



Neutral Citation Number: [2024] EWHC 1912 (KB)

Case No: KB-2023-002162

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26/07/2024

Before :

THE HONOURABLE MR JUSTICE MOULD

Between :

WYE VALLEY NHS TRUST
- and -
SEAN MURPHY

Claimant

Defendant

MS CLAIRE TOOGOOD KC (instructed by **DAC Beachcroft LLP**) for the **Claimant**
MR BENJAMIN BRADLEY (instructed by **Janes Solicitors**) for the **Defendant**

Hearing date: Thursday 11 July 2024

Approved Judgment

This judgment was read-out in part in open court on Friday 19th July 2024. This final approved version of the judgment was handed down remotely at 2pm on Friday 26th July 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

.....
THE HONOURABLE MR JUSTICE MOULD

MR JUSTICE MOULD :

Introduction

1. This is an application for the committal of the Defendant, Mr Sean Murphy, for contempt of court.
2. The application is made by Wye Valley NHS Trust [**‘the Trust’**]. On 21 July 2023, His Honour Judge Picton (sitting as a Judge of the High Court) gave permission for the application to proceed. He did so following a hearing held on that day, at which the Trust was represented by leading counsel and Sean Murphy appeared in person without legal representation. For the reasons he gave in [2] of his judgment, HHJ Picton was satisfied that Mr Murphy had had ample opportunity to seek and obtain legal representation. The Judge decided that he should proceed to hear the application for permission on that day.
3. The Judge concluded that the evidence before him demonstrated a strong *prima facie* case of contempt on each of the allegations advanced by the Trust against Sean Murphy. The Judge further found it to be in the public interest and in accordance with the Overriding Objective that the application for contempt should proceed. He concluded that the Trust should be permitted to begin committal proceedings.
4. In short summary, the Trust alleges that Sean Murphy pursued a fraudulent claim for very substantial and hugely exaggerated damages for clinical negligence following an operation carried out to repair his left bicep which he had injured during a rugby match on 25 March 2017. He deliberately and knowingly made false statements to medical experts instructed to assist the court in the assessment of his claim. He verified particulars of his claim and a preliminary schedule of loss and damage, including a claim for loss of future earnings, knowing that the assertions as to the impact of his injury and surgery upon his ability to work, to use his left arm and to play rugby were false and lacking any honest belief as to the truth of those assertions. The true value of his claim for damages was less than one per cent of the sum that he claimed on the basis of his deliberate and knowing false statements.

The negligence claim

5. On 16 October 2020, solicitors then acting for Mr Murphy issued a claim for damages greater than £200,000. Paragraphs 36 and 37 of the Particulars of Claim dated 29 January 2021 pleaded –

“36. The Claimant suffers persistent pain in the left upper limb, and is taking Naproxen and Codeine medication. He is unable to straighten the elbow fully and pronation and supination are limited. His grip strength in his left hand is reduced. He is no longer able to work as a builder and has been unable to return to work since the index events. He is unable to play rugby or attend the gym which he previously enjoyed.

37. The Claimant’s ability to assist with domestic chores, and interact with his 4 children has been significantly disrupted. He is at risk of worsening of his symptoms with premature secondary osteoarthritis in due course. He is handicapped on the open labour market.”

6. The Particulars of Claim were verified by a Statement of Truth signed by the solicitor then acting for Mr Murphy –

“Statement of Truth

The Claimant believes that the facts stated in these Particulars of Claim are true. The Claimant understands that proceedings for contempt of Court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

I am duly authorised by the Claimant to sign this statement”.

7. A Preliminary Schedule of Loss dated 29 January 2021 advanced a claim for damages in the total sum of £580,642.91. The largest elements of alleged losses were a claim for past loss of earnings in the sum of £109,204.92 and for future loss of earnings in the sum of £356,562.50. Account was given for an interim payment in the sum of £40,000 made on 18 July 2019, leaving a total balance of £540,642.91. The Preliminary Schedule of Loss was verified by a Statement of Truth signed by the solicitor then acting for Mr Murphy –

“The Claimant believes that the facts stated in this Preliminary Schedule of Loss are true. The Claimant understands that proceedings for contempt of Court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

I am duly authorised by the Claimant to sign this statement.”

8. Following service of proceedings on 1 February 2021, on 24 February 2021 the Trust filed its Defence. The Trust sought the dismissal of Mr Murphy’s claim pursuant to section 57(1) of the Criminal Justice and Courts Act 2015 [**‘the 2015 Act’**], on the ground that Mr Murphy had been fundamentally dishonest in relation to his claim for damages.

Disposal of the negligence claim

9. The hearing of Mr Murphy’s negligence claim took place before Mr James Healy-Pratt, sitting as a Deputy High Court Judge, on 11 October 2022. Mr Murphy did not appear and was not legally represented. The Deputy Judge recorded that Mr Murphy had taken no steps in the proceedings since the service of the Trust’s defence alleging fundamental dishonesty. Mr Murphy’s solicitors had come off the record as acting for him on 14 May 2021. The Trust was represented by Ms Claire Toogood KC (who has also appeared on behalf of the Trust before me). The Deputy Judge gave judgment on 12 October 2022.

10. In [5] of his judgment, the Deputy Judge said –

“In short, the Defendant submits in the strongest terms that the Claimant knowingly misled two firms of solicitors and four medico-legal experts about the extent of his injuries, and did so for financial gain in his action for personal injuries. At first blush, it may appear surprising that a Claimant can fool two firms of solicitors highly experienced in personal injury claims, as well as two orthopaedic surgeons and two consultant psychiatrists. However, in this case there is clear and convincing evidence that this did indeed occur. That evidence came from a lay witness who had the courage to call out the actions of the Claimant to the NHS fraud line. Without that evidence (to which I shall return in detail later) it is likely that the Defendant would not have been in a position to allege fundamental dishonesty by the Claimant.”

11. In [7] he said –

“Moving now to the parties’ submissions, the Claimant was not present, nor was he represented, nor has he taken any active role in this action since 24 February 2021. The Defendant’s submissions were in three parts. Firstly, that under section 57 of the 2015 Act, based on the evidence of the lay witness, Mr Oseman, and the evidence of Mr Limb, a consultant orthopaedic surgeon, and the evidence of Dr Jenkins, a consultant psychiatrist, the Defendant would prove more likely than not that the Claimant had been dishonest in the presentation of his primary claim in a way that adversely affected the Defendant in a significant way, and, further, that the Claimant’s dishonesty was fundamental to his primary claim as it affects the claim for general damages and claim for loss of earnings, care assistance, medication, DIY and gardening, transport and travel. In short, the Defendant submitted that the true value of the Claimant’s primary claim was in the region of £5,000, which was some 0.85% of the sum claimed in the Claimant’s schedule of loss that totalled £580,642.91. Hence, on the Defendant’s submission, this court should dismiss the primary claim due to the Claimant being fundamentally dishonest in relation to that primary claim.

12. In [9] he said –

“In summation, the Defendant seeks a finding of fundamental dishonesty by the Claimant, repayment of £50,000 by way of interim payments paid in 2019, and costs on an indemnity basis, less the £5,000 they say is the true value of the claim, such costs being subject to detailed assessment by the Senior Courts Costs Office.”

13. At [14] of his judgment the Deputy Judge said that he had heard evidence from 3 witnesses called on behalf of the Trust - Mr David Limb, a consultant orthopaedic surgeon, Dr Peter Jenkins, a consultant psychiatrist and Mr Ben Oseman, a lay witness. He recorded the substance of the written and oral evidence given by each witness in detail.

14. At [34] the Deputy Judge said –

“Given the paucity of reliable evidence, I am satisfied that £5,000 is a fair assessment for quantum purposes for the Claimant’s entitlement to damages based on the evidence of Mr Limb. Again, that figure with interest is £5,169.32, under section 7(4) of the 2015 Act.

15. At [37]-[40] the Deputy Judge stated his findings on the Trust’s allegations of dishonesty against Mr Murphy –

“37. In the Claimant’s schedule of loss for £580,642.91, the Claimant stated under the statement of truth that the facts stated are true, and further understood the consequences of a false statement without an honest belief in its truth. The Claimant’s solicitor, Nicholas Young at JMW Solicitors, signed that statement of truth as duly authorised by the Claimant. There is no evidence to suggest that Mr Young himself did not have the authority of the Claimant to sign the statement of truth, i.e. there is no evidence that Mr Young was making a false statement in that regard. Neither is there any evidence that Mr Young of JMW Solicitors was aware that he had been misled by the Claimant about his injuries, symptoms or prognosis. It appears he was simply another professional, in the line of professionals, fooled by the Claimant.

38. The evidence from Mr Oseman, including video footage, social media posts and other web-related evidence, is compelling in its weight and cogency. That evidence is crystal clear in its flat contradiction of what the Claimant had told Mr Limb, Dr Jenkins, his own medicolegal experts, Mr Kurer and Dr Haynes, as well as presumably his own solicitors, JMW, and indeed the solicitors for the Defendant when the claimant was in direct contact with them post-May 2021. Whilst dishonesty is a subjective state of mind, the standard by which the law determines whether that state of mind is dishonest is an objective one, and that if by ordinary standards a Defendant’s mental state is dishonest, it is irrelevant that the Defendant judges by different standards. The Claimant had stated to Dr Jenkins and Mr Limb that because of his injury and surgery he was unable to play rugby, he had not worked since the surgery, he was unable to go to the gym, he could not hold a saucepan, he could not put his socks on, he was unable to carry clothes upstairs, and that the most he could lift was an empty kettle, and that he required assistance with the activities of daily living, including dressing and cooking. These claims, in the context of Mr Oseman’s evidence and video and social media evidence, were wholly false. In truth, the Claimant had returned to playing rugby in October 2017, had returned to work, completing decking jobs and laying tarmac, had set up a new business, Sanctuary Supplements Ltd, and had returned to the gym, lifting very heavy weights, bench pressing 150 kilos, and participating in boxing training.

39. To that end, the evidence of the Claimant’s recovery from his injuries and surgery is unambiguous and damning. In my view, the evidence is certainly more probable that not that the Claimant must have known himself that his schedule of loss was fraudulent on a massive scale. Again, objectively based on the evidence, it is certainly more probable than not that the Claimant acted dishonestly when authorising his solicitor to sign the statement of truth on his behalf.

40. Having found that the Claimant acted dishonestly, I now turn back to para.64(b) of the LOCOG in relation to fundamental dishonesty. On the evidence heard yesterday, I am satisfied that the Defendant has proved on the balance of probabilities that the Claimant acted dishonestly in the presentation of his case in a way that adversely affected the Defendant in a significant way. The Claimant's dishonesty is fundamental because it goes to the heart of his claim for general damages, loss of earnings, care assistance, DIY and gardening, together with lesser ancillary items. I remind myself that the true value of the claimant's claim is 0.85% of the total of his schedule of loss. In my view, the nature of the Claimant's dishonesty is clearly and convincingly fundamental in its nature. Having found that the Claimant has been fundamentally dishonest in relation to the primary claim, I therefore must dismiss the claim under section 57(2) of the 2015 Act."

16. The Deputy Judge then went to consider the Trust's claims for repayment of the interim payment and for payment of its costs on an indemnity basis. At [54] he drew overall conclusions. He made an order accordingly on 12 October 2022.

The contempt proceedings

17. On 27 April 2023, the Trust issued proceedings against Sean Murphy for committal for contempt. The details of claim were as follows –

"1. The Defendant brought a claim against the Claimant for damages for clinical negligence arising out of treatment provided at the Claimant's hospital following a rugby accident in March 2017, claim number QB-2020-003648.

2. In relation to that claim, the Defendant was in contempt of court in that he:
a) Interfered with the due administration of justice by giving false information to medical experts who provided reports for the Court; and
b) Made false statements in documents verified by a statement of truth, namely the Particulars of Claim and Preliminary Schedule of Loss.

3. The Defendant made the following untrue claims:
a) That he had been unable to work since the accident;
b) That he had been unable to play rugby since the accident;
c) That he had significantly reduced strength in his left arm and required assistance in activities of daily living, gardening and DIY".

18. The Statement of Grounds for Contempt at [7] said that the Trust relies on those three factual areas to prove beyond reasonable doubt that Sean Murphy interfered with the due administration of justice and made false statements in documents verified by a statement of truth.

19. Particulars of the alleged contempt are then set out –

(1) In respect of alleged inability to work – at [8]-[13]

(2) In respect of the alleged inability to play rugby, at [14]-[18]

(3) In respect of the alleged loss of strength in his left arm, at [19]-[25].

20. Evidence in support of the Trust's application was provided by the affidavit of Kristian James Hansen sworn on 4 April 2023 and 20 numbered exhibits produced by Mr Hansen with his affidavit.

21. On 15 June 2023, Sean Murphy filed an acknowledgment of service in which he stated –

"I am innocent"

"I did not instruct my at the time solicitor, he falsified and signed on my behalf important docs"

"The witness is grossly biased"

"The photo "evidence" (inverted commas) are from prior to my injury and surgery".

22. Following the grant of permission on 21 June 2023 for the Trust to proceed with these committal proceedings, on 9 August 2023 Mr Murphy's current solicitors gave notice that they had been instructed to act on his behalf. On 10 August 2023, the Trust's solicitors supplied Mr Murphy's solicitors with the claim form, grounds of alleged contempt, the affidavit of Mr Hansen and exhibits, His Honour Judge Picton's permission order and notice of listing for directions.

The guilty plea

23. On 11 December 2023, the Trust was served with a document signed by Sean Murphy and dated 8 December 2023, entitled "Basis of Plea":

"The allegation to which the Defendant indicates a guilty plea:

1. The Claimant alleges that the Defendant "interfered with the due administration of justice by giving false information to medical experts" and by making "false statements in documents verified by a statement of truth, namely the Particulars of Claim and the Preliminary the Schedule of Loss."

2. It is specifically alleged that the Defendant made the following untrue claim: "That he had been unable to play rugby since the accident".

3. The Defendant accepts that:

a. All 4 medical experts gained the impression that the Defendant had been unable to play rugby since the accident; and that;

b. It is further asserted in his Particulars of Claim and Preliminary Schedule of Loss that he was unable to play Rugby since the accident;

c. Such statements were untrue. He accepts that he has interfered with the due administration of justice and thus in respect of the allegations relating to his ability/inability to play rugby, he has acted in Contempt of Court.

4. Accordingly, the Defendant wishes to plead guilty to the allegations that relate to his inability to play rugby and apologises to the Court in respect of his admitted contempt.

The basis of the plea:

5. In making such admissions:

a. The Defendant cannot recall whether he directly told the experts that he had been 'unable to play rugby since the accident' or whether he failed to correct an expert if such a proposition was put to him during the medical examination;

b. Either way, the Defendant accepts that if the experts inadvertently gained the impression that he had stopped playing rugby all together following his injuries, he ought to have corrected the position;

c. The Defendant asserted that he had been 'unable to play rugby since the accident' because in his own mind, he was not playing rugby to anywhere near the high standard he had enjoyed previously. Subjectively, he did not consider that he was playing rugby because his engagement in the games that he did play was limited;

d. However, he accepts that it was both wrong and a contempt of court to give the impression that he was not playing rugby at all, when in fact, that was not the case.

Other allegations:

6. For the avoidance of doubt, the Defendant pleads not guilty to all remaining allegations raised against him."

24. On 11 December 2023, His Honour Judge Richard Roberts (sitting as a Judge of the High Court) gave directions for the trial of the Trust's application to commit. The Judge permitted the Trust to rely upon the Affidavit of Mr Hansen together with its exhibits as evidence in support of its application. The Trust was permitted to serve further affidavits upon which it wished to rely by 26 January 2024. Mr Murphy was permitted to serve any affidavits in reply to the Trust's application to commit by 8 March 2024, which was later extended by consent to 3 May 2024.

25. Pursuant to those directions, on 24 January 2024 the Trust served the affirmation of Mr David Limb which was affirmed on 22 January 2024, together with 2 exhibits. Mr Murphy has not served any affidavit evidence in reply.

26. On 9 May 2024 the court fixed the hearing of the Trust's application to commit to begin on 11 July 2024.

The committal hearing

27. At the hearing on 11 July 2024, the Trust was represented by Ms Claire Toogood KC. Sean Murphy was represented by Mr Benjamin Bradley of counsel. I received skeleton arguments from both counsel and a supplementary skeleton argument from Ms Toogood KC. I am very grateful to counsel for their clear and helpful submissions.
28. At the hearing, the Trust relied on the evidence of Mr Kristian Hansen and of Mr David Limb. I heard evidence on oath from Mr Hansen. Mr Hansen verified his evidence given in his affidavit. He did not give further oral evidence-in-chief. He was cross-examined on his affidavit evidence by Mr Bradley. There was no re-examination. Although David Limb had been summoned to give evidence and attended on 11 July 2024 for that purpose, he was not called by Ms Toogood KC as Mr Bradley informed the court that he did not wish to ask Mr Limb any questions in cross-examination.
29. At the beginning of the hearing on 11 July 2024, I addressed Sean Murphy in the following terms –

“This is the hearing of Wye Valley NHS Trust’s application to commit you for contempt of court. As you know, the Trust was given permission to bring this application following a hearing on 21 July 2023.

The burden lies squarely on the NHS Trust to prove its allegations against you. The Trust must do so to the criminal standard of proof. In other words, the Trust must make me sure on the evidence that is before the court that those allegations are true.

You do not have to give evidence in response to the application to commit. You have the right to remain silent.

It is also your right to give evidence in response if you wish to do so. The choice whether or not to give evidence is yours alone.

I must warn you that if you do decide to remain silent, it is open to the court to draw adverse inferences from your silence. If you do decide to give evidence, counsel for the NHS Trust may cross examine you on your evidence.

I shall hear evidence first from the witnesses to be called by the NHS Trust.

When I have heard the Trust’s evidence, I shall remind you of your right to give evidence in your defence, but that you are not obliged to give evidence and may remain silent. If at that stage you would like to consult with your lawyers, I shall allow you some time to do so.”

At the conclusion of the Trust’s evidence, I reminded Mr Murphy of his right to give evidence in response to the application and of his right to remain silent. I reminded

him that the choice whether or not to give evidence was his alone. I again warned him that if he decided to remain silent, it was open to the court to draw adverse inferences from his silence.

30. Mr Murphy told me that he did not wish to give evidence.

Factual background

31. Sean Murphy was born on 5 August 1985. He is 39 years old.

32. On 25 March 2017 Mr Murphy hyperextended his left arm while playing rugby. On 28 March 2017 he attended a fracture clinic. Following examination of his left arm, a suspected biceps tendon rupture was diagnosed. That was confirmed following an MRI scan. On 31 March 2017 Mr Murphy underwent surgery to repair the ruptured biceps tendon. On 6 April 2017 Mr Murphy presented at the A&E department and was seen in an emergency fracture clinic. He was experiencing significant pain and swelling in his left hand.

33. On 13 April 2017, Mr Murphy underwent further surgery to his left arm. Following a review on 16 May 2017, on 7 June 2017 nerve induction studies revealed radial nerve lesion. On 29 June Sean Murphy underwent a third surgical procedure to remove the endobutton and explore the nerve. On 18 July 2017 Mr Murphy was reviewed by the surgeon who recorded that he still experienced some clicking at rest and poor supination. Mr Murphy declined further surgery.

34. Mr Murphy did not attend Hereford County Hospital for further examination on 4 September 2017.

35. On 11 July 2017 Mr Murphy instructed solicitors on a conditional fee agreement.

36. On 11 December 2017 Mr Murphy did not attend a review at the County Hospital.

37. On 29 October 2018, at his solicitors' request Mr Murphy was examined by Michael Kurer, a consultant orthopaedic surgeon. Mr Kurer produced his report on 24 March 2019.

38. In [18] to [27] of his report, Mr Kurer said –

“18. DOMESTIC ASPECTS: Mr Murphy lives with his wife and four children aged thirteen down to four at the time of interview. Prior to the surgery, they shared the domestic chores.

19. In the aftermath, he did not really get back to doing domestic chores until November or December 2017. For a period of 6-8 months after the negligence, Mr Murphy struggled to move his arm and required help with all aspects of daily living including dressing, washing, putting on socks and shoes, cooking and cleaning. After 6-8 months, Mr Murphy needed less assistance with washing and dressing, cooking and cleaning. Mr Murphy still

required, and continues to require assistance with heavy lifting tasks which require two arms and dressing on his left side.

20. WORK ASPECTS: Mr Murphy is a builder and he works in a two-man company with his father-in-law. Their company specialised in doing 'ground-work' which includes digging foundations, footings, draining and slabbing. This is the heaviest of building work and it almost always involves a great deal of digging by hand.

21. Essentially, he has not been back to work. He just cannot do that sort of work at all. He and his father-in-law have done almost no work this year. He has done a few 'light duties' building jobs but essentially he is quite incapable of doing the work he was doing before.

22. He is contemplating becoming a delivery driver using his van. He would be hand delivering boxes for on-line companies.

23. SOCIAL ASPECTS: He was a keen rugby player and he trained twice a week and played once a week and he also went to the gymnasium regularly to maintain his strength and fitness. All that has finished. He says he has put on around two stone in weight because he is not been able to train and play rugby. He is not undertaking any strenuous hobbies.

24. He was a very talented DIY person, after all that is his job. He had done some flooring and tiling in his own home and would take on large jobs such as putting in a new kitchen or a new bathroom. He would not be able to do the strenuous jobs now, only lighter jobs. For example, he would struggle to complete jobs such as putting up shelves but could do interior decorating.

25. CHILDREN: Prior to the surgery he would take his son aged nine to boxing. He would join him with the boxing. One of his daughters also enjoys boxing and he would take part in that. He would take them swimming regularly. He is not able to swim because he has too much of pain. Essentially, as a result of this surgery, he is not able to interact physically with his children as he was doing before.

26. PRESENT STATE: His main problem is pain and it is there all the time but is controlled by taking constant Naproxen and Codeine medication. He has repeat prescriptions from his General Practitioner for this. His sleep pattern is disturbed. He is unable to straighten the elbow fully and pronation and supination is limited. He still has the paraesthesia at the base of his hand. His grip strength in left hand is reduced.

27. PSYCHOLOGICAL ASPECTS: This has affected all the facets of his life. He cannot work, he cannot play his beloved game of rugby and he cannot interact strenuously with his children. He has little money. He acknowledges having depression. This was treated with Amitriptyline, but he had side effects. He has only been offered counselling. (I am also aware the Claimant has been diagnosed with PTSD which has prevented him from considering further surgery.)”

39. Mr Kurer stated his opinion in [65] of his report. At [68]-[72] he said -

“68. It is most unfortunate that Mr Murphy worked as a builder and that as a builder he specialised in the heaviest of building tasks, namely groundwork where an enormous amount of digging or hand digging was required. It is not surprising he has been quite unable to return to that. I confirm that this is as a result of his persistent elbow symptoms which are a direct consequence of the substandard performance of surgery on 31 March 2017.

69. He also enjoyed playing rugby, training twice a week, playing once a week and also going to the gymnasium and again I confirm that the most likely cause of him being unable to do that is his persistent radioulnar symptoms.

70. The same applies to strenuous interactions with his children.

71. This has been a life changing event and it is not surprising that he has had a psychological reaction of depressive type. I have seen a report prepared by Dr Jonathan Haynes, a Consultant Psychiatrist, following an examination on 6 February 2019.

72. He remains very handicapped and though he has been offered two different operations for his namely radial head replacement and reconstruction of the missing segment of the radial head, I would add a third option which is radial head excision.”

40. Mr Kurer produced colour photographs with his report. These clearly show two scars on Sean Murphy’s left arm, both of which were the result of his surgery to his damaged biceps in 2017.

41. On 19 December 2018 Mr Murphy’s solicitors sent a letter before claim on his behalf.

42. On 6 February 2019, at his solicitors’ request Mr Murphy was examined by Dr Jonathan Haynes, a consultant psychiatrist. The interview lasted for 60 minutes. Dr Haynes produced his report in March 2019. In his report, Dr Haynes said –

“4.01.1 Prior to commencing the interview I explained to Mr Murphy that the contents of the interview would become part of the medical report, and that the report would be sent to the persons who instructed me. Mr Murphy understood this, raised no objection and made a decision to proceed with the interview. In my opinion Mr Murphy had capacity to give valid consent.

...

4.02.3 Prior to the index events he worked full-time as a self-employed builder, mainly doing groundwork. He had been in the role for 10 years, and enjoyed it. The work was going well.

...

4.03.8 Mr Murphy told me that he continues to have numbness in his left hand, between his thumb and index finger. He has reduced grip and forearm strength in his left arm, and reduced ability to rotate. He continues to experience pain, which is controlled to the level of 5 out of 10 by Codeine and Naproxen.

4.03.9 He is unable to work. He is unable to pick up his children (age 5, 9 and 13-year-old twins). He can no longer play rugby, which had been his passion and major hobby. He can no longer go to the gym. He finds it difficult to carry things and dress his left side.

4.03.10 Because he has been unable to work, his wife has had to increase her hours of work; previously she had worked part-time as a care assistant. She now works full-time. Their finances are tight.

...

4.04.1 Mr Murphy told me that rugby had been his passion and his main stress relief. It is very difficult not being able to play. He therefore becomes frustrated and is often irritable. He is tetchy towards his wife and angry towards himself.

4.04.2 He is frustrated that money is so tight, and there is so much that he can no longer do.

4.04.3 He is frustrated that he cannot provide for his wife as he used to, and that she has to work full-time. He is frustrated that their roles have reversed.”

43. On 13 June 2019, the Trust’s solicitors wrote in response to the letter before claim.

44. On 4 July 2019, the Trust made an interim payment of damages of £40,000.

45. On 17 August 2020, at the request of the Trust’s solicitors, Mr Murphy was interviewed by Dr Peter Jenkins, a consultant psychiatrist. Dr Jenkins reported on 20 August 2020. In his report Dr Jenkins stated –

“2.5 Mr Murphy had previously been employed as a self-employed builder which involved regular heavy manual tasks. He used to be a keen amateur rugby player, having previously been a professional player, and regularly undertook training and gym attendances. He has some impairment, due to his physical injuries, of ordinary domestic activities and his ability to look after his children and the psychiatric allegations are basically that he has become depressed.

...

4.11 Mr Murphy told me he worked with his father-in-law, trading as CLL Contracting, a building and construction company which undertook roadworks and ground works. He was classed as a self-employed sole trader.

...

5.2 Mr Murphy told me that he is right-handed and he has now only limited use of his left arm. He told me that his work involved heavy work such as making up driveways, ground works or footpaths. He also undertook fencing and occasionally painting or plastering. He told me that the type of work he and his father-in-law undertook was known as being heavy with 'a lot of humping and carrying.'

5.3 Mr Murphy told me that there was a restricted range of movement of his left forearm. He found it difficult to supinate or rotate his left arm. He told me that he felt that the left arm was shaking, though this was very minor when he extended it to show me. He reported that he has markedly decreased grip strength, saying that the grip strength with his left hand is about 10% of that of his right and this prevents him from holding a saucepan or his children. He told me that he cannot extend his arm properly in order to put socks on, he cannot tie his left shoelace without difficulty.

...

6.1 Mr Murphy told me that he has undertaken no work since the accident.

Domestic

6.2 Mr Murphy told me he lives in a three bedroomed house in Lea with his wife and their four children. Prior to the accident he was capable of undertaking any type of housework and self-care.

6.3 Mr Murphy told me he could use a Hoover one-handedly but anything which requires two-handed work is very difficult, giving as an example the fact that he could not carry a box of clean clothes upstairs for his daughter.

6.4 Mr Murphy told me he could cook but now has to be assisted to do most cooking tasks because he cannot do things such as opening a jar of paste due to being unable to grip the jar in his left hand. He told me he would find it difficult to hold a saucepan in his left hand and things which required two-handed work, for example putting things into an oven, were difficult. He said he had cooked about once in the past week.

...

6.7 He told me that he had to teach his elder daughter how to use a lawnmower because he cannot mow his back lawn. He is able to do a limited amount of gardening with his right hand.

...

6.13 He told me that he used to play rugby and he used to go daily to a local gym. He would swim regularly. Most of the off season he would continue his daily physical activity and weight training, all of which were done at a local leisure centre."

46. On 20 August 2020, at the request of the Trust's solicitors, Mr Murphy was examined by Mr David Limb, a consultant orthopaedic surgeon at Leeds Teaching Hospitals NHS Trust. Mr Limb produced his report on 25 October 2021.

47. At head of his report, Mr Limb stated –

"I am compiling this medical report following an interview and examination of Mr Sean Murphy, which I carried out in the presence of his wife, Laura Murphy, on 22nd August 2020. Sean Murphy was at that time a 34 years old, right handed gentleman who told me that he was not working, but was a self-employed ground worker for the construction industry when he ruptured his left distal biceps tendon in March 2017".

48. Mr Limb's report included the following passages -

1.ACCOUNT OF MR MURPHY

...

1.6 After the third operation he was left regretting he had undergone any surgery at all. His elbow has remained painful and weak. He has continued to experience numbness in the left hand. He has no strength. He feels that his life is on hold until his medicolegal case is resolved.

2. SYMPTOMS PRESENTED AT EXAMINATION

2.1 When I saw Sean Murphy on 22nd August 2021 he told me that his elbow swells every day and he takes naproxen to relieve the swelling. He has been taking three doses of naproxen a day almost since the time of surgery.

2.2 He tells me that he has no feeling on the dorsal aspect of his left thumb or left index finger and the sensation of numbness extends up his forearm towards the lateral elbow scar.

2.3 Mr Murphy tells me that his wife has reported to him that his left arm jumps or shakes frequently in the night, when he is sleeping.

2.4 He reports that he has poor grip in the hand. The most weight he can lift is an empty kettle, whereas he had a reputation before surgery of having a 'vice-like' grip at the gym.

2.5 The pain he reports is all around the elbow. He cannot locate it to a particular site. He takes tramadol and cocodamol for pain but despite these cannot use the left elbow for any manual activity.

3. PAST MEDICAL HISTORY

3.1 Sean Murphy tells me he has never had any problems with the left elbow or arm. Before the accident he ran his own groundworks company and enjoyed the gymnasium where he had a reputation for strength.

4. EFFECT ON WORK

4.1 Sean Murphy tells me that since the index accident he has not been able to put in a day's work.

4.2 Prior to the accident he employed his father-in-law as a labourer but only to assist. None of his jobs therefore continued after his bicep rupture.

4.3 He tells me he held out hope that he would return to his job but following his third operation he shut down his company, as he realised he would never get back to heavy manual work. He tells me that he has not looked for work since, as his arm is so painful and he wants to know the outcome of his medicolegal case.

5. EFFECT ON SOCIAL AND RECREATIONAL ACTIVITIES

5.1 Prior to the index event Sean Murphy tells me that he played rugby three times a week but has not picked up a rugby ball since the first operation.

5.2 I have noted that he enjoyed using the gymnasium, which he attended three times a week. He tells me that he held all the gym records for lifting.

5.3 He has tried to go back to the gymnasium since his 3 operations, but he can only manage cardiovascular work on exercise bikes. He tells me that he sees the men there who he used to train with and is embarrassed. He therefore does not enjoy visiting the gymnasium.

...

6. EFFECT ON DOMESTIC ACTIVITIES

6.1 Mr Murphy tells me that he lives with his wife and four children who are now twins aged 14, a son aged 10 and a daughter aged 6.

6.2 Since the accident Mr Murphy tells me that he has had problems with even simple activities of daily living. On occasions, particularly around the times of surgery, he even had to ask his wife for help using the toilet. She still has to help him put on socks which he cannot manage without assistance, nor can he fasten shoelaces. He has difficulty pulling up trousers unless they are loose fitting.

6.3 Mr Murphy tells me that he used to enjoy cooking. He can now manage to reheat food in a microwave without assistance, but cannot chop food, lift pans and prepare a full meal.

6.4 He tells me he used to manage all the DIY work at home, but this is no longer possible. He can do some painting with his uninjured dominant right arm. He has had to teach his daughter how to cut the grass or ask a neighbour to do this for him. He has not had to pay anyone for tasks that he would have otherwise managed himself.”

49. Mr Murphy’s claim form was issued on 16 October 2020. On 1 February 2021 Sean Murphy’s solicitors served his Particulars of Claim and Preliminary Schedule of Loss claiming £580,642.91, verified by statements of truth.

The application to commit

50. The Trust’s application to commit Sean Murphy relies upon allegedly false statements made by Mr Murphy both to medical experts and in documents verified by statements of truth in respect of three assertions –

- (1) His alleged inability to work
- (2) His alleged inability to play rugby
- (3) His alleged loss of strength in his left arm.

51. As to Mr Murphy’s assertion that he had been unable to work since the surgery to his left arm in 2017, the Trust relies on the following facts –

- (1) Mr Murphy told four medical experts (Mr Kurer, Dr Haynes, Dr Jenkins and Mr Limb) that he was unable to work and had been unable to work since the accident in March 2017.
- (2) The Particulars of Claim, which were verified by a statement of truth signed by Mr Murphy’s legal representative on his behalf, stated that Mr Murphy was no longer able to work as a builder and had been unable to work since the index events.
- (3) The Preliminary Schedule of Loss, which was verified by a statement of truth signed by Mr Murphy’s legal representative on his behalf, claimed full loss of earnings from six months after the surgery, when it was stated that he would have returned to work but for the negligence, and gave no credit for any earnings received. A sum of £108,444.78 was claimed for past loss of earnings and £356,562.50 for future loss of earnings.
- (4) In fact, Mr Murphy had returned to work by May 2018, when he posted pictures on Facebook of a ‘few jobs done lately’. In July 2019 he was appointed sole director of Sanctuary Supplements Limited, a business selling nutritional supplements used by weightlifters.

- (5) The statements made by Mr Murphy to the medical experts, if accepted by the Court, would have interfered with the administration of justice in that they would have caused him to be paid compensation to which he was not entitled.
- (6) At the time Mr Murphy made those representations to the experts and the statements in the Particulars of Claim and Preliminary Schedule of Loss, he had no honest belief in their truth and knew them to be false.

52. As to Mr Murphy's assertion that he had been unable to play rugby since the surgery to his left arm in 2017, the Trust relies on the following facts –

- (1) Mr Murphy told the same four medical experts that he had been unable to play rugby since the accident in March 2017.
- (2) The Particulars of Claim and the Preliminary Schedule of Loss stated that Mr Murphy was unable to play rugby.
- (3) In fact, a report of a rugby match in the Ross Gazette on 18 October 2017 referred to 'some dogged forward play thanks to Sean Murphy.' He was referred to in further match reports on 21 February 2018 and 7 February 2019. He was also listed on team sheets and or referred to in match reports posted on Facebook for Ross RFC on 12 November 2017, 2 November 2018, 11 January 2019, 25 January 2019, 6 March 2019, 14 March 2019 and 30 March 2019. He attended Gloucester Royal Hospital on 27 November 2017 due a head injury sustained in a rugby scrum.
- (4) The statements made by Mr Murphy to the medical experts, if accepted by the Court, would have interfered with the administration of justice in that they would have caused him to be paid compensation to which he was not entitled.
- (5) At the time Mr Murphy made those representations to the experts and the statements in the Particulars of Claim and Preliminary Schedule of Loss, he had no honest belief in their truth and knew them to be false.

53. As to Mr Murphy's assertion that he had been suffering from loss of strength in his left arm since the surgery in 2017, the Trust relies on the following facts –

- (1) On 17 August 2020, Mr Murphy told Dr Jenkins that he had reduced grip strength in his left hand such that he could not hold a saucepan and he could not extend his arm properly in order to put socks on or tie his shoelaces. He reported that he found it difficult to put things into an oven, he was unable to carry clothes upstairs and could no longer mow the lawn.
- (2) On 22 August 2020, Mr Murphy told Mr Limb that the most he could lift was an empty kettle and he required assistance with activities of daily living including dressing and cooking.

- (3) The Particulars of Claim stated that his grip strength in his left hand is reduced and his ability to assist with domestic chores and interact with his children has been significantly disrupted.
- (4) The Preliminary Schedule of Loss stated that Mr Murphy required assistance with heavy lifting tasks which require two arms and dressing the lower half on his left side. Claims were made for assistance with gardening and DIY.
- (5) In fact, Mr Murphy is able to lift heavy weights, including a heavy kettle bell, with his left arm, as demonstrated by the videos provided by Mr Oseman.
- (6) The statements made by Mr Murphy to the medical experts, if accepted by the Court, would have interfered with the administration of justice in that they would have caused him to be paid compensation to which he was not entitled.
- (7) At the time Mr Murphy made the representations to the experts and the statements in the Particulars of Claim and Preliminary Schedule of Loss, he had no honest belief in their truth and knew them to be false.

54. The Trust's case is that Mr Murphy is in contempt of court in relation to his claim for damages for clinical negligence in that –

- (1) He interfered with the due administration of justice by giving false information to medical experts who provided reports for the court.
- (2) He made false statements in documents verified by a statement of truth, namely the Particulars of Claim and Preliminary Schedule of Loss served on his behalf on 1 February 2021.

Legal principles

55. There was no dispute between Counsel as to the applicable legal principles.

56. The burden is on the Claimant, the Trust, to prove each of the allegations of contempt made against the Defendant, Sean Murphy. The standard of proof is the criminal standard of proof. The Trust must prove the allegations of contempt beyond reasonable doubt.

57. It was common ground that the approach I should take is that summarised by Stewart J in [9] of *AXA Insurance UK plc v Rossiter* [2013] EWHC 3805 (QB) –

“For the Claimants to establish each contempt alleged they must prove beyond reasonable doubt in respect of each statement:

(a) The falsity of the statement in question

(b) That the statement has, or if persisted in would be likely to have, interfered with the course of justice in some material respects;

(c) That at the time it was made, the maker of the statement had no honest belief in the truth of the statement and knew of its likelihood to interfere with the course of justice”.

58. Mr Bradley also invited me to follow the approach stated by Spencer J in [35] of *Calderdale and Huddersfield NHS Foundation Trust v Atwal* [2018] EWHC 961 (QB)

—

“35. It is important in a case such as this to concentrate on the nub of what is complained of at its most serious, rather than to consider and adjudicate on every detail of an oral or written statement which is alleged to have been false. The real thrust of this application for committal is that the defendant quite deliberately set out to deceive the doctors and other experts about the extent of his continuing disability, and that he verified by a statement of truth assertions of fact in his witness statement, and in his schedule of loss and damage, consistent with the things he had told the doctors and other experts knowing those statements to be false. I do not propose to make a finding in respect of each and every one of the 33 allegations of contempt but, even if it is not found to be a specific contempt, the fact that the defendant made a particular statement to more than one doctor or other expert may well provide evidence to support the inference that the central false statement was made quite deliberately knowing it to be false and knowing that it was likely to affect the value of the claim.”

59. Again, there was no dispute between Counsel that I should be guided by the same approach. Indeed, I understood the common position of counsel to be that in the present case also, the real thrust of the Trust’s application to commit Sean Murphy is that Sean Murphy quite deliberately set out to deceive the doctors and other experts about the extent of disability in his left arm, and that he verified by a statement of truth assertions of fact in his particulars of claim, and in his preliminary schedule of loss, consistent with the things he had told the medical experts knowing those statements to be false.

60. The evidence before the court comprises the evidence submitted on behalf of the Trust

—

(1) The affidavit of Mr Hansen and the documents (including electronic documents) exhibited to that affidavit.

(2) The affirmation of Mr Limb and the documents exhibited to that affirmation.

61. Mr Hansen is a solicitor in the firm of solicitors instructed by the Trust. He produces as exhibits a number of paper and electronic documents upon which the Trust relies as evidence in support of its allegations of contempt. In paragraphs 16 to 20 of his affidavit, Mr Hansen identifies and explains those documents which are said to establish Mr Murphy’s false statements in respect of his inability to work since the

accident to his left arm in March 2017. In paragraphs 21 to 24 of his affidavit, Mr Hansen identifies and explains those documents which are said to establish Mr Murphy's false statements in respect of his inability to play rugby since the accident to his left arm in March 2017. In paragraphs 25 to 28 of his affidavit, Mr Hansen identifies and explains those documents which are said to establish Mr Murphy's false statements in respect of his alleged weakness in his left arm since the accident to his left arm in March 2017.

62. Although Mr Hansen was cross-examined on his evidence given in his affidavit and in relation to a number of the documents exhibited to his affidavit to which he refers, I bear in mind that Mr Hansen claims no personal or direct knowledge of the facts which are alleged by the Trust to establish Mr Murphy's alleged acts of contempt of court. Put another way, the court is as well placed as Mr Hansen to review the documents exhibited to his affidavit; and to consider the degree to which those documents establish the facts upon which the Trust relies.
63. One of the documents exhibited by Mr Hansen is a witness statement made by Mr Ben Oseman and dated 22 September 2021. I understand that Mr Oseman's witness statement was before the Deputy Judge at the hearing of Mr Murphy's claim on 11 October 2021 and that Mr Oseman gave evidence at that hearing. Mr Oseman was not called to give evidence before me. In answer to a question in cross-examination, Mr Hansen said that the Trust had attempted to locate Mr Oseman with a view to his giving evidence in the present proceedings, but had been unable to do so. Mr Bradley did not object to the admission of Mr Oseman's witness statement. However he submitted, correctly, that he had not had the opportunity to cross-examine Mr Oseman, that Mr Oseman had not made a witness statement in support of the Trust's application to commit and that his witness statement dated 22 September 2021 was no more than an exhibit to Mr Hansen's affidavit.
64. In contrast to Mr Hansen, Mr David Limb is able to give evidence from his own knowledge of statements made to him by Mr Murphy during the course of Mr Limb's examination of Mr Murphy on 22 August 2020. Although Mr Limb did not produce his report until 25 October 2021, he had made manuscript notes of what Mr Murphy said to him during his examination on 22 August 2020. I had the benefit both of those manuscript notes and a typed transcript of those notes. Those notes are consistent with Mr Limb's evidence in paragraph 10 of his affirmation of what Mr Murphy told him at his examination appointment on 22 August 2020.
65. Mr Limb answered the witness summons to attend the hearing of this application to commit on 11 July 2024 in order to give oral evidence. He was not called to give evidence, as Counsel for Mr Murphy told the court that he did not seek to cross examine Mr Limb on his affirmation.
66. I accept Mr Limb's evidence in his affirmation sworn on 22 January 2024. In particular, I find that Mr Limb's account in paragraph 10 of his affirmation of what Mr Murphy told him at his examination appointment on 22 August 2020 is true and accurate. I give full weight to Mr Limb's evidence.
67. I now turn to consider each of the three elements of contempt alleged by the Trust against Mr Murphy.

68. In the light of Mr Murphy's plea of guilty in respect of his alleged inability to play rugby since the accident, it is convenient to begin with what remains in dispute as to the basis of that plea. I shall then explain my findings in relation to the alleged loss of strength in his left arm and, finally, deal with the question of his inability to work.

Inability to play rugby

69. Mr Murphy has admitted that his statements made in his Particulars of Claim and Preliminary Schedule of Loss that he was unable to play rugby since the accident in March 2017 were untrue. He has further admitted that in making those false statements, he has interfered with the due administration of justice and in respect of the allegations relating to his inability to play rugby, has acted in contempt of court.
70. The basis of his plea is that he cannot recall whether he directly told the experts that he had been unable to play rugby since the accident, or whether he failed to correct an expert if such a proposition was put to him during the medical examination. Either way, he accepts that if the experts inadvertently gained the impression that he had stopped playing rugby altogether following his injuries, he ought to have corrected the position.
71. Mr Murphy states that his false statement that he had been unable to play rugby since the accident was made because in his own mind, he was not playing rugby to anywhere near the high standard he had enjoyed previously. Subjectively, he did not consider that he was playing rugby because his engagement in the games that he did play was limited.
72. In [10] of his affirmation, Mr Limb states that on 22 August 2020 Mr Murphy told him that since the first operation he had not picked up a rugby ball. Mr Limb says that Mr Murphy volunteered this information and did not suggest that he had played rugby at a lesser standard than previously.
73. In [23] of his report, Mr Kurer records Mr Murphy as telling him on 29 October 2018 that Mr Murphy was a keen rugby player, that he trained twice a week and played once a week and he also went to the gymnasium regularly to maintain his strength and fitness. All that had finished. He said that he had put on around two stone in weight because he had not been able to train and play rugby.
74. In [4.03.9] of his report, Dr Haynes records Mr Murphy as telling him on 6 February 2019 that he could no longer play rugby, which had been his passion and major hobby. At [4.04.1] Mr Murphy is recorded as saying that rugby had been his passion and his main stress relief – it was very difficult not being able to play.
75. In [6.13] of his report, Dr Jenkins records Mr Murphy as telling him on 17 August 2020 that SM used to play rugby and he used to go daily to a local gym.
76. Mr Murphy's Particulars of Claim served on 1 February 2021 at [36] stated "He is unable to play rugby or to attend the gym which he previously enjoyed".

77. On the basis of Mr Limb's unchallenged evidence and these reported statements made by Mr Murphy to other medical experts on the occasions on which they examined or interviewed him, I am satisfied to the criminal standard that, on each occasion, Mr Murphy deliberately lied to each medical expert, by volunteering the false information that he had been unable to play rugby since he suffered the injury to his left arm on 25 March 2017. I reject his assertion made on 8 December 2023 in his basis of plea that he cannot recall whether he directly told the experts that he had been unable to play rugby since the accident. I am in no doubt that Mr Murphy was well able to recall that he had consistently and deliberately told the medical experts that he had not been able to play rugby since his accident, and that he had done so knowing that to be untrue. His assertion that he failed to correct an expert if such a proposition was put to him during the medical examination is also untrue. The evidence of Mr Limb shows that Mr Murphy volunteered the false information that he had been unable to play rugby since his injury in March 2017. The record of what he said to the other medical experts shows that he did the same in his interviews and examinations with them.
78. Mr Murphy's assertion that in his own mind, he was not playing rugby to anywhere near the high standard he had enjoyed previously and did not consider that he was playing rugby because his engagement in the games that he did play was limited, was made for the first time in his basis of plea on 8 December 2023. Had he truly been of that state of mind when he was interviewed by the medical experts, it is very difficult indeed to understand why he did not raise that with them. In particular, at least some explanation is needed as to why Mr Murphy did not raise that matter with either of the two consultant psychiatrists who interviewed him in relation to the alleged impact of his injury and subsequent surgery on his mental health. Mr Murphy has offered none.
79. Mr Hansen has produced as exhibits to his affidavit certain local press reports and entries from social media which are said to demonstrate that Mr Murphy returned to playing rugby by October 2017 at the latest, that is to say long before he was first interviewed by Mr Kurer on 29 October 2018.
80. The earliest report is taken from the website of Ross Rugby Football Club. It provides a match report of a game played between Ross 2nds and Hucclecote 2nds in late March 2017. Sean Murphy is mentioned as having played in Ross 2nds' front row on that day.
81. The next report is also taken from the Ross RFC website. It reports a match played on 12 November 2017 between Ross 2nds and Tewkesbury 2nds. The Ross 2nds front row is reported as including Sean Murphy, and is said to have "bullied their opposite numbers for the entire game".
82. In paragraph 12 of his affirmation, Mr Limb draws attention to Mr Murphy's medical records, which includes a note of Mr Murphy having been seen by his GP on 27 November 2017, said to be due to his having suffered a head injury whilst playing rugby on the previous weekend.
83. There is then a match report taken from the website of the Ross Gazette dated 7 February 2019 of a rugby game played between Ross 2nds and Tenbury 2nds. Sean Murphy is again mentioned as having played in the Ross 2nds' front row during that game.

84. Social media posts by Ross RFC on 11 January 2019, 25 January 2019, 8 March 2019, 14 March 2019 and 30 March 2019 all record Sean Murphy as being selected to play for Ross 2nds in rugby games on or around those dates.
85. On the basis of this evidence, I find as a fact that from November 2017 onwards, Mr Murphy was able to turn out and be selected regularly to play as a front row forward for Ross RFC 2nd XV, the very team for which he had been playing in March 2017 at the time when he sustained the injury to his left arm. I am satisfied to the criminal standard that Sean Murphy's standard of play from no later than November 2017 was sufficient to enable him to secure regular selection as a front row forward for the team for which he had been playing at the time of his injury. Given these facts and that there is no evidence of Mr Murphy having raised with the consultant psychiatrists (or at all) the assertion that in his own mind, he was not playing rugby to anywhere near the high standard he had enjoyed previously and did not consider that he was playing rugby because his engagement in the games that he did play was limited, I reject that basis of his plea on 8 December 2023 as untrue.

Lack of strength in left arm

86. In [10] of his affirmation Mr Limb says that on 22 August 2020 Mr Murphy told him that prior to his injury and operation in 2017 he had been a gym enthusiast famed for his strength and holding records for lifting. Since the third operation on 29 June 2017, whilst he had tried to go back to his pre-injury gym routine, he had only felt able to return to the gym recently and then could only manage cardiovascular work on exercise bikes. Mr Murphy told Mr Limb that he had suffered a reduction in grip strength since the injury and operations, such that he now suffered with poor grip in his left hand. He could not lift the weight of more than an empty kettle with his left hand.
87. On 29 October 2018, Mr Murphy told Mr Kurer that he continued to require assistance with heavy lifting tasks which require two arms and dressing on his left side. Mr Murphy told Mr Kurer that his grip strength in his left hand was reduced.
88. On 6 February 2019 Mr Murphy told Dr Haynes that he found it difficult to carry things and dress his left side; and that he had reduced grip and forearm strength in his left arm.
89. On 17 August 2020, Mr Murphy told Dr Jenkins that he would find it difficult to hold a saucepan in his left hand and things which required two-handed work, such as putting things in the oven, were difficult.
90. In [36] of his Particulars of Claim, Mr Murphy asserted that his grip strength in his left hand was reduced. In his Preliminary Schedule of Loss, Mr Murphy asserted that he required assistance with heavy lifting tasks which require two arms and with dressing the lower half on his left side. Mr Murphy claimed special damages to cover the past and future cost of care and assistance with heavy lifting tasks and dressing his left side.

91. The Trust's contention that Mr Murphy's statements as to the lack of strength in his left arm were false, and that he knew them to be false when he made them, is primarily founded upon video evidence provided by Mr Oseman and now exhibited to the affidavit of Mr Hansen.
92. There are a substantial number of such videos. The common theme is that they appear to show Mr Murphy lifting heavy weights with either both arms or his left arm both in a gym setting and in what appears to be his back garden. On behalf of Mr Murphy, Mr Bradley makes some important points about the reliability of this evidence, as the basis for proof beyond reasonable doubt of Mr Murphy having falsely and deliberately misled the medical experts about the strength or weakness of his left arm since his injury and operation.
93. None of the videos are dated. Out of the 33 videos which appear in the trial bundle, only two are said by the Trust to show evidence of Mr Murphy's post-operative scarring on his left arm. Without evidence of the dates on which the videos were taken, even those two videos which are found to show those scars cannot reliably be said to prove that Mr Murphy knowingly misled the medical experts, unless the videos can be dated. As Mr Bradley put it, in the absence of knowing the date, it is difficult to use the video footage as an evidential basis to compare Mr Murphy's reported function as against his actual function at the time of the medical evidence.
94. There is some force in these arguments. In particular, I would find it very difficult to accept undated video evidence of Mr Murphy lifting heavy weights, without it being possible to detect the post-operative scars on his left arm, as capable of reaching the requisite standard of proof. There would almost inevitably be a residue of reasonable doubt as to whether, in each case, the video had been shot prior to the events of late March 2017.
95. Conversely, however, if the Trust is able to point to video evidence of Mr Murphy lifting heavy weights using his left arm in which the post operative scars are clearly visible, such evidence will be capable of supporting a finding to the requisite standard of proof, particularly if it can be shown that the video footage in question was shot prior to at least one of Mr Murphy's statements about the loss of strength in his left arm. That is the corollary to Counsel's submission.
96. I return to the unchallenged evidence of Mr Limb. In [12c] of his affirmation, Mr Limb attests to the fact that 41 videos of Mr Murphy exercising have been passed to him, showing Mr Murphy performing numerous lifts with heavy gym equipment. Mr Limb states that the videos are not dated. He further states that in a number of the videos the scarring on Mr Murphy's lateral left elbow is clearly visible.
97. During the hearing, I was asked to view videos 8 and 27.
98. In video 8, Mr Murphy is seen repeatedly lifting a weighted bar with both arms over a period of some 20 seconds. The location appears to be a private garden. The posture in which Mr Murphy is performing the lift is plainly one which depends upon significant strength in the biceps of both arms of the lifter. Mr Murphy's post-operative scarring is clearly visible on his left arm. The video footage can thus be confidently dated to no earlier than 29 June 2017 (the date of Mr Murphy's third and

final operation). I was informed by Counsel that the website showed video 8 to have been uploaded onto YouTube on 17 August 2020. The video footage shown in video 8 must therefore have been shot prior to Mr Murphy's interview with Mr Limb on 22 August 2020.

99. In video 27, Mr Murphy is seen lifting and repeatedly swinging back and forth with both arms between his legs a kettle bell with "20KG" printed upon it over a period of some 40 seconds. The location appears to be a private kitchen. The posture in which Mr Murphy is performing the lift and swinging the kettle bell is plainly one which depends upon significant strength in the biceps of both arms of the lifter. Mr Murphy's post-operative scarring is clearly visible on his left arm. The video footage can thus be confidently dated to no earlier than 29 June 2017 (the date of Mr Murphy's third and final operation). I was informed by Counsel that the website showed video 27 to have been uploaded onto YouTube on 13 September 2020. The video footage shown in video 27 may therefore have been shot prior to Mr Murphy's interview with Mr Limb on 22 August 2020; but must have been shot within no more than some 3 weeks after that interview.
100. The Trust is, therefore, able to point to video footage of Mr Murphy lifting heavy weights using his left arm in which the post operative scars are clearly visible. Both videos 8 and 27 provide such footage. Video 8 must have been filmed on a date no later than 17 August 2020, the date on which it was uploaded to YouTube. Five days later, Mr Murphy told Mr Limb that he had experienced and continued to experience such a loss of strength in his left arm that he could no longer lift anything heavier than an empty kettle with his left hand. Video 27 must have been filmed on a date no later than 13 September 2020, the date on which it was uploaded to YouTube. Although that date comes some three weeks after Mr Murphy made that statement to Mr Limb, the fact that some three weeks later Mr Murphy was able to lift and to swing a 20 kilogram weight with both arms for a sustained period of 40 seconds calls for explanation. Mr Murphy has offered none.
101. In the light of the evidence provided by videos 8 and 27, I am satisfied to the criminal standard that Mr Murphy's statement to Mr Limb on 22 August 2020, that he continued to have poor grip strength and that he could lift nothing heavier than the weight of an empty kettle with his left hand, was false. The video footage in videos 8 and 27 proves beyond any reasonable doubt that at the time when Mr Murphy made that statement to Mr Limb, he was experiencing no significant weakness in the strength of his left arm and his ability to lift with that arm. I am satisfied to the criminal standard that when Mr Murphy made that statement to Mr Limb, he did so deliberately, knowing that it was false and without any honest belief in its truth.
102. These findings are reinforced by my findings in relation to Mr Murphy's ability to play rugby on a regular basis as a front row forward since November 2017. It is utterly fanciful to suggest that Mr Murphy could have done so since 2017, had he genuinely been so weakened in the strength of his left arm that he was unable to lift a weight heavier than an empty kettle. Mr Murphy came to interview with Mr Limb on 22 August 2020 knowing full well that he had resumed playing rugby regularly since late 2017, and that he had the ability in his left arm to lift weights on a sustained basis in a posture which placed significant strain on his biceps. Mr Murphy deliberately and blatantly lied.

103. For the same reasons, I am satisfied to the criminal standard that the similar assertions made by Mr Murphy in [36] of his Particulars of Claim and in his Preliminary Schedule of Loss, were false and that Mr Murphy caused those documents to be verified knowing those assertions to be false and without any honest belief that they were true.

Inability to work

104. In [10(b)] of his affirmation, Mr Limb states that on 22 August 2020 Mr Murphy told him that he had not put in a day's work since he sustained his injury on 25 March 2017. Mr Murphy told Mr Limb that following the third surgery on 29 June 2017 he had shut down his company as he realised that he would never get back to heavy manual work. Due to the pain in his left arm, he had not looked for work since that time.

105. In [20]-[22] of his report, Mr Kurer records Mr Murphy as telling him on 29 October 2018 that he was a builder and worked in a two-man company with his father-in-law. The company specialised in doing ground work which included digging foundations, footings, draining and slabbing. This was the heaviest building work as it almost always involved a great deal of digging by hand. Mr Murphy told Mr Kurer that essentially, he had not been back to work. He just could not do that sort of work at all. He and his father-in-law had done almost no work that year (2018). Mr Murphy had done a few 'light duties' building jobs but essentially he was quite incapable of doing the work he was doing before.

106. In [4.03.9] to [4.03.10] of his report, Dr Haynes records Mr Murphy as telling him on 6 February 2019 that he was unable to work; and because he was unable to work, his wife had had to increase her hours of work and now worked full time as a care assistant. Their finances were tight.

107. In [4.11] of his report, Dr Jenkins records Mr Murphy as telling him on 17 August 2020 that he worked with his father-in-law trading as CLL Contracting ['CLL'], a building and construction company which undertook roadworks and ground works. He was classed as a self-employed sole trader. At [5.2], Mr Murphy is reported to have told Dr Jenkins that the work that he and his father-in-law undertook was heavy work with a lot of humping and carrying.

108. At [6.1], Dr Jenkins records Mr Murphy as stating that he had undertaken no work since the accident.

109. Mr Murphy's Particulars of Claim at [36] state "He is no longer able to work as a builder and has been unable to return to work since the index events"; and at [37] "He is handicapped in the open labour market".

110. In his Preliminary Schedule of Loss, Mr Murphy asserted that he had been unable to return to work as a self-employed builder. His main job involved heavy manual

building tasks such as laying groundwork and as a result of his persistent elbow symptoms he had been unable to return to this. He said that he had been advised that but for the negligence, he would have returned to work six months after surgery. He claimed for total loss of earnings on that basis for the period 30/09/2017 to 29/01/2021 in the sum of £108,444.78. Insofar as his claim for future loss of earnings was concerned, it was based on the difference between what he would have earned on an average annual basis had he been able to continue his building work and what he might now expect to earn looking forward working as a light goods delivery driver, a taxi driver or in customer services. That difference was calculated to be £11,410 per annum which capitalised over the remainder of his working life gave a total claim for loss of earnings of £356,562.50.

111. The Trust's case is that Mr Murphy had in fact returned to building work with CLL by May 2018. Mr Hansen produced as an exhibit Facebook posts which he said demonstrated that Mr Murphy had returned to work laying tarmac drives and constructing decking and fencing by July 2018, prior to Mr Murphy's examination by Mr Kurer on 29 October 2018 and Dr Haynes on 6 February 2019.
112. The CLL Facebook posts include one dated 11 May 2018 which stated "Few jobs done lately". On 19 July 2018, there was a post from CLL stating "Raised decking job in western". On 19 July 2018 a post stated "Tarmac drive and fence in Hereford". On 24 July 2018 a post stated "Tarmac drive Hereford". On 3 August 2019 a post stated "Another happy customer. Tarmac drive Hereford".
113. Mr Bradley pointed out that none of these posts by CLL was direct evidence of Mr Murphy actually undertaking any work, let alone heavy building work. Moreover, Mr Kurer records Mr Murphy as having stated that he had been able to undertake a few light duty building jobs. It was incorrect for the Trust and for Mr Hansen to assert that Mr Murphy had told "all four medical experts" that "he was unable to work and had not been able to work since the accident".
114. The Trust also relied on evidence that on 28 June 2019, Mr Murphy applied to Companies House to set up a company called Sanctuary Supplements Ltd ['SSL'] and thereafter ran a business selling supplements which had its own Facebook page. Mr Hansen exhibited the documents which attested to the formation and registration of SSL. A Facebook post dated 8 January 2020 gave Mr Murphy's home address as the address for SSL supplements store. SSL was incorporated on 1 July 2019 with Mr Murphy named as SSL's sole director.
115. Mr Bradley pointed out that SSL was dissolved on 23 March 2021. The Trust had produced no evidence of any profit which might need to be set off against Mr Murphy's claim for past or future earnings. There was no evidence of any accounts having been filed.
116. Mr Bradley submitted that there was no evidence that Mr Murphy had actually carried out any heavy building work of the kind he undertook prior to his injury in March 2017. Although Mr Murphy had said to Mr Limb on 22 August 2020 that he had not done a day's work since the accident, the court should be careful not to confuse hyperbole and exaggeration with a clear and deliberate intention to deceive. Mr Murphy had been more nuanced in what he said to Mr Kurer, acknowledging that

he had done some light work. In the Preliminary Schedule of Loss, Mr Murphy had based his claim for future loss of earning openly on the basis that he expected to be able to work in delivery work or taxi driving, or in customer care. Crucially, Mr Murphy had not based his claim for loss of future earnings on the false assertion that he was no longer able to work. That, however, was the basis for the alleged contempt. The Trust was not able to prove to the requisite high standard that Mr Murphy had set out deliberately to deceive the medical experts or the court into proceeding on the basis that since his injury in March 2017 he had been, and would continue to be, unable to work. The Trust had not produced evidence which enabled the court to be sure that Mr Murphy was deliberately seeking to interfere with the administration of justice by advancing a fraudulent claim for damages based on false statements as to his inability to work since his injury.

117. I remind myself of the common position taken by Counsel that, in a case such as this, it is important to concentrate on the nub of what is complained of at its most serious, rather than to consider and adjudicate on every detail of an oral or written statement which is alleged to have been false. To adopt the formulation used by Spencer J in *Calderdale*, the real thrust of the Trust's application for committal is that Mr Murphy quite deliberately set out to deceive the medical experts about the extent of disability in his left arm; and that he verified by a statement of truth assertions of fact in his Particulars of Claim, and in his schedule of loss and damage, consistent with the things he had told the medical experts, knowing those statements to be false.
118. Central to the Trust's case is the contention that Mr Murphy deliberately set out to deceive the medical experts and the court as to his ability to resume his work in the building trade. The contention is that Mr Murphy's motive for doing so was in order to deliberately misrepresent his earning capacity since surgery and so secure a large payment of damages for loss of past and future earnings.
119. I return to what Mr Murphy actually said to the medical experts.
120. He told Mr Kurer in October 2018 that essentially, he had not been back to work and that he was quite incapable of doing the heavy building work that he was doing before his injury and operations. He told Dr Haynes in February 2019 that he was unable to work, that as a result his wife was now having to work full time and that finances were tight. He told Dr Jenkins in August 2020 that he had undertaken no work since the accident. He told Mr Limb on 22 August 2020 that he had not worked since his injury in late March 2017, that he had shut down CLL following his surgery in later June 2017 as he realised that he would never get back to heavy manual work.
121. I am satisfied to the criminal standard that these statements were false. In making them, Mr Murphy intended to deceive the medical experts into a false understanding of the true impact of his injury and the surgery to his left arm. Mr Murphy did so deliberately and fully aware that he was lying about his ability to undertake heavy building work.
122. The evidence is clear that from November 2017 at the latest, Mr Murphy had resumed playing rugby regularly as a front row forward for the team in which he played at the time of his injury in March 2017. The evidence shows that by the date of his interview with Mr Limb in August 2020, CLL had been trading for over two years.

The video footage establishes that five days before, and three weeks after, Mr Murphy told Mr Limb that he was unable to work and could not see himself returning to heavy manual work, videos were uploaded onto YouTube showing Mr Murphy lifting heavy weights with the post operative scarring visible on his left arm.

123. On the basis of this evidence, I am satisfied to the criminal standard that Mr Murphy was able to undertake heavy building work of the kind that he had undertaken with CLL from no later than November 2017 onwards. The overwhelming inference is that he was carrying out such work regularly with CLL from May 2018 onwards. When he told each of the four medical experts that since his injury and surgery he was no longer able to undertake the heavy building work he had done before, he was deliberately deceitful. On each occasion, he well knew that he was lying and had no honest belief in the truth of what he said.

124. I am satisfied to the criminal standard that Mr Murphy maintained that deliberate deception in both [36] and [37] of the Particulars of Claim and in his Preliminary Schedule of Loss, which included the false statement that he was unable to work which he deliberately and falsely verified as true. In particular, he lied as to his ability to resume his former work as a builder following the injury and surgery to his left arm. He did so knowingly, with the dishonest intention of grossly exaggerating his claim for past and future loss of earnings by asserting, falsely, that he would in future be limited to other less lucrative trade or employment.

Conclusion

125. I find the allegations of contempt made by the Trust against Sean Murphy to have been proved to the criminal standard of proof.

126. Sean Murphy is in contempt of court in that he has interfered with the due administration of justice by giving false information to four medical experts who provided reports to the court.

127. Sean Murphy is in contempt of court in that he made false statements in documents verified by a statement of truth, namely the Particulars of Claim and Preliminary Schedule of Loss.

128. The false information was that since and by reason of his injury and surgery in 2017

–

(1) He was no longer able to work.

(2) He was no longer able to play rugby.

(3) He had significantly reduced strength in his left arm.

129. In each case and on each occasion, Sean Murphy gave that false information knowing that it was false, without any honest belief that it was true and knowing that it was likely to interfere with the course of justice.