



## ANDREW LAWSON

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### REACHING OUT WITH FUNDAMENTAL DISHONESTY – CPR 44.16

#### *A recent example of Fundamental Dishonesty in action*

In a 2014 road traffic accident claim, listed for the determination of liability as a preliminary issue, I was instructed on behalf of the insurer to represent the Defendant driver at the Stoke – on – Trent County Court. The Claimant would ordinarily have had the benefit of QOCS protection.

The Claimant driver and his passengers alleged that their 7 seater vehicle had been hit to the rear by the Defendant whilst turning left off the major road into a minor road. On the relevant corner, there was a takeaway venue that they had intended to visit.

The Defendant's case was diametrically opposed, namely, that the Claimant's vehicle had reversed into the main road, at speed, from the minor road into collision with the front nearside of his car. There were a number of parked cars outside the takeaway which would probably have obscured the Claimant driver's view of oncoming traffic. The resulting damage to the vehicles was not conclusive.

Liability was denied in the defence and there was an MOU in place between the insurers. Fundamental dishonesty was not expressly pleaded.

After cross examination of the witnesses and submissions from counsel, the judge found that the collision had occurred, on balance, as described by the Defendant. The Claimant's allegations of negligence and his claim were dismissed.



Since the factual version of events as alleged by the Claimant has been rejected, I made an application that he should pay the Defendant's costs pursuant to CPR 44.16 because his claim had been fundamentally dishonest. The application was opposed.

The judge agreed that since the respective accounts of the collision by the drivers had been so polarised, it could not be said that there was a simple error of recollection or mistake by the Claimant about the positioning of his car. In light of the findings of fact, the Claimant must have known that he had reversed his car into the main road. It was not a minor detail and, logically, it meant his pleaded version of events was fundamentally dishonest. Costs were summarily assessed and permission granted to enforce the full extent of the costs order against him.

I doubt that CPR 44.16 was primarily designed to catch Claimants as described in the circumstances above. However, it is still clearly a powerful weapon which can be legitimately relied upon by the Defendant in cases where the parties version of events are so diametrically opposed.

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