

# What is Fundamental Dishonesty? In this case, a central allegation to the case, based upon a lie

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In the case of *Razumas v Ministry of Justice 2018 EWHC 215 (QB)*, the Court considered how to deal with a Claimant who had positively pleaded a misleading account of his medical treatment. Concluding that this behaviour amounted to fundamental dishonesty as his lie went to the heart of the case.

## The facts

This claim involved an action for clinical negligence against the Ministry of Justice ("the MOJ"). The claim failed at trial on its merits but the Court considered the issue of "*fundamental dishonesty*" pursuant to s57 of the Criminal Justice and Courts Act 2015 ("the Act"), as, in the course of bringing his claim, Mr Razumas had positively asserted an allegation in the Particulars of Claim which he knew to be false.

Mr Razumas had, for various periods between 2010 and 2013, been in prison and during that time, it was accepted by the MOJ that he had received medical care which was deficient in various respects. He underwent left above knee amputation due to a failure to diagnose and treat a tumour.

The MOJ argued that there were large periods of time when Mr Razumas was not in prison, during which, he could have sought medical advice and his failure to do so broke the causative connection between any earlier negligence and the effects of a failure to treat on his return to prison.

Mr Razumas argued, amongst other things, that he had attended a GP and been given a date for an operation for removal of the tumour. However, he then returned to prison and the MOJ failed to appropriately manage his medical care thereon. Despite attempts by Mr Razumas' Solicitors, no records of these medical consultations were ever obtained. There were also issues regarding fluctuations in the Claimant's account given to his own expert and in his own evidence (including telling his expert that he had not sought medical treatment whilst out of prison as he was on the run from the police).

The MOJ invited the Court to conclude that Mr Razumas made a deliberate choice not to seek medical attention in order to evade police arrest and the Court did so, agreeing that no reliance could be placed upon Mr Razumas' evidence on this point.

## The law on fundamental dishonesty

Once it was established that the Claimant had lied, the MOJ invited the Court to conclude that Mr Razumas had been *fundamentally dishonest* in advancing his claim. That although the allegation in question was only one of a number of allegations over a period of time, it was one which, if proven, was all that was needed to establish liability. It was therefore a central part of the case.

Conversely, Mr Razumas argued that even if the court found he had lied, his untruths "*barely scratch[ed] the bark*" and went "*nowhere near the root of the case.*" Mr Razumas also argued that if he were to lose the claim on this basis he would suffer substantial injustice due to the gross disproportion between the lies and the effect of depriving him of an award.

The Judge adopted the test set out by Julian Knowles J in *London Organising Committee of the Olympic and Paralympic Games* who stated that a claimant should be found to be fundamentally dishonest within the meaning of the Act if the defendant proves, on the balance of probabilities, that the claimant had:

- (a) acted dishonestly; and
- (b) had, in doing so, substantially affected the presentation of this case, either in respect of liability or quantum, in a way which potentially adversely affected the defendant in a significant way, judged in the context of the particular facts and circumstances of the litigation.

The Judge in *Razumas* was satisfied that the Claimant had acted dishonestly, and further that his dishonesty went to the root of his claim. The argument the Claimant had advanced went to an entire factual section and pleaded occasion which would, if successful, have entitled relief on the main claim. In the final part of his consideration the Judge reviewed whether the Claimant would suffer substantial injustice if his claim were to fail. He concluded that it could not be right to say that substantial injustice would follow in disallowing a claim which the claimant had advanced dishonestly. The Judge therefore

confirmed that if there were a claim it would fail at this stage.

## Practical considerations

- Although this case looked at fundamental dishonesty theoretically (because the Claimant's claim failed on its merits), it will only apply where the Claimant has an entitlement to damages.
- The balance of probability standard applies to whether, on the evidence, the Claimant has acted dishonestly
- If the Claimant is found, on the balance of probabilities to have acted dishonestly, the Judge will need to consider whether the dishonesty goes to the heart of the claim or whether it is only peripheral to whether the claim would succeed.
- The Court retains a discretion to permit the claim if it can be established that to dismiss the claim would result in the Claimant suffering "substantial injustice" but loss of damages alone is insufficient to establish substantial injustice
- Where a Court does dismiss a claim, it is still obliged to record the amount of damages which the Claimant ought to have recovered but for the fundamental dishonesty.

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