Neutral Citation Number: [2024] EWHC 30 (KB)

Case No. KB-2023-002601

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice,
Strand, London WC2A 2LL

Date: 12 January 2024

Before :

THE HONOURABLE MR JUSTICE PEPPERALL

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Between :

UK INSURANCE LIMITED

Claimant

- and -

(1) SYED MOHAMMED YUSUF ALI
(2) SYEDA KAUSER
(3) SYEDA FATIMA TUL-ZAHARA

Defendants

- - - - - - - - - - - - - - - - - - - -

Paul F McGrath (instructed by **Keoghs LLP**) for the **Claimant**
Robbie Stern (instructed by **Hannah Solicitors LLP**) for the **First Defendant**
Simon Clarke (instructed by **Smart Legal Defence**) for the **Second Defendant**
Alesdair King (of **Usmani King Solicitors)** for the **Third Defendant**

Hearing date: 17 October 2023

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Approved judgment

This judgment was handed down remotely on 12 January 2024
by circulation to the parties and by release to the National Archives.

THE HONOURABLE MR JUSTICE PEPPERALL:

1. By these applications, UK Insurance Limited seeks permission to apply for the committal to prison of Syed Mohammed Yusuf Ali, Syeda Kauser and Syeda Fatima Tul-Zahara in respect of statements made by each of the siblings about a road traffic accident that occurred on 11 February 2016.

BACKGROUND

2. The accident happened on the slip road leading on to the M25 at junction 13 and involved three cars. The lead car was a Vauxhall Breeze that was owned by Syed Ejaz Hussain but driven by his daughter, Ms Tul-Zahara. The second car, which collided with the back of the Breeze, was a Vauxhall Astra driven by Stephen Singers. The final car, which collided with the back of Mr Singers' Astra, was a BMW 3 series car driven by Arlene Mosley and insured by UK Insurance.

3. Ms Tul-Zahara reported the accident to her father's insurers the following day. She then said that the Breeze had been driven by her brother, Mr Ali. She claimed that he had been to hospital with back and neck pain and had been given painkillers.

4. On 26 June 2016, Mr Ejaz Hussain issued a claim in respect of the damage to his car. The claim was supported by statements made by, among others, Mr Ali and Ms Kauser:

   4.1 In a statement made on 18 October 2017, Mr Ali asserted that he had been the driver of the Vauxhall Breeze car at the time of the accident and that Syed Akeel Hussain and his sister, Ms Kauser, had been passengers in the car.

   4.2 In her own statement made on the same day, Ms Kauser also asserted that Mr Ali had been driving and that she had been a passenger.

5. In addition, a personal injury claim was notified by Lance Mason on behalf of Ms Kauser on claim notification forms dated 11 May and 12 December 2016 asserting that she had suffered injury in the accident.

6. Ms Mosley insisted that the driver of the Breeze was an Asian woman in her mid-30s to 40s. She pleaded that this was a staged accident in which the driver of the Breeze had deliberately braked in order to cause an accident.

7. The case initially came on for trial on 12 June 2018. Mr Singers then disclosed photographs taken on his mobile phone which indicated that the driver of the Breeze had indeed been a woman and that her passenger was none of the people previously said to have been in the car. The case was adjourned.

8. Subsequently, Mr Ejaz Hussain amended his claim. He now pleaded that Ms Tul-Zahara had been the driver. Further, he asserted that none of Mr Ali, Ms Kauser or

Mr Akeel Hussain had been in the car. He sought to recover the value of his written-off car in the sum of £1,430 and credit hire charges of over £92,000.

9. On 15 January 2019, Ms Tul-Zahara made a statement accepting that she had been the driver. She said that she had panicked because she did not want her father to find out that she had been out all night and stayed with other men. She therefore provided her brother's details to the other drivers. Ms Tul-Zahara said that she begged her siblings to protect her from her father's wrath.

10. The adjourned trial was heard by His Honour Judge Simpkiss in Brighton. It opened in March 2020, shortly before the first COVID-19 lockdown, but the evidence did not conclude until March 2021 when it was again possible to conduct hearings in person. The judge heard submissions in the following month and circulated his draft judgment on 6 July 2021. It was not, however, handed down until 25 February 2022.

11. Mr Ali retracted his earlier statement and wrote an undated handwritten letter of apology to the judge. He expressly admitted that he had given a false statement to the court and added:

> "At the time of the accident my sister was driving but I admitted it was me to try and protect her. We are from a religious family and due to her divorce and other issues with her ex-husband my sister was going through a very tough time. I felt as her brother it's my job to protect her.
>
> I should have protected her by getting her to tell the truth. And I should have told the truth as well. I regret lying to the court and giving a false statement. This was very wrong.
>
> I want to say sorry to the court and I admit that I did wrong. I shouldn't have lied to the court and I am guilty. And I will never do anything like this again.
>
> I hope the court can forgive me. I am very sorry."

12. At trial, neither Mr Ali nor Ms Kauser gave evidence. Ms Tul-Zahara gave evidence that she had been speeding up to join the motorway when her car was hit from behind.

13. Upon the judge's findings, this was a staged accident deliberately caused by Ms Tul-Zahara slamming on her brakes in order to cause a collision and allow people claiming to have been in the Vauxhall Breeze to submit claims for minor injuries. At [77]-[80], he said:

> "77. … The evidence is clear that Ali, Akeel, Ms Tul-Zahara and Ms Kauser made dishonest representations about who was in the Breeze when the accident happened: Ali, Akeel and Kauser said that they were present and Ms Tul-Zahara that she wasn't. Ali and Kauser each made a claim that they had suffered injuries as a result of the collision (albeit that claims were never pursued to the stage of issuing a claim form). They each stood by while Ejaz made claims on the basis that Ali was the driver and not Ms Tul-Zahara. Her evidence is that Ali and Kauser originally

made the suggestion that they would say that they were in the Breeze and neither has gone into the witness box to deny it.

78. There can be no doubt that Ms Tul-Zahara, Ali, Akeel and Kauser conspired to put forward a false case that Ali was driving the Breeze and Akeel and Kauser were the passengers. I have rejected the evidence that the purpose of this was to prevent Ejaz from finding out that Ms Tul-Zahara was out with two men. Ali, Akeel and Kauser made witness statements in these proceedings supporting the case that Ali was the driver and describing an accident that they were not involved in. Ali and Kauser each started to make claims that they were injured in the accident, that the cars behind were at fault and a credit hire agreement (running to a very significant figure for a newer vehicle) was entered into. Ali went to hospital in relation to an injury which he knew he hadn't suffered as a result of the accident.

79. Apart from Ms Tul-Zahara, none of the others has made a witness statement explaining what they say happened and the reason for their false evidence. They weren't prepared to go into the witness box at the trial. In these circumstances there can be no doubt that they were parties to a conspiracy to make a false claim after the accident.

80. Were they all part of a conspiracy to cause a 'slam-on' collision with the purpose of enabling them to claim compensation from a following driver and with Ms Tul-Zahara (who was named as a driver of the Breeze on Ejaz's insurance policy)? This is pleaded against them all in Ms Mosley's amended additional claims. They have not responded to this allegation (apart from Ms Tul-Zahara whose defence I have rejected as set out above). Nor have they denied it in evidence. I am satisfied that each of these people was involved in a decision to cause a collision with a view to profit. Ali's name was given at the scene as the driver, although he wasn't in the Breeze. I have rejected the explanation that this was all hatched up after the accident. Ms Tul-Zahara's evidence that her siblings had suggested to her that she tell her father that they were in the car was contradicted in oral evidence by Ms Tul-Zahara (who said that she had suggested it to them) and doesn't fit with Ali's name being given as [the] driver at the scene. Kauser went as far as to instruct solicitors in April 2016 to make a false claim on her behalf for personal injury (signing a conditional fee agreement in the process)."

14. Judge Simpkiss dismissed Mr Ejaz Hussain's claims and found Ms Tul-Zahar solely liable for the accident. Further, he found Mr Ali, Ms Kauser and Ms Tul-Zahara jointly liable in the tort of deceit for conspiring to stage a collision with a view to profit. The judge entered judgment for Ms Mosley against the siblings in the sum of £10,713.80. Further, the judge entered judgment for Mr Singers against Ms Tul-Zahara in the sum of £4,203.

15. In addition, the judge ordered Mr Ali, Ms Kauser and Ms Tul-Zahara to pay Ms Mosley and Mr Singers' costs of the proceedings on the indemnity basis. Further, they were ordered to make payments on account of such costs liabilities totalling £80,000. While I have not been told the total costs claimed against them in the

County Court proceedings, I infer that it is likely to be over £100,000 given the usual cautious approach taken by judges in assessing the appropriate level of payments on account.

THE COMMITTAL APPLICATIONS

16. Judge Simpkiss ordered that any committal application should be filed and served by no later than 8 April 2022. The applications now before the court were made on 4 April 2022. The judge directed on 13 April 2022 that the applications should be referred to the High Court. Nevertheless, no progress was made for a year. While that delay is not explained in either the evidence or submissions before me, I note that, by an order made on 1 June 2023, Soole J observed that none of the parties were responsible for such delay.

17. The applications for permission came before Soole J on 28 June 2023. While the defendants then appeared in person and an adjournment was appropriate in any event in order to afford them an opportunity to obtain representation, UK Insurance's counsel also accepted that the hearing bundle was inadequate and directions were given for a replacement bundle to be prepared. While the defendants were served with the new bundle, my ability to prepare properly for this hearing was frustrated by the claimant's failure to provide that bundle to the court until after court hours the day before this hearing.

18. UK Insurance seeks to pursue a number of allegations of contempt:

    18.1 Against Mr Ali, it is said that he knowingly made false statements in his witness statement dated 18 October 2017 that (a) he had been the driver of the car at the time of the accident; (b) his sister, Ms Kauser, had been a passenger in the car at that time; (c) he had alighted from the car and spoken to Mr Singers and Ms Mosley after the accident; and (d) the accident had happened when he was hit from behind while driving at 30mph (allegations 1-4 respectively).

    18.2 Against Ms Kauser, it is said that she knowingly made false statements in her witness statement dated 18 October 2017 that (a) Mr Ali had been the driver of the car at the time of the accident; and (b) she had been a passenger in the car at that time (allegations 1-2 respectively).

    18.3 Against Ms Kauser, it is further said that she knowingly made false statements in claim notification forms dated 11 May and 12 December 2016 that she had been a passenger in the car at the time of the accident and had suffered injury (allegation 3).

    18.4 Against, Ms Tul-Zahara, it is said that she knowingly made false statements in her witness statement dated 25 January 2019 that the accident had been caused when she was hit from behind as she was "speeding up to join the motorway" (allegation 1).

    18.5 Against Ms Tul-Zahara, it is further said that she interfered with the due administration of justice by knowingly encouraging and persuading Mr Ali and Ms Kauser to make false witness statements about the accident (allegations 2-3 respectively).

18.6 Against all three siblings, it is said that they interfered with the due administration of justice by conspiring with each other to cause Mr Ali and Ms Kauser to make false statements about the accident circumstances (allegations 5-6 in the case of Mr Ali, 4-5 in the case of Ms Kauser, and 4-5 in the case of Ms Tul-Zahara).

19. The applications are supported by the affidavit of Andrew Burkitt. No evidence has been filed in response.

THE NEED FOR PERMISSION

20. Rule 81.3(5) of the Civil Procedure Rules 1998 provides:

> "Permission to make a contempt application is required where the application is made in relation to—
>
> (a) interference with the due administration of justice, except in relation to existing High Court or county court proceedings;
>
> (b) an allegation of knowingly making a false statement in any affidavit, affirmation or other document verified by a statement of truth or in a disclosure statement."

21. Permission is undoubtedly required to bring contempt proceedings in relation to the allegations that these defendants made false statements in witness statements and claim notification forms: r.81.3(5)(b). Permission is not, however, required pursuant to r.81.3(5)(a) in respect of allegations that they interfered with the due administration of justice in relation to "existing" court proceedings.

22. Paul McGrath, who appears for UK Insurance, contends that permission is not therefore required in this case to pursue the allegations of interference with the due administration of justice. He relies on Bacon J's reasoning in Care Surgical Ltd v. Bennetts [2021] EWHC 3031 (Ch), at [7], and points out that in this case the insurer expressly indicated its intention to make contempt applications before Judge Simpkiss sealed the order dismissing the County Court proceedings.

23. Simon Clarke, who appears for Ms Kauser, agrees with Mr McGrath's analysis that permission is not required to pursue allegations 4-5 against her. The other defendants take a different view:

23.1 Robbie Stern, who appears for Mr Ali, argues that, on their proper construction, the conspiracy allegations relate to the alleged making of false statements. He argues that UK Insurance cannot simply evade the permission filter stage by dressing up allegations that relate to the making of false statements so as to fall within r.81.3(5)(a). Accordingly, he argues that permission is required to pursue allegations 5 and 6 against Mr Ali.

23.2 Alesdair King, who appears for Ms Tul-Zahara, adopts a similar position. He relies on the decision of Trower J in Cole v. Carpenter [2020] EWHC 3155

(Ch) and invites the court to continue to consider all allegations on the basis of permission being required.

24. In Care Surgical, Bacon J considered the scope of the exception. She observed, at [7]:

> "As to the first of those points, the CPR does not define the word 'existing'. It is, however, on its natural meaning a broad term which does not appear to be confined to pending proceedings. The exception for existing proceedings would therefore appear to have the purpose of distinguishing between an alleged contempt that relates to proceedings that have come into existence, and contempt that relates to intended proceedings (or indeed does not relate to any proceedings in particular). If that is correct, the question of whether the proceedings are still pending or have been finally determined is irrelevant. But even if that is not correct, the reference to existing proceedings must at least be wide enough to encompass the present situation in which there is an extant provision in the underlying proceedings for a damages enquiry, whether or not that enquiry has been actively pursued by the claimant."

25. The proper construction of r.81.3(5)(a) was further considered by Lane J and Mark Ockelton, then respectively the President and Vice President of the Upper Tribunal (Immigration & Asylum Chamber), in YSA v. Associated Newspapers Ltd [2023] UKUT 00075 (IAC). Mr Ockelton observed, at [31], that the termination of proceedings may be irrelevant in cases like Care Surgical where the alleged contempt "relates so intimately to the conduct of the trial" but questioned whether it could be irrelevant in all cases. The exception, the tribunal held, was not applicable where the alleged contempt arose from disobedience with an order made in proceedings which were over and where it could not be said that the alleged contempt had any effect on the proceedings at the time.

26. In this case, the allegations of interference with the due administration of justice are all pleaded as having been committed "on a date or dates between 11 February 2016 and 12 June 2018"; i.e. between the date of the accident and the date of the ineffective trial. The allegations therefore span both the pre-issue period after the accident (11 February to 26 April 2016) and the post-issue period between 26 April 2016 and 12 June 2018. No party has, however, addressed me on the consequences, if any, of the allegations spanning those two distinct periods of time and whether permission is therefore required because of the inclusion of the pre-issue period during which there were no proceedings. As to that point, I note that despite the breadth of the pleaded date range, the allegations are further pleaded as conspiracies or the encouragement and persuasion of others to cause false statements to be made in action C32YM153. Further, such statements were of course made post-issue on 18 October 2017.

27. Even if the allegations of interference with the due administration of justice are made in relation to existing proceedings within the meaning of r.81.3(5)(a) as explained by Bacon J, that is not the end of the matter since there is force in the submission that the court should consider the true nature of each allegation and not simply the label

given to it by the claimant. Most obviously an allegation that a defendant interfered with the due administration of justice in existing proceedings by him or herself making a false statement in a document verified by a statement of truth should, in my judgment, be regarded as in substance an allegation that falls within r.81.3(5)(b). The important issue of whether permission is required cannot turn on the skill of the draftsman but must be approached on the basis of the true substance of the allegation.

28. I am fortified in that view by the decision in Cole. At [23], Trower J expressed the view that an allegation formulated as an interference with the due administration of justice was at least arguably also made in relation to a false statement. Further, at [24], Trower J observed that even if permission is not required the court might properly consider staying contempt proceedings based on the interference ground if permission is refused on the same allegation formulated as a false statement of truth in accordance with the guidance in TBD (Owen Holland) Ltd v. Simons [2020] EWCA Civ 1182, at [239]. Foxton J took the same approach in Verlox International Ltd v. Antoshin [2023] EWHC 86 (Comm), at [30].

29. In Verlox, Foxton J referred to the position where a legal representative makes a statement verified by a statement of truth on behalf of a client. Such verification is taken as confirming the client's belief in the truth of the contents of the statement: Practice Direction 22, paras 3.7-3.8. In such a case, I agree with Foxton J that the position cannot be different simply because the allegation is that the defendant authorised and caused his solicitor to make a statement rather than directly making it in his own name: Verlox, at [31].

30. There is, however, a difference between an allegation that a defendant interfered with the administration of justice by him or herself making a false statement in a document verified by a statement of truth (whether directly or by authorising a legal representative), and the position where it is alleged that the defendant caused or encouraged some other person to make the false statement. I venture the view that the gravamen of the former case is the making of a false statement while in the latter it is the interference with the administration of justice in causing or encouraging another person to pursue a false case or mislead the court.

31. Nevertheless, the issue of whether Mr McGrath is right to submit that permission is not needed to pursue the interference allegations is not for me since the short point is that he confirms that UK Insurance does not seek the court's permission in respect of such allegations. Further, there is no application before me to strike out these allegations for failure to seek such permission or to stay the allegations. Accordingly, the only issue before me is whether the court should grant permission pursuant to r.81.3(5)(b) to allow the false statement allegations to be pursued. In considering that issue, I accept Mr Stern's submission that I should leave out of account the disputed question of whether these defendants will in any event have to answer the interference allegations. A similar approach was taken by Trower J in Cole, at [24].

ARGUMENT

32. It is common ground that the evidence before the court discloses a strong prima facie case of contempt against each defendant. The issues in this case are therefore public interest, proportionality, and the proper application of the overriding objective.

33. For the insurer, Mr McGrath submits that the deliberate making of a false statement will usually be so inherently serious that nothing other than an order for committal to prison will be sufficient. He particularly relies on dicta in Liverpool Victoria Insurance Co. Ltd v. Zafar [2019] EWCA Civ 392, [2019] 1 W.L.R. 3833, and contends that it is therefore in the public interest to bring these committal proceedings. Anticipating the argument that the public interest has been served by the judge's findings at trial, he counters that it is more important to punish contempts that are persisted in to trial. As to proportionality, Mr McGrath argues that the particulars are tightly drafted and the evidence will not be likely to be extensive. This would, he submits, be a day's case in which the claimant's costs would be likely to be limited to around £30,000. As to the overriding objective, Mr McGrath argues that it would clearly be just and an appropriate use of public resources to allow these serious allegations to go forward to a final hearing.

34. For Mr Ali, Mr Stern urges great caution and submits that the proper application of the permission filter should only lead to the most egregious cases going forward. He argues that these proceedings rehearse matters already canvassed in the judgment of Judge Simpkiss. Relying on the reasoning in Stobart Group Ltd v. Elliott [2014] EWCA Civ 564, he argues that the overall reality is that these matters have been canvassed, determined, and remedied in the County Court proceedings and that such consideration diminishes both the public interest and proportionality of bringing committal proceedings. Relying on observations in Frain v. Reeves [2023] EWHC 73 (Ch), Mr Stern argues that Mr Ali has already paid for his dishonesty. Indeed, he points to evidence that Mr Ali is unemployed and in receipt of Job Seekers' Allowance thereby making the liabilities incurred in the County Court litigation ruinous. He also relies on Mr Ali's fulsome apology to the court. Mr Stern observes that the court did not itself initiate contempt proceedings and questions whether it is either in the public interest or proportionate to allow an insurer to pursue contempt proceedings. Mr Stern also asks the court to consider delay given that these committal applications concern matters going back to 2016. Finally, Mr Stern invites the court to consider whether it is in the public interest to list civil contempt cases while pressure on the prison estate remains at such a high level.

35. For Ms Kauser, Mr Clarke adopts Mr Stern's submissions as to the law. He stresses that Ms Kauser did not give evidence at the trial and also relied upon the delay in this case. Notwithstanding Judge Simpkiss's rejection of Ms Tul-Zahara's explanation, Mr Clarke insists that the defendants come from a strict Muslim family and that Mr Ejaz Hussain was very much head of the family. He points to the fact that the defendants will be in receipt of civil legal aid and to the enquiries that he says will be required including as to Ms Kauser's understanding of English, her ability to give evidence and the possible need for an intermediary and an interpreter. Such

concerns are, however, the subject of submissions from the bar and are not grounded upon any evidence before the court.

36. For Ms Tul-Zahara, Mr King also adopts Mr Stern's submissions. He adds that Ms Tul-Zahara's position differs in that she gave oral evidence at the trial. He submits that any dishonesty on her part has been exposed and dealt with and that contempt proceedings are not now necessary to protect the integrity of the court process. He submits that she has been punished by the findings and orders made at trial and that this application is a sledgehammer to crack a nut. While he also argues that the initial deception as to who was driving was unsophisticated, as explained above UK Insurance does not seek permission in respect of the allegations of knowing interference.

DISCUSSION

THE LAW

37. The applicable principles are not in dispute. Permission should only be granted to make a contempt application pursuant to r.81.3(5)(b) where:

    37.1 there is a strong prima facie case against the defendant;

    37.2 the public interest requires the committal proceedings to be brought;

    37.3 the proposed committal proceedings are proportionate; and

    37.4 the proposed committal proceedings are in accordance with the overriding objective.

    See Stobart Group Ltd v. Elliott [2014] EWCA Civ 564, at [44]; Berry Piling Systems Ltd v. Sheer Projects Ltd [2013] EWHC 347 (TCC), at [30].

38. In this case, each defendant has formally conceded for the purposes of this permission application that there is a strong prima facie case. In those circumstances, it is neither necessary nor appropriate to say anything further about the merits of the applications: KJM Superbikes Ltd v. Hinton [2008] EWCA Civ 1280, [2009] 1 W.L.R. 2406, at [20], Moore-Bick LJ, and Stobart, at [44(viii)], Gloster LJ.

39. In Stobart, Gloster LJ gave the following further guidance at [44(vii)]:

> "In assessing whether the public interest requires that permission be granted, regard should be had to the strength of the evidence tending to show that the statement was false and known at the time to be false, the circumstances in which it came to be made, its significance, the use to which it was actually put and the maker's understanding of the likely effect of the statement bearing in mind that the public interest lies in bringing home to the profession and through the profession to witnesses the dangers of knowingly making false statements."

40. In Cavendish Square Holdings BV v. Makdessi [2013] EWCA Civ 1540, Christopher Clarke LJ gave similar guidance at [79]. He said that whether an application for

committal is in the public interest will depend on a number of considerations including the significance of the statement in the context of the case, the clarity of its meaning, the strength of the contention that the respondent knew it to be untrue, the respondent's status, the seriousness of the consequences of it having been made, the length of time over which, and the circumstances in which, it was maintained, and any explanation as to why it was made. While maintaining that the extent to which a false statement had been persisted in was relevant, Christopher Clarke LJ added, at [73], that an application to commit should not be regarded as inappropriate simply because the respondent recants before trial. As to this, he observed:

> "Any such principle would risk becoming a licence to lie until the penultimate moment. Nor is there any rule that permission to apply to commit should be refused unless the statement in question has affected the outcome of a trial."

See also, to the same effect, Joanna Smith J in Frain v. Reeves [2023] EWHC 73 (Ch), at [20].

41. Against that, Gloster LJ stressed in Stobart, at [111], the need for judges to "stand back and look at the overall reality of the litigation." She observed that the matters about which the applicant complained in the contempt proceedings had been canvassed as issues in the substantive proceedings and had led, where appropriate, to adverse consequences. Those matters militated against permission being granted. The same point was made by Whipple J, as she then was, in Newson-Smith v. Al Zawawi [2017] EWHC 1876 (QB), at [83], when she observed that the respondent had "paid literally and heavily for his misdemeanours." See also Frain, at [20(ii)] and, at [62], where Joanna Smith J observed:

> "I recognise that there is a public interest in discouraging others from making false statements in the course of court proceedings and I have firmly in mind the guidance in Berry Piling (amongst others) … as to the importance of statements of truth. However, assuming for these purposes that her statements, or some of them, were knowingly or recklessly false, Louise has already been challenged about those statements during the trial and it would appear that they have played a significant part in persuading the Judge to dismiss her case and to pronounce for the 2012 Will. For this she has already paid, as Whipple J put it in Newson-Smith 'literally and heavily'. She was ordered to pay indemnity costs following the trial and it is common ground that she has suffered a significant amount of public and media interest. I do not consider that the public would take the view that she has 'got away' with her false statements or that she has not been adequately punished for them. I regard the Claimants' submission that a refusal of permission would mean that 'nothing' has happened to Louise as a consequence of her alleged false statements, such that the administration of justice will be seriously damaged because others will be encouraged to regard the statement of truth as a mere formality, as neither accurate nor realistic."

42. Factors in also declining to give permission for contempt proceedings against the solicitor in that case included the fact that he had corrected his statement on discovering that it was false, been cross-examined such that the court was not misled, and the judge had made highly uncomfortable and professionally embarrassing findings against him: Frain, at [87].

43. Summarising the principles in Newson-Smith, at [83], Whipple J added, at [6(c)(iv)], that the court must consider any delay in warning the respondents that he or she might have committed contempt.

44. Judges have made clear in a number of cases that considerable caution is required:

    44.1 In KJM Superbikes, Moore-Bick LJ observed, at [17], that the wider public interest would not be served if courts were to give permission too freely. Such remarks were, however, in the context of what he described as the obvious need to guard carefully against the risk of allowing vindictive litigants to use contempt proceedings to harass those against whom they have a grievance. That is plainly not this case and UK Insurance, as a motor insurer, has a real and proper interest in exposing and punishing those who pursue dishonest accident claims.

    44.2 In Cavendish Square, Christopher Clarke LJ observed, at [79], that permission applications should be approached with "considerable caution" and that it is not in the public interest that such applications should become a regular feature in cases where at or shortly before trial it appears that statements of fact in pleadings may have been untrue.

45. As to proportionality, Gloster LJ added in Stobart, at [44(vi)]:

> "In assessing proportionality, regard is to be had to the strength of the case against the respondents, the value of the claim in respect of which the allegedly false statement was made, the likely costs that will be incurred by each side in pursuing the contempt proceedings and the amount of court time likely to be involved in case managing and then hearing the application but bearing in mind the overriding objective - see Berry Piling, at [30(d)]."

46. In Berry, Akenhead J observed at [37]:

> "Whilst of course there is a public interest in pursuing people who have deliberately or even recklessly misled the court, that must be weighed in what is at best a marginal case by the proportionality of the exercise; proportionality is measured in a case like this largely by reference to the cost and time likely to be involved."

47. Liverpool Victoria Insurance Co. Ltd v. Zafar [2019] EWCA Civ 392, [2019] 1 W.L.R. 3833, was not a decision as to permission but rather an appeal as to the penalty imposed for proven contempts committed by an expert witness. The Court of Appeal observed, at [59]-[60]:

> "59. We say at once, however, 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 exaggerated claim, a lay witness seeking to provide evidence in support of such a claim, or an expert witness

> putting forward an opinion without an honest belief in its truth. In the case of an expert witness, the fact that he or she is acting corruptly and makes the relevant false statement for reward, will make the case even more serious; but it will be a serious contempt of court even if the expert witness acts from an indirect financial motive (such as a desire to obtain more work from a particular solicitor or claims manager), or without any financial motivation at all, and even if the expert witness stands to gain little financial reward by it. This is so because of the reliance placed on expert witnesses by the court, and because of the corresponding importance of the overriding duty which experts owe to the court …
>
> 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. The sum in issue in the proceedings is however relevant, because contempt of court by an expert witness will be even more serious if the relevant false statement supports a claim for a large sum, or a sum which is grossly exaggerated above the true value of any legitimate claim."

48. In South Wales Fire & Rescue Service v. Smith [2011] EWHC 1749 (Admin), Moses LJ stressed that the proper administration of justice is seriously damaged by false claims. He observed, at [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."

49. Further, in Liverpool Victoria Insurance Co. v. Bashir [2012] EWHC 895 (Admin), [2012] ACD 69, Sir John Thomas P, as he then was, referred to the great difficulty of detecting fraudulent road traffic claims. The judge added that even "foot soldiers" in a conspiracy to make false road traffic claims valued at £5,000 to £15,000 must expect to be committed to prison.

50. The court must consider the case against and for each defendant and upon each ground separately: Patel v. Patel [2017] EWHC 1588 (Ch); Attorney General v. Yaxley-Lennon [2019] EWHC 1791 (QB), [2020] 3 All E.R. 477, at [98].

THE RELEVANCE OF PRESSURE ON THE PRISON ESTATE

51. In developing his submission that the current pressure in the prison estate is relevant to the court's assessment of public interest, Mr Stern relies on an article published in *The Times* on 12 October 2023 about a meeting in which the Senior Presiding Judge, Edis LJ, is said to have ordered judges to delay imprisoning defendants who appear on bail. The article ran under the headline "Judges told not to jail rapists as prisons are full." In view of the reliance upon newspaper reporting of a private

meeting, I declared to the parties that I had been present at that meeting in my capacity as a Presiding Judge of the Midland Circuit. Further, I made plain that no judge had been ordered to do anything, still less to sentence any defendant other than in accordance with the law and any applicable sentencing guidelines. What is, however, public knowledge is that the prison system is under severe pressure:

51.1 On 30 November 2022, the government announced Operation Safeguard by which it requested the use of 400 police cells to supplement the prison estate.

51.2 On 6 February 2023, the Ministry of Justice gave the National Police Chief's Council fourteen days' notice to make cells available in the north of England and in the West Midlands.

51.3 On 24 February 2023, the then Deputy Prime Minister wrote to the then Lord Chief Justice confirming that the prisons were operating "very close" to capacity. He added that prisoners were held in crowded conditions, would have less access to rehabilitative programmes and be placed further away from home thereby affecting the possibility of family visits.

51.4 On the day before the hearing before me, the Lord Chancellor made a statement in Parliament announcing short and long-term reforms designed to create additional prison capacity.

52. While responsibility for the prison estate is a matter for the executive and not the judiciary, there are two issues for judges to consider. First, as Edis LJ observed in a judicial capacity in R v. Ali [2023] EWCA Crim 232, [2023] 2 Cr. App. R. (S) 25, judges should take into account the impact of current prison conditions until such conditions return to a "more normal" state. Such consideration will principally arise in cases like Ali where a judge is considering a short prison sentence which might properly be suspended. Secondly, judges are responsible for listing. The actual message that Edis LJ imparted at the meeting on 12 October was that the resident judges in charge of the Crown Courts across England & Wales should take into account the pressure in the prison system when deciding which cases to list. Accordingly, judges were encouraged to pause listing bail cases which might lead to an immediate custodial sentence for a couple of weeks. Such period has of course now passed.

53. In response to the prison capacity issue, Mr McGrath properly observes that it has never been suggested that prison conditions should be relevant to whether a criminal charge is preferred or a case taken to trial. By analogy, he submits that the court should leave prison conditions out of account when considering an application for permission to bring contempt proceedings. I agree. While, by analogy with the criminal jurisprudence, the court can properly take into account prison conditions when determining the appropriate sanction for any proven contempt, I do not consider that such conditions are relevant to the question of whether the court should give permission for committal proceedings to be brought. Indeed, where the court has found that the public interest requires a proportionate committal application that raises a strong prima facie case of contempt and is in accordance with the overriding objective, such application should be allowed to proceed regardless of whether pressure in the prison estate is ultimately likely to tip the scales in favour of a non-custodial sanction in the event that contempt is proved. I therefore leave the question of prison conditions out of account.

DELAY

54. I am concerned that this application seeks to litigate matters going back to 2016/2017 in respect of Mr Ali and Ms Kauser and 2019 in the case of Ms Tul-Zahara. That said, contempt proceedings were plainly not appropriate until after judgment and were intimated as early as April 2022. It is unfortunate that the proceedings did not then come on for an effective permission hearing until October 2023 but no party has sought to challenge Soole J's observation upon investigation that such delay was not the fault of the parties. Accordingly this is not a case where the claimant has unreasonably delayed, although I do – in the exercise of my discretion – take into account the overall passage of time in this case.

THE ALLEGATIONS AGAINST THE FIRST DEFENDANT

55. Allegations 1-4 against Mr Ali concern his witness statement made on 18 October 2017 in which it is alleged that he falsely claimed to have been the driver of his father's car at the time of the accident, that Ms Kauser was a passenger and that he could give an account of the accident circumstances and immediate aftermath. While Judge Simpkiss found Mr Ali jointly liable in deceit on the basis that this was a staged accident, no such case is made either in these allegations or in allegations 5-6 which do not fall for further consideration in this judgment. This is not therefore a case in which these contempt allegations go to the heart of the fraud found by Judge Simpkiss.

56. I acknowledge the public interest in exposing and punishing those who make false statements in support of court proceedings. Here, Mr Ali persisted in his allegedly false account until the door of the court but did not ultimately give perjured evidence in accordance with his statement. Indeed, once the falsity of the core claim that he and Ms Kauser had been in the car was exposed, Mr Ali wrote a letter of apology to the court in fulsome terms. Further, Mr Ali has been heavily penalised by being held jointly and severally liable for the costs of the County Court proceedings. Such costs have been ordered to be assessed on the indemnity basis and were estimated before me to run to six figures. The public would not, in my judgment, take the view that there have been no consequences for his actions.

57. Balancing all of these factors, I do not consider that it is in the public interest, or that it would be either proportionate or just, to allow UK Insurance to apply for Mr Ali's committal on allegations 1-4.

THE ALLEGATIONS AGAINST THE SECOND DEFENDANT

58. Allegations 1-2 against Ms Kauser concern her witness statement made on 18 October 2017 in which it is alleged that she falsely claimed to have been a passenger in a car driven by her brother at the time of the accident. Again, while Judge Simpkiss found Ms Kauser jointly liable in deceit on the basis that this was a staged accident, no such allegation of contempt is made against her.

59. As with her brother, this is not therefore a case in which these contempt allegations go to the heart of the fraud found by Judge Simpkiss. Again, I acknowledge the public interest in exposing and punishing those who make false statements in support of court proceedings. Ms Kauser persisted in her allegedly false account until the door of the court but did not ultimately give perjured evidence in accordance with her statement. Further, Ms Kauser has been heavily penalised by being held jointly and severally liable for the costs of the County Court proceedings. The public would not, in my judgment, take the view that there have been no consequences for her actions in making the statement of 18 October 2017.

60. Balancing all of these factors, I do not consider that it is in the public interest, or that it would be either proportionate or just, to allow UK Insurance to apply for Ms Kauser's committal upon allegations 1-2.

61. Allegation 3 is, however, more serious since it alleged that Ms Kauser submitted a false claim notification form alleging that she had suffered injury in the accident. False claims necessarily involve a fraudulent attempt to obtain compensation to which the claimant is not entitled. Such claims are difficult to detect and put all law-abiding motorists to additional cost through increased insurance premiums. There is, in my judgment, a real public interest in holding those who make false claims to account through committal proceedings even if – as here – the claim is not pursued through to court proceedings. Accordingly, I consider that despite the fact that the claim was not pursued and the passage of time since 2016, it is in the public interest, proportionate and just to give UK Insurance permission to apply for Ms Kauser's committal upon allegation 3. Indeed, this focused allegation can be efficiently heard at relatively modest cost.

THE ALLEGATIONS AGAINST THE THIRD DEFENDANT

62. Ms Tul-Zahara was not originally a witness in this case. While she had reported the accident to the insurers, she does not therefore face an allegation that she made a witness statement falsely stating that the car was driven by Mr Ali or that Ms Kauser had been a passenger. Her statement was only made after that original deception had been exposed. Allegation 1 against her is actually more fundamental. It is that she knowingly made a false statement on 25 January 2019 as to the accident circumstances. Specifically it is alleged that her statement falsely claimed that the accident happened as she sped up to join the motorway and was struck from behind whereas in truth, it is said, she had harshly braked just before the accident. The allegation is essentially that she staged this accident by heavy braking but then made a witness statement giving a different account of events in order to pursue a claim against innocent motorists.

63. Unlike the allegations in respect of the witness statements made by her siblings, this allegation does therefore go to the heart of the judge's finding that this was a staged accident. Furthermore, Ms Tul-Zahara only made this allegedly false statement after the original deception had been exposed. She then maintained this allegedly false account at trial and gave evidence in support of such case.

64. While Ms Tul-Zahara has also been found liable in deceit and been ordered to pay substantial indemnity costs, there is, in my judgment, a real public interest in holding those who persist in false statements in support of staged accidents to account. I therefore consider that it is in the public interest, proportionate and just to give UK Insurance permission to apply for Ms Tul-Zahara's committal upon allegation 1.

OUTCOME

65. Accordingly:

65.1 I refuse permission to apply for Mr Ali's committal upon allegations 1-4.

65.2 I refuse permission to apply for Ms Kauser's committal upon allegations 1-2 but give permission upon allegation 3.

65.3 I give permission to apply for Ms Tul-Zahara's committal upon allegation 1.