Pump Court

Classic car fraud, conduct and costs: the Court of Appeal's decision in Limbani v Carl [2026] EWCA Civ 856

On 6 July 2026 the Court of Appeal (Falk, Jeremy Baker and Foxton LJJ) handed down judgment in Limbani v Carl [2026] EWCA Civ 856, an appeal concerning a costs order made against a defendant after a fraud trial. The leading judgment was given by Foxton LJ.

The Court of Appeal's judgment will be the leading appellate authority on departures from the general costs rule in CPR r.44.2 if a successful defendant has acted in a dishonest way prior to and during the proceedings. The judgment will be of interest to litigators generally, but of particular note to commercial fraud practitioners.

Sean Brannigan KC represented the successful Respondent, instructed by Malvern Law. Both Sean Brannigan and Malvern Law were instructed on the appeal only.

The Background

The underlying litigation arose from a long-running fraud on Mr Carl, a collector of historic sports cars. Money he paid to intermediaries to acquire vehicles — including a Ferrari F40 which was in fact never purchased — was diverted, while false reports of acquisitions were fed back to him. When Mr Carl obtained an order for delivery up in October 2015, the cars that did exist were removed from storage in a co-ordinated "raid" arranged by the principal fraudster, Mr Edwards.

Mr Limbani entered the story when a police officer, DC Robson, telephoned the number given for the man who had removed the cars. The man who answered — found by the trial judge to be Mr Limbani — admitted moving five vehicles, including "an F40": a car which had never existed. It also emerged at trial that £500 per month, marked "storage", had been paid from Mr Edwards' wife's account to Mr Limbani's wife's account for months after the raid.

At trial the claim against Mr Limbani in conspiracy and conversion failed on the grounds that he had acted as the instrument of his employer and lacked sufficient possession of the cars. The Court nonetheless made a number of findings against Mr Limbani, including an assessment that he was *"an unsatisfactory witness, who clearly knew a great deal more than he was prepared to disclose".*

On costs, CPR r.44.2 sets out the well-known general rule that *"the unsuccessful party will be ordered to pay the costs of the successful party."* However, in his judgment the trial judge expressed a preliminary view (prior to the consequentials hearing) that there should be no order for costs in Mr Limbani's favour because he had *"escaped examination of his conduct through a policy of evasion and non-disclosure"*. At the consequentials hearing five months later, the trial judge treated that preliminary view as a final determination and declined to hear submissions upon it.

The Appeal

Serious procedural irregularity

One of Mr Limbani's grounds of appeal was that the trial judge's refusal to hear further submissions on his preliminary

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view as to costs amounted to a serious procedural irregularity.

Before the Court of Appeal, the Respondent accepted that "*something had gone wrong*" at the consequentials hearing. Foxton LJ agreed and found that the error was serious: he concluded at paragraph 54 that it was a serious procedural irregularity for the judge to "*depart from the established starting point for the exercise of the costs discretion in a significant respect without permitting Mr Limbani to make any submissions on that question*".

Mercifully, it is rare for a Court to make final determinations on costs without first hearing the parties. In this case, that error is likely to have been because of various unique features of the litigation: Mr Limbani had himself contributed to the "mishap" in various ways [1] and there was an unusual five month lag between the trial and the consequentials hearing.

For practitioners, the most significant takeaway from the first ground of appeal is that, because of the serious procedural irregularity by the trial judge, the Court of Appeal approached the question of costs on the basis that *"the issue of costs is fully at large before this court"*: see paragraph 59 of Foxton LJ's judgment. That is very unusual. Normally, an appellate court will show deference to the exercise of a discretionary power by a first instance judge. However, because the trial judge's decision was affected by a serious procedural irregularity, the Court of Appeal declined to use the trial judge's "*preliminary view*" on costs even as a starting point: see paragraph 58 of Foxton LJ's judgment.

The Fresh Exercise of the Discretion

Paragraphs 60 to 91 of the judgment address how the Court of Appeal decided to exercise the CPR r.44.2 discretion on costs afresh. Mr Limbani argued that he should have been awarded his costs because there had been no finding that any reprehensible conduct had increased the costs of litigation or had an outcome on the case more generally.

Foxton LJ started his analysis by reviewing previous authorities considering when the court will decline to make a costs order in favour of a successful party because of their dishonesty before or during the litigation. [2] Foxton LJ derived the following principles:

a) A costs order will generally seek to address the costs consequences of the successful party's dishonesty: see paragraph 66 of the judgment. Put another way, the court by its costs order will seek to remediate the costs consequences of the successful party's dishonesty.

b) When trying to establish what those costs consequences are, *"the causal effects of conduct in this context are not approached in the same way as when issues of causation arise as an ingredient of a cause of action"*: see paragraph 73 of the judgment. Causation in this context is assessed in a summary, common-sense way and it is not necessary for the effect of the dishonesty on costs to be quantified precisely.

c) The court may depart from the normal order as to costs where a successful defendant has brought the litigation on themselves by engaging in dishonest conduct. This may happen where the ultimately successful defendant has fuelled suspicion that they committed a wrong by dishonest actions pre-action or during proceedings: see paragraph 67.

d) It is not always necessary to show that the dishonesty had consequences on the costs of litigation. Conduct of sufficient seriousness may attract a proportionate costs penalty irrespective of its causal consequences *"where and to the extent that it is a proportionate response to the conduct in issue, having regard to all of the circumstances of the case"*: see paragraph 71 of the judgment.

e) When deciding what a proportionate costs order should be in light of all the circumstances of the case, the Court will assess the conduct of both parties. On this point Foxton LJ adopted the reasoning of Lewison LJ in the

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very recent case of Ward v Donnellan [2026] EWCA Civ 729, another recent case where a successful defendant had pursued their case in a dishonest way.

Bringing these principles together, the court's costs order needed *"both to reflect the consequences of Mr Limbani's conduct on the proceedings, and to constitute a proportionate sanction for that conduct"*: see paragraph 85 of the judgment. Most likely, this formulation will be treated as a test to be applied in future cases.

Applying that test, Foxton LJ concluded at paragraphs 85 to 90 that on the facts as found, no order as to costs remained the right order. The false account given to the police was an important factor in Mr Carl's decision to sue Mr Limbani at all — he "*can be said to have brought the proceedings on himself*" — and his dishonest defence, witness statement and oral evidence "*plainly required a costs sanction*" in any event. The appeal was dismissed.

Implications for Practitioners

Although Limbani v Carl had various unique features, the scenario was a familiar one to commercial fraud practitioners. A commercial fraud-type claim was brought against various defendants with differing roles, albeit with many of them appearing to work together during the litigation. It is not uncommon for a claim to be successful against some of those defendants and unsuccessful against others. Limbani v Carl will be a useful authority for claimants seeking to mitigate their potential costs exposure to defendants where liability has not been established despite it appearing from the outset that they were a part of an overarching fraud.

Five particular points arise:

- First, Limbani v Carl will likely become the leading authority on the application (and disapplication) of the general rule on costs in CPR r.44.2(2)(a) where a successful defendant has acted dishonestly. That is because Limbani v Carl is a rare case where the Court of Appeal was not simply reviewing how a trial judge exercised the discretionary power to make costs orders, but exercising that power itself.
- Second, paragraph 85 of the judgment sets out a clear test to be applied on the question of costs where a successful defendant has been dishonest prior to and during proceedings. The appropriate order must reflect the consequences of the dishonest conduct on the proceedings and constitute a proportionate sanction for that dishonest conduct.
- Third, the judgment puts to bed any argument that a party seeking to disapply the general rule in CPR r.44.2 needs to be specific about the additional cost incurred because of the other side's dishonesty. Paragraph 73 of Foxton LJ's judgment accepts the common sense proposition that precise quantification is not possible in a costs procedure that does not involve the apparatus of a trial.
- Fourth, in Limbani v Carl it was an important factor that the successful defendant was found to have brought the proceedings on themselves by their dishonest acts before and during the proceedings. It is not difficult to see how claimants could deploy this argument in other multi-party civil fraud claims where, at the outset, all of the defendants appear to be working together in a way that is subsequently found to be dishonest.
- Fifth, the Court of Appeal has now decided two cases in quick succession concerning the costs consequences of a successful defendant pursuing their case in a dishonest way: Limbani v Carl and Ward v Donnellan (handed down just a few days before the hearing in Limbani v Carl and, notably, also decided by Falk LJ). At first blush, the results in the two cases might seem inconsistent. Unlike in Limbani v Carl, in Ward the Court of Appeal decided that the trial judge was wrong to make no order as to costs because of the successful defendant's dishonesty. However, there are two crucial differences between the cases that explain the different outcomes. Most obviously, in Ward *both* the claimant and the defendant had been dishonest, so the costs order after trial needed to recognise that the successful defendant was entitled to their costs of exposing the claimant's dishonesty: see paragraph 67 of Ward. Further, in Ward the successful defendant could not be said to have brought the proceedings on themselves; the claimant's dishonesty was found to have "*infected*" all claims and therefore

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should not have been brought at all: see paragraphs 67 and 89 of Ward.

[1] At the consequentials hearing no skeleton argument had been served on behalf of Mr Limbani, nor had any notice been given as to the points he would raise: see paragraphs 51 and 52 of the judgment

[2] Widlake v BAA Ltd [2009] EWCA Civ 1256, Abbott v Long [2011] EWCA Civ 874, Bank of Tokyo-Mitsubishi UFJ Ltd v Baskan Gida [2009] EWHC 1696 (Ch), Grupo Torras v Al-Sabah and the Court of Appeal's own very recent decision in Ward v Donnellan [2026] EWCA Civ 729.

Article written by Sanjay Patel KC.

Read the full judgment here.

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