



OUTER HOUSE, COURT OF SESSION

[2026] CSOH 18

PD25/23

OPINION OF LORD BRAID

In the cause

SCOTT MCSEVENEY

Pursuer

against

AVIVA INSURANCE LTD

Defender

**Pursuer: Allardyce; Jones Whyte**

**Defender: Milligan KC; DAC Beachcroft Scotland LLP**

5 March 2026

**Introduction**

[1] In this action the pursuer sues for damages of £2,500,000 in respect of injuries he sustained in a serious road traffic accident on 19 November 2021, when a car driven by a person insured by the defender collided with the motorcycle being ridden by the pursuer. Liability is admitted, as is the fact that the pursuer suffered a brain injury and significant orthopaedic injuries. The action is set down for a 6-day proof commencing 21 April 2026.

[2] The defender's motion to dismiss the action on the grounds of the pursuer's (alleged) fundamental dishonesty, which failing to dismiss the action except insofar as it relates to a claim for solatium only, called before me. Senior counsel for the defender advised me that

in the event that the motion is granted in full or in part, as a concession the defender will not seek repayment of interim damages totalling £140,000 already paid to the pursuer.

[3] In support of the motion, senior counsel for the defender submitted that there was evidence before the court that the pursuer had deliberately and consistently lied about the extent of his injuries, such that it was simply impossible for the defender to assess the true extent of his damages. The pursuer was abusing the legal process, to the serious prejudice of the defender. His dishonesty could be seen from the contrast between his symptoms as reported by him, and the objective evidence. The first medico-legal report, obtained from Mr Spence, Consultant in Orthopaedics and Trauma, on 11 June 2022 predicted complete orthopaedic recovery within two to three years. On 26 July 2022, Dr Aveyard, Consultant Psychiatrist, noted that the pursuer reported significant disability including having to walk with crutches. On 25 May 2023, Dr Mumford, Consultant Neurologist, reported no sensory abnormality, and that “neurological examination of the arms and legs showed normal muscular tone with full power in all muscle groups and normal coordination”.

Subsequently, and against that background, the pursuer had then told a succession of expert medical witnesses that he was severely disabled; required help from his partner with such tasks as dressing, going to the toilet, washing, cooking, cleaning, driving and being taken to appointments. Although he had claimed to be unable even to make a cup of tea, he had been observed pouring water from a boiling kettle into a cup without difficulty. On his account, he did not do anything around the house but just sat and watched TV. He was unable to go out for a walk on his own. He could not be left alone because of his injuries. He more than once claimed that he found traffic and speed hard to tolerate and had to travel in the back of the car with blacked out windows and earphones on. A Care Needs Report in

July 2024, based on such information, concluded that he required an extensive care package including case management.

[4] Notwithstanding those claims to medical professionals, the pursuer averred on record that he is “physically capable of more”, whatever that meant. Moreover, and significantly, surveillance video footage carried out in March and August 2024 showed the pursuer out and about driving two different vehicles, and on one occasion he was seen to carry a heavy jerrycan filled with liquid into a building, unassisted. Further, the pursuer had lied in other respects. He had claimed to doctors that he had no forensic history, but in fact he had several previous convictions. In April 2025 he was sentenced to 8 years imprisonment (subsequently reduced on appeal to 6 years and 9 months) for the importation of cannabis (that offence being committed before his accident). He had until recently denied that conviction although it was now admitted on record. His prison records had been recovered which showed that he continued to exaggerate his symptoms in prison, claiming that he needed a stick when plainly he did not (the records in fact appear to show a degree of scepticism on the part of at least one prison officer about the pursuer’s requirement for a stick). To the extent that the pursuer’s partner supported his claim to be severely disabled, she was complicit in his fraud. In these circumstances his conduct amounted to a persistent and flagrant fraud designed to frustrate a fair trial on the only live issue, namely quantum. It mattered not that the pursuer had a genuine claim for damages; if he were shown to be fundamentally dishonest in relation to quantum, it would be open to the court to dismiss his action as an abuse of process: *London Organising Committee of the Olympic and Paralympic Games (In Liquidation) v Sinfield* [2018] PIQR 8. As a matter of public policy, the pursuer should not be allowed to pursue his action further. The motion had to be made now, since it would be inappropriate to dismiss the action after evidence had been led: *Summers v*

*Fairclough Homes Ltd* 2012 1 WLR 2004 [36] to [39] and [62]; *Grubb v Finlay* [2018] CSIH 29, LP Carloway at [34].

[5] Counsel for the pursuer, opposing the motion, submitted that it was of critical importance that it was accepted that the pursuer had a legitimate claim, liability having been admitted, and that he had suffered a significant brain injury. Under reference to *Perrin v Walsh* [2025] EWHC 2536, he stressed the inherent problems in relying on video evidence which had potentially been edited in the manner most favourable to the defender, omitting footage which perhaps supported the pursuer's case. While the pursuer had admittedly lied to doctors about driving, that was because he ought not to be driving at all, due to the epilepsy from which he now suffered as a result of his brain injury, which he had not wished to admit. The fact was that the pursuer was unable to do the work which he had done before the accident, and nothing in the video footage justified an inference that he was able to work. He had suffered from a congenital hip condition since birth, which affected his movement when walking. The pursuer required round-the-clock services of a nurse in prison. It did not follow from the fact that he had admittedly been dishonest that his action ought to be dismissed: *Taylor v Forth Valley Health Board* [2025] CSOH 103. Dismissal was a draconian remedy, which ought not to be granted.

### **Decision**

[6] It is accepted that dismissal of an action before any evidence has been led would be a competent remedy to afford the defender, albeit one which should be exercised only in the most exceptional of circumstances: *Grubb*, above. Pursuance of an entirely fraudulent claim might be one circumstance where the court would take that exceptional step. I consider that the task of persuading the court that dismissal is appropriate where the pursuer has an

admittedly genuine claim is still more difficult. Nonetheless, I also accept that the court has the inherent power to bring to an end an action which is blatantly an abuse of process, and in circumstances where the pursuer's behaviour makes it impossible for there to be a fair hearing at proof.

[7] As *Grubb* and *Taylor* exemplify, it is not sufficient for a defender to show merely that the pursuer has been dishonest in relation to some aspect of his claim or in the general conduct of his life; for present purposes I therefore attach little weight to the pursuer's conviction of a drugs-related offence, or his (somewhat pointless) denial of the fact of his conviction and imprisonment; or his denial of a criminal record; or, for that matter, his conduct in prison.

[8] However, the pursuer's conduct goes beyond that. There is material, in the form of the surveillance footage, which does confirm that he has lied to expert witnesses, both his own and the defender's, about his current capabilities, at least to the extent that he is not only unable to drive but barely even able to get into a car, when that is patently untrue, as he has now admitted through his counsel. Judging by the manner in which he was seen to handle a nearly-full jerrycan of liquid, it also appears that his claims of being unable to handle a boiling kettle, or to undertake other tasks, or to be left alone in the house, are also untrue. I do not consider that there can be a fair trial where evidence advanced on the pursuer's behalf is based on admitted or palpable untruths; to advance a case on that basis would indeed be an abuse of process. That said, I acknowledge that it cannot be inferred from the footage, or at the least the footage that I have seen, that the pursuer is fit for work, and I cannot discount the possibility that he does have a valid claim for loss of earnings. However it is essential that he give those witnesses instructed to offer opinion evidence an honest account of what he is, and is not, able to do; and at the very least they must be

offered the opportunity to comment on their previous reports and offer revised opinions in the knowledge of what the footage shows.

[9] Since I cannot discount that the pursuer has a genuine, although seemingly exaggerated, claim for loss of earnings, I do not propose to grant the defender's motion at this stage. Instead I will refuse it *in hoc statu*, which will leave it open to the defender to renew its motion in the event that the pursuer does not candidly disclose his capabilities to the expert witnesses and to the court. He may well have practical difficulties in doing that, given his current circumstances. I did give consideration to whether I might sist the action, suspending all procedure and discharging the forthcoming proof, until the pursuer has achieved what is required, but concluded that I should not do so without giving parties the opportunity to address me on the appropriateness of that course.