Neutral Citation Number: [2024] EWHC 626 (KB)

Case No: QB-2022-BRS-000051

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BRISTOL DISTRICT REGISTRY

2 Redcliff Street
Bristol
BS1 6GR

Date: 04/04/2024

Before:

HHJ RUSSEN KC

(sitting as a Judge of the High Court)

- -

Between:

ADVANTAGE INSURANCE COMPANY LIMITED	**Claimant**
- and -	
ALAN HARRIS	**Defendant**

- -
- -

Paul F McGrath (instructed by **Keoghs LLP, Bolton**) for the **Claimant**
Tagbo Ilozue (instructed by **Hoole & Co**) for the **Defendant** (for 8 March and 4th April 2024 only)

Hearing dates: 10th November 2023, 8th March and 4th April 2024

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Approved Judgment

HHJ Russen KC:

1. This is my judgment following a trial in committal proceedings which took place in two stages at separate hearings. At the first of those hearings I found on the evidence that the defendant had been guilty of the essential acts of contempt alleged by the claimant. That finding was subject to one outstanding aspect of the allegedly contemptuous conduct, within Ground 1 below, which I indicated to the parties I

would like to consider further. I made clear to them on that occasion that my decision on that outstanding matter would not have a material impact on the appropriate punishment for the contempt. The second hearing was for the purpose of hearing submissions on the appropriate punishment and the third hearing (held remotely) was for me to give judgment on punishment and consequential matters.

2. At the first hearing on 10 November 2023 the defendant appeared in person. At the second and third hearings on 8 March and 4th April 2024 he was represented by solicitors and counsel.

3. As my earlier extempore judgment at the conclusion of the first hearing made clear would be the case, this judgment addresses all aspects of the contempt application before me. In addition to the question of punishment, it therefore covers the background and the procedural history, the basis of my finding of contempt in perhaps a little more detail than that earlier judgment; and it addresses that one particular aspect on which I reserved judgment. This judgment is therefore the definitive record of my findings and conclusions.

4. It was necessary to give a judgment at the conclusion of that first stage of the trial so that the defendant (then appearing in person) and any lawyers who might subsequently come to represent him would have a clear understanding of what I had decided in terms of the material allegations of contempt that had been established. As already noted, I made it clear that I did not regard my later determination of the outstanding allegation within Ground 1 as being of any significance to the outcome at the second stage. I explain the reason for that view below. I also took the view that the provision of the order reflecting the outcome at that first stage (both a declaration of my findings and a recital noting the reservation of judgment on the outstanding issue), together with a copy of the trial bundle, would provide any lawyers subsequently instructed by the defendant with all the material required to address me on the issue of punishment, without the need to obtain a transcript of the extempore judgment.

Introduction

5. By a Part 8 Claim Form issued on 1 September 2022 ("**the contempt application**") the Claimant ("**Advantage**") applies for the committal to prison or some other sanction against the Defendant ("**Mr Harris**"). Permission to pursue the claim, so far as required under CPR 81.3(5) in relation to some of the grounds relied upon by Advantage to support it, and other directions towards the trial of it were the subject matter of my earlier Order dated 16 March 2023.

6. At the trial Advantage were throughout represented by their counsel Mr McGrath. I am grateful to Mr McGrath both for his clear and constructive submissions in this matter and for him being scrupulously fair in addressing the position of Mr Harris at the time when he did not benefit from legal representation.

7. Dr Ilozue, instructed on behalf of Mr Harris for the second stage of the trial over sentencing, has also assisted me with clear and helpful submissions upon the appropriate punishment for the contempt.

8. As well as representing himself on 10 November 2023, Mr Harris had also appeared in person at the directions hearing on 16 March 2023 and (as appears from a recital and the notice within the order of that date) the application was such that I was anxious to encourage him to seek professional legal advice and assistance. He was

made aware, both through my comments and provision of the appropriate form, that legal aid should be available for such representation: compare CPR 8.1(4)(2)(j).

9. In that regard, the trial had been fixed for 18 July 2023. The parties appeared before me on that date when it was clear not only that Mr Harris was not legally represented but also that he had not perhaps explored the possibility of obtaining legal aid as diligently as he might have done. Mr McGrath said Advantage's witnesses were present at court to give evidence and his primary submission was that the trial should proceed, though that submission was tempered by his fair and proper recognition of the potentially serious consequences of the contempt application for Mr Harris and the desirability of him being legally represented if there was a realistic prospect of that. Mr Harris told me he wished to be legally represented at the trial if he could be. For the reasons given on that occasion, I therefore decided to adjourn the contempt application. This was on the basis that Mr Harris should have one final opportunity to secure legal representation. My order of 18th July 2023 made provision for the re-listing of the trial according to the progress made or not made by him on that front.

10. In the event, Mr Harris attended the hearing of the contempt application on 10 November 2023 without the benefit of legal representation. Advantage's solicitors informed the court in the week before the trial that they had been in contact with a firm of solicitors on behalf of Mr Harris but those solicitors had not filed a Notice of Acting and had been unable to secure counsel to represent him. Reference to correspondence at the hearing indicated that the solicitors in question had not received further instructions from Mr Harris since 21 September 2023.

11. At the hearing of 10 November 2023 Mr Harris applied informally for a further adjournment of the trial. He appeared to have got nowhere in obtaining legal aid but he told me that he had already raised some money and had it in mind to raise more so that counsel might be instructed on his behalf. This time the adjournment application was firmly opposed by Advantage. I refused to adjourn the trial for the reasons given at the outset of the hearing. I was mindful that it had already been adjourned once, with a clear indication that the next hearing would be an effective one, and that Mr Harris' legal representation was still an uncertain prospect.

12. In the event, and as I have already explained, the trial was adjourned on 10 November 2023 after I had made the relevant findings of contempt. This judgment was reserved following the further hearing on 8 March 2024 at which, following counsel's submissions, I made it clear that Mr Harris was not at risk of being passed an immediate custodial sentence.

Background

13. The contempt application arises out of Mr Harris having advanced an unsuccessful personal injury claim which arose out of a vehicle collision involving his car (and another Vauxhall Corsa) in a supermarket car park on 24 June 2017.

14. On 20 February 2020 Mr Harris brought proceedings against Advantage in their capacity as insurer of a Mr Taylor who was the driver of the other car involved in the collision. He issued his claim in the County Court Money Claims Centre in Northampton under Claim No. G20YJ241 ("**the Claim**"). It was what is known as a "whiplash claim"; the value of such claims accruing after 31 May 2021 having since been significantly contained (in the absence of exceptional circumstances) by the Whiplash Injury Regulations 2021, SI 2021/642. The issue of the Claim had been preceded by solicitors for Mr Harris, Amanda Cunliffe Solicitors of Macclesfield,

sending Advantage a Claim Notification Form (RTA 1) **("CNF")** dated 13 May 2019. This said that Mr Harris had suffered an injury as a result of collision which was described as "*soft tissue left shoulder whiplash neck*".

15. The Claim Form stated that he expected to receive between £5,000 and £10,000. Mr Harris served Particulars of Claim which were supported by a statement of truth dated 7 November 2019 (and therefore some 2 months or so before the Claim was issued) and signed on his behalf a representative of the solicitors who said she was duly authorised by Mr Harris to sign it. The Particulars of Claim summarised the injury said to have been suffered by Mr Harris as "*whiplash injuries to the neck*" as identified in the attached medical report of Dr Geoff Hogg, a General Practitioner, dated 23 May 2019. There was no mention of soft tissue shoulder injury. Dr Hogg's Report recorded Mr Harris telling the doctor that the accident caused "*extensive damage*" to his vehicle and that the collision had been such as to throw him from "*side to side*". Mr Harris reported suffering from neck pain within 24 hours of the accident, localised to the mid-line, and on examination represented that he was suffering pain on movements in all directions save for flexion. Dr Hogg recommended physiotherapy and predicted that Mr Harris would recover within 26 months of the accident (and therefore within about 3 months of the medical examination). Dr Hogg concluded that the accident was the cause of the reported neck pain. He diagnosed a soft-tissue, whiplash style injury to the neck.

16. Mr Harris' Particulars of Claim also sought general damages for personal injury along with special damages of £15 which was said to represent miscellaneous (though undocumented) telephone calls, postage and travel costs. The Defence served by Advantage admitted that Mr Taylor had driven negligently but denied that any injury could have resulted from what was said by Advantage to have been such a minor collision.

17. Mr Harris made a witness statement in support of the Claim which was dated 11 December 2020 and verified by his statement of truth. In that witness statement Mr Harris alleged that his vehicle, and his body, were knocked side to side as a result of the collision. He said that he suffered neck pain as a result of the accident and relied upon the report of Dr Hogg. He said that he had recovered from the injury by the time of signing his statement (and that the recovery was in line with Dr Hogg's prognosis) but that he still suffered from the "*odd twinge every now and then*".

18. The trial of the Claim took place in Exeter County Court on 19 November 2021 before Deputy District Judge Davy ("**the Judge**").

19. In his testimony at that trial Mr Harris confirmed that his witness statement was true and accurate to the best of his knowledge and belief and initially maintained that he had sustained a neck injury as a result of the collision. However, under cross-examination and in response to questions from the Judge, Mr Harris admitted that he had not injured his neck as a result of it. Reading the transcript of the trial reveals that he made this admission really quite quickly and readily after the initial confirmation of his witness statement. Mr Harris also accepted that he did not have any out-of-pocket expenses and could not explain why he had approved any claim for their recovery.

20. The Judge dismissed the Claim in its entirety and ordered that he should pay Advantage's costs in the sum of £6,803.22. The Judge found that the Claim had been a fundamentally dishonest one and as Advantage were therefore permitted to enforce the costs order against Mr Harris (thus disapplying the ordinary restriction upon the enforcement of costs set out in CPR 44.13 and 44.14). I was told by counsel that Mr Harris has not yet met that costs order.

Grounds for the Contempt Application

21. Advantage relies upon and the contempt application identifies three grounds of alleged contempt by Mr Harris in the context of the pursuit of the Claim:

Ground 1: that he knowingly made a false statement in a document verified by a statement of truth in that he authorised his solicitors, on or about 13 May 2019, to sign and send to Advantage the CNF that he knew to be false in that it said he had suffered from a soft tissue injury to his left shoulder and neck as a result of the road traffic accident on 24 June 2017, when he knew this to be untrue, and that it was likely to interfere with the due administration of justice.

Ground 2: that he knowingly made a false statement in a document verified by a statement of truth in that he authorised his solicitors, on or about 7 November 2019, to sign, and later serve on Advantage, a set of Particulars of Claim that he knew to be false in that it said he had suffered from a soft tissue injury to his neck as a result of the road traffic accident on 24 June 2017, when he knew this to be untrue, and that it was likely to interfere with the due administration of justice.

Ground 3: that he knowingly made a false statement in a document verified by a statement of truth in that he made and signed a witness statement dated 11 December 2020 that he knew to be false in that he said he had suffered from a neck injury as a result of the road traffic accident on 24 June 2017, when he knew this to be untrue, and that it was likely to interfere with the due administration of justice.

22. I refer to these as Grounds 1, 2 and 3 respectively. Each of them therefore rests upon the twin limbs of deliberately making a false statement and a likely interference with the due administration of justice. Each represents a fusion of the separate grounds for a contempt application identified in CPR 81.3(5); though, at least for the purpose of severance of the second limb, the final "and" in each is capable of being read disjunctively.

23. My reasons for granting permission to make this application on these grounds were given at a hearing on 16 March 2023. I will not repeat them here (or make further reference to the authority then cited) but, in the absence of any transcript of that hearing, I will simply say again that it was then not obvious to me, on the true interpretation of that provision in the CPR, and having regard to (what appeared to me) to be the apparent distinguishing of cases where the contempt application arises in the context of existing litigation from those which either do not or might not do so, that the County Court proceedings should be treated otherwise than as "existing proceedings" for the purposes of CPR 81.3(5)(a). This notwithstanding that the Judge had given judgment on the Claim. Proceedings do not generally "die" with the judgment; and I could see no reason for (and indeed could see reasons against) treating them as dead for the purposes of a contempt application arising out of things said or done in the course of them. If the County Court proceedings were "existing proceedings" then Advantage did not require permission to pursue that part of the application based upon an interference with the administration of justice: see CPR 81.3(5)(a).

24. On that basis, I had prior to the March 2023 hearing raised with Advantage's solicitors the question why the contempt application had not been made to a Circuit Judge in Exeter County Court in CPR 23 form: see CPR 81.3(1) and (2). This established that, against themselves, Advantage assumed that permission was required to pursue all aspects of their contempt application. The Part 8 Claim had

been issued, as if CPR 81.3(3) rather than 81.3(1) applied, and (apart from the fact that he has had to travel further from his home in Exeter to engage with these proceedings in Bristol) I could see no or insufficient prejudice to Mr Harris in proceeding on the basis of it. The powers of the court under CPR 81.9 are no different according to whether I am sitting as a Circuit Judge or High Court Judge. I was also persuaded on the evidence before me that it was an appropriate case for granting permission (including for the second limb or each ground, to the extent needed).

The Evidence on the Contempt Application

25. The written evidence in support of the contempt application was contained in the affidavit of Timothy Ibbotson of Advantage's solicitors which is dated 10 August 2022. That affidavit exhibited the documents relied upon in support of the above three grounds (including the Report of Dr Hogg) as well as a written assessment, including photographs, of the damage suffered by Mr Harris' Vauxhall Corsa and also a transcript of the trial of the Claim covering both the evidence and the Judge's short judgment.

26. The Order dated 16 March 2023 (reflecting the provision within CPR 81.4(2)(m)) confirmed that Mr Harris was at liberty to file and serve any document and witness evidence on which he intended to rely at the trial of the contempt application but confirmed that he was under no obligation to do so. In the event, Mr Harris did not file any evidence on the contempt application.

27. The affidavit of Mr Ibbotson in support of the contempt application was filed in accordance with CPR 81.4 and is hearsay evidence. Mr Ibbotson was called as a witness by Advantage at the trial of the contempt application and confirmed his affidavit. Mr Harris did not cross-examine him.

28. In relation to the trial before the Judge (as transcribed in the exhibits to the affidavit) Mr Ibbotson confirmed that he was not present at that trial and confirmed (as his affidavit indicated) that he took over the day-to-day conduct of the matter on behalf of Advantage, in place of a colleague, after the date of the trial of the Claim and as a consequence of its outcome.

29. The findings of the Judge (as well as the evidence given at the trial) are admissible and do not fall foul of the rule in *Hollington v Hewthorn* [1943] KB 387 because the parties to the contempt application are the same as the parties to the Claim: see *Phipson on Evidence* (20th ed.) at para. 43-78, for the basis of the rule, and the decision of Joanna Smith J in *Frain & others v Reeves & others* [2023] EWHC 73 (Ch), at [33] and [42]. Nevertheless, it does not follow from the fact that those findings are admissible that I am bound by them. The Judge's findings – including the finding that "*this is a claim which appears to this court to have been fraudulent from the very start*" and "*there has been a fundamental dishonesty in the advancement of this claim*" – were made by reference to the civil standard of proof. The Judge's findings on the Claim are not inadmissibly irrelevant but, as Mr McGrath for Advantage readily accepts, they do not obviate the need for his Advantage to prove its case on the contempt application.

30. The allegations against Mr Harris in Grounds 1, 2 and 3 must be proved to the criminal standard of proof. Unless the relevant facts are investigated afresh on the contempt application the court will not be able to assess the weight that ought properly to be given to those findings and whether the case which Advantage

previously made out on the civil burden of proof has been established beyond reasonable doubt. Mr McGrath was therefore correct to say, of the evidence introduced by Mr Ibbotson, that the transcript of Mr Harris' testimony at the trial of the Claim was more relevant to my determination of the contempt application than the Judge's short judgment.

31. Mr Harris might have faced credibility issues in distancing himself from the answers he is recorded as having given in the transcript of the proceedings before the Judge but, as a matter of principle, he was entitled to challenge that evidence relied upon by Advantage. He was entitled to argue that the evidence (including the Judge's findings) was not conclusive or did not satisfy the legal burden of proof upon Advantage on the contempt application. So much is perhaps obvious from the "non-finding" of the Judge in this case (between the two quoted in paragraph 29 above) that "*I am not in a position to make a finding as to whether it was Mr Harris who intended that fraud or his solicitors*."

32. In the event, Mr Harris chose not to give evidence on the contempt application.

Assessment of the Evidence

33. In my judgment, as I also explained it at the conclusion of that first stage, Advantage has established to the criminal standard of proof the allegation that Mr Harris knowingly made or authorised the making of a false statement which is central to each of the grounds set out in paragraph 21 above.

34. That conclusion must follow from the absence of any challenge by Mr Harris to Mr Ibbotson's evidence and Mr Harris' decision not to give evidence himself. Indeed, not only did Mr Harris not in any way seek to challenge, qualify or distance himself from the answers he is recorded as having given before the Judge at the trial of the Claim but, in his representations to me, he accepted the allegation of making false statements was "*true*", adding "*I regret it too*". I then clarified with Mr Harris that I took this to mean that he was admitting that the allegations in Counts 1, 2 and 3 had been made out and he confirmed that was so.

Legal Principles

35. As noted earlier, the contempt application rests upon Mr Harris (personally or by his agent) having deliberately made false statements and, by doing so, done things likely to interfere with the due administration of justice.

36. As the evidence of Mr Ibbotson in support of the contempt application shows (in the introductory words of paragraph 9 of his affidavit) and, permission having previously been granted to make the application by reference to the alleged falsity of statements (compare CPR 32.14 and CPR 81.3(5)), the second limb of each ground of alleged contempt really stands or falls with the first. Advantage's case is that Mr Harris was guilty of interfering with the due administration of justice by making or causing to be made deliberately untrue statements which were likely to have that effect. Subject to what I say below about Ground 1, which highlights that the first limb might be made good even where the second is not, that the two limbs within each ground should otherwise be addressed as one is reinforced by the decisions of Warby J (as he then was) in *Liverpool Victoria Insurance Company Ltd v Yavuz* [2017] EWHC 3088 (QB), at [12], and of Zacaroli J in *Neil and anor v Henderson* [2018] EWHC 90 (Ch), at [72].

37. Those two decisions recognise that in order to make good the "interference with justice" ground it is not necessary to show that the making of false statements succeeded in having that effect. It is instead sufficient that they had a propensity or tendency to that effect. It therefore follows that Advantage do not face the additional hurdle of establishing that the allegedly false statements *did* interfere with the administration of justice; a task which might not be entirely straightforward in the light of the way the Judge disposed of the Claim against Mr Harris after a single, relatively short hearing.

38. As the test does not require proof of actual interference, in many cases it might be difficult for the maker of (what for present purposes is presumed to be) a deliberately false statement in court proceedings to disown its intended consequences and its potential, or tendency, to have a deleterious effect upon the proper course of those proceedings. However, it is clear from the test set out in the next paragraph that the court should not make any assumptions against the alleged contemnor about the presumed impact upon their pursuit or outcome.

39. The test which applies to Grounds 1, 2 and 3 is summarised the judgment of Stewart J in *Axa Insurance UK plc v Rossiter* [2013] EWHC 3805 (QB), at [9], as follows:

> "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."

40. This was the test applied by Zacaroli J in *Neil v Henderson*, by Ms Rowena Collins Rice (sitting as a deputy judge of the High Court as she then was) in *Liverpool Victoria Insurance Company Limited v Hall* [2019] EWHC 3534 (QB), at [12]-[13], and by HHJ Auerbach (sitting as a judge of the High Court) in *Axa Insurance Limited v Salhab and ors* [2023] EWHC 413 (KB), at [17]. Those matters must be proved to the criminal burden of proof, so that the court is left with no reasonable doubt about them or, to put it another way, is "sure" that they have each been established.

41. In relation to Ground 1 (which rests upon an allegedly untrue statement in a document notifying a proposed Claim and which is dated some 9 months before the Claim was issued) there appeared to me to be a question about the temporal scope of the "administration of justice" concept which is identified in that ground. In paragraph 23 above I have touched again on the question of when proceedings in court which have been commenced are assumed no longer to "exist" for the purposes of CPR 81.3(5(a). The question I had in mind on Ground 1 is about when they are to be treated as having come into existence for the purpose of that provision which rests upon an interference with the role of someone tasked with administering justice (most obviously, but probably not exclusively, a judge).

42. The question about the sustainability of the second limb of this ground did not occur to me and did not surface at the permission hearing but I raised it with Mr McGrath at the conclusion of the hearing on 18 July 2023 for him to reflect upon it further.

43. I did so recognising that the test set out in paragraph 39 above includes within its scope statements which "*if persisted in would be likely to have interfered with the course of justice*". As I interpret it, that language is aimed most obviously at capturing a false statement which is made but then subsequently withdrawn (or at

least not persisted with) in the course of proceedings rather than one which is made before the proceedings are commenced. It is clear that the language of CPR 32.14 expressly recognises that contempt proceedings may (subject to the permission required by CPR 81.3(5)(b)) be brought against a person in respect of a false statement, verified by a statement of truth, which is "prepared *in anticipation of* or during proceedings" (my emphasis). [I would add that this wording represents an expansion of CPR 32.14 in its previous form as is apparent from what Warby J said about the earlier wording in *Liverpool Victoria Insurance Company Ltd v Yavuz,* at [148], when the words I have just quoted – and in particular those I have emphasised – did not feature.] However, that wording supports the ground for committal identified in CPR 81.3(5(b). It does not, in my judgment, provide an obvious answer as to whether such a false statement made in anticipation of proceedings supports the other ground identified in CPR 81.3(5)(a).

44. In his supplemental written submissions for the later hearing on 10 November 2023 Mr McGrath provided an explanation as to how the CNF sits within the administration of justice over personal injury claims. This was required for someone like me who has minimal knowledge and no experience of such claims. Mr McGrath drew my attention to the following points:

i) any potential Claimant making a personal injury claim which is estimated to be of less than £25,000 in value is required to complete and submit a CNF to both the defendant (alleged) tortfeasor and the defendant's insurance company: see the Pre-Action Protocol for Low Value Personal Injury Claims in Road Traffic Accidents from 31 July 2013 (and noting that this case predated the 'whiplash reforms' implemented by the 2021 Regulations);

ii) any failure to adhere to the terms of the Pre-Action Protocol (which is often referred to as the MoJ Portal) carries sanctions;

iii) the first stage of initiating a personal injury claim to the Courts is therefore issuing a CNF to the defendant and the defendant's insurer: see paragraph 6.1 of the Pre-Action Protocol; and

iv) a CNF carries with it a statement of truth.

45. In connection with that last point Mr McGrath referred to *Richards v Morris* [2018] EWHC 1289 (QB) where Martin Spencer J said this about CNF's:

"7. I interpose to make two comments about CNFs generally. Firstly, CNFs are important documents because not only are they the first notification of a claim to the potential defendant's insurer in low value personal injury claims in road traffic accidents where the damages sought are between £1,000 - £25,000 but also they will often be the basis for early settlement of the claim. Thus, a claim may go no further than the submission of a CNF and an offer of settlement based on it, which is accepted.

8. Secondly, and linked to the first point, the statement of truth is thus important as it means, or should mean, that the insurer can rely on the accuracy of the contents of the CNF in assessing the damages and any offer of compensation to be made. Where the statement of truth is signed by a claims manager on the claimants' behalf, as here, the insurer trusts the claims manager and, through him or her, the firm of solicitors to have taken proper instructions and to have verified the accuracy of the contents of the document. It is worth remembering the provisions of the practice direction to Part 22 of the Civil Procedure Rules which states:

"3.8. Where a legal representative has signed a statement of truth, his signature will be taken by the court as a statement -

1) that the client on whose behalf he has signed and has authorised him to do so,

2) that before signing he had explained to the client that in signing the statement of truth he would be confirming the client's belief that the facts stated in the document are true

3) that before signing he had informed the client of the possible consequences to the client if it should subsequently appear that the client did not have an honest belief in the truth of those facts."

CPR 32.14, relating to false statements, provides that "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.""

46. These observations were not made in contempt proceedings but instead on a successful appeal against a County Court judgment awarding general damages to the damages to the claimants for personal injuries. The judge recognised, as I have, that a dishonest CNF may support a finding of contempt under CPR 32.14 and CPR 81.3(5)(b). Allowing for subsequent changes to CPR 81, that also appears to have been the basis of the judge's finding of contempt *Liverpool Victoria Insurance Company Limited v Hall* (a case in which Mr McGrath appeared) by reference to a false CNF and subsequent court documents.

47. The authority relied upon by Mr McGrath which, in my judgment, does answer the query I raised at the July hearing is the Court of Appeal's decision in *Jet 2 Holidays Limited v Hughes and anor*. [2019] EWCA Civ 1858, [2020] 1 WLR 844. It is clear that it is the Court of Appeal's judgment, at [17]-[18], [26] and [50], which led to the CPR being changed to the current expanded language of CPR 32.14 from the previous language which constrained the judge at first instance in that case and upon which Warby J also commented in *Liverpool Victoria Insurance Company Ltd v Yavuz.*

48. In *Jet 2 Holidays Limited v Hughes* the contempt application was based upon the making of false statements in witness statements sent purportedly in compliance with the Pre-Action Protocol for Personal Injury Claims in anticipation of proceedings which were never in fact commenced. The witness statements were therefore without a heading or case number. In circumstances where the point was of much greater significance to the outcome of the contempt application than it is in the present case (see my observation in paragraph 36 above) the Court of Appeal considered whether the false witness statements could nevertheless support an order for committal under the exercise of the court's inherent power to commit for contempt on the language of CPR 81 as it then was.

49. The Court of Appeal held that it could, saying:

"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.

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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.

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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."

50. In the light of what Mr McGrath has told me about the purpose of the CNF, and what the Court of Appeal said at [39] about the pre-action protocol under which it was sent, it is therefore clear that the making of a false statement of truth in a CNF is capable of supporting a finding of contempt under CPR 81.3(5)(a) as well as (now) CPR 81.3(5)(b).

The Contempt

51. In the light of my finding on the evidence, the application of the test in *Axa Insurance UK plc v Rossiter* and the decision in *Jet 2 Holidays Limited v Hughes* (n relation to the second limb of Ground 1) each of Grounds 1, 2 and 3 have been established by Advantage. I am sure, to the requisite standard of proof, that Mr Harris is guilty of the contempt alleged in those grounds.

The Approach to Sentencing

52. The question therefore arises as to the appropriate sentence to be imposed on Mr Harris for that established contempt in accordance with CPR 81.9.

53. The decision to impose any of those sanctions (as limited by section 14 of the Contempt of Court Act 1981 in the case of imprisonment or fine) is a discretionary one. However, Mr McGrath referred to the guidance of the Court of Appeal in *Liverpool Victoria Insurance Co Ltd v Khan (Practice Note)* [2019] EWCA Civ 392; [2019] 1 WLR 3833, at [59]-[60] and [64]-[69] on the appropriate penalty for a contempt of the kind established against Mr Harris.

54. That decision concerned the making of false statements by an expert witness but, although the second set of paragraphs relied upon by Mr McGrath (and the introductory paragraph [57]) make it clear that the court was focussed upon providing guidance for that type of case, when the judge at first instance had noted the absence of authority providing such guidance, the first set relied upon do apply to Mr Harris' position as the language of [59] quoted below confirms. This authority is cited in the 2023 White Book (at para. 81.9.1) as the containing the leading modern restatement of sentencing principles in contempt cases.

55. The Court of Appeal said this in *Khan* in indicating that in a case where the contemnor has made false statements, whether dishonestly or recklessly (therefore not caring about their truth), it will "usually" be the case that the custody threshold has been met:

> "59. 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. In the case of an expert witness, the fact that he or she is acting corruptly and makes the relevant false statement for reward, will make the case even more serious; but it will be a serious contempt of court even if the expert witness acts from an indirect financial motive (such as a desire to obtain more work from a particular solicitor or claims manager), or without any financial motivation at all, and even if the expert witness stands to gain little financial reward by it. This is so because of the reliance placed on expert witnesses by the court, and because of the corresponding importance of the overriding duty which experts owe to the court (see paras 33–34 above).
>
> 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."

56. The court went on to say, at [69]-[70], that in the case of such contempt by an expert witness such a custodial sentence would usually be an immediate one. One or more powerful factors would have to be established to justify suspension of the sentence. The fact that the false statement was made recklessly rather than intentionally will not usually amount to one. This further presumption within the guidance does not of course apply to Mr Harris's case.

57. All that said, however, the Court of Appeal expressly recognised at [58] that the sentencing court may (indeed must) in such cases as the present first consider whether a fine would be a sufficient penalty having regard to the seriousness of contempt tested by reference to the culpability of the contemnor and the harm caused or intended or likely to be caused by his acts. The court went on to conclude:

> "If it would, committal to prison cannot be justified, even if the contemnor's means are so limited that the amount of fine must be modest."

58. It is therefore clear from the way the court expressed itself that there will be contempt cases of the present type where the imposition of a fine rather than a custodial sentence (whether unconditional or suspended) is appropriate even if the thrust of *Khan* is that they should probably be described as unusual or, to put it another way, exceptional. Any other conclusion would appear not to sit entirely comfortably with the width of the court's discretion conferred by CPR 81.9(1) in relation to the punishment for contempt. In *Attorney-General v Crosland* [2021] UKSC 15; [2021] $ WLR 103, at 43]-[44] the Supreme Court, addressing the guidance in *Khan*, recognised that, in the light of the court's determination of the seriousness of the contempt, "*the court must first consider whether a fine would be a sufficient penalty*."

59. In *National Highways Ltd v Heyatawin and others* [2021] EWHC 3078 (QB), at [49], Dame Victoria Sharp P. explained the approach involved in this first stage of assessing the seriousness of the contempt against the "most serious sanction" of a sentence of imprisonment:

> "…………
>
> (d) The Court should consider all the circumstances, including but not limited to: (i) whether there has been prejudice as a result of the contempt, and whether that prejudice is capable of remedy; (ii) the extent to which the contemnor has acted under pressure; (iii) whether the breach of the order was deliberate or unintentional; (iv) the degree of culpability; (v) whether the contemnor was placed in breach by reason of the conduct of others; (vi) whether he appreciated the seriousness of the breach; (vii) whether the contemnor has cooperated, for example by providing information; (viii) whether the contemnor has admitted his contempt and has entered the equivalent of a guilty plea; (ix) whether a sincere apology has been given; (x) the contemnor's previous good character and antecedents; and (xi) any other personal mitigation;
>
> ………."

60. It appears to me that recognition of the court's ability to impose a non-custodial punishment in cases such as the present also serves to ease the over-stretching of any tension between the *Khan* guidance and the understandable concern of courts at first instance to ensure that contempt applications by aggrieved adversaries do not become too numerous and burdensome for those courts.

61. Contempt proceedings are brought solely in the public interest but if findings of contempt in this type of case invariably led to a custodial sentence then I would have thought that would only increase the appetite for launching them. In *Frain v Reeves*, at [18-[20], Mrs Justice Smith identified by reference to other authority some of the factors which fall to be considered when assessing the risks and consequences of committal applications being made by vindictive litigants in pursuit of a grievance. The consequences include the demands upon valuable court time and resources which result. The courts have more than enough of a workload in determining just the once the proper outcome of contested facts raised by adversaries. In *Integral Petroleum SA v Petrogat FZE & ors* [2020] EWHC 558 (Comm), at [26], Foxton J, in his judgment following a trial of a contempt application based upon breaches of injunctions, also referred to the "*unfortunate trend*" of committal applications becoming an increasingly common feature of High Court litigation, particularly in the Business and Property Courts. In *Frain v Reeves* the judge was considering the relevant factors at the permission stage but (especially when the court cannot at that stage stray into the merits and should not overlook the seriousness nature of the allegation of falsehoods which is emphasised in *Khan*) I consider these wider

potential implications are still relevant on a contempt application which has been permitted to proceed and succeeded.

62. In saying this I recognise the force of Mr McGrath's point, made in response to me raising these wider potential implications, that it would obviously be a mistake for the court to give off signals indicating it was going soft on acts of contempt which interfere with the proper administration of justice. Any resulting increase in the making of dishonest statements by litigants would obviously be a bigger concern than the burden on the courts created by the number of committal applications which are already being made without such unintended and unwelcome consequences. In note that in *North Bristol NHS Trust v White* [2022] EWHC 1313, at [103], Ritchie J considered the correct signal that ought to be given to others suing NHS trusts in clinical negligence claims based upon exaggerated symptoms when he was weighing up his decision upon whether to pass an immediate custodial sentence or a suspended one.

63. Whether or not the Court of Appeal in *Khan* would have set much store by the link I have made to the judicially recognised need to guard against the undesirable consequences of aggrieved adversaries being too eager to resort to committal proceedings (at least those with sufficient resources to risk the costs of a second contest over the same disputed facts) its decision and the decision of the Supreme Court in *Crosland* clearly leave it open to the judge in this type of case to conclude that a custodial sentence is not justified on his or her assessment of the seriousness of the case. However, the language used in *Khan* and the risk that, otherwise, the wrong signal might be given to others tempted to interfere with the due administration of justice suggests that such cases should probably be described as exceptional.

64. Counsel drew my attention to the Sentencing Council's 'Sentencing Guidelines' including the "overarching principles" from which the above authorities derive the concept of seriousness by reference to the twin factors of culpability and harm.

65. Dr Ilouze referred to the section in the Guidelines addressing reductions in sentence for a guilty plea – "*E1. Imposing one type of sentence rather than another*" – in submitting that Mr Harris's "owning up" to the contempt would enable the court to conclude that he fell below a custody threshold otherwise met. However, further consideration of the Guidelines confirms the response I made at the time with Mr McGrath's more general reminder of the need to guard against their unqualified application to contempt cases in mind. Section E1 reminds the criminal court of its ability to act on a guilty plea by reducing a custodial sentence to a community sentence, or by reducing a community sentence to a fine. However, a community sentence is not available to this court under section 14 of the Contempt of Court Act 1981. It is presumably because of this that, as I read them, the authorities mentioned above describe in less qualified terms a threshold determined by the concept of seriousness under the overarching principles. *National Highways v Heyatawin* shows that an admission of contempt may form part of the assessment of seriousness, but the authorities do not contemplate a further raising of the custody bar once it is first reached.

66. Dr Ilozue also referred to the obvious pressures on the Prison Estate in connection with the court's decision on whether or not to pass an immediate custodial sentence or a suspended sentence. He relied upon the later guidance of the Court of Criminal Appeal in *R v Ali* [2023] EWCA Crim 232; [2023] 2 Cr. App. R. (S.) 25 where Edis LJ said, at [22]:

"…… Sentencing Courts will now have an awareness of the impact of the current prison population levels from the material quoted in this judgment and can properly rely on that. It will be a matter for government to communicate to the courts when prison conditions have returned to a more normal state."

67. The overcrowding in prisons is relevant to whether or not a contemnor should be sent to prison, or instead passed a suspended custodial sentence, as counsel submitted, but cannot in my judgment be relevant to whether or not he deserves either. I note that in *UK Insurance v Ali, Kauser and Tul-Zahara* [2024] EWHC 30 (KB), at [52]-[53], Pepperall J concluded that the guidance in R v Ali could not be relevant to the court's decision on the grant of permission to make a contempt application and I take the same view in relation to its irrelevance when assessing the seriousness of the contempt established at a trial.

<u>Mr Harris's Case</u>

68. In his written Sentencing Note for the hearing on 8 March, Dr Ilozue had recognised that Mr Harris' conduct is serious enough to meet the custody threshold. This was no doubt a reflection of the guidance in *Khan* and the sentencing outcome in other cases which are similar to the present one at least in terms of the categorisation of the contempt. However, in urging upon the court that the appropriate punishment should be a suspended sentence and a fine, in those written submissions he made a number of points in mitigation. These included his references to Section E1 of the Sentencing Council's and *R v Ali* which I have addressed above.

69. At the conclusion of that hearing, having benefited from Mr McGrath's and Dr Ilozue's submissions, I made clear my decision that an immediate custodial sentence for Mr Harris was not justified on my assessment of the case. As I also made clear to counsel at an earlier point in that hearing, I was most troubled by the decision as to whether or not his contempt did meet the custody threshold. I floated the rhetorical question as to when a case of the present kind might displace the presumption of a custodial sentence encouraged by *Khan* if not by reference to the 'mitigating' factors for Mr Harris identified below. In the appendix to his judgment in *North Bristol NHS Trust v White* Ritchie J produced a table of the sentencing in what he described as cases comparable to the one before him. Reference to the factors going to the degree of culpability and harm (or potential harm) in those other cases and in that case – such as the value of the claim, the surveillance evidence required to expose its fraudulent nature or the defendant's response to the committal application – highlights the reasons for me thinking Mr Harris's case could well be in a different category.

70. In his oral submissions Dr Ilozue recognised that it was of course for the court to decide whether or not the custody threshold had been met and he recognised that some of the mitigating factors identified by him could be taken into account in the court's assessment of the seriousness of the contempt for the purposes of it perhaps qualifying as an exceptional case under the *Khan* guidance.

71. Dr Ilouze made the point that it was an unsophisticated fraud. Mr Harris had neither fabricated the collision or staged it in a "crash for cash" scam. Instead, he had exaggerated the injury caused by a genuine accidental collision. It had not taken any surveillance evidence or other detective work, of the kind seen in some of the other authorities addressing the contempt of interfering with the administration of justice, to unravel the Claim. Instead, by his own evidence on the Claim, Mr Harris readily made the admissions upon which the resulting contempt application rests. Dr Ilozue, referring to Mr Harris's limited education and comprehension, said this indicated a

degree of vulnerability on the part of Mr Harris when it is reasonably clear that he had no understanding that would be the consequence.

72. Dr Ilozue also referred to Mr Harris's good character, his remorse over his conduct, and the impact that any immediate custodial sentence would have on Mr Harris, his partner and his employment. Mr Harris earns his living as a lorry driver and has done so for over 22 years. His counsel said the court could be confident that such conduct will never be repeated by Mr Harris. He produced a written statement from Mr Harris in which he apologised for his conduct and explained his good employment record and otherwise good character and how his long-term partner, cohabitee and co-worker at the same workplace, Nicola Russell, has some financial dependence upon him and also relies upon him for her own transport to work and for food shopping. I was also shown a statement from Ms Russell which corroborated this and statements from the general manager and another employee at Mr Harris's workplace which also referred to his great remorse over this matter, his good character and to his position as a valued and trustworthy worker.

73. All of these points which are personal to Mr Harris accord with my own assessment of him before counsel made submissions (and I should of course note that Dr Ilozue did not benefit from being at the earlier hearings). In focusing upon the factors personal to Mr Harris, in my approach to that threshold, I do not include the point made about current state of the Prison Estate for the reason given above.

74. Mr McGrath for Advantage in his written submissions also referred to some mitigating factors in this case. These included the low value of Mr Harris's personal injury claim, the fact that he had essentially admitted his dishonesty before the Judge (while highlighting that the Claim had of course got as far as a trial) and that the deceit was a basic one which had not involved any other victims or participants. Having said that, and having quite properly noted that it is not for Advantage to urge a particular outcome in terms of sentencing, Mr McGrath correctly observed that the court should be wary before concluding that these factors justify the conclusion that the bar set by the custody threshold has not been met.

75. However, on the basis of the other factors identified by Dr Ilozue, I have reached the conclusion that it is not appropriate to impose even a suspended custodial sentence upon Mr Harris. I have done so after inevitable hesitation given the thrust of the guidance in *Khan* and consideration of the outcome in the other cases conveniently summarised in *North Bristol NHS Trust v White*. In particular, I have pondered upon Mr McGrath's response to my rhetorical question when he said a situation where the custodial threshold might not be met could be where, unlike the present case, the dishonest statement did not require a trial to expose it. As he also observed, given the relatively modest value of the Claim, there was a risk that Advantage might have taken a commercial decision to pay up on it instead of incurring the costs of the trial which exposed its bogus nature. Nevertheless, following the approach laid down in *National Highways v Heyatawin,* Mr Harris does not in my judgment deserve a custodial sentence.

76. There can of course be no excuse whatever for him having made the false statements from which he later resiled (which, in relation to the shoulder injury mentioned in the CNF he did by his witness statement of 8 December 2020 and, in relation to the others, he did quite readily under cross-examination at the trial). However, having regard to the evidence he gave on the Claim, I am far from satisfied that they were anything other than the result of him being encouraged by others to believe that he had a claim. This is the point on which the Judge herself was in doubt and I share it. His witness statement confirmed that he was not immediately aware that he was entitled to make a claim for personal injury and that it was only when he received

advice on how to make the Claim that he decided he would pursue it. The CNF and Dr Hogg's Report were each dated almost 2 years after the accident.

77. Reading the transcript of Mr Harris' testimony at the trial of the Claim reveals considerable naivety on his part. In her judgment the Judge recorded her concern that "*Mr Harris did not quite understand the question that he was being asked*" (before noting that the questions had been repeated and he had given answers which supported the conclusion that he had not been injured in the collision). That testimony does not indicate a manipulative or scheming litigant as opposed to one who, in hindsight, would be better described as foolishly credulous and incautious. More importantly, that is how Mr Harris has appeared to me on this contempt application. Although the point does not require any reformulation of the grounds of contempt established by Advantage, on the test in *Axa Insurance v Rossiter* (and following the distinction recognised in *Khan* at [58]) I would describe Mr Harris as having made the statements recklessly rather than with out and out, coldly calculated dishonesty.

78. Like the Judge, I cannot fairly reach any firm conclusions as to how the Claim came about. Mr Harris's evidence on the Claim indicates that he might well have been persuaded by others that he had a claim for whiplash injury. However, Advantage has not sought to allege anyone other than Mr Harris is responsible for making the false statements, or causing them to be made, and he must take responsibility for them. The court must recognise the seriousness of his false statements even though he capitulated at the trial, much as he did on this contempt application by entering the equivalent of a guilty plea. Allowing for the inherent seriousness of the matter, I feel unable to conclude that Mr Harris's had the state of mind of the unscrupulous litigant who fully knew what he was about in pursuing a bogus claim. I would instead describe him as naïve and gullible.

79. Mr Harris's lack of sophistication and apparent naivety in relation to legal proceedings is demonstrated by me mentioning how the hearing on 10 November 2023 developed. A further adjournment of the trial having been refused, Mr McGrath indicated that it might be sensible for there to be a short adjournment during which he might speak to Mr Harris about the possibility of him admitting the allegations of contempt with a view to relying upon the admission as a mitigating factor on sentencing. [Mr McGrath quite properly made it clear that he could not in any way "advise" Mr Harris in this respect.] After that adjournment Mr Harris made it clear to me that he did not want to make any admission and that instead the trial of Grounds 1, 2 and 3 should proceed. Yet he did not then cross-examine Mr Ibbotson, chose not to give any evidence himself and (as I have explained) readily admitted the allegations in a remorseful way. In the space of about 30 minutes after the adjournment Mr Harris had therefore done what he might have done during it, with the prospect of gaining some "credit" on sentencing. Although he must take responsibility for initiating the Claim, his position in these more unwelcome proceedings has also been one of confusion.

80. I regard these observations about Mr Harris's gullibility, his ready acceptance of guilt and his obvious regret for what he has done as key points in deciding that a fine rather than a custodial sentence is the appropriate punishment for his contempt.

81. They are reinforced by consideration of the harm involved in his contempt. Obviously, the court's power under CPR 81.9 in these separate proceedings is distinct from the "sanction" of the adverse costs order imposed by the Judge on the dismissal of the Claim. Nevertheless, it is relevant to the exercise of my discretion that, even though he has yet to pay them, Mr Harris has already been penalised in costs as a result of telling the same set of falsehoods as have now been established on

the contempt application. The making of an adverse costs on the Claim, and the dismissal of the Claim, alleviated much of the harm caused by his acts of contempt. That is relevant on the approach identified in *National Highways v Heyatawin* though it does not undermine the need (highlighted in *Liverpool Victoria Insurance v Khan* at [58]) to have well in mind that, though not determinative of the Claim, the false statements were presented them with *the aim* that, through a corruption of the justice process, he would recover damages and his own costs on a bogus claim.

82. The decisions in *Khan* and *Crosland* leave it open to the court to conclude that, even in a case of a contempt of the present kind, the case is not sufficiently serious to justify a custodial sentence. After the hearings in this application I have reached the clear view that this is such a case.

Decision

83. In my judgment this is therefore a case where the appropriate penalty for the contempt is a fine rather than a period of imprisonment, even a suspended sentence. Coupled with the finding of contempt a fine is a sufficient punishment for the contempt and (although my clear impression is that there is little risk of it) a sufficient deterrence to Mr Harris repeating something like it or otherwise engaging in criminal behaviour which would also be quite out of character.

84. As I have said, Mr Harris earns his living as a delivery driver. His financial means are modest and he has yet to pay the costs ordered by the Judge. Dr Ilozue told me that the shared net income of Mr Harris and Ms Russell is approximately £3,300 per month, to which Mr Harris contributes some £1,800. Their monthly outgoings are around £2,000 which means that Mr Harris's share of their disposable income is around £600 or so. Mr McGrath said that Advantage were not in a position to challenge this and did not wish to do so.

85. Mr Harris's counsel suggested that a fine of £3,000 would be appropriate in the circumstances.

86. I agree. In the exercise of the discretion under CPR 81.9 I therefore conclude that Mr Harris's acts of contempt are sufficiently marked by the finding that he has been guilty of contempt and a fine of £3000. This fine will be payable within 6 months.

87. The contempt application has of course occasioned further costs for Advantage and they have been successful on the application. I will make an order that Mr Harris is to pay those costs to be assessed if not agreed.