Neutral Citation Number: [2020] EWHC 3046 (QB)

Court Claim No: QA-2019-000132

IN THE HIGH COURT OF JUSTICE
HIGH COURT APPEAL CENTRE
ROYAL COURTS OF JUSTICE
ON APPEAL FROM
THE COUNTY COURT AT CENTRAL LONDON

Royal Courts of Justice
Strand
London WC2A LL
(Remote hearing on Skype for Business)

Date: 12 November 2020

Before:

MR JUSTICE LAVENDER

- -

Between:

Mohamed Issa Kamara

Claimant/ Appellant

- and -

Builder Depot Limited

Defendant/ Respondent

- -
- -

Graham Smith (instructed by **Nas & Griffith Legal Associates**) for the **Appellant**
Arun Katyar (instructed by **DAC Beachcroft Claims Ltd**) for the **Respondent**

Hearing date: 12 June 2020

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JUDGMENT

Mr Justice Lavender:

(1) Introduction

1. I want to emphasise at the outset of this judgment a truly remarkable fact. By the time of the hearing before me on 12 June 2020, the Claimant's application for permission to appeal had resulted in 10 orders by High Court Judges in the 12 months and more since the Appellant's Notice was filed on 22 May 2019. This is a thoroughly unsatisfactory situation and incompatible with the overriding objective, especially in circumstances where, as I will explain, the proposed appeal had no prospect of success.

2. The application before me was for a sixth, retrospective extension of the time limited for filing the appeal bundle in connection with the Claimant's proposed appeal against the order of HHJ Baucher dated 1 May 2019, which was made following a trial on 15 to 17 April 2019 of the Claimant's claim for damages for personal injuries said to have been sustained in an accident at work on 7 July 2014.

3. HHJ Baucher held that the Defendant would have been liable to the Claimant, after a two-thirds deduction for the Claimant's contributory negligence, for damages in the amount of £283.33, but for his fundamental dishonesty in exaggerating his account of the incident, in exaggerating the extent of his back symptoms and in presenting a claim for £3,250 for the cost of care which he did not receive, supported by fabricated invoices. She dismissed the claim pursuant to section 57 of the Criminal Justice and Courts Act 2015.

(2) The Trial and the Judgment

4. The Claimant was represented at trial by counsel, Mr Lixandru, who, as the judge noted, had been instructed shortly before the trial. The Defendant admitted that the accident occurred and that it was liable to the Claimant, subject to the issues of contributory negligence and fundamental dishonesty. It is unnecessary for me to say much about the trial or the judgment insofar as they concerned the issues of contributory negligence or damages other than the claim for the cost of care.

5. The trial commenced with an unsuccessful application by the Claimant for the trial to be adjourned to allow time for him to obtain a report from a clinical psychologist on his alleged learning disability. The Claimant gave evidence himself and called a psychiatrist, Dr Obuaya, and relied on a report from an orthopaedic expert. The defendant called four factual witnesses and a psychiatrist, Professor Maden, and also relied on five unchallenged witness statements.

6. In relation to the claim for the cost of care, the Claimant's case was that he was referred by his cousin, Peter Muana, to People's Carers, a business run by one Sam Nyambeh, who arranged for carers to come to his home, where he paid them in cash. However, the Claimant did not call Mr Muana, Mr Nyambeh or any of the carers. He relied on a number of invoices purportedly issued by People's Carers for the cost of the alleged care.

7. The Claimant now contends that he was unable to provide a witness statement from, or to call, Mr Muana because Mr Muana could not be contacted by the Claimant's solicitors. However, the Claimant also claims that Mr Muana did attend court on the

second day of the trial, arriving during closing submissions. His presence was not drawn to the attention of the Judge.

8. The Defendant's case was that the Claimant had not received or paid for any care and that the invoices were forgeries. The Defendant relied on the following matters:

   (1) The Claimant's DWP records stated that he had been the carer for his uncle, with whom he lived, from 3 February 2012.

   (2) The alleged need for post-accident care was not referred to in the Claimant's disclosed medical records, nor in the histories which he provided to the three medical experts.

   (3) The judge was invited to draw an adverse inference from the Claimant's failure to call Mr Muana, Mr Nyambeh or any of the carers.

   (4) The defendant relied on unchallenged witness statements to the effect that:

      (i) People's Carers did not exist.

      (ii) The address for People's Carers given in the invoices did not exist.

      (iii) Two of the alleged carers named by the Claimant had been contacted and had confirmed that they did not provide care to the Claimant.

   (5) The Claimant did not provide bank or other statements showing the source of the funds allegedly used to pay for his care.

   (6) The invoices were contradictory, contained many spelling mistakes and, in one case, pre-dated the accident.

9. At the end of the trial, instead of making oral closing submissions, the claimant was given a day in which to file written closing submissions. Mr Lixandru was disinstructed and the Claimant's solicitors completed his closing submissions.

10. In her judgment dated 1 May 2019 the judge found that the claim for the cost of care was totally fabricated. She drew adverse inferences from the Claimant's failure to call Mr Muana and his alleged carers, saying as follows in paragraphs 80, 84, 85 and 86 of her judgment:

> "80. … In his witness statement the claimant said that he was given the number for Peoples' Carer by his cousin, Peter Muana. He said that Peter had visited him and suggested that he needed care. He was asked in cross-examination when he had last seen Peter. He provided various dates; October 2013, October 2014, October 2016 and October 2017. Two of those dates are inconsistent with the claimant's witness statements when he referred to seeing Peter in February 2015. The 2013 and 2014 dates cannot be right as they pre-date the provision of care. I am satisfied that those dates were just given at a whim by the claimant. I find that has nothing to do with his slowness in respect of reading and writing."
>
> "84. Further, the claimant was put on notice right from the outset of this case that he needed to call Peter Muana and, for that matter, the other witnesses. I

> simply do not accept his varying accounts as to when he last saw Peter Muana. …"
>
> "85. I reject the claimant's assertion that he has not seen Peter Muana. If there is any truth in the contention that Peter Muana arranged the care provision and that it had been properly and legitimately provided, Peter Muana should have given evidence. I also find it very surprising that he was not so called because he was identified as a witness in the claimant's Directions Questionnaire. That document is dated 5 March 2018. The claimant must have identified him as a witness at that stage and I simply reject the claimant's varying accounts as to when he last saw Peter Muana. I draw an adverse inference in relation to the nonattendance of Peter Muana.
>
> 86. Further, given the seriousness of the allegations the claimant faced, he should also have called those who allegedly provided the care. Their absence, and there is a total silence as to why they have not been called, save for the information provided by the defendant, results in my drawing an adverse inference in respect of their non-attendance. If there was a shred of truth in the provision of the care, then all those witnesses should have been in court and should have given their evidence on oath, or affirmation."

11. As for the invoices, she said as follows in paragraphs 82 and 83 of her judgment:

> "82. The claimant's solicitors submitted that given the claimant's literacy level he was not capable of producing the documents in support of the claim for care.
>
> 83. Literacy is but one part of the problem for the claimant. I accept that he has only basic literacy skills, but in my view rather than undermining the assertion that the documents were, at least in part, produced by the claimant, his attendant limitations support that assertion. The letters and the simple invoices are littered with mistakes such as, 'Peoples' Carer' spelt incorrectly, 'Private' spelt PIVATE, 'Liability' spelt LAIBILTY and, 'Apologies' instead of, 'Apologise'; just the sort of mistakes I find the claimant would make."

12. Earlier in her judgment, the judge had found that the Claimant's literacy was limited, but that he was capable of reading or writing simple documents. In reaching this finding, she attached most weight to the evidence of one of the Defendant's witnesses, Mr Allum, who said that he had seen the Claimant complete basic forms, but he knew that the Claimant was slow at writing. The judge found Mr Allum to be a clear, cogent and fair witness.

13. The judge found that the Claimant was not an impressive witness. He was histrionic, aggressive and combative. The judge found that this was not because the Claimant was stressed or suffering from any mental illness, as he contended, but that it was done for effect. That was the opinion of Professor Maden, who was in court throughout the Claimant's evidence. The judge rejected the Claimant's evidence that his GP's note certifying him fit to work on 29 July 2014 was fabricated and was clearly unimpressed by the fact that the Claimant made and persisted in this serious, but unsustainable allegation.

14. Then she said as follows in paragraphs 87 and 88 of her judgment:

> "87. The claimant's difficulties in relation to the care plan are compounded by his own oral evidence. He told me he paid the care claim weekly in cash, but the invoices show the liability of £3,250 being due at the start of the care in September 2014 and then reducing on a weekly basis. It was never said that the claimant knew how much care he needed before it had even commenced. Further there is an invoice dated 18 February 2014, which predates the accident, which refers to "payment been overdue". It also states that the care was provided from 18 September 2014 to 18 February 2015, whilst a letter dated 5 April 2017 refers to the care being provided from 9 September 2014 to 24 March 2015, which accords with the claimant's schedule of loss.
>
> 88. I find that these invoices were simply manufactured for dishonest gain. Whether the claimant did it alone or assisted, I know not. I found his explanation that Peter had "sorted it out" unbelievable. My view is strengthened by the claimant's singular failure to tell any of his treating consultants of the need for care and also my findings that this was but a minor incident. On my findings he had long recovered by the time the care was allegedly provided. I find that he did not need care at any stage, even for the three weeks that I have allowed for his pain and suffering. It is also beyond belief that a man earning £11 an hour who was by then off work would pay out £25 an hour for basic care services. Further, his bank statements did not support the claimant taking out cash to pay for the care each week and when the claimant appreciated that he changed his evidence. He then said he had borrowed the money from family and friends and he had repaid them out of his savings. As Mr Hogg asserted in closing, if that had been so, why not simply pay the carers out of his savings in the first place? The reality is that I find the claimant has paid out nothing. I find that the claim for care is totally fabricated and despite his assertions to the contrary and the attempt to justify it, the claimant did not receive or pay for any care."

15. The judge set out section 57 of the Criminal Justice and Courts Act 2015 and quoted the discussion of that section in paragraphs 62 to 65 of the judgment of Robin Knowles J in *LOGOC v Sinfield* [2018] EWHC 51 (QB). She found that the Claimant's claim was fundamentally dishonest, that the Claimant's account of the incident and his involvement in it was totally exaggerated and untrue and that he had deliberately exaggerated the extent of his back symptoms. Then she said as follows in paragraphs 96 to 98 of her judgment:

> "96. However, the claim can be dismissed in any event on the basis of the claim for care. The reality is that the claimant's claim for future loss of earnings was never provable. His expert evidence did not support it. Even on the claimant's best case he had a maximum of two years' pain and suffering and one year's loss of earnings with some psychological damage and that that meant a claim for £3,250 care was substantial. However, on my actual findings, the claim for £3,250 dwarfs the actual award. The obvious reason for the fabricated invoices and the claim is financial gain.
>
> 97. I find that the dishonest claim for care went to 'the root of or the heart of the claim' not only in terms of value but also by its submission the claimant was asserting that he was so disabled by the accident he was required to obtain care from September 2014 to March 2015.

> 98. No evidence has been adduced that the claimant would suffer substantial injustice if the claim were dismissed. He will clearly lose the valid part of his claim. However, as was said in *LOGOC v Sinfield*, at paragraph 89 something more is required than the mere loss damages. The primary claim must be dismissed."

16. The judge ordered the Claimant to pay the Defendant's costs and to pay £50,000 on account of costs by 15 May 2019.

(3) The Application for Permission to Appeal

17. I will attempt to summarise the protracted history of the Claimant's application for permission to appeal and to identify the causes of delay.

(3)(a) The Appellant's Notice

18. No application was made to HHJ Baucher for permission to appeal. On 2 May 2019 the Claimant applied to Auscript for a transcript of the whole proceedings. On 22 May 2019 the Claimant filed an Appellant's Notice. I will consider the grounds of appeal later.

19. Paragraph 4.3 of Practice Direction 52B provides as follows:

> "**Applications in the appeal:** Any application to be made in the appeal (for example, for a stay of the order of the lower court, or for an extension of time) should be included within the appellant's notice. Any application for a transcript at public expense should be made within the appellant's notice."

20. The Claimant did not apply in the Appellant's Notice for a transcript at public expense. That failure has been a substantial cause of the subsequent procedural difficulties. On 28 May 2019 the Claimant received an estimate from Auscript of £990 for the production of transcripts, but it was not until 30 September 2019, i.e. over 4 months after the Appellant's Notice was filed, that the Claimant made an application to the High Court on form EX105 for an order for a transcript of the entire proceedings at public expense. Regrettably, that application was not dealt with until 31 January 2020, i.e. a further 4 months later.

21. What the Claimant did apply for in the Appellant's Notice was a stay of execution and leave to introduce fresh evidence. The allegedly fresh evidence consisted of:

(1) The evidence of Mr Muana. The Claimant subsequently obtained a short statement made by Mr Muana on 3 June 2019, in which he said that he found Mr Nyambeh of People's Carers on Gumtree for the Claimant. The statement concluded as follows:

> "9. The People's Carers invoices was from Sam Nyambeh who at the first instance was not too keen on providing the invoices.
>
> 10. In our second meeting he handed over the invoices in an A4 size envelope. This was the last time I saw Sam Nyambeh.

> 11. I was able to make my way to court during the closing submission but the counsel representing in court elected not to inform the Honourable Judge of my presence in court."

(2) A report on the Claimant's alleged learning difficulty. This was obtained later and is dated 22 February 2020. The author of the report, Ms Sarah C. Meredith, said that the Claimant could not read or write and that it was likely that he had a specific learning difficulty that was closely aligned to dyslexia.

22. On 30 May 2019 Sir Alistair MacDuff made an order (the first High Court order in this case) staying HHJ Baucher's order. In the events which I will describe, after a brief hiatus in August and September 2019, that stay remained in force until 17 March 2020, when the appeal was struck out.

(3)(b) The Requirements for the Appeal Bundle

23. Paragraph 6.3 of Practice Direction 52B states as follows:

> "**Appeal bundle:** As soon as practicable, but in any event within 35 days of the filing of the appellant's notice, the appellant must file an appeal bundle which must contain only those documents relevant to the appeal. The appeal bundle must be paginated and indexed."

24. As to what the appeal bundle should contain, paragraph 6.4(1)(g) provides as follows (emphasis added):

> "Subject to any order made by the court, the following documents must be included in the appeal bundle–
>
> …
>
> (g) a transcript of the judgment of the lower court <u>or other record of reasons</u> (except in appeals in cases which were allocated to the small claims track and subject to any order of the court)."

25. In addition, paragraph 6.4 (2)(g) of Practice Direction 52B provides as follows:

> "The following documents should also be considered for inclusion in the appeal bundle but should be included only where relevant to the appeal –
>
> …
>
> (g) any other documents which any party considers would assist the appeal court."

26. In my experience, practitioners in this field often appear to be unaware of the significance of the words "or other record of reasons" in paragraph 6.4(1)(g). Those words refer back to paragraph 6.2(c). Paragraph 6.2 provides as follows:

> "**Transcript of the judgment of the lower court or other record of reasons:** Except where the claim has been allocated to the small claims track, the appellant must obtain a transcript or other record of reasons of the lower court as follows –

> (a) where the judgment has been officially recorded, the appellant must apply for an approved transcript as soon as possible and, in any event, within 7 days of the filing of the appellant's notice;
>
> (b) where the judgment under appeal has been handed down in writing, the appellant must obtain and retain a copy of the written judgment;
>
> (c) in any other case, the appellant must cause a note of the judgment under appeal to be made and typed. The parties to the appeal should agree the note, which should then be sent to the judge of the lower court for approval. The parties and their advocates have a duty to make, and to co-operate in agreeing, a note of the judgment."

27. Appeals to the High Court are bedevilled by delays in obtaining transcripts of judgments. It is not, in my judgment, an acceptable approach for appellants or their representatives to assume that appeals can simply be put on hold until a transcript is produced. Sadly, experience shows that, for whatever reason, it may be the case that either: (i) the production of a transcript is inordinately delayed; or (ii) it may not be possible to produce a transcript at all.

28. The Practice Direction provides what should be the solution for this problem in most cases. Instead of a transcript of the judgement, the appeal bundle can contain an "other record of reasons", i.e. an agreed note prepared in accordance with paragraph 6.2(c). This can be replaced with the transcript if and when the transcript is subsequently obtained.

29. In other words, the production of an appeal bundle does not have to await the production of a transcript of the judgment under appeal. On the contrary, if there is any delay in the production of a transcript of the judgment, the party applying for permission to appeal is under a duty to cause a note of the judgment to be made and typed and to seek the other party's agreement to it. The note can then be included in the appeal bundle if the transcript is unavailable.

30. My own practice, when faced with an application to extend the time for filing an appeal bundle because of a delay in obtaining a transcript of judgment, is usually to grant an extension, but to direct that, if a transcript of the judgment is not available by the extended time limit, the appeal bundle should be filed and should include, instead of a transcript of judgment, a note prepared pursuant to paragraph 6.2(c) of Practice Direction 52B. This is not always an appropriate order to make, but in many cases it can help to prevent the situation which arose in the present case.

31. Similarly, the production of the appeal bundle need not await the production of any other transcript which the appellant regards as relevant and helpful and which the appellant would wish to include in the appeal bundle pursuant to paragraph 6.4(2)(g) of the Practice Direction. The skeleton argument can explain why a transcript has been sought of the whole hearing and, using counsel's or solicitors' notes, what the transcript is expected to say on the points relevant to the appeal. Such a skeleton argument may have to be amended when the transcript is produced. It is normal practice in the Court of Appeal Criminal Division for counsel's advice on appeal to be perfected in this way. But the skeleton argument will be helpful to the court, for instance in deciding whether or not to grant permission to appeal.

(3)(c) The First Extension of Time

32. On 5 June 2019 the Claimant filed a skeleton argument in support of his application for permission to appeal.

33. On 17 June 2019 the Claimant submitted to the County Court at Central London requests on form EX105 for the transcripts of the trial on 15 to 17 April 2019 and of the judgment to be provided at public expense. As I have already indicated, those requests should have been made in the High Court and should have been made in the Appellant's Notice.

34. In this case, the appeal bundle should have been filed on 26 June 2019. It was not, on the basis that the court had not released the tapes to Auscript, who had consequently not produced any transcripts. On 25 June 2019 the Claimant applied for an extension of time. On 7 July 2019 Freedman J made an order (the second High Court order) extending the time for filing the appeal bundle to 14 days from receipt of the transcript or 30 July 2019, whichever was the earlier. He also directed that any application for a further extension should be made before the expiry of the extended deadline.

35. On 25 July 2019 a clerk in the County Court at Central London wrote to the Claimant's solicitors to tell them that their request for a transcript at public expense should be made to the High Court. The Claimant did not in fact make a request to the High Court until over 2 months later, on 30 September 2019.

36. The appeal bundle was not filed by 30 July 2019. Again, the tapes had still not been released to Auscript. No application was made by 30 July 2019 for a further extension. That was the first instance of the Claimant failing to comply with an order that an application had to be made by a certain time. The reason subsequently given for the failure to issue the application on time was illness on the part of the paralegal dealing with the matter, followed by difficulty in obtaining fee remission.

(3)(d) The First Strike-Out and the Next Two Extensions of Time

37. On 15 August 2019 Murray J made an order (the third High Court order) striking out the appeal and lifting the stay of HHJ Baucher's order. On 19 August 2019 the Claimant applied for Murray J's order to be set aside. The Claimant also submitted an application, dated 29 July 2019, but not received by the court until 20 August 2019, for a further extension of the time limited for filing the appeal bundle.

38. On 4 September 2019 Murray J made a further order (the fourth High Court order), setting aside his first order and restoring the stay. He extended the time limited for filing the appeal bundle to the earlier of 14 days from receipt of the transcript or 30 September 2019. He directed that any application for a further extension must be made before the extended deadline.

39. In paragraph 3 of his reasons, Murray J said as follows:

> "The Appellant should, however, pay careful attention to para 4 of this order. If an application for a further extension is necessary and is not made in time, there is no guarantee that the indulgence afforded to the Appellant on this occasion will be afforded again. It is likely that the appeal will be and remain

> struck out, although that will, of course, be a matter for the judge who considers any future application in this regard."

40. It appears that the tapes of the hearing on 1 May 2019 were released to Auscript on 18 September 2019. The Claimant did not file an appeal bundle by 30 September 2019. On that day he made an application for a further extension of time and also filed in the High Court his request for the transcript of the entire proceedings to be provided at public expense. On 2 October 2019 Saini J made an order (the fifth High Court order) extending time to the later of 14 days following receipt of the transcript or 2 December 2019. (The word "later" was treated by both parties as a slip for "earlier".) He directed that any application for a further extension must be made 7 days before the extended deadline.

(3)(e) The Applications before, and the Orders of, Mr Justice Griffiths

41. The Claimant did not file the appeal bundle by 2 December 2019. He did not issue an application for a further extension of time until 3 December 2019. That was the second occasion on which the Claimant failed to comply with such an order. The Claimant's evidence is that this was due to a mistake by the paralegal dealing with the matter, caused by his medical condition. The Defendant applied on 18 December 2019 for the appeal to be struck out and the stay lifted. The Claimant applied on 7 January 2020 for relief from sanctions.

42. Meanwhile, on 20 December 2019 a clerk in the Queen's Bench Division sent an email to the Claimant's solicitors stating (incorrectly) that the request for a transcript at public expense should be made to the county court. When this email was forwarded to the county court, a clerk in that court replied on 31 December 2019, stating (correctly) that the request should be made to the Queen's Bench Division. Of course, all of this to-ing and fro-ing could have been avoided if the Claimant had observed the Practice Direction and included his request in the Appellant's Notice.

43. The three applications came before Griffiths J on 24 January 2020. He made an unless order (the sixth High Court order). The appeal was to be struck out on 6 March 2020 and the stay lifted unless the Claimant filed and served his appeal bundle by 6 March 2020. He ordered that the appeal bundle was to contain, inter alia, the skeleton argument, a transcript of the judgment and a transcript of the trial. He directed that any application for a further extension of time should be made by 28 February 2020.

44. In his judgment (*Kamara v Builder Depot Ltd* [2020] EWHC 2174), Griffiths J said that it was with considerable hesitation that he was going to give the Claimant one last chance. He said as follows in paragraph 24 of his judgment:

> "So, what I am going to do is to make an unless order, and that means that, unless this order is complied with, the action will automatically come to an end and the appeal will automatically end. And I emphasise that this is very much a last chance, because the prejudice caused by the delay is real, both to the administration of justice and to the defendant kept out of the fruits of the action, and it is essential that the appeal is progressed efficiently and so far as possible speedily now. There can be no more failures."

45. Griffiths J also directed that a copy be sent to him of the Claimant's application for an order that the transcripts be provided out of public funds. That was done and on 31 January 2020 Griffiths J made an order (the seventh High Court order) approving the application for a transcript of the whole hearing on 1 May 2019, i.e. the day of judgment. His order was silent as to the transcript of the trial. It appears that this was an error. Regrettably, therefore, it took 4 months for the court to deal with the Claimant's request for transcripts at public expense and, when it did so, it failed to deal with part of the request.

46. Sadly, the Claimant's solicitors failed to notice that the order did not deal with the transcript of the trial. The transcript of the judgment was sent by Auscript to the County Court at Central London on 20 February 2020 and then to the Claimant's solicitors, who received it on 27 February 2020. They noted that there was no transcript of the trial and on 27 February 2020 they sent an email to the court, asking for Griffiths J's order to be reworded to include approval of the application for a transcript of the trial at public expense. Griffiths J made an order (the eighth High Court order) on 27 February 2020 approving the application for a transcript of the hearing at public expense, but it seems that this was not received by the Claimant's solicitors until 11 March 2020.

(3)(f) The Application before, and the Order of, Mr Justice Saini

47. Also on 27 February 2020 the Claimant applied for a further extension of the time limited for filing the appeal bundle and for a variation of Griffiths J's order of 31 January 2020 so as to approve the request for a transcript of the trial at public expense. Unfortunately, this application was not supported by a witness statement and contained little explanation of what was by then a complex procedural history.

48. On 3 March 2020 Saini J made an order (the ninth High Court order), granting what he described as a final extension to 17 March 2020 of the time limited for filing the appeal bundle, which he directed must include the skeleton argument and the transcripts of the judgment and of the trial. He ordered that, unless the appeal bundle was filed by 17 March 2020, the appeal would be struck out without further order and the stay removed. He observed as follows in his reasons:

> "The evidence supporting the application notice is unhelpful. It consists merely of references to attached correspondence with no explanation or statement of how long would be required to comply with Griffiths J's Order. Doing the best I can, I see that there has been some delay in transcripts being received. The transcripts were received on 20 February 2020 and I have provided a more than generous period (to 17 March 2020) for provision of the appeal materials. That date must be kept and the Court will not grant any further indulgences."

49. It appears that, because of the inadequacy of the evidence supporting the application, Saini J was acting under the mistaken apprehension that the Claimant's solicitors had received all of the transcripts which they needed.

50. On 9 March 2020 Nana Prempeh, the legal executive with conduct of the appeal, had to self-isolate at home. The principal of the firm, Reginald Griffith-Anteson, was already self-isolating. She has stated that neither of them had the equipment at home needed to prepare an application for a further extension of time.

51. Instead of issuing an application, on 10 March 2020 the Claimant's solicitors, having received Saini J's order, sent an email to the court asking for further directions in light of the fact that they had not received the transcript of the trial and had not even received Griffiths J's order that a transcript of the trial be prepared at public expense, which they received on the following day, 11 March 2020.

(3)(g) The Incomplete Appeal Bundle

52. What purported to be an appeal bundle was filed and served on 17 March 2020. However:

    (1) it did not contain the transcript of the trial, which had not been received; and

    (2) it did not contain the skeleton argument, although that had been filed as long ago as 5 June 2019. The Claimant's solicitors did not include the existing skeleton argument because they wanted to rely on a revised skeleton argument, which they intended to prepare once they received the transcript of the trial. This was a mistaken approach, as I have already stated.

53. The Claimant had not complied with Saini J's order and so the appeal was struck out by virtue of that order.

(3)(g) The Present Application

54. Following the introduction of the national lockdown on 23 March 2020, the Claimant's solicitors' offices were closed. The equipment necessary for Ms Prempeh to prepare an application at home could not be installed until 2 May 2020. It was not until 4 May 2020 that the Claimant issued an application for an extension of the time limited by Saini J for filing the appeal bundle.

55. The work of the courts was also affected by the lockdown and it was subsequently discovered on 21 May 2020 that the County Court had still not by that date sent the request for the transcript of the trial to the recording unit to identify the relevant tapes to be given to the transcribers.

56. The application was supported by a witness statement by Ms Prempeh, which dealt with events down to 7 April 2020. On 14 May 2020 Eady J made an order (the tenth High Court order) that the application be listed for hearing. In her reasons, she indicated that the Claimant would have to explain: why the application was not made before 4 May 2020; what further steps had been taken to check the progress of the missing transcript of the missing days of hearing; and the grounds for the application for permission to adduce fresh evidence. Ms Prempeh made a further statement dated 9 June 2020.

(3)(h) The Hearing of the Present Application and Subsequent Developments

57. The hearing of the Claimant's application issued on 4 May 2020 took place before me on 12 June 2020. The consideration of the application was significantly disadvantaged by reason of the fact that the Claimant's solicitors had not prepared a hearing bundle. Instead, I received copies of various documents by various emails. However, I did not receive, for example, a copy of the judgment of HHJ Baucher or copies of the fresh evidence on which the Claimant seeks to rely. Nor did I have before me copies of all of the various applications made by the Claimant.

58. Nevertheless, I invited, and heard, submissions at the hearing on the merits of the proposed appeal, on the basis that the prospects of success of the appeal were relevant to the question whether its strike-out should be revoked. I was greatly assisted by the submissions of counsel. In particular, I wish to commend Mr Smith, who had been instructed at very short notice to represent the Claimant. He was a pupil and this was his first hearing as an advocate. In difficult circumstances, he did a very good job

59. I did not feel able to make a decision at the hearing. Instead, I directed that the Claimant file an electronic bundle, containing the judgment appealed against, the various applications and the fresh evidence sought to be relied on. I also directed that the parties should have the opportunity to make further written submissions. The Defendant filed written submissions which addressed, in particular, the merits of the appeal. The Claimant chose not to file any written submissions.

60. On considering the judgment and the Defendant's written submissions, it seemed to me that I might well be in a position to decide the question whether permission to appeal ought to be granted (were I to grant relief from sanction). I communicated this to the parties because I wanted to give them (and, in particular, the Claimant, since the Defendant had addressed the merits at some length in its written submissions) an opportunity to make any further submissions on the merits of the appeal before doing so and, in the Claimant's case, an opportunity to explain why he contended (if he did so contend) that it would not be appropriate to deal with permission at this stage. Both parties made further written submissions, although the Claimant's submissions focused more on procedural matters than on the merits of the appeal. The Claimant did not voice any objection to my deciding whether permission to appeal should be granted.

(4) Relief from Sanction

61. The Claimant's application of 4 May 2020 was, in effect, an application for relief from the sanction imposed when the application for permission to appeal was struck out on 17 March 2020 by operation of Saini J's order of 3 March 2020. Submissions were made on the familiar principles set out in *Denton v TH White Ltd* [2014] 1 W.L.R. 3926. However, I do not need to dwell on those matters, because it is clear to me that the proposed appeal has no prospect of success, and so rescinding the strike-out would achieve no useful purpose.

62. I will say, however, that, if I had concluded that the appeal had any prospect of success, then I might have rescinded the strike-out. There were many failings in the case on the part of the Claimant's solicitors, as I have set out at some length, and it was only with considerable hesitation that Griffiths J decided to extend time on 24 January 2020, but thereafter the effect of his and Saini J's orders was to place the Claimant in an impossible position. On the one hand, the Claimant was ordered to file an appeal bundle containing the transcript of the trial but, on the other hand, Griffiths J did not make an order on 31 January 2020 that that transcript be provided at public expense, his order of 27 February 2020 to that effect was not sent to the Claimant's solicitors until 11 March 2020 and the request for that transcript had not been acted on by the County Court as late as May 2020.

63. There were further failings by the Claimant's solicitors during this period.

(1) They did not notice that Griffiths J's order of 31 January 2020 only extended to the transcript of the judgment, which led to a few weeks' delay. Prompter action on their part might have resulted in the transcript of the trial being obtained before 17 March 2020, but one has to bear in mind that they were responding to a mistake made by the court in dealing with a request which had been with the court for 4 months.

(2) They did not explain the position adequately in the application made on 27 February 2020, which led to Saini J making his order on a mistaken basis.

(3) They did not make the present application before the expiry of the deadline on 17 March 2020, although the delay in that respect was perhaps the responsibility of the pandemic.

64. But when the guillotine came down on 17 March 2020, it could be said that the Claimant was being penalised for not doing something which he could not do.

(5) The Merits of the Proposed Appeal

65. The proposed grounds of appeal are set out in paragraphs 12 to 20 and 22 to 24 of the document headed "Grounds of Appeal". I will refer to them as "ground 12" etc. Paragraph 21 refers to the possibility an amendment to the grounds after the transcript of the judgment had been obtained, but no such amendment has been proposed.

66. Although Griffiths J was persuaded that a transcript of the trial was required, he did not have the benefit of sight of the careful and detailed judgment. Having read the judgment and the grounds of appeal, I do not consider that a transcript of the trial is needed in order to assess whether the grounds of appeal are arguable.

67. Grounds 15, 16 and 17 concern the judge's finding on contributory negligence. Grounds 18 and 19 concern the judge's findings on quantum, I need not consider these grounds, since they could serve no useful purpose unless the Claimant was able to overturn the judge's finding that the claim for the cost of care was fundamentally dishonest.

68. Ground 14 is that the judge was wrong to refuse an adjournment of the trial to allow the Claimant an opportunity to obtain evidence of the kind now contained in Ms Meredith's report. However, that report does not assist the Claimant's case. It states that he has a learning disability. That may explain why his literacy is poor, but the judge found that his literacy was limited. It is suggested that the report would have assisted the judge in her assessment of the Claimant's credibility, but there is no basis for that. The report does not contain any opinion by Ms Meredith on the Claimant's demeanour or his conduct in court. In any event, the Claimant did call a psychiatrist at trial. The report does not add anything to what the psychiatrist could say on this issue.

69. Three other grounds concern the issue about the Claimant's demeanour. Ground 13 asserts that the judge failed to give any weight to the findings of the First-tier Tribunal on an issue relating to the Claimant's mental health condition and demeanour. Ground 20 asserts that the judge was wrong to prefer the evidence of Professor Maden, because he was evidently biased. Ground 23 asserts that the judge failed to take account of the

Claimant's mental state, leading to the erroneous finding that he was not a credible witness.

70. There were many reasons for finding that the Claimant was not a credible witness, including the inconsistencies in his evidence referred to in paragraphs 80 and 87 of the judgment. The judge considered in paragraph 38 of her judgment the Claimant's submission that his demeanour was the product of stress and mental illness. She was entitled to reject that submission. The only basis for the allegation that Professor Maden was biased was a seemingly inappropriate phrase in his report. Any allegation of bias could and should have been raised at trial rather than being reserved for appeal.

71. Ground 19 challenges the judge's finding as to the Claimant's ability to read and write. Specifically, it is said that she did not provide an adequate explanation why she did not accept the evidence of the Claimant's GP on this subject. But the judge gave a clear and adequate explanation of the reasons for her finding: she accepted the evidence of Mr Allum, who had seen the Claimant complete basic forms. In any event, the judge accepted that the Claimant might have had help in fabricating the invoices, so the argument that his literacy was so limited that he could not have fabricated them alone does not help the Claimant.

72. By grounds 12.4 to 12.14 it is asserted that the judge could not reasonably have found that the Claimant created the invoices, by ground 12.3 it is asserted that the judge placed undue weight on the inconsistencies in the Claimant's evidence and by ground 12.15 it is asserted that the fact that People's Carers and Mr Nyambeh could not be found was no indication that the Claimant did not receive care services. However, there was ample evidence to support the judge's findings that the Claimant did not receive care and that he fabricated the invoices. The weight to be given to individual parts of the evidence was a matter for the judge. In all the circumstances, the Claimant's failure to call any witness involved in the provision of the alleged care and his reliance on obviously bogus documents meant that it would have been very surprising if any judge had accepted that he received the alleged care.

73. By ground 12.14 it is asserted that:

> "It was necessary for the Judge to find that the Claimant himself created the invoices in order to find him to be fundamentally dishonest …"

74. That submission makes no sense. If the Claimant had got someone else to fabricate the invoices for him, that would not have prevented his claim for the amount of those invoices from being fundamentally dishonest. In any event, the judge did find that the Claimant manufactured the invoices.

75. By grounds 12.1 and 12.2, complaint is made that the judge failed to determine whether the Claimant knew the invoices to be untrue and by the second ground 12.5 (which follows ground 12.14) complaint is made that the judge only implied that the Claimant created the invoices, but did not make an express finding to that effect. In fact, the judge said as follows in paragraph 88 of her judgment:

> "I find that these invoices were simply manufactured for dishonest gain. Whether the claimant did it alone or assisted, I know not."

76. That was an express finding that the Claimant dishonestly manufactured the invoices, either alone or with assistance.

77. The statement from Mr Muana is not admissible on appeal, as it does not satisfy the first limb of the test in *Ladd v Marshall* [1954] 1 W.L.R. 1489. The question whether the Claimant could have called Mr Muana at trial was explored at trial and the judge, in drawing an adverse inference from the failure to call Mr Muana, had clearly concluded that the Claimant could have called Mr Muana if he had wanted to. The statement does not contradict that. It says nothing about why Mr Muana did not give evidence at trial. It contains no statement by Mr Muana that he was not in contact with the Claimant or his solicitors. Indeed, in asserting that he fetched the invoices, Mr Muana was saying that he was in contact with the Claimant and that he assisted the Claimant in preparing his claim.

78. Finally, ground 24 asserts that the judge was wrong to find that the Claimant would not suffer substantial injustice if his claim was dismissed. Two reasons are given for this. The first amounts to no more than a submission that the Claimant was not dishonest. The second is an allegation that the Defendant's case at trial was inconsistent with the Defendant's case in proceedings before the employment tribunal. That is a matter which could have been explored at trial, but it is irrelevant to the question whether the Claimant, having advanced a fundamentally dishonest claim, should not suffer the usual consequences of so doing.

79. For all of those reasons, if I were considering the application for permission to appeal, I would refuse permission to appeal and, indeed, would consider certifying that the application was totally without merit. There was overwhelming evidence that the claim for the cost of care was fundamentally dishonest and, as I have said, it would have been surprising if the judge had reached any other conclusion. At best, the grounds of appeal seek to reargue points which the judge was entitled to decide as she did, but they do not identify any arguable error on the part of the judge.

(6) Conclusion

80. For the reasons given in this judgment, I dismiss the application issued on 4 May 2020. The application for permission to appeal remains struck out.