Neutral Citation Number: [2020] EWHC 3127 (QB)

Case No: QB-2018-004231

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 19/11/2020

Before:

DAVID LOCK QC
(SITTING AS A DEPUTY JUDGE OF THE HIGH COURT)

- -

Between:

ZURICH INSURANCE PLC	**Applicant**
- and -	
(1) SHAUN KEVIN BARNICOAT	**Respondents**
(2) PHILIP CRAZE	

- -
- -

Simon McCann (instructed by **DAC Beachcroft**) for the **Applicant**
No appearance by the Respondents

Hearing date: 17 November 2020

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Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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DAVID LOCK QC (SITTING AS A DEPUTY JUDGE OF THE HIGH COURT)

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website. The date and time for hand-down is deemed to be 10:30am on 19 November 2020.

David Lock QC:

1. This is an application brought by Zurich Insurance Plc ("**Zurich**") to commit Mr Shaun Kevin Barnicoat ("**Mr Barnicoat**") and Mr Philip Craze ("**Mr Craze**") to prison for Contempt of Court for making or causing to be made false statements in Particulars of Claim, supported by Statements of Truth, and in witness statements they made in connection with a personal injury claim for damages brought by them against Cornwall Housing Limited ("**CHL**"). The claim was made for damages arising out of an incident that Mr Barnicoat and Mr Craze alleged had happened on Thursday 13 June 2013. The damages claim was brought by proceedings in the County Court under action number C19YM286 ("**the Proceedings**"). The damages claimed were limited to below £5,000.

2. In summary, the Claimants in the Proceedings alleged that they were injured as a result of falling into a manhole which was located on a footpath on land managed by CHL. The Claimants alleged that, shortly after midnight, they were walking together along the footpath on the way back to Mr Barnicoat's flat after posting a letter when they were both injured. The incident has been described in a variety of different ways but the main features were that they alleged that Mr Craze had fallen into the manhole which was open, and he had dragged down Mr Barnicoat as he fell. Their case was that the cover of the manhole cover had been missing at the time and that the open manhole was thus a danger for anyone using the footpath.

3. Zurich were CHL's insurers and were thus required to fund the defence of this claim and, if the claim was compromised or was proved at court, would have been required to pay any damages awarded to Mr Barnicoat or Mr Craze. CHL defended the Proceedings on the basis that, whilst they admitted CHL were in breach of duty in failing to ensure that cover was maintained over the manhole, the Claimants were acting dishonestly in bringing the claim because, in summary, the accident had never happened. CHL's case was that this was a fraudulent claim because neither Mr Barnicoat nor Mr Craze had fallen accidentally into the manhole as they claimed and neither of them suffered any of the injuries they claimed.

4. Mr Barnicoat and Mr Craze both prepared witness statements for the Proceedings which described their account of the material events and described their injuries. They both attended appointments with Mr IP Stewart, a consultant in Accident and Emergency Medicine, who produced reports dated 8 May 2014 relating to Mr Barnicoat and 2nd November 2015 relating to Mr Craze. The details of their injuries set out in Mr Stewart's reports are incorporated into the Particulars of Claim

5. The Particulars of Claim were dated 3 June 2016 and were signed by both Mr Barnicoat and Mr Craze as follows:

> "Statement of Truth
>
> I believe that the facts stated in these particulars of claim are true"

6. Both Mr Barnicoat and Mr Craze signed witness statements dated 23 February 2017, and both contain a Statement of Truth. Their account of events was supported by a

witness statement sworn by, Mr Patrick Doyle, who claimed to have observed the accident.

7. However, those who attended the scene on the night of this incident saw matters very differently. Witness statements were also produced from Mr Christopher Buscombe, a paramedic who attended the scene and PC Francis Thomas who arrived on the scene at about 1.25am, both of whom raised questions at the time as to whether Mr Barnicoat and Mr Craze were being truthful in their account of events.

8. By the time the case came to trial, there was also a witness statement from John Norsworthy, who worked for CORMAC, which is a division of Cornwall Council. Mr Norsworthy's evidence is that an unidentified member of the public had called the Council on 4 September 2013 to report overhearing a conversation in a public house in Bodmin involving Mr Barnicoat and Mr Craze in which they were joking about making a fraudulent claim against the Council for falling into a manhole. Whilst the attendance note made by Mr Norsworthy is not entirely clear, the gist of it was that the caller was reporting that Mr Barnicoat and Mr Craze were openly joking about the fact that they were making a fraudulent claim and were expecting to be paid damages by the Council for falling into a pothole.

9. The Proceedings came to trial before District Judge O'Neill in the Plymouth County Court on 18 May 2017. Both Mr Barnicoat and Mr Craze gave evidence and were extensively cross-examined by counsel for CHL. It was agreed between the parties that Mr Norsworthy's evidence was not in dispute, albeit that I assume that this did not amount to any admission as to what either Mr Barnicoat or Mr Craze had actually said in the pub. Mr Buscombe and PC Thomas also gave evidence.

10. The District Judge gave an extempore judgment on the same day. I have the benefit of a transcript of that judgment. The Judge rightly reminded herself at §8 and §9 that she was determining matters to the civil standard. In her impressive and comprehensive judgment she examined many of the inconsistencies and inadequacies of the Claimants' case and made damning findings about the credibility of both Mr Barnicoat and Mr Craze. She found that the Defendant's case that this was a "*fabricated and dishonest claim*" was made out. She said:

> "I regret to say very clearly, I have no hesitation in finding that this claim, both of these claims, are fundamentally dishonest"

11. The District Judge therefore dismissed the action and ordered Mr Barnicoat and Mr Craze to pay CHL's costs in the sum of £10,705.67.

12. On 16 March 2018, Zurich issued these proceedings and, as required under CPR 81.14, sought permission. Committal proceedings are required to be personally served on a Respondent unless the Court orders otherwise: CPR 81.14(2). Mr Barnicoat was personally served on 19 April 2018 at his house at 3 Greenbanks Road, Rock, Wadebridge, PL27 6NB. However, there appear to have been problems serving the Mr Craze and an order was made by Master Fontaine on 9 October 2018 giving Zurich permission to serve Mr Craze by posting the Claim Form and other documents to him at 10 Hillside Park, Bodmin, Cornwall PL31 2NB. Mr Craze was then served by post on 11 October 2018.

13. Each Respondent is required to file an Acknowledgement of Service within 14 days of being served and has the right to serve evidence to oppose the application. Neither Respondent has served an Acknowledgement of Service and neither have taken any part in these proceedings. The consequence of a party failing to file an Acknowledgement of Service are set out in CPR 8.4, namely that such a person is entitled to attend the hearing but cannot take part unless the court gives its permission. However, notwithstanding their failure to file an Acknowledgement of Service, as these proceedings may have serious penal consequences for Mr Barnicoat and Mr Craze, if either had attended the hearing or attends a future hearing, I would be minded to permit them to take part in the hearing.

14. Zurich was granted permission to bring these proceedings by an order made by Mr Justice Stewart dated 24 April 2020. It was also given permission to serve that order by posting the order to the Respondents. The Respondents were served with the permission order on 4 May 2020.

15. Having granted Zurich permission to bring this claim and permission to amend the Claim Form to include a penal notice, Mr Justice Stewart made directions in an order dated 2 June 2020. That order provided directions to bring this matter to trial. It gave Mr Barnicoat and Mr Craze the opportunity to file evidence in response to the application by way of a witness statements, to be filed by 23 July 2020. No such evidence was filed. I do not think I can draw any adverse inference against either Mr Barnicoat or Mr Craze because they have elected not to respond to these proceedings. They are not required to prove anything and, even if they had taken part, they would have been entitled to make Zurich prove its case.

16. This matter was listed by the court staff for a final hearing to be held on 17 November 2020 on 21 September 2020. That information was passed to Zurich's solicitors, DAC Beachcroft. They sent letters to the Respondents dated 22 September informing them about the hearing and stating "*Your attendance is required*". The letter to Mr Craze was sent to his new address at 17 Battalion Close, Bodmin. I understand that this address for Mr Craze was obtained by DAC Beachcroft from Council Tax records. Further letters were sent to Mr Barnicoat and Mr Craze reminding them of the need to attend the hearing on 8 November 2020.

17. Zurich was represented by Mr Simon McCann of counsel. Neither Mr Barnicoat nor Mr Craze attended the hearing at the Royal Courts of Justice on 17 November 2020. Mr McCann invited me to continue with the hearing notwithstanding the non-attendance of the Respondents. Mr McCann referred me to the observations of Mr Justice Cobb in *Sanchez v Oboz* [2016] 1 F.L.R. 897. Cobb J notes that "*It will be an unusual, but by no means exceptional, course to proceed to determine a committal application in the absence of a respondent*": see §4. The Judge then set out the reasons why it was overwhelmingly preferable to hear committal applications in the presence of a respondent. However, the Judge also identified a series of factors at §5 which he considered would be relevant to any decision to proceed with a committal hearing notwithstanding the non-attendance of one or more of the respondents.

18. My conclusion on those factors is as follows:

i) I am satisfied that the Respondents have been properly served, including being notified about this hearing;

ii) I am also satisfied that the Respondents have had more than sufficient notice to enable them to prepare for the hearing;

iii) I note that no reasons have been advanced by them or by anyone on their behalf to explain their non-appearance;

iv) It is not clear to me why the Respondents have not engaged in this process but I do not think I can draw an inference that they have waived their right to be present. It is probably more accurate to say that they have had every opportunity to take part and have chosen not to do so;

v) There is nothing in any of the material before to suggest that, if I were to adjourn this case for a short period, either of the Respondents would be likely to attend a resumed hearing. Accordingly I doubt that the court would be in any different position in the future if this matter were to be adjourned;

vi) It would clearly be better for the Respondents if they were to attend, but the level of prejudice caused to them by their non-attendance may be limited as they have given evidence in full about the relevant events and been thoroughly cross-examined. A Respondent to a committal application is not obliged to give evidence: *Comet Products Limited v Hawkex Plastics Ltd* [1971] 2 QB 67. Even if the Respondents had attended and had given evidence, it is hard to see that there is any additional evidence they could give which was not given to the District Judge or that, in giving evidence, they would be in a better position than they were before the District Judge. I thus accept that the Respondents may be disadvantaged by not being able to present their account of events but I do not consider that this is prejudice to them because it is highly likely that they have not attended because they have chosen not to attend;

vii) There will be a measure of prejudice caused to the applicant by any delay in that it will incur additional costs which, in all probability, it will never recover whatever the outcome of these proceedings;

viii) I also do not consider that any real undue prejudice would be caused to the forensic process if the application was to proceed in the absence of the respondents; and

ix) Given that the Respondents have been served but have taken the decision not to be involved in these proceedings, it seems to me consistent with the overriding objective in CPR 1 for the case to proceed in the absence of the Respondents.

19. Accordingly, having considered the factors set out by Cobb J in *Sanchez v Oboz*, it seemed to me to appropriate to continue this hearing despite the non-attendance of the Respondents. The Respondents have been given proper notice of both the proceedings and this hearing. If they had wanted to seek an adjournment, they could

have done so. In the absence of any application for an adjournment, the clear balance in the above factors is in favour of continuing with the hearing.

The grounds

20. CPR 81.14(1) provides that an application for permission to make a committal application must set out the specific grounds upon which the Applicant relies. Once permission is given, CPR 81.28 provides that, unless otherwise ordered, an applicant must not rely on any grounds other than those set out in the statement of grounds supporting the application for permission. Zurich has made no application to amend its grounds and accordingly is limited to proceeding in relation to the grounds set out in a document entitled "Applicant's Grounds for bringing Committal Proceedings". Whilst that document contains a series of "Statements" as opposed to "Grounds", it clearly sets out the 3 relevant grounds relied upon by Zurich. In summary:

    i) Ground 1 is directed to both Respondents and asserts that neither of the Respondents was involved in "an accident" in the manner set out in the Particulars of Claim, and that the Statement of Truth signed by each Respondent at the end of the Particulars of Claim referred to the accident was an untrue statement;

    ii) Ground 2 is solely directed to Mr Barnicoat and concerns his injuries. §15 states that "The statement that the 1st Respondent suffered injury to the right arm was false and the 1st Respondent knew it to be false";

    iii) Ground 3 is solely directed to Mr Craze and concerns his injuries. The complaint is that the claim that Mr Craze banged his head and lost consciousness fleetingly, and experienced pain in his head and both legs was false and was known by Mr Craze to be false.

The standard of proof

21. Zurich, by its counsel, accepted that it was required to prove each element of the case to the criminal standard, namely to prove the facts of its case beyond reasonable doubt or so that I can be satisfied so that I am sure. In *AXA Insurance UK Plc v Rossiter* [2013] EWHC 3805 (QB) Mr Justice Stewart set out the relevant law at §9 as follows:

> "The Relevant Law In Outline
>
> 9. It is common ground that for the Claimants to establish each contempt alleged they must prove beyond reasonable doubt in respect of each statement:
>
> (a) The falsity of the statement in question
>
> (b) That the statement has, or if persisted in would be likely to have, interfered with the course of justice in some material respects;
>
> (c) That at the time it was made, the maker of the statement had no honest belief in the truth of the

> statement and knew of its likelihood to interfere with the course of justice"

22. That is the approach I was invited by Mr McCann to take in the present case.

The evidence

23. The only evidence relied upon by Zurich to support its case was a witness statement from Angela Byrne, a Chartered Legal Executive employed by Zurich's solicitors. Ms Byrne exhibits all the relevant documents including the transcript of the trial before the District Judge. Ms Byrne does not give evidence in person because she has no personal knowledge of the circumstances of the accident.

24. Zurich's case is that the material available to this Court, which is the same material which was available to the District Judge plus the transcript of the evidence and the judgment of the District Judge, is sufficient to prove each ground to the criminal standard. However, in coming to this material I am in a significantly worse position than the District Judge because she had the benefit of hearing Mr Barnicoat and Mr Craze giving live evidence before her. She also had the benefit of hearing live evidence from Mr Buscombe and PC Thomas.

25. Mr McCann invites me to reach conclusions, which he accepts he has to prove to the criminal standard, based on the written material. However, it seems to me that there are a series of inherent difficulties in approaching the case in this way, particularly bearing in mind the need to prove the case to a criminal standard. Those difficulties are as follows:

    i) First, these events happen 7 years ago and there was a period of 4 years between the material events and the trial before the District Judge. That passage of time inevitably means that it is more difficult to be confident about what did and did not happen on the night of 13 February 2013;

    ii) Secondly, discrepancies about the precise details about how an accident happened do not, of themselves, prove that anyone is being dishonest. Honest witnesses recall events with different details and often in a different sequence. Memories do not operate perfectly and the litigation process itself can distort people's memories, as Leggatt J observed in *Gestmin SGPS SA v Credit Suisse (UK) Ltd* [2013] EWHC 3560 and HHJ Pearce explained in *AB v Pro-Nation Ltd* [2016] EWHC 1022 (QB);

    iii) Thirdly, there is evidence that Mr Barnicoat and Mr Craze had been drinking considerable quantities of alcohol on the day in question. The evidence from PC Thomas both men were "heavily intoxicated and possibly drunk". That evidence may well justify a finding that neither Mr Barnicoat nor Mr Craze were reliable witnesses concerning the relevant events. However, the fact that they were both heavily intoxicated may also, at least in part, explain their difficulty in giving a coherent account as to what happened. Accordingly, any inconsistencies and discrepancies in their evidence could be equally referable to their intoxicated state as they could be referable to a deliberate attempt to obtain damages by being dishonest; and

iv) The fact that the District Judge expressed her views using forcible words on whether Mr Barnicoat and Mr Craze were being truthful when trying a civil case to a civil standard of proof, is of some persuasive value but is not binding on me. I do not consider that I am entitled to reach the view that either Mr Barnicoat or Mr Craze was totally dishonest based upon the findings of the District Judge alone, despite her clear conclusions that these men were putting forward a dishonest claim. It seems to me more important to attempt to understand why the District Judge reach this clear view in order to see whether I can follow her along the same path.

26. Having said all that, I accept Mr McCann's submission that there must come a time when the accumulation of contradictory or obviously incredible pieces of evidence builds a case which is sufficiently clear that I can be satisfied so that I am sure on each of the elements required to prove Zurich's case.

27. I have carefully considered all of the documents and the evidence given by all the witnesses before the District Judge. It seems to me that there are a large number of pieces of evidence which support Zurich's case that this accident either did not happen at all or did not happen in the manner described by Mr Barnicoat and Mr Craze, if it happened at all:

i) First, the evidence was that Mr Barnicoat and Mr Craze had left Mr Barnicoat's house at 18 Old Market Place, Bodmin to walk the short distance to post a letter. However, for reasons which were never explained, Mr Barnicoat and Mr Craze assert that they took a different and longer route on their way back to Mr Barnicoat's flat. Mr Barnicoat was disabled and found walking difficult, and that means that taking a longer route in the middle of the night is particularly inexplicable. When he was asked about this, his only response to the question as to why he, as a disabled man, took a longer route was that there was "no law against it". Whilst that is true, it is not an explanation as to why he chose a longer route on the way home;

ii) Secondly, although this supposedly accident happened in the middle of the night, Mr Buscombe confirmed that there was "*good street lighting plus 1 unrestricted light across the road from the incident*". Further, Mr Barnicoat accepted when he was giving evidence that he was aware of the manhole and the problems with a detached manhole cover prior to the accident. Mr Barnicoat thus claimed that he fell into a manhole in an area which he knew well and was near to his flat and which he knew was uncovered. He also claimed to have done so at a time when there was good street lighting and thus the manhole ought to have been obvious to him. Whilst it is not impossible for someone to make that mistake when intoxicated, given all the circumstances it is somewhat unlikely that Mr Barnicoat stumbled into the known manhole without a thought;

iii) Thirdly, PC Thomas confirmed that the manhole was 2 feet deep and the bottom was covered in a layer of dirt and silt. Mr Craze later complained that his trainers were covered with mud. However, in contrast, PC Thomas said that "*It [the floor of the manhole cover] had not been disturbed and I formed the opinion that these 2 persons could not have fallen down the drain as they*

had alleged". The account of the accident given by both Mr Barnicoat and Mr Craze was that Mr Craze had stepped right into the manhole. It seems highly unlikely that this could have happened in the way Mr Barnicoat and Mr Craze described if the layer of dirt and silt had not been disturbed as reported by PC Thomas;

iv) Fourthly, Mr Craze claimed that he injured his right leg when it went into the manhole. However, for the reasons which were explored in the evidence before the District Judge, that simply cannot be correct. He says he was walking on the pavement and the manhole was at the far left hand edge of the pavement, and substantially into the grassy area. It is almost impossible to envisage how the accident could have happened in the way Mr Craze alleged if his right leg was involved;

v) Fifthly, Mr Craze claimed to have been knocked unconscious in this incident and to have remained unconscious for 30 minutes. However, this cannot have been correct because the ambulance call was made by Mr Doyle very soon after the alleged incident at 1.06am and Mr Buscombe was on the scene within 3 minutes at 1.09am. His notes say "? KO". It therefore simply cannot have been the case that Mr Craze was unconscious for any extended period. When questioned about this, Mr Craze came very close to admitting that when he was asked about the discrepancy between his account and that of the ambulance staff;

vi) Sixthly, both the paramedic and the police officer attending the scene quickly came to the opinion that, at the lowest, the account of events given by Mr Barnicoat and Mr Craze was suspicious and, in the case of PC Thomas, he formed the view that this was a staged accident to support a compensation claim and reported as such on the night;

vii) Seventhly, Mr Barnicoat claimed that his right arm was injured in the accident and produced a photograph of the arm. However, as the District Judge noted, he had a significant tattoo on his left arm and the photograph showed the tattoo on his left arm. However, whichever arm was supposed to have been injured, this was not an injury that was noted by the paramedic at the time he attended the scene. He cannot have injured his right arm;

viii) Eightly, Mr Craze reported scars on his shins as a result of this incident to Dr Stewart who reported on his injuries over a year later and reported this in the Particulars of Claim. No abrasions were noted by Mr Buscombe when he attended that night. It is simply not believable that, if Mr Craze had lacerations and bleeding on his legs from this incident, these injuries would have been entirely missed by the paramedic, particularly as he says he was wearing shorts. Further, when Mr Craze was asked about this discrepancy in cross examination he was not able to offer any explanation other than that he had taken his trousers down to show the injuries but Mr Buscombe had not noted them;

ix) Ninthly, the ambulance was called by Mr Doyle from a telephone box that was some way away from the scene at 144 St Mary's Road. That seems very

strange as Mr Doyle admitted that he had a mobile phone. However, he also reported that the men had "blood on faces" which is something that he accepted he cannot have known and thus, at the very least, was exaggerating the injuries suffered by his friends;

x) Lastly, neither Mr Barnicoat nor Mr Craze had any real explanation of the incident in the public house reported to Mr Nosworthy. It was put to Mr Barnicoat that he had joked with Mr Craze about making a fraudulent claim and, instead of denying it, Mr Barnicoat just said it was "banter" and "gossip talk". However, it hard to see how that is a proper answer if they had thought that they were making a genuine claim as opposed to a fraudulent one.

28. There are a series of other discrepancies that were put to me by counsel but the ones I have listed above are more than sufficient to explain why the District Judge came to the clear view that she did. It seems to me that this evidence demonstrates to a criminal standard that the injuries claimed by Mr Barnicoat and Mr Craze in these proceedings as set out in Grounds 2 and 3 cannot have arisen as a result of the incident described by Mr Barnicoat and Mr Craze. I accept Mr McCann's submission that the injuries described by Mr Barnicoat and Mr Craze are so inconsistent with the observations of Mr Buscombe and are so inconsistent with the way that this incident was described by Mr Barnicoat and Mr Craze that neither of these men can have suffered the injuries they claimed as a result of claimed incident. I accept that the evidence establishes that this is established to the criminal standard and thus I find that Zurich has proved its case under grounds 2 and 3.

29. It is more difficult to decide whether the evidence is sufficient to establish to the criminal standard that Mr Barnicoat and Mr Craze conspired from the outset to fabricate a claim or whether, whilst drunkenly making their way back to the flat after posting the letter, Mr Craze tripped up in the vicinity of the manhole and caused the observed small abrasion to his right lip as a result.

30. Zurich put is case squarely on the basis that there was no accident at all and that this was all staged and thus was premeditated. Paragraph 13 of the Grounds states:

> "There was no accident as alleged"

31. The case was not put on the basis that Mr Barnicoat may have been involved in an accident involving the manhole, but had seriously misrepresented both its seriousness and its consequences. There was, of course, no independent evidence from CCTV or any other source to assist in understanding what had happened or to explain how the very minor injuries observed by the paramedic had arisen. I do not accept that Mr Doyle's evidence can be classed as being "independent". There are numerous problems with accepting his evidence, as set out above and in the judgment of the District Judge.

32. With considerable reluctance, I have concluded that the evidence that Zurich has been able to lead does not go far enough to demonstrate to the criminal standard that Mr Craze did not have any form of incident involving the manhole on that evening. I also cannot be satisfied so I am sure that any stumble involving Mr Craze may not also have had the effect of bringing Mr Barnicoat to the ground. It seems to me highly

unlikely but I cannot say that it is proven beyond reasonable doubt that these men were not involved in any incident in the vicinity of the manhole.

33. However, I am satisfied that even if there was some form of minor incident involving the manhole, it did not result in either Mr Barnicoat or Mr Craze suffering any form of significant injury and certainly did not lead to the injuries which both Mr Barnicoat and Mr Craze claimed that they had suffered as a result of any incident, as described in the Particulars of Claim. I am satisfied to the criminal standard that, in the aftermath of whatever had led to Mr Barnicoat and Mr Craze finding themselves on the ground, they quickly saw the capacity to use that incident as a way of seeking to make money for themselves by pretending that they had suffered injuries which they knew they had not suffered.

34. I therefore find that, regardless as to what happened on that night:

i) Both Mr Barnicoat and Mr Craze made false statements about the injuries that they claimed to have sustained, as particularised in Grounds 2 and 3;

ii) That they made those false statements for the purpose of improperly seeking financial compensation from CHL (or in practice their insurers) as damages for injuries that they never sustained;

iii) That when they signed the Particulars of Claim and made witness statements, both Mr Barnicoat and Mr Craze knew that they were telling lies about the alleged injuries, and that they did so in order to seek to persuade CHL to pay them damages for injuries that they never sustained.

35. It follows from what I have set out above that I accept that Zurich has proved its case under grounds 2 and 3. Those are, as I see matters, the most serious parts of this committal application because, unless the Respondents lied about the injuries they claimed to have suffered, they would not have been in a position to claim any damages. I accept that, whatever may have triggered this event in the first place, Mr Barnicoat and Mr Craze quickly made a deliberate decision to pretend that they had suffered injuries which they could then use to make a compensation claim. Once they had commenced that course of action, they aggravated matters for themselves by lying to the Court in an attempt to secure payment.

36. The seriousness of the consequence of these findings were outlined by the Court of Appeal in *South Wales Fire and Rescue Service v Smith* [2011] EWHC Admin 1749 where Moses LJ said:

> "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 advisers 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."

37. The seriousness of giving false evidence in an attempt to obtained damages from a court was also underlined by the late Lord Justice Laws in *Lane v Shah* [2011] EWHC 2962 (Admin) who said:

> "It has been stated and repeated in the cases that this species of contempt is a public wrong and needs to be recognised and published as such. Corrupting the stream of public justice is generally more poisonous than the mere telling of a lie by one man to another. Many would think that the litigant who dishonestly perverts the process of litigation should recover nothing through the courts, even if otherwise her case has some justice. There is much to be said for that point of view"

38. Whilst I accept that this was only a relatively modest damages claim, it nonetheless involved a serious and extended level of deception. Nonetheless, I do not consider it would be appropriate to sentence Mr Barnicoat and Mr Craze without giving them an opportunity to seek legal advice about the serious situation they find themselves in and, if they are so minded, to apply to the court to purge their contempt.

39. I hope that Mr Barnicoat and Mr Craze understand that they have been found guilty of contempt of court and that the Court of Appeal have given strong guidance that the consequence of this is that they should expect to go to prison. However, in order to give them an opportunity to make representations about sentence, I will adjourn this case to be heard in open court in the week commencing 14 December 2020 when I shall be sitting in Birmingham. I direct that a copy of this judgment shall be sent by Zurich to both Defendants at their home address and to their former solicitors, C Nicholls of 71 Fore Street, Bodmin, Cornwall PL31 2JB, along with a letter encouraging them to inform their former clients that they would be well advised to seek legal advice and secure representation before this matter comes back to court.

40. Irrespective as to whether the Respondents attend the adjourned hearing or not, I intend to use that hearing to fix the punishment for the grounds that I have found proven.