Fundamental Dishonesty: Lessons from *Atuanya v Ministry of Defence* [2026] EWHC 758 (KB)

Introduction

1. In *Atuanya v Ministry of Defence* [2026] EWHC 758 (KB), the court was confronted with an all-too-common scenario. The Claimant, having advanced a personal injury claim, had discontinued that claim. However, the Defendant had pushed the matter to a hearing in any event, since it was alleging fundamental dishonesty. Upon hearing full argument, the court duly found fundamental dishonesty established, and it thus made an enforceable costs order against the Claimant.

2. All fundamental dishonesty disputes turn on their own unique facts. However, this judgment contains several points of interest for practitioners seeking to argue fundamental dishonesty, irrespective of the kind of personal injury claim in which that issue arises (employers' liability, clinical negligence, road traffic accident or otherwise). All paragraph references in this note are to those in the judgment.

Facts

3. In very general terms, the Claimant (a former soldier) sued the Defendant (his former employer) on the basis that, due to the latter's negligence, he had developed a non-freezing cold injury ("NFCI"). He duly advanced a schedule of loss seeking (amongst other things) £150,000 for disadvantage on the open labour market on the basis that he was "*unfit for any career which requires him to work outdoors or in a cold environment.*" **([150])**. The Claimant further alleged psychiatric injury, and the parties had instructed psychiatric

experts, who had opined that the Claimant had either a depressive disorder or an adjustment disorder **([60]).**

4. The parties instructed 'NFCI experts'[1] who agreed that, whilst the Claimant did have NFCI, the extent of that injury was mild **([62])**. By the time of a second joint report in May 2025, the experts agreed that *"the impact of that injury was 'probably negligible'."* **([74])**. However, the Claimant's expert raised the possibility that the Claimant's condition was *"exacerbated by his poor mental state"* or otherwise explainable by the Claimant's psychiatric condition **([64])**.

5. The Defendant alleged that the Claimant had dishonestly exaggerated the extent of his injuries in the following five respects **([124]):**

> *"i) Making out that he has more difficulty in walking than he really does.*
> *ii) Inventing and/or exaggerating the weakness of grip and sensitivity of fingers.*
> *iii) Exaggerating psychological problems.*
> *iv) Exaggerating sensitivity to cold.*
> *v) Exaggerating the impact of medication"*

6. In support of its case, the Defendant relied heavily on surveillance footage obtained from 7 to 9 March 2024 **([42 – 50])**.

7. The court found, following full argument and cross-examination, that the fourth allegation of fundamental dishonesty was established: namely, that the Claimant had dishonestly exaggerated his sensitivity to cold.

[1] More precisely, the Claimant instructed a Consultant General & Vascular Surgeon, Mr Cross, whilst the Defendant instructed a Consultant Neurologist, Dr Mumford.

Analysis

8. Rather than simply regurgitate the court's reasoning, this note sets out the following four practical points that can be gleaned from that reasoning.

9. Firstly, the judgment rightly notes that to prove dishonesty, it is not enough to show that the relevant person is wrong (or otherwise inconsistent). Rather, one must go further (usually by showing that, in some sense, the person knows that they are wrong). Here, the Claimant was a poor and unreliable witness, who gave oral evidence that was *"in many regards inconsistent with his own witness statements and with the statements of his friend and the accounts he gave the experts"* **([137])**. However, having reminded itself of the well-known *Gestmin* guidance **([126])**, the court noted that *"inconsistency is not, in itself, probative of dishonesty"* and that *"It is common for honest witnesses to be mistaken and unreliable."* **([137])**.

10. Secondly, where the alleged dishonesty turns on the relevant person's subjective perception of their condition, dishonesty will often be inherently difficult to prove. This is particularly so where, as here, that individual has a psychiatric condition potentially affecting that perception. The court noted – entirely correctly – that *"There can sometimes be an honest psychiatric cause for symptoms that have no organic physical cause"* **([6])**. The court applied this point as follows.

    a. On 8 March 2024, the Claimant had displayed a limp which could not be explained neurologically by his NFCI. However, rather than find that the limp was feigned or otherwise exaggerated, the court found that the same was attributable to the Claimant's psychiatric condition **([163 – 164])**, even though the Claimant's

psychiatric expert had not been tested in cross-examination **([150])**, and thus declined to find that this particular part of the Claimant's claim was dishonest. Further, the court declined even to rule on whether the Claimant had exaggerated low grip strength, instead simply flagging the possibility that the points raised by the Defendant merely constituted *"the listless and fearful reaction of a man with depression being asked to try something new which he feared might cause him pain."* **([167])**.

b. Similarly and more generally, the court noted *that "[the] psychiatric illness makes it very difficult to determine whether the Claimant has been dishonest"* **([138])** and stated that, if it had been applying the criminal standard of proof, it would have acquitted the Claimant of all accusations of dishonesty, since *"I cannot be sure beyond reasonable doubt of what was in the Claimant's mind when he did or said things which were untrue or misleading."* **([139])**.[2]

c. Further, whilst the court did find the Claimant fundamentally dishonest, it did so only in respect of an issue that allowed it to bypass detailed analysis of the Claimant's subjective perceptions. Specifically, when visiting his vascular expert for an assessment on 8 March 2024, the Claimant (consistently with his case that he *"tended to wear additional warm weather clothing most of the year"* **([153])***)* duly wore such clothing: namely, a hoodie, jacket, hat and gloves. However, on the very next day, when the temperature was similar, the Claimant *"left the house wearing only a T-shirt, with nothing to cover his arms or hands."* **([155])**.[3] As the court put it, *"I cannot see what the Claimant was thinking but I can see what the Claimant*

[2] For the avoidance of doubt, the correct standard of proof was the civil standard, and the judge applied that standard. In the author's view, the practical relevance of the judge's obiter comment is that, were anyone minded to bring contempt proceedings against the Claimant, any such proceedings would have to be proved to the criminal standard.

[3] The key point being that the Claimant, at this time, was not visiting his medical expert or any other official connected with the case, and had no idea he was being observed.

was wearing." **([152])**. It duly held, on the balance of probability, (having considered and rejected the Claimant's explanation), that *"the Claimant deliberately sought to overstate his need for warm clothing, both expressly in what he said to Mr Cross and implicitly in what he wore* [since he] *knew he did not wear warm clothing outdoors even when it was warm and yet he told Mr Cross that he did."* **([156])**

11. Thirdly, when considering the necessary subjective element of dishonesty, the judgment rightly highlights the distinction between knowing that conduct is wrong (in the sense of being inaccurate or untrue) and knowing that the same is dishonest. Here, the court found that the Claimant did not think he had done anything dishonest **([140])**. However, this was not sufficient to negative dishonesty, if indeed it ever had been.[4] Rather, the court found the Claimant objectively dishonest per the *Ivey v Genting* test simply because, on the court's findings, he had advanced claims which he had known were not true **([134 – 136, 141])**.

12. Fourthly and finally, the judgment reminds legal practitioners that they have a role to play in protecting their clients from dishonesty allegations. Clearly, such protection can only go so far. However, the court noted the common scenario where a litigant, speaking hyperbolically in the way that ordinary people often do, says that they 'never' do something, when in reality, they actually mean that they 'rarely' do the said thing **([130])**. Accordingly, legal practitioners should be cautious about drafting such claims in statements

[4] Here, on this obiter point, the author would respectfully point out the following. The court considered that *"Under that old, disapproved Ghosh test … someone would only be found dishonest if they realised what they were doing was dishonest."* **([118])**. The author respectfully considers this an oversimplification of *Ghosh*, which stated that the test was not whether the relevant person knows that their conduct is dishonest but rather whether they know that ordinary people would regard the same as dishonest. In *Ivey* at [59], the Supreme Court fairly noted that, in many practical scenarios, these two concepts might blur into one; however, they nevertheless remain distinct concepts. Here the court made no findings – and obviously needed to make no findings – as to whether the Claimant knew that ordinary people would regard his conduct as dishonest.

of case and witness statements and (in the author's view) should probably ensure that such claims are specifically checked.[5] Interestingly, the court indicated that it was receptive to the possibility that the Claimant had only claimed the sums he had because *"someone has supported or encouraged the Claimant to sue the Defendant for sums of money that bore no relation to his mild NFCI."* **([169])**,[6] although this in itself was not a part of the rationale for the finding of dishonesty.

Concluding thoughts

13. As set out above, this was a case where the Defendant's allegation of fundamental dishonesty succeeded. However, whilst the court faithfully followed the evidence and (in the author's view) probably reached the right conclusion, it is clear that it only did so with considerable reluctance. Most of the claims of fundamental dishonesty actually failed, with the judge emphasising that, had he applied the criminal standard of proof, all the claims would have failed. Proving fundamental dishonesty will rarely, if ever, be straightforward, especially where psychiatric conditions are in play, and even if (as here) surveillance evidence exists. Defendant practitioners should proceed with caution and allege the same only where it can properly be sustained. Similarly, Claimant practitioners should advise their clients fully, realistically and candidly as to the merits of their case and, if it is possible to save their clients from themselves, should be in a position to do so.

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[5] As opposed to, for example, simply giving the client a lengthy witness statement to review without directing them to any particular passages of particular concern.

[6] Instinctively, the author considers this suggestion a little unfair. If, as the court found, the Claimant was deliberately overstating his need for warm clothing and duly stating that he thus could not work outdoors, it is difficult to see why his legal representatives should not have faithfully advanced that case on his behalf. However, unfair or not, this simply demonstrates the need for legal practitioners to ensure they can demonstrate, if necessary (and subject to privilege), that they properly advised their clients at all times.