



Neutral Citation Number: [2022] EWHC 854 (QB)

Case No: QB-2021-002242

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 11/03/2022

Before :

THE HON. MR JUSTICE BOURNE

Between :

**HULL UNIVERSITY TEACHING HOSPITALS
NHS TRUST**

Applicant

-and-

NATASHA LOUISE COLLEY

Respondent

Caroline Harrison QC (instructed by DAC Beachcroft) for the Applicant
Selena Jones (instructed by Pepperells Solicitors) for the Respondent

REASONS FOR THE DECISION OF THE COURT MADE FOLLOWING THE HEARING

Hearing date: 1st February – 2nd February 2022 and 10th March – 11th March 2022

Approved Judgment

The Hon. Mr Justice Bourne :

Introduction

1. This is an application to commit the Respondent for contempt of court on the grounds of making knowingly false statements in documents supported by statements of truth. The criminal standard of proof applies. That means that the application cannot succeed unless, having considered the evidence, I am satisfied so that I am sure that (1) one or more of the statements was false, (2) that such statement has, or if persisted in would be likely to have, interfered with the course of justice in some material respects, and (3) that at the time it was made, the Respondent had no honest belief in the truth of the statement and knew of its likelihood to interfere with the course of justice. That test was set out in *AXA Insurance UK Plc v Rossiter* [2013] EWHC 3805 QB at [9].
2. The statements in question were made by the Respondent (“Mrs Colley”) in support of a claim against the Applicant by her daughter Megan for damages for personal injuries caused by clinical negligence. Between November 2016 when the Claim Form was issued, and July 2018 when Megan reached the age of 18, the Respondent acted as her Litigation Friend.
3. Megan was born on 7 July 2000 with severe acetabular dysplasia, which is a severe disorder of the hip joints. She underwent what is described as conservative treatment followed by a number of surgical procedures to rectify the dysplasia and dislocated hips. By the underlying claim it was alleged that there were repeated instances of negligence by the Applicant, resulting in a worse outcome. Megan’s case was that if care had been provided to an appropriate standard, she would have had normal hip function, alternatively four decades of good function with the need for any arthroplasty (surgical joint reconstruction) delayed until the age of 50 or 60, with good mobility preserved until her 80s. Instead, she claimed that, at the time of issue in 2016, she would require left hip arthroplasty imminently and right hip arthroplasty within a decade. Three repetitions would

be needed over a period of about 21 years. By her mid-40s she would require crutches and/or a wheelchair. She was likely to be wheelchair dependent by her mid 50s and to require full-time care by her 70s. When first fully quantified in March 2018, the claim was pleaded at £7.3m.

4. The Applicant defended the claim, save to a very limited extent. It did not admit that Megan would have repeated operations or that she would require crutches and/or a wheelchair by her mid 40s, would be wheelchair dependent by her mid 50s or would require full-time care by her 70s. On the other hand it contended that her very severe dysplasia would in any event have necessitated total hip replacement at some point. The Applicant did however admit that there were some breaches of duty in connection with surgery. The Applicant averred that the causative effect of the admitted breaches of duty was limited to the need to re-do two hip operations, modest exacerbation of unavoidable hip discomfort and acceleration by approximately five years of the unavoidable need for bilateral total hip replacement. After that procedure, undertaken at 27 or 28 years of age instead of 32 or 33, she would be in materially the same position as she would have been in without the breaches of duty.
5. In March 2018, the Applicant disclosed the report of its expert orthopaedic surgeon. He expressed “some doubt about the current level of the Claimant’s symptoms” which were “not easily explained on an anatomical basis”. The Applicant investigated Megan’s social media postings and formed the view that they did not support the impression given in her evidence of her current state. The Applicant then obtained covert surveillance evidence which, with the social media material, was disclosed in September 2018. In a re-amended Defence, the Applicant alleged that there had been fundamental dishonesty in the presentation of the claim, in particular by giving a misleading impression of Megan’s functional capacity and exaggerating her disability. If made out, that was a complete defence to the claim under section 57 of the Courts and Criminal Justice Act 2015.

6. Subject to the section 57 defence, the Applicant admitted liability for damages of approximately £65,500 based on the limited breaches of duty which were agreed.
7. The clinical negligence claim was first listed for trial on 10 October 2018. The trial was adjourned because an expert was unavailable. A trial window from April to July 2019 was then identified. The trial was eventually re-listed to start on 5 March 2020.
8. Meanwhile, in August 2019, Megan's claim was re-pleaded at a value of £5.4m. Then, on 21 February 2020, eight working days before trial, Notice of Discontinuance was served on her behalf. No explanation was provided, save that this step had been taken against legal advice. Because Megan was in receipt of Legal Aid, the discontinuance prevented the issue of fundamental dishonesty from being determined by the Court.
9. By this committal application, Mrs Colley is alleged to have made various false statements, verified in each case by a statement of truth. CPR 32.14 provides:

“Proceedings for contempt of court may be brought against a person who makes or causes to be made a false statement in a document, prepared in anticipation of or during proceedings and verified by a statement of truth, without an honest belief in its truth.”
10. The Applicant contends that the essence of the allegedly false statements was very substantially to exaggerate Megan's disability and immobility arising from her hip dysplasia. In particular, Mrs Colley made multiple references to Megan being significantly reliant (though not wholly dependent), upon a wheelchair, and consequently, at school and College, needing special arrangements and the assistance of friends to get around. The Applicant contends that video evidence shows that in fact she has “grossly normal” mobility in terms of walking, using stairs and accessing public transport. Statements from teachers at school and College say that they are unaware of any special arrangements for Megan.

11. Mrs Colley stands by her statements. She says that Megan achieved the mobility which can be seen in the video evidence by increased use of painkillers (Tramadol) and that she has bad days as well as the good days which can be seen in the evidence.
12. In May 2021 the Applicant sought permission to bring these contempt proceedings. The application was heard by Mr Justice William Davis on 23 July 2021, when it was conceded on the Respondent's behalf that there was a prima facie case and that the public interest requirements were satisfied.

The allegations of contempt

13. The statements by Mrs Colley which are alleged to have been untrue are as follows:
 - i. In a witness statement dated 23 September 2013:

“36. ... Megan continues to struggle with mobility and can only walk for about 5-10 minutes until her legs start to ache. For this reason when she is outdoors and has to walk long distances, Megan uses a wheelchair ...”

“39. ... She does attend school, but does so in her wheelchair ...”

“41. ... She also struggles with the fact that she is often confined to a wheelchair.”
 - ii. In a witness statement dated 5 November 2017:

“40. I have also had the opportunity of considering the medical reports obtained, including ... a psychology report from Dr Koseen Ford dated 10 March 2017 and a care and occupational therapy report prepared by Ms Amy Dooley ... I have read these reports very carefully and can confirm that the factual information contained within those reports is accurate.”

Dr Ford's assessment stated (page 5): “Megan can walk short distances. If she is required to mobilise long distances she needs a wheelchair.”

Ms Dooley's report stated:

“1.20 Megan ... will, on occasion, go out with her friends. ... they will

push her in her wheelchair into Hedon, however she finds this embarrassing.”

“3.8 Megan has been provided with a wheelchair from her local wheelchair service which she reported to use outdoors and one at college.”

“3.9 She ... is unable to walk outdoors for longer than a few minutes.”

“3.11 Megan ... relies on her mother or friends to push her in her wheelchair into town and she also relies on assistance while at college to mobilise in her wheelchair.”

“3.48 Megan needs to be pushed in her wheelchair while shopping.”

“3.52 Megan reported a limited social life. She ... is unable to mobilise on crutches outdoors for any significant distance and ... is unable to propel her wheelchair time.”

“3.54 Megan attends college in her wheelchair. ... she has a full-time teaching assistant who pushes the wheelchair ...”

iii. In a Schedule of Loss dated 16 March 2018:

“C is currently reliant upon the use of a wheelchair when out of the house.”

“ ... due to problems with mobility, bus travel has been prohibited”.

iv. In a witness statement dated 27 September 2018:

“24. Megan does not really go out or do a lot other than with us or to go to college. She has recently, over the last few months, increased her Tramadol intake and is able to manage it better which means she can take up to 2 to 3 tablets approximately 15 minutes before she goes out which enables her to walk or complete journeys without as much pain.

25. Megan did at one point rely on her wheelchair but she has never been wheelchair bound. On her bad days, I did previously have to push her around in a wheelchair and even on occasions now when the pain is bad, this is still necessary.

26. ... She occasionally takes her wheelchair to college depending on whether she has a good day or bad day. It depends also on whether she is leaving the campus to go out for lunch with friends; if she does then she

takes her wheelchair; if not then she does not tend to take it in and relies on the college lifts.”

The evidence

14. It is necessary to see Mrs Colley’s statements in their context, i.e. in the context of all the evidence in the clinical negligence claim.
15. Mrs Colley’s witness statement signed on 23 September 2013, when Megan was 13, was the first statement lodged in support of the clinical negligence claim. The statement reviews Megan’s medical history in her early years. It states that she took painkillers virtually every day, could only walk for about 5-10 minutes before experiencing pain, required assistance with many everyday tasks e.g. getting in and out of the bath and attended school in her wheelchair.
16. The clinical negligence claim was also supported by the report of an orthopaedic surgeon, Mr Dwyer, dated 20 July 2015. That report extensively discusses Megan’s hip condition. It describes her complaining of daily pain, especially after 10 minutes of walking slowly, and records her need for assistance with daily tasks. On a typical day she took Ibuprofen and Codeine 3 times. In the past she had used a wheelchair but now she preferred not to. Mr Dwyer found that “her symptomatology is confusing in that she appears to have neuralgic pain most probably attributable to multiple surgeries and sensitisation of a lateral cutaneous nerve of thighs”, and he recommended referral to a pain management team.
17. Megan’s first statement is dated 25 November 2015, by which time she was 15 years old. She said that she needed support when using the stairs at home and had difficulty getting in and out of the bath. She had pain first thing in the morning until taking her first dose of painkillers which would take the edge off it. At school she was given a written pass allowing her to leave each lesson 5 minutes early in order to get to the next, and was helped by a “Teacher’s Aid”

who walked with her between lessons. She enjoyed performing arts and was on a course at school consisting of practical and theory elements, but “for obvious reasons, it does not involve any strenuous movements such as dancing”. She experienced constant pain. Tramadol took the edge off it and she tried “to keep the painkillers topped up, without reaching the recommendations for daily dosage”. She could not bear anything touching her left hip. When outside, she could “walk without sticks for a short while” but had to sit down to rest every 5 minutes. On bad days she needed a wheelchair.

18. I have seen a social services assessment relating to the Colley family, carried out in January 2015. Megan, then aged 14, spoke to the social worker about her disability. In particular she said that she “likes to go walking and swimming even though this can cause pain” and “likes to be outdoors, but can’t run”. At school she had adapted PE lessons but no contact sports. She “has close friends at school and in the surrounding area”. There is a fair amount of discussion of Megan’s needs but no mention of a wheelchair. It relates that Megan “likes to go out with her friends, boxing, into town with friends and going to the cinema”.
19. Dr Koseen Ford saw Megan on 30 January 2017 and signed her report on 10 March 2017. Megan told her that she could walk short distances but needed a wheelchair for long distances while her mother had to help her with the stairs, bath and toilet. Pain was a constant issue and she took Tramadol. Her social life was not very good and she spent a lot of time at home. Dr Ford diagnosed an Adjustment Disorder with mixed anxiety and depressed mood, and also recommended specialist multi-disciplinary pain management.
20. Megan and her family met with the occupational therapist Ms Dooley on 31 May 2017, though Ms Dooley’s report is dated February 2018. I return to it below.
21. A pain consultant, Dr Munglani, saw Megan on 22 August 2017 and reported on 4 September 2017. Megan told him that she had constant pain and could manage roughly 5 minutes of walking at a time. She said that on a good day she would

take 2 tablets of Tramadol twice in the day, and would take the maximum dose of 4 tablets per day three times a week. Megan told Dr Munglani that she was doing a BTEC in Performing Arts. She said that she always has her wheelchair with her at college e.g. for getting to the toilet, and that she always had a wheelchair with her when going out, but did not normally go out. She described herself as incapable of a number of activities including dancing, though she enjoyed singing. Dr Munglani expressed the view that she had musculo-skeletal pain in and around both hips, should try various remedies and should reduce her intake of Tramadol.

22. Megan saw Mr Dwyer again on 14 August 2017. His further report dated 24 November 2017 said that her coursework includes dancing but that she avoids this because of lack of flexibility and pain. She could walk for 10 minutes on a good day at a slow pace. She took 100mg of Tramadol each morning, and “on bad days which are 4 to 5 days each week” she would take a second dose later. Mr Dwyer found her to have a “grossly abnormal” gait and noted that she was “unable to dance”.
23. Mrs Colley and Megan both signed their second witness statements on 5 November 2017. Mrs Colley went back through the history. She stated that she had read Megan’s statement and that its contents were accurate. She had “very carefully” read the expert reports filed on behalf of Megan including those of Dr Ford and Ms Dooley and confirmed that the information in them was accurate. An oddity of the case is that Ms Dooley did not sign her report until February 2018, well after Mrs Colley’s statement. It was therefore necessary to establish what “information” had definitely been set out by Ms Dooley by 5 November 2017 and was adopted by Mrs Colley. Mrs Colley’s counsel, Ms Selena Jones, confirmed that Mrs Colley was referring to those passages which she quotes in her last witness statement in these proceedings, dated 11 October 2021.
24. Megan’s statement of 5 November 2017 also repeated much that had been said in her first statement. She again said the pain was constant and that she used

Tramadol while trying not to reach the maximum dose each day, monitored by her GP. She was “heavily reliant upon my mum for virtually everything”, needed assistance getting in and out of bed, on the stairs and with the toilet and putting on trousers and underwear, could not use the bath, went out only very rarely and travelled mostly by taxi. Megan stated that she was now at Hull College, in the second year of a three year course in performing arts. In the first year she obtained distinctions in a number of disciplines and a merit in movement “but this was limited to my upper body and head”. She said that the courses she is attending “are for those with a disability”. She now had only two friends, one of whom was severely disabled, but mixed with other friends when at college.

25. Ms Dooley signed her report in February 2018, having also seen the reports of Dr Ford and Dr Munglani and the updated reports of Mr Dwyer. Megan told her that she could not walk outdoors for longer than a few minutes and that she relies on her mother or friends to push her in her wheelchair into town and relied on assistance while at college to mobilise in her wheelchair. On bad days she needed help on the stairs. She needed help to get to and from bed, bath or toilet, help dressing and undressing and help with personal hygiene. She needed to be pushed in her wheelchair while shopping. She had a limited social life. She attended college in her wheelchair and had a full-time teaching assistant who pushed the wheelchair. She was allowed to leave lessons 5 minutes early.
26. The Schedule of Loss signed by Mrs Colley on 16 March 2018 refers to Megan being “very limited in the distances that she can walk and in relation to standing for any length of time” and “currently reliant upon the use of a wheelchair when out of the house”.
27. The Applicant, in opposition to the clinical negligence claim, filed the report of an orthopaedic expert, Professor Montgomery, in March 2018. He reviewed various records. He noted that GP records referred to injuries sustained by Meagan while snowboarding, cycling and playing hockey. School records in 2010 and 2011 referred to her engaging in dance and gymnastics. Professor

Montgomery also felt that many of Megan's reported symptoms could not have been caused by her hip problems and that one possible explanation for them was exaggeration, conscious or unconscious.

28. In a further report in June 2018, Professor Montgomery said that "there has to be some doubt about the current level of symptoms".
29. The Applicant also instructed a pain consultant, Dr Plunkett, who saw Megan on 26 September 2017 and signed a report in June 2018. Megan told him that she took Tramadol 100mg twice a day and Brufen 500mg as needed, which could provide complete relief from pain albeit with a side effect of nausea. She told him that "her mother helped her to the toilet in the night until approximately three years ago", but she still needed help with washing, the toilet and dressing. She said that she was currently studying singing but "avoids dancing due to the impact on her hips". She could stand for 5 minutes, or walk for 5 minutes and "uses a wheelchair outside of the house, and crutches while indoors". Dr Plunkett felt that Megan's psychological condition was amplifying her perception of pain and related disability. He also thought there might be elements of unconscious exaggeration. He recommended multi-disciplinary pain management and suggested continuing with Tramadol but in slow-release form to minimise side effects.
30. The Applicant's care expert, Jennifer Murray, also saw Megan and her parents in September 2017 and reported in June 2018. She gave a similar summary of Megan's reported needs while at home. When she arrived for the assessment visit, Megan was on a couch and had to be helped to a standing position by Mrs Colley. Megan told Ms Murry that she spent most of her time at home when not at college and felt isolated. She said that "when performing on stage she is able to walk but uses a chair to sit on when necessary. If they are doing a dance they will incorporate her by making her lay on a table or sit in a chair." She could walk for 5 minutes before needing to sit down. On arrival at school she was met by a teacher who would push her in her wheelchair. During the school day she left

each class 5 minutes early and was “pushed by a friend or teaching assistant to her next class”. She would go shopping with her mother but “needs to be pushed in her wheelchair”.

31. The Applicant also relied on the report of a psychiatrist, Dr Jasti, dated June 2018 and based on an interview on 8 February 2018. Megan told him that she uses her wheelchair most of the time while at college and could not walk long distances or get on the bus by herself. He did not agree with Dr Ford that Megan had an Adjustment Disorder. He found that she had symptoms of anxiety and diagnosed a Phobic Anxiety Disorder due to pain and her physical condition, but no depressive disorder or any other serious mental health condition.
32. Megan signed a further statement on 10 August 2018, responding to and resisting the suggestion that she was exaggerating her symptoms. She put forward explanations for the entries in records which referred to activities like snowboarding and cycling, explaining that she had attempted these activities on specific occasions without success.
33. The Applicant then served surveillance video taken near the Colleys’ home and in the town centre at various times on 2, 8, 9 and 10 August 2018. The relevant parts can be summarised as follows.
34. At about 17.05 on 2 August 2018, Megan can be seen leaving her home on foot. She walks for about 15 minutes at a reasonably brisk pace and without any appearance of difficulty.
35. Ms Jones suggested that the footage shows Megan carrying her left shoulder lower than her right and that she walks with a slight limp. Watching the film myself, although I agree that Megan’s upper body appears to lean slightly to the left, I could not detect anything that struck me as abnormal. It is possible that her body angle is affected by the fact that she is carrying a bag on her right shoulder.

36. Megan then waits at the bus stop for 16 minutes, standing up. She does not noticeably lean against the bus shelter. There is a low wall nearby but she does not sit on it. For much of the time she is on her phone. Sometimes she moves from foot to foot. There is no other visible sign that she is or may be in any discomfort. At 17.37 the bus arrives and Megan boards it with no visible difficulty.
37. Megan is next seen at 18.33 walking along the pavement, carrying a carrier bag with her right wrist and another bag on her right shoulder. She is talking on her phone and walking at a steady pace. She stops outside a building and continues her telephone conversation. Then she enters the building and embraces someone just inside, climbing 3 steps to do so, at a normal pace.
38. There is brief footage of Megan at 22.42, getting into a taxi, and then at 22.56 arriving home on foot.
39. At 13.33 on 8 August she is seen leaving her house and walking down the street with the other members of her family. As before, she has her bag on her right shoulder. They are walking at a steady pace and in much of the footage she is at the front of the group. At 13.37 she momentarily breaks into a jog with her little brother. She continues the walk, reaching a bus stop at 13.51 where she stands, using her phone. She boards a bus at 13.53.
40. At 14.15 Megan is filmed in the street, having left the bus. She now walks at a brisk pace, overtaking some other pedestrians, before going into a shopping centre and entering W.H. Smith at 14.21, where she remains, browsing and buying an item, until 14.30. She then walks through the shopping centre to Boots, entering at 14.30. In Boots she walks up an escalator, slowly and holding the handrail but without apparent difficulty. She then stands at a photo printing machine for a few minutes. A few minutes later she is seen paying at the till. At all times while walking she has her bag on her right shoulder.

41. At about 16.50 Megan can be seen walking in the street near her home for about 12 minutes. She is walking at a steady pace without any visible difficulty, again with her bag on her right shoulder.
42. At 12.17 on 9 August 2018, Megan can be seen at her front door, helping to bring some shopping bags inside.
43. At 11.58 on 10 August 2018, Megan is seen outside her home with her mother, brother and sister. They walk down the street at a steady pace. At 12.02 Megan stops for a moment and the others pause with her before they all continue. Mrs Colley has commented that Megan is limping at this point, but I cannot detect this. At 12.16 she slows down slightly. At 12.18 they arrive at the premises of Holderness Taxis where Megan starts to climb a metal staircase. At 12.22 they can again be seen walking in the street. At 12.25 they arrive at a takeaway outlet. At 12.32 they can be seen outside, eating. Megan remains standing for the next 15 minutes while her mother and sister sit down. At 12.47 Megan leaves the others and walks down the street at a steady pace. Again, Mrs Colley has suggested that she is limping but I cannot see this. She is then seen at a bus stop at 12.53. She boards the bus at 12.57. She is then seen to leave the bus at 13.18 and walks briskly to the office of her solicitors, entering at 13.20. Mrs Colley has suggested that at this point she reaches for the wall to support herself but again, I could not see that. She emerges at 13.22 and then walks until 13.31 when she sits on a bench. She walks steadily but perhaps more slowly than before. I detected some tendency to lean towards her left side, though I would not call it a limp or a “waddle” as Mrs Colley has suggested. The video is unsteady at this point, making assessment more difficult. At 13.33 a man arrives and she gets up and embraces him. They walk together at a steady pace, pausing for a minute at 13.45 to check a bus timetable. By 13.52 they slow down and stop near a bus stop. Although there is seating there, they stand, talking to each other, until 13.56 when they board the bus and sit down. At 14.31 they can then be seen walking through the street for 3 minutes until they enter a house. At all of these times Megan is carrying a bag on her right shoulder.

44. The surveillance video was served in September 2018. Soon afterwards, Megan signed a third statement on 26 September 2018, responding to it. In respect of the walk to the bus stop described at paragraph 39 above, she says that this took 15 minutes whereas it should normally take 7 minutes. She said that she had taken 3 Tramadol and waited some minutes for these to take effect before each of the outings seen on the film.
45. More specifically, Megan explained that she did not take painkillers at regular times, but only when she needed them because of pain or because she intended to do something like going out. During the summer holidays she did not do many activities and therefore could manage her Tramadol intake when required. She confirmed that the Schedule of Loss was accurate when it was compiled in February 2018, as were her instructions to experts in 2017, but that she had since increased and managed her use of Tramadol.
46. Mrs Colley's third statement on 27 September 2018 also, as I have said, explains that Megan does not go out much and has in recent months increased her Tramadol intake to manage journeys.
47. A joint report by the two sides' orthopaedic experts is dated 10 February 2019. Mr Dwyer considers the surveillance evidence to be consistent with Megan's reported symptoms. Professor Montgomery does not. Mr Dwyer considers that Tramadol can have the effect claimed by Megan but Professor Montgomery says that, as Megan herself has put it, it just takes the edge off pain. He also notes that Megan has never said in any statement that it transforms her from a housebound person to the person seen on video. He also points out that her description of the amounts taken is not supported by her prescriptions.
48. A joint report by the two sides' pain management consultants dated May 2019 states that what was seen on the surveillance video was "considerably better than reported to us" and that Megan's claimed level of function was not supported by

the footage. They also thought that Megan's assertion as to the quantity of Tramadol she was taking was "highly unlikely" to be true in view of the amounts actually prescribed to her, though she might have saved up the capsules and taken them intermittently. One of the experts thought that it was possible, though not probable, that what was seen on the video could be explained by her storing up Tramadol and using it only on bad days.

49. The joint report, signed in April-May 2019, of the psychologist instructed by Megan and the psychiatrist instructed by the Applicant stated that psychological issues "can account for material differences between the Claimant's complaints and presentation in examination/video evidence".
50. The care experts in a joint statement following a discussion on 1 July 2019 note a disparity between the levels of function shown on the surveillance and those observed during their assessments. Ms Dooley thought there could be innocent explanations for the difference, whereas Ms Murray thought that, based on the surveillance, Megan could in fact independently complete tasks which she had said she could not.
51. The Applicant applied for permission to make the committal application on 27 May and issued the claim form on 9 June 2021. In October 2021, in response, Mrs Colley served a further witness statement dated 11 October 2021.
52. Mrs Colley there states that, following disclosure of the surveillance evidence in September 2018, Megan's mental health deteriorated, with episodes of delusions, hallucinations and self-harming. This culminated in her instructing her solicitors in January 2020 that she wanted to discontinue her claim. The solicitors instigated a psychiatric capacity assessment. In a report dated 17 February 2020 a psychiatric consultant, Dr Ramzan, thought she had an acute and transient psychotic disorder, associated with stress which in turn was associated with the litigation, but considered that she had capacity to make litigation decisions. The Notice of Discontinuance was served a few days later.

53. In this latest witness statement, Mrs Colley goes through the material previous statements and reiterates that they were true, with one exception which is dealt with below.
54. In support of the 2013 statement that Megan struggled with mobility and could only walk 5-10 minutes before her legs started to ache, Mrs Colley says that if the family went a long distance they would always take the wheelchair because it made Megan more confident to know that it was there if needed. In support of the 2013 statement that Megan attended school in a wheelchair, she says that the wheelchair went to school with Megan in Mr Doherty's taxi, so she honestly believed that Megan was using it at school.
55. Mrs Colley exhibits an email dated 23 November 2011 which appears to record a meeting between someone at Megan's school and her parents. It says, among other things:
- “Moving around school – Due to her arthritis Megan is finding it very difficult to get around school at the moment. Up to now she has had 17 operations on her hips and if knocked this could cause her a lot of problems. I am going to arrange from tomorrow that Megan is moved with [name redacted] and [name redacted] this way she will be supported at all times. If either of these students are not in the lesson with her please allow to leave 5 minutes early so she has time to move when the corridors are quieter.”
56. That email also refers to Megan not being allowed to do any contact sport, and then continues:
- “Toilet pass – Due to her physical difficulties Megan has a numbness in her lower body and can sometimes not realise when she needs the toilet. Please allow her to go to the toilet if she needs to and also take into consideration that this may take her sometime, simply with the speed she can walk.
- Registration and breaks – Megan will be dropped off by her taxi at reception and will be collected to come up to LSB [Learning Support Building] she will then be taken to form time by a TA and moved to her next lesson. Megan is also welcome to come up to LSB at break and lunchtime if she requires any help with homework etc.”

57. Mrs Colley states that Megan’s hips deteriorated when she was around 14. Thereafter she took the wheelchair to school more regularly, and was taught privately in the Learning Support Building so that she would not have to travel around the school.
58. More generally Mrs Colley provides context for social media references to Megan snowboarding, cycling, ice skating, going out with friends and walking home.
59. The exception to Mrs Colley’s reiteration of her previous statements concerns the assertion on 5 November 2017 that she had carefully read the reports of Dr Ford and Ms Dooley and confirmed all their contents (paragraph 13(ii) above). She now disagreed with a statement in Dr Ford’s report that Megan could not navigate stairs and needed help getting on and off the toilet (though those specific assertions are not referenced in the committal application). She had struggled to process all the information in all the reports in the clinical negligence claim, and her agreement with Dr Ford was intended to be in more general terms. She points out that Megan’s ability to go up and down stairs and to use the bath was, at this time, evidenced in Ms Dooley’s report and therefore she had clearly not been trying to trick anyone.
60. More generally Mrs Colley reiterates that Megan did “need” her wheelchair when a longer walk was in prospect, in the sense that she needed it to be nearby though she might not use it. She did use her wheelchair at college or when out with friends – but this meant that she used it sometimes, not all the time. Mrs Colley produced a very short Snapchat video showing Megan being pushed in her wheelchair at college by a friend in or around 2018. As to the assertion to Ms Dooley in May 2017, adopted in November 2017, that Megan “is unable to walk outdoors for longer than a few minutes”, Mrs Colley says:
- “This statement would have been true at the time that I made it. As already stated, Megan had good and bad days. I maintain my position that the statement will have been made and signed around a time when Megan had been having bad days and was struggling to walk outside for longer than a few minutes.”

61. Mrs Colley also reiterated that Megan did indeed rely on her mother or friends to push her in her wheelchair into town and relies on an assistant while at college, with the qualification that this only occurred sometimes. As to the statement made to Ms Dooley in May 2017, adopted in November 2017, that Megan needed to be pushed in her wheelchair while shopping, she qualified this as applying only “with regard to lengthy shopping trips, such as to Leeds or Bridlington”, and she added that this statement was made before Megan’s increased use of Tramadol.
62. In respect of the statement made to Ms Dooley in May 2017, adopted in November 2017, that Megan attends college in her wheelchair and has a full-time teaching assistant who pushes the wheelchair, she says:
“There was another student in Megan’s class who had an electric wheelchair and a full time assistant. Due to Megan’s disability, the assistant would also help her out. Megan also received support of friends.”
63. In response to the surveillance video, Mrs Colley says that in the months between her second witness statement and the surveillance (November 2017 – August 2018), there was an increase in Megan’s mobility due to an increase in her use of Tramadol. She also reiterates that the footage was taken on good days, and that on a bad day Megan would stay at home and therefore would not have been filmed.
64. Mrs Colley argues that a few social media pictures of social events do not prove the level of Megan’s activity or that she never used a wheelchair.
65. Mrs Colley acknowledges that she was aware of Megan’s participation in the theatre shows. In the 19 months between the date of her second witness statement and the performance in June 2019, Megan started to use more Tramadol to combat the pain. Meanwhile, after performing, she “would come off the stage and cry behind the curtain because she was in so much pain”. In *Jack and the Beanstalk*, “Jack was not a main part. She was rarely on the stage. It was more about singing than movement.”

66. In respect of the second schedule of loss on 16 March 2018, Mrs Colley defends the statement that Megan “is currently reliant upon the use of a wheelchair when out of the house” on the basis that there were times when she was so reliant, and she says that the statement that “due to problems with mobility, bus travel has been prohibited” was true at the time, though it evidently was not true at the time of the surveillance footage in August 2018.
67. In respect of the third witness statement on 27 September 2018, Mrs Colley stands by the assertions that, despite the improvement achieved during the previous few months by increased use of Tramadol, “on bad days Megan still needs wheelchairs” and that she “occasionally takes her wheelchair to college depending on whether good day or bad day” and takes a wheelchair when going out with friends. She repeats that Megan used a lot of painkillers to get through performances and when working shifts in a bar.
68. Mrs Colley also filed a witness statement from Edward Doherty dated 2 October 2021. He worked as a taxi driver until his retirement in the winter of 2015 (when Megan was 15). About 2-3 times per week, he took Megan to and from school at Holderness Academy and Sixth Form College. She had a wheelchair with her “more often than not”, and he was given this job because his car was big enough to accommodate it. The statement does not mention any personal connection between Mr Doherty and Megan or her family.
69. In December 2021 the Applicant served further evidence in reply, including witness statements from staff members who taught or interacted with Megan during her studies at Holderness Academy and Sixth Form College and at Hull College.
70. Ellie Bull was Megan’s history teacher in Year 10 and 11 (ages 14-16) in the academic years 2014/15 and 2015/16. Ms Bull had already given a statement in the clinical negligence claim. There she said that Megan was on an action plan for poor attendance and, when she asked about this, explained it by reference to

problems with her hips. Ms Bull did not observe her having any difficulty in walking. She did not recall her ever using a wheelchair and was sure that she would remember if she had seen this. She did not remember any special arrangements, which would need to be contained in lesson plans, or the use of a designated teaching assistant. She could not be sure whether she ever saw Megan using crutches but was sure she would remember if they had been used regularly. In this committal application Ms Bull made a second statement, reiterating the contents of the first. She adds that she taught Megan twice a week in a room on the second floor. If Megan had needed to use the lift she would have needed permission. She is very clear that Megan did not have assistance from other students within the class and was not permitted to leave classes earlier. Ms Bull never taught her separately from other students in the Learning Support Building. In her classroom, furniture would have had to be moved to accommodate a wheelchair and this did not happen. Risk assessments were carried out for students who required wheelchairs and Ms Bull was aware of two examples, but no such assessments were in place for Megan.

71. Christopher Wicks similarly gave a statement in the clinical negligence claim and another in the committal application. He was Megan's English teacher briefly in Year 10 and then for 8 lessons every two weeks in Year 11, in 2015-16. He did not recall her having any mobility problems or ever using a wheelchair and is "reasonably confident" that he would have remembered this. Special arrangements would be in Megan's records, as would a risk assessment if she used a wheelchair or crutches, together with "red flags" to be marked on the register for every day that a pupil was using crutches. He did not teach her separately from other students in the Learning Support Building. His classroom was only accessible by stairs or, with permission, the fire escape, and he did not move furniture to accommodate a wheelchair.
72. The Applicant also adduced a number of statements from staff members at Hull College where Megan attended courses in Performing Arts in 2016-17 (Level 2), 2017-18 and 2018-19 (Level 3) and 2019-20 (Level 4).

73. Jade Barker taught Megan mathematics for 1 ½ hours per week from January 2017 until June 2018. She remembers Megan complaining on occasion about health issues and about her body aching. She says that Megan was not permitted to leave classes earlier than other students for this or any other reason. She never attended the maths classes in a wheelchair or with crutches and Ms Barker never saw her on campus with these, or being assisted on the stairs by friends. She does not remember any special arrangements being in place for Megan.
74. Emma Wilson was Course Leader for Megan’s Level 2 course. She taught her in around 80% of her lessons in 2016-17 and was also the first port of call for pastoral care. She has provided two statements. She remembers Megan at the start mentioning problems with her hips causing mobility issues and pain. She confirms that no special arrangements were put in place. She says that Megan did not avoid dancing , which was an integral part of the course. Instead, she was a “really strong performer”, playing a full part in rehearsals and shows. These included *Sleeping Beauty* in December 2016 and *Oliver Twist* in June 2017, discussed further below. Ms Wilson also taught Megan for 1 ½ hours per week in her Level 3 course in 2017-18. On that course the students develop their skills in jazz, tap, ballet and contemporary dance techniques. That year, Megan played the lead role in *Jack and the Beanstalk* in December 2017: see below.
75. Ms Wilson only ever saw Megan in a wheelchair on one day. This struck her as unusual, she asked why and she was told this was because of hip problems. She never saw Megan attend any classes or performances in a wheelchair or on crutches or be helped on the stairs by friends. Another girl in the same class was a wheelchair user, and had a full-time teaching assistant. Ms Wilson does not remember Megan having a teaching assistant. She was not aware of Megan being allowed to leave classes early. A wheelchair user would have had a support plan, including an evacuation plan, and a key for access to lifts, and certain exemptions relating to assessments. None of these were in place for Megan.

76. Susan Bielby taught Megan in singing sessions once per week in 2016-17 and helped her with singing and acting in *Sleeping Beauty*. She feels that they built up a strong relationship. Ms Bielby also taught her in acting classes in the next two academic years. She remembers that Megan “would mention having a little bit of pain in her hip”. She recalls that Megan was one of the strongest dancers in the class. Ms Bielby was Director and Assistant Musical Director in a production of *Crazy For You* in June 2019 (see below). This show, like the others referred to below, was double cast i.e. performers might play a principal role in the first cast for half of the performances and an ensemble role in a second cast for the other half. Ms Bielby says that Megan’s principal role required her to, for example, crawl across the floor, straddle another performer on a chair and sit on table and throw her legs around another performer. In her ensemble role she performed a vigorous tap dance. There was a dresser to assist those who needed support with dressing or undressing before, during, between or after shows, but Megan did not need this assistance.
77. Ms Bielby was also Musical Director and co-Director of *Oliver Twist*. She says that Megan would have performed three times in one day, including a dress rehearsal, and that she “did not hold back” in the role of Nancy (see below). She does not remember Megan showing any sign of being upset after any performance. She would have expected to be told if such a thing happened. She remembered one period of about a week when Megan brought a wheelchair to college and left it in a downstairs office, and her friends “fussing around her”. Otherwise she says that Megan never attended any of her classes or performances in a wheelchair or with crutches, and that she was never permitted to leave Ms Bielby’s classes early for mobility or other reasons. She did not have a teaching assistant, and Ms Bielby is not aware of her having had the necessary assessments as a wheelchair user. She was not given exemptions for her assessments.
78. Nichola Roe was Megan’s dance teacher in 2016-17. She describes the dance elements of the level 2 course as physically demanding with a weekly two hour group session, learning dance routines mainly in a jazz style. Ms Roe also taught

her dance in 2017-18, with two weekly two-hour sessions instead of one, and in 2018-19 when about 25% of Megan's course time would have been dance.

79. Ms Roe thinks that Megan may have mentioned hip pain in a couple of classes in 2016-17 but no more than that. In 2017-18 Megan said on occasion that her hips were hurting and she occasionally took breaks to sit down. She was a good dancer and a strong performer. Ms Roe's recollection is that *Jack and the Beanstalk* was performed at 10 a.m., 1 p.m. and 7 p.m. on each of three days, and Megan would have taken part in all nine performances. Like Ms Bielby, she remembers a period of a week or two where Megan brought a wheelchair to college and she saw it in the canteen. She says that this was after September 2018. She does not recall Megan ever attending any of her classes or performances in a wheelchair. Megan did not have a teaching assistant. None of these teachers remembers her getting assistance from any other teaching assistant, such as the one who assisted the classmate who was a wheelchair user. Megan did not leave Ms Roe's classes early.
80. Kerrie Grantham taught singing in workshops and helped teachers and students to prepare the Christmas and end of year shows in 2017-18. She remembers Megan's occasional complaints of hip pain being mentioned to her by Ms Roe. She also remembers that Megan occasionally, but not often, had to sit out for short periods in workshops. Otherwise she remembers that Megan "loved movement and was very physical with it". She never required additional support. Megan never attended any of Ms Grantham's classes or performances in a wheelchair and did not leave classes early.
81. Anne-Marie Crook choreographed and taught the tap dance number in *Crazy For You* in June 2019, which she described as energetic. She also taught the dance aspects of Megan's course in 2019-20. She recalls having conversations about Megan's hips and struggling with some movements, causing her to make some modifications to warm-ups and routines. Megan chose dancing as the topic of a presentation in which she spoke about how she had had to learn to improve her posture to manage her hip problems. She does not recall Megan needing any

other adaptations for classes or performances. She does not remember Megan attending college or performances in a wheelchair or crutches or having any help from a teaching assistant, or having to leave classes early.

82. For completeness, I will add that the teachers make reference to Megan experiencing some mental health issues in 2018-19 which affected her attendance at college.
83. The exhibits to the teachers' statements include documents from Megan's file at the College. There are Learning Agreements for 2016-17, 2018-19 and 2019-20, signed by Megan on 26 August 2016, 29 August 2018 and 3 September 2019, on which a "wheelchair user" box is filled "no". In 2016 she ticked a box for "disability affecting mobility", but to the question whether additional support was needed she ticked "no". In the subsequent years a box for learning difficulty or disability is filled "yes – details recorded". A re-enrolment form completed in 2016-17 and relating to 2017-18 refers to a self-declared "disability affecting mobility". A box recording any need for support is ticked "yes" with a signature on 29 August 2017.
84. In cross examination some of the teachers were challenged by Ms Jones about that fact that a few phrases or sentences are repeated verbatim in statements of more than one of them. They were unable to explain this, and said that the statements were expressed in their own words. In submissions Ms Jones has not pursued a suggestion that there was any improper collusion. Rather, she submits that where witnesses may have simply adopted wording drafted by solicitors, less weight can be placed on their evidence. In principle, I agree, and lawyers helping witnesses to prepare statements should take care to ensure that the words are a witness's own, save for the purely formal parts of a statement. In this case, however having heard from the teachers, I am sure that they have done their best to assist the Court by providing their honest recollection of the facts. Any criticism of the method of drafting does not impinge on the value of their evidence about what they observed of Megan.

85. The Applicant also relies on video recordings of student theatrical productions in which Megan participated.
86. The video of *Sleeping Beauty* (December 2016) lasts for just over an hour. Megan plays the role of the princess and is on stage for just over 30 minutes. There is no sign of any mobility issue. At one point she dances a waltz with the prince. There are also two group dance numbers in which she is centre stage.
87. *Oliver Twist* (June 2017), derived from the musical *Oliver!*, lasts for around 80 minutes. Once again there were two casts. In one of these, Megan played the female lead, Nancy, who is on stage for a total of 30 minutes 30 seconds. In the performance of which I have seen the video, Megan is a member of the ensemble but has a prominent role, participating in song and dance numbers, some of them quite energetic. Nancy's part is similarly active, for example involving being pushed to the floor as well as solo singing.
88. The video of *Jack and the Beanstalk* (December 2017) lasts for about 90 minutes. In the version I have seen, Megan is part of the ensemble who are on stage for a total of 22 minutes 40 seconds. There was an alternate cast, whose performance I have not seen, in which Megan played Jack, who is on stage for 42 minutes. The show includes some dance numbers including two towards the end which are more energetic. Jack's part involves a certain amount of running, bending, jumping etc.
89. There is less video evidence from 2018. Ms Bielby says that Megan had an ensemble part in a musical show in June 2018, *The Greatest Show*, but we do not have footage of it. In December 2018 she did some singing and group movement in a show called *2018*. The available footage includes some brief appearances by Megan, but nothing that gives any real insight into her mobility.
90. I have seen a short collection of video clips from *Crazy For You* (June 2019) in which Megan is one of a line of dancers (whereas she played an individual role in another cast, as in the other shows above). Again, she appears to participate

in the same way as the rest of the cast, but in view of the brevity of the extracts this adds little to the overall picture.

91. Finally there is a statement from Mani Bhullar, an “intelligence researcher” employed by the Applicant’s solicitors, who exhibits various social media posts showing an apparently friendly relationship between the Respondent (and her husband, and Megan) and Edward Doherty, the taxi driver who is referred to above. These include social media posts such as birthday greetings to Mr and Mrs Colley in 2020 and 2021.
92. Mrs Colley began to give oral evidence by video link on the second day of the hearing and adopted her witness statement. In cross examination she said that Megan takes 8 Tramadol tablets every day and that her functioning improved when she increased the quantity taken. Previously she did use Tramadol to take the edge off pain but it did not allow more energetic activity. Increasing the dose was what Megan had to do “to have a life”. Mrs Colley was then challenged on what happened if Megan ran out of the Tramadol which had been prescribed, and she said that she could get more from other family members who are also taking it. She does not previously appear to have mentioned that in evidence.
93. On the morning of 3 February 2022, the third day of the hearing, I was informed that Mrs Colley could not attend because she had taken an overdose and had been admitted to the Applicant’s hospital. At the invitation of Ms Caroline Harrison QC, counsel for the Applicant, I ordered the Applicant to disclose the medical records relating to this incident. I also ordered the parties to co-operate in obtaining records from the treating NHS Trust including, if possible, a report from the treating psychiatric clinician on Mrs Colley’s capacity and fitness to continue with the trial. I adjourned the hearing and ordered the case to be mentioned around 2 weeks later.
94. At the mention hearing on 18 February 2022 there was not much more information. It was indicated that the trial could continue but that Mrs Colley

did not wish to continue giving evidence. I ordered her to attend the adjourned hearing in person and the case was relisted.

95. The delayed third day of the hearing took place yesterday, on 10 March 2022. It was confirmed that Mrs Colley did not wish to continue giving evidence. There was a debate about whether I should draw an adverse inference, i.e. an inference that she is guilty of one or more of the contempts alleged, from her refusal to return to the witness box. However, as Ms Jones submitted, it is at least possible that the curtailment of Mrs Colley's evidence is explained by psychological difficulties. Her medical records contain references to such difficulties from at least 2008. In 2009 she was found to have an anxiety state connected with a court appearance. Anxiety was mentioned again in 2011. She saw her GP complaining of suicidal ideation in 2019 and was prescribed an anti-depressant. By 2020 the notes refer to an anxiety disorder and the prescription continues. She attended A&E in October 2021 complaining of suicidal thoughts. Further medications were later prescribed, in particular for panic attacks. She was admitted to hospital for 3 nights in December 2021, reporting visual and auditory hallucinations and suicidal ideation, described in an assessment form as "symptoms of psychosis" although it does not seem that any formal diagnosis was made. The assessment also refers to "history of overdose 13 years ago" although that was self-reported and no details were available. Records associated with her admission on 31 January 2022 refer to stress and anxiety and suicidal thoughts, though not to mental illness. I do not have the benefit of any medical report on Mrs Colley's current state, but I cannot ignore the history as described in the records. In short, I am not persuaded that it would be logical to draw an adverse inference from her refusal to continue giving evidence.
96. I then heard the oral evidence of Edward Doherty, followed by the parties' submissions, and adjourned the matter for judgment today.
97. Mr Doherty robustly defended his witness statement, saying that he took Megan's wheelchair to school with her on most days between 2010 and 2015. His

recollection is that this pattern did not change during those 5 years. Challenged, he could not explain how this fitted with Mrs Colley's evidence (in paragraph 41 of her most recent statement) that it was from 2014 that Megan started to take her wheelchair to school more regularly. Mr Doherty was shown social media posts revealing a friendly relationship between him and the Colley family which was not mentioned in his witness statement. He responded that he is friendly to all of his regular customers and for that reason was much in demand as a driver. In cross-examination he agreed that Megan's father worked in the office at the same taxi company, but he could not remember from when, and thought that their time as colleagues had not coincided very much.

Discussion and findings

98. The statements which are alleged to have been untrue consist of short extracts from the statements of case and witness statements in the clinical negligence claim. Those documents, as a whole, provide the context for the disputed material.
99. When all the evidence in the clinical negligence claim is considered, it is absolutely clear that Megan, by herself and with the help of Mrs Colley, significantly exaggerated the levels of disability which she was experiencing during the lifetime of the litigation.
100. The most powerful evidence demonstrating this is the video footage of the theatrical performances in 2016 and 2017, together with the evidence of her College teachers in those years. Those performances took place before the time when Mrs Colley now claims that Megan significantly increased her intake of Tramadol.
101. In these multiple performances, preceded no doubt by multiple rehearsals, Megan showed herself to be one of the strongest dancers in her year at College and secured leading roles which involve dancing as well as acting and singing.

102. That makes a nonsense of the case put forward by Megan in the clinical negligence litigation at around that time, e.g. that the movement component of her course was for upper body only, that the courses she was attending were for disabled people, that she avoided dance, that she could not walk for more than a few minutes or that she was heavily reliant on her mother for help with basic daily tasks like dressing or going up and down stairs.
103. Having seen the recordings of the performances in 2016 and 2017, and having read and heard the evidence of Megan's teachers at college in those years, I am sure that the case being advanced about Megan's physical capabilities at that time was exaggerated.
104. In particular, I am sure that Mrs Colley gave false statements, and knew that she was doing so, when in her witness statement dated 5 November 2017 she confirmed the accuracy of Amy Dooley's report. That evidence was false in that Ms Dooley said that Megan "relies on an assistant while at college" and "attends college in her wheelchair. ... she has a full-time teaching assistant who pushes the wheelchair". Those assertions (which, as I said at paragraph 23 above, Mrs Colley in her last witness statement acknowledged having seen at the relevant time) cannot be true, in the light of the footage of Megan acting and dancing, and in the light of the statements of multiple teachers who say that they did not make any arrangements for Megan to use a wheelchair, that she did not have the assistance of a teaching assistant and that she did not need any assistance backstage.
105. For the same reasons I am sure that Mrs Colley knowingly made a false statement in the Schedule of Loss dated 16 March 2018 that Megan "is currently reliant upon the use of a wheelchair when out of the house." At that time, Megan was "out of the house" at college several days a week and, far from relying on a wheelchair, was securing leading roles and dancing in rehearsals and on stage.

106. I am also sure that Megan put forward a misleading picture in her witness statement of 5 November 2017 when she said that her dance activities at college were “limited to my upper body and head” and that the courses “are for those with a disability”. The evidence of her teachers is, instead, that she was on a physically demanding course in which she was one of the strongest performers. On the same date, Mrs Colley signed a statement in which she confirmed the truth of Megan’s statement. That is not one of the contempt allegations specified in the application. However, it is relevant because it contributes to my certainty that Mrs Colley and Megan were co-operating in the exaggeration of Megan’s claim. That in turn is a key reason for my findings on the application.
107. Each of the teachers accepted, when asked, that they could only comment on Megan’s condition at the times when they actually saw her, and also that they could not necessarily be certain that all of their recollections were correct. Those answers helped to demonstrate that these were honest witnesses, doing their best to assist the Court rather than taking sides. The force of their statements is in their collective effect. None of them believed that Megan made regular use of a wheelchair at college, or struggled with dancing, or was helped by a teaching assistant, or needed any assistance with costume changes or exhibited any distress after performances.
108. The unanimity of that evidence is fortified by the absence of any significant documentary evidence of the difficulties which it was claimed that Megan had. Neither side is really assisted, in my judgment, by the Snapchat video which is only a few seconds long.
109. Ms Jones compared this case to *AXA Insurance UK Plc v Rossiter* [2013] EWHC 3805 QB. There, Stewart J was not satisfied that a Defendant had been dishonest when describing herself as severely disabled in statements which failed to acknowledge that, as surveillance video would later show, her condition was variable. Stewart J cited *Ford v GKR Construction* (22 October 1999, unreported) in which a claimant had, herself, failed to recognise that there were times when

she could do more than she claimed to be able to do, and therefore was found not to have been lying about her capabilities.

110. No doubt there are cases where the facts can be interpreted in that way, but findings of fact in other cases do not really assist me. In this case, even if the dramatic performances in 2016 and 2017 had represented only what Megan could do on “good days”, I consider that statements which painted a picture of very substantial disability on “bad days” and made no reference at all to good days were dishonest. But in any event, I am sure that “good days” is not the true explanation for what is seen in those recordings. The number of performances and, no doubt, rehearsals, supported by the evidence of the teachers, none of whom remembers any difficulty which could have inhibited Megan from performing those roles or indeed from being cast in them in the first place, proves that Megan’s overall state was very different from the descriptions given by her or by Mrs Colley.
111. I therefore find that the statements specified in paragraphs 104-105 above were false and that Mrs Colley knew that they were false when she made them. I am sure that they were knowingly made with a view to increasing the value of Megan’s clinical negligence claim and, to the knowledge of Mrs Colley, they thereby interfered with or if persisted in would have interfered with the course of justice in a material respect.
112. I am not satisfied to the criminal standard that the other statements specified in the application were knowingly false, although it is likely that they were.
113. Mrs Colley’s witness statement of 27 September 2018 states that, by that time, Megan was managing to do more with the assistance of painkillers. I cannot be sure that Megan was not occasionally resorting to a wheelchair as that statement suggests.
114. Nor am I sure that what was said in the witness statement of 23 September 2013 was knowingly false, though again I think it probably was. There Mrs Colley

stated that Megan could only walk short distances and therefore used a wheelchair when walking long distances outside, and attended school in her wheelchair. There is a lack of documentary evidence to corroborate those assertions. The 2011 email referred to at paragraphs 55-56 above, though specifically focusing on Megan's needs at school, did not mention a wheelchair and referred instead to her walking to the toilet. Mrs Colley's most recent statement itself refers to Megan taking her wheelchair to school more regularly from the age of 14, which would have been after the witness statement of 23 September 2013.

115. However, none of the evidence from Megan's school teachers dates back to 2013. There is no equivalent, for that period, of the video evidence of theatre productions which the Court has for the time when Megan was at college. There is also Mr Doherty's evidence that he frequently took Megan to school with her wheelchair, though Ms Harrison has forcefully pointed out certain shortcomings of that evidence. Bearing in mind the limited information available about that earlier period, I do not find, to the criminal standard, that the assertions in the statement of 23 September 2013 were untrue.
116. The findings of contempt which I do make are not based on the surveillance video, although its contents are entirely consistent with my findings. That is because it is possible, though in my view very unlikely, that when she walked quite long distances at a brisk pace in that footage, she was doing so on "good days" and with the help of an increased intake of painkillers. The medical evidence tends to suggest otherwise but, considered as a whole, does not entirely exclude that possibility. Not having heard live evidence from the experts, I cannot go behind what they say.
117. For all of the above reasons, my ruling is that Mrs Colley committed contempt of court by knowingly making false statements, supported in each case by a statement of truth:

- i. in her witness statement dated 5 November 2017, that the information contained in Amy Dooley’s report was accurate; and
- ii. in the Schedule of Loss dated 16 March 2018, that Megan “is currently reliant upon the use of a wheelchair when out of the house.”

Penalty

118. I must therefore decide what penalty to impose on Mrs Colley.

119. The relevant principles have recently been set out in cases of contempt consisting of breaches of court orders. In *National Highways Ltd v Heyatawin and others* [2021] EWHC 3078 (QB), Dame Victoria Sharp P said at [49]:

“The key general principles are as follows:

(a) The court has a broad discretion when considering the nature and length of any penalty for civil contempt. It may impose: (i) an immediate or suspended custodial sentence; (ii) an unlimited fine; or (iii) an order for sequestration of assets;

(b) The discretion should be exercised with a view to achieving the purpose of the contempt jurisdiction, namely (i) punishment for breach; (ii) ensuring future compliance with the court's orders; and (iii) rehabilitation of the contemnor;

(c) The first step in the analysis is to consider (as a criminal court would do) the culpability of the contemnor and the harm caused, intended or likely to be caused by the breach of the order;

(d) The court should consider all the circumstances, including but not limited to: (i) whether there has been prejudice as a result of the contempt, and whether that prejudice is capable of remedy; (ii) the extent to which the contemnor has acted under pressure; (iii) whether the breach of the order was deliberate or unintentional; (iv) the degree of culpability; (v) whether the contemnor was placed in breach by reason of the conduct of others; (vi) whether he appreciated the seriousness of the breach; (vii) whether the contemnor has cooperated, for example by providing information; (viii) whether the contemnor has admitted his contempt and has entered the equivalent of a guilty plea; (ix) whether a sincere apology has been given; (x) the contemnor's previous good character and antecedents; and (xi) any other personal mitigation;

(e) Imprisonment is the most serious sanction and can only be imposed where the custody threshold is passed. ...

(f) The maximum sentence is 2 years' imprisonment: s. 14(1) of the Contempt of Court Act 1981 . A person committed to prison for contempt

is entitled to unconditional release after serving one half of the term for which he was committed: s. 258(2) of the Criminal Justice Act 2003 ;
(g) Any term of imprisonment should be as short as possible but commensurate with the gravity of the events and the need to achieve the objectives of the court's jurisdiction;
(h) A sentence of imprisonment may be suspended on any terms which seem appropriate to the court.”

120. In the context of making false statements in civil proceedings, I would also refer to *South Wales Fire and Rescue Service v Smith* [2011] EWHC 1749 (Admin) where Moses LJ said:

“2. For many years the courts have sought to underline how serious false and lying claims are to the administration of justice. False claims undermine a system whereby those who are injured as a result of the fault of their employer or a defendant can receive just compensation.

3. They undermine that system in a number of serious ways. They impose upon those liable for such claims the burden of analysis, the burden of searching out those claims which are justified and those claims which are unjustified. They impose a burden upon honest claimants and honest claims, when in response to those claims, understandably, those who are liable are required to discern those which are deserving and those which are not.

4. Quite apart from that effect on those involved in such litigation is the effect upon the court. Our system of adversarial justice depends upon openness, upon transparency and above all upon honesty. The system is seriously damaged by lying claims. It is in those circumstances that the courts have on numerous occasions sought to emphasise how serious it is for someone to make a false claim, either in relation to liability or in relation to claims for compensation as a result of liability.

5. Those who make such false claims if caught should expect to go to prison. There is no other way to underline the gravity of the conduct. There is no other way to deter those who may be tempted to make such claims, and there is no other way to improve the administration of justice.

6. The public and advisers must be aware that, however easy it is to make false claims, either in relation to liability or in relation to compensation, if found out the consequences for those tempted to do so will be disastrous. They are almost inevitably in the future going to lead to sentences of imprisonment, which will have the knock-on effect that the lives of those tempted to behave in that way, of both themselves and their families, are likely to be ruined.

7. But the prevalence of such temptation and of those who succumb to that temptation is such that nothing else but such severe condemnation is likely to suffice.”

121. I have also had regard to the decision of the Court of Appeal in *Liverpool Victoria Insurance Co Ltd v Khan* [2019] 1 WLR 3833. The judgment of the Court (Sir Terence Etherton MR, Hamblen and Holroyde LJ) stated:

“58. In the context of a contempt of court involving a false statement verified by a statement of truth, the contemnor may have acted dishonestly, or recklessly in the sense of not caring whether the statement was true or false. In either case, it is always serious, because it undermines the administration of justice. In considering just how serious it is in all the circumstances of an individual case, and in deciding the appropriate punishment for contempt of court, we think that the approach adopted by the criminal courts provides a useful comparison, though not a precise analogy. In particular, the Sentencing Council's definitive guidelines on the imposition of community and custodial sentences (see para 30 above) and on reduction in sentence for a guilty plea are relevant in cases of this nature. It is therefore appropriate for a court dealing with this form of contempt of court to consider (as a criminal court would do) the culpability of the contemnor and the harm caused, intended or likely to be caused by the contempt of court. Having in that way determined the seriousness of the case, the court must consider whether a fine would be a sufficient penalty. If it would, committal to prison cannot be justified, even if the contemnor's means are so limited that the amount of the fine must be modest.

59. We say at once, however, that the deliberate or reckless making of a false statement in a document verified by a statement of truth will usually be so inherently serious that nothing other than an order for committal to prison will be sufficient. That is so whether the contemnor is a claimant seeking to support a spurious or exaggerated claim, a lay witness seeking to provide evidence in support of such a claim, or an expert witness putting forward an opinion without an honest belief in its truth ...

60. Because this form of contempt undermines the administration of justice, it is always serious, even if the falsity of the relevant statement is identified at an early stage and does not in the end affect the outcome of the litigation. The fact that only a comparatively modest sum is claimed in the proceedings in which the false statement is made does not remove the seriousness of the contempt.”

122. I therefore proceed on the basis that making false statements of this kind is a very serious matter which will usually result in a sentence of imprisonment. I have been shown examples from case law of cases bearing some similarities to this one in which terms of several months have been imposed.
123. In terms of culpability, I have no reason to believe that Mrs Colley was anything other than fully aware what she was doing. As I have said, she knew that the statements were false. In my judgment her culpability was also increased by the fact that she was involving her daughter Megan in the deception. Until Megan turned 18 in July 2018, Mrs Colley was her Litigation Friend. It is lucky for both of them that the Applicant decided not to proceed against Megan as well.
124. In terms of harm, it is important to remember that the deception contained in the relevant statements was not of a kind which could make Megan's clinical negligence claim succeed. It could have increased the value of that claim, but only by a limited percentage. The clinical negligence claim itself, and its potential value of up to £5 million, depended largely on genuine differences of opinion between medical experts about the care given in Megan's early years and about what the consequences of it would be, quite a long way into the future. Megan's condition in the period 2016-2018 was not central to the case.
125. Having said that, the exaggeration of Megan's condition would still have had a substantial value in damages if it had been successful. The Applicant points out that after the social media and video surveillance evidence was served, revealing that the Applicant now intended to expose the exaggeration, an Updated Schedule of Loss in August 2019 revised the amount claimed for past gratuitous care provided by Mrs Colley, plus interest, downwards by about 50% or a margin of £94,000. The Updated Schedule also reduced the amount claimed for specialist aids and equipment including wheelchairs by 75% or around £1,000,000. A claim for an immediate need for wheelchair-adapted accommodation was abandoned, reducing the claim by over £300,000.

126. From those items alone, the Applicant argues that the false statements supported an increase in the value of the claim of around £1.4 million.
127. Bearing in mind that I have only made findings about two statements and that these were not the only support for the relevant parts of Megan's claim, I cannot be sure that the real value of the deception was close to that figure. However, having regard to the amounts claimed before and after it was known that fundamental dishonesty was being alleged, I am sure that the deception gave material support to a potential increase in the claim's value which would have been well into six figures. A part of that could in principle have been to Mrs Colley's direct benefit because it represented the value of care gratuitously provided by her, and damages for that loss could have been held by Megan on constructive trust for her.
128. Conversely, none of these sums were actually paid out, because Megan abandoned her claim. The deception may have prolonged the litigation and increased the costs but I cannot be sure that it did, given the other fundamental issues in play. So the financial harm was potential rather than actual.
129. I note also that Mrs Colley and her family have already experienced suffering and loss as a result of this conduct. Whilst I do not know what the outcome of the clinical negligence claim might have been, the existence of such a large claim did in itself have a notional value, and that was lost when the claim was abandoned in the face of the fundamental dishonesty defence. With it was lost any chance of recovering the approximately £65,000 for which the Applicant at one time accepted that it was liable.
130. Meanwhile, through no particular fault of any party, this matter has hung over Mrs Colley for a long time. It is now about 3 ½ years since the surveillance evidence was served.
131. I have already referred to psychological problems which Mrs Colley appears to have suffered over a period of years. The Court will have some sympathy for those

and other health difficulties, and my impression is that she will have been more vulnerable than an average person to the stress which these contempt proceedings will have caused.

132. It is also relevant that Mrs Colley is of previous good character.
133. I am prepared to accept that Megan too has suffered significant stress as a result of these matters, and have been told that she discontinued the claim because she could not face it any longer. I also do not overlook the fact that, whether or not the clinical negligence claim was well founded, it is common ground that Megan will experience serious problems as she grows older as a result of her hip condition, and some of that burden will no doubt be shared by her family. Mrs Colley at all times will know that she contributed to the collapse of Megan's claim for substantial damages.
134. It is unfortunate that the High Court when dealing with a committal application has only a restricted range of options when it imposes a penalty. In deciding whether to pass a prison sentence, it does not have the option of obtaining a pre-sentence report of the kind used in criminal courts. It can suspend a prison sentence, and can do so on terms e.g. that the Respondent must not commit any further contempts, but it cannot attach the punitive or rehabilitative community requirements, such as unpaid work, which a criminal court could attach. Thus a suspended sentence could be said to lack "teeth". And in a case such as this, a fine does not provide a meaningful alternative where the Respondent, who depends on benefits, simply could not afford to pay it.
135. In deciding whether to pass a prison sentence, I bear in mind the Sentencing Council's guideline on the imposition of custodial sentences which applies in the Crown Court, though technically it is not binding on me today. I must ask myself (1) whether the contempt is so serious that a fine alone cannot be justified for it, having regard to harm and culpability; (2) whether a prison sentence is unavoidable, though again I do not have alternative options; (3) what is the

shortest term commensurate with the seriousness of the contempt; and finally (4) if there is to be a prison sentence, whether it can be suspended.

136. As to the first two of those questions, the Courts have repeatedly said that deception of this kind should normally lead to a prison sentence. This case was serious and sustained and, as I have said, potentially involved substantial sums. There is nothing approaching an excuse for it, and a minor also became involved in it. Mrs Colley has resisted the contempt application and therefore has admitted no deception and made no apology. I therefore consider that a fine alone cannot be justified and that a custodial sentence is inevitable. Ms Jones, indeed, has wisely accepted that.
137. As to the third question, the shortest possible sentence, bearing in mind the mitigating features to which I have referred, would be a sentence of 6 months, and Mrs Colley would be entitled to be released after serving half of that term. A term of that length would be necessary, in my judgment, to mark the seriousness of an attempt of this kind and of this magnitude to deceive the Court.
138. I must then consider the fourth and last question, of whether that sentence can be suspended. The Sentencing Council's guideline would require a Crown Court, at this stage, to weigh a number of factors to which I now turn.
139. Against suspension are the offender presenting a risk or danger to the public, the need for immediate custody as appropriate punishment and history of poor compliance with court orders. Only the second of those is present here.
140. In favour of suspension would be a realistic prospect of rehabilitation, strong personal mitigation and a significant harmful impact of custody on others.
141. In my judgment, personal circumstances provide significant mitigation in this case. It has been explained to me that Mrs Colley grew up as the eldest child of a mother who was addicted to drugs. She effectively became surrogate carer for her siblings. She became pregnant herself while still a child and had Megan when

she was 16. Megan, of course, immediately turned out to have her very serious hip condition necessitating numerous operations while she was very young. I have already referred to Mrs Colley's mental health problems. Despite such problems, she found herself raising a young family and has encountered more than her fair share of health and welfare issues. Her son, aged 6, now has significant medical issues too. I need not go into the details. Mrs Colley's parenting is a topic which jumps out from the character references which I have been shown, and from the expert reports to which I have already referred. By common consent she is a warm and loving parent who has established a stable home. She is the primary carer to the young son, as well as having been that for the two daughters who are now 19 and 21. Her husband has experienced depression and anxiety too, and they support one another.

142. Mrs Colley of course made a disastrous decision to try to help Megan by exaggerating her claim. The background does not excuse that tragic mistake but it helps me to understand it.
143. It also seems to me inevitable that custody would have a significant harmful impact on all of the family and especially her son.
144. Meanwhile, I accept that these proceedings, over a long period, have already had a severe impact on Mrs Colley. The lack of any admissions is profoundly regrettable, and places her at real risk of an immediate prison term, but there is some reason to believe that she will have learned her lesson, in other words, a real prospect of rehabilitation.
145. Doing the best I can with the very limited tools available to me on a contempt application, I have come to the conclusion that whilst a 6 month sentence is appropriate, the sentence can be suspended. It will be suspended for 2 years, on condition that no further contempt of court is committed. If it is, Mrs Colley may be brought back to Court and the 6 month sentence can be activated in full.

146. I hope Mrs Colley understands the exceptional nature of this decision to suspend. She has evaded immediate custody by a narrow margin. As other judges have said before me, conduct of the kind seen in this case will usually result in an immediate prison sentence of significant length.
147. The sentence is imprisonment for 6 months, suspended for 2 years on condition that no other contempt of court is committed during that time. If it is, Mrs Colley will be brought back to court and the prison sentence can be activated in full.