Court of Appeal

*Jones *v* University of Warwick

[2003] EWCA Civ 151

2003 Jan 22; Feb 4

Lord Woolf CJ, Hale and Latham LJJ

Evidence — Admissibility — Improperly obtained evidence — Defendant in personal injury action not accepting claimant's alleged continuing disability — Inquiry agent posing as market researcher and secretly videotaping claimant at home — Whether videotape to be admitted in evidence — Whether court's disapproval of defendant's conduct to be reflected in costs order — CPR r 32.1(2)

The claimant injured her right hand in an accident at work and she sought damages, including special damages in excess of £135,000, from the defendant, her employer. The defendant admitted liability but disputed that the claimant had the continuing disability which she alleged. On two occasions an inquiry agent acting for the defendant's insurers obtained access to the claimant's home by posing as a market researcher and used a hidden camera to film the claimant without her knowledge. The defendant's medical expert, having viewed the resulting video, concluded that the claimant's hand functioned entirely satisfactorily. The defendant applied for leave to adduce the video in evidence at the trial. The claimant contended that the video should be excluded, pursuant to the court's discretion under CPR r 32.1(2)[1], because of the inquiry agent's trespass and the infringement of her right to privacy under article 8(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms, as scheduled to the Human Rights Act 1998. The district judge ruled that the video evidence should be excluded but, on the defendant's appeal, the judge reversed that ruling.

On the claimant's appeal—

Held, dismissing the appeal, that it was not possible to reconcile perfectly the conflicting public interests that arose, namely, on the one hand, that in litigation the truth should be revealed and, on the other hand, that the courts should not acquiesce in, let alone encourage, a party to use unlawful means to obtain evidence; that the conduct of the defendant's insurers was not so outrageous that the defence should be struck out and, therefore, the case had to be tried; that to exclude the video evidence would create a wholly undesirable situation since fresh medical experts would have to be instructed, evidence which was relevant would have to be concealed from them and it would not be possible to cross-examine the claimant appropriately; that, therefore, it would not be right to interfere with the judge's decision not to exclude the video evidence; but that under the Civil Procedure Rules, a judge, in exercising his discretion in managing litigation, had to consider the effect of his decisions upon litigation generally and, while doing justice between the parties in a particular case, he should seek to deter improper conduct by litigants; that the court could reflect its disapproval of the insurers' improper and unjustified conduct, and discourage such conduct by others, by the costs orders which it made; and that, accordingly, since the insurers' conduct gave rise to the litigation over the admissibility of the video evidence, the defendant should pay the costs before the district judge, the judge and the Court of Appeal of resolving that issue (post, paras 2, 21, 25, 28–31).

Per curiam. The trial judge, when dealing with costs, should take into account the defendant's conduct. He may consider that the costs of the inquiry agent should not be recovered. If he concludes that there is an innocent explanation for what is shown in the video as to the claimant's control of her movements then this is a matter

[1] CPR r 32.1(2): see post, para 18.

A which should be reflected in costs, perhaps by ordering the defendant to pay the costs throughout on an indemnity basis (post, para 30).

Decision of Judge Charles Harris QC sitting as a judge of the Queen's Bench Division affirmed.

The following cases are referred to in the judgment of the court:

Kuruma v The Queen [1955] AC 197; [1955] 2 WLR 223; [1955] 1 All ER 236, PC
B *McNally v RG Manufacturing Ltd* [2001] Lloyd's Rep IR 379
PG and JH v United Kingdom The Times, 19 October 2001, ECHR
R v Khan (Sultan) [1997] AC 558; [1996] 3 WLR 162; [1996] 3 All ER 289, HL(E)
R v Loveridge [2001] EWCA Crim 973; [2001] 2 Cr App R 591, CA
R v Mason [2002] EWCA Crim 385; [2002] 2 Cr App R 628, CA
R v Sang [1980] AC 402; [1979] 3 WLR 263; [1979] 2 All ER 1222, HL(E)
Rall v Hume [2001] EWCA Civ 146; [2001] 3 All ER 248, CA
C *Schenk v Switzerland* (1988) 13 EHRR 242
Venables v News Group Newspapers Ltd [2001] Fam 430; [2001] 2 WLR 1038; [2001] 1 All ER 908

The following additional cases were cited in argument:

D v National Society for the Prevention of Cruelty to Children [1978] AC 171; [1977] 2 WLR 201; [1977] 1 All ER 589, HL(E)
D *Daniels v Walker (Practice Note)* [2000] 1 WLR 1382, CA
Grobbelaar v Sun Newspapers Ltd The Times, 12 August 1999, CA
ITC Film Distributors Ltd v Video Exchange Ltd [1982] Ch 431; [1982] 3 WLR 125; [1982] 2 All ER 241
Khan v United Kingdom (2000) 31 EHRR 1016
R v P [2002] 1 AC 146; [2001] 2 WLR 463; [2001] 2 All ER 58, HL(E)
R (S) v Chief Constable of the South Yorkshire Police [2002] EWCA Civ 1275; [2002]
E 1 WLR 3223; [2003] 1 All ER 148, CA
Riddick v Thames Board Mills Ltd [1977] QB 881; [1977] 3 WLR 63; [1977] 3 All ER 677, CA
Vernon v Bosley (No 2) [1999] QB 18; [1997] 3 WLR 683; [1997] 1 All ER 614, CA

The following cases, although not cited, were referred to in the skeleton arguments:

Douglas v Hello! Ltd [2001] QB 967; [2001] 2 WLR 992; [2001] 2 All ER 289, CA
F *G v G (Minors: Custody Appeal)* [1985] 1 WLR 647; [1985] 2 All ER 225, HL(E)
Glaser v United Kingdom [2000] 3 FCR 193
National Justice Compania Naviera SA v Prudential Assurance Co Ltd (The Ikarian Reefer) [1993] 2 Lloyd's Rep 68
X and Y v The Netherlands (1985) 8 EHRR 235

APPEAL from Judge Charles Harris QC sitting as a judge of the Queen's
G Bench Division

By a claim form issued on 30 August 2000 the claimant, Jean Jones, sought damages for personal injury from the defendant, the University of Warwick. On 1 November 2001 District Judge Wartnaby dismissed an application by the defendant for permission to rely on video evidence obtained by an inquiry agent acting for its insurers who obtained entry to the claimant's house by posing as a market researcher. On 16 May 2002 Judge
H Charles Harris QC, sitting as a judge of the Queen's Bench Division in Birmingham, allowed the defendant's appeal against that decision.

By a notice of appeal and with the leave of Pill LJ the claimant appealed on the grounds that the judge (1) should not have interfered with the exercise by the district judge of his discretion in a case management decision; (2) wrongly

failed to comply with his duty under section 6(1) of the Human Rights Act 1998 and acted incompatibly with the claimant's rights under the Convention for the Protection of Human Rights and Fundamental Freedoms; (3) misdirected himself when stating that the court should not concern itself over the methods by which the evidence was obtained but merely with the usefulness of the evidence; (4) erred in finding that it was not a feasible option for the defendant to obtain video evidence of the claimant without entering her home; (5) erred in law in attaching any weight to a public policy consideration that the defendant needed to be in a position to protect itself from deceitful claimants when there was no allegation that the claimant had been deceitful; and (6) failed to comply with the overriding objective in CPR Pt 1 which required that the defendant's appeal be dismissed.

The facts are stated in the judgment of the court.

Robert Weir for the claimant.
Robert Owen QC for the defendant.

4 February. **LORD WOOLF CJ** handed down the following judgment of the court.

1 The issue which this appeal raises is whether, and if so when, a defendant to a personal injury claim is entitled to use as evidence a video of the claimant which was obtained by filming the claimant in her home without her knowledge after the person taking the film had obtained access to the claimant's home by deception.

2 As Mr Robert Weir, who appears on behalf of the claimant, contends, the issue on the appeal requires this court to consider two competing public interests: the interests of the public that in litigation the truth should be revealed and the interests of the public that the courts should not acquiesce in, let alone encourage, a party to use unlawful means to obtain evidence.

The background to the appeal

3 The claimant, Mrs Jean F Jones, appeals against an order of Judge Charles Harris QC, sitting as a judge of the High Court, who on 16 May 2002, allowed an appeal from the decision of District Judge Wartnaby and made an order allowing the University of Warwick, the defendant, to rely, at the trial of the claimant's action against the defendant, on a video film which they had recorded of the claimant in her home without her knowledge.

4 The action arose out of an accident that occurred when the claimant dropped a full cash box with a broken lid onto her right wrist causing a small cut in the web between her fourth and fifth fingers of her right hand.

5 The claimant was employed by the defendant. The claimant contended that she had developed a focal dystonia. She alleged significant continuing disability and claimed special damages in excess of £135,000.

6 The defendant admits liability but disputes that the claimant has the continuing disability she alleges. The defendant has expert medical evidence that accepts that the claimant appears to have had an episode of extensor tenosynovitis but contends she had virtually recovered by March 1998 and her ongoing disability "remains uncertain but it seems to be more related to habit than need": see the report of Professor Burke of 9 May 2001.

7 The video evidence, the admissibility of which is in dispute, was obtained on two occasions by an inquiry agent, acting for the insurers of the

A defendant. The first occasion was 19 November 1999 and the second 18 January 2000. The inquiry agent obtained access to the claimant's home by posing as a market researcher. The inquiry agent used a hidden camera and the claimant had no idea that she was being filmed. The film which was made was disclosed on 11 June 2001. This was after High Court proceedings had been issued on 30 August 2000 by the claimant in which she claimed substantial damages. Nothing turns on the date that the filming B took place. It was, however, followed by the filming of the claimant in public on 21 January and 30 March 2001. The admissibility of this later filming is not in dispute but it is common ground that the later films are not as helpful to the defendant as the films which were taken in the claimant's home.

8 The defendant's expert, after seeing the films taken in her home, was C of the opinion that the claimant had an entirely satisfactory function in her right hand. The claimant's medical experts have come to a different conclusion. This is that the claimant still has a significant continuing disability but the films taken in her home can be explained because the extent of the disability in her hand varies. She has good and bad days.

9 It is not in dispute that: (i) the inquiry agent was guilty of trespass and that she would not have been given permission to enter had she not misled D the claimant as to her identity; (ii) as the medical experts have now seen what was recorded in the films taken at the claimant's home, if the film was not to be admitted in evidence, those experts would not be able to give evidence. New medical experts would have to be instructed and the existence of the recordings would have to be concealed from the court and the new experts.

E

The approach of the judges in the lower courts

10 On 23 August 2001 the defendant made an application to the court for directions as to whether the video evidence obtained at the claimant's home should be admissible in evidence. At a hearing before District Judge Wartnaby on 19 October 2001, the claimant contended the disputed F recordings should not be admitted, relying on the court's discretion under CPR r 32.1(2) and article 8(1) of the Convention for the Protection of Human Rights and Fundamental Freedoms. On 1 November 2001 the district judge gave a reserved judgment in writing, in which he came to the conclusion that:

> "The court has to carry out a balancing exercise between the benefit to G the court of having all the evidence available and the consideration of the improper way in which the video evidence was obtained. The court should not in any way give approval to the methods used by the defendant's agent in misleading the claimant and gaining improper entry to her home. In those circumstances I am not satisfied that the video evidence should be available and I order that it is excluded . . ."

11 In his reserved judgment of 16 May 2002, Judge Harris came to the H opposite conclusion. Judge Harris drew attention to the fact that the claimant was alleging a substantial handicap and therefore that she was entitled to substantial compensation; that the disputed films revealed in the words of the defendant's orthopaedic expert "that she has regained full function of her right hand"; that as copies of the film had been provided on

11 June 2001, this was not an ambush case; that in English criminal proceedings the fact that evidence has been illegally obtained does not render it inadmissible, subject to the power of the trial judge to exclude evidence in the exercise of his common law discretion or under the provisions of section 78 of the Police and Criminal Evidence Act 1984.

12 The judge was considerably influenced by the approach adopted by Lord Nolan in his speech in *R v Khan (Sultan)* [1997] AC 558. The judge pointed out that: "the overriding objective in a civil case tried in England is that court the should deal with the case justly" and referred to his own judgment in *McNally v RG Manufacturing Ltd* [2001] Lloyd's Rep IR 379, 382, where he had stated that if a party is making:

> "an inflated, exaggerated or unjustified claim then he is seeking other people's money to which he is not entitled. It is clearly both just and fair that he should be prevented from succeeding in this. In order to uncover his deception steps may have been taken which involved him in being misled or his privacy being infringed. Misleading him may be the only practical means of showing that he himself is misleading other people . . ."

He added that in that case he had concluded:

> "there were next to no physical signs as opposed to complaints of anything wrong with him. I do not think that the deception involved in coming to his house in the guise of a market researcher . . . was of such gravity or impropriety as to render evidence thus obtained inadmissible."

13 As to the reliance upon the Convention, he contended that under the Strasbourg jurisprudence questions of admissibility were matters of domestic law. Referring to the Civil Procedure Rules, he stated that:

> "The overriding objective of those rules is to enable the court to deal with cases justly. This includes, inter alia, ensuring that the parties are on an equal footing, that the case is dealt with in ways which are proportionate to the amount of money involved and that the case is dealt with 'fairly': CPR r 1.1. The claimant knows very well what she can do with her hand, the defendant does not. It is not, therefore, on an equal footing in this respect."

14 The judge added:

> "So the question for me to decide in my review of the district judge's decision is whether it was wrong. I think it plainly was. The central passage of the district judge's reasoning was, 'the courts should not in any way give approval to the methods used by the defendant's agent. In those circumstances, I am not satisfied that the video evidence should be available.' "

15 The judge continued by saying that:

> "The primary question for the court is not whether or not to give approval to the method whereby evidence was obtained. It is whether justice and fairness require that this highly material evidence, which contradicts the evidence she has given to others, should be put to her before the trial judge to enable him to reach a sound conclusion about the

A true extent of any disability. True, the claimant was herself deceived, but there is strong prima facie evidence that she herself is deceiving or misleading the defendant to enrich herself thereby. It is not easy for defendants to protect themselves against exaggerated claims. Anyone with much experience of personal injury litigation will know that the defendants and their insurers are frequently faced by claimants who suggest that their disabilities are far greater than they are, and large sums B of money may be unjustifiably sought. Though such people are rarely, if ever, prosecuted in many cases what they do or seek to do must amount to the crime of obtaining property or pecuniary advantage by deception. In these circumstances, I do not believe that the court should be too astute to prevent effective investigation by defendants of the claims against them. Clearly, there is a public interest that unfair, tortious and illegal methods C should not be used in general and where they are unnecessary, but the conflicting considerations are on the one side the claimant's privacy and on the other the legitimate need and public interest that defendants or their insurers should be able to prevent and uncover unjustified, dishonest and fraudulent claims. In the instant case I have no doubt that the latter considerations do and should outweigh the former."

D **16** Finally, the judge commented in a critical manner about the fact that up to that stage the claimant's solicitors had kept the films from their own medical experts, "thus not giving them all the available material to enable them to make a disinterested assessment of the degree of her disability". Having acknowledged that he had not heard very extensive argument upon this "perhaps not wholly straightforward topic", he added, "at first blush E this seems, to put it mildly, very unsatisfactory".

The contentions of the parties

17 We can deal with Mr Robert Owen's submissions on behalf of the defendant fairly succinctly because he naturally relied very strongly on the forceful reasoning of Judge Harris. Mr Owen was, however, careful to make F it clear that in his submissions he was not inviting the court to give a green light to insurers taking unlawful action, such as trespassing, in order to obtain evidence. His submission was that the court had a discretion to exercise and the judge had exercised his discretion properly, having come to the conclusion that the district judge had exercised his discretion wrongly, and this being so, this court should not intervene.

18 Mr Weir was in agreement with Mr Owen that the judge had a G discretion. The discretion was contained in CPR r 32.1 which provides, so far as relevant:

> "(1) The court may control the evidence by giving direction as to . . . (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."

H

He also relies upon the overriding objective contained in CPR r 1.1 which provides:

> "(1) These Rules are a new procedural code with the overriding objective of enabling the court to deal with cases justly.

"(2) Dealing with a case justly includes, so far as is practicable— A
(a) ensuring that the parties are on an equal footing . . . (d) ensuring that it is dealt with expeditiously and fairly; and (e) allotting to it an appropriate share of the court's resources, while taking into account the need to allot resources to other cases."

He could also have referred to the duty of the parties under CPR r 1.3 "to help the court to further the overriding objective". B

19 When it comes to determining how a court should exercise its discretion Mr Weir argues that the answer is provided by the relevant provisions of the Human Rights Act 1998 and in particular articles 6 and 8 thereof. The article 6 right to a fair hearing he argues must be analysed in the context of the court's obligation to determine whether the introduction of the video is in accordance with the law and necessary for the protection of C
the defendant's rights. In saying this he relies on the fact that the video recording was obtained as a result of the defendant's representative having trespassed and infringed the claimant's right of privacy under article 8(1). The reference to law and necessity he extracts from article 8(2) which provides:

"There shall be no interference by a public authority with the exercise D
of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security . . ."

20 Mr Weir accepts that he cannot rely upon article 8 directly because the insurers of the defendant were responsible for obtaining the evidence in this way and not a public authority. But he contends that this does not prevent him relying upon article 8. This is because of the fact that the court E
that has to exercise its discretion is a public authority (see section 6(3) of the Act) and it is "unlawful for a public authority to act in a way which is incompatible with a Convention right" (see section 6(1)). He submits that for the court to ignore the manner in which the video evidence was obtained would involve the court acting in a way that is incompatible with the claimant's article 8 rights unless the evidence which was obtained in F
contravention of article 8 was necessary in order to achieve justice in the case.

Squaring the circle

21 It is not possible to reconcile in a totally satisfactory manner, the conflicting public policies which the district judge and the judge had to try G
and balance in this case. The approach of Judge Harris was consistent with the approach which would have been adopted in both criminal and civil proceedings prior to the coming into force of the Civil Procedure Rules and the Human Rights Act 1998. The achieving of justice in the particular case which was before the court was then the paramount consideration for the judge trying the case. If evidence was available, the court did not concern H
itself with how it was obtained.

22 While this approach will help to achieve justice in a particular case, it will do nothing to promote the observance of the law by those engaged or about to be engaged in legal proceedings. This is also a matter of real public concern.

A **23** If the conduct of the insurers in this case goes uncensured there would be a significant risk that practices of this type would be encouraged. This would be highly undesirable, particularly as there will be cases in which a claimant's privacy will be infringed and the evidence obtained will confirm that the claimant has not exaggerated the claim in any way. This could still be the result in this case.

B **24** Fortunately, in both criminal and civil proceedings, courts can now adopt a less rigid approach to that adopted hitherto which gives recognition to the fact that there are conflicting public interests which have to be reconciled as far as this is possible. The approach adopted in *Kuruma v The Queen* [1955] AC 197 and *R v Sang* [1980] AC 402 and *R v Khan (Sultan)* [1997] AC 558 which was applied by the judge has to be modified as a result of the changes that have taken place in the law. The position in criminal C proceedings is that now when evidence is wrongly obtained the court will consider whether it adversely affects the fairness of the proceedings and, if it does, may exclude the evidence: section 78 of the Police and Criminal Evidence Act 1984. In an extreme case, the court will even consider whether there has been an abuse of process of a gravity which requires the prosecution to be brought to a halt: see *R v Loveridge* [2001] 2 Cr App R D 591 and *R v Mason* [2002] 2 Cr App R 628 (paras 50, 68 and 76). In civil proceedings, Potter LJ recognised this in *Rall v Hume* [2001] 3 All ER 248. He commenced by saying, at p 254:

> "In principle . . . 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 E usually be in the overall interests of justice to require that the defendant should be permitted to cross-examine the claimant and her medical advisers upon it . . ." (Emphasis added.)

25 Potter LJ added that this does not apply if the conduct of the defendant amounts "to trial by ambush". The discretion on the court is not, however, confined to cases where the defendants have failed to make proper F disclosure. 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 G 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 H should properly exercise its discretion in making orders as to the management of the proceedings.

26 Mr Weir argues that unless it was *necessary* for the insurers to take the actions they did, the evidence must inevitably, at least in a case such as this, be held inadmissible. He submits that otherwise the court would be

contravening the duty that it is under, pursuant to section 6 of the Human Rights Act 1998, not to contravene article 8. While the court should not ignore the contravention of article 8, to adopt Mr Weir's approach would fail to recognise that the contravention would still remain that of the insurers' inquiry agent and not that of the court. The court's obligation under section 6 of the Human Rights Act 1998 is to not itself act in a way which is incompatible with a Convention right: see *Venables v News Group Newspapers Ltd* [2001] Fam 430, 445–446, paras 24–27.

27 As the Strasbourg jurisprudence makes clear, the Convention does not decide what is to be the consequence of evidence being obtained in breach of article 8: see *Schenk v Switzerland* (1988) 13 EHRR 242 and *PG and JH v United Kingdom* The Times, 19 October 2001, para 76. This is a matter, at least initially, for the domestic courts. Once the court has decided the order, which it should make in order to deal with the case justly, in accordance with the overriding objectives set out in CPR r 1.1 in the exercise of its discretion under rule 32.1, then it is required or it is necessary for the court to make that order. Accordingly if the court could be said to have breached article 8(1) by making the order which it has decided the law requires, it would be acting within article 8(2) in doing so.

28 That leaves the issue as to how the court should exercise its discretion in the difficult situation confronting the district judge and Judge Harris. The court must try to give effect to what are here the two conflicting public interests. The weight to be attached to each will vary according to the circumstances. The significance of the evidence will differ as will the gravity of the breach of article 8, according to the facts of the particular case. The decision will depend on all the circumstances. Here, the court cannot ignore the reality of the situation. This is not a case where the conduct of the defendant's insurers is so outrageous that the defence should be struck out. The case, therefore, has to be tried. It would be artificial and undesirable for the actual evidence, which is relevant and admissible, not to be placed before the judge who has the task of trying the case. We accept Mr Owen's submission that to exclude the use of the evidence would create a wholly undesirable situation. Fresh medical experts would have to be instructed on both sides. Evidence which is relevant would have to be concealed from them, perhaps resulting in a misdiagnosis; and it would not be possible to cross-examine the claimant appropriately. For these reasons we do not consider it would be right to interfere with the judge's decision not to exclude the evidence.

29 Mr Weir's submission that we should determine the issue on the basis of the facts as they were before the district judge is not realistic. None the less, it is right that we should make clear that we do not accept that the criticism of the claimant's legal advisers for deciding not to reveal the contents of the video films in issue to their medical experts is justified. It was sensible to defer doing so until it was known whether the evidence could be used. While not excluding the evidence it is appropriate to make clear that the conduct of the insurers was improper and not justified. We disagree with the indication by Judge Harris to the contrary. The fact that the insurers may have been motivated by a desire to achieve what they considered would be a just result does not justify either the commission of trespass or the contravention of the claimant's privacy which took place. We come to this

A conclusion irrespective of whether Mr Weir is right in contending that in this particular case the evidence could be obtained by other means.

30 Excluding the evidence is not, moreover, the only weapon in the court's armoury. The court has other steps it can take to discourage conduct of the type of which complaint is made. In particular it can reflect its disapproval in the orders for costs which it makes. In this appeal, we therefore propose, because the conduct of the insurers gave rise to the B litigation over admissibility of the evidence which has followed upon their conduct, to order the defendant to pay the costs of these proceedings to resolve this issue before the district judge, Judge Harris and this court even though we otherwise dismiss the appeal. This is subject to Mr Owen having an opportunity to persuade us to do otherwise. In addition, we would indicate to the trial judge that when he comes to deal with the question of C costs he should take into account the defendant's conduct which is the subject of this appeal when deciding the appropriate order for costs. He may consider the costs of the inquiry agent should not be recovered. If he concludes, as the claimant now contends, that there is an innocent explanation for what is shown as to the claimant's control of her movements then this is a matter which should be reflected in costs, perhaps by ordering the defendant to pay the costs throughout on an indemnity basis. In giving D effect to the overriding objective, and taking into account the wider interests of the administration of justice, the court must, while doing justice between the parties, also deter improper conduct of a party while conducting litigation. We do not pretend that this is a perfect reconciliation of the conflicting public interests. It is not; but at least the solution does not ignore the insurers' conduct.

E 31 Subject to hearing further argument on costs, the appeal is dismissed.

Appeal dismissed.
Defendant to pay costs of proceedings to resolve admissibility of video evidence.
Leave to appeal refused.

F

Solicitors: Irwin Mitchell, Birmingham; Buller Jeffries, Coventry.

J B S

G

These pages will be reissued in the next part

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Note

End of starred cases in this issue of The Weekly Law Reports. Cases following are those intended for publication in The Law Reports.