Ltd instructed by Ryan Kelly, Horwich Farrelly

The Claimants alleged that they were involved in a road traffic accident caused by Mr Bourne's negligence. Someone had taken out a policy in the name of Mr Bourne at a given risk address. The insurer, Esure, had informed the Claimants' solicitors pre-action that it did not accept that Mr Bourne even existed and positively denied that he had ever lived at the risk address. The Claimants nevertheless served proceedings on Mr Bourne at the risk address, including Esure in proceedings as Second Defendant relying on s151. It its Defence Esure did not accept it could be a s151 insurer where the insured might not exist and where a certificate could not have been delivered to the purported insured. Further, it denied that service on Mr Bourne at the risk address could have been effective. Esure sought to strike out the claims and relied on Marshall v Maggs [2006] 1 WLR 1945 to show that service had not been effective. The Claimants sought to distinguish Marshall v Maggs on the basis that in a road traffic situation, the Second Defendant is liable to pay third parties pursuant to s151 and thus different issues arose for consideration. Further, the Claimants made an oral application in the face of the Court to amend to plead against a 'person unknown' pursuant to Cameron v Hussain. Esure submitted such an application was made far too late and in any event in the present case s151 status is not conceded as it was in Cameron.

Held: the claim had not been validly served on the First Defendant and the claim against him was a nullity but would, if persisting in any way, be struck out. The claim against the Second Defendant was, in these proceedings, strictly parasitic on the claim against the First Defendant and accordingly was struck out. The Claimants must pay the costs of the action to be assessed. The Claimants had been informed of the position before issuing proceedings and there were no reasonable grounds to bring the claims as they did, QOCS would be disapplied. Further a payment of account of £500 was made against both Claimants.

Fraudulent Credit Hire Claim: Insurer succeeds in its claim for damages for deceit, indemnity against dishonest driver and declarations of non-cover, 2 May 2018

Credit Hire – Fraud – Insurance

Alex Glassbrook (instructed by Andrew Baker of Horwich Farrelly) represented the successful motor insurer.

A claim for credit hire charges exceeding £80,000 had been claimed in relation to a vehicle allegedly damaged beyond use in a road traffic accident, and judgment had been obtained on that claim against the allegedly insured driver, without notice to his insurer.

Investigation by the insurer showed that the allegedly unroadworthy car had continued to be driven significant distances and had passed MOT tests during the hire period, so contradicting the alleged need to hire a substitute.

The insurer served documents showing that the vehicle of the allegedly negligent driver had been disposed of by its insured before the start of the relevant period of insurance, so was not insured by it at the time of the accident, and showed that the former claimant's solicitor had failed to give it the notice required to trigger its compulsory insurance obligations under the Road Traffic Act.

The insurer made its own claim in deceit against the driver and obtained default judgment after the driver stated that he would serve a defence then failed to do so. The Circuit Judge was satisfied that the representations made by the claimant driver as to the credit hire claim had been entirely false. The Judge applied CPR 3.10 to correct the procedural error whereby default judgment for the insurer had been obtained by request instead of application and upheld the insurer claimant's default judgment on the claim in deceit. The declarations of non-cover and an indemnity against any liability as Road Traffic Act insurer were allowed and the Judge assessed as damages the claimant insurer's in-house expenses and legal costs of investigating and dealing with the dishonest claim. The Judge awarded the claimant insurer its costs of the present proceedings, summarily assessed on the indemnity basis. The Judge was critical of the driver's solicitors for their conduct of the underlying claim.

Al-Baidhani v (1) Mohammed (2) Ageas Insurance Ltd, Uxbridge CC, 3 and 11 May 2018, DDJ Holmes-Milner

Put to proof – opportunistic claim

Paul McGrath appeared for Second Defendant instructed by Luke Vincent, Keoghs LLP

The Claimant alleged that he was waiting in his motor vehicle at traffic lights when a vehicle was attempting a three-point turn and struck the rear offside of his motor vehicle, and then drove away. The Claimant alleged that he followed the vehicle and came across it having hit some railings around a pedestrian island. The Police attended the scene to redirect traffic. The First Defendant did not take any part in the proceedings. The Second Defendant had serious misgivings about the claim and put the Claimant to proof as to each and every aspect. The Claimant was cross-examined about his alleged involvement in the accident and the other possible scenarios.

Held: The Claimant failed to prove his claim. The Judge formed the view after hearing the cross-examination that the Claimant had not been involved in any accident and that his alleged involvement had been concocted. The Judge rejected the Claimant's submission that the fact that the Claimant called the Police should weigh heavily in his favour, instead holding that this was simply a tool of an opportunist. The claim would be dismissed.

Ahmed v Loftus, Birmingham CC, 8 May 2018, DJ Rouine

Late discontinuance – QOCS – procedure

Paul McGrath appeared for Defendant instructed by Chris Scott, Keoghs LLP

The Claimant issued proceedings claiming damages for personal injury and associated losses arising out of an alleged road traffic accident on 1 April 2016. The Defendant alleged in his Defence that the Claimant had induced the collision by deliberately applying his brakes when unsafe to do so.

The parties complied with directions. One month before trial, the Claimant discontinued. No explanation was put forward. The Defendant made an application for its costs (deemed payable by CPR 38.6) to be assessed and for permission that such costs may be enforced pursuant to CPR 44.16(1) and CPD 12.4(c) (i.e. on the basis that the claim was fundamentally dishonest). The Claimant's solicitors came off the record. The application was listed for a 3 hour hearing on 8 May 2018. The Claimant did not attend, nor had he engaged with the application at all. The Defendant asked for the Court to act on the papers (the Defendant's written evidence as to the collision) along with drawing a strong adverse inference from the Claimant's lack of engagement and non-attendance.

The Judge considered submissions as to the proper procedure and was referred to paragraph 52 Gosling v Hailo and Screwfix (HHJ Maloney QC) and Rouse v Aviva (HHJ Gosnell). The Judge was concerned about acting on the papers in the circumstances of the case. The Defendant asked, in the alternative, for an Unless Order to be made.

Held: In the circumstances of the case the most appropriate course was to adjourn the application to allow oral evidence to be taken from the Defendant and the Claimant (if he engages with the process). However, the Court was concerned about the potential waste of costs and Court resources if the Claimant was to offer no evidence to meet the Defendant's case and was not going to engage with the process. Accordingly, there would be an Unless Order made, adjourning the hearing but noting that if the Claimant did not file some form of written notice within 21 days after service of the Order, then an Order would be deemed to have been made granting the Defendant permission to enforce its costs. The costs were also summarily assessed.

Ambreen Ahmed v Fareen Kauser (1) and Skyfire Insurance Co Ltd (2), 10 May 2018, Luton County Court, HHJ Bloom on appeal from DJ Clarke

LVI – Exaggerated Injury – Fundamental Dishonesty – QOCS

William Irwin (instructed by Karen Mann and Holly Butler of Horwich Farrelly) represented the Second Defendant in this case regarding dishonest account of injury given to a medical expert.

The Claimant said she was involved in an accident with the First Defendant. The collision was allegedly a rear end shunt. The First Defendant played no part in proceedings.

In the course of her appointment with a medical expert the Claimant failed to disclose an extensive history of back, shoulder and neck pain. This included pain which arose spontaneously, without any trauma. The Claimant had received treatment to her spine before the index accident; indeed at the time of the appointment the Claimant was undergoing a course of osteopathic treatment. The Claimant did admit to her medical history in her witness statement for the proceedings but continued to rely upon the medical report produced by the medical expert in ignorance of her pre-existing condition.

At first instance the District Judge held that the Claimant had dishonestly failed to disclose her medical history to the reporting expert. The judge rejected the Claimant's explanation that she had assumed that the medical expert would have access to her medical records before completing his report. The Claimant's PI claim was dismissed and QOCS disapplied.

The Claimant appealed the District Judge's order. She contended that the judge had unlawfully elided the questions of dishonesty and fundamentality – in other words contended that it was an error of law not to have considered separately the issues of whether the Claimant had been dishonest and whether that dishonesty was fundamental to the claim.

HHJ Bloom dismissed the appeal. She relied upon the analysis of fundamental dishonesty in London Organising Committee of the Olympic and Paralympic Games v Haydn Sinfield [2018] EWHC 51 (QB) (in which James Laughland and Mark James, both of TGC, appeared). The judge held that there was no material error in the District Judge's decision, holding that dishonest misrepresentation of a Claimant's medical history to their medical expert was unarguably fundamental to an injury claim.

Khan v Blue Triangle Buses, 10.05.18, Romford CC, DJ Wright

Causation – LVI – subsequent accident – exaggeration

James Henry, instructed by Sandra MacMichael of Weightmans, represented the successful defendant in this dishonest injury claim brought against a London bus company.

D's bus driver tried to move around a parked car and collided with the rear offside of C's Mercedes. Breach of duty was admitted but causation was denied on the basis that the bus had only scraped the Mercedes.

The Judge found the bus driver's evidence authoritative and reliable, but because the driver had not felt or heard any collision, it was limited to that extent. However, the force of the collision did not need to be determinative because C was dishonest in the presentation of her claim.

C went to her GP and underwent a course of physiotherapy. Her evidence began to unravel when she sought to contend, and maintain, that she was suffering from very bad pain; at level of 8-9/10 for a number of weeks after the accident. C was also involved in a subsequent accident, and when she saw the expert for subsequent accident she told him that her index accident-related injuries had resolved after 6 months. That did not sit well with her evidence to the court that she continued to suffer with index accident-related pain over a year later.

Multiple inconsistencies in the presentation of the claim emerged during cross-examination in relation to injury site, onset of pain, ability to work and recovery. The Judge found C to be an entirely unreliable historian, who had not only exaggerated but who had been fundamentally dishonest.

Kajenthiran v T&L Perkins Haulage Ltd (10th May 2018, Kingston-Upon-Thames CC, DDJ Roots)

Inconsistency – Fundamental Dishonesty – QOCS

James Yapp (instructed by Alexandra Steele of Horwich Farrelly) appeared in this case in which liability and causation were disputed. The driver of the Defendant's vehicle did not attend to give evidence.

The Judge found that there were serious and significant inconsistencies in the Claimant's evidence.

In his witness statement he simply said that "the Defendant changed lanes", whereas in oral evidence he suggested his vehicle had been shunted into the kerb and spun through 90 degrees. The engineering evidence and photographs supported the Defendant's driver's contention that this was a glancing blow.

The Claimant's accounts of his injuries varied between his CNF, medical report, witness statement and oral evidence. The Judge noted the particular inconsistencies surrounding whether the Claimant had injured one shoulder or two.

The Claimant told his medical expert he had no significant history of relevant musculoskeletal problems. His medical records included numerous attendances relating to his lower back, along with occasional neck and shoulder issues. In light of his history of back problems, the Judge found that the Claimant had made a "seriously misleading statement" at the examination.

Further, his CNF and medical report were inconsistent regarding whether the Claimant had attended hospital and/or taken time off work in the aftermath of the accident.

These matters (among others) undermined the Claimant's credibility to such an extent that the Judge could not accept his evidence. The claim was dismissed with a finding of fundamental dishonesty and an enforceable costs order in the Defendant's favour.

Aggarwal v Markerstudy, 17.05.18, Brentwood CC, DJ Jazarbkowski

Causation – late intimation – exaggeration

James Henry, instructed by Matthew Hill of Horwich Farrelly, represented the successful defendant in this fundamentally dishonest late intimation claim.

The claim was brought 8 months after the accident as a result of a cold call. D admitted negligence, and had to concede that the accident could have caused injury, but denied the claim on the basis of the late intimation.

Following disclosure of medical records and cross-examination it emerged that C was a man who 'who works his doctor pretty hard'. He was a regular attendee, troubling his doctor for all sorts of ailments, but he failed to seek any medical attention as a result of the accident. D conceded that would have been questionable, but perhaps understandable, if C was alleging minor short-lived pain. However, against the backdrop of a complaint of severe pain there was no good explanation, save for fundamental dishonesty.

Ramesh Ahmadi v Insurers (Uxbridge CC, 18.05.2018)

Fundamental dishonesty – discontinuance – professional boxer

Helen Nugent (instructed by Karen Mann of Horwich Farrelly) successfully represented the Defendant insurer in counterpunch application to disapply QOCS protection pursuant to CPR r. 44.16(1).

The Claimant, a professional boxer, issued proceedings in respect of an alleged road traffic accident he purported to be involved in on 16/02/2014, as a front seat passenger in a friend's vehicle. He contended that he had sustained soft tissue injuries at his neck, lower back and knees bilaterally; which had had a detrimental effect on his boxing career.

A medico-legal report was obtained, following a GP examination some three months post-accident. At that time, the Claimant referred to some improvement in his symptoms, which were described as being mild to moderate. He informed the expert that he had taken one month off from boxing and that his social/leisure activities (including gym training) were (and continued to be) severely restricted. In stark contrast, his match history and social media profile presented a Claimant who was fighting fit: victorious in his first post-accident fight on 27/02/2016 and involved in a second professional bout only two days before the GP assessment.

Fraud was pleaded in the Defence. It was denied that there had been a genuine accidental collision, occupancy was placed firmly in issue and the Claimant was put on notice of the intention to rely on fundamental dishonesty to disapply QOCS protection. Sections of the Claimant's Facebook profile were expressly set out within the pleading. On 30/11/2016, the claim was discontinued by the Claimant's solicitors.

At the application hearing, the Claimant conceded that he had not informed his solicitors that he had been involved in two fights and training. He endeavoured to justify his position, by explaining that: (i) he felt obliged to continue with fights which had already been scheduled (and for which tickets had been sold); (ii) as a professional boxer, he had a public image to maintain; and (iii) he was concerned that disclosure of information may result in the doctor stopping him from fighting. On behalf of the Defendant, it was argued that the Claimant's explanations were entirely inconsistent with someone who had sustained injury. There were references on the Claimant's own social media pages to boxing being a very strenuous and physically demanding activity; it was a fanciful and unconvincing contention that he had been injured. In addition, the Court was invited to draw an adverse inference from the Claimant's silence up to the date of the hearing; notwithstanding an earlier adjournment to allow him to respond to the allegations against him. Having conducted a limited enquiry at the application hearing (which included hearing from the Claimant directly), the Judge found that the Claimant's claim for personal injury was a dishonest one; a finding of fundamental dishonesty was made; and the Claimant was ordered to pay the Defendant's costs.

Following on from Rouse v Aviva Insurance Limited, this decision puts insurers in a stronger position to challenge spurious claims; where Claimants seek to take advantage of the provisions of CPR Part 38 with early discontinuance. It also underpins the relatively wide discretion of the Court in managing applications in respect of costs following discontinuance.

Daunoras v Allianz, 07.06.18, Romford CC, DJ Goodchild

Causation – late intimation – fundamental dishonesty

James Henry, instructed by Samantha Donovan of Keoghs, represented the successful defendant in this fundamentally dishonest claim intimated a year after C had allegedly recovered from his injuries.

C claimed in respect of a 3-month whiplash injury, but he did not commence the claim until 15 months after the accident. He contended that he did not know he could make a claim for injury until he saw an advert telling him he could in around March 2015. When he was cross-examined on the detail of his allegation he could not remember where he had seen the advert, whether it was a newspaper or a website, whether someone had called him (and if so how they got his details) or he called them, the name of the company he dealt with or any material detail.

C's presentation was not frank or honest. His evidence was littered with inconsistencies exposed during his evidence, he did not seek medical attention or take any time off work and he exaggerated the level of his alleged pain.

The Judge was careful to make clear that her decision was not made on the basis of one piece of evidence alone. The singular inconsistencies and problems with the evidence may not have been enough individually to persuade the court that the claim was dishonest, but taken together, when the Judge stepped back and looked at the evidence as a whole, she was persuaded on balance that the claim was fundamentally dishonest.