



Crime brief

A recent case has underlined that equality before the law is one of the bedrocks of our justice system, no matter who is bringing the claim: **David Walbank KC** reports

IN BRIEF

- ▶ Equality before the law.
- ▶ Clinical negligence claim by prisoner convicted of attempted murder.
- ▶ Statutory defence of fundamental dishonesty.

In the last 'Crime brief', we looked at one of two recent cases illustrating the principle that 'all are equal before the law' ('Crime brief', *NLJ*, 4 November 2022, p13).

The former king of Spain, Juan Carlos I, had been sued by his ex-mistress for harassment, the allegation being that he had arranged for agents of the Spanish intelligence service to carry out a campaign of intimidation and harassment by, among other things, placing her under surveillance, intercepting and monitoring her communications, burgling her home and deliberately leaving veiled threats with not-so-subtle references to the death of Princess Diana and the conspiracy theories which abound about the part played by MI6 and the CIA.

Juan Carlos' various attempts to pray in aid the doctrine of state immunity were all dismissed by the High Court in London, and a civil action against the former sovereign was allowed to proceed.

Background to the claim

In this article, we examine another hard case, testing the limits of equality before the law. *Cojanu v Essex Partnership University NHS Trust* [2022] EWHC 197 (QB), [2022] All ER (D) 15 (Feb) followed an incident in which a man called Dorinel Cojanu attacked his wife with a knife and was remanded in custody to HMP

Bedford. When he was taken into custody, he had deep cuts to his right ring finger and little finger. The NHS trust that was supplying medical services to the prison had pre-arranged a repair operation, but then decided to cancel it on the ground that other medical treatment could be provided locally and that a security risk arose whenever prisoners were given advance notice of medical appointments. However, due to a delay in arranging the local surgery, Mr Cojanu lost the opportunity to have his cut finger tendons repaired.

He brought a personal injury claim based on what he alleged had been clinical negligence by the NHS trust while he was on remand in custody. He contended that he would have made a full recovery if he had received surgery within ten days of suffering the original injury, but that the trust had been guilty of negligence in delaying his treatment. He prayed in aid prison service order PSO 3200, which requires that prisoners are provided with an equivalent standard of healthcare to that available to ordinary members of the public.

At the trial of the action, the recorder found that the trust had indeed been negligent in failing to fax a referral letter to the local hospital, thereby delaying the claimant's treatment, but he then went on to consider quantum and possible defences, including the statutory defence of 'fundamental dishonesty' under s 57, Criminal Justice and Courts Act 2015. On that latter issue, the recorder found that the claimant had been fundamentally dishonest in a number of different ways, including his failure to allude in his pleaded case to the real cause of his injuries, his averment that it was his wife who had

inflicted the injuries on him when attacking him with a knife and conveniently neglecting to mention the rather relevant fact that, by the time he issued these proceedings, he had been convicted of attempted murder. The recorder went on to make a finding that Mr Cojanu had, in addition, dishonestly inflated the quantum of the claim, which he then proceeded to dismiss.

Equal entitlement

On appeal to the King's Bench Division of the High Court, Ritchie J held as follows.

Under s 57, the defendant to the action had to establish to the civil standard that there had been dishonesty on the part of the claimant in relation to a matter fundamental to the claim. That did not encompass dishonesty in relation to something incidental or collateral to the claim. In order to establish his cause of action in this case, the claimant did not have to prove what had actually caused the cuts that were to be treated. On the contrary, the precise mechanism by which the injuries had been sustained was of no relevance to the clinical negligence proceedings and was merely incidental or collateral to the claim. Any dishonesty on the part of the claimant regarding the background to the case impinged only on his credibility as a witness. But liability here ultimately depended not on the claimant's own testimony, but on expert medical evidence. Nor did any dishonesty on the part of the claimant have any impact on the quantum of the claim.

The bottom line was that all citizens, including those with criminal convictions, are equally entitled to bring civil actions before the courts. Put another way, s 57 did not act as a 'credibility filter', barring such people from bringing a claim. The NHS does not turn away or discriminate against the criminal classes or any other class of person, and nor does the civil jurisdiction. The rationale underlying the statutory defence of 'fundamental dishonesty' was to stamp out fraudulent claims, not to deny access to the civil courts to criminals who were either unrepentant or in denial. The appeal was allowed, and judgment was entered for this man who was serving time for attempted murder.

The judgment establishes beyond doubt that convicted criminals, even those who are guilty of the gravest of crimes and who then lie about that fact in subsequent civil proceedings, will not be shut out from their remedies before the civil courts. It is the clearest possible affirmation that equality before the law is one of the bedrocks of our justice system. **NLJ**

David Walbank KC is a member of Red Lion Chambers and the founder of the updating website www.crimecast.law on which he presents video case reviews of recent judgments. The site currently hosts more than 200 free-to-view videos.