

CASE NOTES: O'Connell v Ministry of Defence



DISMOUNTED AND DISHONEST: O'CONNELL V MINISTRY OF DEFENCE

On 12 September 2025, the High Court handed down judgment in *O'Connell v Ministry of Defence* [2025] EWHC 2301 (KB), dismissing a former Royal Horse Artillery gunner's personal injury claims in negligence and under the Animals Act 1971, arising from a fall from a horse during training. The court also made findings of fundamental dishonesty, disapplying QOCS and enabling recovery of costs against the Claimant under CPR 44.16.

The judgment is significant for all dealing with claims under the Animals Act, and with personal injury litigation in which fundamental dishonesty is or may be an issue



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The facts of the case

The Claimant joined the King's Troop, Royal Horse Artillery in October 2014. On 4 September 2015, during a riding lesson with other recruits, she was switched from her original mount, 'Narlia', to 'Electra Jazz' ('Jazz') after struggling to control the first horse.

The recruits were then instructed to trot in formation within the arena and turn right. The other two recruits mistakenly turned left. The Claimant initially turned right, then, thinking she had erred, redirected Jazz to the left. The horse bucked, unseating her. She landed badly, sustaining a comminuted left clavicle fracture and needing two surgical interventions and prolonged rehabilitation.

The Claimant made the following disputed allegations:

- Jazz had bucked earlier in the lesson and she had negligently been told to remount.
- She had been issued oversized boots and not properly instructed on stirrup use.
- Jazz was unsuitable for novice riders, such as her.

The Claimant accepted that orthopaedic recovery had occurred. However, she asserted that she was suffering permanent, chronic pain and hypersensitivity in her left shoulder and arm, subsequent to peripheral nerve injury, such that its function was very severely restricted.

Her claim for damages was originally put at c.£2.5m. Following review by the experts of video surveillance

evidence disclosed by the Defendant in 2022, the Claimant served a schedule of loss for trial which put the claim at c.£1.7m. Her medical experts unanimously assessed her to be a credible historian.

Liability

The claim was advanced in negligence and under s.2 Animals Act 1971. In view of the work context, the negligence claim drew upon relevant terms of the Provision Use of Work Equipment Regulations 1998 and Management of Health and Safety at Work Regulations 1999.

Having heard the factual witnesses and equestrian experts on both sides, the judge made findings that:

- No earlier bucking incident was proven;
- The issued boots were somewhat large but not unsafe;
- Jazz was suitable for novice riders.

It followed from those findings that the claim was not made out in negligence.

So far as strict liability under the Animals Act was concerned, the central issue was whether the damage was '*of a kind which, if caused by the animal, was likely to be severe*' for the purposes of s.2(2)(a).

There is tension within the authorities involving falls from horses. The Claimant relied upon *Lynch v Ed Walker Racing* [2017] EWHC 2484 and *Koetsier v Thomas* [2024] PIQR P9, in which Judge Harrison had considered it a '*short step*' from

a finding of a violent buck to a conclusion that the second limb of s.2(2)(a) was satisfied. The Claimant further cited Etherton LJ (as he then was) in *Freeman v Higher Park Farm* [2009] PIQR P6, at [34]: *'It is obvious that, if a horse bucks on beginning to canter so that the rider falls off it is reasonably to be expected that severe injury will result.'*

The Defendant drew the judge's attention to the guidance of Lewison LJ in *Turnbull v Warrener* [2012] PIQR P16, at [54], that the observations of Etherton LJ in *Freeman* (as well as those of the Court of Appeal in *Welsh v Stokes* [2008] 1 WLR 1224) were *'statements of fact rather than rulings on the law'*, and that the same approach had been followed in *Lynch* by Langstaff J and, more recently, by Cotter J in *Boyd v Hughes* [2025] EWHC 435.

With that guidance in mind, the judge held that the requirements of s.2(2)(a) were not made out. He took into account that:

- Jazz was moving at a trot prior to the buck;
- The Claimant was unprepared for the buck;
- The buck was neither small nor substantial;
- Jazz was around 1.55 metres tall;
- The surface (a sand arena) was relatively forgiving;
- The Claimant was wearing a hard hat; and
- The equestrian experts agreed, and statistical evidence before the Court showed, that the majority of falls from horses do not cause serious injury.

Fundamental dishonesty

The claim having been dismissed on liability grounds, the question whether it should be dismissed for fundamental dishonesty under s.57 Criminal Justice and Courts Act 2015 did not arise. However, the question of fundamental dishonesty was critical to costs enforcement under CPR 44.16 (QOCS disapplication).

The video surveillance footage showed the Claimant with *'normal or near normal'* function of her left shoulder and arm at certain times and for certain periods, but its significance was a matter of dispute between the experts, most importantly the pain experts.

In preferring the conclusion of the Defendant's expert, Dr McDowell, that the video evidence represented the Claimant's true level of function, the judge gave useful guidance about the extent to which, in cases such as this, experts should address the question of veracity:

Whilst the assessment of the truthfulness of a Claimant is a matter for the court, it helps a judge to hear from an expert how a particular claimant compares with other individuals with similar conditions whom the expert has seen in clinical practice. The expert can point out the presence or absence of anything unusual in the history they obtain, in their findings on examination, in their reviews of the records and in the statements and other relevant material in the case.

Dr McDowell had done just that. Professor Lalkhen, instructed by the Claimant, had revised his diagnosis (from CRPS to chronic neuropathic pain) following receipt of the video evidence, but had not revisited comments he had made in his original report (supportively at the time) regarding the Claimant's veracity.

Importantly, the surveillance and expert evidence did not stand alone at the centre of the judge's finding of fundamental dishonesty. Lines of inquiry pursued by the Defendant's legal team over the life of the litigation had produced other, important evidence upon which that finding was ultimately based, including that the Claimant had concealed her ownership and use of a manual car when claiming to be unable to change gear with her left hand, and that she had falsely denied owning and looking after horses in the face of her contrary account within an employment disciplinary process.

Niazi acted for the Ministry of Defence, leading Emma-Louise Fenelon of 1 Crown Office Row. They were instructed by Keoghs LLP.