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IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MANCHESTER DISTRICT REGISTRY

Before HHJ Sephton QC sitting as a judge of the High Court

BETWEEN

Sara Iddon

Claimant

and

Dr Karen Warner

Defendant

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.

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 2pm on 2 March 2021.

Introduction

1. This is a sad case. Mrs Iddon brings a claim for damages against her general practitioner, Dr Warner, because, she says, Dr Warner missed a diagnosis of breast cancer. The missed diagnosis meant that Mrs Iddon had to undergo mastectomy and axillary dissection which would otherwise have been unnecessary. Mrs Iddon claims that these treatments left her with debilitating chronic pain that have blighted her life. Dr Warner has admitted breach of duty. However, Dr Warner alleges that Mrs Iddon's claim should be dismissed because she has been fundamentally dishonest in relation to the claim.

The law

2. The statutory rule dealing with fundamental dishonesty in personal injury claims is found in Section 57 of the Criminal Justice and Courts Act 2015. It provides, so far as relevant, as follows:

    (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…

(8) In this section—

"claim" includes a counter-claim and, accordingly, "claimant" includes a counter-claimant and "defendant" includes a defendant to a counterclaim;

"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.

3. I address firstly the law on "dishonesty" and then consider the authorities relating to "fundamental dishonesty".

4. The Supreme Court addressed the elements the court must consider in deciding whether dishonesty is made out in *Ivey v Genting Casinos UK Limited* [2017] UKSC 67. Lord Hughes, with whom the other justices agreed, said at [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."

5. 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 QOCS 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."

6. In *London Organising Committee of the Olympic and Paralympic Games v Sinfield* [2018] EWHC 51, Julian Knowles J reviewed the authorities concerning "fundamentally dishonest" and "fundamental dishonesty" with characteristic thoroughness 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."

The background

7. Mrs Iddon attended an appointment with her General Practitioner, Dr Warner, on 27 January 2014. She presented with a lump on her left breast. Dr Warner recorded that there was "no discrete lump" and reassured Mrs Iddon.

8. Mrs Iddon attended an appointment with Dr Prestwell at the same general practice on 3 November 2014. She complained that there was a change in the shape of her left breast. Dr Prestwell referred her to the breast clinic where she underwent a mammogram. This study revealed a soft tissue mass that was confirmed on biopsy to be a carcinoma.

9. On 30 December 2014, Mrs Iddon underwent left mastectomy, axillary node clearance and immediate breast reconstruction. She underwent adjuvant chemotherapy and hormone therapy followed by radiotherapy.

10. Mrs Iddon underwent lipo modelling of her reconstructed left breast on 15 December 2015, 8 March 2016, 17 May 2016, 3 August 2016 and 11 October 2016. The donor sites for the lipo modelling were both sides of her lower abdomen.

11. On 22 June 2017 Mrs Iddon commenced this claim. Her claim was expressed to be for "damages exceeding £25,000". Paragraph 20 of the Particulars of Claim alleged that the claimant had

"suffered avoidable pain, suffering and loss of amenity, specifically

a. Mastectomy and reconstruction of the left breast, leaving the claimant with a grossly abnormal left breast appearance which is unlikely to be improved with surgery
b. Axillary clearance, causing ongoing symptoms of pain and reduced movement in the left arm and increased risk of lymphoedema"

The schedule of loss made a claim for past loss of earnings, care, travel and miscellaneous expenses to a total of £76,634.07 with general damages and future losses to be confirmed.

12. Mrs Iddon attended on Mr Henderson, consultant plastic surgeon for examination on 22 August 2017. Mr Henderson recorded the following (amongst other things):

> "She hopes to be able to recover her sporting activities and she is now attending a gym with a 25m swimming pool and she like to average 20 to 30 lengths per session…"

> "She cannot lift heaving (sic) things… can abduct her left arm to 120° but not to 180°"

13. On 7 September 2017, Dr Ford, consultant clinical psychologist examined Mrs Iddon. Dr Ford recorded (amongst other things) that

> "She no longer runs but does try to swim a bit in the swimming pool. However this is not anywhere near the level she was at prior to the alleged negligence i.e. she used to swim for miles…"

14. On 30 November 2017, Dr Sharma, consultant in pain medicine, examined the claimant. In relation to the pain Mrs Iddon was complaining of, he wrote:

> "The pain is constant, severe, agonising, aching, sharp, throbbing, tingling and horrible in character"

In relation to the effect of her pain upon her sporting activities, he recorded this:

> "Mrs Iddon was fit and she used to run 4 times a week as well as she had training for a half marathon that she took part in. She used to swim in open waters as well as take her dog out for a walk. She cannot do these leisure activities now because of lack of fitness and tiredness…"

15. On 6 March 2018, Mr and Mrs Iddon, Mr Christopher Barnes and Mr Thomas Barnes made witness statements in support of Mrs Iddon's claim. I shall refer to these statements later in this judgment.

16. On 27 March 2018, the defendant served a defence which denied liability.

17. By order dated 18 December 2018, DJ Stonier granted Mrs Iddon permission to increase the value of her claim to "damages exceeding £200,000" and to amend her Particulars of Claim. (The proposed amended Particulars of Claim had been served on the defendant on 15 May 2018.) So far as relevant, the amendment added the following to paragraph 20 of the Particulars of Claim:

c. Severe chronic post-surgical pain and associated dysesthesia and numbness in the left chest wall, left shoulder/arm and both hips causing severe disability, fatigue and psychological injury"

Mrs Iddon verified the Amended Particulars of Claim with a statement of truth dated 1 May 2018.

18. Mrs Iddon served a schedule of loss, verified by a statement of truth dated 9 May 2019, claiming a total of £941,182.03. The schedule of loss claimed just less than half a million pounds for past and future loss of earnings and a little more than a quarter of a million pounds in respect of her past and future care.

19. On 1 July 2019, the defendant made an open admission of liability. On 6 July 2019, by consent, DJ Stonier:

(a) Entered judgment for the claimant for damages to be assessed.

(b) Ordered the defendant to make an interim payment of £100,000

(c) Ordered the defendant to make an interim payment on account of costs of £100,000.

20. Mrs Iddon attended upon Dr Logan, consultant in pain management, on 18 October 2019, for a medico legal report. Dr Logan recorded the following account:

> "She can do no lifting, no shopping, she avoids bending, bathing is difficult and she cannot cook or complete domestic chores so her husband helps with the activities of daily living. She has difficulty sitting and standing for over 30 minutes. She can only drive a very short distance due to pain. She used to be sporty and swim, run, walk and socialise. She does not do these things now"

21. On 22 October 2019, Dr Welch, consultant clinical psychologist, examined Mrs Iddon for medico legal purposes. He recorded the following:

> "She was an open water swimmer and was an extremely active person. When asked if she could consider a return to open water swimming, given that she would be wearing a wetsuit to cover up any scarring at the operation site, she stated that she would be unable to do this because her appearance would look so bad even in a wetsuit. In addition, the pain in her upper quadrant would prevent her from swimming."

22. On 7 November 2019, the defendant volunteered a further interim payment of £5,000.

23. On 11 December 2019, Mr Richard Vaughan made a witness statement. Mr Vaughan is an intelligence analyst. His witness statement disclosed (amongst other things) that:

(a) On 2 September 2016 Chris Barnes posted on Facebook the following: "Sara is not a victim but a fighter carrying on with her life running and swimming like she did before."

(b) On 1 November 2017, Sara Iddon posted on Facebook the following: "Fantastic night swim with Christine, Swimease 30/10/17, brilliantly organised and really good fun""

(c) A Google search revealed that Sara Iddon finished 45th in the Great North Swimrun 2018 which took place on 9 June 2018.

(d) A Google search revealed that Sara Iddon and Andrew Iddon finished 100th and 101st in the Great Scottish Swim Aquathon which took place on 25 August 2018.

24. The defendant served Mr Vaughan's witness statement together with a counter schedule on 12 December 2019. They later invited Mrs Iddon to respond to Mr Vaughan's statement in a document verified by a statement of truth.

25. On 20 January 2020, further witness statements were made by Mr and Mrs Iddon and by Christopher Barnes. I analyse Mrs Iddon's witness statement later in this judgment. In summary, these witness statements denied that Mrs Iddon had taken part in the sporting activities referred to by Mr Vaughan.

26. At a joint settlement meeting on 23 January 2020, the claimant's solicitors served the witness statements of 20 January 2020 and a draft unsigned statement of Amanda Anstey. They also served an amended schedule of loss. The total claim was now £915,451. Although the claims for loss of earnings and care were moderated slightly compared with the previous schedule, these claims continued on the premise that the claimant would never work again and she would require 2 hours of care each day for the rest of her life.

27. At the same meeting, the defendant served a further witness statement from Mr Vaughan dated 15 January 2020. Mr Vaughan exhibited photographs illustrating Mrs Iddon taking part in the "Crazy Cow" 10 km run events held on 21 May 2017 and 17 June 2018 and in the Great Scottish Swim Aquathon 2018.

28. On 6 February 2020, the defendant served an amended defence pursuant to permission granted by me on 4 February 2020. In it, Dr Warner admits that

(a) She was negligent in failing to refer Mrs Iddon to the breast clinic under the 2 week pathway on 27 January.

(b) Her negligence caused a delay of about 8 months in Mrs Iddon's cancer diagnosis.

(c) In the absence of the admitted delay, Mrs Iddon would have avoided the mastectomy and the axillary clearance and the risk of lymphoedema.

The amended defence raises the allegation that the claim should be dismissed on account of the claimant's fundamental dishonesty. I gave Mrs Iddon permission to serve a further witness statement dealing with the allegations contained in the Amended Defence and the other documents served by the defendant.

29. An implant in Mrs Iddon's left breast was removed on 11 March 2020.

30. On 1 June 2020, Mrs Iddon made a further witness statement verified by a statement of truth. In this witness statement, she repeated her account that she suffers from debilitating pain. She stated that she would assess her pain as being 7 or 8/10. She repeated that she would be unable to cope with working. She repeated that she requires domestic help. She stated that she acquired CBD Hemp oil and a substance she believed to be cannabis oil to cope with the effects of breast cancer. With the aid of these substances, she was able to manage 8 sporting events, participation in which she now admitted. She confirmed that "these are all the events I have participated in with no omissions." She admitted that parts of her witness statement dated 20 January 2020 were untrue. She had been telephoned by her former solicitor, Laura, and confronted with Mr Vaughan's evidence. She panicked because if she admitted participating in these events she would have to explain that she was only able to do so by using cannabis oil. She was afraid that she would be imprisoned because she had taken cannabis oil. She said that Laura required her to make a witness statement but had said that they would only be deployed as a last resort.

31. On 2 June 2020 Mrs Iddon served a Reply to the Amended Defence which she verified by a statement of truth. In it, she asserted that:

(a) She had participated in 8 events which she identified. (In paragraph 7 of the Reply it is asserted that "these are the entirety of the events she has taken part in".)

(b) The reason she did not disclose her participation in those events was out of fear of potential prosecution because she had obtained what she believed was cannabis oil.

(c) The only way in which she was capable of competing in those events was because she was using CBD Hemp and cannabis oil.

32. On 8 July 2020, the defendant served a notice to admit facts. Amongst the facts, admission of which was required, was the fact that Mrs Iddon had taken part in a 10 km run on 14 May 2017 which she had not previously referred to. Mrs Iddon admitted those facts.

33. It is convenient to set out the details of all of the sporting events in which it is known that Mrs Iddon took part in 2017 and 2018:

(a) 14 May 2017 Worden Park 10 km run.

(b) 21 May 2017 Crazy Cow 10 km run.

(c) 9 June 2017 Great North Swim 1 mile in Lake Windermere.

(d) 26 August 2017 Great Scottish Swim 1 mile in Loch Lomond

(e) 30 October 2017 Helly Hansen Water Sports Centre Night Swim 300m

(f) 9 June 2018 Great North Swimrun. This involved: a 7km run; a 450m swim; a 1.5km run; a 630m swim; a 2.3km run and finally a 760m swim

(g) 17 June 2018 Crazy Cow 10 km run

(h) 25 August 2018 Great Scottish Swim. This involved a 800m swim followed by a 5 km run.

(i) 30 September 2018 Preston 10 km fun run.

If breach of duty had not occurred

34. The question of what treatment Mrs Iddon would have undergone if Dr Warner had referred her to the breast clinic in January 2014 is addressed in the reports of Professor Price and Dr Chaudary. They state that she would have been offered wide excision of the tumour ("lumpectomy"). They observe that Mrs Iddon would have had to undergo sentinel lymph node biopsy. The experts agree that she would have required adjuvant chemotherapy and hormonal treatment. Mr Chaudary explains that local protocols mandated the use of radiotherapy in a case such as Mrs Iddon's. Mr Chaudary indicates that mastectomy may have been required in any event, but, having regard to the admission in the defendant's Amended Defence, I assess this case on the basis that mastectomy would have been avoided. As admitted in the Amended Defence, given early diagnosis, Mrs Iddon would have avoided the mastectomy and the axillary clearance and the risk of lymphoedema.

The witness statements

35. The claimant's solicitors served witness statements made on 6 March 2019 by Mr and Mrs Iddon, Thomas Barnes and Christopher Barnes. I identify two material themes that run through these witness statements: firstly that Mrs Iddon is now significantly disabled such as to require care and support from her husband and father and secondly, that Mrs Iddon had been a keen sportswoman prior to her mastectomy and the attendant treatment but that now, she could no longer undertake the running and swimming that she used to.

36. It will be recalled that material exhibited to Mr Vaughan's witness statement suggested that Mrs Iddon had been "carrying on with her life running and swimming like she did before" and had participated in 3 open water swimming events. This was a stark contrast to the picture painted in the witness statements of 6 March 2019 and in paragraph 20(c) of the Amended Particulars of Claim. After the defendant had served Mr Vaughan's statement, Mr and Mrs

Iddon provided witness statements dated 20 January 2020. Mrs Iddon's witness statement asserted:

(a) In relation to her brother's Facebook post, that she was unable to run and she had tried on occasions to swim at the gym, though she thought that this had not started until 2017. She said that when she tried swimming she did not manage much. She said that Mr Henderson's report was incorrect in stating that she could swim 20 – 30 lengths in a 25 m pool; she could manage 10 lengths at best. She said that she could not remember the last time she had swum but she thought it was over a year ago.

(b) In relation to the Halloween Swim, that she had signed up for the swim, but she tried on her wetsuit a few days before but could not even get it on because of the pain and so she did not swim.

(c) In relation to the events on 9 June 2018 and 25 August 2018, that she had applied to enter with her husband. When she realised that she could not participate, her place was taken by her friend, Amanda Anstey.

The witness statement Mr Iddon made on 20 January 2020 and the draft statement of Amanda Anstey were to similar effect.

37. In relation to the statements served in January, Mrs Iddon explained to me in cross-examination that she decided to approach her friend, Amanda Anstey, to put forward an account that Ms Anstey had taken her place in two of the open water swims in her place. She told me that Ms Anstey willingly complied. Mrs Iddon told me that she had to persuade her husband to make a witness statement that supported her account that she had not swum in the Halloween event and that Ms Anstey had replaced her in the other two swims. In fact, although Ms Anstey provided a statement, she did not sign or date it and so it appears in the trial bundle as a draft unsigned statement.

38. In her witness statement of 1 June 2020, Mrs Iddon admits that parts of the witness statement of 20 January 2020 were untrue. Although she does not frankly confess to dishonesty, the part of her statement that deals with the earlier statement is headed "omissions and lies."

39. I emphasise the significance of the evidence that Mrs Iddon gave in her witness statement of 1 June 2020 and in her evidence before me: She admits that her witness statement of 20 January 2020, verified by a statement of truth, contained a number of untruths that she had advanced in answer to Mr Vaughan's first witness statement. She also admits that she

recruited her husband and her friend into supporting her dishonest account. In my judgment, it is fair to characterise Mrs Iddon's conduct as inciting, and then participating in, a conspiracy to pervert the course of justice.

40. By her notice to admit facts, the defendant invited Mrs Iddon to admit that she had participated in a number of sporting events, and Mrs Iddon did so. One such was the Worden Park run on 14 May 2017. This run is significant for several reasons. It was chronologically the first significant sporting event after Mrs Iddon's operations of which the court has been made aware. It took place only a week before the Crazy Cow run, a 10km run on 21 May 2017. The happening of two 10 km runs in the space of a week is undoubtedly a significant feature in the context of a claim where the claimant alleges that she suffers from debilitating pain. The witness statements of Richard Vaughan did not identify that Mrs Iddon had undertaken the Worden Park run. Mrs Iddon's witness statement dated 1 June 2020 purports to identify all of the events in which she participated (paragraph 54 says "with no omissions… in order to be completely open about this part of the case"), but it does not mention the 10km run at Worden Park. The defendant submits that the reason that the claimant's witness statement does not mention the Worden Park run is because the claimant thought she had got away with not mentioning it.

41. Mrs Iddon told me in evidence that she had informed her solicitors about the Worden Park Run, but she says that they must have forgotten about it when they were preparing her witness statement of 1 June 2020. I reject that evidence. The circumstances in which the witness statement of 1 June 2020 was prepared were that Mrs Iddon had already been caught out in lies. The forensic purpose of the witness statement was to allow her to make a clean breast of events and to throw herself on the mercy of the court. In my judgment, it is inconceivable that a solicitor would have omitted to refer in a draft witness statement to an event as significant as the Worden Park run if he or she had received instructions about it. Furthermore, the (allegedly complete) list of events in which Mrs Iddon admitted participation contained in paragraph 7 of the Reply is clear and in chronological order. I am sure that Mrs Iddon was advised to read the Reply carefully before making a statement of truth. I cannot believe that she missed the fact that the Worden Park run did not appear on the list. In my view, this is further evidence that Mrs Iddon's solicitors carefully identified the events in which she participated and that Mrs Iddon did not point out that the Worden Park run was missing from the list.

42. I find that Mrs Iddon deliberately omitted to refer to the Worden Park run in her witness statement of 1 June 2020 because she believed that the defendant had not found out about that event and she hoped to conceal that event from the court's attention.

43. This is an important conclusion. It demonstrates that I cannot take the witness statement of 1 June 2020 as being accurate. Even though it purports to make a clean breast of matters, it contains at least one significant and dishonest omission. Taken together with the claimant's admittedly misleading witness statement of 20 January 2020 and her accounts to the medico legal experts (with which I deal later in this judgment), I conclude that I must treat the rest of the witness statement with grave suspicion. I have come to the conclusion that I cannot accept the claimant's evidence unless it is supported by other, reliable, evidence.

44. I turn to consider the assertion made in the witness statement of 1 June 2020 that Mrs Iddon did not wish to admit completing the sporting events because she would have to explain that she did so only by admitting consuming cannabis oil, possession of which is a criminal offence. She claimed that it was for this reason that she made the witness statement of 20 January 2020 and for this reason that she recruited her husband and Amanda Anstey into making witness statements supporting her lies. The claimant was cross-examined about this account. Her evidence was that she bought a "small bottle" of hemp oil in a health food shop in Whitby in 2016. She claims that she used hemp oil before and after sporting events. In paragraph 61 of her witness statement of 1 June 2020, that she took CBD Hemp on a daily basis. In paragraph 72 of her witness statement she says that she used it 3 times a week. She did not explain how a "small bottle" of oil could have lasted so long. She claims that she persuaded her husband to obtain 10ml of cannabis oil which she then used in the sporting events of 2018. She invoked the privilege against self-incrimination when she was asked about where she acquired the cannabis oil and how she managed to make 10ml last for the season. Mrs Iddon therefore did not explain how she came by the alleged cannabis oil or how much she used, so as to justify the inference that there was sufficient cannabis oil to provide relief for periods before and after several endurance events.

45. I do not believe Mrs Iddon's story about hemp oil and cannabis oil for several reasons: This account appears in a witness statement which I treat with suspicion for the reasons set out earlier in this judgment. Extremely cogent evidence would be required to convince me that her account is accurate. The account she gave about how she came by these substances and how the amount she admitted buying managed to last her through two sporting seasons is lacking in the detail necessary to give her account any semblance of cogency. Further, I do not believe that Mrs Iddon thought that engaging in a conspiracy to pervert the course of justice

was less grave in its consequences than a possible prosecution for possession of a minute quantity of cannabis oil.

46. I find that the true reason Mrs Iddon made her witness statement of 20 January 2020 and persuaded others to support her lies was that she thought she could explain away the matters set out in Mr Vaughan's first witness statement and persuade the court that the evidence was not nearly as damaging to her case as the defendant suggested. Her plan was foiled by the further, damning, evidence in Mr Vaughan's second witness statement. A further consequence of my conclusion is that I reject the submission that the consumption of either hemp oil or cannabis oil had any effect at all on Mrs Iddon's performance in the sporting events in which she took part. I find that when she took part in those sporting events, she performed without the aid of these substances.

47. None of Mrs Iddon's other factual witnesses gave evidence at the trial. Mr Skeate invited me to take account of the evidence contained in their witness statements even though they were not called to give evidence. In the circumstances of this case, I draw the conclusion that the witnesses were not prepared to face cross-examination on their statements. I place no reliance on the evidence in the witness statements.

Extent of Mrs Iddon's sporting activities

48. I consider that it is helpful at this stage to analyse the claimant's sporting activities further. Mrs Iddon's achievements in competition are important because they are an index of her abilities in a field of endeavour which is evidenced by lists of results kept by the organisers of events. The court therefore has access to evidence about her capability that is independent of the claimant and the witnesses she may choose to call. The court does not have similar independent evidence about, for example, Mrs Iddon's activities of daily living. Mrs Iddon's sporting achievements stand in stark contrast to the picture of a woman crippled by pain which she sought to portray to the medical experts. In my view, a 10km run is no mean feat for a survivor of breast cancer, even if some of it was carried out at a walking pace, as Mrs Iddon would have the court believe. A one mile swim in open water is likewise a significant achievement.

49. In the course of the trial, there was a debate about whether Mrs Iddon's performance in 2017 and 2018 was significantly poorer than before the index breach of duty. Mrs Iddon made the point that competition times are not good index of ability because performance in open water competition is affected by several variables that can be better controlled in training; for example, the number of other competitors who might impede one's progress and the wind

and water conditions. Mrs Iddon sought to prove the point by producing a Facebook post in which she claimed that in training in 2012, she had swum 2 miles in 1 hour and 19 minutes, which provides an average speed much quicker than she had achieved in any competition. I find that Mrs Iddon's results in competition in 2017 and 2018 are roughly comparable to what she achieved in competition before 2015. I am unable to reach any clearer conclusion about whether her performance deteriorated, given the state of the evidence.

50. However, the argument about whether Mrs Iddon's performance had deteriorated misses an important point, namely, that Mrs Iddon must have undertaken a good deal of training in order to compete in 2017 and 2018 at a similar level as before 2015 after a series of operations, exhausting and debilitating courses of radiotherapy and chemotherapy and consequently, a long period during which she could no longer participate in physical activity. This common sense conclusion is supported by several pieces of evidence:

(a) In a Radiotherapy discharge note dated 3 September 2015, the therapist recorded the following:

> "She completed the radiotherapy on 24 July 2015 but the tiredness has not completely disappeared. Sara's baseline fitness was good, she was training and swimming but she feels she cannot do the things she wants to do. I informed her that her fitness can come back gradually and she will have to build up her fitness slowly".

(b) On 1 March 2016, she discussed with her therapist values that were important to her. The note records:

> "Fitness – this remains a very important value to Sara. She is building up her swimming and enjoying this, although she told me that she wonders if it is excessive at times."

(c) On 2 September 2016, Christopher Barnes, Mrs Iddon's brother, made the following Facebook post:

> "Sara is not a victim but a fighter carrying on with her life running and swimming *like she did before*." (my emphasis).

In my judgment, the most likely explanation of the Facebook post is that it was true.

I find, therefore, that in addition to the competitions in which Mrs Iddon now admits participation, she undertook training which involved running and swimming.

Mrs Iddon's accounts to the medical experts

51. I turn to consider the account of herself that Mrs Iddon gave the medical experts about her sporting activities. In the light of the conclusions I have drawn, I note that by the time the experts examined her she had been training hard for her sporting activities. She had competed in several events.

52. It is striking that Mrs Iddon did not mention to any medical expert her participation in the several endurance events in which she competed.

53. When Mrs Iddon saw Mr Henderson on 22 August 2017, she had undertaken two 10 km runs in the space of a week and had participated in a 1 mile open water swim in Lake Windermere. She was intending, four days after the examination, to undertake a further open water swim in Loch Lomond. I remind myself that the account Mr Henderson recorded:

> "She hopes to be able to recover her sporting activities and she is now attending a gym with a 25m swimming pool and she like to average 20 to 30 lengths per session…"

This is misleading because it fails to acknowledge the training she had undergone or the events in which she had participated.

54. When Mrs Iddon saw Dr Ford on 7 September 2017, she had completed the Great Scottish Swim 12 days previously. The account Dr Ford recorded was this:

> "She no longer runs but does try to swim a bit in the swimming pool. However this is not anywhere near the level she was at prior to the alleged negligence i.e. she used to swim for miles…"

In my judgment, this was even more misleading, suggesting as it does that Mrs Iddon no longer ran or undertook open water swimming when plainly she had done so in the recent past and was destined to do so in the future.

55. When she saw Dr Sharma on 30 November 2017, she had undertaken an open water swim at night the month before. He records this account:

> "Mrs Iddon was fit and she used to run 4 times a week as well as she had training for a half marathon that she took part in. She used to swim in open waters as well as take her dog out for a walk. She cannot do these leisure activities now because of lack of fitness and tiredness…"

This was untrue.

56. When Mrs Iddon saw Dr Logan and Dr Welch in October 2019, she had undertaken another summer of sporting activities. She gave an account that she was very significantly disabled in her everyday activities and quite incapable of the sporting activities she used to enjoy.

57. In paragraph 130 of Mrs Iddon's witness statement of 1 June 2020, she seeks to suggest that her remarks to some of the medical experts were not misleading for the various reasons set out in her witness statement. In cross-examination, Mrs Iddon repeated that her statements to the medical experts were factually accurate. I reject the claimant's explanation. The fact of the matter is that the claimant had trained and competed in a number of endurance events

which she must have known would influence the opinions of the medical experts. Her sporting achievements belie the account of the helpless invalid she sought to portray in her accounts to the experts.

58. I conclude that, by the incomplete or frankly misleading accounts Mrs Iddon gave to the medical experts, she intended to mislead the court about her capabilities.

Surveillance

59. The defendant commissioned surveillance of the claimant in December 2019 and January 2020 and relied upon recordings made on 4 days. In brief summary:

    (a) Mrs Iddon drove her car to Preston on 16 December 2019. She walked around town for just over an hour with her bags in the crook of her left arm.

    (b) Mrs Iddon drove to a gym on 17 December 2019 where she stayed for 2 ½ hours before driving home.

    (c) On 9 January 2020 Mrs Iddon drove and ended up at a café, where she stayed for about ½ hour.

    (d) On 10 January 2020 Mrs Iddon drove to Sainsbury's and did some shopping. As she was returning home she had a near miss with a van and she used her phone in her left hand for some minutes.

60. I accept Mr Skeate's submission that this surveillance shows Mrs Iddon active for limited periods in each day on which surveillance took place. I accept that the recordings do not unequivocally show that Mrs Iddon had significantly greater use of her left upper limb than she claims: although she carried her bags in the crook of her left arm, one cannot tell if they were heavily laden; she was able to use her mobile phone with her left hand but did not elevate her elbow significantly to do so. On the other hand, the recordings do not show that Mrs Iddon is suffering from severe disability; the manner in which she uses her left arm appears to me to be no different from what I would expect of a healthy right-handed person. Incidentally, the recording on 16 December 2019 demonstrates that the claimant was misleading me when she said, in re-examination, that she had only recently managed to drive as far as Preston in order to pick up the trial bundles.

Chronic Pain

61. A significant feature of the claimant's complaints is that she suffered and suffers from what is described in paragraph 20(c) of the Amended Particulars of Claim as follows:

> "Severe chronic post-surgical pain and associated dysesthesia and numbness in the left chest wall, left shoulder/arm and both hips, causing severe disability, fatigue and psychological injury."

In view of my finding that the claimant's evidence is unreliable, I turn to consider whether there is convincing evidence that supports her complaints of severe disabling pain. In relation to the allegation that Mrs Iddon suffered from chronic pain I heard from pain consultants, Dr Sharma and Dr Logan.

62. Mrs Iddon described her pain to Dr Sharma and Dr Logan as being very serious, as set out earlier in this judgment.

63. When these experts examined Mrs Iddon, they were unaware of her sporting activities in 2017 and 2018 and they did not know that she had admitted lying in her witness statement of 20 January 2020. The experts had not seen recordings of surveillance of Mrs Iddon undertaken in December 2019 and January 2020. Dr Logan and Dr Sharma prepared a joint statement after these facts became known. In the joint statement, these experts agreed the following relevant propositions:

    (a) The series of operations and procedures Mrs Iddon suffered could plausibly lead to chronic pain up to and including severe chronic pain and disability.

    (b) The experts' conclusions and opinions would have been significantly affected if the claimant had made them aware of her sporting achievements. The claimant undertaking sporting activities is not inconsistent with a diagnosis of chronic post-surgical pain syndrome.

    (c) Pain is essentially subjective and the experts rely completely upon the claimant's self-report. Accordingly, the experts cannot confidently express an opinion if they cannot accept the reliability of the claimant's report.

    (d) From a pain management perspective, the experts expect some degree of pain and suffering will continue and it is unlikely that she will ever recover.

64. When Dr Sharma examined Mrs Iddon, he identified sensitivity and dysesthesia in the distribution of the intercostal brachial nerve. Dr Logan had a similar finding. Dr Sharma explained that even a modest insult to this relatively small nerve could give rise to severe chronic pain. Dr Logan agreed that damage to the intercostal brachial nerve could have occurred during the axillary dissection that Mrs Iddon underwent. He made the point that the extent to which such nerve damage caused pain was subjective; a patient might exaggerate the extent of their discomfort and the medical practitioners would be none the wiser.

65. Dr Sharma gave evidence that, even when Mrs Iddon did not know that she was being observed, she had involuntary, jerky movements of her shoulder and upper limb. He ascribed this to chronic pain. Dr Logan had not observed this phenomenon, though he agreed that Mrs Iddon had reported this phenomenon to him. He accepted that Dr Sharma had seen the claimant jerking when Dr Sharma believed that she did not know she was being observed. He explained that he sees many patients in his practice that have jerky movements, but he frequently could not get to the bottom of why. He could not confidently ascribe the jerky movements to chronic pain.

66. Dr Logan stated that the severe pain of which Mrs Iddon complained would probably emerge within 3 months of the operation at the most. He recorded that the claimant considered the pain in her shoulder and arm to vary between 7/10 and 10/10 with an average of 8/10. He would have expected that the claimant would have complained to the medical staff about pain of this intensity but Mrs Iddon had not done so. Dr Logan concedes that Mrs Iddon regularly made generalised complaints of pain. He points out that there were several occasions when Mrs Iddon denied that she was in pain at all. The first mention of pain located in the left shoulder only emerged at a GP consultation on 30 April 2017. It seems that the GP made an orthopaedic referral. On 6 September 2017, Mr Gardner, a specialist physiotherapist, recorded the following:

> "She has good active elevation of the left shoulder to virtually full range 170° but does have a painful arc of abduction… She has a positive Hawkins' impingement test… the lady has an impression of subacromial pain…"

Mr Gardner sent her for further studies. When Mrs Iddon re-attended on 15 November 2017, Mr Gardner recorded the following:

> "She has had an ultrasound scan which confirms what we thought which was subacromial pain and bursal thickening with inflammation… She is having physiotherapy which is starting to have an effect…"

Mr Gardner was considering a steroid injection but decided to refer to Mr Boland, Mrs Iddon's breast surgeon, to check that this treatment was not contra-indicated because of her medical history. On 21 February 2018, Mr Gardner recorded that Mr Boland advised against an injection because of the risk of lymphoedema. He notes,

> "The good news is that she is finding that using Naproxen and having physiotherapy significant improving (sic) her shoulder function"

On 6 June 2018, Mrs Iddon was discharged from Mr Gardner's clinic. Mr Gardner wrote:

> "She is happy to manage her symptoms with Naproxen medication and also with acupuncture which seems to be really helping her. I am happy for her to continue with

this form of management however I mentioned to her that we would be happy to see her again if necessary. At this moment we do not have any further intervention planned so I have discharged her to your care for the moment. She is happy with this decision."

67. Dr Sharma suggested that the reason that Mrs Iddon did not complain specifically about left upper limb pain until April 2017 might be that, prior to that date, her generalised pain was of such an intensity that the shoulder pain was not particularly conspicuous.

68. When Dr Sharma gave evidence, I formed the impression that he was unshakably convinced that Mrs Iddon suffered from severe, debilitating chronic pain. He appeared to me to give lip service only to the conclusion in the joint statement that pain is subjective and that a pain specialist could not confidently express an opinion if he could not rely upon the patient's report. At times, his evidence bordered on advocacy for the claimant. I found that Mr Logan was balanced in his evidence and he was prepared to concede points that detracted from his thesis. I preferred the evidence of Mr Logan.

69. I accept that the claimant's left intercostal brachial nerve was damaged during the procedures she underwent. I accept that there is some numbness in the distribution of the nerve. I reject the submission that Mrs Iddon suffers from chronic pain of any significance for the following reasons:

(a) She was able to train for, and perform in, several arduous sporting events. This is inconsistent with the allegation of "severe disability and fatigue."

(b) I accept Dr Logan's evidence that chronic pain would probably have manifested within 3 months of the operations which caused it. I agree with his suggestion that if Mrs Iddon were suffering from debilitating pain as she alleges, she would have mentioned it to the medical practitioners. She would not have denied that she had pain. Mrs Iddon's first complaint in relation to her shoulder arose 2 years and 3 months after the operation, appeared to be of orthopaedic rather than neurological significance and was sufficiently under control that she was discharged from Mr Gardner's care in 2018.

(c) There being no reliable evidence to support her account, I reject Mrs Iddon's complaints of severe chronic pain causing severe disability, fatigue and psychological injury.

For the avoidance of doubt, I find that Mrs Iddon's life expectation has not been reduced by chronic pain. (I note that paragraph 21 of the Amended Particulars of Claim disavows any other cause of reduced life expectation.) I accept Dr Logan's view that the jerky movements observed by Dr Sharma cannot confidently be attributed to debilitating chronic pain.

70. It is clear from one of the photographs annexed to Mr Henderson's report and from the examination of Mr Gardner referred to above that the range of movement in Mrs Iddon's left shoulder is functionally normal. This gives the lie to a photograph contained in Dr Sharma's report where Mrs Iddon is shown grimacing with her left arm extended to about 45°. I accept the possibility that Mrs Iddon may suffer some weakness in the left arm, and that it may sometimes give her discomfort or frank pain. However, there is no reliable evidence about the extent (if any) of genuine weakness and pain. Accordingly, I am forced to conclude that Mrs Iddon has not proved any genuine symptoms of weakness and pain that she may have. She has not satisfied me that her condition prevents her from dressing herself, undertaking the activities of daily living or doing the housework.

71. The allegation in paragraph 20(c) of the Amended Particulars of Claim is that psychological injury is consequent upon severe chronic post-surgical pain. Since I reject the allegation that the claimant has severe chronic post-surgical pain, I also reject the allegation that Mrs Iddon has suffered consequent psychological injury. In any event, Dr Welch, from whom I heard, expresses the view, which I accept, that Mrs Iddon does not suffer from any recognised psychiatric condition. I note that Dr Ford, who thought that Mrs Iddon may have an adjustment disorder, was not called, and her evidence has not been tested.

72. Having made these findings, it is appropriate to consider the value of Mrs Iddon's claim.

General damages

73. The defendant admits that, had Mrs Iddon been referred earlier, she would have avoided the mastectomy, axillary clearance and the risk of lymphoedema.

74. I bear in mind that Mrs Iddon had a number of procedures that she would not otherwise have undergone: a mastectomy, axillary clearance, 5 lipo modelling procedures and, most recently, the removal of the saline implant. The most obvious consequence of these operations is scarring and disfigurement to the left breast. There is also an axillary scar and an indent in the donor area of the hip. It is most unfortunate that I was not shown high quality photographs of the areas of scarring. The clearest photographs I have are annexed to the report of Mr Henderson; they are quite small and poorly reproduced. Mr Henderson provides a helpful description in the body of his report. I have neither photograph nor description of the claimant as she now is after her operation in March 2020. In considering the cosmetic consequences of the defendant's breach of duty, I must bear in mind that, absent breach of duty, Mrs Iddon would have had to undergo lumpectomy which carries with it the risk of what Mr Chaudary calls "an unacceptable cosmetic result."

75. I accept that Mrs Iddon found the mastectomy extremely distressing. I believe her that she felt that her femininity had been compromised. Notwithstanding that I have found that she did not suffer a recognised psychiatric condition, I accept that she suffered from insomnia and had a poor body image. In my judgment, the negative psychological effects of the loss of a part of the body that made Mrs Iddon feel feminine distinguish this case from the general run of scarring cases.

76. The axillary clearance carried with it a risk that Mrs Iddon would develop lymphoedema, that is, swelling of the hand and arm on the treated side. Mr Chaudary explains that 77% of patients who develop the condition do so within 3 years of surgery. Fortunately, Mrs Iddon does not appear to be one of these. Thereafter, the risk of lymphoedema is 1% a year for at least 20 years. There is no cure for this condition, though there are measures that can be taken to mitigate its effects.

77. Mr Skeate referred me to reports of three cases about damages in similar cases. None of these cases is the result of judicial decision; all are compromises. I am not assisted by these reports.

78. Counsel referred me to the Judicial College Guidelines relating to traumatic chest injuries and to scarring. I regard the chest injury guidelines as being relevant to traumatic internal thoracic injuries and not helpful in this case. In my view the scarring guidelines do not assist me in this case, where I deem the psychological consequences to be of particular importance and where I must reflect the fact that Mrs Iddon has undergone a series of operations.

79. In my judgment, taking all of the above matters into account, the appropriate award for pain, suffering and loss of amenity is £25,000.

Loss of earnings

80. Mrs Iddon was employed in the betting industry until June 2013. She was then unemployed until April 2014. If Dr Warner had referred Mrs Iddon to the breast clinic in January 2014, Mrs Iddon would not have been employed in April 2014; she would have been off the job market for a significant period whilst she underwent lumpectomy, adjuvant chemotherapy and radiotherapy. She would then have been seeking employment in the open labour market. I have little evidence to go on, but doing the best I can, I find that she would have been on the labour market again in July 2014. She would have been seeking a job after an absence from work of about a year. Mrs Iddon has adduced no evidence about what opportunities she might have had.

81. What happened in fact is that Mrs Iddon obtained employment in April 2014 at Lyreco. There is no reliable evidence about what Mrs Iddon earned at Lyreco. Mrs Iddon served a witness statement from Mr Duane Fullwood, but Mr Fullwood was not called to give evidence and his witness statement was not agreed. Having regard to my doubts about all of the factual evidence served on behalf of Mrs Iddon, I give Mr Fullwood's witness statement no weight. For the reasons canvassed earlier in this judgment, I am sceptical about Mrs Iddon's own evidence.

82. I note that in her counter-schedule, the defendant accepts that Mrs Iddon would have earned £25,433 over a period of 14 months. I calculate that his amounts to £21,800 a year net. In the light of the defendant's concession and given the scant evidence available to me, I find that Mrs Iddon could have expected to earn £21,800 a year net.

83. The counter-schedule concedes that Mrs Iddon would have been off work until the end of 2015 owing to the operation she had to undergo. In my judgment, this concession fails to take account of the fact that Mrs Iddon underwent 4 lipo modelling operations in 2016. Those operations were necessitated by the defendant's negligence. Having rejected Mrs Iddon's assertion that she was in too much pain to return to work, I find that Mrs Iddon ought to have been capable of a return to the open labour market by January 2017.

84. In January 2017, Mrs Iddon would have been in a similar position to that she ought to have been in in July 2014. Her ability to earn was thus delayed by 2 ½ years, subject to credit for the amount she in fact earned at Lyreco (£11,838.97, taken from the counter schedule). Thus:

£21,800 x 2.5 =	£54,500.00
Less paid	(£11,838.97)
TOTAL	£42,661.03

Care

85. I feel unable to rely upon Mrs Iddon's account relating to the care and support she required for the reasons canvassed earlier in this judgment. Mr Iddon chose not to give evidence. I am not prepared to accept the account given in his witness statement when he has not been cross-examined upon it and when it appears that there is reason to doubt his accuracy, given that he was induced to make a witness statement that contained untruths about Mrs Iddon's participation in sporting events. I note that the defendant concedes that Mrs Iddon required extra care following her operation in December 2014, after her lipo modelling procedures and in additional hospital attendances. The amount conceded is £1,521.21. In my view, this is a reasonable approach, given the dearth of reliable evidence. I would, however, allow an additional sum to reflect the fact that Mrs Iddon probably required additional support after

the removal of the implant in March 2020: say 20 hours at £8 an hour. The total award under this head would therefore be £1,681.21.

86. I would make no award for future care needs.

Other heads of claim

87. The claim for travel expenses refers to an "attached schedule". I take it that the attached schedule would have enabled me to determine what travel was undertaken and with what purpose. Unfortunately, the schedule was not attached. I accept the validity of the arguments in the counter schedule, namely, that Mrs Iddon would have required to travel to undergo surgery and adjuvant treatment in any event and that Mrs Iddon is not entitled to claim as damages her legal expenses of attending counsel. Absent proper particularisation and cogent evidence to support this claim, I would allow the figure conceded by the defendant: £370.08.

88. In relation to miscellaneous losses, I would allow the figure conceded by the defendant, £338, for the reasons set out in the counter schedule.

89. I would make no award for cognitive behaviour therapy. Mrs Iddon is not suffering from any recognised psychiatric condition.

90. The aggregate of the sums I would award is £70,050.32.

Fundamental dishonesty

91. Mrs Iddon's actions in this litigation must be measured against my findings that she did not suffer from chronic pain of any significance and that she trained for, and performed in, various sporting events in 2017 and 2018. Notwithstanding the reality as I have found it to be, Mrs Iddon:

    (a) Asserted to the medical experts that she suffered from debilitating pain and concealed from them her participation in her sporting activities.

    (b) Made and served her witness statement of 6 March 2018, which advanced the account that she was severely disabled by chronic pain.

    (c) In May 2018, verified Amended Particulars of Claim in order to advance the claim that she suffered "Severe chronic post-surgical pain and associated dysesthesia and numbness in the left chest wall, left shoulder/arm and both hips, causing severe disability, fatigue and psychological injury."

    (d) In January 2020, recruited her husband and Amanda Anstey to put forward a false account of her sporting activities.

(e) Made and served her witness statement of 20 January 2020 in which she denied training or participating in three open water swims when in fact she had done so.

(f) In her witness statement of 1 June 2020, represented that she had made full disclosure of her sporting activities when she knew that the list of activities was incomplete because the Worden Park run was not mentioned.

(g) In her witness statement of 1 June 2020, advanced the excuse that she had previously lied because she was anxious about being prosecuted for possession of cannabis oil, when in fact she had never possessed cannabis oil. She also falsely claimed that it was only by using hemp oil and cannabis oil that she was able to participate in her sport.

(h) Verified with a statement of truth two schedules of loss in which, by reason of her alleged chronic pain, damages exceeding £900,000 were sought.

(i) Continued to advance her account that she was in chronic and debilitating pain when she was in the witness box.

92. I have no doubt that Mrs Iddon was well aware of her training and sporting achievements and of the fact that she was not suffering debilitating chronic pain. I find that she deliberately took the steps I have outlined in the preceding paragraph of this judgment in order to mislead the defendants and the court about the extent of her injuries so as to make the consequences of the defendant's breach of duty appear much more serious than they were. By the standards of ordinary decent people, her actions were dishonest. What is more, I believe that Mrs Iddon knew that they were dishonest.

93. In my opinion, Mrs Iddon's dishonesty amply justifies the adjective "fundamental". I approach the issue from three directions. Firstly, to deploy the dichotomy proposed by HHJ Moloney QC and approved by the Court of Appeal in *Howlett v Davies*, Mrs Iddon's dishonesty did not go to some incidental or collateral part of the claim; it went to the heart of her claim. Secondly, to adopt the words of Julian Knowles J in *LOGOC v Sinfield,* her dishonesty has substantially affected the presentation of her case – indeed, it has pervaded her case to the extent that Mrs Iddon has scarcely taken any step in the action that was not tainted by dishonesty. Thirdly, the effect of her lies was to seek to inflate the value of a case which I have held to be worth just over £70,000 into a case worth over £900,000. In reaching the conclusion that Mrs Iddon has been fundamentally dishonest, I have carefully excluded from my consideration that it is probable that Mr Iddon and Christopher Barnes were dishonest too: the statute requires me to consider whether *the claimant* has been fundamentally dishonest.

94. It follows that I am required to dismiss the claim unless I am satisfied that the claimant would suffer a substantial injustice. Mr Skeate urges upon me the submission that Mrs Iddon would suffer substantial injustice. He submits that Mrs Iddon has apologised for her dishonesty and has shown remorse. He points out that if her claim is dismissed, Mrs Iddon will not be able to obtain the therapy she says she needs. He submits that the tortfeasor will escape a liability that it rightfully hers. He pointed out that Mrs Iddon has used the interim payments she has received to purchase her current home. If her claim is dismissed she would have to sell it.

95. In order to weigh these submissions, it seems to me that I must consider the context in which the statute was enacted.

96. The toxic effects of dishonest claimants is well-known. They were aptly summarised by Moses LJ in *South Wales Fire and Rescue Service v Smith* [2011] EWHC 1749 (Admin) as follows:

> "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."

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.”

99. I consider that I have to have well in mind the damage done to our system of justice by dishonest claims in general and by this claim in particular in deciding whether this claimant would suffer “injustice” if her claim were dismissed. I note that Mrs Iddon was dishonest in relation to her own claim (a “primary claim” to use the words of section 57(1)) so that she stood to benefit personally from her lies. Different considerations might have applied if her dishonesty was in relation to a “related claim” so that her lies would not have benefitted her directly.

100. Mrs Iddon did indeed apologise in her witness statement of 1 June 2020 and again when she gave evidence. I find that her apology was offered because she had been caught out in dishonesty and not because she felt genuine remorse. If she were genuinely remorseful, Mrs Iddon would have offered the court a truly honest account of her activities. Instead, as I have found, she simply substituted for the account in which her lies had been discovered, another untruthful version.

101. I do not think that Mrs Iddon suffers “substantial injustice” merely because Dr Warner is not required to pay damages and because Mrs Iddon does not have the funds to seek the therapies she wants: these are inevitable corollaries of the operation of the statute.

102. I was initially inclined to think that Mr Skeate was on stronger ground in submitting that Mrs Iddon has changed her position (by buying a house) in the expectation of succeeding in her claim. On reflection, however, I am not persuaded that this could amount to substantial injustice in this particular case. The court may order the repayment of an interim payment: see CPR 25.8(2)(a); any claimant who receives an interim payment runs the risk that the court will exercise the power to order repayment. If the money is invested, for example, in a house, the claimant runs the risk that if the court orders repayment, he may lose the investment unless he has other means to repay. I conclude from this observation that a claimant who changes his position on receipt of an interim payment does not have a defence to an order to repay merely because he has changed his position. I remind myself that even if I were not to dismiss the claim, Mrs Iddon would have an award of less than she has already received by way of interim payments. It is likely that she would have to make a substantial repayment: thus, she may have to sell her house in any event. I do not believe that Mrs Iddon would suffer

substantial injustice if I dismissed her claim if such a dismissal is likely to result in the court ordering her to repay the interim payment.

103. I regard Mrs Iddon's dishonesty in this case to be very grave. She lied repeatedly about her injuries, she continued to lie after she had been found out and, most seriously, she persuaded others to lie on her behalf. In my judgment, the culpability and extent of her dishonesty far outweighs any injustice to her in dismissing her claim; the dismissal of this claim seems to me to be exactly the evil to which Parliament directed its mind in enacting section 57. I do not believe that she would suffer substantial injustice if her claim were dismissed.

Conclusion

104. Mrs Iddon suffered serious and distressing consequences because of the defendant's breach of duty. Regrettably, she lied about how serious her condition was, and persuaded others to lie to support her account. I feel unable to rely on Mrs Iddon's evidence; I have been forced to look to other sources of information. It may be that the evidence I feel able to rely on is incomplete so that some of the losses Mrs Iddon suffered have not been taken into account. If that is so, she only has herself to blame.

105. I conclude that Mrs Iddon has been fundamentally dishonest in relation to her claim. I am not persuaded that she would suffer substantial injustice if I were to dismiss her claim. I record that, but for the dismissal of her claim, I would have awarded Mrs Iddon £70,050.32. Unless the parties can agree an order, I will hear submissions on what orders I should make about costs and about repayment of the interim payments and the interim payment on account of costs.