

# **FRAUD AND EXAGGERATION: WHAT TO DO?**

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# Define Your Terms

- A spectrum of scenarios
- Unconscious exaggeration
- Conscious exaggeration
- Outright concoction

# Defeat and Deterrence

- Weapons available fall into 2 broad classes with some overlap:
  - Steps to defeat the claim in hand
  - Steps to deter other fraudsters

# The Arsenal

- Striking out
- Jaundiced judgment
- Deprivation of interest
- Adverse costs orders
- Committal for contempt
- Criminal proceedings

# Striking out for abuse

- Jurisdiction: inherent and CPR 3.4(2)
- “The court may strike out a statement of case if it appears to the court –
  - b) that the statement of case is an abuse of the court’s process or is otherwise likely to obstruct the just disposal of proceedings;”

# Cases before Fairclough Homes

- *Ul-Haq v Shah* [2009] EWCA Civ 542
- *Widlake v BAA Ltd* [2009] EWCA Civ 1256
- No jurisdiction to strike out after a trial at which the claimant has established some loss.

# Fairclough Homes Ltd

- *Fairclough Homes Ltd v Summers* [2012] UKSC 26
- Initial schedule: £838,616.  
Final award: £88,176.
- After judgment, D sought to strike out the whole claim.

# Supreme Court decision

- *Ul-Haq* and *Widlake* over-ruled
- Judge does have jurisdiction to strike out whole claim after trial even where C has established some loss.
- The power will only be exercised in the very exceptional case.



# Fari v Homes for Haringey

- Central London County Court – 9.10.12
- Claim for £740,000. Honest element £1,500 (less than 1%).
- Claim struck out and transferred to High Court for contempt proceedings. [2013] EWHC 757

# Interlocutory strike out

- Fairclough Homes: the judgment did not affect the jurisdiction to strike out at an interlocutory stage.
- If there is evidence to strike out, apply at an early stage.
- Query how successful such applications are likely to be where facts are in issue?

# Jaundiced Judgment

- Appropriate adverse inferences where C has been found to be a liar on some aspects of the claim.
- Judge likely to be sceptical of the whole claim where there has been clear evidence of fraud.

# Deprivation of interest

- Interest is awarded in the discretion of the court.
- Where fraud has prolonged proceedings, there is a good argument for depriving C of interest.
- Without fraud, the claim would presumably have settled at an early stage.

# Adverse costs orders

- Part 36 is of no assistance to D where there has been fraud.
- Calderbank offers should be made.
- Loss of QOCS: CPR 44.16(1)

# Contempt

- Proceedings have to be brought in the High Court even if underlying proceedings in the County Court.
- *Airbus Operations Ltd v Lee* [2012] EWHC 3631
- *Contrast South Wales Fire and Rescue v Smith* [2011] EWHC 1749

# Criminal Proceedings

- It is open to the Judge to refer a case to the CPS or DPP.
- Likely to be a rare case in which the CPS or DPP acts.
- Insurers more likely to achieve deterrence by seeking to commit for contempt.

# Conclusions

- The choice of weapon will depend on the strength and timing of the evidence of fraud.
- An early application to strike out is the optimum but will not often arise.
- Calderbank offers and threat of contempt proceedings are likely to be most effective.