

Prosecuting Fraudsters: Contempt and Committal

- What to do when you have won.....

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Introduction

“Those who makes 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.”

“The prevalence of such temptation and of those who succumb to that temptation is such that nothing else but severe condemnation is likely to suffice.”

(Lord Justice Moses, South Wales Fire and Rescue Service [2011] EWHC 1749).

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The Contempt of Court Act 1981

"The question whether contempt is a criminal contempt does not depend on the nature of the court to which the contempt was displayed; it depends on the nature of the conduct." [R v O'Brien [2014] UKSC 23]

1. **'Civil contempt'** – wilful disobedience of any judgment, decree, direction, order, writ or other process of a court or wilful breach on an undertaking given to the court.
2. **'Criminal contempt'** - the publication (whether by words, spoken or written, by signs, or visible representation, or otherwise) of any matter of the doing of any act whatsoever which
 - (i) Scandalises or tends to scandalise, or lowers or tends to lower the authority of the court, or
 - (ii) Prejudices, or interferes or tends to interfere with the due course of any judicial proceeding, or
 - (iii) Interferes or tends to interfere with, or obstructs or tends to obstruct, the administration of justice

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Statement of Truth

CPR 32.14(1)

Proceedings for contempt of court may be brought against a person if he makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.

CPR 32.23(1)

Proceedings for contempt of court may be brought against a person if he makes, or causes to be made, a false statement in a disclosure statement without an honest belief in its truth.

CPR Part 81

Unified set of rules governing the procedure for committal applications in the Court of Appeal, High Court and the County Court.

CPR 81 (inserted in the CPR by the Civil Procedure (Amendment No. 2) Rules 2012 (SI 2012/2208))

- **Section 2** – enforcing compliance with a judgment or order or undertaking
- **Section 3** – interference with the due administration of justice
- **Section 5** – contempt in the face of the court
- **Section 6** – the making of a false statement of truth or disclosure statement

CPR 81 Section 6: False Statements of Truth

“Proceedings for this type of contempt of court must be brought in the High Court, as jurisdiction to punish for them lies within the High Court’s inherent jurisdiction. The county courts do not have jurisdiction.”

[Brighton & Hove Bus & Coach Co. Ltd v Brook [2011] EWHC 806]

CPR 81.18 Permission

CPR 81.18

- (1) A committal application in relation to a false statement of truth or disclosure statement in connection with proceedings in the High Court, a Divisional Court or the Court of Appeal, may be made only
 - a) with the permission of the court dealing with the proceedings in which the false statement or disclosure statement was made; or
 - b) by the Attorney General
- (2) ...
- (3) A committal application in relation to a false statement of truth or disclosure statement in connection with proceedings in the County Court, may be made only –
 - a) with the permission of a single judge of the High Court; or
 - b) by the Attorney General

CPR 81: Procedure

Stages

- (1) The Application
- (2) The Interlocutory Hearing
- (3) The Hearing

The Application

- Application Notice

The application notice must contain a prominent notice stating the possible consequences of the court making a committal order and of the Respondent not attending the hearing. [**CPR 81 PD13.2(4)**]

(The example wording given in the CPR should usually be adopted.)

- Detailed Statement of the Applicant's grounds for bringing committal application
- An Affidavit setting out the facts and exhibiting all documents relied upon

[to be served personally on the Respondent]

The Affidavit

CPR 81PD.5.2

The affidavit evidence in support of the application must –

- (1) identify the statement said to be false;
- (2) explain –
 - a) why it is false; and
 - b) why the maker knew the statement to be false at the time it was made; and
- (3) explain why contempt proceedings would be appropriate in the light of the overriding objective in Part 1.

The Interlocutory Hearing

The Court's Choice

- Give permission for contempt proceedings to proceed
- Refuse permission
- Refer the matter to the Attorney General for further consideration

Evidence and Burden of Proof

Contempt must be proved to the criminal standard i.e. beyond reasonable doubt

Essential therefore to lay the grounds for the contempt application, during the civil case:

- solid case preparation
- plead fraud
- keep the allegations as tight and specific as possible
- early Part 18 Requests tease out the lies
- focus witness statements on specific findings at trial

Exaggeration Cases

- Obtain good quality and scope of surveillance evidence
- What has the Claimant specifically said that she cannot do?
- Does your surveillance evidence contradict the Claimant's account?
- Keep the expert evidence tight and to the point
- Anticipate "good day/bad day" and "meds/no meds" arguments

What if we settle? What if the Claimant discontinues?

Settlement isn't going to cut it ...

- No findings of fraud
- The evidence isn't fully developed
- Judges don't like it

... but discontinuance will

- Lends support to the conclusion that the claims that were dropped were not genuine
- Particularly where no credible explanation is offered for the decision to discontinue

What if the Claimant lies in his CNF?

Liverpool Victoria Insurance Co Ltd v Yavuz and 8 Others
[2017] EWHC 3088

Obiter:

It was not a part of LV's case but a necessary implication of it that false statements had been made in the CNF filed through the online portal. It might be arguable that a false and dishonest statement in such a form could found an application to commit for contempt but the matter was not free from doubt.

The Hearing: Evidence

The Applicant may not rely on any grounds other than those set out in the application notice or any evidence unless served in accordance with the requirements of CPR 81.14 [CPR 81.28]

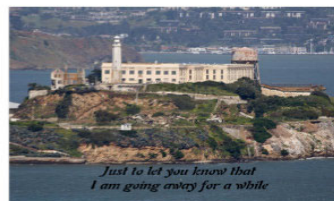
At the hearing the Respondent is entitled to give oral evidence (whether or not he has filed and served written evidence) and, if so doing, may be cross-examined.

The Respondent may also call a witness to give oral evidence, whether or not that witness has made an affidavit or witness statement.

The Court may require or permit any person (other than the Respondent) to give oral evidence at the hearing.

What if the Respondent doesn't turn up?

A committal order may be made in the Respondent



Sentencing: Section 14

Section 14 of the Contempt of Court Act 1981 provides that a guilty party may be:

- committed to prison for contempt of court for up to 2 years; and/or
- fined up to £2,500.

A successful Applicant may also be awarded their costs subject to summary assessment.

AVIVA INSURANCE LTD v AHMED LTL 21/11/2017

A man who deliberately caused a road traffic accident by braking suddenly in front of another vehicle in order to make a fraudulent personal injury claim was sentenced to nine months' imprisonment for contempt of court for making false statements about the cause of the collision, which were disproved by CCTV footage of the incident.

AVIVA INSURANCE LTD v KOVACIC [2017] EWHC 2772

Twelve allegations of contempt of court were proved to the criminal standard where video surveillance evidence showed that a personal injury claimant had consistently lied in his particulars of claim, witness statements and interviews with medical and social care experts to falsely represent the extent of his continuing symptoms after he sustained injuries in a car accident.

- The Claimant falsely asserted that he could walk on 30m on a good day. He regularly walked his children to school.
- The Claimant used a stick at his appointment with the Defendant's orthopaedic expert when his need for a stick was "very much the exception"
- Video surveillance showed that the Claimant could bend, contrary to his account to the accommodation expert
- Video surveillance further showed that the Claimant's assertion that he could not carry heavy things was false
- The Claimant's claim that he needed help with shopping was designed to falsely represent his level of independence.
- The Claimant's statement that he tried to drive but could not control the clutch was a blatant lie. Video surveillance provided incontrovertible evidence that the Claimant could and did drive.

ROYAL & SUN ALLIANCE INSURANCE PLC v MAHAROUF FAHAD [2015] EWHC 1092 (QB)

A person who had made false statements in a fraudulent damages claim against an insurance company in relation to a staged road traffic accident was committed for contempt of court where the evidence showed that he had knowingly and deliberately set out to defraud the insurance company in a false claim for damages.

ADVANTAGE INSURANCE LTD V CHRISTOPHER EWERE [2017] LTL

An individual was found in contempt of court for falsely stating in particulars of claim and several witness statements that he had been in his parked car when it was struck by another driver and that he had suffered soft tissue injuries as a result of the collision. It was clear beyond any doubt that he had not been in the car when it was struck.

Not this time...

AXA CORPORATE SOLUTION SERVICES LTD v KHAN & ANOR **[2017] EWHC 1122 (QB)**

An insurance company was not permitted to bring committal proceedings against two respondents for allegedly pursuing a fraudulent road traffic accident claim. Although the trial judge had found fraud to the balance of probabilities, the evidence had mainly been circumstantial and there was no strong prima facie evidence of fraud. Further, the insurance company had waited 18 months before bringing the proceedings.

Another Option: the Private Prosecution

- A Private Prosecution can be brought by an individual or any company [Section 6(1) Prosecution of Offences Act 1985]
- It enables the victim to retain control of criminal proceedings and actively pursue a conviction (particularly in cases where the prosecuting authorities are unwilling to bring proceedings).
- A successful private prosecution can result in a criminal conviction and custodial sentence for the offender and compensation being awarded to the victim.
- There is no limit to the compensation that a crown court may order (though it must have regard to the offender's means).
- In the magistrates' court, the maximum sum which may be ordered by way of compensation is £5,000.
- A conviction also sends a clear deterrent message to those tempted to engage in similar criminal activity

The Risks

- Those bringing such prosecutions have to conform to the highest standards as “ministers of justice” and are subject to the same obligations as public prosecutors [R v Zinga (Munaf Ahmed)[2014] EWCA Crim 52]
- The CPS may take over a private prosecution and either continue or discontinue it
- If the prosecution fails, the private prosecutor may be sued by the Defendant for malicious prosecution
- If the prosecution fails, an adverse order for costs may be made against the private prosecutor [R (on the application of David Haigh) v City of Westminster Magistrates Court & Hisham Al Rayes, Jinesh Patel and Peter Gray [2017] EWHC 232]

Costs

- The Private Prosecutor must fund the investigation and prosecution
- NB a private prosecutor has a duty to pursue reasonable lines of enquiry and obtain, retain and disclose relevant material.
- The prosecutor will need to instruct an advocate with rights (and appropriate expertise) to represent the prosecutor at trial.
- An order may be made for a payment out of central funds to compensate the prosecutor but no such order will be made if the prosecution is instigated or continued without good cause.

Precedent?

In October 2014 HHJ Harvey Clark handed down a three year sentence to Mr Paul Gustar after a jury found him guilty on two counts of insurance fraud under the Fraud Act 2006.

Mr Gustar brought a personal injury claim against his employer but abandoned his civil claim after changing his story about how the accident took place.

Following the collapse of the civil trial and the court's apparent unwillingness to support an application for committal for contempt (on the basis that this would take up a disproportionate amount of High Court time), AXA took the decision to pursue a private prosecution.

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