



***Fraud by victims of personal injury***

This subject was suggested to us for our 11th programme. Under the current law, a personal injury claimant who fraudulently exaggerates their loss may still recover the legitimate part of the claim. Fraudulent exaggeration may amount to abuse of process, but the Supreme Court held in *Summers v Fairclough Homes Ltd* ([2012] UKSC 26, [2012] 1 WLR. 2004) that the power to strike out claims at a late stage of the proceedings should be exercised only in very “exceptional circumstances”.

This position has been criticised by both academics and practitioners for failing to do enough to deter fraudsters. In *Summers*, the court pointed to other measures of deterrence, including adverse finding on costs, possible committal for contempt of court and a risk of criminal proceedings. However, these may not be as effective as forfeiture of the whole claim.

The approach taken in *Summers* differs from that taken when a policyholder makes a claim under their own insurance policy. Here even a slight exaggeration can lead to forfeiture of the whole claim. It also differs from the law in other jurisdictions: for example, in 2004 the Irish Parliament introduced an express provision (section 26(1) of the Civil Liability and Courts Act 2004) which directs the courts to dismiss fraudulently exaggerated claims, unless “the dismissal of the action would result in injustice being done”.

We would like to hear whether the Law Commission should examine this area, or whether it can be left to the courts. One advantage of statutory reform is that it could be more explicit in considering the interest of the State to recover the cost of NHS services and/or benefits.