This is a judgment to which the Practice Direction supplementing CPR Part 40 applies. It will be handed down on 3rd August 2022 at 11am. This draft is confidential to the parties and their legal representatives and accordingly neither the draft itself nor its substance may be disclosed to any other person or used in the public domain. The parties must take all reasonable steps to ensure that its confidentiality is preserved. No action is to be taken (other than internally) in response to the draft before judgment has been formally pronounced. A breach of any of these obligations may be treated as a contempt of court.

The court is likely to wish to hand down its judgment in an approved final form. It will be handed down remotely on 3rd August 2022

Claim No E20YX353

IN THE COUNTY COURT AT WREXHAM

B E T W E E N :

MRS KAREN ANN PREATER

Claimant

And

BETSI CADWALADR UNIVERSITY HEALTH BOARD

Defendant

James Arney QC of Temple Garden Chambers (instructed byRussell-Cooke LLP) for the Claimant
Henry Bankes-Jones of Hailsham Chambers for the Defendant

DRAFT JUDGMENT

1. Mrs Karen Preater brings a claim for damages against the Defendant alleging, as a result of their breach of duty to her as a patient, she has suffered significant and life changing injuries It is her case that, in the absence of the Defendant's breach, she would have continued to lead her normal life as a working mother, the main breadwinner in her family, and also caring for her family of 3 children. It is her case that, after surgery carried out by the Defendant's servant of agent, for the insertion of vaginal mesh in January 2014, her life changed significantly. She was unable to continue her well-paid and fulfilling job in marketing with Yellow Pages. She was in considerable pain, which affected all aspects of her life. She was unable to provide the support and care she had previously provided to her family. She had to self-catheterise permanently. She was no longer able to engage in a sexual relationship with her long-term partner. She has been an ardent campaigner against the use of vaginal mesh since.
2. She brought a claim alleging clinical negligence. By a consent order dated 26th June 2020 judgment was entered in her favour for 85% of the value of her claim. This is against the background of the Defendant apparently losing all of the Claimant's

clinical notes; the rationale of the parties in reaching this concluded agreement matters not.

3. In January 2021 the Defendant made an application to rely upon surveillance evidence and to allege fundamental dishonesty against the Claimant: that was granted by consent. The Defendant contends that the Claimant is a liar; that her claim is dishonest in terms of its presentation of a significant loss of earnings and care claim. It is contended that she has grossly and deliberately sought to mislead experts and the court as to the extent of her disability, and has done so in order to dishonestly obtain compensation to which she knows she is not entitled. The Defendant nails its colours firmly to the mast when, in closing submissions, counsel states that the dishonest nature of this claim was clear from the offset. "At every stage the claimant was prepared to lie to the court. She has dissembled, exaggerated and told demonstrable untruths". The Defendant contends that the Claimant has presented a claim for over £1 million which is a dishonest claim; they rely upon surveillance evidence, social media evidence and what they say is an exaggerated presentation of disability to medical experts .
4. Despite the fact that breach of duty has been accepted, therefore, much of the 7 days of this trial focussed on the allegations of fundamental dishonesty.

<u>The background and what is agreed</u>

5. As stated, prior to the surgery in question the Claimant was working full time and leading a normal fulfilled life. She had suffered from periods of poor mental health in the past but had still successfully built her career. She lived with her partner Nick and her children in Rhyl (her eldest daughter, for some period, lived with her father). She was the main breadwinner in the family. Having had 3 children, the Claimant suffered some increasing urinary stress incontinence. At the age of 38 in January 2014 she therefore underwent treatment at Ysbyty Gwynedd. It is her case that in the immediate aftermath of the surgery, she had intense and agonising pain in her left hip and thigh area. The pain was so severe she was unable to walk, and she was unable to pass urine. She was discharged from hospital with crutches to mobilise and a large bag full of pain relief medication. Her symptoms have persisted, and she says have ruined every aspect of her life.
6. At the time of the surgery, she was in full-time employment with Yellow Pages as a sales/advertising manager. This job was in Stoke and involved considerable driving. She had worked her way up in the company and felt passionate about her work. She had hoped to apply for a managerial role in the future. Her salary plus commission in the year ending 2013 was £43,708 gross. She also had a company car supplied, insured, and serviced by her employers and health insurance. As she felt unable to continue her role post-surgery she made what she described as a very difficult decision to take voluntary redundancy. However, as her job had required a lot of driving and she couldn't sit for long periods, had problems concentrating and was in considerable pain she felt she had no choice. Nevertheless, she found another job at Topline aerials in a similar capacity but with much less travel. The earnings were £26,000 gross per annum. However, by September 2014 she resigned from that job

saying that she could not cope because of a combination of her pain and psychological symptoms.

7. The claimant contended in her witness evidence at page 577 of the bundle that since being unable to continue working she had been in receipt of the care element of personal independence payment and was also in receipt of the mobility element. She also received other benefits.
8. The claimant issued protective proceedings in this matter in 2018. Initially breach of duty and negligence was contested. However, as set out above, ultimately the parties reached a consent position as to that. The matter was case managed by the court for a number of years. In the latter part of 2020 surveillance evidence was disclosed. That video surveillance evidence in brief, showed the Claimant out with a friend for coffee and going around some shops. It showed her paying for fuel at a garage. It showed her shopping in Sainsburys. By order of 11 January 2021 permission was given for the parties to rely upon expert care evidence (the claimant's care expert report from Mrs Barbara Simmons having been disclosed in support of the application). On 18 February 2021 following a further case management hearing various directions were given including giving the claimant permission to rely on additional evidence in light of the surveillance evidence that had been disclosed. At that stage a trial window was fixed for three months from September 2021. Shortly after that hearing the claimant's then solicitors McKenzie Jones made an application to come off the record which was granted. The claimant then continued to act as a litigant in person for a period, during which she filed witness evidence commenting on the surveillance evidence. The claimant engaged her current solicitors in, I believe, late 2021 and they have continued to act to date. In the weeks and months leading up to the trial there were a number of applications in relation to disclosure. The claimant was ordered to provide disclosure of her personal Facebook account within her list of documents. The defendant was ordered to provide an edited copy of surveillance evidence. On another hearing the claimant was ordered to provide specific disclosure for all appointment books and diaries including her own webpage and various appointment-booking pages in respect of a beauty business which, it was the defendant's case, she had been running.
9. The claimant provided disclosure; the defendant continue to contend that it was incomplete. The disclosure provided related to voluminous pages of social media entries. There are entries in relation to the claimant's personal Facebook account. There are entries from the claimant on specific vaginal mesh Facebook pages. There are also numerous pages of extracts from a social media Facebook page called Pure Beauty which, the claimant accepts, she operated from 2015 through to 2020. The defendant's case is that the claimant, despite contending that she had not worked and was not fit to do so, was in fact operating her own beauty business (which at times was a mobile business) from her own home. It is the defendant's position that this social media documentation is critically relevant to the question of the claimant's honesty in the presentation of her case. The claimant denies that she was operating something which was considered by her as work but accepts that she did

provide some limited but regular beauty treatments over this period all be it for limited financial reward.

10. This is not a case where it is suggested that the claimant was uninjured. In fact considerable aspects of the claimant's injuries are agreed between the parties. It is helpful to set out at this stage what that agreement is. The following expert evidence has been presented to the court:

Area of expertise	**Claimant's expert**	**Defendant's expert**
Gynaecology	Mr Farkas	Mr Jackson
Urology	Mr Moore	Mr Shah
Pain management	Dr Johnson	Dr Thomas
Psychiatry	Professor Elliott	Dr Scott
Neurology	NA	Professor Chadwick
Care	Mrs Simmons	Mrs Scandrett

11. The gynaecological experts agree that the claimant has had symptoms including weakness of her left leg, the need to walk with a stick, pain with sexual intercourse, fatigue, and depression. They agree that vagina examination allowed there to be palpation of the tape from the vaginal mesh extending over the left obturator which caused pain. If the mesh were to be removed it would not, on balance, cure the pain but may improve voiding dysfunction. However, the decision to remove the mesh and have additional surgery was a matter for the claimant and she was not to be criticised for not pursuing it.
12. From a urological perspective the experts agree that the claimant is currently unable to urinate and is reliant on self-catheterisation. It is agreed that the claimant has left groin pain and that the mesh was readily palpable and abnormally tender on palpation. The tenderness of the claimant's vagina in the vicinity of the mesh is the most likely cause for her pain during intercourse. The experts agree that if the mesh tape was divided by surgery this might help her voiding and groin pain, but the downside was a risk of incontinence of about 50%. The need to perform regular self-catheterisation is a social and psychological inconvenience which can impact daily life but of itself but would not prevent a person from undertaking normal activities as long as they had access to clean toilet facilities. It is agreed by the urologists that the claimant's decision not to undergo further surgery was a reasonable one.
    In terms of pain, the pain management experts agree that prior to the surgery the claimant had some established problems with anxiety and depression but did not have consistent pain or disability. They agree that the claimant has pain on movement and manipulation related to her left hip and also an abnormal gait that was provocative for her pain. As experienced pain clinicians they considered that there is evidence of the claimant having a significant chronic pain problem. The claimant's sensory symptoms are more prominent in the distribution of the lateral

cutaneous nerve of the thigh but there are some symptoms in the obturator nerve. The most likely explanation, in the absence of any other is, that there have been two different peripheral nerve lesions after the surgery. The pain symptoms that the claimant describes post-surgery were consistent with surgical damage to the obturator nerve which would explain the symptoms in the left lower limb. It is agreed that the claimant now has a chronic pain condition consisting both of neuropathic pain and a chronic widespread pain problem. Although in the joint report there was disagreement as to this, it is now accepted that the claimant has developed fibromyalgia and that the development of fibromyalgia has probably been caused by the claimant's chronic pain as a result of the consequences of the surgery (i.e., it is on balance caused by the defendant's breach).

13. It is agreed that chronic pain is usually variable to some extent. There is a relationship between the claimant's psychological condition and pain; the stress of litigation can increase her experience of pain. However, at the current stage from surgery it is likely that there is a reasonable consistency with the claimant tending to avoid a boom-and-bust approach to physical activities. The pain experts agree that the claimant is likely to need greater assistance on the worst days, but she is unlikely to be swinging from relatively normal activity to being extremely disabled. Prolonged driving or heavy manual work would exacerbate the claimant's pain condition. It is agreed that settlement of the litigation is likely to be helpful, but improvement is likely to be modest. It is agreed that the claimant's pain is unlikely ever to settle completely. In terms of treatment, psychological treatments as recommended by mental health practitioners would be appropriate. The experts did not think that a pain management programme would particularly help the claimant albeit, as a result of questioning from the court, they did not consider such to be unreasonable. They agree that psychological treatments would benefit the claimant including psychosexual treatment.
14. From a psychiatric perspective the experts agree that the claimant had a significant pre-existing vulnerability. Depending on the court's finding it is agreed that the claimant has suffered ongoing psychological symptoms albeit the diagnosis of such is in dispute. Nevertheless, the experts agree that the claimant's psychological disorder of itself does not prevent her from returning to the open labour market. It is agreed that chronic pain would have an impact on an individual's quality-of-life and mental health.
15. It is against this background of agreement between the experts in the case (and after the experts have considered the surveillance evidence and to some degree the social media evidence) that the questions of fundamental dishonesty ought to be considered. This is not a case where a claimant has not suffered significant injuries. Far from it in fact given the measure of agreement between the experts in this matter. Nevertheless, if a claimant has been fundamentally dishonest even a claimant with true and significant injuries, that claimant may face the punitive effects of losing their entire damages as a result of the provisions of section 57 of the Criminal Justice and Courts Act 2015

16. There are a number of issues upon which the assertion of fundamental dishonesty are asserted. In brief they are:
    1. The social media evidence: the Defendant contends that it paints a picture that the Claimant is substantially less disabled than she contends; further in terms of the beauty treatment pages, it presents a picture of a Claimant not only capable of paid work but actually carrying out paid work that she did not declare.
    2. The video surveillance: the Defendant contends that it demonstrates that the Claimant functioned at a higher level than she says
    3. The Claimant's reporting of symptoms to medical experts: the Defendant contends that repeatedly the Claimant told a number of experts that she was unable to work and painted a picture of a higher level of disability than was true.
17. This is all against a background of the claim for damages, as set out in various schedules of loss. The "Best Available Schedule" dated 29th October 2018 and signed by a solicitor reserved the position in respect of future care, claimed £37,605 past care and stated that the Claimant had not returned to any form of employment. A "Without Prejudice" schedule was unsigned but is in the bundle. A Schedule of 17th December 2020, signed by a solicitor, puts forward claims for future loss of earnings of £311,321 and future care and assistance of £106,583. There were also significant other future claims. The total claimed exceeded £885,000. A schedule signed by the solicitor dated 19th August 2020 also appears in the bundle. A schedule signed by the Claimant dated 12th July 2021 (when she was acting in person) claims just over £800,000 including loss of earnings of over £315,000 and care of over £122,000. The schedule, signed by the Claimant dated 17th May 2022 and before all the joint statements were filed, addresses the issue of her "unsuccessful business ventures" and claims loss of earnings of over £600,000 and future care and assistance of £192,000. There is a further schedule, again signed by the Claimant dated 25th May 2022 increasing those figures (care £268,492 and loss of earnings £601,434) There remain a number of other significant losses claimed. This claim has therefore always been presented as one of significant value for the claimant with substantial future loss claims.

<u>The law</u>

18. There is no real dispute between the parties as to the applicable law in respect of fundamental dishonesty.
19. Section 57 of the Criminal Justice and Courts Act 2015 provides:

    "Personal injury claims: cases of fundamental dishonesty

    (1) This section applies where, in proceedings on a claim for damages in respect of personal injury ("the primary claim") -

    (a) the court finds that the claimant is entitled to damages in respect of the claim, but

(b) on an application by the defendant for the dismissal of the claim under this section, the court is satisfied on the balance of probabilities that the claimant has been fundamentally dishonest in relation to the primary claim or a related claim.

(2) The court must dismiss the primary claim, unless it is satisfied that the claimant would suffer substantial injustice if the claim were dismissed.

(3) The duty under subsection (2) includes the dismissal of any element of the primary claim in respect of which the claimant has not been dishonest.

(4) The court's order dismissing the claim must record the amount of damages that the court would have awarded to the claimant in respect of the primary claim but for the dismissal of the claim.

(5) When assessing costs in the proceedings, a court which dismisses a claim under this section must deduct the amount recorded in accordance with subsection (4) from the amount which it would otherwise order the claimant to pay in respect of costs incurred by the defendant.

(6) If a claim is dismissed under this section, subsection (7) applies to -

(a) any subsequent criminal proceedings against the claimant in respect of the fundamental dishonesty mentioned in subsection (1)(b), and

(b) any subsequent proceedings for contempt of court against the claimant in respect of that dishonesty.

(7) If the court in those proceedings finds the claimant guilty of an offence or of contempt of court, it must have regard to the dismissal of the primary claim under this section when sentencing the claimant or otherwise disposing of the proceedings.

(8) In this section—

"claim" includes a counter-claim and, accordingly,

"claimant" includes a counter-claimant and "defendant"

includes a defendant to a counter-claim;

"personal injury" includes any disease and any other impairment of a person's physical or mental condition;

"related claim" means a claim for damages in respect of personal injury which is made—

(a) in connection with the same incident or series of incidents in connection with which the primary claim is made, and

(b) by a person other than the person who made the primary claim.

(9) This section does not apply to proceedings started by the issue of a claim form before the day on which this section comes into force."

20. Section 57 was enacted as a response to address the very real problem of fraudulent personal injury claims. These were described by Moses LJ in South Wales Fire and Rescue Service v Smith [2011] EWHC 1749 (Admin),[2]-[4]:

"2. For many years the courts have sought to underline how serious false and lying claims are to the administration of justice. False claims undermine a system whereby those who are injured as a result of the fault of their employer or a defendant can receive just compensation.

3. They undermine that system in a number of serious ways. They impose upon those liable for such claims the burden of analysis, the burden of searching out those claims which are justified and those claims which are unjustified. They impose a burden upon honest claimants and honest claims, when in response to those claims, understandably those who are liable are required to discern those which are deserving and those which are not.

4. Quite apart from that effect on those involved in such litigation is the effect upon the court. Our system of adversarial justice depends upon openness, upon transparency and above all upon honesty. The system is seriously damaged by lying claims. It is in those circumstances that the courts have on numerous occasions sought to emphasise how serious it is for someone to make a false claim, either in relation to liability or in relation to claims for compensation as a result of liability."

21. There is a very clear and detailed analysis of how this area of law is to be considered in the recent case of Steven Lee Woodger v Reece Hallas ([2022] EWHC 1561 (QB)) in which Julian Knowles J set out the following (paragraph 10 onwards) and which I consider represents a true reflection of the law (subject to points made following)

"10. The Supreme Court addressed the elements the court must consider in deciding whether dishonesty is made out in Ivey v Genting Casinos UK Limited (t/a Crockfords Club) [2018] AC 391. Lord Hughes, with whom the other justices agreed, said at [74]:

"74. When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual's knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder by applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest."

11. In Howlett v Davies [2017] EWCA Civ 1696 the Court of Appeal approved the following formulation by HHJ Moloney QC of 'fundamentally dishonest 'in the context of CPR 44.16(1):

"44. It appears to me that this phrase in the rules has to be interpreted purposively and contextually in the light of the context. This is, of course, the determination of

whether the claimant is deserving', as Jackson LJ put it, of the protection (from the costs liability that would otherwise fall on him) extended, for reasons of social policy, by the [Qualified One-way Costs Shifting] rules. It appears to me that when one looks at the matter in that way, one sees that what the rules are doing is distinguishing between two levels of dishonesty: dishonesty in relation to the claim which is not fundamental so as to expose such a claimant to costs liability, and dishonesty which is fundamental, so as to give rise to costs liability.

45. The corollary term to 'fundamental' would be a word with some such meaning as 'incidental' or 'collateral'. Thus, a claimant should not be exposed to costs liability merely because he is shown to have been dishonest as to some collateral matter or perhaps as to some minor, self-contained head of damage. If, on the other hand, the dishonesty went to the root of either the whole of his claim or a substantial part of his claim, then it appears to me that it would be a fundamentally dishonest claim: a claim which depended as to a substantial or important part of itself upon dishonesty."

12. In London Organising Committee of the Olympic and Paralympic Games v Sinfield [2018] EWHC 51, I reviewed the authorities concerning 'fundamentally dishonest' and 'fundamental dishonesty' and concluded as follows:

"62. In my judgment, a claimant should be found to be fundamentally dishonest within the meaning of s 57(1)(b) if the defendant proves on a balance of probabilities that the claimant has acted dishonestly in relation to the primary claim and/or a related claim (as defined in s 57(8)), and that he has thus substantially affected the presentation of his case, either in respects of liability or quantum, in a way which potentially adversely affected the defendant in a significant way, judged in the context of the particular facts and circumstances of the litigation. Dishonesty is to be judged according to the test set out by the Supreme Court in Ivey v Genting Casinos Limited (t/a Crockfords Club) , supra.

63. By using the formulation 'substantially affects' I am intending to convey the same idea as the expressions 'going to the root' or 'going to the heart' of the claim. By potentially affecting the defendant's liability in a significant way 'in the context of the particular facts and circumstances of the litigation' I mean (for example) that a dishonest claim for special damages of £9000 in a claim worth £10 000 in its entirety should be judged to significantly affect the defendant's interests, notwithstanding that the defendant may be a multi-billion pound insurer to whom £9000 is a trivial sum.

64. Where an application is made by a defendant for the dismissal of a claim under s 57 the court should: a. Firstly, consider whether the claimant is entitled to damages in respect of the claim. If he concludes that the claimant is not so entitled, that is the end of the matter, although the judge may have to go on to consider whether to disapply QOCS pursuant to CPR r 44.16 . b. If the judge concludes that the claimant is entitled to damages, the judge must determine whether the defendant has proved to

the civil standard that the claimant has been fundamentally dishonest in relation to the primary claim and/or a related claim in the sense that I have explained; c. If the judge is so satisfied then the judge must dismiss the claim including, by virtue of s 57(3) , any element of the primary claim in respect of which the claimant has not been dishonest unless, in accordance with s 57(2) , the judge is satisfied that the claimant would suffer substantial injustice if the claim were dismissed.

65. Given the infinite variety of circumstances which might arise, I prefer not to try and be prescriptive as to what sort of facts might satisfy the test of substantial injustice. However, it seems to me plain that substantial injustice must mean more than the mere fact that the claimant will lose his damages for those heads of claim that are not tainted with dishonesty. That must be so because of s. 57(3). Parliament plainly intended that sub-section to be punitive and to operate as a deterrent. It was enacted so that claimants who are tempted to dishonestly exaggerate their claims know that if they do, and they are discovered, the default position is that they will lose their entire damages. It seems to me that it would effectively neuter the effect of s 57(3) if dishonest claimants were able to retain their 'honest' damages by pleading substantial injustice on the basis of the loss of those damages per se. What will generally be required is some substantial injustice arising as a consequence of the loss of those damages."

13. In Iddon v Warner [2021] Lexis Citation 39, [97]-[98], His Honour Judge Sephton QC (sitting as a High Court judge) said:

"97. In my judgment, section 57 of the Criminal Justice and Courts Act 2015 is frankly punitive in character. A claimant who is fundamentally dishonest is penalised by having his claim dismissed. Parliament has plainly concluded that the aim of addressing the evils of dishonest claims justifies depriving a claimant of the part of the claim he can prove and providing the defendant with the windfall of not having to satisfy a lawful claim, albeit one that may have been dishonestly presented. The only escape from the default position of dismissal arises if the injustice the dishonest litigant suffers is 'substantial.'

98. I respectfully agree with Julian Knowles J when he said in Sinfield that 'substantial injustice must mean more than the mere fact that the claimant will lose his damages for those heads of claim that are not tainted with dishonesty.'

15. In Jenkinson v Robertson [2022] EWHC 791 (QB), [25], Choudhury J gave the following helpful summary of the applicable principles:

"25. It is clear from these authorities that in an application under s.57 of the 2015 Act:

(ii) An act is fundamentally dishonest if it goes to the heart of or the root of the claim or a substantial part of the claim;

(iii) To be fundamentally dishonest, the dishonesty must be such as to have a substantial effect on the presentation of the claim in a way which potentially adversely affects the defendant in a significant way;

(iv) Honesty is to be assessed by reference to the two stage test established by the Supreme Court in Genting;

(v) An allegation of fundamental dishonesty does not necessarily have to be pleaded, the key question being whether the claimant had been given adequate warning of the matters being relied upon in support of the allegation and a proper opportunity to address those matters.

(vi) The s.57 defence can be raised at a late stage, even as late as in closing submissions. However, where the claimant is a litigant in person, the Court will ordinarily seek to ensure that the allegation is clearly understood (usually by requiring it to be set out in writing) and that adequate time is afforded to the litigant in person to consider the defence.""

22. I note that the definition of fundamental dishonesty as interpreted in Locoq and applied in Iddon is not a statutory definition. As stated by Jacobs J in Elgemal v Westminster City Council [2021] EWHC 2510 (QB)

"*I do not accept the full width of this approach. The relevant statutory word is "fundamental". That is the only statutory word, and paragraphs [62] and [63] in Locog should not be read as though they are a substitute for it. Furthermore, as Julian Knowles J explained in paragraph [63], he was seeking to capture the same idea as the expressions "going to the root" or "going to the heart" of the claim. In my view, those expressions do sufficiently capture the meaning of "fundamental" in the present context, and the difference between conduct which is (as Martin Spencer J said in paragraph [20] of Pegg) "merely" dishonest and fundamentally dishonest.*

77.. Ultimately, it seems to me that the question of whether the relevant dishonesty was sufficiently fundamental should be, and is, really a straightforward "jury" question: as HHJ Harris QC said, it is a question of fact and degree in each case as to whether the dishonesty went to the heart of the claim. That must involve considering the dishonesty relied upon, and the nature of the claim – both on liability and quantum – which was actually being advanced."

23. In terms of the Ivey test for dishonesty Jacobs J stated:

"*93. As the passage in paragraph [74] of Ivey shows, a finding of dishonesty depends initially upon a finding as to the state of an individual's knowledge or belief as to the facts. This is a subjective question. If an individual genuinely believes that the facts are as he represents them to be, then there can be no question of dishonesty. That is so even if, on an objective view of the facts, they are not in accordance with the individual's subjective belief.*"

This, in my judgment, merely emphasises that the first limb of the test is a subjective one. I further note, from Elgemal, that exaggeration of elements of a claim, may fall

short of dishonesty and particularly so in respect of fundamental dishonesty (against the background, as in this case, of a very serious base injury):

"106. He also said that there had been an "exaggeration". Where there has indeed been a very serious injury, the existence of "exaggeration" may well mean that the case is not in the territory of fundamental dishonesty. Exaggeration can of course be dishonest, although the word is very often used to denote statements made which a person would hesitate to describe as dishonest. What is clear in my view is that (as HHJ Hughes recognised) it is not the purpose of s 57 to result in the dismissal of claims where there has been any exaggeration by a claimant. In the committee stage of the Criminal Justice and Courts Bill set out in paragraph [61] of Locog, Lord Faulks QC referred to people who behave in a fundamentally dishonest way by "grossly" exaggerating their own claim.
Ultimately, however, the question is one of fact and degree, including consideration of the potential financial consequences of the exaggeration in the context of the claim that is actually advanced by the claimant in the litigation"

24. Further, in **Wright v Satellite Information Services Ltd [2018] EWHC 812 (QB)** Yip J upheld, in a case on appeal where the trial judge had found that the care claim was overstated and was not made out that there was no fundamental dishonesty. This was in the context of an unsatisfactory care report.
"Read in the context of the evidence and the way in which the claim was presented in the schedule, it is clear that in finding that the claimant had not established his claim for future care, the judge was not bound to find that the claimant had acted dishonestly merely in presenting such a claim. The reason for the judge's rejection of this element of the claim was not that he found the Claimant's evidence to be untruthful, but rather that a proper interpretation of that evidence did not support the assessment of the care expert."
In my judgment it is right to distinguish what is an expert led presentation of a claim and what comes from the claimant.

25. In respect of the **burden and standard of proof**, in establishing an allegation of fundamental dishonesty, the burden lies upon the party alleging it: see *Robins V National Trust* [1927] AC 515. As set out in Section 57 (1)(b) the standard of proof is the balance of probability but an allegation of dishonesty being a serious allegation requires appropriately cogent evidence to persuade the Court: Re H [1996] AC563

26. **Dishonesty by omission:** It is the Claimant's case, in respect of the expert evidence, that she answered honestly the questions as put to her. Nevertheless, it is accepted that she did not volunteer information that went beyond those questions. An example of this relates to employment (pre and post accident) and whether the Claimant was dishonest in failing to volunteer information about the Pure Beauty by Karen venture that she had operated for a number of years post-accident. The detail will be discussed below. However, I note the decision of **Palmer v (1) Mantas & Anor** [2022] EWHC 90 (QB) at paragraph 76 that a similar point was taken and Anthony Metzer QC sitting as a High Court judge concluded (on the facts of that case) as follows:

"*I note in conclusion on this issue that a substantial part of the Second Defendant's case is essentially that the Claimant was dishonest by omission, i.e., chose only to answer questions asked by the medical legal experts and omitted to disclose her true level of function. I have already set out why I do not consider that as a fair approach to expect of the Claimant when being asked about the history and symptoms by all the medical legal experts. I am fortified in my view that that is a particularly difficult submission for the Second Defendant given that I was not provided with any reported authorities where a finding of fundamental dishonesty has been made in a personal injury claim because a Claimant had failed to volunteer information not asked of her during a medical legal assessment."*
The lack of authorities directly upon such a finding remain the situation in this case. However, I accept that each case is very much fact specific and any finding of dishonesty much relate to this particular Claimant, in this particular situation.

27. **In respect of substantial injustice**, I am assisted again by the judgment in Woodger (above):

"43*. The starting point is that s 57 only comes into play where the court finds that a claimant is genuinely entitled to some damages (s 57(1)(a)). Hence, in every case where the court goes on to find fundamental dishonesty ex hypothesi the claimant will stand to lose their genuine damages. But Parliament has provided in express terms that that should be so, subject to the question of substantial injustice. I quoted the Hansard material in Sinfield, [61], which makes that clear.*

44. I thus reiterate what I said in Sinfield, [65], which I quoted earlier, and which was endorsed by HHJ Sephton QC in Iddon, [98], namely that substantial injustice must mean something more than the claimant losing their genuine damages."

The approach taken was, as expressed in Iddon, to balance on the one hand, the nature and extent the Claimant's dishonesty, and on the other the injustice to her of dismissing her whole claim. In that regard, the court considered "the sustained nature of (the Claimant's) dishonesty; the length of time for which it was sustained; and his involvement of others all make his dishonesty so serious that it would have outweighed any injustice to him". I accept that this is the correct approach.

28. Having set out, at some length, the background legal position, I turn to the evidence before the court.

<u>The lay witness evidence</u>.

29. I had the opportunity to consider, hear and assess the written and oral evidence from the Claimant, Ms Karen Preater, her mother Mrs Linda Preater, her partner Mr Nick Preater, her daughter Ms Lucy Preater and her friend Ms Lisa Howard. On behalf of the Defendant, no oral evidence was called, but the Defendant relied upon a number of surveillance operatives whose evidence has been admitted under the Civil Evidence Act.
30. The Claimant: although I did not hear from the Claimant as the first witness, her evidence is so critical and central to the case that it is appropriate to deal with it

first. The claimant produced five witness statements which are contained within the bundle in which I have considered again for the purpose of this judgment. I note that the statement prepared in April 2021 was one the claimant prepared when she did not have the benefit of legal representation.

31. The overall position painted by the claimant is that she is significantly disabled as a result of the negligence of the defendants. In her first statement (prior to disclosure of any surveillance evidence) she explains her background and her prior history. She describes at paragraph 12 the immense and agonising pain that she felt in her left hip and thigh area immediately after surgery. She was in such pain she was unable to walk or weight bear and unable to pass urine. She could not sleep, and the pain was still uncontrolled when she left hospital after nine days. She described how her symptoms have persisted and had ruined every aspect of her life. Two years post-surgery she saw a news report about a campaign called "Sling the mesh" and discovered that many of her complications were matters which were described by others who had undergone such surgery. In her supplemental statement dated 13 March 2020 the claimant set out many of her symptoms which she said were related to the surgery. She describes the initial period when the pain was so bad that she had to give up work, but there appeared to be no apparent cause for the pain she was in. Her mental health also suffered. Between the date of surgery and the date of the statement in March 2020 she had been to hospital on 15 different occasions and to her GP on 30 occasions. She described her pain as relatively constant but in early 2017 it felt worse and the pain in her left hip and thigh appeared to be increasing. In late 2017 she was referred to the urogynaecology department in Manchester . She described on-going pain, having pin with sex. She was unable to weight bear due to pain, she walked with a crutch. Although further surgery was discussed she did not want it at that stage. She explored options as to managing her pain. At paragraph 10 she stated "I am restricted and cannot walk very far at all, maybe 200m. On occasions I have used a wheelchair. I had an additional rail installed on my staircase at home to help, I also have two additional handles installed at my front door"
32. Paragraph 12 she stated " The pain and discomfort has meant that I'm much more reliant on my partner and family than I ever was.… My partner now provides care and assistance with daily tasks including cooking and preparing meals, grocery shopping, housework et cetera. I estimate that he spends at least three hours a day helping me and doing additional tasks that he would not ordinarily have done" Paragraph 13 "My partner now does all the DIY himself and the window cleaning. We would normally decorate a room once a year with me completing a lot of the preparation work. …" Paragraph 14 "I rely a lot on my mum, I honestly don't think I could manage if she didn't help with the kids, she does some of my clothes washing every week, especially the bedding which she strips and remakes, she will take me shopping or go for me if I'm unable to go on days when I'm really bad and have to stay in bed, she will make sure my son is picked up from school, she collects my repeat medications for me. My son also helps me, he will put his uniform in the wash after school, take washing up and down stairs and help with housework."

33. Paragraph 15 “My partner and I have adapted our home slightly to make my life a little easier for me. We overhauled the bathroom and installed a new bath…”
    Paragraph 16 “I also buy walking sticks a lot. I estimate that I buy three or four every year. This is because I like having spares, a set in the car, my mum’s for example and the fact that they need replacing if they break or damage”
    Paragraph 17 the claimant described her psychological symptoms indicating that she has increased antidepressants and seen a counsellor, but the treatment is too expensive to continue with. She says: “The effect the surgery has however completely affected me. The pain is overwhelming which makes me angry and irritable. I have trouble sleeping. I cannot now be intimate with my partner; I have given up work. In 2015 I admit to having some thoughts of self-harm and after visiting my GP I am now taking 200 mg of sertraline daily, a dose that has been increased over time. The medication does seem to take the edge off, but they are in no way a magic pill, I still have bad days and I feel miserable. I’m not the same person I was, and I feel sorry that I cannot do things with the children as I envisaged that I would.”
    Paragraph 19 “I’m keen to see a pain management expert to consider the options I have in alleviating some of the pain I feel. I think that if I could manage my pain better than I could consider going back to some form of work.”
34. In terms of employment the claimant described her previous employment at paragraph 20. She describes an employment package with a car which was supplied insured and serviced by her employers and she has since had to pay for her own car and pay the associated expenses. At paragraph 22 she describes the decision to give up her employment. Initially she took sick leave and intended to return to work within a couple of weeks. She states however “the symptoms post-surgery were such that I just could not continue doing the role, so I took voluntary redundancy. This was a difficult decision. I love my work; I was the main breadwinner and I wanted to stay in employment. My job requires a lot of driving, I would go to … Stoke-on-Trent …as I couldn’t sit for long periods concentration wasn’t great due to the medication and due to the level of pain I was in I knew I would not be able to cope; I took voluntary redundancy, I didn’t know what else to do, I didn’t know why I was in so much pain or how long it would last. My official leaving date was April 2014”.
35. At paragraph 23 she describes her efforts to keep in employment going to work for Topline Aerials she states “Unfortunately I just could not continue. I started in May 2014, resigned from this role in September and I have not returned to work since. Primarily it was the physical aspect that affected my ability to work… The pain levels are so unpredictable they are difficult to manage and also the psychological symptoms played their part. Indeed, not being able to work has not helped me psychologically either.
    Paragraph 24 “…I would (have) continue(d) to work until age 67 and would have earned no less than £45,000 a year plus commission and benefits in a managerial role… Since being unable to continue working I’ve been in receipt of the care

element of personal independence payment. I'm now receipt of the motability element and I receive contribution-based ESA."

36. The claimant's third statement dated 30 April 2021 was one that she prepared herself in the absence of legal representation at that stage. It is a commentary on the surveillance evidence and also some of the social media evidence. I have had the opportunity of viewing the surveillance evidence in detail on a number of occasions during the court hearing and have reviewed it again for the purpose of this judgment. On 12 October 2020 which was the day before the claimant went for a medical appointment with Dr Shah (the Defendant's urological expert in London) she is seen going to a Costa coffee store with her friend Lisa. She is also then seen going round a number of shops in the same shopping complex. She does not have a walking stick with her. One point which became of importance during the trial was that in entering the Costa shop the claimant can be seen to stumble momentarily. I will deal later in this judgment as to what the experts say as to that presentation.
37. In her witness statement the claimant indicated that she met her friend Lisa on that day. She describes it not being preplanned but Lisa texted her that morning because she knew she had been struggling with mental health. The claimant comments that she was parked in a disabled bay and then went to Costa coffee which was approximately 10 m from where she was parked. She has no idea why she wasn't using the stick that day, she may have forgotten it, sometimes her hands were swollen and sometimes she really did not want to be seen using the stick because she is self-conscious about it. She states that she can be seen to be limping on the video. She describes her hip going almost to the point that she fell over. Her friend Lisa asked if she was okay. She describes that her legs were restless on the video, that her feet were tapping. She describes going into a number of shops including River Island where she believes she is returning some jeans and then Poundland where she was pulling an empty trolley. She then went to M&S not to shop but to use the toilet. She then drove a short journey home. She was therefore out of the house for about 1.5 hours.
38. At paragraph 16 onwards the claimant comments on the video from 14 October i.e., the day after she had been to London. She says that she drives a short distance to Sainsbury's, she walked around the supermarket and uses the trolley to lean on as she cannot use a stick at the same time. She is only buying a few items and she recalled that her husband was off at work. Her mother had been looking after her son while they had been to London and she felt guilty relying on others and had to get on with things. She describes purchasing cat litter (I note a heavy looking bag), leaning on the trolley to keep the weight of her left side. She is using the Sainsbury smart shop app on her phone which reduces the need to load and unload to pay. She puts the shopping in the back seat of the car. She says, " was heavy for me and you can see at 1534 when I exhale forcefully clearly indicating has been heavy, and I am limping walking back to the car' .
39. I note at paragraph 20 and 21 the claimant comments as to 2 entries of females attending at her house, identifying them by name and saying that she would have carried out beauty treatments for modest payment (£5 and £16) Further on 21

October someone called Tasha came for a lash tint which would have been £5 pounds. She believes her friend Stacey arrived on 21 October to have her lashes and brows tinted and to chat about the mental health of a family member. She further described the effect of having her house watched which she described as having "really freaked me out".

40. In terms of employment, she describes how her brain fog meant it was impossible to maintain a 9-to-5 job but that she felt a failure and her anxiety and mood was really low. She needed other human interaction to her family. She spent a lot of spare time scrolling through social media and joined various direct selling companies trying to sell various supplements: the ideas would never take off. She saw an advert for a facial waxing course. It was local and she signed up to it on impulse. She never had any interest in that type of beauty before and didn't herself go to beauty salons. She didn't have a plan. She described fantasising about elaborate plans and how she would post on social media about how great things were. She purchased 1000 "likes", for her Facebook page so that the numbers looked good, and her friends would post lots of reviews, some for treatments they had not had. She describes this against the background of having previously worked in marketing and advertising. She describes the courses as having been a bit of an obsession and getting fixated on them. Sometimes she attended, sometimes she did not because of her pain but she still advertised services as "another string to her bow".
41. She described the treatments she carried out including facial waxing, eyebrow and eyelash tinting, underarm waxing, and express eyelashes; all of which are quick and easy to do, she could stand or sit doing them depending on how she felt. She didn't plan too far ahead in terms of booking and she says, "I never even needed a diary", she would often cancel appointments and in particularly bad periods, sometimes months, she wouldn't want to see anybody. Although she created an online booking account with Freesha she didn't really like it as she couldn't control it. She describes all of this against the background of feeling a failure and the guilt weighing her down. She described making impulsive decisions, getting an idea that she might get into some form of part-time work eventually. She said she would spend a fortune on equipment that would come to nothing.
42. She states "Throughout all of this I guess all I wanted was to achieve a feeling of self-worth and a bit of escapism. I am struggling to understand it all. I have felt disconnected for such a long time, it is like I am watching from the outside. I suppose I had hoped it would be something I could do properly at some point, I am not sure how I could have done that though; the days when the pain is bearable and the days when the pain is bad are so unpredictable it is almost impossible to plan ahead. If in the future this or anything else, was to become part-time employment this would need to be sorted and I do not know how to do that."
43. She describes a worsening of her symptoms including her hands and arms and headaches in the diagnosis of fibromyalgia from December 2020; thereafter she did not carry out any more treatments.
44. As to why she had not told anyone (medical experts, legal professionals or the Department of Work and Pension) about the provisions of these treatment she

stated at para.11: “It was not a conscious decision not to mention them, I have thought tirelessly about it and I still cannot think why, I suppose I thought of them as more like therapy, you lose contact with so many people when you suffer with chronic pain, I never thought of them as paid employment.

45. As to any profit made she stated: “ I had not registered as a business for the treatments, because there was nothing to register. I had spent thousands on courses, equipment and stock and have made nothing in return. In terms of money, the only records I have are of people making bank transfers, which could be for a treatment or if I have sold them something, a box of lashes for example. I have calculated I have received the sum of £4913 to date, in total I think I have spent around £4418 on materials and £1113 on courses. I spent £68 on insurance, I did not have it initially, but I read a news article of someone’s tint reacting and that person sued their friend. It made me anxious, and I panicked. I have not bought any stock for a while now unless my daughters need items for their personal use”.
46. This statement continues to describe various ventures that the claimant undertook and described how she got herself into debt doing so. She described everything starting to snowball; “I built up an entire social media persona that I just could not live up to. If I got enquiries and respond saying that I was fully booked.”
47. She describes at paragraph 23 that whilst posting publicly on Facebook about carrying out beauty treatments at the same time she was posting on private Facebook groups supporting other mesh patients, about her struggles. She said she considered those a safe space where she could share with other women in a similar position the pain she was going through and also seek support.
48. In her fourth witness statement dated 19 January 2022 when she was represented by her current solicitors, she exhibited the statement that she had produced herself. She addressed further issues relating to the social media evidence and surveillance footage and commented about examination by medical experts. She stated that she had not found the process easy, and she felt at times that has been put on trial. The experts varied in the way they ask questions, so conversations are always different. Nevertheless, she felt that she had always said the same things; that there was never really a good day, but some days are better than others when she would try to get on with doing things as best she could. On bad days she would stay in the house but that she had no choice but to do things for her family. She did not describe having a particular bad time with any expert but said that she found the interview with the defendant psychiatrist Dr Scott really difficult, she was delving into her past and was quite persistent. She felt uncomfortable in terms of the questioning and felt “as if she wants to put words into her mouth”.
49. In terms of driving the claimant noted that some experts had reported that she told them that she didn’t drive or didn’t drive at the moment. She was clear however in her statement at paragraph 9 that she has never told anyone that she cannot drive at all except just after the accident. She could not understand why experts have noted down that she was unable to drive as she had not said that. She noted that Mr Farkas (the Claimant’s gynaecological expert) on 19 June noted she was unable to drive, whilst was Dr Johnson (her own pain expert) who she saw just two days

previously noted that she was unable to drive long distances. Further if she was feeling what she would describe as “okay” she was always trying to do something because otherwise she would live her life as a recluse. However even on an “okay day” she would never get better than 5/10 of a pain scale.

50. In terms of the distance that she could walk her usual response was “up to about 200 metres” but that was not without restriction and she might have to rest for a minute or two before she could carry on.
51. As to the beauty treatments at paragraph 26 of this statement she thinks over the years she had made no more than approximately £4000 in total (that would also include direct selling schemes). She notes that she had always given credit for an ability to earn in the future within schedules of around £6000 as she’d always intended to get back to some form of paid employment. She denies that she lied to anyone.
52. The two final statements of the claimant are dated 11 May and 9 June 2022 i.e. only very shortly before the trial of this matter. They largely deal with disclosure of her Twitter account and her Facebook account and the difficulty she had been downloading documents. At paragraph 12 of the May statement, she explained that she deleted some accounts because she had not used them for a long time. In her final statement she confirms that she had conducted a thorough search for appointment booking details having confirmed that she didn’t use electronic calendars. She was able to find any very limited information. This is against the background of the defendant making an application for specific disclosure of any online booking she might have in relation to her business from the date of the surgery onwards.
53. The claimant gave oral evidence and was cross-examined extensively and in great detail. She faced appropriate but persistent questioning about the surveillance evidence, the Facebook and social media entries, and her apparent lack of disclosure including how she presented herself to various medical experts throughout the case. It was clear to me that despite a superficially calm demeanour that she retained throughout, the claimant was clearly finding the experience a very stressful and difficult one. On occasions we had brief breaks in her evidence because she was visibly upset.
54. The claimant was asked about her ability to walk as was recorded in Professor Chadwick’s report, with the measurement of a number of yards being put to her. She claimed that she didn’t understand yards and she always talked in metres, but she could not remember a specific conversation. She accepts that she ticked various boxes on Department of Work and Pension forms when she was claiming benefits saying that she could walk no more than 50 m. She indicated that she hadn’t lied; she could walk more than that with difficulty but, in effect, her ability varied and what she did was put down an approximate average. In some of the boxes she put down that her abilities were variable; she said it depended on the variability of her pain. She also recognised that people from the Department of Work and Pensions would come out to speak to her about any entries that she had put so that she could provide further clarification. The claimant was asked specifically about two Facebook

entries which refer to her being bored of walking alone and thinking of starting a walking club page 3482 and at page 3483 thinking of starting a walking club in Prestatyn. She explained that she never had any such intention; while she made those entries, they were simply comment on social media (I note in the weeks or months after surgery) and not reflecting an intention to set up such a group.

55. Various social media entries were put to her about cooking spaghetti bolognaise or cooking meals for her family. This was contrasted with her claim that she needed support and assistance and the entry in the benefits documents that she needed aids to cook meals. She denied that she was misleading anyone in relation to that. She accepted that on occasion she had cooked meals, for example spaghetti bolognaise using a frying pan which wasn't necessarily too big and getting assistance from her partner or her son. She cooked simple meals like beans on toast without any help. She has perched on a stool while doing so. She can't however lift heavy pans because of the risk of dropping them.
56. In terms of travel the claimant had said to doctors that she wasn't able to travel extensively. However, it was put to her that social media entries that this was not true. She travelled to Tenerife which was about a four-hour flight and to Spain and then on a trip on a coach. She explained that none of this was without difficulties. It was a family holiday with her children, and she spent most the time around the pool. It was not that she couldn't do it, it was difficult. In terms of visiting other places for example Ipswich for banger racing she explained that she had done so but it was not without difficulty. She and her partner stayed over and had breaks in the journey rather than going there and back in a day. This was something that they had enjoyed before her injuries and at the time she and her partner was struggling with their relationship. She said she felt that she needed to go to support her relationship. Various entries were put to the claimant and in relation to them all she answered, in my judgment, in a calm and measured way. For example, when it was put to her that she'd been to see a narrowboat (the suggestion being that this was a social trip and not something that she had previously expressed the capability of doing) she explained that her partner Nick had driven her, and that it was to a narrowboat that her father who has subsequently had a stroke had previously lived on, and therefore it was important. The same applied to going on family trips in a touring caravan. She described the caravan as very comfortable with a supportive bed and it was a bit of a break. She pushed herself to do as many normal things as possible as she'd been told in relation to her mental health it was important to do so. Nevertheless, she rested a lot in between, she stated "of course I go for weekends away with my kids. I'm a mum. I push myself through it…it is very hard"
57. The claimant was asked persistently and at length about her social media entries and her work in relation to "Pure Beauty by Karen". She confirmed what she had said in her witness statement, that she did her first course in October 2014. She was finding employment in full-time employment very difficult being on various medications and with pain, but she always worked until then. She was looking for some flexibility. It was put to her that she had lied to expert witnesses when she said she hadn't worked since September 14 and she responded that she answered the questions the

experts asked her. At the time she didn't see it as work. She wasn't in a good place in terms of her mental health and was trying to make herself feel better. It was used as an escape. She didn't see it as a business. Some weeks and days she did more work than others but previously she had been earning over £40,000, working long hours and she simply did not consider carrying out beauty treatments in the same way.

58. She was asked about various Facebook entries about days out with her family for example to Techniquest in Wrexham. She explained that she did go on days out because she was a mum. She had good days and bad days and really bad days, and she tried to do as much as she can when she can. In terms of whether she ever used a wheelchair as claimed by her own care expert by Ms Simmons she replied that she considered the report to be a draft only and in any event had only used a wheelchair once: she had commented to her solicitors that there were mistakes within Ms Simmons report.
59. In respect of the beauty business the claimant was questioned extensively about how she presented this on various Facebook messages and how she had advertised she could do massages and a number of treatments. She denied ever having carried out any massage but accepted that one of the treatments involved application of a product or a body wrap (that was very different from a full body massage). Various of the entries she said were from stock photos copied from someone else's Facebook account. In effect she describes this as all marketing. It was marketing talk not designed to deceive but to try to create an impression that she was busy. Entries such as the diary was getting full didn't mean that she had a diary but "you put it down because it sounds better than it was in reality". Nevertheless, there are entries about looking for a model, then to go to Greater Manchester and on that occasion she did drive to an event. She did have a tanning pod pop-up tent at home. She did have insurance. She and her partner (mainly him) converted a room in her home to be used as a treatment room. She had a card payment card reader to accept payment (although said she may have had this previously).
60. It was put to the Claimant that she had lied saying she was unable to work when all of this information shows that she had worked consistently; in fact, defendant counsel said that adding up the entries in the bank statements indicated that she had received £8000 in addition to any cash payments. The claimant explained that her assertion of receiving £4000 was a provisional one, partly being done by previous solicitors. She denied that she had lied: she answered whatever questions were put to her. She stated this was "a really difficult time for me. I was not very well mentally. I didn't see what I was doing was actually work. I can't explain, it was not work to me it, was more therapy or doing something. I may have been paid money, but it was not for profit. I didn't feel in my own head I was working"
61. The claimant was asked about the surveillance evidence; she asserted that on the day she went to Costa she was not walking "fine" because she stumbled and afterwards was limping. It would have been one of her better days. In respect of the Sainsbury's shopping trip, she reiterated that she was leaning on the trolley instead

of walking with a stick. She had gone shopping out of necessity rather than because she wanted to.

62. It is suggested by the defendant that the claimant lied about having an appointment diary. The claimant was taken to a number of entries in the social media records referring to diaries for an appointment being taken and the like. She confirmed however that she did not actually have a physical diary; again, this was social media or marketing speak to present an impression of being busy: whilst one might write down the times available for appointments, that they were mobile, in the evenings or weekends, this wasn't a true reflection of what actually happened. She was embellishing. References to the house being "blitzed" i.e., cleaned does not necessarily mean that she had done it all herself. She may have had her mother or her daughters to help her. Many of the entries on the Facebook page describing treatments and social activities were an exaggeration and not an accurate reflection of what the claimant actually was capable of doing. She was not trying, she said, to mislead anyone. She said this was exemplified by the fact that she says she cannot swim anymore whilst there are entries indicating she may take the children swimming. She said that that was different from swimming herself. She would bob around effectively supervising her children
63. Over persistent and repeated questioning which was detailed and thorough, the claimant maintained the position. At no stage did she admit to having lied. She maintained that the social media entries were in effect marketing. She kept doing what she could because she felt she had to. She had not deliberately misled anyone. In re-examination the claimant reiterated what she had said in her witness statement. References to walking about 200 m were really walking 200 m without restriction. She described her worst days and her better days. She explained that on the best day she can walk much further without the need to stop, on a moderate day she may need a stick. On a bad day she wouldn't leave the house. On the worst day she would be in bed. She explained that the amount of medication she had taken also made a difference. She described the pain that she was in. She referred to her entries on the "Sling the mesh" website where her pain was like cheese wire cutting into her; entries about doing a jigsaw and then being in pain were highlighted; limits of activities even over Christmas are highlighted. When she went prom dress shopping with her daughter she was still in pain and had problems but did not want to ruin her daughter's day. Some things she simply had to do. She described ranting on social media about the pain that she was in. This is a similar time that she was presenting an entirely different picture on her own Facebook pages. She was referred to entries in March and June 2018 on the mesh pages "Pissed off for the things I've lost since mesh job" "What more can mesh take from me? My life is in tatters ". She said she was never without pain. This was reflected in her entries on social media pages.
64. She gave more detail about how long the beauty treatments carried out took. The longest appointment would last about 1.5 hours (this would be very demanding, and she stopped doing these). The average was under 30 minutes and she would take five minutes in between an appointment to refresh the room. On a good day she

probably did 4-5 treatments, in a medium day was probably 2 to 3 spaced out. She said on average to carried out 14 to 15 treatments a month.

65. She described the devastating effect of the surveillance on her. She massively withdrew, became paranoid. She didn't leave the house for approximately six months. Her mental state had not been very good and she made bad decisions. She explained, in response to my question why she didn't tell anyone about Beauty by Karen that it was not a conscious decision not to mention; it was a lot of things including not trusting people, fearing not being believed. She accepted it was an obvious mistake, but it was against the background of her mental health not being good. She said "I made a very bad judgement error during a very bad time"
66. The balance of the lay evidence was in a relatively brief form. I heard from the claimant's mother Mrs Linda Preater. She confirmed her written witness statement. It was apparent to me that Mrs Preater was straightforward witness who was doing the best she could but did not want to say anything which she felt would undermine her daughter's case. She confirmed that she continued to provide significant support to her family. She was asked about a number of the Facebook entries and accepted that, for example her daughter, had driven to Techniquest and was able to make some meals from scratch (but she herself did not see her daughter do it). In terms of the assertions that the claimant must have travelled and therefore driven to various places including visiting her father Mrs Preater said she didn't know if her son-in-law Nick had driven. She remembers her daughter looking into beauty courses but didn't remember specific details. She accepted that on occasions the claimant would go to school to pick up Max her son, but it would all depend. In terms of "Beauty by Karen" she accepted that her daughter did some beauty treatments for friends or friends of friends. When it was asserted that she had no difficulty in doing things she responded that didn't mean that she wasn't in pain; in respect of the work she did, she said that she couldn't say her daughter hadn't found it difficult: "One often does things that are difficult because you have to do them. My daughter did them." She accepted that her daughter went on holiday and that she must have tried, on occasions to sort out the house. Effectively, she tried to cope and carry on. Mrs Preater confirmed that she still provided care and assistance for her daughter. She was unshaken in her evidence and was a straightforward witness.
67. Nick Preater is the claimant's partner. He confirmed at the outset of his evidence that he was unable to read and therefore there was a short adjournment to allow his brief witness statement (which he had previously signed and confirmed to be true) to be read to him. In his witness statement he had painted a picture of the claimant before her surgery as really active and happy, going for walks with the kids and the dog and loving going away to the touring caravan. She had been very pleased to get her job with Yellow Pages after a tough recruitment process and really enjoyed the job. Since the surgery he described the claimant being very distant, having days when she doesn't want to be around anyone and that they didn't seem to have a laugh anymore: "The fact that Karen is now unable to work affects her too. She loved her job and would never have wanted to give it up"

68. Mr Preater was cross examined. The impression he gave was that he was doing his best to assist the court and support his partner. He confirmed that they had carried out some work converting their garage to be used as a beauty treatment room. Where there were Facebook posts about decorating he accepted that the claimant did some glossing of the skirting boards and some clearing of the room. However, he said that he would have been doing the work. In terms of an entry that the claimant hated putting food shops away (the inference sought to be drawn that she was fit enough to do the food shop) he stated that the claimant would take one of the children with her if she was going shopping and there was always someone there to help. In any event they usually were shopping at weekends. He accepted that the claimant could manage family holidays and going away in the touring caravan. The impression he gave was that things were difficult; for example, he said that if they went on a long journey to visit her father on Saturday the claimant usually didn't get out of bed on Sunday. In terms of what she could do around the house, it had been cut by more than half. The claimant does not enjoy letting other people do it. In terms of the claimant's beauty work he said that he didn't really class it as working as it was from home and far from full-time work "with no disrespect".
69. I heard briefly from the claimant's daughter Ms Lucy Preater: she was clearly very upset by giving evidence. It became clear that for some of the period around the time of the surgery she wasn't living with her mother, she was living with her father instead and would visit at weekends. In her statement she described how her mother would always be up for doing anything such as days out before the surgery whereas subsequently "To see how someone so happy and full of life constantly looks and feels fed up is awful… I know she feels she is letting us her children down because she would have to cancel plans because she couldn't physically get out of bed due to her pain". Nevertheless, in cross examination (which was perhaps cut a little short as I indicated that I didn't find it of particular help) Ms Preater accepted that she wouldn't have in-depth knowledge of what was going on at home because she wasn't always living there. Nevertheless, Ms Preater's picture of the change in her mother was, in my judgment, telling.
70. The final lay witness for the claimant was her friend Lisa Howard who was seen of the video having coffee in Costa. Ms Howard had prepared two statements one dated 30 April 2021 and one dated 25 February 2022. The first one was prepared I believe when the claimant was unrepresented. She confirmed at paragraph 5 that she recalls the claimant jolting and almost falling over and mentioning her hip. She recalls the claimant being fidgety and being told that she had restless legs. This was in reality a commentary on the surveillance footage. In her second statement Ms Howard confirmed that she and the claimant had been friends for many years since schooldays and have been extremely close. She describes the claimant as having previously been very active both during school days and after. The claimant was very outgoing and loved talking to people. Prior to her surgery the claimant seemed very low about her urinary incontinence. After the surgery the claimant complained that she was in pain but then started to withdraw not being in contact with Ms Howard. When they did meet up the claimant would be crying a lot and weeks would go by

without them speaking. She confirmed that when they meet up now usually the claimant holds onto her arm or uses a stick, but not always. On the Costa visit day they only walked a short distance.

71. Ms Howard also commented about the beauty treatments; the claimant had done her eyebrows. She did not comment about whether she knew this was as a business venture. In cross examination Ms Howard appeared to be rather protective in answering. Many of her answers were one word or noncommittal. She did not remember many of the things that were put to her. She also rather surprisingly was unable to remember whether she had seen the surveillance evidence before she prepared her statement. When asked whether she knew that the claimant was running a mobile business and from home she responded, "I don't remember seeing mobile available". Thus, she appeared not to remember many critical points. I did not find Miss Howard's evidence to be of great assistance. Her evidence was very guarded.
72. The only other lay witness evidence is the evidence of the surveillance operatives. Insofar as they are simply producing the video evidence I have not been addressed specifically to anything that they have commented on in statement form. I have of course considered the surveillance evidence in detail.

    <u>The medical evidence</u>

73. I set out above the significant agreement between the various experts in this case. However, the focus of their oral evidence has largely not been upon their expert medical opinion as to the claimant's prognosis or treatment but largely focused on whether the claimant presented to them in a consistent way. That was the core of cross examination of most of the witnesses. Some of the experts had entered into the arena in providing opinions as to whether the surveillance evidence in particular was consistent with the claimant's case. In dealing with with the expert evidence therefore (and as I say there is significant agreement as set out above) I will largely be focusing on the question of alleged inconsistencies so far as they go to the allegation of fundamental dishonesty.
74. The experts prepared their reports and commented on the surveillance social media evidence in the following manner:

Area of expertise	**Claimant's expert/Mode of examination/Commentary on surveillance/social media**	**Defendant's expert/Mode of examination/Commentary on surveillance/social media**
Gynaecology	Mr Farkas: by telephone	Mr Jackson: in person Separate commentary on sv/sm 18th December 2020
Urology	Mr Moore: in person twice	Mr Shah: in person

	2nd report contains commentary on video evidence	Separate commentary on surveillance evidence 17th October 2020
Pain management	Dr Johnson: "via Signal" (I understand this is by video) and then in person. Separate commentary on sv evidence 22nd April 2022	Dr Thomas: in person Separate commentary on sv/sm 16th December 2022
Psychiatry	Professor Elliott: in person and subsequently by video	Dr Scott: Facetime video Separate commentary on sm/sv 18th December 2020
Neurology	NA	Professor Chadwick: in person Separate commentary on sv/sm evidence 17th December 2020
Care	Mrs Simmons; by telephone	Mrs Scandrett: desktop report only. Includes detailed commentary on sv evidence.

75. Rather than setting out in detailed form what the experts said on all issues, I will do so in relatively short form, in recognition of significant issues of agreement, and largely in the order that they were called to give evidence.
76. Mr Moore: urology. There remained very little difference of opinion on issues of urology between the experts. The minor issue was that of risk of tape migration with Mr Moore in the joint statement indicating that it was a lifetime risk of migration into the urethra of less than 5%. In terms of the surveillance evidence both urologist experts agreed that they did not have the expertise to comment on surveillance evidence with regard to any disability that might may be a result of chronic pain. The surveillance evidence and social media entries did not help them explain the urinary symptoms. Mr Moore confirmed that during his consultations the claimant did not inform him that she was working as a beauty therapist. In his later report he confirmed that although he had seen the video evidence and the social media evidence he deferred to the pain management experts in relation to the claimant's fibromyalgia and chronic pain management. He indicated that there was nothing in

the video evidence which alters his opinion substantially. At times the claimant looked able and at other times somewhat disabled, but he did not acknowledge any conclusions that he could draw from that. He felt it outside his area of expertise to comment on the work as a beauty therapist. He did not consider the video evidence to be incompatible with the history provided by the claimant

77. In oral evidence Mr Moore clarified what the problems would be if there were mesh migration and confirmed that it would be difficult to treat the symptoms of pain when urinating. There could be surgical intervention that potentially would be very difficult to treat. He was not challenged any further on his evidence within his reports.
78. Dr Shah was the defendant's urologist. He considered there to be no real risk of mesh migration given that 8 years had passed since surgery and the positioning of the mesh (I found his evidence on that point to be clear and persuasive). He also took the view that the claimant might benefit from surgery.
79. However, unlike his colleague, Mr Shah had commented further in relation to the surveillance and social media evidence. He said that he did not note any disability during the surveillance. However, rather contradictingly, he agreed that he did not have expertise to comment upon it. In the joint statement he had indicated that during consultation on 30 October 2020 the claimant had told him that she was not working. Mr Shah was cross examined and confirmed that his total examination of the claimant including physical took no longer than 25 minutes. It is of note that on the day that the claimant visited Mr Shah, she was videoed walking in the street with a stick. He made no mention of a stick in his report. He said he had not mentioned it because he didn't consider it to be particularly relevant to her urological condition. He specifically asked her about her ability to drive and what activity she relied on others to do, but did not deal in his report with domestic activities. He refreshed his memory from his notes, but he could not recall one way or the other whether there had been any discussion as to good days or bad days. He didn't recall asking her about that. In terms of employment (because he considered the question of self-catheterisation to be relevant) he went further and stated: "I asked her if she was working, and she said no. She said the last time she had worked was the Yellow Pages in 2014 that is in my report. Paragraph 13 summarises our discussions." I note that there is an incomplete employment history recorded there, because there is no reference to Top Aerials. He accepted that when he wrote down the claimant was not working it was the answer to the question he posed. Interestingly Mr Shah confirmed that he had written a separate letter commenting on the surveillance evidence which had not been disclosed. He accepted that upon examination he had not seen any exaggerated disability from the claimant, but he did recall her walking with a walking stick (albeit he had not mentioned it in his report). He was unable to recall specifically the event on the claimant entering Costa when she is seen to withdraw her weight and stumble. He would not accept however that a stumble shows a disability. He appeared to be uncomfortable in accepting that the claimant was limping saying "if anything there might be a mild limp". He accepted that he didn't closely analyse every moment of the surveillance evidence because it would

not be relevant to the urological condition. It was put to Mr Shah that he did not fully comment on the video evidence because he had omitted the stumble and therefore in effect he was not providing a balanced view. When pushed in cross examination Mr Shah accepted that if the claimant stumbled as she had outside Costa whilst on the stairs or in the shower that could be potentially dangerous and accepted that that was a clear sign of disability. He accepted that his evidence in relation to this point had not been very impressive and that he should have qualified it.

80. On balance it seems that Mr Shah was retracting from his previous position as to the claimant having no disability and accepted (when pushed) that his evidence had not been satisfactory on this issue. On balance it appeared that Mr Shah had not fully considered all of the evidence in a balanced way and appeared to be rather too willing to reach conclusions in support of the Defendant's position on only parts of the evidence.
81. The claimant's pain management expert Dr Johnson gave evidence via video because he was suffering from covid. Dr Johnson confirmed his written evidence but with my permission went somewhat further. At the request of claimant's counsel, he explained what the effect of finding a fundamental dishonesty would have been on the claimant. He stated that this would have a very major effect on her, particularly her mood. Given her past medical history she would be at risk and her pain would be increased. Her ability to cope would be very much reduced. The sleep would be affected.
82. Again, there was very little between the claimant's and defendant's experts on pain management in their joint statement. The experts had accepted that pain symptoms and signs were not fully objective but there was evidence of the claimant having a significant chronic pain problem. Dr Johnson's view throughout was that the claimant had developed fibromyalgia subsequently and that had been caused by the claimant's chronic pain with aggravation and precipitation of the fibromyalgia as a result of the index events. Dr Thomas for the Defendant did not originally hold that view. The position in relation to good and bad days is set out in the agreed area of evidence above. It was unlikely the claimant's pain would ever settle completely and although the removal of litigation might assist, the claimant might then be encouraged to engage in rehabilitation, these might be modest factors. I note that both experts had considered the surveillance evidence and felt that they were not in a position to comment on it from their area of expertise.
83. In commenting on the surveillance evidence Dr Johnson stood by his view that the claimant had neuropathic type pain originating from the surgery. She remained in substantial pain albeit her levels of pain and distress was somewhat reduced consistent with her having the same problems but coping better. The surveillance evidence, particular her leg giving way, appeared to be consistent with her having a chronic pain problem. The social media and video surveillance was compatible with Dr Johnson's assessment. He describes it as "chronic pain problem but with relatively normal day-to-day functioning. There may be psychological aspects that are not

possible to determine from the video surveillance which by nature can only assess a small portion of their activities and life"

84. In cross examination Dr Johnson stated that, in a medicolegal appointment, patients often present focusing on their worse symptoms and relive all of the problems they have. "If they have pain and tend to limp they tend to limp more upon examination. It happens nearly all the time". There was no suggestion that this was a dishonest presentation. Pain was always subjective and there is a reliance on self-report which has to be interpreted carefully. He had initially thought that there was some calf wasting when he interviewed the claimant by video but then could not find any later. He did not accept that there were significant differences between the presentation that the claimant gave to him for example an inability to swim and problems of walking with the presentation in the surveillance evidence. He said it "doesn't strike alarm bells". He had read and considered the psychiatric evidence and did not disagree with it in terms of the diagnosis of fibromyalgia. Dr Johnson accepted that there was no temporal connection straightaway but with all the other risk factors of pain, urinary and sexual problem they all add up to the burden of the risk of it developing. He therefore had produced his opinion on the balance of probability.
85. In re-examination certain parts of his report were highlighted; for example, on the comment that the claimant "regularly used a walking stick" he accepted that suggested that they had some detailed discussions as to the frequency of using a walking stick. He accepted he did not do a detailed schedule of the activities the claimant was able to do on good days or bad days; however, he had noted that they were variable. He stated that patients can be very frightened of pain and often describe it at its worst. He was specifically asked about the social media evidence and what had been recorded about the claimant working. He stated that she had told him what job she had previously. She would have been given an opportunity to add anything else in. He said that people often sell themselves in a rosy way in terms of descriptions. In terms of the suitability of work, the beauty treatment role might have been entirely appropriate and compatible with her described difficulties if it was paced. Perhaps a couple of appointments for 30 minutes each per day, would be encouraged and he would not be surprised that the claimant was able to do that. In terms of work Dr Johnson confirmed that the claimant should be able to return to work on a part-time basis taking everything into consideration: she has the potential to work full-time in an office based or variable environment.
86. I considered Dr Johnson's evidence to be balanced and considered. He made realistic concessions and was unshaken in cross examination. He was an impressive witness.
87. Dr Benjamin Thomas was the defendant's pain management expert. His views and the measure of agreement between him and Dr Johnson are set out above. In his supplemental report from December 2020, he reviewed the video evidence. He noted that the claimant was walking without a stick but with a slight limp when she went to Costa coffee. He noted a slight stumble or "sudden reason to pause and slightly withdraw her weight from her left leg". That might be in keeping with sudden pain. In terms of the Sainsbury's shopping footage, he noted a slight limp when

walking without a walking aid and there seemed to be an improvement in independence, mobility, and ability to undertake daily shopping activity compared to when he had examined her in 2019. When he had examined her, he had seen a significant limp and apparent reliance on a walking stick but the presentation on the video was of a gait issue and minor limp without a walking aid. He indicated that there may have been improvement between the two dates. He had no comment to make upon the apparent running of the beauty business but noted that the claimant had stated she no longer works.

88. In cross examination Dr Thomas confirmed he looked at the surveillance footage on a number of occasions and accepted that when the claimant stumbles she may have had a shooting pain which could be the cause. There was nothing to say the claimant was wrong about such an explanation. There was nothing to dispute the claimant's account that this happened every day and such shooting pain may limit function; would be functionally disabling if it impacted on somebody using stairs for example. He accepted the fear of having a shower without someone being present in the house on that basis. He identified this problem on the video footage and didn't try to extrapolate from it. He said "I recognise the importance of my opinion. I gave my observations on what I saw. In my opinion that could be compatible with sudden pain. I didn't go on to speculate how the disability could affect her life on the basis of this short footage". He accepted in terms of the Sainsbury's footage that he had noted that the claimant lent on the trolley for support, but it wasn't always used in that way. Leaning on the trolley could reduce pain in the leg and that would be compatible. He accepted that in brief the footage was compatible and consistent with her left leg and hip pain. He tried to be balanced. He saw a significant limp when the claimant was walking with a stick on the video to see Mr Shah. There was a difference in gait with a more purposeful stride. He accepted however that he hadn't fully dealt with the effect of travel there and the claimant has travelled down to see the doctor shortly before that video.
89. Dr Thomas accepted that many patients are anxious when attending medical appointments and their psychological state can in effect present as an exacerbation of symptoms. There was a discussion in relation to fibromyalgia and the ultimate position was that he accepted that the combination of features that had occurred as a result of the accident with chronic pain, self-catheterisation, loss of intimacy, loss of job, shooting pain and psychological symptoms made it more likely that the fibromyalgia was a consequence of the defendant's breach. He acknowledged and conceded that point in a measured way.
90. He acknowledged that chronic pain is variable from day to day and that there would be a material difference in the presentation of a good day and a bad day. He accepted that when he was asking a patient what they were capable of doing the answer usually reflected them at their worst (again, there was no suggestion that this was a dishonest presentation). He didn't go into good day, bad day scenarios with the Claimant but he did not dispute that on a good day the claimant might be able to do more than she presented in a medical examination. In respect of work, he accepted that the only discussion that he had with the Claimant was about before

the accident. He had asked an open question such as “tell me about work”. He had reviewed his notes which were rapidly handwritten in which he had recorded effectively that the claimant hadn’t returned to work. It wasn’t mentioned to him that she had taken on another role. In response to my questioning, he confirmed he had not been told that the claimant had been setting up a beauty room at home or carrying out any treatments from there. He accepted that litigation was very stressful and that when it was removed he would expect further improvement in the claimant’s function although that could not be guaranteed. The overall trajectory was for improvement. In terms of work, he expressed the view that the claimant could get back to 4- 5 days remunerative work per week (an 80% role); a pain management program was not opposed but was unlikely to significantly assist.

91. I found the evidence of Dr Thomas to be very balanced and thoughtful. He made realistic concessions and impressed me that he was doing his utmost to present a fair opinion. His evidence was, ultimately, in significant agreement with that of Dr Johnson.
92. The defendant relies upon the evidence of Prof Chadwick who is a neurologist. The claimant has no like-for-like expert. There is therefore no joint statement. In his initial statement Professor Chadwick had recorded that the claimant’s mobility remained limited “she walks with one stick and is limited to walking for 20 to 30 yards at a time.” “ She told me she left a previous job because she could not drive. She did work between May and September 2014 on a desk-based job but again left this job because of the persisting pain. She told me that she does not undertake any housework or cooking relying on her mother, her children and her partner for these domestic activities.” He accepted the claimant’s description of ongoing pain as consistent with neuropathic pain consequent on nerve injury. He stated “Currently she is compromised in terms of employment and requires a significant amount of support in domestic activities. She is however self-caring”
93. Prof Chadwick commented on the social media and surveillance footage; he noted in the Costa episode that she walked without a stick, but at one point did appear to stumble, otherwise she seemed comfortable and pain free. On the attendance with Mr Shah, she was carrying a stick, and seen to stride out comfortably without any obvious reliance upon it. In the Sainsbury shop she appeared to be walking without apparent pain. He concluded that the claimant symptoms are of pain and sensory disturbance which are subjective in nature. He said: “The inconsistency of appearance when I saw her compared to performances in the surveillance would suggest she may be unreliable in the way that she describes her symptoms”
94. In oral evidence Prof Chadwick accepted that he had not seen the claimant’s comments on the surveillance evidence which would have been ideal because it may have drawn attention to something that he may have missed. He accepted that without that information his report may be less beneficial. He confirmed that upon viewing the surveillance he couldn’t exclude the possibility of some nerve damage. but the possibility that the Claimant was unreliable might explain the very considerable differences between her appearance when he saw her and on the video. He accepted she didn’t appear to be walking entirely normally nor was she

seen to be walking for a long time on the video and she was limping at times. He accepted in relation to the London video that the claimant's condition could have been exacerbated by a long journey and that that might be an explanation as to why she was worse the next day. He explained that in his view the degree of difference was however quite remarkable. He accepted that the presentation could be a variation from day to day. When it was put to him that the pain experts considered that the stumble as shown on the video was as a result of pain and residual impairment he said that he would accept that, and that the specific peripheral nerve injury contributed to overall pain he accepted there will be some level of risk of injury (as Dr Thomas had) of the claimant using showers, stairs et cetera but that that level of danger would be minimal because the claimant was able to quickly correct herself. He accepted, in terms of what is said in his report about employment, that he wrote a short report, he asked just a general question about her ability to work and didn't ask direct questions about self-employment in any other form. He accepted that he had not record that the claimant had asserted she was unable to work. In terms of her ability to walk he accepted that in terms of the distance he himself might have suggested the distance to the Claimant. He accepted the good day/bad day point might be an important detail in the case, which he had not asked about, and if he had given us such detail it would reduce the scope of misunderstanding. He accepted that the claimant had variable pain levels, and also accepted within the context of medicolegal assessments there tended to be a bias towards people providing information about bad days rather than good days (again, there was no suggestion that this was dishonest). Whilst Prof. Chadwick had been relatively robust in his report, it appeared to me that he made a number of important concessions when he reflected upon his evidence.

95. Mr Farkas the claimant's gynaecologist confirmed his witness statement and his comments in a joint statement. He had recorded in his report that the claimant remained in constant pain "she uses a stick and has very limited mobility". In the joint statement having seen the surveillance evidence the gynaecologist agreed that the claimant had symptoms including weakness of the left leg and the need to walk with a stick, pain with sexual intercourse fatigue and depression. The gynaecology experts agree on balance that removal of the mesh will not cure the claimant's pain but there was a possibility i.e., less than 50% of short-term material improvement. Both experts recognise that there were risks of such surgery. They agreed that it was reasonable for the claimant to decide not to undergo surgery. As Mr Farkas had not seen the claimant in person he did not feel able to comment on the surveillance of social media evidence. From a gynaecological point of view there was no reason that the claimant could not return to work. Self -catheterisation required access to private toilet. In cross-examination it became apparent that Mr Farkas had not seen the social media evidence and so could not comment on it. He accepted in re-examination that what had been said to him by the claimant as to her difficulties,had not been set out in context of good days or bad days.
96. Mr Jackson the defendant's gynaecology expert gave evidence: I set out above the limited difference of opinion between him and the claimant's expert. However, Mr

Jackson had felt able to comment on the surveillance evidence. He noted that the history he had elicited from the claimant stated that the walking was assisted by the use of a stick : the video evidence did not appear to always confirm this. Further the limp he had observed whilst walking into his consulting room was not evident on one of the videos. When he was questioned about this he accepted that it was not a gynaecological opinion but simply a matter of opinion generally. He recognised that he had only commented on some of the videos, and he couldn't remember what the others had shown; in fact, he thinks that he probably did watch them all but may not have done. His evidence as to this seemed unclear and unsatisfactory. He accepted it was a bit of a while ago when he looked at the videos and accepted it wasn't for him to comment as to whether the claimant was exaggerating. Nevertheless, he considered it to be relevant if someone was walking with a significant limp and was significantly disabled when there was other objective evidence of them walking in " an entirely normal manner". He denied knowledge that his evidence was going to be used by the defendants to present a case of fundamental dishonesty, saying that he had put two and two together and assumed that there was some doubt as to the claimant's veracity. I note that at that point Mr Jackson appeared to be distancing himself a little from his comments. He said that he had only looked at the videos fairly briefly, several months ago, he didn't recall the footage of the claimant having stumbled, but when it was put to him again he accepted that she did. In effect he was only recording the inconsistencies (as opposed to things which supported the Claimant's case); he rejected the assertion that he had been partisan. Again, there was some distancing when he stated: " I haven't spent huge amounts of time looking at the mobility aspects of this case" confirming that before preparing the joint reports he had been given 4000 pages of documents and had read the claimant's statement but he was concentrating on the gynaecological aspects. Unlike the pain experts and Prof. Chadwick, he did not see that there would be a worse presentation in medicolegal examinations. In response to my question, he confirmed that he had not drilled down on questions of mobility in his report because he did not consider that his remit. In my judgment it was perhaps unfortunate that he felt able to comment and highlight inconsistencies without giving the balance of recording consistent presentation as well. I did not find this to be an attractive approach from an expert witness.

97. I will deal with the care experts at the conclusion of all expert evidence.
98. In terms of the psychiatric evidence Prof Elliott prepared a report, had commented on the surveillance in the second report and he confirmed his opinion in the joint statement. Again, with the court's permission he gave evidence as to the effect of a finding of fundamental dishonesty upon the claimant and confirmed that it would be likely to be very stressful and very traumatic psychologically. Given her pre-existing vulnerability there would probably be a significant worsening of her mental health. If she were committed to prison for contempt (and this was a question that I was a little cautious about to allowing as I did not consider to be directly relevant to the issues for me to determine) she would be likely to develop an even worse depressive reaction and would be at risk of self-harm. If she had not been fundamentally

dishonest she would to find this very difficult to accept and would lose faith and trust in the process.

99. In cross-examination Prof Elliott was only very briefly cross-examined confirming that he was very aware of the allegation of dishonesty that had been raised and the importance to the court to outline his opinions. Essentially he was leaving this as a matter for me to determine. Much will depend upon the court's finding as to the claimant's presentation given the chronicity of her symptoms, however he concluded that she was suffering from persistent depressive disorder. However, if the court found that she was not suffering from such symptoms then she had not suffered from a psychological illness. In the joint report there was some discussion of the distinction between Prof Elliot's diagnosis and that of Dr Scott. In any event the experts agreed that the psychological disorder of itself did not prevent the claimant from returning to employment.

100. It is of note what Prof Elliott said in his report dealing with the surveillance evidence. At paragraph 14 he had reviewed the video surveillance and the claimant told him that the symptoms had waxed and waned with good and bad days. Quite properly he considered the validity of the claimant's history and symptoms to be a matter for me to determine not for him. However, he noted the claimant's pre-existing vulnerability is in the nature of her symptoms and that her psychiatric disorder had affected her life in several significant ways. The surveillance evidence had been a significant perpetuating factor. Her perception of ongoing pain was likely to be perpetuating factor in her ongoing psychological symptoms. He recommended a course of therapy. He concluded that the surveillance evidence was consistent with the claimant's presentation of good and bad days and times where she put on a brave face. The video evidence was compatible with her psychological symptoms. However, he reiterated that assessment of a patient's psychological state by video evidence was very difficult. In terms of prognosis, the removal of litigation and the conclusion of proceedings would be beneficial to the claimant's mental health

101. Dr Scott, the defendant's psychiatrist was more upfront than most other experts in terms of how she had interpreted the surveillance and social media evidence. Prior to the disclosure of that evidence in September 2020 Dr Scott had initially reported having examined the claimant by video. She took a history which included recording that the claimant had had a history of falls. Although she was able to dress herself she found putting on socks was more difficult. She reported pain, which was chronic, walking with a limp and needing to use a stick. She reported ongoing psychological symptoms, as feeling useless and relying on others to function. The claimant had described to her thoughts of taking her own life and having dark thoughts. This had improved with now good and bad days. Her mental health was impacted by her pain. Dr Scott then carried out a lengthy review of other expert evidence in the case and/or witness evidence. Dr Scott diagnosed the claimant having a pre-existing diagnosis of recurrent depressive disorder and diagnosed dysthymia not fulfilling the criteria for recurrent depressive disorder, mild or moderate in severity. She recommended some medication and cognitive

behavioural therapy. She concluded that the claimant's capacity for work was not negatively impacted by her psychiatric or psychological well-being.

102. Dr Scott prepared a second report having reviewed the surveillance evidence and social media information. In her characteristically detailed style, she went through a number of Facebook posts including the Pure beauty by Karen pages. She considered the surveillance footage. Having reviewed this information she stated that it was contradictory to the history provided by the claimant during the assessment. She stated "She reported being completely unable to function, was unable to go out, unable to look after herself and needed support for all aspects of her care. She reported being unable to work but this is contradicted by the social media posts. She also reported significant functional difficulties impacting her ability to manage longer distances however this also appears to be contradicted by the video evidence. It is therefore my opinion the information and history as reported by (the claimant) is highly unreliable. It is ultimately for the court to determine the validity of the history provided however having reviewed the updated information I am unconvinced she presents with any symptoms of a psychiatric illness and if so this does not impact her functioning. Any condition which she may have developed appears to have resolved, as she is able to function, walk unaided and it was interesting when she was attending her medical appointment, she walked with a stick which was absent during other presentations. I am therefore unconvinced the history provided by (the claimant) is a true reflection of her functioning and consideration therefore should be made for malingering. As highlighted above this is determined by the courts. I am no longer of the opinion she presents with symptoms of an ongoing psychiatric nature. Any physical health symptoms in my opinion are not impacting her functioning from a psychiatric perspective". The reader of this report would be left in little doubt that although she recognises it is ultimately a decision for the court, Dr Scott simply did not believe the claimant's presentation of her physical or psychiatric condition.

103. Unsurprisingly Dr Scott was cross examined at length. There were certain aspects of her evidence which I found to be unsatisfactory and pedantic. For example, she was asked if she was aware that she was the only expert who had use the word malingering; the response was that she had not said that but rather that it "should be considered". She said the claimant was highly unreliable. When pushed she said she wished to correct any impression that she had been saying that the claimant's physical symptoms had resolved (see references above, that, in my judgment was the clear reading of her report); she said she only meant to refer to a psychiatric condition. She was aware that the defendants were alleging dishonesty and was aware of the serious consequences of that.

104. Dr Scott accepted that it was important to be balanced and that it was essential that what she wrote in her report was accurate. She also accepted that if there were factual errors, there was a duty to correct them. She accepted that she had not seen the claimant's response to footage when she commented but confirmed that if she missed something that was relevant she had an absolute duty to point it out. She was asked explicitly about how Dr Thomas had interpreted the

presentation of the claimant. She accepted she read what he said, and she accepted that he was in a better position to comment on pain and would defer to him in relation to pain.

105. She was asked as to what she meant at para 50 of her report at page 1484 when she referred to the trip (outside Costa). She was wholly unwilling to accept that it might be a pain related stumble. She said that is what she saw, not a fall. She said the claimant missed her footing and stumbled and she cannot comment on whether the pain expert was right (about it being a demonstration of someone experiencing sudden pain withdrawing weight). In a difficult cross -examination she appeared to be stuck with the use of the word trip as opposed to stumble saying she simply put down what she had seen. Again, the surveillance footage had to be shown to Dr Scott and she then finally accepted that stumble was a fair description (but she still insisted that a trip or stumble were very similar). I find this to be a problematic area; Dr Scott did not seem willing to accept that her use of this terminology is potentially misleading or an error.

106. Dr Scott did accept that surveillance evidence showed that the claimant was limping on several occasions and that she had impaired walking. That wasn't however included in her report; her explanation was that it wasn't relevant to the claimant's psychiatric health. When asked why she had therefore mentioned it, she said it was in the context of the claimant saying that she couldn't function or do anything without help. Dr Scott was very carefully questioned about what she had meant in the second report as to the claimant being completely unable to function and she was asked where she got this information from. After considerable reviewing of her earlier report she referred to the three-line paragraph in her original report which is set out above. In my judgment that was very different from saying the claimant could not function. There appeared to be a considerable gloss by Dr Scott on what she had recorded the history as being. The comment that the claimant was completely unable to function does not appear to be substantiated from the claimant's history. She accepted that it was her interpretation of what had been said. She was asked specifically on what basis she reached the conclusion that the claimant was unable to go out. She accepted it wasn't anywhere in the claimant's history and must have been included in error. It might have been an oversight. She didn't have her handwritten notes, then she appeared to backtrack and say that she had forgotten to put it in her first report. This difficulty in recalling where these critical references came from were very troubling. Dr Scott's later interpretation of the Claimant's description of her level of functioning does not appear to correspond with a history provided by the claimant. It appears to me that these are clear examples of Dr Scott not preparing her report with sufficient care and, it gives me no pleasure to conclude, not providing a balanced view.

107. There was significant discussion and examination as to the diagnosis Dr Scott had made compared to that of Prof Elliott. In my judgment, that issue adds very little to my ultimate determination in this matter

108. I turn now to the care evidence in this case which, for reasons that will become clear, I found to be very difficult and on the whole unsatisfactory. The

claimant's evidence was provided from Mrs Simmons; the defendant's by Mrs Scandrett.

109. The report of Mrs Simmons disclosed within these proceedings presents a claim for significant aspects of care and support the claimant may need in the future, including aids and equipment. In the joint statement the position of Mrs Simmons has significantly altered. I note that Mrs Simmons prepared her report by telephone. There are a number of aspects of it which the claimant herself says she does not agree with. At the commencement of the trial, I granted the Claimant's application to rely upon an addendum report from Mrs Simmons dated 24 June 2022. Rather unusually that addendum report sets out a sorry history to how Mrs Simmons reports have been obtained in this matter. In brief Mrs Simmons confirms that due to Covid 19 restrictions she produced the first report in this matter by telephone and so didn't have an opportunity to see the claimant in person. At that stage she was in receipt of some but not all medical reports. The report was returned to the claimant's previous solicitor. She heard nothing from that solicitor further. She said it is normal practice in her experience as an expert witness, for the initial draft to be shown to the claimant and then amendments and alterations to be made, with an updated report as the evidence develops. The claimant herself messaged Mrs Simmons in late 2021 asking if Mrs Simmons would still be willing to act. On 17 May 2022 Mrs Simmons was then approached by the claimant's current solicitors asking if she would arrange a joint discussion with Mrs Scandrett which was due by no later than 10 June. As she was unavailable until the 8th June there very little time for preparation and digesting a vast bundle of evidence. She felt under pressure to do the joint statement. It became clear that she had not seen a considerable amount of the claimant's witness evidence and the joint statement was prepared in its absence. She did not want to cause delay to the court. She has now seen the witness evidence and had time to consider its effect. On reflection she considered the evidence of the claimant suffering good and bad days and put forward some justification for her figures in the joint statement or explanation as to why she did not significantly retain her position. Nevertheless, it was accepted by counsel for the claimant that if there was a difference between the figures set out in the addendum report of 24 June and the joint statement they were bound by those in the joint statement. As stated, that is an extremely unusual procedural history. But the history was made even more complex when Mrs Simmons gave evidence. She understood that she had a duty to to the court. She explained that she had considered the original report as a draft one only. She put that forward as an explanation as to why there were significant factors within that report which the claimant and she herself no longer stood by. She said that she believed that she had sent her original report to solicitors indicating it was a draft only and usually put a watermark across the papers on a word document. She could not explain how it was that the report which is contained within the papers and with an appropriate expert declaration as to its truth should have been disclosed, with no such watermark. Although there is mention within it on one or two paragraphs that it was draft it does not have a watermark nor is it headed as a draft report. I find this aspect of

Mrs Simmons evidence to be very problematic. I indicated to counsel at the time that if it was being asserted that previous solicitors may, without the consent of the expert, disclose a report only intended to be in draft form by removing a watermark, that was a very serious matter, and I would need some evidence in support of such an assertion. It was a matter for them and the Claimant if they wanted to waive privilege. The claimant's legal team did not take up that offer. I am therefore left in the unsatisfactory position as to the creation of Mrs Simmons first report. I am unwilling to accept, in the absence of any persuasive evidence, that a solicitor who is a servant of the court has deliberately amended a draft report and disclosed it contrary to the wishes of the expert and also it seems potentially contrary to the claimant (who herself indicated that she was not happy with it). This is a further problematic aspect of the case which I need to consider when I am assessing the evidence overall.

110. In her original report Mrs Simmons had set out that the claimant requires considerable care and domestic assistance. She had pursued a claim for additional holiday costs, occupational therapy and other therapies, housing, heating and energy and other costs. Many of those are now abandoned. Mrs Simmons was carefully questioned as to what she had been told by the claimant and whether she had made a clear record. For example, in her original report she had said that the claimant was unable to drive and yet the surveillance evidence and other evidence indicated that the claimant could drive. Mrs Simmons explained that usually she went to someone's house and she saw a car on the drive which would lead to questions but given that she examined the claimant by telephone she didn't have an opportunity to do this. I am not entirely convinced by this. She was asked about her claim for holidays. She understood that she was told that the claimant had been on holiday a number of times; that she felt shattered when she got there. The recommendation for a scooter and/or wheelchair may not be relevant now she said but might be for the future; this is despite the fact that there was no medical evidence in support. Her recommendation for an adjustable bed has been abandoned. This is because it had only been in the draft report and she hadn't intended or believed that it would be disclosed. Her recommendation for orthosis required in the future is based on her own assessment rather than any medical evidence in support. She confirmed that had she an opportunity to update her report and also had she not felt rushed in the joint report then matters would be different. In re-examination reflecting on where the balance of her evidence now was Mrs Simmons said that her current recommendations were on the basis of the Claimant having good days and bad days and on the basis of the evidence overall. Recommendations for example, for mobility scooter were in relation to bad days.

111. Turning then to the evidence of Ms Scandrett on behalf of the defendant, I note that not even spoken to the claimant at all. Her report was a desktop one. This desktop report, which was confirmed as true, had within it many references to areas which in my judgment would go beyond the evidence and expertise of a care expert. There were significant entries by Ms Scandrett as to the ability of the claimant for example to carry out her beauty business and how that was reflected by her level of

functioning overall. I found such evidence to be wholly unsatisfactory and unhelpful. It went well beyond the evidence that would be appropriate from a care expert. I say this taking into consideration Mrs Scandrett is an experienced care expert but note her qualifications are in the field of social work and not nursing. Therefore, I find it very difficult to understand why she felt that it was either appropriate or within her expertise to comment upon issues of how long and how difficult beauty treatments would be.

112. In cross-examination the very detailed analysis of the surveillance evidence was discussed. Mrs Scandrett had clearly formed the view that the surveillance evidence was important. She accepted however that she was not a psychiatrist and therefore she would not be able to interpret mood or happiness from the evidence. She had no medical expertise in the field of pain medicine and had no qualifications in relation to assessing the claimant's mobility. She accepted she hadn't seen the claimant's comments on the surveillance evidence. She didn't think however that the absence of this devalued her opinion. She was confident that she looked at things in a balanced way. She recognised however that she had not commented in her report on the part of the surveillance where the Claimant stumbled : " the claimant wasn't using the stick, is using a phone, had a large bag on the shoulder and she carried on with her day for over an hour". She didn't want to change a report in the light of the evidence that she had heard. It was likely that she had not seen some of the defendant's evidence in relation to the surveillance at the time of the joint report because of the tight timetable. However, having seen them she didn't wish to change her opinion. She explained that her approach to analysing the surveillance footage was to go through the activity or non-activity and make notes; the comments she put were in relation to the actions claimed to have been taken. She said she would have flagged things up as a material difference because she felt that was incumbent upon her, however Mrs Scandrett accepted that she was wrong when she said the claimant was driving on a busy motorway (rather grudgingly she said she would need to see it again). Further she recalled seeing the claimant stumbling but she said it wasn't an omission, she didn't consider it relevant enough to put in. She considered it to be a small instance of pain and passed in seconds. It didn't affect her opinion. Thus, she didn't accept the assertion that if the claimant could stumble like that outside she might need support at home for example having a handrail over the bath. When she was walking down the stairs she could have a second hand rail to mitigate against the risk. She accepted those costs. She had recorded in relation to the Mr Shah visit that the claimant does not limp because she thought there was not a limp. She said it was up to the court. Mrs Scandrett had asserted that the claimant was out all afternoon when she went to Sainsburys. In fact, she was out for 45 minutes. She did not accept that everything that she had got wrong was favourable to the defendants. She did not accept that she been unbalanced or selective. She did not accept that she had underestimated the claimant's disabilities. As stated above she felt able to comment about her expertise to beauty treatments whilst ultimately she accepted she didn't have any qualifications in that field. Despite all of this she did not feel that her evidence had

been undermined. She had, in her report, assumed that because the claimant was advertising being available to work over a number of days over long hours that she was in fact working all of that. She had not considered that when the claimant had been working with Yellow Pages that she had travelled long distances and did not really take that into consideration when saying that the claimant was subsequently working in a physically demanding role as a beauty therapist. There were very many assumptions in Mrs Scandrett's evidence as I set out above, which are fundamentally flawed. The bedrock of her evidence is based on very unsteady foundations. I have considerable difficulty in accepting that her approach was one of neutrality. It does seem to me that she had formed a view as to the veracity of the claimant's presentation and a report was framed against that background.

My assessment of the evidence overall

113. The evidence in this case both from a lay and expert position is problematic. I have to take a step back and look at it in the round. It is important to be forensic in an analysis of what is being said by whom and when. I have therefore approached all of the evidence with considerable care. I remind myself that the Claimant has the burden of proving her claim on the balance of probabilities. In establishing that the Claimant has been fundamentally dishonest, the Defendant has the same burden, again on balance.

114. Was the Claimant dishonest? In considering this matter I set out the test of dishonesty set out in the various authorities above. This issue needs addressing in respect of (i) the beauty treatment (ii) the Claimant's reporting to the experts (iii) the significance of the social media evidence (iv) the significance of the video surveillance evidence

115. (i) The beauty treatments .There can be no doubt that the Claimant told no professionals involved in her case (medics, care experts, legal professionals) that she was operating as a beautician to any level, until the social media evidence (and to a lesser extent the video evidence) was disclosed. She has presented a claim on the basis that she had given up a job that she loved, had been unable to maintain a replacement job and had not earned anything from the autumn of 2014. In fact, from 2014 she was attending courses, advertising online, getting insurance, and providing mobile and home-based beauty treatments. The Claimant's case is that much of the presentation of her beauty treatments online were in effect marketing puffs, largely aimed to encourage business. It is said by the Claimant that this was all to create the impression that she was more successful than she was. She purchased 1000 " likes"; she got her friends to write false reviews; she copied posts in what has been called "MLM speak" (multilevel marketing, in reality pyramid selling) which was wholly ineffective. This is demonstrated by the Claimant advertising schemes such as JuicePlus and Acti Diet on her fakebook page. It was not, it is said, a true picture. The Claimant states that her Facebook posts in respect of her beauty treatments did not reflect a busy and successful business but were to "make me seem busier". I recognise and accept that in the society in which we live, not everything that is presented on social media is accurate or true . It can be a representation of what one may wish one's life really to be like.

116. I have attempted to reality test the Claimant's social media posts about her beauty business with other evidence in the case. Prior to the Claimant's surgery she was successful and happy in her marketing career. She was earning over £40,000 per annum and was the main breadwinner in her family, gaining I find significant esteem from that role. What evidence is there that she earned any significant sums in the years post-surgery? I recognise that this evidence is somewhat difficult because it relies in part on the Claimant's disclosure (which has been a matter of dispute; the defendant continuing to contend that it is not full, and has been piecemeal) and also whether I accept her own evidence. In terms of hard evidence, there are disclosed bank statements. It was put to the Claimant that they contain evidence of a total of c £8880 by way of receipts in the period 2014-2000. There has been no breakdown as to this. The Claimant says that some of those receipts were for items that she made no profit on (the selling on of false eyelashes for example). Further, that figure does not reflect the sums she spent on buying equipment and attending courses. As against that, the Claimant herself accepted that she would sometimes be paid in cash for treatments. There is therefore no audit trail of such payments. I know that the Claimant had insurance, and that she had a card reader for payments. She had a designated treatment room (converted from her garage). This is evidence suggestive of things being run on a proper business-like footing.

117. In his closing submissions Claimant's counsel did a careful analysis of what the evidence shows was actually received by the Claimant for such treatments . The Claimant's case (if accepted) was that she carried out 14-15 appointments per month. The impression I gained from the evidence of her mother and partner is that it would be slightly more than that (say 2 or 3 a day, spread out over the day, assuming a 5-day week, or approximately 40-50 per month) The mobile treatments stopped after a few years (which is not inconsistent with the online comments about mobile treatments). If one were to assume that the treatments continued over an almost 6-year period, the £8889 identified as earnings by the Defendant would equate to about £1500 per year. In addition, there would be cash payments. However, there is very limited information upon which I could safely conclude that the Claimant was earning significant sums from a beauty business. If I were to reverse the approach and use an average of £10 per treatment (as a low average of the treatments offered): the calculation assuming say 45 treatments pcm x 6 years would be total receipts of £32,400 (£5,400 pa gross). Taking the evidence as a whole, it is safe to conclude that the Claimant probably earned somewhere between those two extremes: between a gross of £5,400 and £1500 per annum for up to 6 years. On balance, a figure somewhere in the middle is probably about right (say £3500 gross of outgoings per annum). That information was not disclosed to anyone, including I believe the Department of Works and Pension.

118. Was the Claimant dishonest in not declaring it? Of course, it is not simply the fact that she may have earned this money but also the fact that she was capable of carrying out this work which is relevant. In terms of the medical evidence, as stated, the Claimant did not tell any of the experts that she was carrying out such work. Had she done so, it is likely that many would have said that such work was to be

encouraged. Dr Johnson concluded that this work (a couple of 30 minutes appointments per day) wouldn't surprise him and would be consistent with the Claimant's level of functioning. Dr Thomas agrees. Mrs Scandrett appeared to accept that such work was to be encouraged. Further, as I will deal with below, much depends on how the question was asked of the Claimant. She certainly did not volunteer the information, but it is clear that she was not always asked if she was working now, or in any capacity. Some of the experts' reporting as to the Claimant's work history is impressionistic and , on occasions, inaccurate.

119. The Claimant contended that she did not tell anyone, because she did not want to be disbelieved (somewhat ironically it might be said, upon reflection). She had little trust in the medical profession (albeit I note that, save for Dr Scott, she did not assert that any of the examinations were in any way unfair). Her work was therapeutic, to make her feel useful and was generating only a modest profit. In my judgment, this is probably a true reflection. It is easy to assess evidence retrospectively through the eyes of contested litigation. However, people do not live their lives in the belief that that they may have to justify their decisions many years later in a court room. Having weighed up all of the evidence, I reach the conclusion that the Claimant did not disclose the beauty treatment, not in an effort to mislead or obtain compensation that she was not entitled to, nor because she was being dishonest. She did not consider that she needed to disclose it because it was not work, as she knew it. She had always worked full time, latterly in a well-paid role. There was no comparison between her previous employment and the beauty treatments she provided. This accords with her partner's evidence "without being disrespectful" that it was not work as they considered it. It may have been a paid hobby or therapeutic. I accept that the Facebook presentation of "Beauty by Karen" as a thriving, demanding, busy beauty business did not reflect the reality. Save for the Claimant's own presentation of it on Facebook and the limited income supply set out above, there is no other evidence that would persuade me that this was a successful business venture. The blandishments and puffs of the social media presentation were, in my judgment, just that, and did not reflect any flourishing business venture. In those circumstances, applying the test in *Ivey* I do not find that the Claimant was dishonest in not disclosing it: she did not believe she should.

120. In saying that I reflect that in the schedules of loss presented the Claimant has never contended that she is incapable of future work . At p 1076, the schedule presented in December 2020 states that the Claimant accepted that in due course there may be some roles available to her, involving home working on a part time basis . A remaining earning capacity of £6000 was conceded. A similar approach has been taken in other schedules. As such, in so far as it is asserted that the Claimant has deliberately or dishonestly attempted to mislead in respect of her actual earnings or earnings ability, that position is not made out by the way the claim is actually presented. It is important in my judgment to drill down to these issues to highlight what the Claimant was actually claiming in this claim.

121. <u>The Claimant's reporting to the experts</u>. This involves careful consideration of the experts' evidence, as I have set out above. I have some very real concerns as

to much of the expert evidence in this case and the willingness and ease with which some experts were drawing adverse conclusions as to the Claimant's presentation. Forensic accuracy is vital in such an analysis. On behalf of the Defendant, counsel made many superficially persuasive and wide-ranging assertions as to what the Clamant had, or hadn't said to the experts, inviting the court to conclude that as a result the Claimant was dishonest in her presentation of her injuries and disabilities. It was said that all experts got the impression that the Claimant was seriously immobile, not working and dependent on others for her needs; and that this was all clearly untrue. These are wide-ranging and sweeping assertions and require some unpicking. Further, the Claimant is blamed for not telling any of the experts that she has good days and bad days and presenting at her worst, as if that were the norm. Again, that assertion requires some unpicking.

122. As set out above, the majority of the experts accept that they never asked the Claimant about whether she had good days or bad days

123. Both of the pain experts and Professor Chadwick accepted that it was normal for a Claimant, particularly a vulnerable one to present in medical examination at their worse (it was not suggested that this was in any way dishonest). I accept that the pain management experts are in the best position to give such evidence; their direct experience is in treating patients with chronic pain. Pain and its presentation is of course entirely subjective. Their evidence as to this (the presentation of symptoms at their worse) is persuasive and compelling. I accept their evidence. As such, in assessing what the Claimant actually presented to the experts, I accept that on balance she was often presenting at her worse; that was not motivated by any dishonesty or attempt to deceive.

Further, upon careful analysis, it seemed that the record keeping, and impressions gained by many of the experts, particularly those of the defendant's experts, was unimpressive. The Claimant is a lay person, and the obligation has to be on the experts to extract and accurately record the relevant history. I accept that a number of the experts will have focussed on the issues that were relevant to their own area of expertise; that is appropriate. The answer to a question will, of course, depend on the question asked.

124. I conclude that on occasions experts have simply made errors in what they reported. An example of that is whether the Claimant was driving. The Claimant contends that she never told an expert that she could not or did not drive. It is recorded that she told Mr Farkas that she did not drive, told Mrs Simmons that she did not drive at the moment, but at the same time told other experts that she did drive, and was limited in her driving because of pain. Many of those histories were recorded at similar times. If these were lies by the Clamant they were wholly inconsistent with each other. I find, on balance, that these were not lies but probably reflected an erroneous recording by the author. My concerns as to Mrs Simmons report are set out above: there has to be considerable doubt as to the contents of her "draft " report, whether it was accurate or not and whether the Claimant ever agreed with its contents.

125. The failure by all the experts to clarify whether the Claimant was reporting good days or bad days is a hallmark of the expert evidence in this case. I appreciate that many of the experts said they asked open questions; however, it was noteworthy that all accepted that they had not "drilled down" with any specificity to whether the Claimant was describing her symptoms at their best, worst, or average. The Claimant has, as the pain experts accept, got chronic pain which is variable (albeit not to the extremes that it may have been, as she may now be better able to manage it). That makes a significant difference to the Claimant's presentation.

126. I understand that a casual review of the evidence may lead one to conclude that the Claimant presented, on video for example, in a far less disabled way than she had presented to the doctors. I have considered this with very great care. However, when there is a forensic examination of this, I accept (i) the Claimant's condition is variable (ii) she may present at her worse to doctors for medical examination (iii) her presentation may be affected by travelling to appointments (iv) the doctors did not ask the Claimant whether she had good or bad days, or what her different presentation was on different days (v) not all experts have recorded the history with real accuracy.

127. As to the approach of the medical experts, whilst I have set out above, my overall views as to their approach, I consider it necessary to state the following

- Dr Johnson and Dr Thomas (pain experts) provided evidence in a clear , persuasive, and balanced manner, addressing issues that were well within their areas of expertise.
- A number of the other experts appear to be straying way beyond their area of expertise. This is particularly so with Mr Shah and Mrs Scandrett. Mr Shah's analysis of the social media evidence was unsatisfactory, yet he was willing to draw adverse conclusions . His discussion of the Claimant's employment was cursory and inaccurate. His evidence on these issues was, as he conceded "not very impressive"
- Professor Chadwick was more willing to make concessions, but he had been willing to draw conclusions from the surveillance evidence, stating "she may be unreliable". However, when the evidence was more carefully considered by him in cross examination he accepted that the Claimant was seen to be limping at times, and that a fair and balanced report should have included that. He accepted that he had not included "good day/bad bay" analysis which would have been more helpful and accepted that because the Claimant could do more on good days, that does not mean the Clamant was being unreliable. This evidence is, in my judgment, an important illustration of the need for precision and analysis in reporting. Professor Chadwick's oral evidence moved some considerable distance from that in his report.
- Mr Jackson's evidence as to the surveillance evidence was, in my judgment, wholly unsatisfactory. He had chosen to enter into the arena by commenting on it (he could have legitimately said that it was outside his area of expertise). However, I gained the clear impression that he had cherry-picked those parts of the evidence which were supportive of the Defendant's case

and did not comment on those parts which were consistent to the Claimant's. That is not the correct approach to be taken by an independent expert, whose duty is to the court. His evidence lacked balance and was unpersuasive.

- By contrast Mr Moore and Mr Farkas did not choose to go beyond their expert fields and comment on such issues.
- In terms of the psychiatric evidence, the difference of approach was stark. Prof Elliot remained consistent in his approach that issues of veracity, whilst very important to diagnosis and prognosis, were matters for the court. He remained substantially unchallenged in cross examination.
- By contrast, Dr Scott seized the proverbial bull by the horns with her assertion that malingering should be considered. Her evidence, as stated, was in my judgment, unbalanced, on occasions inaccurate, and potentially very misleading. I have dealt with this above. Her analysis of the Claimant's reporting of functioning in her reports was flawed. She conceded that her summary in the supplemental report was erroneous (that the claimant was "unable to go out" and introducing the word "independently" into her functioning) It is no explanation to state, as Dr Scott did, that she was not a care expert. Having entered into the arena, the clear duty on any expert is to provide a balanced view. In my judgment Dr Scott strayed far beyond that. I also found Dr Scott's analysis of her diagnosis to be unpersuasive. Her record of the work history was unimpressive (she recorded the wrong dates and recorded nothing about the Topline work). The manner in which she gave evidence as to the video evidence (arguing her position that this was a trip, not a stumble) created the clear impression that she was blinkered in her approach to this evidence. Unfortunately, Dr Scott's evidence in this case was wholly unimpressive.
- The stream does not flow all one way. I find both care experts' evidence to be unhelpful, for the reasons I set out above. I do not know and cannot make findings as to what happened with Mrs Simmons "draft" report"; the evidence is wholly unsatisfactory. However, what I can find is that she was willing to sign a report (draft or not) with an experts' declaration when she had not checked that her recommendations were valid or supported by other evidence. This is unsatisfactory. It is not answer to say, as Mrs Simmons did, that she expected things to fall away when they were discussed with the Claimant. It is not the job of a care expert to put forward a case that the Claimant has the reasonable need for something without any evidential base. For example, her evidence as to lump sum allowances for sundry items (£1040 pa) and Disability related equipment (£2000 pa) was unimpressive, based not on the facts of this case, but on other "similar" ones. Such an approach does not assist the court and certainly does not assist a claimant, creating an impression that the claimant is pursuing a claim for matters which are not justifiable. I accept that the circumstances surrounding the preparation of the joint report would have impacted upon its presentation

(though I do not know why Mrs Simmons was instructed so late in the day). In so far as it is suggested that the addendum report should provide some amendment to the care and equipment position, I consider that the Claimant is bound by the concession of her expert in the joint statement (this being the premise upon which I granted permission for the addendum to be admitted)

- Mrs Scandrett's evidence has been analysed above. She had not even had the opportunity of discussing the case with the Claimant, having only prepared a desktop report. That did not curtail her willingness to enter into the fray. She went far beyond her remit as a care expert in her comments on the Claimant's beauty treatments. She had not, as she asserted, "taken every scrutiny" in her preparation of the report. She had mistakenly asserted that the Claimant was seen driving on the motorway. She made no reference to the Costa stumble. She made no reference of the Claimant limping. She did not refer to the limp and stick when attending Mr Shah's appointment. She mistakenly asserted that the Claimant had been out all afternoon when it was for only 45 minutes. These errors or omissions, which Mrs Scandrett appeared unwilling to concede, lead me to conclude that her approach had not been one of scrutiny and care. In my judgment Mrs Scandrett's evidence was significantly flawed. That reflects not only upon her analysis of the Claimant's presentation but her approach to assessment of care needs. Effectively Mrs Scandrett appears to conclude that, because she could not trust the Claimant's presentation, she had no care needs. She did not accept, in the light of the good day/bad day evidence of the medical experts, that the Claimant would still have care needs, effectively saying she could do everything on her good days. I found that approach to be unattractive and unrealistic.

128. Looking at the expert evidence as a whole, I find that the Claimant probably presented her position to the experts at its worse. However, this reflected her good day/bad days variable pain condition. It reflected what is the common experience of the pain experts and Prof Chadwick for patients to do this, not in any dishonest way. I do not accept that the Claimant told Dr Scott or any other expert that she was unable to go out at all, that she could not function independently, that she could not drive, that she could only walk 20-30 yards. I find that on balance she said that she had difficulty or struggled with all of those things, not every day but frequently. I find that she presented what she genuinely believed to be the position. The fact that she did not volunteer (in the absence of being asked) the position that on good days she is able to do more, is unfortunate but does not lead me to conclude that she was being dishonest nor that she was intending to misrepresent the truth.

129. <u>The social media evidence:</u> I have set out in some detail above my view and analysis of the "Beauty by Karen" Facebook entries. However, that is only part of the social media evidence. At the same time that the claimant was posting rosy posts there about her beauty treatments, she was posting on her own Facebook page. She was commenting on going out, cooking, blitzing the house, visiting her father in Manchester, starting a walking group and the like. The Claimant has been extensively

cross examined as to these entries. However, again at a similar time, the Claimant was posting on the "mesh" Facebook or twitter accounts. She was there painting an entirely different picture as to her disabilities and restrictions. It is important, in my judgment , to look at this evidence in its entirety and not to cherry pick. I note that some of the social media entries paint a picture of a Claimant who has missed out on many important things in life. I note the following (taken from the Claimant's closing submissions):

- "Evidenced examples included Boxing Day 2017 [3718], going out with Nick and friends on 18/11/18 [3732], shopping causing "cheese-wire pelvic pain" [3733], doing a jigsaw [3745], travelling to and from Cardiff on 5/7/18 [3750] and shopping/cooking sending her to bed early [3878].
- CL confirmed saving up energy to do things, or conserving energy afterwards to recover [3809].
- CL confirmed there were times when she just had to get on and do something, so as not to let other people down, despite knowing that there would be adverse consequences (e.g. prom dress shopping with her daughter on 5/5/18 [3760].
- CL confirmed that others have had to do more because of her pain-induced restrictions. This included Max (see 3791 19/3/20 reference to Max making his own breakfast and lunch, putting out the bins and carrying washing upstairs), CL's mum (3820) and her partner Nick. "

I have cross referenced all of those entries and note that they paint a picture which is very different from the "Beauty by Karen" entries or even the more positive entries on the Claimant's own Facebook page (trips to Techniquest, Ipswich, holidays, spaghetti Bolognese etc) .

130. This evidence has to be looked at in the round. Unless it is suggested that all of the positive entries are true and all of the negative entries are false (which I would not accept), in my judgment they paint a picture of a Claimant having good and bad days, trying to paint a positive image on social media, but admitting, particularly in the supportive environment of the "mesh" pages, that her life was a struggle. I accept, and find, that the entries on social media, taken as a whole, do nothing more than paint a picture of the Claimant's life, in its good and bad times. It is accepted by both sides that the Claimant has genuine pain and fibromyalgia: that is demonstrated when she posted on social media about that pain and her concern about not being believed: [3697] (26/2/18 "mesh pain is real") and [3720] (15/12/17 "so refreshing to speak to professionals who don't dismiss the pain I'm in".

131. I am satisfied, having considered the social media evidence in the round, that it does not provide support for the Defendant's assertion that this is a dishonest claim.

132. <u>The surveillance evidence</u>: I have commented on this at length above. One often sees, in video surveillance, "killer" points in respect of a Claimant's case. This was not such a case. I have concerns as expressed above as to how that evidence has been interpreted by the various experts. Ultimately, its interpretation is a matter for me.

133. I accept, having carefully reviewed this evidence, that it paints a mixed picture. On the "Costa" day, the Claimant is walking without a stick: however, she does have an awkward gait and does stumble. This is consistent with the sudden pain and giving way as described above. The Claimant says that this happens regularly, and I have no evidence to suggest that this is not true. She then goes around some local shops. This was not an extensive shopping trip, but it does demonstrate that the Claimant, on better days, is able to function with limitations, in a relatively normal manner. She needed to go the M&S to self-catheterise however after a short morning out.

134. The walking to Mr Shah's appointment , with a stick, at some brisk pace but limping, again demonstrates that after long journeys, the Claimant can walk but appears to have some difficulty (she does not however appear grossly disabled)

135. The following day, when she went to Sainsburys, she was out of the house for 45 minutes carrying out some basic shopping as a necessity. I accept that on occasion she appears to function better than one might have thought possible from her overall presentation: she is lifting the heavy bag of cat litter; she is putting the seemingly heavy bag of shopping into the car. However, the Claimant's evidence was that she had rested after her London trip and went shopping because she felt she had to. In my judgment, this is not inconsistent with the Claimant's overall presentation of trying to cope and get on with things, but making adaptations to her life, and doing things with difficulty.

136. I do not find that the surveillance evidence overall led me to any conclusion that the Claimant is misrepresenting her true position or trying to mislead the court.

<u>Conclusions on evidence</u>

137. I recognise that , unfortunately, not every Claimant comes to court to tell the truth. It is a blight on our legal system when individuals pursue dishonest or exaggerated claims. I would have no hesitation in dismissing such a dishonest claim and have previously done so.

138. The Claimant has the burden of establishing on the balance of probabilities, that as a result of the Defendant's breach, she has suffered injuries and loss. It is apparent, on the face of the agreement by the experts which I set out in the early part of this judgment, that she has discharged that burden, at least to the extent of the agreed evidence.

139. The Defendant's position is that she should lose her damages as a consequence of being fundamentally dishonest; that contrary to her accounts within her witness evidence, and within the accounts she has given to the experts, it is clear from not only the social media evidence that has now been disclosed, but also the surveillance evidence that has been adduced, that the Claimant is not precluded from working at all, that she is fully independent, is able to travel widely, and does so both nationally and internationally both for pleasure and for work.

140. I do not accept that the Defendant's position is supported by the evidence. I find that in fact, the Claimant has not misrepresented the true position. She has a fluctuating pain condition and has presented it to various experts at its worse. That

was not a dishonest presentation. She did not assert that she could not work at all, rather that she was not in employment. This is a real and significant difference. She did not honestly and genuinely believe that her provision of beauty treatments was work, or employment, or something which needed to be disclosed. She may have been naïve and foolish in that regard, but she was not dishonest. There is no evidence that she did any more than answer the questions that the experts put to her in that regard.

141. I find that the Claimant was not, as the Defendant asserts, running a full-time business. If she had been that would have been fundamental to the issues in this case. She was carrying out beauty treatments, she was paid for them, but this was in modest sums and for which, her evidence is, she made modest profit. It was for a prolonged period, I accept. It is evidence in support, as both pain experts concede, that the Claimant has the ability to work in the future. It is not evidence that she is working unimpeded.

142. I have considered with great care the assertion that the Claimant has dishonestly exaggerated her disability. I do not accept that this true. Looking at the evidence overall, there is a clear presentation of a fluctuating condition, but of ongoing chronic pain. Issues as to limps, walking sticks and the like add to the picture but assertions that the Claimant has said she is more disabled than in fact she is, do not hold up when they are forensically analysed as I have above.

143. Having taken great care to step back and look at the overall picture, I find that the Claimant has not been dishonest in her presentation of her claim, either overall or in its constituent parts. I accept that certain aspects of the claim will not be established (see below): that does not mean that the Claimant had been dishonest either as to the nature of the claim or in respect of individual fundamental elements.

Valuation of the Claimant's case

144. The Claimant relies upon written and oral submissions in this regard. Rather unusually, the Defendant in this matter did not really address the specific heads of loss (relying on their position that the claim should fail in its entirety). I therefore invited Counsel to do so in the course of closing submissions. Further, there was not significant challenge to the experts as to the content of their reports dealing with quantum issues.

145. In respect of the severity of the Claimant's condition I accept that the Claimant has a chronic pain condition. She now suffers from fibromyalgia as a result. She is left with a permanent need to self-catheterise. She is unlikely to have any surgery to improve that. She has pain in her vagina and is unable to have a sexual relationship with her partner as a result. She requires some support from family in terms of daily activities (albeit on better days she can do more). Her mobility is affected by an intermittent limp and the need (not always) to use a stick. She can only walk distances with difficulty. On occasions her leg goes, and she stumbles. That means that she is not confident in using stairs or shower unless she has someone

around to support her. She has a history of depression. That has been aggravated by this pain and history. I prefer the evidence of Professor Elliott in that regard.

146. There remains a dispute between two wholly unsatisfactory care experts' evidence as to whether the Claimant has on ongoing need for care and support. I accept that she does, so that she does not use all her energy on her better days doing things; to do so would have a knock-on effect on her finite resources. Nevertheless, I look carefully at the assessment of care and support. Whilst I accept that it not for a court to rewrite experts' evidence, the assessment of the care experts was so wholly unsatisfactory, that I look at all aspect of the care, aids, and support claim with considerable care.

147. In terms of employment, I find that the Claimant is currently fit for some part time employment. The removal of litigation and the psychological therapies will, on balance, produce a measure of improvement in her condition. She is likely to be able to manage the demands of work with her pain condition. She is likely, as Mr Johnson says, to be able to return to full time employment in the future. It is unlikely to be at the same level or with the same demands as her role with Yellow Pages (which required extensive travelling): it is anticipated however that she should be able to return to a role which she will find fulfilling.

148. I accept, on the balance of the evidence, that nevertheless the Claimant, as a result of her physical and pain conditions, will be considered at a disability on the open labour market. I refer now to the attached table in respect of calculation of heads of loss.

149. Pain, suffering and loss of amenity. I have carefully considered the Judicial College Guidelines. The Claimant as stated has fluctuating chronic pain and fibromyalgia. There is an element of overlap with her psychological symptoms. I have also considered the effect on the Claimant's sexual functioning and the need to self-catheterise (recognising that she had continence problems previously, hence the surgery). Taking all of those matters into consideration an appropriate award for pain, suffering and loss of amenity is **£60,000**

150. Loss of congenial employment. There is no doubt that the Claimant enjoyed her previous job and the esteem that came with it. She has lost that job, and that role. She may be able to regain the role of breadwinner again, but not that particular marketing role. I have considered the commentary in McGregor on Damages which states : "More recently, awards have been more liberally made, and in less constrained amounts in relation to a whole variety of employments. In *Dudney v Guaranteed Asphalt Ltd*,1294 a roofer was awarded £5,000, in an amount said to be at the bottom of the range in *Evans v Virgin Atlantic Airways*, a beauty therapist was held to merit what was said to be a relatively high award, coming out at £10,000; in *Davison v Leach*, *Dudney* and *Evans* were followed so as to award £6,500 to an equity sales trader working in the financial sector; and in *Inglis v Ministry of Defence*, the court awarded £8,000 for the loss of enjoyment of seven years of military service, referring to similar cases with different lengths of employment lost where the awards for this head of damages were, adjusted for inflation, of £14,800 and £11,000".

151. In the circumstances of this case, I award a sum of **£7500** under this head of loss.

152. Past loss of earnings. I accept that, but for the breach, the Claimant would have continued working, receiving bonuses and an overall package of c £40,000 gross per annum She gives credit for her residual earnings with Yell and Topline of £9122,33. In my judgment, she needs to give credit for what she also received from her beauty treatments. I accept that these figures are a little broad-brush , but on the analysis above, the Claimant should give credit for c.£3000 per annum (after deducting some overheads) for 6 years (2014-2020) i.e., a total of £18,000. On that basis I award the Claimant loss of earnings to date in the sum of **£234,061.**

153. Past care and assistance. The Claimant relies on the evidence of Mrs Simmons, the Defendant on Mrs Scandrett. I accept that the Claimant has required and has received care and support from her partner, her mother and other family members over the years, over and above that which would have been provided in a usual family. On her bad days the Claimant would have required such support. On her better days, the support would have been less. In terms of valuing this, I refer to the joint experts' report as the best starting point (albeit that has significant shortcomings as set out above) . The experts disagree as to the appropriate hourly rates. Mrs Simmons has taken an aggregate commercial rate throughout and Mrs Scandrett has relied upon a Home help/Carer rate. I have not heard any evidence on the appropriate rate. I have not heard direct evidence as to the number of hours that such help was provided (although I note what was in the Claimant's witness evidence). I therefore have to take a relatively broad-brush approach. I accept, on the whole, the hours set out by Mrs Simmons in the joint report albeit I recognise that there is an element of imprecision as to this. The hourly rate is an aggregate one reflecting care at night-time and weekends. I consider it to be appropriate to adopt Mrs Simmons approach overall but to apply a 25% discount to reflect a non-aggregate rate and some rounding down of hours.

154. There is a claim for past treatment and therapy. There is limited evidence one way or the other on this. I accept that the claimant would have purchased some over the counter medication. I allow a round figure of £500

155. Travel: The claimant has had to travel for some assessments and investigations. This has included trips to her gp, to Manchester and to Glan Clwyd. The claim of £1292 appears to be somewhat overstated and I allow a figure of £800 (roughly £100 per annum)

156. Future loss of earnings. On the basis of the evidence above I accept that the claimant would have worked until normal retirement age. It is contended that she would have achieved promotion and, as such, would have earned £45,000 per annum gross or £33860.60 net. This figure has not been directly challenged by the Defendant in evidence: it reflects only a modest increase on the Claimants pre accident earnings Doing the best that I can, it is reasonable to assume, allowing inflationary and promotional prospects of earnings from 2014 to date, that the Claimant would be earning net £33,000 in the absence of her injuries.

157. The Claimant has a residual earning capacity. Mr Johnson believes, and I accept on the balance of the evidence that she will be able to work full time in the future in an office-based environment. I accept that it may take the Claimant some time to get herself back on the career ladder. I also accept that she will be disabled, due the combination of her ongoing symptoms. I have not been provided with any direct assistance as to comparator earnings from either counsel. I have therefore consulted (as I indicated in submissions that I would) the ASHE table 15 figures for average earnings. https://www.ons.gov.uk/employmentandlabourmarket/peopleinwork/earningsandworkinghours/datasets/regionbyoccupation4digitsoc2010ashetable15. The median gross earnings for a female in full time occupation in an administrative occupation is £483.90 : this equates to a residual earning capacity of £25162 gross per annum or £20,975 net.

158. I have approached the calculation on the basis of an Ogden 8 approach and refer to the 8th edition https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/989906/Ogden_Tables_8th_Edition_Updated_Final_25.5.21.pdf That has the advantage of relying on properly researched, actuarially calculated multipliers. I see no reason to differ from that approach.

159. I have used the current discount rate of -0.25%.

160. Whilst I recognise that it may take some time for the Claimant to get herself back into the employment field, I take a career average from this date forward rather than reducing the residual multiplicand for one year: this is to reflect the uncertainties of the evidence in this case as to when the Claimant will get back to work and is an overall fair approach.

161. At the time of breach, the claimant was in employment and not disabled. Now she is not in employment and is to be considered disabled. I refer to the definition of disabled in the Ogden tables ("Disabled person": A person is classified as being disabled if all three of the following conditions in relation to ill-health or disability are met: (i) The person has an illness or a disability which has or is expected to last for over a year or is a progressive illness; and (ii) The DDA1995 definition is satisfied in that the impact of the disability has a substantial adverse effect on the person's ability to carry out normal day-to-day activities; and (iii) The effects of impairment limit either the kind or the amount of paid work he/she can do.)

162. The calculation I adopt is therefore as follows:

Loss of earnings calculation	
Uninjured net	£ 33,000.00
Retirement multiplier	21.21
Contingency factor	0.84
	£ 587,941.20

Residual earnings	£20,975.69
Retirement multiplier	21.21
Disabled contingency not employed	0.19
	£ 84,529.93
Loss of earnings	£ 503,411.27

163. Pension loss: as a result of her period out of employment and her reduced ongoing earnings the Claimant will suffer a loss of pension. The Claimant's calculation of this is just under £30,000. I recognise that this is a broad-brush approach but given my findings above as to residual earning capacity a lower figure is likely to be appropriate. I allow **£25,000.**

164. Care and assistance: I repeat my concern with the quality of evidence overall. Nevertheless, I accept, on balance, that if the Claimant is working in the future, her energy reserves are likely to be depleted. She needs support from family and friend and will continue to do so, particularly on the worse days. I reject Mrs Scandrett's analysis that the Claimant can do all her domestic duties on her good days. Mrs Simmons cost for gratuitous care of 4 per week and domestic commercial care of 6 hours per week: 10 hours in total. Up to the age of 60 this reduces to 8 hours (2 family, 6 commercial) and from 60-70 4 hours domestic. From 70 onwards there is a claim for 7 hours per week. I recognise that this evidence is far from perfect for the reasons given above. I conclude that Mrs Simmons overall approach is to be preferred to that of Mrs Scandrett: there will be an increased need for care on the basis of the expert and lay evidence overall. However, it appears to me that Mrs Simmons figures are generous and appear to be higher than would be required from the medical evidence as it now stands. I have followed the approached taken by Mrs Simmons but applied a discount factor of 1/3rd to reflect what may well be a more accurate position as to the level of Mrs Preater's ongoing need. I have many reservations about the care evidence generally and this appears to be the safest and fairest approach. I have therefore allowed a total claim for future care of **£146,748.00**

165. Aids and equipment: this claim has been significantly reduced to £7813. This is on the basis that the Claimant may need reclining armchair and perching stool . I am persuaded that some allowance should be made for future equipment: I allow a global sum of £5000

166. Therapy and treatment: I accept that the Claimant would benefit from some psychological therapy. I accept the evidence of Prof Elliot in that regard. That totals £8720. I do not accept that the Claimant, on balance will undergo urological treatment in the future. There is no evidence to support this . I therefore allow the psychiatric treatment only in the sum of £8720

167. Transport: the Claimant previously had a car provided as her employment package. She has since bought, insured, and run her own car. The claim presented however is on the basis on automatic car being leased. The evidence as to this is entirely unclear to me. It does not appear to come from the expert evidence. It is a

matter for the Claimant to prove her loss. It is suggested by counsel for the Claimant that the "court should take a step back": I am happy to do so but I cannot magic evidence from the air. In my judgment the Claimant has failed to prove this head of loss.

168. Miscellaneous: the Claimant claims £18204 for additional home running cost. Bedding, mattress protectors and the like I find this evidence all entirely unsatisfactory. It is unclear to me to what that relates in the light of the changes of Mrs Simmons' evidence. The claimant has not proved this head of loss.

169. In summary therefore, the awards that I make to the Claimant in this matter (subject to interest, interim payments, and any other deductions) are as set out in the table below.

Conclusion

170. I have considered with great care and scrutiny the arguments presented in this case. I understand why, superficially, the defendant took the view that this claim was a dishonest one. However, having considered all aspects of this claim I conclude that the Claimant has not been dishonest in her presentation of the claim. She may have been foolish in not volunteering information, but she has not sought to deceive. She has suffered significant and genuine injuries. The award of damages reflects this.

HHJ Howells

	Head of loss	Claimant's position	Defendant's positon	Award	
1	PSLA	£65,000	£20-50,000	£60,000	
	JC Guidelines 16th Edition				
	Section 9(b)(i) Chronic Pain - Other Pain Disorders - Severe. £42,130-62990				
	Severe: In these cases significant symptoms will be ongoing despite treatment and will be expected to persist, resulting in adverse impact on ability to work and the need for some care/assistance. Most cases of Fibromyalgia with serious persisting symptoms will fall within this range. . Note in the introduction "The presence of an overlapping psychiatric injury is commonplace in such cases."				
	4(A)(c) Psychiatric and Psychological Damage - Psychiatric Damage Generally – Moderate £5,860 - £19,070				
2	Loss of congenial employment	£10,000.00	£0.00	£7,500.00	
	Total general damages				£67,500.00
3	Loss of earnings	£252,061.00	£0.00	£234,061.00	
4	Past care	£30,813.00	£0.00	£23,109.75	
5	Treatment and therapy	£672.00	£0.00	£500.00	
6	Travel	£1,292.00	£0.00	£800.00	
	Total past loss				£258,470.75
	Future loss				
7	Loss of earnings	£ 571,937.00	0	£ 503,411.27	
8	Pension	£29,498	0	25000	
9	Care and assistance	220122	0	£ 146,748.00	
10	Aids and equipment	7801	0	5000	
11	Therapy and treatment	20090	0	8720	
12	transport	65829	0	0	
13	Miscellaneous	18204	0	0	
	Total future loss				£ 688,879.27
	Grand total (GD, past loss excl interest and future loss)				**£1,014,850.02**
	x 85%				**£862,622.51**

HHJ Howells