



Neutral Citation Number: [2021] EWHC 993 (QB)

Case No: QB-2021-000479

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 21/04/2021

Before :

MRS JUSTICE EADY

Between :

AXA INSURANCE UK PLC
- and -
MR ALEXANDER ARISTIDES REID

Claimant

Defendant

Mr Tim Sharpe of counsel (instructed by **DAC Beachcroft Claims Ltd**) for the **Claimant**
Mr Gary Pons of counsel (instructed by **direct access**) for the **Defendant**

Hearing dates: 21 April 2021

Approved Judgment

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MRS JUSTICE EADY DBE

Mrs Justice Eady:

Introduction

1. This is the hearing of the claimant's application for the defendant's committal for contempt of court. The claimant was granted permission to commence these proceedings by order of HHJ Bird (sitting as a High Court Judge), made on 18 January 2021. The defendant consented to the grant of permission and to the terms of the order made by HHJ Bird and has made an admission of his contempt, as recorded in the schedule to that order, in the following terms:

“... Mr Alexander Aristides Reid admits that within a County Court claim made by him (Claim Number F04YJ489 in the County Court at Aldershot & Farnham) he made a witness statement signed with a Statement of Truth on 13th June 2019 that contained untruths that amounted to contempt of court.

The untruths were contained within paragraphs 20 and 21 of the said statement which stated as follows:

“20. When we were waiting for the Police to turn up, a motorbike rider came and gave me his telephone number as he said he had seen what had happened. I now know that he is called Mr Summers.

21. I had never seen Mr Summers before. At the scene he said he was into martial arts, so I think he may have recognised me from events as I was a professional fighter, but I don't know him.”

Contrary to his statement of truth, Mr Reid did know Mr Summers and had met him before. As such, it is admitted that the above statements (i) were untrue (ii) were untrue in such a way that they interfered with, or were likely to interfere with, the course of justice in a material respect, in that they purported that Mr Summers was an independent witness to the road traffic accident on 29th January 2018 which formed the basis of Mr Reid's County Court Claim for damages, when Mr Summers was not an independent witness, and (iii) were made by Mr Reid in the knowledge that they were untrue.”

2. The defendant has also accepted that his contempt is such that the custody threshold is crossed in this case. The focus of today's hearing is thus on the determination of the appropriate period for committal and the question whether a custodial term should be suspended. For completeness, I record that the defendant has agreed to pay the claimant's costs of these proceedings, to be assessed if not agreed (see paragraph 6 of HHJ Bird's order).
3. As for Mr Summers, who provided a statement in support of the defendant's county court claim, I note that he was initially also a respondent to the application for permission in these proceedings, but, given the defendant's concessions, the claimant

withdrew the application in relation to Mr Summers as no longer being in the public interest.

4. In advance of the hearing, I read the agreed bundle, which included the court documents in the present proceedings and the relevant documentation from the earlier county court proceedings; the statement of Neville Sampson, solicitor for the claimant, together with the exhibits attached thereto; the statement of Anthony Thornton, claims validation consultant for the claimant, and the documentation he adduced; and the statement of the defendant, together with the report of 26 March 2021 confirming his recent diagnosis of Asperger's Syndrome, and the further statements he has submitted in support, including a statement from the defendant's fiancée, Nicola Manashe. The defendant did not give oral evidence at the hearing, albeit he was reminded of his right to do so and of his right to remain silent.

The Facts

5. On 29 January 2018, a road traffic collision took place on the A41 involving an Audi motor vehicle driven by the defendant and a SEAT motor vehicle driven by an individual insured by the claimant. Subsequently, on 9 January 2019, the defendant issued a county court claim for damages (claim number F04YJ489) arising out of that collision, seeking damages between £15,001 and £50,000 (albeit the sums claimed were more likely to have been in the region of £20,000, with costs, if the defendant had been successful, estimated to be around £10,000). Liability, causation and quantum were disputed.
6. On 13 June 2019, the defendant served his witness statement in the county court proceedings, which contained a statement of truth in the format complying with the relevant court rules, as follows:

“I believe that the facts stated in this witness statement are true.”
7. In fact, as the defendant has acknowledged in these proceedings, his witness statement contained statements of fact that were untrue in such a way that the untruth interfered with the course of justice in a material respect, and were made in the defendant's knowledge that they were untrue.
8. As Mr Sampson explains, those acting for the claimant carried out various investigations relating to the defendant which drew to their attention that his statement contained matters that were untrue; specifically, that the accident had been witnessed by a Mr Summers (who provided a statement for the defendant in the county court proceedings), someone the defendant had not previously met and did not know. In fact Mr Summers and the defendant were known to each other, as had been stated in an article published on the online version of the East Anglian Daily Times on 25 September 2017 (just over four months before the road traffic accident):

“Alex Reid will be in Ipswich on October 8 giving an MMA masterclass raising money for the Cystic Fibrosis Trust. The event, at Pipers Vale gymnastics club from 1pm on Sunday, October 8, has been organised by former European and world kickboxing champion Darren Summers, whose 16-year-old and

seven year-old children have the condition. “He trained me for my first cage fight which I won in the first round” said Mr Summers. “We wanted to do something for the Trust and this is our first event. You don’t have to be involved in martial arts to come along, it is for anyone of any age from any walk of life. Alex will also be talking about fitness, how to maintain your weight and what to eat and will be answering questions afterwards too.”

9. As the claimant has observed, it is plain the defendant knew Mr Summers, and they were more than passing acquaintances. By his witness statement in the county court proceedings, however, the defendant falsely represented that Mr Summers was an independent witness to the collision, when he was not. This was, as the defendant now acknowledges, no mere slip; the defendant went as far as saying that the witness might have recognised him, but he had not seen the witness before (thereby attempting to head off the potential suspicion of the two being acquainted, the defendant having been a professional fighter, and Mr Summers claiming to be looking for a martial arts shop when he allegedly witnessed the collision).
10. In the light of this information, by application of 26 September 2019, the claimant applied to amend the defence in the county court proceedings to plead an allegation of fundamental dishonesty. This application was due to be heard at 10am 23 October 2019 but, at shortly after 6pm the evening before, the defendant served a notice of discontinuance of his claim.

The Contempt

11. I have already set out the defendant’s admission of his contempt. In the circumstances, I am satisfied to the criminal standard the defendant is guilty of contempt of court as alleged at paragraph 1(a) of the Grounds of Committal.

Sanction

The Approach

12. CPR 81.9 refers to the powers of the court in contempt proceedings: where contempt has been found, the court may impose a sentence of imprisonment for a fixed term, a sentence of imprisonment suspended for a fixed period, or a fine. The maximum fixed term of imprisonment is two years (section 14 of the Contempt of Court Act 1981).
13. The decision on sanction is entirely for the court (*Attorney General v Hislop* [1999] 1 WLR 514, at p 522), albeit any sanction imposed must always be proportionate to the gravity of the offence. The seriousness of the matter and the contemnor’s culpability are the primary considerations for the starting point for any penalty, and for determining whether the custody threshold is passed, and whether a term of imprisonment should be imposed (see *In re. Yaxley-Lennon (Practice Note)* [2018] EWCA Crim 1856, at paragraph 82). In assessing the seriousness of the contempt, it is right to have regard to the purpose for which it was committed and the likelihood of any risk to the process of justice (*R v Cullinane* [2007] EWCA Crim 2682 at paragraph 6).

14. Having established the appropriate starting point, the court will then take into account any matters that aggravate the offence and any factors in mitigation.
15. In *re. Yaxley-Lennon (Practice Note)*, (albeit specifically addressing a contempt arising from a breach of a court order relating to criminal proceedings), the following factors were seen as likely to be relevant (see paragraph 80):

“(a) the effect or potential consequences of the breach upon the trial or trials and upon those participating in them; (b) the scale of the breach, with particular reference to the numbers of people to whom the report was made, over what period and the medium or media through which it was made; (c) the gravity of the offences being tried in the trial or trials to which the reporting restrictions applied; (d) the contemnor's level of culpability and his or her reasons for acting in breach of the reporting restrictions; (e) whether or not the contempt was aggravated by subsequent defiance or lack of remorse; (f) the scale of sentences in similar cases, albeit each case must turn on its own facts; (g) the antecedents, personal circumstances and characteristics of the contemnor; (h) whether or not a special deterrent was needed in the particular circumstances of the case.”
16. Having determined that a term of committal is inevitable, and having decided the length of that term having regard to all aggravating and mitigating factors, it is appropriate to take account of any early admission in the contempt proceedings, which may make it appropriate to apply a reduction in sentence akin to the approach to a plea in criminal proceedings (*Liverpool Victoria Insurance Co Ltd v Khan and ors* [2019] EWCA Civ 392, at paragraph 68, and see, for example, *R (oao Finch) v Surrey County Council – Re. Contempt Application Against the BBC* [2021] EWHC 170 (QB), at paragraph 84).
17. To the extent that the court is considering imposing a term of imprisonment, that should only be where it is satisfied that the contemnor's conduct is so serious that no other penalty is appropriate; it is always a measure of last resort (see *Oliver v Shaikh* [2020] EWHC 2658 (QB) at paragraph 17). Even when satisfied that the contempt crosses the custody threshold, it is relevant to consider whether the sentence might be suspended (*Liverpool Victoria v Khan*, at paragraph 69). Having regard to the *Sentencing Council Guideline on the Imposition of Community and Custodial Sentences*, factors pointing in favour of an immediate custodial sentence are where the contemnor presents a continuing risk, or where appropriate punishment can only be achieved by immediate custody, or where there is a history of poor compliance with court orders. On the other hand, factors that would point towards suspension would be where there is a realistic prospect of rehabilitation, where there is strong personal mitigation, and/or where immediate custody would result in significant harmful impact upon others.

Seriousness and the relevant starting point in this case

18. As the claimant has submitted, the contempt in this case amounts to a plain, deliberate, and dishonest attempt to interfere with the administration of justice in a

material way. The lie told by the defendant was designed to set Mr Summers up in the eyes of the claimant insurance company, and the court, as someone upon whose evidence they could rely as being unconnected to the parties, offering an independent account of the circumstances of the collision. Inevitably, considerable weight is often given to such evidence (in particular where the parties themselves are at odds as to how a collision took place). That is true of a court, where a judge has to adjudicate between two diametrically opposed accounts, but will equally be the case of an insurer that adopts the entirely responsible approach that contested litigation should be the last resort. The false statement was designed to bolster the defendant's chances of proving his claim on liability (or making the claimant insurer accept his version over that of their own insured, who did not have an independent witness), and thereby of recovering some or all of his claim for damages.

19. Whilst this might not have been the most significant claim, and the defendant did not in the end benefit from his dishonesty, harm in this context is a matter that goes far beyond the particular case pursued by the defendant. The seriousness of the defendant's contempt in this regard is underlined by the observations made by Mr Thornton in his statement in these proceedings, explaining that there is a very real problem of insurers being seen as an "easy target" by litigants who are prepared to try to secure financial advantage through deception, there being a false perception that such dishonest claims are essentially victimless crimes and that litigation is a game where presenting false evidence carries little risk. Of course, none of that is true and there is a very real cost to honest insurance customers in terms of the higher premiums that they then face or because of the additional investigations that have to be undertaken when they make a genuine claim. The Association of British Insurers reported that in 2018 there were some 98,000 fraudulent claims (excluding fraudulent claims for cover), of which motor insurance scams were the most common and the most expensive (some 55,000 dishonest claims, worth £629 million, being detected in 2018).
20. The serious consequences of such fraudulent claims should be obvious and have been the subject of observations by courts in previous cases (see, for example, *Liverpool Victoria Insurance Company v Bashir and ors* [2021] EWHC 895 (Admin)). The point is well made in the Judgment of Moses LJ in *South Wales Fire and Service v Smith* [2011] EWHC 1749 (Admin) (subsequently cited with approval by the Supreme Court in *Summers v Fairclough Homes Ltd* [2012] UKSC 26, see paragraphs 57-58) :

“2. For many years the courts have sought to underline how serious false and lying claims are to the administration of justice. False claims undermine a system whereby those who are injured as a result of the fault of their employer or a defendant can receive just compensation.

3. They undermine that system in a number of serious ways. They impose upon those liable for such claims the burden of analysis, the burden of searching out those claims which are justified and those claims which are unjustified. They impose a burden upon honest claimants and honest claims, when in response to those claims, understandably those who are liable

are required to discern those which are deserving and those which are not.

4. Quite apart from that effect on those involved in such litigation is the effect upon the court. Our system of adversarial justice depends upon openness, upon transparency and above all upon honesty. The system is seriously damaged by lying claims. It is in those circumstances that the courts have on numerous occasions sought to emphasise how serious it is for someone to make a false claim, either in relation to liability or in relation to claims for compensation as a result of liability.

5. Those who make such false claims if caught should expect to go to prison. There is no other way to underline the gravity of the conduct. There is no other way to deter those who may be tempted to make such claims, and there is no other way to improve the administration of justice.

6. The public and advisors must be aware that, however easy it is to make false claims, either in relation to liability or in relation to compensation, if found out the consequences for those tempted to do so will be disastrous. They are almost inevitably in the future going to lead to sentences of imprisonment, which will have the knock-on effect that the lives of those tempted to behave in that way, of both themselves and their families, are likely to be ruined.

7. But the prevalence of such temptation and of those who succumb to that temptation is such that nothing else but such severe condemnation is likely to suffice.”

21. In *Liverpool Victoria v Khan*, the Court of Appeal specifically addressed the making of a false statement, verified by a statement of truth, in court proceedings, making clear the approach the courts will adopt in such cases:

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

60 Because this form of contempt of court undermines the administration of justice, it is always serious, even if the falsity of the relevant statement is identified at an early stage and does not in the end affect the outcome of the litigation. The fact that only a comparatively modest sum is claimed in the proceedings in which the false statement is made does not remove the seriousness of the contempt.”

22. As for culpability, the defendant must be held responsible for his own statement in the county court claim he chose to pursue. Although, in his statement for this hearing, he has suggested that the dishonesty was not his idea, he was under no pressure to lie and was plainly the person who stood to gain most from doing so; this was a deliberate falsehood from which the defendant stood to make personal financial gain.
23. This is a case involving both a high level of culpability and significant harm; as the defendant rightly accepts, it clearly passes the custody threshold. Given the gravity of the defendant's actions, I consider the appropriate starting point in this case to be four months imprisonment. In order to determine the end point, however, I need now to consider the aggravating and mitigating features in this case, the appropriate reduction for the defendant's early admission and the question of suspension.

Aggravating and mitigating features; credit for early admission; suspension

24. The defendant continued his lie for some five months, including for around a month after the claimant's application to amend the defence to plead fundamental dishonesty. It is, however, to his credit that he made an early admission of his contempt in the current committal proceedings, albeit not at the very first opportunity, and that he has apologised to the court for his actions and has expressed his remorse for what he has done.
25. In so doing, the defendant has acknowledged the pain and suffering that his actions have caused to his family and he points to the particular difficulties that will be caused to those closest to him should he be sentenced to a term of immediate imprisonment, in particular to his fiancée, his mother and his brother. I do not set out in this Judgment all the personal details relating to those individuals, although I do record the fact that Ms Manashe is currently six-months pregnant and has a number of reasons for her particular dependency on the defendant at this time.
26. I also accept that the defendant, who is now 45 and who has experienced various difficulties in the past (which might, in part, be explained by his recent Asperger's diagnosis), has demonstrated some degree of reflection, which I accept is relevant to the question of rehabilitation. He is also entitled to be given some credit for the fact that he has no criminal convictions or other record of dishonest behaviour and I take account of the work he does in the community, including charitable work, and of the character references that have been provided on his behalf and present a more positive view of the defendant than the conduct I am concerned with might suggest.
27. Having regard to the defendant's personal mitigation, in particular to the hardship that will be suffered by others who are close to him should he be absent from their lives for any length of time, and allowing for a 25% reduction for his early admission, I consider the minimum term that can be passed in this case is one of 8 weeks imprisonment.
28. Having reduced the term down to the very minimum I consider can properly be passed given the contempt in this case, I have reflected on whether this sentence can be suspended. In its skeleton argument for today's hearing, the claimant made the point that the public profile of the defendant, and the possible media attention that may attract, offers the court the opportunity to reinforce the message of deterrence. Although deterrence is a relevant consideration, I make clear that I reject the

suggestion that the defendant should be treated any differently as a result of any celebrity he might have.

29. I have taken into account the observations made in *R v Manning* [2020] EWCA Crim 592, regarding the effect of the coronavirus pandemic on the prison estate; I have well in mind the difficulties that face those serving custodial sentences in these times (as confirmed in the recent reports adduced by the defendant for this hearing), but equally have to keep in mind the particular seriousness of the defendant's actions.
30. I have had regard to the factors identified in the Sentencing Guidelines, to all that has been said on the defendant's behalf, and to all aspects of his personal mitigation (viewed both individually and cumulatively). In particular, I have taken account of the impact of an immediate custodial sentence on those close to the defendant; the knock-on effect of the defendant's actions on the lives of those he loves is inevitably another aspect of the harm caused by his fraudulent conduct. I have taken account of the hardship that will be suffered by the defendant's family in reducing the term to the degree that I have but I would be failing in my duty to do justice more generally if I did not impose an immediate custodial sentence in this case.

Sentence

31. Alexander Reid, you will be committed to prison for a period of 8 weeks. The law is that you will serve half of that period in custody.