

RTA Fraud: The Key Cases

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1. Introduction

This article seeks to outline the most important cases for those dealing with RTA cases, with allegations of fraud.

The latest decisions on contempt of court suggest that the courts' stance has changed and that exaggerated claims are now considered just as serious as fabricated claims.

2. Those who commit RTA Fraud are now being pursued by the insurers for Committal Proceedings.

For those who engage in RTA Fraud, it is clear that the Courts are now willing to commit people to prison. However, it seems that while the instances are still relatively rare and for a deterrent purpose, there are more examples of this in 2011:-

South Wales Fire and Rescue v Smith 2011 EWCH 1749:- , Lord Justice Moses stated:

"Those who make such false claims if caught should expect to go to prison. There is no other way to underline the gravity of the conduct. There is no other way to deter those who may be tempted to make such claims, and there is no other way to improve the administration of justice."

In that case, there was a period of four years between the contempt and the hearing, and the Court did not consider that an immediate prison sentence could, in those circumstances, be imposed. Moses LJ emphasised that it is vital that these cases are dealt with urgency and speed, so that the all-important message of deterrence can be underlined.

This serves to highlight a string of recent decisions where there have been committal proceedings, for those who commit RTA fraud:

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Motor Insurers' Bureau v Shikell and others [2011] OBD

Mr Shikell claimed damages in excess of £1.2 million against the MIB following a road traffic accident in which he suffered a head injury. The MIB pursued contempt of court proceedings against Mr Shikell, his father and a witness after they obtained surveillance evidence which showed Mr Shikell had exaggerated his claim. Mr Shikell and his father received custodial sentences of 12 months and the witness was fined £750.

Esure Services Ltd v Shah [2011]EWCA Civ 1582

Esure brought contempt proceedings against Mr Shah arising from what was believed to form part of a wider fraudulent conspiracy. He was sentenced to six months imprisonment following the proceedings.

Brighton & Hove Bus & Coach Company Ltd v Brooks and others [2011]

Contempt proceedings were brought against three family members for supporting the exaggerated personal injury claim brought by the mother of the family. The exaggeration was exposed after surveillance evidence was obtained by the insurer. Two of the Defendants were found to be in contempt. The Judges considered the false statements made by the Defendants over a period of two and a half years to be "serious contempt", but declined to impose immediate imprisonment sentences, instead suspending the sentences for 12 months. When considering the judgment, it is apparent that the Court did not consider exaggerating a claim to be as severe a contempt as bringing an entirely fictitious claim: "*this is not a case where the entire claim put forward ... was a false one.*"

Lane v Shah [2011] – ALL ER D 23

Contempt proceedings were brought against the Claimant and her family after they signed false statements of truth supporting an exaggerated injury claim. The Claimant had originally claimed special damages totalling almost £637,000 in addition to general damages. Ultimately, the Claimant accepted an offer of £10,000. This was offset against the insurer's costs of investigating the fraud. The Court described the statements as "*calculated, deliberate lies*" and imposed immediate sentences on the Claimant and her family of six and three months.

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3. The Court's Historical Approach

The courts originally considered fabricated claims, to be more serious a deception than exaggerated claims, and were minded to impose more severe sanctions on claimants who supported entirely fabricated claims:

Caerphilly County Borough Council v Hughes and others [2005] – Lawtel 17.03.06

The Council brought contempt proceedings after Mr Hughes claimed to have been injured following a trip on a broken flagstone. His friends supported his account. However, during the course of the original claim it transpired that he had in fact been injured playing football. Mr Hughes received a custodial sentence of 14 days and his witnesses were fined £1,500 each.

Kirk v Walton [2009] – EWCH 703 OB

The Claimant claimed damages in excess of £770,000 but later accepted £25,000, following disclosure of surveillance evidence. The Claimant was fined £2,500 following contempt proceedings and was ordered to pay a significant part of the insurer's costs. Such a sanction can only be an effective deterrent where the costs order and fine outweigh the compensation.

4. Bogus/ Phantom Passenger Cases

Ghalib and Ghaffar v Hadfield [2004] – CC

This case featured a phantom passenger claim. Although the claim by the passenger, Mr Sadik was discontinued before trial, the remaining Claimants maintained throughout that Mr Sadik was in the vehicle at the time of the collision.

The following guidelines were given by Preston County Court for consideration of Copyright Andrew Mckie, Barrister at Clerksroom, September 2012. This factsheet must not be reproduced without the owner's consent.

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whether a claim should be struck out: (1) to what extent had the claimants failed to help further the overriding objective; and (2) whether, in light of the conclusions on (1), the court should exercise its discretion and strike out the statements of case under CPR 3.4(2). Although the claims were not struck out in this instance, no damages were awarded, as the Claimants' credibility had been tarnished by supporting the phantom claim.

Patel and others v Ali [2006] – CC Decision

The County Court struck out the claims of all four Claimants after considering the guidelines laid down in Ghalib and finding that there had only been two occupants in the Claimants' vehicle.

Khan and others v Hussain and others [2007] – CC Decision

Huddersfield County Court used its case management powers to strike out the claims of genuine Claimants who supported the fraudulent claim of a phantom passenger.

5. What happens when a genuine Claimant, supports a fraudulent claim?

Shah v Ul-Haq & Ors [2009] EWCA Civ 542 (09 June 2009)

The Court of Appeal held that there was no support in law for the proposition that a Claimant should be deprived of damages in his own claim, purely on the basis that he had supported a fraudulent claim made by another person. It was invariably the case that, where a claim had been dishonestly exaggerated, a judge would award the limited damages that were appropriate to his findings, but would award the Claimant the damages to which he was indisputably entitled. There was no logical justification for suggesting that a Claimant who had lied about another person's claim should be treated any differently than someone who had lied about his own claim.

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6. Low Velocity Impact Claims – The Key Cases

Barker v Watkins (2006) – Cardiff County Court

In the case of Barker, the Judge stated:

“The court is not required to decide how likely it is that the forces involved could have caused injury, but rather whether, more probably than not, they actually did cause injuries in the particular circumstances of a particular case and (if so) what injuries they did cause”

ARMSTRONG & ANOR v FIRST YORK (2005)

In this case the Court of Appeal endorsed the approach of a trial judge who preferred the evidence of the claimant to that of an expert engineer. The circumstances of the case were that fraud had been alleged on the basis of the engineer’s opinion that the forces generated by the impact were insufficient to have caused the injuries claimed. Notwithstanding the expert evidence, and the fact that the trial judge could not identify any flaw in it, it was held that the credibility and honesty of the claimant amounted to sufficient grounds for the judge to reject the expert’s evidence.

Liddell v Middleton [1996] PIOR P36

Stuart Smith LJ said:-

“We do not have trial by expert in this country; we have trial by judge.”

In the last resort it is for the judge...to determine, on the balance of probability, on all the evidence they receive, where the probabilities lie.”

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7. Low Velocity Impact Cases – Case Management and Expert Evidence

Kearsley v Klarfeld [2005] EWCA Civ 1510 – Court of Appeal (Civil Division)

In this case, both parties sought allocation of the case to the multi-track on the basis that an allegation of fraud had been made and the trial would involve oral expert evidence. The District Judge refused to allocate the case to the multi track due to the relatively low value of the claim, which the District Judge considered would turn on the claimant's credibility as a witness at trial. An appeal against that order was allowed by the judge and the Court of Appeal endorsed the judge's decision to overrule the district judge and to re-allocate the claim to the multi-track. Brooke LJ commented as follows:

“...the district judge did not adequately address the question whether the case could be dealt with justly on the fast track, or consider whether because fraud was alleged it was necessary in the interests of justice for the experts to attend so that the trial judge could properly unravel the complexities that were inherent in their contested evidence.”

Casey v Cartwright [2006] EWCA Civ 1280 (05 October 2006)

The case set down guidance for dealing with the case management decisions for Low Velocity Impact cases: -

It states first, they said that it is desirable that, if a defendant wishes to raise the causation issue, he should satisfy certain formalities. The Defendant should notify all other parties in writing that he considers this to be a low impact case and that he intends to raise the causation issue. This should be done within three months of receipt of the letter of claim. The issue should be expressly identified in the defence, supported in the usual way by a statement of truth. Within 21 days of serving a defence raising the causation issue, the defendant should serve on the court and the other parties a witness statement which clearly identifies the grounds on which the issue is raised. Such a witness statement would be expected to deal with the defendant's evidence relating to the issue, including the circumstances of the impact and any resultant damage. The court then went on:

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31. Upon receipt of the witness statement, the court will, if satisfied that the issue has been properly identified and raised, generally give permission for the claimant to be examined by a medical expert nominated by the defendant.

32. If upon receipt of any medical evidence served by the defendant following such examination, the court is satisfied on the entirety of the evidence submitted by the defendant that he has properly identified a case on the causation issue which has a real prospect of success, then the court will generally give the defendant permission to rely on such evidence at trial.

Having said this, the court then went on to state that there will be circumstances where the judge decides that, even though the evidence submitted by the defendant shows that his case on the causation issue has real prospects of success, the overriding objective nevertheless requires permission for expert evidence to be refused:-

33. ...It is not possible or desirable to produce an exhaustive list of such circumstances. They include the following. First, the timing of notification by the defendant that he intends to raise the causation issue. Unless the defendant notifies the claimant of his intention to raise the issue within 3 months of receipt of the letter of claim, permission to rely on expert evidence should usually be denied to the defendant. It is important that the issue be raised at an early stage so as to avoid causing delay to the prosecution of the proceedings. The period of 3 months is consistent with para 2.11 of the Pre-Action Protocol for Personal Injury Claims which provides that a defendant be given 3 months to investigate and respond to a claim before proceedings are issued.

34. Secondly, if there is a factual dispute the resolution of which one way or the other is likely to resolve the causation issue, that is a factor which militates against the granting of permission to rely on expert evidence on the causation issue. In such a case, expert evidence is likely to serve little or no purpose.

35. Thirdly, there may be cases where the injury alleged and the damages claimed are so small and the nature of the expert evidence that the defendant wishes to adduce so extensive and complex that considerations of proportionality demand that permission to rely on the evidence should be refused. This must be left to the good sense of the judge. It does not detract from the general guidance given at para 32 above.

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8. **Fraud: The Burden of Proof.**

In a civil case, the Claimant must satisfy the civil burden of proof, on both liability and causation but what is this?

Re H (Minors) [1995] 1FLR

“The balance of probability means that a Court is satisfied an event occurred if the Court considers that, on the evidence, the occurrence of the event is more likely than not. When assessing the probabilities, the Court will have in mind the factor to whatever extent is appropriate to that particular case, that the more serious the allegation the less likely it is that the event occurred and hence, the stronger should be the evidence before the Court concludes that the allegation is established on the balance of probability. Fraud is usually less likely than negligence”.

Kearsley v Klarfeld [2005] EWCA Civ 1510 – Court of Appeal (Civil Division)

The Court also noted that a problem had been created by the custom of Defendants in these cases to plead positive allegations of fraud, apparently in deference to the judgment of Belinda Bucknell QC, sitting as a deputy high Court Judge, in *Cooper v P & O Stena Line Ltd [1999] 1 Lloyd’s Rep 734*. The perceived need to do so was misconceived. There was no burden on the Defendant to prove fraud in order to succeed, and there was no need for a substantial leading of fraud, although if there were positive reasons to disbelieve a Claimant these should be pleaded in accordance with CPR 16.5.

In short, there is often no need to plead fraud, unless there is evidence of Fraud, it is simply enough to put the Claimant to strict proof.

What is the Defendant alleges fraud?

If the Defendant alleges fraud, the Defendant must discharge the burden of proof to the civil standard. Even if the Defendant alleges fraud and fails to discharge the burden, the Claimant must still discharge the civil burden of proof.

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9. Fraud : The Last Word?

Summers v Fairclough Homes Ltd (2012)

Mr Summers was injured in an accident at work where he sustained a fracture to his right hand and a serious fracture to his left heel bone. He pursued a claim for damages of almost £840,000. Significant surveillance evidence was obtained by the defendant and the Department for Work and Pensions, which showed Mr Summers to be far more mobile and capable than he alleged and, importantly, working.

Mr Summers maintained his exaggerated claim up to and at a quantum trial where the trial judge held that Mr Summers had committed fraud to satisfy the criminal standard and, amongst other things, underwent an unnecessary surgical procedure in a futile attempt to prove the extent of his injury. Nevertheless, Mr Summers was awarded almost £89,000 in damages.

The defendant appealed the claim to the Court of Appeal seeking to strike out the claim in its entirety, as an abuse of process under the Civil Procedure Rules and/or under the court's inherent jurisdiction. Ward LJ in the Court of Appeal found Mr Summers was "*an out and out liar who quite fraudulently exaggerated his claim to a vast extent*" but nevertheless dismissed the appeal, choosing to follow the previous Court of Appeal decisions of *Ul Haq v Shah* [2009] EWCA Civ 542 and *Widlake v BAA Ltd* [2009] EWCA Civ 1256. Permission to appeal to the Supreme Court was refused but was subsequently obtained direct from the Supreme Court.

On appeal, the Supreme Court held that a court had the power to strike out a case at any stage during the court process, including after trial if there had been an abuse of process. Where a claimant was guilty of misconduct which was so serious that it would be an affront to the court to permit him to continue with his claim, this was the appropriate response and a claim could be struck out for that reason. However, this draconian measure should not be implemented lightly. The Court's main concern is to implement justice, and to exercise proportionality in their judgments. In this case, it was not considered proportionate or just to remove Mr Summers' right to compensation for the valid portion of his claim.

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Any questions?

Andrew Mckie is a Barrister at Clerksroom specialising in claimant and defendant personal injury, credit hire, costs and fraud.

Andrew undertakes Claimant and Defendant instructions in personal injury, alleged fraud and credit hire cases for the following types of work:-

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