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Fundamental Dishonesty Disheartened and Dishevelled

Speakers

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Introduction

- A gambol through the relevant case law from 2024 and what that means for FD cases
- Concluding with Practical Take Aways from those decisions for Claimant Lawyers

A brief summary

- Criminal Justice and Courts Act 2015, s57
- *LOCOG v Sinfield* [2018] EWHC 51 (QB), esp [62]
- CPR 44.16(1)

Scope of section 57 #1

Associated claims

Senay v Mulsanne Insurance Company Ltd [2024] EWCC 12

Scope of section 57 #2

What is a “personal injury” claim?

Reynolds v Chief Constable of Kent Police [2024] EWHC 2487 (KB), [49] – [51]

Strike Out

- *Butt v Gargula* (2024) (County Court) HHJ Brown (DCJ for Kent)

How not to Prepare For Trial – a warning!

Petrovic v Sunyara (CC) DJ Ross

How not to prepare for Trial – further warnings!

Aviva Insurance Ltd v Nadeem and Sidiqi [2024] EWHC 3445 (KB)

Cullen v Henniker-Major [2024] EWHC 2809 (KB)

Evidence

- An example of a well-prepared claim – *Grimal v Lancashire CC* (HHJ O'Brien, Burnley CC)
- The Ds case on FD relied upon Surveillance and Inconsistencies
- Surveillance – a blunt instrument
- HR Records suggested that she very much enjoyed her job

Interim Payment Applications #1

Mehmood v Mayor [2024] EWHC 1024 (KB)

A case where C clearly suffered significant injury, but D alleged that the injury had been exaggerated.

C wanted a significant Interim Payment sum to pay for rehabilitation.

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Interim Payment Applications #2

- Asking for Interim Payments can be a good way to “smoke out” if D has concerns about the C honesty
- Seriously injured C, D making IPs and co-operative, suddenly goes quiet and doesn’t respond to requests any more
- Do you want to threaten to issue for an IP or actually do it?
- Need to take care with the Statement of Truth
- Costs risk of issuing the claim

Costs

- *Thakkar v Mican* [2024] EWCA Civ 5520, [28]

Default position is the usual rule: C's costs are on the standard basis, even if D makes FD allegations, unless C could demonstrate why indemnity costs were appropriate.

"Potential costs incentives are not a good reason for making unwarranted allegations of misconduct, let alone dishonesty. The unfortunate effect of the parties' conduct was to increase not only aggravation to an independent witness but also costs on both sides." (per LCJ Carr at [56])

Can a Solicitor have a Costs Liability for Continuing the claim on Instructions?

Williams-Henry v Associated British Ports & Hugh James [2024] EWHC 2415 KB

A Bonus – 5th February 2025 - Privilege

- *Morris v Williams* [2025] EWHC 218 (KB) DJ Dodsworth in the Sunderland District Registry

- An offer to admit fundamental dishonesty (what an odd thing to offer) can be taken to be an admission of FD and therefore grounds to set aside privilege in the document making said offer.

Practical Take Aways

- Identify potential claims early – cash in hand workers, those who may struggle with English, injuries that on face value appear to exceed the severity of the accident
- Low value claims – may depend upon supervision of lesser qualified case handlers. Cannot put "adequate" resources into every case. How to ensure high risk cases have greater care applied.
- Higher value claims – chronic pain cases, significant psychological injuries
- Early Settlement – greater costs savings, CRU doesn't become a barrier to settlement BUT have to be willing to (i) accept that not have all pieces of the jigsaw; (ii) give a discount for evidence that the D is likely to get, but doesn't yet have.

Practical Take Aways 2

Advice to Claimants

- Not to use social media
- To be aware of the likelihood of surveillance, especially when visiting D experts
- To be balanced in their presentation of their good days and bad days

Advice to Lawyers

- Think carefully about the Particulars of Injury and Schedule of Loss

Practical Take Aways 3

- “I can’t do X”.
- DWP – obtain records early. Advise the C, who often is poorly advised by CAB etc, that they need to think carefully about the answers to the questions and not exaggerate – may mean they don’t get any benefits, when due to the negligence they are unable to work and in financial difficulty
- Quantifying Care – if getting a report consider deferring calculation OR ask the C to complete a care diary for a couple of weeks to form a more realistic basis for the level of assistance being received.

Practical Take Aways 4

- Defendant Expert Consultations

- Routinely ask the C afterwards how the consultation went

Questions and Discussion