



41 above.

42

43 The claimant says in his witness statement that they all climbed into a gondola with  
44 bench seats for four people although there were only three of them in the gondola  
45 himself, his wife and one son Ethan. His wife and son were seated facing forwards and  
46 he sat facing backwards.

47

48 The gondola set off but before it left the platform the bottom became stuck and it  
49 seemed to snag on something. The gondola tipped forward at the top with the bottom of  
50 the gondola still stuck on the platform. That motion threw his wife and son forwards.

51

52 The claimant describes how he stretched up to stop them falling forwards. He says he  
53 tried to grab the post and rail behind them to trap them against the seat. He managed to  
54 grab onto his wife's side but missed the post on his son's side. He pulled himself  
55 forward trapping them between himself and the steel frame. However, he was aware  
56 that he was in a compromised position and was off balance, leaning forward with the  
57 back of his legs pressing into the seat of the gondola. His body was stretched out  
58 diagonally across the gondola and supported by one hand behind his wife's head.

59

60 He says was the gondola was bouncing around he remembers looking up at his right  
61 hand and trying to get a purchase as he was very exposed and vulnerable to letting go.

62

63 He says he looked across over at a gondola passing in the opposite direction he saw  
64 this gondola and cable dropping down which is when he got the sense that something  
65 was badly wrong. He says he could hear shouting a mechanical noise and wondered if  
66 the cable had snapped and was starting to unravel.

67

68 At that point the gondola they were in broke away from the platform and shot upwards  
69 and forwards into the air. The gondola lifted forwards so his side of the gondola rose up  
70 into the air and ended up facing downwards with his body beyond the horizontal and his  
71 legs in the air. At that point he says the cable broke through the roof of a gondola.

72

73 The gondola began to fall again and swing backwards as the cable pulled tight. At this  
74 point he found extreme back pain. He looked up to see a big thick greasy cable cut  
75 through the roof of the gondola and pass between his wife and son.

76

77 As he puts it; "I could see the cable pass within 1 inch of Jo's ear I thought the greasy  
78 cable was going to snag Joe's hair and pull out her hair. I can picture a cable and Joe's  
79 blonde hair"

80

81 He says the gondola continued bouncing around and jerking about before it finally  
82 stopped. He says his wife and son were upset with his wife screaming and Ethan crying.

83

84 He says; "I think at the time I was in shock as I was completely dazed. It felt like a slow-  
85 motion movie. I was aware I had hurt my back but I felt the urge to escape was more  
86 important than anything".

87  
88 He says the operator arrived below where they were and called up telling them they  
89 were safe and that they had to go all the way round before we could get off. His wife  
90 was too frightened and would not go around.

91  
92 Eventually a set of ladders was obtained. The first set being too short. The claimant  
93 says that the operator climbed up the ladder and reached up as high as he could  
94 grabbing their feet and they lowered themselves down holding onto the steel frame. The  
95 operator guided their feet onto the top step of the ladder holding their bodies to avoid  
96 them falling. They climbed down one by one. This procedure was, he says, extremely  
97 painful and he can remember crying out in pain and having tears in his eyes as he  
98 climbed out and reached for the footsteps.

99  
100 **Mrs Walkden**

101  
102 Mrs Walkden gave similar evidence. She in her witness statement says that they arrived  
103 at the park mid-morning, they walked around looking at the rides and her two eldest  
104 sons decided they would go off and do the scary rides whilst the husband and youngest  
105 son who was only 11 decided to go on the cable car to get a better view of what was on  
106 offer for the day.

107  
108 She describes how they sat opposite each other in the gondola and the attendant  
109 pushed them off but as they rose into the air it seemed to get stuck at the back of her  
110 son and herself and they were pitched forward.

111  
112 She says that her husband at this point stood and pushed them down and she can  
113 remember the look of terror on his face.

114  
115 She says that the gondola eventually broke free and was lashing backward and forward  
116 for what seemed like an eternity. She can recall holding onto Ethan and screaming.

117  
118 She too describes a ladder being obtained so they could climb down from the ride.

119  
120 She says that her husband was white and badly shaken she had witnessed how the  
121 cable cut through the roof of the gondola and was so close to her head.

122  
123 She says he hurt his back but could walk to the first-aid room.

124  
125 She herself had a sore neck and was a little shaken as was their son but they were  
126 otherwise okay.

127  
128  
129  
130 **Mr Richard Shepherd**

131  
132 Mr Shepherd is the defendant's ride manager. He did not witness the incident but was

133 responsible for assisting with a recreation of the incident.

134

135 In his statement he tells me that on recreating the incident the gondola was filled with  
136 large plastic water containers to represent the weight of four occupants. The gondola  
137 was pushed with excessive force toward the rope engage to recreate the motion the  
138 claimant would have experienced.

139

140 He says that because of the gondola being pushed with excessive force it was found  
141 that as the mechanical distancing devices open, the gondola gripped the rope and  
142 swung forwards and then backwards impacting the device structure causing damage to  
143 the canopy. The conclusion reached was that this was due to the gondola moving faster  
144 than the rope.

145

146 He says that he understands that the gondola was pushed and then started swinging as  
147 the gondola reached the garden area. He tells me that the Emergency button would  
148 have been pressed at this point and the gondola would have been no more than 20 cm  
149 off the ground. At this level he says the family would have been assisted off the ride  
150 easily. They can either step off the ride onto the ground or by using a single step.

151

152

153 His evidence is that it is difficult to understand how the cable could have swung through  
154 the roof of the gondola as Mr Walkden describes. His conclusion is that the damage to  
155 the roof of the gondola was caused by the gondola striking the top of the frame of the  
156 ride rather than a cable coming through it.

157

158 In cross-examination he accepted that the height the gondola would have stopped  
159 above the ground depended on how quickly the emergency stop button was pressed.  
160 And that the use of barrels did not reflect the movement of bodies in a swinging  
161 gondola.

162

163 In re-examination he explained that the roof of the gondola was of a glass fibre  
164 construction that was decorative rather than structural.

165

166

167

168

169

170 **Mr Alex Harvey**

171

172 Mr Harvey is employed as a mechanical engineer – rope access supervisor.

173

174 He was working on a different ride with a colleague Mr Ford, amongst others, when he  
175 heard Mr Ford saying something like why has that ride stopped or that ride has stopped.

176

177 He therefore looked over to the ride and says that he saw a split in the gondola's  
178 fibreglass roof, that it had not travelled very far out of the station, that it was only

179 swinging for 10 seconds or so and it was not swinging violently.

180

181

## 182 **Other contemporaneous documents**

183

184 D3 2914 Health & Safety Management System witness statement David Ford;

185

186 “I noticed the attendant not walk an empty gondola round from the exit to the loading  
187 area. Instead he pushed it around with enough speed to travel the route without being  
188 walked. I remarked to the other engineers “if he keeps doing that we will have a  
189 derail”.....[in reference to the claimant’s gondola] At this point he pushed the gondola  
190 straight through the dispatch area and down towards the rope. It did not appear to stop  
191 in the dispatch lock and travelled down the ramp section at speed until it seemed to  
192 engage with the rope....At this point it appeared to grab the rope causing the gondola to  
193 swing to an extent that the gondola roof to strike the structure of the ride resulting in the  
194 roof being damaged. The operator ran back and hit the emergency stop, resulting in the  
195 ride stopping and the damaged gondola stopping in the garden section.”

196

197 D3 2916 Engineer Investigation Record - Richard Ecclestone;

198

199 Car 5 removed – directly involved in incident requires repairs (roof)

200 Test runs – carried out test runs of attraction running cars; 2,3,6,7 & 12. Car 6 run under  
201 load 9multiple load and balance positions) All tested satisfactory.

202

203 Simulation of incident -test run -Car 5 dispatched through opened auto dispatch with  
204 excessive force this appeared to recreate the incident.

205

## 206 **Findings**

207

208 The most contemporaneous record of what occurred is the witness statement of Mr  
209 Ford. Mr Ford not only saw the incident but was subsequently part of the team that  
210 carried out the engineering investigation.

211

212 It is clear from the contemporaneous records that no defect was found with the  
213 attraction.

214

215 The conclusion the defendant’s engineers reached with which I agree was that because  
216 of operator error, the gondola car in which the claimant his wife and son were seated  
217 was dispatched too fast causing the gondola to swing.

218

219 I accept that the claimant would have sensed that the bottom of the gondola became  
220 snagged but do not find that is what occurred because although the reconstruction is in  
221 my judgement flawed in many respects it is in my view a fair reconstruction of the  
222 mechanics of the process and that does not show that the bottom became snagged. In  
223 addition, the reconstruction mirrors the evidence of Mr Ford.

224

225  
226 I find that the roof was damaged when the car struck part of the ride's structure. I make  
227 no criticism of the claimant's recollection which would have been in the panic of the  
228 situation, that such damage was caused by a cable. Although of course I do not find that  
229 it was caused by a cable.

230  
231 Again, I turn to Mr Ford's contemporaneous witness statement but also to the  
232 investigation report which shows that no broken cables were replaced. Rather it shows  
233 that a number of cars could be run and tested which on balance they could not have  
234 been if there was a broken cable.

235  
236  
237 It is clear from the documentation of Mr Ford that the operator was inexperienced. I had  
238 no direct evidence as to how quickly he hit the emergency stop button but the car  
239 stopped in the garden section.

240  
241 Mr Shepherd agreed how far the car had moved down the rope and so how high the car  
242 was on the route depended on how quickly the emergency E-button was pressed.

243  
244 Mr Ford reports that the operator, after releasing the car and, after it started to swing,  
245 ran back to press the button. From release to seeing it start to swing and then having to  
246 react and return to press the stop button would in my judgement have taken a few  
247 seconds, doing the best I can on the evidence that I've heard I would say about five  
248 seconds. That being so I would find that the car had had an opportunity to move and  
249 had reached a point where it was 2 m or so above the ground before it stopped.

250  
251 I reject the suggestion that the car was only 20 cm or so above the ground and the  
252 claimant and his family could easily have simply stepped out from it.

253  
254 Turning to the reconstruction, in my judgement it is useful in establishing how the  
255 incident occurred but in my judgement, is no help in ascertaining how human bodies  
256 would react. Firstly, human bodies are dynamic and the claimant describes not  
257 remaining seated but moving to protect his family, static barrels simply do not recreate  
258 that movement. Secondly, four barrels were used when there were only three  
259 occupants. Two occupants were seated on one side of the gondola and one occupant  
260 on the other. I have no direct evidence but it is clear to me that that is a completely  
261 different situation to four static barrels evenly spread out.

262  
263 Barrels are of course smaller and squatter than a human being and therefore I get no  
264 assistance from the reconstruction as to how the claimant or was moved within a  
265 swinging gondola.

266  
267 Of I would therefore accept and find that the claimant's evidence as to the mechanics of  
268 this accident were accurate namely that within the gondola he was subject to violent  
269 swinging whilst he was standing in what I would describe as an awkward position trying  
270 to protect his wife and son.

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**Was the claimant injured**

The claimant says that he hurt his wrist as well as his back and damaged his watch. He hit his hand trying to get hold of the rail.

He says they each filled in an accident report. The young lady from the defendant who was filling out the accident report documentation could not give him any medication or painkillers but she suggested they went to a nearby retail outlet to purchase some paracetamol.

He says he not want to go on any more rides and laid down for about two hours or until lunch. After lunch he took two more paracetamols and agreed to go a train with his wife and youngest son before going home. Once they had finished lunch and been on the ride the children had enough and they went home. By this time his back was completely seized up a couldn't drive. His wife drove home and he sat in the back stretched out over the seat in very bad pain.

**Contemporaneous documentation**

D3 2904 First Aid Record Form -Pt adv not exactly sure how injury occurred "as it all happened so fast" however pt is adv on stiffness/soreness in right hand/fingers. Pt also advises that he feels "shock up" about the incident. Pt also advises he is experiencing lower back pain

D3 2906 [Wife's record] Pt adv no bumps to back of head or neck. However, adv sore in these areas

D3 2908 [Son's record] Pt banged head/neck on metal bars at the back on the gondola

Both the wife and son complain of feeling shook up.

In final submissions counsel behalf of the defendant accepts the claimant suffered an organic – physical injury in this accident.

However, for completeness I find that due to the violent rocking of the car the claimant suffered an injury to his wrist and lower back. The cotemporaneous records clearly establish that fact.

**Does the claimant have any ongoing pain? If so how bad is that ongoing pain? Is that ongoing pain caused by the accident? Does the claimant have a psychological condition? If so is that caused by the accident?**

317  
318 I turned first deal with the credibility of the witnesses  
319

320 **Mrs Joanna Walkden.**

321  
322 In her witness statement she tells me that the accident has had a huge effect on the  
323 claimant. He has been in a great deal of pain and discomfort from the accident, he  
324 sought treatment from wherever he can to try and get himself back to how he was  
325 before but nothing seems to have worked and he finds this very frustrating and  
326 upsetting.

327  
328 She tells me that his physical prowess has been taken away from him, he has found  
329 that extremely difficult. He can't do the work he was doing before the accident and he  
330 has not been able to pursue his hobbies and outdoor activities.

331  
332 He has become very stressed after the accident and has found his limitations very  
333 difficult to cope with.

334  
335 After the accident he was not able to do the physical side of his work.

336  
337 She was subject to intense cross-examination in respect of many matters that touched  
338 upon her credibility I turn to the first.

339  
340 Background, on 7 September 2016 the claimant's company Earheat entered into a loan  
341 with Funding Circle Limited. That loan was supported by personal guarantees from the  
342 claimant and his wife. Earheat defaulted under the loan and Funding Circle sought  
343 payment under the guarantees. When payment was not received Funding Circle  
344 commenced litigation seeking around £74,000 from the claimant and or his wife.

345  
346  
347  
348 In a witness statement signed with a statement of truth that she says she has read the  
349 witness statement made by her husband in the Funding Circle litigation and that what  
350 he says is true. She says that she is presently employed full-time as a personal  
351 assistant to the regional director at a different company, that she has been in that  
352 position since November 2016, but prior to that she was employed by Next directory  
353 1996 full-time but went part-time with them in about 2000 up to 2011. And after that she  
354 was looking after the family" giving occasional secretarial help to my husband in respect  
355 of Earheat".

356  
357 In her defence in the Funding Circle litigation, which was annexed to that witness  
358 statement, she says that whilst it is admitted that she was company secretary of  
359 Earheat between the dates pleaded she held that office in name only since the effective  
360 management of the company was in the sole hands of her husband who did not consult  
361 on matters arising in respect of the management or direction of the company. In any  
362 event she ceased to be a company secretary six year prior to the guarantees. Further



363 although she held shares in the company she was not involved in the day-to-day  
364 running of the company and her knowledge of the affairs of the company was limited to  
365 such knowledge she acquired informally from and incidental to her relationship with him.  
366 Although she had a company email account in February 2016 this was because it was  
367 her only email account and was used by her for her personal and social activities.  
368  
369  
370

371 That evidence is supported by the claimant who in his own witness statement in the  
372 Funding litigation says that at the time the guarantee was signed by his wife she was  
373 not involved in the day-to-day running of his business. She ceased to have any  
374 involvement in the company many years before the time of the dealings with the  
375 company and Funding Circle. She resigned as the company secretary on years before  
376 she signed the guarantee.  
377

378 I pause here to say that the clear impression being given by that evidence is that the  
379 wife had a very minimal role within Eartheat, essentially, she only knew such  
380 information about Eartheat as a husband was prepared to tell her.  
381

382 In cross-examination however, the picture emerged that she joined Eartheat in January  
383 2012 where she worked five days a week until November 2016. That she sat in  
384 meetings with the accountant and business manager. In addition, following her  
385 husband's heart attack she appointed administrators to the business and liaised with  
386 them leading to its eventual sale. Although she said that in affect her role was  
387 secretarial in nature and she ran the family around that work, her involvement in  
388 Eartheat is much more extensive than the picture painted in the Funding Circle litigation.  
389

390 Indeed, from her witness statement within this litigation it is clear that she knows much  
391 more about Eartheat's trading than she suggests in the Funding Circle litigation. I take  
392 for example the evidence from a witness statement where she tells me that the  
393 renewables industry has been growing for some time and that before the accident  
394 interest from the public in the renewable industry was high and had been for many  
395 years. And what that meant was that people who had the level of experience and  
396 expertise her husband and his installation engineer had were not on the ground and  
397 there was therefore a lot of companies out there who didn't have people with their  
398 expertise and therefore they used to get themselves into trouble undertaking  
399 installations and it will often be Eartheat who would be called out to sort them out. That  
400 evidence is more detailed and extensive than someone who has in effect a passing  
401 acquaintance with a husband's business.  
402  
403  
404

405 I must conclude from that analysis that she has been prepared to give misleading  
406 evidence in court proceedings.  
407  
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**Bailey Walkden**

In his witness statement he says that since the accident his father has changed a great deal he doesn't lift anything anymore including the shopping and things around the house. He used to move plant pots indoors but now he asks Bailey that to do that work. Likewise, after the accident he's helped his father with some of the beehives because his father couldn't do the physical work that was needed to be done.

Before the accident he says his father was healthy and used to go hunting, ride a bike, go fly fishing, he stopped those activities after the accident.

In cross-examination he told me that since his father's heart attack the claimant had not been the same man he was physically weaker in the chest. That since the heart attack he seems to sit at home a lot on his iPad and does not do a lot of physical activity.

**Toby Walkden**

He told me that since the accident his father changed a lot. Before the accident he could be quite stressed but got more so after the accident. He became angry and grumpy.

He too says that he stopped doing things like riding his bike and fly fishing. He's not be able to do things around the house is he did before.

He too said the heart attack changed the claimant.

I have no reason to doubt the credibility of either of those witnesses however they were the claimant's children who were clearly there to support their father and their evidence painted no more than a general picture of someone who had been active was less active now but it was unclear whether the reduction in activity was simply post this accident or post the claimant's subsequent heart attack.

I therefore gain little assistance from their otherwise helpful evidence.

**Paul Collins**

455 Mr Collins is a friend of the claimant they played golf regularly before the accident and  
456 were keen cyclists. He says that the claimant hasn't been able to continue with either  
457 activity since the accident. Thereafter he describes the claimant's mood swings and that  
458 the claimant who assists with the local village hall is not as reliable as he once was. He  
459 describes how the village hall relies on booking for its income and that the hall must be  
460 opened and closed after each booking the claimant volunteered but was not be reliable.  
461 He describes how the claimant helps with village hall DIY but does less after the  
462 accident.

463

464

465

466 In cross-examination he told me that the claimant had offered to be the health and  
467 safety manager for the village committee but had not followed through but this had  
468 occurred after the heart attack. Likewise, he was uncertain as to whether the DIY  
469 activities reduced after the subject accident or after the claimant's heart attack.

470

#### 471 **Alan Robinson**

472

473 He's been a friend of the claimant since about 2004 as their children were at school  
474 together. Mr Robinson is a farmer and the claimant kept about 13 to 14 bee hives on his  
475 farm. Since the accident the claimant has slowly been getting rid of the hives.

476

#### 477 **Dr Hellmuth-Weich**

478

479 He and the claimant were fellow South Africans who have become close friends. They  
480 would go fly fishing together and hunting.

481

482 They had gone deer stalking together since the accident but the claimant was unable to  
483 walk for the required distance and so simply watched the hunt from a high seat rather  
484 than going on it.

485

486 In cross-examination he told me he had left the Leicester area in 2015 and that he and  
487 the claimant had only met up on a few occasions since. He said the claimant would find  
488 different excuses to not go hunting.

489

490

491 I have no reason to doubt the bona fides of these witnesses. However, their evidence  
492 was of limited assistance. It was unclear that any of the witnesses were able to say that  
493 the claimant's restrictions occurred post-accident or occurred post heart attack.

494

495

496

#### 497 **The claimant**

498

499 In his witness statement the claimant says that he continues to have a constant low  
500 back pain he describes aching and numbing. The pain is always there but it is worse if

501 he stands or sits for long. He has numbness in his left thigh. He has problems with  
502 urgency in his bowels and bladder which limit his ability to leave the house.

503  
504 He says he has difficulty staying asleep. "I wake up in the night at least three times with  
505 back pain which causes me to get up and go to the toilet. My sleep is interrupted by  
506 discomfort in going to the toilet which means when I wake up in the morning I still feel  
507 tired"

508  
509 He tells me "I have had flashbacks about the accident which started about a month  
510 afterwards. I continuously remember the accident and the cable cutting down between  
511 Jo and Ethan. It is like reliving the accident. They've got better over time recently I had  
512 one when I went to the solicitor"

513  
514 He also says "I have become far more irritable since the accident. I'm far more sensitive  
515 to noises and machinery. If I hear a loud crash I get stressed. I do get angry easily now  
516 and I get panicky. I'm worried that bad things are going to happen this is much worse  
517 than it was before the accident."

518  
519 He summarises matters as follows; "In short after the accident my ability to undertake  
520 the physical side of my role departed and my control and drive in the business went as  
521 well. All of this had a dramatic effect on the fortunes of the company".

522  
523 The schedule of loss, which the claimant adopted, puts it this way;

524  
525 The claimant has suffered severe pain, limitations with his abilities and abdominal and  
526 groin pain and sensory disturbance with bowel and bladder disturbance and alterations  
527 with his erections.

528  
529 The injuries have had serious consequences for the claimant including ongoing  
530 problems which are functional, pain and changes in his mood and behaviour which have  
531 had serious consequences for him in terms of his business and his social life and  
532 relationships.

533  
534  
535

### 536 **The physiotherapy notes**

537  
538 The claimant attended physiotherapy from 30 April 2014 the notes continue until 19  
539 December 2014

540  
541 30/4/14 is recorded acute L4 five nerve root impingement with referred pain into left leg  
542 and diminished reflex

543  
544

545 02/05/14 still a little sore

546

547 09/05/14 still sore but improving  
548  
549 14/05/14 struggling with dizzy spells  
550  
551 16/05/14 C spine feeling better. Still dizzy still struggles at night sleeping L spine  
552 improving but still has problems at work and unable to do all lifting the duties  
553  
554 19/05/14 struggled over weekend when looking after bees  
555  
556 23/05/14 still sore but felt better after  
557  
558 05/06/14 uncomfortable in bed last night but improving.  
559  
560 10/06/14 still limited at work but feeling more confident as pain not as consistent  
561  
562 19/06/14 sore after attempting first installation yesterday. Needing people to carry  
563 equipment  
564  
565 20/06/14 still stiff after the other day's work  
566  
567 24/06/14 feeling a little more stable but not doing any installations at minute  
568  
569 27/06/14 uncomfortable since having to lift at work exacerbated back  
570  
571 28/07/14 uncomfortable day after looking after bees  
572  
573 27/10/14 painful after weekend when tried to do some DIY  
574  
575 05/12/14 feeling better when using drugs  
576  
577 11/12/14 sore not being able to take tablets as irritating his stomach  
578  
579 17 /12/14 needed tablets to control symptoms as had to do is to try to do full installation  
580 advised he will have NSAIDs injections on Thursday 18 1214 To ring after his return  
581 from South Africa or 9/1/15  
582  
583 18/12/15 been a little sore he is unable to have his injections funded by insurance at  
584 present as he needs confirmation however he is considering paying himself as he is  
585 worried about having being able to cope through Christmas holidays  
586  
587 19/12/15 didn't manage to have injections as consultant busy  
588  
589 The medical reports  
590  
591 **Dr Kanwar**  
592

593 The claimant was examined by Dr Kanwar 16 days after the accident

594

595 It is reported that he developed severe pain stiffness and discomfort in the back one  
596 hour after the accident. The symptoms have not shown any improvement yet.

597

598 He developed moderate discomfort in the right hand immediately after the accident.  
599 This improved and is now mild.

600

601 He experienced severe shock and shakiness immediately after the accident. These  
602 resolved after two days. The symptoms were due to the psychological effect of the  
603 accident.

604

605 He experienced moderate flashbacks and insomnia on the day of the accident. The  
606 symptoms have not shown any improvement yet.

607

608 In respect of losses consequential to the injury it is recorded that Mr Walkden states his  
609 main occupation is as a full-time heating installer. Mr Walkden did not take any time off  
610 work. He is still restricted to light duties.

611

612 Since the accident he has been unable to do DIY and gardening.

613

614 His sleep has been severely restricted. It is not yet improved.

615

616 On examination of his back it is recorded the back movements were 80 to 89% of  
617 normal and appeared to cause pain.

618

619 There was no bony tenderness.

620

621 There was no paraspinal muscle tenderness on the left side.

622

623 There was no clinical evidence of any neurovascular deficit.

624

625 **Mr Allen.**

626

627 The claimant is examined by Mr Allen approximately six months after the accident.

628

629 Is recorded that on clinical examination there was tenderness over the L5 lumbar spine

630

631 It was noted that since the accident Mr Walkden had taken painkillers. He is unable to  
632 perform his normally heavy job and at present is on light duties

633

634 He is regularly woken at 4 AM with pain in the lower back and left sided sciatica.

635

636 It was noted that his lower back was extremely painful for two months after the accident  
637 and now finds it affects him with certain postures.

638

639 If he coughs or sneezes he feels a shooting pain down the back of his left leg still.

640

641 If he does not attend his physiotherapy he finds he is unable to sit down. This causes  
642 particular difficulty at weekends, he is using an ice pack in the mornings.

643

644 Mr Walkden is anxious and worried he's not going to improve from the accident.

645

646 It was noted that Mr Walkden is self-employed and restores renewable heating, he finds  
647 this a heavy job. As a result of the accident he has lost work.

648

649 As a result of his injuries he's had to rearrange his business. The estimator is now  
650 installing and he has had to employ a new installer. Mr Walkden is limiting the jobs he  
651 can do.

652

653

654 It was noted that Mr Walkden feels as though his condition has plateaued.

655

656 On examination which was confined to his lumbar spine it was noted that he stood with  
657 the loss of the normal curvature of his back. Flexion of the spine was limited and painful.  
658 He could only flex until his fingertips were at knee level. Extension was normal with no  
659 pain.

660

661

662 I have deliberately not dealt with the prognoses in either report.

663

664 What I draw from these two reports is that both experts could perform a physical  
665 examination and the claimant demonstrated reduced movement in his spine. I accept  
666 that Doctor Kanwar used a non-standard way of defining the loss but nonetheless he is  
667 describing a loss in movement.

668

669 Dr Kanwar's description of the loss of movement is supported by Mr Allen who finds  
670 flexion limited and painful.

671

672

673

674

#### 675 **GP records**

676

677 They show the first entry in relation to the subject accident is a note on 13 May 2014  
678 which records;

679

680 History last 48 hours in shower unstable had to sit down

681 Good Friday injured back in gondolier in theme park faulty has been seeing physio  
682 less feeling in left leg

683

683 sciatic pain left leg

684

684 possible nerve root damage has been having traction which gives temporary relief

685 in past suffered with Meniere's now similar dizziness but no vomiting  
686 dizzy on waking last two days  
687 dizzy at work more sitting at desk.

688  
689  
690

691 Arising from that documentation the defendant cross-examined the claimant on many  
692 issues and I will deal with most of them.

693

694 **1. Does the lack of attendance upon the GP show that the physical injury was**  
695 **a minor nature?**

696

697 It was clear from the defendant's medical notes that he is someone who does attend  
698 upon his GP. He was not the sort of man who never goes which can of course build up  
699 health issues. It is perhaps at first blush surprising that he did not attend upon his GP  
700 when he was in as much pain and with such restrictions as Dr Kanwar reports.

701

702 However, by the time the claimant goes to his GP in the May he is already being  
703 assessed by a physiotherapist and had had more than 9 treatments. In those  
704 circumstances it is not surprising to me that he did not attend upon his GP until the May  
705 and is therefore not indicative of someone who at that time was only suffering very  
706 minor symptoms.

707

708 The claimant gave evidence that a colleague's wife gave him morphine tablets for his  
709 pain and indeed that he still retains some of those morphine tablets now. I did find that  
710 evidence to be extraordinary. The colleague, Mr Wright, although not called makes no  
711 reference to the claimant meeting his wife let alone her giving him some of her tablets. I  
712 would find that if that had happened it would be a memorable event and would have  
713 appeared in Mr Wright's witness statement. I will find that it did not occur.

714

715 **2. Did the claimant go to a pub – restaurant called the Soaring Eagle on 22**  
716 **April 2014 (four days after the accident). If so what inferences should be**  
717 **drawn?**

718

719 The claimant's Yorkshire bank account shows a payment to the Soaring Eagle Leicester  
720 for £94.30 on 22 April 2014. If my calculations are right that is one day after the Easter  
721 Monday with the accident occurring on the Good Friday.

722

723 The claimant's evidence was that he had never heard of the Soaring Eagle and that his  
724 bank card is used by other family members and one of them may well have gone to that  
725 a pub or restaurant. There was no evidence to gainsay the claimant when he said that  
726 and I do not find the claimant went to the Soaring Eagle. But even if he did that does not  
727 establish that he was not in pain. The claimant never give evidence that he was  
728 bedbound immediately after the accident. In my judgement even if he was in pain he  
729 would able to attend a family meal in or around the Easter period.

730



731 I therefore take nothing from that issue.

732

733 **3. The holiday to South Africa and white- water rafting.**

734

735 In December 2014 the claimant and his family holidayed in South Africa.

736

737 By letter dated 18 February 2020 claimant's sister says:

738

739 "On arrival in South Africa my brother Richard Walkden complained of back pain. He  
740 told us of the frightening ordeal at a fairground which he hurt his back trying to save his  
741 son and wife.

742

743 We took him to a local doctor near a holiday home at Hartbeespoort Dam North West  
744 Province. Having sat on a long flight the nine hours he was in dreadful pain. He had an  
745 anti-inflammatory – pain injection administered. The medical rooms have since been  
746 demolished and a new building built. We have tried in vain to find that doctor to confirm  
747 this.

748

749 A few days later some family members went white water rafting on the Crocodile River.  
750 While some of us entered the water at the start of the rapids, Richard only entered the  
751 water further down after the rapids. His paddle down river was therefore smooth.  
752 Because his back was hurting he did not try to paddle over the rapids – rocks and  
753 avoided that stretch of water.

754

755

756 The claimant produced during the trial a letter dated 2 March 2020 from Dr Michael of  
757 The Junction Medical Practice Hartbeespoort. That letter recorded that Mr Richard  
758 Walkden was seen at this practice on 02/01/2015 "He reported having a back injury  
759 eight months previously and requested treatment for back pain as he was to fly back to  
760 the UK.

761

762 He was given an anti-inflammatory injection and a prescription for anti-inflammatory  
763 analgesic tablets".

764

765

766

767 In cross-examination the claimant told me that at the time of going to South Africa he  
768 was still in pain. He'd been to see a spinal surgeon at the Spire hospital prior to him  
769 going to South Africa and that spinal surgeon had suggested a spinal injection. Before  
770 he flew he tried to get that injection but he could not obtain it.

771

772 When in South Africa he was in so much pain that he obtained an injection privately.

773

774 He could not name the doctor nor the address nor could he recall the town where he  
775 went and he believed that the shopping centre at which the medical practice was  
776 located had been demolished.

777  
778 The claimant's evidence in cross-examination about him attempting to have a pain  
779 injection prior to going on his trip to South Africa matches with the physiotherapy  
780 contemporaneous records. It would be incredible if the claimant was making that up. On  
781 the balance of probabilities, the evidence he gave according with the physiotherapy  
782 notes must be accurate and I find that he had attempted to source a spinal injection  
783 prior to going on his trip to South Africa but had been unable to do so.

784  
785 The evidence surrounding the note from Dr Michael does however cause me more  
786 concern.

787  
788 Despite the claimant's evidence that he did not even know what town it was that he  
789 went to a for that injection it transpires from his sister and from Dr Michael that it was  
790 the very town in which her holiday home was located a fact that could easily be  
791 discovered by the claimant. And a fact that it is surprising that the claimant could not  
792 recall.

793  
794  
795 In February 2020 when the sister wrote her letter she indicated that the identity of the  
796 doctor could not be ascertained yet only a few weeks later his identity is found.

797  
798 On the other hand, if the GPs identity was known but he was simply hard to trace how  
799 was he tracked down in only a matter of weeks by the sister.

800  
801 Lastly even if he were tracked down how was he persuaded to write a note about one of  
802 his patients without some authority from the claimant.

803  
804 The claimant was aware of this issue but he has not attempted to show how he paid for  
805 this treatment. I note that I do not have his account statement for January 2014., I have  
806 no receipt I see no claimant travel insurance or the like.

807  
808 It is an issue that stirs some doubt about the credibility of the claimant's evidence.

809  
810

811  
812

### 813 **Whitewater rafting**

814

815 The defendant has disclosed Facebook entries dated 30 December 2014 showing the  
816 claimant clad in a buoyancy aid and helmet sitting on the edge of an inflatable raft at  
817 what looks like the briefing session of a river rafting trip.

818

819 The trip was organised by Paddle Power River Rafting and Abseiling. A white-water trip  
820 is described on their Facebook page as two hours of river rafting on the Crocodile River.

821

822 The claimant accepts he took to the water but in cross-examination for the first time

823 says that he joined the trip only after the rapids were negotiated and he was only  
824 engaged in paddling in flat water.

825  
826 I accept that those with back pain are not precluded from physical activities. After all  
827 there are many organisations that exist to get the disabled to undertake sports and  
828 other activities.

829  
830 I accept the evidence of the various medical experts that those with back pain can have  
831 good days when they feel they can do more and bad days when they can do less.

832  
833 I accept that when those with back pain do activities they can pay for it the next day by  
834 suffering increased pain or increased restrictions.

835  
836 However, this was not the claimant's case in respect of this activity at least, his case  
837 was that he effectively only did a minor part of this activity.

838  
839 The claimant has known of these entries since mid-2019 and yet has only in  
840 cross-examination set out his case.

841  
842 He knows that the defendant purports to identify him in photographs going down the  
843 rapids but does not address that head-on.

844  
845 It also fits with the description given by himself, his wife his children and his friends of  
846 someone who engaged in outdoor activities like fly-fishing, hunting, camping and the  
847 like.

848  
849  
850 I do not accept that he did not do the entire trip, he is kitted up to do it, his children are  
851 in the picture and yet none of them in their evidence says that he did not do the entire  
852 trip.

853  
854 Only his wife gave similar evidence to his but again this was not addressed in her main  
855 witness statement but came out in cross-examination.

856  
857  
858 If I were wrong with that analysis I would find that in any event he was still required to  
859 paddle even on flat water and that would have been a hard, physical activity. The raft  
860 would need to be ported in and out of the water which again would be hard physical  
861 activity. His evidence was not in my judgment credible or reliable on this issue.

862

863

864

865

866

867 **The heart attack**

868

869 The cardiac issues

870

871 The claimant had a non-ST segment elevation myocardial infarction on 21 April 2017.  
872 Following which he had a coronary artery bypass surgery on 8 May 2017 using the left  
873 internal mammary artery bypass the stenosis in the left anterior descending coronary  
874 artery.

875

876 In a joint statement between the defendant and claimant's consultant cardiologists' Dr  
877 Challenor and Professor Channer respectively they agree:

878

879 That the accident on 18 April had no causal or material effect on the development of the  
880 myocardial infarction.

881

882 That any alleged stress or anxiety caused as a consequence of the accident had not  
883 contributed to the subsequent development of a myocardial infarction.

884

885 That the claimant made a full cardiovascular recovery after bypass surgery.

886

887 He has complained of persistent external pain and discomfort and when seen by  
888 cardiothoracic surgeon in Fabry 2018 was shown to have a sternal mobility indicating  
889 the sternal wound had not healed.

890

891 He had an exploration of the sternal wound on 27 July 2018 was found have a  
892 mal-union of the sternum with evidence of infection. The sternal wound was repaired.

893

894 He continues to complain of tenderness in the chest wall and numbness around the  
895 anterior chest. When seen by a neurosurgeon 5th July 2019 he continued to complain  
896 of sternal pain when he coughs and sneezes avoided lifting heavy weights because of  
897 this.

898

899

900 They also agree that he would not have been able to return to the work he was doing  
901 prior to the accident until after full healing following the chest wall revision surgery in  
902 late July 2018. And patients who have had chest wall surgical complications and still  
903 complain of symptoms in the chest would be advised to avoid heavy lifting. So, he  
904 would not be able to return to the work he was doing prior to the accident although they  
905 agree that he could do non-manual work.

906

907 The claimant in his witness statement tells me that he had a heart attack in April 2017.  
908 That the business was on a downward trajectory because of the accident and the heart  
909 attack in 2017 was the final straw. The decision was made that the business could not  
910 continue it was placed in the hands of administrators and the company was wound up.

911

912 He says if it not been for the accident and he had a heart attack in any event the  
913 business would simply not have been in this position that it was. It would have been in  
914 a much stronger position it would be expanding and healthier. After the heart attack he

915 would be able to recover and return to work. It may well have been that there would be  
916 a short-term difficulty but it would have been in a much stronger position to deal with  
917 that. He had no doubt that had it not been for the accident he would be able to return to  
918 work and the business would have been able to continue.

919  
920 He says that he had further complications since the heart attack in that he had to have a  
921 further operation to deal with a sternal wire that operation was carried out on 27 July  
922 2018.

923  
924  
925 His view is reflected in what he says to Dr Williams - specialist in pain management- in  
926 a report of June 2018 when under Psycho- social history it is reported that the claimant  
927 tells Dr Williams that he is now unemployed following his heart attack and subsequent  
928 surgery. His wife having sold the business as it was no longer possible to retain it as a  
929 going concern as the claimant was unable to do the physical work and maintains his  
930 ongoing back pain is the prime reason why he can no longer work in a physical  
931 occupation.

932  
933  
934  
935

#### 936 **GP records**

937  
938 4 August 17 record new statement issued not fit for work diagnosis recovery from  
939 cardiac surgery comment having cardiac rehab unlikely to be fit for the next six months  
940 three months note issued.

941  
942  
943 2 October 2017 problem chest pain history month of chest pains since CABG in April  
944 seems to be deteriorating more SBOE. Description of pain seems more typical of MSK  
945 pain than cardiac no cough

946  
947 3 November 2017 problem ischaemic heart disease history not yet fit to start looking for  
948 a job struggles to concentrate ever feels he is making progress with his therapist  
949 cardiology OPD review in December document eMed3 new statement issued not fit for  
950 work

951  
952 4 January 2018 document eMed 3 new statement issued not fit for work diagnosis  
953 chronic musculoskeletal chest pains MI and SUR ; history has seen cardiology re-MSK  
954 pains letter awaited he says the surgeons are due to review him

955  
956 9 Feb 18 document eMed 3 new statement issued not fit for work diagnosis ischaemic  
957 heart disease; History remains under hospital review at Glenfield

958  
959  
960

961 20/12/ 2017 struggling with wound complained of deep bone pain which he said  
962 prevented him from lifting his toolbox which he needs his job as a heating engineer and  
963 also struggling to undo jam jars due to discomfort

964  
965 12/04 / 2018 chronic musculoskeletal chest pains did return to work in November into  
966 original roles heating engineer but he struggled so has been off since

967  
968 19/12 /2018 complaining of pain in sternum and lifting arms and taking a deep breath  
969 causing considerable problems and unable attend work as a result

970  
971 12/02/2019 significant pain especially moving around engineering work involves lifting  
972 heavy weights and unable to return to work because of unstable sternum are very  
973 concerned about that

974  
975 03/10/2019 unable to work because his job involves dealing with heavy tools and  
976 machinery his chest pain interferes with his ability to carry out his manual work.

977  
978 **Other documentation**

979  
980 Cirencester Friendly Society – sickness benefit claim form;  
981 Q. What is your illness/injury –A. Heart Attack and consequential delayed recovery due  
982 to broken steel sternum pin.

983 Q How is your incapacity preventing you from doing your occupation – A. Yes. I cannot  
984 get a job whilst I don't know when I will be fit for work.

985 Q Manual A. 80% Lifting and placing machinery Administrative A. 20% office work  
986 Declaration I am still incapacitated from following my occupation because- A. Heart  
987 Attack and subsequent surgery.

988 Declaration I have not undertaken any form of work. Since – A. Heart Attack 2017

989  
990  
991  
992

993 I draw from the documents sent to the Cirencester Friendly Society that the claimant  
994 declared that he undertook a lot of manual work in 2018 and that because of his heart  
995 attack and the sternal pain that he was in he was unable to perform his job. Back pain  
996 gets only a passing mention when asked about his ability to bend he ticks the box NO  
997 and adds Chest and Back pain.

998  
999

1000  
1001  
1002

1003 He makes only passing reference to the heart attack in his witness statement. He  
1004 dismisses its impact upon his ability to work his evidence is that he cannot physically  
1005 undertake work because of a bad back. That evidence is reflected in the history he  
1006 gives the medical experts but is not reflected in the GP's records and the sick notes

1007 provided by the GP.

1008

1009 The presentation to Cirencester is in marked contrast to his case before this court that  
1010 he is not working because of the index accident. One of those accounts must be wrong.

1011

1012 **Other inconsistencies :**

1013

1014 **Alpha Innotek incident**

1015

1016 The claimant in his witness statement says;

1017

1018 “I feel that had it not been for the accident then Earheat would become a major player  
1019 in the industry and would have gone on to expand into selling Earheat branded heat  
1020 pumps imported from Europe. We have been approached by a German heat pump  
1021 company Alpha Innotek and were in the early stages of negotiating to exclusively sell  
1022 the heat pumps in the UK”.

1023

1024 In my judgement it is clear from that paragraph that the claimant case is that Earheat  
1025 had been approached by a German company to sell their products on their behalf in the  
1026 UK. It is also clear that the claimant is indicating that those negotiations were in the  
1027 early stages of a big business opportunity.

1028

1029 However, in cross examination the claimant said that he had gone on a business lunch  
1030 with the company and heard them say in German that they would not do business with  
1031 Earheat.

1032

1033 In other words, the true position was that Earheat was not in the early stages of  
1034 negotiations there were no negotiations. The claimant was in effect hyping up the  
1035 position in his witness statement. His evidence was a serious exaggeration of the true  
1036 position.

1037

1038 **Medical history**

1039

1040 Dr Kanwar says that the claimant attended the appointment with him with his wife and  
1041 there was no significant history of relevant musculoskeletal or psychological problems  
1042 provided by the claimant.

1043

1044 In cross examination the claimant said he did not reveal a history of back pain or  
1045 psychological symptoms because he did not want to reveal his vulnerabilities in front of  
1046 his whole family. He said that his whole family had been invited into the consultation. He  
1047 also said the answers he gave would depend upon the questions asked. That is a  
1048 theme that he repeats in respect of other medical examinations and with which I will  
1049 deal with later.

1050

1051 I would however find on the balance of probabilities the doctor records accurately the  
1052 fact that the claimant attended with his wife. There would have been no reason for the

1053 claimant to attend with other family members. His wife would have been aware of much  
1054 of his past medical history as they had been together for many years and so there was  
1055 no reason not to give an honest history. Finding that that record is accurate undermines  
1056 the claimant's explanation as to why he did not reveal the true extent of his prior back  
1057 issues. This incident provides an example of the lack of credibility in parts of his  
1058 evidence.

1059  
1060 **The lack of Earheat documentation.**

1061  
1062 The claimant in a witness statement says.

1063  
1064 "As I have previously explained at the time the administrators took control of the  
1065 company I was in hospital due to my heart attack and therefore I could not access the  
1066 office to get any documents. Also, due to the condition I was in I was not completely  
1067 aware of what was happening and when the administrators cancelled the lease on the  
1068 premises the landlord only allowed a limited number of days in which to remove the  
1069 contents. At this time, my main concern was my health and not the preservation of  
1070 documents. All documents in relation to the company were stored at the office and we  
1071 had a company policy of ensuring that all online documents were stored on the server to  
1072 ensure that all staff members have access. The effect of this is that I had very limited  
1073 information stored on my personal laptop. It is my understanding that all the documents  
1074 taken from the office were destroyed. Therefore, to the best my knowledge all missing  
1075 documents ceased to be my control at the date the administrators took control of the  
1076 company".

1077  
1078 The claimant's heart attack was on 21 April 2017 and the administrators completed the  
1079 sale of Earheat on 30 May 2017.

1080  
1081 The claimant in cross examination accepted that his wife knew he was bringing a claim  
1082 for lost income and that an accountant had been instructed, but that his wife threw  
1083 documents received from the administrator away.

1084  
1085 His evidence was that Earheat documents were thrown away by the new owners of the  
1086 business.

1087  
1088  
1089 He was taken to some email traffic

1090  
1091 D1224 19/06/17 from A Howley [new owner] to Mrs Walkden;

1092  
1093 Yes, the unit was cleared very quickly...As it has been a bit of a mad rush, we still have  
1094 not fully organised all of the things from the unit and some are still unopened including  
1095 some of the filing cabinets...I shall make sure that any sensitive info is kept secure such  
1096 as bank details.

1097  
1098 D 1223 1/7/2017 [same addressee] We found some things that look personal in one of



1099 the drawer units and also some of the files for Pensions.....You are welcome to collect  
1100 the items we have found anytime.....We did take most things but some desks were left  
1101 in the small front office and also a desk or two in the unit itself.

1102

1103 He said that there were no relevant financial documentation documents retained.

1104

1105 Mr Harris the forensic accountant instructed on behalf the claimant, in evidence told me  
1106 that he had been instructed in October 2015 and the and that he had been seeking  
1107 further documentation and various accounts including the accounts for September 2016  
1108 from the claimant. His evidence was that the administrators would have needed  
1109 Earheat's books to undertake their statutory duties. He said he had not had a  
1110 satisfactory explanation for the lack of documentary evidence.

1111

1112 The claimant, on the balance of probabilities, was aware of the importance of preserving  
1113 the documentary evidence that his own expert was asking for. In my judgement his wife  
1114 would equally have been aware of the need to preserve financial documents. I accept  
1115 that the administrators moved in when the claimant was recovering from his heart attack  
1116 but that does not explain the lack of documentation. For well over a year, since the  
1117 appointment of his own expert, he was aware of the need to preserve the financial  
1118 documents. Indeed, his own expert had been asking for it and has no satisfactory  
1119 explanation for the lack of disclosure.

1120

1121 The claimant today, gave no clear explanation as to why that documentation had not  
1122 been provided to his own expert well before he suffered his heart attack.

1123

1124 Further the explanation that the documents were destroyed by the new owners does not  
1125 fit with the evidence that the administrators would have required the books. Clearly the  
1126 administrators were in place before the business was sold, after all it was they who sold  
1127 the business.

1128

1129 In addition, it is clear from that email traffic that the new owners did physically clear out  
1130 the former premises but they only left a few old desks, they retained filing cabinets of  
1131 papers including pension documents. The claimant had an opportunity to recover  
1132 documents from the business from the new owners but no explanation has been given  
1133 for the failure to action those emails.

1134

1135 In my judgement the claimant was evasive as to why important financial documentation  
1136 which would have assisted his own expert, the defendant's expert and this court in  
1137 understanding the true financial position of his business was not provided.

1138

1139

1140

1141

1142 **What have the medical experts asked as against the claimant's interpretation of**  
1143 **what he has been asked?**

1144

1145 The claimant was cross-examined intensely on the issue of what he had told the  
1146 numerous medical experts about his ability to move his spine and his past medical  
1147 history and indeed many other issues.

1148  
1149 A common response from the claimant was in terms that the answers depended upon  
1150 the way he had interpreted the question. I chose a few examples to illustrate the point.

1151  
1152 On the claim for income protection from the Cirencester Friendly Society; to the  
1153 question asking for the percentage breakdown of his work between manual supervisory  
1154 and administration- he said that he that the split he provided was based upon an  
1155 aspiration. In other words, he answered that question based on his interpretation that it  
1156 was asking what do you think you would be doing in the year to come rather than  
1157 answering the question itself which was what is your current split.

1158  
1159 In respect of the issue of whether Doctor Kanwar asked about his medical history he  
1160 said that depended upon the question that he was asked.

1161  
1162 In cross-examination his evidence was following the accident he had left a job in  
1163 Horsham early taking time off. To Doctor Kanwar he says he did not take time off work.

1164  
1165 That inconsistency was put to him. His answer was that his understanding of taking time  
1166 off work was not going to work at all. However, to Dr Fussey he says that he lost work  
1167 and in cross-examination said that he was referring to the Horsham job that he could  
1168 not do but a colleague completed.

1169  
1170 Mr Webb records that the claimant reports that the pain in his lower back is constant.  
1171 Using a visual analogue scale of 0 being no pain and 10 being the worst possible pain  
1172 his pain was 8. This pain is always about that level nothing eases it.

1173  
1174 The claimant's evidence was that he was in pain at that level at the examination. That  
1175 because he was in that level of pain at that time he stated that the pain was always that  
1176 level. The answer may be different on a different day. As he put it "If I was in pain on  
1177 that day I would say I was in constant pain"

1178  
1179 Turning to household restrictions the claimant's evidence was he was still unable to do  
1180 DIY and gardening. When cross-examined as to why those restrictions were not  
1181 mentioned to others he said his answer depended upon what he was doing at the time.

1182  
1183  
1184 Flashbacks: to Dr Fussey he denies any flashbacks, his evidence was that he did not  
1185 really understand what flashbacks were. Yet to Professor Able he describes the event in  
1186 detail and from which she can conclude that he does have flashbacks.

1187  
1188 The claimant was an intelligent witness, this is evidenced by his obvious business  
1189 acumen.

1190

1191 I was however unconvinced by his answers to the inconsistencies put to him in cross  
1192 examination.

1193  
1194 It was clear that he did understand what he was being asked and his replies were  
1195 inconsistent. I do not accept that he told the Cirencester the breakdown between  
1196 manual and administrative work on a future model, he answered the question based on  
1197 what he had been doing up to the point of making the claim.

1198  
1199 Likewise, he understood what the simple term flashbacks meant but realised in giving  
1200 evidence that an explanation for the inconsistency was needed and provided an  
1201 unconvincing one.

1202  
1203 The inconsistencies in respect of his understanding of whether he had time off work  
1204 were troubling. To one doctor the inability to complete the Horsham job meant that he  
1205 had no time off work and yet to another it meant the opposite.

1206  
1207 I do not accept that he misinterpreted simple questions and in my judgment, this  
1208 intelligent man looks to find explanations to address the problems highlighted by the  
1209 defendant in cross-examination. The claimant for example focused on the word in the  
1210 medical report of Dr Kanwar that he had suffered no past traumas to say that the road  
1211 traffic accident that he clearly had suffered was not traumatic. It was clear that the  
1212 context was the doctor exploring his past medical history, the claimant simply did not  
1213 reveal that history. But rather than accept that tried to explain it away by saying it was  
1214 not traumatic.

1215  
1216 The claimant has utilised that same technique, claiming a different understanding or  
1217 interpretation of simple questions to justify other inconsistencies in his evidence. A stark  
1218 example is the evidence to Mr Webb the answer was that as of April 2018 his back-pain  
1219 score 8/10 and the pain was always about the level with nothing easing it. His oral  
1220 evidence was that he reported how his back pain felt on the day of the examination and  
1221 that was the driver to say that he was in constant pain. This intelligent man answered,  
1222 the simple question with a simple, but in reality untruthful, answer. In my judgement he  
1223 knew what he was being asked and he answered it. His oral evidence was simply an  
1224 attempt to address inconsistencies based upon the answer he gave in April 2018.

1225  
1226 Drawing the threads together; misleading evidence in relation to the white-water rafting,  
1227 misleading information on the claim for income protection to the Cirencester friendly  
1228 Society, the lack of candour surrounding Earheat documentation, the failure to preserve  
1229 documents, the inconsistencies within his evidence as highlighted above, lead me to  
1230 find that the claimant is not be a credible witness when it comes to the self- presentation  
1231 of his injury and pain.

1232  
1233 **The expert evidence.**

1234  
1235 **Is there an organic basis for his pain?**

1236

1237 Only one of the many experts called in this case opined that there was.

1238

1239 Dr Allder a neurologist reports that the primary neurological injury Mr Walkden  
1240 sustained in this case was secondary to a hyper extension injury to his back at the time  
1241 of the index accident. In his view the most likely diagnosis for Mr Walden's ongoing  
1242 symptoms is a neurological injury in the form of upper lumbar radiculopathy in L2 – L3.  
1243 This neurological injury was directly caused by the hyperextension of his back at the  
1244 time of the accident.

1245

1246

1247

1248 He was of the opinion that Mr Walkden is unlikely to experience any spontaneous  
1249 improvement in his symptoms although they may be ameliorated with further treatment  
1250 target to the area that he considers most likely on the balance of probability to be  
1251 affected.

1252

1253

1254

1255 In cross-examination Dr Allder stated that the nerve root entrapment was caused by  
1256 damaged to the L1 – L2 disc. However, in the joint statement with Mr Macfarlane, there  
1257 is agreement that firstly they defer to the spinal surgeons in respect of the injury to the  
1258 lumbar spine and secondly there is an absence of any radiological changes to account  
1259 for the neurological type complaints.

1260

1261 His justification for the new stance was that he had had now had time to give it some  
1262 thought. He accepted that if the nerve had been damaged in the accident symptoms  
1263 would come on quickly.

1264

1265 Mr Macfarlane reports that the post- accident MRI scans are consistent with  
1266 long-standing multilevel spinal degenerative change which predated the index accident  
1267 and a history of symptomatic spinal degenerative disease is a strong indicator for future  
1268 low back pain. Mr Walkden had a vulnerable lumbar spine at the time of the index  
1269 accident and would on the balance of probabilities have suffered future symptoms  
1270 regardless of the index accident.

1271

1272 He says of Dr Allder's diagnosis of left L2 – L3 radiculopathy that the contemporaneous  
1273 conclusion was that the sensory impairment was at S1 – L5 distribution. None of the  
1274 imaging shown any nerve root compression L2 – L3 level. Neither is this diagnosis  
1275 consistent with the current distribution of sensory loss.

1276

1277

1278

1279 In oral evidence he made it clear that his view was that the MRI undertaken in August  
1280 2014 showed nothing to explain nerve root entrapment. Further he would expect such  
1281 damage to be reflected in complaints of pain and sensory loss shortly after the accident.

1282

1283 He says that as late as 21 October 2014 that is about six months post-accident Mr  
1284 Allen, an emergency consultant, reports that on examination there was tenderness over  
1285 the L5 lumbar spine. That was felt by the physiotherapists as no evidence of  
1286 neuropathic involvement. The assault most likely causes problems of left-sided L5 – S1  
1287 dysfunction and some referred pain from his lumbar spine.

1288  
1289 That Mr Allen reports that the patient was now complaining mainly of back pain his  
1290 dominant symptoms mainly on the left side without neuropathic involvement. There was  
1291 no foot paraesthesia reported. S1 numbness was improving. It was noted he was  
1292 having traction attends treatment daily before starting work. Is also using lumbar  
1293 support with some benefit when lifting

1294  
1295  
1296 On the balance of probabilities, I prefer the evidence of Mr Macfarlane. The MRI scan  
1297 shows no accident related change that can account for an L2 and L3 radiculopathy. Dr  
1298 Allen has in my view searched for an explanation to justify his opinion but the extrinsic  
1299 evidence is not there.

1300  
1301 In addition, I accept Mr Macfarlane's evidence that a patient suffering such a nerve  
1302 impingement would exhibit symptoms shortly after the index accident. The claimant did  
1303 not.

1304  
1305 Further, Mr Forward, an orthopaedic surgeon, examined the claimant on 26 September  
1306 2017 and in cross-examination reported that he undertook a neurological examination  
1307 which established entirely normal findings. Such examinations findings are incompatible  
1308 with those of Mr Alder. Mr Alder gave no clear explanation as to how such neurological  
1309 symptoms could wax and wane if the claimant had a radiculopathy.

1310  
1311 I therefore find on the balance of probabilities the claimant did not suffer an L2 and L3  
1312 radiculopathy.

1313  
1314 **The orthopaedic evidence**

1315  
1316 Mr Forward examined the claimant on 26 September 2017 and reports as follows;

1317  
1318 There was mild paraspinal tenderness in the upper lumbar region. The claimant was  
1319 unable to bend at all with essentially no movement of the lumbar spine as assessed by  
1320 the modified Schober technique.

1321  
1322 He reports that he either now suffered a more complete disc prolapse likely advanced  
1323 by the incident but of a more significant nature and further intervention could be  
1324 required particularly in view of his bladder and bowel symptoms or he's developed a  
1325 pain syndrome.

1326  
1327 He produces an updated report; scans have excluded any disc prolapse and have  
1328 demonstrated widespread degenerative changes.

1329  
1330 While it would be reasonable to consider him to have suffered an acceleration and  
1331 aggravation type injury from the physical perspective his symptoms and disability are far  
1332 greater than one would expect from that situation.

1333  
1334 Although he would defer to the opinion of a pain expert, on the balance of probabilities  
1335 he has likely developed a pain syndrome from the accident.

1336  
1337  
1338 Mr Webb examines the claimant on 24 April 2018 and records;

1339  
1340 That the pain in his lower back is constant. Using a visual analogue scale of 0 no pain  
1341 and 10 being the worst pain he scores his back 8/10. It is always at about that level  
1342 nothing eases it

1343  
1344 On examination, in respect of spinal movements, he notes flexion- he is unable to flex  
1345 his lumbar spine at all with straight knees there is no flexion. If he bends his knees he  
1346 can vaguely bend forward. Extension he has very little extension perhaps 10%.

1347  
1348 Lateral flexion to the left and right is 10% of normal.

1349  
1350 In his opinion the claimant has a few incongruous physical signs in that he has some  
1351 pain on pseudo-rotation, virtually no lumbar spine movements and straight leg raising  
1352 left is 30 to 40° 90° sitting.

1353  
1354 He says these incongruous physical signs are known as yellow flags. They bear no  
1355 relationship to any underlying spinal pathology and are associated with chronic illness  
1356 behaviour.

1357  
1358 It is his opinion that the claimant has had severe degenerative changes in his lumbar  
1359 spine at the L5 and S1 segment, the small disc which were not causing any significant  
1360 compression to the nerve roots in fact although he had some left leg pain initially, it  
1361 settled reasonably quickly. He has not suffered any significant sciatica. If a patient  
1362 suffers low back pain from all 7 to 12 weeks it is called chronic low back pain.

1363  
1364  
1365  
1366 His conclusion is the claimant probably may well have sustained a significant soft tissue  
1367 injury to his back and stressed a previous symptomatic L5 LS1 segment. He says the  
1368 claimant suffered a predominantly soft tissue injury, ligamentous – muscular and as  
1369 such it should have resolved six months after the index incident. In view of the claimant  
1370 exhibiting incongruous physical signs he recommended assessment by psychologists  
1371 and psychiatrists.

1372  
1373 After viewing surveillance evidence, he opines that claimant can flex his lumbar spine  
1374 through a good range of movement that totally contradicts the findings of not being to

1375 move his spine because of such severe pain. He therefore reaches the conclusion that  
1376 during the consultation the claimant was exaggerating his symptoms and signs.

1377  
1378 In a joint statement Mr Webb says the claimant sustained a soft tissue injury to his back  
1379 that there should be a recovery within 4 to 6 months and he is unable to explain on  
1380 musculoskeletal grounds the continuation of the claimant's apparently significant severe  
1381 back problems.

1382  
1383 He repeats that in his opinion the claimant was exaggerating his signs and symptoms  
1384 during the consultation.

1385  
1386 Mr Forward in the joint statement says that whilst it would be reasonable to consider  
1387 him to have suffered an acceleration and exacerbation type injury, from the physical  
1388 perspective his symptoms and disability are far greater than would be expected. Mr  
1389 Forward's impression was that the claimant had likely developed a pain syndrome.

1390  
1391  
1392 Counsel for the defendant submits that Mr Forward has vacillated in his opinion from  
1393 soft tissue injury to acceleration to pain syndrome. I do not accept that Mr Forward in his  
1394 first report forms a set opinion. He is clearly requiring more information before being  
1395 able to reach an opinion. In his addendum report he moves to a conclusion that there  
1396 was an acceleration type injury but clearly sets out there is a development of a chronic  
1397 pain syndrome.

1398  
1399 Mr Webb's initial report suggested a short-term injury, recommended the involvement of  
1400 a psychological input. In my judgement he too is seeking an explanation for the  
1401 claimant's ongoing symptoms. Mr Webb's view firms up once he has seen the  
1402 surveillance footage. I was particularly struck however by the evidence from Mr Webb  
1403 who administered the Oswestry disability questionnaire in which the claimant's  
1404 self-report restrictions evidenced a high disability. I will return to that evidence in due  
1405 course.

### 1406 1407 **The pain management experts**

1408  
1409 Dr Williams notes that as at 21 March 2018 the claimant complained of constant lower  
1410 back pain with no significant radiation and that the pain is always present but that sitting  
1411 exacerbates the pain.

1412  
1413 Dr Williams opines that;

1414  
1415 The index accident caused soft tissue injury in the form of muscular and ligamentous  
1416 strain with no hard tissue injury and no clear neuronal injury but that the initial soft tissue  
1417 injury and associated pain have had a significant psychological effect upon the claimant  
1418 limiting his ability to engage in many aspects of work and social activity. In his opinion  
1419 the claimant's ongoing pain state is therefore best understood from a psychosocial  
1420 perspective were initial injury and pain has resulted in psychological distress and by

1421 extension social isolation. It is his opinion that the claimant is now sensitised to feel pain  
1422 which helps to maintain his chronic pain state.

1423  
1424 In his opinion with adequate treatment in the form of physiotherapy, appropriate  
1425 analgesics, psychological therapy and attendance on a structured pain management  
1426 program the claimant's initial pain syndrome should have settled within 12 months of the  
1427 index accident.

1428  
1429 In response to a question from the claimant solicitors he sets out that a return to work in  
1430 any meaningful capacity following a prolonged period away from employment due to  
1431 chronic pain is very unlikely. Although the chances are improved by attendance on a  
1432 multi modal treatment pathway the prospect of a return to work remain low.

1433  
1434 Dr McDowell believes there is an inconsistency in the claimant's range of movements  
1435 and medical examinations. He finds it difficult to accept the claimant is able to self- care  
1436 most of the time, yet when examined on recent occasions, has virtually no movement in  
1437 the lumbar spine at all.

1438  
1439 He cannot exclude the possibility that the claimant is over exaggerating symptoms or if  
1440 there are any other conscious or unconscious psychological factors operating.

1441  
1442 In their joint statement they agree that the claimant has presented to themselves and  
1443 the orthopaedic experts with significant reduction in spinal movements. They however  
1444 continue to disagree on whether he has a chronic pain syndrome or not.

1445  
1446 In cross-examination Dr Williams said that it is usual for pain to fluctuate but that the  
1447 claimant did not describe his pain as being so variable. He accepted that the numbness  
1448 the claimant complains of should have been present when the claimant was examined  
1449 by Mr Forward. I pause here to say that that is an inconsistency already highlighted in  
1450 this judgement.

1451  
1452 It was clear from his evidence that Dr Williams was unaware of the sternal  
1453 complications and associated pain that the claimant suffered.

1454

1455

1456

1457

1458

1459

1460

### 1461 **Psychiatric evidence**

1462

1463 Mr Fussey reports in June 2014;

1464

1465 There is no indication of psychosocial stressors immediately prior to the index event and  
1466 I therefore conclude that Mr Walkden is experiencing anxiety and depressive



1467 symptomology as part of an adjustment disorder. There is no personal or family history  
1468 that otherwise explains this presentation.

1469  
1470 He goes on to say

1471  
1472 In some respects, Mr Walkden is experiencing a form of post-traumatic stress but it  
1473 would be difficult to make that full diagnosis based upon his presentation. In addition to  
1474 the psychological trauma of the index event Mr Walkden is now left with physical  
1475 problems.

1476  
1477 Professor Abel reporting in July 2018 reports;

1478  
1479 Within a month of the accident he began to experience flashbacks about the accident.  
1480 He says he continuously remembers the big black cable and Jo's blonde hair and can  
1481 visualise that cable cutting down between Jo and Ethan. It feels like he is intensely  
1482 reliving the experience. Flashbacks are very frequent.

1483  
1484 In her summary she puts it in the following way;

1485  
1486 Following a terrifying incident at a theme park gondola where the lives of he, his wife  
1487 and son were threatened he developed severe flashbacks and reliving as well as  
1488 dreams and nightmares and a feeling of increased anxiety and arousal to noises. This  
1489 lasted for at least 2 to 3 years and although they are subsiding he still occasionally has  
1490 dreams and nightmares linked to the accident. He avoids anything that reminds him of  
1491 the incident to this day.

1492  
1493  
1494 Professor Abel therefore opines that he developed post-traumatic stress disorder, the  
1495 PTSD symptoms have now largely resolved although he continues to have some  
1496 residual symptoms, he developed prominent and increasing anxiety following the  
1497 accident. That over time he developed recurrent mood disorder which is either a  
1498 recurrent episode of depression with prominent anxiety and insomnia or a mixed anxiety  
1499 and depressive episode.

1500  
1501 She opines that he continues to express concern about the effect of his anger and  
1502 irritability these phenomena are likely to result in part from residual hyper arousal from  
1503 PTSD and from the mixed anxiety disorder. The increased anxiety mixed affective  
1504 disorder have a material contribution to the heart attack.

1505  
1506 She was a view that he requires EMDR to remove the resistant flashbacks and reliving  
1507 events that still occasionally affect him. She forms a view that once the litigation is  
1508 settled he will find recovery easier.

1509  
1510  
1511  
1512 Dr Bond in a report of July 2018 reports;

1513  
1514 The claimant has told him that he had continuing problems with his back pain. The pain  
1515 has been constant and located in his lower back radiating through his left buttock into  
1516 his left groin. The pain has been aggravated by lifting heavy objects such as this  
1517 Toolbox, he has avoided heavy avoided lifting heavy objects. It has been aggravated by  
1518 standing at the counter and leaning forward slightly. Lying on his back has aggravated  
1519 the pain.

1520  
1521  
1522 He records that the claimant was having had flashbacks and dreams relating to the  
1523 index accident until the end of 2017.

1524  
1525 I pause a further report of flashbacks that sits in contrast to the claimant's evidence  
1526 analysed earlier.

1527  
1528 He opines that;

1529  
1530 The dominant symptoms of which the claimant complains would point to a diagnosis of  
1531 generalised anxiety disorder.

1532  
1533 He says that from a psychiatric perspective his heart attack and coronary bypass  
1534 grafting was a stressful life event which he would have expected to have negatively  
1535 impacted upon the claimant's mental condition and his capacity for work irrespective of  
1536 the history of back pain and involvement in the index accident.

1537  
1538 He says that any residual psychological problems are mild and consistent with his  
1539 pre-accident history of anxiety. They do not prevent him from engaging in full-time  
1540 employment they have no implications for future care and assistance.

1541  
1542 In the joint statement they state;

1543  
1544 In making a psychiatric diagnosis we have relied on information provided by the  
1545 claimant.

1546  
1547 Professor Abel was of the view that the intensely anxiety provoking scenarios in his  
1548 dreams were very consistent with the arousal anxiety associated with people  
1549 experiencing PTSD. He also notices flashbacks and triggering were very specifically  
1550 associated with the index accident.

1551  
1552  
1553 Further they both agree that the diagnostic criteria for post-traumatic stress disorder is  
1554 ICD 10. They disagree on whether he meets that criteria.

1555  
1556  
1557  
1558 **Is Professor Able correct that the stress caused in the index accident materially**

1559 **contributed to the claimant's heart attack?**

1560

1561 I accept Professor Abel's broad proposition that stress can be a contributor to heart  
1562 attacks. However, this is far from saying that there is a proven causal connection in this  
1563 case.

1564

1565 The consultant cardiologists, Dr Challenor and Professor Channer in their reports and  
1566 joint statements considered his cardiac issues.

1567

1568 They agreed that;

1569

1570 The alleged stress or anxiety caused as a consequence of the accident in April 2014 did  
1571 not contribute to the subsequent development of the cardio infarction.

1572

1573 They are clearly the experts in relation to his heart condition and they have reached the  
1574 conclusion that such stress as he may have been suffering was not a cause.

1575

1576 In addition, they also agree that the claimant made a full cardiovascular recovery after  
1577 bypass surgery. If Professor Abel were correct it is surprising that he made a full  
1578 cardiovascular recovery if he is still suffering from stress because of the subject  
1579 accident.

1580

1581 With respect to Professor Abel she is not the right expert to make the prognosis in  
1582 relation to his heart condition. Straying outside her area of expertise does in my view  
1583 undermine her opinion generally, Mr Bond stayed clearly within the scope of his.

1584

1585 I therefore find that such stress as the claimant has suffered in the index accident did  
1586 not cause his subsequent heart attack.

1587

1588

1589 **The DVD.**

1590

1591

1592

1593 I have had an opportunity of considering a surveillance DVD taken of the claimant over  
1594 a number of days.

1595

1596 I first deal with what the various experts have to say about its contents.

1597

1598

1599 Mr Forward is of the view the claimant appears going about his normal activities as best  
1600 he can and that while superficially attractive the footage presented a limited opportunity  
1601 to examine the claimant's ability to undertake activities. He remains of the opinion that  
1602 the claimant reported severe symptoms and that on the balance of probabilities he  
1603 developed a pain syndrome within 10 months prior to the start of the surveillance  
1604 footage.

1605  
1606 Dr Williams says that chronic pain is a condition with no associated diagnostic signs and  
1607 although many individuals with chronic pain display pain display behaviours like,  
1608 rubbing affected areas, groaning, limping et cetera particularly when knowingly  
1609 observed, many do not. There is no pain thermometer that provides an objective  
1610 quantification of the extent or severity of pain experienced by a patient.  
1611  
1612 He too remained of the opinion that the claimant suffered a chronic pain state with a  
1613 significant psychological component.  
1614  
1615 Professor Abel says there is nothing in the surveillance footage that changes her  
1616 psychiatric opinion.  
1617  
1618  
1619 Dr Alder says the footage does not give a significant insight into the claimant's pain  
1620 levels, or use of medication to manage his symptoms or psychological state. In his view  
1621 there is evidence to indicate that the claimant has antalgic gate. He remained of the  
1622 view that Mr Walkden was suffering an L2 and L3 radiculopathy.  
1623  
1624 Mr Webb is of the view that throughout the surveillance recordings he was unable to  
1625 see the claimant express any signs of pain. His movements were normal. He was seen  
1626 flexing his lumbar spine and stretching to reach items from shelves in a supermarket.  
1627 His movement in out of the driver's seat of the vehicle is undertaken in a normal way.  
1628 His view was that the presentation on the surveillance did not tie in with the Oswestry  
1629 disability index questionnaire result nor the presentation at examination.  
1630  
1631 He opines that the claimant's' ability to move on the surveillance recordings did not  
1632 suggest that he suffered from any pain in the lumbar spine and therefore reached the  
1633 conclusion that he was exaggerating.  
1634  
1635  
1636 Dr McDowell says that the surveillance evidence shows a man who appears to have no  
1637 difficulty walking or bending or getting into a motor vehicle. That if the court accepts the  
1638 evidence is a true reflection of the claimant's functional status as opposed to the  
1639 presentation he gave to the examining medical doctors then in his opinion the claimant  
1640 is either grossly over exaggerating symptoms or indeed possibly fabricating them.  
1641  
1642 Dr Bond is of the opinion that the surveillance footage lends support to the opinion that  
1643 he'd given previously when he commented that any residual psychological problems are  
1644 mild and they do not prevent him from engaging in full-time employment.  
1645  
1646 Mr Macfarlane is of the view that Mr Walkden has fluid movements he seemed to bend  
1647 without apparent limitation and doesn't appear apprehensive in his movements and that  
1648 is inconsistent with the degree of spinal stiffness that he demonstrated at the time of  
1649 multiple medicolegal assessments.  
1650

1651  
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1696

**Drawing the threads together.**

Both counsel urged me in broad terms to consider the overall picture. Mr Hunjan QC emphasises the difference in the presentation of the claimant to his friends and family post- accident, the claimant's desire to get better by attending over a hundred physiotherapy appointments, the reference to him seeking a pain blocking injection. In respect of his work he urges that two witnesses support the claimant's loss of focus and the staff took advantage of the situation. The DVD he submits shows the claimant now has a limited lifestyle, the claimant is not seen undertaking his pre-accident hobbies like cycling or beekeeping and in context he would say the DVD supports the claimant. He submits that if the claimant were lying about being in pain he would not claim that he can walk up to a mile or travel for 30 minutes or the like but rather his evidence would be that he can do almost nothing.

Mr McLaughlin refers to the inconsistencies which he submits undermines the claimant's credibility and reliability. He says that the claimant's witness statement says that he cannot work due to back pain but he had been signed off sick due to chest issues. He points to the contrast between that claim and the claim for income protection. He submits that the claimant's behaviour gainsays his claim to have a serious back condition; he points the white-water rafting, the lack of candour with regard his medical history and the difference in presentation to the medical experts and that scene from the DVD.

I have already found that the claimant undertook the white water rafting trip; the claimants income protection claim was prefaced on the basis that his chest injury prevented him from working, that the claimant has not been honest in his evidence concerning the lack of Earheat documents; the claimant is an intelligent man who groped to find explanations for the inconsistencies in his evidence and that led me to a conclusion that the claimant was not credible when it came to the self- presentation of his injury.

Mr Webb administered the Oswestry disability index questionnaire his evidence was that a patient with the score presented by the claimant would exhibit severe disability. That questionnaire, was of course completed by the claimant, the results fit with the presentation he gives at the medical examinations where he demonstrates an inability to bend his spine.

I accept the proposition that the surveillance DVD is just a snapshot of the claimant's activity. However, that snapshot showed in my judgement the following;

The claimant moving easily into and out of the driving seat of various motor vehicles.

The claimant carrying at arms -length a triangular road sign at an average walking speed.

1697 The claimant exhibiting no obvious abnormal gait when undertaking a regular dog walk  
1698 in the countryside. I pause to say that I therefore disagree with Dr Allder in that regard.  
1699

1700 The claimant bending with little or no support when items in a shopping trolley in a  
1701 supermarket. And bending well beyond the limits exhibited during medical  
1702 examinations.

1703  
1704 The claimant, in my judgement, is seen taking bags out of the boot of the car and  
1705 handing them in a smooth movement to another family member.  
1706

1707 In my judgement those movements are not consistent with someone who has presented  
1708 to multiple medicolegal experts as someone who could not bend their back at all.  
1709

1710 Reinforcing my conclusion, it is in my judgement entirely incongruous to the  
1711 presentation of an inability to bend and a constant pain level of 8 out of 10, the ability of  
1712 the claimant to undertake a white-water rafting expedition.  
1713

1714 I accept the evidence from his friends and acquaintances who gave genuine evidence  
1715 that from their perception he has not undertaken cycling, beekeeping and the like.  
1716 However, their perceptions are based upon how the claimant has presented to them. It  
1717 is his presentation that is the issue.  
1718

1719  
1720 In my judgement then he has exaggerated his injury to the experts in this case.  
1721

1722 He has also underplayed the consequences of his heart attack. He has either lied to this  
1723 court and the heart attack had a major impact upon his ability to work or has lied to the  
1724 Cirencester because it has not. The contemporaneous notes from his GP show he was  
1725 signed off because of his heart condition not his back, that fits with the claim to the  
1726 Cirencester. I would find that he was not working because of his heart attack and the  
1727 subsequent sternal pain rather than the subject accident.  
1728

1729 My view, that the true picture is that he has not returned to work because of issues  
1730 following his heart attack, is reinforced by the most recent documentation sent to the  
1731 Cirencester Friendly Society dated May 2019 which again contains a declaration as to  
1732 truth and clearly states that his is unable to reach up or behind or bend to pick things up  
1733 as a result of the cardiac issues, his back gets no mention. And most importantly he  
1734 declares that he is incapacitated from his work as a result his heart attack and chest  
1735 surgery.  
1736

1737  
1738 Bearing in mind those findings I am far more convinced by the evidence of the  
1739 defendant's experts who have more accurately analysed the claimant's presentation  
1740 over time and in the DVD.  
1741

1742 I find that the claimant is not suffering from a chronic pain syndrome. Such a diagnosis

1743 depends upon the credibility of the claimant and I found him not to be credible.

1744

1745 In respect of a psychological injury, both experts accept that ICD 10 criteria A required  
1746 an incident that involved death or threatened death or serious injury or threatened  
1747 serious injury. The claimant does not give evidence that he felt his life was threatened  
1748 or that he may suffer serious physical injury. I accept that he says the incident was  
1749 frightening and afterwards felt shocked but that is not the same thing. With respect to  
1750 Professor Able she has interpreted the events to fit them into that criteria rather than  
1751 analysing what the claimant reported himself.

1752

1753 My judgement that means that Dr Bond's evidence is the more credible.

1754

1755

1756

### 1757 **Findings.**

1758

1759 As a result of the accident the claimant suffered an injury to his lower back. The pain  
1760 was moderate for the first three months. The pain has continued thereafter at a mild  
1761 level.

1762

1763 In addition, he suffered a mixed anxiety and depressive disorder of a mild nature. This  
1764 has continued.

1765

1766 Neither of these conditions prevented the claimant from working or carrying out his  
1767 beekeeping.

1768

1769 The claimant has exaggerated his claim by misrepresenting his disabilities to the  
1770 medical experts.

1771

1772 Based upon these findings I make only brief comment on the lay and expert evidence  
1773 that dealt with the loss of profit/ lost income claim.

1774

1775 The claimant's evidence is that it is the manual aspects of his job at Earheat that he  
1776 cannot perform viz; "I cannot do the physical parts of the work, that I was doing before  
1777 the accident" and "[the work] involved pulling and pushing, drawing on wrenches and  
1778 tightening fittings in awkward positions" but that he also lost focus on driving the  
1779 business forward. These two factors he says meant that Earheat was in poor financial  
1780 condition by the time of his heart attack which event pushed the business into  
1781 administration.

1782

1783 **Moira Page** a self-employed business consultant, she confirms that there were monthly  
1784 board meetings in which Mrs Walkden was involved [further support for my findings  
1785 about her honesty]. She became involved in the business before the accident and notes  
1786 that "there is no doubt ...that it had its difficulties as shown in the accounts". The plan  
1787 for the claimant was to move him away from the physical installation to marketing and  
1788 lead conversion. Her evidence is that after the accident he could not conduct the

1789 physical aspects of the job. The company hired others to do the installation but they  
1790 were not managed properly. Pipeline work was completed but without proper marketing  
1791 new leads dried up and work ran out.

1792

1793 In cross examination she was unable to identify an example of a lead that the claimant  
1794 did not follow up because of his back pain.

1795

1796 She paints a picture of a business that lacked focus before she came on board,  
1797 developed a strategy with her help and had started to implement the necessary  
1798 changes.

1799

1800 I find that the claimant moved from a hands-on role, undertaking physical installation  
1801 work, to the marketing side under that the plan to try and save his business not as a  
1802 result of an inability to perform the physical side of the job.

1803

1804

1805

1806 **Sandy Soltysik** – was the company’s book keeper. She comments on his physical  
1807 decline after the accident. “He was not able to undertake the manual work”. She says  
1808 the company looked to hire other installers but the company struggled because it was  
1809 not cash rich. She says that post- accident there was less marketing and so fewer  
1810 leads.

1811

1812 In effect, her evidence was that because the claimant was both physically incapacitated  
1813 and mentally unfocused the business declined.

1814

1815 In cross examination she said that post-accident the claimant continued to be the lead  
1816 sales generator and that he would do what he could to get sales and as a result they  
1817 were not as profitable as previous jobs.

1818

1819 However, sales for the year ended 30/09/14 were £424814 and 2015 £413659 which do  
1820 show a small reduction in sales do not support the claimant’s case that “in short after  
1821 the accident my ability to undertake the physical side of my role departed and my  
1822 control and drive in the business went as well. All of this had a dramatic effect on the  
1823 fortunes of the company”

1824

1825 In my judgment they show the claimant continuing to obtain sales which as the  
1826 company struggled to hire staff the company struggled to undertake. I accept her  
1827 evidence that it struggled to hire staff because it was not cash rich but that was not  
1828 causally connected to the accident.

1829

1830 **Mr Harris** – forensic accountant; produces various potential scenarios for lost profit  
1831 ranging from £35299 to £144749 pa, but acknowledges that “difficulty arises in this case  
1832 from the absence of financial statements covering the period of around 19/20 months  
1833 [from before] the appointment of the administrator”

1834



1835 What is now known from cross examination is that the administrator would have needed  
1836 the statutory books to complete their work and Mr Harris had been seeking  
1837 documentation from the claimant and not had an adequate explanation for its absence.

1838  
1839 This has meant that he has not analysed labour costs in detail. In any event as the  
1840 claimant moved from installation to marketing more installers would need to be hired  
1841 and labour costs would have gone up in any event. In my judgment there is no evidence  
1842 that labour costs which rose from £22334 to £73483 did so as a result of the accident.

1843  
1844 He has not been able to examine the order book post-accident and is unable to analyse  
1845 what potential jobs were missed and why, what jobs were won and at what margin.

1846  
1847 In cross examination he accepted that the labour costs for year end 2014 at £22334  
1848 were lower than year end 2012 at £73427 and that he had not had a clear explanation  
1849 for that.

1850  
1851 In my judgment those figures do not support the claimant's case that during 2014 he  
1852 was unable to undertake the physical side of the work as I would have expected the  
1853 cost of wages to rise as the company employed more installers to carry out the large  
1854 sales in that period. In fact wages are at a near historic low.

1855  
1856  
1857 **Mr Geale** -forensic accountant; notes that at end of 2016/start 2017 the company  
1858 obtains finance [the Funding Circle loan], runs a marketing campaign, appears to have  
1859 3 good months of sales and quickly moves into larger premises. "From October 2015  
1860 there is a paucity of documentation...This has prevented Mr Harris and me from  
1861 understanding better the business and how it traded during this period". He is unable to  
1862 identify a loss or connect the sale of the business to the accident.

1863  
1864 He identifies that Earheat's trading mirrors that of "green" energy installers nationally.

1865  
1866 It is noticeable that in March 2015 the value of quotes obtained was £263798, April  
1867 £724898 but by August £0, September £0 and October £0 returning to £123500 in  
1868 March 2016. There is no explanation given for the 3 barren months. I find that the other  
1869 months do demonstrate that the claimant is able to continue generating substantial  
1870 leads and continued working and there is no evidence to suggest that he could not have  
1871 continued so to do.

1872  
1873 Earheat continued to trade from the accident until its sale 3 years later. In that period  
1874 the claimant says he was unable to carry out the physical aspects of his role. I have not  
1875 accepted that in earlier findings. In any event the business advice that the company  
1876 followed was that he moved away from the physical to the marketing side.

1877  
1878 In those 3 years the company continued to seek work through its web site, it hired staff  
1879 and moved to new premises, none of these are in my judgment actions of a company  
1880 that is struggling and on the brink of collapse.

1881  
1882 I prefer the evidence of Mr Geale, I accept that Mr Harris has followed his instructions  
1883 and produced figures for lost profit but as he himself accepted without the important  
1884 documentation that has not been disclosed difficult has been experienced in providing a  
1885 clear trading history of the company post -accident. Mr Geale more explicitly recognises  
1886 that and I agree. The claimant even if I were wrong on my analysis of the medical  
1887 position has failed to prove a loss of profit.  
1888

1889

1890

1891

1892

Quantum

1893

1894 Based upon my findings I have considered Judicial College Guidelines 7 (B) (c) (I)  
1895 £7410 - £11 730 I award £10000 and 4 (A) (c) £5500 - £17900 I award £7000 taking  
1896 into account the overlap of pain and suffering TOTAL AWARD for pain suffering and  
1897 loss of amenity £15000.  
1898

1899

1899 I accept that the claimant would have received some care from his wife for a period of 3  
1900 months post-accident doing the best I can on the evidence award the sum of £500.  
1901

1902

1902 I accept that the claimant undertook a large number of physiotherapy sessions I will  
1903 award a sum based upon 3 months of physio doing the best I can on the evidence I  
1904 award about a third of the amount claimed rounded up £2000.  
1905

1906

1906 I accept he took painkillers and award 3 months' worth of prescriptions in the sum of  
1907 £50  
1908

1909

1909 Likewise, I make an award for travel to and from physio for 3 months in the sum of £50.  
1910

1911

1912

1913

Damages are assessed in the sum of £17600

1914

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1916

1917

HHJ Murdoch 8/6/2020