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Case No: H90BM015

**IN THE HIGH COURT OF JUSTICE**  
**QUEEN'S BENCH DIVISION**

**Birmingham District Registry sitting at Birmingham Magistrates' Court**

**Date: 11/06/2021**

Before :

**HHJ SHETTY SITTING AS A JUDGE OF THE HIGH COURT**

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Between :

<b>WALSALL COUNCIL</b>	<b><u>Claimant</u></b>
<b>- and -</b>	
<b>MOHAMMED YAQUB KABIL</b>	<b><u>Defendant</u></b>

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**Mr David Callow** (instructed by **Brown Jacobsen**) for the **Claimant**  
**Mr Mark Jones** (instructed by **Waldrons**) for the **Defendant**

Hearing dates: 11<sup>th</sup> June 2021

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**Approved Judgment**

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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**HHJ Shetty :**

1. The claimant applies for the defendant's committal for contempt of court. Permission was granted by Mrs Justice Steyn on 12 February 2021. She gave directions for this matter to proceed to a committal hearing. Many of the directions have been ignored by the defendant. Today, there has been significant delay in starting the hearing due to the defendant's initial non-attendance. Whilst it is not necessary to go through everything that has happened, I was initially told that the defendant would not be in attendance and an application to adjourn was being considered because the defendant had mobility issues and could not get here. However, further instructions were then obtained from him and it is suffice to say that at around mid-day, the defendant over telephone to his counsel, Mr Jones, indicated he would attend court and would admit the allegations. The defendant did attend and has made admissions orally which are further recorded in an Order of the Court with a Schedule containing the Particulars of Contempt. Those particulars are set out in an annexe to this judgment. They can summarised by saying that the defendant has admitted falsifying a personal injury claim for damages. He has engaged in signing statements of truth in respect of false statements of case including the Particulars of Claim, a Schedule of Loss and a witness statement.
2. In the circumstances the court has moved on to consider the question of sanction.
3. The defendant has accepted that his contempt crossed the custody threshold. The issue has centred upon the question of length and whether such a custodial sentence should be suspended in the circumstances.

**THE FACTS**

4. The defendant was a claimant in an action for personal injury and losses that were said to have arisen from a highways accident that occurred on 3<sup>rd</sup>/4<sup>th</sup> April 2015. He alleged that he slipped, tripped and fell due to a defect on a drop kerb part of a pavement near his house. He alleged he suffered an injury to his left knee. The claim started off life by way of a Claimant Notification Form that was sent on 21 July 2015. This was limiting the damages to the fast track valuation but the issued claim sought damages within the multi-track jurisdiction. Medico-legal evidence was obtained from Mr Sikand. A provisional schedule of loss indicated a future loss of earnings claim based on a loss of chance or disadvantage on the open labour market.
5. The allegation was contested by the defendant and the matter proceeded to a split trial of liability in front of HHJ Gregory. He heard the defendant's evidence before ruling on whether the defendant had proven that he had suffered an accident as he alleged in the statements of case. Also in attendance were the claimant's witness in regards to the section 58 statutory defence. However they were not called because their evidence was a distinct issue away from the defendant's evidence.
6. HHJ Gregory found against the defendant in very strident terms. He described him as being "wholly incapable of giving a clear account of how he came to fall. He was also wholly incapable of giving a clear account of the manner in which he was proceeding along the footpath" (para 15). HHJ Gregory went on to say that "...the only reason he has given this ridiculous and convoluted explanation for being on what in reality was the wrong side of the road, is because that is where the defect was." (para 27) and that "...[he] has latched on to this particular defective area of the carriageway in order to

seek to justify the claim. I cannot make a finding of fact with regard to where he actually suffered injury...whether it was in the carriageway or at home, because he is a man so lacking in credibility that it is impossible to know what to believe” (para 30). The Judge found that the defendant was “... a deeply unsatisfactory witness who, in my judgment, was quite prepared to make something up on the spur of the moment if it suited his case” (para 32).

7. The Judge found the defendant to be fundamentally dishonest and the claim was dismissed with attendant orders on costs. The claimant has obtained a charging order against a house connected to the defendant. However, to this date the costs order has not been satisfied.

## **THE CONTEMPT**

8. I am satisfied to the criminal standard that the defendant is guilty of contempt of court as alleged in the particulars of Committal. That is so because the defendant has today accepted the allegations when they were put to him by the clerk of the court.

## **SANCTION**

9. The court has the following sentencing powers:
  - (a) a sentence of imprisonment for a fixed term not exceeding two years
  - (b) a sentence of imprisonment suspended for a fixed period
  - (c) a fine of unlimited amount
10. The decision on sanction is entirely for the court but must 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. A custodial sentence is deemed to be the sentence of last resort and should only be imposed when the court is satisfied that the contemnor’s conduct is so serious that no other penalty is appropriate.
11. The contempt in this case, and the seriousness of it, is a deliberate and dishonest attempt by the defendant to interfere with the administration of justice in order obtain damages from the claimant. The damages claimed were not huge but were substantial enough to go into the multi-track. The lies and dishonesty were maintained from the date of the Claim Notification Form, through to trial and until today. There have been numerous hearings and orders issued by the County Court in relation to this case in addition to ‘spin off’ litigation concerning costs and enforcement of costs orders. This is not an embellished or exaggerated claim. Rather it is entirely fictitious. The claim has used a substantial amount of court time and resources as well as the time and resources of the claimant. The claimant has still not recovered its costs from the defendant. The claimant has defended this claim on a self-insured basis and has in effect used public money from council tax contributions to rebut this dishonest claim. This is money which could otherwise be spent by the highways department to repair road surfaces in an environment where conditions of roads and pavements are often given scrutiny and subject to public expressions of dissatisfaction. Dishonest highways

claims are not a new phenomena but that does not detract from the seriousness of making such claims. There is a well-known game of pinning an accident or injury on an identifiable perceived hazard in the highway surface with the hope of a pay out for a certain amount of money.

12. Consequences of dishonest claims have been addressed by the appeal courts previously. As has been said before by Moses LJ in *South Wales Fire and Service v Smith* [2011] EWHC 1749 (Admin):

“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 emphasis 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”

13. In the recent of case of *Liverpool Victoria v Khan*, [2019] EWCA Civ 392. the Court of Appeal specifically addressed the making a false statement, verified by a statement of truth in court proceedings. At para 59 of the judgment it was said that “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 exaggerate 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.”

14. In the older case of *Liverpool Victoria Insurance Co v Bashir and others*, [2012] EWHC 895 (Admin) Sir John Thomas (as he was then), suggested that the court had in mind that “foot soldiers” involved in fraudulent conduct must be deterred with sentences well in excess of 12 months’ imprisonment before taking into account mitigation. However in that case, there was evidence of a much more widescale conspiracy. Further, and in any event there was significant mitigation which substantially reduced this notional starting point.
15. In this case, the defendant was seeking substantial financial gain by pinning an injury to an apparent issue with a road surface. It was prolonged dishonesty as I have mentioned and expended considerable resources on the part of the claimant and the court. Harm is beyond that suffered to the court and the claimant on this case alone. False claims create an inevitable climate of scepticism towards real and genuine claimants. They prolong unnecessary investigations by defending third parties into personal injury claims generally. They have a knock on effect in respect of other genuine cases having to be subject to inordinate and unpalatable delays in respect of the court system.
16. In respect of culpability, there is nobody to blame but the defendant. He was not a supporting witness or a bit player in a wider conspiracy. He chose to make a claim for damages on entirely fictitious grounds and persisted with that until the claim was dismissed. I accept, as the claimant has reminded me, that there was a high degree of calculation in respect of lies which evolved over time. The claimant had noticed a discrepancy about the time of the accident. The defendant’s response was to describe his accident taking place a day before at night to almost align with the date of the reported accident and to convey reasons why the accident was not witnessed or the hazard not seen. The defendant also introduced a person as having assisted him after the accident despite having never mentioned him before.
17. In respect of aggravating features, I have already alluded to the persistence of conduct which has continued until today. That is some 6 years from the date of the claims notification form.
18. In respect of mitigation, the best expression of remorse is him at last accepting his guilt. However, even this morning, due to his absence and non-co-operation he appeared to be attempting to obfuscate the proceedings or at least not take them seriously. I acknowledge that he has some caring obligations towards his brother. However, the extent of that is in some doubt. He was, I presume unable to engage in that whilst he was injured (there is no doubt that he was injured) and I am cautious about accepting the word of someone who was completely prepared to lie for personal gain beforehand. Furthermore the defendant still maintains today that his mobility is substantially affected thereby depriving him of the ability to work. It is difficult for me to comprehend how that it is necessarily congruent with someone who is able to discharge

a caring duty for his brother. For the same reasons, I cannot put too much weight on the defendant's apparent depression which is unsubstantiated.

19. I have taken into consideration the *Manning* principle in which the Court of Appeal stated that the sentencing courts can have regard to the conditions within the prison estate due to Covid 19 restrictions. That can be a factor in determining whether or not to suspend as well as length of sentence.
20. I have taking into consideration the factors within the Sentencing Council's guidelines on the Imposition of Custodial Sentences and Community Sentences, factors against suspension include:
  - (a) whether the offender presents a risk/danger to the public.
  - (b) whether appropriate punishment can only be achieved by immediate custody
  - (c) History of poor compliance with court orders.
21. Factors in favour of suspension include, realistic prospect of rehabilitation, strong personal mitigation and immediate custody will result in significant harmful impact upon others.
22. Whilst I accept that the defendant does not present a risk or danger to the public or have any poor compliance history (save for in respect of these proceedings), and does have some caring responsibilities; ultimately appropriate punishment can only be achieved by immediate custody. A suspended sentence would be little more than a proverbial slap on the wrist to a fundamentally dishonest claimant who persistently lied to the claimant and to the court in hope of leveraging significant financial gain.
23. I take a starting point of six months imprisonment. The aggravating factor of persistence of conduct is substantial given the length of time that can be weighted against the mitigation. However it still results in some increase to 8 months. However, against that, the principle in *Manning*, reduces that down to 7 months. I then take a 10% discount which further reduces that to six months to reflect the 'at the door of the court' acceptance by the defendant. Mr Kabil, would you stand up. I sentence you to six months imprisonment. You will serve half of that before being released.

**HHJ Rajeev Shetty**

**14<sup>th</sup> June 2021**

**ANNEXE- PARTICULARS OF CONTEMPT**

### **A. Contempt by Interference with the due administration of justice**

**The Defendant made the following false statements and representations to experts amounting to contempt by way of interference with the administration of justice:**

1. The Defendant told Mr Sikand on 16 June 2016 that *“On 04/04/2015 it was dark and [he] was walking. The pavement had a ditch and he slipped, tripped and fell on to his left knee”*
2. The Defendant told Mr Sikand that *“He managed to stand up after a while but he had severe pain. He bobbled home”*.
3. These statements were false because the Defendant had not suffered a fall because of the alleged defect in the pavement as set out above but was pursuing a false claim.

### **B. Contempt by making False statements in documents verified by a statement of truth**

**The Defendant made the following false statements in documents verified by a statement of truth when he had no honest belief in the truth of those statements and knew that they were likely to interfere with the administration of justice.**

1. In his Particulars of Claim verified by a statement of truth signed by him, the Defendant stated:
  - a. That he had fallen as a consequence of a hole in the highway adjacent to number 200 Old Park Road on 3 April 2015.
  - b. That he had suffered injuries to his left knee as a result of that fall.
2. In his schedule of loss dated 4 March 2018 verified by a statement of truth signed by him, the Defendant stated:
  - a. That he had suffered financial loss as a result of the fall on the highway on 3 April 2015.
  - b. That those losses caused by the alleged fall included:
    - i. £10,850 in past care following his discharge from hospital.
    - ii. £67.50 in travel expenses; and
    - iii. That he had suffered lost earnings in that *“as a result of the accident [he] was unable to attend to his brother’s needs and as such had to manage his brother’s care by ensuring that other family members were able to assist to ensure that his brother was properly cared for”* and *“It was [his] intention to return to work”*, that *“he had applied for work ad was offered an interview bu was unable to attend due to the injuries sustained. It is the Claimant’s case that but for the accident he would have continued applying for jobs and would have been able to return to work but for the accident.”*
    - iv. As a result of the alleged accident he was at a disadvantage on the open labour market.
3. In his witness statement dated 2 February 2019 that was verified by a statement of truth signed by him, the Defendant stated:
  - a. On 3 April 2015 he left his house to attend to his brother at approximately 11pm.
  - b. Because of cars parked on the pavement it was easier to make his journey on the opposite side of the road with the intention to cross back over the road when he reached my sister’s house.
  - c. He was walking fast and when he got to 200 Old Park Road he tripped and fell as a result of the damaged and dangerous footpath.

- d. His left foot caught the damaged footpath causing him to trip and fall over.
- e. A man came to his rescue, whom he now knows to be Ibraheem Peregar who helped him to 251 Old Park Road.
- f. The location of his accident was just before 200 Old Park Road and between commercial premises.
- g. His accident was caused as a result of a defect on the footpath photographs of which he had exhibited to his statement.