



The Fallible Client

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Behaviours

Credibility
Exaggeration
Malingering
Dishonesty



Legal Context

Breach of Duty
Factual Causation
Legal Causation (Causation of Injury)
Quantum – Assessment of Damages



Procedural Context

Provisional Report
Pleadings
Exchange of Witness Statements
Exchange of Expert Reports
Part 36 Questions
Joint Statements
Trial



Facts

Facts are matters for the trial judge:

“Comment is free, but facts are sacred.”

C. P. Scott



Breach of Duty

Establishing the factual basis of the claim

Differing accounts of client and clinician

*CXB v North West Anglia NHS Foundation
Trust* [2019] EWHC 2053 (QB)

FB v Princess Alexandra Hospital NHS Trust
[2017] EWCA 334 (CA)



Factual Causation

Hypothetical or counterfactual

Expert or lay evidence?

Bolitho v City and Hackney HA [1998] AC 232

Multiple parties:

Wright v Cambridge Medical Group [2011] EWCA
(Civ) 669

Regional particularities



Factual Causation and the Client

Unreasonable/unpredictable behavior:

Darnley v Croydon Health Service NHS Trust
[2018] UKSC 50

Consent to Treatment post *Montgomery*

Contributory Negligence: DNA



The Client and Legal Causation

Initial Symptoms
History of Deterioration
The extent/severity of symptoms
Inconsistent Histories
The importance of medical records



The Law in Relation to Medical Records

CXB v North West Anglia NHS Foundation Trust
[2019] EWHC 2053 (QB)

No principle that court should prefer
medical note over witness evidence

Arrowsmith v Beeston; Steele v Millbrook :

both unreported CA decisions from
1998/99



Factual Inferences

Wizniewski [1998] PIQR P324;
Welsh v Stokes [2007] EWCA Civ 796
Keefe [2010] EWCA Civ 683;
Mackenzie v Alcoa [2019] Civ 2110
Younas v Okeahialam [2019] 2502 (QB);
Shawe-Lincoln[2012] EWHC 1150 (QB)



The Lay Client and the Assessment of Damages

Exaggeration

Unconscious exaggeration:

Digby v Essex CC [1994] PIQR Q54
Page v Smith [2000] 1 WLR 1397
Bythe Valley BC v Henderson [1996] PIQR P64



The Lay Client and the Assessment of Damages

Exaggeration

Conscious Exaggeration

Afzal v Chubb Guarding Services [2003] EWHC 822



The Lay Client and the Assessment of Damages

Malingering

The intentional production of false or grossly exaggerated physical or psychological symptoms, motivated by external incentives such as avoiding military duty, avoiding work, obtaining financial compensation, evading criminal prosecution, or obtaining drugs.



The Lay Client and the
Assessment of Damages

Dishonesty

Extent and nature of dishonesty

Fundamental Dishonesty:

CPR r. 44.16 (1)

Grant v Newport CC (unreported, 18.12.19)

*Calderdale & Huddersfield NHS Trust v
Metcalf* [2021] EWHC 611 (QB)



The Lay Client and the
Assessment of Damages

Video Surveillance Evidence

Hayden v Maidstone & Turnbridge Wells NHS Trust
[2016] EWHC 3276 (QB)

*Wilcox v King's College Hospital NHS Foundation
Trust* [2020] EWHC 2555 (QB)



The Lay Client and the
Assessment of Damages

The Conduct of Trial:
Clarke v Maltby [2010] EWHC 1856 (QB)



Thank You for Your Time

Any Questions?

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