



Fundamental Dishonesty



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Introduction

A person making a claim for personal injury or clinical negligence (otherwise known as a 'Claimant') is fundamentally dishonest if they have acted in a way that ordinary reasonable people would consider to be dishonest, such as lying, exaggerating, or otherwise misconstruing the truth.

For the dishonesty to be 'fundamental', it must relate to something that is crucial to the case and on a balance of probabilities substantially affected the presentation of their case, either in respect of liability (who was responsible for the injury or negligence) or quantum (the monetary value of the case).

What is Fundamental Dishonesty?

The concept is reasonably new to personal injury and clinical negligence claims having been introduced in April 2013 to the Civil Procedure Rules ('CPR'). The CPR is a set of rules and practice directions which legal advisors must follow when conducting litigation to enable the court to deal with cases justly.

Fundamental dishonesty can only relate to the person making the claim against an insurer or employer (otherwise known as the Defendant).

If a solicitor discovers that their client is being fundamentally dishonest, they have a professional duty not to deceive or mislead the court or to be complicit in another person's deceiving or misleading of the court. This will likely mean that they can no longer act on their client's behalf if they want to continue to pursue a dishonest claim and they may be left unrepresented.

An example of fundamental dishonesty can be seen in the case of: *Calderdale and Huddersfield NHS Foundation Trust v Atwal* [2018] EWHC 961 (QB). In this case, the Claimant alleged that the injuries he sustained as a result of failures in his medical care following the fracture of two fingers had left him extremely disabled, unable to work and needing help with everyday tasks. The Defendant doubted the claim and carried out video surveillance and social media trawling which revealed that the Claimant was working as a DJ and living in a way entirely inconsistent with the case he was presenting. The Court found against the Claimant for 14 separate allegations of contempt and sentenced him to three months in prison and to pay £75,000 towards costs.

To avoid the above happening you should:

Do's:

- Always be honest and truthful from the outset of your claim with your solicitor and any medical professionals or third parties.
- Be mindful of any content you are posting on social media such as Facebook, Instagram and Twitter – there is no guarantee that this is not available for the public (including the Defendant) to view.

Don't's

- Do not exaggerate your injuries – you will be found out! Defendants may undertake video surveillance of Claimants they suspect are being dishonest.
- Do not sign witness statements where you know that the contents are not true – this is a criminal offence.

How it could affect YOU AND your claim

Costs

Usually in personal injury and clinical negligence claims, if a Claimant loses their case, they are protected from having to pay high costs of the Defendant. This principle is called Qualified one-way costs shifting ('QOCS').

Essentially the QOCS regime works in two ways. If the claimant wins the case or any aspect of it, they may recover costs (if the court exercises its discretion under the CPR to award them costs) and enforce costs orders obtained against Defendants. If the claimant loses the case or any aspect of it, costs orders against them (again, made in the court's discretion) cannot be enforced except up to the extent of any damages and interest awarded to the claimant in a court order.

There is an exception to QOCS where a Part 36 offer has been made by the Defendant. So a claimant who refuses a defendant's Part 36 offer and fails to do better at trial is at risk for the defendant's costs from the end of the relevant offer period. However, under the CPR the claimant's liability for the defendant's costs and interest in these circumstances will still be capped at the level of any damages and interest recovered by the claimant.

However, if a court finds out that a Claimant has been fundamentally dishonest about something relating to their claim, then they may lose some or all of the protection that QOCS provides. This could mean that the Claimant ends up paying out money to the Defendant. This could be between hundreds, thousands or even millions of pounds if the claim is for catastrophic injury and has been going on for a long time.

Deprivation of Damages

If fundamental dishonesty is only found for part of a personal injury or clinical negligence claim, then damages may only be reduced for that part of the claim. This could however substantially reduce the amount of damages Claimants recover in their claim if the dishonesty relates to an important aspect of the claim.

However, damages can also be reduced to nil if the dishonesty is fundamental to the entirety of the claim.

Case struck out

Under the CPR rules, if fundamental dishonesty is found in relation to a vital aspect of the claim, a court can order for a case to be struck out on the grounds of disclosing no reasonable grounds for bringing the proceedings, or as an abuse of process, or for conduct likely to obstruct the just disposal of the proceedings. This means that Claimants will no longer be able to pursue their claim in the courts and they will not be able to recover damages, some of which they could actually be entitled to.

There is an exception to this if the Claimant were to suffer substantial injustice if the claim was struck out.

Set aside past settlement

Fundamental dishonesty can still be found after a case has settled. For example, if a Defendant uncovers proof of fraud they can return to court and present their evidence. If a court agrees with the Defendants findings, it is entitled to set aside that settlement under the tort of deceit. This means that any monies recovered from the settlement of the claim may have to be paid back to the Defendant.

Criminal Liability

Not only can fundamental dishonesty be detrimental to a claim, it can also have criminal liability attached to it. For example, contempt of court proceedings can be brought against a party if it is proven that they been dishonest and this dishonesty wilfully interrupts the proceedings of the court. Maximum sentences for contempt of court are 2 years. Unlimited fines can also be imposed on Claimants, but these cannot exceed £2,500.

Further to this, criminal charges may be brought against anyone who dishonestly makes false representations contrary to section 2 of the Fraud Act 2013. Such charges may arise when the accident was genuine but the claim has been fraudulently exaggerated.

The courts have not held back on sentencing fundamentally dishonest Claimants to prison and enforcing fines. It is therefore important that you remain truthful from the outset of your claim, and even afterwards when the claim has settled.

Summary

- It is important to be truthful from the outset of your claim and to continue to be even after it has settled.
- If a solicitor discovers their client is being fundamentally dishonest they have a professional duty not to mislead the court. This means that if their client wants to continue to pursue a dishonest claim they will no longer be able to represent them.
- If Defendants suspect dishonesty about a Claimant they may trawl through social media for any evidence to back up their suspicions. Defendants may also undertake video surveillance of Claimants.
- If fundamental dishonesty is found against a Claimant then the value of their claim may be reduced or the claim may be struck out altogether. There may also be criminal implications and fines imposed on Claimants in serious cases.