

Sentencing factors and sanctions in complex injury FD cases

Arguments at the hearing

May 2025

LAW COURTS

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The issues relevant to sanction

HHJ Parker had found AB's civil claim to be fundamentally dishonest in 2022 on the basis that there had been no accident (or, if there had been, it did not happen in the manner alleged), AB had put forward a false independent witness, there had been no injuries or he had deliberately exaggerated such injuries as he did sustain, and his loss of earnings claim was founded on a fabricated job offer.

It was agreed, however, that for the purposes of determining the appropriate sanction for AB's contempts, the court should not look any further than what AB had actually admitted in the contempt proceedings, namely that:

- He had advanced a false witness;
- He had lied about an injury that he had not sustained; and
- He had exaggerated the extent of another alleged injury.

AB did not admit that there had been no accident. Whilst Zurich had the option to pursue a specific finding of contempt in this regard, this would have necessitated a separate trial at substantial cost, at which the criminal burden of proof would have had to be met. Adopting a proportionate approach to contempt proceedings, AB's limited but substantial admissions of contempt were accepted.

Against this backdrop, HHJ Lickley KC was asked to invoke the court's powers in terms of sanction, with due consideration of the parties' submissions in relation to aggravating and mitigating factors and some additional evidence adduced on AB's behalf on the eve of the hearing.

The court's powers

The court's powers in civil contempt cases are set out in CPR 81.9, as follows:

"If the court finds the defendant in contempt of court, the court may impose a period of imprisonment (an order of committal), a fine, confiscation of assets or other punishment permitted under the law."

The court in this case had the power to commit AB to prison for a maximum term of two years should it deem a custodial sentence to be appropriate.

Factors relevant to sanction

The cases of *Liverpool Victoria Insurance Co Ltd v Khan & Ors* [2019] EWCA Civ 392 Practice Note [Auth-47,58-63] and *Haven Insurance Co Ltd v Higham* [2023] EWHC 3472 (KB) [Auth-74] have crystallized the relevant factors for the court to consider in relation to sanction, as follows:

- Culpability
- Intended or foreseeable harm
- Aggravating or mitigating factors
- Whether there should be a discount for admissions
- Whether the custody threshold has been passed and, if so, what is the shortest period of imprisonment commensurate with the contempt
- Whether any period of imprisonment should be suspended or not

There are no formal sentencing guidelines for contempt offences, the court being entitled to exercise its discretion as it sees fit in each case.

A summary of the parties' submissions in respect of each of these factors is set out below.

Culpability

Zurich's position was that AB's contempt was towards the extreme end of the scale, particularly given his persistent advancement of false witness evidence, which served to undermine the fabric of the justice system.

It was also argued that the advancement of entirely false evidence, both in relation to the purportedly independent witness and a fabricated ear injury, was substantially more egregious than mere exaggeration.

AB argued that culpability was of a far lesser degree, as there had been an accident and his exaggeration of its effects was simply down to naivety and foolishness on his part, motivated by a wish to secure some financial security for his family.

Foreseeability of harm

AB's contempt, Zurich maintained, was directly geared towards him securing a considerable sum of money at their expense. AB robustly opposed a finding of fundamental dishonesty at the civil trial to evade (pursuant to QOCS) a substantial costs liability. Hence his contempt, if successful, would have inevitably caused Zurich to suffer a significant financial detriment.

In response, it was submitted on AB's behalf that Zurich had suffered no actual prejudice where the underlying civil claim had been discontinued and an Order secured by which they were entitled to recover their costs. It was highlighted on Zurich's behalf, however, that there was no prospect of making any actual costs recovery as AB was the proverbial man of straw, so they had in fact suffered clear financial prejudice as a consequence of AB's contempt.

Aggravating factors

Zurich presented the following as factors which aggravated AB's contempt:

- The persistent advancement of an entirely false witness;
- AB's dishonesty was aimed at defrauding Zurich of a very substantial sum of damages and evading any liability for their legal costs (an estimated combined total of around £500k);
- Insurance fraud is not a victimless crime, but directly hits the pockets of all those who pay for liability insurance;
- The claim was pursued against a not-for-profit social housing enterprise and not a "cash rich" commercial entity;
- The civil and contempt proceedings had taken up a vast amount of court time and resources.

Mitigating factors

The day before the hearing AB's solicitors served new evidence, comprising what was described as an affidavit from AB (but which was wholly unsigned, let alone properly executed as such), witness statements from his son-in-law and a purported character witness, and a report from a psychiatrist. With reference to this evidence, it was submitted that:

- AB was a man of good character, having no previous convictions, and his conduct in the civil proceedings was entirely out of character;
- He was an elderly and unwell man, being 74 years of age and suffering from a number of physical and mental health conditions;
- He was the primary carer for his partner, who was incapacitated due to her own medical conditions and relied upon him to a substantial degree (although no statement was produced from her nor any medical evidence disclosed in support of these assertions).

Zurich submitted in response that this was thin mitigation. In particular:

- The son-in-law's evidence was inevitably partisan;
- The purported character witness was an individual who appeared to have worked with the claimant for only a short period of time and who was evidently unaware of the reason for the contempt proceedings;
- The psychiatrist had exceeded his remit by advocating on AB's behalf against the imposition of an immediate custodial sentence, whilst at the same time offering no medical rationale as to why this should be the case – he could not say that prison would have an unusually deleterious effect on AB's health.

It was pointed out in addition that not only was the affidavit unsigned, but it contained no semblance of an apology either to Zurich, the defendant in the civil claim or the court.

Credit for admissions

Zurich argued that such credit as AB was entitled to for his admitted contempt should be offset, in whole or in part, by the fact that he was still attempting to appeal the civil judgment on grounds that were inconsistent with those admissions. This ought to be interpreted as a lack of contrition on AB's part, such that his admissions rang hollow and smacked of having been made on legal advice in the hope of avoiding a custodial sentence. In addition, AB had attempted to use the appeal to secure an adjournment of the contempt proceedings, despite knowing that the court had rejected his appeal documents as non-compliant, such that no appeal was in fact live at the time of the contempt hearing. Furthermore, no actual admissions were made until the eve of the permission hearing.

AB's position was that he was entitled to full credit for his admissions as these had been made at the earliest realistic opportunity and were therefore analogous to an early guilty plea in criminal proceedings. It was also submitted that Zurich were not entitled to rely upon the appeal in seeking to controvert this, as AB had admitted limited points within the context of the contempt proceedings but not the entirety of the civil judgment.

Custody threshold

The court was referred to the case of *South Wales Fire and Rescue Services v Smith* [2011] EWHC 1749 (Admin), in which the Divisional Court stated that where false evidence was advanced to support a claim for compensation, a custodial sentence could be expected. This was reaffirmed by the Court of Appeal in *Liverpool Victoria Insurance Co Ltd v Khan & Ors* [2019] EWCA Civ 392 Practice Note. Accordingly, Zurich submitted that in the case of AB the custody threshold was incontrovertibly met.

AB's counsel had submitted a skeleton argument in which he suggested that imprisonment should be a last resort, and that other more proportionate sanctions were available. However, in oral submissions he conceded that the custody threshold had been crossed, and that the only real question to be determined was whether or not the sentence should be suspended.

To suspend or not to suspend?

This was indeed the question. Zurich argued that a suspended sentence would be inappropriate as an immediate custodial sentence would operate as both a proportionate punishment for AB and a deterrent to others who might be contemplating fraudulent claims. Moreover, the court could adequately allow for AB's mitigation by way of a reduction to the term of the sentence rather than by suspending it.

It was submitted on AB's behalf that if the court decided a custodial sentence would be appropriate then suspension was justified in light of the mitigating factors raised. The hearing also happened to coincide with it was suggested to the court that in these circumstances imprisonment should be reserved for the most serious cases.



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