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IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
[2023] EWHC 413 (KB)



No. QB-2022-001575

Royal Courts of Justice
Strand
London, WC2A 2LL

Friday, 17 February 2023

Before:

HIS HONOUR JUDGE AUERBACH
(Sitting as a Judge of the High Court)

B E T W E E N :

AXA INSURANCE LIMITED

Claimant

- and -

(1) MOHAMMED SALHAB
(2) ABBAS SALHAB
(3) MAHMOUD ALJUBOURI

Defendants

MR S CLEGG (instructed by Clyde & Co Limited) appeared on behalf of the Claimant.

MR A MAHMOOD (instructed by Clifford Johnston & Co) appeared on behalf of the First and Third Defendants.

MRS L BUCKLEY-THOMSON (instructed by EBR Attridge Solicitors) appeared on behalf of the Second Defendant.

J U D G M E N T

(v i a h y b r i d h e a r i n g)

JUDGE AUERBACH:

- 1 These are contempt proceedings brought against three defendants. Each of them was a co-claimant in County Court proceedings arising from a road traffic collision between two vehicles which occurred on 17 November 2017. Those proceedings, in case number F46YM185, were begun on 24 November 2019 and they concluded in a trial at Leeds County Court before Mr Recorder Cameron on 12 November 2021.
- 2 The present Part 8 proceedings in this court for contempt were begun in May 2022. The application for permission to bring them was supported by an affidavit of Elinor Willis, a solicitor with conduct of the matter on behalf of the claimant. Each of the defendants is said to have knowingly signed false statements of truth in the County Court proceedings and thereby to have knowingly interfered with the due administration of justice. Permission was granted in respect of the contempt proceedings by consent at a hearing before HHJ Nigel Lickley KC, sitting as a Judge of the High Court on 26 July 2022. Today is the substantive hearing of the application.
- 3 The first defendant Mohammed Salhab has fully admitted the specific schedule of allegations of conduct said to amount to contempt that relates to him. The third defendant Mahmoud Aljubouri has similarly admitted the allegations of conduct said to amount to contempt in relation to him subject to one or two reservations on points that the claimant, through its counsel Mr Clegg, says are not material and are not pressed. The second defendant Abbas Salhab has made partial admissions. The claimant, through Mr Clegg, maintains that the court should deal with him on the basis that it can be sure, factually, of all of the matters alleged against him and not merely those aspects that he has formally admitted.
- 4 Neither Mr Clegg nor Mrs Buckley-Thomson who appears for him suggests that the factual difference between the parties might not be material when it comes to what I will call for short sentencing, although technically what the court has to do is decide on the appropriate order to make under CPR 81. Mrs Buckley-Thomson did make a submission this morning that, nevertheless, given what her client *has* admitted, it would not accord with the overriding objective for this issue to be pursued. However, that was not a submission I was able to accept at this stage in the proceedings.
- 5 Accordingly, I have to determine as a preliminary matter whether I can be sure to the criminal standard of the factual matters alleged against the second defendant but which he has not admitted. The decision I am presently giving is specifically on that point although some of the context I have set out, and I am going to set out a little more in a moment, provides wider context for the matter of what I have called for short sentencing of all three defendants, which I will deal with later on.
- 6 In the run-up to today's hearing there has been correspondence from the solicitors for the second defendant to the effect that he is now living in Lebanon which is where he is right now, and that he would be and has been unable to come to the UK to give evidence in person at today's hearing. Of course, although quasi-criminal in nature, this is not a Crown Court proceeding, he is not on bail, and not obliged to appear. In any event, he is not obliged to give oral evidence if he does not want to and can choose to rely on his written witness statement. But his position through his solicitors has been, in effect, that, ideally, he would like to give oral evidence and to submit himself to cross-examination; but has been unable to come to the UK to do that in person, in summary, because he says his financial means are severely limited and there is no practical way the trip could be funded.

- 7 Prior to today, I have not formed or given any view about that, because, it being made clear to me that, in any event, he would not come to court in person, it seemed to me, in any event, fair for the court to do what it could to arrange a CVP link for his use bearing in mind that he is a defendant in these proceedings and at risk of a custodial order, so that at least he could observe and participate in the proceedings in that way, although his legal team are able privately to communicate with him by mobile phone.
- 8 That link was put in place and, in summary, at the start today the court was told, checks having been made, that he was online and can hear the proceedings, although there is no visual connection on the court's screen. Mrs Buckley-Thomson was content that all that could be expected had been done to enable him to participate in that sense. She submitted, however, that no adverse inference should be drawn in terms of the weight to be attached to his written witness statement from the fact that he is not here. Mr Clegg submitted otherwise. In any event, I have heard argument from them both as to whether I can be sure, on the basis of the witness and documentary evidence before me, of his conduct to the full extent alleged for the purposes of sentencing later on.
- 9 Before I turn to my substantive decision on those matters, some more about the incident itself. On 17 November 2017, a collision occurred on the A64 between Leeds and York between an Audi car and a Ford transit van. The Audi was being driven by Mohammed Salhab, now the first defendant to these proceedings. The Ford transit van was being driven by Tomasz Niezgodna in the course of his employment with a bakery. The Audi was in front. In summary, the collision occurred as a result of the driver of the Audi, Mohammed Salhab, performing an emergency stop.
- 10 The proceedings were issued on the 24 November 2019 in the County Court. The claimants were the three defendants to the present action and Rozia Mahmood. Abbas Salhab, the second defendant to the present action, is Mohammed Salhab's father. Mahmoud Aljubouri, the third defendant to the present action, is a friend of Mohammed Salhab. Rozia Mahmood was, at the time, Mohammed Salhab's girlfriend. The bakery was the defendant. There were claims for personal injury and vehicle damage said in the claim form to have a maximum value of £20,000, although the prayer was for relief up to £10,000. All three defendants to the present action signed the claim form and particulars of claim. They all, including the second defendant, admit to doing so. These documents asserted, among other things, that as well as Mohammed Salhab and Rozia Mahmood, Abbas Salhab and Mahmoud Aljubouri were in the Audi at the time of the collision and that they both suffered injuries.
- 11 The bakery defended the County Court claim through its insurer, which is now the claimant in the proceedings before me. It denied that there was any fault on the part of its driver and also positively asserted that Abbas Salhab and Mahmoud Aljubouri had not been in the Audi; rather that there was only the driver, Mohammed Salhab, and Rozia Mahmood as his sole passenger. Each of the three defendants to the present proceedings later signed individual witness statements in the County Court proceedings consistent with their pleaded case, including as to the injuries which each of them claimed to have suffered. Once again, in the context of these contempt proceedings, each of them has admitted that they did sign their respective witness statements.
- 12 The County Court proceedings were due to come to a contested trial in December 2020; but on 9 November 2020, all four claimants in those proceedings filed notices of discontinuance. However, on the application of the bakery, those notices were subsequently set aside in around March 2021. The County Court proceedings were then due to be tried in around July 2021 but there was a postponement of the initial trial date at the instance at least of the first defendant who was in Lebanon at the time. The trial then went ahead in

November 2021 before Mr Recorder Cameron. Mohammed Salhab, Mahmoud Aljubouri, and Rozia Mahmood all gave evidence, but Abbas Salhab did not attend or give evidence.

- 13 I have in my bundle the full transcript of the proceedings as well as the decision of the Recorder. There is no dispute that prior to the day of the trial, or until very shortly before, there had been no change in the stance of the three defendants or, indeed, Rozia Mahmood, as to who was in the vehicle. But I am told that a change of stance on behalf of Ms Mahmood was communicated to the team of the defendant in the County Court proceedings shortly before the start of the trial. However, in any event, what is clear is that during the course of the trial, the three claimants in that claim who gave evidence all accepted that Abbas Salhab and Mahmoud Aljubouri had not been in the car. However, in evidence at that trial, Mohammed Salhab and Mahmoud Aljubouri maintained that they had not appreciated or intended that the involvement of Abbas Salhab or Mahmoud Aljubouri was in order to pursue their own personal injury claims, rather than to provide support to the case of Mohammed Salhab.
- 14 However, the learned Recorder did not believe them and found that Mohammed Salhab and Mahmoud Aljubouri had been fundamentally dishonest to the criminal standard. In relation to Abbas Salhab, bearing in mind that he had not given evidence, the court was more circumspect, but found, nevertheless, that he had been fundamentally dishonest to the civil standard. I should say that this was following a finding by the Recorder that the bakery's driver was not to blame for the accident and that it had been caused by Mr Mohammed Salhab. However, there was no finding that it was deliberately caused or staged by him, as opposed to being negligently caused.
- 15 The nub of the contempt case against Mohammed Salhab is that he knowingly supported fraudulent personal injury claims by Abbas Salhab and Mahmoud Aljubouri, which were advanced on the premise that each of them had been in the car and been injured, and that he did so by knowingly signing documents supporting their claims in the course of the litigation. Although it is not a separate allegation of contempt as such, it is said to be relevant that he also gave false evidence at the trial as to his lack of awareness of them bringing their own claims, for which misunderstanding he sought to blame his former solicitors.
- 16 The nub of the contempt cases against each of Abbas Salhab and Mahmoud Aljubouri is that they each knowingly pursued fraudulent claims of their own, on the premise of having been a passenger in the Audi. This, again, is said to have been specifically by knowingly signing documents in support of their claims which gave false accounts. Reliance is also placed on both of them having attended medical appointments with orthopaedic experts, and in the case of Abbas Salhab also with a psychiatrist. Again, in Mahmoud Aljubouri's case, although not a specific allegation of contempt, it is said to be relevant that he knowingly gave false evidence at the trial.
- 17 For a contempt of this type to be established, the court must be satisfied to the criminal standard that the defendant put his name to a false statement, that the statement has or would be likely to have materially interfered with the course of justice, and that, as at the time that he made the statement, the defendant had no honest belief in its truth and knew that it was likely to interfere with the course of justice (see, for example, *AXA Insurance UK Plc v Rossiter [2013] EWHC 3805 (QB)* at [9]).
- 18 So far as Mohammed Salhab and Mahmoud Aljubouri are concerned, it has been admitted by them and confirmed to me today that they accept that their admitted conduct amounts to a contempt of which I can be sure, in all those elements, to the criminal standard. On behalf

of Abbas Salhab, the same is accepted in relation to the conduct that he does admit. I do not need, for the moment, to set out the precise detail of how each of the allegations of contempt are framed in Abbas Salhab's case, because the factual difference between the claimant and this defendant can be shortly stated. Abbas Salhab admits that he dishonestly and knowingly claimed to have been a passenger in the Audi and, in particular, that he did so by signing the claim form, particulars of claim, and a witness statement. He also admits that he saw the orthopaedic specialist and lied to the specialist about having been in the car and lied about the whiplash type injuries that he claimed to have suffered. Regarding the psychiatrist, his position is that he cannot recall seeing that specialist, but neither admits nor denies that he did.

- 19 His underlying position is that, whether in relation to the orthopaedic specialist or in relation to the psychiatrist, he did no more than admittedly to lie about being in the vehicle and to lie about having suffered physical injuries, and, in relation to the psychiatrist (if he did see them) injuries to his mental health. However, he says that at no time was it ever explained to him by anyone that any of the documents he was signing were to the effect that he was pursuing his own personal injury claim. He says that he never spoke to the solicitor or claims handler involved in the matter, that the documents were presented to him by his son, and that he trusted his son and just signed.
- 20 He says that he overheard his son discussing the personal injury claim, appreciated that there was a dispute about what had happened, and offered to support his son by claiming to have been in the vehicle in order to back up his account. He says that everything he did, including signing documents that he was asked to sign, was with that purpose of supporting his son's account and his son's claim, not with the purpose of pursuing his own personal injury claim. He says that is equally true of his having attended and spoken to the orthopaedic specialist and, if he did, to the psychiatrist. All of this was done to bolster the credibility of what he knew to be his dishonest claim that he had been in the car, but not knowingly in pursuit of his own claim.
- 21 The claimant's position is that I can be sure that he did know that a personal injury claim was being advanced on his own behalf as well as on behalf of his son. Mr Clegg submits that I can be sure of that, in particular, for the following reasons. Firstly, although, in his statement, Abbas Salhab says that English is not his first language and that he would have had trouble understanding the contents of documents of this type in English, even if he had attempted to read them, he at no stage made use of an interpreter or a translator in the course of the County Court proceedings. Indeed the documents, in particular his witness statement, aver that he did not require an interpreter or translator, nor did he have any such person with him when he saw the two medical experts.
- 22 Secondly, I can be sure that he did see the psychiatrist as well as the orthopaedic surgeon, which he does not positively deny, given the report I have, that is signed by its author, noting that his identity was verified, recording him giving a verbal account of his injuries and being examined in person, and it having featured in the proceedings. Thirdly, Mr Clegg says it is simply not believable that he would have seen, even if only one expert, or both experts, and given first-person face-to-face accounts of his claimed injuries, and yet not appreciated that this was in support of his own claim.
- 23 Mrs Buckley-Thomson, in summary, submits that I cannot be sure that he did understand the documents that he signed and, indeed, there is no positive evidence before me that he ever spoke to the solicitor or the claims handler, or that anyone ever explained the contents to him. She says I cannot be entirely sure that he did see the psychiatrist; but even if I can, I cannot be sure, simply because he described his claimed injuries, which he admits he did

dishonestly, that he therefore appreciated that the purpose of those visits was to further a claim of his own. There is nothing in the documents, in particular in the reports themselves, to say that there was a specific discussion, for example, that that was the point of the visit.

- 24 In addition, Mr Clegg says that I can and should attach less weight to his written statement than I otherwise would, as I cannot be sure that he is telling the court the truth about being in Lebanon; for which no documentary evidence in support has been produced, and his solicitors having simply conveyed what he has told them; and even if I assume or accept that he is in Lebanon, there is not a sufficient explanation for why he could not have travelled here to give evidence in person if he wanted.
- 25 Mrs Buckley-Thomson submits that there is not sufficient on any of those aspects for me to draw any adverse inference or attach less weight to his statement on that account, bearing in mind the full account the court has been given of his limited finances and difficulties in accessing any funds in Beirut at all, the reasons why he feels he cannot call upon his children to fund a trip, and the efforts she says I should accept have been plainly made for him to join the hearing and participate remotely today.
- 26 My conclusions are as follows. Firstly, I remind myself that in order to sentence on the basis of the full suite of allegations advanced by the claimant, I have to be sure of the disputed factual matters to the criminal standard and the burden is on the claimant to make me sure. So far as the second defendant's non-attendance today is concerned, I bear in mind that he was not obliged to attend, not being on bail or under any court order to do so, but also that he indicated that it was his wish to do so. I am invited to infer that he prefers to stay out of the jurisdiction and to give evidence by CVP. Though Mr Clegg was not as explicit as I am now being, this is the clear import of Mr Clegg's position, given the peril that the defendant is in by virtue of these proceedings.
- 27 I am not prepared to say on the evidence before me that I can be sure that Mr Salhab is not actually in Lebanon at the moment. I have been given a background account of his having lived in the UK and been based here for some years. Indeed, it is perfectly clear, for example, from the medical evidence that that is the case; but of his having moved back to the Lebanon following the sad death of his wife in 2018 and because of adverse financial circumstances. He himself, however, says that he returns to the UK periodically to see family and, indeed, for medical treatment. I cannot be sure that that is not true and that he is actually here now. Nor do I doubt that he has done what he can to join on the link this morning. It is entirely plausible that he has been able to join using his phone and to hear the proceedings but not to use the link in a way that he can also be seen given what has been put in his statement about his age, familiarity or not with the relevant technology, access to assistance, and so forth.
- 28 The matter on this aspect that has most troubled is his evidence that he cannot raise the funds to pay for the flight to the UK, given that, on his own evidence, his family has supported him to make regular trips to the UK since he relocated to the Lebanon, both to see them and for medical treatment, and that he plans to come to the UK for further medical treatment in the future; and that whilst he refers to the finances of his children and his reluctance to call upon them, that does not demonstrate that it would be impossible to persuade them to support him or impossible for them to find the means to do so. However, ultimately, reminding myself of the standard of proof, I cannot say that I am sure that he is being deliberately evasive about his ability to come to the UK for this hearing in order to keep himself out of the court's reach; and I am not prepared to draw that inference against him when deciding what weight to attach to his statement.

- 29 I turn then to whether I should, in any event, from all the material before me, draw the inference that Mr Clegg invites me to draw about his state of knowledge that a personal injury claim was being pursued on his behalf when he signed the relevant documents. As I have said, Mr Salhab has admitted dishonestly knowingly claiming to have been in the vehicle and dishonestly claiming to have been injured, including to at least one medical expert. I cannot be sure on the evidence before me that he did either read, or have explained to him that the documents that he signed specifically advanced a personal injury claim on his behalf. It is not impossible that he did not read them and that no one explained the contents to him. I cannot rule that out on the evidence before me.
- 30 The aspect that has most troubled me in relation to this part of the issue is that it is perfectly clear from the documentary evidence that he gave detailed accounts to two experts, and I am sure from the documentary evidence that he did see the psychiatrist, which he does not deny, of the injuries he claimed to have suffered. It is not claimed that he struggles with a command of spoken English in the same way that he does with written English, and the two experts' reports are plain and clear evidence that he does not.
- 31 Mr Clegg says in so many words that it stretches credulity that he could have attended two experts, talked about injuries he claimed to have suffered, and not appreciated that the point of the visits was to further personal injury claims of his own. However, ultimately, I have decided, literally, to give him the benefit of the doubt on this point. That is because it is not logically impossible that he may have thought that the point of his exercise was to give further weight and credence to his dishonest claim to have been in the car. I only have limited information about this gentleman, his background, his education, and/or his exposure to the English legal system and its ways, although I do have evidence that he has been involved in a previous claim. I have come fairly close to saying it really does stretch credulity too far to say that he could not have understood what the point of these visits were. But, ultimately, I have concluded that I cannot be sure of that to the criminal standard. Therefore, I do not find proven to the criminal standard the disputed facts on which the claimant relies in this case, and he will be sentenced on the basis only of the facts that he has admitted.

L A T E R

- 32 I am addressing myself now to the two defendants who are in court. The third defendant is not in court and I will say something about that in a moment. The two defendants who are in court, you do not need to stand up at the moment but I am addressing the two of you in what I am saying now.
- 33 Today I have heard proceedings for contempt against three defendants all of whom signed false and dishonest statements in County Court litigation. This morning, I had to resolve a preliminary issue of fact as to the basis of what I will call sentencing of the second defendant Abbas Salhab and during the course of the decision on that question that I gave this morning, I have set out a good deal of the background and context which I do not need to repeat now.
- 34 What I am doing now is giving my decision as to what order I will make in respect of each of these three defendants by way of what in the Crown Court would be sentence and which I will refer to as sentence conveniently for these purposes. What I am doing is deciding what order to make under CPR 81 in each case.
- 35 All three defendants have been represented by counsel. The matter was opened effectively in the role of what would be prosecuting counsel in the Crown Court by Mr Clegg,

instructed by the claimant, and I have heard submissions as to sentence and in mitigation from Mr Mahmood on behalf of both the first and third defendants, and Mrs Buckley-Thomson on behalf of Abbas Salhab.

- 36 The first and third defendants, Mohammed Salhab and Mahmoud Aljubouri, are here in court and have been throughout the day. Abbas Salhab, who I have been told and accept is in the Lebanon, joined on the link for most of the day but during the course of this afternoon, for whatever reason, his link has failed. However, this was anticipated as a possibility and Mrs Buckley-Thomson told me that her client had made it very clear that he wished to be sentenced today whether or not he was present via the link for that; and there has been no application to adjourn his sentencing. My remarks now, as well as the decision I gave this morning, will be, of course, transcribed; and his counsel and solicitor are also in court listening now. In those circumstances, I am proceeding with sentence in relation to all three.
- 37 As I described in more detail this morning, the background to this matter is a road traffic accident claim in which all three defendants were co-claimants and in which it was found at trial that the accident was caused by the driving of the first defendant Mohammed Salhab, although it was not found to have been a deliberately staged accident. However, it has been admitted by all three defendants that in the course of the litigation, they signed a claim form, particulars of claim, and witness statements asserting that Abbas Salhab and Mahmoud Aljubouri were in the car, which they were not.
- 38 Mohammed Salhab and Mahmoud Aljubouri have admitted dishonestly knowingly signing documentation and pursuing the litigation on the basis, in the case of Mr Aljubouri, that he was in the vehicle, and in the case of Mr Salhab, on the basis that Abbas Salhab and Mr Aljubouri were in the vehicle, and knowing that personal injury claims were being pursued on behalf of Abbas Salhab and Mahmoud Aljubouri. In the case of Abbas Salhab, in light of the conclusion I came to this morning, I am sentencing him on the basis that he put his name to documents knowing that they falsely and dishonestly claimed that he was in the vehicle, but not that he knew and appreciated that a personal injury claim was being pursued on his own behalf. I sentence him on the basis that he has accepted that what he did was dishonest and he knew it was dishonest, but that he did it in the belief that he was somehow supporting or assisting his son, the driver, in his own claim. That is the background, adding to what I have already said about it, and will not repeat now, in my first judgment today.
- 39 I come to some general observations about the approach to sentencing in such cases in light of the provisions of the CPR and of the numerous authorities there have been giving guidance on this subject particularly in the last ten to fifteen years. The options available to me under CPR 81.9 are to make an order for committal to prison of up to two years, but if I do, also to suspend that order. I also have the option to impose a fine and I am satisfied, and this was discussed during the course of submissions, that I would have the option to do both, and certainly do have the option to make a suspended committal order coupled with a fine. What I am not able to do is to make any kind of community punishment order analogous to those that are available in the Crown Court whether as a standalone in a case that falls short of the custody threshold, or a similar type of order attached to a suspended sentence.
- 40 Another difference between this jurisdiction and the Crown Court is that, whilst in respect of custody, the defendant would expect to be released after having served half the custodial period on license in the criminal jurisdiction, in this jurisdiction release at the halfway point is unconditional.

- 41 There are no specific guidelines equivalent to those of the Sentencing Council that apply in this jurisdiction, but there is a great deal of guidance from a number of authorities of the senior courts. A number of these authorities have been cited to me. What emerges from them is that the approach that I should take is essentially analogous in the material respects to the approach that I would take if I were sentencing in the Crown Court. I need to consider, in principle, of the options available to me what is the least severe option sufficient to meet the objectives of punishment in this case, and, in particular, whether the custodial threshold is passed. If not, I should not impose custody. If it is, I should impose custody for the minimum period commensurate with the needs and objectives of punishment in the case. If I do impose custody, I should consider whether it should be suspended.
- 42 In approaching these matters, I have regard to the guidance to be found in the relevant Crown Court guidelines and the general body of authority to which I have referred. In setting a period of custody, the overriding considerations are the degree of culpability and harm and I should have regard to aggravating and mitigating factors. I should take the same approach that I would in the Crown Court to the giving of credit for a guilty plea - in that context; in this case, for admission of the contempt alleged - and I should give appropriate recognition where the offender is of previous good character. As I am told and accept, all three of these defendants are.
- 43 Those are the most general observations about the approach which the court takes to what I have called sentencing for contempt but there is a more specific body of authority relating to contempt by the making of false statements in pleadings or witness statements in relation to Road Traffic Act claims. These authorities establish that this type of fraud or contempt is and has been for many years a severe and pervasive problem in our justice system. For that reason, it is well established that this is a serious form of contempt in all its forms and that deterrent sentences are necessary. This has been spelled out by the High Court and the Court of Appeal on a number of occasions, such as in *South Wales Fire and Rescue Service v Smith* [2011] EWHC 1749 (Admin), where Moses LJ said:
- “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.”
- See also to similar effect Spencer J in *Homes for Haringey v Fari* [2013] EWHC 3623.
- 44 The authorities do distinguish between the different ways in which such frauds are perpetrated in terms of the broad categories that the courts encounter, ranging from cases in which the accident is completely fabricated or deliberately staged, to cases in which the fraud arises from the invention of passengers who were not involved, to cases in which the fraud arises from the exaggeration of injuries and the value of the claim. However, I think it is clear from authorities such as *Liverpool Victoria Insurance Co Limited v Zafar* [2019] 1 WLR 3833 at [59] that all the varieties of this type of fraud commonly encountered by the courts are generally regarded as so serious that the custodial threshold will be passed and, ordinarily, the appropriate sentence is one of immediate custody.
- 45 Nevertheless, the court does have the power to suspend and/or to fine and there are examples, and I have been referred to a number of them, of that power being exercised. Again, there are a number of sources of guidance on when it might be appropriate in the particular circumstances of a given case to do so and, of course, the Crown Court Sentencing Guidelines offer a point of reference as well. I was referred to authorities and

guidelines that referred to factors such as whether the offender presents a risk or danger to the public; whether the appropriate punishment can only be achieved by immediate custody; whether there is a history of poor compliance with court orders; whether there is a realistic prospect of rehabilitation; whether there is strong personal mitigation; and whether immediate custody will result in a significant harmful impact upon others.

- 46 This guidance, in my view, has to be set in the wider context, however, of the overriding approach of the authorities to the inherent seriousness of this type of offending and the need for a deterrent sentences. Nevertheless, the option to suspend is always there and must be considered with care in every case. Ultimately, each and every case turns on its own particular facts.
- 47 The present case did not involve a wholly fabricated or staged accident. It has also been fairly pointed out that in the scale of what the courts see, the amounts claimed were relatively low. Although there was a discrepancy between the claim form and the particulars of claim, no more than £20,000 in total was claimed for all four claimants in the County Court litigation, a few thousand pounds of which was attributable to damage to the vehicle; and I bear in mind also that there were four claimants but only three defendants before me. Nevertheless, although this was not a case of a staged accident, it was a case in which there were two invented passengers.
- 48 Putting all those general features together, I certainly do not regard these cases as falling into the upper bracket of the most serious cases where the court would ordinarily be looking at a starting point of custody of upwards of a year; but for the reasons I have described, I do regard all three cases as passing the custody threshold. Subject to credit for pleas, good character, and other mitigating factors, all three cases, in my judgment, lie somewhere in the middle of the nought to twelve months band.
- 49 I turn then to each of the individual defendants. Mohammed Salhab is 40 years old. He is a hospital doctor. He is of previous good character for which he is entitled to credit. The structure for taking a plea is not formalised in committal proceedings in the way that there is in the Crown Court a specific opportunity to plead at certain hearings or stages in the process; but I have heard that he did not oppose permission, that was required for this type of contempt proceedings, being granted, and there was some indication from him that he accepted wrongdoing at that stage. When provided with a specific table of allegations, there was a prompt response by way of admissions. I am prepared to treat him as entitled to full credit for an early plea in that context.
- 50 I do not accept the submissions made by Mr Mahmood on his behalf that it is a relevant factor in this case that the claimant, the insurance company, having got the notice of discontinuance (to which I referred in my judgement this morning) set aside, insisted on pursuing the matter to trial because they were seeking a finding from the court at trial that the accident had been staged. That is given that they had evidently, on the instructions of their client, a basis for believing that there had been dishonest claims about the presence of two passengers in the vehicle, and it appears there was dash cam evidence from their client's vehicle. I do not think it can be said that this was so unreasonable an approach that this should be reflected in some further credit to the first defendant, because he made efforts to settle the matter upon discontinuance which were not successful.
- 51 To be clear, that does not mean that I am sentencing him on the basis that this was a staged accident. It has not been so found. I am addressing this because the argument was advanced at some length by Mr Mahmood before me this afternoon, that this action by the insurers was relevant to sentence, and I am not persuaded by it. Nor am I persuaded that there would

be any basis for me to infer that the insurers have acted from some collateral purpose in pursuing these committal proceedings, or that they have been slow to do so, given that they were launched a few months after the final trial resolved.

- 52 I am also asked by Mr Mahmood to recognise that Mr Salhab was unrepresented at trial when he admitted for the first time in evidence that the other two claimed passengers were not in the car, but maintained that he had not appreciated that they were bringing their own claims, which the Recorder found to have been fundamentally dishonest to the criminal standard and which is now, indeed, admitted. There is also no basis for me to go behind the Recorder's decision to refuse a postponement that was sought to arrange fresh representation, nor the Recorder's findings, which would have been amenable to challenge my way of an appeal if so I advised.
- 53 Nor can I see, I am bound to say, anything out of the usual run, unfortunately, of what the courts see in terms of the explanation for why Mohammed Salhab did this. I appreciate that, very sadly, his mother passed away in 2018 after a long illness and he has given a description in his witness statement of what he says was, in my words, the mental turmoil and state of denial that he was in. I am entirely prepared to accept that he may have been mentally in a very bad place at this time; but I have seen no medical evidence of specific serious mental ill health, for example.
- 54 Having said all of that, he is a man of good character, well into his adult life when this happened. There is a sheaf of testimonials for him from professional colleagues, past and present, attesting to his qualities as a doctor and a carer, and his commitment to his no doubt incredibly arduous and demanding job working in the NHS at a hospital. This plainly was severely out of character. As I have said, he is deserving of credit for his early plea and I accept that he has expressed in his witness statement and through his counsel today a sincere apology to the court and to the claimant, and real remorse and recognition of the full extent of his wrongdoing which he has clearly now metabolised.
- 55 I am bound to say I do not attach particular weight in his favour to the fact that he has had to pay the bulk of the costs of the litigation and that he is facing being ordered to pay, on some basis or other, costs in respect of today. Those are, or may be, the incidents of his conduct which simply follow from it.
- 56 The particular matter that I have had to consider is not only since this matter does, in my view, pass the custodial threshold what the period of custody should be, but whether to suspend. Taking into account credit for a guilty plea and the mitigation that I have described, the custodial period I will impose is four months.
- 57 As to whether to suspend, I have found this to be extremely finely balanced. The difficulty that this defendant and, indeed, the co-defendants, face is the clear signal from the senior courts of the gravity of this kind of offending as a class, and the need for deterrent sentences, meaning that something exceptional is required to justify suspension. Though there are other examples in many of the cases, it seems to me, in which the court has been persuaded to suspend, they have typically involved a recognition of the particular impact that immediate custody would have not on the defendant but on others, such as dependants who are peculiarly dependent on him or her for familial care or support.
- 58 The difficulty of the judgment that the court has to make is compounded by the fact that it is in the nature of things that custody has a profound impact on the individual who goes into custody, and on his loved ones and family, and it has been the nature of things that it may have a devastating impact on his career and his finances and of those who depend on him.

The court has to do its best to distinguish between cases where those are inevitable consequences which do not justify suspension, because the individual ultimately must bear responsibility for his own acts, and cases in which features such as these do in the particular case justify the step of suspending the committal order.

- 59 A further difficulty alluded to by Bourne J in a recent authority to which I was referred, *Hull University Teaching Hospitals NHS Trust v Colley* [2022] EWHC 854 (QB), is that the range of options available in committal proceedings is not as wide and subtle as it is in the Crown Court, nor does this court have the benefit of a Probation Service report to guide it as to the choice of options. However, it is an option in this case to impose a fine and Mr Mahmood has indicated on behalf of Mr Salhab, and Mr Aljubouri, indeed, as well, that that would not be resisted in either case.
- 60 In Mr Salhab's case, Mr Mahmood has made particular submissions about the testimonials to the important work that Mr Salhab does in an NHS hospital and the extraordinary pressure, of which I can certainly take judicial notice, that our hospital services are under at the moment and to the effect that if he is custody, there will be a real gap in the service of the unit that he works with. I have no doubt about all of that last point, but I have to say I do not regard that as a particularly compelling reason to suspend. He has also referred to the fact that he has surgical exams coming up in May 2023. What matters in that regard is that he should not be in custody at that time. If he is released from custody sooner he will, I am told, still be able to take the exams.
- 61 However, I have been told also and I accept that he has family members dependent on him. He sends \$300 a month to a grandfather in Lebanon who I am told is seriously ill and he provides some financial and medical support to his father who is also dependent on him, and to whom I will come, whose means are limited and who has significant medical costs. I do accept that if he is in custody, even for a short time, there would likely be real impacts on both of them.
- 62 Ultimately, I have decided in his case that, bearing in mind the option also to impose a fine, that I can and will suspend the committal order in his case coupled with the imposition of a fine. It has been a very finely balanced thing but I think it right to recognise the impacts on third parties, to recognise his good character and a form of public service in his chosen profession, and what I accept is a genuine apology and genuine remorse. However stringent the regime under which the court sentences for offences of this type, it is important that where these things are present, they are recognised. But the suspended sentence does need to be accompanied by some additional punishment which cannot be by way of a community order but can be by way of a fine.
- 63 I will therefore direct that Mohammed Salhab also pay a fine of £2,500. I have taken into account what I am told about his current means, his financial commitments, and his ongoing exposure to costs liabilities. This is an amount which I think gets the balance right between having a meaningful impact on him as a deterrent element of his punishment and being something that he will have some ability to pay; and I am prepared to listen to submissions, within reason, about time to pay.

Mohammed Salhab, stand up, please. Do you understand everything I have said so far?

THE FIRST RESPONDENT: I have, your Lord. Thank you very much.

JUDGE AUERBACH: Okay. I am ordering that you be committed to prison for four months but that that order be suspended, and to be clear, the period of suspension is for one year. I am ordering you to pay a fine of £2,500. That will be something on which I will hear submissions about time to pay. If there is any contempt of court of any sort, or any criminal offending of any sort, within that one-year suspension period, you must expect the court to be asked to immediately activate some or all of that four-month committal period which would mean you going into immediate custody. Do you understand that?

THE FIRST RESPONDENT: Yes, your Lord.

JUDGE AUERBACH: Okay. Have a seat, please.

THE FIRST RESPONDENT: Thank you.

JUDGE AUERBACH:

64 I turn to Mahmoud Aljubouri. Much of what I have already said in relation to Mohammed Salhab applies to you. You are a little younger, born in 1989, but---- Is that correct?

MR MAHMOOD: Your Lordship, it is 1988.

JUDGE AUERBACH: 1988. Okay.

65 So you are a little younger but nevertheless well into adulthood when this occurred. Again, the motive seems to have been simply financial. You are an educated person. You were studying for a PhD at the time when this offending occurred. I recognise that you too are of good character and I am prepared to treat you too as having effectively entered the equivalent of an early guilty plea. I recognise that you too have apologised and sincerely expressed your remorse to the court and to the claimant.

66 In your case, for precisely the same reasons as I have said in relation to Mohammed Salhab, I have no doubt that the custodial threshold is passed. In your case, the period of custody that I would impose, giving you credit, for mitigation, good character, and guilty plea, is three months. That is less than in the case of Mohammed Salhab not because I consider the nature of your conduct to be inherently less serious - it is really the same - but, in your case, it related only to yourself, whereas in Mohammed Salhab's case, it related to two people, you and his father. That is why I have arrived at three months in your case rather than four months.

67 I have equally found it very finely balanced, for all the reasons I have already explained when talking about Mohammed Salhab's case, as to whether I should suspend; but, once again, there is the option of a fine and, once again, I think the court should recognise the significant mitigating factors. Again, the thing that I am prepared to recognise as a further exceptional factor in your case is that you have a father and mother living with you who are financially dependent on you, that you have provided support to your sister who is a student, and that you have a wife who is financially dependent on you. Also, your job is on the line if you go into custody.

68 Again, I have had to balance whether those factors are sufficiently exceptional to take this case out of the ordinary run of consequences which people bring on their own heads by this kind of offending, but I am persuaded that, because I can also mark the offending by a fine, that I should suspend. So, in your case too I will suspend the committal order for one year. I will order you too to pay a fine of £2,500, subject to submission about time to be allowed to pay.

Stand up, please. Do you understand everything I have said so far?

THE THIRD DEFENDANT: Yes, your Lordship.

JUDGE AUERBACH: So the order I making in your case is three months committal, suspended for one year, with a fine of £2,500 attached. As I have explained to Mohammed Salhab, if there is any offending or something amounting to a contempt of court during the one-year suspension period, you can expect the court to be asked to immediately activate the committal order so that you would go into custody right away for some or all of that three-month period. I should say to you both that if that were to happen, you could expect to be released conditionally halfway through. Do you understand all of that?

THE THIRD DEFENDANT: Yes, your Lordship.

JUDGE AUERBACH: All right. You can have a seat as well.

69 I come lastly to Abbas Salhab who is not here but I know my remarks will be conveyed by his solicitor and counsel who are in court and will be, in due course, transcribed.

70 His offending is inherently less serious than that of his two co-defendants because I am sentencing him on the basis that he did not appreciate that what he was doing was in support of his own claim. Nevertheless, it certainly does pass the custodial threshold because, on his own admission, he appreciated that he has put his name to documents claiming that he had been in the car and to false claims to have suffered injuries, which is serious enough in itself to pass the custodial threshold.

71 The custodial sentence that I pass in his case, once again on the basis that I give credit for good character, and he is a 73-year-old gentleman – and I give credit for what I am treating as an early guilty plea, because of what I have heard about his intermittent representation and difficulties in fully grasping the nature of the process until a fairly late stage – the custodial sentence in his case, taking all of that into account, is two months.

72 Once again, in his case, because of particular circumstances relating to him and bearing in mind again (and I should have said I have seen testimonials which I took into account for Mr Aljubouri), testimonials that I have taken into account for Mr Salhab, and taking into account particularly what I have seen about his ill health which is supported by the medical records that I have seen, I am persuaded to suspended in his case. He has a number of health conditions. He is evidently receiving ongoing intermittent treatment. He is not at all a well man and whilst I am not sure that that would preclude him going into custody and receiving whatever treatment he might need whilst in custody, I have no doubt that it would be a particular hardship for him given his ill health.

73 Once again, therefore, I will suspend custody for one year. I accept, on what I have seen and heard, that he really has very limited financial resource of his own, and were I to impose a fine on him, it would just come out of someone else's pocket. Given that I find the case on ill health sufficiently compelling to suspend in his case, it is not necessary in his case additionally to mark this offending by a fine and so I will not impose a fine on him. It needs to be conveyed to him, however, that if there is any offending by him or conduct amounting to contempt within the one-year suspension period, he is liable to be committed to prison to serve some or all of that term, although he would be entitled to in that event an unconditional release at the half way point.

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Official Court Reporters and Audio Transcribers
5 New Street Square, London, EC4A 3BF
Tel: 020 7831 5627 Fax: 020 7831 7737
civil@opus2.digital*

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