Case No: HQ16C03763

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 01/06/2018

Before :

THE HON. MR JUSTICE SPENCER

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Between :

Calderdale and Huddersfield NHS Foundation Trust **Claimant**

- and -

Defendant

Sandip Singh Atwal

- -
- -

James Todd (instructed by **Hempsons**) for the **Claimant.**
Robert Parkin (instructed by **Hadgkiss, Hughes & Beale**) for the **Defendant .**

Hearing date: 1st June 2018

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SENTENCE ON COMMITTAL

(unapproved judgment, but authorised for publication)

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Mr Justice Spencer

1. On 12th April 2018 I heard this application to commit the defendant to prison for contempt of court. The defendant did not attend that hearing. I was satisfied he had been duly served and proceeded in his absence. I reserved judgment. On 18th April my draft judgment was forwarded to solicitors and counsel for the claimant, with a request that the claimant's solicitors serve the defendant with my order of the same date notifying the parties of the adjourned hearing date, 27th April, when I would consider sentence for the contempts I found proved. The order made it clear that the defendant was required to attend. Service was to be at his parents' home address in Huddersfield as before, in accordance with the order of Master Cook for service at an alternative address.

2. My order and the draft judgment were duly served at the defendant's parents' address on Thursday 19th April, a week before the adjourned hearing. As before, he was advised in the claimant's solicitors' covering letter of the importance of obtaining legal representation. Within a matter of two days the defendant was informed by his parents of the hearing, and he took steps to obtain representation.

3. On Friday 27th April the defendant duly appeared before me at the adjourned hearing, represented by counsel, Mr Parkin, instructed by solicitors in Birmingham. I formally handed down my reserved judgment: [2018] EWHC 961(QB). I found fourteen of the allegations of contempt proved.

4. The defendant was not at that stage legally aided. The defendant maintained that he had been unaware of the hearing on 12th April, and would have

attended had he known about it. His counsel requested an adjournment, which I granted, in order that the defendant could be fully advised and apply, if so advised, pursuant to CPR 39.3 to set aside the judgment as it arose from a hearing in his absence. I gave detailed directions for the steps to be taken by both parties in readiness for the final hearing of this matter today, 1st June.

5. Those steps have been complied with. The defendant indicated through his solicitors on 4th May 2018 that he would not be applying to set the judgment aside. He does not dispute the findings of contempt, although he does not accept all the factual findings in my judgment. In his witness statement dated 4th May 2018 he sets out his observations and assertions in relation to some of my findings. He also sets out his financial and domestic situation and his means, and the evidence he relies upon in mitigation of penalty.

6. The claimant's solicitors seek their costs of the proceedings, on a summary assessment. The sum claimed, set out in their schedule of costs, is £82,064.08. As directed, the defendant's observations on the claim for costs have been set out in a written response from Mr Parkin, dated 11th May 2018. There is a further statement from Ms Chloe Davies of the claimant's solicitors, dated 17th May 2018, commenting on the defendant's response on costs and explaining and justifying the sums claimed.

7. At today's hearing the two issues I have to decide are what penalty to impose for the contempts I have found proved, and what order for costs I should make. I have had the benefit of further oral submissions from counsel on both issues. I shall deal first with the question of costs.

Costs

8. The sum claimed for costs may seem, at first sight, to be very large for a case of this kind, but it is important to bear in mind that these proceedings for contempt were commenced in November 2016 and have extended over a period of 18 months. They have been so prolonged only because the defendant deliberately failed to engage with the proceedings at all. Had he made admissions at the outset, a great deal of time and expense could and would have been saved. Instead, the claimant's solicitors had to prepare the case at every stage with great care and thoroughness, in order to be able to prove every allegation strictly. They had to work on the assumption that the defendant would not participate in the proceedings.

9. The fact that the defendant is now legally aided does not affect the court's unrestricted power to award costs up to the date he became legally aided, which was 2nd May 2018: see paragraph 3.4 of the Guidance Notes on the application of section 26(1) of the Legal Aid Sentencing and Punishment of Offenders Act 2012 (at paragraph 48GP.03 of the White Book 2018). From that date onwards, however, s. 26 (1) provides that costs awarded against a legally aided party must not exceed the amount (if any) which it is reasonable for him to pay having regard to all the circumstances, including (a) the financial resources of all the parties to the proceedings, and (b) their conduct in connection with the dispute. In such a situation it is often appropriate for the s.26 assessment to be made by a Costs Judge. As I indicated in the course of submissions, for purely pragmatic reasons I do not propose to award any costs against the defendant in respect of the period after 2nd May 2018 when he

became legally aided. Mr Todd and his solicitors have confirmed that the sum involved would only have been an additional £4,286. That course will avoid the necessity for the claimant to incur further expense in proceedings before a costs judge to pursue a sum which would probably be exceeded by the costs of the exercise.

10. It is rightly conceded by Mr Parkin that the defendant cannot resist an order for costs in principle. Nor is there any reason why costs should not be assessed summarily up to the date the defendant became legally aided. The sole question is whether the total sum claimed, or the individual items, are disproportionate having regard to the relevant considerations set out in CPR 44.3(5). Costs incurred are proportionate if they bear a reasonable relationship to (a) the sums in issue in the proceedings; (b) the value of any non-monetary relief; (c)the complexity of the litigation; (d) any additional work generated by the conduct of the paying party; and (e) any wider factors involved in the proceedings, such as reputation or public importance.

11. Taking these matters in turn, there was, as such, no sum in issue in the proceedings, but I bear in mind that the contempt proceedings arose from proceedings in which there was a fraudulent attempt to obtain damages for personal injuries of around £837,000 in a claim worth no more than £30,000. The litigation was complex in the sense that it required meticulous analysis and proof of the truth or falsity of statements made by the defendant to the doctors and other professionals who examined him, and made in his pleadings and his witness statement. Very considerable additional work was generated by the defendant's conduct in failing to engage at all with the proceedings.

Finally, there is the wider factor that these are proceedings involving the liberty of the subject properly brought in the public interest by an NHS Trust, whose conduct of the proceedings had to be, and has been, measured, careful and thorough.

12. I am satisfied that the costs as a whole, and individually, are not disproportionate. This was a heavy case in the High Court, which involved two years' hard work by solicitors' and counsel, with two substantive hearings before High Court Judges as well as several interlocutory hearings. Work on the prospective application for committal began as early as April 2016, even before the consent order which brought the original proceedings to an end. Mr Parkin has submitted that a total sum for costs in the region of £26,400 would be more appropriate, that is to say only a little more than one-third of the sum claimed. He criticises, in particular the amount of time spent on letters out and emails (108 hours) and on perusal and preparation (280 hours). In my judgment this ignores the reality that a very great deal of extra work was generated by the defendant's failure to engage with these proceedings, requiring repeated attempts to serve him with the court process and prove service. More important still it also ignores the fact that in order to prove the falsity of the statements made by the defendant, it was necessary to contact all the doctors and other experts, as well as several of the factual witnesses, in order to double check and prove the accuracy of their reporting of the defendant's offending statements. These were, after all, very serious allegations with the liberty of the subject at stake. I accept the relevant arguments and explanations put forward by Chloe Davies in her recent statement.

13. I have also considered carefully the individual items set out in the schedule of costs, in the light of the points made by Mr Parkin and in the statement in response from Ms Davies, in order to check that each item of costs was reasonably incurred and that the costs in respect of that item are reasonable. I am satisfied that it was entirely appropriate that Ms Davies should have taken on the bulk of the work herself, only delegating the more routine tasks to junior staff. It was not a straightforward case to prepare, and Ms Davies' detailed grasp and overview were essential to the proper preparation of the many affidavits and exhibits and the voluminous bundles of documents. The sheer magnitude of the documentary evidence was reinforced and brought home to me when I came to prepare my lengthy reserved judgment. There were several thousand pages in the many bundles.

14. I am satisfied as well that, save in one regard, the involvement of counsel from the very beginning was essential given the nature and seriousness of the case, the first of its kind pursued by an NHS Trust. The exception is counsel's involvement in conferring with the experts to discuss their role and the type of work required, as well as advising in conference in general terms at the outset. It is appropriate to allow only one such conference. Mr Todd does not oppose this reduction. I shall therefore disallow that item, and reduce the total figure for counsel's fees by £1,000.

15. Bearing in mind this is a summary assessment I adopt a somewhat broader brush approach than a detailed assessment would require. From the total sum claimed, £82,064, I deduct the sum of £4,286 for costs incurred post legal aid. I also deduct the sum of £1,000 from counsel's fees. That leaves a balance of

£76,778. I shall round that down to £75,000 which I am satisfied represents a proportionate figure for costs. Whether the claimant will ever be able to recover that sum is another matter altogether, but that is the order I make. I turn to the question of penalty.

Penalty

16. The defendant does not dispute any of the findings of contempt, but sets out in his witness statement dated 4th May 2018 his side of the story in relation to the matters I have found proved as contempts. I have taken what he now says into account but it does not affect the fundamental position that the defendant deliberately and grossly exaggerated the extent of any continuing disability attributable to his negligent hospital treatment. He consistently maintained that he was unable to drive, unable to lift, unable to pursue his career as a disc jockey, that his earning capacity was seriously reduced, and that he required and would continue to require a great deal of help from his family in managing day to day tasks such as eating, washing and dressing. It is the alleged consequences of his supposed continuing disability which resulted in the gross inflation of his claim.

17. I do not propose to address each and every explanation the defendant now puts forward by way of mitigation of his contempts. One example will suffice. The defendant seeks to explain away the music video of his performing as a DJ by suggesting that he was feeling low and his family thought it would do him good to have something positive in his life. They therefore arranged for him to appear in a promotional video to help promote a track issued on iTunes. Although the video appears to show him performing as a DJ with dancers and

musicians, it is said that they were added in later for effect. That may well be so but I note that there is no explanation of the defendant's other social media DJ appearances, as described at paragraphs 57 and 58 of my judgment, including performing as the headline act at an event at Club Air in Birmingham in 2011, three years after the negligent treatment.

18. I am prepared to accept that the defendant continued to experience some degree of discomfort and disability from the deformity in his right hand, and this has been acknowledged throughout. It is the degree of dishonest exaggeration which makes this case so serious. I note that the defendant now accepts in his witness statement several of the core untruths which led to my findings of contempt. He accepts it was untrue to say that it was impossible for him to manage any of the lifting associated with his job as a courier. He could hardly deny that in view of the video evidence. He admits it was untrue to say that his left hand had become his dominant hand. He accepts that it was "misleading and inaccurate" to say that driving was difficult. He accepts that it was misleading to suggest that on a daily basis he struggled to lift or carry heavy items. He accepts that he did not need 3.75 hours of care and assistance daily.

19. These admissions have come very late in the day, and are completely at odds with the bullish tone of the letter from his former solicitors, dated 16th March 2016, indicating that the defendant would now belatedly accept the Part 36 offer of £30,000. In that letter the solicitors asserted that the defendant denied any fraud and would wish to serve further witness statements to support the bona fides of his account.

20. The seriousness of this case is aggravated by the fact that this was, in effect, an attempted fraud on the National Health Service. Ultimately it would have been the NHS budget which bore the loss had the dishonest claim succeeded. I am told that this is the first case of contempt of this kind where the proceedings have been brought by an NHS Foundation Trust. Generally it is insurers, particularly motor insurers, who bring such proceedings, to protect the public interest by deterring those who might be minded to indulge in similar dishonest conduct.

21. I bear in mind the mitigation which has been advanced on the defendant's behalf. First, he did not persist in his dishonesty once it was uncovered. He abandoned his false exaggerated claim. It follows that the Trust suffered no actual financial loss, save for the costs incurred in these proceedings which they will probably never recover. Second, this was not a claim which was dishonest from the start, as some are, where the whole cause of action is fraudulently contrived, the so-called cash for crash cases. Here the defendant had a genuine cause of action and had suffered a degree of genuine disability. His dishonesty lay in the gross exaggeration of its consequences. Third, it is now more than two years since the defendant's dishonesty was uncovered. That provides little mitigation, however, because the delay is largely the result of his failure to engage with these proceedings.

22. In this regard I make it clear that I do not accept for a moment that the defendant was unaware of these proceedings. He spoke on the phone to the process server in November 2016 and positively encouraged him to leave the relevant papers at his parents' address in Huddersfield where he would collect

them (see paragraph 42 of my judgment). When papers were subsequently delivered there on several occasions I simply do not accept that they were not brought to the defendant's attention by his family. By a striking contrast, he accepts that within a matter of two days he received the latest papers served upon him via his parents. I remain entirely satisfied that the defendant was undoubtedly seeking to avoid service until the reality of a prison sentence has galvanised him into action. I note that in his witness statement he says that he has been living at his current address in Birmingham since May 2016. In November 2016, however, when the defendant spoke on the phone to the process server he told him a very different story. He said he was of no fixed abode and living in London, bedding down at the home of whichever friend would have him. If he was in any doubt about the progress of these proceedings the defendant had every opportunity to contact the Trust's solicitors, who have bent over backwards to assist him, and every opportunity to seek legal advice of his own.

23. In deciding upon the appropriate sentence for these serious acts of contempt I have considered other recent cases arising from similar circumstances, which counsel have drawn to my attention including *South Wales Fire and Rescue Service v Smith* [2011] EWHC 1749 (Admin); *Nield v Loveday* [2011] EWHC 2324 (Admin); *Lane v Shah* [2011] EWHC 2962 (Admin); *Homes for Haringey v Fari* [2013] EWHC 3623 (QB); *Surface Systems Ltd v Wykes* [2014] EWHC 422 (QB); *Network Rail Infrastructure Ltd v Dermody* (2nd May 2017, unreported); *Aviva Insurance Ltd v Kovacic* [2017] EWHC 423 (QB). I have also been referred to and considered two further cases in which the issue of suspending the term of imprisonment arose, albeit for different

forms of contempt: *Templeton Insurance Ltd v Thomas* [2013] EWCA Civ 35; *Lloyds TSB Insurance Services Ltd v Shanley* [2013] EWHC 4603 (Ch).

24. Mr Parkin submits that although a custodial sentence is plainly called for, the term of imprisonment could properly be suspended. He points to the similarity of this case to another case I dealt with last year, *Aviva Insurance Ltd v Kovacic* (above), where a suspended sentence was the outcome. However, as my judgment in that case made clear, there were exceptional circumstances in that case arising from a four year delay. I made it clear that the course I was taking was exceptional, and that the mere fact of delay would not normally save a defendant in such a case from immediate custody, particularly where proceedings had been deliberately and mischievously strung out, which was not the position in that case. I also emphasised that each case turned on its own facts.

25. In the present case the delay is far shorter. The fraud was uncovered, for the most part, by November 2015. The claimant applied in February 2016 to amend the pleadings and allege dishonest exaggeration. The defendant's solicitors indicated on 16th March 2016 that he now wished to accept the original offer of £30,000, but he insisted he had not been guilty of any fraud. There has only been delay at all thereafter because the defendant has refused to engage with the proceedings. He must bear the consequences.

26. I shall now proceed to pass sentence and will address the defendant directly. Sandip Atwal, you may remain seated for the time being. In the judgment which I handed down on 27th April I have found you to be in contempt of court. You did not attend the hearing of the application to commit, even

though you had notice of it for several months. You deliberately chose throughout to bury your head in the sand and not to engage with the proceedings at all, even though you knew how serious the consequences might be.

27. I have found fourteen of the allegations of contempt proved against you to the criminal standard. I could have made many more findings of contempt but, for the reasons explained in my judgment, it was appropriate to concentrate on the main allegations. I now have to sentence you for these contempts.

28. The NHS Foundation Trust was given permission to bring this committal application because it was in the public interest that you should be punished for contempt of court if it was proved that you were guilty of the misconduct alleged. It needs to be clearly understood by everyone that false and lying claims undermine the administration of justice in a number of serious ways: insurers and other institutions have to spend a great deal of time and money identifying and weeding out claims they think may be fraudulent; false claims damage our system of adversarial justice, depending as it does on openness, transparency and honesty; false claims can take up a great deal of court time and precious resources.

29. The senior courts have made it clear that those who make false claims and get caught must expect to go to prison. There is no other way to underline the gravity of such conduct to those who attempt to make such claims. There is no other way to improve the administration of justice.

30. You had a perfectly good claim for damages in respect of negligent hospital treatment in 2008 for injuries you had sustained when you were the victim of

a serious assault. The injuries which were negligently treated were two fractured fingers and a split lip. You were left with some deformity of your right hand and some stiffness and loss of power in the left hand. The negligent treatment of the lip had merely delayed recovery by a matter of a few weeks. You undoubtedly had some modest disability from the finger injuries for a short time but you grossly exaggerated the continuing effects of the injuries in a thoroughly dishonest way.

31. In August 2011, when notified of your prospective claim, the Trust immediately made a realistic offer of settlement, £30,000. That was, if anything, a generous offer. You did not accept it. Instead you pursued a dishonestly aggravated claim, and by November 2014 when your schedule of loss and damage was served, the claim was pleaded at over £837,000. It included a claim for £255,000 for future loss of earnings, and a claim for £421,000 for future care needs and equipment and the cost of employing someone for household tasks you could no longer do yourself. Those claims were based upon what you were falsely telling the medical and care experts was your continuing level of disability resulting from the negligent hospital treatment. The depths of your deception were revealed by covert video surveillance in October 2015, which proved that you were perfectly able to work, to drive, to lift and to carry, activities which you were still claiming not to be able to manage.

32. When you were confronted with that evidence, and other material from postings on the internet which gave the lie to your claims, you rapidly

abandoned your huge claim for damages and belatedly accepted the sum of £30,000 which had been offered nearly five years earlier.

33. Had you not accepted that sum, the likelihood is that the Trust's application to strike out your whole claim as an abuse of process would have succeeded and you would have recovered nothing. That has in fact been the practical outcome in any event. You had to pay the Trust's costs from the date when you turned down their offer of £30,000. Those costs amounted to £60,000. You were entitled to your own costs up to the date of the offer, amounting to £25,000, but the net result of this litigation is that all your compensation has been swallowed up in paying the Trust's costs, and you still owe the Trust £5,000. That is the direct consequence of your greed and your dishonesty. You have no-one to blame but yourself.

34. Some of my findings of contempt are based on what you told the medical and care experts when you were examined by them for the purpose of your claim. Some of my findings of contempt are based on what was said in your schedule of loss and damage and in your witness statement, each verified by a statement of truth. There were essentially four areas of continuing disability that you deliberately and dishonestly exaggerated.

35. First, you claimed that you had lost confidence in your speech and in your ability to work as a professional disc jockey as a result of the injury to your lip and loss of strength and dexterity in your hands. Despite the excuses you now put forward, that was blatantly untrue. You do not dispute the findings of contempt. In fact you were still pursuing your career as a DJ under the stage name SunnyKMS. In March 2011 you and another artist jointly released a

record and a music video, and over the period when these false representations were made you regularly performed as a DJ and music artist. This was discovered from postings on the internet.

36. Second, you informed medical and care experts, and claimed in your witness statement, that driving and lifting were very difficult, that you had to rely on using your left hand, and that you were unemployed because you had not been able to manage your chosen work as a courier driver. You said you had no employment prospects. In fact, as the video surveillance proves, you were perfectly able to drive, to lift and to carry, and you were working. Far from being unable to use your right hand, there was one telling passage in the video evidence where you are seen carrying a very heavy box in your right hand, holding it by a strap. On the strength of the assertion that your earning capacity was permanently reduced, a claim for future loss of earnings was put forward in excess of £255,000.

37. Third, you claimed in your witness statement and in your schedule of loss that you were unable to assist with housework or carry or pack shopping, and that you struggled to lift and carry items which affected you on a daily basis. That was all untrue, for the same reasons.

38. Fourth you maintained the pretence that you had needed and continued to need assistance every day with tasks such as toilet, showering and dressing, general fetching and carrying, psychological and emotional support, and preparation of meals and drinks. Based on this false information you claimed for past and future care of 3.75 hours a day. Consequently there was a very large claim for

your supposed care needs, for care to date £68,000, and for future care £167,000.

39. You did not contest these allegations, but neither did you make any admission. I do not add to your punishment on that account but it means you do not get credit for pleading guilty and admitting the allegations. I do, however, give you some modest credit for your very belated acknowledgment of your dishonesty. You did belatedly, and sensibly, engage with the proceedings rather than try to evade justice further.

40. There is no particular mitigation in your personal circumstances. You are a married man, but you and your wife have no children or other dependants. You are currently in employment, and so is your wife. You live in rented accommodation in Birmingham. You own no vehicle. You claim to have no other income or savings, and you already owe the Trust £5,000 in respect of the costs of the original proceedings. By my order for costs today, you owe them a great deal more, but I doubt that the Trust will ever be able to recover the whole of that debt, if any at all.

41. I take into account that you have already been in the media spotlight as a result of my findings of contempt. That, I am afraid, is part - and a necessary part - of the punishment for such conduct because it is only in that way that the public comes to learn of the seriousness of such conduct, and the seriousness of the consequences for those who indulge in such conduct.

42. I have given the most careful consideration to all the circumstances of this case and all the submissions made by your counsel. My firm and clear conclusion is that a sentence of immediate custody is necessary to mark these

serious contempts, and to deter others. I am satisfied that appropriate punishment can only be achieved by an immediate custodial sentence. Although it is some years now since you made these false statements any avoidable delay is of your own making, for the reasons I have already explained. The case is not comparable with the *Aviva* case, or the *South Wales Fire Service* case. In any event, each case turns on its own facts. Had you admitted these contempts at the outset, the matter could have been dealt with long ago. There are no other circumstances which could justify suspending the sentence.

43. I bear in mind that you have no previous conviction for dishonesty. I give you some credit for you very late acceptance of guilt, and the remorse which it indicates, although it is regrettable that you have not expressed your remorse by an unequivocal apology for your behaviour, recognising the trouble, expense and inconvenience it has caused, the damage to the administration of justice which it involved, and the risk to precious public funds. Your admissions have come very late in the day. They do not merit more than a modest reduction in your sentence. I have, however, also reflected to a degree the passage of time since you committed these contempts, by keeping the sentence as low as it will be. It is to be hoped that the sentence will not mean that you and your wife lose your tenancy, but I make no such assumption. You will probably lose your current employment. Those, I am afraid, are just the sort of consequences which dishonesty of this kind leads to for those who are caught and brought to book. Let it be a warning to all.

44. Stand up please. Sandip Atwal, for each of the contempts I have found proved there will be a concurrent sentence of 3 months' imprisonment. Pursuant to s.258 Criminal Justice Act 2003 you will be released when you have served one-half of that sentence.