Case No: E46YM070

IN THE CAMBRIDGE COUNTY COURT

Before :

HHJ KAREN WALDEN-SMITH

- -

Between :

MR OLUWOLE COKER	**Claimant**
- and -	
MINISTRY OF DEFENCE	**Defendant**

- -
- -

ADAM WALKER (instructed by **IRWIN MITCHELL LLP**) for the **Claimant**
ANDREW P McLAUGHLIN (instructed by **KEOGHS LLP**) for the **Defendant**

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Approved Judgment

This judgment was handed down at 10.30am on 23 April 2025

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HHJ Karen Walden-Smith:

Introduction

1. The claimant, Mr Oluwole Coker, was formerly a serving soldier who had first enlisted into the Royal Signals in April 2006 and trained as an Aircraft Technician. He gave notice to leave the army when he was posted to Germany in 2012 when his fiancé, now wife, did not want to move to Germany. He first left the army in April 2013, in the rank of corporal. His plans for civilian life did not work out and he re-enlisted in July 2015. He was medically discharged on 25 January 2018. By then he had served a total of approximately 10 years. He brought this claim for personal injuries against the Ministry of Defence (MOD) in January 2019 for damages for injuries allegedly caused as a consequence of a Non Freezing Cold Injury ("NFCI") of his hands and feet which developed during his time as a serving soldier, together with associated adjustment disorder or similar psychiatric condition as a consequence of the impact of the NFCI. The MOD admitted that its breach of duty caused Mr Coker injury in the form of NFCI in February 2016. The MOD contended that a full recovery would have been expected. It was not accepted that that the NFCI was disabling. After obtaining surveillance evidence on Mr Coker in March and April 2021, the MOD amended their defence in May 2022 alleging fundamental dishonesty.

2. The trial was listed to take 5 days of court time. As is most often the way in the County Court there were other, short, matters listed ahead of the trial which delayed the start times of the trial but the court made that up by sitting beyond the usual court hours. The 5 day time estimate was manifestly too short – Mr Coker was giving evidence for approximately 2 ½ days – and the case did not complete within the time estimate given by the parties.

3. Evidence was completed but no submissions were given. Submissions were then provided in writing with a plan for there to be a further hearing to deal with any responses to those written submissions. Unfortunately, due to the limited availability of both Counsel and the court's diary being full, it was not possible to obtain mutually convenient dates. Further, and final, written submissions were eventually provided to overcome that difficulty by the end of October 2024 but due to multiple other court commitments it has unfortunately not been possible to provide the judgment until now and I apologise for the delay which has been caused by other court commitments and the need for this judgment to be much lengthier than usual in order to deal with the various evidential points. Given the detail of the allegations, and their seriousness, I have needed to go through the evidential record in detail.

4. I am grateful to both counsel, Mr Walker for the claimant and Mr McLaughlin for the defendant, for their comprehensive and helpful written submissions. I am also grateful to the parties for their patience.

The Background

5. Mr Coker was born on 28 July 1979 and enlisted into the Royal Signals in or around April 2006 (when he was 26) and after basic and trade training was posted to RAF Aldergrove, Northern Ireland in March/April 2008 until around June 2009. He was medically downgraded in the winter of 2008/9 as suffering with shin splints. He was

posted to Canada and then back to Northern Ireland before being posted to Germany. He was employed in a main hangar and later to ground support equipment (GSE) bay, maintaining and servicing ground equipment. He says that the winter was noticeably colder in Germany when he was there over the winter of 2012/2013 and that he was working long shifts of 10-12 hours at a time without any breaks or periods in a warmer environment and that he experienced tingling and stinging in his fingers and, to a lesser extent, in his toes. He says that if his hands became numb he would retreat into an office in order to rewarm near to a heater. Mr Coker is of Nigerian descent and, as is set out in his particulars of claim, he assumed it was natural that he felt the cold more acutely than other white British soldiers.

6. Mr Coker remained based in Germany until April 2013 when he voluntarily left the army on 12 months' notice. His release medical assessed him as fit save for shin splits.

7. After two years, Mr Coker re-enlisted into the 7th battalion REME in or about July 2015, returning to the rank of corporal. He passed the entry medical and was posted to Wattisham.

8. In November 2015 Mr Coker was involved in preparations to undertake a series of exercises in Thetford in February 2016. He was advised by his Company Sergeant Major to be issued a cold weather kit. Mr Coker was questioned by his medical officer about his historic cold exposure and was asked about any difficulties he had experienced with the cold and he explained his experience in Germany. He was down-graded to P7 MND Temporary and referred for assessment at the Cold Injury Clinic at the Institute of Naval Medicine (INM). Mr Coker was also issued with an Appendix 9 for protection from cold exposure and provided with cold weather boots, socks and mittens.

9. In February 2016 Mr Coker was deployed to Thetford on Exercise Aviation Awakening. His chain of command were informed of his medical downgrading and the Appendix 9 and determined that he should be deployed but should inform his commanding officers if he had any problems.

10. The first day of the exercise started at approximately 7am and during the course of the day, Mr Coker says he began to experience symptoms of numbness, pins and needles and discomfort in his hands which he reported. He was given thicker gloves but says he was unable to wear them when undertaking drills so that he was not able to wear any gloves for long periods of time. The training finished at about 5pm and he reported his worsening symptoms but was refused permission to sleep in a heated area and spent the night in an unheated barn. On the next day he started the training exercise at about 6am but found his hands and feet deteriorated rapidly, becoming numb and then extremely painful within a short period of time. He was able to complete the particular exercise but then could not continue because of his symptoms.

11. On his return to camp he was rostered for guard duty and on 15 February 2016 he was involved in a 2-hour period of static guard beginning at 6.30am. He said was not able to wear mittens as he was required to carry a weapon. He experienced increased pain, tingling, numbness and pins and needles in his hands and feet. Mr Coker was also required to attend parades and undertake regimental duties in cold conditions.

12. Mr Coker was seen in the INM in March 2016 when he was diagnosed with NCFI in his hands and feet and recommendations made that he should only be required to work indoors in the winter months and only work outdoors when it was warm and dry, and excused from parades and external guard duties. He alleges that in June 2016 he got wet and suffered significant numbness, pins and needles, tingling and pain when he was sent on a driving course and was required to drive into and recover a vehicle from a pool of water. On another occasion in November 2016 he says he experienced significant and intrusive symptoms of numbness, pins and needles, tingling and pain when he was required to drive a vehicle without a working heater.

13. Mr Coker was seen again at INM in December 2016 when infra-red thermography indicated that he had a moderate to severe degree of cold sensitisation in his feet and a mild to moderate degree in his hands; that thermal sensory thresholds were abnormal in the hands and grossly abnormal in the feet with characteristic pattern of cold injury.

14. Mr Coker's case is that as a result of the matters complained of he has sustained a NCFI to his hands and feet, an associated adjustment disorder (or similar psychiatric condition), and pain and discomfort, paraesthesia and cold sensitivity. It is alleged that his condition has plateaued and that he has been left with symptoms in his hands and feet of numbness, tingling and pain, with most intrusive in temperatures below 15 degrees Celsius. It is alleged that he has a permanent neuropathic injury and extensive sensory loss in his hands and feet.

15. A medical discharge based on Mr Coker's account was recommended by a medical board on 10 May 2017. In November 2017 Mr Coker was admitted to a psychiatric hospital in Peterborough, the Edith Cavell. Mr Coker was discharged from the army on medical grounds with effect from 25 January 2018 and on 12 April 2018 Mr Coker was awarded £11,124 for NFCI by the Armed Forces Compensation Scheme.

16. The MOD admit that, as a consequence of its breach of duty to Mr Coker, he suffered a NFCI in February 2016 at Thetford from which a full recovery would have been expected. That admission is contained in the Amended Defence dated May 2022 in the following way: *"it is admitted that as a result of the defendant's breach of duty the claimant suffered a NFCI in February 2016 at Thetford from which a full recovery would have been expected."* That admission does not prohibit the MOD from exploring whether he had an issue with being outside for long periods, before that NFCI in 2016. Nor does it prohibit the MOD from exploring whether his symptoms that allegedly continued for years after the NCFI in February 2016 were genuine.

17. The MOD contend that Mr Coker has grossly and deliberately exaggerated his symptoms of NFCI and misled medico-legal experts in order to maximise his compensation claim. It is the defence case that Mr Coker probably recovered from a mild NFCI injury within a short time, alternatively the NFCI has caused minimal, non-disabling and occasional symptoms. The MOD rely on surveillance evidence to support their case and contend that the footage, which has been seen by the court, is irreconcilable with the contents of Mr Coker's witness statement, his application for state benefits and his presentation to the medico-legal experts. It is alleged that he has provided a false and dishonest explanations for the discrepancies between his account and what can be seen on the surveillance evidence and that his evidence cannot be relied upon.

The Issues

18. Liability has been admitted with a split in favour of Mr Coker in the sum of 75/25 and it is agreed that Mr Coker did suffer an NFCI in February 2016 as a result of exposure to cold. It is set out in the Amended Defence that the MOD aver that Mr Coker had not experienced any previous NFCI and before November 2015 he had not reported any symptoms of cold injury to any clinicians. Indeed, Mr Coker's own evidence is that he had been approached by an officer in the preparation for the 2016 Thetford manoeuvres to get additional equipment because of being a Commonwealth soldier. That position has been altered by Mr Coker's own evidence on re-examination that in 2013 he realised that he would not be able to take on the role of teaching as that would require some standing outside where he would be subjected to the cold. I will come to that point later.

19. The issues before the court are:

(i) whether Mr Coker has been fundamentally dishonest in the presentation of his claim pursuant to the provisions of section 57 of the Criminal Justice and Courts Act 2015 (CJCA 2015);

(ii) the correct quantum of his claim, which is required by section 57(4) even if the claim is found to be fundamentally dishonest;

(iii) whether, if Mr Coker has been fundamentally dishonest, dismissing the claim pursuant to the provisions of section 57 of the CJCA 2015 would cause a substantial injustice to him.

The Law

Fundamental dishonesty

20. Section 57 of the CJCA 2015 provides for cases of fundamental dishonesty in personal injury claims as follows:

> (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.

(6) If a claim is dismissed under this section, subsection (7) applies to—

(a) any subsequent criminal proceedings against the claimant in respect of the fundamental dishonesty mentioned in subsection (1)(b), and

(b) any subsequent proceedings for contempt of court against the claimant in respect of that dishonesty.

(7) If the court in those proceedings finds the claimant guilty of an offence or of contempt of court, it must have regard to the dismissal of the primary claim under this section when sentencing the claimant or otherwise disposing of the proceedings.

(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.

> (9)This section does not apply to proceedings started by the issue of a claim form before the day on which this section comes into force.

21. The burden of establishing fundamental dishonesty falls upon the party alleging it, the defendant, on the balance of probabilities. The standard of proof does not alter because the allegation is one of fundamental dishonesty, although there is clear authority that as it is a serious allegation, the evidence needs to be stronger. In *Re H* [2996] AC 563, Lord Nicholls put it in these terms:

> "When assessing the probabilities the court will have in mind as a factor … that the more serious the allegation the less likely it is that the event occurred and, hence, the stronger should be the evidence before the court conclude that the allegation is established on the balance of probability. Fraud is usually less likely than negligence."

22. In determining whether a claimant is dishonest the court is required to consider (1) what was the claimant's actual state of knowledge or belief as to the facts; (2) was the conduct dishonest by the standards of ordinary decent people. (See *Ivey v Genting Casino* [2027] UKSC 67.

23. In order for that dishonesty to be fundamental, it must go to the root of the claim or a substantial part of his claim and not something which is incidental or collateral:

> "The corollary term to 'fundamental' would be a word with some such meaning as 'incidental' or 'collateral'. Thus, a claimant should not be exposed to costs liability merely because he is shown to have been dishonest as to some collateral matter or perhaps some minor, self-contained head of damage. If, on the other hand, the dishonesty went to the root of either the whole of his claim or a substantial part of his claim, then it appears to me that it would be a fundamentally dishonest claim …" (Newey LJ in *Howlett v Davies* [2017] EWCA Civ 1696, endorsing the words of HHJ Moloney KC in *Gosling v Hailo*).

24. In *LOCOG v Sinfield* [2018] EWHC 51, Julian Knowles J cited HHJ Hughes KC with approval in *Menary v Darnton* when he said:

> "Fundamental dishonesty may be taken to be some deceit which goes to the root of the claim. The purpose of the phrase is twofold; first to distinguish any dishonesty from the exaggerations, concealments and the like that accompany personal injury claims from time to time. Such exaggerations, concealment and so forth may be dishonest, but they cannot sensible be said to be fundamentally dishonest: they do not go to the root of the claim."

25. Jacobs J. considered fundamental dishonesty in *Elgamel v Westminster City Council* [2021] EWHC 2510, and referred to what it means in these terms:

> "Ultimately, it seems to me that the question of whether the relevant dishonesty was sufficiently fundamental should be, and is, really a straightforward "jury" question … it is a question of fact and degree in each case as to whether the dishonesty went to the heart of the claim. That must involve considering the dishonesty relied upon, and the nature of the claim – both on liability and quantum – which was actually being advanced.
>
> … where the dishonesty is alleged to have resulted in an inflated claim for a genuine injury arising from a genuine accident, it is necessary to consider the extent to which the alleged dishonesty resulted in an inflated claim; i.e. the extent to which the dishonesty, if not exposed, would potentially have resulted in higher quantum of recovery in respect of the claims made. This in turn involves consideration of the various losses claimed by the Claimant, and the potential impact of the alleged dishonesty on the award for those losses. It is important to recognise that it is possible for a witness to exaggerate when they are doing so not for the purpose of deception but in order to convince (see *Smith v Ashwell Maintenance* [2019] 1 WLUK 541). In this matter, the central issue is whether the claimant is exaggerating the impact of the NFCI in order to increase the level of damages that he could be awarded. As Jay J. said in *Roberts v Kesson & Anr* [2020] EWHC 521, the dishonesty must go to a sufficiently important part of the overall claim in order to go to the root of it:
>
> "What is required is a global assessment in the light of the claim as advanced in its entirety but also in view of the saliency and importance of the particular claim under consideration."

The dishonesty must go to the heart of the claim, either liability or quantum or both, rather than peripheral questions or embroidery (see *LOCOG).*

26. In *Muyepa v Ministry of Defence* [2022] EWHC 2648 Cotter J set out the historical issues of dishonest claims brought in the personal injury field, and held, in the context of a NFCI claim, that the deliberate exaggeration of symptoms and functional limitations for financial gain was fundamentally dishonest. In determining whether the claim is fundamentally dishonest he found the following three questions helpful:

> "(a) At what stage and in what circumstances did the Claimant's dishonest conduct start? In some cases the true core of the claim, the base, can be determined without considerable difficulty and the dishonesty can be traced to a point/time when the Claimant decided to consciously exaggerate financial gain, for example after an operation or treatment has alleviated systems. The timeframe may be an extended period, e.g. as residual symptoms gradually ease, or sharply defined. In other cases it may be more difficult to identify when the dishonest conduct started. In any event the court is entitled to proceed with considerable caution in answering this question given the limits of any reliable evidence.

> (b) Does the dishonesty taint the whole of the claim or is it limited to a divisible element?
>
> (c) How does the value of the underlying valid claim (which the court must assess) compare with that of the dishonestly inflated claim? There is no set ratio as to which constitutes fundamental dishonesty but it is usually important to consider relative values."

27. Cotter J found on the facts of *Muyepa* that the claimant had suffered a minor NFCI and that after an initial period of trying to cope with the symptoms he decided to present a picture to the outside world, including his family, friends and medico-legal experts, and then to the court, that he was suffering from a very severe NFCI which had left him greatly disabled. *"He fundamentally and persistently transformed the claim by dishonest exaggeration. His dishonesty tainted the whole claim from the outset. I find that the Claimant has been fundamentally dishonest in relation to the claim."*

28. In *Mantey v Ministry of Defence* [2023] EWHC 761, another allegation of NFCI, Eyre J found on the facts that the claimant knew he was not suffering from symptoms and reduced function which he presented and reported to medico-legal experts, he chose to report symptoms which he knew were false and from which he was not suffering, and he did so in the context of a claim for substantial damages, and the only possible explanation was that he did so deliberately and with a view to enhancing the value of the claim. The finding that the claimant was fundamentally dishonest was based on the finding that the claimant had suffered from a minor NFCI from which he had recovered and he had dishonestly portrayed himself as having suffered a more serious injury which had a continuing and disabling effect, and that he had done this for financial gain. The claimant's dishonesty in *Mantey* was held to taint the whole claim as it went to the heart of it, substantially affected the presentation of it, and advanced on the false footing that the claimant was suffering from an enduring and disabling condition and the characterisation of the claim affected the value of general damages for pain, suffering and loss of amenity and further loss leading to the true value of the claim being of a different magnitude than that which had been advanced.

29. Eyre J held:

> "It is clear a claimant who deliberately and dishonestly exaggerates a valid claim can be found to have been fundamentally dishonest for the purposes of section 57. That can be so even if the exaggeration only begins at some point after the commencement of proceedings. The deliberate concealment of a recovery can cause a claimant to be found to have been fundamentally dishonest in relation to a primary claim even if the recovery only occurs after the proceedings were started. Whether such dishonest concealment will amount to fundamental dishonesty will depend at least in part on the questions of timing and value identified by Cotter J … The duration of the dishonesty will be relevant as to whether the claim is properly to be characterised as fundamentally dishonest but even a claim which was wholly genuine when commenced can become fundamentally dishonest."

30. It is contended on behalf of Mr Coker that the vast majority of his loss has arisen by reason of his medical discharge as a result of his NFCI and the extent of the NFCI did not impact upon the need for him to be discharged.

Substantial injustice

31. It is argued on behalf of Mr Coker that if, contrary to his primary case that the court should not find his claim to be fundamentally dishonest, that he would suffer substantial injustice if the claim were dismissed pursuant to the provisions of section 57(2) of CJCA 2015 on basis that his *"injuries are lifelong and serious and he would suffer substantial injustice if he were denied any remedy."* (paragraph 20 of the Reply to the Amended Defence).

32. Ritchie J in *Williams-Henry v Associated British Ports Holdings Ltd* [2024] EWHC 806, held that the correct approach to adopt when deciding whether a substantial injustice arises is to balance all the facts, factors and circumstances of the case and he took the following factors in turn:

> "(1) the amount claimed when compared with the amount awarded… (2) the scope and depth of the dishonesty found to have been deployed by the Claimant …(3) The effect of the dishonesty on the construction of the claim by the Claimant and the destruction/defence of the claim by the Defendant … (4) the scope and level of the Claimant's assessed genuine disability caused by the Defendant … (5) The nature and culpability of the Defendant's tort… (6) The Court should consider what the Court would do in relation to costs if the claim is not dismissed… (7) Finally, what effect will dismissing the claim have on the Claimant's life…"

The Evidence

33. I heard evidence in great detail from Mr Coker. I also heard evidence from Mr Coker's wife and from Warrant Officer Macken on behalf of the MOD. The MOD also relied upon surveillance evidence which was played in court. I then heard expert evidence from a number of expert witnesses called on both sides including vascular experts, psychiatrists and employment experts. While it is a lengthy process, the nature of this claim and the defence is such that it is necessary to go through the issues in some detail.

Mr Coker

34. Mr Coker is Nigerian but was born in the UK and holds a British Passport. He studied mechanical engineering at the University of Lagos, graduating with a 2:2. He says that thereafter he carried out Youth Service as a teacher, teaching maths to secondary school children in Nigeria before moving to the UK in 2004 carrying out volunteering work through the church and then enlisting into the Royal Signals in April 2006. In cross-examination he had to accept that he made no reference to this Youth Service either within his unsuccessful application to join the Officer Corps and his further application to join the army, and that he failed to mention any service with the Youth Service in his

interview. His explanation that he was told that the Youth Service was irrelevant, and his GCSE grades and other educational qualifications were all that was important, does not withstand much scrutiny given that he had referred to his primary school boy scouts experience in his application.

35. The dates of his employment do not support his account that he moved to the UK in 2004 having seen adverts for the army when in Nigeria, as his statement suggests. Rather, the more likely history from the evidence is that he did not carry out his Youth Service in Nigeria but moved to the UK, with his British Passport, when he intended to carry out a master's degree in aeronautical engineering at Cranfield University in 2002. This chronology is supported by the GP records. It was only after his funding for the master's degree fell through, and after he had worked for a while for Duze Communications and then Sundown Security Services, that he applied to join the army.

36. Whilst these two issues, relating to his application to join the army, are not directly relevant to his claim for damages, they are important as they support the submissions made on behalf of the MOD that Mr Coker is willing to put forward a false account when he feels it suits his position.

37. Mr Coker had worked as a sales assistant and then a security officer before joining the army. His evidence was that he had been a keen sprinter before he joined the army in April 2006 and, while he sought to deny it in his oral evidence, it appears from his medical records that the problems he had with shin splints, or a fracture, had occurred before his enrolment. In the army medical records for 23 May 2006, Lt Col Andrew Baker (the medical officer) recorded that Mr Coker had been suffering leg pain for approximately 6 months (i.e. months before he joined) and an X ray revealed a bony swelling over right anterior tibia – a potential stress fracture. Despite the pain in the shins pre-existing enlisting in the army the first time, and the X ray revealing the existence of a stress fracture, Mr Coker brought a claim that he was injured whilst undertaking basic training and that stress fractures on his shin bones *"was caused by excessive weights carried and also running on unsupported boots which was done in a beastly manner by the physical training instructors and training staff. This occurred in Lichfield."* It is plain from that account that Mr Coker was placing the blame for his shin issues upon his basic training. At a medical board on 11 February 2010, Mr Coker said that he had suffered from bilateral anterior shin splints since December 2006 although reference was made to an x-ray in May 2006 showing a stress fracture.

38. In a lay adjudication on 11 November 2008, Mr Coker said that he suffered bilateral shin splints and stress fracture during basic training with the onset on 15 May 2005. I am satisfied that claim was false but the fact that he did that then both indicates his willingness to give a false narrative and that he could see the benefits of providing a false narrative.

39. Mr Coker was temporarily downgraded as a consequence of the shin splints on or about 30 June 2008, and he remained temporarily downgraded through to 11 February 2011 when it was determined that he needed a permanent downgrade. He remained downgraded until he left the army in 2013. Mrs Coker was unaware of this.

40. As at 2009, Mr Coker had been "placed within the middle third of the LCpls" within the workshop and was recommended for promotion to Corporal. However, while it was recorded that he had made a good start to his military career and had potential to become

an effective leader he needed to *"improve his team building ethos with the platoon, thereby proving his ability to plan, organise and command in the future."* It was noted that his medical downgrading had affected his participation in most activities so his overall performance had not been as strong as it could have been . It was further noted that he had strong potential for further promotion and that he had clear Artificer potential. In 2010 he was still enjoying full support for promotion.

41. Mr Coker decided to leave the army on or before 15 February 2012 as he had been removed from an upgraders training course by his own request *"apparently it is all too difficult"* as he wished to leave the army. He had failed in one of the exams he had taken on 12 January 2012, and that he would need to resit the test. He accepted that played a part in his decision to leave. The other factor was that he knew that he was going to be posted to Germany and his partner/future wife had told him that if he was posted to Germany that would result in a breakdown in their relationship as she was not willing to move to Germany.

42. As at 6 July 2012 he was recorded as being in the bottom third of his cohort of Corporals. Reference was made in that report to his *"great enthusiasm to participate in athletics."* The comments about him at that time were that he was a solid worker and has the capacity to make a sound Class 1 technician if he so wished. The report on 28 March 2013 set out that Mr Coker was reliable, industrious and intelligent and that, to his immense credit, he had been working incredibly hard even though he had handed in his notice. It was said at that time that he would have almost certainly progressed to Class 1 status had he not handed in his notice.

43. In his first statement, Mr Coker referred to the first cold winter he experienced during his time in the army being when he was in Germany during 2012 to 2013. He says that he was exposed to the cold for ten to twelve hours without respite, and that he remembers a tingling stinging pain in his fingers and, to a less extent, his toes. He said he thought it was nothing more than normal and a temporary reaction to the cold and did not cause him any concern as he would warm up overnight. He says that the stinging pain would sometimes be uncomfortable so that he would take Ibuprofen to manage the pain but it never became sufficiently intrusive for him to seek medical attention. Mr Coker did not mention this problem in Germany when he spoke to the medical officer, Major Weiss when he spoke to her in 2015 before the Thetford exercise. He also did not mention this issue in Germany in 2012-2013 when he was examined at the Naval Medicine Cold Injury Clinic 2016 and at the Board on 4 April 2017 he denied any particular cold exposure during this 2006 to 2013 career but "*general discomfort on getting cold"*. He said he did not know why no-one asked him to give an account of anything he had experienced while in Germany.

44. The army records indicate that Mr Coker's last day in the army was 19 April 2013 and that he was going to be living in Romford, with his then pregnant wife, but that he did not have a job at that time. Mr Coker said that when he came out of the army the first time, he was planning to retrain and start working as a teacher and commenced by being a volunteer assisting children with their studies at his local church and carrying out driving in order to support his wife and first child who was born in August 2013. He did not apply to any institutions in order to obtain a post-graduate certificate in education (PGCE) in preparation for leaving the army and, although the MOD employment expert Mr Duckworth refers to him having teaching qualifications which were not recognised in the UK, Mr Coker confirmed in cross-examination that he had

no teaching qualifications. Mr Coker says that he went back to volunteering, assisting children with studies at his local church *"I didn't have any spending hobbies or other activities that saw me outside. Working with the children was always inside a nice warm building."*

45. Mr Coker set out in his written statements that when he could not get work as a teacher, he had decided to go back into the army, and he re-enlisted in July 2015. In his oral evidence, under cross-examination, he accepted quite quickly that he had not in fact looked for work in teaching, that he had been unemployed and collecting Jobseeker's Allowance for most of the time that he was out of the army, but that he did get a job as a delivery driver for a period of about 6 weeks. He said he had been put off teaching by the behaviour of the children and the fact that he would have had to stand outside in the cold for supervising play times.

46. It was in the course of his re-examination that Mr Coker said, for the first time, that he had decided to give up the idea teaching both because of the behaviour of the children but also because he would have to be outside for periods of time. I gave Mr Coker the opportunity to correct that statement in my questions of him but he repeated it. That indicates that Mr Coker was suffering from the cold to an extent that in 2013 he was not willing to be staying outside for any period of time. If that were the case then, as Mr Cross (his consultant vascular surgeon) said, it is unlikely that he would have been able to re-enlist as he would have been medically non-deployable. It is extremely surprising that he did not mention this issue when he re-enlisted in July 2015 as, if he were being honest and straightforward, he would have known that not being out in the cold would have been a problem. The fact that he did have issues with the cold is consistent with the fact that in November 2015 he told Major Weiss of various problems that he had when nothing had changed between July 2015 and November 2015.

47. Having not found employment for much of the time he had been out of the army, approximately 18 months to two years, it may be that Mr Coker was desperate to find work and so he decided that he had to rejoin the army. In the structured interview report it was recorded:

> "Coker is applying to rejoin the army after having left 16 months ago. He was an aircraft technician in the REME for 7 years reaching the rank of Cpl and serving with 1 regiment in Germany for his last posting. His reason for leaving was his wife was pregnant with their first child and his wife was finding it hard to cope with him being in Germany and her being in the UK. He now regrets his decision to leave and his wife fully supported his decision to rejoin and will move with him wherever he is posted in future. Since leaving 16 months ago he has had a few jobs but nothing permanent and he is currently unemployed. He has kept his fitness up and is running 1.5 miles in a stated time of 9 minutes 45 seconds"

48. Mr Coker's initial decision to leave the army had been made in 2012, before his wife was pregnant but I am sure he was motivated to leave, at least in part, because his wife did not want to move to Germany. Mr Coker said that after he left the army, his wife could see how he felt and that things were not turning out as he had wished. When he rejoined, Mr Coker said that his wife had said that she would follow him wherever

he might be posted. That seems to me to be unlikely given her previous opposition to moving to be with him being so firm. When he rejoined the army, Mrs Coker now had a young child, with a second child born in May 2016.

49. Mr Coker said that when he re-enlisted he was successful in re-joining as a "Tech AC", which is clear from the letter dated 10 March 2015. He had a full medical and he said that no-one had asked him about his problems associated with the cold. He said that if they had asked him he would have denied having any problems "*as I didn't believe that I had any."* He said this despite his recognition in evidence that he did not feel he could teach because it would have required him to be exposed to the cold. A matter of months later, in November 2015, when preparing for the exercises which were to take place in Thetford in February 2016, Mr Coker says he was told that he needed obtain a chit from the medical officer in order to be issued with enhanced cold weather kit as a Commonwealth soldier. He said that this was an unsolicited approach and he had not made any complaints about feeling the cold and that the cold weather kit was merely a precaution.

50. On 2 November 2015, when he went to see his medical officer, Major Weiss, in order to get the chit to obtain the additional clothing, he said that she asked him about any problems he had with the cold in the past. He told her that he had *"numbness and stinging pains*" in his fingers when it got cold. He said that he did not see her for the purpose of getting out of the Exercise Aviation Awakening at Thetford in February 2016, or for a medical downgrading. While Mr Coker denied that he had told her he had difficulties with the exercise, it is recorded that *"he does not feel able"* to take part due to his symptoms. That does read that it was Mr Coker who was providing the information voluntarily rather than it being Major Weiss who was advising him that he should not take part in the exercise. As a consequence of the information provided, Major Weiss downgraded Mr Coker to P7 Medically non-deployable in November 2015, pending being assessed at the Institute of Naval Medicine (INM). Mr Cross said that it is unlikely that he would have been upgraded after the downgrade as his condition would not have changed. That would mean that he would not have been able to re-enlist in July 2015 had he revealed his difficulties then.

51. It does not make sense that Mr Coker is saying that he did not believe that he had any problems when he re-enlisted in July 2015, but was then saying in November 2015 that he felt unable to go to Thetford as a consequence of his symptoms. Nothing had changed in that period, and either he was already suffering issues with the cold when he re-enlisted in 2015, and ought to have declared that at the time of re-enlisting, or Mr Coker had latched onto the possibility of cold as a reason for not being sent out on the Exercise in Thetford in February 2016. Mr Coker's account that he was not suffering from any cold injury when he re-enlisted in July 2015 is undermined by the fact that he was referred to the cold injury clinic in November 2015 where reference was made to his symptoms having started in basic training in 2007. That information could only have come from Mr Coker

52. In my judgment it is likely that Mr Coker had been suffering from some problems with the cold before he re-enlisted, and when he was sent to get the cold weather equipment in anticipation of the exercise in Thetford he saw that as a basis upon which he could avoid the exercise in Thetford or being sent away from Wattisham. Mr Coker is an intelligent man. He knew when he re-enlisted that he needed to be able to be deployed to places that could be very cold and he knew that general duties in the army, such as

parade duties, would require him to be outside for periods of time. Being outside for the relatively short periods he would have needed to be outside as a teacher was sufficient to mean that he could not become a teacher. If he knew in 2013 that he could not stand outside as a teacher then he knew in 2013 that he could not carry out the role of a soldier.

53. Having considered the evidence with great care, I have come to the conclusion that Mr Coker joined the army in 2015 knowing already that he had problems with the cold. He had not been able to get the sort of employment he wanted as a civilian and so he decided to go back into the army, but he did so knowing he had problems with the cold and would not be able to be deployed. That would mean he could not go on manoeuvres or be posted elsewhere which suited him see w as he plainly wanted to stay in one location in order not to interfere with his family life. I have no doubt that he is a deeply committed father and husband.

54. I do not accept that the only reason for Mr Coker seeing Major Weiss in November 2015 was to get cold weather kit. The notes dated 2 November 2015 set out the following:

> "*On the final exercise of basic training in 2006 was outdoors in the cold in dry conditions and hands and feet got really cold. Managed to complete the exercise but his hands and feet have not recovered. Cannot remember exactly how cold the weather was at the time of the exercise but remembers that it was cold. All fingers and thumbs are affected on both hands from tips to mcp joints. Does not get any colour changes to fingers or toes. No problems in summer months. Gets cold digits when temp in low teens and below. Gets stinging pain and numbness when temp in single figures. Numbness is more of a problem than pain. Takes ibuprofen when gets pain which is not often. No loss of temperature gauging.*
>
> *Is due to go on exercise in Feb outdoors which he does not feel able to do due to his symptoms. Has never seen INM. Has never reported to med centre*"

55. What is curious about this account is the fact that Mr Coker mentioned none of this when he rejoined the army in 2015. Mr Coker has given no, or no adequate, explanation as to why he told Major Weiss of these difficulties in November 2015 but failed to mention them in July 2015.

56. The Appendix 9 (APP 9) completed by Major Weiss on 2 November 2015 provided that Mr Coker was at high risk for deployment, that he was unfit for outdoor exercises in winter months, and that he was not deployable on operations. It was said that he was to be employed in an appropriate thermal environment, that he required full issue of cold weather clothing and cold weather boots, and that his guard duties were to be limited to guard room only – with no weapons or patrolling. Major Weiss commented that Mr Coker's exposure to cold environment may increase the severity of his clinical condition and/or his symptoms and that the unit safety officer needed to carry out a risk assessment to ensure that the individual is employed in an appropriate thermal environment, for example in an indoor or heated environment. It is not clear to me if

Major Weiss was aware that Mr Coker had left the army in 2013 and had only rejoined a couple of months before this consultation.

57. In the appraisal for the period 1 February 2015 to 31 January 2016 Mr Coker set out his choices for location were the various regiments stationed in Wattisham saying: *"I would like to stay in Wattisham due to my children schooling in Suffolk area. This will be highly beneficial to my acquired knowledge on the Apache Helicopter in the nearest future."* While Mr Coker gave evidence that he was willing to go anywhere, the contemporaneous evidence indicated that he wanted to stay in Wattisham. In his appraisal for the year 2016 to 2017, Mr Coker also gave his three choices as being to work in Wattisham and he said that his family was settled within the Wattisham area and that he was currently receiving treatment for cold injury.

58. Mr Coker said that when, contrary to his representations and the APP 9, he was deployed on Exercise Aviation Awakening at the STANTA training area in Thetford in February 2016 it was very cold. The temperature chart that he provided as evidence in the case indicates that the temperature was 11 to 9 degrees Celsius, but felt like 7 to 8; with a drop to 9 degrees, feeling like 5 degrees, at 9pm. Mr Coker had been issued with cold weather gear but he said that he was not able to wear the mittens he had been issued with as they were too thick to fire a weapon and the only gloves he had which were thin enough to operate a rifle with were thin green cotton gloves. He said that he was on manoeuvres for two to three hours, that his hands were very cold and that his fingers had started to go numb, that his feet were also cold but they were not as bad as his hands as he had his cold weather boots and socks on. He did not complain of having been exposed to the wet and he did not recall having to change his socks because they had become wet. He said that he was made to sleep in an unheated part of a barn overnight, despite asking to sleep in a heated part of the barn, and that he was freezing cold all night in his sleeping bag on a camp cot. He accepted that the sleeping bag is designed for temperatures up to minus 25 degrees, that he was on a cot off the floor, and that the temperature did not drop below 5 degrees. He also accepted that the barn had both a roof and walls.

59. Mr Coker said that the exercise started again at 6am the next morning and that his hands deteriorated fairly rapidly, becoming intrusively painful within 15 to 30 minutes so that his fingertips were numb and starting to tingle, but not so cold that he could not operate a weapon or join in with the training. He said that he was not in thin gloves all day and that the actual amount of time he was without cold weather gloves was much less than 12 hours. Mr Coker reported his problems to his Platoon Commander after a couple of hours as he felt he was getting symptoms . The Platoon Commander arranged for him to be evacuated and he returned to base before 9am. It is clear from the contemporaneous medical note that he informed the medical officer, Cpl Mason, at Wattisham on 2 February 2016 that he had a past medical history of cold injury. On 3 February 2016 he was seen by a doctor who recorded that his hands became cold and tingly. After seeing the medical officer, he was bedded down for three days. Mr Coker says that *"as a result of exposure to cold on that exercise everything got much worse."*

60. I am satisfied that a NFCI was caused by the exposure at the Thetford training in February 2016. The exercise was on 1 and 2 February and on 8 February 2016 Mr Coker was seen by Dr Wilkinson at Wattisham who recorded that his fingers are slightly better, but still some paraesthesia, and his feet are better. The recovery was therefore

approximately a week. Dr Wilkinson said that he would issue a chit allowing him to wear non-issue gloves for the time being with no guard duty, and that he was fit for limited duties – with a duration of 28 days.

61. On 15 February 2016, Mr Coker discovered that he had been rostered for guard duty. From Mr Coker's perspective, he had the APP 9 which confirmed that he had to be employed in an appropriate thermal environment and he had obtained a chit from the medical officer who signed him off from guard duty for 28 days. However, he said that the senior officers still told him he was down for guard duty and that he would have to do it. However, on closer examination he accepted that his guard duty amounted to him spending 2 hours outside manning the main gates and that he did not have guard duties after 15 February. He said that he had no heater, but he did not go to his doctor and report any additional issues at that time and he agreed that it did not have any impact upon his symptoms. Mr Coker was also required to continue with Regimental Duties, including taking down the regimental flag, and attend parades. He says that all of this exposed him to the cold and that *"even though I was wearing gloves, cold weather boots and cold weather socks I really struggled during this duty. When it came to undoing the flat I couldn't move my hands to untie the knot and ended up having to use my teeth."*

62. Mr Coker obviously felt that the senior officers in the army were not taking his situation as seriously as they should have done. Mr Coker is extremely aggrieved that the army did not simply follow the APP 9 completed by Major Weiss in November 2015. – he said that they were *"making a mockery of me"*.

63. I understand that to be his perception, and a genuine perception, but it was not in fact the truth and that by mid-February the army were taking seriously the need not to expose Mr Coker to cold and he was not compelled to attend the Remembrance Day parade and was taken off planned duties.

64. Mr Coker was seen at the INM on 18 March 2016. He said at that stage he was experiencing pain, particularly in his hands, almost every day and that the tests undertaken at the INM revealed that he had a severe degree of cold sensitisation in his feet and a moderate degree of cold sensitisation in his hands. He said that even in the spring he was finding that he had problems whenever his hands got cold, that he was dropping things or struggling to perform basic tasks as a result of numbness, reduced dexterity and grip strength; and whenever his feet became cold he was suffering from a constant burning sensation. Mr Coker accepted in his oral evidence that he was not assigned to guard duty after 15 February 2016. Mr Coker said that he had to go on parade (this would normally be for about ½ hour) and that he had to do other work around the base, but he did not point to any particular incident where he was re-exposed to the cold so as to exacerbate what had happened at Thetford until the incident he refers to that took place in Catterick.

65. In June 2016, he was sent on a driving course in Catterick. Mr Coker said that the majority of the training was classroom based or was in the heated cabs of vehicles but that on one day the training was recovering vehicles that had been stuck. This involved him wading into water so that his hands and feet became wet through and that he was in water for about 20 minutes and that there was a lot of hanging around in wet kit. He said that although it was June, it was only 10-12 degrees Celsius. While he was in

water in order to recover the vehicle he became wet but recovered and rewarmed by that evening.

66. In August 2016 he was taken off from working on aircraft and moved to the library with some driving duties. Mr Coker said that his mood was becoming adversely affected and that he was feeling isolated and withdrawn.

67. Mr Coker referred to an incident on 9 November 2016 when he was picking up a soldier from RAF Brize Norton in a fleet Land Rover with no heating. Mr Coker said that it was a four hour round trip and that although he was wearing mittens, cold weather socks and cold weather boots his hands and feet became so cold that he had numbness in both his fingers and toes, he could not grip the steering wheel and that he had to use the palm of his hand to steer and was using the middle and heel of his foot because he couldn't feel with his toes. Despite seeing Dr Wilkinson on 10 November 2016 in Wattisham, he did not mention anything about what he now says happened on 9 November (the day before) but generally said that his hands were increasingly painful now that the weather had turned colder.

68. Mr Coker said he had effectively given up by that time as he had taken the view that whatever was said, including in the APP 9, was (to his mind) ignored. 9 November 2016 is the last incident of cold exposure alleged to have taken place save that he referred to patrolling the perimeter of the camp and taking down of the flag. In oral evidence he accepted that the guard commander undertakes the patrol of the perimeter. The taking down of the flat (or flags) took a maximum of half an hour, albeit that was challenged by the MOD.

69. Mr Wilcockson reviewed Mr Coker on 5 December 2016. He recorded that since March 2016, Mr Coker had struggled with the cold and he was still being made to work outdoors and go to Parades. Infra-red thermography showed that his feet had a moderate to severe degree of cold sensitisation and his hand has a mild to moderate degree with thermal sensory thresholds being abnormal in hands and grossly abnormal in feet showing the pattern that is characteristic of cold injury of the feet. The recommendations from Mr Wilcockson included that Mr Coker was unfit to deploy to Norway, Falklands or BATUS (British Army Training Unit Suffield) – that is Alberta, Canada, that he was to be excused all Parades and Ranges, to be excused external Guard duties and to wear cold weather gear, including gloves and boots, wherever possible.

70. From 14 February 2017 Mr Coker went off work, and did not return. He gave oral evidence that he had been involved in sharing driving to "Adventure Training" in Austria in or about March 2017 this was not mentioned in any of the statements Mr Coker filed for the purpose of these proceedings and he did not mention it at the medical board that took place in April 2017.

71. The assessment of Mr Coker dated 20 March 2017 noted that he was very quiet but that he keeps himself fit and holds himself in a professional manner in whatever he is undertaking. He was assessed to be in the bottom third of the platoon, not ready for promotion to sergeant and unable to exert a command presence in the company in part due to his inability to be employed at his primary trade. He was noted as progressing in line with his peers but that he was largely physically incapable of employment as a technician as *"the environmental conditions he would/could be expected to work in are unsuitable and likely to further aggravate his NFCI"*.

72. On 7 April 2017, Mr Coker formally went before the medical board and graded P8 which meant that he was permanently unfit for all military duties "now or in the future" and recommended for medical discharge.

73. At the medical board Mr Coker denied that he had suffered any particular cold exposure during his 2006-2013 army career but that he had general discomfort when he was cold and that he saw the medical officer in November 2015 which prompted her to downgrade him and issue an APP 9 to protect him from cold exposure. It was further recorded that:

> "*In February 2016 whilst on exercise in Thetford it would seem that Cpl Coker was required to patrol, became cold and symptomatic necessitating his reporting sick to a medic and subsequently RTU's. Subsequently Cpl Coker describes being placed on guard duty and becoming symptomatic through cold exposure once more contrary to his Appendix 9…*
>
> *In March 2016 he was seen at INM where infrared thermography showed severe cold sensitisation in feet and his left hand to have moderate cold sensitisation…*
>
> *In January 2017 he was seen at NFCI clinic by the ROHA. It was agreed at this time that he would be unsafe weapon handling outdoors …*"

74. At the medical board on 7 April 2017, Cpl Coker described himself as:

> "*…being largely housebound. He is unable to go out with his family. When the family goes shopping he describes parking close to the shops. If it is cold or raining he will stay in the car. If the weather is pleasant he will accompany his wife. He wears gloves and thick socks most of the time. The heating is on at home and Cpl Coker has his own bedroom which is very warm whilst his wife sleeps in a room that is not so hot. He no longer bathes his children due to fear of scalding them. He describes occasionally struggling with buttons an zips particularly when it is relatively cold. He has dropped plates in the past for similar reasons."*

He further reported to the medical board that he was unable to play or take his children to the park and that he could not walk for more than 10 to 15 minutes depending on the weather condition or temperature. Mr Coker denied in cross examination that his description of the impact upon him was that he was largely housebound was a gross exaggeration and that he was providing the medical board with a misleading impression. In my judgment, in light of all the other available evidence, this was a gross exaggeration and Mr Coker was embarking on a course of misrepresentation of the extent of his injuries.

75. It is clear that Mr Coker was giving an impression to the medical board that he was very severely impacted by the NFCI and that he was unable to go outside for any or any lengthy period of time. That is not what he showed to be the case when he was resident

at the Edith Cavell Centre in November 2017 – only a few months later – when he expressed a desire to go on runs and was very active playing table tennis and taking part in other activities, such as smoothy making.

76. At the medical board in April 2017, Mr Coker was given a date to leave the army on 18 October 2017.

77. At a pre-release medical before Major Henry Nwume at Wattisham on 15 September 2017 it was recorded that on his examination Mr Coker's hands and feet extremities were cold to touch despite gloves and thick socks. His medical notes reveal that he was anxious, stressed and very low in mood. He was assigned to attend the intensive anger management group from 6 to 10 November 2017. He was noted to have low mood, loss of appetite and sleep. The leaving date was extended until 25 November 2017 and was then extended again as he was receiving treatment for depression and anxiety and was then put before another medical board and adjustment disorder was added to the conditions affecting his grading. His final date for discharge was confirmed as 25 January 2018. Mr Coker left in the rank of corporal, having served approximately 10 years.

78. In his application for Personal Independence Payment (PIP) he referred to his health condition/disability as being NFCI in both hands and feet (from February 2016) and anxiety and depression (from September 2017). He said that he is very clumsy; that he cannot detect temperature; that he cannot use metal cutlery or utensils and he is not able to tell if they would burn him; that he has constant burning pain in his feet which means he struggles to stand for any length of time. He also said he needed to use aids and appliances to eat and drink and needed help from others to eat and drink and that his difficulties with eating together with his depressed state meant that he often did not want to eat and had to be encouraged to do so. He further said that he needed assistance to wash and bath and that his wife had to run the bath and turn on the shower for him otherwise there would be a serious risk of him burning himself; that he needs aids or appliances to dress or undress and needs help from another person to dress or undress, and he says that he cannot do up buttons or other small fastening, zips, belts or ties or laces and he therefore he needs another to help. He also said that he needed help from others to communicate and that his constant pain and mental health problems means that he cannot concentrate and that his wife always goes with him when dealing with authorities. He also said that he never went out, that he felt everyone was always looking at him *"because I wear gloves all the time including indoors and in hot weather."* He also said that he could walk 50 to 200 metres and that he did not use any aid (such as a walking stick) to walk. He then went on to say, when describing both good and bad days, *"I suffer constant pain, which is even worse in cold weather, going outside if the temperature is below about 20 degree Celsius is real agony and difficult to bear. I spend as little time outside as possible and can only walk very short distances before the pain becomes overwhelming."* He signed that PIP application on 27 February 2018 with a declaration that the information he had given was complete and correct and understanding the negative consequences of not giving an accurate account.

79. At the medical consultation for PIP he said he had to have a hot bath at least 3 times a day, that he had constant pain with his hands and feet, that the pain is unbearable and with no treatment it made him feel low and frustrated. He said that any walking causes him pain and so he would normally only walk around his home. Despite wearing gloves to the consultation, his hands were cold to the touch. When his score for PIP was

too low to entitle him to a PIP payment, even on the account given by him, on 5 July 2018 he appealed the decision and set out, amongst other things, that other than in the summer his wife had to run warm baths for him several times a day

80. In the capability for work questionnaire submitted by Mr Coker to the Department for Work and Pensions (DWP) JobCentre he set out that in March 2016 he had been diagnosed with non-freezing cold injuries to his hands and feet which had started with pains and numbness in his hands and feet but had got progressively worse. By February 2017 he said he had been unable to work and was placed onto long term sick leave and was eventually medically discharged from the army. He said *"I now suffer permanent severe pain in my hands and feet. I have to wear thermal gloves and socks all of the time to keep my hands and feet warm. I am effectively unable to use my hands …. The pain in my feet means I often stumble and fall… The damage to my hands and feet has led to me becoming clinically depressed and anxious. I rarely leave the house, my wife has to help with virtually every aspect of my life."* Further on in the form he set out that after his diagnosis with NFCI in March 2016 with pains and numbness in his hands and feet, it got progressively worse so that by February 2017 he was unable to work and was put on long-term sick leave and was eventually medically discharged from the army and that *"I now* [March 2018] *suffer permanent severe pain in my hands and feet. I have to wear thermal gloves and socks all of the time to keep my hands and feet warm. I am effectively unable to use my hands, as I have no feeling in my hands… the pain in my feet means I often stumble and fall, and have to avoid external stairs. The damage to my hands and feet has led to me becoming clinically depressed and anxious. I rarely leave the house, my wife has to help with virtually every aspect of my life."* He further ticked the box to say that he could not sit or stand in one place and be pain free without the help of another for more than 30 minutes and could not move safely and repeatedly on level ground without needing to stop more than 50 metres as *"my feet hurt[s] all the time with a constant burning sensation. I am constantly at risk of tripping and falling."* Mr Coker signed on 5 March 2018 the declaration that he had read and understood the notes and that the information he had provided was correct and complete, that he understood that he must notify any changes in his circumstances and that if he gave false or incomplete information he may have his support stopped or reduced and any overpayment may be recovered; also that he may be prosecuted or face a financial penalty.

81. These self-descriptions of the level of difficulties that he was suffering were not at all consistent with the reports of his behaviour when in the Edith Cavell Centre which set out that he had no problems with falling, that he was using cutlery normally, and that he liked to take lengthy runs outside and that he was playing table tennis every day. I consider both the PIP application, the PIP consultation and the capability for work questionnaire to include a large number of false statements and misrepresentations.

82. Mr Coker sought to explain the difference between how he was observed in the Edith Cavell in late 2017 and his self-reporting on the basis that he had been encouraged to show interest and be engaged while in the Edith Cavell otherwise he might not be released. That account does not bear any scrutiny as Mr Coker was voluntarily at the Edith Cavell and he could not have been kept in against his own wishes. Again, there was clear exaggeration and I do not accept Mr Coker's account that he had been advised to only report his worst case scenario by others when completing his capability for work questionnaire.

83. Mr Coker was awarded £11,124 for NCFI in 2018 with 26 weeks significant functional limitation to both hands and feet, with substantial recovery after 26 weeks. Mr Coker challenged that award and stated that he had shown significant continuing deterioration, that his manual dexterity had been severely compromised; that he is unable go out without family whenever it is rain, windy or cold since 2016. He was plainly disappointed by the level of damages he was awarded.

84. In the medical report for employment and support allowance it was set out that he was examined on 25 April 2018 by Dr Clare Atherton. She set out that Mr Coker informed her that he had been told that he has severe cold injury to his hands and feet and that he was discharged from the military. He told her that he had constant pain in his hands and feet unless they are warm and that the pain like a constant burning sensation and that his hands and feet become numb if they get cold and they pare painful when they are warm. He also reported that he is able to go out without gloves if the temperature is above 20 degrees Celsius without any windchill and that when the weather is hot he does not have pain or numbness. He also reported that he had been informed that he has an adjustment disorder.

85. In May 2018 at a PIP assessment Mr Coker was saying that *"as long as he is alive, this is good enough for him. He reported that the pain is very unbearable and he knows there is no treatment."* He was also stating that pain relief does not work and antidepressants do not help. Further, he reported that his wife had driven him to the assessment centre and that he only drove when it was hotter and that he had not driven for a long while. This is despite the fact that he had been driving his wife to and from hospital regularly only a few months before this assessment. He also stated that he was in constant pain in his hands and feet without giving any indication that his symptoms varied. He also represented that he could not use cutlery, could not button or use zips, that he was having difficulties with some reading and needed his wife to assist him and that he was "in constant pain with his feet so any walking causes him pain." His own description was *"I have intense pain from nerve damage in my hands and my feet causing medical discharge from the Army."*

86. Mr Coker said that after he left the army he initially tried for a job with Bombardier fixing trains but could not take up employment with that company as it would have involved him in working outside. He similarly discounted any of the emergency services but applied for and was employed by the Prison Service from September 2018 with the role almost entirely indoors with only 30 to 45 minutes outside at any one time, although that had *"got to the point where my hands and feet are so cold they become painful."* An occupational health report on Mr Coker for HM Prison and Probation Service set out that he had been in the army for 10 years prior to his employment with HM Prison and Probation Service and that he was medically discharged in January 2018 due to NFCI to both hands and feet. It set out that he is symptomatic and experiences cold sensitisation and that it takes him longer to warm his hands when going into a warm environment which "*can cause slightly reduced manual dexterity*." It was further recorded that Mr Coker was saying that he had found the transition into civilian life difficult, and "*that senior members of the Army were not supporting him with his injury and felt victimised."* The OH report further set out that *"On a day to day basis Mr Coker is functioning well and reported no problems completing his activities of daily living. He told me he enjoys his work and gets on with colleagues."* Despite this record, Mr Coker said in his statement that he found that the amount of time he was

spending outside was too much, and he resigned from the prison service in November 2019. In his letter of resignation dated 25 November 2019 (it was agreed between the parties that the letter dated 25/01/2019 should have been dated November) he said that he could not see himself *"working in an Environment where I feel Discriminated against due to my Disabilities, which the Establishment was fully aware off. I received no support after after OH Assist… made so many recommendations…".*

87. After resigning from the prison service, Mr Coker took up a position as a night hygiene operative with Aspall Cyder in Debenham. In the occupational health report dated 2 October 2019, he self-reported that he had not suffered from mental illness or stress related problems (despite having spent time at the Edith Cavell). He also said that he was engaging in regular exercise, including jogging, pull ups, running and sit-ups and he was undertaking this exercise two to three times a week. Mr Coker also said that he had no difficulties with running 50 metres, kneeling or crouching, climbing stairs or ladders, using hand tools, repetitive movement of hands or arms, working in extremes of temperature, walking on rough or uneven ground, standing or sitting for 2 hours or more, lifting or bending, gripping firmly with both hands, confined spaces or working at heights or shift work. Given his presentation to Mr Cross and Mr Gaunt, his declaration that he did not have difficulties running 50 metres, using hand tools, gripping firmly with both hands and working in extreme temperatures, are all surprising responses. The OH report dated 22 October 2019 declared that he was fit to perform all the duties. When questioned about the contents of this form and the major differences between the contents of that form and his other representations in forms and his presentation to the medics, Mr Coker sought to blame it upon the manager at Aspall. While not directly accusing his manager of telling him to tell lies, Mr Coker said that the manager told him that the form did not matter as it was generic. His evidence on this point made little sense. He was saying that Human Resources already knew about his difficulties, in which case there is no reason as to why Mr Coker did not put them down fully and honestly, he was also saying that he was simply putting down what he used to do, for example running and sit-ups *:"I just put them there because they're just irrelevant, as I said, its something that I'm not going to be doing…"* That is an extremely curious thing to have said and the remainder of the cross-examination of Mr Coker on this point revealed that he was not being truthful. His dishonesty was with respect to how he was seeking to present himself as unable to do all those things he readily accepted that he was able to do (running, pull-ups, kneeling or crouching, climbing stairs etc) in the form. He also confirmed in the form that he had no problems using hand tools, that he had no problems working in extreme temperatures, no problems walking on rough or uneven ground, or standing or sitting for 2 hours or more. When challenged, he both blamed the manager for telling him that is what he needed to say and relied upon the fact that he needed the job. Mr Coker was particularly evasive and inconsistent through this part of the evidence and I found him not to believable.

88. In August 2021, Mr Coker included in the occupational health form that he had suffered from an injury to the back, but continued to say that he engaged in regular exercise and that he had no problems with any physical activity, including running, climbing, working in extremes of temperature, walking on rough or uneven ground, lifting or bending. In a physical examination on 11 August 2022, it was reported that Mr Coker was said to have no restrictions on musculoskeletal assessment, no concerns on co-ordination or hand-eye co-ordination, and good balance

89. In the particulars of claim served in January 2019 it was alleged that Mr Coker has sustained (i) NFCI to his hands and feet, (ii) associated adjustment disorder (or similar psychiatric condition), (iii) pain and discomfort, numbness, paraesthesia and cold sensitivity. It was alleged that his condition has plateaued and that he has been left with symptoms in his hands and feet of numbness, tingling and pain, most intrusive in temperatures below 15 degrees Celsius and that he has a permanent neuropathic injury and extensive sensory loss in his hands and feet, with pain being severe and constantly present in cold weather. The particulars of claim further alleged that Mr Coker's ability to assess temperature had been compromised, he had reduced dexterity, and that was worse in temperature that trigger significant symptom.

90. In his third statement, dated 17 July 2019, Mr Coker referred to his feet being significantly more affected than his hands because in addition to cold sensitivity he suffers with chronic neuropathic pain in his feet. He said that when temperatures drop below 15-17 degrees Celsius he gets increasingly intrusive symptoms starting with a feeling of being uncomfortably cold *"That feeling then progresses to a numbness which affects the entireties of my fingers. The numbness makes it difficult to manipulate my fingers and I lose dexterity. In combination, this is quite debilitating because it significantly restricts what I can do with my hands in the cold. Examples of everyday things that I now struggle with when outside in the winter, would include feeling for coins in my pockets, doing up zips, tying my shoe laces, using my phone or any other touch screen device, writing etc."* He also said that there were times when he did not feel safe to drive and that when his feet get cold again he cannot feel the pedals and would not drive until he had warmed sufficiently and then *"when I'm having a particularly severe bout of pain, I won't feel safe to drive."* In his evidence he suggested it was something like 10 out of every 25 car journeys he would normally take in a week that he would not be able to take. He said that he tries to manage the symptoms by wearing gloves with different gloves for different times of the year. In the same statement, Mr Coker says that his hands do become painful in the cold at around 10 degrees Celsius after about 15 to 20 minutes but almost instantly if it is colder than 10 degrees Celsius.

91. As a consequence of trying to stay out of the cold as much as possible he says that in winter his life is a constant balance between trying to lead an everyday normal existence and trying to be pain and symptom free.

92. Mr Coker says that the pain in his feet is constant but varies in intensity. The trigger temperature is about the same as for his hands but even in temperatures above 15 degrees Celsius he still has a background burning sensation which is always there, but varying in intensity and aggravated by running. He also says that the pain randomly flares up overnight, particularly in the winter, although there is no discernible pattern to when the flare ups occur.

93. Professor Anand at Imperial College London, Professor of Clinical Neurology, saw Mr Coker in clinic on 11 July 2019. He found that there were no abnormalities on neurological examination other than a reduction of pinprick sensation below the mid-palms and ankles. Overall the history, symptoms, nerve conduction studies and skin biopsy findings were found by Professor Anand to be in keeping with small fibre neuropathy associated with NFCI

94. Mr Coker referred in his statement dated 28 January 2020 that there were times when he did not feel safe to drive as when his feet get cold, they go numb and he cannot feel the pedals and he would not drive until his feet had re-warmed sufficiently for the feeling to return. Also *"when I am having a particularly severe bout of pain I will not feel safe to drive either because the levels of pain will be such that I would be distracted to the point of potentially be[ing] unsafe"*. These periods, when he says he feels unable to drive, are relatively infrequent and relatively short-lived. *"If my feet were cold to the point of numbness the feeling would usually return within 30-60 minutes."*

95. Mr Coker has also set out that when his hands are cold he would not be able to use a sharp knife safely because of the numbness and lack of dexterity, and he would avoid preparing meals which involve handling cold or frozen food but am perfectly safe to chop fresh meat or vegetables. He says that it does not cause him practical problems day to day but that the cold does impact on his ability to walk. *"Firstly the distance I can walk is restricted because the time I can be outside in the cold is restricted. If you can only be out for so long there is only so far you can walk in that time. When my feet become numb I lose confidence in my foot placement and slow my pace so that I can tread more carefully. I am also aware that the sensation of my toes striking the ground causes additional pain*

96. In addition to the physical symptoms, Mr Coker set out the treatment he was receiving for his mental health issues. Since leaving the army he says that he has *"to some extent seen an improvement in his mood. I put this down, in part at least, to taking away the resentment I felt from my chain of command and giving me back some control over my environment… I am far from better. I am nowhere near the person I was before."*

97. In his fourth quantum statement dated 20 December 2020, Mr Coker confirmed that in general terms not much had changed and that he had not received any additional treatment for his pain or mental health. *"There has not been any improvement in my symptoms with the pain I get from the cold injury. As we've gone into the current winter, I recognise the pain as being the same as last winter. It is definitely just as bad."* He says that he has stumbled going up and down stairs and that is maybe because he cannot feel his feet properly and that he miss-steps. He said that his employer, Aspall, knew about his injury. For the reasons explored above, it is not clear that Aspall was entirely cognisant of the difficulties that Mr Coker says he was suffering at the time. Mr Coker was also saying that he could not help his wife do things around the house or take the children out, which would relieve the pressure from her. That statement was setting out why Mr Coker would need significant care but Mr Coker did not proceed with a care claim.

98. Dr Raheb in Pain Management in Ipswich Hospital recorded on 30 March 2021 that Mr Coker sustained a NFCI in approximately 2016 and that he describes pain bilaterally in hands and feet in equal distribution between the two. He described a constant burning sensation in his feet which could escalate to electrical shooting pains. He described experiencing a cold, painful numbness in his hands with electrical shocks on occasions.

Miebeka Coker

99. Mr Coker's wife, Miebeka, met him in late 2005 and they were early on in their relationship when he joined the army in April 2006. She described how their relationship over the first couple of years was that he would see each other a few times

a month and that whenever she saw him he would not complain about the cold and that he would not dress up to go outside any more than any other person. She said that he had no medical problems, other than a stress fracture, and described him as having no problems with the cold all the way up until their marriage in April 2012. She was not aware that he had been medically downgraded in 2008. She was clear in her evidence that, at that time, he had no difficulties in the cold and his hands were not cold to the touch. She said that between the time they were married and when he was sent to Thetford her husband had never said anything about the cold. This contrasts with the medical report dated 2 November 2015 reported that Mr Coker recorded that *"his symptoms first started when he was on his final exercise of basic training in 2007… All his fingers and toes became very cold and numb and painful*. *Since then, he had had very cold fingers and toes in cold weather …"*. That record does not align with Mrs Coker's evidence who said she was unaware of any problems before he went on his training to Thetford.

100. About a month after their wedding in April 2012 Mr Coker was posted to Germany. Mr Coker had been aware that the was going to be posted to Germany for months before he was posted there but Mrs Coker did not want to move to Germany and did not see why she needed to be there. She had her own career as an officer manager for a lettings agent. As she refused to go to Germany and, as they did not want to separate, they decided that he should leave the army and gave 12 months' notice. Mr Coker was in Germany for those 12 months and Mrs Coker says that he did complain about the cold during that time. After leaving the army in 2013, they lived together in Romford and that he volunteered at the local church and worked as a delivery driver. Mrs Coker said that he did not make any complaints about problems with his hands and feet after he had left the army. She said that they had discussed about him becoming a teacher but her husband had not expressed concern about being outside supervising the school children. Their first child was born in August 2013 and it was always their plan to have more children. They now have three. During the time of having the children, Mrs Coker took maternity leave and worked part-time. After the birth of the third child she did not go back to work until she took her teacher qualifications in 2021.

101. Mrs Coker said that after her husband resigned from the army the first time, they soon realised that it was unrealistic to think he could retrain to be a teacher and that they missed the support and security of the army. They both decided he should re-enlist in 2015 and she said that she would support him and they moved into married quarters together in Wattisham. Mrs Coker described how she found a home with the local church and it was clear to me from the evidence of both Mr and Mrs Coker that the church played, and continues to play, a significant role in the lives of Mr and Mrs Coker and their family. Mrs Coker said that when Mr Coker re-enlisted she was aware that he would be posted away. She said that at no point did she say that she would not go with him for any long posting. However, it was clear to me from her evidence that when they were living in Wattisham in married quarters and they had their three children, with her close connections with the Church, that any move away to an overseas posting would have been extraordinarily difficult for them, even when the children were young.

102. Mrs Coker recalls that after about 6 months of being back in the army Mr Coker informed her that he had been downgraded because of a cold injury and in February 2016 he was sent on exercise. She says that he suffers pain when he re-warms from

being cold, that his hands are like blocks of ice and take about an hour to rewarm with burning sensations in both his hands and feet. Mrs Coker said that in temperatures over 15 degrees he does not have any trouble with the cold injury but when his hands are cold, even mildly, he finds he loses dexterity in his hands and that she has to help him do up buttons on his shirts. She set out in her statement dated 1 October 2019 that he used to go for daily runs, as he loved running, but that he now avoids runs as he actively avoids the cold and he does not like to take the children outside as he does not want to risking getting pain in his hands or feet.

103. In her evidence in court, Mrs Coker said that her husband will go for a jog or a run when it is not windy. With respect to the observed return of Mr Coker on the surveillance evidence she accepted that was a jog or walk. She said that he did not go to the gym but that he took his fitness very seriously, that he eats well and uses video fitness programmes for his own fitness regime. She said that he will only go to the park with the children in the height of summer with no risk of it being cold. When asked about the surveillance evidence showing her husband out in March when he was out in shorts for more than two hours with his children, she said he was not restricted to going out in the height of summer. For the reasons set out in greater detail below, Mr Coker's presentation in the surveillance evidence totally contradicts the presentation he gave to the expert medics and contradicts Mrs Coker's evidence about the way he was having to compensate for his cold injury. For example, at no point in the video surveillance evidence was Mr Coker shown to be wearing gloves, and she simply could not explain that.

104. Mrs Coker also said that his physical problems had caused him to be withdrawn and that she would do her best to support him while also looking after the children. She said that there was a time when he was not in a good place but that he has gradually come back to himself. Despite the obvious contradictions between how her husband presented himself to the medics and how he appeared in the videos, when he did not know he was being observed, Mrs Coker continued to state that the way in which he was dressed when seeing the medics (that is, very heavily dressed in heavy winter clothing) was not unnecessary. She also said that it was a safeguard and not a pretence. In my judgment, Mrs Coker either knew that he was exaggerating the extent of his injuries and the impact upon him or she was blindly accepting what she was told by him. In either case, Mrs Coker's evidence does not help him.

105. With respect to the way that Mr Coker walks, she did say that he can walk "funny" when his feet go numb but she had never seen him use two sticks and that he does not walk on his heels with straight legs. That evidence supports the conclusion that Mr Coker was deliberately exaggerating the impact of the NFCI upon him when he saw Mr Cross and Mr Gaunt. Mrs Coker was not involved with any of the applications made by Mr Coker and she could therefore not assist with respect to the information contained on those forms.

Warrant Officer Stephen Macken

106. WO1 Stephen Macken gave evidence that he had known Mr Coker as a Class 3 Aircraft Technician when he rejoined the army in 2015 as they were in the same platoon and he would communicate with Mr Coker on a daily basis and he made a number of welfare visits to Mr Coker after his injury. WO Macken had also been part of the same exercise in Thetford in February 2016. He believes approximately 85 people took part in the

exercise and that all the participants were provided suitable weather kit including a sleeping bag that could withstand – 25 degrees Celsius. WO Macken's role was as the "convey commander" with responsibility to get vehicles to and from the exercise.

107. WO Macken said he recalled seeing Mr Coker reporting his symptoms to his Commander and saying that he was not able to hold a rifle and that his hands were cold. He recalled that Mr Coker was removed from the exercise and put into a heated hut on the exercise grounds in order to recover. Mr Coker was wearing his own thermal and waterproof gloves and a thinner pair of gloves underneath. After the reported injury Mr Coker was placed as part of the administrative staff on the exercise and upon return to camp he recalls Mr Coker attending a number of courses in order to put him in a good position should he decide to leave the army.

108. WO Macken said that when Mr Coker re-joined the army in 2015, after his absence of two years, Mr Coker had found it difficult to recall the knowledge he had previously gained in his initial Apache helicopter training and, although he had been offered refresher training, he had found it difficult to learn new information and that it took six months to refamiliarize and retrain. His view was that Mr Coker would not receive a recommendation for promotion unless his performance and attitude significantly improved as, while he was friendly and well-liked, he was not a good technician and, in WO Macken's view, lacked motivation.. There is an email dated 3 March 2016 from Mark Nicholson REME asking about the feasibility of putting Mr Coker on a class 1 training course. The response was that Mr (then Corporal) Coker was not considered ready for his class 1 course at that time and needed another year before he could be considered for a class 1 course. WO Macken was clear in his evidence that was not to do with any injury he might have suffered. His view was that he was not able to fulfil training for promotion on a technical basis. He said that he gave Mr Coker 1:1 tuition and that it was usual to push individuals in order for them to be encouraged to progress but that Mr Coker to achieve his class 2 status.

Mr Cross

109. Mr Cross, Consultant General and Vascular Surgeon instructed on behalf of Mr Coker, considered the first exposure of Mr Coker to have been in Thetford on 1 to 2 February 2016, with potential further exposure on guard duty on 15 February 2016. Mr Cross initially suggested that as the two incidents were approximately two weeks apart this could mean that the two incidents should be considered together. However, he accepted that Mr Coker was saying that his feet had recovered by 8 February 2016 which is clear evidence that the guard duty on 15 February 2016 was a separate matter. Mr Cross's view that the temperatures at the time in Thetford, 11 degrees with the windchill effect bringing it down to 7 or 8 degrees, would not typically cause a NFCI injury but it could cause an NFCI if there was a genetic predisposition or because of susceptibility due to earlier exposure.

110. Mr Cross said that it was difficult to explain why Mr Coker had more severe symptoms when he saw him. When Mr Coker was seen on 10 August 2018 by Mr Cross, he was assessed as suffering from Stage 4 NFCI of the hands and feet with permanent neuropathic injury and extensive sensory loss. Mr Cross was satisfied that Mr Coker did not suffer involuntary cold exposure and no symptoms likely to be due to non-freezing cold injury between 2004, when he returned to the UK, and when he first enlisted. Mr

Cross said that he thought that Mr Coker had given him a reliable history at the time and he did not think that he was a malingerer

111. Mrs Coker said that she took Mr Coker to the examination by Mr Cross in August 2018 and that he was trying to keep himself warm by wearing thick gloves, boots and warm clothes. On the physical examination on 10 August 2018, Mr Cross noted that Mr Coker's hands were surprisingly cool starting in mid-palm and extending up to the fingertips which were quite cold; that the fingertips looked pale and capillary return was much delayed at around 6 seconds and that the two point discrimination test could not be undertaken as Mr Coker did not feel the pointers at all. Mr Cross said that the situation was similar in the feet as there was no sensation over the whole of the sole of the foot extending up to the tips of the toes and that Mr Coker was unable to distinguish between sharp and blunt sensation. He noted that the feet were slightly warmer than the hands but were still pale and capillary return was again delayed at about 6 seconds.

112. Mr Cross noted that when he examined Mr Coker it was a reasonably warm day in Central London, just at the end of a long heat wave with an outside temperature of 18 degrees Celsius and no wind chill.

> *"Nevertheless, Mr Coker found it necessary to wear thick insulating woolly gloves to keep his hands warm. He was wearing quite thick trainers with thick socks as well. He has a continuous burning sensation in the hands and feet which was mitigated during the recent hot weather to the point where the pain disappeared altogether during the day but return to both him at night. His hands appear to be pink with no colour changes. His trigger temperature is thus around 18 degrees Celsius, but I would expect this to fall to about 15 degrees Celsius when he gets used to the cooler weather. In cold weather the pain becomes quite severe, present constantly and he has quite marked thermotactile issues, being unable to tell the temperature of water or a wall heater for example and he has been advised by the Institute of Naval Medicine to leave his wife to control temperatures at home. He has tactile problems with small objects when he is symptomatic and these symptoms are less intrusive in the warm, but remain persistent. I asked him specifically if he thought his condition was improving and he thought not."*

113. Mr Coker also informed Mr Cross that he had *"year round neuropathic pain"* and indicated that he had no sensation in his hands and feet when he was tested. In his evidence, Mr Coker said that he always kept a pair of gloves with him so that he can wear them when needed. However, when it was 18 degrees Mr Coker did not need to be wearing gloves and his explanation for presenting himself to Mr Cross, wearing gloves on a moderately warm day, was that he was trying to protect himself.

114. When examined by Mr Cross on a second occasion on 12 July 2021, Mr Coker said that his symptoms had been largely unchanged from when he last saw him – in the winter complaining of neuropathic pain and numbness in the hands and feet, worse in the feet, and in the summer this tends to improve so that there is no longer pain in the feet but he does still suffer from numbness, tingling and thermotactile problems. *"He walks*

with a stick to offload his feet …" . Mrs Coker said that he would use a stick as a precaution.

115. Mr Coker was described by Mr Cross as being *"quite heavily dressed for the occasion with a windcheater (not padded), thermal gloves, short sheepskin lined wellington boots and thick socks with one pair of thermal trousers (not long) and thermal underwear. He appeared to be comfortable wearing this amount of clothing."* The outdoor temperature was 20 degrees Celsius, it was not a particularly warm day, being at the end of a particularly unsettled period of early summer weather with drizzle and no windchill. Mrs Coker had driven him to the door of Mr Cross's consultation rooms and he was not unduly exposed to the cold and then was in the waiting room for one and a half hours and 20 minutes in the warm consulting room. His hands were pink and very warm, having just come out of his gloves and *"he did tend to hold his fingers in a slightly clawed position"* and this gave him trouble taking his socks off and putting them back on. *"Capillary return was normal at 2 seconds but there was quite marked subjective sensory loss."* In her evidence, Mrs Coker said that Mr Coker does not have clawed fingers and that he can straighten his fingers. She said that his fingers would only be clawed if his fingers are numb because he was cold. It therefore does not make sense that his hands were clawed in his consultation with Mr Cross.

116. Mr Cross described the toes as being a different matter and that *"despite having been in thick socks and warm sheepskin-lined boots, the tips of the toes were markedly cold although the rest of the toes and the rest of the feet were pink and warm. Capillary return was prolonged only at the tips of his toes, not elsewhere on the feet, and fine sensation was entirely absent."* Mr Cross said that he was unable to elicit allodynia in the hands but there was fairly mild allodynia in the feet which was compatible with walking issues. *"I watched him walking with a stick and although this does help, he did progress with a slight antalgic gait."*

117. After seeing the surveillance evidence with how Mr Coker was acting in April 2021, Mr Cross said that was irreconcilable with the presentation in his consulting rooms in July 2021, which presentation he said was inconsistent with a mild NFCI. The evidence of Professor Anand was that there was small fibre neuropathy which was consistent with a NFCI and the biopsy was something that could not be faked. The capillary refill, which was abnormal at 6 seconds but normal at 4 seconds, could have been faked but Mr Cross did not think that it had been. Mr Cross was of the opinion that Mr Coker had suffered a NFCI in February 2016. The IENFD test undertaken on Mr Coker is a reliable diagnostic test for nerve fibre neuropathy but for the purpose of determining whether there is NFCI and the impact of the NFCI it is necessary to determine the extent of the exposure and the extent of the impact, which relies upon there being a truthful account from the individual.

Mr Gaunt

118. Mr Coker was examined by the MOD's consultant vascular and general surgeon, Mr Gaunt, on 4 December 2020 in his offices in 9 Harley Street, London. It was a dry day with a temperature of approximately 5 degrees. Mr Coker attended his consultation with Mr Gaunt wearing multiple layers of thick clothing, boots and hat and walked slowly on his heels using 2 walking sticks. Mr Gaunt sets out that Mr Coker complains of numbness, burning sensation and pain affecting all the fingers, thumbs and distal part of the palm affecting both hands, and numbness and pain affecting all the toes of both

feet with burning and pain extending along the full length of the sole of the foot to and including the heel. Mr Coker told him that the symptoms affect the feet more than the hands. The hands are predominantly affected when the weather is cold, however the feet symptoms are present all the time but are less severe in the summer. He said that the pain and burning sensation on the soles of his feet requires him to walk on his heels with stiff legs, and because of the difficult with balance he reports that he needs to use 2 walking sticks in order to walk:

> "He walked into the consultation room with two walking sticks and walked and moved slowly, with difficulty, walking on his heels with straight legs."

119. When Mr Coker was asked about this presentation in his evidence, he said that he was not feigning the extent of his difficulties but that he had sustained a fall in May and his feet had become cold during the journey to the consultation rooms by public transport and then taxi. His account for his presentation before Mr Gaunt was, unfortunately, inherently unbelievable. Mr Gaunt further recorded that Mr Coker was unable to raise his hand and arms about shoulder level. Mr Coker said in his evidence that was not true, but it is difficult to understand why Mr Gaunt would not have told the truth about this aspect of the examination. It is inconsistent with Mr Coker's account that his difficulties are with respect to his hands and feet that he could not raise his hands and arms above shoulder level and, having listened to the entirety of Mr Coker's evidence, I have to come to the conclusion that he was exaggerating the level of his disability. Mr Coker also showed himself as being unable to make a fist or straighten his fingers and that he had zero grip.

120. Mr Gaunt recorded that Mr Coker reported that his symptoms have continued since leaving the army, that he has pain, burning sensation and numbness all the time affecting his feet; all the fingers and thumbs of both hands were affected predominantly in the cold; he reports that the symptoms in his feet mean that he is unable to walk normally and has to walk on his heels and requires the use of walking sticks; he reports that he frequently loses his balance and has had many falls. Mr Gaunt said that there was no medical explanation for walking on his heals or the leaning on sticks

121. The full description of his attendance at the consultation on 5 December 2020 by Mr Gaunt, was that Mr Coker attended wearing multiple layers of thick, warm clothing, thick boots and a thick hat with ear flaps. He describes Mr Coker as walking into the consultation room with 2 walking sticks and that he moved slowly with difficulty walking on his heels with straight legs. *"He undressed very slowly but was able to transfer with some difficulty. Both hands* and feet felt cool to the touch compared to the rest of the body, and there was *no hyperhidrosis…"* Mr Coker was observed to hold a pen and able to write normally and he was observed to keep his eyes closed throughout his examination. He was noted to be slim, fit looking, well-muscled individual with particularly good muscle development of the biceps, triceps, chest and leg muscles. *"There was no muscle weakness, atrophy or fasciculation… Tinel's test for carpal tunnel syndrome was negative, but Phalen's test could not be performed as he was unable to straighten his fingers."* Mr Gaunt accepted that he did not question Mr Coker about his journey to the consultation on 4 December 2021, but that he asked Mr Coker about his symptoms generally who said that the symptoms were better in the summer but that the difficulties he was exhibiting on 4 December 2021 were not unique to that day but were predominantly during the cold.

122. Mr Gaunt also noted the following:

> "*On the Dynamometer grip strength registered 0 kg for the right and left arms which is totally abnormal. Clinical testing gave a grip strength of 2/5. This is the same for finger/thumb grip strength and the muscles of the hand, including thenar and hypothenar muscle groups. Power in the flexors/extensors of the shoulders, arms and forearms were measured at 3/5 similarly 3/5 for the hips, knees, ankles and toes… He was unable to lift both legs off the bed against gravity. All reflexes including brachiradialis, knee jerk and ankle jerk were brisk. Plantar reflexes were down going.*"

He also commented that the examination is substantially subjective and reliant on the cooperation of the patient, and he did not feel that Mr Coker cooperated fully with the examination to the normal level expected.

123. Mr Gaunt highlights the following issues as being, in his opinion, inconsistencies between Mr Coker's own account, the medical records, and the known scientific history of NFCI:

> "*i) the absence of any entries of in the medical records of cold related symptoms during his 2006-2013 period in the army*
>
> *ii) the delayed reporting of an episode of cold injury occurring in 2006 to Major Weiss* [the medical officer] *in November 2015*
>
> *iii) the relatively minor nature of the NFCI injury in February 2016 – approximately 24 hours despite the absence of severe weather conditions, the use of extra cold weather kit, sleeping bag etc, immediate removal from exercise and rewarming on reporting symptoms*
>
> *iv) the deterioration in symptoms despite no further significant cold exposure*
>
> *v) the difference in the history of initial cold symptoms reported to Mr Cross and me, from basic training in 2006 to Germany in 2012/13*
>
> *vi) the absence of muscle weakness, muscle atrophy or mobility issues during the assessment of Mr Cross in 2018*
>
> *vii) the presence of severe mobility, muscle weakness, manual dexterity and other neurological abnormalities during my assessment in 2020 despite the absence of further cold injury.*"

124. Mr Gaunt did not consider that Mr Coker had any significant re-exposures that would cause any additional injury. The guard duties would not, in his opinion, cause re-injury although they might cause symptoms. He said that NFCI is hardly ever seen outside the army because the exposure has to be significantly different (see the reference below

to the paper by Golden and others about the soldiers serving in the Falklands conflict) although he has seen it in rough sleepers.

125. Mr Gaunt expressed real concerns in his report dated 15 February 2021, after the examination on 4 December 2020, where he says:

> "*During my examination of Mr Coker, I do not feel Mr Coker was fully cooperating with the physical examination and therefore many of the results were exaggerated and inconsistent, in particular the gross muscle weakness identified is inconsistent with a diagnosis of NFCI, therefore no meaningful conclusions on the severity of this case nor prognosis could be obtained from my examination.*"

126. Prior to seeing the surveillance footage obtained by the MOD or reviewing the additional medical records that had been obtained from Ipswich Hospital NHS Trust, which evidence I will come to, Mr Gaunt concluded in his report of February 2021 that, on the balance of probabilities, Mr Coker had experienced an episode of mild NFCI in February 2016 when at Thetford, from which a full recovery would have been expected: *"It was my opinion that his subsequent deterioration to the severe level of disability claimed was inconsistent and unexplained and not supported by the review of the medical records or by the clinical findings on examination."* Mr Gaunt contrasted the conclusions contained in the paper on morbidity of cold injury during the Falklands Conflict written by Golden and ors where there were *"several days of … horrific conditions, with fluctuating temperatures, precipitation and high wind speeds…"* the Commanding Officer reported that *"Once a man was wet, he stayed wet… For the majority of the 25 days of the campaign, their feet were wet and cold."* It was reported that *"The numbness began to develop after 2 to 3 days"* and that later, in addition to the numbness, the soldiers *"experienced pain and a sensation likened to 'painful electric shocks running up their legs from their toes'*. These Falkland soldiers were exposed to severe conditions of both cold and wet for 25 days and were only able to embark on ships to come home 10 days after the end of the hostilities, but most returned to full sensation by the time they docked in the UK two weeks later or by the end of their leave in early September.

127. Mr Gaunt accepted that different people can present in different ways, potentially because of psychiatric issues or because they are protecting themselves from potential pain, but he considered that Mr Coker was not trying to perform in the tests. He said his well-toned and muscled body was not consistent with his alleged weaknesses and his grip score was 0 when tested (which Mr Gaunt said he had never experienced before) but Mr Coker was able to grip his walking sticks which showed he did in fact have grip strength. He said *"I thought he was trying to convince me that he was damaged; its inexplicable why he didn't perform on the day."* When asked about his psychiatric history, Mr Gaunt properly said he deferred to the psychiatrists but noted that Mr Coker had been functioning normally in the psychiatric unit at the Edith Cavell, for example playing table tennis.

128. In my judgment, having considered all the evidence of Mr Cross and Mr Gaunt, including the cross-examination of both, Mr Coker was exaggerating the extent of his disability before both Mr Cross and Mr Gaunt to a very significant extent. His reason for doing so was to make them both believe that he had been much more severely

injured, that his physical disabilities were far greater and both his level of pain and the impact on his ability to carry out normal day to day tasks was far more severe than was the actual case. This was dishonest. His use of walking sticks and walking on his heels was, by way of example, a deliberate attempt to present himself as far more significantly disabled than he in fact was.

129. Professor Morgan, in his supplementary psychiatric report dated 29 July 2022 expressed a view that the deterioration in Mr Coker's condition, without any further significant cold exposure, could be explicable in terms of mood variation. However, Mr Gaunt said that as an expert in NFCI he sees a lot of patients with depression and he does not close his eyes to the consequences of depression but that, while Mr Coker had suffered a NFCI, it did not explain the level of his disability. Mr Gaunt said he *"had not come across anything to support a psychiatric component causing muscle weakness."*

Dr JF Morgan

130. Mr Coker was examined by Professor Morgan, the consultant psychiatrist instructed on behalf of Mr Coker, in his London consulting rooms on 18 September 2019.

131. Professor Morgan set out that the INM records from February 2016 documented that Mr Coker had suffered a *"cold injury-exercise aviation awakening … Past medical history of cold injury … Come away on the exercise… Now suffering with very cold and painful hands and fingertips."* The notes indicated that Mr Coker was feeling depressed and anxious and that the felt that his comrades felt he was lazy and by September 2016 he was not depressed but feeling anxiety regarding non-freezing cold injury. The notes relating to his pre-release indicated that his depression was becoming more severe as he anticipated transition to civilian life and on 15 September 2017, it is recorded: *"low mood, difficulty managing anger. Symptoms picked up on pre-release … Anhedonia and early morning wakening. Constant feelings of worry about the future. Symptoms in keeping with reactive low mood corresponding with life transition is about to leave service. However, admits to increase feelings of anger that are now significantly impacting on his personal relationship and his communication …"*

132. Professor Morgan recorded that on his discharge to civilian life, Mr Coker's mood first lowered as he feared he would not be able to provide for his family but that with the passage of time his depression has improved in its severity level though has no resolved and he has maintained symptoms of major depression but now of mild severity.

133. As at the time of the consultation in September 2019, Professor Morgan recorded that Mr Coker was finding his pain symptoms to be static and that pain management was largely conservative. Mr Coker also expressed his scepticism about analgesic medication, with trials of amitriptyline and pregabalin and maintenance on gabapentin, and being concerned about potential side effects. At this time Mr Coker was off work from the prison service with work-related stress (he had been off from 20 August to 27 September 2019) but this was not something he mentioned to Professor Morgan. His explanation for that failure being that he had not been asked which is surprising, given that Professor Morgan was his psychiatrist for the purpose of this litigation and concluded that *"with the passage of time his depression has improved not resolved but is now of mild severity."* It seems that Mr Coker may not have been being honest with his doctor when he obtained sick notes for the prison service on the basis that he could

not work due to work-related stress. Indeed, Mr Coker obtained and started work with Aspall before he resigned from the prison service and, although he paid back monies to the prison service, it was plainly dishonest to recover monies from the prison service at the same time as working for another employer.

134. Professor Morgan said that the evidence of Mr Coker with respect to the impact of the lidocaine seemed to him to be an inconsistency as his report that he was feeling bad on one day and then not on another was not something that could be explained by the pathology. It seems that Professor Morgan had picked up on Mr Coker not being entirely honest and straightforward with him, although he did say that it could have been that Mr Coker was intent on convincing others that he was suffering from NFCI and that it was not malingering. Professor Morgan accepted that when Mr Coker was at Edith Cavell the records indicated that he was feeling angry and that the records of him being able to play table tennis was in contrast to the medical reports that he had no grip strength and his OT assessment which required him to be able to make a smoothie indicated that he was not having any problems with his hands even though he was presenting with clawed hands when he saw Mr Cross in the summer of 2021.

135. On his viewing of the surveillance evidence, Professor Morgan accepted that he had not seen any sign of disability during the days of surveillance but thought it was possible that Mr Coker was trying to communicate his illness with vigour when he was seeing the experts and that he might be behaving in this way because he might feel that he was not being taken sufficiently seriously and so he had feelings of vexation. That, of course, could not excuse deliberately misrepresenting the situation.

136. Professor Morgan said that he deferred to Dr Bond's determination that as at August 2020, Mr Coker was not suffering from any diagnosable depressive illness and that there was no clinical depression after August 2020. Mr Coker's presentation after August 2020 could not, therefore, be explained by any psychiatric illness.

Dr Michael Bond

137. Dr Bond, the consultant forensic psychiatrist, instructed on behalf of the MoD examined Mr Coker on 3 August 2020 recorded various comments from Mr Coker which showed that he felt that the army was against him, such as *"they broke me finally"* and his attempt to argue at the medical board that he could be redeployed to a role that would not expose him to the cold, for example as a radiographer, but that at the medical board *"I felt they just wanted to kick me out."* Dr Bond accepted that sometimes people have a catastrophic view of what has happened to them but he did not accept that there was any psychiatric explanation for why Mr Coker was exaggerating his symptoms, but that he might have been endeavouring to make an impression as to how disabled he felt he was.

138. Mr Coker also said to Dr Bond that he tried to block out things that had happened *"I tend to shut it and sweep it under the carpet."* and that during the cold months the pain becomes unbearable and it affects his mood. Dr Bond said that Mr Coker had a sense of grievance against the army and felt that they had failed to abide by the directions given by the medics with respect to what tasks he should have been asked to undertake and that when he was discharged from the army he had some anxiety problems and a sense of grievance.

139. Dr Bond assessed Mr Coker as having symptoms consistent with ICD-10 diagnosis of Adjustment Disorder with mixed anxiety and depressive reaction or ICD-10 diagnosis of Mild Depressive Episode, in typical depressive episodes, the individual usually suffers from depressed mood, loss of interest and enjoyment and reduced energy with other common symptoms being reduced concentration, reduced self-esteem and self-confidence, ideas of guilt, negative views of the future, ideas of acts of self-harm or suicide, disturbed sleep and diminished appetite. Dr Bond did not accept that any psychological difficulties had any impact on his pain levels.

140. Both Professor Morgan and Dr Bond agreed that Mr Coker had suffered a reasonably mild depressive episode which amounted to an adjustment disorder which then became more severe, amounting to a depressive episode of moderate severity in 2019. The depression partially improved in response to antidepressant medication and then further lowered in the initial transition to civilian life and becoming mild as he found a civilian career trajectory. Dr Bond could not say if Mr Coker had any employment issues in 2019 as he did not see him then, but he accepted that he had resigned from his role in the prison service but did not consider that his mental condition was fluctuating while working for the prison service and he was not clinically depressed during this time. Dr Bond said that you can have mild or even moderate depression and keep working but he did not imagine he would have been able to continue with his job in the prison service if he was suffering depression then. In Dr Bond's opinion there were no issues with his mental health when working for the prison services and there was no reason for him not to work from a psychiatric perspective and that his resignation was due to work related stresses. Dr Bond appreciated that prison officers have to work in difficult and risky situations and that he may have had perfectly reasonable reasons for having looked for another job.

141. Both psychiatrists also agreed that there are potential psychological contributions to pain perception, with chronic pain exacerbated by low mood but with the degree of psychological contribution to pain symptoms depending upon the extent of physical contributors. Dr Bond found that by August 2020, Mr Coker was not suffering from a diagnosable depressive episode and was capable of maintaining full time employment with the benefit of duloxetine and outpatient reviews. Professor Morgan agreed that was a reasonable conclusion given the improvement.

142. Dr Bond concluded that Mr Coker was an unreliable witness given the surveillance evidence the report of Mr Gaunt, whereas Professor Morgan concluded that there was nothing inconsistent with his psychiatric presentation. An important point brought out by Pressor Morgan is that Mr Coker felt subjectively angry at his perceived treatment and it is possible that his presentation to Mr Gaunt and Dr Cross was a reflection of his desire to be taken seriously . If that were the case then that is an explanation for the apparent inconsistencies that Mr Gaunt refers to but it would also point towards a knowing attempt to mislead.

Surveillance Evidence

143. Mr Gaunt's opinion, having considered both the edited and unedited surveillance footage and the witness statements of the surveillance operatives, comparing the appearance and function of Mr Coker in the surveillance evidence with the clinical appearance and function as displayed during his consultation on 4 December 2020, is contained in his additional report of 2 March 2022. Within that report, Mr Gaunt notes

a marked contrast between his appearance and function in the surveillance evidence taken at different times on 30 March 2022 and during the consultation on 4 December 2020. The temperature difference between the two occasions was marked in that on the consultation day the temperature was about 5 degrees whereas on 30 March 2022 the temperature was between 17 to 20 degrees. Mr Gaunt did not accept that the difference in presentation between the consultations and the surveillance evidence could be explained by the Lidocaine patches he had been prescribed. Mr Gaunt stressed that there was a very marked contrast between Mr Coker's physique and the way that he presented himself at the consultations.

144. During the surveillance on 30 March 2021 Mr Coker was wearing a T-shirt, shorts and flip-flops with no socks. While this was a warm day, it is notable that he is the only person in shorts and there is very considerable contrast between his dress and behaviour on that occasion and the appearance at the consultation in December 2020 where he knows he is presenting himself when he is wearing multiple layers of thick, warm clothing with thick socks, boots and a thick hat with ear flaps he wore when attending the consultation. He required walking aids in the consultation whereas in the surveillance evidence he walked normally with a normal gait and without sticks or any other aids.

145. In the morning of 30 March 2021, Mr Coker had a telephone conversation with the advanced clinical practitioner at his GPs surgery, Sister Palmer. He told her that he suffered pain bilaterally in hands and feet including *"constant burning"* in his feet with regular shooting pains and a *"cold painful numbness"* in his hands. He also explained that he had suffered falls and that *"due to exceeding his standing tolerance his pain and numbness increase and his legs give way."* He told her that had purchased two walking sticks in discussion with his GP and that he would like to have a walking aid assessment.

146. He did not indicate to Sister Palmer that these various symptoms were intermittent and that, for example, he was not being affected on that particular day. Later, unaware that he was being observed for the purpose of this litigation, he was seen walking around with his children for some time and "broke into a jog" when moving between the car and one particular store. In the surveillance footage he was also able to load shopping into the boot, carry bags of shopping while holding the hand of a child, pick up and handle objects normally, use his hands normally and manipulate car keys and the car door, carry his child around the car door and place into the back child seat, which appeared to be a job requiring fine motor skills. He was also able and drive normally and show fine motor skills and manual dexterity when putting small pieces of food into his mouth, whereas in the consultation he was showing generalised weakness and difficulty using his hands. Mrs Coker's explanation for this apparent extreme difference was that Mr Coker does not suffer restrictions when he is going out at the height of summer.

147. Insofar as the temperature difference provides some explanation to the difference in the way Mr Coker was behaving when knowing he was being observed on 4 December 2020, and when he did not know he was being observed on 30 March 2021, that does not explain the difference between his appearance at the consultation, where he was heavily dressed in very warm clothing, and the surveillance on 6 April 2021 which shows him only wearing trousers, shoes and a top. The temperature at both was approximately 5 degrees. Similarly on 15 April 2021 the temperature was 6 to 7 degrees (that is marginally more than on 4 December 2020) but the clothing he was

wearing was entirely different and in marked contrast to that he was wearing when he knew he was being observed. Additionally when under surveillance he was observed *"walking quickly and confidently to the school with a normal gait with no balance issues and no walking sticks … The claimant uses his hands normally, uses the car keys normally and does not wear gloves."*

148. On 13 April 2021, when the temperature was 10 to 11 degrees Celsius the surveillance evidence records Mr Coker returning to his home. The implication is that he had been out for a run, but there is no footage of him running. What the footage does show is that he is able to move normally, he was not walking on his heels with straight legs (as he was in the consultation), he did not need walking sticks. Mr Gaunt noted that Mr Coker is well-muscled and his appearance was consistent with someone who would go for fitness runs.

149. In July 2021, a few months after the surveillance evidence, Mr Coker turned up to Mr Cross's consultation again dressed in very heavy outdoor clothing including warm clothes, gloves, sheepskin wellies and carrying a stick. Mr Coker's explanation for that was that he was taking precautions but could not give an appropriate explanation as to why he was wearing such minimal clothing on 31 March 2021 without the apparent need to take precautions against getting cold or why, if he was worried about the potential of getting cold when going to the consultation, why he did not simply take the extra layers with him. It is clear from the two and half hours that he spent out in very light clothing with his children on 31 March 2021 that he did not need the level of clothing that he was representing to the medics he required.

150. On 6 April 2021 when he was surreptitiously observed to be in his post office he was wearing entirely usual clothing: jogging bottoms, trainers and a jacket. The temperature was between 2 and 4 degrees. He said he had thermals on as well and was carrying his gloves. Even if that were true, and of course the NFCI does not impact the body but the hands and feet, it is nowhere near the level of clothing that he was wearing in similar conditions when he knew he was being observed by medics - multiple layers of thick, warm clothing, thick boots and a thick hat with ear flaps and needing two sticks in order to walk.

151. On 13 April 2021 Mr Coker accepted that he was on a jog/walk without a stick when it was only 9 or 10 degrees, but that when he saw Mr Cross a few months later he had to be dressed in heavy clothes *"with a windcheater (not padded), thermal gloves, short sheepskin lined wellington boots and thick socks with one pair of thermal trousers (not long) and thermal underwear."* Notably, Mr Coker was telling Mr Cross that there had been no change in his condition over the period, he did not indicate that he found any relief from taking Lidocaine (which had only been for one dose and not repeated) and I can only conclude that he was deliberately representing to Mr Cross that he was suffering in a way that was not true. This included holding his fingers in a slightly clawed position. There is no excuse for Mr Coker not being honest and straightforward in his presentation to the medics. Any depression or desire to convince others that he was truly suffering would not result in him giving such different presentations depending upon whether he knew he was being observed or not

152. Mr Gaunt's conclusion was that on the balance of probabilities, the surveillance footage reveals a considerably greater level of function than in the consultation and that Mr

Coker has exaggerated his degree of pain and lack of physical function. He found that the number and extent of the inconsistencies could not be explained medically.

153. Mr Gaunt did not accept Mr Coker's response to seeing the surveillance footage as the Lidocaine patches were not prescribed by the Ipswich Pain Clinic in time for him to have the apparent benefit of moving from someone needing to walk with two sticks and wearing heavy clothing, to someone moving freely in light clothing. Mr Gaunt's opinion is that if the Lidocaine patches had the extraordinary immediate impact that Mr Coker suggest that they did, then he would not have been moved on to Capsaicin and the Lidocaine (which was a temporary measure before the prescription of Capsaicin) would have been prescribed again.

Discussion

154. Having considered all the evidence presented in this case in great detail I have had to conclude that Mr Coker has been dishonest in his presentation of the impact of the NFCI he sustained on exercise in February 2016 and that his dishonesty is fundamental for the purpose of section 57 of the CJCA 2015. I did not find Mr Coker to be either reliable or credible in his evidence and his exaggerated claims and misrepresentations to the medical experts are a fundamentally dishonest presentation.

155. The original claim, including for care, was in the region of £750,000. Mr Coker's fourth quantum statement by Mr Coker is set out for the purpose of showing the high level of care that he requires. The care part of his claim was not proceeded with and I accept the submissions made on behalf of the MOD that the care claim was not proceeded with as it was recognised that he could not succeed on that claim in light of the surveillance evidence. For the reasons I will set out I consider the actual level of his claim is very significantly lower than that originally claimed or that claimed in the schedule to the skeleton submissions. As a consequence of my findings I am not setting out in this judgment the opinion evidence of the employment experts, Ms Ahern and Mr Duckworth.

156. I have had the opportunity of considering the various written submissions of the parties and I take those submissions fully into account in reaching my various conclusions. While a point is made on behalf of Mr Coker that the MOD did not raise fundamental dishonesty until its amended defence in 2022 and that, prior to that time, there had not been a suggestion of dishonesty, that does not assist Mr Coker. The reason for the MOD alleging fundamental dishonesty in 2022 was as a consequence of the surveillance evidence that was produced in 2021. That evidence, showing the way in which Mr Coker behaved when he did not know he was being observed, as compared to the manner in which he presented himself to the medics instructed in the case, is the clearest indication that Mr Coker was being dishonest. It is not, however, the only evidence that he was being dishonest.

157. As Jacobs J pointed out in *Elgamel* [2021], referred to above, it is important to recognise that it is possible for a witness to exaggerate when they are doing not for the purpose of deception but in order to convince (see *Smith v Ashwell Maintenance* [2019] 1 WLUK 541). In this case, I have no doubt that Mr Coker was exaggerating the impact of his NFCI and that he was doing so in order to recover a much greater sum in damages. He was not exaggerating for the purpose of showing others that he was suffering. If that were the case then it could be expected that he would maintain the pretence in his

daily life. His behaviour as shown on the surveillance videos shows that he had a completely different presentation when he was not aware that he was being observed. Further, the misrepresentation of the true impact upon him was not confined to those he may have felt he needed to convince in order to gain their attention (such as the army medics and the consultants instructed in this case) but was across representations to the experts, to the DWP and to the AFCS and in statements to the court. When his guard dropped, for example during the time when he was in the Edith Cavell for his depression, he revealed that he was fit: he wanted to go out for runs, he was regularly playing table tennis, and took part in an exercise making smoothies – so that he showed his manual dexterity. This is not the same presentation as the man who attended the consultation rooms of Mr Cross and Mr Gaunt.

158. Furthermore, his dishonesty went further than his misrepresentations with respect to the extent of damage and disability that he suffered as a consequence of the NFCI but also included making misrepresentations about his life before coming to the UK and joining the army, his civilian experience between leaving the army voluntarily in 2013 and re-enlisting in July 2015, and his representations on his application to his employer Aspall.

159. Throughout his evidence, when inconsistencies were highlighted between what he had recorded on various forms and how he was seeking to present himself, the inconsistency was explained by blaming advice he was given by others. For example, with respect to his application for work at Aspall he said that his manager told him to put down that he did not have any difficulties in his occupational health questionnaire as they were merely "generic" questions and it did not matter. Of course it mattered, as the manager of Aspall would have known the importance of the questions and would have been concerned to ensure that the answers were correct. Any physical difficulties could potentially limit the way in which Mr Coker could be used in the firm.

160. Similarly, the various army medics were blamed for errors or inconsistencies in his army medical records: Major Weiss for alleged errors in the report dated 2 November 2015; Corporal Mason for the alleged error regarding his past medical history in the entry dated 2 February 2016 (after Thetford); Lt Colonel Baker for the entry dated 15 May 2006 referring to his pre-existing issues with his leg; Dr Wilcockson for the alleged error in the letter dated 18 May 2016.

161. The descriptions given in Mr Coker's application for personal independence payment (PIP) to the DWP were clear exaggerations but, again, Mr Coker did not accept responsibility for that but blamed it upon the individual from the Citizens Advice Bureau to advise him not to be honest and say, for example, that his condition and the impact upon him varies, but to say only how he is on his worst day. I do not accept that to be the case. I find that the decision to misrepresent the true situation was a decision made by Mr Coker and that his actions were designed to increase the amount of money he could recover – either from the state in the form of welfare payments – or from the MOD in compensation through this claim.

162. A clear, discrete, example is when he applied for an AFCS (armed forces compensation) award for problems with his shins. He contended that this had happened on basic training. In fact the medical records, including the X rays, show a chronic stress fracture in his right shin before he joined the army. The consequence of his shin issues is that the was medically downgraded and remained downgraded until he left the army the first time. Mrs Coker was apparently unaware of that.

163. Mr Coker contends that had it not been for him being sent out on exercise in Thetford in February 2016, within months of re-enlisting into the army, then he would have been able to continue in the army where he would have had a successful career.

164. He alleges that it was very cold when he was at Thetford and as a consequence he developed constant burning to his feet and pain on most days in his hands. His evidence to the experts, and to the court, was that as a consequence of the exercise in Thetford, by the time of the medical board in April 2017 he was *"largely housebound" w*ith stage 4 NFCI with permanent neuropathic injury and extensive sensory loss in both hands and feet. As a consequence of this he contends that he has to wear gloves most of year and wear extra layers of warm clothing , that he has had to use one or two walking sticks to steady himself and stop a further fall, that he cannot wash up or bath the children and that during the winter he had to significantly curtail the amount of driving he can undertake and has impacted on him being to continue working for the prison service or for Aspall. He has contended that "but for" the exposure he would have been able to remain in the army and serve a full career.

165. On the basis of the evidence presented before me, I am satisfied that Mr Coker had in fact suffered from cold sensitisation before re-enlisting in July 2015. He knew he had a problem with the cold as he revealed in the course of his re-examination, after a very lengthy cross examination, that he had decided he could not teach because of the behaviour of the children and because he could not stay outside for playground duty. I asked Mr Coker further questions about that evidence in order to give him the opportunity to confirm that was his evidence or say that he had been mistaken. He was clear that concerns about the cold was one of the main reasons that he could not go into teaching. It is extraordinary that he did not mention any problems with the cold when he was medically examined before rejoining the army and said in his evidence that no-one had asked him but had they he would have said he had no problems. That is a glaring contradiction and shows a willingness to say whatever he felt to be most advantageous to him at any particular time. If exposure to cold in the playground was more than he felt he could withstand it was obvious that he would not be in a position to go on exercise or carry out the normal and usual tasks of being a soldier in the army.

166. Mr Coker had left the army in 2013 because he wished to hold onto the relationship with his wife. He applied to leave back in February 2012 as she had made it clear that she would not move with him if he were posted abroad. While she had said that she would support him on re-enlisting, the evidence from the appraisals in 2016 and 2017 makes it clear that his desire was to stay in Wattisham with his wife and children in order not to disrupt their lives and so that he was not away from them.

167. As I have set out above, there is a stark difference between what Mr Coker was telling the army when he re-enlisted and what he told Major Weiss in November 2015. Nothing had changed between July and November 2015, but he was informing Major Weiss that he had various problems which resulted in her issuing the APP 9. Mr Coker was representing at that time (which is consistent with him feeling he could not go into teaching because of the need to go into a playground) that he did not feel able to go on the exercise to Thetford because of his symptoms. He later told the medical board that *"As a corporal I argued the situation and eventually could not refuse an order from my officer commanding."*

168. By his own words, Mr Coker undermined his other evidence that he was happy to go on the exercise and that everyone loves to go on an exercise. The medical board recorded that Mr Coker had gone to see Major Weiss in November 2015 regarding his symptoms of discomfort when in cold weather and it was as a consequence of what he told her that he was downgraded to a P7 MND.

169. I do not accept that "but for" the exposure to the cold during the exercise at Thetford, Mr Coker would have been able to remain. and have a full career, in the army. In my judgment, having considered with care the evidence of both the vascular experts, Mr Coker suffered a NFCI as a consequence of his exposure at Thetford but it was only a mild NFCI which he recovered from in full. The weather at Thetford on 1 and 2 February 2016 was not particularly harsh and overnight, while not sleeping in a heated barn, he was wearing cold weather gear, the barn was with a roof and enclosed, he was on a cot and therefore off the ground and in a sleeping bag that could withstand cold to minus 25 degrees Celsius. At no time did the temperature drop below 5 degrees Celsius and Mr Coker was removed from the exercise at 8.51 on 2 February.

170. I do not accept Mr Coker's evidence that he was made to work in unheated hangers for 4 days when he returned to the base. That is not something he mentioned in his witness statements and he did not refer to it when discussing the history with the experts, who have to rely upon the veracity of the patient. He only mentioned this during re-examination. Further, the guard duty that he did undertake on 15 February 2016, which was for no more than 1 ½ to 2 hours, would not have caused the permanent exacerbation that he contended he suffered as, by that time, his feet had fully recovered - as he told his GP on 8 February 2015. He did still have some paraesthesia in his fingers but that was the same as he had referred to when speaking to Major Weiss in November 2015.

171. In my judgment, Mr Coker did suffer exposure during the exercise in Thetford on 1 and 2 February 2016, but that resulted in a mild NFCI from which he recovered. The guard duty on 15 February 2016 caused further symptoms but did not exacerbate the NFCI on 1 and 2 February 2016 as he had already recovered.

172. It may be that Mr Coker felt that he was not being taken seriously enough by the army or that he was not getting what he wanted out of the army and that he had an unrealistic expectation as to the limits that would be placed upon his own work in the army. Mr Coker did not inform Mr Cross that he had been subjected to any further exposures beyond Thetford and then the guard duty in February 2016. The other specific incidents which he gave evidence about, particularly the rescue of the vehicle in Catterick and the Remembrance Day parade, together with any parade ground duties he may have had (such as bringing down the flag) would not, according to the expert evidence, have led to any permanent exacerbation of his NFCI given his evidence that the symptoms settled on the day.

173. Mr Coker's description of himself to the medical board that he was largely housebound and unable to go out with his family, was entirely contradicted by his other evidence as to the impact of the NFCI upon him. Mr Coker admitted to the fact that he had volunteered to be a driver for a minibus trip to Austria in March 2017. That is entirely inconsistent with what he said in April 2017 to the medical board and is entirely inconsistent with what he told the court, which is that he could not carry out approximately 10 out of every 25 car journeys he would otherwise undertake per week,

but it is consistent with someone who had suffered a mild NFCI in February 2016 from which he had swiftly recovered.

174. The most stark discrepancies in Mr Coker's account of his condition is between the way he presented to the medics (as set out in detail above) and the various statements to the court and in his application for PIP and in the work capability questionnaire (also set out in detail above) as compared to his presentation when he did not know that he was being observed. It is difficult to imagine a more stark case of deliberate misrepresentation. His whole demeanour was completely different on all the occasions he was unknowingly being observed. It is not only the contrast in what he was wearing, it was the contrast in what he was able to do, the way he was moving and the way in which he was behaving. Mr Coker was plainly trying to convince Mr Cross in July 2021 that he had sustained a very severe NFCI which had caused him severe disability, despite the fact that when answering the health questionnaire for Aspall in August 2021 he said he had as a hobby "keep fit" and that he goes running. Both vascular surgeons noted that Mr Coker's body was well muscled. That is not consistent with him having the extent of disability that he sought to portray.

175. Overall, the veracity of Mr Coker was brought into question by both Mr Cross and Mr Gaunt given his presentation. With respect to the capillary return tests, Mr Cross acknowledged that it was easy to fake them and that Professor Anand in his test had not been happy with the variability shown by Mr Coker. Mr Gaunt said that capillary return is only a soft sign of NFCI and his view of Mr Coker was that he was trying to convince him that he was severely disabled.

176. While I fully accept that Mrs Coker was a witness who was endeavouring to assist the court, it is quite clear that she was only able to give evidence from how Mr Coker was presenting himself. She was clearly aware of the fact that he could go out dressed in light clothing as shown on the surveillance evidence and she was not present at the consultations and therefore unaware of how her husband was presenting himself there. It was clear that there were parts of his evidence that were not known to Mrs Coker, such as the fact that he had been medically downgraded. That Mr Coker may have been exaggerating the extent of his injury to his wife, albeit not to the extent that he did to the medical experts, does not assist his case. The clear distinction between what was on the surveillance evidence and what Mr Coker had set out on various forms, in his statements and what he had shown to the medics, could not be more stark.

Quantum

177. In my judgment, Mr Coker suffered no more than a mild NFCI as a consequence of his exposure to the cold at Thetford on 1 and 2 February 2016. The exposure on 15 February 2016 did not, in my judgment permanently exacerbate the NFCI rather that exposure occurred after the NFCI settled down after Thetford and caused a flare up of the earlier symptoms. There was no permanent exacerbation from any other exposure after 15 February 2016.

178. I am satisfied that when Mr Coker re-enlisted in July 2015 he already knew of the problems he had with the cold. Mr Coker was medically downgraded to P7 MND and placed on a APP 9 before he went to Thetford. The downgrading was therefore not as a result of what happened in early February 2016. He is not likely to have been upgraded to P3 MLD "but for" going to Thetford and in those circumstances he would

have been medically discharged. In my judgment, it is more likely than not that he would not have been able to re-enlist had he been upfront and honest about his difficulties with the cold when he re-enlisted. Nothing happened between July 2015 and November 2015 to cause him to have a difficulty with the cold which did not already exist but he decided not to give any of the information he provided to Major Weiss when he enlisted.

179. In those circumstances, while Mr Coker has a claim for general damages for his pain suffering and loss of amenity; his claims for loss of congenial employment, disadvantage on the labour market, past and future loss of earnings and loss of pension (which amount to the vast majority of his claim) cannot succeed and must be dismissed. This is not a case where, but for the MOD sending Mr Coker into an exercise in Thetford in February 2016, he would have had no problems with the cold, would have been medically upgraded and would have had a full career in the army. That is not the case.

180. The admission to a NFCI being caused at Thetford and the averment by the MOD that Mr Coker had not experienced any prior NFCI does not mean that the MOD is prohibited from contending that Mr Coker was already suffering from cold sensitisation when he re-enlisted or that the NFCI sustained at Thetford was mild. The MOD do not seek to suggest that Mr Coker did not suffer a NFCI nor that he did not show small fibre neuropathy when he was tested. The distinction between the case brought by Mr Coker and the defence of the MOD is the level to which that NFCI impacted him and how much he was exaggerating the impact.

181. It is set out in argument on behalf of Mr Coker that he does not fit the profile of a fraudster. That argument is based on the fact that Mr Coker has sought work – both with the prison service and at Aspall. However, he went off on long term sick with the prison service and started working for Aspall while still receiving a salary from the prison service. That does not support Mr Coker being a man who is honest in his dealings. There is considerable other evidence, which I have already referred to, which points to Mr Coker being far from honest in his representations (including the various forms and the way he has acted when under surveillance). The fact that he applied for and obtained alternative work when he left the army the second time is an indication of him needing to work and to obtain an income and not being able to wait until an award of damages. It does not negate the fact that an individual will be dishonest if he is exaggerating the extent of his injuries.

Conclusion

182. In this matter I am satisfied that the dishonesty of Mr Coker was not mere "embroidery" but went to the root of the claim and is fundamental. The claims that Mr Coker has made for past and future losses including pension, and his loss of congenial employment all presuppose that but for the exposure to the cold in Thetford then he would have had no problems and would have enjoyed a full and successful career in the army. That is not the case here. Mr Coker decided to exaggerate the extent of his injuries to such an extent in order to make a case that the NFCI was having an impact upon him which was far greater than the true situation.

183. The damages that he is properly entitled to, including for any consequence psychiatric issues for pain suffering and loss of amenity is no more than £25,000 based upon the JC Guidelines. He has already received an AFCS payment, although there is some

dispute as to the level of that payment which will require determination after further submissions from the parties.

184. While I am satisfied that the dishonesty taints the whole of his claim which was advanced on a false footing, I do consider that it would amount to a substantial injustice if Mr Coker were not able to recover for that part of his claim which was for PSLA as he has already recovered the majority of that by reason of the AFCS payment. In the circumstances I will not dismiss the balance of the PSLA claim. The remainder of the claim is not made out on the balance of the probabilities and it was a fundamentally dishonest claim.

185. The parties have informed me that there are some additional issues that they would now like the court to resolve, including the size of the AFCS payment, and there will be a further hearing on 10 June 2025 at 2pm to deal with those additional matters. The time for any application for permission to appeal this judgment will run from the date of the decisions made at that hearing when the final order, dealing with all matters, will be made..