39 Essex Chambers

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#39Events

Fundamental Dishonesty

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WHEN DOES EXAGGERATION CROSS THE LINE INTO FUNDAMENTAL DISHONESTY?

- Under **s.57 Criminal Justice and Courts Act 2015**, a Claimant who has suffered genuine injury and established liability may nevertheless have their entire claim dismissed if the court finds that they have been fundamentally dishonest, unless dismissal would cause substantial injustice.

- Under **CPR 44.16(1)**, a finding of fundamental dishonesty may also permit the Defendant to enforce costs orders to their full extent, notwithstanding QOCS protection.

THE CASES

1	*Morris v Williams* [2025] EWHC 218 (KB) – without prejudice correspondence
2	*Boyd v Hughes* [2025] EWHC 435 (KB) – dishonest embellishment
3	*Greening-Steer v Ainge* [2026] EWHC 1239 (KB) – dishonesty going to the heart
4	*Perrin v Walsh* [2025] EWHC 2536 (KB) – defective surveillance
5	*Hakmi v East & North Hertfordshire NHS Trust* [2025] EWHC 2597 (KB) – costs

MORRIS V WILLIAMS: A PREJUDICIAL WITHOUT PREJUDICE LETTER

- C admitted aspects of claim were fundamentally dishonest in a letter marked "*Without prejudice – save as to costs*".

- D applied to adduce the letter as evidence on the basis it fell within the "*unambiguous impropriety*" exception to the without prejudice rule: see *Unilever Plc v Proctor and Gamble Co* [2000] 1 WLR 2436 at [24].

- Court granted D's application to adduce the letter, otherwise the claim would proceed on a (at least partly) false basis and C would benefit from unambiguous impropriety.

BOYD V HUGHES: DISHONEST EMBELLISHMENT OF HONEST CLAIM

- *"After significant hesitation"* and *"by a narrow margin"*, C's deliberate exaggeration was not sufficiently significant that it went to the "*root or heart of the claim"*. It was *"dishonest embellishment in an attempt to underpin an essentially honest claim."*

- Three *Muyepa* questions:

1.	When and in what circumstances did dishonest conduct start?	At medical examinations, but C subsequently and voluntarily provided key information before disclosure of surveillance evidence
2.	Does the dishonesty taint the whole claim or limited to a divisible element?	Dishonesty was not of not effect but surveillance was very far from being *"frankly devastating"*
3.	Value of underlying valid claim compared to dishonestly inflated claim?	Limited impact on PSLA claim, and no impact on special damages

GREENING-STEER V AINGE: DISHONESTY GOING TO THE HEART

- C's dishonest exaggeration of the extent and impact of his injuries, went to the heart of the claim and amounted to fundamental dishonesty. The claim was dismissed pursuant to s.57 of the CJCA 2015. The court found that dismissal would not cause substantial injustice.
- Three *Muyepa* questions are *"useful tools"* for assessing whether dishonesty is fundamental:

1.	When and in what circumstances did dishonest conduct start?	Shortly after the accident, where C exaggerated the extent and impact of his ongoing symptoms and disability.
2.	Does the dishonesty taint the whole claim or limited a divisible element?	Whole claim. The exaggeration permeated the claim, including mobility, daily activities, driving and work.
3.	Value of underlying valid claim compared to dishonestly inflated claim?	Valid claim was a fraction of the pleaded case, with the honest element substantially overstated by the dishonesty.

PERRIN V WALSH: KEEP AN EYE ON THE SURVEILLANCE

- Conduct of surveillance company, TSG, was "*extremely poor*" and "*not far way*" from being "*so egregious*" that surveillance material should be excluded under CPR r 32.1.

- *"It is incumbent on defendants, insurers and those they engage to obtain covert surveillance evidence to uphold the highest standards integrity and propriety."*

- D, nonetheless, permitted to rely on it given "*countervailing interest in the trial judge having all probative material before them to be able to reach a properly balanced decision".*

- Excluding evidence is "*not the only weapon in the court's armoury*" – D ordered to pay 80% of C's costs of D's application assessed at £40k.

HAKMI: COST OF WRONGLY ALLEGING DISHONESTY

- C's clinical negligence claim was dismissed. D's fundamental dishonesty allegation was rejected. No dishonesty was established.

- D ordered to pay 15% of C's costs from the date that the fundamental dishonesty allegation was raised.

- *"I do not accept that to make such an order, where a claimant fails, undermines the costs regime. If anything it is the converse, not to make such an order would give a defendant a free tilt at raising the issue of fundamental dishonesty"*.

Lessons / Warnings

1.	*Morris*	• WP protection is not absolute. When drafting WP correspondence, beware the possibility that it could end up before the court.
2.	*Boyd*	• Dishonest exaggeration is not always fundamental. Importance of *Muyepa* questions to assessing whether it is fundamental.
3.	*Greening-Steer*	• Even where a claimant has suffered serious genuine injuries, fundamental dishonesty can result in the dismissal of the entire claim. Financial hardship, including repayment of interim payments, will not ordinarily establish substantial injustice. Importance again of *Muyepa* questions.
4.	*Perrin*	• Difficult for Cs to exclude relevant and probative surveillance footage. But manipulation or misrepresentation of footage may sound in costs against Ds. • Important for Ds, insurers and agents to ensure all surveillance is accurately and honestly recorded, preserved and presented. • Important for Cs to carefully analyse any surveillance served.
5.	*Hakmi*	• There is a costs risk associated with raising FD allegations; no *"free tilt"* . Prospects of a finding must be carefully considered and reviewed.

GAME TIME



TIMON V TALMAN [2026] 10 WLUK 270

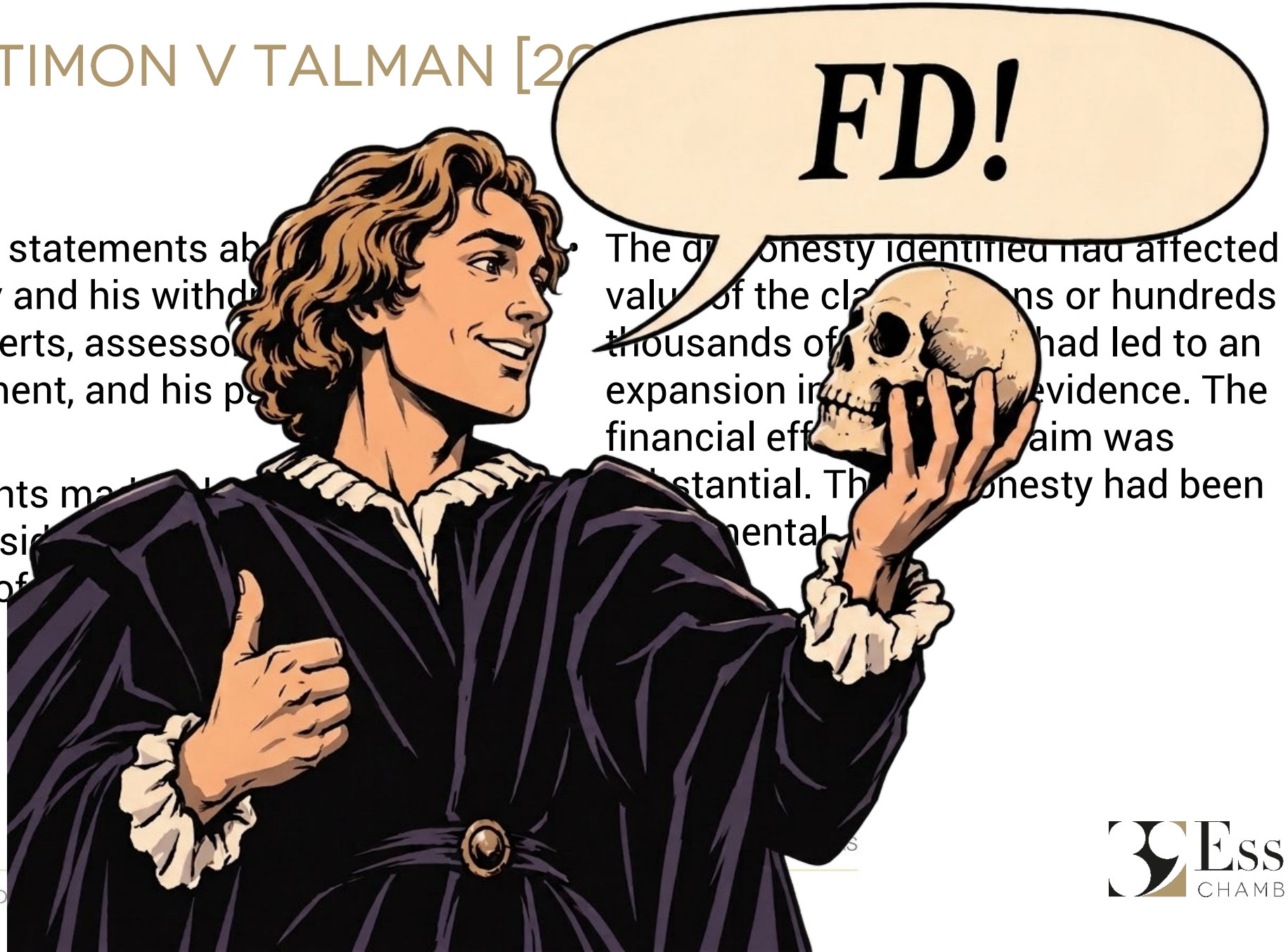
- In 2020 C suffered serious injuries including a TBI, and a fractured spine after D deliberately drove his car into C (D had been convicted of this)
- C was 19, enjoyed playing football competitively, going to the gym and boxing before the accident
- In 2022 C told medical expert he had back pain and could not carry out fitness activities, and that though he could kick a football around with friends, he had not returned to competitive football
- In 2023 C told an initial needs assessment case manager that he had withdrawn from sporting hobbies and that, while he could walk to a local shop and back, that would leave him fatigued
- In 2023 the claim was issued, and C told D's orthopaedic expert that he avoided walking for prolonged periods
- In 2025 D disclosed social-media and other evidence that the claimant had been playing competitive football from the 2020/2021 season and, in 2023, had run the London Marathon in:

  4 hours 20 minutes

TIMON V TALMAN [20

- C made untrue statements ab
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hobbies to experts, assesso
witness statement, and his pe
response
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- The d onesty identified had affected the valu of the cla ns or hundreds of thousands of had led to an expansion in evidence. The financial eff aim was stantial. Th onesty had been mental



SWIFT V MAR CITY PLC [2023] 9 WLUK 410

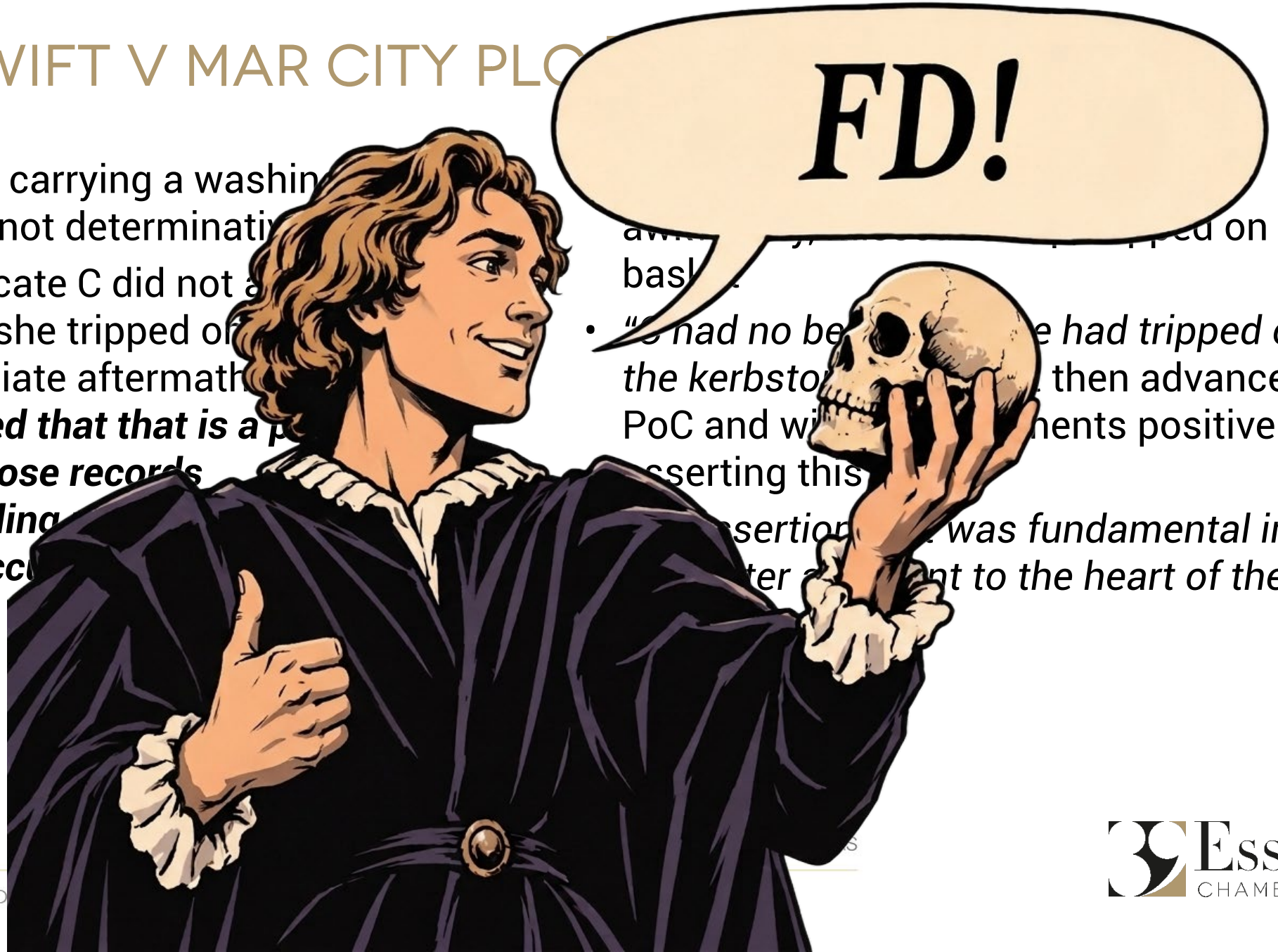
- PoC says: "*on the 23rd of March 2019 at approximately 5 pm the claimant had returned home from a shopping trip with her daughter and was walking across the footpath adjacent to number 19 to return to the car in order to collect some more bags. As the claimant was so walking, she caught her foot on a protruding kerbstone and was so caused to trip and fall."*
- C's witness statement says it was around lunchtime and she was emptying her car after shopping
- C's witness statement goes on to say: "*I took a couple of bags of groceries into the house and went back to get some more. I think it was the third trip back to the car that I fell. On that occasion I'd taken my empty plastic washing basket with me to collect the washing from the car. Just as I got to the car, … I caught my foot on the inside edge of the kerbstone*"
- A&E record says: "*Patient fell carrying basket of clothing down one step."*
- Patient Assessment Record says: " *Fell 3/7 ago hanging laundry. … Foot twisted as stepped awkwardly. "*

SWIFT V MAR CITY PLC [2023] 9 WLUK 410

- Physiotherapy record says: "*Patient fractured left ankle as tripped over washing basket and fell."*
- Psych report says: "*She described the index accident as follows: she tripped over a gutter that was raised on a pavement"*
- Medico legal report says *"she suffered a weight-bearing inversion injury whilst walking on an area of hardcore that was due to have been paved. "*
- At trial C's evidence: Did not know the mechanism of the fall, could not remember tripping (evidence was she passed out)
- Discrepancies in where C was when she fell between different statements and exhibited photographs
- C says: "that this is a case of a claimant seeking to understand how she fell and sustained injury"
- D says: claimant's account of carrying a basket may have been an attempt to explain away difficult features in the medical records which might have suggested a wholly different mechanism for her fall

SWIFT V MAR CITY PLC

- Found C was carrying a washin
  but this was not determinati
- Records indicate C did not a
  believe, that she tripped o
  in the immediate aftermath
  "*I am **satisfied that that is a p***
  reading of those record
  notwithstanding
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- *"C had no be* *e had tripped on*
  the kerbsto then advanced
  PoC and wi nents positively
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GRIMAL V LANCASHIRE CC [2024] 5 WLUK 747

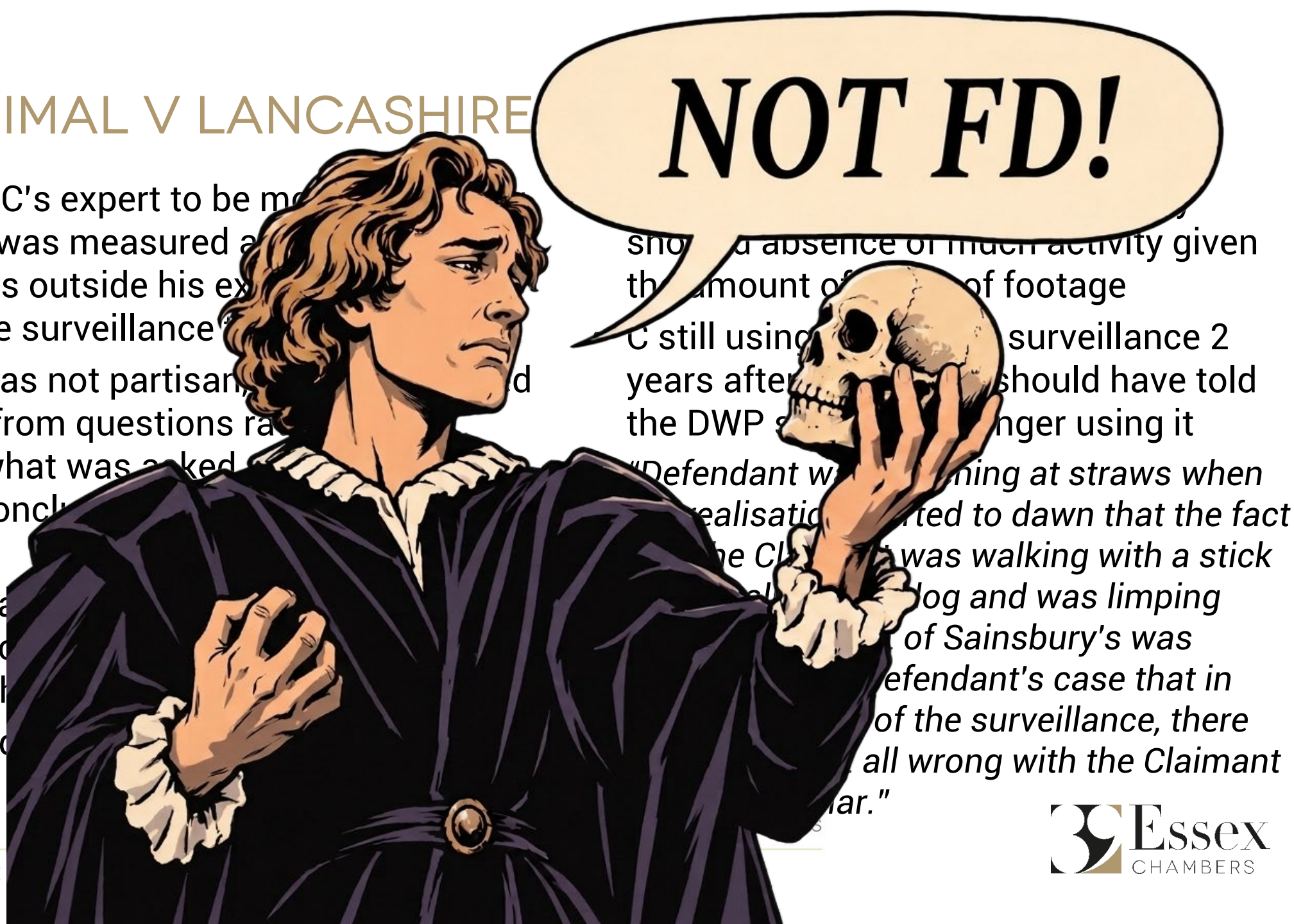
- Breach admitted but causation and contributory negligence put in issue
- Fact of fall and injury not disputed, but D said C "*dishonestly exaggerated*" the extent of injury and impact on her
- C and D put in expert evidence from orthopaedic surgeons
- C said she had difficulty with: bending, low-level work, sitting for long periods, taking her dog on long walks (though to D's expert she is recorded as saying she could not walk her dogs), could only do light shopping and did more shopping online, and that her social life suffered
- D put in surveillance evidence from 4 days of surveillance (one of which was C's bday) C shown walking her dog with a stick and limping, bending down to pick up poo. Also shown going to shops on some days, no other activity except on bday – D says C knew she was being watched
- C shown driving to the pub on her bday. C shown sitting in her sear for 1½ hrs, then driving to shop, walking with a trolley and without, bending down, and walking with a limp (there was a dispute between the experts about this limp, but this was a matter of fact for the Court)

GRIMAL V LANCASHIRE CC [2024] 5 WLUK 747

- C had told physio that she no longer “relied” on her stick, but did not tell the DWP she was no longer using it (two years before surveillance)
- C went on holiday to Mexico
- C continued to visit treating clinicians for a long time including steroid injections, pain killers, and physio
- Disagreement between experts as to the clinical significance of muscle wasting found on her right thigh:
  - C's expert says: If C had improved, the muscle wasting would have improved
  - D's expert says: That is not the case for older patients
- C had some improvement after she saw D's expert

GRIMAL V LANCASHIRE

- Court found C's expert to be m
because he was measured a
identify areas outside his ex
critical of the surveillance
- D's expert was not partisan
to move on from questions ra
answering what was a
presented conclu
logically
- Nothing C wa
with her acco
difficulty with
- People with



sho d absence of much activity given
th amount o of footage
C still using surveillance 2
years after should have told
the DWP s nger using it

"Defendant w ning at straws when
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of Sainsbury's was
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of the surveillance, there
all wrong with the Claimant
ar."

Essex CHAMBERS

ELVIDGE V COVEA [2021] 1 WLUK 576

- C was a 29 year old taxi driver involved in a collision with D The next day C went to an NHS walk in centre: "*stationary at traffic lights and hit from behind at approx. 10-15mph…got straight out of his car; felt pain, twinge above right posterior hip area …pain is now in middle of his back*." Examination reveals nil pain to shoulder and neck. Diagnosis upper back muscle injury.
- A claim was submitted to the portal which described the injury as ""muscle damage in the lower back"
- Claim for PSLA limited to £5k, £278.25 for repairs, and £319 for physiotherapy
- D admitted liability but denied causation, collision was low speed, and neither vehicle sustained visible damage
- D's Mini was smaller and lighter that C's Merc van so just unlikely that force was enough to cause injury
- Repair claim admitted and paid, physio claim was denied and C put to proof of treatment
- Medical report: C suffered mid back pain and stiffness due to a soft tissue injury caused by the RTA, resolve within 8 weeks
-

ELVIDGE V COVEA [2021] 1 WLUK 576

- At trial: C said the expert told him his body moved forward then back, the expert denied this.
- C said pain was in left hip and severe, but kept working for some hours
- C described occasional shoulder pain
- C says only made a claim because he rang his insurance as meant to when in an accident, and was then pushed along by the solicitors, he wasn't contemplating a claim
- C says did not see a physio, but was sent a home exercise programme in a pack, was evasive and could not recall speaking to a physio
- When asked about why he didn't provide documents supporting the physio claim he said *"I've just got swept up in my insurance, pushing me along, I didn't know I had to do anything, I didn't know I had receipts, I didn't know I had to provide and prove anything, I've just done what I've been told that I've got to do, ... I feel I got swept into this."*
- C told medical expert he took 3 days off work but his physio assessment says he took no days off work
- There was a physio invoice referring to treatment on 6 set dates – C said he had never seen it

ELVIDGE V COVEA [2021] 1 WLUK 576

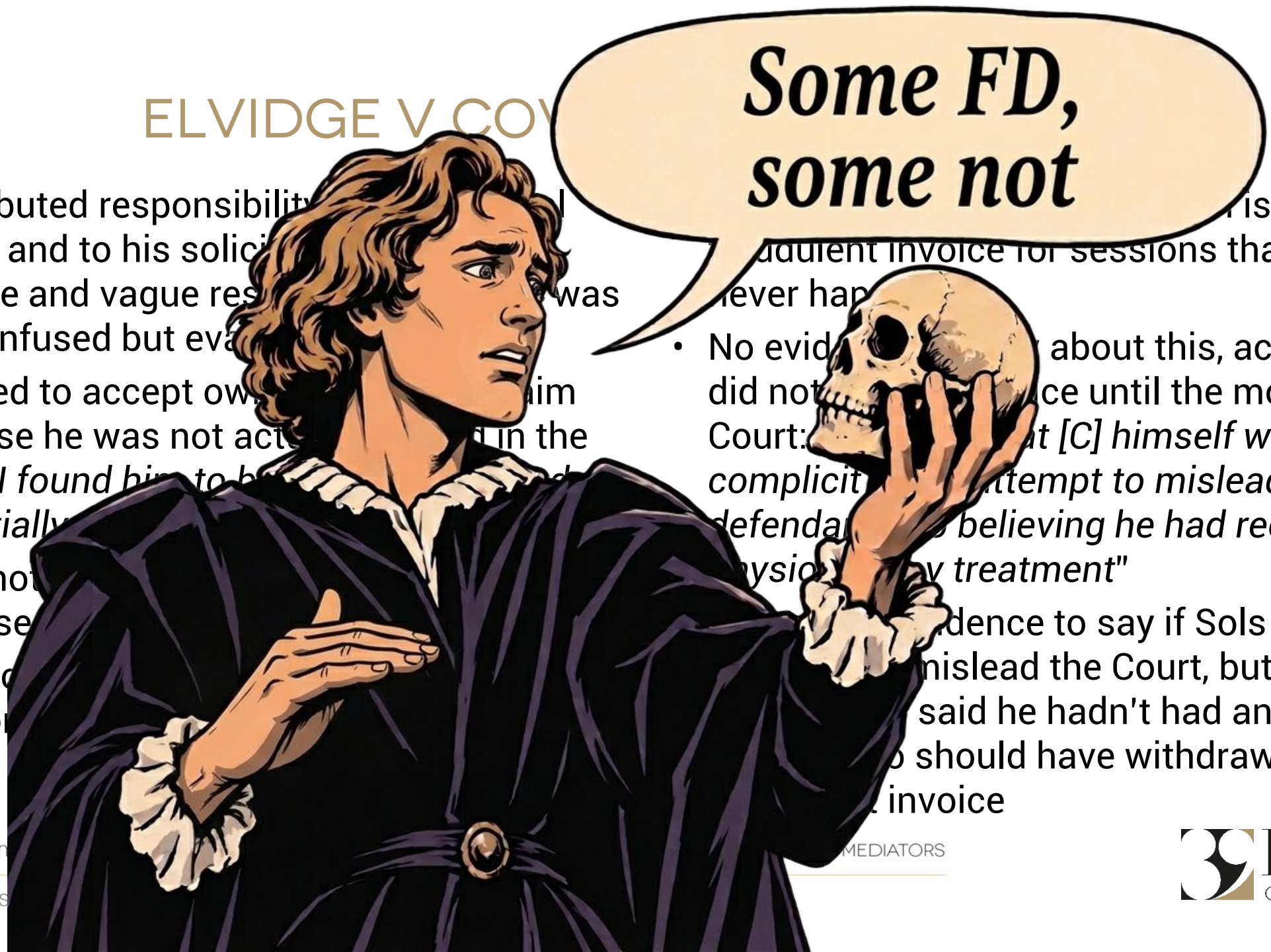
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- C told medical expert he took 3 days off work but his physio assessment says he took no days off work

ELVIDGE V COVEA [2021] 1 WLUK 576

- There was a physio invoice referring to treatment on 6 set dates – C said he had never seen it
- C stated at trial that there had not been 6 treatments by the physio, and that this claim was false
- The treating physio was cross examined – email evidence was that C had opted for a home exercise programme, and an invoice of £40 per session for 6 sessions on specific dates later issued
- Physio said his electronic signature was used by a team, but also that he reviewed it
- Physio said that sending to the claimant a leaflet of exercises is treatment on specific dates because the claimant was told to do the exercises on those specific dates

ELVIDGE V COV

- C attributed responsibili… l expert and to his solici… evasive and vague res… was not confused but eva…
- Refused to accept ow… im because he was not act… in the RTA. "*I found hi… to b… d potentiall…*
- C did not… exercise…
- But acc… sessio…



… issuing a …audulent invoice for sessions that have never hap…

- No evid… about this, accept he did not… ce until the morning of Court: *…t [C] himself was not complicit… attempt to mislead the defenda… believing he had received physio… y treatment*"

…dence to say if Sols …mislead the Court, but found … said he hadn't had any …o should have withdrawn the … invoice

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THE END



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