



Neutral Citation Number: [2026] EWHC 758 (KB)

Case No: KB-2023-002754

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 30/03/2026

Before :

Rory Dunlop KC

Between :

UCHECHUKWU ATUANYA

Claimant

- and -

MINISTRY OF DEFENCE

Defendant

The Claimant in person

Andrew Ward and David Illingworth (instructed by Clyde & Co) for the Defendant

Hearing dates: 16-19 March 2026

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This judgment was handed down remotely at 2pm on 30 March 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Rory Dunlop KC, sitting as a Deputy High Court Judge :

Introduction

1. The only issue for me to decide is whether, on the balance of probabilities, the Claimant's claim was fundamentally dishonest within the meaning of CPR 44.16(1). The Claimant was seeking damages for a non-freezing cold injury ("NFCI") sustained while he was serving in the Army. That claim has now been discontinued. The Claimant can no longer recover damages. My decision goes only to costs. If I decide that the Claimant has been fundamentally dishonest, he will lose the protection he would otherwise have against a costs order, under the rules relating to qualified one-way costs shifting ("QOCS") (CPR 44.13-44.17).
2. Thus, in one sense, this case is about costs. However, it is also about public policy. Mr Ward, for the Defendant, accepts that the costs of the 4-day hearing before me may never, in practice, be recovered from the Claimant. He explained that, even so, the Defendant asked for this hearing because it is 'plagued' by NFCI claims. Such claims pose a significant problem to the Defendant – many soldiers have been exposed to cold and it may be difficult to verify whether and to what extent they have suffered NFCIs from that exposure. The Defendant wishes to send a message to anyone considering a dishonest NFCI claim – that they do so at their peril because the Defendant will pursue them for the costs. Those costs are likely to be substantial. It is no coincidence that two of the authorities on fundamental dishonesty in my authorities bundle involve exaggerated and dishonest NFCI claims against the Defendant – *Muyepa v MOD* [2022] EWHC 2648 (KB) and *Mantey v MOD* [2023] EWHC 761 (KB).
3. The Defendant was represented before me by Mr Ward and Mr Illingworth of counsel. The Claimant appeared in person. I am grateful to them for their assistance, and to the legal team at Clyde & Co who ably supported Mr Ward. Mr Ward responded promptly and helpfully to all my requests. The Claimant was patient and courteous throughout. He was clearly very distressed at times during the hearing. I am grateful to him for persevering.
4. The Claimant was a soldier in the Grenadier Guards. He served for over 14 years. He did tours of Afghanistan, Iraq and Belize, among other places. There are disputes, to which I will return below, about aspects of the Claimant's service but no one denies that, when he was happy and things were going well, he was a hard-working soldier. Col Coulter described him as a 'chipper' soldier when he was doing what he wanted to do. I think it is right to begin by acknowledging the Claimant's service to this country. It is clear that the Claimant takes pride in that service, although he feels badly let down by the Army.
5. NFCIs are neurological injuries sustained by exposure to the cold. The neurological experts are agreed that the Claimant had a mild NFCI as a result of exposure to cold while serving in the Army. Their final joint view is that, in itself, this mild NFCI would have had negligible impact. They reached that final view after having seen a surveillance video of the Claimant to which I will return. In short, for reasons I will expand on below, it is clear that the mild NFCI which the Claimant sustained does

not explain all the symptoms and difficulties for which the Claimant was seeking damages.

6. The complicating factor in this case is that there is evidence that the Claimant suffers from mental illness, which I will discuss in more detail below. There can sometimes be an honest psychiatric cause for symptoms that have no organic physical cause. The most difficult issue I have to decide is whether the Claimant has deliberately and dishonestly exaggerated his difficulties, in order to try to obtain money from the Defendant, or whether he subjectively believed the claims he made.
7. To reach a decision on this issue, I have carefully considered the written and oral evidence and the law. I begin by setting out the facts which are not in dispute. I then turn to the law, the submissions and my conclusions.

Factual Background

The Claimant's military service

8. The Claimant was born on 31 August 1981. He is of black sub-Saharan African ethnicity, which means he is more susceptible to developing an NFCI than someone of white Caucasian ethnicity.
9. The Claimant grew up in Nigeria and came to the United Kingdom as an adult. On 5 October 2008 the Claimant enlisted into the British Army on a 12-year engagement. At that time he was 27 years old. In February 2010 he completed his training as an infantryman. Around this time he reported ankle pain. Ankle pain was reported in his notes on various occasions.
10. In 2011 the Claimant transferred to Aldershot for combat duties. He was a Guardsman from then until he was discharged from the Army.
11. In 2012 the Claimant was deployed to Afghanistan. I received little evidence about this. Mr Cross notes, in the 2012 medical records, that the Claimant was '*blown up by an improvised explosive device but not injured*'. The Claimant later told Dr Baggaley, the psychiatrist instructed on his behalf, that this tour of Afghanistan was '*not the best experience*' and he '*lost some friends*'. In his closing submissions, summarised below, the Claimant appeared to be trying to tell me about this tour of Afghanistan.
12. In December 2015 the Claimant conducted guard duty in the cold. On 15 December 2015 he reported numbness in fingers and toes.
13. In or around February 2016 the Claimant was seen at a NFCI clinic. The advice was that he had 'cold sensitivity'. On 19 February 2016 Lt. Col Mead issued an Appendix 9 – that is to say, a formal document from the Army which puts limits on what he can and cannot be asked to do. This Appendix 9 called for the issue of cold weather clothing and boots and a workplace restriction to an appropriate thermal environment.
14. In February 2018, the Claimant's military vehicle broke down on the motorway near Bicester and he waited 7 hours in cold temperatures. He reported this to the medical centre on 1 March 2018.

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15. In 2018 the Claimant was deployed to Iraq.
16. On 27 March 2019 Dr McRobbie issued an Appendix 9 to the Claimant which did not call for any specific cold protection and which only related to the Claimant's shaving problems.
17. On 20 May 2019 Sgt Bush emailed Maj Proudfoot to say he had received a letter from the Claimant to have physio at Frimley Park Hospital and queried whether it was genuine. On 24 May 2019 Maj Proudfoot asked Maj Coulter to investigate. Maj Coulter conducted an investigation and replied that the letter from Frimley Park Hospital was a forgery. There is no record of any disciplinary action being taken against the Claimant in relation to this.
18. At some point around August 2019 the Claimant was deployed to Belize.
19. On 14 November 2019 LSgt Hayward emailed other officers to express concerns about the Claimant's employability within transport. He said he had asked for copies of all Appendix 9s. His email refers to an Appendix 9 which had some boxes in black pen. This Appendix 9 was not produced to me. The Company Sergeant Major referred the matter to Maj Proudfoot who forwarded it on to Maj Coulter. On 15 November 2019 Maj Coulter said there should be no markings in pen on the Appendix 9 and '*his only limitations on the App9 should be for shaving*'.
20. On 27 November 2019 Maj Coulter issued an Appendix 9 calling for a full issue of cold weather clothing and boots, and a workplace restriction to an appropriate thermal environment, indoor working wherever possible including in heated vehicles.
21. A Fitness to Work Assessment record, written on 27 December 2019 and signed by Maj Coulter refers to having an '*out of date Appendix 9 presented to me by his COC (P2 MFD E2 Appendix 9 for shaving) – on this Appendix several boxes were 'ticked' with a pen to indicate physical training limitations. These were added by the patient in an attempt to 'get out of' additional physical exercises and duties.*'
22. In June 2020 the Claimant participated in a three week exercise with 9 Nijmegen Company in the Brecon Beacons. It is evident that the Claimant was concerned about this and spoke to doctors about those concerns. He was nonetheless required to go on the exercise. Maj Coulter's notes, of 19 June 2020, refer to '*another telephone conversation claimed unable to go on exercise.*' Maj Coulter said the exercise would be in a heated vehicle and sleeping in hard-standing and he couldn't see any reason why the Claimant could not complete the exercise. He recorded that the Claimant was '*not very happy*' at being told he had to complete the exercise.
23. The Claimant did complete the exercise. He spent most nights sleeping in a barn but he spent some nights outdoors. At the end of the exercise, the Claimant went to Accident & Emergency.
24. There are several notes from Maj Coulter in the months that follow about what exactly the Claimant could and could not do. On 15 September 2020, Maj Coulter said '*this is becoming too much of a burden for the [chain of command] and [medical] chain*'. On 5 November 2020 Maj Coulter wrote to the Medical Guard recommending that the Claimant be awarded '*P7 MND Permanent*'.

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25. In a note of 4 December 2020 Lt Col Goldsmith noted '*significant health anxieties*' and '*sleep affected*'. The Claimant was very unhappy, felt he was undiagnosed and was worried he might have cancer or a serious medical condition no one has told him about. Lt Col Goldsmith stressed the importance of trying to relax over Christmas.
26. In Christmas 2020 the Claimant was required to do guard duty. This lasted a week. He said that there was no heating. I heard no evidence to contradict that.
27. In early 2021 many of the medical notes record concerns about the Claimant's mental health. In a note of 1 February 2021 Maj Coulter referred to '*psychological aspects yellow flags and incongruities (Pain worse despite no further exposure/protection from exposure Bad when walking few metres from car to office etc)*'. On 10 February 2021 Lt Col Bahadur referred to '*Chronic pain, psychosocial anxiety, health anxieties*' and '*Increased presentation at medical centre. Suggestive of functional presentation*'. On 22 February 2021 OCdt Ringrose said: '*Appears to be a complex case with multifactorial elements including psychological.*' By March 2021 the Claimant was reporting that he found things extremely difficult at home and at work. In April 2021 the Claimant was reporting that his wife thought he was depressed.
28. Prof Rice conducted various assessments of the Claimant from 7 April 2021 to late September 2021. In his letter of 22 September 2021 Prof Rice gave a diagnosis of "*definite*' *NFCO-related neuropathy and neuropathic pain...*' This letter referred to a skin biopsy.
29. On 4 May 2022 a Medical Board was held. It listed three Principal Conditions that adversely affected the Claimant's Joint Medical Employment Standard in the Army, namely: NFCl, Depression and Other Mental Health issues.
30. On 26 September 2022 the Claimant was examined by Mr Cross, a Consultant General & Vascular Surgeon, in London at the request of solicitors. It was a '*coolish early autumn day with an outside temperature of 16C.*' The Claimant was '*quite heavily dressed*' and Mr Cross observed difficulty with pain in hands and a '*shaking phenomenon*' which was '*typical of neuropathic pain*'. Mr Cross observes that the Claimant's feet were cold and his toes '*icy cold*'. The tips of the fingers were anaesthetic. Mr Cross could not measure grip strength as the Claimant '*was unable to make a fist around my fingers because of pain in the fingertips*'. The Claimant told Mr Cross that he wore additional warm clothing even in summer and that he slept downstairs as it was easier to warm than the upstairs.
31. On 11 January 2023 the Claimant was medically discharged from the Army. By then, he had served for 14 years and 3 months.

The original claim

32. In a report dated 10 February 2023 Mr Cross diagnosed the Claimant as suffering from a NFCl. In this report Mr Cross reported on the term 'yellow flags' which had been used by Maj Coulter. He said:

"Psychological flags are different from clinical ones. There are no red psychological flags; yellow flags include many aspects of thoughts, feelings and behaviours. Some common examples include:

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- *Catastrophising – thinking the worst*
- *Finding painful experiences unbearable, reporting extreme pain disproportionate to the condition*
- *Having unhelpful beliefs about pain and work – for instance “if I go back to work my pain will get worse”*
- *Becoming pre-occupied with health, over-anxious, distressed and low in mood*
- *Fear of movement and re-injury*
- *Uncertainty about what the future holds*
- *Changes in behaviour or recurring behaviours*
- *Expecting other people or interventions to solve the problems (being passive in the process) and serial visits to various practitioners for help with no improvement.’*

33. Mr Cross said it may be that the Claimant was exhibiting some of these yellow flags and he recommended a report from a psychologist or psychiatrist. Mr Cross graded the Claimant’s NFCI symptoms as ‘Stage 4’ but said he suspected that *‘if the psychological factors were filtered out the underlying condition would be mild.’* Mr Cross said that the Claimant was disadvantaged on the open labour market as he must not take employment which involves involuntary cold exposure.
34. On 22 June 2023 the Claimant issued a Claim Form, dated 19 May 2023. At that time he was represented by Gorvins Solicitors LLP. The Claim Form stated that he was claiming for NFCI ‘and associated psychiatric issues’. The value was said to be ‘over £200,000’.
35. On 26 July 2023 the Claimant was examined by Dr Baggaley, at the request of the Claimant’s solicitors. The Claimant made the passing reference, I described above, to his experiences in Afghanistan. Dr Baggaley recorded that the Claimant was taking two anti-depressants – Mirtazapine and Duloxetine - as well as Gabapentin and Codeine for pain. The Claimant described being sad and depressed for most of the time on most days. He said that it was a struggle to sleep and he was often drowsy at night. He said he was tired and had no energy. He struggled to concentrate, and was drowsy after taking the medication. He said he often felt suicidal, but he denied any actual attempts. He said he felt worthless, that he was letting people down and ashamed. He said he became depressed after being medically downgraded and after Brecon. He said he was not working and stayed indoors most of the time but sometimes friends would come round and take him to the gym. He said he had been advised not to drive long distances but would sometimes drive if absolutely necessary.
36. In Particulars of Claim dated 8 August 2023 the Claimant alleged that the Defendant was negligent and/or in breach of statutory duty in failing to protect him adequately against cold injury. It was alleged that the NFCI *‘led to the development of psychological symptoms which has resulted in the Claimant having now been medically discharged from the Army.’* The Claimant filed and served a Provisional

Schedule of Loss dated 8 August 2023 which was largely unquantified but which did claim £15,000 for loss of congenial employment.

37. In a report dated 2 October 2023 Dr Baggaley diagnosed the Claimant as suffering from a 'moderate depressive episode' or a 'major depressive disorder'. He said the cause of the depression was *'multi-factorial, with causative factors including genetic pre-disposition, early childhood experiences and adverse life events in later life'*. He said there was a *'two-way interaction between his depression and NFCI such that the depression makes his perception of pain worse which in turn perpetuates his depression'*.
38. In a defence dated 18 September 2023, the Defendant denied liability but made no allegation of fundamental dishonesty. However, in a Counter-Schedule of Loss, dated 23 October 2023, the Defendant said there were serious concerns about the Claimant's credibility and cited the notes of the Medical Board on 27 December 2019 and other internal notes where Maj Coulter alleged that the Claimant had been involved in forgery.
39. On 8 January 2024 the Claimant was seen by Dr Mumford, a consultant neurologist instructed by the Defendant. His partner accompanied him and said they slept in different rooms as the Claimant would wake up screaming at night. She described her role as a carer to him. She agreed that the Claimant was getting worse, probably because of deteriorating depression, and that he avoided driving as the medication he was taking made it unsafe. Dr Mumford recorded that it was a *'challenging interview'* as the Claimant was *'clearly very distressed right from his arrival in the consulting room up to the point at which I let him leave'* and he broke down in tears three times. Dr Mumford recorded *'no significant sensory loss in his fingers'*.
40. In a report of 8 January 2024 Dr Mumford recorded that the Claimant *'made little effort with tests of strength and co-ordination'*. He said he *'did not form the view that this was deliberate exaggeration or embellishment but rather, in contrast, I felt that these were features of a man with significant, quite severe, untreated depression.'* He said: *'Assessment of the arms and legs was rendered difficult because of his reluctance to co-operate. This, again, in my opinion, reflected depression and doubt at his own capability rather than a deliberate attempt at deception.'* Dr Mumford said it was difficult *'to disentangle those components of his current presentation which take origin on a psychological basis, i.e. reflect untreated depression, and those which reflect a true underlying organic pathology, i.e. NFCI.'* Nonetheless Dr Mumford concluded that, on balance, the Claimant had a mild NFCI which was *'completely dominated by quite profound psychological issues'*. He said that: *'it was very clear during the interview and the examination that this Claimant is profoundly depressed and is lacking adequate treatment and psychiatric input currently.'*
41. On 9 February 2024 the Claimant was interviewed by Dr Isaac, in Dr Isaac's consulting room, in the presence of his partner. The Claimant told Dr Isaac he was *'really, really sick, struggling'*. He said he stayed at home, moving between the bed and sofa. He said he felt useless and had felt like cutting off his leg when he was in the army. He said that the NFCI diagnosis had been a relief because then he *'knew what was going on'* and could be treated. He referred to *'flashbacks'* of his time in Afghanistan. Dr Isaac observed significant *'pain behaviour'* from the Claimant. He

sat painfully aslant in his chair, his hands in his pockets and wearing a pained expression. He would often grimace and fidget and at times was bent double.

7-9 March 2024 - The covert surveillance and the expert examinations

42. On 7, 8 and 9 March 2024 the Claimant was subject to covert surveillance. On the first day (Thursday 7 March) the Defendant's agent was located outside the Claimant's house, from 07.25 to 18.08, and kept a camera trained on the front of the house. The video does not record any sign of the Claimant that day – either leaving or entering his front door or in the kitchen window.
43. On 8 March 2024 the Claimant had two medical appointments in London, with Mr Cross, his own vascular expert, and Mr Radford, the Defendant's orthopaedic expert. At 9.03am the Claimant walked out of his house wearing warm clothing, including a dark blue hoodie and a grey woolly hat, with a coat draped over his arm. The temperature at the time was around 8C. He entered a taxi. At 10.17am the Claimant was videoed on the pavement on Wimpole street, near Mr Cross's office. When he got out of the taxi the Claimant was wearing gloves. He put the coat over his hoodie. By this time the temperature was 9C.
44. In his notes of the consultation Mr Cross recorded that the Claimant was 'heavily clad'. He said that the Claimant's '*affect was extremely poor*' and '*he seemed very depressed to me*'. The Claimant sat with his head down and when asked a question he would answer as if awakening from a deep sleep. When asked about his current condition, he was quite tearful and said he was still getting a lot of pain in his feet. Mr Cross observed that, when the Claimant arrived he was walking with '*a slight limp and a clear antalgic gait in both feet*'. The Claimant described his hands as "not too bad" but he said he does get a worsening of symptoms on cold exposure. The Claimant told Mr Cross that the pain was present all the time, year-round, but worse when the weather was cold and he tended to wear additional warm clothing most of the year even on warm summery days if he was going out. The Claimant told Mr Cross he had a further appointment, but he was '*not sure who this was with in terms of the specialty of the doctor involved*'. His grip strength was said to be '*very poor*' and his fingers were '*entirely anaesthetic to fine touch*'. The Claimant's feet were '*abnormally cool*'. Mr Cross noted, in his report a few days later that there had been some deterioration in the Claimant's mental health and '*It is hard to distinguish between psychiatric illness and exaggeration.*' He remained of the view that the Claimant had mild NFCI '*exacerbated by his poor mental state*'.
45. At 11.55am the Claimant is captured by the video leaving the Wimpole Street address of Mr Cross and getting into a taxi. The Claimant travelled by taxi to Chelsea and Westminster Hospital for an appointment with Mr Radford, a consultant orthopaedic surgeon instructed by the Defendant. The video captures the Claimant at 12.24 walking to the entrance of Chelsea and Westminster Hospital. He has a slow pace and an unusual gait, his leg trails in a sluggish manner as he enters the hospital.
46. In his interview with Mr Radford the Claimant was tearful. The Claimant told Mr Radford that he had had recurrent right ankle pain whilst in the Army. The Claimant said he had become depressed before he left the Army. He said his ankle problems had resolved, he could not remember when, but he still suffered symptoms of a NFCI, more on his left foot than his right. The Claimant told Mr Radford that he does not go

to the gym. He said he was a member of a gym in Aldershot and sometimes visited friends in the gym and did stretching exercises but did no resistance exercises. He said he rarely went out as medication made him drowsy. He said he was able to walk, unless his NFCI was exacerbated, and was able to go up and down stairs. Mr Radford said the Claimant's movements were slow but he was able to dress and undress without assistance. In examination, the Claimant demonstrated a good range of movement. Mr Radford noticed callosities at the bases of the fingers of both hands '*indicative of regular physical activity using his upper limbs*'. The Claimant was tested with a hand dynamometer and only had 12kg and 3.4kg grip in his hands. Normal range was 33.5-55.3kg. Mr Radford observed that the Claimant's gait was '*slow and lumbering, but without a discernible limp*'.

47. At 1.35pm on 8 March 2024 the Claimant was captured by the surveillance camera leaving Chelsea and Westminster hospital. The temperature was by now 13.5C. He was wearing the same warm clothing, a hat, a jacket and gloves. He was limping and struggling – he leaned on to the taxi as he walked around the rear nearside of it before getting into it. That evening, around 8.07pm, the Claimant is filmed at home and seen in the kitchen window but it is not clear what he is doing.
48. On Saturday 9 March 2024 at 1.53pm, the Claimant was videoed leaving his home. The temperature was approximately 11C. He was wearing black trousers and a black T-shirt. He had no covering on his arms or hands. He walked normally at a good pace. He manoeuvred his wheelie-bin and then drove off in his own car. At 2.00pm the Claimant was filmed walking normally along the street to a shop wearing only a T-shirt on his upper body. He then drove for up to 75 minutes until he parked his car in a car park. At 15.19 hours, he parked and got out. There was a slight wobble as he got out of the car. He was not wearing a hat or gloves. He put a gilet on (which did not cover his arms or hands) and then walked normally at a good pace before returning to his car.
49. At 4.56pm on 9 March 2024 the Claimant was caught by surveillance warmly greeting a man who had come out to see him. They hugged and shook hands. The temperature was approximately 13C. The man was wearing a full jacket which covered his arms. The Claimant was only wearing a T-shirt at first but he then added a gilet. The Claimant followed his friend up a flight of external steps. The Claimant climbed the stairs with ease and did not hold the rails.
50. At 7.10pm the Claimant parked at a garage, went to his boot, lifted his Tshirt and sprayed his armpits with deodorant. He then went to retrieve something from the shop.

Witness evidence and expert reports before the disclosure of the surveillance videos

51. Warrant Officer Oliver provided a witness statement dated 24 April 2024. He said that he was the Regimental Sergeant Major and the Claimant had been in his chain of command. He said the Claimant was not reliable and approached most aspects of the job with a negative attitude. He did not, however, suggest that the Claimant was late every day for 2 years, or that the Claimant had ever forged any documentation.
52. Maj Coulter provided a statement dated 30 April 2024. He referred to advice from the Cold Injury Clinic, following an alleged cold exposure in 2015, that the Claimant had

a 'cold sensitivity' rather than a cold injury. He said he downgraded the Claimant in 2019 to 'MLD' (Medically Limited Deployable) because the Claimant had presented multiple times with cold-related issues. Maj Coulter made no allegation of forgery against the Claimant in this statement.

53. The Claimant's partner provided a statement dated 2 May 2024. She said his mental health was worse than his physical health. She said he would wake in pain or from bad nightmares. She said the medication made him drowsy. Most of the time the Claimant slept downstairs. She said she would help him dress and shower.
54. The Claimant's friend, LSgt Ceesay Junior Momodou provided a statement dated 3 May 2024. He said he was on guard duty in December 2020 with the Claimant and the Claimant was struggling with the cold. LSgt Momodou said he saw that the Claimant was treated differently after having an Appendix 9 and everyone thought the Claimant was 'just bluffing it'. He said the Regimental QM tried to give the Claimant driving jobs even though his 'sick chit' meant he couldn't drive. LSgt Momodou said he had to '*stop in and show the sick chit to the chain of command to provide that he couldn't do the task and after this he was let off*'.
55. The Claimant provided a witness statement dated 6 May 2024. In that statement he said he suffered trauma on tour in Afghanistan in 2012 but was able to cope and did not experience negative mental health symptoms. Camaraderie and fellow soldiers helped him get over the trauma. He said he was diagnosed with a depressive episode in February 2022 and felt let down by the Defendant, by the chain of command and the medical staff. He denied the accusations of forgery which the Defendant made. He said the handwritten additions to the Appendix 9 were made by a medic, not him. He said he had never altered any documents. He described the many medications he took and said that, as a result, he was very drowsy and '*unable to have a coherent conversation once I have taken my meds*' and '*this makes me feel very low and depressed*' and '*ashamed and stupid*'. He later added that there was a '*30-40 minute window*' after taking medication when he is tired and repeats himself. He said he rarely drives as he can feel tired at the wheel. He said he tended to sleep on the sofa most of the time '*as I am not easily able to walk upstairs when my pain is particularly bad*'. He said that sometimes his friends would pick him up and take him to the gym. He said he went to the gym for social interaction and if his hands were feeling OK, he would sometimes lift weights but often he could not manage this. He said his partner helped with everything – including showering, dressing and giving him food.
56. Mr Iwuoha, a friend of the Claimant, provided a statement dated 10 May 2024. Mr Iwuoha had also been a Guardsman but discharged from the Army in September 2015. He said the Claimant was a hardworking, competent and dedicated soldier. He said he and his wife often would drive the Claimant to medical appointments. He said the Claimant was sometimes emotionally down. He said the Claimant would cover himself up with lots of layers to try to stay warm. He said that he and the Claimant would go to the gym once a week, sometimes more, and do their own thing there. He said going to the gym was good for the Claimant's emotions and makes him happy.
57. In a report dated 26 May 2024 Mr Radford expressed the opinion that the Claimant would not have been retired from the army because of his ankle symptoms.

58. In a report dated 28 May 2024 Dr Isaac expressed the opinion that the Claimant had adjustment disorder. Dr Isaac said:

“61. Psychiatric diagnosis is intrinsically subjective and ultimately a matter of subjective professional opinion, of which there is commonly a range. We currently have no objective methods, such as blood tests or brain scans, that can confirm or refute the presence of subjective psychological symptoms or pain. It follows that the accuracy of the subject’s account, corroborated if possible by preferably disinterested sources, of which contemporaneous clinical records are among the most important, for a reliable psychiatric diagnosis.

...

64. Falsification of symptoms can have a relatively benign motive, in that symptoms are exaggerated to convey the level of suffering, rather than reflecting a deliberate desire to deceive. Such falsification can amount to diagnosis of a psychiatric disorder – factitious disorder against the self; but if the motive is conscious deceit, whether for financial or other gain, this is malingering, which is not a psychiatric diagnosis, but a matter of evidence and therefore ultimately to be determined by the Court, rather than by medical expert opinion.

...

Condition (Diagnosis)

67.If Mr Atuanya’s reported pain is held to be disproportionate to what might be expected to be due to the verifiable underlying physical damage, two diagnoses vie for acceptance. These diagnoses overlap considerably phenomenologically.

68.Of the two diagnoses, I on balance prefer a diagnosis of adjustment disorder with mixed anxiety and depressed mood (DSM-5-TR F43.23). This reflects a disproportionate, pathologically amplified, psychological response to the overall predicament, including Mr Atuanya’s sense of having been ill treated and, as he puts it, ‘let down’ by his chain of command and the medical officers whom he saw, and whom he feels unfairly traduced him with regard to ‘alleged forgeries’ in his record. I see Mr Atuanya’s amplified psychological reaction as part of that general context, with his persistent reported pain playing a part.

...

Psychiatric/Psychological Causation

72.Causation is undoubtedly complex here. The waters are muddied by Mr Atuanya’s sense of having been ill-used and not listened to when he was in the army, leading, it seems to me, him down the pathway of exaggerating his symptoms in an attempt to convey his suffering. As to the alleged forgeries in his records, this is a matter of evidence in the end, and for the Court to determine. However, such reported symptoms would be in keeping with an attempt to convey suffering, rather than as a calculated issue.

73.All that said, there are times in the medical record where Mr Atuanya seems to be saying that it is only when at work that he feels the symptoms and that he

can manage them perfectly well outwith work. Although this can occur with a physical condition, it is also plausible that his pain or, more correctly, the effects of his pain, are predominantly psychological rather than being explicable in terms of his underlying physical injury.”

The proceedings after the covert surveillance was disclosed

59. On 11 July 2024 the Defendant disclosed the video surveillance footage and made an application to rely on it and to amend their defence. The amended defence alleged fundamentally dishonesty. In particular, the amended defence alleged that:
- i) the Claimant’s presentation of his injuries to Mr Cross was irreconcilable with the way he behaved ‘in his own environment’, in particular: (i) he wore excessive clothing and claimed to wear warm clothing all year; (ii) when he walked with a slight limp on 8 March 2024, he was ‘*pretending to exhibit symptoms from which he knew he did not suffer in order to hoodwink the expert into thinking he had a serious, NFCI condition*’; (iii) he claimed ‘total anaesthesia at the tips of his fingers’ which was inconsistent with his ability to move a wheelie-bin and use a smartphone; (iv) his tearful presentation was put on to deceive Mr Cross into thinking he was not well enough to work.
 - ii) The Claimant’s presentation of his symptoms to Dr Mumford, Dr Baggaley and Dr Isaac was irreconcilable with the way he behaved ‘in his own environment’, in particular: (i) he told Dr Baggaley and Mr Herron that he did not drive anymore and yet on 9 March 2024 he drove for 70 minutes; (ii) he told Dr Baggaley that he did not cook and yet he appeared to be cooking on 8 March; (iii) he said to Dr Baggaley he was depressed, which was inconsistent with the warm greeting he gave on 9 March 2024; (iv) he told Dr Isaac that he was very drowsy; (v) he displayed greater problems to Mr Cross than Mr Radford even though he saw them on the same day.
 - iii) The Claimant’s witness statement was dishonest – the video surveillance footage was inconsistent with the description in his statement of (a) his pain, (b) his ability to drive, (c) his ability to walk up stairs.
60. Dr Baggaley and Dr Isaac provided a joint report, dated 12 July 2024, before they had seen the surveillance evidence. In that report, they agreed that the Claimant had developed a recognisable psychiatric disorder, although they disagreed about the classification – Dr Baggaley preferred the diagnosis of a moderate depressive episode or a major depressive disorder of moderate severity. Dr Isaac preferred the term adjustment disorder with mixed anxiety and depressed mood. They agreed that each option ‘*was within the range of mainstream psychiatric opinion and regard this as no more than a difference of emphasis between them, and not outright disagreement.*’
61. In a witness statement dated 3 September 2024, the Claimant addressed the video surveillance evidence. He said he had not slept well the night before the appointments. He said he was anxious, worried and feeling very low, knowing he was going to have to discuss his injuries and undergo examinations. He said he took medication in the morning (3 x 30mg Codeine, 1 x 300mg Gabapentin and 1 x 60mg Duloxetine) and this medication can make him feel drowsy and tired. He said the first appointment was at a new location, the taxi dropped him off and he was not sure how

far he had to walk and he put on gloves and a coat. He said by the time he left the appointment with Mr Radford he was exhausted. He had been awake most of the night, had been away from home most of the day and was in a considerable amount of pain. When he got home he said he 'felt lighter' and 'not as anxious'. He said he had a really good night's sleep. The following day he was planning to visit his sister, whom he had not seen in over a year and who was visiting Birmingham. He was also planning to visit a friend whom he hadn't seen for 6 years. He said he took the usual medication that he took at night. He said that, in the morning, he took the Codeine and Gabapentin, but not the Duloxetine, as that can make him drowsy in combination with the pain medication. He said he really wanted to see his sister and took extra Codeine so he was not in pain for the long drive. He took his jacket off as it was the middle of the day and warm. He said he had worn a coat and warmer clothing on 8 March as he didn't have control over the vehicles he was getting in and out of and did not know how long he would be outside. He said the extra pain-killing medication on 9 March improved his mobility and allowed him to climb stairs. He said 9 March was a sunny day and it felt warmer than the day before. He said he had bad days and better days and 9 March was one of his better days. He left lighter. He didn't have the worry of the examination. He had had a good night's sleep. He was looking forward to seeing his sister and his friend.

62. Mr Cross and Dr Mumford provided a joint report dated 8 September 2024. By that stage they had not seen the surveillance video. They agreed that the Claimant had suffered a NFCl. They agreed that this was only mild. They said they deferred to psychiatric opinion but said they both found evidence of significant psychological distress and the Claimant may have been suffering from inadequately treated depression.
63. Dr Baggaley was shown the surveillance video and the Claimant's most recent witness statement. In a report dated 3 October 2024, Dr Baggaley said it is not possible to accurately assess a patient's mental state from DVD evidence. He said it was very difficult to assess depression and experience of pain from surveillance evidence. He said it was common for mood to vary from day to day in depressed patients. He said the Claimant was doing something stressful and anxiety-provoking on Friday the 8th and something enjoyable on the 9th. This was likely to make a difference to his mood. He said:

"In summary in my opinion there is a marked discrepancy in the appearance and behaviour of the Claimant between the two days of video surveillance. In my opinion both his conditions are variable and there are a number of psychological factors (anticipatory anxiety before the medico legal assessments, relief at completing them, and anticipatory joy to seeing a friend and relative) as well as a good night's sleep and reduced medication which are plausible explanations for the discrepancy."

64. Mr Cross was shown the surveillance video and the Claimant's witness statement. In a report dated 6 October 2024 Mr Cross said that the Claimant's behaviour on 8 and 9 March 2024 was entirely different and *'this cannot be explained in terms of variability in relation to the symptoms of non-freezing cold injury'* but would defer to Dr Baggaley on whether such a change in demeanour and affect could be explained psychiatrically.

65. The Claimant filed and served an Updated Schedule of Loss dated 7 October 2024, totalling £375,914.60. The Claimant claimed £150,000 for disadvantage on the open labour market. One point made, to justify this figure was that the Claimant was ‘*unfit for any career which requires him to work outdoors or in a cold environment*’.
66. Dr Mumford provided a report dated 26 October 2024. He said, given his previous examination, ‘*it is no surprise to see that the video surveillance reveals a man who can walk normally*’. He said he was ‘*seriously concerned by the variability in his gait seen in these recordings*’. He said there was no neurological explanation for the mismatch.
67. Dr Edwards, a consultant in pain management, interviewed the Claimant via video on 7 January 2025. I was shown a recording where Dr Edwards summarised what the Claimant had said to him in the interview that had just taken place. Dr Edwards appeared to be reading from his hand-written notes of what the Claimant had told him. Dr Edwards read out that the Claimant said he had constant pain in his left foot, which increased in cold weather and, more recently, in his left knee. He said his left foot had ‘tingling, numbness and ripping’. It was worst in cold weather. When warm or hot, it swells. He said he had symptoms in hands when it was cold. He said on the best of days, with medication that did not make him drowsy (e.g. Codeine and Gabapentin) he could walk for 10 minutes and would have to stop. On other days less than that. He said he could not run but he could sit and he could stand for up to 5 minutes. On a good day he could climb a flight of stairs. They discussed the surveillance video and the Claimant said he took an excessive amount of non-drowsy medication. It was his best day and he had never had as good a day before or after. He had taken too many medication and not done that since. He said his sleep was poor and his mood really bad. He could make a salad but not a bigger meal. He found it hard to move as he was drowsy with his medication but if he did not take them he was low.
68. Dr Edwards asked the Claimant for comment on what he had read out. The Claimant appeared to be slumped. He asked about a pain management course where they would insert a wire. Dr Edwards confirmed that the Claimant meant a ‘spinal cord stimulator’ and said he could comment on that.
69. Dr Isaac prepared a further report dated 19 January 2025. He had reviewed the surveillance footage and commented that ‘*In much of the footage, [the Claimant] appears cheerful and active, displaying no outward discomfort.*’ He said ‘*Surveillance footage is commonly unhelpful in psychiatric evaluation, at least directly. It is difficult, if not barely possible, to infer very much about a person’s inward state from their outward behaviour. That said, non-verbal communication (body language, etc.) is the predominant way in which we interact with other people, so that, in social evolutionary terms, unless we have some form of neurodevelopmental disorder that renders absence of a theory of mind,*’ most people can expect to infer a person’s inward state with reasonable success.’ But, he added, this is not absolute and ‘*many people can put on a mask of cheeriness in social settings, even if, inwardly, they feel downhearted.*’ He concluded: ‘*Ultimately, weight on which to put any apparent discrepancies between accounts at interview and accounts when videoed is for the Court, having regard to the totality of the evidence before it. I defer to the relevant experts as to whether in this instance Mr Atuanya’s*

surveilled behaviour differs sufficiently from his reports at interview to call into question the diagnostic formulations that proceed from those interviews.'

70. Maj Coulter provided a further statement, dated 27 February 2025. He said in this statement that he had been asked to comment on an appendix 9, in which some areas were filled by pen. He said it was out of date and should not be used or presented by the Claimant and areas had been filled in by pen, not by the medical board because that was a computer generated process. He also said that he had been asked to look into the Claimant's attendance at physiotherapy by Maj Proudfoot. He said he contacted Frimley Park Hospital who said the Claimant had never attended there. The person he spoke to provided a copy of the letters they used and it was different to the one that Maj Coulter held. He said that he passed the information back to the company commander and recalled that the Claimant received '*some minor reprimand, but the unit decided not to pursue the matter further.*'
71. The Claimant provided a further statement, dated 13 March 2025. He said that he sent most of his time with his partner and son. He said his little boy gave meaning to his life and being with him improved his mood which, in turn, causes him to suffer less with the physical symptoms from his NFCL. He said his partner continued to provide him with assistance.
72. Dr Edwards provided a report, dated 15 April 2025. This report contained an entry headed '*current situation as described by the Claimant*'. In this section, he said: '*If he avoids taking his drowsy medications then he is able to walk, with a limp in his left leg, up to 10 minutes on the best of days, then he would have to stop. Other days he has stop earlier than that. If he takes his drowsy medication, then he cannot do as much.*' This was materially different to the summary Dr Edwards read out to the Claimant, three months earlier at the end of the interview – in that summary, Dr Edwards made no mention of a limp. Dr Edwards' report engaged in a forensic exercise of comparing different statements by the Claimant at different times and alleging inconsistencies. He commented on what the Claimant had said to him – Dr Edwards said that taking excessive doses of Co-codamol and Gabapentin would likely have a sedating effect. He said that the differences between the Claimant's function on 8 and 9 March cannot be explained by the medication the Claimant was taking. He diagnosed chronic primary pain – i.e. pain characterised by significant emotional distress. He said this diagnosis avoided judgment regarding 'causal priorities'.
73. Dr Baggaley and Dr Isaac produced a second joint report dated 9 May 2025 in light of the surveillance footage. This report said the following:

"2.Drs Baggaley and Isaac agree that there is marked variability in the surveillance footage and some shows the Claimant outwardly interacting normally and in normal outdoor activities, without outward discomfort or distress.

3.Dr Baggaley considers that pain and psychological distress can vary from day to day in response to a variety of factors which might explain this variability.

4.Drs Baggaley and Isaac agree that surveillance footage has distinct limitations as far as psychiatric assessment is concerned, since many people can mask inward sadness or distress.'

Approved Judgment

74. In a second joint report dated 15 May 2025 Mr Cross and Dr Mumford agreed there was 'no plausible medical explanation' for the variability they saw in the Claimant's gait in the surveillance footage on 8 and 9 March 2025. They expressed concern the Claimant might be malingering. Mr Cross pointed out that the only other plausible explanation for the change in demeanour was 'psychiatric issues'. They accepted on balance that the Claimant had a mild NFCI but said that the impact of that injury was 'probably negligible'.
75. Dr Edwards provided a further report, after sight of the two most recent joint reports. He confirmed they did not alter his earlier opinion.
76. The Claimant filed a Second Updated Schedule of Loss dated 19 August 2025 which totalled £180,705.84.
77. On 7 November 2025 the Claimant's solicitors filed and served a notice of discontinuance. On the same date the Claimant's solicitors filed a notice dated 31 October 2025, which purportedly came from the Claimant and said that his solicitors no longer acted for him and he would act in person.
78. On 12 November 2025 Master Fontaine directed, pursuant to paragraph 12.4 of CPR Practice Direction 44, that although the Claimant had filed a Notice of Discontinuance, issues arising out of the Defendant's allegation that the claim was fundamentally dishonest should be determined at trial notwithstanding that the notice of discontinuance had not been set aside pursuant to CPR Rule 38.4.

The hearing before me

79. Mr Ward opened the case succinctly. He explained that the claim was no more and that the only issue was whether the Claimant was fundamentally dishonest. He said the Claimant was dishonest, in particular, in relation to his gait, clothes and grip strength. He said this was fundamental as it went to his care needs. He relied on the other two NFCI cases in the bundle as examples where there was a genuine NFCI but the extent of the exaggeration meant they were fundamentally dishonest.
80. The Claimant gave oral evidence. He was cross-examined by Mr Ward. He said he remembered clearly doing Christmas guard duty in both 2019 and 2020. He said he did confuse things. He said sometimes he did not read things his solicitor sent him properly because of the state he was in. He was taken to the notice of discontinuance and said that he was not aware, until now, that his claim had been discontinued.
81. The Claimant accepted that in the video surveillance he walked with a slight limp on the Friday (8 March 2024) but was seen to walk without a limp on the Saturday (9 March 2024). He said when he took his medication, it numbed the pain. He said that sometimes it was about the anticipation of pain. He said that on the night of Friday he did not take the medication that he normally took at night (Mirtazapine, Ramipril and Rosuvastatin) because the next day he needed to collect boxes and nobody else could help him. He said he did not want his friend and sister to see him struggling. He said he did not take all his medication this week either because, if he did, he would doze off. He said on Saturday 9 March he took a lot of Codeine – 6 in the morning and 2 after. He was asked if Saturday 9 March was his best day. He denied this and said that was the doctor recording that. He said his best day was when his boy was born.

He said he had pockets of good days and there had been other good days. He said Codeine did not make him feel drowsy. He said the pain medication masked the pain. He was going to see his sister and his friend. He had been struggling since he left the Army. He rarely saw people. The last thing he wanted was for his sister to see him in that state and tell his mum. In an African family when bad health happens to one person, the health of the others is affected.

82. The Claimant denied putting on a limp. He said he wished the limp was not real. He said he did not want to be walking around with a limp. He said the best way to explain it is that it is attached to his mental health. He said:

'This pain has been there for long. Sometimes the pain leaves me for a minute. Sometimes PTSD is intertwined.'

83. The Claimant said he presented himself to experts how he was on the day. He did not know he was seeing Mr Radford about his ankle. He thought he was there to help him and measure how he was struggling.
84. The Claimant was asked about the allegations of forgery and said it was not possible to alter documents and extend your stay in the Army. Forgery was a big allegation in the Army. He never saw the allegations against him until he left the Army. It was put to him that he received a minor reprimand for forgery and said 'show me the minor reprimand' and said this would not be a minor issue in the Grenadier guards.
85. On the second day the Claimant was taken to the part of his first witness statement where he said he took Mirtazapine, Ramipril and Rosuvastatin on the night of Friday 8 March. He was asked why he had told the court the day before that he had not taken those medications. The Claimant claimed that there was a misunderstanding and he had meant, in the statement, that he had taken the medications on the night of 7 March. He said he might have confused the days when he was talking to his lawyer.
86. It was put to the Claimant that he tried to 'hoodwink' the experts into believing that he wore warm clothing all the time. He denied this and said he wore warm clothing according to the weather. He claimed he had worn a T-shirt on the Saturday as he knew where he was going. On Friday he did not know how long he was going to be outside.
87. The Claimant was asked about climbing stairs. He said sometimes he would struggle. When he sees an obstacle, he freezes or tries to figure out how to tackle it. Sometimes pain is not as bad. Sometimes he jumps at it at thought of putting feet down. He said he was able to climb the stairs easily on 9 March as he had taken a lot of pain medication and he did not want his friend to see him struggling. He said it had been a long time since he had been to the gym. He said he had been with friends 'once or twice' since he left the Army and he was not a member of any gym. He said he could not drive if he had taken medication that made him drowsy. He said he had needed care but did not need care as much now as he did not have stairs. His ex-wife had done most of the chores. His current partner would prepare food for him when away and friends and ex-colleagues would check in. He said he had not wanted to put in a claim but only put it in when he became homeless as the Army evicted him. He said he did not know what work he could do as he was so drowsy. He said that his therapist had told him to come to the hearing as it might offer him clearance and

closure. He said his claim was not exaggerated as he had been on medication for 4 years, given to him by people in the Army, and nobody would want to be on medication for 4 years.

88. The Claimant explained that his partner could not attend due to family issues which he did not specify. The Claimant called LSgt Momodou and Mr Iwuoha.
89. LSgt Momodou said he had known the Claimant for 16 years. He said they had been billeted in Afghanistan together. He said the Claimant was keen on his job. He said the Claimant was not different to who he had been. He said, in answer to the Claimant's questions: *'I do see that you struggle to get along. I've seen you in a state that wasn't you. I couldn't say mental illness but it wasn't you, the person I know.'* He said it was trauma and the Claimant needed to see someone. He said that the Grenadier Guards were strict on discipline and it was impossible that someone could be late for 2 years.
90. In cross-examination LSgt Momodou said that the Claimant was normally in his house - sometimes he was normal and sometimes he was down. He was always different. You never know what you are going to get. Sometimes he was miserable. Sometimes he can chat. Sometimes he has a limp. Sometimes he walks fine. He had seen him drowsy and not coherent.
91. Mr Iwuoha said that the Claimant was a very lovely person to work with, motivated, always encouraging and hard-working. He said the Claimant loved his job. He agreed with the Claimant's suggestion that there was now a 'massive difference' in how the Claimant presented. He said he could see things were not well with the Claimant even though he would not admit it.
92. In cross-examination Mr Iwuoha said that he was surprised to learn the Claimant could drive to Birmingham. He confirmed that he and the Claimant were going to the gym together once a week in March 2024 but were not any more. He said they would go to a gym in Aldershot and he thought the Claimant was a member as you had to be.
93. In re-examination, the Claimant attempted to ask leading questions to Mr Iwuoha suggesting that the period when they had gone to the gym together was much earlier, when they were both in the Army. I explained that the Claimant could not ask leading questions – i.e. supply evidence for Mr Iwuoha to confirm.
94. The Claimant did not call any of his experts. I infer that the reason for that was likely that he could not afford to pay for them to attend.
95. The Defendant called Col Coulter and Mr Proudfoot (as they now respectively are) and Dr Mumford, Dr Isaac and Dr Edwards.
96. Col Coulter was cross-examined by the Claimant. The Claimant asked if he should have been done the Christmas guard duty given his Appendix 9. Col Coulter said he was the clinician, outside the chain of command, and the Appendix 9 could not list every permutation. He said that sometimes the Claimant would see him and they would tighten up the Appendix 9. Col Coulter said that the experts who examined the Claimant in 2016 in Gosport said he did not have a NFI. At that point, the Claimant became upset and said he had never been to Gosport. We had a short break. When

the hearing resumed Col Coulter apologised and accepted that the Claimant had not been to Gosport, he had been to a local satellite cold clinic.

97. Col Coulter could not remember whether he initiated the Claimant's prescription for Duloxetine but accepted he had prescribed it. He said it was a very old antidepressant which was found to have a vaguely beneficial effect with chronic pain.
98. Col Coulter said when he found out about the forgery of the physio letter he forwarded it to the chain of command. He admitted that he had been in Belize with the Claimant in August 2019 and in Iraq with the Claimant in 2018. He accepted that the idea that the Claimant had been coming late to parade for 2 years may have been an exaggeration but said that his concern had been about the fact it had happened, rather than how long it had been going on. He agreed that discipline was taken seriously and soldiers would be disciplined if they were late even one day. It surprised him that no action was taken against the Claimant. He believed this was because they wanted him in Belize due to his driving qualifications. He accepted this was supposition. He said that he had come across soldiers faking medical chits 'a lot' and would not put it past any soldier. However, he said it was 'absolutely not' possible that the chain of command might have forged documents. Col Coulter accepted that putting the Claimant on guard duty in December in a room with no heating was 'probably not' consistent with his Appendix 9 as it was probably not an appropriate thermal environment.
99. Mr Proudfoot was called by the Defendant to confirm his statement. He had been the Claimant's Company Commander in the Grenadier Guards. He said the Claimant was 'amiable' but could be 'difficult to manage' as he was 'sullen and withdrawn'. He was in regular conflict with his 'line managers' and was 'the last on parade and the first away'. He was a frequent visitor to the Company Sergeant Major's office for lateness, poor presentation and turnout and more general discussions about what can be done to help his attitude and change his ways.
100. In cross-examination, Mr Proudfoot said he had been told by the Company Sergeant Major that the Claimant was regularly late. He said he did not recall the Claimant in Iraq and did not think the Claimant would have been late on operations. He said he would query anyone being made to do Christmas duty two years in a row.
101. Mr Proudfoot said, in answer to my question, that in 35 years he had never seen a case of forgery. He said that in the Army's disciplinary procedures a soldier would be told what they were accused of and given a chance to explain or deny it. He clarified that the kinds of minor disciplinary matters, which he had been referring to in his statement and which only stayed on a record for two years, were things like not wearing the appropriate uniform.
102. Dr Mumford was called and cross-examined. He reminded the Claimant how upset he was when they met, on several occasions. Dr Mumford said he was worried the Claimant was depressed and not adequately treated for that. He said the Claimant's mental health appeared to be bad. He said he did not see a limp when he saw the Claimant only a 'laboured gait'. He said the Claimant had great difficulty with heel to toe walking which 'makes no sense from neurological basis.'

103. I asked Dr Mumford some questions. We watched the video again and Dr Mumford accepted there was a moment, in the video of Saturday 9 March 2024, where the Claimant appeared to limp getting out of his car. I asked him about the sentence in the joint report which said that there was '*no plausible medical explanation*' for the variability in gait shown on surveillance. He clarified that, by 'medical', they meant '*physical or neurological*'. He was not a psychologist and did not rule out a psychological explanation of the variation in the Claimant's gait. He said that if the Claimant had only had a NFCI, you would expect improvement. The nerve fibres regrow. He said the biopsy was a borderline result.
104. The Claimant asked Dr Mumford to look at a photograph of his foot. Dr Mumford said he could not comment on the skin but saw no major abnormality. In re-examination, Dr Mumford confirmed there was no '*organic neurological explanation*' for the different gait the Claimant had on different days.
105. Dr Isaac was called. He was cross-examined. He accepted that it was difficult to figure out from video surveillance whether someone was telling the truth and, generally speaking, it was quite easy to put on a front, to smile. He was asked whether they discussed the Claimant's catastrophic experiences and said '*that would have helped me*' but he did not believe it came up. The Claimant asked Dr Isaac why he did not ask about trauma and Dr Isaac said the most valuable information was volunteered information. He said he had no 'inkling' that PTSD was an issue. He said that being on Duloxetine for a long time can affect one as a person. He said that some of the Claimant's medication would make people more sedated and some would make them less sedated. He accepted he was talking about studies of large populations and individual reactions might differ. He said people with PTSD can behave differently with medication.
106. I asked Dr Isaac some questions about the passage in his report which referred to falsification to convey suffering. He said some patients coming into an assessment felt they had to '*pour into that*' all that has gone on. They were anxious to tell him everything. In doing so they could inadvertently, consciously or unconsciously '*overeag the pudding*'.
107. I asked Dr Isaac about the sentence in the joint report which said '*Dr Baggaley considers that pain and psychological distress can vary from day to day in response to a variety of factors which might explain this variability.*' He said he would have agreed if they had put a full stop after 'factors'. He disagreed with whether the variation from day to day seen on the surveillance video fell within the kind of variation that could be expected. Dr Baggaley thought it could. He did not think it could. He could not 'stand across' his original diagnosis. The behaviour he saw in the video on the Saturday was at odds with what he had been told. He had got the impression that that kind of behaviour was not open to the Claimant. He accepted that the factors the Claimant mentioned would have improved his outlook but said he 'still wouldn't be normal'.
108. Dr Edwards was called. He accepted he had made an error in his report – referring to co-codamol when he should have put codeine – but it made no difference. In cross-examination it was put to him that he had videoed the entire meeting but he denied that. His routine practice was to film the summary at the end. He said he would get the medical notes typed out in chronological order by typists before the interview

because experts get criticised if they do not challenge something which is inconsistent with the medical history. He said he took a written note during interview. Then he would read it out to make sure the interviewee was happy it reflected what they had said. Then he would dictate because there were ‘a few more other things to put in the dictation’.

109. In answer to my questions, Dr Edwards accepted that in the video summary, he made no mention of a limp. He said he had noticed that for the first time when the video was played. He said he no longer had the hand-written notes but he had gone back to the dictation and he had mentioned a limp in his dictation. He said codeine was a drug of abuse which could give a spirit boost but not on a long-term basis. In his experience, it more often made one sedated. He said Duloxetine can be sedating. He accepted that individuals may have different reactions to the norm to drugs.
110. I asked Mr Ward to put his closing submissions in writing to assist me and the Claimant. I asked him to specify how exactly the Defendant alleged that the Claimant was dishonest. The Defendant provided the written submissions as I had asked. I address the key points he made below. They were in line with his opening, his skeleton argument and the amended defence.
111. The Claimant was given the last word. He appeared very distressed. He apologised numerous times, although I reassured him he did not need to. I offered to take a break but he was clear that he wanted to carry on. He said he wanted to engage with this hearing ‘*so I know what happened to me*’. He said there was now ‘*a picture to the battle I have been fighting. Things that went wrong that I did not know about until now.*’ He said the past few years had been hell for him. He said he could see what he used to be like but it was out of reaches. He said he gets these flashes and they come in my face. It felt like it was his fault. He complained about how he had been treated by doctors and chain of command in the Army. He said you can live all your life without knowing what your doctor wrote about you. He said it made him feel like he was worthless, he did not mean anything.
112. He said it did not make sense that he forged paperwork twice and nothing happened, that he was extended to stay in the job even though he came late. He said that, even when he got blown up in Afghanistan and his friend lost his leg, he kept going. He came home. He started struggling with the cold. He got medication he should not have taken. He then said some things that were difficult to understand along the following lines:
- “Guess who I see. Wilson. I started crying. Every time I smell smoke, I smell a body. I hear Wilson. I call Crisis helpline. I call my therapist. Maybe I misrepresented myself.”*
113. He said he went to these appointments with experts thinking he was going to get help. He didn’t know he was being assessed as to what his character was like. If he had known Mr Radford was supposed to be focussed on his leg, he would have questioned why he was touching him on the upper body. He said that his friend had got muddled about when they had gone to the gym together – it had been when they were in the Army together.

114. He said that it had recently been confirmed that he had PTSD. He said nobody tried to evaluate his mental health. He said it was only last year when he was sent to hospital for surgery and they evaluated him that they found out he had PTSD all these years.

The Law

115. CPR Rule 44.16(1) provides that:

“Orders for costs made against the claimant may be enforced to the full extent of such orders with the permission of the court where the claim is found on the balance of probabilities to be fundamentally dishonest.”

116. In *Mantey -v- Ministry of Defence* [2023] EWHC 761 (KB), Eyre J said:

“CPR Pt 44.16(1) uses the present tense. In the circumstances of the present case that means the assessment must be made either by reference to the position appertaining immediately before the discontinuance or, which comes to the same thing, without having regard to the fact of discontinuance. The duration of the dishonesty will be relevant as to whether the claim is properly to be characterised as fundamentally dishonest but even a claim which was wholly genuine when commenced can become fundamentally dishonest for the purposes of CPR Pt 44.16.”

117. The Supreme Court gave guidance on the meaning of dishonesty in civil litigation in *Ivey -v- Genting Casinos (UK) Limited* [2017] UKSC 67; [2018] AC 391. Lord Hughes said in paragraph 74:

“...When dishonesty is in question the fact-finding tribunal must first ascertain (subjectively) the actual state of the individual’s knowledge or belief as to the facts. The reasonableness or otherwise of his belief is a matter of evidence (often in practice determinative) going to whether he held the belief, but it is not an additional requirement that his belief must be reasonable; the question is whether it is genuinely held. When once his actual state of mind as to knowledge or belief as to facts is established, the question whether his conduct was honest or dishonest is to be determined by the fact-finder applying the (objective) standards of ordinary decent people. There is no requirement that the defendant must appreciate that what he has done is, by those standards, dishonest.”

118. In so finding, the Supreme Court disapproved a test for dishonesty which had been set by the Court of Appeal in *R v Ghosh* [1982] QB 1053 and applied in many contexts (including professional regulation). Under that old, disapproved *Ghosh* test, dishonesty was judged subjectively – someone would only be found dishonest if they realised what they were doing was dishonest.
119. In *Mantey -v- Ministry of Defence* [2023] EWHC 761 (KB), Eyre J applied the *Ivey* principles in the context of a NFCI claim. He said:

“...If the Claimant knew that he was not in substance reporting his symptoms accurately and that he was thereby giving a false impression of the effects of the NFCI [Non-Freezing Cold Injuries] and reporting those symptoms as being worse than they in fact were there will be no scope for a contention that his conduct was anything other than dishonest by the standards of ordinary decent people.”

120. In *Howlett -v- Davies and Another* [2017] EWCA Civ 1696 at [16]-[17], Newey L.J. approved the following guidance, from HHJ Moloney QC in *Gosling -v- Hailo* (unreported, 29 April 2014), on when dishonesty is ‘fundamental’:

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

45. The corollary term to ‘fundamental’ would be a word with some such meaning as ‘incidental’ or ‘collateral’. Thus, a claimant should not be exposed to costs liability merely because he is shown to have been dishonest as to some collateral matter or perhaps as to some minor, self-contained head of damage. If, on the other hand, the dishonesty went to the root of either the whole of his claim or a substantial part of his claim, then it appears to me that it would be a fundamentally dishonest claim: a claim which depended as to a substantial or important part of itself upon dishonesty.’

121. In *London Organising Committee of the Olympic & Paralympic Games (In Liquidation) -v- Haydn Sinfield* [2018] EWHC 51 (QB) at [62]-[63], Julian Knowles J. said that a claimant should be found to be fundamentally dishonest if they have ‘acted dishonestly in relation to the primary claim and / or a related claim (as defined in s 57(8)), and that he has thus substantially affected the presentation of his case, either in respects of liability or quantum, in a way which potentially adversely affected the defendant in a significant way, judged in the context of the particular facts and circumstances of the litigation.’

Discussion

Preliminary matter – the forgery allegations

122. The Defendant’s written closing submissions begin with allegations that the Claimant committed forgery when he was in the Army, i.e. that: (i) he tampered with an Appendix 9 by adding to it in pen (in ways which have not been specified); and (ii) he forged a letter from Frimley Park Hospital.

123. I decline to make findings on whether these allegations are made out, on the balance of probabilities, because:
- i) They are not part of the claim which is alleged to be ‘fundamentally dishonest’;
 - ii) At most, these matters go to general credibility;
 - iii) They relate to events a very long time ago – 7 years ago.
 - iv) I have not been provided with the Appendix 9 or told what pen marks were added;
 - v) I have not received evidence from the individual who is said to have received the forged physio letter from the Claimant (Sgt Bush);
 - vi) No fair investigation was done at the time – there was no evidence that, while he was in the Army, the Claimant was ever informed about, or asked to respond to these allegations.
 - vii) For the reasons set out below, I am able to make findings on the key issue without needing to make findings on this historic matter.

Overview of the claims which are said to have been exaggerated

124. Mr Ward agreed that the Defendant’s allegations of dishonesty can be separated into the following subheadings:
- i) Making out that he has more difficulty in walking than he really does.
 - ii) Inventing and/or exaggerating the weakness of grip and sensitivity of fingers.
 - iii) Exaggerating psychological problems.
 - iv) Exaggerating sensitivity to cold.
 - v) Exaggerating the impact of medication.
125. Before I set out my conclusions in relation to the particulars, I have set out my conclusions on (a) the relationship between inconsistency, inaccuracy, exaggeration and dishonesty and (b) the Claimant and his credibility.

Inconsistency, inaccuracy, exaggeration and dishonesty

126. The fact that a claimant has been inconsistent or inaccurate in their evidence does not meant that they have been dishonest. As Leggatt J (as he then was) said in *Gestmin SGPS S.A. v Credit Suisse (UK) Limited, Credit Suisse Securities (Europe) Limited* [2013] EWHC 3560 (Comm):

“16. While everyone knows that memory is fallible, I do not believe that the legal system has sufficiently absorbed the lessons of a century of psychological research into the nature of memory and the unreliability of eyewitness testimony.

One of the most important lessons of such research is that in everyday life we are not aware of the extent to which our own and other people's memories are unreliable and believe our memories to be more faithful than they are. ...

17. ... psychological research has demonstrated that memories are fluid and malleable, being constantly rewritten whenever they are retrieved. ...

19. The process of civil litigation itself subjects the memories of witnesses to powerful biases.'

127. In *Elgamel v Westminster*, there was an issue below as to whether the judge had found dishonesty. Jacobs J interpreted the judge below as finding that the claimant had exaggerated but not been dishonest. That raises a difficult question – what kinds of exaggeration are not dishonest?
128. The claimant in *Elgamel v Westminster* presented with a limp for examination by an expert and claimed to have difficulty climbing stairs and on public transport. However, covert surveillance showed him, on the same day as his examination, climbing stairs without difficulty, walking without a limp and using public transport. Jacobs J interpreted the judge below as finding that Mr Elgamel had a '*genuine belief in the facts which he was representing*'. For that reason, Mr Elgamel was not dishonest.
129. *Elgamel* is an example of unconscious exaggeration – a claimant who says things about themselves which are not true but which they believe to be true. This can happen, especially when the truth would not fit the person's self-image. '*Humankind cannot bear very much reality*' as T.S. Eliot once said. Applying the principles in *Ivey*, such a person is not dishonest. It will not matter if their subjective belief was unreasonable.
130. There may be other examples where exaggeration is not dishonest, for example where the person is speaking loosely, and not intending to be taken literally. Someone in a doctor's consulting room might say '*I never get out of bed*'. The sentence is obviously not to be taken literally. The patient clearly does get out of bed sometimes or they would not be in the consulting room. What they mean is '*I find it very difficult to get out of bed*' or '*I seldom get out of bed*'. In the context of medico-legal reports in personal injury claims, claimants should be advised to report their symptoms accurately and avoid this kind of exaggeration. If the claimant does say something which is clearly exaggerated, experts can be expected to pick up on it and tease out what the claimant really means, but otherwise experts (and courts) are entitled to expect that claimants will tell experts the truth. There is even less excuse for this kind of loose speech in a witness statement or a pleading. Anyone signing a statement of truth has both the responsibility and the opportunity to ensure that the contents of the document they are signing are accurate.
131. Conscious and deliberate exaggeration for gain is dishonest. For example, if a claimant in personal injury litigation says that he has not been able to run since an accident, even though he knows that he has run several Marathons in that time, then he has been dishonest.

132. Dr Isaac referred, in his evidence, to a phenomenon of '*exaggerating to convince*'. He said that sometimes patients arrive in his consultation room so eager to convey their suffering that they say things that they know are not true. In paragraph 72 of his first report Dr Isaac referred to the possibility that the Claimant was '*exaggerating symptoms in an attempt to convey his suffering*'. He distinguished this from '*calculated*' dishonesty. Dr Isaac said that, even if the Claimant did forge medical papers in the Army, this was likely done to '*convey his suffering*' to people who he felt were not listening to him, rather than '*calculated*' dishonesty.
133. The phenomenon which Dr Isaac is describing would not be dishonest under the old, now disapproved *Ghosh* test – the individual knows what they are saying is untrue but subjectively does not believe they are being dishonest. They see it as honest because they are telling an untruth in support of a greater truth – i.e. that they have suffered.
134. However, in my judgment, this phenomenon which Dr Isaac describes, of knowingly saying things that are untrue in order to convey genuine suffering, is dishonest for the purposes of CPR 44.16. I say that for two reasons.
135. First, applying the test in *Ivey v Genting*, this behaviour is dishonest. The individual is aware that what they are saying is untrue. The ordinary person would consider that dishonest, especially in the context of bringing a claim for money.
136. Secondly, as a matter of public policy, it is not consistent with the purpose of QOCS to extend its protections to claimants who knowingly tell untruths about something fundamental to their claim, even if they are doing it to convince courts of a truth they believe in. Claimants in personal injury litigation have a protection against costs which most claimants in civil litigation do not. This is to enable Claimants with genuine claims not to be deterred by the prospect of paying large sums in costs if they lose. The purpose of making an exception to QOCS for fundamental dishonesty is to encourage Claimants to be honest or, to put it another way, to discourage dishonest claims, which are a burden on the courts, other court users and on defendants. It would undermine that purpose if Claimants could knowingly tell untruths which are fundamental to their claim and still retain costs protection.

Conclusions on the Claimant's overall credibility

137. The Claimant is not a reliable witness. His oral evidence was, in many regards, inconsistent with his own witness statements and with the statements of his friend and the accounts he gave the experts – e.g. as to how often he went to the gym after leaving the Army and whether he had a gym membership, and whether he took any medication on the evening of 8 March 2024. However, inconsistency is not, in itself, probative of dishonesty. Memory is unreliable. It is common for honest witnesses to be mistaken and unreliable.
138. In my judgment, the Claimant does have a psychiatric illness. I discuss below why I have formed this conclusion. This psychiatric illness makes it very difficult to determine whether the Claimant has been dishonest. The Claimant has, at times, exaggerated his symptoms and difficulties. It is difficult to determine whether this exaggeration was conscious or unconscious.

139. If I were judging this issue to the criminal standard, I would have no hesitation in acquitting the Claimant. I cannot be sure beyond reasonable doubt of what was in the Claimant's mind when he did or said things which were untrue or misleading. Put another way, I cannot be sure that any of the Claimant's exaggerations were conscious.
140. If I were judging this issue under the old *Ghosh* test, I would find that the Claimant was not subjectively dishonest. I do not think any of the Claimant's exaggerations are 'calculated' in the sense used by Dr Isaac in paragraph 72 of his report. Put another way, I do not think that the Claimant thinks he has done anything dishonest.
141. In my judgment, on the balance of probabilities, some of the Claimant's exaggerations were conscious. In my judgment, paragraph 72 of Dr Isaac's first report describes well some of the things the Claimant has done in this claim and his motives for doing them. It is very clear from the evidence and submissions before me that the Claimant feels let down by the Army. He feels that he was not listened to or cared for by the doctors in the Army or by those in command over him. He feels picked on. He feels that it was unfair that he was made to do Christmas guard duty two years in a row in unheated accommodation when he had a young family and known vulnerability to cold. He feels that it was unfair that his doctor and his chain of command were, without his knowledge, exchanging messages that indicated he was a forger and malingerer. His mental health has deteriorated in ways he finds difficult to understand. He seized on NFCI as an explanation for what has happened to him.
142. In my judgment, the Claimant has in this claim been exaggerating the physical difficulties he has faced in order 'to convince' experts and others of the extent to which he is suffering and has suffered. I do not think that this exaggeration is 'calculated' in the sense that Dr Isaac used that word in paragraph 72 of his first report. I do however conclude that this exaggeration is conscious in certain respects, set out in more detail below, and therefore dishonest.

Has the Claimant been fundamentally dishonest in describing his psychological difficulties?

143. I take this sub-heading first because the Claimant's psychological difficulties are, in my judgment, the most serious of all the difficulties he has had. For the following reasons, I do not consider that the Claimant has been dishonest in describing his psychological difficulties.
144. First, the Claimant has been reporting psychological difficulties for a long time, many years before he left employment with the Defendant or considered bringing a claim against the Defendant. He was reporting symptoms of depression in 2021. He did not bring a claim against the Defendant until 2023.
145. Secondly, the Claimant has been prescribed anti-depressant medication for several years. Even Maj Coulter, who has displayed scepticism about some aspects of the Claimant's reporting, was prescribing the Claimant anti-depressant medication. The fact that so many doctors have prescribed anti-depressant medication for so long is an indicator that the Claimant has a genuine mental illness.
146. Thirdly, the experts who have examined the Claimant have noted his distress and commented on the possibility of psychiatric illness. The Claimant's claim began as a

claim for neurological injury (NFCI). However, both of the experts in NFCIs instructed by the parties (Mr Cross and Dr Mumford) thought that the Claimant's problems were primarily psychological. The picture, therefore, is not of a claimant feigning mental illness, in order to claim damages, but of a claimant seeking damages for a physical illness only to be told by the experts in that illness that his problems were primarily psychological.

147. Fourthly, the Claimant's presentation to me was also of a genuinely distressed person. He would need to be an extremely good actor to feign the distress that I saw in the court room.
148. Fifthly, I accept the evidence of the Claimant's witnesses who came to give evidence and who said he is not the same as the person they remember and he is often very low.
149. In short, the overwhelming weight of the evidence points to the Claimant having a genuine mental illness (either a depressive disorder or an adjustment disorder, it matters not which for present purposes). The only evidence pointing the other way is the brief moment of the surveillance evidence on 9 March where the Claimant greets a friend warmly. Dr Baggaley's view was that this behaviour was consistent with his diagnosis. Dr Isaac's view was that this was so far from the person who presented to him (one month earlier) that he could not 'stand across' his earlier diagnosis.
150. I recognise that Dr Isaac was tested in cross-examination but Dr Baggaley was not. However, that alone cannot be decisive. Otherwise, in cases of disagreement between experts, a party who could afford to pay their expert to attend court would always triumph over the party who could not. I must apply my own judgment to this dispute, bearing in mind the possibility that Dr Baggaley might have made concessions if cross-examined. After the hearing, Mr Ward emailed me *MS v Lincolnshire CC* [2011] EWHC 1032 '*regarding the weight to be attached to medical reports where the experts do not give oral evidence*'. He directed me to paragraphs 13 to 17 in particular. I read those paragraphs but they did not seem to me to help me on this issue.
151. In my judgment, there is no irreconcilable inconsistency between the video surveillance footage and Dr Baggaley's diagnosis of a moderate depressive episode or a major depressive disorder. In my judgment, it is possible for a person suffering from one of those conditions to behave as the Claimant behaved on 9 March. By 9 March, the Claimant had got out of the way examinations which he clearly found distressing. He was also seeing an old friend he had not seen for 6 years. In my judgment a person suffering from a moderate depressive episode could, in those circumstances, behave as the Claimant did – i.e. they could mask or rise above their low mood while they greeted an old friend.

Was the Claimant fundamentally dishonest as to his sensitivity to cold and need for warm clothing?

152. I take this sub-heading next because it is the easiest to assess. I cannot see what the Claimant was thinking but I can see what the Claimant was wearing.
153. In my judgment, the Claimant did consciously exaggerate his need for warm clothing. At his two appointments before Mr Cross, on 26 September 2022 and 8 March 2024,

the Claimant arrived heavily clad. Mr Cross was the first expert he saw – the original NFCI expert whose opinion he and his solicitors sought before they brought the claim for damages for NFCI. He told Mr Cross on 26 September 2022 that he wore additional warm clothing even in the summer, and required additional domestic heating in the house and slept downstairs because it is easier to warm than the upstairs of the house. He told Mr Cross on 8 March 2024 that he tended to wear additional warm weather clothing most of the year even on warm summer days sometimes if he was going out. He said in his first witness statement, dated 6 May 2024, that he had bought and wore gloves to try to protect himself from the cold.

154. It was a fundamental part of the Claimant's claim that he was particularly sensitive to cold. He was claiming £150,000 for disadvantage on the open labour market. One point made, to justify this figure was that he was '*unfit for any career which requires him to work outdoors or in a cold environment*'.
155. It is very striking that on 8 March 2024, when the Claimant was attending for examination before Mr Cross, he was wearing a hoodie, jacket, hat and gloves. The very next day, he left the house wearing only a T-shirt, with nothing to cover his arms or hands. The temperature on each day was similar. As far as I can tell from the video recording, there was a similar level of sunshine. This strongly suggests that the Claimant did not feel a need to wear warm clothing whenever he was outside and was not as troubled by the cold as he was making out to Mr Cross.
156. The Claimant's explanation for this is that he had more control on 9 March, because he was driving his own car and not reliant on taxis. By contrast, on 8 March, he was not sure how long he would be outside. I cannot be sure beyond reasonable doubt that this explanation is false. However, on the balance of probabilities I find it to be false. There was no reason why a taxi would drop the Claimant off far from his first appointment. Even if he had to wait for taxis after appointments, he could have waited indoors. In short, there was no reason for the Claimant to think, on the morning of 8 March, that he would be outside for long. By contrast, on 9 March, the Claimant was voluntarily outside for periods of time. Yet, he chose to wear a T-shirt and no gloves. Even the warmer clothing he put on later in the day was a gilet which did not cover his arms or hands. That was far less in the way of clothing than his friend was wearing. It is not likely that a person who suffered from the cold in the way that the Claimant claimed would wear what he wore on 9 March.
157. The context was of someone claiming for NFCI and seeking a large sum of money on the basis that they could not work outdoors. The Claimant presented himself to his own NFCI expert as someone who wore warm clothing all year round when they went outside as they were so sensitive to cold. In my judgment, the Claimant deliberately sought to overstate his need for warm clothing, both expressly in what he said to Mr Cross and implicitly in what he wore. The Claimant knew he did not wear warm clothing outdoors even when it was warm and yet he told Mr Cross that he did. Objectively, that was dishonest.
158. In my judgment, this dishonesty was fundamental to the Claimant's claim. It was a key part of his claim for damages that he suffered significant disadvantage on the open labour market because he could not work in the cold. That was one of the key reasons why a relatively mild NFCI injury ballooned into a claim for very large sums of money.

Other allegations of dishonesty

159. Having found that the Claimant was fundamentally dishonest in this respect, it is not necessary to address the other allegations of fundamental dishonesty. I will, however, offer some observations on the way that the Claimant moves in the surveillance video and the submissions on it, in case it assists either party.
160. For the following reasons, I do not think that the surveillance evidence proves that the Claimant deliberately or consciously feigned a limp. What is curious about the surveillance evidence in this case is that it did show a limp. In *Elgamel* the surveillance evidence showed that the claimant did not have a limp – this was significant because Mr Elgamel had a limp in the consultation room but not outside, when he was being watched unawares. That is not this case. The Claimant limped on both days he was videoed (albeit far more often on 8 March than 9 March).
161. Mr Ward submitted that the video surveillance evidence was important because it showed the Claimant as he truly was. There is some force in that submission. But what Mr Ward did not adequately explain is why the footage of 8 March should be any worse a guide to how the Claimant truly was than the footage of 9 March. The Claimant was not asked in cross-examination about whether he was aware of the possibility of video surveillance. It was never put to him that he was acting, in the street, for the benefit of video surveillance.
162. When I asked Mr Ward why the Claimant limped in the video of 8 March, he pointed to the fact that the limp occurred outside the doctors' offices and suggested that the Claimant may have been concerned that the doctors were looking out of the window. This makes no sense in context. The moment in the video evidence where the Claimant appears to struggle most is at 13.35 on 8 March outside Chelsea and Westminster Hospital, when he is leaving the second of his appointments (i.e. with Mr Radford). The Claimant did not limp inside the hospital when he was meeting Mr Radford. So why would the Claimant limp outside the hospital in case Mr Radford was looking out the window?
163. In summary, the most likely explanation for the fact that the Claimant limps at some times and not others on the surveillance video is the one the Claimant has given, i.e. that he has good days and bad days. 8 March was a bad day as he was seeing experts in this litigation which reminded him of his bad experiences in the Army. 9 March was a good day as all that was behind him and he was meeting an old friend and his sister.
164. I accept the neurological expert evidence that there is no neurological explanation for these bad days. In my judgment, it is far more likely that there is a psychiatric explanation for the bad days, along the lines of paragraph 72 of Dr Isaac's first report. Going through the distressing experience of being probed by experts and made to relive painful experiences in the Army, the Claimant felt exhausted and weak. That was visible in the way he walked. The following day, with a good night's sleep and the prospect of seeing his sister and friend, he felt lighter. That too was evident in how he walked.
165. I do not accept that the Claimant lied about whether he could climb stairs. In his statement he said '*I am not easily able to walk upstairs when my pain is particularly*

bad". The implication was that on good days, when his pain was not particularly bad, he could easily climb stairs. The surveillance evidence of 9 March is consistent with that.

166. In summary, I do not find that the Claimant feigned a limp or lied about his ability to climb stairs. Even so, I do have a sense that, in his witness statements and what he said to experts, the Claimant underplayed, at least unconsciously, his level of mobility on good days. On 9 March 2024 the Claimant walked with an ease and pace that is not reflected in his self-reporting in this litigation. Given my findings above, I do not need to decide whether this amounted to dishonesty, as opposed to unconscious exaggeration.
167. Nor do I need to decide the other particularised allegations of fundamental dishonesty. It would not have been easy to detangle whether the Claimant's low scores for grip strength were a deliberate attempt to deceive experts or the listless and fearful reaction of a man with depression being asked to try something new which he feared might cause him pain.

Conclusion

168. In my judgment, for the reasons set out above, the Claimant was fundamentally dishonest in this claim. I do not find this was 'calculated' dishonesty (in the sense of the word used by Dr Isaac in paragraph 72 of his first report). I find that the Claimant has a genuine mental illness and has not exaggerated his distress. I find that he exaggerated the impact of his mild NFCI (in some cases unconsciously and in other cases consciously) in order to 'convey' his suffering.
169. I do not know how or why the Claimant brought a claim for NFCI and sought to recover so much in the way of damages. Before he discontinued the claim, the Claimant had legal representation and instructed numerous experts. Someone must have paid for those experts. It does not seem likely it was the Claimant. It may be that someone has supported or encouraged the Claimant to sue the Defendant for sums of money that bore no relation to his mild NFCI. If so, they have done the Claimant no favours. The consequence of my judgment is that I will make a costs order against the Claimant. I will consider submissions on the terms of that order in light of this judgment.