

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand
London WC2A 2LL

Tuesday, 23 July 2024

BEFORE:

HIS HONOUR JUDGE LICKLEY KC

Sitting as a Deputy Judge of the High Court

BETWEEN:

ZURICH INSURANCE COMPANY LTD

Claimant/Applicant

- and -

ALAN BILLS

Defendant/Respondent

MR M SNARR (instructed by Keoghs LLP) appeared on behalf of the Claimant/Applicant
MR T GREY (instructed by Janes Solicitors) appeared on behalf of the
Defendant/Respondent

JUDGMENT
(Approved)

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(Official Shorthand Writers to the Court)

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1. JUDGE LICKLEY KC: This is an application for the committal of the defendant, Mr Alan Bills for contempt of court. The application is brought by Zurich Insurance Company Ltd ("Zurich").
2. The claimant's case is that the defendant brought a false county court action alleging negligence on the part of Moat Homes Ltd, who were insured by Zurich, when he claimed damages for personal injury and associated loss in respect of an alleged fall, either a slip or trip, on 6 February 2017 due to a defective pavement at Doggerel Acre, Whitstable, a development of 12 houses arranged in 2 blocks. Mr Bills lives in one of the houses with his partner.
3. Mr Bills admitted contempt in a document, 'defendant's formal admissions' dated 28 February 2024. Before Freedman J on 1 March 2024 by consent, the matter was adjourned and listed for a final sanctions hearing without the need for a trial to determine liability. In the consent order the claimant stated that it did not pursue the remaining counts of contempt alleged and relied upon the formal admissions of 28 February 2024. I will return to that matter later in this judgment.

The history

4. Mr Bills issued proceedings on 28 October 2017. A letter before action had been sent by solicitors instructed by him on 2 March 2017.
5. A statement of value in the claim form alleged that he expected to recover damages of more than £200,000. That sum was largely comprised of a claim for lost income due to an alleged inability to take up lucrative employment.
6. A Defence was filed denying liability and disputing the quantum of the claim. On 22 November 2018 an Amended Defence was filed alleging that the claim was fundamentally dishonest. The claim was discontinued on 31 January 2019.
7. On 19 March 2019 it was ordered that the matter be listed for trial on the issue of fundamental dishonesty. The court was not prevented from deciding that issue by reason of the discontinuance. After various delays, due partly to the pandemic, a trial

was conducted before HHJ Parker sitting at the Canterbury County Court commencing on 4 March 2022. A 6-day trial ensued ending on 11 March 2022. Mr Bills represented himself.

8. I have the benefit of a very full and detailed judgment dated 7 June 2022 of HHJ Parker which runs to some 260 paragraphs. The judge's conclusions amounted to a damning criticism of Mr Bills's conduct in pursuing a claim that the judge concluded was fundamentally dishonest. In summary, the findings were:

(i) Much of the evidence given by Mr Bills was untrue (paragraph 107). The judge gave reasons (paragraphs 108 to 121). The areas of falsity included a fake university degree certificate, GP records showing that he said he had served in the French Foreign Legion, that he had the potential for employment as a security agent in North Korea and a failure to mention that a quote obtained for the removal of damaged items from his property, was from a company that had been dissolved and that he had been a director of that company up to dissolution.

(ii) Mr Bills was an unreliable historian in relation to how the accident occurred and the aftermath (paragraphs 123 to 131).

(iii) A witness Mr Peter Nicholson, put forward by Mr Bills to support his claim, had made false statements suggesting he had witnessed the fall. The statement was used and relied upon in the knowledge that it was false and untrue. The statement was made to bolster the claim given that it suggested that it came from an independent witness when in fact he was not (paragraphs 250 to 251).

(iv) The judge found that Mr Bills suffered no or no significant injury to his right shoulder. He also did not suffer an injury to his ear as alleged (paragraphs 252 to 253).

(v) Mr Bills admitted in evidence that his claim for loss of income was excessive. The judge found that he must have known that when he made the claim for lost income which was grossly exaggerated and based on a bogus job offer (paragraph 254).

(vi) The judge concluded that his findings showed dishonesty going to the root of the claim. Accordingly, the judge concluded that the claim presented was fundamentally dishonest. The judge stated that the level of falsification and exaggeration went to a substantial part of the claim and there was no realistic possibility that Mr Bills could genuinely have believed the false claims he put forward were true (paragraph 257).

(vii) In relation to the fact of the accident the judge set out a number of factors suggesting that there was no accident and concluded finally, that no accident took place (260).

9. A statement of grounds in support of committal for contempt was prepared by the claimant and before the court hearing on 7 March 2024. The alleged contempt was set out in summary at paragraph 19 and the particulars of contempt followed from paragraph 20. The allegations were in summary:

(i) Section (a) concerned the alleged accident. It was said that there was no genuine accident, or, in the alternative, Mr Bills changed his account as to the circumstances of the accident, subsequently alleging that he had tripped as opposed to having slipped, to advance a compensation claim where he would otherwise have had no valid legal basis to present a claim.

(ii) Section (b) concerned the false witness evidence of Mr Peter Nicholson.

(iii) Section (c) concerned alleged injuries, namely to the right shoulder, the ear and the need to use a walking stick.

10. In his formal admissions document of 28 February 2024 Mr Bills made limited concessions.

(i) He admitted first advancing a false witness and/or false evidence from Peter Nicholson to corroborate his claim as set out in paragraph 19(3) of the grounds and thereby paragraph 20(b) of the grounds subparagraphs (iii) and (iv). This included reports by Mr Bills to doctors, that a passerby came along after the accident.

(ii) Paragraph 19(5) that he did not suffer an injury to his ear and thereby paragraph 20(c)11 of the grounds, subparagraphs (vii) to (x). This included his reports to three doctors that he had suffered an ear injury in the incident.

(iii) Paragraph 19(4) in relation to the false reports of the need to use a walking stick and thereby paragraph 20(c) of the grounds, subparagraphs (xi) to (xv). This included that in his Part 18 response of 25 January 2018 that he said at paragraphs 8, 10, 11, 14 and 15 that he needed to use a walking stick to assist walking due to the alleged shoulder injury.

11. As a consequence of the admissions made, the case was compromised on that factual basis. I note that the claimant has not pursued the principal allegation that the accident did not occur in the first place, or secondary issues including that a shoulder injury was caused and that the loss of income claimed was exaggerated. An agreement has been reached between the parties and I am not required to carry out any further investigation in relation to the facts and circumstances of the case. I am therefore to proceed on the basis of the admitted contempt as set out. The concessions made by the claimant, however, do limit to a significant degree the extent of the contempt and the consequences of that.

The law

12. There is no issue in this case that Mr Bills is guilty of contempt of court. His actions can be summarised as his deliberate dishonest exaggeration and manipulation of the court process to further a claim for damages. There is no doubt he did that in the ways alleged and accepted. In particular, Mr Bills first put forward as a witness to the incident and thereby of truth, namely Mr Nicholson. Mr Nicholson was not independent and his account was fabricated. Fortunately, Mr Nicholson did not at any stage give evidence. Second, Mr Bills maintained to doctors that he had suffered an ear injury to increase his claim that was untrue. Third, and finally, Mr Bills stated in a court document that he had to use a walking stick because of his injuries. That too was untrue and said to increase his claim.

13. The maximum sentence is two years' imprisonment. In *Liverpool Victoria Insurance Company Ltd v Khan & Zafar* [2019] 1 WLR 3833 the Master of the Rolls at paragraphs 58 to 69 provided guidance in such situations. The case concerned an expert witness, however his lordship said the factors to consider were in summary:
- (i) If the acts were intentional or recklessly committed (paragraph 61);
 - (ii) The sum in issue (paragraph 60);
 - (iii) Persistence in pursuing the false statement and other conduct to cover it up (paragraph 63); an early admission (paragraph 65); cooperation with any investigation (paragraph 65), genuine ill health (paragraph 65); financial ruin (paragraph 65), the effect on others, defendant relatives if sole carer, etc. (paragraph 66), delay attributable to the fault of the contemnor and early admission (paragraph 67); reduction in term for admissions and the timing thereof from one third to 10 per cent when made at trial.

Evidence

14. The defendant is 74. I have not been made aware of any criminal convictions. I therefore treat him as a man of hitherto good character.
15. The evidence relied upon was due on 17 May 2024:
- (i) What was purported to be an affidavit dated 6 June 2024 and unsigned was served the day before the first day of this hearing. The defendant accepted that he is in contempt of court on the three grounds admitted. There is no statement in that document of an apology or an account as to why he acted as he did.
 - (ii) He says that he has caring responsibilities for his partner, Mrs Newman, who is aged 69, who he has been in a relationship with since 1981. It is said that due to her frailty, tinnitus and rheumatoid arthritis, he assists around the home, going up and down the stairs, with shopping and paying bills. Once a week Mrs Newman's niece visits due to a marriage breakup and he assists with those visits.

(iii) The defendant's medical conditions are referred to in the notes supplied. The defendant says he is required to take nine forms of medication each day. He says he has "various ailments," has to get up in the night because his bodily functions are affected by his medication, that he struggles with his mental health and has suicidal thoughts day and night. He has diabetes, confirmed in the notes as type 2 and has constant pain in his legs. A request for an urgent CT scan dated 22 February 2024 of the abdomen and pancreas due to the new diagnosis of type 2 diabetes has been provided without any report. The medical report of Dr Majiga describes Mr Bills as vulnerable and prone to the development of health issues. I note the recent diagnosis of spinal stenosis, the symptoms caused, the need for treatment and the referral to the local hospital for a gastroenterology examination. A letter from the GP Dr Gould dated 6 June 2024 sets out the medical conditions and the medication taken by the defendant. The doctor said:

"Overall, notwithstanding the circumstances, he is in reasonable physical and mental health and the conditions diagnosed are being managed appropriately."

16. Fourth, two witness statements have been supplied. First, Mr Larry Su says that he has engaged the defendant as an architect since March 2023 regarding a heritage project for a grade I listed building. As such, the defendant has to interact with the head of listed buildings at Maidstone Borough Council. He speaks highly of the defendant's work and personality. In court, I was told that Mr Su found the defendant by word of mouth and that he was paid a limited amount for the work done. Second, Scott Newman is the defendant's stepson. He has known the defendant for 40 years. He has spoken of their relationship and the support the defendant has provided to the family over the years. He is concerned about the defendant's health and the impact custody would have on him given his medical conditions. He has described the stress felt by his mother at this time.
17. Finally, following the first part of this hearing the defendant filed a sworn affidavit dated 11 June 2024. It is the original document now sworn with an additional paragraph 24 that says:

"I deeply apologise to the court and the claimant for bringing this case to the attention of the court. It is my deepest regret that I am appearing here today for a mistake I made in 2017."

Timing of the admission of guilt

18. The chronology supplied demonstrates that proceedings were served on 23 August 2023. An acknowledgement of service was filed on 1 September 2023.
19. On 6 September 2023 the claimant's solicitors recommended to the defendant that he seek legal advice, informing him that he would be entitled to legal aid. Janes solicitors, acting for the defendant, contacted the claimant's solicitors requesting papers on 6 September 2023. A notice of acting was filed on 2 October 2023. Surveillance evidence and telephone recordings were supplied to the defendant's solicitors on 12 January 2024. There then followed some discussion concerning delays pending an appeal of HHJ Parker's decision. I have also seen a chronology of contact between Mr Bills and his lawyers.
20. On 21 February 2024 it was indicated that admissions were to be forthcoming. Counsel discussed matters on 27 February 2024 and admissions were agreed on 28 February 2024.
21. The defendant was, I accept, entitled to take legal advice. The first hearing has been said by counsel for the defendant to be the very first hearing in court and therefore given that admissions were made following a discussion between the parties that were acceptable to both, full credit is justified.

Submissions and arguments in summary

22. The claimant submits:
 - (i) Custodial sentences are to be expected for false and lying statements and advancing a claim for compensation, so interfering with the administration of justice. See *South Wales Fire and Rescue Services v Smith* [2011] EWHC 1749 (Admin).

(ii) Contempt involving the invention of personal injury claims are viewed as more serious than an exaggeration of a personal injury claim, see *Liverpool Victoria Insurance Company v Bashir* [2012] EWHC 895 (Admin).

(iii) Culpability is said to be high and towards the extreme end of the scale. It is said there are multiple facets to the maintenance of the dishonest evidence relevant to an assessment of seriousness, including the five-year period in which the false Mr Nicholson evidence was relied upon from 2017 to trial in March 2022. The three documents containing the false account, that is the typed account dated 11 January 2017, the CPR witness statement of 3 November 2018 and the handwritten letter of 22 February 2019. Then the maintenance of the lie including during the trial, a denial that the defendant had met Mr Nicholson after the accident when the meeting had been caught on camera, and that the evidence was advanced with the encouragement of the defendant. It is said that the alleged ear injury and the need for a walking stick is entire fabrication.

Harm

23. A very large sum was sought. The qualified one-way costs shifting operated by the CPR would relieve an unsuccessful claimant from paying costs. It was necessary to seek a declaration as to the dishonest claim, to disapply the rules in CPR 44.14. The claimant's costs were in the region of £250,000 and sentencing can take account of the need to deter such activity, it is said.

Aggravating factors

24. It is said correctly that Insurance fraud is not a victimless crime. The operators of the housing scheme and staff spent time and resources investigating the claim. Court time has been necessary to deal with the issues raised.
25. The defendant submits:

(i) Imprisonment is only appropriate where a custodial sentence is justified for "*serious, contumacious flouting of orders of the court,*" see Lord Philips MR at paragraph 72 in *Gulf Azov Shipping Company Ltd v Idisi* [2001] EWCA Civ 21.

(ii) It is no longer in dispute whether or not the defendant suffered an accident or not. The contempt concerns the exaggeration of the entirety of the claim. It is accepted that the defendant became entrapped in an ongoing lie or series of lies.

(iii) It is accepted that the contempt is serious and that the defendant is deserving of punishment, but there is no ongoing contempt.

(iv) Mr Bills accepted the wrongdoing at the first hearing and is entitled to full credit for his plea. I have reminded myself of the matters set out in the appropriate sentencing guideline.

(v) It is said that culpability is at a medium level given the limited planning and lack of sophistication. It is said the exaggeration of the effects of the accident was naïve and foolish in order to exploit the circumstances for his own ends and those of his family.

(vi) It is said that the harm is at the lower end of the scale and that the acts of contempt are not the most serious that the courts have to deal with.

(vii) Mitigation. The defendant is a man of 74, of good character, and as such is akin to a first-time offender. Others regard him highly, his behaviour is said to be out of character, he has a number of medical conditions, including hypotension and diabetes, and caring responsibilities. He has belatedly apologised.

26. In oral submissions, Mr Grey conceded that the custody threshold had been crossed and urged suspension of any sentence.

Decision

27. I have considered the written and oral submissions. I propose to deal with the case by passing one sentence and not separate sentences for each admitted contempt. That was agreed by counsel as to the correct approach in argument. If it is formally necessary to

pass separate sentences, then I pass the same sentence on each allegation of contempt to be served concurrently.

28. It has been said often that people who try to cheat their way to massive sums by way of compensation by trying to deceive professionals and the courts over a period of time, and in a deliberate and organised way, must expect to be sentenced to a term of imprisonment. This case is yet another example of that activity. That said, this case was compromised on a basis. I therefore sentence on that basis.
29. I stress that if the claimant had pursued the full allegation, i.e. that the accident did not happen and they had succeeded in that, then the case would have been particularly serious. It is less serious given the concessions and agreement made.
30. It is necessary to determine the correct level of culpability and the intended and foreseeable harm caused by the contemnor, the aggravating and mitigating circumstances, any discount for admissions and if the custody threshold is passed if any sentence of imprisonment can be suspended. This analysis mirrors the sentencing exercise in the criminal courts, see *Haven Insurance Company Limited v Higham* [2023] EWHC 3472 (KB).
31. First, culpability. This can only be regarded as high. The claim was commenced in October 2017 and was not discontinued until January 2019. The false evidence of Mr Nicholson was relied upon to support the claim until 2022. The contempt was not only deliberate as to the matters admitted but was pursued over a long period of time. Doctors were misled and court documents falsified. That all demonstrates planning to a significant level and degree.
32. Harm. The original claim was for a sum in excess of £200,000. The case did not go to trial and was discontinued and so Zurich has suffered no loss in terms of compensation made. However, costs were incurred and have been assessed and ordered in the sum of £200,000. No recovery has been sought because the defendant is impecunious. That loss was therefore borne by Zurich.

33. In addition, court time was taken up. Witnesses were interviewed and inconvenience thereby caused. I note in this regard the evidence of Scott Clayton and the impact on and cost to the insurance industry of investigating fraudulent claims. He said that between January 2021 and December 2023 Zurich identified 7,138 suspicious personal injury claims, each of which was investigated. The potential value of the claims was £199 million. He added that on average around 1,300 fraudulent claims were discovered each day by the insurance industry. False claims impact the wider public in increased premiums.
34. The intended harm was, I find, high. A claim was exaggerated by the defendant and he intended to obtain, by the admitted falsehoods, a significant recovery. I therefore assess the level of harm of high based upon the impact of his actions and the intention of the defendant.
35. Aggravating factors. I do not find any additional factors. I have incorporated all of my findings into my assessment as to culpability and harm.
36. Mitigating factors are as I have set out. Admissions were made and credit is due for that.
37. In my judgment, the case clearly crosses the custody threshold. A lesser penalty such as a fine is not appropriate given the seriousness of the admitted contempt. It is not suggested that the case has not crossed the threshold by counsel for the defendant.

Suspension of a sentence

38. The Sentencing Council Imposition Guideline provides guidance as to the factors to consider when considering the suspension of a sentence of custody. At page 8 a helpful summary is set out. Factors to consider include caring responsibilities for defendant's dependants, failure to respond to supervision in the past, the prospects of rehabilitation and the risk or danger the defendant poses. I have considered all that has been said.

39. Considering the factors, I find that the defendant is not a danger to the public and there is no history of any failure to respond to non-custodial sentences. There is personal mitigation and others will be affected by immediate custody. Rehabilitation is not a live issue. Recently, albeit late in the day, the defendant has apologised for his actions. I add the defendant is a man of good character, has some health issues and is elderly. The risk of reoffending I assess is low.
40. Finally, I have considered the decisions in *R v Ali* [2023] EWCA Crim 232 and the *R v Manning* [2020] EWCA Crim 592 in the context of the current prison population and how that maybe a factor when considering suspension of prison sentences, particularly those of short duration. The same principle can be taken into account when determining the appropriate sanction for any proven contempt, see the decision of Pepperall J in *UK Insurance Limited v Ali & Ors* [2024] EWHC 30 at paragraph 53.
41. In this case, a short custodial sentence in that only half of any sentence will be served and the effect on a 74-year-old man of the current prison conditions is, in my judgment, a significant factor in his favour.

Credit

42. I have considered the submissions. The defendant was entitled to take legal advice. His solicitors were entitled to consider all of the material and take instructions. The matter was resolved relatively quickly without a hearing as to the facts, thus saving court time. In my judgment, not only is credit due to reduce any period of custody, it should be full, that is a reduction of one-third.
43. In my judgment, having considered all of the facts this case is not so serious that only immediate custody is appropriate. The factors supportive of suspension do, in my judgment, outweigh the need for immediate custody. Immediate imprisonment can therefore be avoided in this case. I regard the circumstances as justifying suspension, given the factors I have set out.
44. In my judgment, given the facts of this case and balancing all of the facts and the mitigating factors advanced, a sentence of 12 months' imprisonment is appropriate.

That will be reduced to 8 months for the admissions. That sentence will be suspended for 2 years.

Epiq Europe Ltd hereby certify that the above is an accurate and complete record of the proceedings or part thereof.

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(This judgment has been approved by the judge)