Case No: F94YJ116

IN THE COUNTY COURT AT CAMBRIDGE

Date: 2 March 2022

Before :

HHJ Walden-Smith

- -

Between :

JAMIE STANNARD	Claimant
- and -	
EURO GARAGES LIMITED	Defendant

- -
- -

MARTIN LITTLER (instructed by Jefferies) for the Claimant
JASMINE MURPHY (instructed by Kennedys) for the Defendant

Hearing dates: 1 February 2022

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Approved Judgment

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

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Approved Judgment

HHJ Karen Walden-Smith:

Introduction

1. Mr Jamie Stannard has brought a claim against Euro Garages Limited ("Euro Garages") for damages for personal injuries that he alleges he sustained when he tripped on a defect in the forecourt of a petrol station at Lytton Way, Stevenage, owned and operated by Euro Garages.

2. Euro Garages admitted liability prior to the issue of proceedings and judgment was entered on the papers on 19 March 2020. Proceedings were served on 25 July 2019, the Particulars of Claim being dated 11 July 2019.

3. On the issue of the claim, the statement of the value of the claim was more than £1,000 but not more than £100,000. The Schedule of Loss dated 15 May 2018 comprised a claim for special damages in the sum of £20,287.23; this increased to £39,216.65; and the final Schedule of Loss comprised a claim for special damages of £67,611.83. Euro Garages dispute the size of the claim and contend that the claim is not worth more than £5,000.

4. The solicitors for Euro Garages, Kennedys, have made an application to set aside the judgment entered on 19 March 2020 and strike out the claim of Mr Stannard. The application is made pursuant to the provisions of section 57(1)(b) of the Criminal Justice and Courts Act 2015 on the basis that Mr Stannard has been fundamentally dishonest. As a secondary position, it is contended on behalf of Euro Garages that the claim is itself an abuse of process.

5. Unusually, this application is being made before the commencement of the trial and the court has therefore not heard any evidence from the Claimant or been able to make any judgment about that live evidence. Euro Garages rely upon the witness statements that have been exchanged between the parties, the expert evidence and surveillance evidence that was disclosed to Mr Stannard prior to 18 January 2021. It is denied by Mr Stannard that Euro Garages can rely upon that surveillance evidence as it is averred that Euro Garages have failed to comply with the Order of Ms Recorder McAllister which required Euro Garages to allow for the inspection of the full and unedited footage, together with surveillance witness statements and original recording data/SD Cards by 18 January 2021. I will deal with that dispute later in this judgment.

6. Euro Garages contend that it is appropriate to bring this application to strike out the claim of Mr Stannard prior to any trial of the quantum issues, on the basis that the same is fundamentally dishonest, relying upon a single decision in the High Court: *Patel v Arriva Midlands Ltd* [2019] EWHC 1216. In *Patel v Arriva*, HHJ Melissa Clarke, sitting as a deputy judge of the High Court, determined that it was appropriate to dismiss that claim for damages for personal injuries on the basis that the claim was fundamentally dishonest. The entitlement to damages had been determined and she found that it was not necessary for the quantum assessment to take place on the facts of that case before making the section 57 determination: the issue as to whether a section 57 application should be determined before a quantum trial being whether it could be justly determined at that point. I invited Counsel for Euro Garages to research whether there were any other cases in which a section 57 determination had been made prior to the quantum trial, but was unable to identify any other example and it does not appear

that this case has been followed in any subsequent decision in either the High Court or the County Court.

The Evidence before the Court

7. The only evidence before the court was in the form of witness statements pursuant to the provisions of CPR 32.6. Permission had not been sought for oral evidence to be given at the strike out hearing. The application to strike out the claim was supported by a witness statement from Suzanne Prescot of Kennedys, the solicitors for Euro Garages, dated 20 August 2021. The solicitors for Euro Garages objected to any other evidence being provided by or on behalf of Mr Stannard including a witness statement in response from Mr Stannard's solicitors dated 15th December 2021.

8. In addition to the statement of Ms Prescott, Euro Garages relied upon the surveillance evidence disclosed to the Claimant's representatives. Contrary to the Order of Ms Recorder McAllister, Euro Garages failed to disclose the original recording data/SD cards. The reason given for that failure was that the SD Cards had been destroyed or overwritten by the surveillance agents and were therefore not in the possession or control of Euro Garages. While I understand why Euro Garages contend that they could not disclose that which no longer existed, as it had been destroyed, the SD Cards had once been in their control (through their agents) and the explanation does not deal with the failure to comply with a very clear Order of the court made in the presence of Euro Garages and/or their legal representatives. The Order of the court was not an Order for standard disclosure. It was a specifically worded Order made for the purpose of ensuring that Mr Stannard and his representatives could check whether the edited surveillance was consistent with the unedited surveillance and in order that there was not an unfairness between the parties and their ability to present their respective cases. When it was realised by Kennedys that they were not in a position to comply with the court Order then an application ought to have been made to vary that Order with an explanation as to why the position had changed and why they were unable to comply with the earlier court Order. Without making that application and obtaining a variation to the Order, Euro Garages are currently in breach.

9. In addition to the surveillance evidence (and the surveillance logs), which covers two days (24 June 2019 and 9 July 2019 – nothing was seen on the third day) and lasts for slightly over 30 minutes, Euro Garages seek to rely upon the joint expert report of the orthopaedic experts dated 20 May 2021 and the comments of Professor Ribbans (the orthopaedic expert for Euro Garages) on the surveillance evidence. Euro Garages rely upon that evidence and put it in contrast to the case put forward by Mr Stannard as set out in the Particulars of Claim and his statement dated 19 February 2021.

The Claim

10. The claim was issued through the portal for low value personal injury claims in public liability accidents (£1,000 to £25,000). In the claim, Mr Stannard sets out that his injury was a sprained left ankle and that the GP had recommended physiotherapy. The circumstances of the injury were set out to be that Mr Stannard had been delivering

sandwiches to the garage (in the course of his work) and that as he stepped out of his vehicle "his foot encountered an area where the surface was lower than the surrounding area causing him to go over on his ankle thereby sustaining injury." It was said that it was understood that a draining grid was missing and had been roughly filled thereby causing the hazard.

11. In the particulars of claim dated 11 July 2019, and signed with a statement of truth on 21 May 2019, it was pleaded that the Claimant had formed the impression that the drain or soakaway had a missing grill and had been roughly filled and that reliance was placed upon an admission for primary liability for the accident in email correspondence dated 14 December 2017. At the time of that admission, the statement of truth on the claim notification form signed on 28 July 2017 had limited the claim up to £10,000.

12. Mr Stannard alleged in the particulars of claim that as a consequence of the accident he had sustained a sprain to the left ankle causing lateral ligament instability, that complex regional pain syndrome had been suspected but ruled out and that, in addition to the physical injury, he was suffering from a major depressive disorder with accident-related psychological symptoms. The statement of value had increased to £100,000 and the schedule of loss signed with a statement of truth on 22 May 2019 included claims for loss of earnings, travel expenses and care and assistance. The most significant part of the claim being for loss of earnings it being alleged that he had accepted a permanent position with his employers Greencore Limited, but was on a probationary period which he had been unable to complete *"by reason of the accident"* and that, while Greencore had initially indicated that they would like him to return to work *"they are not able to facilitate that until he is fully fit and able to return to his pre-accident level of work."*

13. An updated schedule of loss was provided, together with the statement of truth dated 9 June 2021, which set out a claim for special damages in the sum of £67,611.83. In that schedule, it was stated that *"The Claimant was advised by a Supervisor for Greencore his job was no longer available to him and the Claimant assumed this was due to the fact he was unable to fulfil his driving role."* He further set out that he had been continuing with symptoms and in receipt of assistance (for which he claimed £1,368.80) but that he had been providing caring assistance for his mother for which he had received an allowance and that he would give credit for that if appropriate.

14. The Defence was filed on 4 February 2020. It reserved the position of Euro Garages pending further investigation in various respects, contributory negligence was raised and various issues with respect to the claim for special damages (including with respect to his employment and his alleged care needs).

15. On 19 March 2020, the claim was allocated to the multi-track and judgment was entered. On 11 November 2020, Ms Recorder McAllister gave further case management directions, including with respect to disclosure of the surveillance evidence as set out above.

16. In the very significantly altered Amended Defence, Euro Garages raised the defence that the Claimant had consciously and dishonestly exaggerated his claim and his injury. Whereas a pleading should set out the material facts relied upon, the Amended Defence unusually sets out a discourse on the law – including reference to cases on fundamental dishonesty and strike out (including county court cases) - and why it is said by the Defendant's representatives that the claim should be struck out as an abuse of process.

17. The essence of the allegation that Mr Stannard is fundamentally dishonest is that he has exaggerated his level of symptoms and disability; that he is making a claim for his own care and loss of earnings at the same time as he was recovering carer's allowance for his own care of his mother; and that his loss of employment was not connected with his injury, and that he knew his inability to drive was unconnected to the accident.

18. The fundamental issue for the court is whether this is a case in which it is appropriate to determine the allegation of fundamental dishonesty prior to any hearing of quantum issues.

Fundamental Dishonesty: The Law

19. The law relating to fundamental dishonesty is now well-settled.

20. Section 57 of the Criminal Justice and Courts Act 2015 provides as follows:

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 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."

21. Prior to section 57 coming into force, it was open to the court to strike out a statement of case, both under its inherent jurisdiction and pursuant to the provisions of CPR 3.4(2), on the grounds that the statement of case is an abuse of the process of the court, at any stage of the proceedings.

22. As was made clear in *Summers v Fairclough Homes Limited* [2012] UKSC 26, all reasonable steps should be taken to deter fraudulent and dishonest claims. The express words of CPR 3.4(2)(b) give the court power to strike out a statement of case on the ground that it is an abuse of the court's process: deliberately to make a false claim and to adduce false evidence is an abuse of process. The rule does not restrict the circumstances in which it can be made or limit the time in which it can be made. The only restriction is that which is included in CPR rules 1.1 and 1.2 that the court must

decide cases in accordance with the overriding objective, which is to determine cases justly. The step of striking a claim out is always a draconian one and there is a balance to be struck in deterring fraudulent and dishonest claims while also ensuring that genuine claims can be heard fairly and for judgment to be given in the ordinary way.

23. As the provisions of section 57 set out above make clear, a claimant will have his claim dismissed where he has been fundamentally dishonest in relation to the primary element of a claim or a related claim which includes the dismissal of any element of the claim where the claimant has not been dishonest, the only exception is where the court is satisfied that the claimant would suffer substantial injustice if the claim were dismissed. With respect to costs, the court assesses and records the amount of damages it would have awarded for the claim absent the dishonesty and deduct that figure from the costs the claimant is ordered to pay to the defendant (section 57(4) and (5)).

24. The test for dishonesty is set out in the decision of Lord Hughes in *Ivey v Genting Casinos (UK) Limited t/a Crockfords Club* [2017] UKSC 67, paragraph 74. The fact finding tribunal ascertains (subjectively) the actual state of the individual's knowledge or belief as to the facts in order to ascertain whether the claimant is dishonest. The reasonableness or otherwise of his belief is a matter of evidence going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable: the question for the fact-finding tribunal is whether the belief is genuinely held. Once the actual state of mind of the individual as to knowledge or belief of facts is established, the question whether his conduct was honest or dishonest is to be determined by the tribunal of fact applying the objective standards of ordinary decent people. There is no longer any requirement that the individual must appreciate that what he has done is, by those standards, dishonest. Consequently, if by ordinary standards the claimant's mental state is characterised as dishonest it is irrelevant whether the claimant judges by different standards.

25. That synopsis of the statement of law by Lord Hughes in *Ivey* highlights the difficulties faced by a defendant seeking to establish dishonesty on the part of a claimant without that claimant having the opportunity of dealing in court with the evidence relied upon by the defendant.

26. In *Howlett v Davies* [2017] EWCA Civ 1696, Newey LJ adopted the formulation of HHJ Moloney QC in *Gosling v Hailo (unreported 29 April 2014)* when dealing with the issue as to what is meant by "fundamental" dishonesty.

> "It appears to me that this phrase in the rules has to be interpreted purposively and contextually in the light of the context. This is, of course, the determination of whether the claimant is "deserving", as Jackson LJ put it, of the protection (from the costs liability that would otherwise fall on him) extended, for reasons of social policy, by the QOCS rules. It appears to me that when one looks at the matter in that way, one sees that what the rules are doing is distinguishing between two levels of dishonesty: dishonest in relation to the claim which is not fundamental so as to expose such a claimant to costs liability, and dishonesty which is fundamental, so as to give rise to costs liability."

As Newey LJ put it, this formulation is common sense and the corollary term to "fundamental" would be a word with some such meaning as "incidental" or "collateral".

27. In *London Organising Committee of the Olympic and Paralympic Games v Sinfield* [2018] EWHC 51, Julian Knowles J provided that an individual will be found to be fundamentally dishonest within the meaning of section 57(1)(b) if he was found, on the balance of probabilities, to have acted dishonestly in relation to the primary claim or related claim and that he had substantially affected the presentation of his case, either with respect to liability or quantum, in a way which potentially affected the defendant in a substantial way, judged in the context of the particular facts and circumstances of that particular litigation. "*By using the formulation 'substantially affects', I am intending to convey the same idea as the expression 'going to the root' or 'going to the heart' of the claim'…".*

28. In *Pegg v Webb* [2020] EWHC 2095, Martin Spencer J found on appeal that no judge could reasonably have failed to come to the conclusion that a claim was fundamentally dishonest where the claimant had failed to establish the injuries for which he was claiming damages. The judge had found that the claim was dishonest, but not fundamentally dishonest as he also found that the accident itself (a road traffic accident) had taken place. It is not correct to suggest that this is a case where fundamental dishonesty was found when no oral evidence has been heard. Oral evidence was given at first instance, the interference with the finding of the judge of first instance was with respect to his conclusion on that evidence the claim was dishonest but not fundamentally so. The error was with respect to the application of the well-established law to the facts found by the judge.

29. In *Cojanu v Essex Partnership NHS Trust* [2022] EWHC 197, a case decided on 2 February 2022 (the day after submissions in this case and therefore not referred to by Counsel) Ritchie J summarised the five points he had gleaned from the various cases, including the need to plead fundamental dishonesty; the burden of proof falling upon the defendant and it being on the civil standard; that the dishonesty must relate to a matter fundamental to the claim; and that it must have a fundamental effect upon the presentation of the claim. A claim can be found to be fundamentally dishonest if there is a deliberate misrepresentation or fabrication of the level of symptoms *(see Pinkus v Direct Line* [2018] EWHC 1671) and where a claimant's account is hopelessly inconsistent, contradictory, or untrue *(see Molodi v Cambridge Vibration Maintenance Service* [2018] EWHC 1288).

30. What is unusual about this application is that the Euro Garages are not seeking to obtain a finding of fundamental dishonesty after the quantum hearing, but before evidence has been heard and tested in court. This application can only succeed if there is evidence on the papers alone which could not be challenged in a hearing which establishes, on the balance of probabilities, that the claimant is fundamentally dishonest. It is, in my judgment, a high hurdle to overcome.

31. In taking that course, rather than dealing with the matter at the quantum hearing, Euro Garages are relying upon the decision in *Patel v Arriva.* As I have set out above, there is nothing to suggest that case has been followed in any subsequent authorities and the particular facts in that case were extreme.

32. The claimant, Mr Patel, a pedestrian, was in collision on 26 January 2013 with a bus owned by the defendant, Arriva, and driven by one of their employees. The claimant had a cardiac arrest at the scene of the accident and was resuscitated after four minutes. He was diagnosed with a subarachnoid haemorrhage. He was discharged from hospital to a rehabilitation unit and then discharged home in May 2013. His case was that he began deteriorating and by the time of his claim was significantly disabled. The

claimant was examined by his own consultant psychiatrist who determined that the claimant was suffering from a severe conversion disorder. The defendant's consultant neurologist agreed that there was no neurological reason for the claimant's condition but that he was suffering a subconscious conversion disorder *"the hallmark [of that condition being] consistency, i.e. an unchanging disability regardless of circumstances and whether or not the patient is being observed."* The defendant did undertake surveillance several months before the defendant's neurologist had examined the claimant and found a striking contrast between his appearance on that surveillance and how he presented to the medics. On the surveillance evidence he could walk, speak and engage in interaction with those around him in a normal manner. In those circumstances, the defendant's neurologist found that *"the diagnosis of a conversion disorder is no longer tenable and the disability is feigned."* The claimant did not provide any further medical evidence after the surveillance evidence had been disclosed.

33. On the stark facts of *Patel*, HHJ Clarke found the claim was fundamentally dishonest on the documentary evidence before her and dismissed the entirety of the claim, being satisfied that no substantial injustice would be caused to the claimant in so doing.

34. In reaching that determination she set out that, pursuant to section 57(1)(a), the court could only find fundamental dishonesty once it had first found that the claimant was entitled to damages on the claim, but that it was not necessary for a quantum assessment of the full claim to be undertaken before fundamental dishonesty could be found. She was satisfied that a section 57 application may be determined at any time after the claimant's entitlement to damages is established. *"Whether, in any case, it should be determined before a quantum trial will depend on whether it can be determined justly at that time. This will depend on all the circumstances of that particular case… I consider it is necessary for a court considering a section 57 application in these circumstances to think carefully whether there are real grounds for believing that a fuller investigation will add to or alter the evidence relevant to the issues that it must determine" per Asplin J in Tesco Stores Ltd v Mastercard Inc. [2015] EWHC 1145 (Ch)."*

The application of the legal principles

35. The Application made on behalf of Euro Garages first seeks an Order to strike out the judgment dated 19 March 2020. That application not only must fail, as there has been no application to resile from the admission of liability made on 14 December 2019, prior to the issue of proceedings, but it is not an Order that Euro Garages requires given the application to strike out on the basis of fundamental dishonesty. In order for section 57 of CJCA 2015 to apply, the court must first determine that the claimant is entitled to damages with respect to the claim and Euro Garages rely upon the judgment in order to establish that entitlement to damages.

36. Mr Stannard sustained a soft tissue injury to his left ankle. Mr Anwar, the consultant orthopaedic surgeon instructed on his behalf, reported on 6 May 2018 and on 3 July 2018. Mr Anwar first saw Mr Stannard on 6 April 2018, the accident having taken place on 20 May 2017, and diagnosed a twisting injury to the left ankle causing soft tissue ligament injury and recommended physiotherapy, in his second report he reviewed an MRI scan which showed evidence of an old injury. The second consultant trauma and orthopaedic surgeon instructed on behalf of Mr Stannard, provided four

reports on 16 September 2018, 30 December 2018, 25 March 2020 and 9 July 2020. In the first report he found lateral ligament instability and complex regional pain syndrome (CRPS) and recommended an opinion from a consultant in pain management. In the second report/letter Mr Kurup noted that CRPS had been ruled out and he recommended lateral ligament reconstruction surgery. In the third report, Mr Kurup noted that Mr Stannard was using one stick to mobilise and, in the fourth report, noted that the ongoing ankle pain was a lot worse and he thought psychiatric opinion was appropriate.

37. Professor Ribbans was instructed by the defendant. He first saw Mr Stannard two years and five months after the accident. He noted that the normal expectation for a talofibular ligament injury a return to work and normal activities would be possible within 6 to 12 weeks. He further found that there was no evidence of chronic instability and no surgery required. His view was that the features of what Mr Stannard was reporting did not have any basis in orthopaedic pathology. He suggested nerve conduction studies and a psychiatric opinion. In his report dated 27 May 2021, Professor Ribbans reviewed the nerve conduction studies, X-rays and MRIs and noted that Dr Cutting, the defendant's psychiatrist, reported on 28 October 2020 that Mr Stannard did not have any psychiatric problems. Professor Ribbans had also seen the surveillance evidence and concluded that what he saw on that surveillance evidence was inconsistent with what Mr Stannard had said to Mr Kurup and himself.

38. In the joint report of Mr Kurup and Professor Ribbans dated 20 May 2021, it is set out that they agree that Mr Stannard gives history of an inversion injury to his left ankle with primary damage to the lateral collateral ligament complex on 20 May 2017, that he was initially diagnosed with a soft tissue injury to his left ankle and that he had no significant pre-existing ankle problems. There is disagreement in that Mr Kurup is of the opinion that Mr Stannard has some degree of ongoing orthopaedic pathology such as ankle impingement and instability, whereas Professor Ribbans is of the opinion that Mr Stannard does not have ongoing chronic, significant ankle pathology. Mr Kurup further considers that if there is an underlying neuropathic condition (such as chronic regional pain syndrome (CPRS)) there is a risk of further deterioration of his symptoms. The pain specialist does not support the existence of CRPS and Professor Ribbans is of the view that while there may have been initial symptoms of CRPS, those symptoms were not present by October 2019. Professor Ribbans defers to the opinion of a pain specialist and/or psychiatry opinion as to the importance of neurogenic or somatisation psychiatric pathology underpinning Mr Stannard's ongoing disability.

39. That joint report was signed by the two experts on 20 May 2021, the day after the report from Professor Ribbans on the surveillance evidence. Within that report, Professor Ribbans refers to a there being a marked difference between the walking pattern of Mr Stannard on 24 June 2019, when he sometimes has a marked limp and sometimes no discernible limp; and on 9 July 2019 when he is walking without a discernible limp.

40. It is contended on behalf of Euro Garages that the medical evidence, summarised above, means that any psychological or orthopaedic symptoms cannot be medically explained. In my judgment that is not an accurate reflection of the entirety of the medical evidence. Mr Kurup is clearly of the opinion that there is some degree of ongoing orthopaedic pathology and that there is an underlying neuropathic condition.

41. With respect to the pain management evidence (on behalf of the claimant) and the psychiatric evidence (on the part of the defendant), Mr Stannard showed that he walked on his toes and that, by the time of the examination by Dr Cutting (the defendant's psychiatrist) on 22 October 2020, Mr Stannard was representing that he was more or less back to what he was before the accident and contemplating a return to work.

42. There is consequently a continuing dispute between the experts as to the extent of any physical or psychological impact of the incident in May 2017. There is not, on the basis of the evidence presented to the court on this application, a clear and obvious misrepresentation by Mr Stannard with respect to the physical and psychological impact of the incident. Even if the surveillance evidence were admissible, and that is by no means certain given the failure of Euro Garages to allow inspection of the SD cards or make an application to vary the Order of Ms Recorder McAllister, the experts are not at one with the interpretation of that evidence.

43. *Patel* was a highly unusual case. The nature of the diagnosis of conversion disorder is that it is unchanging. The claimant was presenting himself as not being able to walk or talk and that he was confined to his bed. The defendant's expert was clear that the injury was feigned in circumstances where he was seen walking around. The claimant's expert had seen the surveillance evidence but no further evidence was disclosed on behalf of the claimant. That is not the same in this case. The medics had come to different conclusions and the surveillance evidence, even if admitted, is not clear cut. Euro Garages contend that Mr Stannard has been exaggerating his symptoms. In order to come to a conclusion that he has been dishonest in his presentation, the court must hear from Mr Stannard and draw its own conclusions with respect to his behaviour.

44. A paper determination of fundamental dishonesty, without the claimant having the opportunity of promoting his case through his oral evidence and that of his witnesses, and removing any opportunity to explain presentation, would be in the circumstances of this matter unfair. The court is obliged to ask itself (per Asplin J in *Tesco Stores v Mastercard*) whether there are real grounds for believing that a fuller investigation will add to or alter the evidence relevant to the issues that it must determine.

45. In this case, there are real grounds for believing that a fuller investigation will add to the evidence relevant to the issues that need to be determined. Euro Garages have not yet applied for a variation of the Order that required the provision of the SD cards for inspection. If Euro Garages do successfully apply for a variation of the Order of Ms Recorder McAllister then Mr Stannard will then have the opportunity to challenge the interpretation of that surveillance evidence promoted by Euro Garages and provide his own explanation for his presentation. The court will inevitably be assisted in any determination as to whether Euro Garages is able to establish, on the balance of probabilities, that Mr Stannard has been fundamentally dishonest, if it has the ability to assess the "live" evidence of Mr Stannard and others.

46. Another matter raised by Euro Garages for the purpose of establishing that Mr Stannard has been fundamentally dishonest is that he initially represented that he had lost his job as a consequence of his injury. In fact, he could not continue with his job as a driver as he had been disqualified. Euro Garages contend that he must have known that he was disqualified. The representatives for Mr Stannard put forward an argument that Mr Stannard had not been aware of his disqualification and that his claim for loss of earnings is not, in any event, established to be fundamentally dishonest. Euro Garages

contend that it is unlikely that he had not received the letters from his employer that he had been disqualified and further argue that there is some documentary evidence that he had been told in person that he had been disqualified. These are all issues that can only be determined by full consideration of the evidence with Mr Stannard being given a fair opportunity to put forward his version of what happened in order that the trial judge can make a decision on a sure foundation.

47. The third issue raised by Euro Garages, to support a defence of fundamental dishonesty, is that Mr Stannard has claimed for the costs of care for himself at the same time as he is providing care for his mother and receiving a carers allowance from the Department for Work and Pensions. Mr Stannard has acknowledged in his Schedule of Loss that he has received carer's benefits for providing assistance to his mother from 9 April 2018, which date is confirmed in his witness statement. Euro Garages contend that there is an inconsistency in the dates as he applied for a carer's allowance on 20 December 2017 and in that document he had said he had been providing care since 10 May 2017. Again, this is a matter of dispute and not something that can be determined without Mr Stannard having a fair opportunity to put forward his version of events in order that the judge is able to make a fully reasoned decision.

Conclusion

48. The law relating to fundamental dishonesty is now well-settled. The key aspects are summarised in the most recent case of *Cojanu v Essex NHS Partnership.* While *Patel v Arriva* establishes that in a suitable case an application could successfully be made to strike out proceedings and/or for a finding of fundamental dishonesty before the quantum hearing, this will only be in rare and highly unusual situations.

49. I can fully understand that, in the interests of saving costs and time, solicitors acting for defendants may wish to find ways of bringing to a swift end those claims that they consider to show elements of fundamental dishonesty. However, in order for a court to be satisfied that a defendant has established fundamental dishonesty on the balance of probabilities, it is necessary for the court to have all the evidence and for that evidence to be subjected to the rigours of cross-examination.

50. In this case, Mr Stannard does not accept the allegations made by Euro Garages that he has exaggerated his injuries or acted in a way inconsistent with the history he gave to the medics. He has explanations to give with respect to why he says he believed his job loss was due to the injury and with respect to his claim for care. He is entitled to put those arguments before the court and, particularly in cases such as this where a finding of fundamental dishonesty can have a severe negative impact on an individual, the court does not lightly shut out someone from being able to put their case forward fully. Where there are disputes on the factual conclusions that a court should reach, it is not in my judgment appropriate to make what is, effectively, a summary judgment finding.

51. The decision in *Patel* was based on particular facts. It is not a case whichcan easily be applied to other scenarios. In the circumstances of this matter, a fuller investigation is required and I refuse the application for dismissal pursuant to the provisions of section 57 of the CJCA 2015 or that it should be struck out as an abuse of process at this time. The defendant may renew its arguments at the trial of this matter once evidence has been heard.

52. There are costs issues arising from this determination and with respect to the hearing that could not take place in December 2021 due to the lack of bundles in court. I have received some submissions on these points, but wish to hear more now that this judgment has been given. Directions will also need to be given for the future conduct of this case.