



Neutral Citation Number [2023] EWHC 2931 (KB)

Case No: KB-2023-000137

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 17 November 2023

Before :

MR JUSTICE CONSTABLE

Between :

QBE UK LIMITED

Claimants

- and -

MARK RAYMOND HILTON

Defendants

Paul Higgins (instructed by Keoghs LLP) for the Claimants

Kate O'Raghallaigh (instructed by Morrison Spowart) for the Defendants

Hearing date: 17 November 2023

JUDGMENT

This judgment was given orally following the hearing, and a copy provided to the National Archives the same day.

The date and time for hand-down is deemed to be 11.30am on Friday 17 November 2023.

MR JUSTICE CONSTABLE:

Introduction

1. The full factual background to this contempt sanction hearing is set out in a judgment handed down on 31 July 2023 ([\[2023\] EWHC 2004 \(KB\)](#)), following the granting of permission to bring contempt proceedings against Mark Hilton. I do not repeat the detail of that judgment now.
2. The salient features are that Mr Hilton brought proceedings which concerned an accident at work on the 15th July 2015. Although the initial claim was modest, it became substantial – in the updated schedule of loss the claim for damages in excess of £600,000. Investigations by the insurers standing behind the then defendant, QBE UK Limited ('QBE'), included the use of surveillance. On the basis of the evidence obtained, they formed the belief that Mr Hilton was making fraudulent statements, forging documents, and grossly exaggerating his injuries in pursuit of his claims. Following the service of that material, an application was made to amend the Defence to plead a case of fundamental dishonesty, which was granted by HHJ Simpkins on the 15th April 2021. A number of court orders were made with regard to obtaining the views of the medico-legal experts upon the obtained footage which Mr Hilton failed to comply with, and his claim was ultimately struck out. Mr Hilton was ordered to pay the Defendant's costs, to make a payment on account of £1000 and he was also ordered to repay the £10,000 he had received by way of interim payment following an early admission of liability for the accident at work. This order has gone unsatisfied.
3. QBE brought an application for permission to bring contempt proceedings against Mr Hilton, particularising 21 Grounds of Contempt. Grounds 1 to 14 each relate to statements by Mr Hilton describing the severity of his medical condition, his lack of mobility and pain, the restrictions on his life and the level of care he required, purportedly by way of justification for the £600,000+ claim, itself an alleged ground of contempt. Grounds 15-21 each relate to the production of what was said to be a forged birth certificate of one of his daughters, stating that her birthday was 17 May 1998, together with statements made in relation to her age. This was of relevance in the proceedings because Mr Hilton deployed the forgery in a failed attempt to disassociate himself from genuine medical records which were unhelpful to his case by claiming that the records related to someone else.
4. After one adjourned hearing, the circumstances of which are again dealt with in the earlier judgment of this Court, Mr Hilton obtained legal representation. At the application for permission, the substance of the contempt was admitted but Ms O'Raghallaigh, representing Mr Hilton, sought to persuade the Court that only certain of the grounds ought to move forward. For the reasons explained in the earlier judgment of the Court, permission was granted for all but one ground to proceed.
5. As had been indicated at the application for permission would be the case, once permission was granted Mr Hilton submitted a witness statement dated 4 August 2023.

In that witness statement, Mr Hilton admitted that he was in contempt of court in respect of charges 1-16 and 18-21.

The Hearing in respect of Sanctions

6. On the question of what the appropriate sanction is, I have heard submissions both from Mr Hilton's counsel, Ms O'Raghallaigh, and from Mr Higgins on behalf of QBE. I thank them both for their helpful submissions. Whilst ultimately the question of the penalty is a matter for me, it is proper that such submissions are made by the party pursuing contempt proceedings where, as pointed out by Carr LJ as she then was in in *Navigator Equities Ltd v Deripaska* [2022] 1WLR 3656:

'A private applicant for civil contempt, even where it is no longer necessary to seek enforcement of an order or undertaking, still has a proper private interest in the outcome of the application. Any private litigant will have an interest in the enforcement of a court order or undertaking which has been made to protect its interests. Apart from having this private interest in principle in the upholding of its rights under the order or undertaking, perhaps the most obvious private interest is that of deterrent for the future.'

7. That interest for the future in this case does not relate to the future conduct of further proceedings between Mr Hilton and QBE, but exists in the context of QBE's own interest in deterring others from acting in a similar way in the future. That is an entirely legitimate interest, not only on behalf of QBE as a commercial entity but on behalf of the wider public upon whose shoulders the costs incurred by bringing falsely exaggerated claims ultimately falls in the form of increased insurance premiums, whether or not that falsity is, as in this case, detected.

The Law

8. Under section 14(1) of the Contempt of Court Act 1981 (CCA 1981), the maximum term of imprisonment that the court can order is two years.
9. In the context of a two year maximum term, in *FCA v McKendrick* [2019] 4 WLR 65, Hamblen and Holroyde LJJ stated at paragraph [40]:

'because the maximum term is comparatively short, we do not think that the maximum can be reserved for the very worst sort of contempt which can be imagined. Rather, there will be a comparatively broad range of conduct which can fairly be regarded as falling within the most serious category and as therefore justifying a sentence at or near the maximum'.

10. There is no doubt that the authorities emphasise the seriousness with which the Court treats the bringing of false or falsely exaggerated personal injury claims. As summarised in the passage of Moses LJ in *South Wales Fire & Rescue v Smith* [2011] EWHC 1749 quoted more fully at paragraph [10] of the judgment on permission, false claims are taken extremely seriously because they undermine the system whereby those

who are truly injured may claim compensation in a number of serious ways, including increasing the burden and cost to those involved in meeting such claims, and the effect on the Court system. The passage concludes:

‘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.’

11. These comments were endorsed by the Divisional Court in Lane v Shah [2011] EWHC 2962 (Admin). In Liverpool Victoria v Khan & others [2019] 1 WLR 3833 at paragraphs 58-59, the following further guidance was given:

‘...It is therefore appropriate for a court dealing with this form of contempt of court to consider (as a criminal court would do) the culpability of the contemnor and the harm caused, intended or likely to be caused by the contempt of court. Having in that way determined the seriousness of the case, the court must consider whether a fine would be a sufficient penalty. If it would, committal to prison cannot be justified, even if the contemnor's means are so limited that the amount of the fine must be modest.

We say at once, however, that the deliberate or reckless making of a false statement in a document verified by a statement of truth will usually be so inherently serious that nothing other than an order for committal to prison will be sufficient. That is so whether the contemnor is a claimant seeking to support a spurious or exaggerated claim, a lay witness seeking to provide evidence in support of such a claim, or an expert witness putting forward an opinion without an honest belief in its truth...’

12. Ms O’Raghallaigh realistically accepts in this case that the custody threshold has been passed. The two questions before me are, therefore:

- (1) what the length of the custodial sentence should be and;
- (2) in light of the submissions advanced by Ms O’Raghallaigh, whether the custodial sentence should be suspended.

13. In relation to suspension, guidance is found in Khan at paragraph [69]:

‘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’.

14. 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.’

The appropriate sentence

15. By way of each of these grounds, Mr Hilton committed a very serious act of contempt of court.
16. The judgment at permission stage sets out at [26] a summary of what can be seen in the surveillance evidence. I do not repeat the detail of that now. There was, in summary, an extremely marked disparity between Mr Hilton’s real ability as captured on video to carry out daily activities, which include working on his car for long periods, shopping and walking and generally going about his business in an ordinary way, and the very significant curtailment of Mr Hilton’s lifestyle and abilities described repeatedly in his various witness statements and acted out in his attempts to mislead the medico-legal experts.
17. Mr Higgins points out that HHJ Simpkins observed that the allegations about Mr Hilton’s conduct set out in the Amended Defence would, if true, represent the second most egregious example of a fraudulent claim that he had ever encountered. I emphasise that I have made my own assessment of the seriousness of the conduct now admitted, but it is clear to me HHJ Simpkins’s use of the word ‘egregious’ was not misplaced.
18. The most aggravating aspect of the contempt is the quantum of the claim which Mr Hilton’s falsity sought to support – in excess of £600,000. It can be noted that the starting point from the sentencing guidelines for the criminal offence of fraud in excess of £500,000 is 7 years. This fact is not of course determinative of any particular starting

point, and in particular the analogy does not compel me to take the maximum as the appropriate starting point. The guidelines for fraud do underline, however, that the quantum of the matter before this Court would be considered, in the criminal context, a really very significant sum giving rise to substantial periods of imprisonment.

19. In addition to the sum falsely claimed in the personal injury proceedings, there are very serious costs which have been incurred which, in light of Mr Hilton's impecuniosity, are effectively irrecoverable. These costs include the costs incurred by Mr Hilton's own legal team, and of course those incurred by QBE in defending the original claim and in respect of which there is an outstanding costs order.
20. Finally, the creation and deployment of a false document in order to mislead people into believing medical records which were unhelpful were not relevant is a particularly grave aspect of the overall conduct. This was a most calculated, if ineptly executed, attempt at defrauding insurers.
21. In terms of mitigation:
 - (1) Mr Hilton was previously of good character.
 - (2) I have read the medical evidence from Mr Hilton's GP, and urological surgeon and the evidence relating to your cardiology relating appointment. I accept that there is evidence before the Court that Mr Hilton suffers from an array of health complaints which include: cardiac illness (in some form), chronic regional pain syndrome, TIAs and kidney stones. I treat this as mitigating because of the distress it would cause him to lose his ongoing medical treatment (as he most likely would, at least in the short term) were he to be imprisoned, and the fact that prison life may, as a result of his ill-health, be more problematic.
 - (3) Mr Hilton has parents who are elderly and in poor health. However, it is not suggested that Mr Hilton is their day-to-day carer or that, other than the no doubt painful absence of social contact with their son, the care of Mr Hilton's parents would be directly affected by his imprisonment.
 - (4) I accept the sincerity of the apology offered to the Court by Mr Hilton.
 - (5) I have read the touching references given on behalf by Mr Hilton's mother, brother-in-law and step-daughter, who all speak to good qualities which may suggest that his conduct in relation to his personal injury claim was an aberration and out-of-character. I accept that the consequences of these proceedings have been sufficiently distressing to make it improbable that Mr Hilton would act in any similarly dishonest way again.
 - (6) The Court also takes account of the admission of contempt, made in substance at the permission hearing. Whilst it is possible that an admission could have been made earlier, I accept that this was for the want of legal advice and that

following the first adjourned hearing, Mr Hilton effectively accepted the substance of the case against him. I give the equivalent of a full discount, namely a third, from the sentence which would otherwise have been imposed.

22. Taking account of all the matters I have indicated, the shortest term of custody I could impose is a period of 10 months' imprisonment. This would have been a period of 15 months' imprisonment but for that admission.
23. This is to be a sentence of immediate custody. Given the seriousness of Mr Hilton's contempt, and the absence of a compelling reason such as children or adults in his sole care, there is no proper basis upon which this sentence can or should be suspended. I have taken account of Mr Hilton's mitigation by a marked reduction from a starting point which would have been relatively close to the maximum sentence. In the context of contempt, there are no alternative options such as unpaid work to serve as the punitive element of the sentence, even if that had been appropriate in the present case (which it would not have been). Absent particularly compelling personal mitigation which is absent in this case, immediate custody is required to signal the gravity with which the Court will deal with those seeking to hain from false and grossly exaggerated personal injury claims. Mr Hilton will serve half the sentence in custody, and serve the second half on licence, remaining liable to recall if in breach of his licence conditions.