



Neutral Citation Number: [2023] EWHC 3472 (KB)

Case No: KB-2023-002826

IN THE HIGH COURT OF JUSTICE
KINGS BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 01/12/2023

Before :

MR JUSTICE COTTER

Between :

HAVEN INSURANCE COMPANY LIMITED

Claimant

- and -

MR NEIL HIGHAM

Defendant

James Laughland (instructed by **Kennedys, Law LLP**) for the **Claimant**
Jonathan Page (instructed by **Fieldings Porter, Bolton**) for the **Defendant**

Hearing dates: 1 December 2023

Approved Judgment

This judgment was handed down Ex Tempore on 1 December 2023..

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MR JUSTICE COTTER

Mr Justice Cotter :

1. The Claimant is an insurance company. It provided motor insurance in relation to a vehicle involved in a road traffic accident on the 17th of August 2019. The Defendant comes before the court today for sentence after admitting contempt of court. In particular, he made two false Statements of Truth in relation to the Particulars of Claim and Schedule of Special Damage served in County Court proceedings in respect of that accident.
2. I have been greatly assisted by both counsel; Mr Laughland as to general guidance in relation to the relevant issues and by Mr Page appearing on behalf of Mr Higham.
3. I shall now set out the relevant procedural history. On the 19th of July 2022 the Defendant issued County Court proceedings making a claim for damages for personal injury. This claim related to the road traffic accident on the 17th of August 2019 when he was struck by a vehicle insured by the Claimant.
4. The Particulars of Claim, verified by a Statement of Truth, set out the nature of the injuries sustained. The Defendant sustained serious injuries, and relied upon reports from two medical experts. Mr Mansoor, a consultant orthopaedic surgeon, and Professor Majid, a consultant neurologist. The Statement of Value for the County Court claim indicated a value of £200,000.
5. The Defendant served a provisional Schedule of Special Damage verified by a Statement of Truth. On the 10th of December 2022 a Defence and Counter Schedule was served. This alleged that the Claimant had been fundamentally dishonest. In the face of overwhelming evidence of dishonesty, the Defendant discontinued the claim. This led to a consent order recording the terms of that discontinuance.
6. On the 10th of July 2023 the Claimant was granted permission to bring these contempt proceedings. The Defendant in his Acknowledgement of Service filed in response admitted his dishonesty. On the 24th of October 2023 there was a Directions Hearing.
7. There are two allegations of contempt. The first relates to the Statement of Truth made in relation to the Particulars of Claim and the second relates to the Statement of Truth made in support of the Schedule of Special Damages. It is said that the Defendant did not have an honest belief in the content of either those two documents.
8. The Particulars of claim incorporated the medical reports by reference. The statements made by the Defendant to Mr Mansoor led to him stating: *“Present Situation... as a consequence of the ongoing symptoms especially around the left knee and shoulder he is finding difficulty on doing any DIY around the house and avoids going up and down ladders as he does not feel very safe”* and also in relation to *“Work”* that *“he was going to start work in January 2020, but due to the injuries that he sustained he was unable to continue with his work as a roofer as he did not feel safe to work on roofs or going up and down the ladders because of the ongoing symptoms of head injury and the knee”*.

9. These statements were false. The Defendant was by then working as a roofer. The surveillance shows him displaying considerable agility whilst going up and down ladders. There is not the remotest sign of any residual problems in his knee.
10. Professor Majid, the neurologist, was told by the Defendant that he had symptoms of residual intermittent dizziness. This statement was also false. The Defendant was seen to be working at height on roofs. I have seen the range of work he had done. It was obviously hazardous. It is not work that could have been done if he had any dizziness.
11. The Schedule of Loss was dishonest. It set out that the Defendant was unemployed, and that the accident had prevented his return to work. It gave no credit for any earned income. These statements were false. He was working. He was not unemployed. I wonder whether these earnings have been disclosed to the relevant benefits agency.
12. The evidence of the contempt is based on surveillance conducted over a 19 month period, the Defendant was seen on ten different days to be working. He was entirely able to work within this period and the surveillance specifically shows he was in fact working as a roofer on various dates. He can be seen climbing on the roof of his van and going up on to roofs and working on chimneys. He was seen to be erecting scaffolding. He can be seen attending building materials' suppliers.
13. The correct approach to penalty in these cases requires consideration of:
 - a. Culpability,
 - b. Intended or foreseeable harm,
 - c. Aggravating or mitigating factors, and
 - d. Whether there should be a discount for admissions.
14. The Court must then consider whether the custody threshold has been passed and, if so, what is the shortest period of imprisonment commensurate with the contempt and should it be suspended.

Culpability:

15. There was persistent dishonesty. The Defendant chose deliberately to pursue a course of fraud. He was only caught out because the Claimant incurred the considerable expense of surveillance.

Foreseeability of Harm:

16. The Defendant had set out that had it not been for the accident he would have returned to work by January 2020 and as a result the claim in the Schedule of Loss should have been for 34 months of loss of earnings. The future loss of earnings claim was put at £18,000 net per annum. It is unclear for how long he would have claimed that he was unable to work, but the Statement of Value valued the claim at £200,000. It is sufficient for today's purposes to proceed on the basis that fraud was of a value of £75,000 and may have been for very much more. Aggravating factors are the length of the deceit and the sums involved.

Mitigating Factors:

17. This case is unusual in that Mr Higham has significant personal mitigation. This relates to the tragic death of his wife in July 2017. I note what is said in his witness

statement about the devastating effects this had upon him. He had been struggling both emotionally and financially. He has also suffered the loss of his claim for damages for personal injury that would have been valuable, given that he did sustain injuries in the accident.

18. I have also read the statements of his two sons that describe the Defendant's current circumstances and the effects of his wife's death, and of the accident, upon the family.
19. However, I am concerned about the accuracy of the statement from his son, Jack. The statement is dated 24th November 2023 but is not verified by a Statement of Truth. In that statement he said that he was living at home with his father and brother. Today I have been told a different account and that he has recently left home as he has started a new relationship. Due to these inconsistencies, I view his statement with great scepticism.
20. However, the Defendant's other son, Cameron, has undoubtedly had a very traumatic time since the death of his mother. He has recently managed to achieve some stability with his father's support.
21. I turn now to the relevant principles. Section 14 of the Contempt of Court Act 1981 provides that the maximum term of imprisonment shall be a period of two years.
22. I make two preliminary observations. Firstly, I have in mind the guidance given by the Court of Appeal in *Cuciurean v Secretary of State for Transport* [2022] EWCA Civ 1519 and also that given in *Lovett v Wigan BC* [2022] EWCA Civ 1631. There is also the Civil Justice Council's report on sentencing in contempt proceedings. I note that the sentencing guidelines for fraud in a criminal context would lead to a significantly longer sentence. For a Category 3 offence the starting point would be 3 years. However contempt sentencing must follow the approach set out in the authorities, including that the two year maximum is not reserved only for the most serious of cases.
23. Secondly, the custody threshold is ordinarily passed in these types of contempt cases. This is evident from what has been said in the case of in *South Wales Fire & Rescue v. Smith* [2011] EWHC 1749 (Admin):

“2. For many years the courts have sought to underline how serious false and lying claims are to the administration of justice. False claims undermine a system whereby those who are injured as a result of the fault of their employer or a Defendant can receive just compensation.

3. They undermine that system in a number of serious ways. They impose upon those liable for such claims the burden of analysis, the burden of searching out those claims which are justified and those claims which are unjustified. They impose a burden upon honest claimants and honest claims, when in response to those claims, understandably those who are liable are required to discern those which are deserving and those which are not.

4. Quite apart from that effect on those involved in such litigation is the effect upon the court. Our system of adversarial justice depends upon openness,

upon transparency and above all upon honesty. The system is seriously damaged by lying claims. It is in those circumstances that the courts have on numerous occasions sought to emphasise how serious it is for someone to make a false claim, either in relation to liability or in relation to claims for compensation as a result of liability.

5. Those who make such false claims if caught should expect to go to prison. There is no other way to underline the gravity of the conduct. There is no other way to deter those who may be tempted to make such claims, and there is no other way to improve the administration of justice.
 6. The public and advisors must be aware that, however easy it is to make false claims, either in relation to liability or in relation to compensation, if found out the consequences for those tempted to do so will be disastrous. They are almost inevitably in the future going to lead to sentences of imprisonment, which will have the knock-on effect that the lives of those tempted to behave in that way, of both themselves and their families, are likely to be ruined.
 7. But the prevalence of such temptation and of those who succumb to that temptation is such that nothing else but such severe condemnation is likely to suffice.”
24. These words hold good in every case of this nature. The Court recognises that the outcome will likely be disastrous for the Defendant in many cases. I also acknowledge what was said by the Court of Appeal in *Liverpool Victoria Insurance v Khan* [2019] EWCA Civ 392:

“60. Because this form of contempt of court undermines the administration of justice, it is always serious, even if the falsity of the relevant statement is identified at an early stage and does not in the end affect the outcome of the litigation. The fact that only a comparatively modest sum is claimed in the proceedings in which the false statement is made does not remove the seriousness of the contempt. The sum in issue in the proceedings is however relevant, because contempt of court by an expert witness will be even more serious if the relevant false statement supports a claim for a large sum, or a sum which is grossly exaggerated above the true value of any legitimate claim.”

25. As to the question of possible suspension of the sentence, there is what was said at paragraph 69 of *LV v Khan*:

“The court must, finally, consider whether the term of committal can properly be suspended. In this regard, both principle and the case law to which we were referred lead to the conclusion that in the case of an expert witness, the appropriate term will usually have to be served immediately, and that one or more powerful factors justifying suspension will have to be shown if the term is to be suspended. We do not think that the court is necessarily precluded from taking into account, at this stage of the process, factors which have already been considered when deciding the appropriate length of the term of committal. Usually, however, the court in deciding the length of the term will already have given full weight to the mitigation, with the result that there is no

powerful factor making it appropriate to suspend the term. If the immediate imprisonment of the contemnor will have a serious adverse effect on others, for example where the contemnor is the sole or principal carer of children or of vulnerable adults, that may make it appropriate for the term to be suspended; but even then, as the *Bashir case [2012] ACD 69* shows, an immediate term greatly shortened to reflect the personal mitigation may well be necessary.”

26. This approach was endorsed by the Supreme Court in *AG v Crosland [2021] UKSC 15*, at paragraph 44.7:

“Once the appropriate term has been arrived at, consideration should be given to suspending the term of imprisonment. Usually the court will already have taken into account mitigating factors when setting the appropriate term such that there is no powerful factor making suspension appropriate, but a serious effect on others, such as children or vulnerable adults in the contemnor's care, may justify suspension.”

27. I have considered the Sentencing Council’s Guidance on the approach to a guilty plea. The Defendant is entitled to and will receive a discount for his early admission of guilt, which he made at the earliest opportunity.

28. The custody threshold has clearly been passed. This was a serious and persistent course of conduct. The value of the fraud is in the region of £75,000. The sentence should be the shortest commensurate with the offence. I determine that to be a period of 3 months, reduced to 2 months to take account of his guilty plea.

29. Mr Page, on behalf on Mr Higham, rightly focussed his submissions on the issue of suspension of the sentence. He said this was a case justifying suspension. I have given anxious consideration to the mitigation presented. This is truly an unusual and exceptional case. The Defendant has been left as the sole carer of his young son. Both have struggled with grief. I accept that sending the Defendant to prison would be disastrous for his young son. His father has been the only constant in his life in recent years. The effect on him on even a short sentence of imprisonment would be considerable.

30. The Court does have the option of considering imposing a shorter than usual custodial sentence to lessen the impact, and I make it clear that it has been a difficult exercise to consider whether to suspend the sentence. By the narrowest of margins and applying the Court’s mercy, I have decided I should suspend the sentence I have imposed. The sentence is suspended for a period of 1 year.