

## Richard Paige discusses the many guises of fundamental dishonesty

Earlier this month I wrote a summary of the case of Maciula v EUJ in which the lead Claimant's whole claim was struck out pursuant to s.57 of the Criminal Justice and Courts Act 2015 as a result of the fundamental dishonesty of his credit hire claim. An order was also made permitting the Defendant to enforce its costs against him pursuant to CPR r.44.16, thereby removing his QOCS costs protection. In the last few weeks I have secured findings of fundamental dishonesty in a number of cases for the purposes of r.44.16. These cases can illustrate the range of factual and procedural circumstances in which a finding of fundamental dishonesty can be made.

In Ogunsanya v Obafemi & EUJ (Clerkenwell & Shoreditch County Court 31/8/2017) the Claimant claimed to have been injured when travelling in a vehicle struck by the First Defendant's vehicle. The Second Defendant alleged that the accident had either not occurred at all or if it had occurred, had been staged. It was able to produce evidence to show that the same email address and mobile phone number that had been used to incept the First Defendant's policy of insurance had been used a few months earlier when quotes were sought in the Claimant's name (and that of his fellow vehicle occupants). The Claimant denied knowing the First Defendant; denied having sought or obtained the quotes; could provide no explanation as to how it was that his details appeared on the insurance quotes; and claimed to have known nothing of the allegations against him until the day before trial. Ultimately the judge rejected his account and found that no genuine accident had occurred, resulting in a finding of fundamental dishonesty.

In Ali v Probis Insurance (Sheffield County Court, 15/9/2017) the Claimant discontinued his claim after being presented with engineering evidence that demonstrated that his vehicle was stationary when struck (contrary to his assertion that it was travelling at 17-20mph) and had extensive pre-accident damage (contrary to his assertion that it was undamaged). After discontinuance, the Defendant applied for a finding of fundamental dishonesty utilising the provisions of paragraph 12.4 of the practice direction to CPR r.44. The Claimant failed to respond to the application and a finding of fundamental dishonesty was duly made.

In Gibbons v EUJ (Liverpool County Court 25/9/2017) the Claimant made a claim following a genuine road traffic accident alleging that he was a passenger in the third-party vehicle. The drivers of both the fault vehicle and the third-party vehicle denied

that the Claimant was in the third-party vehicle and its driver also denied any knowledge of the Claimant. After a Defence was filed alleging fraud the Claimant's solicitors successfully applied to come off record and no further action was taken in the litigation by the Claimant, leading to the striking out of his claim. This was followed by an application by the Defendant for a finding of fundamental dishonesty. Again, the Claimant failed to respond to the application and the finding was made. These three cases serve to illustrate not only the variety of factual circumstances in which a finding of fundamental dishonesty can be made, but also the variety of procedural circumstances – after trial, after discontinuance and after strike out.