Neutral Citation Number: [2018] EWHC 961 (QB)

Case No: HQ16C03763

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 27/04/2018

Before :

THE HON. MR JUSTICE SPENCER

- -

Between :

Calderdale and Huddersfield NHS Foundation Trust	**Claimant**
- and -	
Sandip Singh Atwal	**Defendant**

- -
- -

James Todd (instructed by **Hempsons**) for the **Claimant.**
The defendant was not present and was not represented.

Hearing date: 12th April 2018

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HON. MR JUSTICE SPENCER

Mr Justice Spencer:

Introduction and overview

1. This is an application for the committal of the defendant, Mr Sandip Singh Atwal, for contempt of court. The application is brought by Calderdale and Huddersfield NHS Foundation Trust ("the Trust"), with permission granted by Jeremy Baker J on 12th October 2017. Permission was granted because it is in the public interest that allegations of contempt as serious as this should be heard and dealt with, if proved. The allegation is that the defendant pursued a fraudulent claim for damages for clinical negligence by grossly exaggerating the continuing effect of comparatively minor injuries, sustained as long ago as 2008, which were negligently treated at one of the Trust's hospitals. The injuries were fractures of two fingers and a laceration of the lower lip. Liability was always admitted. As soon as the claim was intimated in 2011, two years before proceedings were issued, the Trust made a Part 36 offer of £30,000. The claim as pleaded in the schedule of loss and damage in November 2014 was for a total of £837,109, including very substantial claims for future loss of earnings and future care, based on the proposition that the defendant was unable to work and was grossly incapacitated.

2. The solicitors acting for the Trust were suspicious. His claimed disabilities were inconsistent with entries in the contemporaneous medical records. In 2015 they commissioned covert video surveillance of the defendant and investigated his social media postings, which gave the lie to much of what he was asserting. The Trust's defence was amended to plead fraudulent exaggeration and to seek to strike out the whole of the special damages claim as an abuse of process.

3. On 16th March 2016, two months before the assessment of damages hearing was to take place, the defendant's solicitors notified the Trust that he would now accept the Part 36 offer of £30,000 made nearly five years earlier. This brought the claim to an end. There was a consent order by which the defendant was allowed his costs up to 5th January 2012 but had to pay the Trust's costs from that date onwards. The defendant's costs up to 5th January 2012 were agreed at £25,000. The Trust's costs from that date onwards were agreed at £60,000. Thus the whole of the defendant's £30,000 compensation was swallowed up in paying the Trust's costs. After eight years of litigation the defendant came out of it with nothing, and owing £5,000 to the Trust.

4. The application to bring these committal proceedings was issued in November 2016, some six months after the consent order settling the case. The defendant has conspicuously failed and refused to engage in the proceedings ever since his dishonesty was uncovered. The defendant did not appear at the hearing of the committal application on 12th April 2018. For reasons which I shall explain in more detail later in this judgment, I was satisfied that it was appropriate to proceed with the hearing in his absence. I heard submissions and, in view of the volume and complexity of the factual material, I reserved judgment.

Background to the original claim

5. The background to the original claim for damages, in brief summary, is as follows. The defendant is now 33 years old, born on 3rd March 1985. Ten years ago, on 20th June 2008, he was the victim of an assault with a baseball bat. He was then living with his parents in Huddersfield and worked in the family taxi business. He attended the accident and emergency department at Huddersfield Royal Infirmary. It is clear that he had been badly beaten, but for present purpose the only relevant injuries were a fracture to the right index finger, a fracture to the base of the ring finger of the left hand, and a laceration of the lower lip. He remained in

hospital for about 3 weeks. Both hands were in plaster. The laceration to his lip became infected.

6. The admitted negligence of the hospital was a failure to treat the fractures appropriately and a failure to suture his lip promptly. In November 2008 the defendant underwent an operation to the right finger but this did not correct the deformity in the joint. The defendant was left with a bent, stiff and weak right index finger. The deformity in the left hand was not so serious but resulted in some stiffness and loss of power. The lip took about four weeks longer to heal than it should have done. There were areas of sensory disturbance and loss of pigmentation slightly larger than would have been the case but for the negligent treatment.

7. The letter of claim from the defendant's solicitors was dated 16th August 2011. The Trust's solicitors immediately admitted negligence, but indicated that causation and quantum remained in issue. The Part 36 offer of £30,000 was not accepted.

8. The claim was eventually issued on 27th March 2013, nearly five years after the negligent treatment. There had been an agreement to extend the limitation period. The particulars of claim were dated 16th January 2014. The only medical report served at that stage was from an orthopaedic surgeon, Mr John Miller, dated 30th December 2011. The claim for damages was, at that stage, limited to £100,000.

9. In June 2014 the defendant's solicitors served a report from a consultant psychiatrist, Professor John Morgan, a report from a nursing care expert, Ms Shirley Kearns, and a report from Mr Seumas Halliday, an employment expert.

10. The defendant had told Professor Morgan, in October 2013, that he was particularly self-conscious in relation to his lip and that attempts to run a courier service had been unsuccessful because of his difficulty in lifting heavy objects.

11. The disability he described to Ms Kearns, in February 2013 and April 2014, included a difficulty in communicating and performing as a disc jockey (DJ) in front of a large audience, and difficulty in driving and cutting up his food. Her assessment, based on what he told her, was that he required continuing care and assistance on a daily basis with toileting, showering and dressing, general fetching and carrying, psychological and emotional support and preparation of meals and drinks. She assessed this at 3.75 hours of care and assistance per day.

12. The defendant had told Mr Halliday, in March 2014, that he had decided to resume courier work in November 2013, working for a company called Rico Logistics on a self-employed basis, but had only done "at most" five jobs since November 2013 and had not done any work "recently".

13. On 15th September 2014 the defendant's solicitors served a report from a maxillo-facial consultant, Mr Stuart Clark. The defendant had told Mr Clark, in October 2011, that he felt he had no confidence in his speech as a result of the injury to his lip. He used to perform in front of thousands of people as a professional DJ but because of loss of confidence he now had to delegate these tasks to an assistant.

14. On 21st November 2014 the defendant's witness statement was served, verified by a statement of truth signed by the defendant. Amongst the factual assertions in his statement were the following. He was unable to assist with household tasks and could not go shopping as

he used to, or pack or carry heavy shopping bags. Driving was very difficult now. As time had gone on it was clear that he could not continue with work as a courier. He had no confidence in going out and tended to stay indoors a lot. He had no income.

15. Also on 21st November 2014 the defendant's solicitors served a schedule of loss and damage, verified by a statement of truth signed by the defendant. Among the statements and representations in the schedule were the following. He struggled to lift or carry items. He was unable to work as a DJ. He remained largely unemployed from August 2008 to November 2014. He had been unable to return to work and was unable to assist at home. From December 2008 to November 2014 he required and received an average of 3.75 hours of care and assistance from his family every day. He continued to require that level of care. He spent £4.79 per week on heat packs.

16. In signing the statement of truth the defendant confirmed the following further assertions in the schedule of loss and damage. He had no employment prospects. He required ongoing physical and psychological support due to the nature of the disabilities arising from the injury in 2008. He would need to pay for agency care when his family became unable to care for him. He would require cognitive behavioural therapy for major depression resulting from the injury in 2008. He would require a driving assessment and adaptations to future vehicles.

17. The breakdown of the total of £837,109 claimed in the schedule of loss was as follows:
General damages: £35,938
Past losses and interest: £123,994
Future loss of earnings: £255,351
Future care and equipment etc: £421,826.

18. The solicitors for the Trust obtained their own expert evidence. On 26th August 2014 the defendant was examined by Professor TRC Davis, consultant hand surgeon. The defendant told him that he had tried to work as courier but stopped after a day because of numbness and tingling in the right hand. He tried to work again a year later but stopped after two days, again because of numbness and tingling in the right hand. He said he drove only rarely.

19. On 30th October 2014 the defendant was visited at his home by Ms Liz Utting, a nursing care expert. The defendant told her, amongst other things, that he had tried working as a courier but was unable to manage the role.

20. On 17th December 2014 the defendant was examined by a psychiatrist, Dr G.E.P. Vincenti. The defendant told him, amongst other things, that he had tried to obtain work as a courier driver but it proved impossible for him to do any of the lifting that was part of the job. He did very little in the day other than watch TV. He was currently drinking 5 or 6 bottles of spirits in the average week.

21. Following the untimely death of the nursing care expert, Ms Kearns, a replacement expert, Ms Dawn Hales, was instructed on behalf of the defendant. She visited him on 23rd November 2015. Among the things he told her was that he remained unemployed and that he continued to use his left hand predominantly when undertaking upper limb activities.

22. The Trust, and the solicitors acting for the Trust, were suspicious of the defendant's claim. His account of his continuing symptoms and disabilities was out of all proportion to the likely severity of the effects of what were essentially fairly modest injuries. It was also noted that the

various accounts he had given of his symptoms and disabilities were impossible to reconcile with many of the entries in his contemporaneous medical records. A decision was taken to undertake further surveillance and to examine his publicly available activities in postings on social media.

23. The video surveillance was carried out in July, September and October 2015. The footage on 17th July 2015 showed him leaving home on elbow crutches, and being driven away in the passenger seat of the car. The need for crutches apparently arose from an unrelated condition of gout. There was nothing in the film to suggest any problem with his hands, which he was using freely to grasp the handles of the crutches.

24. The October 2015 surveillance footage showed the defendant working as a courier, driving a van for prolonged periods and loading and unloading items without difficulty. He was able to hold and operate his mobile phone with both hands and to lift heavy items with his right hand.

25. The solicitors for the Trust asked enquiry agents to conduct a detailed review of the defendant's publicly accessible social media postings. These were very revealing. In particular, there were entries from 2011 showing that his music making activities had continued unabated following his injury. In March 2011 he and another musician released a single and an accompanying music video in which the defendant was seen to be performing with no visible signs of discomfort. This was also wholly inconsistent with his account of being embarrassed and afraid to present himself publicly because of the scar on his lip.

26. All of this material led the solicitors for the Trust, by amendment of the pleadings, to allege fraudulent exaggeration on the part of the defendant justifying the striking out of the whole special damages claim as an abuse of process. As already explained, it was this that prompted the defendant very belatedly to accept the Part 36 offer of £30,000.

The application to commit

27. The detailed statement of grounds for bringing this committal application sets out the history of the original claim and summarises accurately the relevant content of the reports from the various experts, the content of the defendant's witness statement, and the content of the schedule of loss and damage.

28. At paragraph 24 of the grounds it is alleged that contrary to the defendant's portrayal of ill-health resulting from the injuries to his hands, disability, self-consciousness about his lip and hands, social reclusiveness, alcohol dependence, reliance on painkilling medication and prolonged inability to work as a DJ or a courier for the period from 2010 to 2015, the position in fact is:

(1) He returned to his music and DJ career by 2011 at the latest and pursued it with the same vigour as before the assault in 2008.
(2) His recovery from the injuries suffered in the assault was probably complete by 2010 at the latest, and thereafter the position was as follows.
(3) He worked as a taxi driver and a courier without restriction from the effect of his injuries.
(4) He was not inhibited in driving or working in any capacity.
(5) He was not socially reclusive, housebound or depressed as a result of his injuries.
(6) He did not abuse alcohol.
(7) He did not require care and assistance from his family as a result of his injuries.
(8) He had no ongoing or future needs for care, assistance, equipment or therapies as a

result of his injuries.

29. In support of these propositions there was set out at paragraph 25 of the statement of grounds a list of facts and matters derived from the evidence. I shall return to this presently in detail.

30. The allegations of contempt are pleaded at paragraphs 32 to 35 of the statement of grounds. They are reproduced as an Appendix to this judgment. In short it is alleged first that the defendant is guilty of contempt by interference with the administration of justice in making false statements to the various medical and other experts, particularly in relation to his ability to work as a courier, his alleged loss of confidence and ability to perform as a DJ, and his alleged inability to drive or to work. Second, it is separately alleged that the defendant is guilty of contempt by making false statements of truth in support of his witness statement and in support of his schedule of loss and damage. These allegations focus upon his alleged inability to drive or carry on with his work as a courier, his consequent lack of income, his inability to assist with household tasks, and the lack of employment prospects, and the need for continuing care and assistance from his family.

The legal framework

31. In this application for committal the Trust therefore alleges two forms of contempt, each of which is technically distinct in law, although in this case they overlap. First they allege interference, or attempted interference, with the due administration of justice by the defendant's making false statements about his continuing disability to doctors and other experts who examined and interviewed him. That form of contempt requires, in this case, the Trust to prove that:

> (i) the defendant deliberately set out to deceive the doctor or expert in question by falsely representing the extent of his continuing symptoms, either in the physical manner of his presentation or by lies told by the doctor or expert, or both;
>
> (ii) the defendant must have intended thereby to interfere with the administration of justice;
>
> (iii) the conduct complained of must have had a tendency to interfere with the administration of justice.

For examples of contempts of this nature, see *Airbus Operations Ltd v Roberts* [2012] EWHC 3631 (Admin), and *Homes for Haringey v Fari* [2013] EWHC 3477 (QB).

32. The second form of contempt alleged in this case derives from CPR 32.14(1) which provides:

> "(1) Proceedings for contempt of court may be brought against a person if he makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth."

CPR part 22 provides that among the documents which must be verified by a statement of truth are a schedule of expenses and losses in a personal injury claim, and a witness statement. The contempts alleged in this case include examples of false statements in both such documents.

33. In relation to this form of contempt it must be proved that:

> (i) the statement in question was false;
>
> (ii) the statement has, or if persisted in would be likely to have, interfered with the course of justice in some material respect;
>
> (iii) at the time it was made the maker of the statement
>
> (a) had no honest belief in the truth of the statement; and
>
> (b) knew of its likelihood to interfere with the course of justice.

These principles are well established on the authorities, and were confirmed (for example) in *AXA Insurance UK plc v Rossiter* [2013] EWHC 3805 (QB).

34. The standard of proof in respect of each of the elements of contempt is, of course, proof beyond reasonable doubt: the criminal standard of proof. The burden of proof is on the party who bring the proceedings for contempt, in this case the Trust.

35. It is important in a case such as this to concentrate on the nub of what is complained of at its most serious, rather than to consider and adjudicate on every detail of an oral or written statement which is alleged to have been false. The real thrust of this application for committal is that the defendant quite deliberately set out to deceive the doctors and other experts about the extent of his continuing disability, and that he verified by a statement of truth assertions of fact in his witness statement, and in his schedule of loss and damage, consistent with the things he had told the doctors and other experts knowing those statements to be false. I do not propose to make a finding in respect of each and every one of the 33 allegations of contempt but, even if it is not found to be a specific contempt, the fact that the defendant made a particular statement to more than one doctor or other expert may well provide evidence to support the inference that the central false statement was made quite deliberately knowing it to be false and knowing that it was likely to affect the value of the claim.

Proceeding in the defendant's absence

36. The defendant did not attend the hearing on 12th April 2018. I am satisfied that he has been duly notified of the hearing. He has failed to engage with the proceedings at all. The history of attempts to serve him is set out in the witness statement of Chloe Ann Davies, of the Trust's solicitors, dated 16th February 2017. By that date the solicitors for the Trust had made 15 separate attempts to effect personal service, as described in the schedule exhibited to her witness statement. Application was made to the court for permission to serve the claim form and supporting documentation by an alternative method, pursuant to CPR 81.10 (5) (b). That application was granted by Master Cook on 10th March 2017.

37. Contempt proceedings are quasi-criminal. It is, therefore, appropriate to have regard to the principles which a judge in the Crown Court would apply in deciding whether to proceed with a trial in the absence of the defendant. These principles are conveniently summarized in *R v. Jones* [2003] 1 AC 1. The relevant factors which the court should consider are:

> (i) the nature and circumstances of the defendant's behavior in absenting himself from the trial and in particular whether his behavior is deliberate, voluntary and such as plainly waived his right to appear;
>
> (ii) whether an adjournment might result in the defendant being caught or attending voluntarily;
>
> (iii) the likely length of such an adjournment;
>
> (iv) whether the defendant, though absent, is, or wishes to be, legally represented;
>
> (v) the extent of the disadvantage to the defendant in not being able to give his account of events, having regard to the nature of the evidence against him;
>
> (vi) the general public interest that a trial should take place within a reasonable time of the events to which it relates.

38. I have also had regard to the helpful checklist suggested by Cobb J in such circumstances in *Sanchez v Oboz* [2015] EWHC 235 (Fam), derived in part from *R v. Jones*, namely:

> (i) whether the defendant has been served with the relevant documents including notice of the hearing;
>
> (ii) whether the defendant had sufficient notice to enable him to prepare for the hearing;
>
> (iii) whether any reason has been advanced for his non-appearance;
>
> (iv) whether by reference to the nature and circumstances of the defendant's behaviour he has waived his right to be present; i.e. is it reasonable to conclude that the defendant knew of and was indifferent to the consequences of the case proceeding in his absence;
>
> (v) whether an adjournment would be likely to secure the attendance of the defendant or at least facilitate his representation;
>
> (vi) the extent of the disadvantage to the defendant in not being able to present his account of events;
>
> (vii) whether undue prejudice would be caused to the applicant by any delay;
>
> (viii) whether undue prejudice would be caused to the forensic process if the

application were pursued in the absence of the defendant;

(ix) take account of the overriding objective, including the obligation of the court to deal with the case justly, doing so expeditiously and fairly, and taking any step or making any order for the purposes of furthering the overriding objective.

39. Mr. Todd, on behalf of the Trust, invites me to proceed in the defendant's absence and he addressed each of the points in the checklist in turn. I have considered carefully all those points and the relevant matters which fall to be considered before deciding whether the case can proceed in the absence of a defendant in circumstances such as these.

40. Applying all the relevant principles, I am satisfied that the defendant has been duly served, in accordance with Master Cook's order, with the relevant documents, including notice of the hearing on 12th April 2018. I shall deal with this evidence in detail shortly. He has had sufficient time to prepare for the hearing. No reason has been advanced for his non-appearance. It is reasonable to conclude that the defendant knows of and is indifferent to the consequences of today's hearing proceeding in his absence. An adjournment will not be likely to secure his attendance or facilitate his representation. He is not seriously disadvantaged in not being able to give an account of events, bearing in mind the conclusive nature of the surveillance evidence. The insurers would be prejudiced by any further adjournment because more costs would be incurred with little or no prospect of recovering them. I am quite satisfied that in the interests of justice, and in accordance with the overriding objective, it is appropriate to proceed with this application in the defendant's absence.

Service of the committal application

41. The alternative method of service permitted by Master Cook's order was service at the defendant's usual or last known residence, which was his parents' home in Huddersfield. That was his correspondence address for the entirety of the clinical negligence proceedings. On 7th November 2016 a process server, Eoin Hirst, had attempted to serve the defendant at that address with the application for permission to bring these committal proceedings. The door was answered by the defendant's mother. She said that the defendant was now residing in Birmingham but she could not give an address. She said his wife had left him and returned to her parents in Birmingham. She agreed to take the process server's details and pass them on to the defendant. She also said she would be willing to accept documents on his behalf and to pass them on to him in a timely manner.

42. The following day, 8th November 2016, the process server received a phone call from a man who identified himself as the defendant. He appeared to have a good knowledge of the case and the inference must be that the caller was indeed the defendant himself. He told the process server that he was now living in London, but he had no fixed address and was bedding down at the home of any friend who would have him. He provided a mobile phone number. He said he had no intention of returning to his parents' home in Huddersfield in the near future, but he would be happy for the documents to be left there for him. He could then collect them. At that stage this was not possible, because the application for alternative service had not been made. The defendant declined to meet the process server or any other agent in London. This was the one and only direct communication there has been from the defendant in response to any correspondence or attempt to serve him with these

proceedings.

43. On 18th May 2017, following Master Cook's order for service by an alternative method, the same process server attended the defendant's parents' home in Huddersfield. The defendant's mother was not at home but the process server spoke to a gentleman who gave his name as Harbans Singh, who spoke to the defendant's mother by phone. She said she would be back home later and agreed that Mr Singh could accept the documents. A large box of documents, marked for the attention of the defendant, was then handed over to Mr Singh who carried them inside the house and closed the door. This plainly effected valid service pursuant to Master Cook's order.

44. There were subsequent visits to the Huddersfield property to serve further documentation. On 15th September 2017 papers in connection with the permission hearing were put through the letter box when no-one answered the door. On 26th October 2017 further documents were delivered by hand to the defendant's father at the Huddersfield property. He declined to receive the papers but the process server placed them inside the door on the carpet at his feet before the door was slammed shut. On 18th December 2017 further documents including the sealed order made by Jeremy Baker J were served at the Huddersfield property by posting them through the letterbox. There appeared to be no one at home.

45. On 13th December 2017 a different process server, Matthew Holland, visited the Huddersfield property to deliver papers including notice of the trial date for the committal application, 12th April 2018. There was no reply when he knocked on the door. The documents included a covering letter from the Trust's solicitors dated 28th November 2017 informing him that the trial had been listed for hearing on 12th April 2018 at the Royal Courts of Justice. The letter reiterated that in view of the seriousness of the allegations and the possible sanctions, including imprisonment, it was strongly recommended that he seek independent legal advice. The requisite "important notice" to the same effect, forming the first page of the detailed grounds for committal, even gave the names of several firms of solicitors in the Huddersfield area who would be prepared to act in cases funded by the Community Legal Service.

46. The final visit to the Huddersfield property to serve documents was on 8th February 2018. On this occasion various affidavits relied upon by the Trust in support of the application to commit were served. There was no answer when the process server knocked on the door. A day or two after that visit Ms Chloe Davies, the Trust's solicitor, received a phone call from the defendant's mother. Ms Davies gave oral evidence before me about this conversation. His mother told Ms Davies she had returned from America to find all the documents in the house. She was very tearful and upset. She felt that the proceedings, or what had led to them, had ruined her relationship with her son, the defendant. Ms Davies apologized for any upset, stressing that nothing was directed at her. His mother gave mixed messages as to whether she was in fact still in contact with the defendant. She said it had ruined her family and she wanted nothing to do with it. She asked Ms Davies not to send any more documents to her address.

47. I have set out this history at some length because it is highly relevant to the question of whether it is appropriate to proceed in the defendant's absence.

The evidence relied upon

48. The Trust's solicitor, Ms Chloe Davies, in her affidavit dated 6th October 2016 gives an overview of the evidence relied upon and how the committal application is put. There are affidavits from the medical and nursing experts to whom the defendant made the alleged false statements, confirming that those things were said, often supported by their exhibited contemporaneous notes. Some of these witnesses had originally been instructed on behalf of the defendant, some on behalf of the Trust. All their reports, confirmed by affidavit, are also included in the voluminous bundles before me. The experts in question are Mr Clark, Professor Morgan, Mr Halliday, Professor Davis, Ms Utting, Dr Vincenti and Ms Hales. There was also an affidavit from a jointly instructed expert, Dr Robert Bernstein, a consultant rheumatologist. The defendant was rather more frank with Dr Bernstein about his working and driving capability than with the other experts, and I shall return to this aspect. There is no allegation of contempt based upon what the defendant told Dr Bernstein.

49. The surveillance evidence consists of DVDs of the relevant video footage (all of which I have watched), surveillance logs, and reports summarizing their observations. All this material is duly verified by affidavit.

50. There is a large amount of material downloaded and copied from sites on the internet, explained in reports from the private investigators concerned, again, duly verified by affidavit.

51. The defendant's medical records, running to several hundred pages, are included in the bundles before me, and provide an insight into the marked contrast between the picture painted by the defendant in what he was telling the medical and other experts instructed in these proceedings, as compared with what he was saying to medical staff and others in routine attendances at hospital, or at his general practitioner's, or in benefit applications. That was sometimes incidental information given in answer to routine questions, but it is nevertheless particularly revealing.

52. The Trust relies on all this material, but there is a helpful distillation of some of the main pieces of evidence, in chronological order, set out at paragraph 25 of the statement of grounds. It is this distillation, it is said, that proves the Trust's case as to the true level of the defendants continuing disability, or lack of it, as already set out earlier in this judgment. In order to provide the necessary overview, the following is a brief chronological summary of that evidence.

Chronological summary of evidence relied upon

53. On 5th April 2009 the defendant underwent a medical assessment in relation to his claim for disability living allowance (DLA) made in February 2009. The result of the application was that he was deemed fit for work from 21st April 2009. He did not appeal against that assessment. The notes of the interview record the conditions medically identified as "arm problem" and "anxiety". He was troubled by pain and stiffness in the hand and right forearm every day. Overall, however, based on the history, examination and informal observations, it was concluded that for the majority of the time he had no significant restriction of manual dexterity, reaching and lifting and carrying.

54. On 9th June 2010 the defendant attended the accident and emergency department at a hospital in Nuneaton, reporting that he had pain in his right foot after being "tackled on

[Monday] whilst playing football". This sheds considerable light on his claim to be socially reclusive and housebound.

55. On 17th February 2011 it is revealed in his general practitioner records that the defendant underwent a medical examination to work as a taxi driver.

56. It is plain from the social media downloads that the defendant was working in the music industry, including DJ work, in 2011 and 2012. In March 2011, under his stage name "SunnyKMS" he and another artist called Ravi Duggal jointly released a record called "Vanjara" and a music video to accompany it, in which the defendant is seen performing and dancing.

57. In the period from April 2011 to June 2012 the defendant performed as a DJ and music artist under the name SunnyKMS at weddings and promotional shows.

58. On 2nd July 2011 the defendant, under the name SunnyKMS, was billed to perform as the main headline act at an event called "Party in the Pend" at a venue called Club Air in Birmingham.

59. On 31st May 2011 the defendant attended Huddersfield Royal Infirmary complaining of pain in his right ankle which he had sprained three weeks earlier. He said he worked as a taxi driver but had been off work. He said he was previously fit and well.

60. On 28th July 2011 the defendant attended Huddersfield Royal Infirmary complaining of an injury to his left ankle, having turned it over running downstairs. It is recorded that he was normally fit and well.

61. On 16th December 2011 the defendant was again in hospital, this time with a swollen right knee. He told the orthopedic consultant on the ward round, Mr Siddiqui, that he worked as a courier driver. There is an affidavit from Mr Siddiqui confirming that this is what he was told. The defendant also told Mr Siddiqui that he was otherwise fit and healthy.

62. On 19th April 2012, in an attendance on his general practitioner to investigate foot pain and the possibility of gout, the defendant told the doctor that his alcohol consumption was 4 units per week.

63. On 9th July 2012 the defendant was admitted to Huddersfield Royal Infirmary with pain and swelling in the knee which had got worse through the day. The medical notes record "States he drove back from Paris yesterday approx 7 hour journey."

64. On 27th August 2012 in a Facebook posting the defendant is seen photographed with his wife attending a social event, holding a champagne glass in his right hand, gripped (without any apparent difficulty) between his thumb and his damaged right index finger.

65. On 18th December 2012 the defendant was again in Huddersfield Royal Infirmary, complaining of pain in the right knee. He was seen by a senior house officer who recorded that the defendant was fit and well otherwise. The notes record that the defendant said he was a courier driver, smoked occasionally and took alcohol occasionally.

66. On 19th December 2012 (the following day) he was seen by a consultant on the ward round. It was noted that he had been admitted to hospital with a similar episode In July 2012. The ward round note concludes "NB Apparently this gentleman works as a driver and

was made redundant 4 weeks ago."

67. On 14th February 2013 the defendant was seen at Huddersfield Royal Infirmary in the rheumatology clinic. The notes record that the defendant smoked 5-6 cigarettes daily and drank 4-5 pints of beer at weekends.

68. On 26th November 2014 the defendant attended for assessment at the musculoskeletal clinic in Huddersfield complaining of pain in his right buttock and hip which had started with a strange pulling sensation in his calf earlier in the year, which the defendant felt may have started "after driving". He was described in the letter to the GP as a "29 year old courier". This was only a few days after he had signed statements of truth for his witness statement and the schedule of loss and damage.

69. On 17th July, 6th October and 13th October 2015 there was covert video surveillance.

The surveillance evidence

70. The surveillance evidence is crucially important because it provides an incontrovertible record of what the defendant was doing, and capable of doing, on particular dates. It was the service of this surveillance evidence which prompted the defendant to abandon his exaggerated claim for damages. The inference must be that (no doubt on his lawyers' advice) he recognized that he had been caught out and was bound to be disbelieved in relation to his claim. The defendant has never sought to explain any of the discrepancies between the surveillance evidence and his pleaded case, his witness statement and his schedule of loss and damage. The only response he has ever made was in his solicitors' letter dated 16th March 2016, a month after receipt of the application to amend the defence to allege fraudulent exaggeration. In that letter it was asserted that, having taken the defendant's instructions, and having discussed the matter with counsel, the defendant's position was that he "denies any fraud as a matter of fact and those issues can only be determined at trial, after hearing all of the medical evidence and the claimant's own evidence. The claimant would wish to serve witness statements to support the bona fides of his account." No such evidence has ever been served.

71. In the video surveillance footage for 15th July 2015 the defendant can be seen walking the short distance from his front door to the road, using two crutches. He gets into a waiting car, after standing first at the side of the road for a while conversing with a passing driver. The defendant is seen to be gripping the horizontal handles of the crutches with both hands without apparent restriction.

72. On 6th October 2015 the surveillance footage shows the defendant driving away from his home in a white van. Having picked up a workmate, he drives 19 miles to the storage yard of suppliers of school stationery, where the van is loaded up with parcels and boxes of various sizes. Professor Davis, consultant orthopedic and hand surgeon, comments on the video footage from the perspective of his expertise. At 09.54 the defendant is seen passing boxes from the container and placing them in the back of the van. He is seen at times using both his hands. This goes on for 5 minutes. At 12.26 the defendant is seen lifting boxes in the back of his van, using both hands. At 12. 27 he is seen holding a mobile phone in both hands, using his right thumb to activate it. His right index finger looks bent in comparison to his other fingers. (It should be noted there was no dispute there was this level of continuing disability; the issue was whether it seriously incapacitated the defendant). The defendant then resumes loading boxes, his fingers and hand moving fluidly and freely with no

evidence of stiffness or pain. He loads bigger boxes from the side of the van into a trolley. He climbs into the driving seat of the van, putting his right hand firmly on the door and pulling himself up. He opens the side door of the van with his right hand. Hand movements appear fluid and free of pain. At 13.23 he is seen to have his phone in his right hand whilst driving, with his left hand on the steering wheel. At 13.38 he is seen taking boxes from the van and putting them on the trolley. He uses both hands and the movements appear free, fluid and painless. He reloads boxes into the van and then loads them onto a trolley and shuts the door of the van with his right hand. All this is done without any obvious discomfort or pain. In the course of that working day the defendant made deliveries at a number of different schools and educational establishments in the Manchester area.

73. On 13th October 2015 there was further video surveillance of the defendant at work as a delivery driver. He makes the same journey to the yard, having picked up his colleague, where they load items onto the van as before. Again, Professor Davis comments on the footage. At 09.38 the defendant is seen carrying a heavier box from the back of a container and placing it in the van. He carries other boxes from the container to the back of the van, exhibiting free and fluid movement of his hands without obvious pain. At 09.42 he is seen holding a box by its strapping. This was apparently a box containing five reams of A4 paper (2,500 sheets). Ms Davies says in her affidavit that, from her own experience, such boxes weigh 12kg and are difficult to lift by the strap. The defendant lifts this box in his right hand only, the hand which he has claimed he could not use for lifting. During this episode he carries more boxes as well. He never shows any obvious difficulty or pain in using his hands. At 09.51 he carries several bundles of toilet paper rolls, a bulky load, without difficulty. He then picks up cuboid boxes with each hand, one hand at a time only, without difficulty. He is seen throwing a light thin object into the back of the van with his right hand, with fluid unrestricted movement of the right arm. He is seen to grip the handle on the back of the container with his left hand, without pain or restriction. He pulls himself into the back of the van using his right hand. He finishes loading the van from the container, shuts the back door of the van without difficulty and with fluid movements and no obvious pain. At 12.21 he is seen putting air in the tyre of the van using his right hand to grip the control device without difficulty, and for a long period. Professor Davis notes that the defendant did not shake his hand afterwards, which might have been an indication of numbness and tingling, one of the defendant's complaints.

74. Professor Davis's overall conclusion is that he saw nothing in any of the surveillance to suggest the defendant was experiencing pain in his hand or that his hand function was significantly diminished. He never stopped what he was doing to shake his hand through numbness or tingling of the fingers. The only disability displayed was an obvious limp, apparently due to lower limb arthritis and/or gout, and wholly unconnected to the injuries the subject of the claim.

75. The care expert instructed on behalf of the trust, Ms Liz Utting, also comments on the video surveillance. It supports her opinion that the defendant is able to lead a full and active life with no apparent limitations attributable to the material incident. The decision not to award the defendant disability living allowance was correct, as he did not meet any of the criteria for either component. He is clearly able to undertake heavy manual work involving bilateral hand function. It is her opinion that the defendant had no requirement for any ongoing gratuitous assistance or items of equipment or occupational therapy services.

The social media evidence

76. Dr Vincenti, the consultant psychiatrist instructed on behalf of the Trust, has considered the social media evidence in the light of the defendant's assertion, when Dr Vincenti saw him in mid December 2014, that he used to do a lot of private DJ work but had not worked in this way for quite some while because he no longer had the requisite manual dexterity or self-confidence. He also told Dr Vincenti on the same occasion that as he had no strength in his hands the wider family had arranged for someone to be with him most of the time when he was at home. He could not lift a kettle or open a bottle. He needed help to dress. His wife had to cut up his food. He could no longer manage the garden, or wash the car, or decorate. By contrast, Dr Vincenti points out, the YouTube evidence did not display a man with any apparent impairment of function in his upper limbs. He did not appear as someone who would need a family member to cut up his food. He clearly remained active in the music entertainment business up to late 2011. The YouTube videos were uploaded between 31st March 2011 and 27th September 2011.

The medical records

77. In his skeleton argument and oral submissions Mr Todd, on behalf of the Trust, raised an issue in relation to the evidential status of the medical records in so far as they narrate statements made by the defendant to medical personnel on other occasions, as distinct from the statements giving rise to the allegations of contempt which were made to medical and other experts who have given evidence by affidavit. Mr Todd very properly drew my attention to obiter dicta of Buxton LJ in *Denton Hall Legal Services v Fifeld* [2006] EWCA Civ169, which Mr Todd considered might, on the face of it, preclude the court from relying on such statements as evidence of the truth of their contents. A side issue in that case, which was an appeal against an award of damages in a personal injury claim, was the status of medical records and reports used to elucidate the history of the patient, which had been put to the patient in cross-examination to undermine her credibility. At [77] Buxton LJ said this:

> "It is therefore necessary to remind ourselves of the evidential status of such material. What the doctor writes down as having been told him by the patient, as opposed to the opinion he expresses on the basis of those statements, is not at that stage evidence of the making of the statement that he records. Rather where, as here, the record is said to contradict the evidence as to fact given by the patient, the record is of a previous inconsistent statement allegedly made by the patient. As such, the record itself is hearsay. It may however be proved as evidence that the patient did indeed speak as alleged in two ways. First, if the statement is put to the witness, she may admit to having made it. Alternatively, if she does not "distinctly" so admit the statement may be proved under section 4 of Lord Denman's Act 1865. Second, by section 6(5) of the Civil Evidence Act 1995 those provisions do not prevent the statement being proved as hearsay evidence under section 1 of that Act. If the court concludes that such inconsistent statement has been made, that goes only to the credibility of the witness; the statement itself cannot be treated itself as evidence of its contents. Authority is scarcely needed

> for so protean a proposition, but I would venture to mention the observations of Lord Esher MR in *North Australian v Goldborough* [1893] 2 Ch 381 at p386."

78. It is right to observe first that, if medical notes form part of an agreed bundle for a hearing, the documents are admissible at that hearing as evidence of their contents: see Practice Direction 32 (Evidence), paragraphs 27.1 and 27.2. The practical difficulty in *Denton* itself would, therefore, probably not now arise. More generally, however, Buxton LJ was not saying (I suggest) that if such statements by the patient to the doctor, contained within the medical records, are admissible under section 1 of the Civil Evidence Act 1995, they are not properly to be regarded as evidence of the truth of the statements, rather than evidence merely of the fact that they were made. As it is put in *Cross and Tapper on Evidence* (12th Edition) at page 587:

> "It is clear from the definition in s.1(2)(a), and from the terms of s.6, that the new rule of admissibility applies both to third party hearsay, and to previous statements of a witness. In the latter case, as much as in the former, such admissibility operates to prove the truth of the matter stated. Section 1(2)(b) makes it quite explicit that admissibility extends to hearsay of any degree."

79. In a footnote to the penultimate sentence in that quotation the following qualification is given:

> "Although only if proved under s.1, as authorized by s.6(5): see *Denton Hall Legal Services v Fifield* [2016] EWCA Civ 169,[2006] LlR Med 251, Buxton LJ, [77]; but see Stockdale (2006) 156 NLJ 751."

80. In that article in the New Law Journal it suggested that, contrary to the dicta in *Denton Hall*, where the making of a previous inconsistent statement is admitted by its maker during cross-examination, or the statement is proved under section 4 of Lord Denman's Act, the statement is admissible in civil proceedings as evidence of the matters stated. That is not, of course, the situation in the present case. The maker of the statement (the defendant) has not been called to give evidence, so there has been no cross-examination on the inconsistency of any previous statement in the medical notes. Section 6 of the Civil Evidence Act 1995 deals with previous statements of witnesses and the application of the provisions of ss. 3-5 of the Criminal Procedure Act 1865. However, s.6(5) in any event provides:

> "Nothing in this section shall be construed as preventing a statement of any description referred to above from being admissible by virtue of section 1 as evidence of the matters stated."

See also the arguments of counsel in *Charnock v Rowan* [2012] EWCA Civ 2, at [20] - [21]in relation to the effect of Buxton LJ's observations in *Denton Hall*.

81. The basic position under section 1(1) of the 1995 Act is that, in civil proceedings "evidence shall not be excluded on the ground that is hearsay". There are procedural rules requiring notice, in so far as is reasonable and practicable in the circumstances, for the purpose of enabling the other party or parties to deal with any matters arising from its being

hearsay: see section 2(1). Failure to comply with these provisions does not affect the admissibility of the evidence but may be taken into account by the court in considering the exercise of its power in respect of the course of proceedings and costs, and as a matter adversely affecting the weight to be given to the evidence in accordance with section 4.

82. Section 4 is the governing provision requiring the court, in estimating the weight (if any) to be given to hearsay evidence in civil proceedings, to have regard to any circumstances from which any inference can be drawn as to the reliability or otherwise of the evidence. A number of specific factors are listed to which regard in particular must be paid. These include whether it would have been reasonable and practicable for the party adducing the evidence to produce the maker of the original statement as a witness, whether the original statement was made contemporaneously with the occurrence of the matters stated, whether the evidence involved multiple hearsay, and whether any person involved had any motive to conceal or misrepresent matters.

83. I bear in mind the caution which must be exercised in this case in relying upon the medical records to prove that what the defendant told the medical staff was *true*, as opposed to relying on it to prove the defendant *made* the statement in question. An example is what the defendant told hospital staff at Huddersfield Royal Infirmary on 9th July 2012, that he had driven back from Paris the day before, a journey of 7 hours. In assessing the weight of that hearsay evidence, pursuant to section 4 of the 1995 Act, I would not regard it as unreasonable that the Trust did not seek to prove the statement by calling the person to whom it was made. It is a statement recorded in contemporaneous notes of the conversation with the defendant. It is hardly the sort of information which could have been misunderstood or invented by the person making the note. In these circumstances I would have no hesitation in relying upon the evidence as admissible hearsay under section 1 of the 1995 Act. In my judgment it can be relied upon as evidence of the truth of what the defendant said, and not simply the fact that he said it. Mr Todd did not go so far as this in his submissions. He suggested instead that proof of the fact that the words were spoken by the defendant was sufficient to show inconsistency undermining the credibility of the defendant's other accounts. That is an alternative way of approaching the matter, but in my view the note is plainly admissible to prove the truth of what the defendant was saying.

84. Turning from the legal principles to the overall relevance of the medical notes, there is considerable force in the observation made by Dr Vincenti that it seems there are two separate medical histories running in parallel, with no apparent connection between them.

> "From the medico-legal perspective, he claims that his index hand injuries have destroyed his life and prevent him from doing anything and have led to frustration and depression weight-gain and excessive drinking. In parallel, Mr Atwal has been seeking repeated medical assistance for symptoms of gout, including multiple attendances at A & E, and yet in his general practice and hospital records, there is almost no mention of the index injuries that form the basis for his compensation claim, and certainly no evidence of the sorts of disability accruing from his injuries of which he complains at medico-legal interview. This is at least unusual."

85. That observation was made in Dr Vincenti's report dated 7th January 2015, before the social media evidence and the surveillance evidence was available. Added to the evidence

from those two sources, it provides powerful overall circumstantial evidence of the falsity of much of what the defendant was telling the medical and nursing experts in connection with his clinical negligence claim. Mr Todd also relied strongly upon the absence of any contrary evidence from the defendant himself, or on his behalf, and the defendant's non-participation in these proceedings. He submits, and I accept, that the rapidity with which the defendant's very large damages claim was abandoned following receipt of the surveillance material justifies the inference that the defendant himself recognized that he had misled the medical and other experts, both those instructed on behalf of the Trust and those instructed on his own behalf.

Findings of contempt

86. In approaching my findings of contempt I have had regard to all the evidence before me. I bear in mind that I have to be careful not to take out of context words said by the defendant to the experts, or words or assertions adopted by him in signing a statement of truth. I must be careful to ensure that what he was saying or agreeing to was, in its proper context, false and dishonest.

87. In this regard I return to the report of Dr Bernstein, consultant rheumatologist, jointly instructed by the parties. His report was based on an interview with the defendant dated 20th July 2015. Amongst the things he told Dr Bernstein were that he was working "on and off" as a self-employed courier, working on long distance delivery anywhere nationwide, but he was not responsible for loading or unloading the pallet containing the items he carried as that loading and unloading was carried out by forklift truck. He said he drove a lightweight rented van with power steering and manual transmission on long distance work nationally. He said he had tried local multiple-drop deliveries of small items 3-4 years ago. He said his work as a courier was limited by pain in the fingers while holding the steering wheel for as long as 2 or 3 hours at a time.

88. As I have already observed, that account is much more frank than the contrary accounts he had given to the experts previously. But it is also to be noted that this account was given some 8 months *after* he had signed statements of truth in support of his witness statement and the schedule of loss and damage. All the false statements made to medical and other experts relied upon as contempts were made well *before* the interview with Dr Bernstein. The one exception is the care expert, Ms Dawn Hales, who interviewed the defendant on 23rd November 2015. She had not seen him before, but was, effectively, updating the reports of the previous care expert, Ms Kearns, who had died. The defendant told Ms Hales that he remained unemployed. His disabilities remained, for the most part, in the same condition as reported on by Ms Kearns on November 2014. He said he had worked as a DJ three times in 2015, but required the help of an assistant to operate the turntables. He made no mention of his recent work as a courier, as described to Dr Bernstein and as revealed in the surveillance.

89. I take into account Dr Bernstein's evidence but, for reasons I shall explain, it does not in my judgment lessen the falsity or dishonesty of the earlier statements made by the defendant.

The allegations

90. In his oral submissions Mr Todd sensibly elected not to pursue each and every one of the 33 allegations of false statements, pleaded at paragraph 32 to 34 of the statement of grounds. Those which he elected not to pursue are highlighted in italics and bracketed in the appendix

to this judgment. In some cases only part of an allegation is now advanced, as indicated. There are 22 separate allegations which are still pursued. For the reasons already explained in discussing the applicable legal principles I do not propose to make a finding in respect of every allegation, but shall concentrate on those which are the most serious and go to the heart of the real mischief in this case.

91. The allegations can be separated broadly into five categories or themes:

(1) inability to work as a DJ;

(2) inability to work as a courier or otherwise;

(3) inability to lift items or help around the house;

(4) the requirement for care;

(5) the requirement for therapy for psychiatric problems.

I shall consider the individual allegations of contempt under these five headings.

(1) Working as a DJ

92. There are five allegations which fall within this category:

(1) telling Mr Clark on 26th October 2011 that he had no confidence in his speech as a result of his injury to his lip (**32.1.1**)

(2) telling Mr Clark on the same occasion that he had lost confidence in his ability to perform as a professional DJ and now had to delegate this task to an assistant (**32.1.2**)

(3) telling Professor Morgan on 8th October 2013 that he was exquisitely self conscious in relation to his lip (**32.2.1**)

(4) asserting in his witness statement "I have no confidence going out…" (**33.5**)

(5) asserting in the schedule of loss and damage that he was unable to work as a DJ due to loss of strength and dexterity in his hands (**34.2**).

93. The first thing to note is that all these things were said, at the earliest, more than 3 years after the injuries were sustained, by which time any serious continuing disabling effects of the negligent hospital treatment had undoubtedly passed. The suggestion that, because of the injury to his lip, he had no confidence in his speech and was exquisitely self conscious is utterly disproved by his participation in music making prominently in the public eye, as confirmed by the social media evidence. The same goes for the suggestion that he lost confidence in his ability to perform as a professional DJ and now had to delegate these tasks to an assistant. For the same reason it was false and dishonest to assert in his witness statement that he had no confidence going out. That too is proved to be a lie on the whole of the evidence. It was also a lie to suggest in the schedule of loss and damage that he was unable to work as a DJ due to loss of strength and dexterity in his hand. He undoubtedly had been working as a DJ. The social media evidence confirms this. There was no loss of

strength and dexterity in his hands as the surveillance evidence confirms. The surveillance was only a matter of 10 or 11 months after the defendant verified the schedule by a statement of truth. The schedule came six years after the negligent treatment. As a matter of inference from the evidence as a whole, the defendant must have achieved maximum recovery already by that stage. The surveillance merely provided the clinching evidence.

94. I am therefore satisfied so as to be sure that each of these five statements was deliberately false. The making of false statements to the experts plainly had a tendency to interfere with the administration of justice by increasing the seriousness of the consequences of the injuries and, potentially, increasing the quantum of his damages. I am sure too that the defendant must have intended thereby to interfere with the administration of justice. There is no other explanation for making such false statements. Equally, and for the same reason, the false statements verified by a statement of truth in his witness statement and his schedule of loss and damage would be likely to interfere with the course of justice if persisted in. I am sure that the defendant had no honest belief in the truth of the statements he made and knew full well that these false statements were likely to interfere with the course of justice.

95. It is not necessary, in my judgment, to make a finding of contempt in respect of all five of these false statements. Three will suffice to reflect this aspect of the case. The other two add little or nothing. **I am satisfied to the criminal standard that the allegations of contempt at paragraphs 32.1.1, 32.1.2 and 34.2 (Nos. 1, 2 and 5 above) have been proved.**

(2) Work as a courier or otherwise

There are eight allegations of contempt which can conveniently be grouped under this heading:

> **(6)** telling Professor Davis on 26th August 2014 that he had tried to work as a courier but stopped after one day because of numbness and tingling of the right hand (**32.4.1**)
>
> **(7)** telling Professor Davis on the same occasion that he tried to work as a courier again one year later but stopped after two days, again because of numbness and tingling of the right hand (**32.4.2**)
>
> **(8)** telling Dr Vincenti on 17th December 2014 that it proved impossible for him to any of the lifting that was part of the job [of a courier driver] (**32.6.1**)
>
> **(9)** telling Ms Dawn Hales on 23rd November 2015 that he was unemployed (**32.7.1**)
>
> **(10)** telling Ms Hales on the same occasion that he continued to use his left hand predominantly when undertaking upper limb activities (**32.7.2**)
>
> **(11)** saying in his witness statement that "driving is also very difficult now as well" (**33.2**)
>
> **(12)** saying in his witness statement that "I find it hard driving a manual vehicle with the gear changing" (**33.3**)
>
> **(13)** asserting in the schedule of loss and damage that he had no employment

prospects (**35.1**).

96. In his witness statement the defendant said that his brother-in-law worked in Birmingham as a courier and the defendant decided he could do the same. He bought himself a van for £3,000 in around November 2011. He only completed two jobs, one to London and the other to Derby. After the London job his knee swelled dramatically and he was admitted to hospital for surgery to clean the knee out. It was not cost effective and he sold the van. In November 2013 he tried couriering again, this time on a self-employed basis for a company in Birmingham. He hired a van on a rolling contract. He struggled with this work because of his hand problems and was finding it difficult to lift and carry heavy deliveries. He was unable to continue with the work as a courier and returned the van in July 2014.

97. Although the surveillance demonstrates that the defendant was undoubtedly working as a courier (or delivery driver) in October 2015, the evidence to prove that he was doing more courier work than he claimed in his witness statement at an earlier stage is patchy. There are certainly references in the medical records where he described himself at an earlier stage as a courier: 16th December 2011, 18th December 2012, 19th December 2012 (made redundant 4 weeks ago), 26th November 2014. However, even if the statements recorded in the medical notes are taken to be true statements that he was then engaged in work as a courier (rather than his merely describing his occupation generally as a courier driver), the evidence overall does not, in my judgment, compel a finding, to the criminal standard, that the statements made to Professor Davis (Nos. 6 and 7 above) were necessarily false. However, I am satisfied so as to be sure that in telling Dr Vincenti on 17th December 2014 that it proved impossible for him to do any of the lifting that was part of the job as a courier driver, the defendant was deliberately lying. This was only 10 to 11 months before the irrefutable evidence of the surveillance, and on the evidence as a whole it is quite safe to infer that by December 2014 he was no longer inhibited in any way from lifting when the occasion demanded.

98. The strongest allegations of contempt in relation to his employment are the false statements made to Ms Dawn Hales, the care expert, on 23rd November 2015 that he was unemployed at that time and that he continued to use his left hand predominantly when undertaking upper limb activities (No 9 and 10 above). Ms Hales was updating the report of Ms Kearns, the care expert who had died. Ms Kearns had visited the defendant at his home in February 2013 and had spoken to him on the telephone for 25 minutes in April 2014. In her report dated 7th November 2014 Ms Kearns proceeded on the basis that he was currently unemployed. He had told Ms Kearns that since being declared fit for work on 23rd April 2009 he had attempted to get employment via the job centre, but to no avail. He attempted to return to his previous work as a taxi cab controller, and to work as a courier, and had found that neither was a feasible option, due to his right hand injury and knee and ankle difficulties.

99. The defendant told Ms Hales on 23rd November 2015 that he remained unemployed. He made no mention of the work he had been doing as a delivery driver, captured in the video surveillance only 5 weeks or so earlier. It was a blatant lie to say he was unemployed. The context of the lie is even more clearly demonstrated by the accompanying statement to Ms Hales that he continued to use his left hand predominantly when undertaking upper limb activities. That is unequivocally disproved by the surveillance evidence. Accordingly I am satisfied to the criminal standard of proof that the statements he made to Ms Hales, at Nos 9

and 10 above, were deliberately false.

100. The defendant's ability to drive was inextricably linked with his ability to work. In his witness statement he asserted that driving was very difficult now, and he found it hard driving a manual vehicle with the gear changing. Those two statements were blatantly untrue. He had been driving with ease. In this regard, if it were necessary, I would have no hesitation in relying also upon his statement to hospital staff in Huddersfield on 9th July 2012 that he had driven back from Paris the previous day, a 7 hour journey. There is absolutely nothing in the medical records to support the suggestion that he was unable to drive because of any problem with his hands. The only restriction on his driving was the recurrent problem with his leg, probably attributable to gout and/or arthritic changes, and not helped by his grossly excessive weight.

101. In the schedule of loss and damage it was asserted that currently he had no employment prospects. The suggestion in the schedule was that he required vocational retraining to assist him in finding appropriate employment. This, it was anticipated, would take approximately 12 months after which he should be able to return to work part time. Thereafter he should be able to return to work full time but at a lower level than before. On the strength of these assertions a claim for future loss of earnings was put forward in the sum of £255,351.

102. It was plainly false to suggest that he had no employment prospects in view of the work he had been doing as a delivery driver, captured in the surveillance. This dishonest assertion in the schedule of loss came several months before his interview with the consultant rheumatologist, Dr Bernstein, with whom he was more frank. I am satisfied to the criminal standard that this assertion in the schedule was deliberately false.

103. As before, and for the same reasons, I am satisfied to the criminal standard of proof in respect of statements made to the experts (Nos 8, 9, 10, 11 and 12 above) that the defendant deliberately set out to deceive the experts, that his dishonest exaggeration had a tendency to interfere with the administration of justice, and that he must have intended thereby to interfere with the administration of justice. In relation to the statement of truth verifying the schedule, I am satisfied so as to be sure that if persisted in it would be likely to have interfered with the course of justice. I am sure that the defendant had no honest belief in the truth in this statement and knew that it was likely to interfere with the course of justice in that way. In relation to the driving allegations, I need only make findings on one of them, No 11. No 12 adds nothing.

104. **I am therefore satisfied to the criminal standard that the allegations of contempt at paragraphs 32.6.1, 32.7.1, 32.7.2, 33.2 and 35.1 have been proved (Nos. 8, 9, 10, 11 and 13 above).**

(3) Lifting and helping around the house

105. There are three allegations which fall within this heading:

> **(14)** the assertion in his witness statement "I am unable to assist with household tasks and I cannot go shopping as I did before as I cannot pack or lift heavy shopping bags" (**33.1**)
>
> **(15)** the assertion in the schedule of loss and damage that he struggled to lift

or carry items and this affected him on a daily basis (**34.1**)

(16) the assertion in the schedule of loss and damage that he was unable to assist at home (**34.4**).

106. It is to be noted that all three of these statements were made on 20th November 2014, six years after the negligent treatment and only a matter of 10 to 11 months before the surveillance evidence which unequivocally demonstrates that the defendant had no difficulty lifting or carrying items. I am satisfied to the criminal standard that all three statements were plainly false. If persisted in they would be likely to interfere with the course of justice by increasing the seriousness of the defendant's continuing disability and thereby potentially increasing his damages. I am satisfied to as to sure that when he verified his witness statement and schedule he had no honest belief in the truth of those statements and knew they were likely to interfere with the course of justice in that way.

107. I need not make a finding of contempt in respect of both statements relating to assisting at home. A finding in relation to one of them, No. 14 above, will suffice. **Accordingly I am satisfied to the criminal standard that the allegations of contempt at paragraphs 33.1 and 34.1 have been proved (Nos. 14 and 15 above).**

(4) *The requirement for care*

108. There are three allegations which fall under this heading:

(17) the assertion in the schedule of loss and damage that from December 2008 to November 2014 he required and received an average of 3.75 hours of care and assistance from his family per day (**34.5**)

(18) the assertion in the schedule that he continued to require 3.75 hours of care and assistance a day (**34.6**)

(19) The assertion in the schedule that in due course he would need to pay for agency care when his family became unable to care for him (**35.4**).

109. These allegations of contempt differ from many of the others in that it is not suggested that the defendant himself calculated the figure of 3.75 hours per day and provided it to the nursing expert, Ms Kearns. She recommended the provision of 3.75 hours of gratuitous care each day, on the basis of 15 minutes assistance with toilet, showering and dressing; 30 minutes for general fetching and carrying; one hour per day psychological and emotional support; and two hours per day preparation of meals and drinks. The claim for past care in the six year period was pleaded at £68,009. In the schedule it was asserted that he had required assistance with toileting, showering, dressing, general fetching and carrying, psychological and emotional support and the preparation of meals and drinks. This was on the basis that the defendant had in fact required and received such assistance.

110. The claim for future care was also based on the assumption that he would continue to require 3.75 hours of care per day to assist him with all daily grooming tasks, household and domestic tasks, preparing meals and with feeding. The claim for future care was pleaded in three phases. Phase One would be for 12 months, on the assumption that the family would continue to provide care at 3.75 hours per day as before. Phase Two assumed that various aids and equipment would have been provided, making the defendant more independent

around the house. After he had started psychological therapy, the level of care was then estimated to fall to one hour per day. Contingency care for Phase Two was claimed, in the event that the family care was unavailable. Phase Two was to cover the period up to the defendant's 70th birthday, some 40 years hence. Thereafter, Phase Three covered the rest of his life on the basis that only agency care would be appropriate, because family carers would no longer be available. The total claim for future care was £167,301 comprising:

> Phase One: £8,236
>
> Phase Two: £93,595
>
> Phase Three: £65,469.

111. This was therefore a very substantial part of the total claim. It was all based on the wholly false and fraudulent premise that the defendant required, or had ever required, care of the kind envisaged and claimed for. The statement of truth signed by the defendant verified that "the facts stated in this schedule of loss are true". The facts asserted in the schedule were that the defendant had been and remained disabled to the extent that he had required and continued to require care at the level claimed for. Those underlying facts were quite untrue. The evidence of Ms Liz Utting, to which I have referred, confirms what is glaringly apparent from all the evidence as a whole.

112. I am therefore satisfied so as to be sure that the statement made by the defendant in verifying the schedule was false and deliberately false. I am satisfied that the defendant had no honest belief in the truth of the statement. If persisted in it was likely to have interfered with the course of justice by increasing the damages very substantially. The defendant knew of this likelihood. It was thoroughly dishonest.

113. **Accordingly I am satisfied to the criminal standard that the allegations of contempt at paragraphs 34.5, 34.6 and 35.4 of the grounds have been proved (Nos. 17, 18 and 19 above).**

(5) The requirement for therapy for psychiatric problems

114. There are three allegations under this head:

> **(20)** the assertion in the schedule of loss and damage that he required ongoing physical and psychological support due to the nature of the disabilities arising out of the injury in 2008 (**35.2**)
>
> **(21)** the assertion in the schedule that he would require cognitive behavioral therapy for major depression resulting from the injury from 2008 (**35.5**)
>
> **(22)** the statement to Dr Vincenti on 17th December 2014 that he was currently drinking five or six bottles of spirits in the average week (**32.6.3**).

115. The defendant was examined by Professor Morgan, a consultant psychiatrist, on 8th October 2013. His assessment was that the defendant had suffered psychiatric injury as a result of his disabilities, amounting to a diagnosis of depression. He would benefit from a combination of psychological therapy (taking the form of cognitive behavioural therapy) as well as pharmacotherapy (taking the form of prescribed antidepressant medication). With such treatment it was likely, in his opinion, that symptoms of major depression could be

significantly ameliorated within around 18 months from the commencement of such treatment although it would not remove symptoms altogether. This assessment was based upon the information the defendant provided to Professor Morgan about his continuing symptoms and the restrictions they placed upon him in his daily functioning. The accuracy of that information the defendant provided is highly dubious, for the reasons already explained. Nevertheless, the extent to which the defendant had truly developed a depressive illness remains unclear.

116. The assertion in the schedule that the defendant required ongoing physical and psychological support due to the nature of the disabilities arising out of the injury in 2008 is based on paragraph 5 of section G of the schedule, headed Future Care. This goes back to Ms Kearns' assessment that three phases of future care were appropriate. Paragraph 5 deals with Phase One, providing for the defendant's current needs until he obtained the necessary psychological support and suitable aids and equipment to improve his independence. I am satisfied so to be sure that the underlying factual assertions in support of this claim were false, for the reasons already explained. They were wholly false and deliberately false. In verifying this part of the schedule the defendant can have had no honest belief in the truth of the statement and must have known it was likely to interfere with the course of justice by falsely increasing the potential level of his damages.

117. The assertion that he required cognitive therapy is made at paragraph 1 of section H of the schedule, Medical expenses, treatment and therapies. Under the heading cognitive behavioural therapy it is said that the defendant had become depressed and was of very low mood as a result of his injuries and no longer being able to work and provide for his family. This was on the basis of Professor Morgan's diagnosis of major depression, and the recognition that the defendant would benefit from cognitive behavioural therapy to treat his depression and come to terms with the disability, and to help him look to the future with the aim of finding employment which he was able to undertake. That was all on a similar false foundation. While some cognitive therapy may have been required to combat depression the whole factual basis on which it was premised was untrue. Nevertheless, I do not consider it necessary or appropriate to make a finding of contempt on this somewhat contentious underlying medical issue.

118. The final allegation of contempt, on the related issue of the defendant's consumption of alcohol, is the statement he made to Dr Vincenti, the consultant psychiatrist instructed on behalf of the Trust, on 17th December 2014, that he was currently drinking 5 to 6 bottles of spirits in the average week. It is suggested that this was a deliberate lie to support the contention that he was so badly affected by the continuing disability from his injuries that he had resorted to abusing alcohol. Dr Vincenti certainly seems to have taken the defendant's statement at face value. In his report dated 25th January 2016, following disclosure of the surveillance evidence, he even raised the need to inform DVLA of this level of alcohol abuse in view of the defendant's employment as a driver.

119. In order to prove the falsity of this statement to Dr Vincenti, Mr Todd invites me to act upon material in the medical notes where there are entries suggesting that the defendant's consumption of alcohol was within normal limits. On 19th April 2012 he told his GP that he consumed four units of alcohol per week. On 18th December 2012 he said he took alcohol "occasionally". These are examples of hearsay statements where, in my judgment, it is not safe to infer that what the defendant said was actually true, even though section 1 of the Civil Evidence Act 1995 would permit such a conclusion. Here the weight properly to be given to such statements is far less. These were incidental questions he was being asked in

relation to other medical investigations, including the possibility of gout. There are many reasons why he might have been lying to the doctors about his true alcohol intake. It may well be that he was grossly exaggerating in telling Dr Vincenti that he was drinking 5 to 6 bottles of spirits in the average week, but I cannot be sure that the statement was false. He may well have had a serious alcohol problem.

120. Accordingly, in relation to these three allegations, only one has been proved. **I am satisfied to the criminal standard that the allegation of contempt at paragraph 35.2 has been proved (No. 20).**

Conclusion

121. I find the following fourteen allegations of contempt proved:

No.1: He told Mr Stuart Clark, consultant maxillo-facial surgeon, on 26th October 2011 that he had no confidence in his speech as a result of the injuries to his lip.

No.2: He told Mr Stuart-Clark, consultant maxillo-facial surgeon, on 26th October 2011 that he had lost confidence in his ability to perform as a professional disc jockey and now had to delegate these tasks to an assistant.

No.5: He asserted in his schedule of loss and damage, verified by a statement of truth dated 20th November 2014, that he was unable to work as a DJ due to loss of strength and dexterity in his hands.

No.8: He told Dr Vincenti, consultant psychiatrist, on 17th December 2014 that it proved impossible for his to do any of the lifting that was part of the job of a courier driver.

No.9: He told Ms Dawn Hales, care expert, on 23rd November 2015 that he was unemployed.

No.10: He told Ms Dawn Hales, care expert, on 23rd November 2015 that he continued to use his left hand predominantly when undertaking upper limb activities.

No.11: He said in his witness statement, verified by a statement of truth dated 20th November 2014, that "driving is also very difficult now as well".

No.13: He asserted in his schedule of loss and damage, verified by a statement of truth dated 20th November 2014, that he had no employment prospects.

No.14: He said in his witness statement, verified by a statement of truth dated 20th November 2014, that "I am unable to assist with household tasks and I cannot go shopping as I did before because I cannot pack or carry heavy shopping bags".

No.15: He asserted in his schedule of loss and damage, verified by a statement of truth dated 20th November 2014, that he struggled to lift or carry items and this affected him on a daily basis.

No.17: He asserted in his schedule of loss and damage, verified by a statement of truth dated 20th November 2014, that from December 2008 to November 2014 he required and received an average of 3.75 hours care and assistance from his family per day.

No.18: He asserted in his schedule of loss and damage, verified by a statement of truth dated 20th November 2014, that he continued to require 3.75 hours of care and assistance per day.

No.19: He asserted in his schedule of loss and damage, verified by a statement of truth dated 20th November 2014, that in due course he would need to pay for agency care when his family became unable to care for him.

No.20: He asserted in his schedule of loss and damage, verified by a statement of truth dated 20th November 2014, that he required ongoing physical and psychological support due to the nature of the disabilities arising out of the injury in 2008.

122. Those are my findings. When the case is next listed for hearing on Friday 27th April 2018 I will hand down this judgment and consider what penalty should be imposed for the contempts I have found proved.

APPENDIX
Particulars of the Respondent's acts of contempt

Interference with the due administration of justice

32. The Respondent made the following statements to medical and other experts:

32.1 On **26 October 2011** the Respondent told Mr Stuart Clark, Consultant Maxillo-Facial Surgeon, that:

32.1.1 he had no confidence in his speech as a result of the injury to his lip;

32.1.2 he had lost confidence in his ability to perform as a professional disc jockey and now had to delegate these tasks to an assistant.

32.2 On **8 October 2013** the Respondent told Professor John Morgan, Consultant Psychiatrist, that:

32.2.1 He was exquisitely self-conscious in relation to his lip;

[32.2.2 Attempts to run a courier service were unsuccessful because of his struggle to lift heavy objects].

*[32.3 On **20 March 2014** the Respondent told Seumas Halliday, Employment Consultant, that he had not done any work as a courier recently]*.

32.4 On **26 August 2014** the Respondent told Professor TRC Davis, Consultant Hand Surgeon, that:

32.4.1 He had tried to work as a courier but stopped after one day because of numbness and tingling of the right hand;

32.4.2 He tried to work as a courier again one year later but stopped after two days, again because of numbness and tingling of the right hand.

[32.4.3 He drove only rarely].

*[32.5 On **30 October 2014**, he told Ms Utting, Care Expert, that he had tried working as a courier but was unable to manage the role]*.

32.6 On **17 December 2014**, he told Dr Vincenti, Consultant Psychiatrist, that:

32.6.1 *[He tried to obtain work as a courier driver, but]* it proved impossible for him to do any of the lifting that was part of the job [of a courier driver]

[32.6.2 He did very little in the day other than watch TV];

32.6.3 He was currently drinking five or six bottles of spirits in the average week.

32.7 On **23 November 2015**, he told Ms Dawn Hales, Care Expert, that:

32.7.1 He was unemployed;

32.7.2 He continued to use his left hand predominantly when undertaking upper limb activities.

False statements of truth

33. In his witness statement dated **20 November 2014** which was verified by a statement of truth signed by him, the Respondent said:

33.1 "I am unable to assist with household tasks and I cannot go shopping as I did before as I cannot pack or carry heavy shopping bags."

33.2 "Driving is also very difficult now as well."

33.3 "I find it hard driving a manual vehicle with the gear changing."

[33.4 "As time went on it was clear that I was unable to continue with couriering [in 2014]."

33.5 "I have no confidence going out *[and tend to stay indoors a lot]."*

[*33.6 "I have no income.]"*

34. Further, the Respondent made the following statements and representations in the Schedule of Loss and Damage dated **20 November 2014**, which was verified by a statement of truth signed by him:

34.1 That he struggled to lift or carry items and this affected him on a daily basis.

34.2 That he was unable to work as a DJ due to loss of strength and dexterity in his hands.

[34.3 That he remained largely unemployed from 01 August 2008 to 21 November 2014].

34.4 That he *[had been unable to return to work and]* was unable to assist at home.

34.5 That from December 2008 to November 2014 he required and received an average of 3.75 hours of care and assistance from his family per day.

34.6 That he continued to require 3.75 hours of care and assistance per day.

[34.7 That from November 2008 to November 2014 he had spent £4.79 per week on Cura Heat Packs, totalling £1499.94].

35. Further, in the Schedule of Loss and Damage dated **20 November 2014**, the Respondent confirmed the assertions that he:

35.1 Had no employment prospects;

35.2 Required ongoing physical and psychological support due to the nature of the disabilities arising out of the injury in 2008;

[35.3 Would continue to require care and assistance from his family in the amount of 3.75 hours per day];

35.4 In due course he would need to pay for agency care when his family became unable to care for him;

35.5 Would require cognitive behavioural therapy for major depression resulting from the injury in 2008;

[35.6 Would require a driving assessment and adaptations to future vehicles];

In relation to each and every statement and representation set out above at Paragraphs 32 to 35 or any of them:

(A) The statement or representation was false,

(B) The statement or representation, if persisted in, would have interfered with the administration of justice in that it would have caused the Respondent to be awarded more damages than he was entitled to,

(C) At the time that the Respondent made the statement or representation he had no honest belief in its truth and knew the same to be false,

(D) At the time that the Respondent made the statement or representation he knew that it would be likely to interfere with the administration of justice.