

## Suspicious Claims – Spotting them and managing them

A case study

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genuine

expertise

commitment

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## Fraud definitions and case law summary

Definition of “Fraud” :

*“Wrongful or criminal deception intended to result in financial or personal gain.”*

### Fundamental dishonesty CPR 44.16

- *Judicially considered in the following cases;*

*Gosling v Hailo (1) Screwfix Direct (2)* – HHJ Maloney QC, Cambridge County Court, 29.04.2014

*Zimi v London Central Bus Company Ltd* – HHJ Madge, Central London County Court, 8.1.2015

*Creech v Severn Valley Railway and others* – DJ Rodgers, Telford County Court, 25.03.2015

*Vishal Sharma v Barratt Developments plc* – DJ Watson, Northampton County Court 7 April 2016

*Howlett v (1) Penelope Davies (2) Ageas Insurance Limited [2017] EWCA Civ 1696*  
(court of appeal approved *Gosling*)

- Exception to QOCS Regime if established. CPR r.44.16(1). Orders for costs against the Claimant may be enforced to the full extent of such orders with the permission of the court where the claim is found on the balance of probabilities to be fundamentally dishonest.
- Consider preparing an application for a finding of fundamental dishonesty if it seems quantum is exaggerated to a significant degree – the 50 per cent in *Gosling* is a reasonable starting point given the lack of any definition of fundamental dishonesty.

### Criminal Justice and Courts Act 2015 (section 57)

- Applies where there is a genuine and a non-genuine component to the claim.
- Requires the defendant to make an application.
- If a finding of fundamental dishonesty is made in relation to the primary claim or a related claim, the court must dismiss the primary claim, unless the claimant can prove substantial injustice due to the loss of the damages.
- Meaning of “substantial injustice” must mean more than the mere fact the claimant will otherwise lose damages to which he was genuinely entitled - *LOCOG v Sinfield* [2018] EWHC 51
- Dismissal only secures a proportion of the defendant’s costs.
- Is it appropriate to consider holding off making a Part 36 Offer until further investigation has been undertaken ?

## employer liability key fraud indicators

### A - Problems with the Claimant

1. Personal financial problems?
2. Is Claimant too aggressive / nice?
3. Undue knowledge of insurance procedure?
4. Refusal to sign mandates for medical records
5. Readily accepts or looking for reduced claim
6. History of similar claims / multiple claims
7. Disgruntled employee / ex-employee
8. Known disciplinary problems?
9. Limited description of circumstances
10. Phraseology used – technical language
11. Recently joined company
12. Symptoms not borne out by medical records
13. Expert cannot explain ongoing symptoms
14. No emergency services
15. Delay in reporting
16. Injuries conflict with 'mechanics of accident'
17. Accident occurred late at night/early in morning
18. Injuries occurring late Friday night or early Monday morning
19. Poor attendance/performance records
20. Injuries that have no witness other than the claimant
21. Injuries not reported until a week or more after they occur
22. Injuries not documented in GP notes/records
23. Injuries occurring before a holiday, or in anticipation of lay off or termination
24. Injuries occurring where the worker would not usually work
25. Injuries not usually occurring in the particular job description, for example, a secretary injured when lifting a heavy object
26. Claimant observed in activities inconsistent with the reported injury
27. Any evidence of working elsewhere while drawing benefits / off sick
28. Accident/injury not documented in company accident book

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29. Symptoms persist for unusually long length of time
30. Extremely minor incident resulting in psychiatric symptoms
31. Delay in returning to work after medical all clear
32. Majority of complaints are subjective and incapable of corroboration

## B - Problems with the circumstances

1. Vague / conflicting – gaps in detail
2. Injury not recorded / documented in accident book
3. Injury circumstances different to circumstances in medical records
4. Seasonal worker
5. Before / after termination of employment / on notice of disciplinary / redundancy
6. Changes to account / time / location / witness details
7. Delay seeking medical treatment / no medical treatment sought
8. No time off work
9. Exacerbation of previous injury
10. Undue delay notifying claim
11. Unwitnessed accident / claimant working alone or in isolation
12. Feeling claim is premeditated
13. Are other colleagues involved.

## C - Problems with documentation / medical evidence

1. No supporting medical evidence
2. Delay in providing mandates etc for medical records
3. Delay in providing medical evidence
4. Excessive specials claim with no documentation / injury not consistent with special damage
5. Vague description of injuries
6. Conflicting diagnosis from subsequent treating doctors
7. Medical evidence does not support injury claimed
8. Medical records not reviewed for purpose of medical report
9. Medico-legal agent involved in other suspicious claims that are subject to investigation
10. Do the CRU benefits match the medical evidence? EG / No benefits but saying they are unable to work
11. Minor accident but resulting in psychiatric problems.

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Notes

## the fraudulent EL claim

### Case study background

1 At around 9:30am on 4 March 2011, the Claimant was working as a warehouse operative for the Insured at their premises in Cleckheaton. He says he was pulling a pump-truck back into the warehouse when it stuck on a ridge at the doorway entrance to the warehouse. That sudden resistance caused a jolt of pain in his back; when he tried to yank the pump truck over the ridge and into the warehouse there was a second twinge of pain to his lower back.

(a) **Exhibit 1: Accident Report Form 4 March 2011**

(b) **Exhibit 2: A&E Attendance Note 7 March 2011**

2 Cranningham Loosely (loss adjuster) investigated the matter with the Insured concluding there were likely to be criticisms about the state of the flooring in the doorway area leading into the Insured's warehouse. There were no witnesses to the accident, and with the benefit of hindsight, what seems to have been a very innocuous event does now look to be having a disproportionate effect.

3 Claimant relies upon reports from Mr Zoltie (consultant in A&E medicine). He reports at seven months and then eighteen months post-accident (21 October 2011 and 24 September 2012).

4 Mr Zoltie diagnoses a musculoskeletal strain injury but one that does not show the sort of gradual improvement that would normally be expected.

5 Even with the benefit of an MRI scan on re-examination eighteen months post-accident, there is no explanation for the ongoing symptoms the Claimant complains of. By that time Claimant has been 'yo-yoing' between a pain clinic, a musculoskeletal clinic and physiotherapy but still scores his pain at 7/10 and continues to have some care needs, while being unable to undertake anything more than very light chores and certainly none of his pre-accident hobbies (football, cycling, motor cross).

6 Mental health issues have become a factor and apparently the Claimant had a "manic depressive" diagnosis and was in receipt of medication by the time of his re-examination. Mr Zoltie was not able to identify the cause of the pain and there are no anatomical problems; in Mr Zoltie's view the orthopaedic element should not compromise the Claimant's position on the open labour market.

7 Psychiatric Evidence – Report of Mr J Edmondson (behavioural psychotherapist) 30 March 2013; the Claimant was examined at the end of March 2013 just over two years post-accident and was complaining of chronic sharp shooting pains in his rib area and a tight dull pain in his coccyx region. The Claimant has sold his motorbike and split up from his girlfriend of five years (in part citing loss of libido for that). He claims to be teetotal but smokes five cigarettes a day and some cannabis to help manage his pain.

8 It took until 31 August 2012 (19 months post-accident) for the Claimant to attend his GP with any mental health issue – even then he was sent by his mother. Apparently, he is having problems walking, but was getting depressed as well. Matters were made worse in November 2012 when his uncle and grandfather both died.

9 Mr Edmondson concludes that there are some entrenched avoidance behaviours, mainly his avoidance of physical activity, and that he feels chronically hopeless and helpless. The Claimant has, in Mr Edmondson's view, suffered a "*reactive depressive illness with an interrelated anxiety state*". He needs

input from a chronic pain clinician and EMDR and other treatment but there are doubts he will ever be well enough to return to full time employment. You start to get that sinking feeling...

10 If the Claimant is diagnosed with chronic regional pain syndrome then even a moderate case would attract awards between £20,000 and £40,000. More diffuse pain syndromes of a moderate severity are regularly receiving awards between £15,500 and £28,300 following the judicial college guidelines. Chronic pain is the means by which Claimant is hoping to justify a long term care and loss of earnings claim.

11 Valuation summary

(a)	If moderate non-specific chronic pain	£28,300;
(b)	Past loss of earnings to notional trial date	£44,213.58;
(c)	Future loss of earnings to age 65	£209,179.35;
(d)	Past care claim (estimated)	£10,647.00;
(e)	Future care claim	£51,353.85;
(f)	Miscellaneous items	£3,500
(g)	Rounding up/interest	£7,506.22
<b>(h)</b>	<b>Damages potential</b>	<b>£355,000.00</b>
(i)	Claimant's costs to trial:	£125,000
(j)	Defence costs to trial:	£65,000
<b>(k)</b>	<b>Costs potential</b>	<b>£190,000.00</b>

12 **Consider the applicability of the EL Claims Key Fraud Indicators and whether to target this claim with more resource? On a scale of 1-10?**

13 **What about QOCS?**

14 **Discuss a strategy incorporating:**

- (a) Data sources**
- (b) Factual areas for investigation**
- (c) Reliance upon experts (including but not limited to medical experts)**
- (d) How best to analyse the information you secure and plan for more**

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## Data sources

- 1 GP
- 2 Hospital
- 3 Physiotherapy clinic
- 4 Musculoskeletal clinic
- 5 Pain management clinic
- 6 Personnel records
- 7 School
- 8 Gym membership
- 9 Online media:
  - (a) internet forums
  - (b) Google
  - (c) Myspace
  - (d) Twitter
  - (e) Instagram
  - (f) YouTube
  - (g) Facebook
- 10 Colleagues and former managers
- 11 Databases
  - (a) CUE (Claims Underwriting Exchange)
  - (b) Experian
  - (c) DVLA
  - (d) Electoral Role
  - (e) Companycheck.co.uk
  - (f) Google Maps/Streetview

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## Factual areas for investigation

1 Perhaps the most important event that we need to understand was an accident in **February 2011** only a matter of weeks before the alleged incident; the Claimant seems to have been knocked from his motorcycle when leaving work. There is reference to him sustaining a back injury as a result (in the Insured's response to the DWP benefits entitlement investigation) but the Claimant's medical experts are entirely unaware of it.

**(a) Exhibit 3: Return to work note 2 February 2011**

2 The Claimant's employment with the Insured looks to have been in jeopardy in any event. He was on a second warning for his poor attendance and has a pattern of Mondays/Fridays in terms of sickness absence.

3 The Claimant is of questionable character. His mother has been convicted for money laundering (in the order of £108,000) and has a chequered background. The Claimant's online profile suggests he is part of the local 'gang culture' in Huddersfield and preliminary enquiries with Facebook have shown that he is still participating in at least one of his pre-accident hobbies.

**(a) Exhibit 4: Huddersfield Examiner, West Yorkshire Police "Neighbourhood Policing"**

**(b) Exhibits 5,6: Photos extracted from Claimant's Facebook page**

## How best to analyse the information you secure

The Chronology (to be discussed later) can be the essential investment of time/resource to properly develop an accurate context for the mischief the Claimant is trying to make. That can be a laborious and time consuming process depending on the level of data that has been secured from the sources referred to above, but is the only way of drawing out the true sequence of events and often highlights the massive inconsistencies in the Claimant's behaviour and then how he is reporting matters to his treating and medico-legal experts.

You may also be lucky enough to find a trap into which the Claimant is going to fall...

## Surveillance

You have very limited success with surveillance from Snoops Ltd. Most recently, the footage from 22 and 23 March 2014 shows the Claimant leaving the house and he is physically able to help his mother with the weekly shopping. Snoops suggest the Claimant is "hyper-vigilant" to the threat of surveillance and some of his recent postings on Facebook do refer to "*taking them round in circles*".

**Consider surveillance resource (and cost); discuss how to best approach any further deployment bearing in mind the level of vigilance that has been displayed to date?**

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## Surveillance

See slides September and November 2014

## Discussion

1. **With the better insight you now have, is this a case that you would look to challenge?**
2. **Liability, Quantum or both?**
3. **What about the admission of liability that has been made?**
4. **What about the possibility of the Claimant proving some injury, but only a modest one?**

No wrong answers.

Have reasons for your strategy.

Reflect the respective approach and philosophy of the Claims Team and the specific client in question.

For more information on the issues raised or about our general insurance team please contact Alan Jacobs.

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