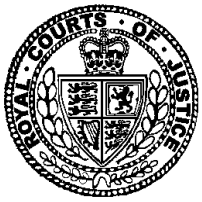

Neutral Citation Number: [2024] EWHC 798 (KB)

Case No: G01MA072

IN THE COUNTY COURT AT MANCHESTER

Manchester Civil Justice Centre
1 Bridge Street West,
Manchester M60 9DJ

Date: 12 April 2024

IN THE MATTER OF AN APPLICATION TO COMMIT FOR CONTEMPT OF COURT

Before :

HHJ CAWSON KC
SITTING AS A JUDGE OF THE KING'S BENCH DIVISION OF THE HIGH COURT
(For the purposes of CPR 81.3(8))

- -

Between :

DARRELL ROBINSON	**Claimant/Part 81 Defendant**
- and –	
MICHAEL MURPHY	**Defendant/Part 81 Claimant**
-and-	
JAMES GIBSON	**Third Party**

- -
- -

Christopher Kennedy KC (instructed by **Keoghs LLP**) for the **Defendant/Part 81 Claimant**
David Boyle (instructed by **Harvey Roberts**) for the **Claimant/Part 81 Defendant**

Hearing dates: 22 February and 4 April 2024

- -

Approved Judgment

Remote hand-down: This judgment was handed down remotely at 10.30 am on Friday 12 April 2024 by circulation to the parties or their representatives by email and by release to The National Archives.

HIS HONOUR JUDGE CAWSON KC:

Contents

Introduction

1. This judgment concerns an application dated 8 March 2023 ("**the Application**") whereby the Defendant/Part 81 Claimant, Michael Murphy ("**Mr Murphy**"), seeks to commit the Claimant/Part 81 Defendant, Darrell Robinson ("**Mr Robinson**"), to prison for contempt of court for having knowingly made false statements in the present proceedings in documents verified by statement of truth.

Procedural history

2. As issued, the Application was supported by the affidavit of Ian James Wilson ("**Mr Wilson**"), a Solicitor employed by Keoghs LLP ("**Keoghs**"), the Solicitors instructed by Mr Murphy and his insurers, Skyfire Insurance Company Limited ("**Skyfire**"), made on 11 March 2023 ("**Wilson 1**"). Although the Application is notionally brought by Mr Murphy, it is reasonably clear that it is Skyfire that is behind the Application.

3. By his order made on 7 June 2023, His Honour Judge Sephton KC, sitting as a Judge of the King's Bench Division of the High Court, granted permission to Mr Murphy, pursuant to CPR 81.3(5), to apply for a committal order in respect of the alleged contempt of court set out in paragraph 3 of Wilson 1. In addition, by his order dated 7 June 2023, Judge Sephton KC gave directions providing for the service by Mr Murphy of a formal schedule of the alleged contempts (limited to those identified in paragraph 3 of Wilson 1), the service of further evidence, including evidence by Mr Robinson in response to the Application, and for the listing of the Application for a hearing on 23 August 2023.

4. Pursuant to the order dated 7 June 2023, Mr Murphy served a Schedule of Allegations of Contempt of Court ("**the Schedule**") dated 14 June 2023, and the following further evidence was served in respect of the Application, namely:

   i) The second affidavit of Mr Wilson made on 27 June 2023 ("**Wilson 2**");

   ii) The third affidavit of Mr Wilson made on 27 June 2023 ("**Wilson 3**");

   iii) The fourth affidavit of Mr Wilson made on 27th of June 2023 ("**Wilson 4**");

   iv) The affidavit of Mr Robinson made on 31 July 2023;

   v) The affidavit of James Gibson made on 26 June 2023;

   vi) The affidavit of Paul Serle ("**Mr Serle**") made on 26 June 2023;

   vii) The affidavit of Allan Gibson made on 26 June 2023;

   viii) The affidavit of Sophie Cobham ("**Mrs Cobham**") made on 28 July 2023; and

   ix) The affidavit of Lesley Varden made on 31 July 2023.

5. Unfortunately, the hearing on 23 August 2023 could not proceed due to Mr Robinson's mother's unfortunate death earlier that month, hence the Application being relisted before me on 22 February 2024.

6. At the hearing on 22 February 2024, and at a further hearing on 4 April 2024, Mr Murphy was represented by Christopher Kennedy KC, and Mr Robinson was represented by David Boyle of Counsel. I am grateful to them both for their helpful oral and written submissions.

7. On 22 February 2024, Mr Kennedy KC opened the Application and called Mr Wilson, who was cross examined by Mr Boyle.

8. Immediately after Mr Murphy's case had been closed, and before Mr Robinson gave evidence, Mr Boyle made a submission of no case to answer, submitting that I should not allow the matter to proceed on the basis that I should direct myself at that stage that I could not safely be sure that Mr Robinson had acted in contempt of court as alleged. Mr Boyle took the point that Mr Murphy had introduced into the Schedule an alternative case that Mr Robinson had made the statements in question *"having no idea whether they were right or wrong"*, i.e. recklessly, a case which had formed no part of the Application as originally formulated, and which would not be sufficient to amount to contempt (as now accepted by Mr Murphy). In essence, Mr Boyle submitted that the very fact that this alternative case had been advanced, supported by a statement of truth on the Schedule, meant that I could not safely be sure that Mr Robinson had known the relevant statements to be false. I dismissed the submission of no case to answer for reasons that I set out in an ex tempore judgment.

9. I had not required Mr Robinson to elect not to call evidence before hearing the submission of no case to answer. Consequently, Mr Robinson then gave evidence, confirming the contents of his affidavit, and he was cross examined at some length by Mr Kennedy KC on behalf of Mr Murphy.

10. All of the affidavits that I have referred to, apart from those of Mr Wilson, were served on behalf of Mr Robinson. However, none of the deponents thereto attended in order to be tendered for cross-examination, an issue to which I shall return.

11. In the event, as a result of the time taken to deal with the submission of no case to answer, and to also to deal with an earlier unsuccessful application by Mr Murphy to introduce an affidavit that he had only made on the date of the hearing, there was insufficient time on 22 February 2024 to hear submissions. The Application therefore had to be adjourned part heard. Unfortunately, due to various listing difficulties, and illness of one of the Counsel for a period of time, it did not prove possible to relist the matter until 4 April 2024, when I heard submissions. In advance of this hearing Counsel helpfully provided written closing submissions.

12. At the end of the hearing on 4 April 2024, I announced that I would reserve judgment. This is that reserved judgment.

The Schedule

13. The Schedule provided particulars of the allegations of contempt of court as follows:

> "1. [Mr Murphy] alleges that [Mr Robinson] has made two false statements in documents verified by him with a statement of truth, namely,
>
> i. A stage 2 settlement pack which he signed on behalf of Mr James Gibson on 18 February 2020 ('the settlement pack');
>
> ii. A response to the Applicant's Part 18 Request for further information in action number G01MA072, which he verified on 13 July 2020. ('the response').
>
> 2. The false statements were:
>
> i. In relation to the settlement pack: that Mr James Gibson had sustained the injuries described in the settlement pack as a result of a road traffic accident which occurred on 16 November 2019, when in fact he was not present and did not suffer those injuries;
>
> ii. In relation to the response: that at the time of the said accident there were seven occupants in LT16 VRM, one of the vehicles involved, and that those occupants included Mr James Gibson, who was in the right rear seat. In fact, Mr James Gibson was not in the vehicle.
>
> 3. The above false statements were likely to interfere with the administration of justice in that they supported the making of a false claim by Mr James Gibson and concealed the fact that such a false claim had been made.

4. The statements referred to in paragraph 2 of the schedule were made by [Mr Robinson] without an honest belief in their truth; that is in the knowledge that they were untrue, alternatively he made them having no idea whether they were right or wrong.

5. [Mr Robinson] knew that making a false statement in these circumstances would be likely to interfere with the administration of justice."

14. It is common ground between the parties that the only contested issue raised by the Application is as to whether it has been proved by Mr Murphy to the criminal standard of proof that Mr Robinson made one or both of the relevant statements without an honest belief in their truth, i.e. in the knowledge that they were untrue.

15. The alternative allegation introduced into paragraph 4 of the Schedule, namely that Mr Robinson made the statements having no idea whether they were right or wrong, i.e. recklessly, is not pursued. As I have said, that is not how the case was put in the Application itself, and in any event the Court of Appeal has recently held that recklessness in not caring whether or not a statement was true or false would not be sufficient for permission to be granted pursuant to CPR 81.3(5) to bring committal proceedings – see *Norman v Adler* [2023] EWCA Civ 785, [2023] 1 WLR 4232, at [61], per Thirlwall LJ: *"It is not sufficient to say that the contemnor did not care whether what he said was true or false. It must first be proved to the requisite standard that he knew that he did not know whether what he said was true or not."*

16. Mr Boyle realistically accepts, as I consider that he must on the evidence before the court, that if it is proved to the requisite standard that Mr Robinson did make the relevant statements knowing that they were untrue, then the Court could, safely, be sure that the other matters required to be proved to the requisite criminal standard in order to prove the contempt, had been proved, namely that the false statements were likely to interfere with the administration of justice, and that Mr Robinson knew that the making of the false statement in the circumstances in which they were made would be likely to interfere with the administration of justice.

17. However, it is Mr Robinson's case that he did not know that the statements in question were untrue, that he believed them to be true, and that Mr Murphy has not proved to the requisite criminal standard to the contrary.

Factual background

18. Mr Robinson is 57 years old and a Fellow of the Chartered Institute of Legal Executives having qualified as such in the 1990s. At all relevant times, he was the senior partner in a law firm, The Rose Partnership Solicitors LLP, that, for over 15 years, had carried out predominantly low-value personal injury work resulting from motor accidents. Mr Boyle pointed out that this sort of work is very process driven, and to that extent is different from traditional litigation.

19. Over the weekend of 16/17 November 2019, Mr Robinson went for a weekend away in the Lake District with a number of male friends from the Manchester area, some of whom at least were, as I understand it, providers of work to Mr Robinson and his firm, but who had become friends. The friends in question were Allan Gibson, James Gibson, Mr Serle,

Martyn Shedwick ("**Mr Shedwick**") and Craig Froggatt ("**Mr Froggatt**"). James Gibson is Allan Gibson's son.

20. I understand from the evidence that they travelled to the Lake District on Friday, 15 November 2019 as Mr Robinson refers to having cooked a full English breakfast for everybody on the Saturday morning. They stayed at a property belonging to Mr Serle near Great Langdale. James Gibson's girlfriend was also in the Lake District, and he spent some time over the weekend with her, although it is Mr Robinson's evidence, supported by photographs, that James Gibson was with the rest of the party in Ambleside on the Saturday evening, having also spent the Saturday morning with them. The evidence is unclear as to whether James Gibson stayed with the others at Mr Serle's house or stayed with his girlfriend.

21. In his evidence, Mr Robinson refers to having spent from about 12 noon to 4 PM on Saturday, 16 November 2019 at the Wainwrights' Inn in Great Langdale drinking, and to a taxi then having been ordered to take the party to Ambleside for further drinks and to watch the Christmas lights switch on. Mr Robinson says that he believes that the taxi, which was a minibus with six passenger seats, arrived at about 4:15 PM.

22. During the course of the journey in the taxi to Ambleside, Mr Murphy's car drove into the back of the taxi. It is now clear from dashcam footage[1] obtained by Skyfire that those in the taxi were, apart from the driver, Mr Serle (sitting next to the driver), Mr Shedwick, Mr Froggatt and Mr Robinson (sitting in the middle row, in that order with Mr Robinson on the nearside), and Allan Gibson (sitting on the third row on the offside). The seat on the third row, on the nearside was empty. James Gibson was not in the taxi.

23. It is Mr Robinson's own evidence in his affidavit that, following the accident, he got out of the taxi, spoke to Mr Murphy, and personally took photographs of the taxi and Mr Murphy's car, and of Mr Murphy's details that the taxi driver had recorded on his mobile phone.

24. The party then proceeded to Ambleside, possibly in another taxi. After spending some time at the Royal Oak in Ambleside, the party returned to Great Langdale to continue drinking at the Wainwrights' Inn. Photographic evidence does show James Gibson together with Mr Robinson, Mr Serle and Mr Froggatt close to the Royal Oak in Ambleside that evening, supporting Mr Robinson's case that he (James Gibson) had rejoined the party by that stage of the evening. It is not suggested that this photographic evidence was fabricated or contrived. I note that James Gibson says in paragraph 14 of his affidavit that he was following the rest of the party in his girlfriend's car, which is consistent with this photographic evidence.

25. It was Mr Robinson's evidence under cross-examination that he could remember Mr Serle, Mr Shedwick, Mr Froggatt and Allan Gibson being in the vehicle, but that he could not specifically recall James Gibson being in the vehicle.

26. Mr Robinson says that it was not until the following day that he noticed that he had been injured, experiencing neck and lower back pain, as well as headaches. In his affidavit, Mr Robinson refers to having spoken to *"my friends"* regarding the accident the following day

[1] This is not strictly dashcam footage, but footage from a camera installed for security reasons recording the passengers in the taxi.

and discussing symptoms that had arisen as a result of the accident, and to the latter confirming that they wished to pursue a claim for the injuries sustained. Under cross-examination, Mr Robinson said that he cannot now recall who, exactly, he spoke to, and that it is possible that he did not speak to all of his friends that day. In his affidavit, Mr Robinson refers to having spoken to Mr Serle the following day, on his return to work, and to Mr Serle having *"re-confirmed that all our friends wish to pursue a claim."*

27. In his affidavit, Mr Serle says that he remembers, on the Sunday, having had a chat with those who had been staying at his house regarding bringing an accident claim, and having asked who was in the taxi. He says that James Gibson raised his hand and said that he was inside the vehicle. He then refers to having contacted Mr Robinson, he thinks the following day, and giving him the names of those who said they had been injured. Mr Serle goes on in his affidavit to say that he had no reason to believe that James Gibson was not telling the truth, and that he did not know that James Gibson was not involved in the accident. He says that he does not believe that Mr Robinson did either.

28. In his affidavit, James Gibson said that he had been following the taxi in his girlfriend's car but was not involved in the accident. He says that he was asked, either on the Sunday or the following Monday by Mr Serle if he had been in the accident, to which he said yes. He now accepts that that was a lie. He refers to having subsequently received letters from Mr Robinson providing forms to fill in to make a claim.

29. Mr Robinson then caused personal injury claims to be pursued, on behalf of himself, and also on behalf of the others, including James Gibson. Mr Robinson had conduct of the claims on behalf of others, with another partner in his firm, Mrs Cobham, acting on Mr Robinson's behalf.

30. Claims were pursued not only on behalf of those who had been in the taxi, but also James Gibson. Even though he says that he could not specifically recall whether or not James Gibson had been in the taxi, Mr Robinson says that, at all relevant times, he believed that James Gibson had been in the taxi in the light of James Gibson's presence with the rest of the party in Ambleside shortly following the accident and what he had been told by others.

31. In his affidavit, Mr Gibson candidly accepts that he made a false claim. In giving evidence, Mr Robinson accepted that he must have spoken to James Gibson whilst handling his claim. It is his case that James Gibson misled him throughout. As he puts it in paragraph 96(f) of his affidavit: *"He lied to me, my firm, the medical expert and the Defendants. I did not know he was not present."*

32. On 9 December 2019, claim notification forms (RTA 1) were filed on behalf of James Gibson, Mr Robinson, Mr Froggatt and Mr Shedwick, essentially claiming damages against Mr Murphy for whiplash injuries sustained in the accident on 19 November 2019.

33. On 9 January 2020, James Gibson was examined by Dr IA Ballin ("**Dr Ballin**"), who produced a medical report of that date expressing the opinion that James Gibson had sustained the following injuries, namely pain and stiffness of the neck pain and emotional upset. The report included the following *"History"*:

> "Mr Gibson was involved in a road traffic accident on 16.11.19. He stated that he was sitting in a minibus towards the rear, behind the driver, wearing a securely fitted safety belt. The minibus was fitted with

> headrests. No airbag inflated. The minibus was stationary at a junction in the Lake District when it was struck from behind along the rear driver's side by third party car. It was shunted forwards but did not hit any other vehicles. Prior to the index accident Mr Gibson was looking straight ahead. He was jolted forwards and sideways. He was able to get off the minibus unaided."

34. On 28 January 2020, an RTA2 was filed in respect of James Gibson.

35. On 11 February 2020, a claim notification form (RTA1) was filed in respect of Mr Serle.

36. On 13 February 2020, Mr Robinson was examined by Dr Ballin, who produced a medical report of the same date. The report expressed the opinion that Mr Robinson was suffering from the same symptoms as those described in the report relating to James Gibson, with the addition of headaches. The report set out the following *"History"*:

> "Mr Robinson was involved in a road traffic accident on 16.11.19. He stated that he was sitting on a minibus in the middle row, on the opposite side to the driver, wearing a securely fitted safety belt. The vehicle was fitted with headrests. No airbag inflated. The minibus was stationary at the junction in the Late District, when it was struck from behind around the rear driver's side by a third party car. It was shunted forwards but did not hit any other vehicles. Prior to the index accident Mr Robinson was looking over his right shoulder. On impact he was jolted. He was able to get out of the minibus unaided."

37. The point is taken by Mr Boyle that this *"History"* contained in Dr Ballin's report relating to Mr Robinson follows a somewhat formulaic pattern and adopts much of the description regarding the accident as had been contained in the report that he had prepared for James Gibson.

38. A Stage 2 Settlement Pack Form and Response Pack Form – Form RTA ("**the Settlement Pack**") was filed on James Gibson's behalf. This set out details of James Gibson's injuries alleged to have been caused by the accident on 19 November 2019, and the amount that he was prepared to accept in settlement. The document contained the following statement of truth: *"I am the claimant's legal representative. The claimant believes that the facts stated in this claim form are true. I have written authority for the claimant to sign this statement."* It is not in dispute that Mr Robinson signed this document on James Gibson's behalf. This is the first of the statements the subject matter of the Application in respect of which it is alleged that Mr Robinson made the same knowing that it was not true.

39. The Settlement Pack records Mr Murphy accepting the offer. In consequence thereof, the Defendant agreed to pay James Gibson £3,100 and costs, including the medical report, of £816, i.e. £3,960 in total. This sum was subsequently paid to James Gibson.

40. On 25 February 2020 and 28 February 2020 respectively, Mr Froggatt and Mr Shedwick received damages in settlement of their claims.

41. On 10 March 2020, a claim notification form (RTA1) was filed in respect of Allan Gibson. On the same day, the present proceedings were commenced by Mr Robinson by way of

Part 8 Claim Form. On 17 March 2020, Mr Robinson received an interim payment of £3,200.

42. On 30 March 2020, First Central Insurance Management Ltd ("**First Central**"), who I understand to have been managing the claims on behalf of Skyfire, wrote to Mr Robinson's firm with regard to all of the claims advising that: *"all previous offers are now withdrawn."* The reason given was that: *"We are not satisfied with the claims presented and with the circumstances as described."* Mr Robinson's evidence under cross-examination was that he would have seen this letter *"at some point"*, although he was not specific as to when.

43. On 31 March 2020, Mr Robinson emailed First Central saying: *"We note Mr Gibson and Mr Serle have exited the portal which seems odd considering other matters have been dealt with. Mr Gibson and Mr Serle were present with me at the time of the accident."* It is common ground that this was a reference to Allen Gibson whose claim was, at that stage, outstanding along with that of Mr Serle. That Mr Robinson should write in these terms at this stage might suggest that he was not, at the time that he wrote this email, aware of the letter dated 30 March 2020.

44. It is to be noted that, at about this time, the country went into lockdown as a result of the Covid 19 pandemic.

45. On 2 April 2020, Skyfire and/or First Central received the dashcam footage showing the occupants of the taxi. The fact that it had been obtained was not disclosed to Mr Robinson or his firm until August 2020. That it had been obtained as early as 2 April 2020 was not disclosed until this was conceded on 2 June 2023. The dashcam footage was sent to Mr Murphy's/Skyfire's Solicitors, Keoghs, on 6 May 2020.

46. On 7 April 2020, James Welsh of Mr Robinson's firm wrote to First Central acknowledging receipt of the letter dated 30 March 2020, and seeking confirmation as to why all offers had been withdrawn. Although sent by James Welsh, it bore the reference *"JW/DR/SER001/Serle/Personal Injury"*, and I note that Mr Serle's RTA 1 identified Mr Robinson as *"contact"* for the claim.

47. On 14 April 2020, First Central responded to Mr Welsh's letter of 7 April 2020. The letter included the following:

> "We can advise occupancy is an issue and therefore we have no offers to make.
>
> We refer you to the relevant section of the Criminal Justice and Courts Bill (sic).
>
> The Court will inevitably have to consider whether your client is supporting (a) phantom passenger claim(s). We are confident that strikeout of your client's entire claim would be appropriate in this case."

48. As the only proceedings afoot were those commenced by Mr Robinson, the claim in respect of which strikeout was threatened can only have been that of Mr Robinson. Under cross-examination, Mr Robinson said that he did not, contemporaneously at least, see this letter

dated 14 April 2020, but accepted that if he had have done so he would have consulted his friends about its implications.

49. On 28 April 2020, Mr Welsh, using the same reference as I have mentioned, wrote to First Central in the following terms:

> "Thank you for discussing the matter earlier today.
>
> We enclose photographs of clients in Ambleside shortly after the accident, the date and time is on the images, you can therefore understand why we are surprised at your comments, we therefore respectfully suggest that the taxi driver is mistaken as he didn't appear to know what to do after the accident occurred and was assisted by our clients, your insured at times was being unhelpful.
>
> All clients live in the Manchester area and were staying at Mr Serle's second residence in Langdale for the weekend."

50. This last letter was not included in the hearing bundle, but it was referred to in a Chronology produced by Mr Boyle. I was provided with a copy of it after the first hearing. Although Mr Robinson was not cross-examined on it, I can only but conclude, given its contents, that he must have played some part in its preparation and therefore must have been contemporaneously aware of First Central's letter dated 14 April 2020, despite what he said under cross-examination.

51. On 1 June 2020, DDJ Nabou gave directions in the present proceedings for a *"Stage 3"* hearing.

52. On 5 June 2020, Keoghs wrote to Mr Robinson's firm, by email to Mr Welsh's email address, in the following terms:

> "Please note we are instructed in respect of this collision and would ask that all future communications are made to us.
>
> On review, it is our understanding and instructions that there were only 6 occupants of KT16VRM [the driver and 5 passengers].
>
> However, we have received 7 Claims Notification Forms, 6 from The Rose Partnership detailing 6 separate passengers, and a 7th form from a separate firm relating to the driver.
>
> Given that this is inconsistent with the information that we have, we require the Claimant to provide an explanation.
>
> We would ask that the Claimant confirm within the next 14 days:
>
> - The number of occupants in LT16VRM at the time of the collision;
>
> - The names of occupants and their seating positions.

- If there were only 5 passengers, how a Claims Notification Form of a 6th passenger was submitted."

53. This enquiry must have been referred to Mr Robinson because, early in the morning on 8 June 2020, he had a WhatsApp exchange with Mr Froggatt in which he asked Mr Froggatt the following: *"By the way in the Lakes accident you were in the middle seat weren't you next to the window, Martin was in between u and me"*. Mr Froggatt responded that he was sat in the middle seat, to which Mr Robinson responded: *"So Martyn against the window?"*, to which Mr Froggatt responded *"yep"*.

54. Later that day, Mrs Cobham emailed Mr Wilson in response to his email of 5 June 2020 saying that she had tried to call him but had been informed that he was on paternity leave. She suggested a *"chat about the matter"* once he returned. She then went on to say that she had taken instructions from her client (i.e. Mr Robinson) and she responded to Mr Wilson's questions as follows:

> 1. There were 7 occupants, 6 passengers and the taxi driver. My client has provided photographs sent to your insurer client, which show the 7 occupants.
>
> 2. The taxi driver was sat in the driver's seat. Paul Serle was sat in the front passenger seat, next to the driver. On the next row, Darrell Robinson was sat on the left seat, Craig Froggatt in middle seat and Martyn Shedwick on the right seat. Finally, in the third row Allan Gibson was in the left hand seat and James Gibson in the right hand seat.
>
> 3. Our client maintains there was *(sic)* 6 passengers plus the driver.
>
> Who said there was only 6 passengers in total?
>
> Why is this issue only being raised at this late stage and after the majority of claims have already settled?
>
> Have you seen the photographs sent to your insurer client?"

55. It was Mr Robinson's evidence, mentioned for the first time in his affidavit, that he ascertained where, so he thought, James Gibson was sitting in the taxi by consulting Dr Ballin's medical report in respect of James Gibbs, which had referred to James Gibson *"sitting towards the rear, behind the driver"*.

56. In response to Mr Wilson attaching an application to transfer the present proceedings from CPR Part 8 to CPR Part 7 pursuant to CPR PD8B, para 7.2, Mrs Cobham spoke to Mr Wilson on 24 June 2020, who we now know by then had the dashcam footage. Her file note recorded the following:

> "Had a frank discussion on this one. Basically, he suspects that there is no issue with this but he has to investigate it but under part 8 he doesn't have the capacity to do so, he hasn't spoken to his policyholder yet.

> He said he has been honest and open as possible in his statement.
>
> His policyholder can't be sure of how many people and he suspects the taxi driver won't cooperate.
>
> I explained I knew the claimant and this is definitely not one that I am concerned about and it is not worth the risk to my client.
>
> Agreed to send the photos and he asked if the client would be willing to answer P18 as could have this dealt with prior to the Court even listing it for a hearing.
>
> He explained that there is no fraud alleged nor are they withdrawing admission. He just needs it procedurally to go to Part 7."

57. Mr Wilson's note of the same conversation is not entirely consistent with this. It sets out the following explanation for the transfer to CPR Part 7:

> "Discussed Application – explained need to follow the evidence, PH isn't sure as to occupancy - need to obtain evidence from Claimant, driver and PH.
>
> Cannot do this on Part 8b
>
> Also potential dishonesty/s57 considerations - again not something which can be done on P8b. "

58. The above is, prima facie, inconsistent with the suggestion that fraud was not alleged, or at least remained a possibility. However, Mr Wilson's note did go on to say:

> "Need to move to P7 - could be that this matter resolves relatively quickly but need to conclude the enquiries into occupancy before we do.
>
> She understood.
>
> Suggested if Claimant wishes to answer P18s early doors the issue of occupancy may resolve before the Court even looks at the App.
>
> She will take instructions."

59. Following this conversation, Keoghs served a Request for Further Information pursuant to CPR Part 18.

60. On 13 July 2020, Mr Robinson answered this request by a Response that:

    i) Confirmed that there were seven occupants in the taxi;

    ii) Confirmed, in like terms to the information provided in the email dated 8 June 2020, that: *"Paul Serle was in the front passenger seat. I was sat in the next row on the*

left hand seat, Craig Froggat (sic) was sat in the middle seat and Martyn Shedwick was sat on the right-hand seat. Finally, in the last row, Alan (sic) Gibson was in the left seat and James Gibson was sat in the right seat";

iii) Identified on the photographs that had previously been provided to First Central the names of the various individuals, namely, himself, James Gibson, Mr Serle, Mr Froggatt, and Mr Shedwick.

61. Mr Robinson added his signature to this Response under a statement of truth that said:

> "I believe that the facts stated in this Part 18 response are true … I understand that proceedings for contempt of court may be brought against anyone who 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."

62. This statement is the second of the statements the subject matter of the Application in respect of which Mr Murphy contends that Mr Robinson made the same knowing that they were not true.

63. On or about 20 August 2020, Mr Murphy served a Defence and Counterclaim in the present proceedings alleging, in essence, that Mr Robinson had fraudulently made false statements in support of James Gibson's claim, including by the Part 18 Statement, and that that provided a basis for applying to strike out the present claim pursuant to s. 57 of the Criminal Justice and Courts Act 2015. The Counterclaim sought to recover the interim payments of £3,200 on account of damages and £816 on account of costs paid to Mr Robinson, i.e., the damages and costs (totalling £3,916) paid to James Gibson, and exemplary damages of £4,125. The dashcam footage was provided to Mrs Cobham as an attachment to an email sent to her on 20 August 2020 at 14:58.

64. A further telephone conversation took place between Mr Wilson and Mrs Cobham on 20 August 2020. Mr Wilson's note of this conversation records Mrs Cobham having stated that she had looked over the Defence and the dashcam footage, and her commenting that whilst the latter was fuzzy, it showed what needed to be shown. Mr Wilson's note records Mrs Cobham as having accused Mr Wilson of being dishonest in not informing them about the dashcam footage. The note further records Mrs Cobham having stated that she had spoken to Mr Robinson and: *"he was on a 'bender' he was drunk and didn't know and has relied on what his friends have said and he has been hoodwinked by them."* Mr Wilson is recorded as having responded that this was the first that Mr Robinson had mentioned any of this and that there had been no ambiguity until then. No file note by Mrs Cobham of this discussion has been provided.

65. Paragraphs 9 to 12 of Mrs Cobham's affidavit suggests that it was in response to Mr Wilson's letter dated 5 June 2020 that she rang Mr Robinson and that she was informed by him that he was *"very drunk at the time of the accident"*, but her affidavit does seem to elide the circumstances behind responding to the letter dated 5 June 2020 with responding to the CPR Part 18 request and subsequent events. Unfortunately, as Mrs Cobham did not attend to be cross-examined on her affidavit, it has not been possible to clarify her evidence on this point.

66. In her paragraph 39 of her affidavit, Mrs Cobham states that after the dashcam footage was obtained and reviewed, she contacted Mr Robinson immediately and that he was: *"in disbelief at finding out that there was indeed only five passenger (sic) plus the driver."*

67. In his affidavit, Mr Robinson says that he rang James Gibson immediately upon reviewing the dashcam footage, and that James Gibson admitted that he was not in the taxi, as he had left to meet his girlfriend from the Wainwrights' Inn and met up with the rest of the group in Ambleside later, as shown by the photographs. Mr Robinson says that he told him that he would need to repay the damages back immediately, and that he would no longer be acting for him. He says that he has not spoken to James Gibson about the matter since.

68. For his part, in paragraph 27 of his affidavit, James Gibson says that he gave Mr Robinson no reason to believe that he was not involved in the accident, and in paragraph 29 of his affidavit, James Gibson says that he received a very irate call from Mr Robinson when Mr Robinson had seen the dashcam footage. As he put it: "*He was very angry and told me that I would have to repay the money quickly and that he could no longer act for me."*

69. On 7 October 2020, Mr Robinson served a Reply and Defence to Counterclaim responding to the allegations in the Defence and Counterclaim that he had been dishonest as alleged as referred to above. At paragraph 5 thereof, Mr Robinson pleaded as follows:

> As to paragraphs 7, 8 and 9 of the Defence and Counterclaim, the Claimant will say that at the time of the accident CNF on 9th December 2019, the Claimant had an honest belief that that there were 7 occupants in the minicab at the time of the accident. It is denied in its entirety that the Claimant was dishonest when the CNF was submitted. The Claimant will admit on the day of the accident he had been drinking alcohol for a period of approximately 12 hours and <u>was extremely intoxicated at the time of the accident. Whilst the Claimant recalls being involved in an accident he was unable to even recall his position in the vehicle at the time of the accident.</u> The Claimant has relied on the other passengers to confirm their positioning within the vehicle at the time of the accident and the Claimant has no reason to doubt the presence of James Gibson being the 7th occupant. Furthermore, the Claimant has photographic evidence following the accident of James Gibson shortly after the index accident, which corroborated his presence in the vehicle at the time of the index accident." [Emphasis added].

70. On 26 November 2020, James Gibson was joined as a Part 20 Defendant in the present proceedings by Mr Murphy, Mr Murphy seeking to recover from him the sums paid to him in settlement of his claim and exemplary damages. On 27 February 2021, James Gibson filed and admission of a debt of £5,916. On 15 March 2021, Allan Gibson, on behalf of his son, sent a cheque for this amount to Keoghs, which cheque was cashed on 30 March 2021.

71. In paragraph 7 et seq of his affidavit, Allan Gibson refers to having contacted Mr Wilson about paying the sum claimed by Mr Murphy on behalf of his son. He says that he felt that Mr Wilson, in the course of the relevant conversation, had tried to coerce him into saying that Mr Robinson knew that James Gibson was not in the taxi at the time of the accident. He said in paragraph 8 of his affidavit that he believed that Mr Robinson genuinely

believed that James Gibson was in the taxi at the time of the accident, and at paragraph 9 of his affidavit that he reiterated the point to Mr Wilson on a number of occasions, to the point where he became annoyed at Mr Wilson trying to force the issue. I do not recall this being specifically put to Mr Wilson in cross-examination.

72. At a Case Management Conference on 5 October 2021, judgment was entered against James Gibson for the sum of £5,916, together with costs to be assessed if not agreed.

73. Mr Robinson subsequently made a witness statement dated 12 January 2022 in the present proceedings. In paragraphs 51-56 thereof, he said the following:

> " 51 When I received these requests, l wasn't sure exactly where I was sitting in the vehicle.
>
> 52 I remember that I was sitting in the second row but I initially thought I was sat in the middle seat.
>
> 53 I messaged Craig Froggatt who confirmed the positioning of the second row, see exhibit 'DR3'.
>
> 54 Even though he told me I was sitting on the left I just could not say where I or anyone else was sat other than Paul as I do recall he was sat in the front next to the driver.
>
> 55 l completed the Part l8's with this information believing that the seating position was correct.
>
> 56. When the CCTV footage was forwarded to my solicitor, she rang me and explained that there were only 5 passengers and not 6, I was genuinely shocked by this as I had a genuine belief that we had all spent the whole day together. l was aware that l had taken photographs of us all together in Ambleside, thinking we had all made the journey in the same taxi from the Wainwrights Inn, it was a genuine mistake."

74. The claim was listed for trial on 19 May 2022, but matters were compromised before the commencement of the trial with Mr Robinson being given permission to discontinue his claim. Mr Robinson repaid interim payments of £4,016 plus interest of £8.70. Judgment was entered on the counterclaim for £8,041 plus interest of £20.10, a total of £8,061.10, to be paid by 2 June 2022. Further, Mr Robinson agreed to pay Mr Murphy's costs of the claim and counterclaim on the indemnity basis in an agreed amount of £20,184, Mr Robinson agreeing to waive the right to QOCS protection. The relevant amounts were subsequently paid by Mr Robinson.

75. The Application was subsequently issued on 8 March 2023.

The correct approach to be taken by the Court

76. The procedural basis for the application is CPR 32.14, which provides that:

> "Proceedings for contempt of court may be brought against a person who makes or causes to be made a false statement in a document, prepared in anticipation of or during proceedings and verified by a statement of truth, without an honest belief in its truth."

77. CPR 32.14 does not create a new form of contempt, but simply draws attention to a particular aspect of the wider principle that it is a contempt of court to engage in any conduct which involves an interference with the due administration of justice in a particular case – see *AG v Leveller Magazine Ltd* [1979] AC 440, per Lord Diplock. Hence the requirement that Mr Murphy should prove to the requisite standard not only that Mr Robinson knew at the time that they were made that the statements that he made were untrue, but also, which is not in issue in the present case if the latter is proved to the requisite standard, that the statements would have been likely to have interfered with the course of justice in some material respect, and that Mr Robinson knew at the time that he made the statements of the likelihood to interfere with the course of justice – see the notes in the White Book 2024 at 81CC.10.

78. In *Norman v Adler* (supra), Thirlwall LJ, at [37], applied with approval a passage from the judgment of Sir Richard Scott VC in *Malgar Ltd v R E Leach (Engineering) Ltd* [2000] FSR 393 at 396, which had previously been approved by the Court of Appeal in *KJM Superbikes* [2009] 1 WLR 2406:

> "The general law of contempt is that actions done by an individual which interfere with the course of justice or which attempt to interfere with the course of justice are capable of constituting contempt of court. In order for the individual who has done acts which fall into that category to be liable for contempt, an appropriate state of mind of the individual must be shown . . . The difficulty lies in knowing quite what the mental state on the part of the accused has to be shown. But I would think that it must in every case be shown that the individual knew that what he was saying was false and that his false statement was likely to interfere with the course of justice."

79. It is trite that allegations that require to be proved in contempt proceedings require to be proved to the criminal standard, that is beyond all reasonable doubt, or as a jury might be directed, I must be satisfied so that I am sure that the allegations that require to be proved have been proved by Mr Murphy - i.e., in the present case, that Mr Robinson knew that the statements that he made were not true – see e.g. *JSC BTA Bank v Ablyazov* [2012] EWCA Civ 1411, [2013] 1 WLR 1331. The burden is therefore fairly and squarely on Mr Murphy to satisfy me, beyond all reasonable doubt, i.e. so that I can be satisfied so that I am sure, that Mr Robinson knew that the statements of truth were false when he signed them.

80. I note that in *Norman v Adler* (supra), Thirlwall LJ, at [63], made the following observations:

> "I would add that absent an admission or compelling documentation it may be difficult to prove the mental element in contempt to the criminal standard. In *Kabushiki Kaisha Sony Computer Entertainment Inc (trading as Sony*

> *Computer Entertainment Inc) v Ball* [2004] EWHC 1192 (Ch) Pumfrey J gave permission only in respect of matters which had been admitted. In *KJM Superbikes* this court overturned the decision below and gave permission in the light of admissions from the witness that he had lied in the proceedings. In *Kirk v Walton* [2009] 1 All ER 257 Cox J gave permission in the light of compelling evidence that the alleged contemnor knew she was making false statements when she made them, and the purpose of the statements (to increase the award of damages) was clear but even in that case only a very few of the allegations were found proved at the hearing of the application by Coulson J *Walton v Kirk* [2009] EWHC 703 (QB)."

81. Mr Murphy's case that Mr Robinson lacked an honest belief in the truth of the relevant statements is based on the inferences as to his state of mind which, so it is submitted by Mr Kennedy KC on his behalf, it is appropriate for the court to draw from the evidence. It is submitted that these inferences reflect the inevitable position (even absent an admission) regarding Mr Robinson's state of mind, that is that he lacked an honest belief in the truth of the relevant statements.

82. Mr Kennedy KC referred me to the observations of Teare J. in *JSC BTA Bank v Ablyazov* [2012] EWHC 237 (Comm) at [8]-[9] as identifying what he submits is the proper approach to the drawing of such inferences in a criminal or contempt context, and from which he derives the following propositions:

    i) Circumstantial evidence can be relied on;

    ii) However, such evidence must be scrutinised with care to see if it reveals any other circumstances which are or may be of sufficient reliability and strength to weaken or destroy the applicant's case and permit of some other interpretation;

    iii) If more than one inference can *reasonably* be drawn and if one of those inferences is incompatible with a finding of contempt, the case must fail.

    iv) In addition, if after considering any evidence given by the respondent to explain what has happened, the court is of the view that the explanation is <u>or may be</u> true, then the application for contempt must fail.

83. Mr Kennedy further refers me to and relies upon the decision of the Court of Appeal, on appeal from Teare J, in *JSC BTA Bank v Ablyazov (No.8)* [2012] EWCA Civ 1411, [2013] 1 WLR 1331. At [52], Rix LJ observed that the essence of a successful case of circumstantial evidence is that the whole is stronger than the individual parts such that it becomes a net from which there is no escape. In this passage Rix LJ referred to the observations of Lord Simon of Glaisdale in *R v Kilbourne* [1973] AC 729 at 758 that *"Circumstantial evidence … works by cumulatively, in geometrical progression, eliminating other possibilities"*, before referring to how the point was put by Dawson J in the High Court of Australia in *Shepherd v The Queen* (1990) 170 CLR 573, at 579–580, namely:

> "the prosecution bears the burden of proving all the elements of the crime beyond reasonable doubt. That means that the essential ingredients of each element must be so proved. It does not mean that every fact—every piece of evidence—relied upon to prove an element by inference must itself be proved beyond reasonable doubt. Intent, for example, is, save for statutory exceptions, an element of every crime. It is something which, apart from admissions, must be proved by inference. But the jury may quite properly draw the necessary inference having regard to the whole of the evidence, whether or not each individual piece of evidence relied upon is proved beyond reasonable doubt, provided they reach their conclusion upon the criminal standard of proof. Indeed, the probative force of a mass of evidence may be cumulative, making it pointless to consider the degree of probability of each item of evidence separately."

84. I note that on the question of inferences in a committal context, the Court of Appeal has very recently, in *Navigator Equites Ltd v Deripaska (No. 2)* [2024] EWCA Civ 265 at [47] per Males LJ, endorsed the observation of Christopher Clarke J (as he then was) in *Masri v. Consolidated Contractors International Company SAL* [2011] EWHC 1024 (Comm) at [145] that whilst it is open to a court to draw inferences from primary facts which have been proved, a court may not infer the existence of an essential element, unless the inference is one that no reasonable person would fail to draw.

85. So far as drawing inferences in the present case is concerned, a relevant consideration is, I consider, that there is authority to the effect that courts ought generally to proceed on the basis of there being an inherent improbability of a professional person, such as Mr Robinson, acting dishonestly – see *Three Rivers District Council v Bank of England* [2001] UKHL 16 at [182], and *Attorney General of Zambia v Meer Care & Desai* [2008] EWCA Civ 1007, at [283]-[284] and [292]. This means that more convincing evidence may, dependent upon the context, be required before a court can safely be sure that a professional has acted dishonestly.

86. The events in question took place over four years ago now. Particularly, perhaps, in the context of the present committal application, where the Court is concerned with the criminal standard of proof, I consider that I must have regard to the much repeated observations of Leggatt J (as he then was) in *Gestmin SGPS S.A. v Credit Suisse Limited* [2013] EWHC 3560 (Comm) at [15] – [22] with regard to the unreliability of memory, and his caution to place limited, if any, weight on witnesses' recollections, and to base factual findings on inferences drawn from the documentary evidence and known or probable facts. Leggatt J described the process by which memories might become distorted by the passage of time as a witness subconsciously reconstructs events in their own mind leading to the giving of honestly held, but false evidence. This is something that I bear in mind in considering, in particular, the evidence of Mr Robinson.

87. Further, it is, I consider, necessary to have regard to the observations of Arden LJ (as she then was) in *Re Mumtaz Properties Ltd* [2012] 2 BCLC 109 at [12] and [14] to the effect that it is necessary for a fact finding judge to act with caution before attaching undue weight to the impression that a witness might give in the witness box, or his or her *"demeanour"*, and that what is said in the witness box requires to be tested against other evidence, and in particular contemporaneous documentary evidence.

Affidavits of witnesses who did not attend for cross-examination

88. As I have said, none of those who have made affidavits for the purposes of the Application, apart from Mr Gibson and Mr Robinson attended for cross-examination.

89. Mr Kennedy KC, on behalf of Mr Murphy, accepts that the court has a discretion in contempt proceedings to admit the evidence in deployed affidavits as hearsay evidence and that a flexible approach is appropriate - see *Daltel Europe v Makki* [2006] 1 WLR. 2704, and the discussion at [52] to [59], per Lloyd LJ, in particular at [56] – [57]. He did not seek to persuade me that I should not admit the affidavits in evidence because the deponents had not attended for cross-examination. However, Mr Kennedy KC submits that the question as the weight to be given to evidence where witnesses have not attended to give oral evidence and to be cross-examined is a separate one, and he submits that little or no weight can be accorded to such evidence, save where it is uncontroversial. Further, he goes on to submit that I should draw adverse inferences against Mr Robinson, and the witnesses in question, from the fact that they did not attend for cross-examination.

90. Although quite possibly academic given the ability of the court to deal with hearsay evidence in a flexible way, the affidavits in question are not, as I see it, strictly speaking to be properly considered to be hearsay evidence given that they are sworn statements by the makers thereof. However, the value of the affidavits is, clearly, potentially qualified by the fact that the makers thereof have not attended for cross-examination in order that their evidence can be tested thereby.

91. In appropriate circumstances, adverse inferences can be drawn against a respondent to a committal application from the fact that a deponent does not attend for cross-examination – see *Discovery Land Company LLC v Jirehouse* [2019] EWHC 1633 (Ch), at [28]-[29], per Henry Carr J. So far as the approach of the Court when asked to draw adverse inferences is concerned, I consider that there are certain analogies to be drawn with the approach to be adopted where adverse inferences are sought to be drawn where a party fails to call a particular witness who might have been expected to help their case as considered by Lord Leggatt in *Efobi v Royal Mail Group Ltd* [2021] UKSC 33, [2021] 1 WLR 3863, at [41], where he said:

> "So far as possible, tribunals should be free to draw, or to decline to draw, inferences from the facts of the case before them using their common sense without the need to consult law books when doing so. Whether any positive significance should be attached to the fact that a person has not given evidence depends entirely on the context and particular circumstances. Relevant considerations will naturally include such matters as whether the witness was available to give evidence, what relevant evidence it is reasonable to expect that the witness would have been able to give, what other relevant evidence there was bearing on the point(s) on which the witness could potentially have given relevant evidence, and the significance of those points in the context of the case as a whole. All these matters are inter-related and how these and any other relevant considerations should be assessed cannot be encapsulated in a set of legal rules."

92. Perhaps the most significant parts of the evidence of the deponents who did not attend for cross-examination were the following parts of their affidavits:

i) James Gibson:

a) Paragraph 29, where he said: *"I received a very irate call from Mr Robinson when he saw the CCTV. He was very angry and told me that I would have to repay the money quickly and that he could no longer act for me."*

b) Paragraph 36, where he said: *"I believe that Darrell did not know that my claim was fraudulent."*

ii) Allan Gibson:

a) Paragraph 8, where he said: *"I believe that Mr Robinson genuinely believed that James Gibson was in the vehicle at the time of the accident."*

b) Paragraphs 9 and 10, where he describes his conversation with Mr Wilson of Keoghs and reiterating to the latter the matters referred to in paragraph 8.

iii) Mr Serle:

a) Paragraph 17 where he said: *"James Gibson was with us earlier in the morning and later in the evening, so I had no reason to believe that he was not telling the truth"*, i.e. when indicating to Mr Serle that he had been in the taxi in the circumstances referred to in paragraphs 13 and 14.

b) Paragraphs 18 and 19 when he said that he did not know that James Gibson was involved in the accident, and that he did not believe that Mr Robinson did either.

iv) Mrs Cobham:

a) Paragraph 12 where she refers to Mr Robinson providing an explanation to her once the issue had been raised by First Central and Keoghs.

b) Paragraph 39 where she described Mr Robinson as having been *"in disbelief"* at finding, on production of the dashcam, that there were only 5 passengers and not 6.

93. No explanation was offered on behalf of Mr Robinson as to why these witnesses had not appeared, save that reference was made to Mrs Cobham having to take time out of the office, and in the case of Mr Gibson, I made the point that he had been served with a witness summons (issued on 28 December 2023 and requiring his attendance 22 February 2024) and had not answered to this. This indicated to me that Mr Robinson had wanted him to attend to give oral evidence, and therefore to be cross-examined. None of the other witnesses were, I was told, served with a witness summons.

94. Mr Kennedy KC made the point that there were important matters relating to Mr Robinson's defence to the Application that could have been tested had the relevant witnesses attended for cross-examination, and that I should draw adverse inferences in relation thereto from the fact that the relevant witnesses did not attend to give oral

evidence. Thus, in the case of James Gibson, there is no evidence of any conversations between Mr Robinson and James Gibson until the alleged irate phone call after the dashcam evidence had been disclosed. It is submitted that James Gibson could have been asked about his communications with Mr Robinson, and how he came to authorise Mr Robinson to proceed with his claim given that he now admits that he was not in the taxi, something which he could not be sure that Mr Robinson did not know. Mr Murphy (and the Court) were thus, it is submitted, deprived of the opportunity of exploring these and other issues with James Gibson.

95. Similarly in relation to Mr Serle and Allan Gibson, with whom it would have been possible to explore, amongst other things, the basis for their stated belief as to Mr Robinson's state of knowledge, as well as their own state of knowledge. It is said to be particularly odd that Allan Gibson did not attend to support Mr Robinson in this way bearing in mind their friendship that went back many years.

96. Likewise, Mrs Cobham who could have been tested, amongst other things, on the basis for her statement that Mr Robinson was *"in disbelief"* at finding, on production of the dashcam footage, that there were only 5 passengers in the taxi, and when, and also the circumstances in which Mr Robinson had explained to her that he had been *"extremely intoxicated"* as referred to in paragraph 33 of her affidavit. The point is made that she was, and apparently remains, Mr Robinson's partner in his firm and, as a Solicitor, and that if there was credibility in her evidence on this point, then she might have been expected to attend at the hearing to support Mr Robinson.

97. I consider it important to distinguish between the making of adverse inferences on the one hand, and the weight to be attached to the evidence as contained in affidavits on the other hand, where the relevant opponents are not tendered for cross-examination, albeit that the considerations affecting the same may in some way elide.

98. So far as James Gibson is concerned, I find it difficult to draw any adverse inference as against Mr Robinson from his non-attendance given that the service of a witness summons upon him does demonstrate an intention on Mr Robinson to get him to come to Court so that he could be cross-examined. There might have been little more that Mr Robinson could have done to get him to come to Court, particularly if, as Mr Robinson contends, he has not spoken to James Gibson since the alleged irate telephone call. Further, as Mr Boyle points out, one can understand why James Gibson might not have been willing to attend a hearing to be cross-examined bearing in mind his admission that he had made a false claim, and for that reason I consider that I must be careful about drawing adverse inferences against him, or rather as to the reliability of his evidence in his affidavit simply through his non-attendance.

99. So far as weight is concerned, one does have the fact that James Gibson has demonstrated a propensity to dishonesty by the making of a false claim. Further, the fact that he has not been cross-examined on his witness statement necessarily means that it must carry less weight than it would have done had he been cross-examined and stood up to cross-examination. On the other hand, there is no obvious reason why James Gibson would, after the event, have had the ingenuity to make up a false story about the alleged irate telephone call which does, I consider, have a ring of truth about it. In short, whilst I consider that I must necessarily give less weight to James Gibson's evidence than I would have done had he attended for cross-examination, I consider that it is evidence that and bound to give

some weight to unless wholly undermined by other inferences to be drawn from the evidence.

100. However, I am concerned about the fact that no explanation has been provided as to why the other deponents did not attend to give oral evidence in support of Mr Robinson, in circumstances in which they might have been expected to do so. It may be that they had concerns about becoming further involved in what was clearly a problematic situation, even if what they were saying was true. However, this was not suggested, and may be unduly speculative. I consider that I should draw some, but limited adverse inferences from the non-attendance of these witnesses to give oral evidence and to factor this into my overall consideration of the evidence. Further, in respect of these witnesses, I agree with Mr Kennedy KC that I ought to attach very limited, if any, weight to what they say. On the other hand, I do not consider that I can wholly ignore their evidence.

101. I note in the case of Mrs Cobham that, as a Solicitor, she solemnly and sincerely swore that the contents of her affidavit were true, opening herself up, in the context of an existing committal application against a lawyer, to a charge not only of contempt, but of perjury. I consider that I am ought to proceed on the basis that she, as a Solicitor, is unlikely to have done so had she not believed in the truth of what she was saying. However, the difficulty remains that it has not proved possible to test the basis, and therefore the evidential significance of what she has said including, for example, her statement that Mr Robinson was *"in disbelief"* following the production of the dashcam footage, and that Mr Robinson had described to her about being *"extremely intoxicated"*.

102. There is the question of a witness statement made by Mr Murphy in the present proceedings on 9 January 2022. As already touched upon, an attempt was made to introduce this more formally in evidence by exhibiting it to an affidavit sworn by Mr Murphy on 22 February 2024, that I declined to allow the latter to be admitted in evidence upon objection being taken by Mr Boyle on behalf of Mr Robinson. Mr Murphy says, in this statement, amongst other things, that there was no indication that any of the passengers in the taxi were inebriated. Again, I do not consider that this is evidence that I should ignore, but I do not consider that it is evidence to which I should attach a great deal of weight given that Mr Murphy was not cross-examined upon it, although, of course, Mr Robinson would have had that opportunity had he not opposed Mr Murphy's affidavit being put into evidence.

Mr Murphy's case as to contempt

103. Mr Kennedy KC, on behalf of Mr Murphy, identifies what he submits are three particularly important considerations concerning context:

i) Mr Robinson has been a legal executive since the 1990s, and at the time of the events in question had been the part owner of his firm, a practice which specialised in claims for personal injury, for over 15 years. He was thus familiar with the process of making personal injury claims.

ii) Mr Robinson clearly knew the importance of a Statement of Truth and accepted that he was responsible for the contents of a document signed by him.

iii) Allan Gibson was a friend of Mr Robinson of long standing, who did not drink a great deal. Mr Robinson accepted in evidence that Allan Gibson would have been

the person to whom he would probably have turned if an issue as to what had occurred had arisen on the night of the accident.

104. Mr Kennedy KC identifies that two propositions underpin Mr Robinson's explanation for his false statements: firstly, that he was too drunk to have his own memory of everyone who was in the vehicle; and secondly, that his admitted failure to make further enquiries to establish what the situation actually was does not permit the court to be sure that he had no honest belief that James Gibson was in the taxi. It is Mr Murphy's case that the weight of the evidence does not permit the latter conclusion, even applying the criminal standard of proof, on the basis that there is too much to explain that is either improbable or beyond improbable.

105. Mr Kennedy KC then highlights a number of specific matters relied upon as showing that it is at least improbable that Mr Robinson had an honest belief in the presence of James Gibson in the taxi at the time of the accident.

106. The specific matters highlighted by Mr Kennedy KC are the following:

Too drunk to remember who was in the taxi

i) Mr Robinson's evidence is that he had a conversation with Mr Murphy at the scene of the accident, and that he had the presence of mind not merely to take pictures of the respective vehicles but also to take a picture of Mr Murphy's details as recorded on the driver's phone. On this basis, Mr Robinson's later suggestion that he was too drunk to remember the various individuals in the taxi is said to be an improbable one.

ii) The description of the accident given to Dr Ballin by Mr Robinson when examined by the latter on 13 February 2020 does not record any mention of drink. To the contrary, as referred to in paragraph 36 above, Mr Robinson gave a fairly detailed description including as to the row in the taxi that he was sitting on, that the taxi had headrests, and that he was looking over his right shoulder at the time of the impact (to where it was subsequently represented by Mr Robinson that James Gibson was sitting). It is submitted that the description given is an unusually precise one for somebody who now says that he was very drunk and cannot remember whether or not James Gibson was with him, and that the level of detail provided renders Mr Robinson's current account that he had no relevant memory improbable. Mr Kennedy KC made a similar point regarding Mr Welsh's letter dated 28 April 2020 referred to in paragraph 49 above in which detail was provided as to the taking of photographs in Ambleside after the accident, and exchanges with the taxi driver, including assistance provided to the latter.

iii) Whilst the contents of Mr Robinson's affidavit might be taken to suggest that he spoke to all of his friends the following morning regarding the accident, in oral evidence he said that it was only *"possible"* that he had spoken to all of them. Mr Kennedy KC relies upon the fact that it was common ground that Mr Robinson had a number of conversations about the accident with other occupants of the taxi on the morning after it happened. It is submitted that it is highly improbable that the fact that James Gibson was not in the taxi did not come up during those conversations, particularly given that Allan Gibson would have been relatively sober.

iv) As referred to above, it was Mr Robinson's oral evidence that the only person he could not remember as having been in the taxi was James Gibson. Mr Kennedy KC submits that it is improbable that, this being the case, when he was telephoned the following day by Mr Serle with details of those making a claim, that he did not mention this fact.

v) Mr Kennedy KC refers to the fact that Mr Robinson accepted that he must have spoken to James Gibson whilst handling his claim, and that it is Mr Robinson's case that James Gibson had been misleading him from an early stage about his presence in the taxi. It is submitted that the latter does not hold water for the following reasons:

a) James Gibson was a friend of Mr Robinson so it is improbable that he would lie to him about something as important as this;

b) Mr Robinson was actually in the taxi and James Gibson had no means of ascertaining what Mr Robinson did or did not remember about who else was there. From James Gibson's perspective it would be very likely that Mr Robinson actually knew that he was not a passenger and therefore that lying to him would be pointless;

c) There were four other friends in the taxi, including Allan Gibson, who all would have their own memories of who was and was not there. In the case of Allan Gibson, that memory would not have been clouded by alcohol. If Mr Robinson was unsure about James Gibson's presence, he only had to ask one of these for confirmation;

d) It is submitted that it is not credible that James Gibson would have pursued his claim unless he knew that the fact that he was not in the taxi was something Mr Robinson knew and was comfortable with.

Failure to make enquiries

vi) It is said that Mr Robinson was on notice that the claims had taken an unusual course as early as 30 March 2020 as evidenced by his email dated 31 March 2020, and that it is remarkable that Mr Robinson made no enquiries of his friends at that stage. Mr Kennedy KC submits that such failure is only explicable on the basis that Mr Robinson knew what the true situation was, namely that James Gibson was not in the vehicle, but did not know that Mr Murphy would be able to show by the dashcam footage that James Gibson was not in the taxi.

vii) As referred to above, First Central wrote on 30 March 2020 withdrawing all previous offers, and on 14 April 2020 wrote advising that occupancy was in issue, that the court would have to consider whether this was a *"phantom passenger"* claim, and that Keoghs would be instructed. Mr Kennedy KC submits that whilst Mr Robinson accepts that he would have seen certain at least of this correspondence *"at some point"* it is highly probable that he would have seen it all shortly after given his involvement in the claim, and in particular in acting for Mr Serle in relation to his claim. Mr Kennedy KC submits that, in his oral evidence, Mr Robinson appeared to suggest that if he had seen the letter dated 14 April 2020, he would have consulted his friends, but did not do so at the time. It is submitted that

this is not credible and that Mr Robinson's failure to make enquiries can, again, only be explained by his knowing what the answers to the enquiries would be.

viii) Mr Kennedy KC relies on Mr Robinson having stated in his evidence that he would not have questioned any of his friends until he had evidence concerning occupancy, as they had been friends for 20 years. It is submitted that this does not explain his failure to inform them of what was going on and to discuss it with them, particularly given that they were clients who were friends.

ix) Mr Kennedy KC refers to the enquiry made of Mr Froggatt after receipt of Keoghs' letter dated 5 June 2020, and prior to Mrs Cobham sending the email reply dated 8 June 2020, regarding who was sitting where in the middle seat of the taxi. The point is taken that Mr Robinson did not make any similar contact to establish who was sitting at the back of the taxi, and where they were. It is submitted that this is not consistent with his current case on the basis that if he did not know who was where in the back row, he would have made a similar enquiry. It is therefore submitted that the only inference to be drawn is that Mr Robinson did not do so because he knew who was and who was not in the back seat.

x) Mr Kennedy KC takes the further point that there was no reference to Mr Robinson's material recollection being affected by drink in Mrs Cobham's email response dated 8 June 2020. It is submitted that, in the context of the enquiry made, it is improbable that this would not have been raised if in fact it were the case. The point is made that the first reference to intoxication is in the exchange between Mr Wilson and Mrs Cobham on 20 August 2020.

xi) The point is taken that the first time that Mr Robinson suggested that he had identified James Gibson's location in the taxi by checking his medical report on his file was in his affidavit made in July 2023. It is submitted that this explanation does not make sense for two reasons:

    a) The account given by James Gibson to Dr Ballin is less definite than the answer provided to Keoghs - *"towards the rear behind the driver"*, compared to *"in the third row in the right-hand seat"*.

    b) As a means of corroborating whether James Gibson was in the vehicle, it is pointless on the basis that if James Gibson was the phantom passenger, then he would not have told Dr Ballin that.

    It is submitted that the court can be sure that if Mr Robinson had had any doubt as to whether or not Mr Gibson was in the vehicle, he would have made further enquiries at this stage at least, particularly given his evidence that James Gibson was the one passenger about whom he did not have an independent recollection, and that he had ready access to friends who could assist him.

xii) Mr Kennedy KC submits that the points referred to in the previous sub-paragraph regarding the response to Keoghs letter dated 5 June 2020 apply with even greater force with regard to the response to the Request for Further Information given Mr Robinson's legal experience and clear understanding of the consequences of signing a statement of truth. It is submitted that Mr Robinson would have checked

if he did not know what the situation was, and that the absence of relevant enquiries at any stage undermines Mr Robinson's case.

xiii) The point is taken that Mr Robinson did not, in his response to the Request for Further Information, say that he was intoxicated. Mr Kennedy KC points out that he did say that he was intoxicated in his Reply and Defence to Counterclaim as referred to in paragraph 87 above, but Mr Kennedy KC submits that the latter is misleading because Mr Robinson pleaded therein that he relied on other passengers to confirm their positions in the vehicle, when he only spoke to Mr Froggatt, and because he pleaded that he had no reason to doubt the presence of James Gibson in the vehicle. The latter is said not to be so, as Mr Robinson had no independent recollection of James Gibson being in the taxi.

107. Mr Kennedy KC submits that certain of the matters referred to in the previous paragraph are, on their own, so improbable as to enable the court to be sure that honest belief on the part of Mr Robinson in respect of the relevant statements of truth did not exist, but that, in any event, taken together the weight of them is unanswerable. They provide, as Rix LJ put it in *JSC BTA Bank v Ablyazov (No.8)* (supra) at [52], the net from which there is no escape. On this basis, it is submitted on behalf of Mr Murphy that the only reasonable inference to be drawn from the evidence is that Mr Robinson had no honest belief as to the presence of James Gibson in the taxi, and therefore I can be sure that that was the case. On this basis the case of contempt against Mr Robinson has been proved to the criminal standard.

Mr Robinson's case

108. Mr Robinson's case, in short, is that at all relevant times he believed that James Gibson had been in the taxi at the time of the accident, and therefore that in making the relevant statements he did so in the honest belief that they were true because Mr Robinson did believe that James Gibson had been in the taxi at the time of the accident. So far as this belief is concerned, it is his case that it was based upon his recollection of events after a boozy night out reconstructed with the assistance of photographs showing the party, including James Gibson, in Ambleside shortly after the time of the accident, and the fact that James Gibson indicated that he had been in the taxi, and came forward to make a claim in circumstances in which, even though he could not specifically recall James Gibson being in the taxi at the relevant time, Mr Robinson had no reason to doubt that that he had been.

109. He says that the individuals in question were his friends, and he had no reason not to trust them in respect of the claims that they were making until the dashcam footage emerged. When the dashcam footage did emerge, he was, as Mrs Cobham put it, genuinely in disbelief that there were only five passengers in the taxi, and he promptly contacted James Gibson and had an irate conversation with him along the lines described by James Gibson, which can only have been consistent with Mr Robinson believing, until then, that James Gibson had been in the taxi.

110. In closing submissions, Mr Boyle posed the question: *"How does it feel to be wrong?"* I understood the point that he sought to make to be that where one becomes convinced as to a particular state of affairs, then it is difficult to accept that one is wrong, and that the exchanges with First Central and Keoghs until the dashcam footage emerged are to be read and considered in that context, even though it should subsequently emerge through the production of the dashcam footage that Mr Robinson was wrong with regard to James Gibson's presence in the taxi.

111. Mr Boyle made the point that the *"History"* concerning the accident as contained in the medical reports prepared by Dr Ballin in respect of James Gibson and Mr Robinson has to be read in the context that medical reports like these tend to adopt a standard format, and that it can be seen that the *"History"* as contained in Mr Robinson's report adopts much of the description of the accident (including certain features of the taxi) that had been included in James Gibson's report.

112. It is therefore submitted that in view of the credible and reasonable explanation of events that has been provided by Mr Robinson, it is simply impossible to draw the necessary inferences that Mr Murphy invites the Court to draw, and that Mr Murphy has not proved his case on a proper application of the criminal standard of proof.

Determination

113. A starting point is, I consider, the inherent improbability of a professional person such as Mr Robinson, an experienced legal executive, acting dishonestly that I have identified in paragraph 85 above with the result that stronger, or more convincing evidence may be required to make out a case against the latter, in particular where the case is based on inference. This does not, of course, mean that a professional person such as Mr Robinson is not open to acting dishonestly, but there is no suggestion that Mr Robinson has anything but an unblemished professional career, or is otherwise than of previous good character. I consider this inherent improbability to be at least a material consideration in a case such as the present where Mr Robinson had little, if anything, to gain from lending his name to a false low value claim, and a great deal to lose by doing so, including potentially losing his career and his liberty. When I put this to Mr Kennedy KC in submissions, he suggested that I should view this consideration against what might have been perceived by Mr Robinson to be the limited risk involved in including James Gibson as a false claimant if he had not factored in the possibility of Mr Murphy's insurers obtaining the dashcam footage. I take this consideration into account.

114. I must necessarily take into account Mr Robinson's performance and demeanour as a live witness, although for the reasons identified in paragraph 87 above, I ought not to attach undue weight to the same. So far as his live evidence was concerned, I have had concerns regarding the vagueness of a number of Mr Robinson's answers under cross-examination. Particular instances of concern have included his account of events on the Sunday after the accident, his attempts to explain inconsistencies between his actions at the time and his subsequent contention that he had been intoxicated, and his answers in respect of the correspondence that took place in March and April 2020. I consider that a number of his answers under cross-examination are capable at least of being construed as being evasive.

115. So far as the latter correspondence is concerned, a particular concern is that Mr Robinson sought to suggest that he had not contemporaneously seen the same, and that Mr Welsh of his firm had been dealing with it. However, this is inconsistent with the contents of the letter dated 28 April 2020 referred to in paragraph 49 above sent by Mr Welsh responding to earlier correspondence, the contents of which must have required Mr Robinson's input regarding Ambleside, photographs and engagement with the taxi driver. This correspondence therefore serves potentially to undermine Mr Robinson's evidence that if he had been aware of the correspondence at the time, then he would have taken up the issues raised thereby with his friends when we know that he did not do so, an issue to which I will return. However, the letter dated 28 April 2020 was not produced until after the

hearing on 22 February 2024, and therefore Mr Robinson was not cross-examined upon it and thereby given the opportunity to explain the position, and I must take this into account.

116. Ultimately, I am inclined to the view that the imperfections in Mr Robinson's evidence that I have so far identified are more readily explicable on the basis of a genuine inability to clearly recall events after the passage of time, and/or a subconscious reconstruction of events in Mr Robinson's mind as he has grappled with what is, on any view, the difficult position that he finds himself in. Certainly, Mr Robinson did not come across to me as an obviously evasive or dishonest witness attempting to mislead the Court.

117. James Gibson is clearly an important character for present purposes. However, he is, on his own admission, somebody was prepared to make a false claim to claim a comparatively small sum of money in circumstances in which, so he says in his affidavit, he was in need of money. If he was prepared to deceive the Court, Dr Ballin and Mr Murphy's insurers in the way that he did, then he was at least capable of deceiving Mr Robinson. It is, I consider, an important consideration that James Gibson was some years younger than Mr Robinson, and that such friendship as Mr Robinson had with James Gibson really came about through his much closer friendship with his father, Allan Gibson. Whilst attaching very limited weight to his evidence, I do note that whilst Allan Gibson says, in fairly clear terms, in his affidavit that Mr Robinson was not aware of the false claim, and that this was something that he sought to disabuse Mr Wilson of, he is conspicuously silent as to what he contemporaneously knew about James Gibson's false claim.

118. It is, I consider, important to identify the key threads of Mr Robinson's case and evidence, and to consider how the same, if true, might fit in with the various key matters relied upon by Mr Kennedy KC, and the contemporaneous documentation.

119. As I have identified, Mr Robinson's case is that he cannot specifically recall James Gibson as having been in the taxi at the time of the accident, and that until the dashcam footage emerged, he believed that James Gibson had been in taxi with the others because he recalls James Gibson as being with the rest of the party at other stages of the evening, as evidenced by the photographs of James Gibson being with the rest of the party in Ambleside, and because James Gibson came forward to make a claim as if he had been in the taxi without anybody suggesting that he had not been in the taxi. As to the latter, Mr Robinson's oral evidence, in contrast to how he had put it in his affidavit, was that he could not specifically recall who he spoke to on Sunday after the accident, and that it was Mr Serle communicating the names to him on the Monday that led him to act for them all in bringing the claims that were brought. Thus, at the time that Mr Murphy's insurers began to question whether all six claimants had been in the taxi, and first raised the spectre of a phantom passenger, Mr Robinson's mindset was, on his case, that all six of them had been present in the taxi and that he had no reason to question or doubt the integrity of any of his friends, and that he did not question their integrity until the dashcam footage emerged.

120. The letter sent to First Central on 28 April 2020 does, as I see it, cut two ways. As I have said, I consider that it undermines Mr Robinson's case that he was not contemporaneously aware of the details of the correspondence being received from First Central in March and April 2020. Further, there is the point made by Mr Kennedy KC about the level of detail being inconsistent with intoxication at the time of the accident, a point to which I shall return. On the other hand, the contents of the letter does lend some support Mr Robinson's case as to his mindset at the relevant time that all six had been together at the relevant time

as evidenced by the photographs taken in Ambleside, hence the surprise expressed as to First Central's questioning of the position.

121. It is, I consider, a relevant consideration that the country went into lockdown in late March 2020. This did not, of course, prevent Mr Robinson from contacting his friends at the time that important correspondence was received in March and April 2020, but the imposition of lockdown no doubt created difficulties for Mr Robinson's practice that required to be dealt with, and limited the social contact the Mr Robinson might otherwise have had with his friends. This is not a point that was raised by Mr Robinson or by Mr Boyle on his behalf. However, I do consider it to be a factor that I cannot ignore in my overall assessment of the evidence.

122. I turn to consider the significance of the principal matters submitted by Mr Kennedy KC to give rise to an inevitable inference that Mr Robinson was aware that the relevant statements were false in the light of the considerations, including the above.

123. There is not inconsiderable force on the point that there is an inconsistency between Mr Robinson's actions on getting out of the taxi immediately after the accident and his engagement with the situation following the accident, the detail that he may have provided to Dr Ballin for the purposes of preparing his report, and the contents of the letter dated 28 April 2020 on the one hand, and what was subsequently said by Mrs Cobham to Mr Wilson on 20 August 2020, and by Mr Robinson himself in his Reply and Defence to Counterclaim and witness statement dated 12 January 2022, and also in his affidavit, about being unable to recall matters because he was intoxicated. A similar point might be made about Mr Robinson's WhatsApp messages with Mr Froggatt on 8 June 2020, where he was able to recall who had been sitting on the middle row, albeit being unsure as to who was sitting where on that row.

124. However, it is, I consider possible to read too much into these inconsistencies. There are certain instinctive steps that a lawyer might have been expected to take following an accident regarding photographs and obtaining driver details, even if having had a not inconsiderable number of drinks, and to do so without appearing noticeably drunk. Mr Boyle makes, I consider, a fair point in relation to the *"History"* in the medical reports to the effect that much of it is standard stuff, with little particular individual detail. There is the reference to Mr Robinson looking over his shoulder, but one has to ask how reliable this is. As Mr Boyle suggested, it is perhaps understandable why Mr Robinson might not have mentioned that he had been drinking to Dr Ballin and subsequently in correspondence with First Central and Keoghs for fear of prejudicing his claim. Again, the letter dated 28 April 2020 is not particularly detailed in the information that it provides. Ditto the recollection evidenced in the WhatsApp exchanges with Mr Froggatt on 8 June 2020.

125. I consider a further consideration to be that even if Mr Robinson was not particularly intoxicated at the time of the accident, he continued to drink for several hours thereafter so as to cloud, or further cloud, his recollection of events at the time of the accident. To the extent that there is any inconsistency between the matters relied upon by Mr Murphy, and that which Mr Robinson subsequently said, for example in his Reply and Defence to Counterclaim, then I am inclined to think that Mr Robinson has subsequently exaggerated his level of intoxication at the time of the accident, not necessarily deliberately so, but more likely as he has sought to rationalise in the light of the disclosure of the dashcam footage why he cannot specifically recall whether or not James Gibson was in the taxi.

126. Thus I consider there to be at least a reasonably credible case that even if Mr Robinson was not necessarily particularly intoxicated at the time of the accident, the evening at least became a very boozy one that continued over a not inconsiderable number of hours in Ambleside and later back at Great Langdale such that, looking back, he is unable to recall whether or not James Gibson, who was seemingly present with the rest of the party after they got to Ambleside, was present at the time of the accident. However, any confusion or lack of recollection as to that would not, properly analysed, necessarily have prevented Mr Robinson from recalling the detail that he was able to provide to Dr Ballin and Mr Froggatt, and for the purposes of the letter dated 28 April 2020.

127. As to the conversations with friends on the Sunday morning, the fact is that at some point James Gibson must have found out that those who were involved in the accident were considering making a claim, and falsely and dishonestly jumped on the bandwagon. Mr Robinson's evidence with regard to any such conversations is, as I have explained, somewhat vague, and to that extent less than satisfactory, and there is the potential tension between the way he put matters in his affidavit, and him stating in the witness box that he could not recall if he discussed the matter with everyone else who made a claim the following day, or just with some of them. However, if, as may have been the case, Mr Robinson was under the impression that everybody had been in the taxi, including James Gibson, because James Gibson had been present later in the evening, then I consider that it may well be that others were under a similar impression so that the need to discuss James Gibson's presence did not arise, and James Gibson himself may well, in those circumstances, have considered it safe to jump on the bandwagon without Mr Robinson challenging the position. Although I must attach limited weight to what those who have not attended for cross-examination said in their affidavits, if Mr Serle is to be believed, then he also was taken in by James Gibson, and Mr Robinson's evidence it was the communication of James Gibson's name to Mr Robinson by Mr Serle on the Monday that led to James Gibson being included as a claimant. In the circumstances, because his understanding was that James Gibson had been the taxi, or at least because he had no reason to doubt that he was, Mr Robinson would not necessarily, it seems to me, have queried the position when he spoke to Mr Serle on the Monday. Thus, whilst the matters identified by Mr Kennedy KC referred to in sub-paragraphs 106(iii) and (iv) above clearly assist Mr Murphy's case on contempt, the circumstances do, I consider, admit of alternative reasonably credible explanations.

128. As to Mr Robinson accepting that he must have spoken to James Gibson, and as to Mr Murphy's argument that Mr Robinson's case as to the latter misleading Mr Robinson from an early stage about his presence in the taxi does not holding water:

i) James Gibson was clearly not as a close friend of Mr Robinson as his father was, and, as commented upon above, James Gibson has admitted being prepared to make a dishonest and fraudulent claim in order to make a comparatively small amount of money. In these circumstances, the possibility of James Gibson being prepared to lie, and having lied to Mr Robinson cannot, I consider, fairly be dismissed as lacking credibility.

ii) Mr Kennedy KC makes a forceful point as to James Gibson perceiving that it was likely that Mr Robinson would have known whether or not he had been in the taxi. However, as touched on above, I consider it quite possible that James Gibson gathered from the circumstances following the accident that Mr Robinson was under the impression that James Gibson had been involved in the accident or had

indicated that he did not know, or that James Gibson thought that he would chance his arm and indicate a wish to make a claim on the basis that Mr Robinson would challenge him if his recollection was that James Gibson had not been in the taxi.

iii) As to the point that if Mr Robinson was unsure about James Gibson's presence in the taxi, all that he had to do was to ask one of his friends, the answer is, as I see it, that if Mr Robinson's clear mindset was that all six of the party had been in the taxi at the relevant time, then he would have had no reason to query the point at that stage because he was sure, in his own mind, of the position, albeit erroneously.

129. So far as Mr Robinson's acceptance in evidence that he would have discussed James Gibson's claim with him, again it is possible to read too much into this bearing in mind that claims of this nature are very much process driven, and so there would have been little, if anything, to discuss between them with regard to James Gibson's involvement in the accident.

130. In short, therefore, I do not consider that the suggestion that James Gibson did mislead Mr Robinson from the start can be as easily dismissed as contended on behalf of Mr Murphy.

131. There is then the point made by Mr Kennedy KC with regard to the fact that when, in the correspondence in March and April 2020, First Central wrote withdrawing all offers, questioning occupancy, and raising the spectre of a phantom passenger, Mr Robinson did not then make contact with the other claimants in order to clarify the position. Mr Kennedy KC submitted that the only credible explanation for this is that Mr Robinson knew what the answers to his enquiries would be, namely that James Gibson had not been in the taxi, and therefore that there was no point in asking the question.

132. Again, there is force in this point particularly in the light of Mr Robinson's concession under cross-examination that he would have contacted the others had he been aware of the correspondence, which I have found that he must have been. However, again, if Mr Robinson's mindset was that all six of the party had been together at the relevant time based upon his recollection of James Gibson being with the group later on, as evidenced by the photographs, and all the other five of the group having come forward with a claim, then one can, perhaps, see why he would not have felt the need to query the position with his friends, who he says he trusted, because he had his own clear view of the position as reflected in the first communication thereof by the letter dated 28 April 2020, and the provision of the photographs sent therewith.

133. That does leave the issue of Mr Robinson's answer under cross-examination that he would have contacted other claimants had he been aware of the correspondence when, so I have found, he must have been contemporaneously aware of that correspondence. I consider that Mr Robinson's evidence that he was not contemporaneously aware of the correspondence is likely to be explicable on the basis referred to in paragraph 116 above, rather than on the basis that Mr Robinson was seeking deliberately to mislead the Court. Further, I consider that his answer that if he had been aware of the correspondence, he would have conferred with the others may very well have been tainted by the same considerations regarding seeking to reconstruct events, in the light of a pointed and pertinent question from Mr Kennedy KC.

134. In the circumstances, whilst the matters identified by Mr Kennedy KC referred to in sub-paragraphs 106(vii) and (vii) above clearly assist Mr Murphy's case on contempt, the circumstances do, I consider, again, admit of alternative reasonably credible explanations.

135. There is the point made by Mr Kennedy KC about Mr Robinson saying in evidence that he would not question any of his friends until he had evidence concerning occupancy as they had been friends for 20 years, and that this does not explain his failure to inform them of what was going on and discuss the position with them given the serious suggestion of a phantom passenger question. However, it does, I consider, need to be taken into account that the country was in lockdown at the relevant time, and if Mr Robinson's mindset was that which he says that it was as reflected in the letter dated 28 April 2020, then his position was that First Central were clearly mistaken, and that what was required to be done was to persuade them of that, a task which only became impossible once the dashcam footage was revealed late in the day.

136. One then gets to Mr Wilson's letter dated 5 June 2020, and the response by email dated 8 June 2020 sent by Mrs Cobham, having obtained instructions from Mr Robinson, and the points made by Mr Kennedy KC to the effect that: (a) whilst enquiry was made of Mr Froggatt, no enquiry was made of Allan Gibson (or indeed James Gibson); (b) no mention was made in the response dated 8 June 2022 about Mr Robinson's recollection having been affected by drink; and (c) the first time that Mr Robinson suggested that he had checked James Gibson's medical records in order to ascertain where he was sitting in the taxi was in his affidavit dated 31 July 2023. Further, there is the point that the account in James Gibson's medical records is less definite than the wording used in the response dated 8 June 2022 about where James Gibson was sitting in the taxi, and the point that the medical records could not reliably have been taken to corroborate James Gibson having been in the taxi because if James Gibson had been the phantom passenger, he would not have told Dr Ballin that.

137. Again, I am not satisfied that these points provide the certainty as to the position that Mr Kennedy KC maintains that they do. I so find for a number of reasons:

i) If Mr Robinson was aware that James Gibson had not been in the taxi, and was therefore seeking to knowingly mislead Keoghs with the responses given by the email dated 8 June 2022, it is, as I see it, difficult to understand why he would have gone to the trouble of seeking precise clarification from Mr Froggatt as to the respective positions of himself, Mr Froggatt and Mr Shedwick in the middle row of the taxi, his recollection having been that the three of them were on the middle row.

ii) It was Mr Robinson's evidence that he could recall Mr Serle having sat at the front next to the driver. Consequently, as matter of logic, if his mindset was that James Gibson had been in the taxi, then he and his father must have been on the back row. He could have asked them if they remembered, but it is, I consider, at least reasonably credible that he might first have looked at the medical records in order to see whether the answer was there. I agree with Mr Kennedy KC that the description in the medical report is less definite than that provided by the email dated 8 June 2020. However, if a process of deduction led him to believe that James Gibson and his father were on the back row, and from the medical report that James Gibson was behind the driver, then one can see why he might then have described James Gibson and Allan Gibson respectively as he did in giving instructions to Mrs Cobham in relation thereto for the purpose of her sending the email dated 8 June

2020. In these circumstances, Mr Robinson would not have needed to go back to either James Gibson or Allan Gibson in providing the response that was given to the letter dated 5 June 2020, and subsequently in respect of the response to the CPR Part 18 request.

iii) If Mr Robinson was able to provide his description of where he believed that the six of them were in the taxi for the purposes of the email dated 8 June 2020 in the way that he did, and if it was his mindset that James Gibson had been in the taxi at the relevant time, and no evidence had been produced to suggest the contrary, then one can, perhaps, see why he may not have felt it necessary to mention that his recollection was affected by alcohol on the basis that he had managed to reconstruct the positions of the sixth in the taxi in what he believed to be the correct way. Further, there is what I consider to be Mr Boyle's cogent point that any disclosure or revelation about intoxication might well have been perceived as being damaging to the claims that were being pursued against Mr Murphy.

138. Much the same analysis can, I consider, be applied in respect of the somewhat similar points that Mr Kennedy KC makes in relation to the signing of the statement of truth on the response to the Request for Further Information, which is the subject of one of the allegations of contempt.

139. In short, therefore, whilst the matters identified by Mr Kennedy KC referred to in sub-paragraphs 106(ix) and (xii) above clearly do assist Mr Murphy's case on contempt, the circumstances do, I consider, again, admit of alternative reasonably credible explanations.

140. One then has the Reply and Defence to Counterclaim, and the point taken by Mr Kennedy KC referred to in paragraph 106(xiii) above that the latter was misleading because Mr Robinson therein pleaded that he relied on other passengers (plural) to confirm their positions when he had only communicated with Mr Froggatt, and because Mr Robinson said that he had no reason to doubt the presence of James Gibson in the taxi when that was not so, because he had no independent recollection that James Gibson was in the taxi. I am not persuaded that one can read into this as much as Mr Kennedy KC submits. The reference to *"other passengers"* might well, as I see it, be simply loose language. At least Mr Robinson did check the position with Mr Froggatt so far as the middle row is concerned, and, on his case, was able to answer the enquiry as to other positions in the vehicle from his own recollection as to Mr Serle's position, and by checking the medical records in respect of James Gibson. So far as the statement that Mr Robinson had no reason to believe that James Gibson was not in the taxi is concerned, the mere fact that he cannot recall him being in the taxi does not necessarily mean that he did not have reason to believe that he was in the taxi. On his case, he did through his recollection that Mr Gibson had been with the party during the course of that evening, leading to an understanding, clouded by having been out for a boozy night and the fact that James Gibson came forward to actually make a claim, that James Gibson had been with them in the taxi.

141. As I have said, I consider that I am bound to give little or no weight to the affidavits of Mr Serle, Allan Gibson and Mrs Cobham and, indeed, that I should draw at least some limited adverse inferences against Mr Robinson from the fact that none of them have, without explanation, attended to give oral evidence. However, as I have explained above, the position of James Gibson is rather different, and I consider that I should attach rather more weight to his statement given the attempts made by Mr Robinson to get him to Court to give evidence on his behalf. His evidence as to the irate call from Mr Robinson after the

dashcam footage had come to light does, as I have said, have a ring of truth about it and that irate call is only rationally explicable on the basis that Mr Robinson have thought that James Gibson had been in the taxi and was pursuing a genuine claim. This evidence is, therefore, I consider, cogently supportive of Mr Robinson's position and defence to the Application, although my decision does not turn upon this consideration.

142. Mr Kennedy KC makes a number of cogent and forceful points on behalf of Mr Murphy which have, at times, caused me to have a real concern that Mr Robinson may have been aware that the relevant statements were not true. However, having regard to all the considerations that I have sought to identify above, I am not ultimately persuaded that the points made on behalf of Mr Murphy, whether taken alone or taken together, lead to the necessary inevitable or irresistible inference that Mr Robinson knew that the relevant statements were not true such that I can be sure that that was the case to the requisite criminal standard. In view of the considerations that I have identified, I do consider that more than one inference can reasonably be drawn from the evidence taken as a whole as to Mr Robinson's state of mind, and that one of those inferences is that he did believe that the statements that he was making were true, and that the explanation that he has provided may be true. Put another way, I do not consider that it can properly be said that the inference that Mr Robinson knew that the statements that he made were untrue is one that no reasonable person would fail to draw.

143. In the circumstances, I am unable to find that the case in contempt has been proved to the requisite criminal standard, and I must therefore find that the Application should be dismissed.

Conclusion and summary

144. I have no doubt that this was a properly brought application, and that the Application disclosed a strong prima facie case for committal that required an explanation from Mr Robinson. Whilst I consider that there is much force in the case, based largely on inference, that Mr Murphy seeks to advance, ultimately, for the above reasons, I am not satisfied that the various matters raised by Mr Kennedy KC on Mr Murphy's behalf that are said to give rise to the necessary inference, either taken alone or considered collectively, lead to such an inevitable or irresistible inference that Mr Robinson knew that the relevant statements were not true that I can be sure that such was the case so as to satisfy the criminal standard of proof.

145. Having sought to carefully consider the same, I have come to the firm view that the evidence admits of alternative explanations that are at least reasonably credible such that I am unable to find that the inference that Mr Robinson knew that the relevant statements were not true is one that no reasonable person would fail to draw.

146. In view of what I consider to be these reasonable doubts as to Mr Robinson's liability for contempt, I consider myself bound to conclude that the application to commit him to prison for contempt of court has not been proved the requisite criminal standard and therefore must be dismissed.

147. As I indicated when I reserved judgement, no attendance will be required at the hand down of this judgement on 12 April 2024. I will then make an order dismissing the Application, and adjourning consideration of consequential matters such as costs and any application for permission to appeal to a consequentials hearing to be listed on a date convenient to the

parties and the Court with an ELH of 1 hour, unless the parties indicate prior to hand down that all outstanding matters can be agreed.