

# Outer Temple

## **Cauda Claim Catastrophes – Committals for Contempt of Court!**

Outer Temple Spinal Sessions Part 1

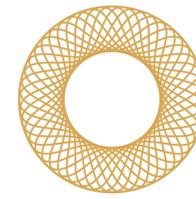
Cauda Equina Syndrome

Tom Gibson

23 June 2022



# Introduction

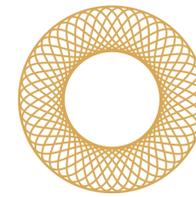


- Oscar Wilde (with apologies...):
  - “To lose one committal hearing may be regarded as a misfortune; to lose both looks like carelessness”!
- (1) Calderdale and Huddersfield NHS Foundation Trust v Linda Metcalf [2021] EWHC 611 (QB) (Griffiths J)
- (2) North Bristol NHS Trust v Holly Rebecca White [2022] EWHC 1313 (QB) (Ritchie J)
- Conclusions – are there any themes from these two cases?

# Part 1 – Calderdale and Huddersfield v Metcalf



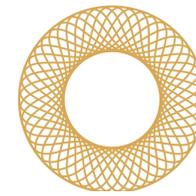
- Ms Metcalf, aged 25, attends A&E at Royal Calderdale Hospital (Halifax) on Sat 30 June, Mon 2 July, and Wed 4 July 2012
- Returns on Thu 5 July: MRI scan; “She was then operated upon” [para 6]
- Brings clinical negligence claim “as a result of a delay in diagnosing her cauda equina syndrome in 2012”.



# The Defendant's admissions

- "It was not, of course, alleged that the Trust was responsible for the original condition; but it was alleged (and the Trust conceded) that it became worse than it should have because of a negligent failure to act and diagnose more promptly." [para 6]
- "The Trust admitted liability at the pre-action stage, based on a failure of care on 4 July only... There was a formal apology and an early interim payment of £75,000 was agreed." [para 7]
- "The case proceeded on the issue of quantum" [para 8]

# What the experts were told...



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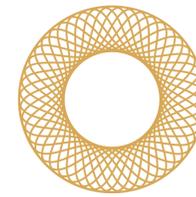
- Ms Metcalf to Denise Winks, her care expert, in March 2017 [para 10]:

10. To take just one example, on 13 March 2017 she told her care expert, Denise Winks, that:

“...her ability to take part in leisure and social events were limited due to her mobility difficulties and levels of pain. There is no reference to her trips to Fuerteventura, France, Spain, Tenerife or Thailand since she was last interviewed by Ms Winks 7 months earlier, although she did state that he boyfriend visited her at her parents’ home and she went on holiday with her family. [She] informed Ms Winks that her indoor and outdoor mobility had deteriorated to the extent that she needed to use two sticks for all walking and her walking distance was limited to approximately 30 metres. She reported that she hired a mobility scooter on outings to the local supermarket. Among other complaints, she reported that she could not sit herself up in bed on her worst days and her mother assisted with this. Her mother also assisted with washing and dressing if her pain levels were worse. [She] reported that she could not drive for more the 45 minutes due to pain.”

(Detailed Statement of Grounds para 35)

11. Subsequently, she presented her condition as even worse: for example, unable to drive at all, and only able to stand supported, without walking sticks, “for a few seconds” (21 March 2018).

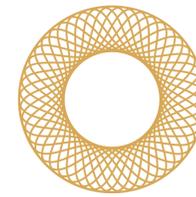


## **...what the surveillance evidence showed:**

- “The evidence took the form of covert surveillance (collected over 3 days in 2017, with further material in July 2018) and internet searches showing her travelling frequently and easily (in the UK and overseas) and walking without sticks or other assistance.”
- “A substantial amount of this footage has been played to me in court.” [para 17]

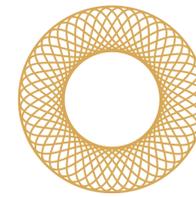


- iii) On 30 July 2018, she went to Scarborough for an appointment with one of the experts, Professor MacFie (Statement of Grounds para 78). Before the appointment, she walked to the Grand Hotel and stood in the reception area for over half an hour, unaided. She was then driven to Professor MacFie for the consultation, where she transferred from the car into a wheelchair brought with her, which she was not seen using in any of the surveillance video of her in Stockport and Scarborough earlier in the day. She left his consultation rooms in the wheelchair and was driven back to Scarborough Promenade where she walked unaided to a restaurant. On leaving the restaurant, she walked along the promenade, without using a wheelchair or sticks, for about 20 minutes. She returned to her hotel and climbed the steps to go in without using the handrail. The use of the wheelchair and sticks when she was in or near the premises of experts she was misleading about the extent of her disability was not only unnecessary: it was obviously part of a plan, and I have been shown it adopted on video on more than one occasion. To the examples shown on the video, must be added the many other cases set out in the Agreed Chronology and the undisputed Statement of Grounds.



# What happened next...

- 31 Jan 2019: Ms Metcalf serves schedule claiming £5,712,773.40
- “The Trust served on Ms Metcalf’s solicitors on 4 February 2019 evidence that her claims were based on lies, and her presentation of herself was a fabrication.” [para 17]
- 9 April 2019: amended defence, alleging fundamental dishonesty
- Reply: “signed by Ms Metcalf personally, she denied fundamental dishonesty and reaffirmed reliance “upon the full witness statements, expert evidence and other evidence served on her behalf””.



## **“Her position was, however, hopeless”**

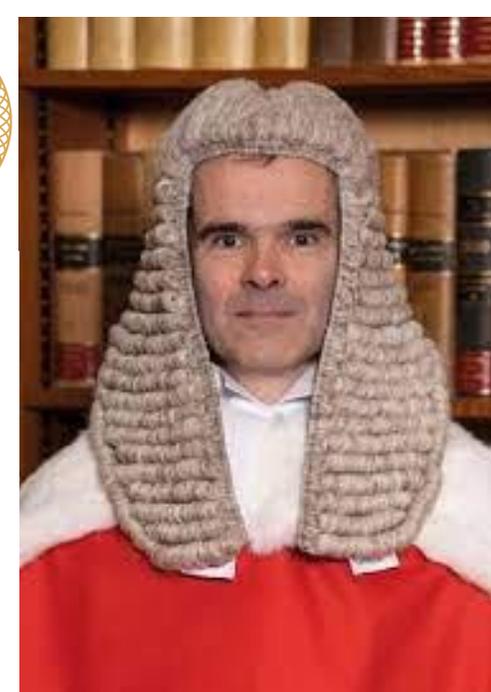
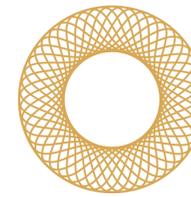
- Trial listed for September 2019
- 10 June 2019: failed JSM
- “she agreed on 18 June 2019 (3 months before trial, 4 months after disclosure of the evidence against her, and nearly 4 years after she had begun her dishonest contempts of court in pursuit of a fraudulent claim) that her claims should be dismissed because of fundamental dishonesty and to repay the interim payment of £75,000” [para 19]

# The committal proceedings

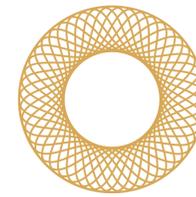


- “The Trust issued and served a claim form seeking permission to bring committal proceedings in March 2020.”
- “Ms Metcalf’s solicitors admitted contempt on her behalf almost immediately, on 14 April 2020, and consented to the bringing of committal proceedings.” [para 20]
- Final hearing, in Leeds, before Griffiths J on 11 February 2021

# Griffiths J:

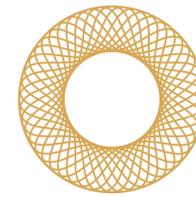


13. Her dishonesty, had it not been discovered, would have extracted millions of pounds from the Trust and, through them, from the funding of the National Health Service. An attempt was being made on a vast scale, over a period of years (between October 2015 to January 2019), systematically and shamelessly to pervert the course of civil justice with a view to financial gain. Whilst some damages were, no doubt, legitimately recoverable by reason of the Hospital's admitted negligence, it is agreed that they would have been in the region of £350,000, and yet her claims, based upon the extreme disability which she falsely alleged, were in excess of £5.5 million. She lied to a total of 13 different experts on 19 different occasions and she signed various statements of truth to matters which were not true.
14. In addition to the potential losses of up to £5 million to the NHS through the Hospital had her dishonesty not been discovered, she accepts that, as a result of her actions, both solicitors and counsel "have lost a lot of money" (first affidavit para 42). They worked on her behalf to pursue a complex claim on a conditional fee funding basis which has come to nothing because of the fundamental dishonesty of her case.
15. She has also involved members of her family in supporting and confirming what now turn out to be false statements and presentations, although they are not being separately pursued.



# The sentencing (in brief)

- Maximum of 2 years imprisonment
- "...the number of contempts, and the range of deliberate (not reckless) conduct, covering false statements of truth and the manufacture of false evidence by systematically deceiving expert witnesses on both sides, taken with the long period of time over which they took place, and the millions of pounds at stake, claimed from a National Health Service entity whose resources are fully committed to the health and welfare of patients, place Ms Metcalf's conduct in the upper bracket of the scale."
- Starting point of 18 months [para 30]



- Mitigating features [para 30], including:
  - She had a genuine claim but has lost compensation. “She has also paid back the interim payment of £75,000, which was not an easy thing for her to do given her limited financial resources”.
  - Poor health (though difficult to determine the extent...)
  - No previous convictions
  - Admitted the lies (though see below)
  - The mother of a young child, now 2 years old
- Reduce 18 months to 9 months; down to 6 for full admissions
- Not suspended: “Appropriate punishment for faking evidence in support of a claim inflated by some £5 million can only be achieved by immediate custody”. Release after 3 months. [para 34]

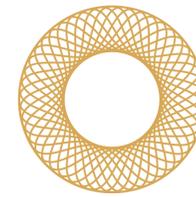
# Part 2 – North Bristol v White



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- Miss White, age 18, “working as a care assistant and/or trainee nurse for BUPA in a nursing home in Bristol” [para 6].
- Past history of IBS; her mother had had cauda equina syndrome with self catheterisation and anal irrigation.
- Apr 2011: “she strained her back helping an old lady out of a chair and the back pain lasted 2 weeks”.
- 17 May 2011: “reported to her GP that she suffered some urinary leakage since the February of that year but had no lower back pain”.
- 19 May 2011: “called her GP complaining of lower back pain which was thought to be related to the UTI” [para 9].

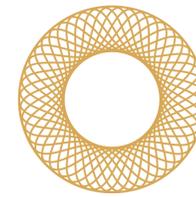
# Medical history



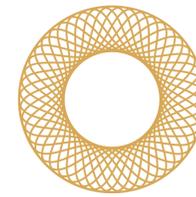
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- 16 June 2011: GP phone call, "continued to complain of urinary leakage and lower back pain which, by that stage was going into her left leg".
- 20 June 2011: GP, "complaining of lower back pain and informed her GP that her mother had suffered a slipped disc resulting in CES. The lower back pain was going into both her left and right legs."
- 25 July 2011: GP noted "faecal incontinence on holiday in Tunisia and she had lower back pain going into her left foot and urinary leakage."
- 12 Aug 2011: "the GP again noted increased lower back pain going into her left leg but no numbness around her bottom."
- 26 Aug 2011: "upset due to her lower back pain and her concern that she herself might be suffering CES". Referred to Frenchay Hospital in Bristol for an MRI. Perineal area "normal at that time".

# Treatment by Def



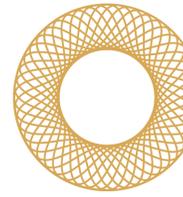
- 18 Sep 2011: attended A&E “complaining of leg pain and lower back pain. The leg pain being in both legs and running into her feet. There was no examination for CES and she was discharged because she was awaiting an MRI. No neurosurgical review took place.”
- “This was the genesis of the clinical negligence claim.” [para 10]
- 8 Oct 2011: presents with “lower back pain and increasing leg symptoms”. An MRI scan “disclosed the disc prolapse”.
- 11 Oct 2011: “decompression at L4/L5 for a central disc prolapse”



## C's claim

- "Miss White alleged that the CES led to three main areas of symptomatology: firstly her bladder; secondly her bowel and thirdly her left ankle which she asserted was weak. Ancillary to the bladder and bowel sensation issues Miss White alleged that she could no longer enjoy any feeling during sex." [12]
- Sep 2014: claim form issued. The particulars "alleged that the Trust had been negligent by failing to refer her for a neurosurgical assessment on the 18th of September 2011 and further asserted that had that referral taken place she would have been offered a spinal operation within 48 hours which would have frozen her symptoms in time and prevented any further deterioration." [27]
- Sep 2015, defence: "liability was denied, as was causation". [28]

# The liability settlement



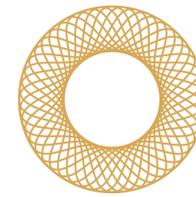
- "29. The trial of the preliminary issue relating to liability was listed for the 22nd of May 2017, however before that date the parties reached agreement to settle liability on a 50:50 basis and that agreement was approved by His Honour Judge Cotter (as he then was) on the 5th of May 2017. The Trust was ordered to pay costs of 82,000 pounds to Miss White's solicitors relating to the liability issue. The settlement covered causation of CES but did not cover causation in relation to the extent of the symptoms claimed by Miss White arising from CES.
- 30. Directions were then given in relation to evidence needed on the quantum of the claim.
- 31. The Trust made three interim payments to Miss White totalling 45,000 pounds, the first in June 2017, the second in March 2018 and the third in October 2018."



# Meanwhile, in the real world...

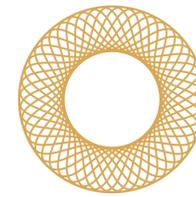
- 2011: 3 months off work after surgery. “The medical notes in November and December 2011 included statements by Doctors that her bladder and bowel were normal although Miss White disputed those notes. In December 2011 an MRI was taken which showed no continuing prolapse and no nerve root compression.” [13]
- Jan 2012: returned to work, worked FT for 6 months [14]
- Mar 2012: MRI scan “disclosed multi level disc disease with prolapse at L2/L3 but no compression. At this time Miss White was complaining of pain in her back, going down her left leg and some numbness” [15]
- Aug 2012: “urodynamic tests because she was not voiding her bladder properly”. Sep, “advice on how to self catheterise”.

# Progress (continued)



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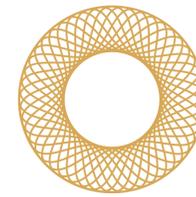
- July 2012: she had “given up work by September 2012 having reduced her hours in July 2012, however it stands as a fact that she had worked as a care assistant full time from January to July 2012.” [17]
- By Dec 2012: self catheterising six times a day [from notes].
- Benefits: claiming “since 2012, including income support, disability living allowance (both components) and housing benefits. She was provided with a Motability vehicle”.
- June 2013: son born
- Feb 2014: 2<sup>nd</sup> spinal operation, “an L5 nerve root decompression. It was her case that this made no difference to her bladder and bowel symptoms. The notes disclosed that her bladder and bowel sensation were reduced substantially after that operation.” [20]



# Progress (continued)

- Feb 2015: "an MRI scan showed L4/L5 disc problems" [22]
- Apr 2015: using bowel irrigation system by this date [23]
- "late 2017": "increasing right leg pain" [24]
- Feb 2018: 3<sup>rd</sup> spinal operation, "a revision discectomy at L4/L5". This "was successful in relieving the right leg pain". Discharged from physiotherapy Apr 2018. [25]

# Back to the quantum claim:



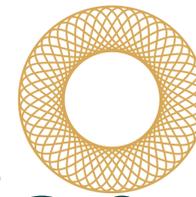
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- Feb 2016 w/s: "still in a lot of pain and her left leg felt weak". [42]
- Nov 2017 w/s: despite notes (from Nov-Dec 2011) saying "normal bladder", "normal bowel function", and "normal perianal sensation", she had "continued to self-catheterise five or six times per day ever since [Sep 2012]". [43-44]
- Bowels insensate; numb in genital area, no pleasure from sex
- "she used one elbow crutch whilst walking outside"
- "lifting one of her son's toys or sitting for 30 minutes led to a significant increase in pain"
- "her partner did all of the cooking, washing, clothes washing, cleaning, gardening, and shopping".
- "she could wash and dress herself but did sometimes need help with socks and shoes".



# What C's experts were told (in brief)

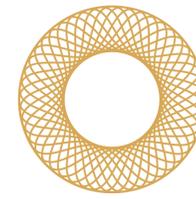
- Mr Todd, neurosurgeon (examination Jun 2018): C said she "had weakness of her left foot and ankle with regular falls; cruised the furniture at home for support and outside walked with one elbow crutch held in the right arm and had a maximum walking capability of 20 steps before she had to stop and rest." [47]
- Ms Winks, OT (Aug 17, Jun 2018): "On the first assessment, due to reports of extreme pain on walking and weight bearing, there was not much mobility. On the second assessment Miss White walked short distances also reporting extreme pain" [50]
- Dr Munglani, pain medicine (Oct 2017 and May 2018): "She told him that she can walk with her crutch for roughly 20 steps and then has to stop due to pain in her lower back and her leg. She stated that walking was "completely wonky"." [52]



# D's neurosurgeon's examination

- Mr Jellinek, neurosurgeon (reported Nov 2018): C had “described left sided sensory disturbances at the T8 level of the thoracic spine which Mr. Jellinek said were absolutely incompatible with a CES injury at L4/L5.” [55]
- “As to the motor neurological deficits in 2015 and again in 2017 when he examined Miss White he found unequivocal and clear *organic inconsistencies* in the presentation of her left leg. He had observed Miss White walking in the hospital towards and away from his examination and yet when he formally assessed the strength of her left ankle the power was zero out of five, indicating no movement whatsoever.
- “He compared that examination with Mr. Todd's examination in June 2018 showing the left ankle power to be five out of five. Both could not be right.”
- “Therefore Mr. Jellinek stated that he could not provide an organic explanation for the apparent profound motor deficit of the left leg.”

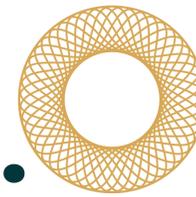
# Schedule – and surveillance



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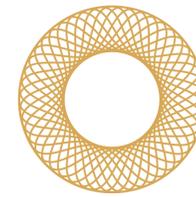
32. Miss White's schedule of loss was signed on the 10th of August 2018 and claimed £4.1 million excluding pain and suffering, so I work on the basis that the claim was for between 4.2 and 4.3 million pounds. She would of course only recover 1/2 of any damages assessed to be due as a result of the settlement on liability. The schedule included a claim for lifetime loss of earnings; substantial property adaptations due to substantial mobility symptoms; future medical treatment costs; future care and case management (claimed at over £2 million).
33. In October of 2018 the Trust instructed surveillance agents to video Miss White and they carried out surveillance between the 11th of October and the 26th of October. That surveillance showed Miss White visiting Tescos, Sainsburys and a Variety store called B&M. She drove to and from these stores, getting in and out of her car freely and easily. She walked around the stores without any apparent limp, slowness or disability. She bent down and sorted through clothes in the back of her car. She bent down and looked at calendars in the Variety store and she walked with a dog on a lead carrying various items. It was apparent to any objective observer of those videos that Miss White's complaints made to various medical and other experts and reproduced in the experts reports, signed by those experts under CPR part 35 with statements of truth, were false and misleading.

# After the surveillance evidence...



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- 11 Dec 2018: videos disclosed. D offers “that she withdraw her claim with no costs order made. This offer was not taken up.” [34]
- 17 Jan 2019: w/s, “setting out similar assertions to those that she had made all through the claim and asserting that she had not been dishonest despite seeing the video.” [35]
- Further expert comments, e.g. “deliberately misleading” [Todd, 49]
- 13 Feb 2019: C offers to have the claim dismissed with no costs on either side; D refuses to accept. [36]
- 15 Feb 2019: D’s counter schedule “pleading fundamental dishonesty”. Claim quantified at around £34k plus generals, so around £80k to £150k on 100% basis (before the 50% deduction). [37]
- 28 Feb 2019: C’s solicitors come off record. [38]



# The end of the civil claim

39. On the 18th of March 2019 the Trust applied to strike out Miss White's claim for breaches of various Court orders.
40. On the 8th of April 2019 His Honour Judge Gore QC struck out the clinical negligence claim for Miss White's failure to comply with directions and ordered her to repay the interim payments of 45,000 pounds. A costs order was made against her but because she had QOCS protection it was not to be enforced. I have seen counsel's note of the hearing and Miss White was clearly contrite during that hearing and did not oppose the striking out of her claim realising dishonesty had been identified.
41. As a result of the way that Miss White had run her clinical negligence claim the Trust had paid out 82,000 pounds to her solicitors on the issue of liability; 45,000 pounds in interim payments which are unlikely ever to be repaid; 57,000 pounds odd to the Compensation Recovery Unit and approximately 170,000 pounds in costs to their own legal team.

# The contempt proceedings



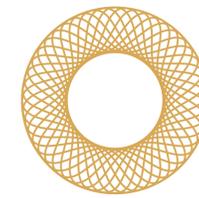
- Feb 2020: Trust's claim form issued
- Jun 2021: permission granted for contempt claim (COVID delays)
- Correspondence; only partial admissions, excluding allegations "of dishonesty about pain" and about "intention and knowledge"
- Listed for 3-4 day hearing in May 2022; Trust's application supported with solicitor's affidavit and "witness statements from 10 expert witnesses"; 7 experts required for cross-examination
- "The night before the hearing Miss White agreed a clarified set of admissions" [58], including false statements to 4 experts (incl Todd, Winks, Munglani) – and in her Jan 2019 w/s

# Ritchie J:

## Findings of fact

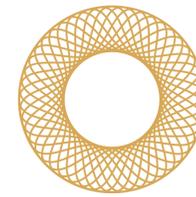
59. On the basis of the admissions set out above I find as a fact that between May 2018 and January 2019 Miss White dishonestly and intentionally made false statements to four experts who were reporting to this Court on her physical condition. Further I find that those statements were made knowing that they would interfere with the administration of justice by potentially increasing her entitlement to compensation arising from her increased clinical negligence claim. In the context of a claim for around 4.3 million pounds I find beyond reasonable doubt that the false statements relating to Miss White's mobility had a value of at least 1,000,000 pounds gross on Miss White's own schedule and probably substantially higher than that.
60. In relation to Miss White's witness statement to which there was attached a statement of truth dated **17th January 2019** I find beyond reasonable doubt and on her admissions that she continued to propagate lies about her state of mobility as set out in the admissions with the same purpose: to increase the damages she might be awarded by this Court. I consider that the reason why the witness statement is important in these proceedings is that it was provided after the surveillance videos were disclosed. For Miss White to make further false statements in the face of the surveillance evidence and the opinions of her own medical experts compounds the dishonesty that she had practised from 2018. That behaviour showed a lack of insight towards the Court and the tax payer who funds the Trust and towards justice itself.





# Sentencing

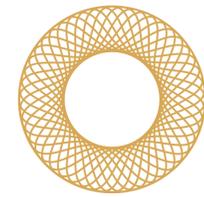
- See the very helpful review of the law in Ritchie J's judgment (see paragraphs 61-79 and Appendix 1, on 11 comparable cases)
- Audience Poll: what should the sentence be?
- (Accepted custodial sentence; 0-2 years maximum; suspend or not?)
- (Mitigation includes 9 year old son, lost clin neg claim, physical challenges, psychiatric report, and delay since 2019)
- Option 1: 12 months, immediate
- Option 2: 9 months, immediate
- Option 3: 6 months, immediate
- Option 4: 6 months, suspended



# The result

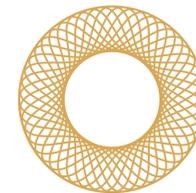
- Ritchie J: starting point is 12 months' imprisonment [97]
- Reduced to 6 months as a result of the mitigation [98]
- Not appropriate to suspend, weighing up the factors [99-104]
- Result: "6 months immediate imprisonment", with entitlement "to release after serving one half of the sentence (3 months)" [105-106]

# Conclusions (over to you!)



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- No themes at all?
  - Just two extreme examples of dishonest claimants?
- Committal proceedings for contempt, brought by the NHS after clinical negligence claims: a growing area?
  - Calderdale v Atwal, [2018] EWHC 2537, was “the first of its kind pursued by the NHS” [Ritchie J’s Appendix 1]
  - 4 more from 2019 to 2022 (so far!), including Metcalf and White.
- Cauda equina claims: might they be relatively high risk for dishonesty, surveillance evidence, and contempt of Court claims?
  - Very serious but not ‘clear cut’ catastrophic injuries; seven-figure schedules?



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***The End***