Neutral Citation Number: [2024] EWHC 2487 (KB)

Case No: KA-2023-000086

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 02/10/2024

Before :

MR JUSTICE SHELDON

- -

Between :

ANDREW REYNOLDS	**Appellant**
- and -	
CHIEF CONSTABLE OF KENT POLICE	**Respondent**

- -
- -

Stephen Simblet KC and Sarah Hemingway (instructed by **GT Stewart Solicitors**) for the **Appellant**
Mark Ley-Morgan (instructed by **Weightmans LLP**) for the **Respondent**

Hearing dates: 1-2 July 2024

- -

Approved Judgment

This judgment was handed down remotely at 10.30am on 2 October 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE SHELDON

Mr Justice Sheldon :

1. Andrew Reynolds, the Appellant (I shall refer to him as "the Claimant[1]"), was found by the Canterbury County Court to have been falsely imprisoned by officers of Kent Police from 2.25pm on 20 December 2015 to 6.30pm on 26 December 2015 and to have been assaulted by them. The trial judge, Her Honour Judge Brown, found, however, that Mr Reynolds had been fundamentally dishonest within the meaning of section 57 of the Criminal Justice and Courts Act 2015 ("the 2015 Act"), and directed that Mr Reynolds should receive no damages and that his claim should be dismissed. Had that ruling not been made, Mr Reynolds would have received damages in the sum of £6,000, an amount agreed by the parties. Mr Reynolds appeals against the judge's ruling on fundamental dishonesty, as well as some other conclusions reached by the judge.

Background Facts

2. On 20 December 2015, four police officers (PC Bibi, PC Brookes, PC Jennings and PC Teague) attended at the home of Mr Reynolds' parents when he was having lunch. A few days previously, there had been a third party allegation that Mr Reynolds had made threats to kill and was in breach of a non-molestation order. Mr Reynolds answered the door, confirmed his identity and asked if he was being arrested. PC Bibi informed Mr Reynolds that he was being arrested "for making threats to kill".

3. Mr Reynolds was taken to a police van in circumstances that were the subject of the trial at Canterbury County Court. He was transported to Tonbridge police station, where he was detained. Mr Reynolds was subsequently taken to Pembury hospital, where it was confirmed that he had suffered a fracture to his L3 vertebrae. He was admitted to hospital and remained there for 6 days, until 26 December 2015. Following discharge from hospital, Mr Reynolds was taken back to the police station. On 27 December 2015 he was charged with two offences of assaulting a police officer with intent to resist a lawful arrest. On 13 October 2016, following a trial at the Sevenoaks and Maidstone Magistrates Court, Mr Reynolds was found not guilty of those offences.

The Proceedings

4. Mr Reynolds brought proceedings in the County Court against the Chief Constable of Kent Police (the Respondent to this appeal) claiming (i) trespass to the person (assault and/or battery); (ii) false imprisonment; and (iii) malicious prosecution. Mr Reynolds claimed that he had been assaulted by the officers who had attended his parents' home in a number of different ways. Mr Reynolds claimed that he had been unlawfully detained for 6 days and 13 hours as a result of the failure to conduct a lawful arrest. It was alleged that PC Bibi had failed to comply with the requirement under section 28 of the Police and Criminal Evidence Act 1984 ("PACE"), by failing to furnish him with the basic grounds for arrest at the time of the arrest or as soon as reasonably practicable thereafter. If his detention was unlawful, then all of the force that was applied to him was alleged to constitute an assault. If the detention of Mr Reynolds was lawful, the force used was alleged to have been unreasonable and disproportionate. Mr Reynolds claimed that he suffered loss and damage, including the fracture to his L3 vertebrae. In

[1] In the County Court, Her Honour Judge Brown referred to Mr Reynolds as "the claimant". I shall capitalise that description of him when setting out the judgment that she gave and the Order that she produced. I shall use the term "the claimant" (lower case) where this is set out in the statute, or when I am referring generically to a person who is making a claim.

his Particulars of Claim, it was stated that Mr Reynolds would rely on an expert report of John D Knottenbelt (Consultant in Emergency Medicine) dated 6 July 2016, and a further report would be served in due course. Mr Reynolds claimed damages, as well as aggravated and exemplary damages.

5. The claim was defended by the Chief Constable. At paragraph 107 of the Defence, the issue of fundamental dishonesty was put in issue by the Chief Constable. It was pleaded that:

> "For the avoidance of doubt it is the defendant's case that:
>
> (a) The Claimant has been fundamentally dishonest because he has intentionally alleged facts that he knows to be untrue.
>
> (b) The Court should dismiss the entire claim pursuant to s.57 Criminal Justice and Courts Act 2015.
>
> (c) If the claim is dismissed CPR 44.16(1) applies."

6. A request for further information, pursuant to CPR 18, was made on behalf of the Claimant. This did not include a request for further information with respect to the pleading at paragraph 107 of the Defence.

7. A trial took place before Her Honour Judge Brown sitting with a jury at Canterbury County Court on 17-21, 26-28 April 2023. The jury answered a number of questions.

> "**A. The Arrest**
>
> Has Kent Police proved that PC Bibi told Mr Reynolds that he was being arrested for both threats to kill and a breach of a non-molestation order?
>
> YES-all
>
> B. Use of Force
>
> Has Kent Police proved that Mr Reynolds behaved in an aggressive manner after being arrested?
>
> YES-all
>
> Has Kent Police proved that both PC Bibi and PC Jennings honestly believed that it was necessary to control Mr Reynolds by taking him to the ground and then restraining him on the ground?
>
> YES-all
>
> Has Mr Reynolds proved that he was taken to the ground on the driveway next to his father's car by being thrown to the ground in an uncontrolled manner?

NO-all

Has Mr Reynolds proved that he was dragged along the ground, with his face making contact with the ground, from the driveway to the road?

NO-all

Has Mr Reynolds proved that a police officer knelt on his neck whilst he was being restrained on the ground?

NO-all

Has Mr Reynolds proved that PC Bibi punched him on multiple occasions to the side of his face/ ear whilst he was being restrained on the ground?

NO-all

Has Mr Reynolds proved that a female officer kicked him whilst he was being restrained on the ground?

NO-all

Has Mr Reynolds proved that a police officer brought his or her knee down onto his back whilst he was being restrained on the ground?

NO-all

Has Kent Police proved that Mr Reynolds bit PC Bibi on the thigh?

YES-all

Has Kent Police proved that Mr Reynolds kicked PC Brookes to the shin?

YES-all

Has Kent Police proved that Mr Reynolds deliberately refused to place his legs into the police van?

YES-all

Has Kent Police proved that PC Bibi honestly believed that it was necessary to use PAVA spray on Mr Reynolds?

YES-all

Has Kent Police proved that Mr Reynolds was deliberately and unnecessarily spitting in the police van during the journey to and/or on arrival at the police station?

> YES-all
>
> Has Kent Police proved that Mr Reynolds behaved in an aggressive manner when he arrived at the police station?
>
> YES-majority of 7
>
> C. Malicious Prosecution
>
> Has Mr Reynolds proved that he did not bite PC Bibi's thigh?
>
> NO-all
>
> Has Mr Reynolds proved that he did not kick PC Brookes' shin?
>
> NO-all"

8. The parties made submissions to Her Honour Judge Brown on the question of fundamental dishonesty. The judge gave the following ruling which I set out in full:

> "JUDGE BROWN: This is my ruling on the issues of fundamental dishonesty and the damages enquiry. In the light of the findings of the jury, in answer to the questions that they were asked, answers with which I entirely agree and which should be read alongside this ruling, I find, on the balance of probabilities, that the Claimant lied about each matter on which the burden of proof rested on him.
>
> I make that finding having had the opportunity to see and hear Mr Reynolds give his evidence. In each case there was no scope for Mr Reynolds merely to have been mistaken. The only explanation for the account that he gave in each case was that he deliberately chose to lie about the matter and I find, on the balance of probabilities, that he lied in the following respects:
>
> a) his allegation that he was thrown to the ground by officers next to his father's car on the driveway, striking his head on the car, twisting as he fell and smashing his face onto the ground.
>
> b) his allegation that he was dragged along the ground from the driveway to the road with his face making contact with the ground.
>
> c) his allegation that a police officer knelt on his neck whilst he was on the ground.
>
> d) his allegation that PC Bibi punched him multiple times to the side of his head or ear whilst he was on the ground.
>
> e) the allegation that PC Brooks kicked him whilst he was on the ground.

f) his allegation that a police officer brought their knee down onto his back whilst he was on the ground.

I also find that he lied about the following matters where the burden of proof was on Kent Police. Again, in my judgment, on the balance of probabilities, there is no scope for Mr Reynolds to have advanced the case that he did otherwise than because he was deliberately lying about these matters. Thus I also find that he lied in the following respects:

a) that he was not behaving aggressively after the purported arrest.

b) that he did not bite PC Bibi on the right thigh.

c) that he did not kick PC Brooks to the shin.

d) that he did not deliberately refuse to place his legs in the police van.

e) that he was not deliberately and unnecessarily spitting in the police van on the journey to and upon arrival at the police station.

f) that he was not behaving aggressively when he arrived at the police station.

So far as the words used when he was arrested are concerned, it is theoretically possible that Mr Reynolds genuinely did not recall exactly what he was told by PC Bibi when he purported to arrest him. However, taking the evidence as a whole, including what I find to have been Mr Reynolds' plan to give a false account that would form the basis of him making a claim against Kent Police if he could, and to be totally unconcerned about telling barefaced lies, I find, on the balance of probabilities, that his account about what was said was also a deliberate lie by him.

Finally, I find that the Claimant deliberately lied about when he started to experience pain in his back. I find that the accounts that he gave at different times were given because he thought that they would support his case that his lumbar vertebra was fractured by the use of force by Kent Police, even though he knew that he had not started to experience pain in his back until the journey to Tonbridge Police Station, or upon his arrival there.

His original account was of experiencing pain in his back when he was being, on his account, assaulted by police officers when he was restrained on the ground. However, his medical expert made it clear that the nature of his injury was not consistent with that mechanism. I find that he then lied at trial when he said that the pain started after he was arrested and when he was thrown to the ground and he twisted. That last word had never been used

by him before, and it was, I find, on the balance of probabilities, an attempt by him deliberately to fit his evidence to the medical expert's opinion on the likely mechanism of the injury he sustained. Thus I find that the Claimant has deliberately lied about all matters material to his claims, whether successful or unsuccessful. His successful claim only succeeds because as a matter of law I have found that, even on the officers' accounts that the jury accepted, what he was told on arrest was insufficient.

Although he has genuinely suffered a fracture to his lumbar vertebra at some point prior to his arrival to the police station, and I will return to that, and other very minor superficial injuries such as grazes, I find that his claim was fundamentally dishonest within the meaning of section 57 of the Criminal Justice and Courts Act 2015. Further, in the circumstances of this case, given the nature of the false allegations that the jury have found were made against police officers, in the sense that they have rejected the Claimant's account, and I have found that they were based on deliberate untruths, and the fact that this trial would have been much shorter had it been limited to the claim for false imprisonment, I do not find that the dismissal of all of the claims, including that that based on unlawful arrest would cause a substantial injustice to Mr Reynolds.

On the contrary. This is exactly the kind of case that in my judgment Parliament had in mind when section 57 was introduced. I therefore direct that he should receive no damages at all and his claim should be dismissed. However, I nonetheless need to set out the damages that he would otherwise have been awarded. In this case that means asking questions of the jury to establish the appropriate level of damages.

In my judgment, no reasonable jury, properly directed, could find that the back fracture was caused in the factual scenarios assumed by the medical expert, because on the jury's findings there was no occasion on which the Claimant was thrown to the ground in an uncontrolled way so as to cause his body to move in the way necessary for such a fracture to be caused. On the jury's findings, nothing that happened before the Claimant was placed in the police van can have caused his back injury. The jury found that the Claimant was spitting in the way described by the police officers, and that he was behaving in an aggressive manner when he arrived at the police station.

In those circumstance[s], given the weight of the supporting evidence, including the evidence of the neighbour about the noises that she heard from the van, no reasonable jury, properly directed, could find anything other than that Mr Reynolds was exerting force during the journey by kicking the side of the van repeatedly, and that he was in a position that exerting force in

that way could have resulted in the circumstances that were contemplated by the medical expert as being the mechanism for the causation of the lumbar fracture.

Although it could be said that he would not have been in the van at all had he not been unlawfully arrested, in my judgment, that does not mean that the back fracture was caused by the unlawful arrest. It merely gave the opportunity for Mr Reynolds to be in the position that he was and to act in the way that he chose to do. It could be said also that the decision of Mr Reynolds to exert such force as he must have done in kicking the police van repeatedly so as to cause a lumbar fracture acted as a break in the chain of causation. I therefore find that a reasonable jury, properly directed, could not conclude that the back fracture and its consequences were caused by the unlawful arrest.

Further, even though he was technically unlawfully detained by police officers, Mr Reynolds was only entitled to use reasonable force in response. In my judgment that does not mean that a person unlawfully detained has the right to use any degree of force they choose against the police officers detaining him. In this case Mr Reynolds had the alternative course of action available to him of talking calmly to the police officers and asking what he was alleged to have done, and where there is an opportunity for someone to do something other than using violence or force then that is a material consideration in considering whether the force that they do use is lawful.

Further, and more importantly, it would have meant that there would have been no reason for him to suffer any injury or for officers to use more than a low level of force on him if he had acted in that way. In particular, I do not consider that the biting of PC Bibi or the kicking of PC Brooks could or did amount to the use of reasonable force. In the case of the biting that was a use of force that had the potential to cause serious injury, and it was plainly, in my judgment, disproportionate to the situation in which Mr Reynolds found himself.

Further, the kick to PC Brooks was, in the circumstances, not an attempt to free himself, but the use of gratuitous violence towards her. Neither constituted the reasonable use of force by Mr Reynolds.

So far as the damages the claimant would be entitled but for my finding of fundamental dishonesty are concerned, although he was unlawfully detained for a period from 2.25pm on the 20 December 2015, until about 6.30pm on 26 December 2015, that period was extended because of his admission to hospital as a result firstly of his complaint of blood in his urine, although that was ultimately not found to be correct when the hospital investigated, and then because of the discovery of the injury to

his back. He appears to have contracted MRSA whilst in hospital and that prolonged his stay still further. I have found that the back injury was not itself caused by the false imprisonment. Although he was under police guard in hospital, in reality he could not leave because of his health conditions.

In those circumstances, in my judgment, the appropriate bracket for damages for the period of the unlawful detention should primarily reflect only the period from when he was arrested until he was taken to hospital and then from his return to hospital until 6.30pm on the same day. However, that figure should be modestly increased to reflect the period of five or so days when he was in hospital and when he was under police guard. The period of which damages should be assessed, leaving out the period in hospital, would be a period of substantially less than 24 hours, namely one of 12 hours and 33 minutes.

I remind myself that the case of Thompson & Hsu v Commissioner of Police of the Metropolis [1998] QB 498, the guideline case on damages for cases of this kind, when one updates the figures, would give a figure of £6,000 for 24 hours detention, and there is of course a sliding scale with higher sums for shorter periods initially and the figures tailing off. And I also take into account the point made by the defendant that the damages for somebody who is of clean character, who has never experienced an arrest or time in custody may be higher than those for somebody such as Mr Reynolds who has had experience of custody, including in the relatively recent past. Taking all matters into account, including the modest increase for the period spent in hospital in my judgment the appropriate bracket is one of £5,000 to £7,500. So far as assaults by police officers are concerned, it is conceded by the defendant that the taking of his arm, leading him from the porch, and the use of handcuffs was unlawful.

In my judgment, although it was open to Mr Reynolds to have simply gone quietly with officers, he was entitled to use reasonable force to resist the unlawful arrest, and in my judgment, although it is a borderline case because of the words he was using and his physical posturing, he did not cross the line before he was restrained, and his use of what I judge to be reasonable force at that point led to him being restrained on the ground and as a result he suffered some minor bruises and grazes as documented by the forensic nurse practitioner.

I consider that the damages for assault should properly include damages for the restraint and the minor injuries sustained. Further, given that he had been unlawfully detained, and even though by this stage officers could have lawfully arrested him for assaulting the two police officers, albeit not in the execution of their duty, but nonetheless they were assaulted, Mr Reynolds

> was still entitled to be obstructive when the officers sought to place his feet in the van. Since the use of PAVA was to facilitate him being secured in the van at a time when he was not lawfully under arrest, I find that there was an unlawful use of force by PC Bibi at that time because of the fact that the Claimant was not lawfully arrested at that time.
>
> It follows that the damages for assault should include damages for the minor injuries suffered during the restraint, for the transient but unpleasant effects of being sprayed with PAVA, as well as the technical assaults by the placing on of hands, the application of handcuffs, and the restraint on the ground. Overall however, given the number and nature of the injuries but their very minor nature, and the lack of any long-lasting injury properly attributable to the false imprisonment, and considering the Judicial College Guidelines for minor injuries, and the fact that there is a tariff, as it were, for handcuffs which certainly historically was about £500, I find that the appropriate bracket for damages for assault is £1,000 to £2,000.
>
> I will deal with issues of costs following the jury's conclusions on those issues. So, in the light of that, I will hand out the draft questions and let you read those."

9. The Order made by Her Honour Judge Brown was that: (i) the claim was dismissed pursuant to section 57 of the 2015 Act; (ii) if the claim had not been dismissed, the parties were agreed that the Claimant would have been awarded £6,000 in damages, and the Claimant agreed that he would not appeal the amount of damages if an appeal was made on the finding of fundamental dishonesty; and (iii) the Claimant should pay the Defendant's costs on an indemnity basis, and the sum of £6,000 shall be deducted from the amount of costs that the Claimant should pay the Defendant.

10. Mr Reynolds appeals from this Order.

Legal Framework

11. Section 57 of the 2015 Act provides that:

> "(1)This section applies where, in proceedings on a claim for damages in respect of personal injury ("the primary claim")—
>
> (a)the court finds that the claimant is entitled to damages in respect of the claim, but
>
> (b)on an application by the defendant for the dismissal of the claim under this section, the court is satisfied on the balance of probabilities that the claimant has been fundamentally dishonest in relation to the primary claim or a related claim.

> (2)The court must dismiss the primary claim, unless it is satisfied that the claimant would suffer substantial injustice if the claim were dismissed.
>
> (3)The duty under subsection (2) includes the dismissal of any element of the primary claim in respect of which the claimant has not been dishonest.
>
> (4)The court's order dismissing the claim must record the amount of damages that the court would have awarded to the claimant in respect of the primary claim but for the dismissal of the claim.
>
> (5)When assessing costs in the proceedings, a court which dismisses a claim under this section must deduct the amount recorded in accordance with subsection (4) from the amount which it would otherwise order the claimant to pay in respect of costs incurred by the defendant.
>
> . . .
>
> (8)In this section—
>
> • "claim" includes a counter-claim and, accordingly, "claimant" includes a counter-claimant and "defendant" includes a defendant to a counter-claim;
>
> • "personal injury" includes any disease and any other impairment of a person's physical or mental condition;
>
> • "related claim" means a claim for damages in respect of personal injury which is made—
>
> (a) in connection with the same incident or series of incidents in connection with which the primary claim is made, and
>
> (b) by a person other than the person who made the primary claim.
>
> . . . "

12. Section 57 has been considered in a number of cases. In *London Organising Committee of the Olympic and Paralympic Games v Sinfield* [2018] PIQR P8 ("LOCOG"), Knowles J stated that:

> "62. In my judgment, a Claimant should be found to be fundamentally dishonest within the meaning of s 57(1)(b) if the Defendant proves on a balance of probabilities that the Claimant has acted dishonestly in relation to the primary claim and/or a related claim (as defined in s 57(8)), and that he has thus substantially affected the presentation of his case, either in respects of liability or quantum, in a way which potentially adversely affected the Defendant in a significant way, judged in

the context of the particular facts and circumstances of the litigation. Dishonesty is to be judged according to the test set out by the Supreme Court in Ivey v Genting Casinos Limited (t/a Crockfords Club) [[2017] 3 WLR 1212].

63. By using the formulation 'substantially affects' I am intending to convey the same idea as the expressions 'going to the root' or 'going to the heart' of the claim. By potentially affecting the Defendant's liability in a significant way 'in the context of the particular facts and circumstances of the litigation' I mean (for example) that a dishonest claim for special damages of £9000 in a claim worth £10000 in its entirety should be judged to significantly affect the Defendant's interests, notwithstanding that the Defendant may be a multi- billion pound insurer to whom £9000 is a trivial sum.

64. Where an application is made by a Defendant for the dismissal of a claim under s 57 the court should:

a. Firstly, consider whether the Claimant is entitled to damages in respect of the claim. If he concludes that the Claimant is not so entitled, that is the end of the matter, although the judge may have to go on to consider whether to disapply QOCS pursuant to CPR r 44.16.

b. If the judge concludes that the Claimant is entitled to damages, the judge must determine whether the Defendant has proved to the civil standard that the Claimant has been fundamentally dishonest in relation to the primary claim and/or a related claim in the sense that I have explained;

c. If the judge is so satisfied then the judge must dismiss the claim including, by virtue of s 57(3), any element of the primary claim in respect of which the Claimant has not been dishonest unless, in accordance with s 57(2), the judge is satisfied that the Claimant would suffer substantial injustice if the claim were dismissed.

65. Given the infinite variety of circumstances which might arise, I prefer not to try and be prescriptive as to what sort of facts might satisfy the test of substantial injustice. However, it seems to me plain that substantial injustice must mean more than the mere fact that the Claimant will lose his damages for those heads of claim that are not tainted with dishonesty. That must be so because of s 57(3). Parliament plainly intended that sub-section to be punitive and to operate as a deterrent. It was enacted so that Claimants who are tempted to dishonestly exaggerate their claims know that if they do, and they are discovered, the default position is that they will lose their entire damages. It seems to me that it would effectively neuter the effect of s 57(3) if dishonest Claimants were able to retain their 'honest' damages

> by pleading substantial injustice on the basis of the loss of those damages per se. What will generally be required is some substantial injustice arising as a consequence of the loss of those damages."

13. In the subsequent case of *Cojanu v Kent Partnership University NHS Trust* [2022] EWHC 197 (QB), Ritchie J identified the steps that should be taken by a trial judge when faced with a defence under section 57 of the 2015 Act:

> "i) the S.57 defence should be pleaded;
>
> ii) the burden of proof lies on the Defendant to the civil standard;
>
> iii) a finding of dishonesty by the Claimant is necessary;
>
> (A) firstly to find on the evidence as a fact what the Claimant's state of mind was at the relevant time on the relevant matters; and
>
> (B) secondly to apply an objective standard to decide whether the Claimant's conduct was dishonest as alleged.
>
> iv) as to the subject matter of the dishonesty, to be fundamental it must relate to a matter fundamental in the claim. Dishonesty relating to a matter incidental or collateral to the claim is not sufficient;
>
> v) as to the effect of the dishonesty, to be fundamental it must have a substantial effect on the presentation of the claim."

See also Jenkinson v Robertson [2022] EWHC 791 at [20]-[24] per Choudhury J.

The Grounds of Appeal

14. Permission to appeal from the judge's finding of fundamental dishonesty was granted by Sir Stephen Stewart on 20 September 2023. The grounds of appeal were as follows:

> "i. The judge was wrong in law to find that the Claimant was fundamentally dishonest simply because the jury had preferred the police version of events over the Claimant's version.
>
> ii. The judge was wrong to find that the Claimant's evidence as to when he felt pain in his back was so strikingly different between his accounts as to amount to fundamental dishonesty, and bearing in mind:
>
> (a) that the Claimant had in fact sustained a fractured back and
>
> (b) that the means by which he received that injury has not been found as a matter of fact by the jury.

> iii. The judge was wrong in law to find that any dishonesty in relation to the cause of the Claimant's broken back or the use of force against him was fundamental to the claim of false imprisonment, which arose from a failure of police to sufficiently inform the Claimant of the grounds for his arrest.
>
> iv. The Claimant did not have sufficient notification of the basis upon which the Defendant contended that the Claimant was guilty of fundamental dishonesty.
>
> v. The judge failed properly to consider that the Claimant's claim involved an injury sustained while in police/ state custody, which engages Article 3 ECHR and where the law requires that the detainer provides a plausible explanation as to how such injuries have been caused, and where the Claimant has to have an effective right of access to the court to pursue his claim. Furthermore, in this particular claim, the deterrence to the Claimant's right of access to the court that the consequences of a finding of fundamental dishonesty entail breach Article 6 ECHR.
>
> vi. The judge was wrong to find that the Claimant would not suffer substantial injustice by dismissing his claim under s.57 of the Courts and Criminal Justice Act 2015.
>
> vii. The judge was wrong in law to find that the Claimant was only entitled to damages for 5 hours imprisonment (covering the period he was in the police station) when in fact he had been falsely imprisoned for six days including his hospital stay under arrest and at no time had the Defendant remedied its failure to comply with the law.
>
> viii. The judge was wrong in law to find that it was not reasonable for the Claimant to attempt to bite / bite / kick in an effort to escape from this false imprisonment and her finding that he was limited merely to asking politely what he was being arrested for cannot stand, for reasons that include:
>
> (a) the breadth of force permitted in reasonable self- defence and
>
> (b) the circumstances in which the Claimant was detained, including that the Claimant was immediately pulled out of his porch and handcuffed to the rear upon arrest."

15. I shall consider each of the grounds of appeal, dealing first with the submissions made by the parties and then discussing the various grounds of appeal.

The Submissions

16. Mr Stephen Simblet KC, and Ms Sarah Hemingway, appeared before me on behalf of Mr Reynolds (Ms Hemingway having appeared for Mr Reynolds at the County Court).

Mr Mark Ley-Morgan appeared before me on behalf of the Chief Constable, as he had done at the County Court.

Ground 1: *The judge was wrong in law to find that the Claimant was fundamentally dishonest simply because the jury had preferred the police version of events over the Claimant's version.*

17. Mr Simblet KC submitted that the judge's approach to the question of fundamental dishonesty was in error. The judge had stated that "This is exactly the kind of case that in my judgment Parliament had in in mind when section 57 was introduced". Mr Simblet KC submitted that that was wrong. The types of case which Parliament had in mind were road traffic incidents, or 'slip and trip' cases where there was verifiable fraudulent exaggeration of the consequences of injury. This was very different from actions against the police.

18. Further, section 57 of the 2015 Act was a draconian measure. It was aimed primarily at those who sign completely false accounts of what has happened, and knowingly sign false schedules of loss, and then fraudulently claim significant damages for loss of earnings or other effects of injuries. Cogent evidence of fundamental dishonesty was required. The cases in which fundamental dishonesty had been found involved false documents or fabrication of the injury suffered: e.g. in LOCOG, where the claimant manufactured invoices from gardeners for a claim in which he claimed gardening expenses following an injury. The present case was of a very different kind. There was no cogent evidence of fundamental dishonesty, no false documents and no fabrication of evidence of injury.

19. It was submitted by Mr Simblet KC that the failure of Mr Reynolds to prove his account of the injury on the balance of probabilities should not lead to a finding of dishonesty about the claims: this was an impermissible leap. On any view the evidence in this case was that there had been a struggle between Mr Reynolds and some police officers; Mr Reynolds was face down on the ground; force had been used against Mr Reynolds; and he had suffered a fractured back. The Chief Constable had not asserted positively as to how the fractured back had happened. The judge needed to be, but was not, analytical in the way she approached the evidence. The case of Gestmin SGPS SA v Credit Suisse (UK) Ltd [2013] EWHC 3560 (Comm) and the observations therein of Leggatt J (as he then was) provided a cautionary tale about the reliability of memory, and it would be wrong to find fundamental dishonesty where the case was based on different recollections of an event. It was submitted by Mr Simblet KC that the judge should have taken more care in considering the evidence against the statutory test, and should have explained her reasoning in more detail. The judgment of Hill J in Afriyie v The Commissioner of Police of the Metropolis [2023] EWHC 1632 (KB) (a claim for assault, battery and misfeasance in public office) was put forward as a model of decision-making in these types of cases.

20. Mr Ley-Morgan, for the Chief Constable, contended that the judge's finding of fundamental dishonesty was not based simply on the fact that the jury had preferred the officers' evidence to that of Mr Reynolds. The judge had formed her own assessment of the Claimant and was entitled to conclude that Mr Reynolds had chosen to tell "barefaced lies". Her finding of dishonesty was a finding of fact, which should not be lightly disturbed. The judge was also right to observe that Parliament had intended that claimants who bring dishonest claims should suffer a penalty.

21. In the instant case, the judge found that Mr Reynolds had lied about all matters that were material to his claim. If Mr Reynolds had confined his case to one of false imprisonment and consequential assault based on the allegation that section 28(3) of PACE had not been complied with, the trial would have been much shorter.

22. The judge's findings in relation to the causation of Mr Reynolds' back injury was not based solely on the fact that the jury had rejected his account of the restraint. The judge concluded, and was entitled to conclude, that Mr Reynolds' evidence was false and that nothing that could have caused the back injury happened before he was placed in the police van. That was consistent with the medical evidence, and the judge was entitled to conclude that no reasonable jury could safely come to the conclusion that the police caused the back injury.

Ground 2: *The judge was wrong to find that the Claimant's evidence as to when he felt pain in his back was so strikingly different between his accounts as to amount to fundamental dishonesty, and bearing in mind: (a) that the Claimant had in fact sustained a fractured back and (b) that the means by which he received that injury has not been found as a matter of fact by the jury.*

23. Mr Simblet KC submitted that Mr Reynolds' evidence about the injury to his back was not so wildly inconsistent with the other material to justify a finding of fundamental dishonesty. The details as to the evidence before the County Court was explained in oral argument before me by Ms Hemingway.

24. Ms Hemingway submitted that what happened after the initial arrest of Mr Reynolds was a fast-moving situation. The police officers were the first to use force. They quickly took Mr Reynolds to the floor, and considerable force had been used. The accounts given by the officers were inconsistent with one another (for example, PC Bibi said that he struck Mr Reynolds twice with full force, but the other officers said that they did not see his punches). There were different views and understandings as to what happened. In circumstances where there was no independent evidence, such as mobile phone or video footage, it is hard for the judge to draw the conclusion that Mr Reynolds was fundamentally lying.

25. With respect to the crucial issue of how and where Mr Reynolds was taken to the ground, the various witnesses said different things. Mr Reynolds' version was not totally inconsistent with what was actually found to have happened. Ms Hemingway submitted that it is not enough for a finding of fundamental dishonesty that a claimant embroiders, exaggerates or embellishes his evidence. The jury was not asked whether Mr Reynolds had been lying about his evidence, and the judge ought not, therefore, have concluded that he did lie. The jury was also not asked to comment on the manner in which Mr Reynolds was brought to the ground on the second occasion when that happened, nor about the manner in which he was put into the police van. The jury was not asked about when the injury was caused.

26. Ms Hemingway noted that the judge concluded that Mr Reynolds had lied about his back claim; that he lied when he said that the pain started after he was arrested and when he was thrown to the ground he was "twisted". The judge reasoned that this was Mr Reynolds' false attempt to fall within the medical expert's discussion as to what may have caused the back injury. However, Ms Hemingway pointed out that the language of "twisting" had actually been used by one of the officers (PC Jennings) in

his statement. Ms Hemingway explained that Mr Reynolds had been brought to the ground whilst wearing handcuffs, that he was put in a figure of four and weight was used against him. It was on that occasion when Mr Reynolds' back may have been hurt. The account given by Mr Reynolds at trial was not so wildly different from what he had initially said in the Particulars of Claim that it should lead to a finding of fundamental dishonesty.

27. Mr Ley-Morgan took issue with this analysis of the evidence, taking the Court through the various iterations of Mr Reynolds' case: from an interview with the police on 26 December 2015, to a further interview with the police on 4 February 2016, to the first medical report (July 2016), to the statement for these proceedings on 14 February 2020, and then his evidence in chief and in cross-examination. Looking at these materials, Mr Ley-Morgan submitted that the judge was clearly entitled to make the finding that Mr Reynolds had lied as to when he first started to experience pain in the back, and also that he lied about this aspect of the claim to support his allegation that the officers had caused the fracture when he knew this was not true. Mr Ley-Morgan submitted that this gave rise to the conclusion of fundamental dishonesty because if Mr Reynolds had been successful on his claim that the back injury had been caused by the officers, this would have led to a substantial award of damages. Lying to win a claim for a back jury was dishonest. This went to the heart of the claim being brought by Mr Reynolds.

Ground 3: *The judge was wrong in law to find that any dishonesty in relation to the cause of the Claimant's broken back or the use of force against him was fundamental to the claim of false imprisonment, which arose from a failure of police to sufficiently inform the Claimant of the grounds for his arrest.*

28. Mr Simblet KC submitted that the evidence of Mr Reynolds which was criticised by the judge did not 'go to the root' of the false imprisonment claim. That claim was founded on the police officers' failure to provide Mr Reynolds with sufficient information as to the grounds for his arrest, and so there was no basis to dismiss that claim.

29. In any event, Mr Simblet KC submitted that, as a matter of law, the judge had no power to dismiss the false imprisonment claim. False imprisonment is not recognised in law as a personal injury claim, and so that claim cannot properly be identified as the "primary claim" and cannot therefore be properly dismissed under section 57 of the 2015 Act.

30. Mr Ley-Morgan contended that the dishonesty found by the judge did go to the 'root of the claim'. Further, in order to give effect to section 57 of the 2015 Act in 'mixed claims' (that is, those involving both personal injury claims and other claims), the expression 'primary claim' in the statutory provision should be interpreted to mean all claims. This would serve a purposive interpretation of the legislation.

Ground 4: *The Claimant did not have sufficient notification of the basis upon which the Defendant contended that the Claimant was guilty of fundamental dishonesty.*

31. Mr Simblet KC contended that the notification provided by the Chief Constable as to basis for the contention that Mr Reynolds was fundamentally dishonest was inadequate and unfair. The particulars provided in the Defence were insufficient. Written submissions were only provided after the jury had delivered its findings. They were an

ex post facto attempt to complain about matters that needed to be identified earlier. An example of this was to do with the causation of the back injury: the Chief Constable had not given Mr Reynolds a proper opportunity to comment on the various possibilities. Mr Simblet KC submitted that the Chief Constable's approach meant that Mr Reynolds had been denied access to the Court (contrary to Article 6 of the Convention) in that the basis upon which the Chief Constable was alleging fundamental dishonesty was not "clear, accessible and foreseeable".

32. Mr Ley-Morgan accepted that a claimant must be given adequate warning of the matters relied upon to support an allegation of fundamental dishonesty and a proper opportunity to address those matters (see Jenkinson v Robertson [2022] 4 WLR 46 at [25(v)]. Mr Ley-Morgan submitted that both of those requirements were met in this case.

33. Mr Reynolds was on notice from the Defence that the Chief Constable was alleging fundamental dishonesty. A request for further information was not sought. The Chief Constable's opening submissions, which were sent to Mr Reynolds' counsel before the commencement of the trial set out in some detail the case regarding fundamental dishonesty and what Mr Reynolds was alleged to have lied about. The various disputes of fact were put to Mr Reynolds in cross-examination. It was suggested to him on several occasions that his evidence had been fabricated. It should have been clear to Mr Reynolds that his honesty was being challenged.

Ground 5: *The judge failed properly to consider that the Claimant's claim involved an injury sustained while in police/ state custody, which engages Article 3 ECHR and where the law requires that the detainer provides a plausible explanation as to how such injuries have been caused, and where the Claimant has to have an effective right of access to the court to pursue his claim. Furthermore, in this particular claim, the deterrence to the Claimant's right of access to the court that the consequences of a finding of fundamental dishonesty entail a breach of Article 6 ECHR.*

34. Mr Simblet KC did not contend that the fundamental dishonesty regime in section 57 of the 2015 Act was incompatible with the European Convention on Human Rights ("the Convention"). Nevertheless, he submitted that when the trial judge is considering whether there was fundamental dishonesty it was necessary to acknowledge the impact that this would or could have on the right of access to the Court, under Article 6 of the Convention, especially given that the underlying claim brought by Mr Reynolds amounted to a breach of Article 5 of the Convention (deprivation of liberty must be lawful and not arbitrary). If the bar for a finding of fundamental dishonesty was set too low – such as preferring one person's evidence to that of another – then this will deter people from bringing claims of this kind.

35. Mr Simblet KC sought to adduce evidence which purported to demonstrate that the assertion of the fundamental dishonesty defence was becoming routine in police cases. This would, he submitted, be an unreasonable deterrent on the right of access to the Courts. I reviewed this material *de bene esse*, as its production was opposed by Mr Ley-Morgan, but considered that it did not add anything material to the arguments, as there was no evidence, or even a suggestion by Mr Simblet KC, that the invocation of the fundamental dishonesty regime by defendant police forces had had a "chilling effect" on claims for misconduct by the police.

36. Mr Simblet KC contended that the fact that the back injury was undoubtedly sustained by Mr Reynolds, and was sustained during the course of his false imprisonment, meant that the correct outcome ought to have been that Mr Reynolds had succeeded on his assault claims including the claim for a fractured back.

37. Mr Simblet KC submitted that the judge's finding that the back injury was caused by Mr Reynolds kicking forcefully in the van was wrong. The judge should not have decided this as a matter of principle: she had usurped the function of the jury, which had not been asked a question about the cause of the fracture. This gave rise to constitutional difficulties as the jury is supposed to be the finder of fact. In any event, the conclusion reached by the judge was not the most sensible inference to draw.

38. Mr Ley-Morgan contended that it is not correct that in cases where a person in custody suffers an injury the burden of proof shifts to the authorities to explain how that injury occurred, relying on Sheppard v Secretary of State for the Home Department [2002] EWCA Civ 1921 at [11] – [15].

39. Mr Ley-Morgan submitted that the judge was entitled to find that the injury was not caused by the officers, and a 'plausible explanation' for the causation of the injury was Mr Reynolds' own actions whilst he was in the back of the van. This was based on the medical report, the jury's findings of fact and the judge's own assessment of Mr Reynolds' credibility.

Ground 6: *The judge was wrong to find that the Claimant would not suffer substantial injustice by dismissing his claim under s.57 of the Courts and Criminal Justice Act 2015.*

40. Mr Simblet KC accepted that the threshold for suffering "substantial injustice" was high (referring to *Woodger v Hallas* [2022] EWHC 1561 at [44]), and must mean more than the Claimant losing his damages. Where, however, the claim involved allegations against agents of the State, and concerned false imprisonment, justice requires that there are findings of wrongdoing and that there are consequences for those held to account. It is wrong to dismiss the claims, as this deprives the Claimant of more than his damages.

41. Further, the judge's reasoning that "this trial would have been much shorter had it been limited to the claim for false imprisonment" was wrong. Given that Mr Reynolds succeeded on his false imprisonment claim, a claim for assault would succeed as the police were not entitled to use force to effect a wrongful arrest. In this case, given that the Chief Constable disputed the extent of the force used, contended that the force was reasonable, and disputed the question of causation of the injuries sustained, the use of force material would have been litigated in the same way as if a false imprisonment claim had not been made. There was, therefore, no substantial effect on the presentation of the claim.

42. Mr Ley-Morgan disputed this analysis. He contended that if Mr Reynolds had not lied about the force that the officers used when arresting him, and not made false denials about his own use of force, there would have been no dispute between the parties as to what force had been used. The case would have been limited to the issue of whether the arresting officer had said enough to satisfy section 28(3) of PACE. In these circumstances, the trial could have concluded in two days.

Ground 7: T*he judge was wrong in law to find that the Claimant was only entitled to damages for 5 hours imprisonment (covering the period he was in the police station) when in fact he had been falsely imprisoned for six days including his hospital stay under arrest and at no time had the Defendant remedied its failure to comply with the law.*

43. Mr Simblet KC did not abandon this ground of appeal, but did not make oral submissions about it given that the order by Her Honour Judge Brown noted that Mr Reynolds had undertaken not to appeal from the damages assessment (based on agreement) if a fundamental dishonesty finding was appealed.

44. Mr Ley-Morgan contended that in light of the undertaking given by Mr Reynolds, the question of damages should not be reopened.

Ground 8: *The judge was wrong in law to find that it was not reasonable for the Claimant to attempt to bite / bite / kick in an effort to escape from this false imprisonment and her finding that he was limited merely to asking politely what he was being arrested for cannot stand, for reasons that include: (a) the breadth of force permitted in reasonable self- defence and (b) the circumstances in which the Claimant was detained, including that the Claimant was immediately pulled out of his porch and handcuffed to the rear upon arrest.*

45. Mr Simblet KC contended that, having been unlawfully detained, Mr Reynolds was entitled to use reasonable force to resist the force being applied to him by the police officers who had come to arrest him. Given that he was handcuffed to the rear, with his face to the ground and the police using their body weight to hold him in a prone position, Mr Reynolds had little option other than to bite, or kick to resist such force.

46. Mr Ley-Morgan submitted that the judge was correct to find that Mr Reynolds had used more force than was reasonable, relying on Walker v Commissioner of Police of the Metropolis [2015] 1 WLR 312. Kicking and biting, which he was found by the jury to have carried out, was not a reasonable response to an unlawful arrest. Further, in any event, it was not Mr Reynolds' case that he had done these things to free himself from unlawful arrest.

Discussion

47. In analysing the various grounds of appeal, I shall deal at the outset with ground 3 as that includes an argument which goes to a jurisdictional question as to whether section 57 of the 2015 Act even applies to a claim for false imprisonment. The judge assumed that it did, the contrary not being argued before her. I shall then deal with Grounds 1 and 2 together as there is considerable overlap between them. I shall then deal with the remaining grounds of appeal.

Ground 3: *The judge was wrong in law to find that any dishonesty in relation to the cause of the Claimant's broken back or the use of force against him was fundamental to the claim of false imprisonment, which arose from a failure of police to sufficiently inform the Claimant of the grounds for his arrest.*

48. Whether or not a claim for false imprisonment falls within section 57 of the 2015 Act was not a matter raised before Her Honour Judge Brown. I have to consider, therefore, whether Mr Reynolds should be permitted to raise this point on appeal. I consider that he should. Although it is likely that had the point been raised below it would have

affected the conduct of the trial, the Chief Constable does not object to the point being raised and has had adequate time to deal with it. There is also no submission from the Chief Constable that he has acted to his detriment on the faith of the earlier omission to raise the point. It is also of importance more generally that this matter is considered by this Court so as to provide guidance in respect of other cases in which the fundamental dishonesty defence may be raised in claims of false imprisonment. This is especially so because, in my judgment, a claim for false imprisonment does not fall within section 57 of the 2015 Act, and so the judge's decision in dismissing the claim under that section was wrong.

49. Section 57 of the 2015 Act applies to "proceedings on a claim for damages in respect of personal injury". That is described as "the primary claim". If the court finds that the claimant is entitled to damages in respect of that claim, but the court is satisfied that the claimant has been "fundamentally dishonest in relation to the primary claim or a related claim", the primary claim must be dismissed unless the claimant would suffer "substantial injustice" if the claim were dismissed. A "related claim" is also a claim for "damages in respect of personal injury" which is made in connection with the same incident or series of incidents in connection with the primary claim, but is brought by a person other than a person who made the primary claim. That is not relevant to the claim brought by Mr Reynolds.

50. The tort of false imprisonment falls under the general rubric of "Trespass to the Person". It is described by *Clerk & Lindsell* (24th Ed. at 14-24) as "the unlawful imposition of constraint on another's freedom of movement from a particular place", referring to Collins v Wilcock [1984] 1 W.L.R. 1172 at 1177B (per Robert Goff LJ)[2]. According to *Clerk & Lindsell*, the tort of false imprisonment is established on proof of: (1) the fact of imprisonment; and (2) the absence of lawful authority to justify that imprisonment. *Clerk & Lindsell* state that: "For these purposes, imprisonment is complete deprivation of liberty for any time, however short, without lawful cause", referring to Bird v Jones (1845) 7 Q.B. 742; Meering v Grahame-White Aviation Co (1919) 112 L.T. 44.

51. On the face of it, therefore, the tort of false imprisonment is not a claim for personal injury: its focus is the deprivation of liberty. There will, of course, be cases in which the circumstances of false imprisonment will also involve personal injury. However, the personal injury will not result from the false imprisonment itself, but from the assault or battery that may arise during the period in which the claimant is falsely imprisoned. Similarly, the false imprisonment may also remove the lawful justification for any touching or handling of the claimant that is associated with the imprisonment itself, but the touching or handling will constitute an assault or battery. In each of these scenarios, the claim for personal injury will not be the false imprisonment but the assault or battery.

52. Indeed, that was how the claim brought by Mr Reynolds was described in the Particulars of Claim. Under the heading "Particulars of Trespass to the Person", a number of different assaults were described at paragraph 22. At paragraph 23, it was pleaded that "Insofar as the basis for detaining the Claimant was unlawful, any use of force/or the threat of force against the Claimant during the course of an unlawful detention constituted an assault/battery". At paragraph 24, it was pleaded that "Insofar as the basis

[2] In Walker v Commissioner of Police of the Metropolis [2015] 1 WLR 312, Sir Bernard Rix pointed out at [27] that Collins v Wilcox had been repeatedly applied by the Courts, either in name or in substance.

for detaining the Claimant may be found to be lawful, which is denied for reasons set out below, the force used was unreasonable and disproportionate in the circumstances and constituted an assault/battery." The "Particulars of False Imprisonment" were set out at paragraphs 26 to 28.

53. As a matter of principle, therefore, and on the particular facts of the instant case, the false imprisonment claim was not itself "a claim for damages in respect of personal injury". As a result, the trial judge was not empowered by section 57 of the 2015 Act to dismiss the false imprisonment claim and thereby extinguish the claim for damages for that tort, and so the appeal must be allowed insofar as it applies to the decision to dismiss the false imprisonment claim.

54. Section 57 of the 2015 Act would apply, however, to the assault claim and it was open to the judge to dismiss that claim if she found that Mr Reynolds had been fundamentally dishonest in relation to the assault claim.

Ground 1: *The judge was wrong in law to find that the Claimant was fundamentally dishonest simply because the jury had preferred the police version of events over the Claimant's version.*

Ground 2: *The judge was wrong to find that the Claimant's evidence as to when he felt pain in his back was so strikingly different between his accounts as to amount to fundamental dishonesty, and bearing in mind: (a) that the Claimant had in fact sustained a fractured back and (b) that the means by which he received that injury has not been found as a matter of fact by the jury.*

55. These grounds of appeal overlap. They focus on the approach taken by the judge to the question of fundamental dishonesty, and this is highlighted by the judge's approach to when Mr Reynolds felt pain in his back.

56. As for what evidence is required to satisfy the test of "fundamental dishonesty", or the circumstances in which that test will be satisfied, this is not mandated by the 2015 Act. Nevertheless, cogent evidence of fundamental dishonesty is to be expected given the serious consequences for the claimant if the test is satisfied. What that evidence is, and the circumstances in which the test will be satisfied, will be varied and should not be subject to any judge-made constraints. There is no requirement that fundamental dishonesty will only be established where it is found that the claimant has used false documents or has fabricated his injury.

57. This does not mean that in every case where a jury, or a judge, prefers the evidence of other individuals over that of the claimant that fundamental dishonesty will be made out. Nor does it mean that in every case that a claimant is found to have told an untruth about a particular matter that the test will be satisfied. It is likely that the trial judge will require something more. The trial judge will be mindful of the admonition against relying on memory set out in Gestmin. In the instant case, the judge's finding of fundamental dishonesty was not based simply on the fact that the jury had preferred the officers' evidence to that of Mr Reynolds. Rather, the judge had formed her own assessment of Mr Reynolds and concluded that he had chosen to tell "barefaced lies". The trial judge found that Mr Reynolds had lied about all matters that were material to his claim: she set out 12 different matters about which Mr Reynolds lied, commenting that "there was no scope for Mr Reynolds merely to have been mistaken". These are

serious findings, and are not commonly made by trial judges. Those findings about Mr Reynolds were properly open to Her Honour Judge Brown given the contradiction between Mr Reynolds' version of events and that of the police officers, as well as the findings of the jury, and there is no reason in principle why they should not justify her decision that Mr Reynolds had been fundamentally dishonest.

58. In the instant case, the trial judge heard Mr Reynolds give evidence over several hours, which included his cross-examination by Mr Ley-Morgan. Although it is the function of the jury to make findings in response to the specific questions posed to them and this will usually involve considering the opposing accounts given by the witnesses, the trial judge will be present and will inevitably form her own views as to the witnesses' evidence and credibility, bearing in mind the Gestmin admonition. In most cases with a jury, the trial judge will keep these views to herself and they will have no impact or influence on the findings of liability that need to be made. However, where fundamental dishonesty has been put in issue (as it was in this case), and the parties agree that this should be dealt with by the trial judge (as was the case here), the trial judge's views on the matters that formed the basis of the jury's answers may be relevant to considering the question of fundamental dishonesty, and in doing so her views as to the claimant's credibility may be relevant. In reaching a conclusion as to fundamental dishonesty, the trial judge may have to make findings of fact that go beyond those made by the jury itself. The trial judge cannot make findings of fact that have already been made by the jury, but there is nothing unconstitutional about the trial judge making findings on matters that have not been decided by the jury.

59. With respect to the finding as to when Mr Reynolds started to feel pain in his back, it was entirely appropriate for the judge to conclude that he had deliberately lied. His original account was that he experienced pain when he was restrained on the ground. He had also not referred to being thrown to the ground by the officers and been twisted by them. This changed, however, when he gave evidence at trial.

60. At his interview with the police on 26 December 2015 (6 days after the incident in question), Mr Reynolds said that the officers "threw me on to the floor". He also said that when he was on the floor an "almighty blow went to the back of my spine. Someone's gone down with their knees right on the back of my spine. And then, then with that I was in absolute agony". In a witness statement dated 4 February 2016, six weeks later, Mr Reynolds stated that when he was on the ground he "felt an officer come down on my back with a knee. I felt a terrible pain shoot through me". He said that when he was arrested, "The officers twisted my arms behind my back". He did not say that they "twisted" him and threw him down. Rather, he said that "When we got to the back of the car the officers took me to the floor". This version of events was repeated in the witness statement produced by Mr Reynolds for the proceedings against the Chief Constable on 14 February 2020.

61. At trial, however, Mr Reynolds said that the pain started after he was arrested and when he was thrown to the ground and he twisted. In evidence in chief, Mr Reynolds stated that "They twisted me and threw me down". In cross-examination by Mr Ley-Morgan, the following exchange took place:

> "Q. . . . She drops onto your back?
>
> A. Yes.

Q. With her knee?

A. Yes.

Q. OK. Now, I want to be absolutely clear about this, is it your evidence that from that moment on your back was in agony?

A. No. It was in agony before that.

Q. Right. So let us clarify that. From what point? Your back was not in agony when you went to answer the door?

A. No, nothing wrong with it.

Q. All right. At what point did your back become in agony??

A. When I was taken to the floor at the back of my dad's car, I was twisted and thrown down onto the floor.

Q. Right. So now it is twisted. Not just thrown down.

A. No.

Q. It was twisted?

A. It was twisted. I was twisted and thrown to the floor.

Q. OK.

A. Yes.

Q. OK. You see, I read and listened to various accounts ---

A. OK.

Q. --- that you have given, I do not remember you ever using the word you were twisted as you were thrown to the floor.

A. Well, I was.

Q. You just made that up for the first time now?

A. No. It was actually used in court before that I was twisted and thrown to the floor.

Q. I am interested in what you have said in your statement.

A. Well, OK. I forgot to put I was twisted. I do apologise. But I was twisted and thrown to the floor.

Q. Right. So you are saying that is the point at which your back was injured during this incident?

> A. It hurt, yes.
>
> . . .
>
> Q. . . You are saying, then, from that moment on, so before you are dragged across the drive, your back is in agony?
>
> A. Yes".

62. Based on the changes to Mr Reynolds' evidence, the judge was entitled to conclude that he lied about when he first started to suffer pain. It would be surprising if his recollection of events when giving evidence in 2023 was better than his memory of those same events when making statements within a matter of days or weeks of the events in question.

63. As for why Mr Reynolds had done this, the judge found that the use of the term "twisted" by Mr Reynolds was an attempt by him to fit his evidence deliberately to the medical expert's opinion on the likely mechanism of the injury he sustained. This conclusion was one which the judge was entitled to come to. Mr Reynolds was undoubtedly keen to obtain as large an amount of damages as possible, and his evidence at trial aligned with the report of his medical expert. In his report, Dr Knottenbelt had expressed the opinion that "Direct blows to the back or bending backwards forces to not cause this type of fracture, in my experience". Dr Knottenbelt also noted that Mr Reynolds and his witnesses "do not specifically mention any point in the sequence of events in which [he] was bent (jack-knifed) forwards with a twisting motion, leaving the incidents of being taken to the floor as the most likely candidates for time of fracture causation during the incident".

64. This conclusion is not undermined by the fact that, as Ms Hemingway submitted, PC Jennings had said in his witness statement that "The Claimant was lying down but slightly twisted on the floor (he was not completely prone). . . .I placed the Claimant's left leg across the back of his right knee to place him in a figure 4 leg lock". This did not mean that PC Jennings was saying that he, or any of the other officers, had twisted Mr Reynolds, or placed him in a figure 4 lock, when they took him to the ground. PC Jennings had also stated that "PC Bibi and I took the Claimant to the floor . . . This was a controlled manoeuvre". This latter statement appears to have been accepted by the jury, by their specific rejection of Mr Reynolds' allegation that he had been taken to the ground "by being thrown to the ground in an uncontrolled manner".

65. As for whether the barefaced lies of the Claimant, and in particular his claim that his back injury had been caused by the police officers, justified a finding of "fundamental dishonesty", I see no basis to challenge the conclusion reached by the trial judge. If Mr Reynolds had been successful on his claim that the back injury had been caused by the officers, this would have led to a substantial award of damages. Lying to win a claim for a back jury was dishonest. This went to "the heart" or "the root" of the claim being brought by Mr Reynolds for assault.

66. I agree that it would not have gone to "the heart" or "the root" of the claim for false imprisonment: the essence of that claim turned on whether the requirements of PACE had been met when Mr Reynolds was arrested. The circumstances surrounding Mr Reynolds' back injury followed, but were not caused by, the false imprisonment.

Accordingly, the appeal against the dismissal of the false imprisonment claim would have succeeded on this point had there been jurisdiction under section 57 of the 2015 Act to dismiss that claim.

67. If Mr Reynolds had confined his case to one of false imprisonment and consequential assault based on the allegation that section 28(3) of PACE had not been complied with, the trial would have been much shorter. This was the judge's finding, and it was open to her to reach that conclusion. There were a number of assault claims that the County Court had to consider which the jury found had not taken place, and which the judge considered were based on deliberate untruths. They obviously took up a material amount of Court time which would not have been needed had Mr Reynolds not pursued them. In the circumstances, the presentation of the claim was substantially affected by Mr Reynolds pressing on with his false allegations of assault, thereby justifying dismissal of the assault claim: see Cojanu (discussed at [13] above).

Ground 4: *The Claimant did not have sufficient notification of the basis upon which the Defendant contended that the Claimant was guilty of fundamental dishonesty.*

68. The requirements of fairness demand that a claimant who is being accused of "fundamental dishonesty" must be provided with proper warning that that allegation is being made and sufficient particularisation of the matters that will be relied upon, and he must be afforded a proper opportunity to address these matters: see Jenkinson v Robertson [2022] EWHC 791 (QB) at [21]-[25]. This is especially important given the consequences that a finding of "fundamental dishonesty" may have: the extinction of a claim for damages that would otherwise have been made in the claimant's favour.

69. What fairness will demand in any particular case will depend on the specific circumstances. There is no need for the Court to set out the way in which fairness will be satisfied in every case or even in the majority of cases. In the instant case, there is no doubt that proper warning and sufficient particularisation was given to Mr Reynolds, and he was given ample opportunity to address those matters. The Defence submitted by the Chief Constable alleged fundamental dishonesty. This put Mr Reynolds on notice that the contention would be made. I accept that it would have been helpful to Mr Reynolds to have been given further particulars at this stage or shortly thereafter, but that was not required as a matter of fairness. Indeed, Mr Reynolds' legal representatives did not insist that further material be provided at that stage as no request for further particulars was made to the Chief Constable. Further details were provided to Mr Reynolds as part of the written opening submissions which were sent to Mr Reynolds' counsel before the commencement of the trial. No complaint was made that Mr Reynolds did not have time to understand and reflect on those details before giving his evidence.

70. At the hearing itself, it is clear that Mr Reynolds was given ample opportunity to address the points that were being made against him which went to the question of fundamental dishonesty. The various disputes of fact were put to Mr Reynolds in cross-examination. It was suggested to him on several occasions that his evidence had been fabricated. It should have been clear to Mr Reynolds that his honesty was being challenged.

Ground 5: *The judge failed properly to consider that the Claimant's claim involved an injury sustained while in police/ state custody, which engages Article 3 ECHR and where the law requires that the detainer provides a plausible explanation as to how such injuries have been*

caused, and where the Claimant has to have an effective right of access to the court to pursue his claim. Furthermore, in this particular claim, the deterrence to the Claimant's right of access to the court that the consequences of a finding of fundamental dishonesty entail a breach of Article 6 ECHR.

71. Section 57 of the 2015 Act is a punitive measure. It is designed to deter claimants from seeking to obtain personal injury damages through dishonesty. There is nothing in the legislation to indicate that the measure cannot be applied to actions against the police, or other emanations of the state, and I can see no reason in principle why it should not be applied to claims against such bodies. Indeed, it is notable that Mr Simblet KC has not sought to challenge section 57 of the 2015 as being incompatible with the Convention. I reject any suggestion that the application of the principles underlying section 57 should be different depending on the identity of the defendant. I also reject any assertion that the fundamental dishonesty regime deterred Mr Reynolds' right of access to the Court. It will only be in rare cases that a finding of fundamental dishonesty will be made given the stringent requirements for satisfying the statutory test.

72. With respect to one of the key issues in the case – causation of Mr Reynold's back injury – the judge's findings were not based solely on the fact that the jury had rejected his account of the restraint. The judge concluded, and was entitled to conclude, that Mr Reynolds' evidence was false and that nothing that could have caused the back injury happened before he was placed in the police van. That was not inconsistent with the medical evidence, and the judge was entitled to conclude that no reasonable jury could safely come to the conclusion that the police caused the back injury.

73. I acknowledge that it is somewhat odd that a direct question as to how the back injury occurred was not one which was asked of the jury. It would appear that neither party requested that this be asked of the jury. This did not mean, however, that the judge could not decide that question for herself. The matter needed to be decided so that the quantum of the claim for damages could be properly assessed. It did not mean, as Ms Hemingway had submitted, that the judge had usurped the function of the jury.

74. Furthermore, there was a plausible explanation for what had caused Mr Reynolds' back injury: that it was caused by his own actions whilst he was in the back of the van. This satisfies the approach indicated by the Strasbourg jurisprudence that where a claimant suffers an injury when in the custody of the State, the trial judge should be aware of the need to look for a viable explanation of what had happened: see Sheppard v Secretary of State for the Home Department [2002] EWCA Civ 1921 at [11] – [15], per Laws LJ.

Ground 6: *The judge was wrong to find that the Claimant would not suffer substantial injustice by dismissing his claim under s.57 of the Courts and Criminal Justice Act 2015.*

75. Section 57(2) of the 2105 Act provides that "The court must dismiss the primary claim, unless it is satisfied that the claimant would suffer substantial injustice if the claim were dismissed". The threshold for suffering "substantial injustice" means more than the Claimant losing his damages.

76. The main thrust of Mr Simblet KC's argument on this point was that Mr Reynolds' would suffer "substantial injustice" if the false imprisonment case was dismissed. The false imprisonment case involved the conduct of agents of the State, the police, and it is important constitutionally that the wrongdoing is called out. There is some force in

the point that there is more to a claim against agents of the State, such as the police, than damages. That a finding of liability may be important to mark the wrongdoing of agents of the State and to hold them accountable.

77. In the instant case, however, as already explained, the trial judge was not entitled to dismiss the false imprisonment claim or the damages arising for that tort under the fundamental dishonesty regime. Accordingly, the wrongdoing of the police will be marked, and an award of damages will result.

78. The question that remains is whether the dismissal of the claim for assault and damages arising that is a consequence of the finding of false imprisonment – as there was no lawful excuse for restraining Mr Reynolds – means that "substantial injustice" is suffered by Mr Reynolds. In my judgment, there is no such "substantial injustice" here. First, he is not deprived at all of the finding of false imprisonment or damages that flow directly from that finding. Second, what he is deprived of is his claim for damages for assault, and the thrust of that claim was found to have been fundamentally dishonest. There is no injustice, let alone substantial injustice, if he is to be deprived of damages as a result of his dishonesty in this regard.

Ground 7: *The judge was wrong in law to find that the Claimant was only entitled to damages for 5 hours imprisonment (covering the period he was in the police station) when in fact he had been falsely imprisoned for six days including his hospital stay under arrest and at no time had the Defendant remedied its failure to comply with the law.*

79. Mr Reynolds undertook not to appeal against the damages assessment if the fundamental dishonesty finding was appealed by him. As a result, I consider that it would be an abuse of process for an appeal from the damages assessment to be made given that the fundamental dishonesty finding was appealed. There was, presumably, a reason why Mr Reynolds gave that undertaking, and it is not for this Court to inquire further into that matter.

80. Of course, the effect of my decision above that the claim for false imprisonment should not have been dismissed is that Mr Reynolds should be awarded damages for that claim. The agreement reached by the parties was that damages for both false imprisonment and assault was £6,000. What the relevant amount should be for the false imprisonment element of the claims ought to be capable of agreement by the parties. If not, then the question of damages will have to be remitted to the trial judge for that issue to be determined. I will direct, therefore, that this matter should be remitted to the trial judge unless the parties are able to reach agreement.

Ground 8: *The judge was wrong in law to find that it was not reasonable for the Claimant to attempt to bite / bite / kick in an effort to escape from this false imprisonment and her finding that he was limited merely to asking politely what he was being arrested for cannot stand, for reasons that include: (a) the breadth of force permitted in reasonable self- defence and (b) the circumstances in which the Claimant was detained, including that the Claimant was immediately pulled out of his porch and handcuffed to the rear upon arrest.*

81. This ground of appeal is not sustainable. The trial judge was entitled to conclude that Mr Reynolds had used more force than was reasonable in seeking to resist his unlawful arrest: kicking and biting was not a reasonable response to his arrest, especially in circumstances where it was not even Mr Reynolds' case that had bitten or kicked the

officers, or that he done so to free himself from the unlawful arrest. There are echoes of this fact pattern in the case of Walker, relied upon by Mr Ley-Morgan. In that case, the trial judge had found that the Claimant's reaction to his false imprisonment was not a reasonable and proportionate exercise in self-defence. As was observed by Sir Bernard Rix at [34], 'There were several alternatives open to Mr Walker short of violence to emphasise that he did not want to speak to PC Adams: but Mr Walker resorted directly to threats and to actual violence for the very reason that he was, contrary to his case and his evidence, already angry and aggressive'. Similarly here.

Conclusion

82. For the foregoing reasons, therefore, this appeal is allowed in part. The judge was wrong to dismiss the claim for false imprisonment.

83. As a consequence, the question of damages for false imprisonment needs to be addressed. If the matter cannot be agreed by the parties, this will need to be remitted to the County Court.

84. The question of costs will also need to be addressed. If the judge had not dismissed the false imprisonment claim this may have affected her order as to costs. This is not something that I can deal with on this appeal as the judge had discretion as to costs in respect of the false imprisonment and malicious prosecution claims – this was a 'mixed claim' for the purposes of CPR 44.16(2)(b). I cannot say what order the judge would have made with respect to costs of the false imprisonment claim, and this will need to be remitted to the judge if the parties cannot agree the matter themselves.