Neutral Citation Number: [2024] EWHC 806 (KB)

Case No: QB-2021-CDF-000010

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
CARDIFF DISTRICT REGISTRY

Cardiff Civil and Family Justice Centre
2 Park Street, Cardiff, CF10 1ET

Date: Wednesday 10th April 2024

Before:
MR JUSTICE RITCHIE

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BETWEEN

KIRSTY WILLIAMS-HENRY
(by her mother and litigation friend Christel Williams)

Claimant

- and –

ASSOCIATED BRITISH PORTS HOLDINGS LTD

Defendant

Marcus Grant (instructed by **Hugh James, Cardiff**) for the **Claimant**
Patrick Blakesley KC (instructed by **DWF**) for the **Defendant**

Hearing dates: 4-8, 11-15, 18 March 2024

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APPROVED JUDGMENT

This judgment was handed down remotely at 14.00pm on Wednesday 10th April 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Mr Justice Ritchie:

The Parties

1. The Claimant has a moderately severe brain injury from a nasty fall off Aberavon Pier on 21 July 2018. The Defendant owned or occupied the pier.

Bundles

2. For the hearing I was provided with 17 lever arch files of documents, an authorities bundle, skeleton arguments and various videos. Late evidence on substantial injustice was admitted near the end of the trial.

Summary

3. There had been press reports of bioluminescent plankton in the sea along Aberavon beach near Port Talbot. The Claimant and her family lived nearby and went out, at night, to see it. The Claimant had been drinking. The pier is made of concrete. There used to be safety railings along (at least) one edge. These had been taken out many years before. As she walked back in the dark away from the end of the pier the Claimant tripped or stumbled and fell off the edge, down 4-5 metres to the rocks and sand below. She suffered injuries. She sued the Defendant. Liability was settled at 2/3rds in her favour and judgment was entered on 16.3.2022 by consent. This hearing was the trial of quantum. It lasted 11 days.

The Issues

4. The main issue at trial was whether the Claimant had been fundamentally dishonest within S.57 of the *Criminal Justice and Courts Act 2015* [S.57] in this action. The second issue was the correct assessment of the quantum of the claim on the evidence. The third issue was whether, if the Claimant has been fundamentally dishonest, dismissing the claim under S.57 would cause a substantial injustice to the Claimant.

5. In relation to the allegations of fundamental dishonesty, the burden of proof is on the Defendant. If I find, on the balance of probabilities, that: (1) what the Claimant has written or told a third person was factually untrue and, (2) in addition, I find that the Claimant knew at the time that what she was saying or writing was untrue, I shall state that I consider that she has "lied".

The applications

6. Various applications relating to evidence were made during the trial. I granted various of them providing extemporary reasons.

Pleadings and chronology of the action

7. The letter of claim was dated early 2021. The Claim Form was issued on 5.7.2021 and the Particulars of Claim were served with a report from Doctor Joseph, a neurologist. The Defence was served in September 2021. The Defendant denied liability and

pleaded contributory negligence against the Claimant, including being drunk and asserted that there had been no other accidents on the pier over many years.

8. An interim payment of £50,000 was provided for in the March 2022 order. Directions for trial were provided in June 2022. In total £75,000 of interim payments were made. In late July 2023 the Defendant served surveillance video evidence and obtained permission to rely upon it by an Order made in September 2023. A further interim payment application was made, but refused, in October 2023. In November 2023 an Order was made requiring the Claimant to disclose her social media, employment and DWP records.

9. In January 2024 a litigation friend was appointed to make litigation decisions for the Claimant. The costs budgets were around £452,400 for the Defendant and £584,509 for the Claimant.

Quantum

10. The parties' schedules for trial set out their respective assessments of the appropriate quantum of the claim (subject to it being dismissed for fundamental dishonesty) as follows (the figures are rounded off):

Item number Heading	Claimant £	Defendant £
A. GENERAL DAMAGES		
1 General damages	£180,000	Up to £120,000
1a Interest	£9,498	£6,336
Total general damages	£169,356	Up to £126,336
B. PAST LOSSES INCLUDING INTEREST		
2 Past loss of earnings	£118,674	£21,294
3 Gratuitous care	£106,414	£43,619
4 Travel and transport	£9,171	£3,381
5 Rehabilitation, therapies	£57,317	£56,998
6 Miscellaneous	£4,579	£1,275
7 Case management	£20,789	£20,789
8 Support	£13,626	£8,711
9 Aids, equipment	£6,075	£617
10 PI trust	£1,560	£0
Subtotal	£338,206	£156,685
C. FUTURE LOSSES		
11 Loss of earnings, pension	£1,578,748	£60,000 or £235,356
12 Care, Case management etc	£1,028,353	£0
13 Childcare contingency	£72,149	£0
14 Therapies	£246,469	£34,081.50

15 Aids, equipment, services	£73,205	£30
Subtotal	£2,998,924	£91,115 or £269,468
Grand total A+B + C at 100%	£3,526,628	Up to £374,135 or £552,488
Liability at 66.6%	**£2,352,261**	**Up to £259,174 Or £367,957**

By the end of the trial the Claimant had reduced her past care claim by around £20,000.

The witnesses of fact

11. I heard and read evidence from the following witnesses of fact called by the Claimant:
    The Claimant; Christel Williams; Emma Heyes; Michelle Jones; Lauren Wilyeo; Gemma Lerwell; Sarah Lewis; Doctor Peter Marshall; Emma Hale; Kevin Thomas.

12. I heard or read evidence from the following witness of fact called by the Defendant:
    Terri Tavelli; Aaron Haines; Rob Davies; Michael Monks; Jack Harman; Steve Hibbert; John Hope (all surveillance operatives). I also viewed the videos and saw and read the social media postings by the Claimant.

The expert witnesses

13. I heard and read expert evidence from the following expert witnesses called by the Claimant:
    Doctors: Joseph (neurology); McDonald (neuro-radiology); Maheson (orthopaedics); Price (neuro-psychiatry); Monaci (neuro-psychology); Law (pain); Raza (ENT);
    Other experts: Gerry Harlow (physiotherapy); Miss. Gibson (care).

14. I heard and read expert evidence from the following expert witnesses called by the Defendant:
    Doctors: Humphrey (neurology); Vanhegan (orthopaedics); Poole (neuro-psychiatry); Mullin (neuro-psychology); Claxton (pain);
    Other experts: Miss. Laverty (physiotherapy); Miss. Russell (care).

Findings of fact in chronological order

15. Before I set out the individual evidence of the witnesses I am going to set out my factual findings in chronological order. I make these findings on the balance of probability taking into account all of the evidence from witnesses of fact and the documents. I also take into account the expert evidence when I make these findings, but I will summarise their opinions later on. I take into account that the burden of proof is on the Claimant generally but on the Defendant in relation to fundamental dishonesty. I have not set out all events or details. I have chosen most of the relevant ones to the Claimant's injuries and symptoms mainly related to the fall or asserted so to relate and the issues

raised by the Defendant on credibility, fundamental dishonesty. I will also set out in this chronology what the Claimant told the medico-legal experts at each examination but will not generally set out the diagnoses and prognoses, which will come later. When considering the social media postings of the Claimant I take into account that there is a tendency to post happy events on such platforms from time to time.

Before the accident

16. The Claimant was born on 4.2.1991, she is now 33 years old. She was brought up in humble circumstances in Port Talbot. Her parents divorced when she was young. Her mother, who works as a nurse/sister at a local hospital, has a lot of family members living nearby and her father, who was a steel worker, found another partner and lives nearby. Later, he had two other children who are the Claimant's half siblings (aged approximately 14 and 16). The Claimant did well at school. She was of average intelligence (IQ103, per Doctor Monaci). She obtained one A and two or three Bs at A-level. She gained a first class degree in computer sciences at Mid Glamorgan University, then tried working in London for 2.5 months, but she did not like it there. She returned home to Port Talbot and started work at a large, local insurance company called Admiral on the graduate scheme. She did well there. She rose through the ranks and by January 2018 was a senior business analyst in "DevOps" earning good sums. At the age of 23/4 she bought a house, 10 minutes walk from Aberavon beach and 2.5 miles from the train station. She had a quite large mortgage. It was a 3 bedroomed semi-detached with a two car front driveway and a back garden. She had at least one dog, maybe two and she was happy. The Claimant was very driven to work hard and she gained most of her self-esteem from doing so. The Claimant was contracted to work 39.5 hours per week. She worked on big IT projects. She owned a manual shift Ford car, insured via Admiral and she drove to work in Cardiff regularly as part of a car share group. Her performance reviews at work were invariably strongly positive and glowing in parts. She was earmarked for advancement by her manager and highly respected for her abilities, teamwork and commitment. She had a young person's desire to change the processes at work so as to make them more efficient but lacked the diplomatic skills to do so. She was grossly critical of senior management in her reviews and this approach would, in my judgment, have held her advancement back somewhat.

17. Socially, the Claimant was close to her mum, who lived nearby, her aunties and her father. She had work and non-work friends and enjoyed partying, the cinema, films on TV, rugby and heavy drinking. She also took part in online video gaming with friends. The Claimant took regular foreign holidays (for example to Budapest, New York and Italy) and went to music festivals and concerts. She had a boy friend.

18. Health wise, the Claimant had been obese from the age of 14. She had been diagnosed with asthma in 2010. At the age of 27 (in April 2018) she weighed 109 kg (BMI 34.4). This and her sedentary lifestyle (no gym, no running, no individual or team sports) probably led to her suffering regular back pain since 2003. Her lower lumbar spine was

degenerating, as shown on MRI scanning and by December 2017 she had constant lower back pain with intermittent acute exacerbations. Her GP notes evidence this. Despite advice to lose weight and exercise, she chose not to do so. She paid for private plastic surgery in April 2018.

19. In the Claimant's work performance review dated August 2016, her manager, Emma Heyes, described her as a very bubbly individual and a motivator within the department. The Claimant had a keen focus to develop within her role as a business analyst. She was passionate about her role and looking for ways to make her work better. However, she displayed frustration at lack of progress and the manager had to advise her on how best to deal with her frustrations. Her team meeting contributions were solid and her communication was strong. The Claimant's own self appraisal included insight that she needed to become more politically mindful. She criticised senior management for messing her role around so much and stated she was "worn down" by senior management which created "bad morale" and was not addressed by the leadership. She described the changes as making staff run a "3 legged race before they had even started to crawl". She praised her direct line manager. She sought help for stress management and her professional conduct. In September 2017 Emma Heyes reviewed her performance again. She described the Claimant's feedback from other staff as "outstanding" and praised her work ethic and commitment, technical and business knowledge. The Claimant had a willingness to learn and pick up new challenges, was a trusted member of the business analysis community who provided guidance to less experienced members. The Claimant was described as a "delight to be around". The Claimant self-described as trying to change her approach and become more self-aware and more controlled when she disagreed with things. She described numerous frustrations, but stated she genuinely enjoyed the job, despite the negatives. She self-described as a complainer and "stress head" who preferred flat-out working and getting involved. The Claimant described it as a "tough year" and that she did not feel supported but she was glad to be in the DevOps team. In the August 2018 performance review, which related to her work before the accident but mentioned her accident, her manager again described the Claimant as a "joy to be around". The Claimant self-described as "acting" as a product owner on six DevOps team matters and then moving to the P&I team in which she considered she had made "great strides". The performance review must have been written long after August 2018 because the Claimant described her own coming back to work so quickly as being "an amazing achievement". She described recognising her poor behaviours and needing to improve. She stated that she was unhappy in her role 70% of the time because she felt disrespected and misused for a long period. She criticised the lack of process and appreciation of her role and being brought in too late on major projects.

But for the accident

20. In my judgment, but for the accident, the Claimant would have continued at Admiral in Cardiff and risen through the technical ranks. She might have moved to other employers

later in her career. Her post-accident performance reviews were very complimentary for 4 years, but I do not consider that she would have broken into senior management. She lacked long range strategic-diplomatic vision, the necessary skills or the self-restraint for higher management success. She was undiplomatic. She was aiming to become an IT Solutions Architect earning between £77,458 and £110,250 gpa. I consider that she would have achieved this position but the salary will be considered later, below.

21. I find as a fact that the Claimant would have developed acute lumbar spine symptoms in December 2018 in any event leading to injections, time off work and serious back surgery in the Autumn of 2019 (as she did after the accident). Thereafter, she would have suffered left leg L4/5 nerve root neurological symptoms including altered sensation, for life. Her obesity would have led to her developing type 2 diabetes around the same time that she has developed it in any event. I find that the Claimant would not have developed depression or any chronic pain syndrome. She probably would have married and had children, which was her aim. She would have taken some time off work to give birth and raise the children when they were very young. She would have worked to her mid 60s, but I do not consider that, on balance, she would have worked to 68 as pleaded. I consider that her life-long obesity, diabetes, asthma and spinal degeneration would have taken a toll in later life. However, the Claimant would have been independent for all activities of daily living (ADL).

The injuries

22. As a result of the accident on 21.7.2018 the Claimant suffered:
- Skull fractures including bilateral skull vault and base fractures, mainly on the left hand side but also on the right hand side, plus bilateral cerebral, subdural, sub-arachnoid brain damage together with damage in the transverse sinus and the parenchymal area. Extensive frontal and temporal lobe damage. She also suffered brain swelling leading to a craniotomy and her removed skull bone being placed into her abdomen for weeks and then repositioned by cranioplasty. Overall: moderately-severe (Mayo Classification) brain injuries.
- Damage to her left ear including a rupture of the tympanic membrane and mild reduced left sided and right sided hearing and very mild tinnitus.
- Right pubic rami fractures, without displacement.
- Trimalleolar, minimally displaced, fractures of her left ankle.
- Minor abrasions and bruising to her right hip.
- Bruising to one right foot toe.
- Psychiatric sequelae including depression, mild PTSD and anxiety.

The medical treatment in hospital

23. An ambulance took the Claimant to the local hospital. She was soon transferred to University Hospital Cardiff due to the traumatic brain injuries (TBIs). She was sedated,

scanned, had an intracranial bolt inserted and underwent a frontal craniotomy because of brain swelling, bleeding and intracranial pressure. The Claimant was in ITU for 8 days and for 3 weeks she was in and out of consciousness. Her left ankle was manipulated under anaesthetic into congruity. Her left ankle was put in a cast, then a boot. Her pelvis was treated conservatively. By the second half of August she was receiving physiotherapy, neuro-psychology counselling, occupational therapy (OT) and improving well. Endocrine, pituitary and adrenal insufficiency were identified as a consequence of the TBI but I have no relevant expert reports on these matters and cannot make clear findings on them. She suffered some headaches in hospital. Her right hip caused some pain in hospital. There is no mention of PTSD in the hospital notes and she could not remember the accident.

After hospital

24. On discharge, on 10th September 2018, she was mobile and had been assessed as able to manage stairs and use a kitchen. At that time she weighed 125.5 kg (BMI 39). I do not consider that this weight gain was caused solely by her time in hospital and infer that just before the fall she had put on weight to raise the April 2018 figure from 109 kg to nearer 125 kg. She benefitted from therapy and many discussions about the effects of frontal lobe brain injuries. These continued regularly with Doctor Zoe Fisher, a neuro-psychologist and her team for 2.5 years and overlapped with others thereafter at Tonna Hospital. She was suffering fatigue and irritability. There is no suggestion in the early notes that she suffered any post-traumatic stress from the events in hospital. She was advised to take inpatient rehabilitation but chose outpatient rehabilitation and she was discharged to the care of her mother, who took time off work.

The Autumn and Winter of 2018

25. The Claimant had a DWP assessment at home in October 2018. She reported headaches, loss of hearing, sensitivity to light and frontal lobe symptoms including irritability and reduced cognition. She reported loss of sensation on her left side, weak grip and still had a leg brace on her left ankle. She was using a crutch. Carole Saunders, of the Community Brain Injury Service, noted that by 23.10.2018 she was able to shower independently (I place reliance on this). She had a Headway solicitor. She was starting or considering starting litigation. Personal independence payments (PIPs) were awarded.

26. The Claimant's left ear hearing had been reduced since the fall and she took private advice from Mr. Singh, a local Ear Nose and Throat (ENT) surgeon, in November 2018. Audiology showed some mild high pitch hearing reduction on the left and a smaller loss on the right, caused by the fall. I find as a fact that the Claimant was told this and understood it. She had also lost her sense of smell and part of her sense of taste, with some alteration of taste. The Claimant suffered some dizziness, which Mr. Singh thought could be Benign Positional Paroxysmal Vertigo (BPPV), but he did not confirm the diagnosis and the Hallpike test he did for that condition was negative. He gave the

Claimant treatment for BPPV which was the Epley's manoeuvre which was beneficial and thereafter I find she knew how to do that manoeuvre if she needed to repeat it. I accept the medical evidence that Epley's can resolve dizziness for many years or the dizziness may return and require the manoeuvre again. It involves challenging the chosen one of the three balance canals with head movements. In any event the Claimant never returned to Mr. Singh and I find that her dizziness did not trouble her enough to do so. The Claimant also complained of noise intolerance and tinnitus.

27. The Claimant improved enough to start a phased return to work in November 2018. She worked her way up over the next few months to 32.5 hours per week or 6.5 hours per day for 5 days per week. This was a 17.7% reduction in her hours (normal 39.5). She travelled from Port Talbot to Cardiff each day, which took about half an hour each way by train or in colleagues' cars. She was already in the P&I team and stayed there. She was taken off some larger projects.

28. The Claimant received regular neuro-psychological therapy and help from Doctor Zoe Fisher and her team, promoting her insight into her frontal lobe damage and managing her fatigue, her slight disinhibition and behavioural dysfunction. The Claimant's intellectual functioning was undamaged and she continued to perform well at work.

29. In November 2018 the Claimant and her mother travelled to London to visit Winter Wonderland at Hyde Park, which is a crowded, noisy, large, open air shopping zone with carnival rides. She also walked in Covent Garden to a café. So, the Claimant and her mother clearly considered her balance issues, walking restriction and noise intolerance to be no barrier to attending such an event and the travel involved.

30. In December 2018 the Claimant attended a friend's birthday party. Around Christmas the Claimant's lower spine started to cause neurological symptoms from a sequestrated disc (a split disc with extruded nucleus pulposus aggravating or damaging her nerve roots) at L4/5. This seriously affected her left leg over the next 9 months. I find that it was unrelated to the accident and would have occurred in any event, based on the orthopaedic evidence.

31. In the latter part of 2018 the Claimant posted some insights into her TBI and fatigue and mentioned she was walking with a stick, on occasion. Her New Year's Eve posting acknowledged the tough journey she had been through. She stayed in. Her friends posted sympathetic support for her recovery.

2019

32. In January 2019 the lower back pain became worse. However, the Claimant wrote of her hangover in posts in the second week, so was able to socialise and drink. In mid-January she travelled to Bryn Meadows Spa, which is North of Caerphilly and stayed there one weekend. She continued to travel to and from work by train. The Claimant

posted a link to Brainlaw.com explaining how the description of TBI symptoms there was appropriate for her TBI. The Claimant later told Mr. Harlow that she had moved back to her own home in January 2019. I accept that evidence and find that she was living at her own home thereafter. I also accept that she stayed over from time to time at her mother's house, sometimes 2-3 days pw.

33. On 31.1.2019 Doctor Zoe Fisher provided a detailed appraisal of the Claimant's neuro-psychological results since the fall. Six months had passed. The Claimant's intellectual abilities, memory and cognition were well preserved and undamaged. After the full neuro-psychological assessment of her cognition Doctor Zoe Fisher reported that the Claimant performed within expected ranges on most memory tests and exceeded expectation on visual memory with a superior score. Her scores for executive functioning, planning, initiation, organisation, problem solving and response control were at an expected level compared with the population. The tests did not show any cognitive difficulties and instead showed high levels of ability. The Claimant had not reported difficulties prioritising work. However, Doctor Zoe Fisher warned that the tests were carried out in a highly controlled environment which was not similar to the real working world. It was quiet and free from distraction. She noted that the Claimant reported fatigue and difficulty with attention and memory when she was tired. Doctor Zoe Fisher pointed out that the neurocognitive tests did not measure disinhibition or socially inappropriate behaviour. The Claimant had reported irritability and being more blunt and Doctor Zoe Fisher linked those to fatigue and lack of sleep or psychological distress. She warned that the Claimant was overthinking and catastrophising *more than she used to*. She was suffering fatigue and some behavioural dysfunction. Such tests cannot mimic the distractions of real life but showed that the Claimant had made a truly remarkable recovery. She also wrote a "to whom it may concern" letter for Admiral setting out the Claimant's physical and TBI symptoms. I find that this was sent to Admiral around that time. As I shall repeat below I accept these results as accurate.

34. As result of the disc sequestration the Claimant took some time off work in late January into early February 2019. In early February 2019 she discussed fatigue management with her psychologist and reducing her work to 25 hpw but she chose not to do so. In early February 2019 the Claimant attended a wedding at the Orangery between Port Talbot and Cardiff. In early March 2019 the Claimant went to the Bryn Meadows Spa for a weekend and swam in the pool there.

35. In March 2019, at the 6 months orthopaedic review of her ankle, the Claimant had an "excellent" range of movement (ROM) and reported no pain. Her ankle bones had mended with congruity. She was walking comfortably (from the ankle point of view) and discharged. There was no record of her needing a stick to walk. I accept that evidence as correct.

36. In April 2019 the Claimant had a spinal block injection. It did not resolve the disc symptoms. She had chiropractic treatment 8 times between December 2018 and July 2020. In April 2019 she reported her ankle felt "blocked" for dorsi-flexion. Socially the Claimant went to see and sing at the "Greatest Showman" singalong in Cardiff. The Claimant's driving licence was returned to her in April 2019 and she started to drive again using her manual shift Ford. I find that she also went on a longish walk with her dogs down the Velindre Falls river, near her Aunt's house that month. The paths there are not all even. A post on 9th April confirms she walked to work before and after using trains. In May 2019 she went to the Forest of Dean for a weekend, staying in a log cabin, lunching at the local pub and taking hot tubs whilst reading books. Later that month the Claimant bought "shots" for her friends on a night out. In May 2019 the Claimant went to see the Spice Girls' reunion tour (pop) in Cardiff, in which she did not stop screaming, singing and dancing, according to her post, which I accept was accurate. She stayed for the full set. Then, in June 2019 the Claimant went to another Spice Girls' concert in Bristol. The Claimant stayed over at a hotel in Bristol. She enjoyed some beers. She was in the front rows of this concert. Unfortunately, after going to the toilet she was not allowed back into the Golden Circle because it was too full for while. She became angry and she left the concert with her family. Her mother wrote a complaint email thereafter about this. In the same month the Claimant went to a "Pink" concert (heavy rock). Thus, I find that any mobility issues and noise sensitivity issues she may have had earlier on, had ameliorated by that time so were either minimal or non-existent. I do not accept, as the Claimant asserts, that she left the Spice Girls' second gig due to fatigue after 4 songs.

37. There are handwritten clinical psychology notes from October 2018 to January 2021 by Doctor Zoe Fisher and her team. Initially, the Claimant's goals were: to return to work, to drive and to return to live at home. She achieved all of these by April 2019. Initially the neuro-psychology sessions were weekly from 12.11.2018. From 2019 they were monthly. Various psychologists were involved. In early January 2019 the Claimant's mum reported she was walking into work to and from the train rather than being driven by her manager and was suffering fatigue. On 22.1.2019 the Claimant reported fatigue, reduced cognition, increased ankle, hip and back pain and loss of sleep. She told the psychologist her dizziness had improved day by day and she only had some when looking up and standing. I accept that evidence as true. She could taste tomatoes, meat, curries and burgers. I accept that evidence as true. In March 2019 the Claimant and the psychologist discussed her irritability at people saying "stupid things". They focussed on fatigue and planning ahead. During the 3 years and 17 sessions of neuro-psychological counselling from Doctor Zoe Fisher and others for her TBI and the symptoms thereof, memory, planning and using aids, time planning and energy planning were all covered. Work adjustments were covered. Her worries about being unable to cope were discussed many times. I find that this led to her gaining and exercising good insight into managing her brain injury symptoms. Her posts about fatigue and managing brain injuries evidence this. For instance, in November 2019 the

Claimant reported that her manager had followed the psychologist's recommendations but she was still suffering fatigue and making mistakes at work.

38. In May 2019, Miss. Topliss, a consultant orthopaedic surgeon, noted the Claimant complained of left ankle instability on stairs and trains. At that time Miss. Topliss thought that the Claimant had a physical block to dorsi-flexion secondary to the fracture and requested an MRI. In June 2019 the Claimant was treated at the Port Talbot Pain Management Service (PMS) and this continued until October 2020. In June 2019 the Claimant went to Zante for a holiday lasting one week. She flew there. She went to the beach and wore flip flops. She lay on sunchairs with the back of her head on the headrests. She lay in the sun. She swam in the pools. She suffered a bit of sun burn on her first day. She went to the sandy beaches and walked on them. She went out on a boat trip. There is no photographic or "media" evidence that she used a walking stick or had balance or dizziness issues. The Claimant did post a concern about long distance walking. She drank alcohol. She went down to the village, a 15 minute walk away. In July 2019, on her return from Zante, she attended a friend's birthday party at a commercial premises at which she drank alcohol. On the anniversary of her fall she posted a long social media message. She thanked the surgeons, her friends and family. She acknowledged her ongoing fatigue, reduced cognition and irritability. I do not consider that the Claimant was depressed at that time.

39. In July 2019 the Claimant was examined by a trainee spinal nurse practitioner. She told the clinician that her back went getting into a car in January 2019 with shooting pains down her left leg. She had altered sensation down her left calf and on top of her left ankle. She told the clinician that she had lived with her mother since the accident (I reject that assertion) and rarely drank alcohol (I reject that assertion). In August 2019 she may have travelled to Cyprus (according to Miss. Gibson) but the evidence of that holiday was unclear. On 25 September 2019 the Claimant underwent major spinal surgery (micro-discectomy) in her lower lumbar spine to remove the sequestrated disc and relieve the nerve roots. Pre-operatively her pain was diagnosed as left leg radicular, due to a large disc herniation. She had a laminectomy at L4/5 and the nerve root was decompressed. No metal was inserted. She recovered well after this. There is no record of the Claimant being afraid of hospital or having PTSD about hospitals.

40. In September 2019 MRI scanning showed no soft tissue or bony explanation for her continued complaints of ankle pain and reduced dorsi-flexion (foot raising by swivelling the ankle up). The scan was summarised by Miss. Topliss on 17th October 2019 as showing no discontinuity in the ligaments but some bone oedema which was healing. On clinical review the ankle was stable and the Claimant's movement was improving because the nerve pain in her left leg caused by the disc had improved and the strength was returning. I accept the orthopaedic evidence of Mr. Vanhegan that by 12 months from the date of the fall, so the summer of 2019, there was no orthopaedic cause for her left ankle pain or her right hip pain. I consider that the Claimant was not

suffering pier fall related ankle or right hip pain by this time. Any left leg symptoms were from the disc.

41. On 12th November 2019, Mr. Boreham, who had operated on the Claimant's back, wrote that the Claimant's left leg pain had “completely resolved” and the Claimant was reducing her analgesia slowly, did not require any physiotherapy, had returned to work and was taking a lot of mini breaks. The Claimant attended social events (Bingo Lingo) in November 2019 and went to the cinema. She drank with friends on nights out. In late 2019 the Claimant described on social media how she loved watching various streaming TV box set series. I do not consider that the Claimant was depressed at this time.

42. In her December 2019 performance review at work her manager described the Claimant’s performance as “excellent” and her being “on top of her workload”, thorough and covering all elements. The Claimant was always “willing to help”, “eagerly volunteered for additional tasks” and she worked particularly well with testers “discussing complex changes” with them. The Claimant’s communication was described as “really good”. She was described as “knowing her audience” and able to cater for their needs. She worked well with the primary customer: the P&I business and was well thought of and “a source of knowledge and expertise and advice” for them. She played a “valuable role in triage meetings”. However, Emma Heyes recognised that the Claimant had struggled with engagement with the team and IT. She recognised the Claimant was getting help outside work and thought things had “improved massively” since the Claimant’s back operation but was concerned about how to manage the Claimant’s expectations by establishing clear guidelines for her role and working practices within the team. Other staff provided feedback on the Claimant which was selected and put into the appraisal by her manager. The Claimant was described as “clear, concise”, willing to help, with an “incredible level of detail that other people missed”. The Claimant was described as “always thinking of wider consequences beyond her team” which was “incredibly helpful”. She was “very approachable and easy to get on with”. Her knowledge was described as “superb” and well shared. She had an “excellent attention to detail” and was willing to voice opinions, even if controversial. In the list of negatives there were not many items. She was described as a little bit challenging in certain work atmospheres and when expressing her frustrations. As for the Claimant’s self-appraisal: she considered she had achieved a lot in the year, despite hurdles. She was confident she was succeeding. She had tried to catch up on architecture changes. She was happy within her team but unhappy with the department. She felt her role was disrespected by senior management, misunderstood and misused. She felt under-appreciated. She did recognise her weaknesses in relation to “sarcasm” and noted her pain and frustration but she asserted her “core behaviours” were good. She recorded that her cognitive problems made life “far more difficult”. She accepted she needed to be more political and mindful of others. She was complimentary of her direct manager but not of senior management.

43. The Claimant spent a family Christmas eating, playing games and watching films. During this year the Claimant had continued to draft and post insightful information about brain injury and was clearly on traumatic brain injury group web-sites.

2020

44. The Claimant continued working 5 days pw and travelling to work by train. On her first day back in January 2020 she forgot her laptop, so had to return home after a wasted train journey to Bridgend. The Claimant blamed her TBI for the oversight.

45. In January 2020 the Claimant told Doctor Zoe Fisher she had started to suffer new onset headaches. She was referred by Doctor Zoe Fisher's team to the head injury service at Swansea Bay University Hospital and Mr. Michael McCabe, a locum A and E consultant, recorded that in September 2019 she had started to develop severe right frontal headaches, which came on with no precipitating factor. He did not consider that they were typically post head injury headaches. CT scans had excluded haemorrhage or venous thrombosis and blood tests were unremarkable. I find that these were unrelated to her TBI. Her weight at that time was 110 kilogrammes and the Claimant was complaining of worsened dizziness and a number of falls in the last month.

46. In late January 2020 the Claimant posted that she had just restarted walking her dogs on Aberavon beach. I take that as meaning restarted after the back operation. In February 2020 she was dining at Miller and Carter, a steak house in Swansea. I find that she fed herself and cut up her own steak. She went ten pin bowling and I find that this required balance, agility and head movement (looking up when bending down) and I find as a fact that the Claimant did do some bowling. I do not accept that she only used a metal frame to move the bowling balls. She watched a Six Nations match with her family at a pub, ate and drank alcohol. The Claimant went to the Tutankhamun exhibition in London in February 2020. I find that this required a lot of travel and walking around the exhibition. In early March the Claimant posted an insightful summary of her symptoms from her brain injury, setting out fatigue, reduced ability to drink alcohol, concern about being pushed over so that she might bash her head again, her irritability and her fear that depression and anxiety might return. Her friends gave her online support in response. The Claimant posted a diagram of the parts of the brain for brain injury month and published that she had been booked to speak at a brain injury conference in May 2020. She clearly understood the symptoms and effects of her TBI. She had worked as a sponsor at the conference the year before (2019). The Claimant praised Doctor Zoe Fisher, with whom she had received neuro-psychological therapy for well over a year by then. She wrote it was doing wonders for her "self-awareness". She wrote that her recovery had been a "miracle" and she was doing so well. But, she described feeling guilty on her "down days" and that her symptoms (fatigue and cognitive issues) were still there. She went out to Treatz in Swansea for a meal that month.

47. On 17th and 25th March 2020 the Claimant posted photos of her walking on Aberavon beach with her dog and I find that she did not just restrict herself to the pavement but walked on the beach. She informed Doctor Zoe Fisher's team that in March 2020 she was mainly living at home but sometimes with her mother. A meeting was set up for Doctor Zoe Fisher to go to Admiral and speak to the Claimant's managers to inform them in detail about her brain injury symptoms.

48. The Claimant's social life, like the rest of the population's, was very restricted from late March 2020 into early – mid 2021 due to Covid. She started working from home then. In late March she posted how she missed complicated books. On 4th April she was again walking on Aberavon beach with her dogs.

L&G Life Insurance application

49. On the 11th of April 2020 the Claimant herself filled in a proposal for life insurance. She declared that her answers were correct and of course she was working for an insurance company, so very well understood the duty of utmost good faith owed by applicants for insurance when filling in proposal forms. In answer to a question on her employment she asserted she was in full-time employment, whereas in fact at that time she was working part time. In relation to her lifestyle, she was asked how often she drank alcohol and responded "never". This was a lie. In relation to her health, she disclosed her TBI and in relation to the questions upon it, one of which was "have you been left with any lasting psychological or emotional problems or memory loss?" she answered "no". I accept that answer was true by that time. In relation to the question "how would you best describe your current condition?" she responded *"residual symptoms, but little or no help needed to carry out daily activities; Mobile and can live independently."* In my judgment this response was probably true. Under the heading "health in the last five years" which was accompanied by the written advice that if the Claimant was unsure whether to disclose a medical condition she was encouraged to tell the insurer anyway, she was asked whether she had suffered any of the following: "back, spine, joint trouble, sciatica". She answered "no". That was a lie, in view of the sequestrated lumbar disc and the microdiscectomy that she had undergone less than one year before she filled in the form. In answer to a question whether she had "in the last five years" suffered "anxiety, depression or stress that had required treatment or counselling or a chronic fatigue syndrome", she answered "no". That answer showed how she felt about her past accident-related symptoms at the time and I accept it as true. In answer to questions on whether she had suffered "numbness", persistent memory loss, dizziness or balance problems, she answered "no". This puts into perspective her occasional complaints in relation to her self-reported memory loss, dizziness and balance problems to treating clinicians. I find that it was the truth at that time. In answer to her "health conditions in the last 12 months", she was asked whether she had suffered any "medical condition, illness or injury" for which she had received treatment for a continuous period of four weeks or more in the last 12 months. The Claimant answered

"no". That was a lie. In answer to a question whether she had been "referred to or had any investigations in a hospital" or any scan in the last 12 months, she answered "no". This was a lie in relation to her major back surgery. The declaration at the end made by the Claimant stated that the information given in the application form had been provided "truthfully and accurately". That declaration was also a lie in relation to her disc sequestration and back surgery.

50. On 5th June 2020 the Claimant posted a photo of herself having beer and waffles in her garden. On 3rd August 2020 the Claimant went out for supper to Miller and Carters. On the 8th August she went on a pub crawl on Wind Street and drank alcohol. In one photo she is throwing her head upwards and back with pleasure.

51. At the Claimant's annual performance review dated 28th August 2020 her manager, Emma Heyes, described her as an "extremely valued member of the team" who had been "fundamental to many successful implementations" largely due to her "attention to detail, diligence and perseverance". Throughout remote working the Claimant had "worked tirelessly" to make sure communication of business benefits, context and specific details were "well documented and understood". She was an "extremely valuable to the team and extremely well thought of by developers". She had built a great relationship with her testers and she had mentored some. The Claimant helped to navigate errors and was "extremely busy due to her dedication and commitment". The manager provided some notes of caution including the fact that the Claimant was struggling with additional workloads caused by change in the organisation. In relation to her insight into her difficulties the Claimant herself wrote this:

> **"3. What was your biggest learning over the last 12 months? What changes have you implemented to support this?**
> In my appraisal of 2019, I said my biggest weakness was allowing negative problems in work to affect me too much and not managing my health/work balance well enough because I was also being negatively affected by incredible personal problems at the time, so my pain/symptoms were exuberated (sic) at work where there was constant problems/changes in the department that I have opinions on because I of course want the department to be better and have put 8 years of my career/life into it and disagreed with a lot of the changes. I was sometimes snappy and didn't give enough thought to how my opinions were being delivered and how diplomatic I was which was a combination of my pain and the disinhibition cognitive issue I now suffer.
> **This year – personally I believe I have SMASHED that weakness and have massively improved.**
> I am getting help outside of work for personal mental health issues and for cognitive symptoms of my disability which I am still in the early stages of recovery for but have shown great growth in with work.

 I have adapted well with the team and more structure/understanding has taken place in the team to eliminate a lot of the issues that caused me to be blunt in my assessment of things previously. When I am unable to avoid it, I do try and take steps to think about it and explain myself more logically/diplomatically using many skills and Cognitive Behaviour Therapy learnings I have personally undertaken off my own back.
 However, I think people will still see me as not diplomatic because I am still unfortunately in a position (BA/Early stage of backlog creation) where the biggest upheaval and changes occur like multiple roles with overlapping responsibilities etc without great management understanding or management around it. So there is always something new causing problems/issues that I have to speak up about because if I don't it just gets ingrained and I have to live with it. However, despite everything I point out or speak up about (things for the benefit of the team, factual and our combined goal as an IT development department), people, I'm finding mostly managers do not like people with an opinion that differs from their own or points out problems so I will now try to avoid involving myself in strategic meetings or at least not give my opinions in them.
 I've also attempted to put structure around my day (start at 10am work till 4:30pm with no calls allowed between 12-12:30 so I can cook while working and not miss out on lunch to take my tablets) this isn't working greatly because people keep booking meetings with me before 10am or after 4:30 and always between 12-1. So I've been trying 9:30 till 16:00 but that seems to have made it worse. But trying to stick to that structure at least has helped.
 Outside of the team I now do make a huge effort to avoid those type of situations where conflict is going to occur in work."

13 days after this insightful and eloquent written summary by the Claimant she signed a DWP State benefits (PIP) review form.

DWP application 2020

52. On 10th September 2020 the Claimant signed the renewed DWP application for PIPs. In this form, which was penned by her mother, she answered various clear questions. I find as a fact that the Claimant read and approved all of the contents. The form required her to declare that she: (1) agreed that the information given was "complete and correct"; (2) understood that if she gave wrong or incomplete information her benefits might be stopped and she might be prosecuted; (3) understood that she had to tell the DWP promptly of anything that might affect her entitlement to benefits. I will pick out some answers below, but not all. She answered the following questions thus:

- Health conditions: the Claimant listed them including "deaf left ear". This was a lie. Her left sided hearing was mildly reduced.
- The form advised: "*If the effects of your health condition can change for example during the day, day by day or from week to week, please include as much detail as*

you can in your answers. You need to answer all the questions and the information sheet can help you with this. Remember to send us supporting information that tells us how your health condition or disability affects you now. Examples of the types of information you should send are on the information, sheet." The Claimant gave the answers: "due to left hand weakness have no grip so unable to use oven or stove unable to hold saucepan etc. uses a perching stool due to dizziness, unable to stand for long. Due to cognitive problems, unable to remember. … my mother does all cooked meals…". I find that these words contained lies. I find that the Claimant had good left hand grip which was only mildly reduced due to underuse and she could hold a saucepan, could stand for long periods of time and was able to cook meals herself.

- The Claimant reported that her mother was unable to call the Claimant on her mobile due to the Claimant's deafness, inability to understand or verbally process words and her anxiety. I find that this was a lie. I find that they spoke regularly each day and the Claimant understood conversations perfectly well.
- The Claimant asserted that her mother had to cut her meat for her due to left hand weakness. This was a lie. In find that the Claimant was capable of eating independently.
- The Claimant asserted that her mother had to arrange her pills in a Dosette box and remind her to take them. I find that this was a lie. I find as a fact that the Claimant was capable of arranging and taking her pills from the marked day by day boxes in the Dosette.
- The Claimant complained of numbness in her right hip and left ankle. She asserted that her mother had to wash her lower legs because she could not bend down from her shower seat to do so due to dizziness. I consider that this washing need assertion was a lie. Whilst this may have been the case in the early months, I find as a fact that the Claimant could bend forwards from a seated position to wash her feet in the shower and could dress all of herself.
- The Claimant asserted that she had to use a stick "all the time", this was a lie. I find that she did not do so all of the time and did not need to do so.
- The Claimant asserted that due to deficient verbal processing, deafness and anxiety her mother dealt with everything for her. I consider that this was a lie. I find that the Claimant's ability at work matched her ability at home.
- The Claimant asserted that she was unable to control her thoughts, reactions and behaviour and was unable to be in busy places around people because her brain became overstimulated, she was hypersensitive to noise and was "really bad" around people. I find that these were lies. The Claimant could control her thoughts and reactions and the majority of her behaviour. She had been to pop and rock concerts and London events with crowds and was able to tolerate noise and crowds. She was not really bad around people at work or socially.
- She asserted that her mother or family members were "always with" her, "I am never alone". She made no mention of travelling to work on trains or her holidays

with friends or nights out on the town. I find that these were lies. I accept that her mother was often with the Claimant, but that is not what she asserted.

- The Claimant asserted that it was very difficult to come down stairs. I find as a fact that she never put in a second set of handrails or bannisters in her own home. I find that the Claimant could walk down stairs using alternate legs and she did so. This was a lie.
- In answer to the question "how far can you walk?", she ticked "*less than 20 metres*". I find that this was a lie. I find that the Claimant could walk much further without pain or restriction.
- The Claimant wrote that she always used a stick due to dizziness. I find that this was a lie. I find that the Claimant did not always use a stick to walk and did not have any significant dizziness.
- At the end of the form the Claimant asserted that: (1) she needed assistance with everything she did; (2) that she had severe anxiety, depression and constant pain; (3) that she struggled with severe brain fatigue and as the days wore on she struggled to "get words out"; (4) that "I can't do anything I used to". At this time the Claimant was working 32.5 hours per week, 5 days per week in a difficult and demanding IT job. She had holidayed abroad, socialised, driven her car, visited London for busy exhibitions, drunk alcohol and partied on many occasions in the previous two years, so I consider that the scope and severity of these assertions were lies (save perhaps for some mild intermittent but medicated depression and daily mild to moderate fatigue).
- The Claimant asserted that she felt isolated and had "no" independence. I do not accept this on the balance of probabilities. The alleged isolation was not evidenced or supported by her mother's substantial support or the firm and unwavering support of many of her friends.

I shall deal with the Claimant's and her mother's explanations for these lies, which they denied, later in this judgment.

53. On 15th September 2020 the Claimant was eating Chateaubriand with cousins and on 19th September was baking a cake with her half-sister.

2021

54. In January 2021 the Claimant disclosed more "new onset" headaches which were severe. She reported on 16.1.2021 to an OT who worked with Doctor Zoe Fisher's psychology team that she needed equipment at home to help her cope with dizziness, her "fractured ankle and pelvis" and daily stumbles and falls. I find that these were gross exaggerations. Doctor Zoe Fisher reported that the OT considered the Claimant was independent with meals and accessing the kitchen but needed a bed lever, shower board, bath board, hand rails, another bannister on her stairs and referral for physiotherapy. That equipment was not provided on the NHS because the Claimant

earned too much. The Claimant never did install another bannister. I find that the Claimant did not install another bannister because she knew she did not need one. She did buy some of the other equipment.

55. It is not co-incidental to the complaints in the preceding paragraph that in January 2021, like many others in the company, the Claimant's role was changed to Product Owner. Like many others the Claimant struggled with this new role. She also had a new manager (Kelly Blake). The Claimant soon found her mental health deteriorating and was signed off work with depression. In February 2021 her GP referred her to Port Talbot persistent pain management service (PPMS) for "generalised body pains". The referral letter listed the Claimant as having increased pain in the last 2 months and inter alia being a current drinker. In April 2021 the GP also referred the Claimant to Port Talbot mental health services for significant anxiety, feelings of hopelessness, irritability and mood switching. Various anti-depressants had been tried and had failed. On 28 April 2021 she told Doctor Zoe Fisher she had suffered a melt down and was off work for a month in early 2021 due to a role change at work. Doctor Zoe Fisher agreed to speak to the Occupational Health department at Admiral. Doctor Zoe Fisher referred her for counselling with a psychologist.

Doctor Joseph

56. On 29th April 2021 the Claimant was examined by Doctor Joseph, her medico-legal neurologist. The Claimant attended with her mother. She asserted that she rarely drank alcohol. The Claimant asserted she suffered no headaches for the first two months after the accident and then frequent severe headaches coming in clusters of three or four (I find this latter assertion unproven). The Claimant asserted almost complete loss of left sided hearing (this was a lie) and that she had impaired right sided hearing and noise sensitivity, particularly uncomfortable when she is in a noisy environment. I do not accept that those assertions of noise sensitivity were true. She asserted memory problems for her short term and working memory which she asserted was significantly affected. I do not accept that level of complaint was true in the light of her performance reviews. She asserted she had to depend on Amazon Alexa for reminders and could not function without it. (I do not accept that this reported level of inability was factually true as a result of her performance reviews at work). She asserted her work colleagues had to e-mail her because she did not register verbal communication or instructions and she had suffered significant difficulties at work. I consider this to have been a factual exaggeration which the Claimant knew to be so. She reported excessive fatigue. She asserted no longer being able to enjoy video gaming, reading and watching movies. I consider that the asserted inability to watch movies was a lie. I find that the Claimant still read books. She asserted that she preferred short YouTube videos of less than 30 minutes. She asserted that watching a film from beginning to end would be out of the question. I find that was a lie. She asserted mood and irritability issues and poor sleep but denied suicidal ideations. She asserted altered sensation below the left knee since the accident. I find that this had in fact been identified as caused by the disc

sequestration in December 2018 and had not been alleviated by the disc operation. She accepted her speech was fine, although sometimes she had word finding difficulties when she was excessively fatigued. She did not describe problems with comprehension of speech. She reported dizziness which had "never improved", I consider that this was a lie. She described imbalance and a tendency to fall, I consider that this was a lie. She asserted that this was triggered by extending or moving her neck when looking upwards or hugging someone or bending forwards. I consider this was a lie. She asserted that she could take a few steps around the house but it would take her a long time to negotiate stairs. She preferred to walk with the aid of a stick and could manage about 100 yards before having to stop, I consider that this sentence was a lie. The Claimant asserted that after 100 yards her limp became more noticeable and she would be in significant pain, I consider that this was a lie. She asserted particularly struggling with kerbs and sloping roads or driveways, I consider that this was a lie. She asserted being unable to clean her house or perform any domestic chores, other than washing the dishes or preparing a simple meal, I consider that this was a lie. She asserted constant left sided arm and leg weakness, I consider that this was a lie. She asserted that her mother had to do all the shopping for her. She asserted that she found being in crowded places very difficult, I consider that this was a lie. The Claimant asserted she was unable to understand her GP and solicitor giving her information and relied on her mother, I consider that these were lies. On examination she walked slowly and cautiously with a limp, I consider that her presentation was grossly exaggerated.

57. On 25th May 2021 Doctor Zoe Fisher met the Admiral Human Resources staff with the Claimant. Information and advice on "at work" adjustments and the Claimant's TBI was provided. They described a life cycle for the Claimant lasting 6-8 weeks, with pressure building up, social life suffering and then the Claimant moving back in with her mother at the end due to fatigue and anxiety. In June 2021 the Claimant attended a fatigue management group with her mother.

58. The Claimant received CBT, EMDR and counselling from Doctor Lynne Jones, a psychologist, during 24 sessions via the NHS mental health service at Tonna Hospital, between June 2021 and October 2022. Sam Fisher-Hicks (SFH) carried out the initial assessment in June 2021 during which the Claimant asserted that she was "unable to return to job", denied suicidal thoughts, asserted she had short term memory difficulties, felt paranoid, was angry and irritable, had emotional dysregulation, felt isolated, had low mood and nightmares. SFH contacted Doctor Zoe Fisher for a summary of the past history and received this back:

> "I have been working with Kirsty since her injury. I am not entirely sure what you want to know but here are some things that might be helpful to know re adaptation to therapy. On formal neuropsychological testing Kirsty's performance across all areas of cognition was either in the normal ranges or in the superior ranges (top 5% of the population). In a real world setting she

can become easily overwhelmed with competing demands in the environment. For example, she works in an open plan office which can be noisy and if she is working on something stressful for example or hasn't slept well she is less able to regulate her emotions. She reports feeling more irritable than she did before. She is currently off work on sick as the company restructured and she is struggling in her new role. She had been able to return to her old role as a technical analyst at Admiral Insurance several months after her injury. I am currently working with Kirsty and her employers to make reasonable adjustments to her new role such that she can see whether it is feasible to maintain her employment in the long run. It should be noted that although Kirsty has managed to sustain her employment over the past 2.5 years - she has done so at the expense of everything else. **Specifically, she is so fatigued after work that she can't do anything in the evenings and weekends are spent resting and getting ready for another week in work.** We are looking at ways to manage this. From a psychological perspective Kirsty reports experiencing anxiety. She has just attended a Mindfulness Group and is now receiving one-to-one Mindfulness/ACT based psychological therapy with our psychology assistant Lowri Wilkie. She also reports feeling low in mood but a lot of this is related to her current work situation which I am currently helping her to manage. I would be happy to send you reports if you would like. In terms of adaptations, it should be noted Kirsty is extremely bright and capable - she will be able to follow the course of therapy well and will be able to actively engage and benefit from it. It may be helpful to ask Kirsty to write a summary of the appointment and the main take home points after each session but otherwise I think she will do just fine." (My emboldening).

59. It is clear to me that the Claimant had not informed Doctor Zoe Fisher about the full extent of her foreign holidays, Spa weekends, pop concerts, trips to exhibitions in London or her social life with any proper accuracy. During the subsequent 24 sessions the Claimant had with SFH and Doctor Lynne Jones she discussed her anger at her own part responsibility for the fall from the pier due to alcohol, her dissonance with family members and her immediate line manager (Kelly Blake at that time), her enjoyment of walks on the beach with her dogs and had therapy for her TBI symptoms.

60. In June 2021 the Claimant attend a friend's wedding and was a bridesmaid. She drank alcohol at the event. The Claimant posted photos looking happy and elegantly dressed. In June 2021 the Claimant started attending a surfing group in the sea (Surfability) for disabled persons and went into the sea water and on surf boards, managing to kneel on the surf board. She wore a wet suit and a helmet. She interacted well with the group and enjoyed it. She did this 5-6 times between June and November 2021 at Porthcawl, 14 miles from her home. Not all the sessions were perfect and she did not take part in the sea in some. She also attended sleep group programmes in July and August 2021.

In late July her sleep diary was considered and advice was given to stay up until midnight then retire to bed instead of going to bed at 9 pm and not falling asleep until 3 am. That advice improved her sleep. She was advised to reduce her intake of caffeine drinks. She was still awakening once or twice per night. On 21st August 2021 the Claimant attended another wedding.

61. In her 2021 annual performance review, which is undated but I assume was completed in August because the previous ones had generally been, Kelly Blake, her new manager from the start of the year, described the Claimant having a "solid year" and "making a great contribution" to the team. She noted the Claimant had a lot to overcome, firstly the Admiral restructuring and her new role and more recently moving again within the department. The manager noted "outstanding feedback from colleagues" who described the Claimant as having "answers to most things" with regards to Admiral processes and historic technology. Others said they "loved Kirsty" and "appreciated everything she had to offer" and "relied on her knowledge and expertise". The Claimant self-reported that she was proud of her work on the customer data service being transferred to the cloud. She accepted however that she did not have the ability to solve structural issues relating to change in infrastructure and disclosed "reduced confidence" but hoped for improvement now things were becoming more settled in the company. She was uncertain of the role she was performing as a product owner and wanted clarity on her role. She "doubted herself" a lot more since the restructuring. She asserted that she was "fine with change". She wished to have her role better defined. She described herself as a "good motivator" and "proud of her reputation" but as having struggled in the year due to confusion about restructuring. She accepted she had "lost a lot of confidence in herself". She needed more training and support. She self-described as a "*quick learner*" when given "*new areas of the business or systems*" and that she "*picked up knowledge quickly*" and was "good at explaining it all to others". She described herself as "*good at communicating with stakeholders"* and balancing being challenged on a point and knowing when to accept the challenge. She accepted she was weak on political communication and too direct. She considered she *"understood priorities"* and "*made realistic plans"* whilst trying to push and be ambitious. Her plan was to be a technical business enterprise analyst or architect. I accept the contents of this review by her manager and the Claimant's self-appraisal and consider it accurately reflected what the Claimant considered to be the truth at that time. It showed to me that much of what had been put in the DWP form was not true.

62. In early September 2021 the Claimant won a holiday to Tenerife for 2 weeks but asserts that she did not go. Also, the Claimant attended a hen party and drank alcohol. On 21 September 2021 the Claimant drove to Cardiff for work and easily found a car park space in St David's. She attended a friend's wedding on 9-10th October 2021 and drank alcohol, staying over in a hotel. 5 days later on 15-16th October the Claimant was on an away trip to Dyffryn House (in the hills outside Cardiff) with her mother and stayed overnight. On 18th October 2021 she was at an 80's night out with her friends. Her

mum's birthday celebrations continued with the Claimant entertaining by holding a party at her house on 20th October 2021. On this evidence, by this time, I cannot accept that the Claimant was significantly fatigued after working 5 days per week, as she did, looking at that very busy social life.

63. On 21.10.2021 the Claimant was contacted by the PPMS at Port Talbot Hospital for an assessment by a clinical nurse specialist who recorded that she had pain managed by low dose Longtec and had not been given an appointment with a psychologist. The final Surfability took place on 7th November 2021 and the Claimant went into the water.

64. In December 2021 the Claimant's solicitors called Doctor Zoe Fisher twice and sought to persuade her to ask Admiral to reduce the Claimant's work hours. Doctor Zoe Fisher refused to make recommendations on the request of the solicitors as distinct from the patient. This was the right thing to do. Despite her not being called to give evidence I am greatly impressed by Doctor Zoe Fisher's professionalism and care for the Claimant over the years. The Claimant did not in the end decide to reduce her hours. Over Christmas 2021 the Claimant went to see an Elvis impersonator at a commercial venue and on New Year's Eve went to China Kitchen and had to stand outside for a long time in a queue.

2022

65. On 3rd February 2022 the Claimant went out for a curry in Port Talbot. In February 2022, the Claimant was interviewed by Doctor Antwistle, a neuro-psychologist from the PPMS at Port Talbot. She noted that the Claimant was on Longtec (20mg), Gabapentin (600 tds) and Naproxen. The Claimant complained of being unable to bend her left foot (dorsi-flexion), altered sensation of the left leg from the knee down and a permanent ache in the ankle. She had a patch of allodynia on the right hip (pain due to stimulus which should not cause pain). The Claimant reported that working from home had helped because she did not have to walk the 15 minutes from Cardiff Central to Admiral's offices (for which she also took taxis). The Claimant reported being able to walk her dogs for 5 minutes once or twice a week but said that she "suffered afterwards". She felt fatigued, her mum did all her chores. Her social life was much reduced. Doctor Antwistle advised the Claimant to have pain management at Tonna Hospital. In my judgment these complaints were unrelated to the fall and most of them were exaggerated or fabricated. The left leg pain (if any) related to the disc sequestration and the right hip pain (if any) was not connected with or caused by the fall by either of the consultant orthopaedic surgeons. I consider that the Claimant was exaggerating her symptoms to this clinician.

66. In February 2022 the Claimant was booked to fly to New York for a holiday but flu prevented her going. The fact that she had booked the holiday speaks for itself about her self-knowledge relating to her ability to walk, travel, visit crowded, noisy cities and

live her social life outside work. On 4th March 2022 the Claimant attended a "Friends" theatre show. The Claimant attended a Dua Lipa concert (pop) in April 2022.

67. In late March 2022 liability was settled. This led to an interim payment. Rather than continuing to rely on the NHS, the Claimant's solicitors then set about appointing a brain injury case manager (Kevin Thomas) who provided an Initial Needs Report (INA). This led to the instruction of a privately paid multi-disciplinary team (MDT) consisting of: Sarah Lewis (neuro-physiotherapy); Doctor Emma Hale (neuro-psychologist) and Gemma Lerwell (OT). So, in late March 2022 this new force affected the Claimant's life. Instead of her NHS treatment with Doctor Zoe Fisher, SFH and Doctor Lynne Jones and Lowri Wilkie, she was assessed by Doctor Emma Hale and Kevin Thomas. They started to work with the Claimant paid out of her interim payment. The INA by Kevin Thomas is revealing of the Claimant's exaggerations and their approach. He held meetings with the Claimant between 30th March and 4th April 2022. He had her employment records and medical notes. The Claimant told him she lived alone in her house but her mother provided daily support. He noted the Claimant was working 5 days pw. The Claimant informed him that the work was causing "*extreme physical, cognitive and psychological problems*." That assertion was contradicted by the performance reviews and the treating neuro-psychologist's records and I consider that it was a lie. Mr. Thomas listed the Claimant's asserted "current symptoms" in bullet form with no filtering comparison to the medical records or employment records, as follows:

> **"Current Symptoms**
> **Reported/observed physical problems:**
> • Compromised gait
> • Reduced walking speed and distance
> • Balance issues particularly on rising from a seated position
> • Possible vestibular disorder
> • Pain and stiffness to right hip
> • Pain, stiffness, and weakness to left leg
> • Dorsiflexion restriction to left ankle
> • Severe back pain and discomfort
> • Dizziness – exacerbated by fatigue, bending, and following periods of sitting
> • Debilitating physical fatigue
> • Visuospatial deficits – evidenced by knocking onto door frames and walls, and missing tables/worktops
> • Visual disturbance – black spots and patterns
> • Poor co-ordination
> • Hearing loss to both ears – Miss Williams-Henry now has new digital hearing aids
> • Hyperacusis
> • Hormonal issues

• Altered menstrual cycle
• Poor appetite
• Anosmia
• Dysgeusia
• Very poor regulation of body temperature
• Loss of skin sensitivity to hot water
• Hair loss at site of scarring and reduced hair regrowth
• Sleep disturbance cause by physical pain and psychological issues
• Frequent and urgent need to urinate

Reported/observed cognitive and psychological problems:

• Some issues with insight and acceptance of cognitive deficits
• Debilitating cognitive fatigue
• Anger management regulation
• High levels of stress
• High levels of anxiety
• Cognitive dissonance
• Emotional lability
• Very low moods
• Mood instability
• Some evidence of apathy
• Suicidal thoughts
• Some evidence of paranoia
• Low self-confidence and self-esteem
• Some evidence of insecurity
• Some evidence of social phobia
• Reassurance-seeking behaviours
• High levels of frustration
• High levels of impatience
• Poor short-term memory
• Compromised long-term memory
• Poor prospective memory
• Poor planning and organizational skills
• Aphasia
• Tangential speech
• Verbal communication processing difficulties
• Confusion
• Rigidity and inflexibility of thought
• Rigidity and inflexibility of reasoning
• Fixation of ideas
• Very low levels of tolerance
• Some evidence of confabulations
• Some disorientation to day and time
• Perseveration

• Reduced ability to cope with change
• Very poor levels of concentration
• Very poor levels of attention
• Very poor levels of focus
• Distractibility
• Inability to multi-task
• Cognitive inflexibility
• Lack of instigation
• Lack of motivation"

This is a huge and, in my judgment, largely fabricated list of complaints. Mr. Thomas appears to have taken all these assertions at face value. He cross referenced nothing from the treatment notes or the performance reviews. He then recommended a fully funded, private rehabilitation package involving hiring: a neuro-physiotherapist; an OT; a neuro-psychologist; a brain injury case manager (himself) and a support worker. He advised that there had been and was a "lack of understanding and support" for the Claimant from professionals. In my judgment this was factually incorrect. He failed to mention or summarise the previous NHS treatment the Claimant had been provided with by: Mr. Singh, Miss. Topliss, Mr. Boreham; Doctor Zoe Fisher and her team for over 3 years; Sam Fisher-Hicks and Doctor Lynne Jones and her colleagues for over 6 months from Tonna Hospital; Lowri Wilkie, Doctor Antwistle; Surfability; the sleep management group; the OT advice on equipment; the adjustments made at Admiral on the advice of Doctor Zoe Fisher; the PPMS at Port Talbot and others. Mr. Thomas advised that: *"she did not receive a referral to the occupational health provider for an assessment. This would have looked at the impact of the injury on her ability to work and also any necessary adjustments."* This was a serious misunderstanding of the past, long term, detailed, supportive neuro-psychological therapy, advice and involvement of Doctor Zoe Fisher and her team and SFH and many others, with the Claimant between her release from hospital and 2021, which focussed on her work. Doctor Zoe Fisher had gone into Admiral's offices and informed Admiral's HR management face to face about the Claimant's symptoms and the need for adjustments. She had previously written to them in late January 2019 setting out, in full, the Claimant's disabilities and symptoms. I conclude that Mr. Thomas failed to read or was not given the Claimant's relevant neuro-rehabilitation and other treatment notes. To top off his lack of understanding and sloppiness Mr. Thomas conflated the names of Doctor Zoe Fisher and Sam Fisher-Hicks and called her "Dr Doctor Zoe Fisher-Hicks" and asserted that the Claimant had "previously tried to raise this matter with Admiral Insurance without success", referring to discussing the Claimant with their occupational health department. This was wholly incorrect. As I shall set out below this blinkered approach set in train some really adverse consequences for the Claimant. She would stop work in 6 months; write a "Dear John" letter to Doctor Zoe Fisher; disengage with all NHS treatment; refuse NHS pain management and fall into a suicidal state of despair.

68. For a while the Tonna Hospital therapy continued and the clinical notes evidence the therapy. In April 2022 the Claimant reported to SFH that she had won the Court case and was busy with appointments (for quantum and MDT therapy). She was given desensitisation for her traumatic thoughts about the fall and the hospital treatment. She reported feeling life was a battle and was draining. She was described as "catastrophising" by SFH, but had good insight into this. In June 2022 the Claimant described a holiday with friends asserting that she could not drink as much as before and could not match their "energy". I accept that as the truth. As for self-care the Claimant reported to SFH that she enjoyed "walking on the beach" with her dogs, "swimming in the sea" and "Headspace" support groups. In July 2022 the Claimant reported that on her Benidorm hen weekend she was feeling: "taller than the mountain" and that she went to the beach. Throughout the 24 sessions she reported intermittent depression and variable moods. All the sessions were on Teams until early August 2022 when SFH and the Claimant met face to face. At that session she reported being "on hold" for the legal case, however she considered that she had made "significant gains" through the NHS therapy with SFH. On discharge the Claimant reported an absence of trauma symptoms and triggers and she reported reduced anxiety. From then onwards the MDT took over and things collapsed.

Doctor Monaci

69. Going back in time a few months, the Claimant was examined by Doctor Monaci on 8th April 2022 in London for expert evidence on the construction of the quantum of her claim. The Claimant's mother was present. The Claimant asserted that since the accident she "*hears nothing from her left ear"*. That was a lie, her hearing loss was mild and only at high frequencies. The Claimant asserted that since the fall she had not gone to music festivals or travelled. Those statements gave a wholly misleading impression due to non-disclosure in the light of the Claimant's foreign holidays, Spa weekends, attendance at Spice Girls and Pink concerts and her social life. I realise there is a difference between a festival and a concert, but full and frank disclosure is what the Claimant was expected to provide to experts in answer to questions. The Claimant said she had a fear or phobia of fish and had never wanted to swim in the sea. That bizarre assertion was a lie in my judgment in the light of her taking part in Surfability and telling SFH that she enjoyed sea swimming. The Claimant asserted that she still could not lie on her back in bed due to her head pain, back pain and her sleep was disturbed by needing to urinate. I do not accept that the Claimant had an inability to lie on her back in bed caused by head pain. I find that this was a lie. The Claimant asserted that the range of movement of her left ankle was 25-30% of normal. I find that this was a lie. She asserted that she could not lift her left leg or turn it. She had never complained of this before and I find that these assertions were lies. The Claimant asserted that she struggled to drive and "was unable to drive to Cardiff". That was a lie. I find that the Claimant had driven to Cardiff many times before that examination. The Claimant told the expert that she was affected by pain in *both* hips and the back of her lower *legs* (plural); she asserted that she struggled to walk and would limp after a

couple of yards: I find that these were lies. The Claimant had never sought treatment for pain in *both* hips or *both* legs since the discectomy. She could walk a great distance farther than she stated. The Claimant asserted that she could not shower in her own home. I find that was a lie. She asserted that she had fallen countless times in her own home after looking up or down. I do not accept that assertion was true. The Claimant asserted that she heard "nothing from her left ear", that was a lie. The Claimant asserted she had migraines a couple of times per week and had to lie down in a dark room. I do not accept that was the truth. Referring to foreign travel the Claimant asserted that she had travelled to Greece once, had not attended any music festivals and sometimes went to the cinema but struggled to keep up with a long film. I do not consider that the Claimant's description of her social life post-accident was full or accurate, it was misleading as to scope, extent and detail. The relevant non-disclosures were substantial. The Claimant stated that she had undergone some brain injury sessions but could not attend groups because of work. These were gross under statements, she had attended a large number of sessions with Doctor Zoe Fisher and her team, attended Surfability, sleep management and brain injury support groups and met SFH and Doctor Lynne Jones and Lowri Wilkie. The Claimant's mother did not correct the lies.

70. On 8th April 2022, whilst in London, after the appointment with Doctor Monaci, the Claimant went to a high end City of London restaurant. On 11th April the Claimant was walking on a lovely beach in Port Talbot. On 22nd April 2022 the Claimant attended a Spa weekend at Nant Ddu Lodge near Bannau Brycheiniog National Park. She drank alcohol. On April 28th the Claimant went out to the theatre to see Snow White and the Seven Drag Queens. In May 2022 the Claimant published how she was enjoying watching the "Ozarks" streaming series on TV. In June she published how she was enjoying watching the "Stranger Things" series on streaming TV.

71. On 20 July 2022 two members of Doctor Zoe Fisher's team met the Claimant to understand why she had stopped attending NHS treatment in late 2021. The conversation centred on the solicitor's request made in December 2021 for Doctor Zoe Fisher to advise that the Claimant should reduce her working hours. Doctor Zoe Fisher's team reminded the Claimant that Admiral would give her time off work for her to attend groups and therapies and this would not affect her job. The Claimant explained she was starting to see a private team and could not engage with both. In October 2022 the Claimant wrote a long "Dear John" email to Doctor Zoe Fisher's Swansea Bay UHB Brain Injury psychology service explaining why she did not attend several appointments in late 2021 and why she did not wish to give up work and commit to NHS rehabilitation therapy. So, Doctor Zoe Fisher and her team were dropped as the private therapists took over.

72. In July or August 2022, the Claimant's mother moved in to live with the Claimant at the Claimant's home because a relative needed her mother's home, having moved out of her own home nearby. Rent was charged to the relative. In August 2022 the Claimant

had another Spa weekend break. At her work Occupational Health review on 9th August 2022 the Claimant was declared fit for work with adjustments. She was kept on reduced hours. Admiral were advised to provide a reduced noise environment and to provide her with notes of meetings and action points. If only this had been continued, in my judgment things would have been better for the Claimant.

Karen Gibson

73. On 31 August 2022 Karen Gibson first interviewed and interviewed the Claimant to assess her care needs for the quantum of the claim. She noted that her local train station was 2.5 miles from the Claimant's home. She noted the staircase had one bannister, not two. The Claimant asserted that after two months back at work she realised it was not "working at all". This was a misrepresentation of the facts. The Claimant asserted that her manager had seen the effect of the TBI on the Claimant and "suggested that she work from home permanently from early 2020." I find that assertion was a lie. The Claimant worked at Admiral in the office in Cardiff until the Covid lockdown. The Claimant told Miss. Gibson that she could not do her work "now" because she was no longer able to multi-task or manage complex information. That assertion was quite contrary to the Claimant's written statements in her annual appraisal carried out two months later and I find that it was a lie. There is a real and factual difference between telling an expert that she had symptoms (fatigue, irritability and mood disturbance) which reduced her work capacity and telling an expert that she could not do her work. The expert noted the contradiction with the annual reviews but did not act on it. The Claimant told the expert she was "unable to drive" to work. I find that was a lie. The Claimant told the expert she had only been on holiday once since the accident, to Cyprus in 2019 and had not attempted to go away since. I find that was a lie. I refer to her foreign trips set out above. The Claimant asserted that she had "no capacity" for any leisure after work because she was so "exhausted". I refer to the chronology of social life set out above, this was a lie. The Claimant asserted that she was "constantly" dizzy and any head movement triggered it. I find that was a lie. She asserted that, on occasion, she had to stay in bed all day due to dizziness, I do not accept that assertion was true. If the Claimant's dizziness was so severe I consider she would have sought medical treatment. She did not do so after seeing Mr. Singh back in November 2018. In relation to mobility, the Claimant reported chronic pain in her right hip, left ankle and the back of her head when lying down. She rated her pain in her left leg as "permanent" beginning at 2-3 out of 10 but always getting to seven each day. She asserted that following "any walking" her pain would increase to 10: in my judgment these assertions were lies. The Claimant reported she had experienced "horrendous pain" from migraines since the accident. This was not true, the migraines/headaches commenced long after the accident. The Claimant reported reduced strength, sensation and functioning in *both legs*. She reported numbness in her *right thigh,* through her right hip into the middle of her back. This assertion is not evidenced by the clinical records. The Claimant asserted significant swelling in *both feet* after walking a "very limited distance", "less than 50 metres". This swelling assertion was not evidenced in

the medical records or found on any examination and I find it was a lie. The Claimant asserted that she had “severe deafness in the left ear”, this assertion was an exaggeration, her left sided hearing loss was only mild and only high tones. The Claimant asserted she experienced increased sensitivity to noise and avoided busy places. I find that this assertion was a lie. The Claimant reported worsening difficulties with her spatial awareness in the previous six months and that she regularly bumped into things with her right shoulder and often tripped, particularly on steps. Consequently, she asserted, she rarely drove her car because she did not feel confident to park: I find that this assertion was a lie. The Claimant reported sleep disturbance, mood disturbance and frustration. The Claimant asserted reduced cognition and stated “*when you leave, I will not remember a thing you say, or will remember things incorrectly”*. I consider that was a gross exaggeration. The Claimant asserted an inability to multitask, process complex information, look at the big picture or to carry out simple everyday decisions and asserted reliance on Amazon Alexa to remind her and prompting from her mother. The contents of this sentence of assertions was contradicted by her performance reviews.

74. Within a few months of the INA the Private MDT advised the Claimant to take a 6 month sabbatical from work to focus on intensive, privately paid rehabilitation for her self-asserted physical and psychiatric symptoms. The Claimant accepted this advice and stopped work at the end of October 2022. This turned out to be truly catastrophic for her state of mind. Combined with the concurrent and subsequent medico-legal examinations in the Autumn and Winter of 2022 it led to a severe depression, loss of self-confidence and self-esteem with suicidal ideation. A support worker was appointed and started working with the Claimant in January 2023.

DWP September 2022

75. On 13 September 2022 the Claimant signed her next DWP PIP benefits review form. Once again the form required her to set out her health conditions and disabilities. It required her to tell them about any changes straight away and stated: *“please tell us straight away if you need more or less help with daily living or mobility”*... if *“your health professional tells you your condition will last for a longer or shorter time than you have already told us ... these changes can affect the amount of PIP you get.”* There was also a warning in these terms: “*if you do not tell us about changes straight away, you risk being prosecuted or having to face a financial penalty*.” The Claimant signed the declaration stating she understood that if she gave wrong or incomplete information her benefits might be stopped and she might be prosecuted. In the form she asserted in relation to “**preparing food**” that: (1) due to her traumatic brain injury she had a weak left side of her body and hand and; (2) a very limited grip; and (3) was unable to hold any saucepans, kettle etc, and (4) was unable to use a stove and; (5) due to cognitive issues she had not got the ability to remember to remember so was unable to put anything on to cook because of the fire risk; and (6) She asserted her mother made all the hot meals. I consider that all of these (1)-(6) were lies. I find that the Claimant was

able to grasp kitchen tools and pans and use them with her dominant right hand and her non dominant left hand. I find that the Claimant was able to use a stove. I find that the Claimant was able to cook hot meals. I accept that, from time to time, her depression demotivated her but I do not accept that she had any physical or mental disability preventing her from doing those things. In relation to "**eating**", the Claimant asserted that her mother had to encourage her to eat due to her having no taste or smell. In my judgment this was a partial lie. The Claimant had no smell but she had sufficient taste, as set out above, to distinguish and enjoy eating meat, tomatoes and curries. She went on to assert that her mother prepared all her food and cut up her meat, due to weakness of her left hand. I consider that the assertion that her mother cut up her meat was a lie. I find as a fact that the Claimant has been able to feed herself since a few months after the accident. Under the heading "**managing treatments**", the Claimant asserted that her mother spoke to her GP and hospitals for appointments because she had verbal processing problems so her mother had to be at every appointment and to take all calls. She asserted that her verbal processing and cognitive damage caused her brain not to take information in. I consider that various lies were scattered through those assertions. Firstly, the Claimant was capable of making and receiving phone calls and did so regularly both at work and socially and was able to understand the conversations and to recall and record them. Secondly, although her mother assisted with some appointments it is clear from the medical and therapy records that the Claimant communicated perfectly well with all her treating clinicians, as she did with the medico-legal clinicians. In my judgment, her assertion that her verbal processing and cognitive deficits caused her to be unable to process or retain information was a lie. In relation to "**washing and bathing**", the Claimant asserted that her mother had to be with her due to "severe dizziness" and that she was unable to look up or bend down. Her mother washed her legs and feet because she was unable to bend and, due to weakness in her left hand, it was unsafe to hold onto a grab rail. This paragraph contained a number of lies in my judgment. Firstly, I find that the Claimant did not suffer severe dizziness. She was not unable to look up or to bend down. Secondly, I do not accept that her mother washed her legs and feet because she was unable to bend. Thirdly, I do not accept the asserted weakness in her left hand made it unsafe for her to hold onto a grab rail. I find that these were all lies. Under the heading "**dressing**", the Claimant asserted that her mother had to assist her dressing below the waist because she was unable to bend due to dizziness, numbness in her left hand and pain in her *hips* and *legs* (plural). I find that these were lies. Under the heading "**reading and understanding**", the Claimant asserted that because of her brain injury she found it hard to take in and learn new information due to reduced concentration, verbal processing and cognitive problems. The solution, she said, was that her mother dealt with all her letters, explained everything and kept everything in a planner. I find that in relation to her own abilities this was a lie. It is clear to me from the Claimant's work reviews, her communications with treating clinicians, Doctor Zoe Fisher and the medico-legal experts that the Claimant was perfectly capable of communicating, understanding, processing and recalling the vast majority of normal day-to-day information. Furthermore, she was

capable of functioning at a "high level" at work, subject to some fatigue and anxiety. In relation to "**planning and following a route to another place**", the Claimant asserted that she had a memory problem which caused difficulties in planning and needed somebody with her to repeat information. The Claimant asserted that she only went to places with someone else, never alone, only to local places and she needed repeated planning. I consider that the assertion that she needed repeated planning to go on car journeys was untrue. I considered that the assertion that she only went to local places was a lie. In relation to questions on "**moving around**", the Claimant asserted in answer to the question "how far can you walk" that she could only walk "*less than 20 metres".* She asserted that she *"always needed a walking aid*" and assistance. She stated she always used a stick. She asserted she did not go anywhere without dizziness and she struggled on kerbs with slopes or stairs, due to dizziness and her left ankle lack of dorsi-flexion. She also asserted that she used a wheelchair on "any distances". I find that these assertions were all lies. She could walk a lot further than 20 metres, she did not always use a stick, she did not use a wheelchair when travelling any distances. I find as a fact that she had only used a wheelchair two or three times in the whole period of four years since the accident and then only in the early months.

76. In September 2022 Port Talbot Hospital offered the Claimant their NHS Persistent Pain Management Service. An assessment was listed for 7.10.2022. The Claimant did not attend the pain management sessions arranged and so was discharged in January 2023. The Private MDT team, on the Claimant's self report, had effectively cut her off from NHS treatment. In any event I find that the Claimant did not need pain management treatment and knew that she did not, save for her left leg sensory changes caused by her sequestrated disc, which were unrelated to the claim.

Mr. Maheson

77. On the 22nd of September 2022 Mr. Maheson examined the Claimant in Swansea. She was accompanied by her mother. The Claimant asserted her symptoms included: memory loss, personality change, general left sided weakness affecting the arm and leg, together with dizziness. She also asserted daily, intermittent, mild intensity low back pain and stiffness. She asserted persistent left leg pain radiating from the knee to the toes but denied numbness in the toes or foot. She asserted her low back pain was exacerbated by bending, twisting or lifting. I have already dealt with and identified many untruths above and will not repeat them all as I go through. I do not accept that the Claimant was suffering low back pain exacerbated by bending twisting or lifting. She asserted intermittent pain over the front of the pubic bone radiating through the right hip, worse after prolonged sitting or walking moderate distances. She asserted constant pain, stiffness and swelling of the left ankle, causing difficulty walking, such that she was "*obliged to use a stick"* which she held in her right hand. This summary was untrue. The asserted constant need for a stick was a lie. She asserted intermittent giving way of the ankle. I consider that this was a lie. She told the expert that she was "*able to walk up to 30 yards on flat ground, experiencing difficulty with uneven ground,*

slopes and stairs." In my judgment this assertion about reduced walking distance was a lie. The Claimant asserted she was unable to bend and therefore required care with regard to washing and dressing the lower half of her body: I consider that assertion was a lie. The Claimant asserted she needed supervision when showering because she experienced dizziness causing falls: I consider that was a lie.

78. In October 2022 the Claimant took photos from the beach of her mother sea swimming on Aberavon beach.

Gerry Harlow

79. Mr. Harlow, a physiotherapist, examined the Claimant at her home on 3rd October 2022 for medico-legal reporting. She was still working at that time. The Claimant told him that she had returned to live at her own home in January 2019 and her mother had provided daily support, which was ongoing. Grab rails were provided by NHS occupational therapists in the bathroom and at the front door and a perching stool was provided for the kitchen. The Claimant told him she was managing to work but it proved "extremely challenging" and she was performing at a level significantly below her pre accident level. That self-report did not match her self-report in her employment reviews accurately. The Claimant asserted that she *"never ventures outside of the local area as this requires increased concentration that causes fatigue and the fear she may not make it back home."* I find that that was a lie. The Claimant asserted she could only sleep on her left side, because lying on her right hip caused intolerable pain. She was unable to lie on her back because the back of her skull was painful from pressure against a pillow. I do not accept either of those factual assertions was true and consider that they were lies. The Claimant asserted that she required her mother to wash and dry her legs and dress her bottom half. I find that was a lie. The Claimant accepted she could cook for herself (contradicting what she had told the DWP). She asserted that she needed both hands to carry saucepans. The Claimant accepted she rarely used her wheelchair (contrary to what she told the DWP). The Claimant reported no communication difficulties and the physiotherapist noted none were evident (contradicting what she had told the DWP). The Claimant reported significant memory problems and the need to write any task down immediately or she would forget it. The Claimant reported irritability when tired and a need for reassurance (I accept this assertion). The Claimant reported one migraine attack each week, which started about a year after the accident. That report contradicted her earlier report about migraines and headaches. I find that it was a lie as well. The Claimant asserted "virtually constant pain" in her right hip which was aggravated by standing in one position for more than two minutes, altering her body or sitting for longer than 30 minutes. She stated it was a particular problem on car journeys and travel in general. I consider that was a lie. She asserted the pain increased to 10 out of 10 until she moved or lay flat on the bed. I consider this was a lie. The Claimant asserted hypersensitivity over the right hip and a similar sensation over the outside of her lower left leg below the knee. The Claimant asserted a constant ache in her lower left leg rated at 5 out of 10 in intensity and asserted there was a bone spur

present within the joint. This was a lie about her own belief that she had a bone spur. She had been informed in 2019 that she had no bone spur and I find that she knew very well that she had no bone spur. The Claimant then asserted that her ankle pain was her worst pain and limited the distance she could walk to around "10 metres" before she needed to stop and rest. The Claimant asserted that the joint swelled and the pain escalated to 10 out of 10 making her limp; that walking from her lounge to her kitchen and back caused pain that took 10 to 20 minutes to reduce and that pain following a longer walk could take up to 3 hours to settle: in my judgment all of her descriptions about her walking restrictions were lies.

Mr. Raza

80. On 10th October 2022 the Claimant was examined by Mr. Raza in Newport. She told him that she "does not drink alcohol". I find that was a lie. She complained of tinnitus which she asserted was "constant for 12 months" and then reduced to intermittent. This does not match what she told Mr. Singh. She asserted noise sensitivity, for example due to clapping, children screaming and high pitched sounds. I consider that this was a lie. It is undermined by the Claimant's pop and rock concert visits, sing alongs, hen nights and restaurants visits. She did not disclose those to Mr. Raza. She asserted intermittent dizziness which affected her at the top of stairs and looking up and down. She asserted sometimes it was triggered without any "known cause" and could last 2-3 days: I consider that assertion was a lie. The Claimant accepted that the Epley's manoeuvre she had been taught improved her symptoms temporarily but later they returned.

81. For her annual performance review, dated 19th October 2022, Emma Heyes had returned to be her manager and described her as having moved back to an IT role as a technical analyst. The Claimant had "quickly grown into the role" and remained an "extremely valuable member of her team" with an "amazing work ethic" who is "approachable, knowledgeable and happy to help anyone". The Claimant is described as new to DnA (as were the rest of the department) but had "*successfully applied her skills and experience to become extremely proficient*" in understanding the area. Selected quotes from other colleagues about the Claimant included: the Claimant being a "very popular figure", "*whose approach to work and analysis was superb*" and "2nd to none". She was described as: "*particularly strong digging into fine details*" and "*thinking about the bigger picture*" and "*keeping up to date with changes to core systems*" and integrations. The Claimant showed "great enthusiasm, passion and commitment" and was "brilliant to work with" and "really knew her stuff". She was also described as: "a lovely person to talk and work with". In relation to her health it was described as having "some lingering difficulties". The Claimant was "highly commended" for "maintaining her high standards". She was described as "so good at her role". As for the Claimant's self-description she stated that: she was pleased to have given up the product owner role and did an "excellent job handing over to another member of staff". She had struggled to find her place as a technical business analyst initially but made "*key contributions to building multiple dashboards with complex*

queries, fixes and bugs" and "creating her own version of a data dictionary" for all features created by P&I. She criticised the restructuring as making her day less fulfilling. She criticised her role and the way the teams had been reorganised since "Baringa" (explained in evidence as the big corporate restructuring around 2019-2021). She considered her role was "criminally under-appreciated and mismanaged". She was looking forward to a career break so that she could come back in a "much better mental and physical state".

82. 8 days later, on 27th October 2022, the Claimant signed a witness statement for this Court and swore that the contents were true. She asserted that her short term memory was "awful". She stated she needed Amazon Alexa to prompt her to take her tablets. She asserted that due to memory issues she ate the same meals each day being generally bacon and tomatoes. She asserted that this was all she was capable of making. She asserted she did not have the capacity or physical ability to cook anything more extravagant. She asserted she struggled to comprehend the order in which things needed to be cooked. Taking into account all that I have set out above I find that these assertions were lies. She asserted her sleep was "completely destroyed" and this had got progressively worse. I find that this was a gross exaggeration. She asserted that she went to bed by 7:00 PM but lay in bed unable to sleep. She asserted that she awakened every hour. She asserted that if she accidentally rolled onto her right side she experienced shooting pains in her hips (plural) or if she rolled onto her back it "feels like a punch to the back of the head". The Claimant completely failed to mention in her witness statement the advice given to her in her sleep management group classes (to go to bed at midnight) which lasted for many weeks, which she followed at the time and which improved her sleep. She asserted, at paragraph 36, that she could no longer eat curry. This was a lie in view of the curries she had eaten, as disclosed in her social media posts. She asserted that since the accident she had developed "a major intolerance to heat". I do not accept this assertion, particularly in view of her many holidays to hot countries, lying in the sun and getting sunburn. In relation to migraines, the Claimant asserted that these started in Christmas 2018 and described them as severe. She asserted that she still suffered 4 to 5 migraines a month, which required her to lay in silence for long periods, despite the fact that she was still at work. I consider that the Claimant was consciously exaggerating the commencement, frequency and duration of her headaches or migraines. She asserted that she struggled with any sort of bright light and noises which she asserted added to her headaches and asserted sunny weather caused her a "real issue" and that she avoided going outside when the sun is shining. I consider that those assertions were lies, in the knowledge of her holidays to hot places and her time in swimming pools and getting sunburn. She asserted that she continued to experience dizziness when getting up from a seated position, waking in the morning and when looking upwards. She also asserted getting extremely dizzy when at the top of stairs. She asserted her dizziness caused her to fall and bump into things "all of the time". She asserted that as a result of this dizziness she only showered at her mother's house. I consider that from the date when she moved home, in January 2019, the Claimant was

able to and did shower herself at her home without help. She asserted that despite going to see Mr. Singh nothing could be done to help her dizziness. I consider that her assertions of dizziness were not true and she knew it. If she had suffered dizziness to the asserted extent she would have returned to Mr. Singh or another balance expert for treatment. She has never done so. She asserted that her left ear suffered moderate to high hearing loss. This is untrue and the Claimant knew it. She was diagnosed with mild left sided hearing loss and even milder right sided hearing loss and Mr. Singh told her that. The Claimant asserted that her noise intolerance occurred in large crowds and that she avoided social activities and only ate out three times a year. I consider these were lies in view of her attendance at pop and rock concerts, going to London for exhibitions and the Winter Wonderland and her holidays, hen nights and pub crawls. The Claimant asserted that she still suffered "immense pain in the back of her head". She asserted she was unable to lie back on a chair or her bed and "*if someone touches it, it feels like someone has punched me."* I consider that this was a lie. Her examination by one of the ENT surgeons involved the surgeon holding the back of her head and moving her head in various ways. She displayed no pain. In addition, she lies back on sun beds in her social media photographs and sits in cars, on aeroplanes and in trains with headrests. The Claimant asserted that she suffered permanent throbbing pain in her left ankle and shooting pains and the pain spreads up to her knee. She asserted that these caused her to limp. She asserted that she took oxycodone, a strong painkiller, to treat this severe pain. I do not accept that the Claimant suffered severe pain in her left leg in 2022 or at all after the disc operation. I do accept that she suffered neurological loss of sensation below the left knee after the disc sequestration. The Claimant also complained of pain in her right hip which was really sharp if she rolled over onto it in bed. I do not accept that the Claimant suffered this pain and consider that she was not telling the truth about it. The Claimant asserted that standing for longer than 3 or 4 minutes caused her hips (plural) to ache and that the pain built up if she sat for too long. This pain she asserted "*really stops me from being able to walk anywhere".* I consider that that assertion was a lie. The Claimant accepted that she walked from Cardiff Central to Admiral's offices but asserted it would take her three times as long as normal and that then she reverted to taking taxis for a year. I note that no claim for taxis to and from Cardiff Central has been listed in the Schedule and I do not accept that evidence. I consider that the Claimant was capable of the walk between Cardiff Central and the offices of Admiral from a few months after the accident and that her left ankle pain only lasted a maximum of 12 months and did not prevent her from making that walk to work from March 2019 onwards. I accept that during the 9 months when her sequestrated disc caused radicular pain in 2019 she took taxis but after the operation this was substantially resolved. I find that she regularly walked from the train station after that. The Claimant asserted that a lack of dorsi-flexion of her left ankle made using her clutch on her Ford "impossible" and so her mum ended up driving the car more than her. I do not accept that evidence. She kept her manual car for four years after the accident until it was replaced by a Motability automatic car in the Autumn of 2022. I find as a fact that the Claimant did drive her car from April 2019, when her licence was returned, to

the autumn of 2022. In addition, she drove another manual car, owned by Olivia, a relative of hers, on whose policy the Claimant was a named driver. The Claimant arranged for family insurance rates through Admiral insurance for this learner driver. I note that in her witness statement at paragraph 69 the Claimant accepted that she began to work remotely at the start of the pandemic in March 2020, thereby contradicting the lies that she had said to various other experts and treating doctors that she had been advised to work from home as a reasonable adjustment before the pandemic. This point was brought home in paragraph 70 in which the Claimant asserted that before the pandemic, working from home at Admiral was rare. She went on to assert that she was not someone who would have liked to work from home before the pandemic in any event. The Claimant gave evidence that in January 2021 a massive restructuring took place at Admiral and she, like others, moved from her role as senior business analyst to a product owner role. She asserted she could not cope with that role and she had a new manager who did not understand her brain injury. The Claimant asserted she had a breakdown in the spring of 2021 and had to take three months off on sickness leave. She asserted that she returned to a different role as a technical analyst. I do not consider that this chronology was wholly accurate. It is more likely that she worked as a product owner until early 2022. By the Autumn of 2022 the Claimant was earning over £40,000 gross per annum (gpa) despite working a 17.7% reduction in the normal number of hours. The Claimant asserted that she struggled with multitasking and her communication skills were terrible. These assertions are undermined by her own self-appraisals in her performance reviews. Looking at the whole of the witness statement and in particular paragraph 65, in which the Claimant asserted that before the accident she enjoyed foreign holidays but that “I would never be able to go on these kinds of holiday now”, it is striking how the Claimant failed to disclose her holidays to Benidorm, Zante and Cyprus, her weekend Spa trips, her attendance at weddings and hen nights, her visits to rock and pop concerts, singalongs and her pub crawls. It is clear to me that the Claimant never thought that the Defendant would video her or ask for her social media or find out. Nor did she consider that the Court might need to be informed of these activities of daily living.

Doctor Price

83. On the 10th of November 2022 the Claimant travelled to London to be examined by Doctor Price at Queen’s Square. During the interview with the expert the Claimant asserted: (1) pain below the left knee radiating to the toes and pain in the right hip: I do not accept those assertions were true. (2) Weakness of the left arm and leg, difficulty opening jars, cooking and carrying heavy objects: I consider that these were lies by 6 months after her fall. (3) Headaches daily which developed in hospital: I consider that this was a lie in relation to the continuation of the headaches after hospital and the frequency of them. (4) Migraines which were sharp and shooting, lasting 2 to 3 days, during which she could not bear light or sound: I consider that this was a factual exaggeration in relation to the start, the duration and frequency. (5) The Claimant asserted her dizziness symptoms had stayed the same: I consider that this was a lie. (6)

She felt dizzy rising from a chair or lying down and used a shower seat to avoid fainting. I do not accept that assertion was true from the date Mr Singh examined her forwards. She also asserted extreme dizziness every couple of weeks with no obvious precipitant factor: in my judgment this was a lie. She asserted the Epley's manoeuvre, which Mr. Singh had taught her, only had an effect for 10 minutes: in my judgment this was a lie. (7) The Claimant reported she had severe deafness in her left ear, that was a lie, it was mild. (8) The Claimant reported bilateral noise sensitivity and tinnitus, on occasion. I consider that the noise sensitivity was a lie. (9) The Claimant asserted that she had gained 5 stones since the accident. In fact, the GP's weight chart shows that in September 2022 she weighed 129 kilogrammes and in April 2018 she weighed 109 kilogrammes. I have already found that she probably weighed closer to 125 kg at the time of her fall but even if I ignore that finding, 20 kg = 3.14 stones not 5 stones. This was another factual exaggeration. (10) The Claimant asserted "brutal fatigue" and "extreme tiredness" after conversations. She asserted her brain was four times slower than other people when thinking. I consider that was a substantial factual exaggeration and was contradicted by her performance reviews. (11) The Claimant asserted that she could only recall learned tasks associated with work and would forget if someone spoke to her to do something. She asserted she needed written notes. I consider that was a gross exaggeration. The Claimant asserted that she could not recall whether she had taken her tablets despite having a Dosette box which makes that absolutely clear. Such boxes state the day of the week and the name of each pill to take. I consider that was a lie. (12) The Claimant reported irritability, anxiety, low mood, passive thoughts of not wanting to be alive, tearfulness and sadness. I accept those self-reports at that time.

Mr. Vanhegan

84. The Claimant was examined by Mr. Vanhegan on the 16th of November 2022 at Salisbury District Hospital. She had travelled there in her new automatic car, with her mother, from Wales. The Claimant asserted to this expert that she "had been teetotal since the accident", I consider that this was a lie. The Claimant told Mr. Vanhegan that she had moved back in with her mother "ever since the accident". This was also a lie. The Claimant asserted that she only drove "very short distances in the local vicinity" (10 to 15 minutes), I find that this was a lie. The Claimant asserted that she suffered pain and numbness from the left knee down to the ankle which pulsated and throbbed and she rated this 6 out of 10 at rest and 9 out of 10 when aggravated by walking. In my judgment this was a lie in relation to the pain. The Claimant asserted that she could walk upstairs reasonably well but struggled going downstairs or on slopes. The Claimant asserted that her left ankle swelled regularly but that it "has not given way". I contrast that latter assertion with her assertions to other experts that the ankle locked or gave way regularly. The Claimant asserted throbbing and aching symptoms in her right hip with a severity of 6 out of 10 which, when aggravated, raised to 8 out of 10. I consider this was a lie. The Claimant asserted she needed help with everything and that she needed help washing herself from the knees down and putting on socks and shoes. I consider that this was a lie. The Claimant asserted it was uncomfortable to sit for

more than 10 to 15 minutes, I do not accept that assertion. The Claimant stated she had used a walking stick "ever since the time of the accident" and that her walking distance "is now limited to 200 yards": I find that was a lie. The Claimant asserted that she drove only really to take her dogs for a walk or for local journeys of a maximum of 10 to 15 minutes. She put this restriction down to brain fatigue: I find that this was a lie. In relation to work the Claimant asserted she returned after three months and was driven to Cardiff by a colleague and asserted she was closely supervised. The Claimant asserted that she found work particularly exhausting and so "was allowed to work from home from 2019". I find that this was a lie, she worked in the Cardiff office until the Covid lockdown in March 2020. The Claimant asserted there was a profound impact on her quality of life and "socially she no longer goes to concerts or sees friends to the same extent". The Claimant's failure to disclose her hen nights, Spa weekends, foreign holiday travel, weddings, Spice Girls concerts, Pink concert and other social events was intentionally misleading in my judgment.

Doctor Humphrey

85. On the 17th of November 2022 the Claimant was examined by Doctor Humphrey at 10 Harley Street in London. The Claimant reported that fatigue was her major issue. At the end of the working day she felt exhausted and stated "she no longer has a social life". I find that this was a lie. The Claimant accepted she occasionally went out for meals with friends, once every six to eight weeks. She asserted she used to enjoy music, watching rugby, travelling and going to the cinema and gave the impression that she no longer did those things. This was a substantial non-disclosure of fact. The Claimant asserted that her language "goes" when she was tired but her speech with Doctor Humphrey was entirely normal. The Claimant asserted irritability, mood swings, depression, frustration and a change in personality and lifestyle. The Claimant asserted that she had suffered regular falls and experienced vertigo and dizziness if she moved her head quickly. The Claimant asserted she was able to walk 50 to 100 yards with the aid of a stick but then developed a limp and attributed the problems to her left ankle pain associated with right hip aching. Taking into account the video evidence, the orthopaedic evidence and the social media evidence, in my judgment this assertion was a lie, the Claimant could walk far further without pain. The Claimant asserted heat intolerance and stated "she can no longer tolerate elevated temperatures which she finds very unpleasant". This assertion is not consistent with her holidays in Benidorm, Zante, Spain and possibly Cyprus in some of which she is photographed lying on sun chairs and self-reported suffering sunburn. The Claimant asserted severe deafness in her left ear, which, in my judgment, she knew very well was diagnosed as mild deafness by Mr. Singh in November 2018. The Claimant asserted she suffered troubling headaches, triggered by light, once a week and a two-month long headache starting in September 2019. I consider that this was partially inaccurate information. I accept the new onset headaches in September 2019 at about the time of the disc operation which lasted at least until February 2020. The Claimant asserted numbness on the outside of her left calf spreading down to the left foot. She also asserted intermittent sensory symptoms

in the left arm causing her to drop objects and that her grip was weak. I do not accept that last assertion was true. If the left arm symptoms were caused by the TBI intermittence would not be characteristic. The Claimant told Doctor Humphrey she was living in her own house with three dogs, two of which belonged to her mother. Her mother had been living there for several months.

86. I note that the Claimant drove back to Wales from London after this examination.

Doctor Joseph

87. On 24th November 2022 Doctor Joseph re-examined the Claimant. Her mother was again with her. The examination occurred in Wales. The Claimant stated her mother had moved in with her. Her mother carried out most domestic duties and they employed a professional cleaner. Since stopping work the Claimant felt she had slowed up. She asserted she only ate tinned tomatoes and bacon for breakfast because of her altered taste. She asserted spicy food tasted unusual. She asserted she could not make breakfast for herself due to apathy, poor function of her left arm and difficulty bending: I consider that these latter assertions were lies. The Claimant accepted that she could tend to her own personal care needs but with some difficulty. Despite doing nothing other than watching television and napping in the afternoon she asserted she felt exhausted by 7:00 or 8:00 pm and retired to bed. This approach was wholly contrary to the teaching that she had been given in the sleep management group a few years before. The Claimant asserted that when she had been working she found work difficult because of problems with multitasking, impaired memory and concentration. She asserted she would often have to ask colleagues to send her a summary of meetings by e-mail. She did not believe that her work was anywhere near the standards that she had achieved pre accident. This assertion did not match her performance reviews. The Claimant asserted ongoing fatigue which was disabling even though she was not working any longer and asserted that she struggled even with one appointment per week, which depleted her energy. I consider that that assertion was not true. She asserted suffering migraines 4 times a month which could last two to three days at a time. I do not accept that the Claimant suffered migraines of anything like that frequency over the four years while she remained in work. She would not have been able to perform her work if the migraines were at the reported level. The Claimant also asserted she suffered other headaches at least once a day lasting 3 to 4 hours. She asserted these affected her activities of daily living and had worsened since 2019. I do not accept factually that the Claimant suffered headaches either as regularly or as severely as she stated to Doctor Joseph. I do not consider that the Claimant could have worked as efficiently as she did at Admiral if she had suffered those headaches, as reported. She asserted episodic dizziness when moving her head up and down which had not been helped by ENT review and therapeutic repositioning manoeuvres. I do not accept that assertion by the Claimant was accurate. She never returned to Mr. Singh or indeed to any balance service for further treatment for her asserted vertigo and her level of activity does not support this factual assertion.

Doctor Poole

88. On the 29th of November 2022 the Claimant was examined by Doctor Poole in London. She was accompanied by her mother. The Claimant asserted that from about two months after discharge from hospital she began to experience pain in the chest, tremors, butterflies, lumps in her throat, shortness of breath and racing thoughts, accompanied by feelings of impending doom. These episodes tended to occur at night and monthly. The Claimant reported low mood from about six months after the accident because she gradually realised she was not getting back her old life. Whilst I accept that the disc sequestration and the radicular pain caused her low mood in 2019 I take into account the high quality, regular and detailed neuro-psychological counselling she received from Doctor Zoe Fisher and her team from 2018 through 2019 trailing off through to 2021 and note the Claimant's own insightful social media posts on her brain injury symptoms. The Claimant reported that initially she was unable to cook due to being unable to stand, however this resolved. She then asserted that she found she was unable to focus and concentrate on cooking and once nearly started a fire when she left food on the stove and it went up in flames. Also, her mother returned to find some mince cooked in a microwave but the Claimant was involved in a different task. I accept these two events happened in the early few months but do not accept that they repeated later on and find that she could cook for herself. The Claimant asserted struggling to recall recent conversations and word finding difficulties when fatigued. She reported irritability and inability to concentrate on television shows or video games. The Claimant accepted that she could read books, but tired more easily. Of her return to work the Claimant described it as "horrific" and "overwhelming". She described herself doing a "piss poor job". She stated the work environment and background noise overwhelmed her. She stated she did not fully understand or remember verbal communications. These assertions about the Claimant's work are contradicted by her performance reviews and her self-appraisals. The Claimant denied being disorientated (contradicting what she told other experts) but stated that she did not go out as often as before and she did not go as far afield as she did before. The Claimant described fatigue and asserted that any medico-legal appointments caused her to be tired for "four to five days". This assertion was undermined by the multiple medico-legal appointments the Claimant attended in October and November 2022, together with the choice she made of driving to Wales from London and from Wales to Liverpool, the shopping trips in London and Liverpool and the going out to restaurants after appointments. The Claimant asserted she was unable to reach down to her feet due to her physical symptoms. In my judgment this was a lie, as was shown on the surveillance videos in which she bends down to the ground outside her own house. The Claimant asserted that she required her mother to support her when showering because she felt dizzy in the shower, even while sat on a stool. I do not accept this factual assertion was true. It is noteworthy that during her three day holiday in Benidorm she showered and dressed without any assistance. The Claimant described her work post-accident as "ticking boxes" and that she was only just managing it. This description is contradicted by her

performance reviews and her own self assessments in those and is an untrue representation of her work capacity.

Doctor Mullin

89. Doctor Mullin assessed the Claimant on the 8th of December 2022 in Liverpool and reported on the 16th of March 2023. He is an NHS consultant in clinical neuropsychology. The Claimant drove from Wales to Liverpool. I find that her mother did not do the driving. She walked from the hotel to the consultation. That took around 20-30 minutes. The Claimant presented to him in a highly distressed and suicidal state. She said that she had planned her method of suicide, probably in the new year. He carefully obtained permission to contact her GP and treating psychologist to report his concerns and he contacted both afterwards. There was a factual dispute about whether he also telephoned the Claimant's mother after the consultation on the same day, to warn her to stay with the Claimant because he was worried about the risk of suicide. Doctor Mullin denied this and I accept his evidence on this fact. Therefore, I reject the Claimant’s and her mother's evidence about this phone call. At interview the Claimant asserted that she did not wish to be in the world and had been like this since the accident. That was not factually correct. She had not been suicidal after the fall or for any period between 2018-2020. In interview she then changed that view and accepted that she had worsened in the last couple of weeks. The Claimant complained that she had taken a sabbatical to engage in intensive rehabilitation but that the medico-legal appointments had delayed the rehabilitation for months. She had only seen Doctor Emma Hale, the psychologist during this time. She asserted she could not manage travelling to and from medico-legal appointments and was “fried” for three to four days after each appointment and the travel involved. I find that this was a lie. The Claimant asserted her life was ruined and she was not capable of anything. This last assertion was a lie. She asserted all her friends had moved on. This was a lie. She asserted that she thought she was fine at first and “clung onto” her job. I find that this was a wholesale manipulation of the true state of affairs in the first year or two after the accident during which she was receiving high quality neuro-psychological therapy and assistance from Doctor Zoe Fisher and her team and the SFH which gave her considerable insight into her TBI and how to manage it. The Claimant asserted she had been demoted to a technical analyst and that she did not mentor anyone. That does not match her performance reviews in one of which she was proud about mentoring a handover. The Claimant asserted she struggled going places in groups, got fatigued and irritable and never travelled alone. I find that this was a lie. She asserted that her mother had moved into her house “two months ago” because they thought the rehabilitation would happen. The Claimant and her mother both failed to mention that the real reason the mother moved in with her was because another family member had moved into the mother's house urgently and started paying rent. The Claimant asserted she could not focus on films and suffered pain in her leg and hip which caused no end of mobility problems. I find that these were both lies. She asserted she had migraines and headaches three times a week and that light affected her a lot. I consider that this was a substantial

exaggeration. She asserted her memory was atrocious. This was an exaggeration. She asserted she suffered dizziness every time she lifted her head up or down and had it all the time if she got up from sitting. I consider that this was a lie. She asserted that light reflecting off water on beaches disorientated her. This was a wholly new assertion. She asserted she had not drunk alcohol since the accident. This was a lie.

90. After this examination the Claimant went on a 105 minute walkabout shopping trip with her mother around Liverpool and was captured on video doing so. At the end of December 2022, the Claimant was out for a curry but posted a sad message with the photo.

2023

91. Between January and July 2023 the Claimant had intensive private MDT therapy. Her physical and mental health are reported to have improved. In late February 2023 the Claimant went to Venice by plane and stayed 3 days. I find that the Claimant walked quite long distances there, went on a Gondola, drank alcohol and enjoyed it. This is not consistent with dizziness and balance difficulties. In February 2023 she travelled to Sainte Pierre Country club and Spa for a weekend of relaxation. She drove her friends there. She walked with no stick and she pulled her suitcase up a hill with no limp. In March 2023 the Claimant went to a "Lizzo" concert.

Miss. Laverty

92. In April 2023 the Claimant attended a hen night in Swansea. Also, in April 2023, Miss. Laverty a physiotherapist, examined the Claimant. She was physically operating very well by then. She made her own bed, cooked her own breakfast, was able to walk the dogs on the beach 3 times per week, but set out a list of her continuing difficulties. The Claimant still asserted she needed help showering due to dizziness and her mother prepared 80% of their meals.

Doctor Law

93. Doctor Law examined the Claimant at her home on the 1st of May 2023. He asked the Claimant to describe her pain from the accident, in the intervening period and the current day. The Claimant asserted she had lived with her mother for two to three years. I do not accept that assertion was factually correct. The Claimant stated that as at the date of examination she lived in her own house but received daily help. The Claimant asserted that she suffered ongoing pain: (1) in her left lower leg, and (2) that her foot locked and that her ankle "goes". In my judgment assertion (2) is a lie. Locking and giving way are not substantiated by any regular contemporaneous records and she denied this to another expert. I have already found that I do not accept that the Claimant suffers left leg pain. The Claimant asserted that her low back pain settled after the discectomy. I accept that as a fact. However, this contradicted what she had told other experts. As for her current pain symptoms, the Claimant described significant pain in her left lower leg at the front of her ankle joint and the outer aspect of her left shin

which she described as intrusive. She asserted general activity increased her pain and walking increased her pain as did climbing stairs and walking off kerbs. Despite these factual assertions being made repeatedly by the Claimant to multiple treating doctors, I do not find that the Claimant suffered left leg or ankle pain after the discectomy. I accept she suffered altered sensation caused by the disc sequestration. The Claimant also asserted pain at the front of her pelvis and outer aspect of her right hip and asserted that if she sat for prolonged periods the pain worsened, but if she exercised or walked it decreased. This latter assertion contradicted earlier assertions that activity increased her hip pain. The Claimant asserted that if she rolled onto her right hip at night she felt pain like a sword. I do not find that any of the right pelvis or right hip pain is proven on the balance of probabilities from a few months after the fall and so I reject these assertions. The Claimant went on to complain of pain in the rear of her head which she asserted was persistent and "like a throb" and asserted that if she touches the back of her head or puts pressure on it her pain can flare up four "up to 12 hours". In my judgment this was a lie. I have already found that the Claimant has lain down upon lilos, worn hats, driven cars with headrests for long distances including to London and Liverpool, sat on aeroplane seats and been examined medically by doctors, one of whom held the back of her head and moved it in various directions. None of these activities support this asserted symptom.

94. In May 2023 the Claimant was on holiday in Almeria in Spain with her father. She burnt her shoulders in the sun, lay on sun-loungers, wore sun hats and swam in pools. A family wedding was held and she drank alcohol and wore a fascinator. She also went out for a curry in her home area that month. The Claimant went out to a restaurant in May 2023 and attended a friend's wedding in June 2023.

95. On 27th July 2023 the Claimant purported to be so unable to make decisions, when in the company of her treating MDT neuro-OT, that she took 10 minutes to decide between two punnets of strawberries. In July 2023 the Claimant attended an ABBA tribute band concert.

Videos served

96. On 28th July 2023 the Defendant served the video surveillance evidence and this sent the Claimant into a mental health downturn. In brief summary these showed the Claimant: driving long distances from London to Wales and from Wales to Liverpool, walking longer distances than she had ever admitted to, on occasion without a stick, and when at medical examinations and on other occasions with a stick. It showed the Claimant bending to the ground, carrying bags in her left hand and carrying trays of foodstuffs in both hands, pulling and lifting suitcases, parking with ease and reversing out with ease, shopping with her mother for 105 minutes in Liverpool, filling her car with petrol. In my perception the Claimant appeared more disabled with her stick when she went into each expert examination. Overall, I consider that the videos gave the lie to many of the Claimant's assertions both to the medico-legal experts and to her treating

MDT clinicians and some previous clinicians. In August 2023 the Claimant swam 12 lengths of a pool when she was with her physiotherapist. There were negotiations with Admiral about returning to work but I find as a fact that the Claimant's mental health was suffering due to the service of the video surveillance. This led to the need for further witness statements from her and her mother explaining the videos and she was unable to contemplate returning to work in the early Autumn of 2023 and so her job was terminated. But for the lies she had disseminated I consider the Claimant would have returned to work in the Autumn of 2023 and settled her case as I shall explain below.

97. What followed thereafter was an application for disclosure of her social media, which was granted in November 2023 and a refusal of her further interim payment application. Her MDT team had lost their funding. From July 2023 to the trial the pressure on the Claimant built up as she realised that she faced potentially losing all of her damages if she were to be found to have been fundamentally dishonest. When the social media was inspected all of the undisclosed holidays, Spa weekends, cinemas trips, pop concerts, weddings, hen nights, drinking and partying came out. I should make it clear here that the Claimant is not to be criticised for living her life and enjoying it. The issue in this case involves no criticism by the Defendant of that. The issue relates to failing to tell treating clinicians, medico-legal experts and her lawyers, misleading the Court and creating a false impression of extensive disability for financial gain. Her mental state went down-hill in late 2023 and by early 2024 her lawyers applied for her mother to be appointed as her litigation friend.

The witnesses of fact

98. **The Claimant** confirmed her witness statements were true at the start of her evidence. I have already found that the 27.10.2022 witness statement contained substantial exaggerations and some lies. As a result of the service of the videos, she served a witness statement dated 11.9.2023. This, if drafted by her, was akin to a detailed business document. It contained a detailed, chronological, precise and intelligent dissection of the videos with explanations. She sought to explain that she had not really received proper NHS rehabilitation and only recovered with the private MDT rehabilitation. She asserted that she had been "in denial" before liability was admitted. The Claimant basically threw the years of NHS rehabilitation by Doctor Zoe Fisher and her team, SFH, Doctor Lynne Jones and Tonna Hospital, Mr. Singh, and her orthopaedic surgeons, to the wind. She praised Kevin Thomas, her case manager and criticised the Defendant for having the temerity to require multiple expert examinations. She built her case on the remarkable success of the private rehabilitation between January and July 2023, which, she asserted, lifted her mood and improved her physical abilities. She asserted that by May 2023 she was going out weekly with friends and had stability over her dizziness, less fatigue and better sleep. Then, video by video, the Claimant sought to explain what was shown. She sought to explain how she walked to John Lewis and around inside the shop for quite a long time in London before seeing Doctor Humphrey on 17 November 2022. She sought to explain how and why she

herself decided to drive from London to Wales rather than to ask her mother to do so. She sought to explain why she walked with no stick at Chieveley services. In relation to the video of her travel to the examination in Liverpool, the Claimant sought to explain why she drove most of the way to Liverpool, not her mother. She asserted that she felt dizzy and nauseous on trains. In my judgment that was a lie. On one date she was captured filling up her car with no stick and no limp. The Claimant sought to explain why she chose to walk for about half an hour (with her stick) before the appointment with Doctor Mullin then, after the 2.5 hours examination, she sought to explain why she went shopping with her mother for 105 minutes, walking for at least 50 of those on video and in my judgment probably a lot more of that time off camera. She visited no less than 9 stores. This video wholly undermined the Claimant's assertions that she was exhausted after medico-legal examinations and that she could only walk 10/20/100 yards before she suffered "high levels" of pain. The Claimant also sought to explain the video in early February 2023 of her driving her family to the pub, drinking 3 pints and leaving at 5-6 pm after a rugby match. On 18th February 2023 the Claimant was videoed helping her cousins to load various cars. This shows her bending to the ground, carrying piles of food in trays in both hands, walking freely with no stick, moving her head freely. Later the Claimant cleaned her car, then drove for 1 hour and 20 minutes to a Spa in Chepstow and walked into the hotel, up a slope, with a wheelie suitcase and no stick. What I find remarkable about this witness statement is that the Claimant continued to maintain that she had never lied. For instance, she sought to maintain that she was "basically teetotal". I reject the Claimant's assertion that with only the few physiotherapy sessions, more numerous neuro-psychology sessions and the support worker assistance which she had received since the start of the MDT, such a remarkable physical improvement had occurred in such a short space of time by February 2023.

99. On the same date the Claimant swore another witness statement answering the medical expert's comments on the videos. In summary, the Claimant raised a "good days, bad days" explanation. In my judgment this was and is wholly unsustainable in the face of her utter failure, with some of her treating experts and the medico-legal experts, to mention her good days. This failure was mirrored in her failure to inform the DWP of her good days in her review forms and undermined by her L&G insurance application which, in my judgment, was much closer to the truth. I reject the Claimant's good days and bad days explanation. Beyond that explanation, the Claimant sought to persuade the Court that she struggled to explain distances to experts. I reject that explanation as another lie. The Claimant is an intelligent person. Her intelligence is unaffected by her TBI. Her frontal lobe damage does not explain lying about her condition. In this witness statement she asserted that she was *"completely teetotal for the 1st few years after the accident"* and had her first drink at the start of 2022. I reject that assertion as another lie. On 30th October 2023 the Claimant swore a further witness statement trying to explain statements in her witness statement dated 27th October 2022 and the social media disclosure.

100. The Claimant gave evidence for approximately 2 days before me in Court. During that time I had a considerable chance to assess both her energy levels and her intelligence. She was engaged, attended to detail well and managed the process without any apparent fatigue. True it is, that on more than one occasion she became highly emotional when defence counsel, perfectly properly, put to her that she had been dishonest. I shall not summarise her evidence here in any great detail. Suffice to say that the Claimant denied ever lying to any medico-legal expert or to the Court. She asserted she could not survive without her care worker. She asserted there was no way she could do her Admiral job now. She asserted that she needed prompting for everything and would not be able to go shopping without somebody with her. When cross examined on her performance reviews she denied that her work performance was of good quality. She accepted that before the accident she was undiplomatic and highly critical of senior management. After the accident she asserted that she had been in denial for the first three years. Taking into account the detailed therapy notes of Doctor Zoe Fisher, SFH, Doctor Lynne Jones and the Claimant's own social media postings, I consider that this was not true. She could not explain why the orthopaedic registrar, in March 2019, noted she was walking comfortably with no left ankle pain. She asserted her left ankle pain had never changed. I reject that evidence. She could not explain why she continued to assert that she had a bone spur in her left ankle when she had been told by Miss. Topliss that she did not. In relation to her 2019 performance review she accepted that she was undiplomatic before the accident, but thought she was worse after. When shown, paragraph by paragraph, the very impressive praise her manager gave to her in the review, she denied that it was accurate. When questioned on the 2020 performance review, she stated she was starting to accept that she was different by that time and was upsetting people. However, she accepted that she had written that she had "smashed" her diplomacy issues and she had written that she was proud that she had made some improvements. She then denied that she had actually made improvements and asserted that it was only when the private therapy team started with her in 2023 that she actually made any improvements and asserted that she was "deluded" before the time. I reject that evidence as not only illogical but also contrary to the performance reviews and the contemporaneous medical records. The Claimant asserted that Kelly Blake "hated" her and was awful to her but could not explain why the manager's written review was appreciative and supportive of her. The Claimant could not explain why she accepted, in her self-appraisal, that she cooked for herself at lunchtime whilst working from home and the adjustments the employers made to allow her to do so. She sought to persuade the Court that her left hand was so weak she couldn't operate a tin opener or pick up a small frying pan. She also sought to explain that she was cognitively incapable of cooking a simple meal. I reject that evidence. When shown, in the performance review, that she was planning to do an MBA masters long after the TBI, the Claimant was exposed as grossly exaggerating her fatigue. I consider that she would not have been planning to do a Master's and to continue at work in 2021 if she was suffering anything like the level of fatigue that she put forwards in this claim. The Claimant was then taken to the DWP records. Her evidence in relation to the statements written in 2020 and 2022

firms was some of the least impressive that I have ever heard. Lie by lie the answers were exposed by professional and careful cross examination by Mr. Blakesley. I have dealt with those documents above. For instance, the Claimant accepted that she was eloquent and intelligent after the accident, as set out in her employment records, but could not explain why she had allowed her mother to write that she could not even use a telephone to talk to people from the DWP or other services because of her lack of understanding and deafness. Assertions to the DWP that she was unable to use a saucepan or stove were deeply unimpressive. For instance she could not explain why she failed to mention that her dominant right hand was perfectly capable. She could not explain why her mother had to deal with her Dosette pill box when she was perfectly capable of doing so herself, in my judgment. She could not explain why she alleged hypersensitivity to noise and anxiety to the DWP when she had been to two Spice Girls' concerts and a Pink (rock) concert. She asserted that she had left the Spice Girls' concert early because of fatigue and noise intolerance but, as I have found above, her mother wrote a complaint e-mail soon afterwards stating that the reason why she left the Bristol Spice Girls' concert was because she was not let back into the Golden Circle having been to the loo. She provided the breathtakingly dishonest answer in cross examination that there is nothing she would take back which was written in the DWP forms. She asserted that others had advised her mother and her that she should only put down on the form her worst days. She could not explain why she asserted that she used a wheelchair if she "went anywhere outside" with her mum or to hospital appointments, when that was not true. When taken through the social media entries she sought to minimise each entry but accepted that she drank alcohol at various events and was walking on the beach on various occasions. She tried to persuade the Court that when she went bowling she did not actually bowl with her arms and used a metal frame. I reject that evidence. She accepted that she drank five pints in February 2020 watching the Six Nations rugby and suffered a hangover. But then, in the same breath, asserted that she really doesn't drink. She could not explain why she had said she had been "teetotal" since the accident to various experts and clinicians. She then apologised for misleading the experts "100%". When taken to the L&G life assurance application in April 2020 she accepted that she knew insurance companies expected accurate information and that there was a risk of prosecution. She could not explain why two months after drinking 5 pints on a night out she wrote that she never drank alcohol. She then asserted that this was not a lie. It was put to the Claimant that she downplayed any symptoms she had or she had no symptoms and the form was accurate at least in relation to the absence of symptoms. The Claimant denied both but then asserted that what she had said in the claim was true. It was put to her that the Claimant lied on the form to suit her purpose of obtaining a low premium for life assurance. It was put to her that she then exaggerated and lied about her symptoms on the DWP review forms to gain financial benefit from the State. The Claimant denied both. When taken to her 2022 performance review she accepted that her criticism of senior management was once again scathing. It was put to her by Mr. Blakesley, and I accept, that there was little difference between her scathing criticism of senior management in writing before the

accident and the criticisms that she made after the accident. In relation to her representations on the 2022 DWP benefits form she again asserted in evidence that nothing written therein was untrue. She asserted she had been told to fill out only her worst days. When questioned on what she told Kevin Thomas for his initial needs assessment in April 2022 she could not explain why she had written that she lived alone in her own property when during the personal injury case she had asserted that she lived much of the time with her mother. The Claimant accepted in cross examination that in Benidorm she dressed herself and showered herself without help or support. Taken back to the DWP review form in September 2022 the Claimant asserted that writing that she could only walk a maximum of 20 metres was accurate and likewise that she always needed a walking aid. She said this was 1000% correct (sic). She gave evidence that she did not go anywhere without her stick until October 2022, when she stopped using the stick all of the time. This assertion was contradictory to her case, which was that she became increasingly depressed in the Autumn of 2022 and then became suicidal and that her perception of pain was increased as her psychiatric state became more severe. The Claimant was questioned on her use of a wheelchair and asserted she had used it multiple times, but when presented with her statement to Miss. Gibson that she avoided using wheelchairs she was caught out. Defence counsel took the Claimant through the various statements she had made to various experts which I have dealt with above. The Claimant admitted in May 2021 that she insured her niece's Volkswagen Polo, with herself as the main driver and did not take out a learner driver policy, despite her niece being a learner. I note this was a manual car which the Claimant drove, despite the fact that later she asserted she had great difficulty drive manual cars and so bought a Motability vehicle (with State funding) because it was an automatic car. When faced with the surveillance videos in cross examination and when each item of mobility or carrying or bending or walking without a stick was pointed out, the Claimant's explanations were: the level of pills she was taking; good days and bad days; to challenge the honesty of the surveillance operatives or to assert that she stopped regularly in the periods that were not filmed. The Claimant also asserted that she had always said she could walk for 10 to 15 minutes, but various experts had misinterpreted her words and written down various short distances. I reject that evidence as a lie. Overall, I regret to say that I found the Claimant to be dishonest and manipulative both in Court and in what she said to the medico-legal experts.

Miss. C. Williams

101. In her evidence in chief from her witness statement dated 26 October 2022 the Claimant's mother asserted that the Claimant suffered compromised gait and drastically reduced speed and walking distance. She asserted the Claimant was unable to dorsi-flex her left foot. In my judgment that was a lie. She asserted the Claimant was reliant on her walking stick. In my judgment that was a lie. She asserted that the Claimant could not join the beach dog walking group and that mobilising of any kind caused significant pain. I consider that was a lie. She asserted, at paragraph 13, that *"using public transport would be impossible now for Kirsty because of the noise and her mobility*

issues". In my judgment that was a lie. She was quite oblivious to the 1 year of train travel to work her daughter had performed. Miss. Williams asserted the Claimant fell a lot and spent four to five nights per week at her house and showered with her. She asserted the Claimant had "no" left hand grip. In my judgment those were lies. Although she accepted that the Claimant was still at work, she asserted the Claimant had "no life" besides her work. She asserted that going to a recent concert had drained her so much she had to take four days off work. Miss. Williams asserted the Claimant would struggle to go to a pub with a live band. Miss. Williams asserted the Claimant, if left alone, would only make breakfast. She would be too fatigued to do anything else. In my judgment that was a lie. Miss. Williams had reduced her hours at work to care for the Claimant and had been signed off sick due to stress in July 2022 but was to return to work in November 2022. She asserted the Claimant was no longer able to walk her dogs. In my judgment that was a lie. In her second witness statement dated March 2023 Miss. Williams stated the Claimant had improved since the intensive private rehabilitation and was more positive. She was looking forward to doing a creative writing course. The Claimant was doing housework, cooking, shopping and laundry with prompting. She praised Doctor Marshall for changing the Claimant's medications and Doctor Emma Hale for her therapy. In her third witness statement dated September 2023 (post disclosure of the videos) Miss. Williams asserted that the Claimant's social life was pretty non-existent. She asserted that, with the exception of some family gatherings and a few occasions with her close friends, things had been very limited. Miss. Williams asserted that since her fall the Claimant had rarely consumed alcohol and was "now more or less teetotal". In my judgment that was a lie. In relation to the hen days in Benidorm Miss. Williams asserted that the Claimant had called her a lot during that holiday and was exhausted on her return. Miss. Williams asserted that the Claimant never drove unaccompanied outside her local area except for the drive to Liverpool and she asserted that she, Miss. Williams, had done the vast majority of the drive. I do not accept that assertion is true. Miss. Williams admitted that the Claimant drove back from London to Wales, after seeing Mr. Vanhagen in Salisbury and another expert in London. She also admitted that the Claimant drove to Liverpool, because on that occasion Miss. Williams asserted she was ill. Miss. Williams asserted that they swapped driving when it got dark. She then sought to explain the video surveillance evidence. She asserted that Doctor Mullin called them after the consultation and advised her to keep an eye on the Claimant due to the suicide risk. Doctor Mullin denies this and I have already found that I accept Doctor Mullin's evidence on that fact. Miss. Williams considered the rehabilitation between January and July 2023 had been a great success but complained that the funds then stopped. In October 2023 Miss. Williams provided a fourth witness statement seeking to explain the social media disclosure which included multiple concerts and holidays. She asserted that the Claimant exaggerates "unintentionally". She explained the Claimant's October 2022 witness statement away by stating the Claimant had been suicidal.

102. In cross examination Miss. Williams was taken through the surveillance videos and social media and challenged on her October 2022 witness statements and the assertions made therein. She accepted that she moved out of her house and into the Claimant's house in the summer of 2023 because her sister had to leave her house because she had sold it. When taken to the DWP form dated September 2020, which she filled in on behalf of her daughter, she could not explain why she had written the Claimant could only walk less than 20 metres. She asserted the Claimant could walk for 10 minutes. In my judgment these were both lies. She asserted the Claimant did "always need aids". In trying to explain the answers put on the form she asserted that she had been advised only to put the worst day down on the form. She could not explain why she did not mention the three hen days in Benidorm. In her answers in relation to why the DWP should not be told about the Claimant's holidays in Benidorm and Zante, her socialising and her ability to walk further, I found Miss. Williams' evidenced to be very unimpressive. She denied lying on the DWP forms. In re-examination Miss. Williams asserted that she had been told to only put the bad days on the DWP forms by her cousin, Charlotte Dicks who worked for the DWP and by Kelly Thomas who was a disability assessor who worked for the Government. I ordered those witnesses to give evidence.

103. As a result, further documents were put in from the Citizens Advice Bureau, to whom the DWP refer applicants for advice on how to fill in PIP assessment forms. Those documents show, quite clearly, that the DWP expects applicants to set out honestly what they can do and what they cannot do, their good days and bad days and to explain their condition accurately. The guidance from the CAB sets out how to fill in the claim form very clearly. It advised that applicants should fill in a true picture of their conditions and on pages 23, 29, 35, 41, 47, 59, 65, 71, 75, 80 and 87 made it clear, heading by heading, that the applicants should put down good days and bad days so that the DWP would get a full picture. Kelly Thomas signed a witness statement in which she recalled speaking to Miss. Williams while she was undertaking training for the DWP. She was a nurse before she tried training for the Civil Service in relation to State benefits. She gave evidence to me that she only did that for four weeks and never did the exams because she didn't like the approach of the DWP took. They generally were very tough on the granting of benefits. She went back to nursing. She could not recall the details of what she had told the Claimant or Miss. Williams about how to fill in a PIP form. However, she gave evidence in cross examination that she was trained to advise applicants to set out their good and bad days. She stated that if anyone advised an applicant only to put down the bad days that would not be the truth. I was impressed by Kelly Thomas as a witness of truth. I accept her evidence.

104. Unfortunately the same cannot be said for Charlotte Dicks, who provided a witness statement dated the 7th of March 2024 and is the cousin of Miss. Williams. She works as a civil servant, is a deputy work coach team leader and performance team leader for the DWP and has worked for them since 2011. She asserted that she recalled discussing filling in benefits forms with Miss. Williams and asserted in her witness statement that

"it is widely known that when applying for health benefits you should complete the form as if you are describing your worst day and include all the health conditions that affect you." She asserted she knew this because she had sat through information sessions with different departments such as the Citizens Advice Bureau. She also asserted that she has to signpost customers to various departments and the DWP guidance for PIP payments refers applicants to the CAB's advice website and the guidance provided there. She extracted part in her witness statement to seek to persuade the Court that the CAB suggested that applicants should only put down their bad days. She also asserted that she had filled in forms for her family and friends and had always only done it on the basis of describing their worst day.

105. Miss. Dicks was cross examined on the DWP guidance provided through the Citizens Advice Bureau which clearly stated that applicants should set out their good days and bad days, not just their bad days. Her answers in cross examination were unimpressive. She pretended never to have known of the Citizens Advice Bureau guidance and she sought, despite having extracted sections from one of the guidance documents, to persuade the Court that she had never read the full guidance document with the multiple references to good and bad days. I consider that she was intentionally trying to mislead the Court in her answers. She asserted that there was no guidance stating that good and bad days had to be set out despite the existence of the clear written guidance in the CAB document. Under professional and determined cross examination by Mr. Blakesley she eventually accepted that applicants did have to put down their good days and bad days, having been taken to the multiple pages in the CAB guidance that expressly said that. She agreed it would be misleading to put down the one bad day in the year and to ignore the 364 good days. Then she accepted in cross examination that she did not tell Miss. Williams only to put down bad days and not to put down good days. However, she maintained her assertion that it was "widely known" that applicants should complete the form as if they were describing their "worst day". I found Mrs. Dicks to be an unimpressive witness. I consider that she was simply trying to help Miss. Williams explain the lies that Miss. Williams had put on the DWP form with the Claimant's full authority and consent. What was so disappointing was that she, Miss. Dicks, was and is an employee of the DWP and yet was prepared to come to Court and inform the Court that she had advised her relatives to fill in the DWP State benefits forms in a way contrary to the clear published advice from the Citizens Advice Bureau on how to fill in the forms, which the DWP recommended applicants should read before doing so. I would be interested to know whether senior managers in the DWP, on reading her written witness statement, consider that she has breached her contractual obligations as an employee of the State.

106. Having rejected the evidence of Miss. Williams and of Miss. Dicks in relation to the excuse that the DWP forms were filled in, on the advice of others, only to show the Claimant's bad days and finding, as I do, that even if only bad days were being described, the DWP form still contained multiple lies, I find that both the Claimant and

her mother knew, when they filled in the 2020 and 2022 DWP forms, that they were lying to the DWP with a view to obtaining benefits to which the Claimant was not entitled.

Lauren Wilyeo

107. Miss. Wilyeo was a friend of the Claimant who went on the hen weekend in Benidorm. The Claimant joined the other women on the beach and at the pool during the day for 80% of the time and then went for a nap in the afternoon. At night they went out from the hotel together but the Claimant returned back to the hotel earlier than the other women each of the three nights and was clearly tired by day three. I accept the evidence of this witness who I found to be honest and impressive. It shows that the Claimant's fatigue does affect her ADL but not prevent them.

Emma Heyes

108. This lady was the Claimant's line manager at Admiral for many years. She has worked for 22 years for the company, she had managed staff for four years in Swansea and then moved to Cardiff. She described the Claimant as a very enthusiastic and valuable employee in Cardiff. The Claimant had good systems knowledge and communication skills. Emma Heyes became her manager in 2017. After the accident the Claimant had a phased return to work. She had become more opinionated and was different. The Claimant lacked subtlety and became argumentative. Colleagues complained and the Claimant occasionally upset Ms. Heyes too. The Claimant was also often away from work. After COVID, when staff all started to work from home, there were still blow ups as a result of the restructuring that Admiral had imposed on all staff. The Claimant's role changed in 2021 as did the role of others and her new manager, Kelly Blake, took over. One locum manager refused to work with the Claimant and Miss. Heyes came back to become her manager in March 2022. Miss. Heyes gave clear evidence that the quality of the Claimant's work was not affected by the accident and it was always of a high standard after the accident. However, she made adjustments: she did not arrange afternoon meetings because the Claimant became too tired. IT managers had gained significant pay rises due to a rise in their market value since the Claimant's accident and so did the Claimant. She had discussed promotion with the Claimant before the accident to a job earning between £60,000 and £80,000. As a result of the accident Miss. Heyes considered that the Claimant is less adaptable, although her intellect is not affected. Miss. Heyes was concerned, in October 2022 when she signed her witness statement, that the current situation might not be sustainable.

109. In her evidence in cross examination Miss. Heyes asserted that the appraisal process, as recorded in writing, was not misleading, it was an honest process and there was no sugarcoating. She agreed that the Claimant was undiplomatic before the accident. She was blunt. Miss. Heyes described how, as a result of major restructuring at Admiral, many members of staff were moved away from being business analysts to being product owners. After the accident she asserted the Claimant was less controlled and caused

more difficulties with her behaviour. However, the quality of her work was unaffected. With clear instructions she could work to a high standard. Miss. Heyes described how the difficulties arose because the Claimant's role involved going out to people in other departments, understanding what they needed and bringing information back to translate into a document and then for a programmer to create a programme. The challenge was her interactions with other people. In simple terms the Claimant had the technical skills to be a successful "geek" but was less good at her human interactions. After the sabbatical the Claimant did not return to work in April 2023, as planned and the occupational health process rolled through to November 2023, when her job was terminated. In answer to the question whether the Claimant could be re-employed at Admiral now, Miss. Heyes was thoughtful. She considered that the Claimant would need re-training and re-skilling but wondered whether the Claimant would struggle with change and learning new things. She didn't know whether the Claimant would manage. In re-examination she gave evidence that the other technical analyst at Admiral was earning £73,000 per annum gross at the time of trial. But for the accident she considered that the Claimant would probably have become a solutions architect.

Michelle Jones

110. Michelle Jones gave evidence. She was a people services executive in Admiral. She confirmed that the quality of the Claimant's work was good on her return, but there were behavioural changes. She attended a meeting in June 2021 with Doctor Zoe Fisher, the Claimant's neuro-psychologist. At that time Kelly Blake was the Claimant's manager. Miss Blake had misunderstood the Claimant's need for time off for treatment. Adjustments were made as a result of the meeting to take into account the Claimant's disabilities. She was given breaks and feedback. After her return to work after these adjustments, the Claimant was transferred to a technical analyst role and, although occupational health suggested reduced hours, the Claimant did not want reduced hours. In cross examination Miss. Jones accepted that Admiral had not carried out an independent occupational health assessment of the Claimant's needs. Instead she had attended the meeting with Doctor Zoe Fisher and made work adjustments for the Claimant.

The MDT team in 2022-2023

Doctor Emma Hale

111. I shall provide a broad overview of the evidence of the MDT team and the work which they did with the Claimant between April 2022 and the summer of 2023. Doctor Emma Hale is a psychologist who provided private neuro-rehabilitation to the Claimant. In her 17th June 2022 rehabilitation needs assessment report she relied on the INA by Kevin Thomas dated April 2022. She did not carry out any cognitive assessment herself. She concluded, from a single discussion on the 14th of June 2022 with the Claimant and her mother, that the Claimant suffered "frequent cognitive overload" characterised by a "complete mental shutdown" by the end of the day or after approximately one hour in a busy social setting. Doctor Zoe Fisher never recorded such a conclusion. She was told

that the Claimant could learn new processes at work but this took more time. The Claimant told her she had difficulty recalling verbal instructions and had to have all work requests emailed to her. The Claimant reported she had lost orientation in time and often watched the same film or television programme several times to recall the plot. The Claimant asserted she could no longer multitask and was unable to cope in an open plan office at work. The Claimant complained of slow processing and asserted she was assigned to the bare minimum tasks at work. The Claimant asserted initiation difficulties and requiring prompting from her mother for "all tasks". The Claimant asserted she slept at her mother's house every night or her mother stayed over with her. The Claimant asserted her orthopaedic injuries caused chronic pain in her left leg from knee to ankle and pain in *both* hips after walking a few yards. She asserted left sided weakness through the left leg and arm with reduced grip in the left hand. She asserted she could not place pressure on the back of her head and experienced frequent headaches, requiring her to lay down in the dark for one to two days, once to twice a week. The Claimant complained of significant dizziness and stated the Epley's manoeuvre she had been given was "without effect". She asserted this dizziness was exacerbated by movement or looking up or down or standing. The Claimant asserted that every action was "exhausting" and she retired to bed soon after finishing work. The Claimant asserted "high sensitivity" to noise which prevented her from concentrating in busy places. She asserted heat regulation was a "debilitating problem". The Claimant asserted she experienced unusually heavy menstrual bleeding for one year after the accident and then complete cessation of menstruation save for three periods in two years. The Claimant asserted she lived on her own in a house with three dogs but slept at her mother's house due to anxiety. She asserted she was unable to access her own shower due to mobility restrictions. The Claimant asserted she had been unable to engage in rehabilitation because she was unable to take time off work (directly contradicted by Doctor Zoe Fisher's notes). Miss. Hale took all of these assertions at face value without cross checking them either with Doctor Zoe Fisher's rehabilitation notes, the notes from Tonna hospital or any of the medico-legal reports. So, in June 2022, Miss. Hale concluded that the Claimant was moving towards a "mental health breakdown" and asserted that the Claimant was working but had "no social life". She concluded that the Claimant was doing no domestic activities herself and was reliant on her mother. She concluded that the Claimant was living with chronic plain, physical disability and chronic fatigue from her TBI symptoms. She considered the Claimant needed time away from work for rehabilitation. She organised a career break of six months and was of the opinion that she had pulled the Claimant back from the "*edge of a mental health crisis*". She noted that medico-legal appointments made the Claimant "very unwell". On the 5th of December 2022 she became very worried and called the Claimant's GP because of the Claimant's suicidal ideation. She asked the Claimant's mother not to leave her alone. She considered the Claimant's pain perception was strongly linked to her emotional state. Once rehabilitation started in early 2023 she considered the Claimant made good progress, was hardworking and committed and was

"a dream to work with". She considered a "breakthrough" was made in March 2023 and considered that the Claimant was honest.

112. Under cross examination Miss. Hale accepted she had carried out no neutral evaluation of all of the evidence. She only had a partial picture. When the fact that the Claimant had failed the neuro-psychological tests with Doctor Monaci was put to her, she asserted it was a misconception to consider that a failure of effort tests could be equated with malingering. In January 2024 Miss. Hale had declared that the Claimant lacked capacity but accepted that she did not carry out validity testing before she did so. She accepted that Doctor Mullin queried the reliability of the information that she had relied upon in coming to that conclusion. She accepted she took the Claimant and her mother at face value. She denied that she did not have the information necessary to overturn the presumption of capacity in early 2024.

113. Whilst I accept that Emna Hale was well motivated, I do not consider that she adequately researched or read the Claimant's BHS rehab notes. Nor did she exercise sufficient objective insight into the likely mental health effects of her recommendation that the Claimant should take a sabbatical. Even by the time of trial she did not appear to understand how that recommendation had led to the tailspin of suicidal ideations and depression because of the Claimant's loss of self-esteem because she was no longer in work. I consider that Doctor Emma Hale did not gain a full or accurate picture relating to the Claimant's NHS rehabilitation, particularly with Doctor Zoe Fisher, SFH and Doctor Lynne Jones when she first assessed the Claimant. Doctor Emma Hale and Kevin Thomas, the case manager, appear to me to have accepted everything the Claimant and her mother told them at face value in April to June 2022 without having an objective, critical, detailed, proper or balanced clinical understanding of the Claimant's 4 years of progress since the accident and the NHS therapy she had already received, which kept her in work and socially active.

Doctor Marshall

114. Doctor Marshall gave evidence of fact as the Claimant's treating psychiatrist in his witness statement dated September 2023. He was asked to become involved on the 9th of December 2022 by Kevin Thomas on an urgent (private) basis due to the Claimant's suicidal ideation. He prescribed an increased dose of Sertraline and also Melatonin for her sleep. By the 14th of December the Claimant was sleeping better but she remained anxious, with headaches and migraines reported one to three times per week and significant right hip pain. His evidence then skipped forwards to July 2023 when he diagnosed that her mood dipped and her sleep worsened. This coincided factually with the disclosure of the surveillance videos. He was very concerned about the Claimant's mood and he advised that he considered her to be an honest, reliable and resilient character.

115. In his verbal evidence Doctor Marshall sought to explain why he jointly signed the lack of litigation capacity report provided by Doctor Emma Hale in January 2024, despite having carried out no assessment of the Claimant himself. I found his answers in this issue unimpressive. Doctor Emma Hale had not carried out a cognitive assessment and Doctor Marshall had carried out no assessment at all. I do not consider that he should have countersigned the report. He accepted in cross examination that the Claimant saw the surveillance videos on the 2nd August 2023 and her mood became considerably worse. He advised in re-examination that the stress of the litigation had produced suicidal thoughts in the Claimant and he had prescribed increased antidepressants, including Diazepam, in February 2024.

Surveillance operatives

116. I heard evidence from two of the Defendant's instructed surveillance operatives. The other statements were allowed in evidence unchallenged. Both were challenged by the Claimant on the basis that they had failed to video the Claimant stopping to rest and had too many stop/start events in their video surveillance. I consider that both witnesses were doing the best they could to assist the Court. They worked together in tandem. They did their best not to be seen or discovered by the Claimant or her mother. Their videos were generally of high quality and I found them helpful, in particular, in relation to the video of the shopping trip in Liverpool after the Claimant attended a long examination by Doctor Mullin. I find as a fact that the Claimant walked for more than the 50 minutes shown on the video but probably did stop once, for a pasty, during the shopping trip but only for a short period of time.

117. I have carefully viewed all of the surveillance video evidence and looked through every single page of the social media photographs and take them into account when coming to the factual findings that I have set out in this judgment.

Assessment of the Claimant's evidence and honesty

118. I have carefully considered the reasons given by the Claimant and her mother for the various lies which I have set out above. I have come to the conclusion that both the Claimant and her mother have been thoroughly dishonest in their presentation of the Claimant's symptoms and disabilities and have sought to mislead clinicians, medico-legal experts and this Court about the Claimant's health, functioning, activities of daily living and her work abilities. I have considered the subjective elements above but looking at the Claimant's statements which I have identified as lies above and below, objectively, taking into account what a reasonable member of the public would consider to be honest, knowing all of the relevant facts, I have come to the conclusion that the Claimant and her mother have been objectively dishonest. I will set out the law in relation to findings of dishonesty below.

Expert evidence

Orthopaedic

119. On 1.6.2023 the consultant orthopaedic surgeons provided their first joint report. The surveillance and social media evidence had not been disclosed at this time. They agreed that the Claimant suffered the orthopaedic injuries set out at the start of this judgment. They agreed that the Claimant suffered a pelvic fracture which united well with conservative treatment. There was no orthopaedic injury to her right hip. They clearly did not consider that the right hip minor abrasions and bruises noted in hospital merited elevation to the list of injuries. They agreed that there were no long terms symptoms from the minimally displaced ankle fractures, which were manipulated under anaesthetic back to congruity and resolved well. I accept the opinion of Mr. Vanhegan that the Claimant's left ankle symptoms took 12 months to resolve. I prefer it to Mr. Maheson's longer estimate. They diagnosed no soft tissue long term sequelae. They were unable to diagnose the cause of the continuing complaints of ankle pain, providing the following options: (1) referred pain from lower back disc sequestration causing damage to the nerve roots; (2) psychiatric and TBI sequelae; (3) exaggeration. Mr. Maheson did not support conscious exaggeration but neither had seen the videos and social media. They advised that 3-4 months of care would have been appropriate for the orthopaedic injuries. They advised that the disc sequestration would have occurred in any event. Mr. Maheson opined that it was accelerated by 2 years. Mr. Vanhegan opined that it would have occurred when it did in any event. I prefer and accept the evidence of Mr. Vanhegan.

120. In their second and third joint reports they considered the videos and social media evidence showing the Claimant's greater mobility, undisclosed substantial foreign travel and undisclosed social life activities. They agreed that the Claimant was capable of walking with no stick, including on inclines and declines, bending and twisting, carrying moderately heavy bags, driving significant distances and sitting for long periods of time. They agreed that physically the Claimant is not disadvantaged on the labour market, has no ongoing requirement for care and is not functionally limited. I accept that evidence and apply it to my assessment of quantum.

Mr. Maheson

121. There is no need for me to summarise the consultant orthopaedic surgeons' individual reports in much detail save to point out a few matters. The Claimant lied to Mr. Maheson during his examination of her in September 2022. She asserted that her ankle gave way intermittently, she could walk only 30 yards on flat ground, was unable to work in an office due to pelvic pain (mainly) and she was unable to bend. Despite these assertions he noted that the Claimant was walking comfortably and had been discharged from orthopaedic care in March 2019 and had grade 5 dorsi-flexion (full power) in June 2019. In my judgment, these clinical records showed that the Claimant's subsequent complaints of pain, weakness, reduced dorsi-flexion, giving way and locking of the left ankle were not orthpaedically generated. Mr. Maheson was "unable to account" for her level of disability. Mr. Maheson's later letter dated 29.9.2023 is revealing. He was not shown the social media, only the video surveillance, but he advised that she was capable

of work and had no ongoing disability and had no orthopaedic basis for any long term loss of amenity. In a final letter dated 27.2.2024 he considered, on the but for prognosis, that she would not have suffered a chronic pain syndrome, but that was not his field. In his evidence, which was was fair and measured and I was grateful for his assistance, he was unable to explain any satisfactory, logical basis for his "2 years acceleration" opinion in relation to the disc sequestration, other than altered gait. I preferred the evidence of Mr. Vanhegan.

Mr. Vanhegan

122. The Claimant misled this expert at their meeting in mid-November 2022 by asserting that she was teetotal, lacked any social life and had moved back in with her mother ever since the fall. She asserted that she had left ankle pain at level 6 out of 10 rising to 9 out of 10 on increased walking. Interestingly, she told him her ankle did not give way and I accept that was true. The Claimant misled him on her inability to self-care, shower, dress and lie on her back. The Claimant misled him about her walking distance (she said it was limited to 200 yards). She misled him on being advised to work from home from 2019 and her asserted limited driving ability. He noted that at her physio assessment by the privately funded MDT on 21 June 2022 she displayed zero dorsi-flexion and reduced movement of the left ankle in all directions. He advised that her pelvic fracture had healed well. He advised that the left ankle fracture had achieved an excellent outcome and the prognosis was for no arthritis. He advised that the disc degeneration was unrelated to the fall. I note that on his examination he found no inappropriate signs but he could find no orthopaedic reasons for her continuing complaints. In his letter dated 14 July 2023 he considered the videos and social media evidence. He changed his opinion as a result. He considered that her account to him had been unreliable. He considered that the video was highly suggestive of the Claimant intending to mislead him at examination. I agree. In his letter dated 1 February 2024 he noted that the Claimant's ankle went through a full range of movement (ROM) with FES electrical stimulation in October 2023. He explained that the reduced ROM before then was either conscious lack of effort or sub-conscious. I consider that it was conscious lack of effort.

Neuro-radiology

123. Doctor McDonald and Doctor Birchall provided a joint neuro-radiological report on 21st February 2023. They diagnosed multiple bilateral skull vault and base fractures mainly on the left hand side but also on the right hand side. They diagnosed bilateral cerebral, subdural and sub-arachnoid brain damage together with damage in the transverse sinus and the parenchymal area. Overall, they diagnosed extensive frontal and temporal lobe damage.

Physiotherapists.

124. Mr. Harlow reported in March 2023, having examined the Claimant in October 2022. On examination he found, normal power throughout the arms. He found reduced left

hip flexion, this had never been part of the claim. All left ankle movements were stiff and dorsi-flexion was zero. The Claimant's Rhomberg balance test was negative. The Claimant could balance on each leg for a short period. The Claimant asserted that walking from the kitchen caused pain. She could manage stairs and he was *"surprised she had no bannister"*. The Claimant was unable to bend forwards at the hips beyond 50 degrees. He advised an initial bolus of physiotherapy of 32 sessions in year 1 and vestibular physiotherapy and hydrotherapy of 26 sessions pa for life. Also 6 sessions of physio pa until age 50. This was very substantial, long term physiotherapy. He made no effort to think about causation and the accident. In medico-legal reporting it is inappropriate to ignore advising on which complaints were caused by the tort and which were not. Mr. Harlow was advising the Court on the Claimant's needs arising from the tort but he ignored that responsibility. He advised again in October 2023, after the videos were served. Remarkably he concluded that the Claimant had received no specialist neurological rehabilitation support for 4 years. He latched onto Doctor Law's diagnosis (boom and bust) and concluded that the videos did not show the intricacies of the Claimant's "complex presentation". He deferred to the Court on honesty of presentation and credibility.

125. Miss. Laverty examined the Claimant in April 2023 and found her left arm power to be 4 - 4+ out of 5 with variable, inconsistent presentation (which I find to be lack of effort). The Claimant complained of reduced sensitivity from the elbow to the fingers of the left arm (a new complaint). Her left hand grip was 100% for pinch, pulp pinch, keg pinch, chuck grip and span grip and 80% for power grip and hook grip. Her left ankle dorsi-flexion had a minimally reduced ROM which increased with handling. The Claimant could walk backwards, stand for 10 minutes with no rest, jump and stand on a single leg. She passed the Berg Balance test scoring 54/65. She had a low risk of falling. I have watched her video. She advised that the Claimant could descend her stairs two footed (with more practice). Miss. Laverty diagnosed problems in her shoulders (a new complaint), left ankle, right hip, reduced balance and poor exercise tolerance. But Miss. Laverty was not filleting out what was caused by the accident. She made no attempt to chart the progress of her physical abilities from the accident to recovery, through return to work and thence to the examination. She recommended a year of fitness and physiotherapy but noted the Claimant's pre-accident sedentary lifestyle. She reported again in July 2023 on the videos. She then withdrew her recommendations for physiotherapy because of the discrepancy between what she had been told and the ADL function on the videos. She advised that the Claimant can live independently and can return to work. Having read the MDT notes in January 2024 Miss. Laverty noted the full ROM of the ankle using the FES machine and simply advised the Claimant needed to strengthen her ankle.

126. By the end of their 3 joint reports the physiotherapists ended up agreeing 30 hours of neuro-physiotherapy in future (£4,500). Mr. Harlow gave lifestyle advice to join a gym, but in my judgment that was not caused by the TBI or the accident. He also

recommended a physiotherapy contingency of 60 hours for the future which Miss. Laverty did not accept. Both agreed the Claimant can work and should be able to live independently. They agreed the provision of an exercise bike costing £599. I carefully listened to their live evidence. The problem with Mr. Harlow's advice to the Court is the he failed to try to distinguish accident related complaints from non accident related complaints. Where they did not agree, I prefer the evidence of Miss. Laverty.

Neurologists

127. In their first joint report (May 2023) the neurologists advised that the Claimant had suffered a severe TBI with loss of sense of smell and some taste, impaired hearing, tinnitus, dizziness and BPPV, all caused by the TBI. As to the Claimant's asserted left sided weakness, Dr Joseph said that he "feels" that the Claimant has left sided weakness. Doctor Humphrey rejected this, pointing out that on hand power testing the Claimant had no fine finger control difficulties. He advised that these would be apparent first in TBI generated mild left hand weakness, long before any main power grip weakness, because they are far more complex neurological processes. I accept that opinion. I note that Doctor Joseph did not contradict this opinion, he just side stepped it. Therefore, I find that the Claimant does not have left sided weakness any more and the early left sided weakness resolved within a few months of the fall. As to cognitive deficit, the experts agreed that the Claimant's difficulties with language resolved after the fall. They considered the neuro-psychological assessments and noted the Claimant had "passed" validity tests (whereas I note that she had failed Miss. Monaci's validity tests). They advised that they considered that the reported symptoms were largely psychological or neuro-behavioural, allied to a change of personality. They accepted that the Claimant suffered moderate fatigue. As to the headaches, the neurologists accepted that initially they were related to the TBI but agreed that "other factors" were prolonging them including her psychiatric state and the multiple medicines the Claimant was consuming. They advised that the Claimant faces an increased risk of epilepsy over the next 14 years and faces a reduced life expectation of around 5-6 years due to the TBI. There was also a risk of greater neuro-degeneration if she suffers dementia in old age. They agreed that her symptoms are permanent and Doctor Joseph opined that the Claimant would not able to return to full time work but could probably do part time work. He also advised that care and support was required. Doctor Humphrey did not comment on those matters, leaving them to the psychiatrists. I consider that he was wise to do so.

128. In their two further joint reports (October and November 2023), having seen the videos and social media, the neurologists advised that the Claimant had clearly made a "good physical recovery" (Joseph), and that her walking was not compatible with neurological deficit (Humphrey). They agreed that the Claimant's energy levels were good on the videos. Doctor Humphrey advised that the social media and video evidence was very difficult to equate with what she had told the neurologists and that the Claimant must have been conscious of the discrepancies. I accept that evidence and agree with it.

They agreed that the range of explanations included conscious exaggeration. In my judgment the Claimant has consciously exaggerated and manipulated gone further, has been malingering her symptoms in relation to her right hip pain, left ankle pain, left hand/arm weakness and reduced range of movement, dizziness and her alleged back of head pain. The neurologists deferred to the psychiatrists but suggested explanations for the variability in the Claimant's presentations including: (1) significant psychiatric elements, (2) moderate neuro-behavioural elements and (1) mild cognitive deficits.

Doctor Humphrey

129. I should briefly summarise the expert's individual reports which led to the joint views. Doctor Humphrey reported twice, the first time in March 2023 having examined the Claimant in November 2022 and the second time in July 2023, after the videos and social media. I find that he was misled by the Claimant at interview for his first report as set out above. For instance, she told him she could only walk 50-100 yards with a stick. Interestingly she said she had a "permanent" headache but only lasting 2 months from September 2019. I accept that assertion, because it was partly supported by the notes. On examination he found no major communication loss, she could stand on her toes and rock onto her heels and partially crouch. He concluded that there was no evidence that her walking difficulty was neurological. Importantly, he found non-organic "give way weakness" of the left hand/arm. With persuasion it was normal. He found typical L5 nerve root sensory loss in the left leg. He opined that he was unable to explain the left sided symptoms. In his second report he advised that the videos were not compatible with significant neurological deficit. He considered that any headaches suffered more than 6 months after the TBI were not related to it. I accept that opinion. He advised that the reported chronic headaches were not related to the trauma. He saw no difficulties with the Claimant's ability to fulfil her ADLs independently. In a final letter dated 31.1.2024 Doctor Humphrey changed his view on life expectation to "full".

Doctor Joseph

130. Doctor Joseph was the first medico-legal expert to examine the Claimant. In his first report, dated May 2021, he recorded that the Claimant had suffered a severe TBI, loss of smell and some taste, headaches, reduced multi-tasking and concentration, substantial fatigue, poor sleep, dizziness, vertigo, reduced mood and personality change with dis-inhibition. In my judgment he was misled by the Claimant on many matters at that time. The Claimant told him that she rarely drank alcohol (untrue); had a complete loss of taste (it was partial); suffered frequent severe headaches from 2 months after the fall (they were new onset in September 2019); suffered migraines (these were new onset long after the fall); suffered noise sensitivity (she failed to disclose going to pop and rock concerts and pubs); short term memory loss (he was not given her employment performance reviews); could walk 100 yards then needed to stop (a lie); needed help showering (a lie); suffered left leg and right hip pain (there was no neurological or orthopaedic cause of these complaints); was unable to do domestic tasks (a lie); suffered left sided leg and arm weakness (subsequently unsupported by the neurologists in their

joint reports). On examination, she walked with a limp. The examination was not extensive. He gave the early opinion that the headaches started in hospital and were attributable to the TBI. He advised she was dependent on her mother. He diagnosed mild personality change, this diagnosis was possibly outside his field of expertise. He diagnosed mild, episodic dizziness which was positional and improving. He advised that there had been a spontaneous worsening of her spine condition unrelated to the accident. He wrote letters on 22/7/2022 and 21/8/2022 and then reported for a second time in March 2023 having re-examined the Claimant in November 2022. By the time he submitted the report he had read the MDT early reports and in particular Kevin Thomas' INA. On examination he noted reduced left arm power at 4 out of 5, reduced left hand dexterity and reduced left foot dorsiflexion at 4+ out of 5. He noted the MDT reported rapid deterioration in the Claimant's mood and suicidal thoughts after the recommended sabbatical. He took into account Doctor Zoe Fisher's neuro-psychological testing in January 2019 which showed the Claimant's cognition was undamaged, however his opinion was completely supportive of the Claimant's self-report. He did not question a thing. He diagnosed the TBI as severe, credited the left sided weakness, stating that it would be permanent, he blamed frontal lobe damage for causing: reduced ability to plan, dysfunction in expressing language, reduced executive functioning, personality change, disinhibition, endocrine problems, headaches and fatigue. He advised that the Claimant was disadvantaged on the labour market and unable to carry out chores due to apathy. He advised that the Claimant needed support workers of 15-20 hours per week and that she had reduced life expectation by 5-6 years. He advised that the Claimant had capacity but would need more care after the age of 60. He provided a letter in July 2023 and then a second report in October 2023 having viewed the videos and social media disclosure and the MDT notes from 2023. I find that report telling about his approach. He accepted that the variability of the Claimant's walking, sometimes with a stick and sometimes without, was not typical of organic causation. He noted Doctor Price's diagnosis of somatization and catastrophisation. He deferred to the Court on the issue of conscious exaggeration or malingering of symptoms. Overall, he accepted that the Claimant had made a good physical recovery but credited "subtle" left sided weakness sufficient to affect her ADL. He found it difficult to explain her "improvement" in the videos in October and November 2022. He was not convinced that the Claimant and her mother were deliberately misleading him. He deferred to the psychiatrists. He believed she suffered illness behaviour and had become dependent on her mother.

131. Having heard both Doctor Joseph and Doctor Humphrey give evidence I found Doctor Humphrey to be thoughtful and thorough (despite not being given some documents which should have been given to him earlier). Cross examination did not undermine Doctor Humphrey in my judgment. I accept his opinions and prefer them to Doctor Joseph who, in my judgment, was too accepting of the self report information given to him by the Claimant, failed adequately to cross reference it with contradictory medical notes, and later failed to tackle the videos, the social media, her employment annual

reviews and failed to consider the contradictions therein with sufficient objectivity. I take into account that Doctor Joseph's first examination of the Claimant was carried out by video despite lockdown having ended. He found it difficult to comment on the assertions of BPPV. He overlooked the December 2017 note of her pre-accident spinal pain. He accepted in cross examination that there was no neurological reason why the Claimant could not live alone. At most he supported mild, nuisance level left sided weakness due to the TBI. He accepted that the Claimant had no significant physical neurological issues. In re-examination he came up with a new explanation for her presentations: functional neurological disorder. This means no more than subconscious exaggeration and I reject that opinion produced off the cuff long after the joint reports.

Neuro-psychiatric evidence

132. The neuro-psychiatrists, Doctor Price and Doctor Poole, provided their first joint report on the 19th of May 2023, before the surveillance videos and social media records were available. They also did not see the L&G life insurance application form or the DWP records for the Claimant. They agreed that the Claimant suffered a moderately severe traumatic brain injury with some residual neurological symptoms, although they deferred to the neurologists for these, and some day-to-day dysfunction, although they deferred to the neuro-psychologists for this. As to the Claimant's psychiatric reaction, they considered that it was significant and diagnosed post-traumatic stress disorder with anxiety and depression. Doctor Price diagnosed personality changes but Doctor Poole disagreed, diagnosing irritability, depression and fatigue. They accepted that the pain was "possibly" excessive for the orthopaedic injury. Stopping there I should say that they did not summarise the orthopaedic experts' final views by that summary because the joint reports had not yet been provided. Doctor Price diagnosed a Somatic Disorder but Doctor Poole was not prepared to make that diagnosis and instead deferred to the pain experts, advising that depression can exacerbate pain. On causation they accepted that the psychiatric conditions were caused by the fall and they noted that, with multidisciplinary treatment, the symptoms had improved. For the future they advised neuro-psychiatric treatment for two years but gave different advice on how much was needed. They also advised a contingency sum should be provided for psychiatric treatment thereafter. They considered that the Claimant had capacity to litigate and they agreed that her social life had been and was impaired by fatigue and anxiety. In their second report dated November 2023 they advised having considered the surveillance videos, social media and the subsequent witness statements of fact. The key advice to this Court was that psychiatric assessment depends on self-report and so depends on the accuracy of the Claimant's statements. They agreed that it was difficult to advise accurately if the self-report is different from the actual condition of the Claimant. Turning then to the surveillance and social media, they noted the Claimant had an extensive social life, holidays, eating out, drinking alcohol and experience of living with her traumatic brain injury. They stated that there was no discernible evidence of significant physical pain or abnormal gait on the videos. Dealing with the discrepancy between the objective evidence and the Claimant's subjective accounts Doctor Price

considered the cause was largely psychological but Doctor Poole deferred to the pain experts. He accepted mood can affect perception of pain and stated the Claimant and her mother had a tendency to exaggerate. He noted the Claimant had described a markedly limited lifestyle but failed to mention the full range of activities that she had engaged in. He also noted that the Claimant was not denying the consequences of her TBI. A lack of denial showed that she was conscious and aware of the consequences of her TBI. They both agreed that they had previously formed the opinion that she was more disabled than she appeared to be. Doctor Price postulated that the variability could be caused by rigid thinking. Doctor Poole was sceptical. However, they both agreed that the Claimant is capable of work in the local area which is flexible and will probably be part time. As to the prognosis, they gave a 50% chance of further depression. They both accepted her functioning was higher than her self-report and that this undermined their confidence in their previous opinions because her impairment was less than she had stated. Doctor Poole advised it was difficult to advise on the duration of her anxiety and depression caused by the fall.

133. Turning to the individual evidence, Doctor Price first saw the Claimant in November 2022 and reported in March 2023. He diagnosed a moderately severe TBI with ongoing mobility issues, hearing issues, taste and smell issues, increased weight, dizziness, fatigue, reduced cognition, reduced memory, personality changes, irritability, lack of empathy and considered these were all due to the TBI. He deferred to the ENT experts, neurologists, pain experts and neuro-psychologists for matters within their fields. Within his field he diagnosed significant psychiatric symptoms which would need multidisciplinary team therapy for two years. He advised she would need support workers instead of relying on her mum and would need a case manager and occupational therapy. He advised that she had needed to stop work to focus on her rehabilitation and stated she was "unable to perform to her pre accident abilities at work." He advised that her physical, cognitive, behavioural and psychiatric symptoms prevented her working at her usual levels and taking part in social, recreational and domestic activities. In the body of his report he noted that there were no concerns about her performance in the employment reviews, however he noted the June 2021 welfare meeting at work which set out her problems with processing, planning, multitasking, at group meetings and her fatigue. I have dealt above with what the Claimant told him at his examination, which included lies and inaccurate information about her mobility, physical difficulties, headaches, noise intolerance, dizziness, lying down, lifting her head up or down, fatigue, forgetfulness of verbal conversations, inability to operate her own Dosette pillbox, inability to concentrate on films, anxiety and irritability. He noted that she did not drink alcohol, could no longer go to music festivals, gigs and on holiday regularly because of noise intolerance. On mental state examination the Claimant had a good rapport with him and her speech was fine but she had feelings of worthlessness, guilt and stated she had not successfully attended a party since the accident.

134. In Doctor Price's second report he considered the surveillance videos, some of the social media posts and further reports. He noted variability in her mobility and that she can go out in public. He recorded that he had agreed with Doctor Poole that the Claimant's pain was excessive for the injuries she suffered but he maintained his view that there was a Somatic Pain Disorder with an excessive focus on pain. He advised that the Claimant was catastrophising but would defer to a pain expert. He deferred to the Court on the matter of the Claimant's honesty or dishonesty. In his final report dated October 2023 he was given some more surveillance and some more reports but did not change his view.

Doctor Poole

135. Doctor Poole first examined the Claimant on the 29th of November 2022 and reported in February 2023. In his opinion the Claimant suffered a moderately severe TBI with subtle cognitive difficulties. He noted she was in a cognitively demanding role and coping well in well-rehearsed tasks, but struggling to adapt to completely new roles. He noted subjective reports of lack of sustained attention, auditory memory deficits, reduced cognitive flexibility at work and more difficulty at work in noisy environments with increased fatigue, all of which were in keeping with a TBI. However, he noted the neuro-psychological assessment of Doctor Zoe Fisher on the 31st of January 2019 showed that the Claimant was cognitively unimpaired with only subtle deficits in highly cognitively demanding tasks. He diagnosed mood problems, irritability and fatigue, when overwhelmed. He diagnosed a moderately severe depressive disorder affecting irritability, fatigue and subjective cognitive functioning. He did not state when that started. He noted negative self-belief, hopelessness, broken sleep and loss of appetite with reduced motivation and suicidal ideations. On causation, he diagnosed that the depression was caused by the TBI, her loss of her boyfriend relationship and her reduced work ability, which was her major source of identity, purpose and self-esteem. He noted a reduced ability to engage in pleasurable activities due to fatigue. He thought that the onset of headaches after the accident may not be attributable to the accident. He also diagnosed an anxiety disorder which was more likely post-traumatic stress disorder which had partly responded to EMDR treatment. He accepted that the depression, fatigue and PTSD were affecting her work ability. He accepted she could not manage her ADL without the support of her mother. He advised the cognitive impairment was more likely due to depression and anxiety than organic TBI. I set out above what the Claimant told Doctor Poole and filleted out those parts that I considered were not accepted by the Court and those parts which were lies.

136. On the 16th of July 2023 Doctor Poole reported on the surveillance videos and occupational health records of the Claimant. He advised that the video showed that the Claimant was less impaired than she had told experts. He advised that if deliberate exaggeration was the explanation that would undermine her reports of depression and anxiety and fatigue. I have found deliberate exaggeration so I accept and find that the opinions of the consultant psychiatrists are undermined by the Claimant's dishonesty.

He advised that the Claimant did not have care needs and stated that paid for care would be counterproductive for her independence. He advised she is capable of independent living and that the Claimant could return to a similar level of IT job, probably part time due to her continuing fatigue. He was not instructed to advise on the social media disclosure and only took that into account when coming to the joint report.

137. Both neuro-psychiatric experts were impressive witnesses. I prefer the evidence of Doctor Poole because I found him to be slightly more objective in his approach. However, both advised the Court that they deferred to the Court on the issue of dishonesty and that any dishonest presentation would have a significant undermining effect on their diagnoses and prognoses. I will not summarise their verbal evidence here in much detail. **Doctor Price** maintained that the TBI had more than subtle effects on the Claimant's presentation. He noted some poor interactions at work. He accepted that his diagnosis of Somatic Pain Disorder relied on excluding all other diagnoses or explanations for the pain. I have found that the Claimant is consciously feigning the left ankle pain, left sided weakness, right hip pain and dizziness so his diagnosis falls away. He accepted that the videos raised serious credibility issues. He advised that the litigation was very stressful for the Claimant and the dishonesty allegations had had a very grave effect on her. He advised that stopping work and the later loss of her job were two very significant blows to her identity and the Claimant went downhill after the videos were disclosed. He advised that once the case was over and the stressors removed, she could rebuild and her psychiatric conditions and fatigue would ameliorate.

138. **Doctor Poole** was an impressive witness. He advised that the Claimant had made a good recovery from her TBI but had remaining issues with depression, anxiety, fatigue and irritability. His prognosis was good. He advised that the Claimant should respond well after the litigation but that the fatigue would be longstanding. Her sleep should improve. Her medication needs urgent rationalisation and she is being over medicated. In my judgment his evidence was not undermined by cross examination. He considered that the Claimant is catastrophising and seeking reassurance but did not accept that the Claimant's presentation discrepancies were explained by those tendencies. He avoided commenting on her pain and left that to others. He advised that depressed persons don't change the facts of their history. He advised on the side effects of the huge range of medications the Claimant was taking which included causing headaches and fatigue. In relation to the effect of the INA and early reports by the MDT in 2022 he advised that to be told that she had a really bad TBI had wiped her out. She had been doing rather well at work, then was advised to stop and that was not helpful for her. His prognosis was that the Claimant needs to be encouraged back to independence. He did not accept that she needed lifelong support for depression and anxiety. As I have stated above, I prefer his evidence to that of Doctor Price.

Neuro-psychology reports

139. Doctor Monaci and Doctor Mullin provided their first joint report in May 2023 (before the surveillance was served). They diagnosed a moderately severe traumatic brain injury. They noted that the neuro-psychological testing of Doctor Zoe Fisher from late 2018 into late January 2019 showed the Claimant had normal cognition. They concluded that the TBI could not be the reason for the decline in the Claimant's test scores when they tested the Claimant's cognition. The likely reason was either inadequate effort or chronic pain. I accept that advice and find as a fact that the reason for the decline in neuro-psychological test scores was intentional inadequate effort. I do not accept that it was chronic pain. The neuro-psychologists disagreed on malingering. Doctor Monaci considered that inadequate effort was not consistent with malingering. I reject that opinion in this case. She gave as a reason that neuro-psychological testing focuses on cognition not social interaction and behaviour. She relied on Miss. Williams' reports of the Claimant's interactions and behaviour, on the MDT reports and other evidence and advised that the Claimant had difficulties in unstructured situations. She considered that mood, pain and reduced sleep had a negative impact on her presentation. In contrast, Doctor Mullin advised that the Claimant does not have cognitive impairment and raised the fact that the Claimant had failed performance validity and effort testing by a substantial margin. I am persuaded by Doctor Mullin's view on this and consider it supports my findings of the Claimant lying and exaggerating her symptoms. Doctor Monaci advised that the Claimant's work capacity is considerably lower and that it is unlikely the Claimant can return to full time pre-accident work. Doctor Mullin advised that the Claimant had returned to a challenging job after the accident and that with treatment the Claimant's symptoms would improve. He advised that no neuro-psychological factors affected the Claimant's ability to work. Doctor Monaci then stepped outside her field and advised on neuro-psychiatric sequelae. I treat with circumspection her evidence on neuro-psychiatric matters because that was the field of the neuro-psychiatrists, who are trained doctors, whereas Doctor Monaci is not a trained psychiatric doctor. In my judgment she should have deferred. As for activities of daily living (ADL) Doctor Monaci advised on what the Claimant and her mother told her, that the Claimant was doing no DIY or gardening, not attending music festivals, suffering reduced ability to read and go to the cinema, was not playing computer games and that her mother prepared her food for her. Doctor Monaci accepted the self-report that she struggled to drive due to ankle pain. Doctor Mullin advised that any reduction in the ADL was not due to cognitive injuries. As for care, Doctor Monaci advised the Claimant will need support with everyday life due to neuro-behavioural difficulties. Doctor Mullin deferred to the neuro-psychiatrists and I consider that he was right to do so. However, Doctor Mullin did not consider that the Claimant needed care or support workers and advised that the Claimant had learned to be helpless. He raised the fact that she had returned to work after the accident for four years in a demanding role and deferred to the psychiatrists. Whilst both neuro-psychologists commented on the Claimant's presentation in relation to anxiety, mood disorders and depression, in my judgment those were matters for the neuro-psychiatrists not the neuro-psychologists. Both accepted that the Claimant had capacity to litigate

and manage her own affairs. There was disagreement about the Claimant's need for future psychological therapy.

140. In their second report dated December 2023 the neuro-psychologists considered the surveillance videos, social media and witness statements. Doctor Monaci diagnosed an element of "functional overlay", but in my judgment that is a matter for the neuro-psychiatrists. Doctor Mullin again raised the Claimant's failure in performance testing and advised that malingering cannot be ruled out. I have already found that the Claimant has lied extensively to her treating clinicians, medico-legal experts and the Court and has malingered. Doctor Mullin advised that depression and functional overlay were not explanations for the variability on the videos. Doctor Mullin attacked the 2020 paper by *McWhirter*, relied upon by Doctor Monaci to support her opinion that failed validity tests did not indicate malingering. I accept Doctor Mullin's criticism of Doctor Monaci's reasoning and prefer his opinion on that matter. Both experts went outside their field to advise that the Claimant's depression was being exacerbated by the litigation rather than the original injuries and both gave a prognosis that with treatment and an end to litigation the psychiatric difficulties would improve. That was really a matter for the consultant psychiatrists. In relation to the detail of the videos Doctor Monaci sought to explain the variability of presentation as merely a consequence of the voluminous records. I do not find that reasoning persuasive. Doctor Mullin stated that the Claimant had given inconsistent descriptions to experts of her ADL's and highlighted her failure to mention the hen weekend in Benidorm. Doctor Monaci sought to explain the Claimant's various exaggerated or untruthful accounts by highlighting that the Claimant had told Miss. Russell in June 2023 about going to Benidorm and told Miss. Gibson in July 2023 about going on holiday to Cyprus. I consider that this was Doctor Monaci getting rather close to becoming an advocate for the Claimant. Doctor Mullin considered, in relation to causation, that the Claimant's primary difficulty was emotional and that there was minimal neuro-cognitive causation. Doctor Monaci accepted that the Claimant's cognitive impairment could not be quantified on testing because the results were not validated, but blamed reduced mood, pain and reduced sleep for the effect on her cognitive functioning, despite the videos and social media posts. Dr Monaci asserted that the Claimant's reduced ADLs, enjoyment of life and fatigue were attributable to neuro-behavioural factors. This once again was not her primary field of specialisation. It was for the psychiatrists. Doctor Mullin advised there was no neuro-cognitive impairment and the videos showed that the Claimant was less impaired than she had claimed. In relation to the prognosis Dr Mullin repeated that he considered the litigation stress was causing worsening depression and Doctor Monaci sought to advise on an increased risk of cognitive decline during any dementia years, were the Claimant to suffer dementia. In my judgment this was outside Doctor Monaci's field of expertise. She should have deferred to the neurologists. For future treatment both advised some neuro-psychological treatment, Doctor Mullin for two years and Doctor Monaci for life.

141. Turning to Doctor Monaci's report dated March 2023 arising from an interview carried out in April 2022, It was 81 pages long. She asserted she had worked as a clinical neuro-psychologist in the NHS since 2005 and "covered" the position of consultant clinical neuropsychologist for the last six years of NHS employment. Looking at her CV she qualified in Italy, finished the UK statement of equivalence programme in 2007, did a diploma in clinical neuro-psychology in Glasgow finishing in 2010 and completed a qualification for the British Psychological Society in 2011. She completed a doctorate in clinical psychology carrying out research on symptom validity at the University of Essex in 2014. She set up her expert witness business under the name Monaci Consulting Limited in 2009 and from that time forwards she provided medico-legal reports. She asserted in her CV that 60% of her work was for claimants but accepted in cross examination that the true figure was 80 to 90%. Looking at the papers she published from 2014 to 2021, many focused on malingering, functional disorders, validity testing, credibility, chronic pain, causation in medical reports, borderline capacity and the like. She asserted that she practised in the NHS currently but the CV showed posts at six different NHS establishments between 2005 and 2017 and no NHS practice thereafter. In evidence she accepted that her practice was substantially medico-legal alongside some private neuro-psychology treatment. Doctor Monaci formulated the opinion that the Claimant suffered a moderately severe TBI and had some NHS treatment which then stopped, due to work. This was not an accurate summary of the extensive treatment given by Doctor Zoe Fisher and her team or by Sam Fisher Hicks or Doctor Lynne Jones or others. Doctor Monaci found that during the test she administered, the Claimant put in inadequate effort, so the results under represented her abilities. Doctor Monaci acknowledged that from 2018 to early 2019 neuro-psychological testing found the Claimant's function was normal. She advised the decline in the Claimant's function thereafter was not due to the traumatic brain injury but more likely inadequate effort due to chronic pain, fatigue and mood disturbance. She had supported the Claimant taking a six month career break for intensive rehabilitation and had reservations about the Claimant's return to work. She advised that the Claimant was *not likely* to have a future at Admiral after rehabilitation and that the fall had drastically altered her career and that she had no social life when she was working. Doctor Monaci advised that the Claimant was struggling to drive due to her left ankle pain and it was unlikely she would return to full time work at the same level. She advised that the Claimant needed care and a case manager for the rest of her life. Just stopping there, I reject that advice. It was not sufficiently logical, analytical or objective. Doctor Monaci undervalued the Claimant's four years of work at Admiral, in a highly complex and demanding role and took at face value the Claimant's complaints of disability and lost social life without cross checking them with the chronology and the orthopaedic records. Advising a need for lifetime case management and lifetime support workers in the light of the Claimant's lack of organic cognitive deficiency caused by the TBI and her four years of substantially good work was inappropriate in my judgment. In addition, Doctor Monaci seemed unable to grasp the effect that this advice might have had on the Claimant, her self-esteem, self-confidence

and her ability to be independent. I doubt such an opinion would have been expressed in NHS practise had Doctor Monaci still been in NHS practise in 2022. Doctor Monaci administered various neuro-psychological tests and found significant emotional distress, sadness, anxiety, fear and hopelessness. Doctor Monaci noted that the Claimant failed the tests of symptom validity and accepted the tests were not a true representation. She explained this either as inadequate effort, possible over reporting or consistent with significant psychological distress, her multiple physical symptoms and cognitive problems. The defect in Doctor Monaci's approach was that it was based on an uncritical acceptance of what the Claimant and her mother had told her. Doctor Monaci assessed the Claimant's pre accident IQ at 103 and found no evidence of decline. Verbal comprehension and perceptive reasoning were average. The borderline result in working memory showed decline so Doctor Monaci accepted the earlier assessment by Doctor Doctor Zoe Fisher as more likely to be accurate. That showed no reduction in working memory. Likewise, Doctor Monaci found reduced processing at the borderline level but noted that in 2018 it was higher and the earlier result was more likely to be accurate. Doctor Monaci advised there was no reason why processing should decline unless chronic pain or possible fatigue was the reason. Her memory and knew learning capacity were found to be average by Doctor Monaci but higher in 2018 and the decline was due to inadequate effort. Likewise for language. The Claimant's visual spatial abilities were normal. I note that this undermines the Claimant's assertion that she cannot drive due to visual spatial disability. As for the Claimant's executive function, Doctor Monaci found her test results were "extremely low" but compared these with the higher results in 2018 and concluded they were due to inadequate effort.

142. In a letter dated 16th October 2023 Doctor Monaci commented on the surveillance videos. She stated that she could not rule out intentional misrepresentation but thought that the Claimant more likely had a "functional overlay". That diagnosis was not her field and she should have deferred to the psychiatrists. The videos did not make her change her uncritical acceptance of the Claimant's self report, which I found unimpressive.

143. I carefully listened to Doctor Monaci's verbal evidence. It was peppered with dissemination and long-winded explanations. In cross examination she agreed that she set up her medico-legal consultancy before she completed her qualifications. She stopped NHS work in 2017. She turns out 3-4 medico-legal reports per month and asserts she does so within 2 weeks of being instructed. She could not recall how many sets of instructions she received per annum from the Claimant's large personal injury solicitors firm. I found her evasive in that answer. She accepted that she was surprised when she learned about the Claimant engaging in Surfability but she did not change her opinion. She disseminated as to why she did not feel the videos and social media undermined her opinion. When pressed by careful and professional cross examination by Mr Blakesley she accepted she was surprised by some of the matters shown on the social media disclosure. Finally, she accepted that it appeared that the Claimant had

given her a worse account of her symptoms than the reality but watching the process of getting her to admit that was like watching counsel pushing a boulder up a steep hill. Doctor Monaci could not explain why she did not raise the DWP exaggerations (which I have found were lies) in her final opinion or report. She could not explain why she had not cross referenced the workplace reviews with her opinion. She maintained, despite her substantial publications on symptom validity testing, that the Claimant's failure to pass validity testing on her testing was not likely to be malingering. I did not find her explanation of her opinions to be persuasive on this issue. She avoided many of counsel's questions with dissemination. When challenged on the Claimant's own self-assessment that she had "smashed" her previous lack of diplomacy, Doctor Monaci said it was "difficult for me to comment" whether this showed insight by the Claimant into her TBI symptoms. I do not see why it was difficult. Doctor Monaci was happy to pass comment on matters which supported the Claimant's claim but not to balance that with objectivity. I was unimpressed with Doctor Monaci's opinion in her first report that the Claimant needed lifelong case management and 42 hours per week of care. Her answers in cross examination were equally unimpressive. When challenged on that opinion she accepted that she had just accepted everything which the Claimant had told her.

Doctor Mullin

144. Doctor Mullin carried out a range of six tests including: pre morbid function, the Weschler Intelligence test, the California Verbal learning test, the Delis Kaplan Executive Function test, the HADS and TOMM tests. On this occasion the Claimant passed the performance validity tests and Doctor Mullin found her pre-morbid intelligence to be average, her post-accident verbal comprehension and non-verbal comprehension to be average, but found her working memory to be borderline. Her processing speed was not assessable because the Claimant would not operate her *dominant right hand*. That alleged disability was unimpressive. Her memory was extremely low on test results and her executive functioning was variable but in the low average range. In his first report Doctor Mullin diagnosed clinically significant depression which emerged after her work role changed to product owner in 2021. At presentation he diagnosed an adjustment disorder, depression and anxiety but he deferred to the psychiatrists for those diagnoses and did so rightly. He referred back to Doctor Zoe Fisher's neuro-cognitive tests from January 2019 and considered she had no cognitive impairment. He took into account that the Claimant was capable of returning to work successfully in a highly skilled job. He considered that the low test results he had obtained were due to emotional distress, fatigue and pain and advised that cognitive function does not reduce over time after the initial damage caused by a TBI. He advised there was possible exaggeration by the Claimant. In relation to the prognosis, if the distress improved with treatment the prognosis would be better. He advised that the Claimant could return to work in a similar role to that which she was previously capable of, with adjustments to manage her fatigue. Doctor Mullin advised that the Claimant had received comprehensive rehabilitation from her NHS team and

deferred on the need for further rehabilitation. He advised obtaining a psychiatric report on her depression but noted she had received counselling and neuro-psychological therapy on the NHS. For the future he advised 24 sessions of neuro-psychological treatment. He did not consider she needed care.

145. In his next report, dated the 17th of July 2023, he considered the videos, social media, occupational health records and updated reports. He carried out a detailed analysis of the videos, including the long distance driving and filling up at petrol stations. He covered the Claimant's ability to go shopping, carry bags, drive in London, walk without a stick in service stations, put suitcases in car boots, pull suitcases up inclines, driving to Liverpool, walking a half a mile to his examination with a stick in a busy city centre, shopping for more than an hour after his examination, bending down beside her car, driving to shops and carrying bags in December 2022, driving and walking with no stick and watching rugby in a pub in February 2023, cleaning her car, carrying bags and platters of food with no stick in February 2023, driving to Saint Pierre country club and walking with no stick in that month. In his opinion the videos were inconsistent with her account to him and other experts about substantially restricted driving, walking and alcohol intake and high fatigue. He also advised that her behaviour at his interview was broadly inconsistent with the videos before and after his examination. He pointed out inconsistencies between the Claimant's account and her accounts to other experts. He put into context his concern about her suicidal ideations in Liverpool when he saw her shopping trip after his examination and considered it was not consistent with her presented behaviour. He concluded that the Claimant can concentrate when driving for several hours, can walk without sticks for relatively long periods, can carry objects in her left hand and enjoy social activities. He repeated that he had previously concluded that the Claimant had no care needs due to reduced cognition but had care needs due to pain fatigue and depression. He changed that opinion and advised the Court that the Claimant had no current care needs at all. In relation to ADL's he concluded that the Claimant was entirely capable of independent living and entirely capable of fulfilling her work role in the insurance industry, as she had done for several years after the TBI.

146. I listened with care to the verbal evidence of both experts. I was impressed by and accept the evidence of Doctor Mullin. I accept his diagnosis that the Claimant's cognition is not organically damaged. I take into account his prognosis that the Claimant's mood will probably improve with MDT but he defers to the psychiatrists on psychiatric factors. In cross examination he accepted that in the noisy, real world the Claimant does suffer fatigue and reduced mental functioning but would have expected this to be picked up on neuro-psychological testing. He accepted the behavioural issues were not the focus of neuro-psychological testing. He accepted that he had not taken Miss. Heyes' evidence sufficiently into account when writing his reports. I was struck by his evidence that the Claimant told him that she could not hold a pencil in her right hand. This was yet another tell tale. He stuck to his opinion that the Claimant had no care or case management needs going forwards. I accept that evidence. Taking the

above into account I accept the evidence of Doctor Mullin (subject to my findings of dishonesty) and reject the evidence of Doctor Monaci.

Pain management experts

147. The pain management experts, Doctor Law and Doctor Claxton, provided their joint report in February 2024. They agreed that the Claimant suffered the injuries listed by the other experts. They agreed that the Claimant reported to them pain in the left ankle, left leg, right hip and anterior pelvis. Doctor Law considered the Claimant was straightforward and coherent on examination. For the reasons explained above I consider that he was misled. He advised that the Claimant was unsteady on her feet and when he palpated the left ankle he found pain. He also found pain in the right trochanter over the hip and the anterior part of the pelvis and he found reduced sensation down the left leg. Doctor Claxton, on examination, found inconsistency in the Claimant's presentation because she walked unaided with a normal gait and he found no unsteadiness. He found reduced sensation down the left calf but he found no ankle pain on palpation. As to the cause of pain, they agreed that there was a neurological injury causing left leg symptoms (not their field) but there was a significant neuro-psychiatric and neuro-psychological component (not their fields either). Both agreed that any defect in the Claimant's credibility would undermine their pain opinions and Doctor Claxton deferred to the Court in relation to that. They deferred to the consultant orthopaedic surgeons on organic leg pain and organic back pain. However, Doctor Claxton advised that any leg pain was caused by her degenerate disc not the accident (not his field). As to the pelvis, he accepted that it was likely that there was some pain still caused by the fall (not supported by the experts in orthopaedics). As to the right hip Doctor Law considered there was some pain due to band snapping or trochanteric bursitis, but Doctor Claxton deferred to the consultant orthopaedic surgeons who did not so find. I reject Dr Law's opinion on the orthopaedic aspects of this case. He should have deferred. As to non-biological factors, both experts considered these were more important than organic factors and identified depression and post-traumatic stress disorders as having a negative interaction with pain. The pain experts considered that the neurologists diagnosed permanent personality change (which Doctor Humphrey did not). They summarised the ENT experts as accepting "imbalance" was caused by the fall, which is not my understanding of their conclusions. They considered the neurology experts had accepted the Claimant suffered headaches and asserted these would reduce the Claimant's capacity to cope (This was not an accurate summary of Doctor Humphrey's opinion). They did not separate out headaches caused by the accident from those unrelated to the accident or analyse the start dates. They agreed the Claimant had catastrophised and exaggerated the negative aspects of her life which would impact on her pain. Doctor Claxton deferred to the Court to decide on exaggeration or catastrophisation but agreed that litigation stresses were having a negative effect on her perception of pain. As to the pain diagnosis, Dr Law "felt" the Claimant suffered pain and he considered it had been persistent or recurrent and should be categorised as chronic pain. Doctor Claxton deferred to the Court on whether the Claimant was

genuine. If the Court accepted she was genuine then he accepted the Claimant suffered chronic neuropathic pain secondary to a disc protrusion. He also accepted some contribution to her overall pain experience caused by organic injuries ending in March 2019. However, on the balance of probabilities the Claimant's left leg pain was not attributable to the accident and would have occurred in any event. As to the prognosis Dr Law advised she had chronic pain which was unlikely to resolve. Doctor Claxton advised that the Claimant was pain free between March and November 2019 and that there was no organic cause for the hip or pubic pain and no explanation for the deterioration other than her spinal disc sequestration and stated the disc sequestration was not accident related. In any event he advised the reported improvements in her functioning in 2023 were good prognostically. In relation to care the experts deferred to care experts. Doctor Law advised that the need for care was driven by psychiatric, psychological and neurological factors. Doctor Claxton advised that the Claimant had no care needs related to the accident. He advised that it was important to focus the Claimant on independence and not to reinforce a perception of disability. In relation to future treatment both experts agreed that some pain management was warranted. Doctor Law advised that the Claimant will need ongoing surveillance of her pain management. This will be for her left leg neuropathic pain and could be delivered by her local NHS pain service. Doctor Claxton advised that, given the Claimant's disproportionate presentation, she should be de-medicalised and managed within the psychological realm. He considered there was little to be offered by pain management other than supervision of opiate medication, which should be done by her GP. Both experts advised the Claimant to return to work and to be encouraged to do so. In relation to the videos and the social media, the experts agreed that credibility was for the Court and that her activities were at odds with her narrative. Doctor Claxton noted that he saw the Claimant after the videos had been disclosed and she was not presenting with significant functional deficits then. He advised that where the videos contradicted what she had told other experts there was no pain management explanation for the difference. Doctor Law advised generally on chronic pain patients but his advice in paragraphs 61 to 62 lacked specificity for this Claimant. He descended into a complicated description of multifactorial pain management.

148. In their second report dated 9th February 2024 the pain experts looked at the but for prognosis. The advice was vague and non-specific. They agreed that most patients who undergo discectomy are unlikely to end up in a pain clinic. Doctor Claxton considered that the Claimant had suffered "failed back surgery syndrome" after the discectomy and was unable to advise the Court as to the likelihood of her presenting with that in any event. However, he then contradicted himself by saying that it is probable that the Claimant would have reported similar symptoms after disc surgery but for the index accident. He then advised that the neuro-psychiatric injuries caused by the fall probably magnified her perception of pain post the discectomy.

Doctor Law

149. Doctor Law's first report, dated July 2023, arising from an examination in May 2023 (before the videos and social media were disclosed) was 90 pages long. He set out, at length, extracts from her previous medical history in pages 36 through to 90. On examination Dr Law found she could rise and walk but was unsteady on tip toes. She had reduced movement of the right ankle which, in evidence he corrected to: left ankle. He palpated the left ankle and she complained of pain. He palpated the right trochanter and she complained of pain. Her tone was normal. Doctor Law advised that her abnormal gait put extra stresses on her joints and caused pain in her hips and limbs. He found altered L5 dermatome sensation. He summarised the reports of various other experts. He advised that the hip pain was caused by her altered gait. He accepted other factors including mood, depression and PTSD coexisted with the pain and he advised the Claimant was trapped in a vicious cycle of perceived injustice and litigation stress. Overall, he advised that the Claimant continued to suffer due to trauma, non-physical sequelae, disc herniation, the aftereffects of musculoskeletal injury and imbalance caused by non-organic factors, mood disturbance and vestibular problems. He diagnosed chronic pain within ICD 11 which he considered was genuine. He made no effort to separate out causal factors relating to the fall. He advised that causation was a matter for the Court. However, he advised the Claimant would benefit from care, assistance with DIY, gardening and adaptations to her accommodation and consideration of single level accommodation, the provision of equipment, a long term case manager, long term support workers and MDT rehabilitation. He advised that the Claimant was unlikely to return to full time work and would probably retire early and he advised it was challenging for her to return to any work.

150. I stop here to comment that in the light of the Claimant's considerable improvement with MDT treatment in early 2023 this expert's recommendation for life long care and case management were lacking in objectivity, in my judgment. So was the recommendation for consideration of single level accommodation. I also consider it an abrogation of his responsibility to avoid advising on causation relating to the tort when, at the same time he was advising the Defendant should pay for lifetime case management and care.

151. Doctor Law provided a letter dated 29th September 2023 commenting on the disclosed videos. He stated that "conscious exaggeration" may be in the range of opinion. However, he said "*such matters of veracity are not within the province of pain expertise and are matters solely and explicitly for the Court.*" He then went on to provide long and complicated explanations for a putative general patient's subjective experience of pain. He set out the Claimant's assertion of "boom and bust" behaviour lifted from her witness statements and from her treating private therapists. He described long term maladaptive patterns of movement and physical activity which, if unchecked, could result in psychological changes namely depression and disability. He stated that low mood in late 2022 could be seen as in combination with untreated chronic pain. He discussed catastrophisation. In relation to the Claimant's shopping in Liverpool with

her mother he stated: "*this may be associated with reward and such contextual factors may override any fear avoidance behaviour.*" I don't really understand what that means. He advised that chronic pain patients often describe their pain in bizarre ways. He sought to explain that the diagnosis of post-traumatic stress disorder together with her anger were commonly found to coexist with chronic pain. He noted that the Claimant's grip doubled in strength over a shortish period of time. He accepted that, from a pain perspective, the improvements in early 2023 likely showed that the Claimant's pain and function were modifiable. He later provided two further letters dated November and December 2023 in which she did not modify his opinions despite the social media disclosure and certain part 35 questions.

152. In his verbal evidence I found Doctor Law's formulation to be unhelpful and unrealistic. He was not prepared to separate out accident related factors from naturally occurring factors. He advised that the Claimant was straightforward and clear. I do not accept that opinion. When challenged in cross examination on the agreed evidence from the orthopaedic experts he said he did not go behind that. Yet in his report he had accepted her continuing complaints of pain. He just said: that is what she was feeling. He used an odd diagnostic phrase: he said the pain came from maladaptive excitability of the ankle soft tissues caused by post trauma changes in the soft tissues. He said that there were soft tissue abnormalities when he examined her. When cross examined on exactly what he did by way of examination he admitted he simply put his hand on the ankle and she said it was painful so he withdrew his hand. How that facile test could lead to his complicated theory, I do not know. I compare that with Doctor Claxton's palpation, which he demonstrated in Court, and find the latter to have been far more persuasive and thorough. Doctor Claxton found no pain. Then Doctor Law stated, without irony, that consultant orthopaedic surgeons only dealt with "bones". That displayed an arrogance and lack of understanding which I did not find persuasive. When challenged on his use of the phrase: the Claimant had neurological injury "in the left leg" he backed down and admitted the neurological injury was in the spinal nerve roots at L5, not the leg. He was taken through the many untruths told to him by the Claimant and backed away from his opinion that she was straightforward. He had not been given the DWP records so he made no mention of them in his report. He could not explain why he had omitted to mention the March 2019 orthopaedic registrar's letter recording that the Claimant had no ankle pain. He deferred on headaches. Near the end of cross examination he stated he had never seen anyone cured of chronic pain. He cautiously rejected the assertion that after the stress of the litigation is over her pain may "evaporate". He admitted that if it was true that the Claimant could only walk 20 metres in 2022 and after 6 weeks of MDT physiotherapy she could then walk up to 2 miles that would be "miraculous". I gained the impression that Doctor Law was a mere supporter of the Claimant's complaints not an independent and objective expert assisting the Court on what was caused by the accident and what was not. I did however find is descriptions of the side effects of the pill cocktail which the Claimant was taking helpful. Gabapentin creates a suicide risk and is addictive. Oxycodone is addictive, can

drive headaches, exacerbates TBI symptoms and mood disturbance. I also accept his advice that generally chronic pain is persistent and does not wax and wane. It does not disappear and reappear.

Doctor Claxton

153. If I thought other expert's reports were long they were overshadowed by the huge, 221 page report provided by Doctor Claxton on the 14th of December 2023 arising from a medical examination on the 24th of November 2023. It would be more helpful to Courts if a paginated core bundle of medical notes was provided and the expert merely referred to the bundle page number. On examination, the Claimant walked unaided into the room and her mobility was good. She was overweight. Her left foot was the same size as her right foot. On palpation of her left foot she did not describe pain. There was a reduced range of movement of the left ankle by approximately 20%. The Claimant complained of pain on deep palpation of the *left hip* (sic). Doctor Claxton deferred to the experts within their own fields. On balance, he attributed the left leg symptoms to her L4/5 disc, not to the fall. His clinical examination indicated a non-dermatomal distribution in the left leg, which would indicate a non-organic cause for the reduction in sensation. He considered the severity of her left leg pain was significantly magnified (but I comment here that if there was no pain being caused by the original injuries there would be nothing to be magnified). He could not explain why her left ankle pain had improved but then deteriorated. He could not decide on the cause for her increased complaints of pain. It was either conscious exaggeration or psycho-social reasons and the TBI. He noted she was only on paracetamol after she was released from hospital in September 2018 and moved up to co-codamol later, after the disc sequestration. He noted she did not stop her medication, despite the successful back surgery. In relation to the right hip, he noted only bruising in the accident, and he noted the clinicians' rejection of the suggestion of a labral tear after the 2019 MRI. He noted the variations in her reports of right hip pain. He stated there was no organic explanation for her reported levels of pain and considered there was a very significant psychological overlay or conscious exaggeration. He deferred to the orthopaedic experts. He could not relate the right hip pain to the accident. As for the pubic rami pain, the severity described was disproportionate to any underlying pathology and it was either conscious exaggeration or a somatization. In his conclusions, he accepted that the Claimant probably was in pain and but opined that the severity of the pain was significantly exaggerated. He could not advise on whether this was conscious or unconscious exaggeration. He advised that in all pain medicine diagnosis and prognosis are predicated on the assumption that the individual is entirely genuine in presentation. If the Claimant is found to be entirely genuine he advised that the left leg and ankle pain was caused by the disc protrusion and was not caused by the fall. He was unable to explain the right hip pain but deferred to the orthopaedic experts. He was unable to explain the right pubic pain and noted it was not mentioned on many occasions in the clinicians' notes. He deferred to the neurologists on the headaches. He advised that the Claimant is able to work full time from a pain management perspective. He advised

that the Claimant had no care needs and that her perception of the severity of her pain would in any event reduce at the end of the litigation, once the stressors were removed.

154. In cross examination he accepted that but for the TBI and depression it is likely that the Claimant would have dealt with the remaining left sided symptoms after the disc operation without suffering a chronic pain syndrome. He agreed with Doctor Law that the Claimant should reduce her medicine intake. He did not accept that the Claimant's explanation for her ability to go shopping for over an hour in Liverpool, based on taking two slow release Oxycodone tablets, made sense. He accepted that the improvement in 2023 with MDT pointed towards unconscious exaggeration more than conscious malingering. Doctor Claxton considered that the Claimant's left leg symptoms were more likely created by her L5 nerve root than the fall. On the prognosis he advised that her symptoms would improve after the litigation had finished. He found her function was good in any event when he examined her. He advised withdrawing opiate medication. He doubted that this would affect her pain perception but it would improve her cognition. I was more impressed with Doctor Claxton than Doctor Law. He did make real efforts to fillet out causation of the Claimant's various complaints.

155. Where the pain experts are not in agreement I generally prefer the evidence of Doctor Claxton. His approach to each injury was more logical and he carefully read into the notes and filleted out the matters relevant to the accident. However, because the pain expert's opinions were based on the Claimant's self-report, I consider that neither can assist me much with the diagnosis or the prognosis or causation.

Care experts

156. I shall deal with the evidence of the care experts when considering quantum.

Assessment of the expert witnesses

157. There was not much disagreement between the orthopaedic experts. Where they did disagree I preferred the evidence of Mr. Vanhegan. I accept the evidence of the neuro-radiologists. I prefer the evidence of Doctor Humprey where it conflicts with the evidence of Doctor Joseph. I do not accept their opinions on any post hospital headaches being attributable after a few months. I prefer the evidence of Doctor Poole where it conflicts with the evidence of Doctor Price. I prefer the evidence of Doctor Mullin and reject the evidence of Doctor Monaci, whom I consider became close to being and advocate for the Claimant. I accept the evidence of Miss. Laverty where she disagrees with Mr. Harlow. The ENT experts agreed on most matters. I found the pain experts could give very little assistance to the Court save to recommend reduction of opiate medication and I reject the evidence of Doctor Law.

Diagnosis, prognosis and findings on the expert evidence

158. I find that in the fall the Claimant suffered skull fractures and a moderately severe TBI. This involved substantial frontal and temporal lobe damage. She has been fortunate and

has achieved a very good recovery since the fall. Her intellect and cognition are retained intact. Her symptoms from the TBI are mainly mild to moderate fatigue, irritability, anxiety, some disinhibition, some emotional dysregulation and some mild reduction in short term memory when tired. I do not consider that the Claimant has suffered organic cognitive decline or substantial loss of the function of her memory. I do not consider that the Claimant has lost the ability to multi-task or her spacial awareness. The Claimant received high quality, long term NHS therapy and support from: Doctor Zoe Fisher and her team from 2018 to 2021, SFH, Doctor Lynne Jones, Lowri Wilkie, Port Talbot Pain Management Service and has also received EMDR. She gained, early on, good insight into her TBI, the sequelae from it and how to cope with them. She took part in TBI conferences. She also received OT, a little physiotherapy, some chiropractic therapy and joined sleep management and brain injury groups. She returned to work in a demanding, challenging and fast moving job and worked her way up to 5 days per week, 6.5 hours per day within 3-4 months. She learned new work matters and succeeded. She kept working at that level until the end of October 2022, so for 4 years. She resisted suggestions to reduce her working hours. She was good at her job, well respected and gained self-respect from being good at it. She had insight into her condition, shown by her performance reviews and her managers' assessments of her and her own self assessments 2018-2022. She did suffer fatigue during and after most working days and this did reduce her ability to work full time, take late afternoon meetings, stay out late after work and to socialise as frequently as she used to before the accident. However, the Claimant was able to enjoy regular Spa weekends, foreign holidays including foreign hen nights, beach holidays in the sun, pop and rock concerts, pub crawls, cinema nights, sing-along nights, hen nights in the UK, weddings, trips to London to see exhibitions and visits to curry houses and steak houses. I accept that she had less energy and left some social events early, but not all. The Claimant still drinks alcohol, although she has had to reduce her consumption. The Claimant can drive long distances, has full spatial awareness and good concentration. She can reverse and park with ease. She can walk her dogs on the beach, swim in the sea and in swimming pools. She can walk to work in Cardiff from the train station and can use public transport. The Claimant had mild left sided weakness which resolved within less than a year. The Claimant faces a small increased risk of epilepsy over the next 14 years. There is also a very small risk of increased severity of dementia should she suffer that in old age.

159. The Claimant suffered some headaches in hospital and some intermittently thereafter. These have not interfered with her work. She suffered new onset headaches in September 2019 through to January 2020 and again in 2021. Both were unrelated to the fall. I do not find that any migraines were caused by the TBI.

160. The Claimant's TBI and skull fractures have caused mild, left sided high frequency hearing loss and milder right sided hearing loss. I find that the Claimant suffered initial tinnitus and dizziness but these cleared up within 3 months and I do not accept that she has suffered organic balance difficulties since around December 2018. I do not consider

that the Claimant suffers noise intolerance. I do not consider that the Claimant suffers pain on the rear of her head when it is touched there, when she lies on a pillow, when she rests her head on a car seat, deck chair or sun-lounger.

161. The Claimant's fractured left ankle healed well within 8 months and healed totally within 12 months. She was walking normally and without ankle pain by March 2019. I accept that she suffered discomfort thereafter until the end of July 2019. Her complaints of pain in the ankle since then are fabricated. The Claimant can walk normally and needs no stick. The loss of sensation complaints below the knee are caused by the disc sequestration and are left over symptoms since the spinal operation. They are not caused by the fall and would have arisen in any event. I do not accept that she has a multifactorial chronic pain syndrome relating to her left ankle or right hip.

162. The Claimant's fractured pelvis caused pain for no more than 3 months. Her complaints thereafter are fabricated. The Claimant's bruised and abrased right hip did not result in symptoms after December 2018. Her complaints thereafter are fabricated.

163. The Claimant developed a sequestrated lumbar disc at L4/5 in December 2018 which become worse in January 2019 and produced quite severe left leg pain, restricted feeling and movement but was much improved after micro-discectomy in September 2019. Thereafter, any real back pain, left leg pain and altered sensation suffered by the Claimant was and is unrelated to the accident. She would have suffered it in any event. I accept some permanent altered sensation but not pain in the left leg and find that this is not related to the fall.

164. The Claimant has suffered low mood from time to time when adjusting through her therapy with Doctor Zoe Fisher, SFH, Doctor Lynne Jones and Lowri Wilkie. The disc sequestration lowered her mood between December 2018 and September 2019. I accept that she suffered mild depression and anxiety in early 2020. This worsened in early 2021 when her job specification changed and she took time off work. It worsened again when the case manager, Kevin Thomas, provided his INA in April 2022 accepting (on her dishonest self-report) that she was in a really desperate state, despite working 5 days per week, 6.5 hours per day. This was re-enforced by Doctor Monaci's report and Doctor Emma Hales' advice to give up work and this all came to a head in late October 2022 when her work was ended by sabbatical and she lost her self-esteem to a very substantial extent. She developed suicidal ideation in December 2022. This was treated urgently by Doctor Marshall before Christmas and she stabilised and slept better. I do not find that the Claimant would have taken or been advised to take the sabbatical had she presented honestly to medico-legal experts and her MDT. She responded well to her MDT therapies from January to June 2023 and she functioned much better physically and her mood lifted. I find that the Claimant has been able to function since the late Autumn of 2019 at least at the level she presented in the summer of 2023, so at

a good, normal, physical level. Then, her dishonesty was uncovered by service of the surveillance videos at the end of July 2023 and the interim payments were stopped. This led to her depression returning and deepening and to her anxiety and fear of the litigation and the trial. Her lies were uncovered by the videos and the social media disclosure. In late 2023 things looked bleak and I infer she was advised by her lawyers between July 2023 and January 2024 on the effect of S.57 and a potential fundamental dishonesty finding. In my judgment this downturn was wholly avoidable and the responsibility was the Claimant's. Had the Claimant been honest and genuine with her clinicians, the Defendant, the Court and the experts, the case would never have warranted surveillance and would probably have settled in late 2023, with a quite substantial payment and no costs penalty. In my judgment the case went to trial because of the Claimant's dishonesty and this led to her deepening depression.

165. I do not accept that the Claimant's depression is the cause of her dishonesty. None of the experts suggested that depression caused dishonesty. As for the pain experts, I accept their agreed advice that their opinions are wholly reliant on the Claimant's self-report. I do not find that the diagnosis of chronic pain syndrome can be proven alongside the Claimant's wholesale dishonesty as to her pain, dizziness and functional disabilities.

166. I have carefully considered Doctor Price's diagnosis of somatoform pain disorder. I was not provided with the ICD 11 or DSM V diagnostic criteria for that condition in the bundles. However, I do not consider that it can be justified or proven due to the Claimant's unreliable and dishonest self-report. In any event I prefer the opinion of Doctor Poole.

167. There is insufficient evidence to attribute the polycystic ovaries to the TBI. Whilst initially the endocrine symptoms were attributed to the TBI and claimed, by the end of the trial the Claimant, through her counsel, abandoned that assertion, there being no expert endocrine evidence before the Court.

Prognosis

168. The prognosis for the Claimant's left ankle, right hip and pelvis reflects the diagnosis. The accident is not the cause of any continuing pain symptoms and has not been for years. The only relevant symptoms continuing now are as follows. The effects of the TBI which are mild-moderate fluctuating fatigue, irritability, mild anxiety, mild memory dysfunction when tired, some mood disturbance and mild loss of planning ability when tired. These symptoms can be ameliorated by memory aids and prompts, adjustments at work, a reduced social life, less alcohol, a lot less pain killing pills, following sleep management advice and careful time management.

169. As for the depression, in my judgment, if the Claimant had not been dishonest, the MDT therapy would have been successful a year ago. The depression and anxiety would have

been slowly fading away. The July 2023 down turn, caused by the disclosure of the video would not have occurred. I consider that the Claimant would have been back at work with Admiral from the September of 2023 at the latest, in part time work, earning the appropriate wage for a technology analyst. She would probably have been working 32.5 hours per week.

170. The Claimant's symptoms of altered left leg sensation are not related to the accident. Her hearing loss will require hearing aids for life. She should have been able, had she been genuine, to live independently since mid 2019.

The Law on fundamental dishonesty

171. S.57 is set out below:

> "**S. 57 Personal injury claims: cases of fundamental dishonesty**
>
> (1) This section applies where, in proceedings on a claim for damages in respect of personal injury ("the primary claim")—
>
> (a) the Court finds that the Claimant is entitled to damages in respect of the claim, but
>
> (b) on an application by the Defendant for the dismissal of the claim under this section, the Court is satisfied on the balance of probabilities that the Claimant has been fundamentally dishonest in relation to the primary claim or a related claim.
>
> (2) The Court must dismiss the primary claim, unless it is satisfied that the Claimant would suffer substantial injustice if the claim were dismissed.
>
> (3) The duty under subsection (2) includes the dismissal of any element of the primary claim in respect of which the Claimant has not been dishonest.
>
> (4) The Court's order dismissing the claim must record the amount of damages that the Court would have awarded to the Claimant in respect of the primary claim but for the dismissal of the claim.
>
> (5) When assessing costs in the proceedings, a Court which dismisses a claim under this section must deduct the amount recorded in accordance with subsection (4) from the amount which it would otherwise order the Claimant to pay in respect of costs incurred by the Defendant.
>
> (6) If a claim is dismissed under this section, subsection (7) applies to—
>
> (a) any subsequent criminal proceedings against the Claimant in respect of the fundamental dishonesty mentioned in subsection (1)(b), and
>
> (b) any subsequent proceedings for contempt of Court against the Claimant in respect of that dishonesty.

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

(8) In this section—

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

"claimant" includes a counter-claimant and "defendant" includes a defendant to a counter-claim;

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

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

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

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

172. In *Cojanu v Essex* [2022] EWHC 197 (QB) I summarised the necessary steps to consider in a S.57 case as follows:

> "47. … there are 5 steps to be taken by a trial judge when faced with a defence under S.57 before a finding can be made of fundamental dishonesty:
> i) the S.57 defence should be pleaded;
> ii) the burden of proof lies on the Defendant to the civil standard;
> iii) a finding of dishonesty by the Claimant is necessary (more on this below);
> iv) as to the subject matter of the dishonesty, to be fundamental it must relate to a matter fundamental in the claim. Dishonesty relating to a matter incidental or collateral to the claim is not sufficient;
> v) as to the effect of the dishonesty, to be fundamental it must have a substantial effect on the presentation of the claim.
> …
> "49. I take from this ruling that the test for the trial judge to apply when considering making a finding of dishonesty is:
> (A) firstly to find on the evidence as a fact what the Claimant's state of mind was at the relevant time on the relevant matters; and
> (B) secondly to apply an objective standard to decide whether the Claimant's conduct was dishonest as alleged. Therefore my step (iii) above has two parts to it: A & B."

173. I should clarify that I used "should" not "must" in the pleading ruling. Subsequent authorities have polished the pleading point. S.57 can be raised late in the day, even if

there is no pleading, if it has reasonably only arisen late. In this case the assertions of fundamental dishonesty were set out clearly in the Defendant's counter schedule. The burden of proof lay on the Defendant and I consider that it has been satisfied by the Defendant in relation to the specific findings of the lies I have set out above. Those covered conscious gross exaggeration and fabrication of the true duration and/or extent inter alia of: (1) her left sided hearing loss, (2) her disability when walking, (3) her noise intolerance, (4) her dizziness and balance issues, (5) her fatigue, (6) her lack of spatial awareness, (7) her ankle pain and range of movement, (8) her left sided hand grip and alleged weakness, (9) her cognitive disability, (10) her memory and cognitive functioning, (11) her light intolerance, (12) her back of head pain, (13) her ability to shower alone, (14) her foreign travel, (16) her ability to socialise and her consumption of alcohol, (17) her ability to drive long distances, (18) her need for help with ADL, (19) her headaches. Overall, I find that the Claimant has presented her function and disabilities to clinicians, medico-legal experts and the Court dishonestly. The effects of this dishonesty on the claim have been substantial and fundamental. It has led to the experts instructed on her behalf making recommendations for care and case management in the past and in future which were and are far in excess of her actual needs caused by the accident. The claim for care was pitched at around £1 million. Some experts recommended care and therapies for life. The dishonesty has led to the cost of surveillance, multiple supplementary medical reports, disclosure applications and the need for a 2-week trial. It has substantially affected the presentation and preparation of both the claim and the defence. I consider that in law these matters are fundamental to the claim.

174. I consider that the lies in the L&G insurance form and the DWP applications were collateral, so were not fundamental, to the claim, but they proved to my satisfaction that the Claimant was a regular liar when financial benefit to her was the objective. As a result, the claim must be dismissed under S.57 unless I am satisfied that the Claimant would suffer substantial injustice (SI) if the claim were dismissed. So, what does that mean?

Substantial injustice

175. In *London Organising Committee of the Olympic and Para Olympic Games v Sinfield* [2018] EWHC 51, (*LOCOG*) Knowles J. ruled as follows.

> "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."

176. In *Woodger v Hallas* [2022] EWHC 1561 (QB), at para 49, Knowles J. stated:

> "49. Counsel on this appeal were unable to refer me to any case which has defined the meaning of 'substantial injustice'. I was not wholly surprised by that. To paraphrase US Supreme Court Justice Potter Stewart in *Jacobellis v Ohio* 378 US 184, 197 (1964), county court judges will generally, 'know it when they see it'.

177. The principle to be applied is that fundamental dishonesty will result in the Claimant losing her genuine damages. This penalty is intended by Parliament. So, the starting point is that a dishonest claimant is not suffering an injustice per se by being deprived of his/her genuine damages. Once fundamental dishonesty has been found by the Judge then the Court must consider whether the dismissal will cause SI. However, trying to identify whether dismissing a claim for damages with a properly assessed genuine quantum of say £600,000 would cause any or even a substantial injustice to a claimant, whilst ignoring the very dismissal which is the only operative cause of any potential injustice, is imposing a blindfold on the Judge which the Act itself does not impose. I do not understand how a Judge will know injustice when she/he sees it, with the blindfold put on. If that is what Knowles J. was saying then I respectfully do not agree with his ruling on the interpretation of SI. The plain words of the Act tie the responsibility to assess any resulting SI to the dismissal of the claim. In my judgment it is the dismissal of the claim for damages that is the trigger for the analysis of whether a substantial injustice will occur if no damages are awarded. One cannot ignore the very thing which S.57(3) takes away when considering the injustice of the taking away. I accept, of course, that the aim of the section is to punish dishonesty by the dismissal of the claim. But this is tempered by Parliament's inclusion of S.57(2). This section gives the Judge discretion which, is to be exercised fairly and only if a threshold with two parts is reached. Part one is a finding of injustice to the Claimant. Part two is a finding that the injustice is substantial.

178. I consider that the correct approach when deciding whether a substantial injustice arises is to balance all of the facts, factors and circumstances of the case to reach a conclusion about SI. The relevant factors in my judgment are all of the circumstances and include:
(1) The amount claimed when compared with the amount awarded. If the dishonest damages claimed were small or moderate compared to the size of the assessed

genuine damages which were substantial or very substantial this will weigh more heavily in favour of an SI ruling.

(2) The scope and depth of that dishonesty found to have been deployed by the claimant. Widespread and gross dishonesty being more weighty against SI than moderate or minor dishonesty.

(3) The effect of the dishonesty on the construction of the claim by the claimant and the destruction/defence of the claim by the defendant. This would be measured by considering all matters including the costs consequences of the work done in relation to the dishonesty compared with the work done had there been no dishonesty.

(4) The scope and level of the claimant's assessed genuine disability caused by the defendant. If the claimant is very seriously brain injured or spinally injured, then depriving the claimant of damages would transfer the cost of care to the NHS, social services and the taxpayer generally and that would be more unjust than if the claimant had, for instance, a mild or moderate whiplash injury. The insurer of the defendant (if there is one) has taken a premium for the cover provided. Why should the taxpayer carry the cost?

(5) The nature and culpability of the defendant's tort. Brutal long term sexual abuse, intentional assault or drug fuelled, dangerous driving being more culpable than mere momentary inadvertence.

(6) The Court should consider what the Court would do in relation to costs if the claim is not dismissed. The Judge should ask: will the Court award most of the trial and/or pre-trial costs to the defendant in any event because fundamental dishonesty has been proven? Also, will the claimant have to pay some or all of his/her own lawyers' costs out of damages if the claim is not dismissed? These both aim towards answering the question: "what damages will be left for the claimant after costs awards, costs liabilities and adverse costs insurance premiums are satisfied?" If the genuine damages to be received by the claimant will be substantially reduced or eradicated by the adverse costs awards, then it is less likely that SI will be caused by the dismissal.

(7) Has the defendant made interim payments, how large are these and will the claimant be able to afford to pay them back?

(8) Finally, what effect will dismissing the claim have on the claimant's life. Will she lose her house? Will she have to live on benefits, being unable to work?

I will consider these matters below after assessing the quantum of the genuine parts of the claim.

Quantum

179. **Pain and suffering.** I consider that a reasonable award for the Claimant's pain, suffering and loss of amenity from the TBI falls into the Judicial College Guidelines of October 2023, (JCG) section for brain injuries described as moderate, section A (c) (iii):

> "Cases in which concentration and memory are affected, the ability to work is reduced, fatigue may be a feature, where there is a small risk of epilepsy, and any dependence on others is very limited. There may nonetheless be vestibular symptoms and an effect on senses. £52,550 to £110,720.

180. In relation to depression the JCG state:

> "**Psychiatric Damage Generally**
> The factors to be taken into account in valuing claims of this nature are as follows:
> (i) the injured person's ability to cope with life, education, and work;
> (ii) the effect on the injured person's relationships with family, friends, and those with whom he or she comes into contact;
> (iii) the extent to which treatment would be successful;
> (iv) future vulnerability;
> (v) prognosis;
> (vi) whether medical help has been sought.
> (a) Severe: …
> (b) Moderately Severe: In these cases there will be significant problems associated with factors (i) to (iv) above, but the prognosis will be much more optimistic than in (a) above. While there are awards which support both extremes of this bracket, the majority are somewhere near the middle of the bracket. Cases involving psychiatric injury following a negligent stillbirth or the traumatic birth of a child will often fall within this bracket. Cases of work-related stress resulting in a permanent or long-standing disability preventing a return to comparable employment would appear to come within this category. £23,270 to £66,920
> (c) Moderate: While there may have been the sort of problems associated with factors (i) to (iv) above there will have been marked improvement by trial and the prognosis will be good. Cases of work-related stress may fall within this category if symptoms are not prolonged. £7,150 to £23,270"

181. I consider that the depression, PTSD and anxiety caused by the fall, but not caused by the dishonesty, fall into the moderate category.

182. For the hearing loss, in my judgment, the correct JCG bracket is: "Slight or occasional tinnitus with slight NIHL": £8,890 to £15,370.

183. The ankle injury is properly placed into the category (d) headed "modest injuries" attracting awards up to £16,770. In my judgment, had this been the only injury, a reasonable award would have been £7,500.

184. I take into account that inflation has been running high in the last 5 months since publication of the JCG and in the months between the figures being fixed and publication. The proper awards for the fractured ankle, the fractured pubic rami and the PTSD, depression and anxiety are to be encompassed within the main award and the depression, hearing loss and fatigue overlap with the TBI. The psychiatric sequelae were fluctuating up to moderately severe for this Claimant but should have resolved by mid 2023 in my judgment and were prolonged by her dishonesty and the discovery of it by the Defendant's surveillance. From late July 2023 I consider the downward spiral of her mental health was not caused by the Defendant's tort. It arose from the service of the evidence leading to the uncovering of her dishonesty. I consider that an award of **£100,000** is appropriate for the Claimant's genuine pain, suffering and loss of amenity.

PAST:

Loss of earnings

185. I consider that the Claimant is entitled to past loss of earnings for her time off work after the accident, then a build up on return to work and then the 17.7% reduction in her working hours from the date of her return to work. The time off for her spinal disc issue is not relevant. Thereafter the loss continued at the 17.7% reduced level up to the date of trial. I do not consider loss is awardable from when she stopped work in October 2022. Had the Claimant presented her disabilities honestly, in my judgment she would probably not have caused Kevin Thomas, Doctor Emma Hale and Doctor Monaci to have advised her to take a sabbatical. Had they been more discerning at checking Doctor Zoe Fisher's and the other treating clinicians' clinical notes they might have been more diffident about advising the Claimant to stop work, but they were misled by the Claimant and her mother into accepting a very high level of asserted disability in April-June 2022, which I have found was mainly fabricated. I find that but for the fabrication the Claimant would have continued in work at Admiral part time (at around 77-80%) and would not have taken a sabbatical. Therefore, the correct past loss from October 2022 to date relates onto to the 17.7% reduction in her hours from 39.5 to 32.5. At the time of the fall the Claimant earned £34,000 gpa (£27,559 npa). The claim is premised on a promotion to solutions architect or senior technical consultant around the 2019 appraisal at a salary of £60,000 gpa (£46,339 npa). Rising by 3% pa thereafter to trial. The Defendant admits the pre-fall salary and adds inflation to trial. I consider that the better way to calculate the loss (because of the dishonesty) is to look at the end of year pay slips and calculate the 17.7% loss of net income (net tax and NI) due to her reduced hours.

Period	gross actual pay	net pay	lost 17.7%
31/7/2018 – 31/3/2019	41,596	32,548	1,600 gross 1,248 net
(the Claimant received full pay until February 2019)			
1/4/2019 – 31/3/2020	36,355	28,633	6,158 net*
1/4/2020 – 31/3/2021	45,359	35,819	7,703 net
1/4/2021 – 31/3/2022	45,297	36,155	7,775 net

1/4/2023 – 31/3/2024 - - 8,164 net
(Claimant took time off and then a sabbatical so I use the figures from the year before and update for inflation by 5%)
total loss: **£31,048**

* some of this loss in this year was from the disc but I am unable to calculate it using this method.

186. I consider that the Claimant would have been promoted to systems architect by April 2024. I will deal with that below.

Gratuitous care

187. Whilst I accept that the Claimant needed a considerable amount of care from her mother for the first 4 months after the accident and I take into account the evidence of Miss. Gibson, the Claimant's care expert, in valuing the hours of past care, I do not accept that thereafter the Claimant needed anything like the input set out in Miss. Gibson's care report. I accept a need for gratuitous care for no more than a total of 12 months during which period the Claimant's ankle and pubic rami symptoms were orthopaedically caused and whilst the Claimant was adapting to her TBI.

188. I listened carefully to the evidence of both care experts and took into account their relative experience. I have read their reports. Miss. Russell is an OT. She has no qualifications as a brain injury case manager and had no experience of organising care packages for brain injured victims or being a case manager for brain injured victims. She admitted this in cross examination. I do not consider that she should have been stepping outside the boundaries of her professional OT experience and advising the Court on care packages, past or future, with no such experience. Her expertise was in equipment provision. Her assertion that she had case management expertise because she had seen others arrange care packages in MDT meetings is wholly unsatisfactory. I reject Miss. Russell's opinions on care because she is not a care expert. I take into account that Miss. Gibson did not assess care on the basis that the Claimant's presentation was fundamentally dishonest. I award a general sum for past gratuitous care of £10,000. That is based on 4 months of care provided initially at an intense nursing level in September through November 2018 and reducing to January 2019 when the Claimant moved back home. Thereafter, I accept that Miss. Williams has provided support and reassurance. Miss. Williams also attended many medical appointments with the Claimant but those sound in costs. Furthermore, I do not consider that Miss. Williams' evidence was reliable. Any past gratuitous care will be held on trust for her and I take that into account. However, she never corrected the Claimant's dishonesty and was integrally bound up in misrepresenting her disabilities to medico-legal experts. I do not consider that it would be right to award gratuitous care after the end of July 2019. **Total: £10,000**.

Travel

189. I do not consider that the tort caused the need to purchase the Motability car. The Claimant managed with her own manual shift Ford for 4 years. I do consider that the Claimant's train fares to work were caused by the tort because she was working reduced hours so the car share did not work for her. I award a proportion of those deducting some for her petrol costs of the car share which would have been incurred anyway. I award £1,500. I allow the Defendant's admitted figure of £1,924 for petrol and car depreciation for travel to and from treatments, which was or should have been in her Ford. **Total £3,425**.

Rehabilitation in 2023

190. In my judgment the Claimant received high quality NHS treatment and rehabilitation from Doctor Zoe Fisher, SFH and their teams. Had the Claimant presented genuinely throughout she would not have needed much final private physical rehabilitation, only further psychiatric and some neuro-psychological treatment. I allow some of Doctor Emma Hale's fees, Doctor Marshall's fees and a small physiotherapy top up in 2023. I do not consider that the Claimant needed a support worker, OT or longer term physiotherapist.

Item claimed	sum claimed	sum allowed
Counselling 2019-2020	80	80
Chiropractor 2019-2021	306	120
St Joseph's various 2018-2023	1,888	160 (ENT only)
OT 2022-23 (Lerwell)	not totalled	0
Neuro-psychol 2023 (Hale)	not totalled	5,000
Neuro-psych 2022-23 (Marshall)	not totalled	6,000
Physio 2023 (Lewis)	not totalled	750
Sub total		**£12,110**

Misc expenses

191. The Claimant claims for accommodation adaptations (new driveway), damaged clothes and hair loss items. I award £**1,275** as admitted in the Defendant's counter-schedule. I do not consider that the new driveway was necessary as a result of the injuries caused by the tort.

Case management

192. I do not consider that the Claimant required much case management as a result of the Defendant's tort. Her symptoms were managed by the NHS. By the date on which liability was settled I consider her physical state was good and she had been in work for 3.5 years. She was performing well. She had considered reducing her work hours further but rightly decided not to do so. I consider her fatigue, irritability, depression, anxiety and behavioural challenges needed some further psychiatric and neuro-psychological run off treatment but she needed limited case management. I shall allow **£3,000** for case management to set up and run the psychiatric and neuro-psychological treatment and limited neuro-physiotherapy in 2022/3.

Support worker

193. The Claimant lived with her mother until January 2019. Then she lived at her home. I do not consider that the Claimant has discharged the burden of proof that she needed a support worker in 2022-2023. The dishonesty about her presentation has undermined her ability to evidence the real level of her depression, anxiety, fatigue and her genuine resulting reduced ADL functioning. I find that her PTSD was substantially cured by SFH and Miss. Wilkie through therapy and EMDR. I do not accept that the Claimant was unable to keep her house clean. Nor do I accept she was unable to cook or walk her dogs after March 2019. The Claimant's capabilities at work, the January 2019 cognitive assessment, the orthopaedic evidence, the neurological evidence and the unrelated disc degeneration and operation do not support the asserted disability in 2022 being due to the tort. I allow no sum. Total: zero.

Aids and equipment

194. I do not consider that the tort caused the need for a hot tub. The medical evidence does not support it either. I award the items admitted in the counter-schedule. Total: **£592.**

PIT

195. I do not consider that the Claimant lacks the capacity to run her affairs. I understand the Claimant's emotional dysregulation before the trial relating to her dishonesty made decision making erratic intermittently. I do not consider it will continue after the trial and prefer Doctor Poole's and Doctor Mullin's evidence on capacity. In any event, no PIT has been set up so there is no past expense. I make no award.

FUTURE

Loss of earnings and pension

196. This head of loss is the largest part of the claim and rightly so. I accept that the Claimant's capacity to earn is reduced by the TBI. But for the injury I accept that the Claimant would have reached systems architect level by April 2024. The claim is pleaded at £67,530 gpa (£51,596 npa) in that role. The date of further claimed promotion is uncertain and I do not accept that the Claimant would have obtained it. The Defendant contended for a but for net income of £30,000. I do not consider that values the Claimant's technical skills as highly as the market would have done.

197. **But for earnings.** The Claimant's Schedule set out two different loss of earnings multipliers. The Claimant used 31.38 in the future loss of earnings calculation (35.66 x 0.88), but on page 3 used the base multiplier to age 68 of 35.21 and discounted it for contingencies by 0.84, producing a multiplier of 29.58. I consider that the Claimant is a level 3 achiever when considering the discount, which should therefore be 0.88 not 0.84. In any event, I consider that the Claimant would have retired before 68 for the reasons set out in the paragraph headed "but for" above. I shall use a loss of earnings

multiplier to 65 of 32.69 (from table 10). Thus, I consider that but for the injury she would roughly have earned £51,596 x 32.69 x 0.88 = £1,484,272.

198. **Residual earning capacity**. I consider that the Claimant is disabled within the relevant definition. That definition, for the Ogden Tables, has three parts:

(1) The disability lasts over a year; and
(2) The activities of daily living (ADL) test set out in the *Disability Discrimination Act 1995*, S.1 is satisfied. That states:

> "1. Meaning of "disability" and "disabled person".
> (1) Subject to the provisions of Schedule 1, a person has a disability for the purposes of this Act if he has a physical or mental impairment which has a substantial and long-term adverse effect on his ability to carry out normal day-to-day activities.
> (2) In this Act "disabled person" means a person who has a disability." And,

(3) The effects of the impairment limit the kind of paid work or the amount of work which the Claimant can do.

It is clear to me that steps (1) and (3) are satisfied. The Defendant submitted that the Claimant does not satisfy the ADL test in step (2). I consider that the Claimant's fatigue and anxiety, mild hearing loss, reduced cognitive effectiveness in busy or noisy environments, combined with her modest behavioural dysfunction/disinhibition does have a substantial and long-term adverse effect on her ability to carry out normal day-to-day activities. It slows her up. It also reduces her social life. Things take her longer. She will have more fallings out with friends and suppliers. However, she is borderline on this test so I will cross check it with another method of calculating damages.

I consider the Claimant's residual earning capacity over her working life will average 20% lower than her but for capacity, so I find it is £41,277 npa. I consider that the Claimant should have been still in work at Admiral now, had she presented genuinely to her MDT team in April-June 2022, so the discount on the multiplier should be based on a disabled, level 3 female, in work aged 33, which is 0.59. Thus, the Claimant's residual earning capacity is £41,277 x 32.69 x 0.59 = £802,689. The Claimant's future loss of earnings award will be**: £681,583** (£1,484,272- £802,689). As a cross check, working on the basis that the Claimant does not come within the ADL disability test, if I take the £10,319 net loss per annum and multiply it by her loss of earnings multiplier of 32.69 x 0.88 the total loss would be £296,849. That is less than half of the total under the more modern method categorising her as "disabled". But the multiplier used in the older standard approach only takes into account mortality risks, not employment market and other risks including the risk that a part time IT worker would be more likely to lose her job before a full time one and less likely to gain a new job than a full time one.

Thus, the rough figure of £400,000 would have been more appropriate on the non disabled basis.

Care and case management

199. I do not consider that the Claimant needs future care or case management due to the fall and the TBI. Her current state of psychiatric dysfunction is, in my judgment, caused by depression, anxiety and fear over the trial and the lead up to it, which was caused by her fundamental dishonesty. If the Claimant had presented genuinely since mid 2019 she would not have been advised to take a sabbatical, would not have lost her job, would be finished with her MDT and would be in work with a large settlement sum in the bank now. I do not accept the evidence of Miss. Gibson, which was based on the Claimant's and her mother's self-report to her and others. The claim for childcare was abandoned during the trial. Award: zero.

Therapies

200. The ENT experts agree that the Claimant needs her hearing aids because of the TBI. Both agreed their figures were within a range of reasonable figures. I accept that by age 70 the Claimant would probably have required hearing aids in any event. I award £25,000, which is slightly more than the Defendant's expert's figure and less than the Claimant's. I accept that there will be occasions during her life when she will need top up psychiatric assistance and neuro-psychological assistance. I award £2,000 for psychiatric treatment as claimed and £4,320 for neuro-psychological treatment (24 x £180). The physiotherapists agreed £4,500 of neuro-physiotherapy and I award that. They also agreed £599 for equipment. I award that. I do not consider that the rest of the claim for physiotherapy or OT was made necessary by the tort, nor the vocational therapy, nor the pain management, nor the dietician, nor the tinnitus retraining. I do not consider that the burden of proof was discharged by the Claimant on any of these claims. **Total: £36,419.**

Future aids and equipment.

201. I allow £30 for memory aids. I do not consider that the Claimant proved the need for air-conditioning arose from the tort, nor the safety alarm. As for DIY, I do not consider that the Claimant is incapable physically or mentally of painting, or doing standard domestic DIY or gardening. **Total: £30.**

Conclusions

202. This is the table of my awards for the genuine injuries suffered by the Claimant as a result of her fall.

Item number Heading	Claim £	Defendant £	**Award £**
A. GENERAL DAMAGES			
1 General damages	180,000	Up to 120,000	100,000
1a Interest (4.02%	9,498)	6,336	4,020

Total general damages	169,356	Up to 126,336	**104,020**
B. PAST LOSSES INCLUDING INTEREST			
2 Past loss of earnings	118,674	21,294	31,048
3 Gratuitous care	106,414	43,619	10,000
4 Travel and transport	9,171	3,381	3,425
5 Rehabilitation, therapies	57,317	56,998	12,110
6 Miscellaneous	4,579	1,275	1,275
7 Case management	20,789	20,789	3,000
8 Support	13,626	8,711	0
9 Aids, equipment	6,075	617	592
10 PI trust	1,560	0	0
Subtotal	338,206	156,685	60,450
Interest on past loss at 3.15% to 20.11.2023 So to end March 2024 = 4.15%			2,509
Total Past loss and expense			**63,959**
C. FUTURE LOSSES			
11 Loss of earnings, pension	1,578,748	60,000 or 235,356	681,583
12 Care, Case management etc	1,028,353	0	0
13 Childcare contingency	72,149	0	0
14 Therapies	246,469	34,081.50	36,419
15 Aids, equipment, services	73,205	30	30
Subtotal	2,998,924	91,115 or 269,468	**718,032**
Grand total A+B + C at 100%	£3,526,628	Up to 374,135 or 552,488	**895,011**
Liability at 66.67%	£2,352,261	Up to £259,174 Or £367,957	**£596,704**

Substantial Injustice

203. I have set out above, at length, how I have found the Claimant to have been fundamentally dishonest in her claim. In relation to substantial injustice (SI), the evidence served by the Claimant from herself, Doctor Marshall and the Claimant's mother was to the effect that if I find fundamental dishonesty the Claimant will commit suicide. This was sworn to in two witness statements dated March 2024 and one expert's witness statement. No witness was cross examined on these statements other than Miss. Williams on the financial aspects of an SI finding. The contents of the SI witness statements were not agreed. The Claimant asserted she would do so because she would not be able to pay for the MDT therapy she asserts she needs or to repay the interim payment of £75,000. Doctor Marshall asserted that the NHS would not provide the same level of care to the Claimant as private services would. He asserted that the Claimant's mental health deteriorated after July 2023 (when the videos were served). He warned that the Claimant was developing psychotic symptoms in December 2023.

He advised that there is a significant risk of the Claimant succeeding in committing suicide. He will put in place measures to prevent that happening with her GP, which may include admission to a mental hospital. When the draft of this judgment is handed down to counsel for correction of typing errors, these safety measures should be triggered.

204. Whilst this evidence is deeply troubling, the focus of the Claimant's witness statement was the money. The focus of Doctor Marshall's was what he called the Claimant's alleged core values of honesty and the risk of her injuring herself. I take into account that the Claimant has never attempted suicide. I consider that I cannot take into account the threat of or the risk of suicide when making the decision on fundamental dishonesty. However, I do consider that these are relevant to the SI issue.

205. For the decision on SI I shall take each relevant factor in turn. (1) The amount claimed when compared with the amount awarded. The Claimant sought £2.5 million and recovered just under £600,000. The difference is not outside the usual bounds of claims and awards in personal injury claims, however the dishonest parts of the claim inflated the damages sought by over £1 million. (2) The scope and depth of the dishonesty found to have been deployed by the Claimant. The scope of the Claimant's untruths was wide. They related to her asserted pain, her ADL, her social life, her physical disabilities and her mental disabilities. The level of dishonesty was high in my judgment and was for financial gain. The Claimant told ancillary untruths to the DWP and the life insurer L&G for financial gain alongside her many fundamental untruths to this Court, her treating clinicians and the experts. (3) The effect of the dishonesty on the construction of the claim by the Claimant and the destruction/defence of the claim by the Defendant. I consider that the Claimant's dishonesty had a very substantial effect on the trial, on the preparation for the trial and on the evidence relating to the claims for case management, care, therapies, loss of earnings and the figure for pain and suffering and loss of amenity. It also led to many more experts' reports. (4) The scope and level of the Claimant's assessed genuine disability caused by the Defendant. The Claimant is moderately severely brain injured but has made a very good physical and cognitive recovery. Depriving the Claimant of damages will not transfer much, if any, cost of care to the NHS, social services and the taxpayer generally. In my judgment she can work and live independently. (5) The nature and culpability of the Defendant's tort. The Defendant's tort was at the lower end of the culpability scale. The pier had stood in the state it was in for years with no previous accidents. (6) The Court should consider what the Court would do in relation to costs if the claim is not dismissed. If I were to find SI, I would almost certainly award the trial and pre-trial costs to the Defendant in any event because fundamental dishonesty has been proven. These costs may be very substantial considering the size of the Defendant's costs budget. I have, of course, not seen any Part 36 offers, but the fundamental dishonesty will have an overarching effect on the costs orders which usually flow from Part 36 offers. The Claimant would most likely have to pay some of her own lawyers' base costs and success fees out of damages

if the claim is not dismissed because of my probable adverse costs orders against her. What damages will be left for the Claimant after adverse costs awards, her own lawyers' costs and insurance premiums are satisfied? Will her adverse costs insurance cover fundamental dishonesty? I doubt it, but have not been shown any policy. In my estimation the genuine damages to be received by the Claimant will be reduced (or potentially eradicated) by the adverse costs orders and the standard terms of her own CFA (which I have not seen but which usually entitle the lawyers to recover their costs on recovery of any sum in damages). It would have assisted the Court if I had been shown the CFA and the adverse costs insurance policy for the SI issue. (7) Finally, what effect will dismissing the claim have on the Claimant's life. I am unsure what the effect will be on the Claimant's life. I consider that she is capable of work, physically and mentally, from the perspective of the injuries caused by the Defendant. I take into account the evidence of the Claimant's suicidal ideation. I consider that the Claimant's current unstable state of mental health has been caused by her own dishonesty. The advice she received to take a sabbatical and later, to give up work, was likewise so caused. The Claimant was in work until October 2022. In my judgment her stopping work was not caused by the tort. I am unclear whether the dismissal of the claim will lead to the Claimant being unable to repay her mortgage. She paid part of it off out of the £108,000 she received from an insurance policy after the fall. She should be able to afford the reduced mortgage repayments if she gets back to work. She has minimal savings.

206. I consider that requiring the Claimant to repay the £75,000 of interim payments could, when combined with dismissal of the claim, be an injustice to the Claimant because she would then be homeless, jobless, depressed and suicidal. In closing submissions the Defendant pointed out that this Court could refuse to order repayment of the interim payments under CPR Part 25. No application for a repayment order was made by the Defendant. I consider that the interim payments should not be repaid because that would probably mean that the Claimant would lose her home. On the basis that the interim payments are not to be repaid, I can now balance the remaining factors. This Claimant maintained before trial, in open Court and in her last served witness statement, that she had never lied during this claim. I take into account the wide scope and considerable depth of the Claimant's fundamental dishonesty in the claim, compared to the low level of culpability of the Defendant (the Defendant company was also only 2/3rds to blame on liability). I take into account the large sums which would be taken out of the Claimant's damages by adverse costs orders if damages are awarded. I further take into account the excellent recovery which the Claimant made from the injuries with high quality NHS treatment both at hospital and for years afterwards. On balance, I do not find that it would be a substantial injustice to dismiss the claim. I know it looks like a large sum of money to deprive a genuinely injured person of, but by drafting and passing S.57 Parliament sought to stamp out dishonesty which is fundamental in personal injury claims and the Claimant has breached this law. Finally, I take into

account that the Claimant was wholly unrepentant when she gave evidence and had sought, in parallel, to defraud the DWP and L&G insurance about her disabilities.

207. The claim is dismissed.

END