

Fundamental Dishonesty: Section 57 Update

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Prior to the introduction of s. 57 of the Criminal Justice and Courts Act 2015 (CJCA 2015), the court would disallow the dishonest elements but allow the honest elements of the claim. However, in the course of three short years (during which the decision in *Summers v Fairclough Homes* [2012] 1 WLR 2004 was handed down, the 'Jackson reforms' of 2013 came into effect, and there was a general push-back by the insurance industry against what was said to be a significant problem of fraudulent personal injury claims), the landscape rapidly changed.

The default position, now, is as set out at s. 57(1)-(3) of CJCA 2015:

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.

Julian Knowles J delivered one of the early judgments dealing with the practical effect of s. 57 in *London Organising Committee of the Olympic and Paralympic Games v Sinfield* [2018] PIQR P8. In simple terms, and applying the letter of s. 57(1), (2) and (3), he held in *Sinfield* that the Claimant would lose his entire claim, even where he had only been found to have been fundamentally dishonest in relation to part of it (a claim for the cost of a gardener, which was found to be a dishonest head of claim).

There was a statutory exception, however, preserved at s. 57(2), upon which no appellate authority existed:

"... unless it is satisfied that the claimant would suffer substantial injustice if the claim were dismissed".

Julian Knowles J has now provided the only appellate decision yet to consider the scope of this potential exception. In the case of *Woodger v Hallas* [2022] EWHC 1561 (QB), he has overturned the earlier decision of the trial judge, HHJ Godsmark QC, who had applied the 'substantial injustice' exception (albeit only partially) and had refused to dismiss the whole of the primary claim.

In short, a high bar has been set for any Claimant wishing to benefit from the 'substantial injustice' exception at s. 57(2). In approving of the approach of HHJ Sephton QC in the first instance case of *Iddon v Warner* [2021] Med LR 384, where even the Claimant's purchase of a house in expectation of succeeding on her claim (which she would have to sell if her whole claim were dismissed) was found to be insufficient to amount to 'substantial injustice'; Julian Knowles J's decision in *Woodger* makes clear that, in most cases, it will seemingly be very difficult indeed for dishonest Claimants to resist their entire claims being dismissed once an element of them has been found to be dishonest.

Taking *Woodger* and *Iddon* together, it is difficult to conceive of any circumstance which might give rise to injustice of sufficient 'substance'. It is unfortunate neither the statute nor the courts have yet gone so far as to provide any authoritative guidance upon, or examples of, injustice which could be substantial enough to justify the discretion under s. 57(2) being exercised in a Claimant's favour. Given the prevalence of fundamental dishonesty arguments in modern-day

personal injury litigation, it is probably only a matter of time before further case law provides an answer.

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