



Neutral Citation Number: [2026] EWHC 1875 (KB)

Case No: KB-2024-002858

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24/07/2026

Before :

Susie Alegre (sitting as Deputy Judge of the High Court)

Between :

MR EUAN LAWRENCE CAVELL

Claimant

- and -

CENTAUR CONSTRUCTION LTD

Defendant

Francesca Martin (instructed by Ashtons Legal) for the Claimant
Rory Holmes (instructed by Kennedys Law LLP) for the Defendant

Hearing dates: 7th – 13th July 2026

Approved Judgment

This judgment was handed down remotely at 10.30am on 24th July 2026 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Susie Alegre (sitting as a Deputy Judge of the High Court)

Introduction

1. This is my judgment on liability following a trial heard between 7 July 2026 and 13 July 2026.
2. This is a case about a serious injury suffered by the claimant, Euan Cavell (“Euan”), while working as a subcontractor for the defendant on a construction site in September 2021.
3. The defendant is a construction company specialising in civil engineering and groundworks, engaged by housing developers for the purpose of new housing estates. Euan was employed by Hudson Administration Services, a company that provides sub-contractors to the construction industry and he worked for the defendant as a sub-contracted groundworker.
4. The accident took place at a site in Templar Green, Polecat Road Braintree, Essex (‘the site’). The defendant had been engaged by the Principal Contractor, Inland Homes, to undertake groundworks. Euan had been working on site since 17.8.21, which was just over 2 weeks before the accident date.
5. It is accepted that, on 2 September 2021 Euan was accidentally run over by the dumper truck he had been driving, as he attempted to alight from it without having applied the handbrake, whilst the engine was still running, and having plugged in the seatbelt behind his back to circumvent the engine ‘cut off switch’ safety feature (the unplugging of the seatbelt will cut the engine). This three part time saving technique allows a dumper operator to alight and reboard the vehicle without having to restart the dumper using a security pin every time. I will refer to it as Mr Holmes did before me as “the unsafe shortcut”.
6. When they realised that Euan was under the dumper, three of the defendant’s employees, Neil Twin, Kevin Martin and Peter Fryatt, intervened to rescue him from under a rear wheel of the dumper truck which was moving slowly forward over his body.
7. The matter of quantum was settled before me and therefore the facts around this intervention are no longer contentious. In brief, one of the digger drivers, Kevin Martin, swivelled his digger and placed the bucket in the buck/front of the dumper truck, to stop the dumper rolling any further forward over Euan’s body. The other dumper truck driver, Euan’s supervisor, Neil Twin, jumped onto Euan’s dumper truck to try to help so that Euan could extricate himself from under the rear wheel of dumper. The other digger driver, Peter Fryatt, swung his crane around and placed the bucket behind the dumper truck, to stop it rolling any further back. While there was some dispute about the impact of Neil Twin’s actions on Euan’s injuries which was aired in evidence before me, now that quantum is settled, I do not need to decide exactly what transpired during the incident and therefore I will limit my assessment to the key issue of liability.
8. The key issue I have to decide is, did Andrew Crick, the claimant’s boss, demonstrate or instruct Euan to use the unsafe shortcut which he then followed in the course of his

employment, or did Euan adopt the unsafe shortcut contrary to his employer's guidance on safety in the workplace?

9. The defendant also asks me to consider whether Euan Cavell is fundamentally dishonest in his account if his claim is successful.
10. The outcome of the case boils down to whose account I believe to be more likely, on the balance of probabilities, taking into account both the written evidence and the oral evidence given by the witnesses before me. It is for the claimant to prove the case to the required standard and, should I find it necessary to consider fundamental dishonesty, it is for the defendant to prove that on the balance of probabilities.
11. After careful consideration of the evidence, I find the claimant's case to be proved, on the balance of probabilities, and I am not persuaded that he is fundamentally dishonest in his account and I will explain why in this judgment.

The law

12. The claim is brought in common law negligence, non-exhaustively, for failing to provide or maintain for the claimant a safe system of work and failing to exercise adequate care for his safety. It is also brought under the Construction Regulations 2015. Regulation 17(2) provides:

“(2) A construction site must be, so far as is reasonably practicable, made and kept safe for, and without risks to, the health of a person at work there.”

13. The claimant bears the burden of proof. That the accident happened due to an unsafe practice is not in dispute. The claimant must establish, on the balance of probabilities, that the defendant breached their duty of care to him.
14. As an initial point at the start of the trial, Mr Holmes questioned whether the claimant sought to raise a new argument based on the lack of adequate supervision that had not appeared in the pleadings. However, as the trial progressed, I was satisfied that the issue of supervision was not being advanced as a separate head of claim but rather as an aspect of the overall argument on negligence related to the use of the unsafe practice and Mr Holmes conceded that this would be acceptable.
15. I have considered the guidance of Legatt J in *Gestmin SGPA S.A. v Credit Suisse (UK) Ltd* [2013] EWCH 3560 (comm); [2020] 1 C.L.C. 428; [15]-[22] when weighing up the evidence before me:

“Evidence based on recollection

15. An obvious difficulty which affects allegations and oral evidence based on recollection of events which occurred several years ago is the unreliability of human memory.

16. While everyone knows that memory is fallible, I do not believe that the legal system has sufficiently absorbed the lessons of a century of psychological research into the nature of memory and the unreliability of eyewitness testimony. One of

the most important lessons of such research is that in everyday life we are not aware of the extent to which our own and other people's memories are unreliable and believe our memories to be more faithful than they are. Two common (and related) errors are to suppose: (1) that the stronger and more vivid is our feeling or experience of recollection, the more likely the recollection is to be accurate; and (2) that the more confident another person is in their recollection, the more likely their recollection is to be accurate.

17. Underlying both these errors is a faulty model of memory as a mental record which is fixed at the time of experience of an event and then fades (more or less slowly) over time. In fact, psychological research has demonstrated that memories are fluid and malleable, being constantly rewritten whenever they are retrieved. This is true even of so-called 'flashbulb' memories, that is memories of experiencing or learning of a particularly shocking or traumatic event. (The very description 'flashbulb' memory is in fact misleading, reflecting as it does the misconception that memory operates like a camera or other device that makes a fixed record of an experience.) External information can intrude into a witness's memory, as can his or her own thoughts and beliefs, and both can cause dramatic changes in recollection. Events can come to be recalled as memories which did not happen at all or which happened to someone else (referred to in the literature as a failure of source memory).

18. Memory is especially unreliable when it comes to recalling past beliefs. Our memories of past beliefs are revised to make them more consistent with our present beliefs. Studies have also shown that memory is particularly vulnerable to interference and alteration when a person is presented with new information or suggestions about an event in circumstances where his or her memory of it is already weak due to the passage of time.

19. The process of civil litigation itself subjects the memories of witnesses to powerful biases. The nature of litigation is such that witnesses often have a stake in a particular version of events. This is obvious where the witness is a party or has a tie of loyalty (such as an employment relationship) to a party to the proceedings. Other, more subtle influences include allegiances created by the process of preparing a witness statement and of coming to court to give evidence for one side in the dispute. A desire to assist, or at least not to prejudice, the party who has called the witness or that party's lawyers, as well as a natural desire to give a good impression in a public forum, can be significant motivating forces.

20. Considerable interference with memory is also introduced in civil litigation by the procedure of preparing for trial. A witness

is asked to make a statement, often (as in the present case) when a long time has already elapsed since the relevant events. The statement is usually drafted for the witness by a lawyer who is inevitably conscious of the significance for the issues in the case of what the witness does nor does not say. The statement is made after the witness's memory has been 'refreshed' by reading documents. The documents considered often include statements of case and other argumentative material as well as documents which the witness did not see at the time or which came into existence after the events which he or she is being asked to recall. The statement may go through several iterations before it is finalised. Then, usually months later, the witness will be asked to re-read his or her statement and review documents again before giving evidence in court. The effect of this process is to establish in the mind of the witness the matters recorded in his or her own statement and other written material, whether they be true or false, and to cause the witness's memory of events to be based increasingly on this material and later interpretations of it rather than on the original experience of the events.

21. It is not uncommon (and the present case was no exception) for witnesses to be asked in cross-examination if they understand the difference between recollection and reconstruction or whether their evidence is a genuine recollection or a reconstruction of events. Such questions are misguided in at least two ways. First, they erroneously presuppose that there is a clear distinction between recollection and reconstruction, when all remembering of distant events involves reconstructive processes. Second, such questions disregard the fact that such processes are largely unconscious and that the strength, vividness and apparent authenticity of memories is not a reliable measure of their truth.

22. In the light of these considerations, the best approach for a judge to adopt in the trial of a commercial case is, in my view, to place little if any reliance at all on witnesses' recollections of what was said in meetings and conversations, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts. This does not mean that oral testimony serves no useful purpose – though its utility is often disproportionate to its length. But its value lies largely, as I see it, in the opportunity which cross-examination affords to subject the documentary record to critical scrutiny and to gauge the personality, motivations and working practices of a witness, rather than in testimony of what the witness recalls of particular conversations and events. Above all, it is important to avoid the fallacy of supposing that, because a witness has confidence in his or her recollection and is honest, evidence based on that recollection provides any reliable guide to the truth.”

16. And of Cotter J in *Muyepa v Ministry of Defence* [2022] EWHC 2648 (KB) [16]-[20]:

“16. Where witnesses are accused of lying [...] cross-examination still remains the gold standard test (see generally the analysis of Mostyn J in *Carmarthen County Council v Y* [2017] EWFC 36 and Stewart J in *Kimathi & Ors v Foreign and Commonwealth Office* [2018] EWHC 2066 (QB). [...])

Most first instance Judges across a range of jurisdictions undertake the assessment of veracity on a very regular basis and the proper approach as set out in a number of cases and articles requires no exegesis from me. It is now well recognised that caution must be exercised before placing weight on how the evidence was given. [...] However, the assessment of witness evidence is not a beauty parade and Judges should not treat it as such. As Peter Jackson LJ said in *B-M* [2021] EWCA Civ 1371 at pp.23-5:

“No judge would consider it proper to reach a conclusion about a witness's credibility based solely on the way that he or she gives evidence, at least in any normal circumstances. The ordinary process of reasoning will draw the judge to consider a number of other matters, such as the consistency of the account with known facts, with previous accounts given by the witness, with other evidence, and with the overall probabilities. However, in a case where the facts are not likely to be primarily found in contemporaneous documents the assessment of credibility can quite properly include the impression made upon the court by the witness, with due allowance being made for the pressures that may arise from the process of giving evidence....”

17. Demeanour in court is not entirely irrelevant; it can on occasions be instructive. It is usually far easier to tell the truth than to lie. There may be pauses as a witness may try to think through implications and remain consistent. There may be a failure to answer a direct question by deliberately going off at a tangent; so appearing to answer; but not answering at all. However, the way evidence is given or “demeanour” must not be given disproportionate weight. The difficulty some witnesses will have in giving evidence (for a range of reasons) must be taken into account. The overriding objective sets out that it is the aim of the Court to ensure a witness can give their best evidence, but the process often cannot be an entirely level playing field. Judges give due allowance for the fact that the court room is often an unfamiliar and frightening place for those who appear as parties or to give evidence, and that some witnesses will find the process more stressful and difficult than others particularly if they have a mental health issue such as depression. Allowances must also be made for education and use of language. On the other hand some witnesses may be calm and assured, but calculated and accomplished liars. I took these

matters into account when assessing all the witness evidence in this case. There are numerous article and books that cover this issue. See e.g. Lord Bingham's essay "The Judge as Juror: The Judicial Determination of Factual Issues. See generally Lord Shaw in *Clarke-v-Edinburgh Tramways* [1919] SC (HL) 35 at p 36

18. Each Judge will have his or her own approach to the factors referred to by Jackson LJ. I usually take as a first step in the analysis of the veracity of a witness, establishing the relevant base of facts that cannot be in dispute; a set of foundations against which the reliability of the testimony can be assessed. Establishing such facts does not rely upon witness recall; rather on what is established by scientific fact and/or the seemingly ever increasing amount of data we produce such as documents, photographs, emails, text messages, video and other footage.

[...]

20. The next step I take is to consider the evidence of all of the witnesses in turn. Ms Collignon properly placed very great emphasis during her submissions upon the number of witnesses prepared to give evidence on behalf of the Claimant. It was the method used to seek to prove that the Claimant was essentially honest and Mr Lessey was a liar. However the assessment of evidence it is not purely a numbers game. It is necessary to carefully consider the evidence of each witness critically taking into account all relevant matters such as the following (this being a non-exhaustive list):

Motivation. What if anything has the witness to gain or lose through their evidence being accepted and is the witness trying to help the court independently of his or her personal interests/allegiance? [...]

(b) Is there the potential for unconscious bias? Leggatt J (as he then was) in *Gestmin v Credit Suisse* [2013] EWHC 3560 (Com) referred to modern psychological thinking on frailty of memory and stated:

“19. The process of civil litigation itself subjects the memories of witnesses to powerful biases. The nature of litigation is such that witnesses often have a stake in a particular version of events. This is obvious where the witness is a party or has a tie of loyalty...to a party to the proceedings. Other, more subtle influences include allegiances created by the process of preparing a witness statement and of coming to court to give evidence for one side in the dispute. A desire to assist, or at least not to prejudice, the party who has called the witness or that party's lawyers, as well as a natural desire to give a good

impression in a public forum, can be significant motivating forces.”

In my view unconscious bias has to be borne in mind in particular when considering the evidence of the Claimant’s family and friends, particularly about events which were not particularly memorable at the time [...].

(c) Is the extent of the recollection (or lack of it) plausible?

[...]

(d) It is internally consistent (or has the witness changed his or her mind)? [...]

(e) To what extent is the evidence of any witness consistent, with and/or corroborated by, other evidence (lay, expert, documentary etc). This includes considering whether other witnesses broadly agree on matters (bearing in mind that more than one witness could be wrong but that evidence may provide cross/mutual support. [...]

(f) Ordinarily it is harder when cross examined to lie in a consistent and plausible way than it is to tell the truth. [...]”

17. I have applied the principles in both cases to my assessment of the evidence before me.

Evidence

18. During the hearing, in addition to the claimant’s own evidence, I heard from two lay witnesses, John Stuart and Mark Coppola, who had worked with Euan previously.

19. For the Defendant, I heard from Andrew Crick, the site manager, Neil Twin, Euan’s supervisor at the time of the accident, Peter Fryatt and Kevin Martin, who worked on the site at the time of the accident, and David Foster who worked for AM Safety Specialists, the health and safety consultants for the site and conducted the initial investigation on the day of the accident.

Analysis and conclusions on liability

20. The relevant evidence before me on liability includes the contemporaneous evidence provided by Andrew Crick, Neil Twin, Peter Fryatt and Kevin Martin to David Foster on the day of the accident along with the near miss report dated 1st September 2021, the day before the accident, as well as the witness statements of both the claimant’s and the defendant’s witnesses and their testimony before me in court.

21. Euan Cavell gave evidence about his memory of the circumstances before and during the incident. It was clearly very difficult for him to talk about the experience and he was visibly upset when reliving the trauma. He came across as a young man who was trying to remember what happened in extremely stressful circumstances which would undoubtedly have had an impact on his recollection of the accident itself and the time immediately before and after the accident before he was airlifted out.

22. Regardless of the accuracy of his memories, Euan did not come across as a dishonest witness. He did, however, repeatedly say that he did what he was told on the construction site. This inclination to do what he was told may well explain the minor discrepancies in written evidence over time that were highlighted by Mr Holmes in cross examination.
23. Euan's memories of his experience at Centaur before the accident were mixed. In the days prior to the incident, he described an unpleasant and pressured atmosphere at work. In particular, he said he felt that if he didn't do what he was told, he would lose his job. He was, however, measured in the way he described the pressure from Andrew Crick in particular, and he conceded that he could have left the job because he had another job offer but decided to stay when he was offered better pay. His account indicated a not particularly pleasant atmosphere but not an atmosphere of bullying or physical threat.
24. Euan said that he did not see the near miss incident report dated 1 September 2021, the day before the incident, and that Neil Twin didn't mention it to him. He said he has no memory of the report but did not go so far as to say that it must be a forgery. He maintained this position under sustained cross examination and was a credible witness. I find that Euan did not see and was not aware of any near miss report on the day before the accident.
25. He spoke movingly about feeling sure that he was going to die under the dumper truck and trying to relax so that it would be easier. Mr Holmes, in his questioning, seemed to take this as an indication that Mr Cavell was not scared but Mr Cavell clarified that he was scared for his life but tried to remain calm in the face of the inevitable. That seems like an entirely natural response to an extremely dangerous situation.
26. Mr Holmes put it to Mr Cavell that, immediately after the accident, he said to his colleagues words to the effect of "I'm sorry I've been so stupid" and that this was an indication that he had taken it upon himself to use the unsafe shortcut that had led to the accident. Euan said he could not remember what he said.
27. I give very little weight to anything he did or did not say immediately after being taken out from under the dumper. It is clear to me that, any statements made after such an enormous shock and in circumstances where he had been run over by heavy machinery and was in excruciating pain, would not be particularly rational or illuminating on the issue of liability before me.
28. In short, I find it extremely unlikely that Euan Cavell devised the unsafe shortcut himself. There are several points that lead me to this conclusion. The claimant's two lay witnesses told me that he had not adopted unsafe practices while working with them on previous jobs. Although Mr Holmes questioned their independence and both of them conceded that they "wanted what's best for Euan", they have no particularly strong motivation beyond a desire to help him seek justice. They are not close family friends or friends of Euan and they have no financial interest in the outcome of the case. Their motivations appear to be entirely altruistic and they have no reason to lie, particularly in the imposing circumstances of giving evidence under oath in court. I have no reason to doubt that the photograph produced by Mr Stuart which he says shows Euan operating a dumper truck with a seatbelt is anything other than genuine.

29. It is accepted that the accident happened as a result of the unsafe shortcut. The question for me then, is why Euan used that shortcut on the day of the accident. Euan does not come across as a rebellious rule breaker who would invent such a shortcut and take it upon himself to use it if it were not common practice among more senior colleagues. He was trained and had previous experience, he knew what the safe procedure was, to adopt the unsafe shortcut was a three-stage process that required some thought be given to it.
30. I think it likely, instead, that someone told him to use it, in the circumstances I think it is **more likely than not that the person who demonstrated it to him was his superior on the site, in this case Andrew Crick**. Euan had nothing to gain from saving time – as he said, he was paid by the day, not by the task. There is simply no reason at all for him to have devised the shortcut that led to this accident. I believe that the only reason he would do it was if he was told to do it by his superior and in circumstances where others were using the same shortcut on the site around him.
31. Euan Cavell came across as a young man who does not want to rock the boat. Even in court when being cross-examined by Mr Holmes over a long period and in obvious pain, he was loathe to pass the blame or to cast his colleagues in an unnecessarily negative light. When asked about the assertion that Andrew Crick was a bully, he was very measured in his response and did not try to paint his former boss as a pantomime villain.
32. That inclination was borne out further, in my view, by the fact that he had not blamed Andrew Crick for the accident in text messages from hospital, only bringing his claim when it was suggested to him by a nurse at Addenbrookes that his employer might be responsible for his injuries. I consider discrepancies in his evidence to be more likely attributable to a tendency to say “yes” to people in authority, agreeing to the particulars of claim without proper checking because it was presented to him by his lawyer, rather than an indication of any fundamental dishonesty. It is that tendency to “do what I was told” that Euan repeatedly referred to as the reason why he used the unsafe shortcut on Andrew Crick’s instruction.
33. Much was made by Mr Holmes in cross-examination of the claimant’s lay witnesses of the fact that rule-breakers break rules when supervisors are not looking. The same, however, may be said of bad employers when health and safety are not looking. I think it more likely than not that this was the case here. **It was a new site which had not yet had a visit from the external health and safety consultants**. On the site were a group of workers who had known each other for two decades. They knew how each other worked and they had each other’s backs. If health and safety was lax, they were all in it together.
34. Mr Holmes suggested that the lack of previous incidents at Centaur is a sign that health and safety was tight. But the unsafe shortcut increases risk, it doesn’t guarantee an accident like Euan’s would happen. It is entirely possible that Centaur had been lucky from its establishment in 2017 up until 2 September 2021. That new safety protocols have been introduced since the accident is, in my view, a reflection of the fact that such a dramatic incident serves to focus the mind on the seriousness of health and safety requirements, not an indication that the rules were being followed prior to the accident.
35. The defendant’s witnesses were mainly quite limited in their responses to Miss Martin’s cross examination. It is much easier to maintain a lie when you are simply giving yes

and no answers. The two witnesses whose evidence was perhaps the most telling were Neil Twin and Kevin Martin and their evidence diverged in a crucial way.

36. In my view, the near miss report is key to the analysis of the evidence and to my decision as to whether Euan Cavell took it upon himself to use the unsafe shortcut against the advice of his supervisor and colleagues, or if he was told, or shown, by them how to save time by using the unsafe shortcut.
37. I recognise that it is documentary evidence that was produced shortly after the accident when David Foster was on site to conduct his investigation. If it is false, the decision to produce it must have been taken very quickly after the accident by Neil Twin, the author and supervisor, either alone or in collusion with Andrew Crick. I have not been quick to reach that assumption, however, on careful analysis of the evidence surrounding the near miss report, I have concluded that it is more likely than not that this is what happened.
38. Neil Twin gave evidence before me about the accident, and I am sure that he acted quickly in good faith to do the best he could to save Euan when he saw him under the dumper. I do not need to make findings as to whether his actions during the accident exacerbated Euan's injuries, but based on the evidence before me, I should say that it seems clear to me that he did what he did to save Euan in a moment of extreme danger. However, his evidence about the near miss report and the incident that led to it was not compelling and other evidence points towards the conclusion that the purported warning related to a near miss the day before the accident simply did not happen.
39. The near miss report is brief and refers only to Euan having left the handbrake off, it does not refer to the other elements of the unsafe shortcut. While I accept that there is no box in the form that requires a signature from Euan, I would have expected him to be included in the list of witnesses to the incident, instead, it is marked N/A. It also seems slightly odd that the time of the near miss report is almost identical to the time of the accident the following day – while that could be just chance, other evidence points to the near miss report having been fabricated following the accident.
40. The lack of a toolbox talk the day after the supposed near miss incident is telling. Kevin Martin says it would happen after such an incident. Of the defendant's witnesses, he was perhaps the most convincing and I note that he had no responsibility for the accident and therefore no personal interest in avoiding that responsibility. **If Euan's behaviour was deemed worthy of a near miss report, it should have been worthy of a toolbox talk to ensure it did not happen again, particularly as it had occurred on only the second day that Neil Twin was his supervisor.** In those circumstances, I would expect Neil Twin to want to make sure that all health and safety protocols were being followed to the letter and to show himself to be a diligent supervisor.
41. Although Peter Fryatt says he had words with Euan twice before about using the unsafe shortcut, there was nothing on Euan's file to indicate that he was reckless with health and safety rules on site. I would expect there to have been some record of these issues if Euan was an outlier on the site, taking dangerous shortcuts and not doing what he was told. Apart from the near miss report, signed by Neil Twin, there is nothing. The highest criticism of Euan from his employer is Andrew Crick's assertion that he was rushed in the mornings because he had to change his shoes and arrived close to the start

time, though not actually late. That is not an indication of an employee who poses a serious health and safety risk on site.

42. Neil Twin's contemporaneous account shortly after the accident that categorized Euan's injuries as "some cuts and bruises" is disingenuous in circumstances where Euan had been run over by a 9.5-ton dumper truck, suffered serious fractures, bleeding from the ear and required an airlift to hospital. It seems to me that this is evidence of Neil Twin's dawning understanding that, as supervisor, he was in part responsible for the accident and seeking to minimize the damage he had caused. At that point, Euan was not on site to give his own account of what had happened, and no one could be sure what the real extent of his injuries might turn out to be as a result of such a serious accident.
43. For all of these reasons, I find it likely that, in the same vein of seeking to cover up his mistake, he drew up the near miss report in an attempt to pass the blame onto Euan who was not there to put his side of the story.
44. I did not find the reports of Euan's words following the accident to the effect that he was somehow responsible to be credible. Even if he did say what was alleged, I do not give any weight to that – he had just survived an accident that could well have proved fatal, it is unlikely that anything he might have said in those circumstances would be a rational assessment of the situation. What is more telling is Andrew Crick's offer to give him a job for life in the immediate aftermath when he no doubt felt some responsibility for the accident.
45. Miss Martin characterised this case as a David and Goliath situation, with Euan Cavell bringing his claim against the ranked testimony of the defendant's witnesses, a group of men who have all worked together for decades. I agree with her submissions that the claimant had no more reason to lie than any other claimant in a personal injury case. The motivations of the defendant's witnesses, however, include ongoing financial and personal dependencies and a long history together. While I recognise that it is hard for anyone to give evidence in court, it is particularly so where there is a risk that the court will find your evidence to be untruthful. It is not, however, a numbers game. And in this case, I am obliged to find that one side, or the other is not telling the truth. For the reasons given above, in my assessment of the evidence, in this case, it is the claimant who is telling the truth.
46. Further to circulation of my draft judgment, Mr Holmes flagged three factual determinations which were not covered in the draft: (i) whether in the lead up to the accident Mr Cavell was subject to too great a workload; (ii) whether in the lead up to the accident Mr Cavell was alternating between the two dumpers, and; (iii) whether the workload on the day of the accident was greater than previous days on site. He referred me to his duty to raise a material omission with the court as described in *In the Matter of A, L (Children)* [2011] EWCA Civ 2015. He accepted that it was for the court to decide if this was material.
47. Miss Martin, in response, drew my attention to the guidance of Baker J at [9] in *YM (Care Proceedings) (Clarification of Reasons)* [2024] EWCA Civ 7 to the effect that a judgment does not need to address every point that has arisen in the case and should only address any omission, ambiguity or deficiency in the reasoning if it is material to the decision to be taken.

48. Having considered their submissions, I do not consider the questions of workload on the day or alternating between dumpers to be material to the issue I have to decide given my reasoning and focus on other evidential matters in reaching my decision and therefore I will not address these matters further in my judgment.

Conclusion

49. Based on my analysis of the evidence from the claimant's and the defendant's witnesses and the documentary evidence, I conclude, on the balance of probabilities, that Euan used the unsafe shortcut because his superior, in this case Andrew Crick, either told him or showed him how to use on the day of the accident. In light of these findings, the defendant is liable in negligence for the injuries caused by the accident and, as Mr Holmes concedes, in these circumstances there is no contributory negligence to be considered.
50. My assessment of Euan's evidence is sufficient to demonstrate that I do not find any sign of fundamental dishonesty on his part.
51. For these reasons, I find for the claimant.

Costs

52. Costs for the claimant.