

VICTORIA ADMANS

Claimant

and

TWO SAINTS LIMITED

Defendant

JUDGMENT



Introduction

1. This is a personal injury claim in which the Defendant applies to strike out the statement of case as an abuse of process, the ground being fundamental dishonesty on the part of the Claimant which, the Defendant contends, taints the whole claim and has the effect that the Claimant has forfeited the right to have her claim determined at a full trial.
2. The application, which seeks ancillary orders outlined below, is based on CPR 3.4(2)(b) which provides that the court may strike out a statement of case if it appears to the court that it is "an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings".

Summary of procedural history

3. This claim was brought by Mrs Admans claiming damages for personal injury against her former employers, Two Saints Ltd. Her cause of action claimed that the Defendant had caused her to carry out tasks involving excessive lifting on 28th May 2012.
4. The letter of claim sent on 3rd January 2013 asserted that by the end of the day she was doubled over in pain and had been unable to work ever since. That basic assertion has been repeated in the medical reports served subsequently in the proceedings together with a description of a high level

of disabling back pain and loss of function.

5. Proceedings were issued on 16th January 2015. The Particulars of Claim are dated 24th April 2015, the Schedule of Loss 1st May 2015 and the Defence 29th June 2015. In that Defence Two Saints Ltd admitted breach of duty but not causation.
6. During the course of 2014 and 2015 the Claimant was seen by the following medical experts: On 14th June 2014 she was examined by Dr Dabis, her own orthopaedic expert; On 2nd March 2015 by her rheumatology expert Dr Collins; On 21st August 2015 by Mr Marks, an orthopaedic and spinal surgeon, on behalf of the Defendant and on 5th October 2015 by Dr Neal, a psychiatrist, on behalf of the Defendant.
7. During the autumn of 2015 the Defendant obtained video surveillance footage of the Claimant
 - a. On 21st August attending her appointment with Mr Marks
 - b. On 30th September 2015 at Hayling Island
 - c. On 5th October 2015 attending her appointment with Dr Neal
 - d. On 28th November 2015 driving from her son's school to her home in Kintbury near Reading
8. Directions were given on 9th December 2015 requiring disclosure by 21st December 2015, the service of witness statements by 17 February 2016 and the process of expert exchange to be completed by 17th March.
9. On 19th November 2015 the Defendant served clarification requests on the Claimant under Part 18. Those requests were specifically focused on the Claimant's disability and working capacity. Her answers were provided on 12th December 2015.

10. On 4th February 2016 the Defendant issued an application seeking the following orders
 - a. Permission to rely on surveillance evidence
 - b. Permission to Amend the Defence to plead fraud on the part of the Claimant
 - c. An order that the claim be struck out pursuant to CPR 3.4 as an abuse of process
 - d. An order for repayment of an Interim Payment of £5,000 made in December
 - e. Costs on an indemnity basis

11. That application was supported by the disclosure of the surveillance footage referred to above and by disclosure of a file of social media entries. Both the significance of the material disclosed and the grounds on which the Defendant sought the various orders outlined were set out in a witness statement by the Defendant's solicitor, Miss Fox dated 4 February 2016.

12. Further directions have been given which are relevant to this application: On 11th February 2016 the court ordered extensions of time to 24th February 2016 for the service of witness statements. On 23rd February 2016 an order was granted permitting the Claimant's solicitors to come off the record. The Defendant served its statements on time but that the Claimant did not. The Defendant's statements include updated supplemental opinions from Mr Marks and Dr Neal. The Defendant issued an application for an unless order which was granted by District Judge Cronin on 12th April 2016 requiring witness statements to be served within 7 days of the service of the Order. The Claimant served her statements on or about 14th April 2016.

13. In addition to these directions on 15th March 2016 District Judge Cronin set a new timetable towards the trial date in early September which includes provision for psychiatric expert evidence to be served by the Claimant by

27th May 2016 and for subsequent expert meetings of orthopaedic experts to be completed by late June and psychiatric experts by late July .

The Hearing of the Defendant's applications

14. I heard the applications on 20th May 2016 at Swindon County Court. The Defendant was represented by counsel and solicitors. The Claimant was unrepresented, acting as a litigant in person.

15. At the outset of the hearing I established that the Claimant raised no objection to the admission of the video evidence and did not object to the amendments to the Defence being made. I took into account the procedural history. Although there had been a short apparent delay between the taking of the videos and its disclosure this was readily explained by the need to obtain the Claimant's answers to the Part 18 requests and thereafter to obtain the views of the Defendant's experts. Disclosure of the video evidence and the proposed amendments arising from such evidence had occurred in good time before the timetable dates for service of factual and expert evidence had passed. Nor had there been any prior objection to either aspect of the Defendant's applications on the part of the Claimant's former solicitors or the Claimant herself. Exercising my discretion I granted the Defendant permission in respect of the first and second orders sought.

16. Thereafter the remainder of the application was developed by Mr Todd on behalf of the Defendant who not only highlighted the evidence in the statements on which he relied by reference to his skeleton argument and the main supporting witness statement served by Miss Fox but also played the video "footage" in Court. Bearing in mind her status as a litigant in person and the nature of the case advanced by the Defendant I allowed a significant degree of latitude in relation to the Claimant's response to the application and in particular to the inferences which the Defendant invited

me to draw from the evidence served. In effect she was permitted to amplify the evidence served in her witness statement and I was able to ask her questions directly inviting her to comment on the material served and the points made by the Defendant and to listen to and assess her while giving her answers.

The law

17. A number of authorities were cited by Mr Todd and copied in his skeleton argument bundle which may be conveniently listed as:
 - a. *Summers v Fairclough Homes Ltd* [2012] UKSC 26
 - b. *Masood v Zahoor* [2010] 1 WLR 746
 - c. *Arrow Nominees v Blackledge* [2001] BCC
 - d. *South Wales Fire and Rescue Service* [2011] EWHC 1749
 - e. *Fari v Homes for Haringey* 9.10.2012 Central London CC
 - f. *Scullion v RBS* 24.5.2013 Exeter CC
 - g. *Ilmi Plana v First Capital Ltd* 15.8.2013 Central London CC
 - h. *Alpha Rocks v Alade* [2015] EWCA civ 685

18. Those which bear the closest resemblance to the factual circumstances of this case are the County Court cases of *Fari*, *Scullion*, and *Ilmi Plana* all three of which involved the impact of surveillance evidence. *Masood* and *Summers* were both cases which concerned the striking out of a claim after a trial and the *South Wales* case was an application for committal for contempt of court following admitted dishonesty. Nevertheless, as the analysis in paragraphs 16 - 19 of the judgment in *Alpha Rocks* shows, they all represent in different contexts cases in which the Courts have considered the exercise of the general power to strike out a case on the basis advanced here; and they all to a greater or lesser degree illustrate the application of that power.

19. My attention was drawn to the judgment in *Summers* and I note the

pertinent paragraphs from that judgment which cited with approval (at paragraphs 38 - 40 and 57 - 58) passages from both *Masood* and the *South Wales* case which underpin the objects to be achieved by the exercise of the power to strike out and (at paragraph no's 41, 42, 48 and 49 quoted by HHJ Collender QC in *Ilmi Plana*) the way in which that power chimes with the terms of the CPR and the framework of the overriding objective .

20. In paragraph 61 of *Summers* Lord Clarke had stated that the jurisdiction to strike out a case after a trial did exist but would be exercised only in a very exceptional case. At paragraph 62 however he went on to draw a distinction between that situation and an interlocutory application saying that

"... nothing in this judgment affects the correct approach in a case where an application is made to strike out a statement of case in whole or in part at an early stage. As the Court of Appeal put it in Masood v Zahoor at para 73 (set out above) in a passage with which we agree, one of the objects to be achieved by striking out a claim is to stop proceedings and prevent the further waste of precious resources on proceedings which the claimant has forfeited the right to have determined".

21. In the *Alpha Rocks* case the Court of Appeal was directly concerned with an application similar to that made in this case rather than arising out of a full trial. Having reviewed the authorities cited to me (excluding reference to either *Scullion* or *IM Plana* but noting the decision in *Fari*) the Court identifies the principles on which the court should act at paragraph 21 - 23 in these terms:

21. It is important first to emphasise, as did Lord Clarke JSC in the Summers case, the range of available remedies when a situation arises in which a party to litigation thinks that his opponent has

exaggerated his claim, whether fraudulently or otherwise. Establishing fraud without a trial is always difficult. And it is open to a defendant to seek summary judgment on the claim under CPR r 24.2(a)(i) , without seeking a strike out for abuse of process. As Masood's case and the Summers case also demonstrate, striking out is available in such cases at an early stage in the proceedings, but only where a claimant is guilty of misconduct in relation to those proceedings which is so serious that it would be an affront to the court to permit him to continue to prosecute the claim, and where the claim should be struck out in order to prevent the further waste of precious resources on proceedings which the claimant has forfeited the right to have determined. The other available remedies for such a default follow the proceedings once they have run their course, but are none the less important. They include costs and interest penalties and proceedings for contempt of court or criminal prosecution.

22. In my judgment, the court should exercise caution in the early stages of a case in striking out the entirety of a claim on the grounds that a part has been improperly or even fraudulently exaggerated. That is because of the draconian effect of so doing and the risk that, at a trial, events may appear less clear cut than they do at an interlocutory stage. The court is not easily affronted, and in my judgment the emphasis should be on the availability of fair trial of the issues between the parties. As CPR r 3.4(2)(b) itself says, "the court may strike out a statement of case if ... the statement of case is an abuse of the court's process or is otherwise likely to obstruct the just disposal of the proceedings " (emphasis added).

23. The cases I have mentioned were right to emphasise in the context of striking out what is effectively factor (a), namely the need for litigation to be conducted efficiently and at proportionate cost.

The need for compliance with rules and orders is equally important. But it must be remembered that the remedy should be proportionate to the abuse. In the context of this case, it is also worth emphasising before I turn to the particular circumstances that litigants should not be deprived of their claims unless the abuse relied on has been clearly established. The court cannot be affronted if the case has not been satisfactorily proved. This aspect is obviously inter-related with whether or not a fair trial remains possible.

22. *Alpha Rocks* represents the most direct authority from a higher court on how I should approach this application. It is abundantly clear from the passages set out and from the subsequent discussion within the judgment that any Court should exercise real caution before acceding to an application of this kind on an interlocutory basis before a full oral hearing and, even then, should be slow to conclude either that there has been dishonesty or that it justifies the striking out of a claim. Yet, as the reference in the judgment to *Fari* without any disapproval of the decision as an illustration of the power shows, it may yet be an appropriate and proportionate remedy in some cases.

The Defendant's case and the evidence in support

23. The Defendant argues that this claim has been fundamentally advanced on the basis that the injury was a serious one with lasting or enduring effects which have created a major and constant level of pain and disability which has caused a need for care and a total loss of earnings which continues.
24. They say that there is a fundamental incompatibility with the way that the Claimant has described her symptoms and disabilities and their effects to her experts and in the pleadings and statements served by her and/or on her behalf and what the surveillance shows. They also argue that there is an irreconcilable conflict between the Claimant's assertions about her

working capacity and what the social media evidence demonstrates.

25. The Defendant also relies on the views of their experts after seeing the footage. Each expert has concluded on reviewing the video that the Claimant has deliberately exaggerated her disability. Dr Neal's view is that the disparity is such that it cannot be explained by psychological factors. Mr Marks has concluded that if her typical daily function is in line with the video then she does not in fact have any significant disability.
26. I adopt without quoting in full the synopsis of events set out in paragraph 3 of Miss Fox's statement. By way of brief note this includes the following entries:
- a. On 14th June 2014 Mr Dabis recorded the following description of her disabilities by the claimant:
- 'PRESENT COMPLAINT ...constant low back pain and left sciatica. 'physical activities are restricted...sleep is disturbed...difficulties bending, stooping and lifting... shopping... doing the household chores...walking her dog...sitting or standing for long periods...her back status has altered her lifestyle...social life has been affected and restricted...she has been off work since the accident...She is not currently applying for jobs because of the status of her back.*
- b. On 2nd March 2015 Dr Collins recorded the following:
- Current Situation ...central back pain in the lumbar region to the left of centre, radiating to her left leg, occasionally as far as the foot....an aching pain in the interscapular region and around her shoulders, elbows, wrists...pain around her knees and in the calves and thighs...Her sleep remains disturbed and poor. '*
- 'She worked for the homeless hostel since 2008, was signed off after the incident in question and has not worked since... ' [She] was assisted into the room by her husband... she was limping heavily and*

leaning heavily on his left side. He had to assist her on and off the examination couch and helped with undressing.

- c. On 21st August 2015 her symptoms were described to Mr Marks as including

'Constant pain in the low back which is more on the right than left side...associated with...pain radiating down from the hips through the thigh and calf into the feet...Symptoms are exacerbated by travelling (particularly sitting for long periods) and are eased by getting up and moving around' 'She is not self-caring. Her husband has to help her get up out of bed, to wash her and dress her... ' 'Housework - She tells me she does nothing at all, her mother does a lot of her housework and her husband does the cooking, shopping etc. ' Driving - She tells me that on some days she can drive locally but she will "pay for it later". 'She previously enjoyed sewing and tells me that if she does sit to sew for any time she will have severe pain for three days after this. ' 'She tells me has not worked in any capacity since the day after the accident of 28th May 2012. '

- d. On 5th October 2015 her symptoms were described to Dr Neal as follows:

'She told me her main worry at the moment is her finances...she has lost four years of wages. ' 'She told me she has come to terms with being in a wheelchair in ten years ' time. ' '...she told me that because of the back pain she cannot sit still....she suffers from pain everywhere in her body except her nose and eyes...she is in constant pain, which varies between 8/10 to 10/10... the pain is only down to 8/10 when it is controlled by medication. ' 'She told me she sometimes uses a single walking stick...she also has a walking frame...she has a stick with her at all times in case she needs it...she uses a stick about 30% of the time...her maximum walking tolerance

on a good day on the flat with a walking stick is about 100 metres before she has to sit down and rest... she always finds it difficult climbing in and out of cars... she is limited to five to six miles driving on a good day...she never goes supermarket shopping on her own...she does not carry any shopping bags unless they were exceptionally light... ' 'She told me that if she lived on her own she would require professional carers. ' 'She confirmed that she has never returned to work in any capacity. ' '..the reason she cannot work at the moment is mainly pain. ' 'she has been told by the doctors that there is no chance of her ever going back to work' She tells me she stays at home in her pyjamas a lot of the time. She has to wear loose fitting clothes or else they will hurt her. Her husband will have to walk upstairs behind her. He has to help her in and out of the bath.

27. It has not been disputed that these statements were not made to the experts in these terms. In the case of those made to her own experts they were verified by the Claimant by her statements of truth to the Particulars of Claim and the Schedule of Loss. In the case of those made to the Defendants' experts they were effectively reiterated in the answers provided by the Claimant to the Part 18 requests on 12 December 2015 and were again verified by a statement of truth.

28. In her Part 18 answers the Claimants' representations included
'I am in pain 24 hours a day, 7 days a week My back pain is constant and because of my fibromyalgia I might be in pain anywhere on my body. I have pain in both of my legs constantly. The nerve pain all across my back is constant. If I do anything, I'm then in agony for 3-4 days afterwards... ' I can no longer do normal things. I cannot lift. I can never walk far and some days I cannot walk at all. I struggle to go to the toilet. I struggle in the bath...I need assistance with the

cleaning. I cannot work as some days I can't leave the house... ' ...will require a stairlift (£6,000 approx), mobility scooter (£1,400 approx)... ' '[Need] Help getting in/out of the bath, cooking, daily cleaning, getting dressed/undressed - 2.5 hours per day. Cleaning - 2 hours per week. Gardener - 2 hours per week. Dog walker - 2 hours per day. ' I have seen several doctors who have all said that I will no longer be able to work because of the pain, the effects of the medication and the risk of worsening my symptoms. '

29. In relation to the social media material my attention was drawn in particular to pages which alluded to a business trading under the name, “eenie meanie market” which appears to run craft markets in village halls. The Claimant was identified as having taken over as the owner on 6th February 2015 and subsequently other entries referred to active trading activities. The inferences which the Defendant contended were inevitably to be drawn from these entries are set out in paragraph 6 of Miss Fox’s statement. The Defendant’s contention has been that they, taken together with the surveillance footage, show that the Claimant has been economically active running businesses, or at least participating in such businesses, since at least 2014.

The Claimant’s response to the application

30. The Claimant’s witness statement signed on 14th April 2016 continues to assert that she is grossly disabled and, in her own words, “*can now only get around with a walking stick*”. She states that “*the chronic pain is endless. If only I could get one hour pain free it would be a joy*”. It responds to the allegations that she has been working in the following way: “*I do try and sell clothes on Facebook, I have so many clothes that I can no longer [?wear]I can no longer work to earn money. I’ve sold furniture and all sorts of times to get some money ' ... “yes I was in the shop (my eldest son owns it) but at that time so was my ex husband mum and brother. My ex husband*

was at the other end of the clothes rail that was on wheels. Yes like I previously said I do try to sell clothes furniture or anything else I can to get some money so far as I was concerned the evidence was completely irrelevant”

31. In court she advanced her thoughts in a similar way but with significant changes in stance. She told me that all the video showed or demonstrated was that she had good days and bad days or that in other words her condition fluctuated. She told me that the images of her helping out in the shop were probably simply an example of her helping out while her mother was elsewhere in the shop. She also said that the shop was owned by her mother. She said that she had helped out at the shop perhaps three times in the last 4 years. Interestingly in answer to the point made by Mr Todd that it was impossible for her explanation regarding her ex husband’s assistance to be true she did not maintain that but said she may have been thinking of another occasion. And despite her assertion in court that the shop was owned by her mother not her oldest son she had not brought any evidence to that effect.
32. As for the internet extracts she did not at any stage refute the fact that she had acquired some form of business on line and indeed confirmed that she did sell clothes on line but seemed to imply that it was on an ad hoc basis which did not count as earning.
33. When asked about any evidence which verified or supported these statements she told me that she had left a lot of documents at home. When she mentioned statements I asked her to identify what those statements were or who the witnesses might be that she wished to call but had not served. She was unable to identify any one except for her GP who she told me “believe her” but who, she volunteered, had not seen the surveillance video. I pause to mention that the only evidence emanating from the GP is

a proforma statement of the Claimant's current medication without any evaluative comment at all. Although there have been funding difficulties I was not told whether or not there had been any attempt to invite her medical experts to review and comment on the footage. Nor at any stage was it indicated that there was any more recent medical evidence obtained which she was proposing to serve or rely upon (I had in mind the possibility of psychiatric evidence for which the time for service expires on 27th May). On the contrary she said that she hoped to find a new legal team and new doctors to support her claim.

34. When asked to comment directly on the video footage showing her activities in the shop she was unable to add to the comments which I have summarised above.

The video evidence

35. I have reviewed the footage carefully and of course did so during the hearing. It shows a huge contrast between the behaviour of the Claimant when visiting the Defendant's experts and at other times.
36. On the former occasions her posture is stiff and slow and she relies heavily on her husband for support. He alone drives the car.
37. On 30th September 2015 the footage runs from 1214 hours to 1647 hours. Through this period the Claimant is seen sitting at a small table on the pavement outside a shop, Betty's Clothing and Accessories" in Hayling Island. She is then shown behind the counter both standing and leaning over the counter engaging normally and cheerfully with a customer and her child. From 16.13 to 16.26 hours she is shown closing the shop, a process which includes carrying in a container of clothing, packing up and carrying in the table and chair on which she had previously been sitting, pulling a rail of clothing on wheels from the pavement outside over the threshold and into

the shop. All these tasks she carries out on her own. She is then shown getting into her car and driving to a convenience store where she appears to first obtain cash from an ATM and then acquire some shopping or groceries which she carries back to her car before driving away. There is no hint in any of this sequence of anything other than completely normal physical function.

38. On 28th November 2015 there is a lengthy film showing the Claimant driving her car. She confirmed at the hearing that the car is manual and that she was the driver. There is no hint that the car is driven anything other than normally throughout.

Discussion and findings on dishonesty

39. I find that the video footage on 30th September is incompatible with the Claimant's own descriptions of her disability. It shows someone who interacts normally, with apparent energy and ease of movement when walking and lifting not only the clothes rail loaded with garments but also the chair and table on the pavement outside the shop. There is no indication that anyone else is in the shop. Indeed it is the Claimant who closes the shutters. It seems quite plain that she was managing the shop that afternoon and that her level of functional ability is normal.
40. The Claimant has been in possession of the video footage and related evidence relied on by the Defendant since early February 2016. Her witness statement recounts that following its disclosure she travelled to Liverpool for a meeting with her solicitors and counsel specifically to discuss the same. Overall she had a period of over 2 months in which to formulate her response and gather and serve any evidence in support of her case. Despite the obvious constraints on introducing further factual evidence following the

expiry of the unless Order the Claimant was, as I have already outlined in paragraph 33 above, given in effect a further opportunity at the hearing to identify whether or not there was any important material which she might wish to rely on or seek permission to rely on which might cast a different light on the Defendant's evidence.

41. If indeed the Claimant's pattern of life was one in which she fluctuated between days on which her function was completely normal and days in which her function was as described in her Part 18 answers it is inexplicable that supporting evidence would not be available. Yet this explanation on the part of the Claimant appear in her witness statement, was only raised at the hearing, and is not supported by any other witness or medical records. Furthermore I accept Mr Todd's submission that whilst it might be possible to discern in her previous descriptions some modest degree of variability in function from day to day that is not a sufficient explanation for the stark difference between her claimed level of disability and the scale of the normality shown in the videos.
42. The lack of any focussed response to the footage in her statement was a theme also evident in her submissions and answers at the hearing. Having invited her to comment directly on what the video footage she said at the conclusion of the hearing that she had not in fact watched the third video at all. It was then played in court and she frankly admitted that it showed her driving her manual car home from dropping off her son at school. Nevertheless this interlude contributed to my conclusion that she has not wished to confront what the video footage shows by analysing it in any detail and her reason for not wishing to do so is that she knows that it shows her previous statements in this case to have been untrue.
43. The video footage in combination with the social media extracts and the

claimant's own admissions therefore satisfies me that she has engaged actively and over a prolonged period in various forms of internet based economic activity. The cogent impression to that effect has not been displaced in any way by the Claimant's very imprecise responses, rather they have reinforced it. She seemed to suggest that her transaction with the cardigan and/or that the fact that she might have helped out in the shop was not important. At no stage has she attempted to quantify her role or to call evidence which might cast the extent of her role in any different light. Even if she had I would find it hard to explain or excuse why any active participation in her family's business had not been identified to the medical experts when expressly asked and not identified in her Part 18 responses. I am driven to conclude that the Claimant has worked since the accident and that she has been economically active to an undisclosed degree.

44. These factors have both individually and cumulatively driven me to the conclusion that she has dishonestly exaggerated her disability and its effects and to lead me to be satisfied that it is appropriate that I draw such a conclusion at an interlocutory stage in the action. In my judgment dishonest exaggeration is the only sensible explanation for the discrepancies between
- a. Her apparent behaviour when attending the expert assessments and at other times
 - b. Her ability to drive regularly and not insignificant distances in a manner which does not suggest fatigue or difficulty to the extent described
 - c. Her normal behaviour when dealing with a customer and when shutting up the shop (with no credible explanations offered for that behaviour)
45. As discussed above I have considered carefully whether this is not simply one of those cases where the condition has fluctuated. Some degree of difference was described to Dr Neal but not to the extent required to explain

the surveillance evidence. At no point has the Claimant said to the experts or in her Part 18 response that she was on some days able to function completely normally. That picture of unremitting and substantial loss of day to day functional ability is one which she has had repeated opportunities to correct. I am satisfied that it was painted deliberately.

The application of the law to this case

46. In deciding whether this is an appropriate case in which to exercise the power to strike out the claim I have considered very carefully whether, in the language of *Alpha Rocks*, the option of striking out the claim is too blunt an instrument to counterbalance the ordinary presumption in favour of a full trial.
47. But that was a case where there were heavy conflicts of fact, where the conflicts were truly conflicts between different accounts, and where the exaggeration did not affect more than a small percentage of the claim. Here by contrast there is no real conflict about what the Defendant's evidence shows and my task has been to look at a relatively straightforward issue about whether, firstly, I agree with the inference which the Defendant say that the material raises and, secondly, whether there is a credible explanation which the Claimant might be able to advance. The Claimant has not in my judgment put forward a credible reason or potential reason to displace that inference. She has, as already discussed above, had a very full opportunity to adduce specific evidence on the issues raised. I myself have had the opportunity to listen to and observe her for the better part of the Court day. Whilst she has not given evidence formally on oath or been subject to cross examination she has, as indicated already, been permitted latitude in providing her account and in identifying grounds which might require testing at a trial.
48. Therefore, even having reflected on the approach which *Alpha Rocks*

requires me to adopt, I cannot see that the court is in this case in any worse position to evaluate the core issue of dishonesty than it might be after a process of formal evidence.

49. Having concluded that the Claimant has indeed been dishonest in the portrayal of her symptoms on repeated occasions the next stage to consider is whether the scale of that dishonesty and its impact on the issues in the case is such that in all the circumstances I should accede to striking out the claim.
50. It seems to me impossible to escape the conclusion that the dishonesty has been maintained over an extended period and that it has a fundamental impact on the assessment of her claim. This case is all about the Claimant's degree of disability and whether the accident had in fact rendered her economically inactive. Her credibility also is relevant to any assessment of general damages and in all probability will likewise be relevant to the ultimate causation issues as to whether the incident in May 2012 had any real impact on her overall prognosis. In other words it must in my judgment taint the whole of the claim.
51. I am mindful of the need to avoid using the power to strike out with any kind of punitive purpose and with due regard to whether the remedy is in fact proportionate to the abuse. But the overriding objective does require that I weigh in the balance factors such as court resources and the interests of other litigants in the way summarised by both HHJ Collender QC and HHJ Cotter QC both of whom in effect highlighted the comments of Lord Clarke in *Summers* set out at paragraph 20 above. The Claimant's right to a full trial must be gauged with those other factors in mind and the importance of resources and cost have, if anything, been given even greater prominence in the adjustments to the Overriding objective introduced since April 2013. The requirement under CPR 1.1 for the court to deal with cases justly and at

proportionate cost does now expressly embrace the need to bear in mind that fairness both to other court users and to the defendants requires that cases are conducted without undue expenditure of time and money.

52. Here not only do I regard the issues on which I have found dishonesty to pervade the whole claim but (as I have noted at paragraph 33 above) the claimant herself, in requesting me not to strike out her claim, was asking for the chance for her to obtain entirely new medical evidence. This came close to a recognition that, as matters stand, her claim is bound to fail.
53. It also underlined the fact that were this claim to continue there would be a need for the Defendant to prepare for a full trial. Yet the very fact that the claimant is a litigant in person may mean that the Defendant's litigation costs from now to trial will not be recoverable. In the course of the application she asserted that she has insufficient funds to repay the interim payment other than by installments. Such a factor should not of course deprive a litigant of the chance of pursuing a properly maintainable claim to trial but in this case it tends in my mind to reinforce the conclusion that I have reached.

Orders to be made

54. At the conclusion of the hearing I invited submissions from the parties on the orders sought, provisional upon my ruling on the main application. Both parties were content to indicate their position and to agree that the remaining issues, and the formal handing down of the judgment itself, should be dealt with without an oral hearing. Both parties agreed to that.
55. The Claimant acknowledged that if I were to decide that the claim should be struck out she does not resist an order for repayment of the interim payment made (subject to requesting time for repayment by installments) and neither does she resist an order for costs in the Defendant's favour on

an indemnity basis.

56. I therefore asked the Defendant to draw up the Order in the light of the draft judgment, and to liaise with the Claimant in doing so, so that I could finalise both the order and the judgment at the same time. The draft judgment was completed on 18th May and circulated subsequently to the parties with an invitation to the parties that if any remaining issues arose they should set out their position (in a single email by each party) so that I could, as agreed at the hearing, determine them without the cost of any further attendance by either side.
57. I am informed that the terms of the draft judgment were emailed on 13th June and a draft order was sent to the Claimant on 15 June 2016 without any response. In those circumstances I have finalised the order in the terms attached.

24 June 2016

Recorder James Watson QC