

## Radia v Marks – Experts & adverse credibility findings

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The recent case of *Radia v Marks* [2022] EWHC 145 (QB) is a particularly interesting and important case concerning professional negligence alleged against an expert witness. It would appear that the Court has, for the time being at least, closed the door on a professional negligence claim being made against an expert, where that expert has made an error in their findings that has in turn led to an adverse credibility finding (e.g. a finding of dishonesty) being made by the Court against their client.

By way of brief background, Mr. R brought an employment tribunal claim against his employer on grounds of disability discrimination, and in the course of these proceedings Mr. R appointed Dr. M as a single joint expert. Unfortunately, Mr. R's claim did not end well, and the tribunal concluded that he was a dishonest witness because his evidence had not been credible, for example he had instructed Dr. M that his illness resulted in his weight dropping to under 50kg, which was not true (the medical records recorded a weight of 81kg), and he was difficult and evasive when under cross-examination.

Following the conclusion of the employment tribunal claim, Mr. R commenced civil proceedings against Dr. M on the basis that Dr. M failed to accurately record what was told to him by Mr. R during the consultation, that Dr. M failed to properly crosscheck Mr. R's instructions (for example, his instructions his weight was as low as 50kg) with his medical records (which recorded his weight as 81kg), and that this was a breach of duty by Dr. M to protect Mr. R's credibility, that resulted in the failure of Mr. R's employment tribunal claim.

The Court concluded that the harm suffered by Mr. R fell outside the scope of Dr. M's duty, because the engagement letter was limited, and Dr. M was not instructed to report on matters relating to Mr. R's credibility, Dr. M was only required to address matters within his expertise (which of course did not include an assessment of the credibility of Mr. R.), and in any event, if Dr. M had a duty to protect Mr. R's credibility, this could conflict with Dr. M's overriding duty to the court.



This is a particularly interesting case because it has in essence created an immunity for expert witnesses with regard to credibility findings. Essentially, if an expert makes a mistake in their findings and this in turn leads to their client being found to be, for example, dishonest, which in turn means their client's claim fails, the client essentially has no ability to sue the expert in negligence, because according to *Radia v Marks*, an expert has no duty of care to their client to protect their client's credibility.

Clearly, the decision reached in *Radia v Marks* was the correct decision on those specific facts, simply for the fact Dr. M had correctly recorded what Mr. R had said to him, and it was Mr. R being dishonest, rather than Dr. M making any mistake(s), that led to the adverse credibility finding being made against Mr. R.

However, it is hard to now see how a party could sue an expert witness for damage suffered by an adverse credibility finding, even where that adverse credibility finding has been made as a result of a mistake(s) on the part of the expert witness.

If you would like to discuss a potential financial negligence claim, then please contact a member of our [professional negligence team](#).



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