

ENGLAND AND WALES / JUDGMENT

Kerry Middleton v Carnival PLC t/a P&O Cruises

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[2026] EWHC 235 (KB) IN THE HIGH COURT OF JUSTICE KING'S BENCH DIVISION Case No: KB-2023 - 002197 Royal Courts of Justice Strand, London, WC2A 2LL Date: 09/02/2026 (sitting as a Deputy Judge of the High Court) Before: Tim Moloney KC

- ----- Between: KERRY MIDDLETON

- and - CARNIVAL PLC T/A P&O CRUISES

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- ----- Claimant Defendant Eliot Woolf KC (instructed by Irwin Mitchell) for the Claimant James Todd KC (instructed by Clyde & Co.) for the Defendant Hearing dates: 16 January 2026

- ----- Approved Judgment This judgment was handed down remotely at 10.30am on Monday 9 February 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives. TIM MOLONEY KC Tim Moloney KC:

1. On 16 January 2026, I heard an application by the Defendant to be granted permission to rely upon disclosed surveillance evidence. The proceedings concern a personal injury claim with a value of approximately £10,000,000 advanced in the Claimant's Schedule of Loss. This matter was listed for trial with an eight day estimate commencing in a five day trial window on 26 January 2026. The application was therefore heard very close to the trial date. Because of the proximity of trial, I gave my decision to the parties on the day of the application and indicated that I would give these written reasons in due course.
2. The Court was invited to exercise its discretion to admit the evidence pursuant to CPR 32.1 which reads: "(1) The court may control the evidence by giving directions as to –
 - (a) the issues on which it requires evidence;
 - (b) the nature of the evidence which it requires to decide those issues; and
 - (c) the way in which the evidence is to be placed before the court.

- (2) The court may use its power under this rule to exclude evidence that would otherwise be admissible.”
3. The parties agreed that if I were to admit the evidence that is the subject of the application, it would be necessary for the trial to be adjourned.
4. Before explaining the contentions of the parties and giving reasons for my decision as to the admissibility of the surveillance evidence which is the subject of the application, I firstly set out the complex and protracted material chronology of the proceedings and the application before me. I have had the benefit of considering materials provided by the parties including witness statements from the Defendant’s solicitor (Ms. Gemma Pearce) and the Claimant’s solicitor (Mr. James Riley); skeleton arguments from the parties’ counsel; a bundle of relevant documents (including expert reports, schedules of loss and relevant correspondence); and, a number of authorities which I summarise between paragraphs 42 and 53 below.
5. The Defendant is represented by Mr. James Todd KC; the Claimant by Mr. Eliot Woolf KC. I am very grateful for their excellent written and oral submissions. Chronology of the Proceedings
6. At the time of her accident, the Claimant was employed by the Defendant as a Senior Director, People (Maritime).
7. On 03 October 2019, the Claimant was working aboard the MV Britannia while it was docked in Cádiz, Spain. At approximately 9.30 a.m., she was in a toilet when she slipped and fell heavily on the wet and slippery tiled floor.
8. The Defendant admitted liability for the accident in open correspondence of 14 December 2021. Judgment was entered on 8 March 2023. Contributory negligence has been agreed at 95 to 5 per cent in the Claimant’s favour. 9. It is said in the witness statement of the Claimant’s solicitor that although the accident was in itself relatively innocuous, it has gone on to have a catastrophic impact on the Claimant’s life and that she now has a high level of disability; primarily as a result of her developing a functional neurological disorder (“FND”). Her condition has continued to deteriorate. In the recent exchange of expert medical evidence, the diagnosis of FND has been agreed between the experts, but causation of the disorder remains in dispute.
10. That issue of causation will be crucial to the quantification of the Claimant’s damages. Identifying the central importance of the difference between the parties on this issue, Mr. Todd says at [7] of his skeleton argument for this application “C says that she is catastrophically disabled and that her condition is wholly attributable to the accident on 3 October 2019 – by her schedule of loss she seeks an award of £10.2M; D’s case is that the true extent of C’s disability is for her to prove, but that her FND is in any event not causatively linked with the accident – on D’s primary case the claim has a value of no more than £25,000”.

11. The skeleton argument of Mr. Woolf KC rehearses different, but similar, figures (he informs the Court that the Claimant's Schedule of Loss total is £9,712,804 on a 95:5 per cent basis but the effect is the same - the resolution of the issue between the parties is of fundamental importance to the quantum proceedings).
12. The case was first listed for Costs and Case Management by Order dated 17 March
2023. Directions were provided by Master Davison by Order dated 19 May 2023. A further case management conference was ordered for April 2024, and a trial was subsequently listed by Notice dated 13 September 2023 for 8 days commencing in a 5 day window beginning on 11 November 2024.
13. The parties exchanged lists of documents on 20 October 2023. On 20 December 2023 the parties exchanged witness evidence and expert medical evidence on neurology, psychiatry, pain management and orthopaedics on 2 April 2024. The experts subsequently served joint statements.
14. At a further case management conference on 24 May 2024, Master Davison ordered that the trial window which had been previously listed in November 2024 be vacated to allow the parties to obtain further expert evidence in the fields of Care/Occupational Therapy and accommodation. The trial window was then ordered to commence on 1 April 2025. However, due to the number of expert and lay witnesses, mutual dates of availability for trial could not be agreed and the trial window had to be extended twice. The listing for 26 January 2026 was eventually notified to the parties on 4 February 2025. Chronology prior to Disclosure relevant to the Application
15. It is said on behalf of the Claimant that she suffered a significant deterioration in her condition and began to suffer with seizures in December 2024. Consequently, the parties agreed to vary the directions and obtain updated expert evidence.
16. The parties exchanged initial care and accommodation evidence in April 2025.
17. On 9 May 2025, the parties returned to court for further directions. The order of Master Brown noted "the deterioration of the Claimant's condition" and gave permission for updated evidence in neurology, psychiatry and pain management; with additional permission for expert neuropsychiatry evidence.
18. Expert evidence in neurology, psychiatry, and neuropsychiatry was exchanged on 14 July 2025, followed by pain management evidence on 18 July 2025. Subsequently, the experts served joint statements with the last joint statement in relation to those areas being served on 2 September 2025. (To depart from the chronology in order to complete the picture of service of expert evidence, on 10 October 2025 updated care and accommodation expert evidence was exchanged, followed by the experts' joint statement).

19. On 25 September 2025, by order of Master Thornett pursuant to the agreement of the parties, the Defendant was given permission to rely upon an updated list of documents served on 30 June 2025 and permission to serve a further supplemental list of documents by 30 September 2025. By agreement, that deadline was subsequently extended and the full supplemental list was ultimately served on 14 October 2025. That supplemental list included the surveillance evidence which is the subject of this application. It was thus disclosed almost 3 months and two weeks before the trial window. The earliest date of the surveillance included in the footage is 11 March 2023 and the last date is 14 January 2025. Chronology following Disclosure relevant to the Application
20. On 20 October 2025, six days after disclosure of the surveillance evidence, the Claimant's solicitor emailed the Defendant's solicitor saying: "Overall, this disclosure is in my view of limited, if any, probative value. In the circumstances, are you sure that your client wishes to rely upon it? I am concerned that if that is the position, the experts will need to comment upon it, which will increase costs ahead of Trial".
21. The Defendant took a different view as to the probative value of the evidence and, on 22 October 2025, replied in terms which included the following: '..in light of the nature of the footage, we consider that it is entirely proportionate that the experts have the opportunity of considering the footage so that they can have the full picture. We look forward to hearing from you as we intend sending the footage to our experts as soon as possible bearing in mind our tight timetable running up to the JSM and trial.'
22. The "JSM" referred to in that email was a Joint Settlement Meeting which had been fixed for 4 December 2025 since roughly 25 September 2025. The Defendant thus envisaged having the opinions of the experts on the footage prior to the JSM in early December.
23. The Claimant's solicitor replied the same day saying: 'I will need time to discuss this with my client, after which I will revert substantively to set out our position. With regard to the experts, you will be familiar with the case of Perrin v Walsh (Rev1) [2025] EWHC 2536 (KB) (09 October 2025). I rely in particular on paragraph 84 of the Judgment. The experts should not be sent the surveillance evidence until my client has had chance to formally respond. I will come back to you as soon as I can.'
24. The reference to Perrin v Walsh requires further explanation. The case concerned an application by the Defendant to admit surveillance evidence which was decided just five days before the Defendant disclosed its surveillance footage in this case. I explain the salient features of that case at [52] below.
25. The next email in the sequence of events was a week later, 29 October 2025, wherein the Claimant's solicitor said: 'I discussed the surveillance evidence with my client yesterday. My client's position in respect of the surveillance is reserved until the following has been provided...'

26. A detailed list of requests for information focused on the integrity of the surveillance evidence followed the statement of the Claimant's position.
 27. On 14 November 2025, the Claimant served her final schedule of loss.
 28. The Defendant purported to answer the questions raised by the Claimant's email of 29 October 2025 in an email of 26 November 2025. The email also attached statements from surveillance operatives explaining their methods.
 29. On 28 November 2025, the Defendant served its final counter schedule of loss.
 30. On 1 December 2025, the Claimant's solicitor served eight draft, without prejudice statements from the Claimant, members of her family and friends addressing the surveillance evidence.
 31. Just three days later, on 4 December 2025, the parties attended the long scheduled JSM. That meeting was unsuccessful. I was informed by Mr. Todd during the course of the hearing of this application that a discussion between Mr. Todd and Mr. Woolf followed that unsuccessful meeting and the next day, 5 December 2025, the Defendant issued their application to admit the surveillance footage which was served on the Claimant on 9 December.
 32. On 11 Dec 2025, the Claimant responded by email to the application saying "Please note that the Claimant intends to oppose the application". The Submissions of the Parties
 33. In support of the Defendant's application to admit the documents, Mr. Todd argues that the surveillance evidence is relevant to the issue of the Claimant's true level of disability and relevant to her reliability as a historian. He suggests (and the court expresses no view on the accuracy or otherwise of his suggestion) that the footage shows the Claimant walking freely around her kitchen and preparing food on 31 December 2024. She has normal mobility and is cheerful and happy with her family. That footage was recorded at a time when, according to the Claimant's account, she was unable to walk and was required to use a wheelchair. He relies on what is recorded by Dr. Munglani (a pain management expert) as having been said by the Claimant to Dr. Munglani during the course of his examination of her on 1 May 2025 and what Dr. Munglani recorded seeing. In summary, the relevant material in Dr. Munglani's report is as follows: Para 37: 'She can stand but cannot walk.'
- Para 40: 'She stated that if she needs to go to the toilet (to open her bowels) she would need to use a wheelchair.'
 - Para 63: 'Her sitting room has been converted into a bedroom.'
 - Para 65: 'She cannot walk around but she can stand, and she can use the wheelchair to move herself around.'

- Para 69: ‘Her husband very kindly turned around the camera and I watched her get up from the bed, manoeuvre towards the wheelchair and in my view one or two steps but holding on to things and then sitting down and then getting up again.’ Para 71: ‘When she also got back on the bed, she needed help to lift the left leg on. She says this leg is always more dead than the other and this was confirmed by her husband and the physiotherapist.’
- 34. Mr. Todd also relies on the diary kept by the Claimant of her daily state of health which was attached to her witness statement of 24 April 2025. He notes that her entry for 31 December 2024 in effect records that she was “using a wheelchair/unable to walk” and that she suffered a knee injury.
- 35. He argues that the surveillance footage stands in stark contrast to that which was said by the Claimant to Dr. Munglani only four months and one day after the footage was recorded, as well as what is recorded in the diary, and submits that the evidence accordingly has very significant probative value and its admission is necessary for the fair disposal of the matter.
- 36. He also focuses on the relevance of the surveillance footage to specific items in the Claimant’s schedule of loss. Thus, he remarks that the schedule of loss contains claims for a year round live-in carer at a cost of £120,000 a year, as well as a full suite of the kind of aids and equipment that would normally be seen in a claim based on paraplegia and a claim for the costs of a replacement home equipped for a wheelchair user. He submits that the surveillance evidence undermines any claims for the necessity of that sort of provision.
- 37. He further submits that the Defendant acted reasonably in the circumstances and timing of disclosure of the surveillance evidence. He contends that there was no ambush of the Claimant; on the contrary, the Claimant has been provided with, and has availed herself of, a full opportunity to consider the surveillance and to respond to it.
- 38. He observes that the claimed deterioration in the Claimant’s condition in December 2024 triggered a need for a further round of expert evidence; as well as the instruction of a new medical expert discipline (neuropsychiatry) to deal with the shift in the diagnosis to FND. He submits that it was legitimate for the Defendant to wait until that round of evidence was complete before making the decision to rely on the surveillance. The Defendant wished to see what the Claimant had said to each of the experts. He observes that there has been more than one round of expert evidence from numerous experts during the course of these proceedings and the order of Master Brown of 9 May 2025 provided for a further round of expert evidence. The Defendant then disclosed the surveillance more than three months before trial. It was possible in that timeframe to resolve all outstanding procedural issues without the need to disturb the trial date. The Claimant had a fair opportunity to deal with the evidence.

39. He says that the Defendant cooperated with the Claimant in her request that she be allowed to respond by full witness evidence to the surveillance before it was shown to the experts. Having initially reserved her position on the surveillance on 29 October 2025), the Claimant only stated her objection to its admission at the time of the failed settlement meeting on 5 December 2025.
40. He submits that while it is therefore regrettable that the application comes before the Court at this stage of the proceedings the Defendant should not be criticised.
41. In response, Mr. Woolf argues that service of the Defendant's surveillance evidence amounts to an "ambush" within the meaning of the authorities and permission to rely upon it should be refused by virtue of CPR 32.1 and the overriding objective. In particular he submits: (I) Granting permission to rely upon the evidence will result in an inevitable loss of the trial date. (II) It is over 6 years since the Claimant's accident and over 3 years since the claim was issued. Standing out an eight day trial will result in the matter inevitably being put back by 6 to 12 months. (III) It is agreed by the experts that the Claimant requires multidisciplinary treatment for her FND and that this is best conducted after the claim ends. Accordingly, further delay will have an adverse impact on the Claimant. (IV) The Defendant was in a position to serve and rely upon its surveillance evidence far earlier in the proceedings without prejudicing the trial fixture but elected not to do so. The last footage it obtained was 12 months prior to the date of this application but the Defendant chose only to serve it in October 2025. The Defendant elected not to raise the issue before Master Davison on 25 May 2024; Master Brown on 9 May 2025 or Master Thornett on 25 September 2025. Further, he submits that the Defendant cannot shield behind a contention that the Claimant needed to 'nail her colours to the mast' before the evidence was served, as the Defendant had all the Claimant's substantive witness statement evidence and medical evidence by the time of exchange of evidence in April 2025. Mr. Woolf asserts that the longer the Defendant waits before disclosing such evidence, the greater the risk they run that the evidence will not be admitted. He submits that the disclosure of the footage on 14 October allowed insufficient time for the Claimant to have a fair opportunity to address the evidence. (V) He further submits that, whilst refusing permission for the Defendant to rely upon the footage will deprive them of being able to rely upon such probative value that it asserts exists, that is far outweighed by the impact of an adjournment of the trial, not least because it has been caused by the Defendant's own delay. (VI) In exercising its discretion, the Court should also be mindful of the conduct of the Defendant's surveillance operatives. Mr. Todd emphasises that the faces of all persons in the footage, save the Claimant, have been pixellated. Mr. Woolf nonetheless observes that they have obtained footage of the Claimant through her kitchen window from the roadway, which is a matter of understandable grave concern and upset to the Claimant and her family who were also on that footage. Conduct is a relevant consideration to the exercise of discretion. (VII) There will be substantial wasted costs. The Relevant Law

42. Any review of the relevant law governing such an application must commence with *Rall v Hulme* 2001 EWCA Civ 146. Giving the judgment of the Court, Potter LJ (with whom Sedley LJ agreed) said: In principle, as it seems to me, the starting point on any application of this kind must be that, where video evidence is available which, according to the defendant, undermines the case of the claimant to an extent that would substantially reduce the award of damages to which she is entitled, it will usually be in the overall interests of justice to require that the defendant should be permitted to cross-examine the plaintiff and her medical advisors upon it, so long as this does not amount to trial by ambush. This was not an 'ambush' case: there had been no deliberate delay in disclosure by the defendant so as to achieve surprise, nor was the delay otherwise culpable, bearing in mind the mutual muddle over the 9 October hearing date. Nor is this the comparatively rare kind of case in which the film has to be independently adduced because what it shows goes beyond what can be established by cross-examination, and where different directions may be needed.
43. In *Douglas v O'Neill* [2011] EWHC 601 (QB), HHJ Collender QC comprehensively analysed the existing authorities on the admissibility of surveillance evidence. He observed:
42. Surveillance evidence has long been a legitimate weapon, when properly obtained and legitimately used, for a defendant to put before a court that may demonstrate that a claimant's evidence is false. Such evidence may show inconsistencies that are inexplicable by a claimant. Its production may lead to the end in one way or another to a claim or a part of a claim. It may be a powerful tool in preventing the successful advancement of a case which is based on untruth.
43. If the fact that a document is video surveillance were to be disclosed in Part 2 that would inevitably alert a fraudulent Claimant to the fact of surveillance and would be likely to deprive a defendant of the privileged opportunity to continue surveillance and to obtain evidence of the kind sought, namely evidence to demonstrate inconsistencies between the truth and the evidence being given by a Claimant.
44. He remarked that this did not provide Defendants with carte blanche and at [46] said:
46. In my judgment the issue of ambush comes to this --are the circumstances in which the evidence is disclosed such that the Claimant has a fair opportunity to deal with it, or was the time or circumstances of disclosure such that the court should use its case management powers to prevent the defendant from relying upon it?
45. He explained at [47] that the case management power he had in mind would be one that penalised the Defendant by preventing the use of the evidence because they had failed to act in a manner which was consistent with effective and fair case management. At [48] he then quoted from a judgment of Hallett J (as she then was) in *Uttley v Uttley* (18th July 2001) [2002 PIQR P12] which dealt with a Claimant's complaint of late service of surveillance evidence as follows: "In my judgment, in the circumstances of this case -and I emphasise in the circumstances of this case -the defendant's solicitors were entitled to hold on to the video recording for a reasonable period of time. This was not simply a case of trying to ambush

the claimant at trial. The defendant's insurers not surprisingly wished to assess the evidence in their possession with the claimant's up-to-date account before disclosing it. I say not surprisingly in the light of the history of the litigation as I have outlined it. They wanted to use it effectively as cross-examination material."

46. HHJ Collender explained that Hallett J had balanced the Defendant's entitlement to use surveillance evidence effectively, against the general case management goal of openness and, found in favour of the Defendant. HHJ Collender then identified *O'Leary v Tunnelcraft* [2009] EWHC 3438 (QB) as an example where the exercise of judicial discretion had operated with a different outcome and the surveillance evidence had been judged inadmissible. In that case Swift J had decided that "there is no reason in my view why the footage....could not have been disclosed earlier"
47. At [53] Judge Collender concluded his review of the authorities by reference to *Jones v University of Warwick* [2003] 1 WLR 954. In that case, surveillance had been properly disclosed but it had been improperly obtained when surveillance operatives had tricked their way into the Claimant's home. Despite the behaviour of the operatives, the evidence was admitted. In giving the judgment of the court Lord Woolf CJ approved the dictum of Potter LJ in *Rall v Hume* when he observed that the starting point that the evidence is admissible does not apply if the conduct of the Defendant amounts to "trial by ambush" and Lord Woolf continued [25]: "A judge's responsibility today in the course of properly managing litigation requires him, when exercising his discretion in accordance with the overriding objective contained in CPR Pt 1, to consider the effect of his decision upon litigation generally. An example of the wider approach is that the judges are required to ensure that a case only uses its appropriate share of the resources of the court: CPR r 1.1(2) (e). Proactive management of civil proceedings, which is at the heart of the Civil Procedure Rules, is not only concerned with an individual piece of litigation which is before the court, it is also concerned with litigation as a whole. So the fact that in this case the defendant's insurers, as was accepted by Mr Owen, have been responsible for the trespass involved in entering the claimant's house and infringing her privacy contrary to article 8(1) is a relevant circumstance for the court to weigh in the balance when coming to a decision as to how it should properly exercise its discretion in making orders as to the management of the proceedings."
48. That passage serves to demonstrate the breadth of factors the Court may consider in exercising its discretion to decide upon the admissibility of surveillance evidence.
49. In *Hayden v Maidstone & Tunbridge Wells NHS Trust* [2016] EWHC 1121 (QB), Foskett J also reviewed all previous relevant authorities. He affirmed that which was said in *Rall v Hume* (see [43] above) as to the starting point on any question of admissibility and saw no reason to depart from the summary of the relevant legal principles set out by HHJ Collender QC in *Douglas v O'Neill* at [32] to [54] of the judgment. He then specifically approved what Judge Collender had said (at [46]) in respect of the relevant considerations when the Court was required to decide whether the defence amounted to ambush: namely, whether the claimant

had a fair opportunity to deal with it or, instead, was the time or circumstances of disclosure such that the court should use its case management powers to prevent the defendant from relying on it as the Defendant had failed to act in a manner consistent with effective and fair case management. He explained [31]: I respectfully think that this description of what amounts to an “ambush” in this context is helpful and is consistent with the way Potter LJ characterised an “ambush” in *Rall v Hume* and the circumstances in which the material might be ruled inadmissible by the court under its case management powers. It eliminates the need to find some sinister motive in the actions of the party seeking to rely upon the surveillance evidence and focuses on whether the delay in revealing it was “otherwise culpable”.

50. In order to avoid satellite pre-trial litigation as to whether the Defendant was culpable of a deliberate ploy to wrong foot the Claimant, he suggested [34] that the focus should be an objective one based upon the real effect of the late application to rely upon the kind of evidence in question on the preparations for the trial and, most importantly, on the trial date itself, particularly if fixed.
51. In that context he recognised that [36]: It appears to be well-recognised that a defendant is entitled to wait until a claimant has pinned his sail to the mast of a particular level of disability or collection of symptoms (through a witness statement and/or schedule of loss, accompanied by a statement of truth) before the defendant needs to undertake the relevant surveillance.
52. The issue in *Perrin v Walsh (Rev1)* [2025] EWHC 2536 (KB) (09 October 2025) (see paragraph 23 above) was not one of late service; it concerned the integrity of the surveillance footage relied on by the Defendant in that case. HHJ Grimshaw said [76] that he would take a similar approach to Lord Woolf CJ in *Jones v University of Warwick* (see paragraph 47 above) and decided that the failings identified by the Claimant, as serious as they were, were not such that he should exclude what was otherwise clearly probative evidential material. He observed that the case would be going to trial, and it would be artificial and undesirable for the evidence, which was relevant and admissible, not to be placed before the judge who has the task of trying the case. He was of the view that it would be manifestly unfair to the Defendant to deprive them of the ability to place the surveillance material before the Judge and he said that the weight that the trial judge gives such evidence is an issue for the trial judge. It would be open to the Claimant to cross-examine the surveillance operatives and to submit that the evidence was unreliable for the reasons that had been advanced before him. Thus, the integrity of the footage was an issue that could be addressed at trial and was insufficient to require the exclusion of the evidence. HHJ Grimshaw then ordered [82 to 84]: “82. The current edited footage is not fit for purpose. I therefore direct that the parties are to agree a new compilation of edited footage that can be placed before the experts and trial judge. Should there be an inability to reach such an agreement I will hold another hearing to make any determinations required, albeit the parties are reminded of CPR 1.3 and there may be costs consequences should a party take an unreasonable stance.

83. The Claimant must be given an opportunity to file witness evidence in response to the surveillance evidence once the edited video is agreed upon. Such evidence need not be limited to her; she should have permission to file witness evidence from her husband and mother, if so advised; the Defendant conceded as much during the hearing.
84. The surveillance footage must not be provided to the medical expert witnesses until the Claimant has filed any further witness evidence that the Court gives permission for. Such witness evidence must be sent to the medical experts alongside the agreed edited footage. There should be permission for the medical experts to provide supplemental reports that address the surveillance evidence”.
53. Plainly, the experts would not provide an opinion on the integrity of the footage but would instead consider witness evidence relevant to the medical issue before providing any supplemental report.

Analysis

54. The parties agree that the starting point for consideration of the issue before me is that the surveillance footage is admissible. The real question for me in deciding this application is whether I consider the way in which the Defendant has dealt with this application to admit surveillance evidence amounts to an “ambush”. I have a wide discretion in reaching my decision as to that. I must consider whether the Claimant had a fair opportunity to deal with the surveillance evidence or, instead, whether the time or circumstances of disclosure were such that the court should use its case management powers to prevent the Defendant from relying on it as the Defendant had failed to act in a manner consistent with effective and fair case management. In that regard, it is recognised that the Defendant is entitled to wait for the Claimant to pin their sail to the mast before securing such evidence. I should also take into account the broader conduct of the Defendant in considering the overriding objective of the Courts.
55. I have been told that the parties have behaved co-operatively throughout the proceedings. The legal teams have a good relationship and the parties have agreed different rounds of expert medical evidence when considered necessary. Thus, on 20 December 2023 the parties exchanged witness evidence and expert medical evidence in neurology, psychiatry and pain management and on 2 April 2024 they exchanged evidence in orthopaedics. Subsequently the experts served their joint statements. Then on 24 May 2024, Master Davison ordered that the trial, which had been previously listed for November 2024, be vacated to allow the parties to obtain expert evidence in the fields of Care/Occupational Therapy and accommodation. The trial window was then ordered to commence on 1 April 2025. However, due to the number of expert and lay witnesses, mutual dates of availability for trial could not be agreed and the trial window had to be extended twice. The listing for 26 January 2026 was notified to the parties on 4 February 2025.

56. At a directions hearing on 9 May 2025, in the wake of a claimed deterioration in the Claimant's condition in December 2024, the parties agreed another round of updated expert evidence in neurology, psychiatry and pain management. At that hearing, they further agreed that expert evidence in neuro psychiatry be permitted. Joint expert statements were served on 31 August and 2 September 2025 and care and accommodation evidence was exchanged on 10 October 2025 with a joint statement of the experts following shortly thereafter. The case had thus proceeded for a long time with a large measure of agreement between the parties.
57. It was on 14 October 2025 that the Defendant disclosed the surveillance evidence. In my view the Defendant was entitled to wait until then to disclose the footage. Although the footage on which this application has focused was recorded on 31 December 2024, it was a claimed deterioration of the Claimant's condition which led to the agreed ordering in May 2025 of updated expert evidence in neurology, psychiatry and pain management and the first expert evidence on neuropsychiatry. As explained above, the relevant joint statements in those areas were not finally received until 2 September 2025. More evidence was to come on 10 October 2025. The Defendant was entitled to assess what the Claimant had finally said to the experts before disclosing the footage. The footage was disclosed in a reasonable time after that assessment. It was over three months before the date for trial.
58. The Claimant's first reaction (on 20 October 2025) was to query whether the Defendant really intended to rely on the evidence as it had little if any probative value and would only add to costs associated with the experts reviewing it. The Claimant made no suggestion that the timing of the disclosure jeopardised the trial date.
59. By way of email of 22 October, the Defendant disagreed with the Claimant as to the probative value of the footage and indicated its view that the costs of the experts' review was proportionate. The Defendant indicated that it was mindful of the tight timetable running up to the JSM and trial and said that they intended to send the footage to their experts as soon as possible. Replying the same day, the Claimant's solicitor said that he would need time to discuss the matter with his client, after which he would revert substantively to set out the Claimant's position. He pointed out that in *Perrin v Walsh HHJ Grimshaw* directed that the experts should not be sent the surveillance evidence until the Claimant had a chance to formally respond. Again there was no suggestion from the Claimant that the disclosure had jeopardised the trial date.
60. On 29 October the Claimant's solicitor indicated that he had seen his client on the previous day and she wished to reserve her position until information primarily relating to the integrity of the footage was provided. Again, there was no indication of any concern about the viability of the trial date.
61. The Claimant then served her final schedule of loss on 14 November. On 26 November, the Defendant purported to answer the Claimant's inquiries as to the integrity of the footage which had been raised in the email of 29 October and, on 29 November, the Defendant

served its final counter-schedule. During the period between 29 October and 29 November, there was no indication from the Claimant that she was concerned that the trial may need to be adjourned. In my view, any concern of that nature should have been expressed as soon as possible in order that the Defendant had the opportunity to make any necessary application.

62. On 1 December the Claimant's eight without prejudice witness statements relating to the surveillance were served.
63. It was only at the unsuccessful JSM of 4 December that the Claimant first indicated her resistance to the admission of the surveillance footage. When, as a result, the application to admit the evidence was made the following day and served on the Claimant on 9 December 2025, the Claimant formally indicated that the application would be opposed.
64. In my view, the actions of the Defendant cannot reasonably be viewed in isolation from those of the Claimant. The parties had worked co-operatively over a long period. In keeping with that co-operative working relationship, they had agreed to a further round of expert evidence including relating to a new discipline of expert evidence, which had been prepared and exchanged over the summer of 2025. Following the disclosure of the surveillance evidence, the Claimant's solicitor reasonably asked for time to consult their client and revert. Having the timetable in mind, the Defendant indicated in reply that they wished to progress matters by sending the footage to their experts. The Claimant requested that they not do so, referencing *Perrin v Walsh*, and subsequently indicated that the Claimant wished to reserve her position until the Defendant provided additional information. The Claimant later served without prejudice statements of the Claimant, her family and friends on 1 December. I have not been shown anything to demonstrate that the Claimant indicated that she would object to the admissibility of the evidence on the basis of late service, nor to demonstrate that she raised the fulfilment of the trial date as an issue of concern; even though the Defendant referred to the tight timetable for the JSM and trial. The absence of such material is surprising given that Mr. Woolf now contends that the Claimant would not have had a fair opportunity to address the evidence even if the application to admit it had been made on 14 October 2025.
65. When asked what prevented the Defendant from making an application to admit the surveillance shortly after 14 October, Mr Todd candidly replied that the most cautious approach would have been to make the application at that time but the Claimant had asked for time to consider her position. Mr Woolf submits that the onus is on the Defendant to make the application and the longer they delay, the greater the risk that any subsequent application will be unsuccessful. In my view, however, there is a responsibility on both parties to confront any issue which they believe will affect the trial date. It would be unsatisfactory if a Claimant was able to succeed in the exclusion of otherwise admissible footage by delaying committing to whether they opposed the admission of the material until the point where the application was more likely to fail. It is not suggested that the Claimant has engaged in such behaviour but if there exists a genuine concern that a future trial date or JSM is jeopardised following disclosure of footage then that should be made clear as soon

as practicable.

66. If the parties had acted with alacrity within the period of over three months that was available to them after disclosure and before the trial, I am of the view that the medical experts could legitimately have provided supplemental reports dealing with the surveillance footage in good time for the trial to commence.
67. It follows that I conclude that the time and circumstances of disclosure were not such that the court should use its case management powers to prevent the Defendant from relying on the surveillance material. I conclude that the Defendant has not failed to act in a manner consistent with effective and fair case management.
68. That the Defendant secured the footage by filming into the kitchen of the Claimant from the highway is insufficient to alter the balance of my discretion in favour of excluding the surveillance footage.
69. I will therefore admit the surveillance footage which is the subject of this application.
70. It is extremely unfortunate that, as the parties agreed at the outset, my decision to admit the evidence means that the trial date of 26 January must be adjourned. This matter is of considerable antiquity and the costs associated with it will only escalate. In addition, Mr Woolf has emphasised in this hearing that the Claimant's treatment will be most effective when these proceedings end. That process will now be further delayed. Those negative effects of the adjournment of these proceedings only serve to emphasise the necessity for the parties to actively engage with the case management implications of such an application as soon, and as expeditiously, as possible.

Conclusion

71. In accordance with CPR 32.1 I am satisfied that the evidence which is the subject of this application is properly to be admitted and the Defendant's application succeeds.

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