



Neutral Citation Number: [2025] EWHC 3173 (KB)

Case No: KA-2025-BRS-000003/000013

**IN THE HIGH COURT OF JUSTICE**  
**KING'S BENCH DIVISION**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 3 December 2025

**Before :**

**MR JUSTICE CONSTABLE**

**Between :**

**WEMIMO MERCY TAIWO**

**Claimant/  
Applicant**

**- and -**

**HOMELETS OF BATH LIMITED**

**Defendant/  
Respondent**

**- and -**

**EMMANUEL DIAMOND**

**Additional Defendant**

**- and -**

**(The person known as)  
ABAYOMI BAMIDELE ODEBODE**

**Additional Defendant**

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The Claimant was not legally represented  
Christopher Maynard (instructed by Juliet Hardick Solicitors) for the Respondent

Hearing date: 24 November 2025  
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## **JUDGMENT**

This judgment was handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10:30am on Wednesday 3<sup>RD</sup> of December 2025.

**Mr Justice Constable:**Introduction

1. This judgment concerns the oral renewal of the Applicant's application for permission to appeal from the decision of His Honour Judge Blohm KC dismissing her claim pursuant to section 57 of the Criminal Justice and Courts Act 2015 ("the 2015 Act"). The application was refused by Sheldon J on the papers, with full reasons, on 28 March 2025 (Order sealed 1 April 2025). The Applicant had succeeded at a liability trial before Recorder Sharp QC, in a judgment given on 12 April 2018. The Recorder found that the Applicant had been the subject of a course of conduct of harassment contrary to the Protection from Harassment Act 1997 ('the 1997 Act'), and had been assaulted. This related to the treatment of her by the Respondent over 5 days in 2010 when the Respondent sought to evict the Applicant from a property in Bath. Damages were to be assessed at a separate trial ('the Quantum Trial').
2. Acting through a Litigation Friend, Mr Diamond, the Applicant sought damages in the sum of around £2 million. This was made up of a claim for continuing disability (in particular, psychiatric injury), injury to feelings, and loss of earnings. At the Quantum Trial, the Applicant was represented by Counsel, instructed through Direct Access. The Respondent sought to argue, amongst other things, that the Applicant had been "fundamentally dishonest" in respect of her claim, invoking section 57 of the 2015 Act.
3. The judge's findings on section 57 of the 2015 Act were that the Applicant had been dishonest with respect to three matters: (1) that her marriage to Mr Nwanokwu was a sham, or not a genuine marriage, and so the allegations of loss dealing with the breakdown of her relationship with her "husband" and its effect on her psychiatric condition were dishonestly false; (2) that she dishonestly sought Employment Support Allowance (ESA) benefits; and (3) that for the period from October 2013, the Applicant's evidence as to her disability was deliberately and dishonestly exaggerated. The judge then found that the Applicant's dishonesty was "fundamental", going to the root of the claim; that the Applicant should not be relieved of the consequences of the statute; and that the Vento damages arose in and under a 'claim for damages in respect of personal injury' and so were also caught by section 57 of the 2015. As such, the Applicant's entire claim was dismissed. The judge also decided that the Applicant was no longer a protected party ('the Quantum Trial Order').
4. At the consequential hearing, attended by the Applicant, and Mr Diamond for the Applicant and Counsel for the Respondent, the judge ordered that the Applicant was to pay the Respondent's costs of the claim, to be assessed on an indemnity basis, with a payment of £25,000 on account. The judge also terminated, 'with effect from the conclusion of the Consequential Hearing today' the appointment of Mr Diamond as the Applicant's Litigation Friend. These parts of the Order have since been stayed pending the outcome of this hearing. In addition, he joined Mr Diamond, and a person known as Abayomi Bamidele Odebode to the litigation as Defendants for the purposes of considering the making of a non-party costs order against each of them under section 51 of the Senior Courts Act 1981 and, in respect of Mr Diamond,

enforcing the undertaking given by Mr Diamond on his appointment as Litigation Friend to pay any costs which the Appellant might be ordered to pay ('the Consequentials Order'). These orders are the subject of an application for permission to appeal, which was refused on paper, the oral renewal of which forms part of the matters considered in this judgment.

#### Procedural Background Since the Quantum Trial

5. It is not necessary to consider in any detail the procedural background prior to the Quantum Trial. By way of context, however, it is noted that either the Applicant, her erstwhile solicitors, or Mr Diamond acting as Litigation Friend, issued at least 30 applications in the proceedings, of which 12 were for extensions of time to comply, 4 were to vacate, adjourn or stay hearings, and two were relief from sanctions.
6. Following the Quantum Trial, by an Application Notice in the County Court dated 17 January 2025, the Applicant sought an extension of time to serve her Grounds of Appeal against the Judgment handed down a fortnight earlier. Notwithstanding that application, 5 days later, on 22 January 2025, the Applicant filed an Appellant's Notice in the High Court which was accompanied by the first iteration of her Grounds of Appeal. That was a 5-page document which contained 6 Headline grounds, each elaborated over a number of subparagraphs. Section 10 of the Applicant's Notice also sought prospective permission to amend her Grounds of Appeal generally after receipt of a transcript of the six day Quantum Trial. The supporting witness statement of Emmanuel Diamond stated, at paragraph [12], that the transcript was '*essential for reviewing trial evidence, identifying material errors in the judgment, and ensuring the Grounds of Appeal adequately address any missteps.*'
7. On 04 February 2025, solicitors for the Respondent sent to the Claimant by email the text of a draft order consequent upon the Judgment. The draft provided was not responded to. On 6 February 2025 the Applicant filed an undated and unsigned document entitled 'Applicant's Skeleton Arguments (Provisional)'. Those arguments substantially reproduced the first iteration of the Grounds of Appeal, but they inserted a new 'Fresh Evidence' point as Ground 1 and re-numbered the other 6 grounds. Paragraphs [3.6] and [3.7] of that document repeated that the trial transcript was required so as to identify the precise legal and factual basis of the finding of fundamental dishonesty; to ascertain whether the judge applied the correct test for dishonesty; and to determine whether the judge properly considered the substantial injustice test under s 57(2) CJCA. It was asserted that, without the transcript, the Applicant would be unable to formulate specific, legally grounded Grounds of Appeal and risked advancing generalised assertions.
8. On 10 March 2025, the Respondent provided a response to the Application for Permission to appeal, which it was anticipated would be made at the consequentials hearing listed for 13 March 2025. On 11 March 2025, the Respondent provided their counsel's Skeleton Argument for the consequentials hearing which contained detailed submissions supporting the various orders previously proposed. On 12 March 2025 the Applicant filed a Skeleton Argument, signed by Mr Diamond, for the same hearing. This relied upon the

prior document served as the grounds of appeal advanced, and also dealt fully and clearly with the Applicant's basis of objection to the proposed orders. As part of the Skeleton Argument, Mr Diamond asserted (without more) an inability to instruct counsel (the hearing had been listed on 25 February 2025, over two weeks prior). The relevant substance of the Consequential Order has been set out above.

9. On 21 March 2025 the Applicant filed two unsigned and undated documents, one entitled 'Appellant's Amended Grounds of Appeal' and the other entitled 'Appellant's Skeleton Argument'. There was no accompanying application for permission to amend. The Amended Grounds of Appeal comprised a 4-page document which contained 9 headline grounds, with a number of the grounds being divided into 'sub-grounds'. Previously stated grounds were re-framed and new allegations of judicial bias, reversal of the burden of proof and failure to consider the substantial injustice exception under section 57 of the 2015 Act were introduced. This was the third iteration of the Applicant's Grounds of Appeal. The accompanying 'Appellant's Skeleton Argument' was a 36-page document, with over 200 numbered paragraphs. On 24 March 2025, the Applicant filed an Application Notice for permission to amend the Grounds of Appeal. No further Grounds of Appeal or Skeleton Argument accompanied that Application Notice.
10. The Respondent's solicitors provided a letter of detailed response to these, the third, Grounds of Appeal on 26 March 2025. Later the same day, the Applicant sent another version of the Skeleton Argument. Although some of the language was the same, it was an entirely different document to her Skeleton Argument filed five days earlier. This new Skeleton Argument also purported to add new sub-grounds under Grounds 4 and 6, and to add an entirely new ground of appeal, Ground 10, which did not feature in either the original or the proposed amended Grounds of Appeal. This new ground argued for the first time that the proposed appeal presented issues of systemic significance concerning the proper interpretation and application of section 57 of the 2015 Act. On the morning of 27 March 2025, the day on which Sheldon J was considering the application on the papers, the Applicant filed a yet further version of her Grounds of Appeal and another Skeleton Argument in support ('the 27 March Submission'). On 27 March 2025, Sheldon J made his Order on the papers, refusing permission to appeal against the Judgment handed down on 02/01/25, having given consideration to the latest iteration of the Grounds/Skeleton, without prejudice to the question of whether permission to amend the Grounds should be granted.
11. On 8 April 2025, Mr Diamond filed an N161 Appellant's Notice seeking a re-hearing of the Application for such permission. Sheldon J directed that, if the Application for permission was renewed on any grounds, the application to amend the Grounds of Appeal would need to be considered by the Court. On 15 April 2025 HHJ Berkley sitting as a High Court Judge directed (by the Order dated 16 April 2025) that latest application should be treated as an Application for an oral re-hearing of permission to appeal ('the Berkley Order').
12. The Berkley Order also determined that the application for permission to appeal the Consequential Order was out of time, and that no reason had been advanced

as to why time should be extended. The Berkley Order stated that the date of the decision in this case for the purposes of CPR 52.12 was 13 March 2025 and not the date that the order was received by the Applicant or her Litigation Friend. The application for provision of the full transcripts of the trial to be supplied at public expense was refused. Those parts already approved by HHJ Blohm KC to be so obtained remain approved. Insofar as not already approved, the provision of the transcript of the evidence of Dr Haynes at public expense is approved. Otherwise, the reasoning of the trial judge is contained in his judgment. The application for a stay of execution in respect of the Consequentials Order was refused, as was an application for the appeal to be listed before a High Court Judge with specific personal injury expertise.

13. Pursuant to the entitlement under the CPR to do so in circumstances where the Order was made without a hearing, on 22 April 2025, the Applicant sought the setting aside/varying of most of the Berkley Order. On 2 May 2025, the Applicant also appealed the Order. On 1 May 2025 the Court issued a Notice of Hearing on the papers to take place on 15 May 2025 of the Applicant's request to renew permission to appeal, to follow on from the consideration on the papers of the application dated 22 April 2025.
14. On 15 May 2025, the Applicant (purportedly in her own name) made a further application (dated 14 May 2025) seeking, in summary, a declaration that steps taken by the Applicant without a Litigation Friend to be of no effect, for a re-hearing of the permission to appeal, for provision of a transcript at public expense, for permission for amended Grounds of Appeal and Skeleton and for the consolidation of all applications.
15. On 15 May 2025, Bourne J struck out the application dated 14 May 2025 as an abuse of process and declared it totally without merit ('the Bourne Order'). He directed that if there was an application to vary or set aside the Bourne Order (it having been made without a hearing) it would be heard at the hearing of the oral renewal of the application for permission to appeal. Bourne J directed that at the hearing which he directed to be listed (and which is the hearing giving rise to this judgment), the Court would consider, in addition to any application to set aside the Bourne Order:
  - (1) In respect of the Quantum Trial Order on 2 January 2025:
    - (i) Whether any of the proposed amended grounds of appeal have any real prospect of success or there is any compelling reason for them to be heard.
    - (ii) If the answer to question (i) is yes, whether to grant permission to amend and, therefore, permission to appeal.
    - (iii) If the answer to either question (i) or question (ii) is no, whether permission to appeal should be granted for any unamended ground.
  - (2) In respect of the Consequentials Order:
    - (i) Whether any of the proposed grounds of appeal have any real prospect of success or there is any compelling reason for them to be heard, without

prejudice to the question of whether time for the application for permission to appeal should be extended.

(ii) To the extent necessary in light of the answer to the preceding question, whether to vary or set aside paragraph 4 of the Berkley Order refusing to extend time for the application for permission to appeal.

(iii) In light of the answers to the two preceding questions, whether to grant or refuse permission to appeal, and whether to make any other order on or arising from the Applicant's application to vary or set aside paragraphs 5 and 8 of the Berkley Order.

(3) Whether to make a Civil Restraint Order against the Applicant and/or her litigation friend.

16. Meanwhile, on 24 April 2025, the Respondent had applied as had previously been foreshadowed for a Non-Party Costs Order against Mr Diamond and Mr Odebode. The hearing was listed for 6 August 2025 before HHJ Blohm KC. On 28 July 2025, the Applicant applied for the hearing to be adjourned and/or vacated in light of the pending appeals (which included an allegation of apparent bias). Mr Diamond and Mr Odebode filed a Skeleton Argument on 6 August 2025 but did not appear. The Court ordered that the Respondent had permission to enforce against Mr Diamond all costs ordered to be paid by the Applicant to the Respondent; and that pursuant to Section 51 of the Senior Courts Act 1981, Mr Odebode was ordered to be jointly and severally liable for the costs ordered to be paid to the Respondent by the Applicant ('the NPC Order').
17. On 13 August 2025, the Applicant (notwithstanding the fact that the Applicant had not been the direct subject of the NPC Order) applied, through Mr Diamond, to set aside the Order and/or appeal it.
18. The Applicant had also applied to the Court of Appeal for permission to appeal against the Bourne Order. Shortly in advance of the hearing listed for 24-25 November 2025, the Applicant applied to adjourn the oral renewal applications hearing pending the outcome of that appeal.
19. Consideration of the application for an extension of time and permission to appeal the Bourne Order was expedited. On 18 November 2025, the extension of time was refused and (irrespective of the timing of the appeal) permission was refused by Newey LJ as the application having no real prospect of success.
20. All the applications made by the Applicant, in her own name or through Mr Diamond have been made without having been required to pay Court fees under the Fee Remission scheme.

#### Application to Set Aside/Vary the Bourne Order

21. In light of the fact that, by the decision of the Court of Appeal, the merits of any appeal against the Bourne Order have been considered substantively, it is not necessary for the Court to revisit the Bourne Order further.

Attendance, Skeleton Arguments and Representation at the Hearing on 24 November 2025.

22. No Skeleton Argument was filed by anyone on behalf of the Applicant by the due date, 18 November 2025. The following day, an unsigned, undated, 21 page document entitled ‘Appellant’s Skeleton Argument’ was provided to the Respondent’s solicitors. The e-mail asserted that it had been filed the previous day “*via the CE-filling*”. A screenshot of the CE-file provided by the Respondent did not show it to have been processed. The Applicant has since provided a screenshot that shows it was lodged at 11.44pm on 18 November. Nothing turns on this point. The e-mail stated that “*the filed skeleton is not the intended updated proofed version*”, and that a further version would be sent by 5 pm that day. It was not. At 10:33 on 20 November 2025, a 52 page document entitled “Appellant’s Skeleton Argument” was sent to the Respondents. The document properties identified the author as “Kayago”.
23. The Respondent submitted that this was believed to be the name of a firm of solicitors trading at Wellington Street in Woolwich, London SE18. On 20 November, the Respondent’s solicitors spoke to a registered foreign lawyer at that firm called Abubakar Solihu Orisankoko (SRA no 837977), who appeared to be a solicitor and barrister of the Supreme Court of Nigeria. Mr Orisankoko declined to confirm or deny that he was the author, or whether he would be attending court as an advocate.
24. Mr Diamond indicated, at the outset of submissions on 24 November 2025, that he had already provided a witness statement to the Court dealing with his attempts to find representation for the hearing. No witness statement had in fact been filed with the Court or provided to the Respondent. However, a witness statement was provided on 25 November 2024, albeit dated the previous day. This statement confirmed that the Applicant had indeed engaged Kayago Solicitors on a pay-per-task basis to assist in making what Mr Diamond described as ‘my’ draft skeleton argument effective and compliant for submission to the Court.
25. In the week leading up to the hearing on 24 November 2025, the existence (or non-existence) of one particular authority in the 27 March Submission was questioned by the Court. The Court asked that a copy of the authority be provided by the Applicant. None was provided. It was, in fact, a bogus authority, no doubt falsely created by AI. There are now a number of judgments in which the presentation of false authorities to Court has, unsurprisingly, been deprecated. This topic, of obvious concern to the Court, was dealt with specifically in the witness statement provided by Mr Diamond the day after the 24 November 2025 hearing. Mr Diamond stated:

*“We received the Court’s email of 18 November 2025 informing the parties that the judge would like to be provided with a copy of Irani v Duchy Farm Kennels [2020] EWCA Civ 405. I understand that this case was cited in the skeleton argument dated 27 March 2025, which was filed by Mrs Taiwo herself at a time when she did not have a professional legal representation*

*or litigation friend, because I had temporarily stepped back from the proceedings. I did so in light of the Respondent's stance that my role as litigation friend had been terminated by the Court at the conclusion of the consequential hearing on 13 March 2025, and the absence of any clear clarification from the Court on the matter.*

*Mrs Taiwo has informed me that she received assistance from various people in preparing the 27 March 2025 skeleton argument, including in relation to the authorities cited. Since receiving the Court's email, I have made diligent efforts to locate *Irani v Duchy Farm Kennels* [2020] EWCA Civ 405, but as at the date of this statement I have not been able to obtain a copy. I will, of course, provide the authority to the Court immediately if I am able to obtain it before the hearing."*

26. I reject this evidence as wholly untrue. The suggestion that Mr Diamond in fact stepped away from the litigation or was not involved in the 27 March Submission is risible. As Bourne J observed before me (at paragraph 18(e) of the reasons for his Order), it is obvious that at all times, Mr Diamond has exercised close control over this claim. Contrary to the assertion in his witness statement, it is plain that Mr Diamond was as much in control (whether with the help of unidentified lawyers, or AI, or both) of the 27 March Submission, containing at least one false citation, as he has been for all other documents and applications submitted in the name of the Applicant. As pointed out by Mr Maynard, other documents filed before the Consequentials Order (in which, subject to a subsequent stay, the Litigation Friend status of Mr Diamond was brought to an end) also included false citations: e.g. the Claimant's Skeleton Argument for Consequential Hearing on 13 March 2025, dated 12 March 2025 and signed by Mr Diamond himself. At paragraph [27] there is a reference to Chapman v Tameside Hospital NHS Foundation Trust [2018] EWCA Civ 2085. This case does not exist (albeit the bogus reference can be 'recreated' through Google's AI Overview function). There is a 2016 case in the Bolton County Court between the two named parties, but there was no appeal in 2018 to the Court of Appeal and [2018] EWCA Civ 2085 is a false reference.
27. The reliance upon false citations is just as unsatisfactory when presented to the Court by a litigant in person (or Litigation Friend), although of course the sanction for having done so may not necessarily be the same as those applicable if a registered lawyer is responsible for the submission. I make clear that where (as seems at least possible here) the citation was included in a document authored or reviewed by a lawyer, without attribution, whether for reward or pro-bono, for use by the litigant in person, that lawyer may, upon identification, be subject to a reference for misconduct or potential contempt (see R (on the application of Ayinde) v Haringey LBC [2025] HLR 38).
28. Finally, I note that at the hearing on 24 November 2025, the Applicant attended with Mr Diamond, with no other representation. The Respondent disputes Mr Diamond's status as a Litigation Friend. The status of Mr Diamond as a Litigation Friend is considered below as part of the renewed application for permission to appeal against the Consequentials Order. For the purposes of the hearing, I considered Mr Diamond's position *de bene esse*. I therefore permitted Mr Diamond to address the Court. He did so by reading from a script.

29. Further to a direction from the Court, what is said to have been a copy of the two documents from which Mr Diamond read were provided on 25 November 2025. As Mr Maynard noted, the documents were provided were in PDF form, the PDF was created the day after the hearing. Although not entirely satisfactory, nothing of substance turns on the point.
30. The parties were also invited to make brief written submissions following the oral hearing in respect of the Vento damages part of the appeal. The Applicant was directed to identify, by statement of truth, the nature and extent of external legal input and the identity of the lawyer. A witness statement from Mr Diamond stated that Mr Akeem Y. Akinwale of Kayago Solicitors ‘*provided advice on making the attached submission compliant for the court.*’

### The Appeal against the Quantum Trial Order

31. I will consider, first, the question of whether any of the Grounds (whether amended or original) advanced are reasonably arguable. If the answer to this question is no, the issue of whether to give permission to amend does not arise. If in respect of any of the amended grounds, the answer is yes, it will be necessary to go on to consider the question of whether permission ought to be granted to allow the amendment.
32. Although I consider each ground, or amended ground, in turn, there is considerable overlap and repetition. It may be for this reason that Mr Diamond’s oral submissions focussed on the principal arguments that (1) there was an erroneous approach to the psychiatric evidence and the two stage Ivey test; (2) there was a misapplication of s.57 and reversal of the burden of proof; and (3) serious procedural unfairness in how the dishonesty case was pleaded and put.

### The Test

33. In accordance with CPR 52.6(1) permission to appeal may be given only where (1) the court considers that the appeal would have a real prospect of success; or (2) there is some other compelling reason for the appeal to be heard. The ‘real prospect of success’ test is the same as that applied when the courts consider summary judgment. The court has to consider whether there is a realistic, rather than a fanciful, prospect of success.
34. Where the basis of a permission to appeal application is a challenge to a trial judge’s findings of fact, there must be a real prospect of success that the appeal court will be satisfied that those findings were either unsupported by evidence before the judge or that the decision subject to challenge was one that no reasonable judge could have reached (see The Mayor and Burgesses of the Haringey LBC v Ahmed & Ahmed [2017] EWCA Civ 1861, CA at [29]-[31]). This is a difficult test to satisfy.
35. As set out in *Re: B* [2013] 1 WLR 1911:

*“[The appellate court] can and sometimes does test the judge’s factual findings against the contemporaneous documentation and inherent probabilities. But where findings depend on the reliability and credibility*

*of witnesses, it will generally defer to the trial judge who has had the great advantage of seeing and hearing the witnesses give their evidence. The question is whether the findings made were open to him on the evidence”.*

*Ground 1: Procedural Unfairness – Denial of a Fair Trial*

36. Ground 1 asserts that the judge erred in concluding that the Claimant was fundamentally dishonest. The original formulation of this Ground focused on an argument that the allegations of fundamental dishonesty were not properly pleaded or put to the Applicant in cross-examination, contrary to Browne v Dunn (1894) 6 R 67 (HL), so as to deprive the Applicant of adequate notice of the case to be met. This remains part of the amended Ground, but the Applicant also asserts that the judge erred in law and acted unfairly in refusing to admit or give weight to the witness statements of Mr Diamond, in the circumstances where, it is said, he was genuinely unfit to attend trial due to a medical emergency. The claim also extends to alleging apparent bias, asserting the existence of repeated speculative and unsupported findings aligning with the Defendant’s narrative.
37. As advanced by the Applicant, there is a principle that a claimant wishing to maintain a claim that depends on fraud or dishonesty must distinctly allege and prove it (Three Rivers DC v Bank of England (No 3) [2001] UKHL 16, [2003] 2 AC 1). However, in Howlett v Davies [2017] EWCA Civ 1696, in the context of the question of what a *defendant* must plead in order to seek to establish fundamental dishonesty in the context of section 57 of the 2015 Act, the Three Rivers decision was regarded by the Court of Appeal as being of limited assistance. The Court of Appeal went on to emphasise that what was required was ‘*sufficient notice of the points that [the defendant] intended to raise at the trial and the possibility that the judge would arrive at the conclusions he ultimately did*’. Indeed, the judgment specifically concluded that a defendant need not necessarily have alleged in its defence that the claim was “*fundamentally dishonest*”, providing that by the time of trial there was sufficient identification of the issues to be explored that the claimant could not fairly suggest that they had been ambushed (see paragraph [33]).
38. In this case, it is not reasonably arguable that the key elements of dishonesty upon which the judge made findings had not been pleaded. As pointed out by Sheldon J in his reasons for refusing the application on paper, the Respondent put in issue that the Applicant’s marriage was a sham in the “Defendant’s Narrative”, a pleading which accompanied the Counter-Schedule of Loss (see paragraph 41); the Respondent put in issue that the Applicant’s submissions for ESA were false or unconscionably exaggerated (Defendant’s Narrative at paragraph 179); and more generally the Respondent put in issue that the Appellant’s psychiatric dysfunction had been deliberately fabricated or exaggerated in the Re-Amended Defence at paragraph 31A. Both the 27 March Submission and Mr Diamond’s oral submissions elaborated on this ground by alleging that reliance upon the ‘Defendant’s Narrative’ as part of the Counter-Schedule of loss was inadequate; however, the important requirement of proper notice emphasised in Howlett is one of substance, not form. The Applicant was

plainly on notice of the key points which formed the basis of the judge's conclusions. The conclusion asserted at paragraph 26 of the Applicant's skeleton argument (dated 27 March 2025) that the judge's determination under s57 of the 2015 Act was '*not open to the Judge*' on the basis that the allegations of dishonesty were never fairly or precisely articulated is therefore not reasonably arguable.

39. It is, also, not reasonably arguable that the judge erred in concluding that the points had been sufficiently put in cross-examination. The judge addresses this properly at paragraphs 104-110 of his judgment, identifying the appropriate applicable principles.
40. First, with respect to the findings about the sham marriage and ESA records, it was not suggested by the Applicant's counsel at trial (in his Appendix to Closing Submissions specifically addressing a failure to have put matters in cross-examination) that these points had not been properly put to her: indeed, paragraphs 10 (pre-Index Events) and 14 (post-Index Events) accept otherwise. As described by the judge, which it is not suggested to be inaccurate, the complaint about entitlement to work was not that the point was not put at all, but that it was put in respect of a period compendiously. Nevertheless, the point was put and the witness given a fair opportunity to respond.
41. With respect to the reporting of false symptoms, the judge observed at paragraph [109] that counsel for the Respondent cross-examined the Applicant on her recounting of symptoms which counsel contended were not consistent with the diagnoses that she now maintained, and asserted that those symptoms were false and dishonestly reported. This characterisation of what happened has not been challenged. The judge did record that Counsel had not put that '*her symptoms were in general and otherwise dishonestly fabricated or exaggerated*' and it would have been clearer if he had. However, in the context of the case as it was put (including the pleaded case), the judge determined that the Claimant knew the case being put and had sufficient opportunity to deal with it.
42. At paragraph 32 of the 27 March Submission, in respect of the fabrication of symptoms, the criticism made is that the Applicant was not asked to identify which specific symptoms, or which periods, were alleged to have been fabricated or exaggerated, thereby denying her an opportunity. The same point is made in the latest Skeleton Argument. However, a line of questions which identified the recounting of symptoms and their inconsistency with the diagnoses that the Applicant's case depended upon, and putting that those symptoms were false and dishonestly reported (as described by the judge) would plainly have given the Applicant the opportunity to address the case against her on the central issue in the case.
43. The judge plainly put his mind, with care, to whether the case had been fairly put in evidence, the point having been raised in closing submissions. It is not reasonably arguable that, on the basis of the exchanges described by the judge in his judgment, it was a serious procedural irregularity to conclude that the point had not been fairly put.

44. A further element of this Ground, as amended, is a complaint that the judge erred in refusing to admit or consider the evidence of Mr Diamond, denying the Applicant the benefit of material corroboration. This was not advanced by Mr Diamond in his more truncated oral submissions.
45. The relevant passage of the Judgment is as follows:

*“45. Mr. Emmanuel Diamond provided two witness statements dated 2 October 2017 and 28 May 2019. He is a first cousin of the claimant, according to his witness statements living in South London. He was involved in the history of these events from 2012, and gives evidence of the claimant’s mental state and the fairly comprehensive care he has provided for her. As such, he is a significant witness.*

*46. He appeared to be taken ill at court on Monday morning (the first day of the trial), collapsing and being taken to hospital. Arrangements were made for him to give evidence on Friday, but on his way to court from Bath at Friday lunchtime he was said to have collapsed on the bus, and to have been attended by paramedics. He did not appear to give evidence (although I had indicated that I would be willing to receive it if he was able to give it) on 26 September, the date scheduled for closing submissions. Mr. Meredith-Hardy has asked me to take his evidence into account as a hearsay statement, and an application to permit late service of a Civil Evidence Act hearsay notice was served on 25 September 2024. I granted that application at the commencement of the trial, indicating to the parties that I was not thereby necessarily accepting that the matters stated in support of the application were true.*

*47. The failure to serve a hearsay notice in time does not render a hearsay document inadmissible. It goes to the weight that the court should attribute to the document. In any event, it is a matter for the court, taking all relevant circumstances into account, as to the weight to be given to hearsay evidence (Civil Evidence Act 1995 section 4). The court does however have jurisdiction to refuse to admit the document into evidence if that is the appropriate course. In the present case Mr. Diamond’s evidence is very important in corroborating the claimant’s psychiatric condition since 2012. The defendant for its part would want to cross-examine Mr. Diamond to demonstrate that he was part of what it views as the dishonest plot to extract money from the defendant and to investigate the presence or absence of Mr. Nwanokwu and Mr. Odebode on the scene. In the absence of cross-examination and in the circumstances of Mr. Diamond’s physical absence from the court it asks me to draw the inference that Mr. Diamond is presently faking his symptoms to avoid being cross-examined, and that I should draw an adverse factual inference as to what his evidence might be.*

*48. The relevant matters that I take into account are that Mr. Diamond was a significant witness as to both the psychiatric illness alleged to have been suffered by the claimant and (according to the defendant) to the fraud that was being practiced; that there is no evidence that corroborates Mr. Diamond’s various conditions or illnesses precluding him from giving evidence. The medical evidence adduced corroborates Mr. Diamond’s*

*complaints of illness, which is a quite different thing. The circumstances in which the evidence is adduced do suggest (although they do not prove) that Mr. Diamond was seeking to avoid cross-examination. My conclusion is that I should give Mr. Diamond's evidence no weight where it is contentious."*

46. It is not reasonably arguable that this conclusion represented a serious procedural irregularity. It was open to the judge, from all the circumstances in the case, to reach the conclusion he did. Contrary to the submissions of the Applicant, the judge did not reach the conclusion he did in light of medical evidence which established objectively that Mr Diamond *was* ill. The evidence was that Mr Diamond was *complaining* of illness. Mr Diamond's evidence was going to be subjected to significant attack by cross-examination. No application was made to delay closing submissions by a short period to permit Mr Diamond to attend upon recovery. Placing no weight on the controversial aspects of the tendered statement in these circumstances falls well within the range of decisions a judge may reasonably make. It is not a paradox, in these circumstances, nevertheless to accept forensic submissions about the content of the tendered statement, such as the absence of any reference to the Applicant's husband, when considering aspects of the case. There was no arguable procedural irregularity. For what it is worth, I have found that Mr Diamond has not been honest in his evidence before the Court on this application for permission to Appeal. This, albeit with the benefit of hindsight, fortifies the judge's contemporaneous scepticism about Mr Diamond and his conduct.
47. A fourth sub-element in the amended ground is an allegation of apparent bias. There is simply no arguable basis for this contention. The basis for the allegation is not the way in which the trial was conducted (e.g. remarks made before or during the hearings suggesting pre-determination), or other surrounding circumstances. Instead, the allegation as advanced at paragraphs 42-51 of the 27 March Submission relies upon the same procedural and substantive decisions or statements within the Judgment itself which were adverse to the Applicant's case and in respect of which the Applicant complains in other elements of the appeal. It is said that the cumulative effect of these is the establishment of apparent bias. In circumstances where the underlying complaints are not reasonably arguable, as is the case, this conclusion is not substantiated. No objective fair-minded observer would conclude on the basis of the judgment that there existed any possibility of bias. Instead, the judge (as is clear from the rejection of Ground 5 (Failure to Give Reasons)) came to reasoned decisions on the evidence before him. It is clear that he formed, ultimately, a very dim view of the Applicant and her case, and that was on the basis of the evidence before him. It is not remotely arguable that it came from predisposition.
48. This ground of appeal fails.

#### *Ground 2 – Reversal of Burden of Proof*

49. The Applicant argues that the judge erred in reversing the burden of proof, requiring the Applicant to prove her honesty rather than requiring the

Respondent to prove dishonesty. It is said that the judge failed to apply the two-stage dishonesty test from Ivey v Genting Casinos [2017] UKSC 67, rendering the dishonesty conclusion legally and factually flawed (although this is also the substance of Ground 3). It is said, by way of sub-grounds, that the judge (1) placed impermissible weight on the Applicant's courtroom demeanour to infer dishonesty and exaggeration, contrary to the evidential guidance in psychiatric injury cases; (2) reversed the burden of proof by requiring the Applicant to prove the genuineness of her marriage, despite official documentation and no evidential basis for dishonesty; (3) required the Applicant to disprove exaggeration of ongoing psychiatric symptoms, disregarding unchallenged expert evidence and thereby reversing the evidential burden; (4) made findings of dishonesty relating to ESA applications without cogent evidence; and (5) substituted speculation for evidence, and failed to apply the required civil standard of proof with caution, as required when allegations of dishonesty are made.

50. None of these points are reasonably arguable.
51. The judge clearly, and correctly, directed himself to the correct test, stating that the burden of proving dishonesty lay upon the Respondent (see paragraph [111]). None of the matters relied upon by the Applicant suggest that, notwithstanding the correctness of his legal self-direction, the judge fell into error with respect to the burden of proof. It is noted that in respect of some allegations (e.g. dishonestly obtaining NHS treatment in the UK; whether the Applicant underwent psychiatric treatment in Nigeria), the judge concluded - clearly conscious of the burden of proof - that the Respondent had *not* made out its case on the evidence.
52. The first of the five points focuses on the judge's conclusions at paragraphs [12] and [124]. These two paragraphs state as follows:

“12. Her display and demeanour is material not simply for its effect on the quality of her evidence and her credibility but also to the factual issue as to whether she is, presently, continuing to suffer from a mental illness of the sort complained of. As will be seen there is some expert commentary on her oral evidence. For my part I saw nothing during what must have been a stressful (but I stress, appropriate) period of giving of evidence which indicated any current mental illness at all. I do note that her medical records refer to good days and bad days.

...

128. I also have regard to the demeanour of the claimant in court, both as regards this hearing and the hearing before Mr. Recorder Sharp KC, and the comments from Dr Haynes. Whilst having regard to the expressed opinion of HHJ Cotter, and the possibility that she may have good and bad days, I am firmly of the view that the claimant's psychological difficulties as expressed on those occasions are quite different from her stated condition in her witness statements. Having regard to my view of the claimant's credibility I do not consider that she is presently suffering from mental illness.”

53. The third complaint also relates to the same issue, namely the judge's conclusions as to the alleged psychiatric condition which fundamentally underpinned the claim for much of the claimed loss. The critical point which undermines the Applicant's contention in suggesting that the judge relied upon demeanour alone, contrary to medical evidence, is that it is plain from those parts of the judgment to which the Applicant does not refer that the judge was plainly influenced, as he was entitled to be, by the evidence of the Applicant's own psychiatric expert, Dr Haynes, at trial. At paragraph [53], the judge records the following:

“Dr. Haynes helpfully observed the claimant give her evidence over a period of two hours. When he came to give his evidence on Thursday he was asked further questions by Mr. Meredith-Hardy as to the demeanour and responses he observed during that period. He said that the claimant presented quite differently from her presentation to him for the purposes of a diagnosis, and that in his view she did not manifest any symptoms of psychiatric illness or depression. He described her evidence as ‘surprising’ on three occasions. He emphasised that giving evidence in these circumstances was a highly stressful experience, and the inference was that he would expect her behaviour to reflect that stress.”

54. Although not available to Sheldon J when refusing the application on the papers, I have had the benefit of reading a transcript of the evidence of Dr Haynes. The judge's summary of that evidence was entirely accurate and fair. He said, during examination in chief, that the Applicant's “presentation was not consistent with someone who was suffering a severe depressive episode”, and that the opinion expressed in this supplemental report with respect to prognosis should be changed. A particularly illuminating passage in the cross-examination then followed:

‘Q. If you assume as a fact that there has been no treatment and that the medication has continued as it has for many years now, what is your explanation for the improvement in her condition? You said earlier you had none.

A. Well, I am surprised....

Q. Yes.

A. ...particularly if there were no further treatment. I am surprised by the improvement, given how unwell Mrs Taiwo was and present to myself and other clinicians. I am surprised by how much better she is. It is perhaps a little speculative. It has been identified by myself, Dr Niel and others that litigation has been a strain. Potentially coming towards the end of litigation may have been beneficial for her, but equally and more usually, approaching court usually makes things worse for people.’

55. No part of the judge's conclusion as to the genuineness and duration of the Applicant's claimed psychiatric illness was arguably a reversal of the burden of proof. It was an assessment of the evidence at trial, during which the Applicant's own expert, both in examination in chief and under cross-examination, gave

considerably more limited support for the Applicant's case than he had previously, on the basis of self-presentation during his examination of the Applicant for the purposes of his report. The judge was undoubtedly entitled to place weight on that fact, combined with the other aspects in which he concluded on the evidence that the Applicant had been dishonest, in forming his overall view as to whether the Respondent had discharged the burden of proof.

56. The suggestion that the judge's conclusion about whether the Applicant's marriage was a sham was the result of an unstated reversal of the burden of proof is hopeless. The judge set out, over nearly three pages, the eighteen reasons that combined to lead him to his conclusion. The reasoning is rational and objectively justifies the conclusion the judge arrived at. It plainly does not amount to a reversal of the burden of proof to point to an evidential lacuna which would easily have been filled had the marriage been genuine – particularly when (as here) the Applicant was properly on notice that the genuineness of the marriage was in dispute.
57. The fourth point relates to a supposed reversal of the burden of proof in relation to the judge's finding of dishonesty relating to ESA payments. Again, the judge set out his reasoning. His conclusions at [158] were supported by a detailed analysis from [120] onwards, which identified a documented worsening of symptoms when the Applicant was annually required to certify her medical state for the renewal of her Employment Support Allowance. Taken together with the other evidence in the case, including the views of the psychiatric experts, it is not arguable that the judge was not entitled to conclude, as he did at [123] and [158] that the Applicant (from October 2013 onwards) was exaggerating her symptoms for the purposes of obtaining ESA.
58. The fifth point adds nothing of substance to the previous point. The submission is no more than disagreement with the findings of the judge (describing the conclusions as speculation), without actually engaging with the reasons the judge gave and ignoring the evidence as it is recorded. For example, whilst relying upon the evidence of Dr Haynes (at paragraphs 78 of the Skeleton Argument), the Applicant downplays the oral evidence given by Dr Haynes in evidence. The judge was entitled to consider all the evidence in the case, including (as both experts agreed) a view as to the genuineness of the reporting of symptoms to them, on which they both accepted their opinions were based. It is not reasonably arguable that the judge was not entitled to come to the conclusion he did as to the extent to which that reporting was – or was not – genuine.
59. This ground of appeal fails.

*Ground 3 – Misdirection in Law: Failure to Apply the Proper Test*

60. The Applicant asserts that the judge failed to apply the two stage test in Ivey v Genting Casinos.
61. This is not remotely arguable.

62. The judge correctly identified the test, both by reference to Ivey, and to the judgment of Ritchie J in Cojano v Essex Partnership University NHS Trus [2022] EWHC 197 (QB), in which he said:

“49. I take from this ruling that the test for the trial judge to apply when considering making a finding of dishonesty is: (A) firstly to find on the evidence as a fact what the claimant’s state of mind was at the relevant time on the relevant matters; and (B) secondly to apply an objective standard to decide whether the claimant’s conduct was dishonest as alleged. Therefore my step (iii) above has two parts to it: A & B.”

63. As the judge rightly then identified:

‘The court must enquire as to what elements material to the claim the claimant falsely represented, and consider what the claimant knew or believe about that representation. If by the objective standard of ordinary decent people the making of the false representation or act would be considered dishonest, the court must then consider whether that dishonesty is ‘fundamental’.’

64. The Applicant contends that the judge failed to consider the Applicant’s subjective state of mind. This is simply wrong. The judge found (in respect of the key question of exaggeration of ongoing claim to mental illness) that the claimant’s evidence as to her disability was deliberately exaggerated and dishonestly so. The judge’s mind was plainly directed to the subjective state of mind (in that the exaggeration was ‘deliberate’, a word consistent with consideration of the state of mind of the actor) and the objective test (dishonest). Moreover, at p167] of the Judgement, the claim was described as, ‘*a sophisticated and prolonged fraud on the defendant seeking to obtain substantial moneys to which the claimant knew she was not entitled*’. On the basis of this finding, the suggestion that this would not amount to satisfaction of the legal test is unarguable. For the reasons given in respect of Grounds 1 and 2, it is also unarguable that the evidence was not such so as to permit such findings.

65. As part of this ground, the Applicant argues that the judge treated collateral issues as ‘dishonesty’. It is not reasonably arguable that he did. In relation to the ESA benefits issue, that judge held, as he was plainly entitled to, that this was more than a collateral matter which went to the Claimant’s credit only. The claims were accompanied by visits to the GP which were required for supporting evidence. The judge was justified in concluding that that had formed part of the medical narrative in this case, and that related to the genuineness of the medical symptoms said to have been experienced by the Claimant. Similarly, in regard to the Applicant’s sham marriage, the argument that the judge erred in concluding that this was more than collateral is hopeless where the Applicant’s claim included damages to reflect the loss of the alleged marriage and the relationship with Mr. Nwanokwu as the father of her child.

66. This ground of appeal fails.

*Ground 4 – Findings against the weight of evidence*

67. The Applicant argues that the judge’s findings as to fundamental dishonesty went against the weight of the evidence. The burden on an applicant to demonstrate that the judge, who had the benefit of seeing the evidence over the course of a trial, erred in reaching particular findings of fact is a high one.
68. In summary, the Applicant argued that: the judge (i) inferred that the Applicant’s marriage was a sham based on missing corroboration rather than discrediting her marriage certificate, tenancy records, or her consistent account, (ii) based his conclusion on psychiatric symptom exaggeration on courtroom demeanour, ignoring expert consensus on ongoing mental illness and without expressly rejecting that evidence, and (iii) inferred ESA form dishonesty despite no proof she authored them or knew of inaccuracies—these forms were unconnected to the pleaded claim. By treating these peripheral or unpleaded matters as central dishonesty, it is said that the judge reversed the burden of proof and misapplied the threshold for ‘fundamental’ under s.57 CJCA 2015.
69. This ground is, in substance, no more than a repetition of the same points that have been raised in support of Grounds 2 to 3. In short, the Applicant entirely mischaracterises the basis upon which the judge drew on numerous factors in order to conclude that the Applicants’ marriage was a sham. This was neither peripheral nor unpleaded, given that a significant element of the loss claimed related directly or indirectly to a claim that the index events led to the breakdown of the Applicant’s marriage. As previously explained, the judge did not ignore, but at least in part relied upon the evidence of Dr Haynes, the Applicant’s own expert, in respect of the Applicant’s presentation. In circumstances where the ESA forms were authored by Mr Odebode, with whom a close connection was not disputed, the inference of dishonesty on the part of the Applicant – whose presentation of worsening symptoms at GP visits fluctuated chronologically with the requirement to fill out such forms – was entirely within the range of inferences a judge may properly, in all the circumstances of the case, have formed.
70. That the judge’s findings of fact were against the weight of evidence is not, therefore, reasonably arguable. The combination of evidence and legitimate and reasonable inference from the lack of evidence where appropriate was more than sufficient to justify the conclusions reached by the judge.
71. This ground of appeal fails.

*Ground 5 – Failure to Give Reasons*

72. The Ground complains that the judge failed to provide adequate reasons, suggesting that this deficiency frustrates effective appellate review and is said to undermine the judgment’s legitimacy. This is hopeless. In substance it is again, an attack on the reasoning and conclusions with which the Applicant, through Mr Diamond, disagrees, rather than a cogent argument exposing a wholesale failure to give reasons.

73. In English v Emery Reimbold & Strick Ltd [2002] EWCA Civ 605, a case referred to by the Applicant, the Court of Appeal clarified what was meant by this at [19]:

*“...the judgment must enable the appellate court to understand why the Judge reached his decision. This does not mean that every factor which weighed with the Judge in his appraisal of the evidence has to be identified and explained. But the issues the resolution of which were vital to the Judge’s conclusion should be identified and the manner in which he resolved them explained. It is not possible to provide a template for this process. It need not involve a lengthy judgment. It does require the Judge to identify and record those matters which were critical to his decision.”*

74. The judgment makes clear those issues the resolution of which were vital to the judge’s conclusion. The reasons why he resolved them against the Applicant is clear. The judge gave a lengthy justification for why he had concluded the marriage was a sham; he identified the basis for his inference from the evidence that Applicant had dishonestly exaggerated her symptoms in the context of ESA applications from 2013; and, against this background, the judgement explains that he concluded from all the evidence, including the Applicant’s own expert’s evidence about the difference in presentation between her examination and her appearance in Court, that the losses claimed from the personal injury in 2010 were, coincidental with the dishonest ESA applications, exaggerated from around 2013 onwards. It is not arguable that the reasons given were either non-existent or inadequate for the Applicant, or anyone else, to understand the basis of the decision.
75. This ground of appeal fails.

#### *Ground 6: Misapplication of Section 57 CJCA 2015*

76. The Applicant repeats the argument made in the context of other grounds that the judge erred in ‘*conflating minor inconsistencies with fundamental dishonesty*’. The Applicant also contends that the judge failed to consider the question of ‘substantial injustice’. It is also said that the judge erred in law by extending Section 57 CJCA 2015 to encompass injury to feelings damages under harassment claims, relying upon Irani v Duchy Farm Kennels Ltd [2020] EWCA Civ 405 – the false authority referred to above.
77. The first element of this ground of appeal is hopeless. The judge was plainly entitled (and right) to consider that, in circumstances where losses were claimed which related to the alleged marital breakdown, whether or not the marriage was a sham marriage was more than a mere collateral issue. It was central to part of the Defendant’s claim that the claim for losses was dishonest. Similarly, to describe the dishonest ESA claims, as the judge found them to be, as a minor inconsistency is nonsense. The judge was plainly entitled to consider the authenticity of those claims for payment from the state on the basis of a supposed debilitating psychiatric condition in the context of the Applicant’s claim for extremely large sums of money from the Respondent on the basis of

the same purported medical condition. On any view, on the basis of the findings of fact by the judge, this was a case of ‘fundamental dishonesty’, which ‘*goes to the root of the claim*’ (see Cojanu) for the purposes of Section 57 of the 2015 Act.

78. It is also not reasonably arguable that the judge failed properly to consider the question of substantial injustice. The judge correctly identified the appropriate circumstances at paragraph [167]:

“If one considers the surrounding circumstances, they are that this claim is based on a tort intended to protect the vulnerable or those who might be rendered vulnerable; that there is a purposive element in allowing recovery in a case such as this where a wrong has been done to a vulnerable person, as the claimant was, by someone who should have known better and was in a position of power, acting as the agent of the landlord. Against that the dishonesty in this case is of a sophisticated and enduring type. Although I consider that it is likely that the claimant is not the main agent behind this deception, I consider that she was a willing party to it. This was a sophisticated and prolonged fraud on the defendant seeking to obtain substantial moneys to which the claimant knew she was not entitled.”

79. Having correctly identified the competing factors, the conclusion reached by the judge, that relief against the consequences of the application of section 57 should not be granted, was one which was plainly open to the judge.
80. The third element of this ground of appeal relates to the question of whether the Vento damages are damages caught by S57 of the 2015 Act.
81. Section 57(1)-(3) state:

*“(1) This section applies where, in proceedings on a claim for damages in respect of personal injury (“the primary claim”)*

*(a) the court finds that the claimant is entitled to damages in respect of the claim, but*

*(b) on an application by the defendant for the dismissal of the claim under this section, the court is satisfied on the balance of probabilities that the claimant has been fundamentally dishonest in relation to the primary claim or a related claim.*

*(2) The court must dismiss the primary claim, unless it is satisfied that the claimant would suffer substantial injustice if the claim were dismissed.*

*(3) The duty under subsection (2) includes the dismissal of any element of the primary claim in respect of which the claimant has not been dishonest”*

82. Although this ground was not subject to specific oral submission by Mr Diamond, I sought further assistance from counsel for the Respondent, Mr Maynard, to understand the basis of the judge’s conclusion in light of two particular authorities which I drew to his attention. The first was Senay v

Mulsanne Insurance Co Ltd [2024] EWCC 12 (HHJ Charman, 24 May 2024), in which the Court concluded that, following a finding of fundamental dishonesty, Mr Senay's claim for personal injury was dismissed but his claims in respect of damage to his vehicle, its recovery and storage and for loss of use of it were not dismissed. The second was Reynolds v Chief Constable of Kent [2024] EWHC 2487 (KB) in which Sheldon J acknowledged at [51] that there will be cases in which a claim for damages for loss of liberty through false imprisonment would not be dismissed in circumstances where the claim for damages for personal injuries for assault (which was said to have taken place during the false imprisonment) fell foul of section 57.

83. I was assisted by the further submissions provided by both Mr Maynard and from Mr Diamond (prepared with legal assistance as described above).
84. I am satisfied that the judge was correct in concluding that they were, and that it is not reasonably arguable that the judge was wrong.
85. As submitted by Mr Maynard, the starting point is the 1997 Act. This provides that in a civil claim under s 3(1) of the Act, "*damages may be awarded for (amongst other things) any anxiety ... caused by the harassment.*"
86. The question is therefore whether the statutory claim for anxiety caused by harassment is a claim for personal injuries and part of the 'primary claim' for the purposes of section 57 of the 2015 Act.
87. As identified in the submissions from both parties, it is plain that in the context of the Limitation Act 1980, it is (see Oates v Harte Reade & Co (a firm) [1999] 1 FLR 1221, per Singer J, noted at Halsbury's Laws of England, vol 68 (2021) Limitation Periods §1100, n1). The definition of personal injuries for the purposes of the Limitation Act 1980 (see section 38(1)) is materially identical to the definition in section 57(8) of the 2015 Act. Both provide that "personal injury" includes any disease and any other impairment of a person's physical or mental condition.
88. The Applicant's submissions, having accepted this, contended that nevertheless in the context of 'draconian' section 57, personal injuries should be construed so as to exclude anxiety. I do not agree. There is no particular contextual rationality for construing the same words in the different statutes differently.
89. I therefore concur with Sheldon J: it is not reasonably arguable that the judge erred in dismissing the claim for Vento damages, as well as other claimed losses, as part and parcel of the claim for personal injuries pursuant to section 57 of the 2015 Act.

*Ground 7 - Failure to Determine Key Issues (Lack of findings on pleaded allegations)*

90. The criticism of the judge is that he erred in law by failing to determine a critical pleaded issue central to the dishonesty allegation, namely whether the

relationship between the Applicant and Mr Odebode was familial or whether they were in a partnership.

91. This is not reasonably arguable. The precise nature of the relationship was not central to the case. A judge does not have to determine every factual issue which may arise on the pleadings, only those which enable the judge to provide a reasoned answer to the determinative questions. In this Quantum Trial, those were the questions of causation, loss and the application of section 57 of the 2015 Act. The judge was plainly entitled to reach concluded views on these questions without determining the precise status of the relationship between Mr Odebode and the Applicant.
92. The Ground of Appeal fails.

*Ground 8 - Erroneous assessment and miscalculation of Damages*

93. In circumstances where the other substantive Grounds of Appeal have failed, this Ground does not materially advance the Applicant's position.
94. In any event, the judge provided clear reasons for each of his determinations with regard to quantum.
95. The Application refers first to an inconsistency in the reasoning of the judge who, it is said, concluded that the psychiatric effect caused by the index event had concluded by 2013, but that that was inconsistent with findings elsewhere of persisting symptoms and the existence of some continuing loss. That is simply not what the judgment says. Paragraph [134], the paragraph relied upon by the Applicant to demonstrate the supposed inconsistency, deals with whether there were losses caused post 2013 not by the inability to work because of a continuing psychiatric condition (which the judge had rejected), but because of the possible indirect financial effect of being unable to find a job as rewarding as that she had previously with TL-Peakline.
96. The second alleged failure was in respect of career progression post 2013, but the judge plainly did not consider this because of his primary findings about the end of any effect of the index event by that point. This was not 'arbitrary' as alleged by the Applicant, but predicated on his analysis of the Applicant's medical condition over time.
97. Third, the judge provided reasons for his rejection of the claim for gratuitous care, finding on the evidence he heard that it did not enable him to come to any likely view as to the extent of any such care provided. The expert called on the Applicant's part explicitly based her assessment on the factual evidence put to her, and the judge's decision not to accept that evidence in circumstances where he found that the Applicant had been fundamentally dishonest is well within the decision-making range of a reasonable judge.
98. Finally, the judge's determination in respect of the cost of door repairs, said to have been arranged by Mr Odebode at the request of Mr Taiwo/Nwanokwu,

was, as the judge said, the result of his conclusions about the sham marriage. This was a finding the judge was entitled to make.

*Ground 9: Fresh Evidence*

99. The Applicant seeks to adduce fresh evidence from Ms Ijeoma Nwanokwu, her purported mother-in-law, to refute the sham marriage finding. This was not advanced as part of Mr Diamond's more focussed oral submissions, but I deal with the point nonetheless. There is no principled basis upon which this evidence ought to be allowed on appeal. As explained by Sheldon J when also refusing permission on the papers, the first of the three principles in Ladd v Marshall [1954] 1 WLR 1489 is clearly not satisfied. The evidence must be something that could not have been discovered and presented with reasonable effort at the initial trial. This is not the case.
100. I come to this view for the same reasons expressed by Sheldon J. The Applicant had been clearly put on notice that the Respondent was contesting the genuineness of her marriage. It was a matter for her as to what evidence she wished to adduce to deal with this allegation.
101. The Applicant's Skeleton Argument states, when addressing the first test in Ladd v Marshall that:
- '(i) The evidence could not with reasonable diligence have been obtained for trial—Ms. Nwanokwu had become estranged from the Appellant and contact was only restored after judgment.'*
102. However, this assertion is not reflected in the very evidence that is sought to be adduced. Ms Nwanokwu says that she maintained regular contact with the Applicant when she moved house and changed her phone number before the Covid-19 pandemic which, in her words, "*unfortunately led to a temporary loss of contact*". This is not estrangement in any normal use of language. Ms Nwanokwu does not suggest that she would, for some reason, not have been willing to give evidence had she been asked. At most, Ms Nwanokwu's evidence (taken at face value) is that the Appellant did not have her details to make contact. However, this is not what is implied in the Skeleton Argument. Importantly, no assertion is made (nor is there a witness statement provided with a statement of truth attached to suggest) that the Applicant did not know how to contact Ms Nwanokwu.
103. The Applicant has asserted, in respect of Sheldon J's views (with which I concur) that this fails to address the '*nuanced*' explanation in the Skeleton Argument. It is not a nuanced explanation. There is no evidence which suggests an '*estrangement*' nor that the relationship came to be restored. There is no credible basis to conclude that the evidence could not with reasonable diligence have been obtained for trial.
104. This Ground of Appeal, and application to adduce evidence, fails.

*Ground 10: Other compelling reasons*

105. The Applicant contends that there are compelling reasons for the appeal to be heard notwithstanding the fact that the grounds are not reasonably arguable.
106. This is not reasonably arguable. The case raises no point of principle in respect of the dismissal of Vento damages, nor of the requirements to plead fundamental dishonesty or put points in cross examination, or the two stage test in *Ivey*. The case raises no points of importance around how a Court should deal with the question of ‘substantial injustice’. The case raises no points of significance around the duty to record the amount of damages which would otherwise have been awarded. The judge did this. The suggestion that there was no breakdown of the quantified sum is plainly wrong: see paragraphs [128], [136], [144] and [145].
107. The mere fact that the Applicant was a protected party does not mean any of the points become compelling when otherwise they would not have been.

*Conclusion*

108. None of the arguments raised, whether by amendment or otherwise, are reasonably arguable. Permission to amend is refused. Permission to appeal is refused.

Oral Renewal of Permission to Appeal the Consequential Order

109. I consider first the substance of the appeal. It is only if any ground is reasonably arguable is it necessary to consider (1) whether the Appellant’s Notice was late and/or (2) whether an extension of time ought to be permitted.

*Ground 1: The listing of the hearing date*

110. It is said that the judge erred in law and procedure by directing that the consequential hearing be listed on 13 March 2025, a date when the Applicant had previously informed the court her legal representatives were unavailable. It is said that proceeding without legal representation caused unfairness and deprived the Applicant of effective participation in the hearing.
111. There is no evidence (whether provided as part of the appeal or otherwise) to support the underlying contention that the non-attendance of legal representation was caused by availability on the date listed. Sufficient notice was provided of the hearing. The Applicant and Mr Diamond were both available to attend. The suggestion that there was previous counsel or other representative in place (but for the specific date) is inconsistent with the evidence recently provided to the Court that it was a number of weeks after the Consequential Order that the Applicant sought assistance from Advocate, a pro bono organisation.

112. In any event, the Applicant provided legal submissions, as she had done before and since, which fully articulated the Applicant's position (albeit reliant in part on false citations). There is no basis to conclude that the absence of legal representation prejudiced the Applicant's position in any way: litigants in person regularly appear before the courts and the mere fact of their unrepresented status is not a reasonably arguable ground of appeal.

*Ground 2: Termination of Litigation Friend*

113. This ground is hopeless.
114. The decision of the judge to conclude that there was (no longer) any basis upon which to conclude that the Applicant lacked capacity is wholly unsurprising in light of the evidence given by the Applicant's own expert. This is clear having had the benefit of the transcript of Mr Haynes' examination and cross-examination.
115. The relevant passage during examination in chief is as follows:
- ‘Q. MR MEREDITH HARDY: I think you may have just answered it. So I am just going to take it in stages, but I was going to ask you, financial affairs is the first one.
- A. Yes, I believe she does.
- Q. Does now.
- A. Does now.
- Q. And in relation to litigation from what you were able to see?
- A. I believe she does now.’
116. It is right that this evidence was caveated by reference to the nature of the observation during the period of the Applicant's giving evidence. However, the judge was plainly entitled, particularly in the context of his findings of her dishonesty and changes in presentation, to conclude that – caveat notwithstanding – there was no sufficient medical support for any finding that the Applicant presently lacks capacity. This conclusion was *not* limited to judicial impression but supported by the medical evidence before him.
117. It follows that there is no basis upon which Mr Diamond is entitled to continue to act as a Litigation Friend.

*Ground 3 – Error in Awarding Indemnity Costs against a Protected Party with Appeal Pending*

118. It is noted that it was in the context of this submission that the document submitted by Mr Diamond included the false citation of Chapman, discussed

above. As matters transpired, a later order stayed the requirement to pay costs pending appeal. Permission to appeal has now been refused.

119. There can be no appeal against the indemnity nature of the costs assessment in principle given the Applicant's failure to beat a Part 36 Offer. This ground is no longer relevant/not reasonably arguable.
120. For the avoidance of doubt, the award of indemnity costs, to be assessed if not agreed, should now be effective without more.

*Ground 4 – Premature and unjustified enforcement of costs*

Again, a stay was in fact put in place. The Applicant has been denied permission to appeal.

*Ground 5 – Payment on Account*

121. As above, the Applicant has not been required to pay the Interim Payment pending this judgment. Her application for permission has now been refused. There is no continuing basis to stay the requirement to pay the interim payment.

*Ground 6 – Error in Joinder of Third Parties without Proper Legal Basis*

122. It is argued that the judge erred in law in directing the joinder of Mr Diamond and Mr Abayomi Odebode, for the purpose of considering non-party costs orders under s.51 of the Senior Courts Act 1981. It is argued that no evidence was adduced to demonstrate these individuals (a) controlled or funded the litigation, or (b) engaged in conduct justifying personal costs liability.
123. However, no non-party costs order was made by the judge as part of the Consequential Order. It is not reasonably arguable that the circumstances of the involvement of Mr Diamond in the conduct of the litigation and Mr Odebode's involvement generally, which the judge was familiar with from general experience in the litigation, was insufficient justification for the joinder.
124. It was pointed out to Mr Diamond during submissions that he appeared to be advancing this ground of appeal in his own right and for his own benefit, rather than on behalf of the Applicant. There is no reason why the Applicant would, from her own perspective, have any interest in whether Mr Diamond ought to be joined; indeed, it would be positively beneficial for another party to become liable to pay her liability for costs. This elision of his own and the Applicant's interests and rights is itself illustrative of the very circumstances which no doubt lay behind the judge's decision. Mr Diamond has not in fact appealed the decision in his own right. He is now massively out of time to do so, and any such appeal would not succeed on the merits, in any event, for the reason set out above.

*Ground 7 – Cumulative Effect*

125. It is said that the cumulative effect of the procedural unfairness, legal misdirection, and factual errors in the orders made on 13 March 2025 rendered the consequential orders unsafe and unjust. This adds nothing.

*Conclusion*

126. The application for permission to appeal the Consequential Order fails. In circumstances where the appeal is not reasonably arguable, the application for an extension of time is refused.

Civil Restraint Order

127. As part of the Bourne Order, this Court is to consider making a Civil Restraint Order. Bourne J concluded that the application before him was totally without merit. The Court of Appeal concluded that there was no likelihood of the Applicant persuading the Court of Appeal that this was not justified.
128. Pursuant to 3CPD.2, a limited civil restraint order ('CRO') may be made where a party has made 2 or more applications which are totally without merit. Pursuant to 3CPD.3, an extended civil restraint order ('ECRO') may be made where a party has persistently issued claims or made applications which are totally without merit. The difference between a CRO and an ECRO is that the former restrains the person against whom the order is made from making further applications in the proceedings in which the order is made without first obtaining permission; whereas the latter restraint extends to any applications or claims.
129. The term "party" in 3CPD is not restricted to a person who is formally a party to proceedings; it can embrace a person who was "the real party" or motive force behind the unmeritorious claims or applications Sartipy v Tigris Industries Inc [2019] EWCA Civ 225; [2019] 1 WLR 5892 per Males LJ at [32]. The same case establishes that when considering whether to make a CRO, the court is not limited to claims or applications certified at the time as "totally without merit", albeit that in such cases the court will need to ensure that it knows sufficient about the previous claim or application in question (see [37], relying upon R (Kumar) v Secretary of State for Constitutional Affairs (Practice Note) [2006] EWCA Civ 990, [2007] 1 WLR 536 at [67] and [68].).
130. I am satisfied that there is - at the very least - one other application made which was totally without merit. That is the appeal brought by the Applicant on 22 January 2025 against a costs budgeting case management decision (itself made on 22 July 2024). As Sheldon J observed on 27 March 2025, in his reasons for dismissing the appeal, it was misconceived and unarguable.

131. In terms of wider circumstances, the general conduct of the Applicant and/or Mr Diamond in these proceedings demonstrates a complete lack of discipline in its interactions with the Court and the Respondent: see the numerous iterations of documents provided dealing with the same subject matter, increasing both cost and administrative burden. I bear in mind, however, that all such conduct has been within the same proceedings.
132. I consider that it is appropriate to issue a (limited) CRO against the Applicant and Mr Diamond.

Further unsolicited substantive ‘evidence’

133. At the end of the oral hearing, I indicated that a draft judgment would be provided in advance of formal handdown, for the purposes of identifying typos and the like. I made clear it was not an opportunity for the Applicant or Mr Diamond to make further substantive submissions. Notwithstanding, on the eve of hand-down the Court received an unsolicited witness statement purportedly drafted by the Applicant, but stylistically very similar to many documents submitted by Mr Diamond. The author of the document has been removed from the ‘properties’ of the document.
134. The first section deals with the CRO, and notes that ‘*the Court did not heard [sic] legal submissions from Mr Diamond at the hearing on 2 November 2025*’. Mr Diamond was extended every opportunity to make such submissions as he saw fit on any of the issues which were the subject of the hearing. The fact that the Court would consider the making of a CRO was explicitly directed within the Bourne Order. Such submissions as were made in the skeleton argument submitted on behalf of the Applicant were considered by the Court.
135. Nothing in the further information provided (essentially heavily redacted versions of communications with lawyers) changes the categorisation of either ‘qualifying’ application as being totally without merit for the purposes of making a CRO.
136. Ironically, the provision of a further substantive submission following sight of the draft judgment, notwithstanding the opportunity to do so in writing prior to, and orally at, the hearing, and in contravention of the Court’s clear indication that the provision of a draft judgment was not to give the parties the opportunity to re-argue points, is demonstrative of precisely the lack of discipline in the Applicant’s (and/or Mr Diamond’s) interactions with the Court referred to above and fortifies the appropriateness of the imposition of a CRO.
137. The next substantive section deals with the rejection of Ground 9 of the application for permission to appeal against the Quantum Trial Order. The section commences with same note about the absence of oral submissions at the hearing. If Mr Diamond chose not to make oral submissions, that was a matter for him. The matter had been dealt with comprehensively in the numerous iterations of Grounds and the various Skeleton Arguments.
138. The latest document submits that both Sheldon J and this judgment have misunderstood the previous evidence submitted with the application for appeal.

This is not the case. Nothing in the further information changes my conclusion, which concurred with the decision of Sheldon J on the papers, that there is no credible and sound basis for a conclusion that, with reasonable diligence, the evidence sought to be introduced could not have produced been previously.

139. The final short points in the document dealt with legitimate points of correction on which nothing turned, and which have been reflected in minor changes to the draft.

#### Costs

140. Having seen a draft of this judgment, the parties provided me with their competing positions on costs in advance of the formal hand-down. The Respondent seeks its costs of responding to the application for permission to appeal, to be assessed on an indemnity basis if not agreed, with a interim payment of £15,000, together with the summary assessment of £4,000 for dealing with the CRO issue. The Applicant objects to any cost order being made against her.

141. Practice Direction 52B, paragraph 8.1 states:

**“8.1 Attendance at permission hearings:** Where a respondent to an appeal or cross-appeal attends the hearing of an application for permission to appeal, costs will not be awarded to the respondent unless–

- (a) the court has ordered or requested attendance by the respondent;
- (b) the court has ordered that the application for permission to appeal be listed at the same time as the determination of other applications;
- (c) the court has ordered that the hearing of the appeal will follow the hearing of the application if permission is granted; or
- (d) the court considers it just, in all the circumstances, to award costs to the respondent.”

142. The Respondent relies upon this paragraph and submits that this is a case in which it would be appropriate to make a costs order against the Claimant. As indicated in the White Book at 52.5.2, Mount Cook Land Ltd v Westminster City Council, [2004] 2 Costs LR 211 gives guidance as to the circumstances in which it would be just and convenient to award costs to the respondent. At paragraph [76] (albeit in the context of similar provisions relating to attendance at oral renewals for permission for judicial review), Auld LJ gave the following guidance:

*“3) A court, in considering an award against an unsuccessful claimant of the defendant’s and/or any other interested party’s costs at a permission hearing, should only depart from the general guidance in the Practice Direction if he considers there are exceptional circumstances for doing so.*

*4) A court considering costs at the permission stage should be allowed a broad discretion as to whether, on the facts of the case, there are*

*exceptional circumstances justifying the award of costs against an unsuccessful claimant;*

*5) Exceptional circumstances may consist in the presence of one or more of the features in the following non-exhaustive list:*

*a) the hopelessness of the claim;*

*b) the persistence in it by the claimant after having been alerted to facts and/or of the law demonstrating its hopelessness;*

*c) the extent to which the court considers that the claimant, in the pursuit of his application, has sought to abuse the process of judicial review for collateral ends – a relevant consideration as to costs at the permission stage, as well as when considering discretionary refusal of relief at the stage of substantive hearing, if there is one; and*

*d) whether, as a result of the deployment of full argument and documentary evidence by both sides at the hearing of a contested application, the unsuccessful claimant has had, in effect, the advantage of an early substantive hearing of the claim.”*

143. Although I have found that none of the grounds were reasonably arguable, this does not of itself equate to hopelessness for obvious reasons: if it were otherwise, costs would regularly be awarded in the respondent’s favour upon attendance at an oral renewal, when such an order is the exception rather than the rule. However, I have found that a number of the grounds were not just not reasonably arguable, but hopeless. They have also been persisted with in a manner which I have described above as demonstrating a complete lack of discipline, leading to the imposition of a limited CRO. The numerous iterations of documents and applications in the pursuit of the appeal, and its oral renewal, together with the citation of false authorities have all undoubtedly added to the burden on the Court and the Respondent.
144. I regard it as in the interests of justice that the Applicant’s approach is marked with a costs order against her. However, taking account of the fact that not all the points taken were ‘hopeless’, I consider the appropriate balance is that the Applicant is to pay 75% of the reasonable costs incurred by the Respondent, to be assessed on a standard basis if not agreed, from the date of Sheldon J’s order refusing permission on the papers (including any costs dealing with the CRO). There shall be an interim payment of £7,500 on account.