



Neutral Citation Number: [2019] EWCA Civ 1858

Case No: A2/2018/2897

**IN THE COURT OF APPEAL (CIVIL DIVISION)**  
**ON APPEAL FROM THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**  
**NOTTINGHAM DISTRICT REGISTRY**  
**HHJ Owen QC (sitting as a Judge of the High Court)**  
**[2018] EWHC 3716 (QB)**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 08/11/2019

Before :

**THE MASTER OF THE ROLLS**  
**LORD JUSTICE HAMBLÉN**  
and  
**LORD JUSTICE FLAUX**

Between :

**JET 2 HOLIDAYS LIMITED**

**Claimant/  
Appellant**

- and -

**Karl HUGHES (1)**  
**Laura HUGHES (2)**

**Defendants/  
Respondents**

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**Paul Higgins** (instructed by **Horwich Farrelly Solicitors**) for the **Appellant**  
**The Respondents** made written submissions

Hearing date : 22 October 2019  
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**Approved Judgment**

**Sir Terence Etherton MR, Lord Justice Hamblen and Lord Justice Flaux :**

1. This appeal concerns proceedings for committal for contempt brought by the appellant, Jet 2 Holidays Limited, against the respondents, Karl Hughes and Laura Hughes, arising out of claims made by the respondents that they had suffered sickness on a package holiday arranged through the appellant due to the dirty and unhygienic conditions and bad food at the hotel at which they were staying.
2. It is an appeal from the order dated 13 November 2018 of His Honour Judge Owen QC, sitting as a High Court Judge, dismissing the application of the appellant to amend to add new grounds of contempt and striking out the committal proceedings.
3. In *Liverpool Victoria Insurance Company Ltd v Yavuz* [2017] EWHC 3088 (QB) at [148]-[153] Warby J pondered, but did not have to decide, whether certain documents verified by a statement of truth made before proceedings are commenced, including false witness statements, could be the subject of committal for contempt. In this judgment, on the facts of the present case, we hold that a witness statement verified by a statement of truth made by a prospective claimant before the commencement of proceedings in purported compliance with a pre-action protocol (a “PAP”) can give rise to contempt and be the subject of an application for committal for contempt even though, following challenge by the prospective defendant to the truth of the statement, proceedings for substantive relief were in the event never issued.

**The background**

4. The respondents booked an all-inclusive 10 day package holiday with the appellant at the Occidental Lanzarote Playa Hotel from 21 December to 31 December 2016.
5. By letters of claim dated 21 April 2017 the respondents, by their legal advisers, gave notice to the appellant of a claim for damages for holiday sickness under the Package Travel, Package Holidays and Package Tour Regulations 1992 and under the Consumer Rights Act 2015. They alleged that while on holiday they contracted food poisoning as a result of eating contaminated food or drink or swimming in the hotel’s insanitary swimming pool.
6. Under cover of a letter from the respondents’ legal advisers dated 2 May 2017 and another dated 27 July 2017 the appellant received respectively a witness statement of the second respondent and a witness statement of the first respondent (“the original witness statements”) in purported compliance with the Personal Injury Claims PAP. Each of the original witness statements was dated 12 April 2017 and was in the usual form used in civil proceedings, save that the heading did not contain the name of a court. In the heading and in the body of each of the witness statements the relevant respondent was described as the “Claimant”. The appellant was described in the heading as the “Defendant”. Each witness statement contained a signed statement of truth.
7. The original witness statements were similar in content. They stated, among other things: that food was left uncovered for long periods; it seemed that the food was reused on several occasions; the burgers seemed undercooked; there were ants and beetles around the food areas and ants were crawling on the bread; children were being sick in the children’s pool and the respondents’ child became ill from

swallowing the pool water; the respondents started to feel ill on the second day and began being sick on the third day; they were acutely ill for the remainder of the holiday with diarrhoea, stomach pains, vomiting, lack of energy and feeling very weak and were not 100 per cent fit on returning from the holiday; and they believed that their sickness was caused as a result of the undercooked food and unhygienic conditions at the hotel.

8. The appellant found various images and comments posted by the respondents on social media during their holiday, including Facebook posts, a YouTube video and two Twitter posts, which indicated that the respondents and their children were physically well during the holiday and had an enjoyable time while staying at the hotel.
9. The appellant rejected the respondents' claims. The respondents did not commence proceedings against the appellant.

### **The committal proceedings**

10. On 5 February 2018 the appellant commenced proceedings against the respondents under CPR Part 8 seeking permission, as required by CPR 81.18, to commence committal proceedings against the respondents on several grounds, each ground relevant to this appeal relating to each allegedly false statement, verified by a statement of truth, made in each of the original witness statements. The claim form also asked for directions and costs.
11. The claim form was supported by an affidavit sworn by Alexander Wilkinson, an associate in the appellant's solicitors, setting out the history, exhibiting the social media posts relied upon by the appellant and stating, among other things, that there was a strong prima facie case that the original witness statements were false and that the respondents were in contempt of court and that it would be in the public interest for permission to be granted for committal proceedings to be commenced against them.
12. Each of the respondents filed an acknowledgment of service on 12 March 2018 stating that they intended to contest the claim. On the same day each of them made a further witness statement ("the further witness statements") stating that each of the comments in the original witness statements relied upon by the appellant as a ground of contempt was in fact true. The respondents further stated that they had complained to the hotel manager with respect to the unhygienic conditions, quality of the food and the pool; despite their illnesses arising from the unhygienic conditions, they felt that their only option was to make the best of the situation and put up a "front" that they were having a great holiday; and the Facebook pictures did not provide a true reflection of their mood at all times of the holiday.
13. On 8 August 2018 His Honour Judge Godsmark QC, sitting as a High Court Judge, having heard counsel for the appellant and a solicitor-advocate for the respondents, ordered by consent that permission be given to the appellant to commence committal proceedings against the respondents on the grounds relied upon by the appellant. He also ordered, among other things, that the committal proceedings be listed for a case management conference on 19 October 2018. The proceedings were formally issued on 24 August 2018.

14. The case management conference took place before Judge Owen, who raised the question whether the court had jurisdiction to entertain committal proceedings in respect of the original witness statements in view of the fact that they had been made otherwise than in connection with extant proceedings and no proceedings for damages had, in fact, ever been commenced. He ordered that issue to be determined as a preliminary issue.
15. In order to save the contempt proceedings if it should be determined that there was no jurisdiction to hold the respondents in contempt on the basis of the original witness statements since they were not made in any proceedings, the appellant made an application dated 8 November 2018 to add additional grounds of contempt arising from the various statements made in the further witness statements which endorsed the truth of what had been said in the original witness statements.

### **Judge Owen's judgment**

16. The preliminary issue and the appellant's application to amend came before Judge Owen on 13 November 2018. He delivered a detailed, substantial and impressive immediate judgment, holding both that there was no jurisdiction to find contempt on the basis of the original witness statements and that the application to amend be refused.
17. In relation to the preliminary issue of jurisdiction Judge Owen said that the basis of the committal application was that the original witness statements were witness statements within CPR 32.14, which provides, so far as relevant, as follows:

“32.14(1) Proceedings for contempt of court may be brought against a person if he makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

(Part 22 makes provision for a statement of truth.)”
18. Judge Owen rejected that argument. He said (at [48]) that a statement of truth within the ambit of CPR Pt 22 is concerned with a statement which is made and presented to the court within the meaning of CPR 32.14; and that, having regard to the terms of CPR 22.1.1(c), 32.4(2) and 32.8 and the Practice Directions accompanying Pt 22 and Pt 32, it was clear that any such witness statement would be served within actual proceedings which have been started within the meaning of CPR 7.2.
19. He said (at [50]) that the outstanding grounds of alleged contempt (two having been withdrawn by the appellant) did not have anything but the slimmest and tenuous relationship with the course of justice or the administration of justice or the notion of justice as a continuing process, being formulated by potential litigants for the purpose of intimating a claim in the hope of either an admission of liability or an offer of settlement.
20. Judge Owen concluded on this issue as follows (at [53]):

“I am not persuaded that it is arguable that the framework within which the letters of claim and the statements complained

of were sent to the claimants is to be equiparated, in effect, with the framework which is in place when proceedings are started. It is an important step, the commencement of proceedings, which clearly engages the legal process and which in turn engages the court's powers and duty to police that process and to protect the administration of justice. However, I am satisfied, for the reasons which I have given, that this case is one which the court may, and indeed should, exercise its power conferred upon it by its case management powers, and in particular for present purposes paragraph 16.1 of PD81 to dismiss these proceedings summarily."

21. In relation to the application to amend, Judge Owen rejected the application for essentially three reasons. First, he said (at [64]) that it would be oppressive and contrary to the Overriding Objective to grant the amendments to allow the committal proceedings to be continued in circumstances where they ought never to have been brought. Second, he said (at [65]) that the false statements were not "persisted in" for the purpose of using the court process to gain damages for a dishonest claim as no claim for damages had been made. Third, he said (at [65]) that he was not persuaded that it would be in the public interest to allow the amendment and to permit the proposed proceedings to take their course.

### **The appeal**

22. The appellant appeals on the grounds that (1) Judge Owen misdirected himself on the law in deciding that the respondents could not be in contempt in respect of the false statements in the original witness statements because those witness statements were made before proceedings were commenced; and (2) he misdirected himself in law and made errors of principle in dismissing the application to amend.
23. The respondents did not attend and were not represented on the hearing of the appeal. Their solicitors filed a skeleton argument saying that they were not in a position to oppose and do not actively oppose the appeal; that Judge Owen, and not they, raised the point on absence of jurisdiction; and that "the appeal is properly a matter between the appellant and the appellate court." We have, however, read and had regard to the written skeleton arguments prepared on their behalf by counsel for the hearing before Judge Owen on 13 November 2018 and who also represented them at that hearing.
24. We are grateful to Mr Paul Higgins, counsel for the appellant, who did his best to assist us.

### **Discussion**

#### Jurisdiction

25. The issue is whether, permission to bring the committal proceedings having been granted by Judge Godsmark, it was open to Judge Owen to strike out the committal proceedings. There was no appeal from Judge Godsmark's permission order, and so, as Judge Owen correctly recognised, the only possible ground for striking out was that the committal proceedings were wholly invalid from the outset because the court lacked jurisdiction

26. We agree with Judge Owen that jurisdiction to bring the committal proceedings was not conferred by CPR 32.14. Witness statements made before the commencement of proceedings do not fall within that Rule. That is clear from para. 17.1 of PD 32, which requires witness statements to be headed with the title of the proceedings
27. Irrespective of the Civil Procedure Rules, however, the court has an inherent power to commit for contempt. That inherent power is expressly recognised in CPR 81.2(3) and PD81 para. 5.7. As Sir Richard Scott V-C said in *Malgar Ltd v R.E. Leach (Engineering) Ltd* [1999] EWHC 843 (Ch), [2000] FSR 393, at [395] on the occasion of the first application under CPR 32.14 after the Civil Procedure Rules were introduced:

“It is ... necessary to make clear that Rules of Court cannot make substantive changes in the law of contempt. There is much case law describing in what circumstances a contempt of court is committed. ... It is not open to Rules of Court to introduce a new category of contempt, and CPR 32.14 does not do that.”
28. As was also said in *Griffin v Griffin* EWCA Civ 119, [2000] 2 FLR 44, at [21] by Hale LJ (as she then was), with whom Simon Brown LJ (as he then was) agreed:

“The power to commit to prison for contempt of court is a common law power which has never been fully regulated by statute or even by rules of court.”
29. The test at common law is whether the conduct in question involved an interference with the due administration of justice either in a particular case or more generally as a continuing process: *Attorney General v Leveller Magazine Ltd* [1979] AC 440 at 449F, 459B, 468A, and 479D.
30. Aside from his correct finding that the original witness statements were not within CPR 32.14, Judge Owen considered that the alleged false statements in each of the original witness statements, being “a witness statement without a heading or a case number, formulated by potential (perhaps) litigants for the purpose of intimating a claim and clearly in the hope ... of either an admission of liability or an offer of settlement” had “but the slimmest and tenuous relationship with the course of justice or the administration of justice, or the notion of justice as a continuing process”.
31. We do not agree with that conclusion. It is well established that an act may be a contempt of court even though carried out before proceedings have begun. There have been some judicial and academic statements suggesting that conduct is only capable of constituting contempt if it takes place when proceedings are “pending” or “imminent”. That limitation was rejected by the Divisional Court of the Queen’s Bench Division (Watkins and Mann LJJ) in *Attorney-General v News Group Newspapers plc* [1989] 1 QB 110 at 133B and 135C. In that case the Court held that contempt at common law had been constituted by the publication of articles by a national newspaper encouraging the bringing of a private prosecution by the mother of a child against a doctor who the mother, in effect endorsed by the newspaper, alleged was guilty of rape of the child. A private prosecution was brought by the mother several weeks later, but the doctor was acquitted. The Divisional Court said

that the articles published by the newspaper posed a real risk of prejudice to a fair trial of the doctor and were intended to do so. In rejecting the argument of the newspaper that it could not be in contempt unless the conduct complained of was carried out when proceedings were either pending or imminent, Watkins LJ, with whom Mann LJ agreed, said at 133D:

“The common law is not a worn out jurisprudence rendered incapable of further development by the ever increasing incursion of Parliamentary legislation. It is a lively body of law capable of adaptation and expansion to meet fresh needs calling for the exertion of the discipline of law.”

32. Watkins LJ quoted, in that connection, the following words of Sir John Donaldson MR in *Attorney-General v Newspaper Publishing Plc* [1988] Ch 333 at 388:

“The law of contempt is based upon the broadest of principles, namely, that the courts cannot and will not permit interference with the due administration of justice. Its application is universal. The fact that it is applied in novel circumstances, for example to the punishment of a witness *after* he had given evidence (*Attorney-General v Butterworth* [1963] 1 QB 696) is not a case of widening its application. It is merely a new example of its application. In that case, as here, the trial judge, Mocatta J, relied upon the fact that there was no such case in the books, but this court held that that was a distinction of fact, not principle: per Donovan LJ at pp. 724-725.”

33. We agree with that statement and with the decision and reasoning of the Divisional Court in *Attorney-General v News Group Newspapers plc*. They are applicable to the circumstances under consideration in the present case and on this appeal.
34. It is apparent from the correspondence between the parties’ solicitors that they believed they were engaged in complying with the Personal Injury Claims PAP. As Mr Higgins acknowledged in his oral submissions, it would have been more appropriate for them to comply with the Disease and Illness Claims PAP. If the claims were made today, they would presumably fall within the Resolution of Package Travel Claims PAP, which is the most recent PAP but only applies to letters of claim sent on or after 7 May 2018.
35. The fact that the parties mistakenly proceeded under the wrong PAP does not matter for present purposes. Nor does it matter that neither the Personal Injury Claims PAP nor the Disease and Illness Claims PAP required details of the claim to be set out in a witness statement verified by a statement of truth. It is sufficient that the respondents, in purported compliance with a PAP, set out their claims in a witness statement verified by a statement of truth plainly for the purpose of giving the impression to the appellant of greater weight and conviction to their claims than might otherwise be the case. They used the witness statements to indicate, in accordance with CPR 32.4(1), the oral evidence which they would give in proceedings and the verification of truth gave solemnity to that indication.

36. A dishonest witness statement served in purported compliance with a PAP is capable of interfering with the due administration of justice for the purposes of engaging the jurisdiction to commit for contempt because PAPs are now an integral and highly important part of litigation architecture.
37. The first PAP, the Personal Injury Claims PAP, came into force in 1999 at the same time as the Civil Procedure Rules. As Lord Woolf MR explained in the Access to Justice Final Report (Chpt. 10, para 6) PAPs were to be “an important part of the system” and were to “set out codes of sensible practice which parties are expected to follow when faced with the prospect of litigation.” In a speech on 7 May 1998 to the Association of Personal Injury Lawyers Lord Irvine LC said that PAPs were “in many ways, the key to the success of the civil justice reforms.”
38. The Access to Justice Final Report (at Chpt 10, para 1) identified PAPs as having the following four purposes:
  - (a) to focus the attention of litigants on the desirability of resolving disputes without litigation;
  - (b) to enable them to obtain the information they reasonably need in order to enter into an appropriate settlement; or
  - (c) to make an appropriate offer (of a kind which can have costs consequences if litigation ensues); and
  - (d) if a pre-action settlement is not achievable, to lay the ground for expeditious conduct of proceedings.
39. Some PAPS are more closely integrated with the CPR than others. For example, the PAP for Low Value Personal Injury Claims in Road Traffic Accidents and the PAP for Low Value Personal Injury (Employers’ Liability and Public Liability) Claims are the subject of specific provisions in Section 11 of CPR Pt 36 (dealing with offers to settle) and Section III of CPR Pt 45 (concerning fixed costs) and Practice Direction 8B. The Resolution of Package Holiday Claims PAP is the subject of specific provision in Part IIIA of CPR Pt 45 (concerning fixed costs).
40. All PAPs, however, expressly state that one of their objects is to enable proceedings to be managed efficiently where litigation cannot be avoided: see, for example, the Practice Direction on Pre-Action Conduct and Protocols para. 3(e), the Personal Injury Claims PAP at para. 2.1(d), the Disease and Illness Claims PAP at paras. 1.2 and 3.1 and the Resolution of Package Travel Claims PAP at para 3.1(5). Para. 4 of the Pre-Action Conduct PD provides that neither a PAP nor the PD must be used by a party as a tactical device to secure an unfair advantage over another party and that only reasonable and proportionate steps should be taken by the parties to identify, narrow and resolve the legal, factual or expert issues. A dishonest witness statement designed to elicit from a potential defendant an admission which may be deployed against that person in any subsequent proceedings (as to which, see CPR 14.1A), runs directly counter to that requirement. The adverse consequences for the proper administration of justice are plain.



41. The Pre-Action Conduct PD expressly provides in paras. 1 and 13 that the court expects parties to conduct themselves in accordance with, and to take the steps set out in, the PD and the PAPs before proceedings have begun, and in that connection para 13 draws attention to the provisions of CPR 3.1(4)-(6) and (what is now) CPR 44.2(5)(a).
42. CPR 3.1(4)-(6) provide that, where the court gives directions in the proceedings, it will take into account whether or not a party has complied with the Pre-Action Conduct PD and any relevant PAP and may order a party to pay a sum of money into court if that party has, without good reason, failed to do so. CPR 44.2(5)(a) provides that, in deciding what order (if any) to make about costs, the court will have regard to all the circumstances, including the extent to which parties followed the Pre-Action Conduct PD or any relevant PAP.
43. From the outset PAPs were to be approved by the Master of the Rolls, as the Head of Civil Justice in England and Wales. Since 2012 responsibility for drafting new PAPs and revising PAPs has in practice rested with the Civil Procedure Rule Committee, which is also responsible (subject to the approval of the Lord Chancellor) for drafting and oversight of the Civil Procedure Rules. This reflects both the integration of PAPs into the litigation framework and the need to ensure coherence and co-ordination between the Civil Procedure Rules, Practice Directions (which are made by the Master of the Rolls as the nominee of the Lord Chief Justice, with the concurrence of the Lord Chancellor) and the PAPs, and a consistency of approach to the preparation of all PAPs.
44. In practice claimants often serve witness statements as part of compliance with a PAP, even though that is not strictly required by the PAP. They do so, as in the present case, to give weight to the claims. Observations of Moore-Bick LJ in *KJM Superbikes Ltd v Hinton* [2008] EWCA Civ 1280, [2009] 1 WLR 2406 in relation to a false witness statement served in the course of proceedings apply with equal force to witness statements served as part of purported compliance with a PAP. In that case the Court of Appeal allowed an appeal from the decision of the first instance judge refusing permission to bring contempt proceedings in respect of a false witness statement in support of a claim by Honda against KJM Superbikes Ltd (“KJMS”), a motorcycle dealer, for, among other things, an account of profits or damages for infringement of its trademarks arising out of the sale in this country of Honda motorcycles imported from abroad without Honda’s authorisation. The application for permission to bring the contempt proceedings was brought following the trial of the action, at which Honda’s claim in relation to motorcycles supplied to KJMS by a particular foreign dealer was dismissed. Moore Bick LJ, with whom the other two members of the court agreed, said as follows:

“23. The judge's conclusion that proceedings for contempt in this case would be unlikely to promote the integrity of the legal process or respect for it in the future is one which I find difficult to accept. It is true that only prominent examples of the kind that are widely reported in the press can be expected to make an impression on the public at large, but that is to ignore the fact that the pursuit of contempt proceedings in ordinary cases may have a significant effect by drawing the attention of the legal profession, and through it that of potential witnesses,

to the dangers of making false statements. If the courts are seen to treat serious examples of false evidence as of little importance, they run the risk of encouraging witnesses to regard the statement of truth as a mere formality. That is not a matter which the judge appears to have taken into consideration. In my view the prosecution of proceedings for contempt in the present case would be likely to have a salutary effect in bringing home to those who are involved in claims of this kind, of which there are many, the importance of honesty in making witness statements and the significance of the statement of truth.”

45. For all those reasons we consider, contrary to the view of Judge Owen, that there was a close connection between the original witness statements made by the respondents and the administration of justice and that, if those witness statements were false, as appears strongly to be the case, they interfered with the administration of justice.
46. In the *Malgar* case Sir Richard Scott held that the public interest did not require the prosecution of a committal application in circumstances where what were said to be false statements in witness statements had not been persisted in (the defendant having submitted to summary judgment on that part of the case) and, insofar as they remained of relevance to the outstanding issues for trial, the challenge to the truth of the statements could take place when the witnesses were cross-examined and a committal application would constitute an undesirable and unnecessary interference in the proceedings and the sensible disposal of what remained outstanding between the parties. Such considerations have no application in the present case where the respondents, having been confronted with evidence which undermined the truthfulness of their witness statements, have decided not to bring any proceedings for damages against the appellant. Their decision not to do so does not detract from the fact that, if the original witness statements were knowingly untrue, as the appellant alleges, the respondents will have lied in order to procure money by deception pursuant to a conspiracy to defraud; nor does it detract from the fact that the appellant has had to face a claim with financial and reputational implications and to expend time and money to meet the claim.
47. It is not necessary or appropriate on this appeal to address whether, and in what circumstances, false statements in relation to other types of pre-litigation documents are capable of giving rise to contempt, not least because only the appellant was represented before us and there will be widely varying factual situations where the point may arise.
48. The appellant’s application for permission to bring contempt proceedings was made in the Queen’s Bench Division of the High Court. That was not the correct court. CPR 81.13 and (in the case of a false statement of truth or disclosure statement) CPR 81.18 specify the court to which such an application must be made. It is apparent from the wording of CPR 81.13(1)(a) and CPR 81.18(1) that CPR 81.13(1) and CPR 81.18 are, like CPR 32.14, concerned with contempt committed after proceedings have been commenced. Where contempt has been allegedly committed before proceedings have been commenced, the relevant Rule is CPR 81.13(2), which provides that, where contempt of court is committed “otherwise than in connection with any proceedings”, the application for permission may be made only to the Administrative Court. We

consider that the alleged contempt in relation to the original witness statements was committed in connection with the proceedings which were implicitly threatened if the respondents' claims were not satisfied but the words "otherwise than in connection with any proceedings" in CPR 81.13(2) are to be interpreted, consistently with CPR 81.13(1) and 81.18(1), as referring to proceedings which were commenced before the contempt was committed.

49. Accordingly, strictly, the application for permission in the present case should have been made to the Administrative Court. Para. 16.2 of PD16 provides that the court may waive any procedural defect in the commencement or conduct of a committal application if satisfied that no injustice has been caused to the respondent by the defect. In the skeleton arguments for the respondents for the hearing before Judge Owen on 13 November 2018 the point was taken that the application for permission to bring committal proceedings had not been made in the correct court. Judge Owen recorded (in [59]) that he had indicated during the hearing that the point lacked any merit and the respondents' counsel had indicated that the point was withdrawn or abandoned. In effect, therefore, Judge Owen exercised his discretion to waive the procedural defect.
50. It is not satisfactory that false statements made in witness statements served before the commencement of proceedings in purported compliance with a PAP fall outside CPR 32.14. Nor is it satisfactory or convenient that any application for permission to bring contempt proceedings for such false statements must always be made to the Administrative Court pursuant to CPR 81.13(2). It is highly desirable, therefore, that the possibility of contempt in relation to such statements should be expressly addressed in the Civil Procedure Rules and a Practice Direction.

The application to amend

51. The issue on this part of the appeal is whether Judge Owen made an error of principle or acted outside the bounds of a proper exercise of judicial discretion in refusing to permit additional grounds of contempt in connection with the respondents' further witness statements to be added to the claim in the contempt proceedings.
52. The principal ground on which Judge Owen refused to permit the amendment was that it would be oppressive and contrary to the Overriding Objective in CPR Pt 1 to allow a claim to continue which ought not to have been brought. As we have decided, contrary to the conclusion of Judge Owen, that the court did have jurisdiction to hear the contempt proceedings based on the original witness statements, he made an error of principle in refusing to permit the amendment.
53. It therefore falls to us to exercise the discretion whether to grant permission to amend, there being no reason to remit to the High Court the question of permission. We consider it is appropriate to grant permission.
54. The new witness statements fall within CPR 32.14. They did not simply repeat what had been said in the original witness statements but gave further false evidence in seeking to explain the social media posts. The respondents' conduct in making the further witness statements, just as much as in making the original witness statements, had to satisfy the stringent requirements for suitability for contempt proceedings. They did so. Those requirements have been described in a number of cases, including

in particular the *KJM Superbikes* case. Most recently, they were explained and applied in *Zurich Insurance plc v Romaine* [2019] EWCA Civ 851, [2019] 1 WLR 5224. Unsurprisingly, in the absence of the respondents on the hearing of this appeal, no issue has been raised before us as to the summary in that case of the relevant considerations for the grant of permission. Some of the conditions in that summary are not applicable to false statements made before the commencement of proceedings, which are then never instituted, as was the position with the respondents' original witness statements. In relation to the application to amend, however, we are concerned with the respondents' further witness statements, which, on the appellant's case, contained further untruths. For the purposes of the present appeal, it is sufficient to say that there is an apparently strong case of contempt in relation to the making of the further witness statements and a clear public interest in the bringing of contempt proceedings in respect of them.

55. There is a clear public interest for the reasons given by Moore-Bick LJ in the *KJM Superbikes* case, quoted in para. 44 above. In *South Wales Fire and Rescue Service v Smith* [2011] EWHC 1749 (Admin), Moses LJ (with whom Dobbs J agreed) also powerfully underlined how seriously the courts regard false claims. He said:

“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.”

56. It is plainly convenient, efficient and cost effective for the allegations of contempt in relation to the further witness statements to be heard and determined in the same proceedings and at the same time as the allegations in relation the original witness statements. That would not give rise to any unfair prejudice to the respondents.
57. It is not necessary to issue new contempt proceedings every time there is a contempt in or relating to the same set of proceedings. Contempt proceedings are not like litigation between private persons where the claimant seeks a personal remedy against

the defendant based on a cause of action which is not barred by limitation of time and which must generally speaking exist before proceedings can be commenced. As Moore-Bick LJ said in the *KJM Superbikes* case at paras [9] and [11] proceedings for contempt of court are public law proceedings, and when the court gives a private person permission to pursue such proceedings against a witness who is alleged to have told lies in a witness statement it allows that person to act in a public rather than a private role, not for the furtherance of that person's private interests, but rather to pursue the public interest. In any event, even in proceedings where the claimant must establish a cause of action for a personal remedy against the defendant, the court may permit the claimant to amend the proceedings to allege facts necessary to found a cause of action, notwithstanding that they occurred after the claim form was issued, where that would promote the Overriding Objective of enabling the court to deal with the case justly: *Maridive and Oil Services (SAE) v CNA Insurance Co (Europe) Ltd* [2002] EWCA Civ 369, [2002] CLC 972.

### **Conclusion**

58. For all those reasons we allow this appeal.