Neutral Citation Number [2023] EWHC 616 (SCCO)
Case No: SC-2021-APP-001319

IN THE HIGH COURT OF JUSTICE
SENIOR COURTS COSTS OFFICE

Thomas More Building
Royal Courts of Justice
Strand, London WC2A 2LL

Date: 9/03/2023

Before :

COSTS JUDGE LEONARD

- -

Between :

MISS CATHRYN HULME	**Claimant**
- and -	
HANDLEY LAW LTD	**Defendant**

- -
- -

Gordon Exall (instructed by **Zen Law Solicitors**) for the **Claimant**
Gurion Taussig (instructed by **Handley Law Ltd**) for the **Defendant**

Hearing dates: 29 and 30 November 2022

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....

COSTS JUDGE LEONARD

Costs Judge Leonard:

1. Between March 2014 and 21 June 2021 the Defendant, a firm of solicitors incorporated as a limited company, represented the Claimant in a clinical negligence claim in the County Court at Manchester. On 21 June 2021 the Defendant terminated its contract of retainer with the Claimant. On 14 September 2021 the Defendant delivered a final Bill of Costs dated for the work undertaken on the Claimant's behalf.

2. The Claimant says that the Defendant is not entitled to any payment for its services because the Defendant wrongfully ended the retainer. That is the issue addressed by this Judgment.

The Retainer Documentation

3. The terms of the contract of retainer between the Claimant and the Defendant are set out in several documents. A "client care" letter of retainer dated 26 March 2014 and sent by the Defendant to the Claimant on that date enclosed a number of documents including what appears to be a standard form incorporating notice of the right to cancel and explaining matters such as potential heads of claim and ATE insurance ("the Cancellation Document"); a Conditional Fee Agreement ("CFA"), also dated 26 March 2014; the Defendant's standard terms and conditions; and the Law Society's "Conditional Fee Agreements, What You Need to Know" Leaflet. The CFA expressly stated that it was to be read in conjunction with the other three documents.

4. The retainer letter, under the heading "Funding", provided:

> "If you are unsuccessful with your claim you will not have to pay any costs to this firm **except**… where this is found to be a fraudulent claim or the allegations are substantive enough to mean that we are unable to continue to represent you… when you fail to co-operate with us and we have to stop working for you in which case we have the right to charge you for the work which has been done at the hourly rate set out in the terms and conditions attached and for expenses incurred on your behalf…"

5. The Cancellation Document incorporated a brief explanation of the Qualified One-Way Costs Shifting (QOCS) regime applicable in personal injury cases, including this warning:

> "There are other situations however where the Defendant's Costs are not limited to the amount of damages you recover. Some of the situations are reasonably clear e.g. if you conduct your case unreasonably or your claim is misconceived or fundamentally dishonest, but other situations are less clear and may depend on future court rulings.…"

6. The standard terms and conditions included these provisions:

> "A CFA is an agreement between you and us (commonly known as a 'no win no fee' agreement) which means that we will not seek our costs from you if we lose the case… It is important that you understand the CFA. If you breach the terms of that agreement or make a fraudulent claim then we will seek our costs from you. The basic conditions (recommended by the

> Law Society) are attached to the draft CFA included in these papers. We would urge you to read that document carefully before proceeding further…"

7. Under the heading "Instructions":

> "We shall proceed on the basis of the instructions we have received from you and rely upon you to tell us as soon as possible if anything occurs which renders any information previously given to us incorrect, inaccurate or incomplete… In circumstances where our instructions are terminated or we cease to act for you, we will be entitled to receive payment for our reasonable charges…"

8. Under "Termination":

> "We may end this agreement (and therefore cease acting for you) in relation to any matter or all matters of yours but only on written notice and for good reason. Examples of a good reason included where you have not given us sufficient instructions… or where we reasonably believe that the relationship between you and us has broken down. If your matter does not conclude, or we are prevented from continuing to act because of our legal obligations or professional rules, we will charge you for any work we have actually done. Our charges will be based on our hourly rates set out in this agreement… If we cease acting for you we shall (where relevant) inform the court… that we no longer act for you and shall apply to be removed from their records. We may charge you for doing so…"

9. The Law Society leaflet, under "What do I pay if I lose?", said:

> "If you lose, you pay your opponent's charges and disbursements. You may be able to take out an insurance policy against this risk…"

10. Under "Your responsibilities", it provided:

> "You must… give us instructions that allow us to do our work properly… not ask us to work in an improper or unreasonable way… not deliberately mislead us… co-operate with us… go to any medical or expert examination or court hearing."

11. Under "What happens if this agreement ends before your claim for damages end" the leaflet said:

> "We can end this agreement if you do not keep to your responsibilities. We then have the right to decide whether you must… Pay our basic charges and disbursements including barrister's fees but not the success fee when we ask for them; or… Pay our basic charges and disbursements including barrister's fees and success fees if you go on to win your claim for damages…"

12. On 31 March 2014 the Claimant signed a document headed "Client Confirmation of Information" which incorporated the following statement:

> I confirm that I have read and understand… The Client Care Letter of Engagement and attached documents… The Conditional Fee/ Contingency Fee Agreement…"

The Defendant's Account of Events

13. Dr Victoria Handley, a solicitor and a director of the Defendant, managed the Claimant's clinical negligence claim. She has given evidence for the Defendant. This is Dr Handley's account of events, supplemented by extracts from the Defendant's files.

14. The Claimant's clinical negligence claim was issued on 8 February 2017. It related to continence surgery performed on 16 December 2010. The Claimant contended that she had not been properly advised as to her reasonable treatment options or their associated risks and benefits. Her case was that had she been properly advised, she would have undergone a different procedure, so avoiding a serious nerve injury which she had sustained in the course of treatment. The nerve injury had caused serious and ongoing sensory and motor symptoms in the groin, leg and lower limbs, as well as severe, constant pain in the vagina, groin and legs. Her pleaded case, to which she appended a statement of truth on January 15 2019, read:

> "The Claimant's incontinence has worsened. Before her… operation she did not suffer from stress incontinence, now she suffers from urgency and large volume urge incontinence on a daily basis. She can neither stand nor walk without leakage. She voids more than 20 times a day and has 3-4 episodes of nocturia. She suffers from constant pain in both groins and shooting pains down both legs as far as her knees. Her pain is exacerbated by simple activity such as walking. She experiences pain on intercourse, this has caused relationships to break down. Her partner of 8 years has left her. The Claimant feels constantly tired and ill, her condition dominates her life. She now takes pregabalin, amitriptyline, codeine, diazepam and tramadol, all as a result of her condition, Further treatment is unlikely to resolve her pain… She has retained her employment but can only work part-time, her salary has reduced accordingly and she claims for that loss of salary on an ongoing basis."

15. The employment referred to was with British Airways, for whom the Claimant worked as an air stewardess. I have not seen the full body of pleadings, but from a counterschedule served by the Medical Protection Society ("MPS") on 18 June 2021, the Claimant's pleaded case as at June 2019 would appear to have been that, due to the level of pain she experienced, her hours and therefore her salary had been reduced by two thirds and that she struggled to undertake part-time work.

16. It would also appear that in a schedule of loss dated 26 June 2019 the Claimant claimed past loss of earnings of £95,159; future loss of earnings of £359,513; loss of pension of £61,460 (a total of £516,132); and fertility treatment in the sum of £62,850. This however was dropped entirely in a further schedule served on 4 February 2021. According to Dr Handley, the Claimant then limited her special damages claim to costs such as dog walking, cleaning, ironing, decorating and gardening. According to the June 2021 counterschedule those heads of loss were quantified at £110,667.60 and included care costs.

17. It is not in issue that at about the end of February to mid-March 2018, the Defendant prepared a witness statement for the Claimant which stated that she had a mobile spray tanning and lash business from which she earned approximately £60 per week.

18. According to the Claimant, this statement was signed on 28 February 2018 and it reflected numerous discussions with Ruth Thomas, one of the fee earners whom I believe handled the Claimant's case before Dr Handley took over in 2018. According to Dr Handley, it was dated 16 March 2018. It would appear to have been retyped following amendments made by the Claimant, but not signed.

19. Dr Handley says that the Claimant further instructed the Defendant that by 29 October 2018 she no longer undertook beauty work and that she did her beauty work primarily for her family but she was no longer doing so as she was finding it hard enough to undertake her work for British Airways.

20. This is recorded in an attendance note dated 29 October 2018 produced by the Defendant. It records a call to Dr Handley by the Claimant in which Dr Handley expressed some concerns about changes of evidence on the Claimant's part and about medical records which did not appear to support the Claimant's case and the Claimant, a month after her mother's death, became very upset. The note concludes with this paragraph:

> "She is constantly off work with BA due to her groin pain - I will need to send authority for those records if we are to instruct expert accountant to prepare report - asked about the Beauty £60 - she was not doing that - not done it since 2012 - she did for family – hoped it would turn into something but did not - finds it hard enough to work for BA with the groin pain - these are the records we need then if we are to claim LOE."

21. On 5 November 2018 the Claimant returned to the Defendant a questionnaire about her losses which, again, made no mention of a beauty business. She confirmed that her employer was British Airways. Against the question "Did you give up work completely?" she answered "no but I will have to soon".

22. On 8 January 2019 Mr Simon Jackson, a consultant gynaecologist, provided a Condition and Prognosis report on the Claimant, whom he had seen on 13 December 2018. He recorded the Claimant's statement to the effect that she had continuous groin pain, shooting down as far as both knees, and that she felt constantly tired and ill, constantly exhausted from lack of sleep and pain, and that her medical condition had taken over her life. Under "occupation" he recorded the Claimant's position as a stewardess with British Airways, her hours and salary having reduced by two thirds due to her condition. There is no mention of any other occupation or income, and he records that the Claimant, who used to go out every weekend, now stays at home. Mr Jackson also noted that the Claimant had been given a disabled badge due to incontinence at the supermarket, which she described as the "only place she goes these days".

23. The Claimant then saw Dr Sharma, a consultant in Pain Medicine, on 21 February 2019. Dr Sharma produced a report on 4 March 2019. He noted severe pelvic and vaginal pain and referred pain in the lower abdomen, buttocks and lower limbs, sufficiently severe, according to the Claimant, to make it difficult to go upstairs. He

reported that the Claimant "believes she can work part time", although he had some concerns about whether she could sustain her job long term without significant periods of sickness absence. Under the heading "Claimant's account of the impact of her symptoms" and the sub-heading "Work" he reported:

> "Mrs Huhne worked as a British Airways cabin crew full time at the time of surgery in 2010. She became part time in 2011 as she struggled at work. In April 2017, she has been under occupational health review because of severe pain. She took time off work because of ill health and was on 33% contract due to pain. She is due back at work on 33% contract from March 2019. Her mum has not been well and hence Mrs Huhne was off work to look after her and she passed away in September 2018. The stress of frequent shorter European flights with frequent take offs and landings and moving trolleys within the cabin worsens her pain and incontinence. She believes she can cope better with long haul flights instead. She believes she will be able to return to her 33% contract in March 2019 and may be able to work full time if she was offered long haul flight contract…"

24. Under the sub- heading "Activities of Daily Living" Dr Sharma reported:

> "Mrs Hulme has difficult standing, sitting or lifting because she wets herself. She is fearful of long journeys because of fear of incontinence. She gets wet even when she is getting in and out of a car and movements are painful. She has not used any crutches or appliances. Today she drove for this consultation which took about 30 minutes. She plans to drive back alone. She has a cleaner and struggles with household chores. She cannot hoover or iron because of severe pain. She cannot walk her dog and has someone else instead. She can slowly wash and dress herself, but she must put on her socks slowly otherwise her pain is worse. She can walk for about 10 minutes, but she reports to be in a lot of pain afterwards…"

25. Under the sub-heading "Leisure" he reported that

> "she is unable to do any leisure activities…"

26. The Claimant completed a pain questionnaire for the consultation with Dr Sharma. Against the question "what is your job" she answered "Cabin Crew". I guess the question "are you working at the moment" she answered "No". There was no mention of any beauty business.

27. On 24 May 2019 the Claimant saw Dr Scott, Consultant Psychiatrist, who produced a report on 23 June 2019. With regard to the Claimant's employment with British Airways, Dr Scott reported:

> "she stated she has also been given notice of termination of her post and felt this is like 'the end'. She fears this loss as she has a good job and cannot see a future without it. She believes she can manage to work with the current 33% contract as this was her way of coping."

28. Dr Scott's report records that "Financially she receives income from rental property…" but there is no mention of a beauty business or any other source of income.

29. On 26 June 2019 the Claimant confirmed to Dr Handley by email that she had lost her job at British Airways and that her termination date was 5 July 2019.

30. The Claimant liaised with Frenkel Forensics for the purposes of an Expert Accountancy Report dated 27 June 2019, the purpose of which was to quantify loss of earnings and pension for the Claimant's clinical negligence claim. The report and its appendices run to some 36 pages and focus entirely upon her employment as an air stewardess. There is no mention of any other business.

31. On 12 September 2019, Dr Handley sent an email to the Claimant asking whether she had managed to get other employment and what her plans were in that respect. The Claimant replied by email on 16th September:

> "I have completed some training in beauty as this was my job before I started working as cabin crew. About 2007 1 started a lash business up but never really did anything with it. I would like to re start that and have recently done a course. However due to the nature of my illness I have currently have a fit note off my Dr which says I am able to work possibly 2-10 hours each week depending on my level of pain. I have a pip meeting next week, as just recently I have been walking with a stick due to the pain I am in in my hips and legs and I'm struggling to get about. I have been for a recent interview with the job centre and they agree, I am not going to find employment at the moment as I cannot predict a good day or a bad day, Therefore my only option would be to do my beauty treatments on days when I feel well enough to work and this would have to be home based as I need to be able to lie down asap if I have a bad pain attack. I've always been honest about my should pain with all the experts I have seen, but my medical records confirm that I had the should pain at the time when I was still holding down a full time contract, so I agree there is an element of that in there, but absolutely nowhere near on the level of pain I am in down below. I hope this is all the information you need…"

32. I believe that the reference to "should" pain here is to chronic shoulder pain resulting from a shoulder injury sustained at work in about 2012.

33. During a conference on 11 November 2019 with Mr Sharma and counsel, the Claimant stated that she was taking an unfair dismissal claim against British Airways in the Employment Tribunal. This, says Dr Handley, was the first occasion that the Defendant had been notified that the claimant was making more than one claim for lost income.

34. On 26 November 2019 the Claimant contacted Dr Handley following receipt of a Defence from the MPS, along with an offer to the effect that the Claimant should discontinue the claim. According to Dr Handley's note of the conversation, the Claimant was upset about the offer, saying that the operation had ruined her life and that the defendants (or treating physicians) wanted to get away with it. The Claimant

said that she was not working as her pain was too debilitating. She could not walk well and was using a stick.

35. On 11 January 2020 Dr Sharma produced a report (subsequently reprised for disclosure in November 2020) following a further examination of the Claimant on 2 January 2020. In his report he summarised his observations from examinations of the Claimant on 21 February 2019 and 2 January 2020. As at 21 February 2019 he reported:

> "Mrs Hulme walked slowly and was leaning forward and could not straighten up displaying pain behaviour. She displayed significant distress throughout the consultation and often was tearful. She struggled to sit straight and had to frequently reshuffle… Mrs Hulme was assessed on an average day and generally in a week she has 2 bad days and the rest are average. She does not report any good days."

36. As at 2 January 2020 he reported:

> "She was very distressed and displayed significant pain related distress and pain behaviour and was tearful and feeling sick... She walked with a limp using a Rollator…Towards the end of consultation, she was able to walk to her car park area using a rollator but was walking very slowly and with a limp leaning on to rollator."

37. According to his January 2020 report, the Claimant reported that her pain had worsened in the period between the two examinations:

> She has not used any crutches but now uses a rollator if going out for more than 100 meters… She has a cleaner and struggles with household chores. She cannot hoover or iron because of severe pain. She cannot walk her dog and has someone else instead. She can slowly wash and dress herself, but she must put on her socks slowly otherwise her pain is worse. She can walk for about 10 minutes, but she reports to be in a lot of pain afterwards... She is unable to do any leisure activities though in the past she would go for a run and attend gym activities."

38. Dr Sharma's 11 January 2020 report included in this paragraph:

> "Mrs Hulme in August 2019 has trained as a beauty therapist. The course was over five weeks period involved five modules and carrying out make-up on clients. She had to sit and stand and change her posture frequently. She thought she managed her training well. She now believes that she can work self-employed with the flexibility afforded as some days she is better from than others. She is now on Disability Living Allowance."

39. He anticipated, however, continued further deterioration in the future to a point where the Claimant might struggle even with self-employed role as a beauty therapist. She was, he thought, likely to become more disabled and deconditioning to the point that she would require significant help with not only day-to-day household chores but also help with self and personal care.

40. On 2 April 2020 the Defendant and Claimant discussed her case by telephone following a conference with Mr Sharma, who had apparently suggested that the groin pain suffered by the Claimant could have been psychological in origin. Dr Handley's note records what must have been a rather difficult conversation in the course of which the Claimant became upset. The note records the Claimant saying that a reference in her pre-surgery medical records to dyspareunia was something that an abusive partner had made her say, and a warning from Dr Handley that the Claimant's lack of openness about aspects of her life could be used against her. Dr Handley suggested that the true value of the claim might be between £10,000 and £40,000.

41. According to Dr Handley's note, the Claimant confirmed that she was "happy to drop" her loss of earnings claim, that she understood "double recovery" (a reference, I believe, to duplicated claims in the clinical negligence and Employment Tribunal proceedings). When challenged by Dr Handley on the inconsistency between her clinical negligence case and an unfair dismissal claim against British Airways based upon the proposition that she had been fit to work, the Claimant became angry and said that it was her union's idea to press on with the claim, not hers. The Claimant also stated that she was walking with a frame and that she had no skills other than as a stewardess and needed to retrain.

42. A series of further attendance notes made by Dr Handley between 2020 and 2021 records a number of significant conversations with the Claimant. A note dated 11 June 2020 records the following conversation:

> "She is exploring being a foster carer and doing an eye lash course
>
> Asked how she could do this with the pain and immobility and she agreed but will be seeing what the courses entail and what the foster carers say. She hopes that if she works from home it may be the answer and with a child being at school all day she could rest.
>
> She is unable to do anything at present. She feels so let down by BA as she loved that job and that was all she ever wanted to do. She does not know what she will do with herself.
>
> Advised her to speak to the hospital about her deterioration and what treatment they can give and then see. She feels depressed as she has no skills or qualification and air stewardess is all she knows what to do."

43. A note dated 16 October 2020 reads:

> Calling Client to .... to go through the draft statement and add information
>
> In her previous statement she included £60 per week beauty work – she said she was not earning that at the time and told the fee earner -it should not be in the statement - she did lashes in 2007 before she joined BA but then had to give it up
>
> Advised important to add anything and everything to the statement
>
> Employment case still proceeding - she did not have an update

> Pain is just as bad as ever - uses a stick - finds it difficult to go up stairs. Got tearful."

44. On 20 October 2020 the Claimant signed a witness statement which referred to the loss of her employment with British Airways and said that she had worked part-time for as long as she could, but made no reference to any beauty business.

45. On 10 November 2020 Mr Jackson updated his condition and prognosis report after a telephone consultation on 2 November. Under "Mobility" he reported:

> "Ms Hulme states she has to walk with the aid of a stick-on wheels which she calls a 'rollator'.
>
> She states she can walk anything between 0 and 200 metres depending on whether it is a good or a bad day. She 'tries to get the dog to the end of the street'.
>
> She states all of these symptoms came on after TVT-O, prior to the TVT-0 she states she was able to run 10 kms for recreation."

46. Under "Occupation" he reported:

> "Ms Hulme used to work as a stewardess for British Airways. Ms Hulme stopped working in July 2019 when she was dismissed. She has been unemployed since then. There is an industrial tribunal scheduled for November 2021 for unfair dismissal."

47. Under "Social & Recreation" he reported:

> "Since her surgery she has stayed at home. She watches television and is in bed by 8.30pm."

48. The Claimant mentioned beauty work to Dr Andrew St Clair Logan, a Pain Management Consultant instructed by the MPS, at an examination on 15 January 2021. Dr Logan, in a report dated 12 June 2021, observed that the Claimant appeared to have difficulty in walking a distance of 25 yards, using a crutch. He said that the Claimant had told him:

> "She worked as Cabin Crew in British Airways. She reports that she lost her job in July 2019 and then did beauty treatments self employed but she struggled to do this, both due to the pain and also due to the subsequent arrival of the Covid pandemic."

49. On 1 March 2021 the Medical Protection Society wrote to the Defendant requesting disclosure by the Claimant of documents including "Details of the self-employed beauty treatment work the Claimant described to Dr Sharma (paragraph 3.6.1 of his report, 27 November 2020) and to the Defendant's pain expert, Dr Logan, including details of accounts and earnings; DWP records relating to her claim for Disability Living Allowance (paragraph 3.6.1 of Dr Sharma's report, 27 November 2020)"

50. Dr Handley says that by March 2021, the Defendant had made contact with OP Parsons, the solicitors who were bringing the claim for unfair dismissal. They did not know of the clinical negligence claim and had no idea about the Claimant's groin pain and how that had allegedly impacted on her life. They provided the Defendant with a schedule of loss for her employment claim dated October 2020. It was for £75,000. It appeared to Dr Handley that the Claimant had been pursuing a clinical negligence claim for debilitating pain which prevented her from working at the same time as she had been pursuing a claim for unfair dismissal and discrimination which had stopped her from working.

51. On 2 March 2021 Dr Handley telephoned the Claimant to discuss the MPS disclosure request. Her response is recorded in Dr Handley's attendance note of that date:

> "She will call me about employment when she has spoken to her solicitor - she has deteriorated and feels very victimised by the request for information. Got upset in the call. Could not think straight about the information needed and will need to get back to me.
>
> She does not have any beauty certificates - there is nothing to disclose. It was not a business. She wanted to learn a skill to see if this was an option for her after losing her job but it did not go anywhere."

52. Later on the same day, the Claimant called Dr Handley back. Dr Handley's attendance note records what appears to have been a rather difficult conversation:

> Call from Client, she has a call out for the solicitor in employment tribunal - she was upset that she is being called into question – she goes with the flow and did not think about the dual claims - she did not know what point she became unable to work - how could she – she did not know what claim she was making to the employment tribunal was all about or what damages she was seeking of the basis for the same. She was sacked after her mother died and the union persuaded her to pursue a claim.
>
> Explained she needed to find out what the Claim is about - at the time of the claim she may have been seeking her job back but look at what she had told Jackson, Scott and Sharma and the Defendant experts facts about her deterioration - she uses a rollator and crutch now -so could not claim she was able to work
>
> Katie got upset and defensive - explained that she is the only one to know how she deteriorated in health and when - she said she had the walker for 5 years and that she has to crawl up the stairs to go to the bathroom - which contradicted the fact she was able to work for BA as an air stewardess and bringing a claim against them about not being able to work - she said she works past the pain and then has to take time off for it - agreed that in the past that may have been the case but her claim was for debilitating groin pain then she loses her job - so if she cannot climb the stairs then she cannot be claiming for lost employment - surely?
>
> She says she is only claiming for not going through the 'consultation period but in the past it was for lost earnings (hence she could not claim in this

> claim for the same thing) - 1 said 1 did not do employment law so I don't know what damages she could claim for then for breach of consultation period - she urgently needs to find out what her claim is about and send details to me.
>
> Explained the counter factual case seems at odds - in this case she can't work due to groin pain in that case she can... she said that is not the case and she told the solicitor that - she said she just signed as her union suggested it - told her to find out as she has trial in this case Oct and trial in employment in Nov and she needs to know what she is talking about and needs to be clear to us about the situation with her BA employment Claim.
>
> Katie kept saying she did not know, getting upset and frustrated -she is on a lot of pills and these make her not think straight
>
> Explained that she cannot in cross examination say she 'does not know' to questions - they will just say if you 'don't know what happened last year then how come you know about not being warned about pain etc in 2010".... they will use her inability to give a straight answer against her
>
> - she was emotional and upset - explained she needs to understand the issues that she signed to sue British Airways and disclose the documents - they may be fine or they may show a contradiction – until she understands that she cannot get upset about it - we need to know what is happening in order to advise and represent her."

53. On 9 March 2021 Dr Handley again telephoned the Claimant to discuss the disclosure sought by the MPS. Dr Handley's attendance note records this conversation:

> "… she worked as a part time beauty therapist years ago - Facebook mainly called Hulme Katie - she rented a space at Peace and Post between 2011-2012 and this closed down and she then went to The Gatsby 2012.
>
> She rented a chair 2 days per week when she was not flying. She would take about £20 per client for eyelashes - only a couple of clients – mainly family and friends - She feels she has told us this already - Advised that we did not know - the Defendant Solicitors wanted documentation which we did not have.
>
> I will send her form of authority to get the information.
>
> She did an online course for 5 weeks which as a refresher recently and she thought she may be able to do this work - this was for lash extensions - then the pandemic hit and she has been unable to do any work and her health deteriorated so much it is just not possible.
>
> She was very upset at not being able to remember everything we are asking and felt hugely under pressure - she does not know things and this is due to her medication and feels put on by the Defendant and us – she stated that from 2014 to date her life has changed so much and she cannot remember

> everything - which is why we were helping her get it straight and to bring it up to date for the disclosure.
>
> She was very upset and started shouting so I suggested that we leave the conversation there and I would email her the list.
>
> She felt that no amount of documents would change her injury.
>
> She was very angry to find out that there was a trial date this year and she had not known and her cleaner knew and but her - advised we had written to her about directions and the trial window last year and we wrote to her when we knew the exact date this year - 1 would send her that correspondence again."

54. Dr Handley wrote to the Claimant on the same date:

> The Defendant has sought information about your beauty therapy course and business that you ran 2 days per week up to 2018.
>
> It appears from our conversation that you had hoped to return to this business towards the end of 2019 when you left British 'Airways but then due to -the pandemic you have been unable to. We have advised them that you did not work-following completion of the course. However we anticipate that they will seek information about your intentions to work and thus ask for the following information.
>
> Please can you provide the following information:
>
> 1 . All accounts for the business Hulme Katie
>
> 2. The receipts for the rent of the chair to 'Peace and Post' and 'The Gatsby' or record of payments.
>
> 3. Copies of the tax returns filed.
>
> 4. Your on-line course certificate in 2019 for the lash course.
>
> 5. The date you ceased work.
>
> 6. The monthly or weekly salary at the time of the absence.
>
> 7. Have you got intentions to begin work as a beauty therapist post lockdown?
>
> a. If yes, please confirm where and when.
>
> b. If no, please confirm why
>
> If you wish to discuss the above then please get in touch."

55. On 17 March 2021 the Claimant sent an email to Dr Handley confirming that she had returned the forms of authority; advising that she had re-read her witness statement and that it was accurate; emphasising that she was making no claim for a loss of

earnings, and referring to an occasion when she had to be taken by ambulance to hospital due to being unable to move. Her email included this passage:

> "When I was sacked I had no idea that my pain will become so debilitating and my circumstances would change so significantly. Yes I do occasionally have good days where I am able to get dressed and try to forget that I don't live a normal life, but those days are very few and far between. Back then they were a lot more frequent…"

56. The Claimant emphasised that she was not claiming for loss of earnings but for the loss and pain caused by her treatment, including her inability to have children, which at times had left her feeling suicidal. She attached pictures which she said were from May 2020 showing her being taken from her home by ambulance due to an inability to move caused by pain. She did not mention the beauty business, and Dr Handley continued to pursue her for documentation.

57. On 30 March 2021 the Claimant sent two Certificates in beauty therapy she had obtained in 2019. Dr Handley requested financial information pertaining to the beauty business and the Claimant replied by email stating

> "I don't have any information, do you mean as in an appointment book? it was not that kind of business that I kept any books, I would literally use text messaging if I ever did any beauty work it was only ever a small 'side line'… The only documentation would be with Hmrc…"

58. On 18 June 2021 the MPS served upon the Defendant the counterschedule to which I have already referred. It was accompanied by the report of Dr Logan to which I have referred, as well as reports from Mr Parkinson, a Consultant Urologist who had interviewed the Claimant on 16 November 2020 and Dr Cutting, a consultant Psychiatrist, who had interviewed her on 26 January 2021. The Claimant had mentioned to both experts her loss of employment with British Airways BA job but not a beauty business.

59. The MPS also served a witness statement, with exhibits, from Haley Ho of Netwatch Global Limited, which had been instructed by the MPS in November 2020 to investigate the Claimant's online activity. Ms Ho's witness statement exhibited extensive social media posts by the Claimant and other public records.

60. The documents exhibited to Ms Ho's statement included the following.

61. A company search recorded the incorporation on 10 October 2019 of "By Kaso Limited" (company number 12253925), an active limited company of which the Claimant was a director, its business being described as "Hairdressing and other beauty treatment".

62. A report from the Manchester Evening News dated 11 December 2020 pictured the Claimant and a woman described as her business partner, Sophie Dumville, outside "By Kaso", a fully appointed beauty salon in Monton, a village in the Greater Manchester area.

63. The report described the Claimant as "an established celebrity lash artist" who had "opened her salon and academy at the start of 2020 with her business partner…" The report quoted the Claimant is saying that she had taken out loans and applied money left to her by her mother in order to realise her dream of opening up her own training academy, and describing the salon as her mother's legacy..

64. The focus of the report was the detrimental effect of Covid-19 restrictions upon the Claimant's business. It stated that the " salon and academy" had been opened by the two business partners at the beginning of 2020, but had had to close after only 11 weeks due to lockdown. The report was focused upon the Claimant's complaint that unnecessary restrictions on close-contact services were causing continuing damage, quoting her as saying, "I face closing the door on my business"..

65. The report featured photographs of the Claimant (not Ms Dumville) carrying out beauty treatment work with the use of masks and protective clothing. A government grant had, it said, allowed the Claimant and her business partner to manage so far, despite outgoings of £2,300 per month, but there was no more money to pay the rent and the Claimant complained of "living off soup". At the possibility of further support she was quoted as saying "… We don't want any more from the government, we just want to be able to work. The first push back was frustrating, but the most recent one, to be given less than 24 hours' notice when we had clients booked in, it was gut wrenching…".

66. The report, which said that the Claimant had contacted 150 "other therapists in similar positions", was promoted on Facebook by the Claimant, with a link to an online petition.

67. Ms Ho's witness statement also exhibited a copy of a "Tik Tok" video published by "@bykasogang" featuring the Claimant, in the foreground with Ms Dumville behind her, both performing a short and simple dance routine, on what would appear to have been the "By Kaso" premises.

68. Pictorial exhibits to Ms Ho's statement indicate that the Claimant was employing and training staff at the "By Kaso" premises and included a picture of the Claimant apparently comfortable in a suspended semi-spherical plastic chair, tucked in with raised legs in a posture that indicated that she was capable of a degree of agility.

69. Ms Ho's statement also exhibited extracts from social media posts by the Claimant herself and by "Lash and Brow Boutique" indicating that the Claimant had been running a beauty business since about 2013. They included a Facebook posting by the Claimant on 26 April 2016 stating that she was now fully booked until 26 May and stating "If you are a regular client I would recommend that you book at least 3 appointments in advance as I don't want to let any of you down…"; a posting from 7 July 2016 stating "I've had another cancellation at 10 AM tomorrow, so it is up for grabs for 2 hours… After that it is going. And I get my first Friday lie in in a LONG TIME…"; a posting from 14 March 2017 stating "When your packing for a holiday & you look at your appointment book & just know if you don't pack it your going to wish you had when clients start texting you with forgotten dates/times of their appointments…"; a posting from 4 May 2017 reading "I am very sorry if I had to cancel/rearrange your appointment this week… but my mum (and my health) has to come first… I have even offered to work Sundays to accommodate!"

70. A Facebook posting from 8 November 2017 describes "Lash and Brow Boutique" as a growing business; "… I'm really pleased to announce that from December I will have yet another amazing Lash technician working alongside me at @lashandbrowboutique original at the amazing ever growing @aurorahouseofbeauty". A posting from 15 September 2018 thanks clients for cards, flowers and support, comparing them favourably with "relatives".

71. Postings continue into 2021. They include an Instagram advertisement for a live Facebook workshop on Lash technique on 25 June 2020 (which the Claimant, on cross-examination, confirmed that she had run); a price list for services from 27 November 2020; a Lash and Brow Boutique "meet the team" webpage from 10 December 2020 showing the Claimant as a "Master Lash Artiest and Brow Technician" supported by a "Junior Lash Artist"; a reference on 3 January 2021 to building "a small team of women" involved in a scented candle business, who were making between £50 and £2,000; an announcement that "@lashandbrowboutiqueandacademy" was posting dates for training courses in April, June and July 2021 "after what is essentially an entire year"; and an announcement on 16 February 2021 that the Claimant had been selected by "@hairandbeautyawardsUK" as a finalist in 3 categories including "Best salon decor", commenting "it is amazing it to be recognised by the industry that I have spent nearly 10 years in…".

72. The same posting makes a further reference to the scented candle business; "During this pandemic I haven't been able to earn anything from lashing however… last September… I was still earning money from my "side hustle" there was no need for me to get up at 6 am… no need for me to commute on long journeys…"

73. On 25 February 2021, "@lashandbrowboutiqueandacademy" advertised Lash courses "fully accredited with ABT Therefore fully insurable… You will also have access to a Facebook support group and we also offer a 15% discount on al @lashbase_uk products for all of our students…"

74. On 7 March 2021, "@cheshirelashcompany" published an Instagram photograph depicting a search of Lash and brow boutique'. Under the caption "Let's talk training!" the post read:

> "… Before my training I made sure I did my research and found out the key points to look for in a course and ensure I was going to learn from the best lash trainer as I started my journey in the beauty industry.
>
> This is how I came across @lashandbrowboutique… Training with Katie was honestly the best decision I ever made. Her courses are all accredited by @abtinsurance therefore fully insurable.... Katie has over 10 years experience in the lash industry and it is evident that she is passionate about passing on her knowledge and experience to her students. Courses include an incredible lash kit with EVERYTHING you could need to start out & highly detailed training manuals… Katie made me feel so at ease during my trainings with small group sizes… I absolutely adore her pristine salon @bykasoltd it's so inspiring to train in such a beautiful environment with the highest standard equipment in the industry…"

75. Further Instagram posts in March and April 2021 by @scentsbykaiieh" and "@lashandbrowboutiqueandacademy" advertised scented candles for sale and lash and brow services.

76. I will interrupt Dr Handley's narrative at this point to mention that in cross-examination the Claimant's attention was drawn to a record of a DWP Universal Credit telephone interview with the Claimant on 30 March 2021 which says:

> "Cathryn has qualification in beauty and although would love to utilise them, feels not something she could do with health conditions as is unable to stand or sit for long periods. Has thought about it and would like to pursue career in teaching beauty as feels she could go at her own pace."

77. This was about six weeks after the Claimant advertised on social media her selection as a finalist in three categories as a beauty therapist, and about three weeks after "@cheshirelashcompany"'s post praising the Claimant's training and her premises, by which she can only have meant the premises of "By Kaso". It fell within a period when "lashandbrowboutiqueacademy" was still advertising lash and brow services on social media.

78. On cross-examination the Claimant did not deny responsibility for the "lashandbrowboutiqueacademy" postings or suggest that the DWP record was inaccurate. She did explain that she had actually paid £100 for her certificate as a finalist in what was effectively a sham competition, something she described as common practice in the beauty industry. She also said that "@cheshirelashcompany" was a friend's daughter whom she had given free training in return for her advertising the Claimant's services.

79. The candle business, she said, was a pyramid scheme which she had been "talked into" in an attempt to make a living during lockdown. She followed a script to persuade people to pay £300, but she made very little.

80. The covering letter of 18 June 2021 received by the Defendant from the MPS's solicitor, Mr Dixon, said:

> "You will note the social media evidence obtained by Netwatch Global Ltd indicates your client undertakes work as a lash and brow technician and that she runs her own business at commercial premises in Manchester demonstrating a far higher level of function and physical capability than the Claimant has reported to her treating clinicians, experts, the Defendant's experts and the Court.
>
> I request an explanation of the evidence from the Claimant within 7 days in order to be able to consider the position, advise the Defendant and take instructions on any further action. I put you on notice that, subject to the Claimant's response, that action might be to plead fundamental dishonesty and/or bring proceedings for contempt of Court."

81. The MPS counterschedule challenged the disclosure given by the Claimant to date and sought disclosure of documents relating to the termination of her employment with British Airways and her Employment Tribunal claim; any other claims made by

the Claimant; the Claimant's DWP records; documents relating to her application for a blue badge; documents relating to the Claimant's work as beauty therapist, as mentioned to Dr Sharma but not in her witness statement; and documents relating to her training and the setting up of any business.

82. The counterschedule also asked the Claimant to explain why her claim for loss of earnings had been dropped, and suggested that there had never been any proper basis for making such a claim. Under the heading "Credibility fundamental dishonesty" it said:

> "i The Defence set out concerns as to the Claimant's alleged symptoms and required the Claimant to prove that there were ongoing symptoms due to the TVT-O and what the level of those symptoms was/is.
>
> ii. There is now sufficient in the statements, medical reports, Schedule and documents and the shape of the claim to call further into question the Claimant's credibility. The Defendant requires the further disclosure referred to above within 7 days and will make an application to Court if that disclosure is not provided.
>
> iii. The Defendant also relies on a statement from Haley Ho of Netwatch. It appears that the Claimant has been working as a beauty therapist since well before August 2019 and that her presentation in this claim is at odds with the presentation in the Claimant's online activity. See for example exhibit HJH50.
>
> iv. The Defendant awaits the disclosure referred to above, requires disclosure by the Claimant of all photos, videos and accompanying text uploaded to her social media accounts since the index surgery, and awaits the Claimant's response to the statement of Haley Ho. The Defendant puts the Claimant on notice that his present intention is to show the statement of Hayley Ho to the instructed experts and to amend the Defence to allege fundamental dishonesty."

83. The MPS disclosure says Dr Handley, was immediately sent to the Claimant and Counsel whilst she herself reviewed the papers, reports, and correspondence. The Claimant returned a call to Dr Handley on 21 June 2021. Dr Handley's attendance records this conversation:

> "Thanked her for calling back - 1 wanted to discuss the information sent from the Defendant - wanted to see what she had to say about it
>
> She said she had a lot to say about it… she said it was ridiculous… She had nothing to hide… Social media was unrealistic… Things were posted on those days but were not from those days… They dont paint a true picture… Why is it relevant - Lady Ga Ga has pain but she is able to perform on stage - you just dont see how she feels after - she is like that - she is ill after… Picking out social media which is not accurate - she sent a photo of her going to hospital in an ambulance to me… Told us from day 1 that she had a beauty business - not told a single lie… We told her months ago about

social media and told to delete accounts and she did not as she has nothing to hide

Advised that was not true - she told us it was something she did in 2010 ish part time for friends and family - she agreed - this shows she was doing it from 2013 to present day and setting up limited company.

She never worked full time-it was not a full time job at ail -she never works there. They are promotional pictures… The business is not really a business - it is her friends business -she is helping out with social media posts only.

Explained that the MEN article - she said was just press and not her business… Asked about the limited company - she ignored the question… She has done lashes for little mix, Victoria Beckham, Petra Eccleston - she is big on social media so was asked to help - "do you know what an influencer is Dr Handley" - yes - are you an influencer - "no I am not an influencer - 1 earn nothing from this - 1 have only 10K followers… I raised my friends profile - 1 am doing a favour for a friend she is not a business partner

Explained how the information contained demonstrates that she was working and had premises and had an academy with students saying how good she was and that she was in the MEN - she felt all that was just promotion of her friends business - she was doing her friend a favour - explained that favour then has had disastrous consequences for her case as it painted a picture which is diametrically opposed to her case.

She told the experts and the Defendant experts nothing about the beauty business or that she was able to work - she said she cannot work and a photo of her standing does not show that the next minute she is in pain… She invited the Defendant to wait outside her house to see how often she leaves the house - 1 explained that they may well already have done that given the investigations they have undertaken She needs to provide an explanation for this information and it may be that they are content with her explanation but we are not as she has not told the truth to us when asked repeatedly for information -in fact she told us the part time work ended in 2011ish which was 10 years ago - whereas according to this she was working for the last 10 years doing BA flying and beauty.

Explained that Counsel Gurion Taussig had looked at the information and decided he could no longer act for her

We can no longer act for her - she confirmed in March that she did not have a beauty business and had not done it since 2010 - 2012 and it was just a chair she rented for friends - she could not explain anything other than this.

We have advised the ATE and they are withdrawing cover as FD has been raised - explained FD - if she has been earning an income from the business and received benefits that may be at odds. She said she did not earn anything at all - the business was £50k in debt

> Explained that according to her she did not have a business. It did not add up. I had fought very hard to bring the claim and this is disastrous.
>
> The Defendant solicitors needed an explanation and she needs to provide a firm explanation. Her unwillingness to explain to us is not going to help… They may be seeking a discontinuance but they are still able to proceed with fundamental dishonesty (explained the same) - can she see how it is diametrically opposed - no - she is in pain all day every day and social media does not pain the true picture.
>
> Explained that we needed to file the notice of change and will send it to her to sign and if not then we will make an application to the court… She said that I did not have faith in her and have not had for some months - she did not want me to represent her and the call was closed.

84. Dr Handley says that she considered the Claimant's instructions carefully. The Claimant had not, in her view, provided a coherent or reasonable explanation for the social media posts, training academy, beauty rooms, limited company documents or the Manchester Evening news article. The Claimant's claim that "By Kaso" was not her business was, she concluded, plainly untrue as the Claimant was a Director of By Kaso Ltd and had duties under Company law. Her allegation that the social media posts were "lies" and that her article with Manchester Evening News was untrue was either itself a lie, or, if true, demonstrated that the Claimant was prepared to lie for financial gain.

85. The Claimant wanted the Defendant to advance her argument that the social media posts were a "lie" as a defence to MPS's allegation of fundamental dishonesty. Dr Handley, mindful of paragraph 1.4 the Solicitors Code of Conduct: "You do not mislead or attempt to mislead your clients, the court or others, either by your own acts or omissions or allowing or being complicit in the acts or omissions of others (including your client)…" did not believe that she could do so.

86. Dr Handley says that she found herself unable to argue properly, and in accordance with her professional obligations, that the Claimant's social media posts were not true; to refute the setting up of a limited company; to explain the training academy or press coverage; and how the Claimant, whilst allegedly suffering with chronic debilitating pain and using a crutch and rollator, was able to run two careers simultaneously until July 2019 and thereafter a beauty business and training academy.

87. Dr Handley concluded that the MPS's allegations of fraudulent conduct and fundamental dishonesty against the Claimant were, by reference to the terms of retainer, "substantive enough"' to justify termination of the retainer by the Defendant. She also considered there had been a breakdown in confidence and that she was unable to obtain proper instructions.

88. Dr Handley sought confirmation from Counsel and the ATE provider as to whether the explanation put forward by the Claimant was reasonable or logical. Counsel did not consider the Claimant's explanation reasonable or logical and was not prepared to act further on CFA basis. The ATE provider, relying on its policy terms excluding

liability "for fees or costs arising from a fraudulent, exaggerated or dishonest claim", withdrew cover.

89. Dr Handley terminated the Defendant's retainer by letter dated 21 June 2021. She provided the Claimant with a notice of change, which the Claimant refused to sign, so she applied to the Court to be removed from the Court record as acting on behalf of the Claimant in the clinical negligence claim. Her application was served upon the Claimant and was unopposed. The order was duly made.

90. Under cross examination Dr Handley confirmed that the letter from MPS enclosing the counter schedule and other documents arrived on Friday, 18 June 2021. She immediately sent copies to the Claimant so that she and the Claimant could both consider the documents over the weekend and she could hear what the Claimant had to say on Monday 21 June. Having spoken to the client on that date, she considered the Claimant's disavowal of any involvement in "By Kaso" and her dismissal of her social media posts as untrue or unreal, to be an inadequate and not a credible response. It was at that point that she copied the MPS letter and enclosures to the Claimant's ATE insurer, which withdrew cover without any input from Dr Handley herself.

91. On a 14 December 2021 the Employment Tribunal dismissed the Claimant's unfair dismissal claim against British Airways. The Tribunal's judgment refers to chronic pain from a shoulder injury sustained at work, but not to pain resulting from surgery. The three Tribunal members stated bluntly in their judgment that they did not believe the Claimant's account of purported bullying from her line manager, whom the Tribunal found to have addressed difficult issues in a courteous manner. The Tribunal found that the Claimant was prone to exaggeration in her evidence, and that her contention that her line manager was a bully was misleading.

The Claimant's Evidence

92. The Claimant has filed a witness statement, some of which comprises legal argument based upon the terms of the retainer. This does not belong in a witness statement, and it tends to undermine the credibility of any lay witness's statement because it indicates that it has been drafted by lawyers, rather than, as it should as far as practicable, being in the witness's own words.

93. The Claimant also attempts to offer evidence on the link between emotion, grief, fibromyalgia and chronic pain to which I cannot attach any weight because that would be a matter for expert evidence.

94. I will however summarise what the Claimant offers by way of factual evidence in support of the proposition that her contract of retainer was wrongly terminated by the Defendant.

95. The Claimant refers to the medical evidence prepared in support of her damages case. She says that she has eight years' worth of medical records relating to her pain and has had in the region of twenty hospital visits for treatments. She has also been registered with a pain clinic for most of that time. She is recognised as disabled as a result of her pain. The DWP has seen her on several occasions and confirmed that she struggles to walk and has a disability. It cannot be the case, she argues, that some social media entries which

do not portray the reality can hold more weight than the evidence of medical professionals.

96. The Claimant denies having ever exaggerated nor been fraudulent throughout this entire process or that she concealed what she describes as "my side beauty business". Nor, she says, did she ever fail to cooperate with the Defendant.

97. Chronic pain, she says, is not something that people want to post on social media (although she has exhibited to her witness statement a number of postings that record at least some very difficult and painful days). It is, she say, classed as an "invisible illness" and is discriminated against.

98. The Claimant says that from the time her mother died in 2018, Dr Handley was fully aware of her grief for both her mother and her cat and the loss of her career of over 25 years, and the impact that had on her mentally and physically. She trusted Dr Handley to guide her, she was deeply vulnerable and was in no state to make legal decisions. She was not in the best state of mind to handle the complexities of the case and therefore unable at times to state her position consistently. On occasion, she says, she may have provided inaccurate or partial information from memory which was not helpful however it was never her intention to mislead. She was at worst a poor historian.

99. As the stress and the time over which the claim ran took its toll, the Claimant's mental health has, she says, deteriorated. She had also been a strong medication for both her pain and her mental health problems. This, she says, should have been a consideration when the Defendant considered whether any of her instructions were incomplete or even inaccurate at times due, as the Claimant puts it, to lack of capacity rather than any deliberate intention to mislead.

100. The Claimant says that Dr Handley continually told her that when she had medical appointments she should only discuss her "worst case scenario", even if those symptoms had resolved. She says that it felt at the time like coercive behaviour, and was recorded in a telephone conversation not long after her mother had passed away, where she was typing out the Claimant's statement (I think that this must be a reference to a partial transcript of their telephone conversation on 16 October 2020, when Dr Handley was working through the Claimant's witness statement with her shortly before signature on 20 October).

101. This is also, says the Claimant, documented in one of Dr Handley's letters (which I do not believe the Claimant has produced). The Claimant felt that she was being "railroaded" and she struggled this behaviour due to her deteriorating mental health.

102. The Claimant blames Dr Handley for insisting that the claim be continued regardless of the Defendant's concerns, and refers to an email sent by Dr Handley to the Claimants on 11 March 2021 in which Dr Handley stated that she did not believe that there was any cause for concern with regard to the disclosure sought by the Defendant, but that disclosure was necessary so as to demonstrate that there were no credibility issues affecting the claim. This, says the Claimant, was despite Dr Handley's being aware of the Defendant's evidence and the attendant risk to the Claimant.

103. The Claimant says that it should have been clear to Dr Handley when she sent her email of 17 March 2021 that she was in no fit state to continue with the claim. Dr Handley

never, she says, properly explained the risks of pursuing the matter. Given the allegations raised by the Medical Protection Society, Dr Handley should have undertaken a further risk assessment and advised accordingly "instead of advising me to continue regardless".

104. Even the CFA, says the Claimant, was never properly explained. At no point was the issue of exposure to the Defendant's costs discussed. The Claimant was only advised that it was a 'No Win No Fee' arrangement and that if she were not successful then there would be no fees to pay.

105. With regard to her beauty business, the Claimant says that the Defendant failed to ask relevant questions regarding the beauty business despite being fully aware from the outset that she was able to undertake some beauty treatments as a side business, on a part time basis, when her pain allowed.

106. She says that she discussed that with Ruth Thomas and Dr Handley from 2014 onwards on numerous occasions. She mentioned that she had qualifications in relation to the business going back to 2009 and that she undertook such work on a part time basis. She signed the witness statement of February/March 2018, which she corrected to show that she had never run a mobile tanning business, only a lash business through which she earned £60 per week. She specifically denies saying on 29 October 2018 that she no longer ran a lash business.

107. Nor, says the Claimant, did she ever suggest to the Defendant that she was so debilitated that she was unable to do anything at all. The Defendant never made any careful note of her instructions in this respect and did not take any prudent measures to ask for further information or ensure that the medical experts were instructed to ask about her capacity to undertake this work. If asked about her beauty business by the experts, she would have volunteered the information.

108. When she referred to "work", the Claimant was referring to employment. She saw the lash business as a separate matter, as would have been clear from what she said on 16 September 2019. Similarly her references to being unable to work and having to re-train referred to a full time career, not her part-time business. At the time she had no other formal qualifications.

109. With regard to her witness statement of 20 October 2020, the Claimant does not deny that Dr Handley advised her that it was important to add anything and everything to the statement. She says however that she had already made Dr Handley aware of her beauty business on numerous occasions and assumed that she had that information, so there was no need to specifically mention it again. As she had previously given that information and was not asked again about this by Dr Handley during their discussion, then it was as a matter of course left out of the October 2020 witness statement. Had Dr Handley asked her for an update on the beauty business, the Claimant would have given her all of the information she needed.

110. The Claimant blames the Defendant's alleged lack of care in relation to her beauty business for an application for costs made against her by the MPS after the Defendant ceased acting for her. She says that the Defendant reassessed prospects of her claim and realised that the risk had increased on account of the matters disclosed by the MPS in June 2021 disclosure and their own lack of proper preparation of her case, and then

looked for a reason to attribute blame to her, being determined to cease acting for her at that stage no matter what explanation and evidence she provided.

111. The Claimant says that the Defendant has refused to disclose copies of correspondences sent to the MPS which would show whether or not they actually advised the MPS of her part time business, and that she would like to see the letters of instruction to the Claimant's experts to see whether they made any reference to her part time business. She complains that the Defendant has refused to disclose its file, so that she cannot check it against what Dr Handley says.

112. The Claimant says that at the time Handley Law came off record, the MPS had simply disclosed documents and evidence with a request to respond with an explanation. There was no formal allegation of Fundamental Dishonesty and no application to the court had been made to amend its Defence. She blames the Defendant for writing to the ATE Insurer in terms suggesting that her claim was dishonest and exposed her to having to pay for all the disbursements which the Defendant is not claiming from her. Had the Defendant acted appropriately, she says, the ATE Insurer would have paid.

113. As for By Kaso Limited, the Claimant does not deny in her witness statement that she told Dr Handley on 21 June 2021 that it was her friend's business, not hers (although I understood her to do so on cross-examination). She says however that she invested in the business and had no practical involvement at all. She had not, at the time, earned anything from the business. Her association was the use of her name or brand, which had accumulated some social media recognition due to her undertaking some work for celebrity clients. The business, she says, is currently not trading.

114. The Claimant also says that she was pressurised into claiming loss of earnings, notwithstanding her instructions from the outset that she had no intention of making such a claim. She refers to a letter dated 28 February 2018 addressed by Dr Handley to the Claimant which in itself refers back to a conversation with a Mrs Paul on 6 February 2017. The letter states that the Claimant advised Mrs Paul that the only financial loss sustained by the Claimant, for the purposes of her clinical negligence claim, was the cost of buying painkillers twice a week and that she had no claim for matters such as loss of earnings, travelling expenses, missed holidays or care costs, and continues:

> "if this is not correct can you please contact us and we will ensure that we note any additional losses on the file".

115. The Claimant says that the documents submitted by Handley Law become gradually more focused on the loss of earnings aspect of the claim despite her instructions that she did not wish to pursue that head of loss. She believes that the Defendant saw an opportunity to increase the value of the case, notwithstanding her instructions, and that at the time she went along with the advice being given to her by the Defendant.

116. The Claimant also says that Dr Handley did not always accurately record her instructions: in fact, that she was incapable of listening and typing at the same time (most if not all of her telephone attendance notes appear to have been typed in the course of the call). She says that in their telephone discussion of 16 October 2020, she said twice that an assault on her by a passenger whilst employed by British Airways did not go to court but that Dr Handley noted that she had received £45,000.

117. The Claimant also says that 16 October 2020, she stated that she signed the consent form for her surgery but did not recall any discussion about complications, whereas Dr Handley typed, incorrectly, 'I don't recall signing the consent form'.

Conclusions: The Claimant's Medical Problems

118. I do not doubt that the Claimant has experienced, and (as medical evidence exhibited to her witness statement demonstrates) continues to experience severe physical and psychological distress, including pain which seems, on the expert evidence, itself to have a major psychological element. She is entitled to every sympathy for those problems, which may well distort her judgment and her perception of events. It does not follow that she is not to be held responsible for what she says and does. On the evidence that has emerged in these proceedings, I cannot avoid the conclusion that the Claimant has been overstating the effect on her of her medical problems and underplaying her active role in the beauty business, first to support her damages claim and then to resist the Defendant's claim for costs. I will explain that conclusion.

Conclusions: The Defendant's File Record

119. It is one of the duties of a solicitor undertaking litigation to keep a written record of instructions from a client. Telephone or face-to-face discussions are normally recorded in attendance notes, which have the dual purpose of recording the client's instructions and, when it comes to the recovery of costs from an opponent, supporting the costs claim.

120. It also serves another purpose. Where, as in this case, there is a dispute and a conflict of evidence between the solicitor and the client, the file record will play a critical part in the determination of the facts.

121. It does not follow that a file record will always be accepted as accurate. It may be shown to be inaccurate, even deliberately so.

122. In this case, I have to decide whether the Defendant's file record is, as the Claimant says, inaccurate in critical respects or whether it can be relied upon as a contemporaneous record of events. My conclusion that it is a reliable record derives first from the fact that Dr Handley's attendance notes are supported by other contemporaneous records and second that its accuracy is vouched for by its creator Dr Handley, whose evidence generally I find to be credible, whereas (for reasons I shall give) I find the Claimant's evidence generally not to be credible.

123. One difficulty faced by the Claimant in her attempts to discredit Dr Handley's file record is that by her own account she was, after her mother's death in September 2018, so distressed and in such poor health as to lack the capacity to make decisions. Now however she claims to have sufficient recall of key conversations held at the time, to be able to challenge the accuracy of Dr Handley's notes on the detail of what was said. The two contentions are not consistent.

124. I have seen nothing to substantiate the contention that Dr Handley was unable to take accurate notes of the Claimant's instructions. Some points of detail may have been misunderstood from time to time, but that is a normal part of the process of gathering and refining a client's evidence.

125. The Claimant's attempt to rely upon a transcript of her telephone conversation with Dr Handley on 16 October 2020 seems to me to be misconceived. With regard to the assault, the transcript records only that Dr Handley thought that she had seen a record of the case going to court and the Claimant explained that it had not. The reference to an award predates the conversation of 16 October. It appears in Dr Handley's note of 2 March 2021. Dr Handley believes that it was a CICA award.

126. As for the consent form it was Dr Handley, not the Claimant, who confirmed (evidently by reference to medical records) that the Claimant had signed a consent form and who then drew the initial conclusion, from the Claimant's inability to recall any discussion about risks or complications, that the Claimant had no recollection of signing the consent form. Four days later the Claimant signed a statement prepared by Dr Handley dealing with the consent form in terms with which the Claimant was evidently satisfied. Nor does the transcript record any suggestion by Dr Handley that the Claimant should report a "worst case scenario", whether to the medical experts or to anyone else.

127. As Dr Handley says, the transcript of the 16 October 2020 conversation produced by the Claimant is evidently incomplete. Apart from a broad assertion to the effect that she thought that Dr Handley might not be acting in her best interests (although she seems to have said nothing about that at the time, and seems to have been content to continue to instruct Dr Handley) the Claimant does not explain why she recorded the call. More to the point, she does not explain why she is relying upon a partial transcript of the conversation. Being incomplete, the transcript does nothing to contradict Dr Handley's record of the Claimant advising her (not for the first time) that she had given up lash work. Dr Handley's note is also consistent with her oral evidence to the effect that, in preparing a statement, she worked (as one would expect) from the statement given in February/March 2018, which the Claimant said need to be corrected.

128. Dr Handley's file record is supported by more than the evidence of Dr Handley herself. I refer for example to the DWP record from 30 March 2021, which records the Defendant saying in the clearest terms that although she had qualifications in beauty, she was unable to use them because of her physical condition. This is more consistent with Dr Handley's attendance notes than with what the Claimant says now.

129. The Claimant's own email of September 2019 very plainly states that the Claimant had undertaken some beauty work before she started working as an air stewardess; she had started the lash business in 2007 but had done nothing with it and would like to restart.

130. That is wholly inconsistent with the proposition that she told the Defendant that she had had a continuing lash business for years. It is consistent with Dr Handley's attendance note of 29 October 2018, which records the Claimant advising Dr Handley that she had not done any beauty work since 2012, and Dr Handley's attendance note of 16 October 2020, in which the Claimant told Dr Handley that she had done lash work in 2007 before she became an air stewardess, but then give it up, and that her previous statement to the contrary was incorrect.

Conclusions: The Claimant's Credibility

131. The matters to which I have already referred are already damaging to the Claimant's credibility. I must add to that her claim that she was never advised that she might be exposed to personal liability for her opponent's costs. Not only was she given that advice in writing, but she signed (on 31 March 2014) an acknowledgement that she had read and understood it.

132. The Claimant has over a period of years presented two very different versions of her life: one for the purposes of her beauty business and the other for the purposes of maintaining her clinical negligence claim. In the first she is a busy, successful and active beautician with long experience in the beauty industry, who at the beginning of 2020 opened her own salon, "By Kaso", with a business partner, and who (after a break brought about by the pandemic) held training sessions in 2021 for aspiring beauticians. In the second, she is disabled to the point of being unable to do more than a very limited amount of work from time to time (and on some of her accounts, barely able to leave the house). In that version, notwithstanding that she was a director and co-owner of "By Kaso" and presented publicly as the face of the business, she was really nothing more than an investor with no practical involvement.

133. In order to support the version of her life that she advanced for the purposes of the clinical negligence claim, she asserts that there is no reality whatsoever in the information she presented about herself, over a period of years, through the press and social media.

134. I appreciate that the Claimant will not have wished to advertise her health problems to customers of her lash and brow business. I accept that the Claimant presented to her social media contacts and customers a fraudulent account of being a finalist in a fictitious set of beauty awards; that the review of her training by "@cheshirelashcompany" in March 2021 was set up by her giving free training to by a friend's daughter in return for the review; and that her advertised candle business was part of a pyramid scheme (in relation to which her degree of culpability is unclear).

135. Those matters are however in themselves also damaging to the Claimant's credibility, and do not begin to show that her presentation on social media and in the press was entirely false.

136. The Claimant has admitted to treating celebrity customers Including Victoria Beckham, Jesy Nelson, Petra Ecclestone and members of the Coronation Street cast. Mr Exall for the Claimant described her business, consistently with her evidence, as a "microbusiness" for family and friends. I hope that Mr Exall will forgive my observing that he presented a very weak case as effectively as one could possibly expect, but the proposition that the Claimant could attract such clients on the back of such a business, thanks to a completely misleading social media profile, does not really bear examination. Whether the Claimant was paid for that work, or (as she says) it was done without charge to raise her profile, is not to the point.

137. The same is true of her attempts to disown the report of the Manchester Evening News and her quite evidently central role in the establishment and management of "By Kaso". Everything in the report shows her as taking the lead, with Ms Dumville in a nonspeaking supporting role. She, not Ms Dumville, is pictured demonstrating how to give treatments safely. In the Tik Tok video she is dancing in the foreground,

with Ms Dumville in the background. Even the name of the business is an amalgam of Katie and Sophie, with Katie to the fore. Her insistence that she played no active part in the business is not credible.

138. The Claimant has explained away the "@cheshirelashcompany" review of her training as not a genuine review. She has not however addressed the fact that it demonstrates that she was supplying training in "her pristine salon @bykasoltd", which contradicts her oral evidence to the effect that the only use she was able to make of the "By Kaso" premises was to treat clients without having to pay for the chair.

139. There is then the DWP record. I have already referred to the entry from March 2021. Dr Handley has referred to an Industrial Injuries Disablement Benefit form completed by the Claimant on 2 April 2018 in which she says:

> "Since my last assessment on 7th March 2016 my head injury is alright but my neck, left shoulder, depression and anxiety have not changed and are still the same. I have not had any specialist treatment and I have been discharged from specialist follow up. I was not coping at work and 1 have not worked since January 2017 and I am still off work. 1 continue having pain, anxiety and depression and I still suffer from pain, anxiety and depression every day. I take sertraline 50mg daily for depression and For anxiety and .pregabalin .... For pain relief I have difficulty lifting and reaching. I am alright showering, dressing and. driving an automatic car, I have not had any further injury or accident I have been suffering from bladder incontinence for 5 years. I do not have any other health conditions and am otherwise healthy. I still have constant pain in my neck, left shoulder and arm."

140. This entry is notable for two reasons. First, there is a clear statement to the effect that the Claimant has not worked since January 2017, with no mention of the beauty business. Second, there is no reference to the Claimant's surgery or to resulting groin pain. On the contrary, there is a positive assertion to the effect that the Claimant has no medical problems other than the shoulder/neck injury sustained at work, depression and anxiety, and an incontinence problem. Dr Handley points out that the DWP records go back to 2012 and states that there is no reference in them to gynaecological pain, groin pain or the Claimant's surgery. I have seen nothing to contradict that. The Claimant is not in a position to rely upon her DWP record: quite the contrary.

Conclusions: Responsibility for the Development of the Claimant's Clinical Negligence Case

141. Because I accept that the Defendant's file record and the evidence of Dr Handley is true and accurate, and because I am unable to accept that the Claimant's evidence generally is true and accurate, I have come to these conclusions.

142. Having revealed to the Defendant in February/March 2018 that she had some income from beauty work, the Defendant changed her position and in October 2018 advised Dr Handley that she had given it up years before. She maintained that position until

the truth was exposed in June 2018, at which point she attempted to deny the obvious, even to the extent of saying that "By Kaso" was Ms Dumville's project and not hers.

143. I do not accept that the Defendant in any way coerced the Claimant into making or maintaining a loss of earnings claim, any more than I accept that the Claimant's union coerced her into making an unfair dismissal claim. The Claimant appears to have a habit of attempting to shift responsibility for her actions on to others, as if she had no will of her own.

144. The letter of 28 February 2018 referred to by the Claimant is nothing more than a request for confirmation of instructions apparently given in 2017 to the effect that the only claim in the clinical negligence action was going to be for painkillers. Evidently that confirmation was not forthcoming, and the purported instructions of 2017 would have been entirely inconsistent with the way in which the Claimant still presents her case. As I have mentioned, even after the claim for loss of earnings and pension (pleaded at over £500,000) was dropped the Claimant maintained other claims based upon a serious degree of disability, including care costs, quantified at over £110,000.

145. On the evidence, the Claimant maintained the loss of earnings claim until Dr Handley pointed out to her that it was hopelessly inconsistent for her to maintain a claim against British Airways on the basis that she was fit to work whilst maintaining a clinical negligence claim on the basis that she was not. The only influence Dr Handley had upon the Claimant's loss of earnings claim was in persuading her to drop it.

146. Nor do I accept that Dr Handley, as the Claimant says, instructed the Claimant to present a misleading "worst case scenario" to her medical experts. As I have observed, the transcript of 16 October 2020 does not support that allegation. Her assurance to Dr Handley in her email of 16 September 2019, that she was honest with the experts about her shoulder injury, is plainly inconsistent with it. The file records show Dr Handley advising the Claimant to be as frank as she could in her evidence. The Claimant, not Dr Handley, is responsible the information she gave to the experts, and her allegation of necessity implies that she did mislead them.

147. The complaint that Dr Handley, in March 2021, was encouraging the Claimant to continue without considering the risks is another example of the Claimant attempting to pass to the Defendant responsibility for the consequences of her own actions. Dr Handley, as she should, worked on the basis that her client's account was true, and encouraged her to be frank and open with her disclosure to demonstrate that she had nothing to hide. It was not until 18 June 2021 that she realised that her client had a great deal to hide, and had indeed been hiding it.

Conclusions: The Claimant's Other Complaints about the Defendant's Conduct

148. In submissions, Mr Exall argued that the Defendant should have looked into the level of earnings derived from the Claimant's beauty business, which she describes as minimal. Dr Handley, he suggested, should before terminating the retainer have taken up the Claimant's offer to send bank statements.

149. That seems to me to be rather beside the point. The question was not what the Claimant was earning but what she was doing, and its inconsistency with what she

had repeatedly told the Defendant.

150. That aside, I find it remarkable that the Claimant criticises Dr Handley for not ascertaining the level of her earnings from the beauty business when the Claimant herself in her witness statement, has volunteered nothing about the level of those earnings (other than a broad statement that she made no money from "By Kaso"). She has disclosed no records that might substantiate what she says. It was only on re-examination that she claimed to have earned about £2,500 per annum in 2016 and 2017 (notwithstanding that she told the DWP in April 2018 that she had not worked since January 2017), very little in 2018 due to the illness and death of her mother, and just under £3,000 in 2019, with no income to speak of in 2020 or 2021 due to the pandemic.

151. Under the circumstances I can attach no weight to that evidence. The true level of the Claimant's earnings from the beauty business, as far as I am concerned, remains unknown.

152. Another complaint made by the Claimant is that the Defendant, in exercising her right to a lien over the papers, has declined to disclose her file, which the Claimant says will vindicate her evidence to the effect that she discussed her beauty business with other members of the Defendant firm before Dr Handley took over the case.

153. It is common ground that no application has been made by the Claimant for disclosure or inspection of the Defendant's file. It is unclear whether disclosure or inspection was ever actually requested: Mr Taussig for the Defendant says that it was not.

154. The issue, like that of the Claimant's income from beauty work, seems to me to be rather beside the point. The question is not what the Defendant said before Dr Handley took over her case, but what she said after Dr Handley took over. What she said then was that she had given up the beauty business years before and that any previous understanding that she had a continuing business was incorrect.

Conclusions: The Expert Evidence

155. The Claimant also cites in support of her case the expert evidence. Mr Exall submitted that the Defendant should have referred MPS's new evidence to the experts for comment before terminating the retainer.

156. I do not think that the expert evidence is at all helpful to the Claimant. On cross-examination she admitted that she had never mentioned her beauty business to Mr Frenkel for the purposes of his June 2019 report on loss of earnings, giving as her reason that it was not a reliable source of income. That is an entirely implausible explanation given the earnings to which she was prepared to admit between 2016 and 2019.

157. As for the medical experts, the Claimant's attempt to assert that it was the Defendant's responsibility to make her medical experts aware of her beauty business does not bear examination. That is first because she herself told the Defendant that she had no such business. It is second because, as one would expect, the medical experts went into the Claimant's day-to-day activities with her in some detail, extending to matters such as work, hobbies and social life. As Dr Handley said in

evidence, that was a task for them: they did not need additional instructions from the Defendant. The only credible explanation for so much of the expert evidence failing to mention the Claimant's beauty business is that the Claimant withheld that information.

158. To recap, in January 2019 the Claimant told Dr Jackson that her occupation was "cabin crew", and that she had cut her hours due to her medical condition. She did not mention a beauty business and described the supermarket as the only place where she went. In November 2020, she told him that she no longer worked for British Airways and that she did not leave the house. There was no mention of a beauty business, much less that she had opened a salon at the beginning of that year.

159. The Claimant told Dr Sharma in January 2019 that she worked with British Airways. She did not mention a beauty business. In February 2020, she told him that she had in August 2019 trained as a beauty therapist and believed that she could work self-employed. This was presented as a new development and a possible future venture, not as an accomplished fact extending back over a period of years. here was no mention of having opened a salon at the beginning of the year.

160. The Claimant did not mention her beauty business to Dr Scott in May 2019. She mentioned income from property, but not from any other source.

161. The Claimant did not mention her beauty business to Mr Parkinson or Dr Cutting, only her employment as cabin crew. She told Dr Cutting on 26 January 2021 that in April 2019 she had gone back to work for 3 days "following which she never worked again". She told Mr Parkinson in November 2020 that she had lost her job. There was no mention of beauty work, opening a salon, or offering training.

162. The nearest that the Claimant seems to have come to telling an expert that she was active in the beauty business was in telling Dr Logan, on 15 January 2021, that after she lost her job in July 2019 she undertook beauty treatments on a self-employed basis but struggled to do it.

163. This was presented to me as an example of the Claimant being frank and honest. It strikes me rather as an example of the Claimant's inconsistency in the little she did reveal, from time to time, about the beauty business. It is not consistent with what she told other experts. It is not consistent with the record of her activities. It is not consistent with the fact that she had been running her beauty business long before she left British Airways. It is not consistent with her last-minute evidence to the effect that her 2019 earnings exceeded those from previous years.

164. As for whether the expert evidence is generally supportive of the Claimant's case, I must quote this passage from Dr Sharma's report of January 2019 and repeated in his subsequent reports:

> "Pain is a subjective, self-reported symptom not amenable to independent verification. Only Mrs Hulme can know the true nature and severity of the pain that she suffers. Medical assessment and opinion rely on her being honest and reliable in providing her testimony and being genuine in presentation."

165. Dr Sharma thought that the Claimant's pain presentation had a significant psychological element, although he evidently felt obliged to include exaggeration within the range of opinion appropriate to her case. In March 2020 he noted inconsistencies between the Claimant's account of her pain and her medical records, which he felt unable to explain. It seems reasonable to conclude that he would have had to revise his view quite radically had he seen the evidence produced by the MPS.

166. Other experts also noted that the Claimant's medical records did not support her account of pain starting after her surgery. Dr Cutting, in his June 2021 report, concluded that the Claimant was exaggerating the pain in her pelvis relative to that in her shoulder.

167. Dr Logan found the discrepancy between the Claimant's account in her medical records to be so marked as to lead him to the conclusion that the Claimant's account was exaggerated He attributed that possibly to her severe distress and depression, alternatively that she had developed pain after the operation but attributed her symptoms to the operation, backdating her symptoms either consciously or unconsciously. He did not rule out the possibility of fraud for financial gain. Again, it seems likely that his opinion would have hardened significantly had he been asked to comment upon the evidence unearthed by the MPS.

Conclusions on the Termination of the Retainer

168. Dr Handley received MPS's crucial letter and enclosures on Friday 18 June 2021. She and the Claimant reviewed the documents over the weekend and she effectively terminated the retainer on 21 June 2021. The Claimant says that that was premature and that Dr Handley did not have a right to terminate the retainer.

169. My conclusion is that Dr Handley had every right to terminate the retainer when she did.

170. The one inconsistency I have identified in Dr Handley's evidence is that she says that she referred the Claimant's response to Counsel and the ATE insurer for consideration, whereas her attendance note of 21 March 2021 indicates that Counsel had already refused to act further and the ATE insurer had already withdrawn cover before she heard what the Claimant had to say.

171. I do not regard that as material. Dr Handley's attendance note of 21 June 2021 reads as if she herself had already made up her mind, but she would have been entitled to do so. Dr Handley will have been aware by then that the Claimant had repeatedly lied to her concerning her beauty business; that the Claimant's account of her physical and psychological condition was flatly contradicted by the evidence of her business activities; and that the evidence produced by the MPS in June 2018 showed a level of physical and social activity entirely incompatible with the Claimant's stated case. The Claimant's blustering response did not offer any credible explanation, but no credible explanation was really possible. The withdrawal of counsel and the ATE insurer and the termination of the retainer between the Claimant and the Defendant was inevitable, whatever the exact sequence of events.

172. Dr Handley was in my view entirely correct, on 21 June 2021, to conclude that MPS had raised allegations of dishonesty against the Claimant that were, in accordance

with the terms of the retainer, substantive enough to justify its termination.

173. It would have been clear to Dr Handley by 21 June 2021, as it appears clear to me now, that the Claimant had not cooperated with the Defendant in the management of her claim; that she had not adhered to her responsibilities under the terms of the retainer, in particular not to mislead the Defendant; that the Claimant's clinical negligence claim had consistently been pursued in a dishonest manner; that professional rules prevented the Defendant from acting for the Claimant further; and that the Defendant was entitled forthwith to terminate the retainer and seek from the Claimant payment of its costs and disbursements in accordance with the retainer's terms.

174. Dr Handley had already invested much of her firm's time and resources, on a conditional fee basis, on a case that she could no longer properly support. It was not incumbent upon her to make further enquiries or to re-instruct experts. Dr Handley was fully entitled, on 21 June 2021, to terminate the contract of retainer between the Claimant and the Defendant with immediate effect, and the Defendant is fully entitled to seek payments of its costs and disbursements from the Claimant.