

Case Nos: CO/9612/2009 & CO/578/2010 & CO/1778/2010
Neutral Citation Number: [2010] EWHC 1849 (Admin)

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 23/07/2010

Before :

LORD JUSTICE HOOPER
MR. JUSTICE KENNETH PARKER

	BETWEEN:	
	A. BARNES t/a POOL MOTORS	<u>Claimant</u>
	- and -	
	MICHAEL SEABROOK	<u>Defendant</u>
AND:		
	MANDY HILL	<u>Claimant</u>
	- and -	
	AGNES GOUGH	<u>Defendant</u>
AND:		
	SOUTH WALES FIRE & RESCUE SERVICE	<u>Claimant</u>
	- and -	
	ANTHONY SMITH	<u>Defendant</u>

MR. D. MELVILLE QC appeared for A Barnes (t/a Pool Motors).
MR. A. GOFUR appeared for Michael Seabrook
MR. G. EDWARDS appeared for Mandy Hill.
MS. A. GOUGH appeared in person.
MR. M. GRANT appeared for South Wales Fire & Rescue Service.
ANTHONY SMITH did not appear and was not represented.

Hearing date: 7th July 2010

Judgment

Lord Justice Hooper:

1. The three claimants seek permission to commence proceedings for the punishment of the defendants for contempt of court for having made, during the course of county court proceedings, false statements in documents verified with a statement of truth and (in one case) in a false disclosure statement. The punishment sought by the claimants is committal to prison.
2. In all three cases the defendants had made claims in the county court, claims which are alleged to have been in a number of respects fraudulent.¹
3. We joined the three cases together only because there were common issues.
4. During the hearing we announced the following decisions, reserving our reasons:
 1. A Barnes (trading as Pool Motors) v Michael Seabrook: permission granted
 2. Mandy Hill v Agnes Gough: permission refused
 3. South Wales Fire and Rescue Service v Anthony Smith: decision reserved pending the service of further evidence, which we have now received.
5. An understanding of why these (and similar) applications are being made may be obtained from the statement of Mr John Lezmore, a solicitor instructed by the claimant (or, in reality, by the claimant's insurance company) in the first case. He wrote that the arguments in favour of punishing the defendant for contempt are:

To act as a deterrent. Insurance fraud is endemic. The reason for that is that many perpetrators perceive it to be a victimless crime for which the penalties of being caught are negligible. The advent of accident management companies and no win no fee lawyers mean that all the fraudsters need to invest in their fraud is a day of their time at trial (if the case goes that far). Hitherto, if their fraud is exposed, they merely walk away from the litigation unscathed, any adverse costs being met by their ATE LEI. The fact that this fraud was perpetrated by an educated London cabbie indicates the contempt for which the civil justice system is currently held by fraudsters. The perceived unwillingness of the civil courts to punish litigants who abuse their process deceitfully is itself a factor that perpetuates the rise of fraudulent claims.

To raise awareness of the QBD judiciary of the sorts of demands being placed on the Circuit judiciary. I submit that the Lists in Ilford and Central London County Court are

¹ There seems to be some confusion about the correct nomenclature for the person making the application (claimant/applicant) and the alleged contemnor (defendant/respondent). I have used claimant and defendant. But see Practice Direction to RSC Ord. 52, paragraph 2.5.

clogged up with fraudulent motor claims. Unless and until some of the fraudsters lose more than a day of their time at court, and until that fact begins to filter down to grass roots level where such claims germinate, then the status quo is unlikely to change.

To raise public awareness. This fraudulent claim involved a deliberate attempt to manipulate the civil justice system by lying to all the lawyers and the court. It is important that the public understand that they are paying for the illicit proceeds of such frauds through higher insurance premiums. Compulsory motor insurance is a form of taxation in which insurance companies provide the safety net for society to function in an environment of controlled risks. Raising public awareness that Courts are prepared to protect the public at large from such fraud provides a valuable public service.

Improve the administration of justice. The additional costs of permitting this matter to proceed to High Court Committal proceedings should result in a significant reduction of such claims in the future resulting in a significant global saving in costs and freeing up the Judges' civil lists, enabling meritorious cases not tainted by fraud to get to trial faster.

6. Although it may not matter in practical terms, the contempts of the kind with which these three cases are concerned could be said to be criminal contempts in that they interfere with the administration of justice and thus constitute public wrongs (see e.g. Halsbury's Laws of England, volume 9(1) (4th Reissue) paras. 402 and 445). Unlike other serious criminal offences, criminal contempts are triable only summarily (*ibid.*, para. 491). However in *KJM Superbikes Ltd v Anthony James Hinton* [2008] EWCA Civ 1280, Moore-Bick LJ said, in a judgment with which the other two members of the court agreed, that contempts of the kind with which these three cases are concerned are civil contempts. He said:

11. ... Proceedings for contempt of the kind contemplated in this case, albeit civil rather than criminal, are public in nature and by committing an act of a kind which is liable to interfere with the course of justice the witness exposes himself to the risk of punishment by the court. When the court gives a private person permission to pursue proceedings for contempt against a witness who is alleged to have told lies in a witness statement it allows that person to act in a public rather than a private role, not to recover damages for his own benefit, but to pursue the public interest. That is why the court will be concerned to satisfy itself that the case is one in which the public interest requires that the committal proceedings be brought and that the applicant is a proper person to bring them.

7. In *Daltel Europe Ltd and others v Hassan Ali Makki and others* [2006] 1 WLR 2704, [2006] EWCA Civ 94 Lloyd LJ said in a judgment with which the other two members of the court agreed:

45. The making of a false statement on oath would be perjury, which plainly is a crime, and proceedings for which would be a prosecution, plainly criminal proceedings. When the new rules were devised, with the emphasis on verification of statements by a statement of truth, which is not made on oath, it was necessary to consider what should be the sanction for non-compliance. An offence could have been created, but it was not. Instead recourse was had to the established concept of contempt, which is not the subject of a prosecution or a trial before a jury, but rather of either proceedings within an existing action or separate proceedings before the Divisional Court brought by a Part 8 claim form.

46. The question being whether the applications before the judge were civil proceedings within the rather general definition in the 1995 Act, it seems to me that the judge was right to decide that they were

But see also the White Book 2010, pages 2179 and 2181 where it is said that contempts of the kind with which these appeals are concerned are criminal contempts.

8. I shall start with the legislative framework for contempts of the kind alleged in these cases.

Legislative framework

9. The power of the county court to try and punish criminal contempt is a limited one. Section 118 of the County Courts Act 1984, as amended, provides:

(1) If any person--

(a) wilfully insults the judge of a county court, or any juror or witness, or any officer of the court during his sitting or attendance in court, or in going to or returning from the court; or

(b) wilfully interrupts the proceedings of a county court or otherwise misbehaves in court;

any officer of the court, with or without the assistance of any other person, may, by order of the judge, take the offender into custody and detain him until the rising of the court, and the judge may, if he thinks fit,--

(i) make an order committing the offender for a specified period not exceeding one month to . . . prison . . . ; or

(ii) impose upon the offender, for every offence, a fine of an amount not exceeding [£2,500], or may both make such an order and impose such a fine.

(2) The judge may at any time revoke an order committing a person to prison under this section and, if he is already in custody, order his discharge.

(3) A district judge, assistant district judge or deputy district judge shall have the same powers under this section in relation to proceedings before him as a judge.

10. The county court also has a common law power to punish breaches of orders and undertakings etc as a civil contempt. The maximum sentence is one of two years' imprisonment by virtue of section 14(1) of the Contempt of Court Act 1981 which provides:

In any case where a court has power to commit a person to prison for contempt of court and (apart from this provision) no limitation applies to the period of committal, the committal shall (without prejudice to the power of the court to order his earlier discharge) be for a fixed term, and that term shall not on any occasion exceed two years in the case of committal by a superior court, or one month in the case of committal by an inferior court.

By virtue of section 14(4A), for the purpose of this section "a county court shall be treated as a superior court and not an inferior court." (See also Practice Direction ("PD") RSC 52 and CCR 29, paragraph 1.2).

11. CCR 29 governs the procedure for dealing with contempts of this kind.
12. It is agreed by counsel who appeared in these cases that the county court has no power to try and punish contempts of the kind with which these cases are concerned. This accepted limitation on the power of county courts might tend to support the proposition that contempts of this kind are criminal contempts.
13. Rule 32.14 of the Civil Procedure Rules ("CPR") provides:

(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.

(2) Proceedings under this rule may be brought only –

(a) by the Attorney General; or

(b) with the permission of the court.

14. The PD which supplements Rule 32 states in so far as witness statements are concerned:

A witness statement is the equivalent of the oral evidence which that witness would, if called, give in evidence; it must include a statement by the intended witness that he believes the facts in it are true.

20.2

To verify a witness statement the statement of truth is as follows:

‘I believe that the facts stated in this witness statement are true’.

15. It is clear that the making of such a false statement is a contempt at common law and that Rule 32.14 does no more than set out the procedure to be followed consequential on such a contempt. In the words of 32.PD.28.4:

The rules do not change the law of contempt or introduce new categories of contempt.

See further *Malgar Ltd v RE Leach (Engineering) Ltd* a decision of the Vice-Chancellor, Sir Richard Scott, in the Chancery Division dated 1 November 1999, [2000] FSR 393.

16. Rule 31.23 deals with false disclosure statements. It provides:

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

(2) Proceedings under this rule may be brought only –

(a) by the Attorney General; or

(b) with the permission of the court.

17. A disclosure statement must, by virtue of the annex to the PD supplementing Rule 31, carry the following certificate:

I certify that I understand the duty of disclosure and to the best of my knowledge I have carried out that duty. I certify that the list above is a complete list of all documents which are or have been in my control and which I am obliged under the said order to disclose.

18. It is to be noted that the institution of proceedings requires the permission of the court if not instituted by the Attorney General.

19. The Rule 32 PD makes provision for what is described as the “penalty” for making false statements. Paragraph 28 provides:

28.1

(1) Where a party alleges that a statement of truth or a disclosure statement is false the party must refer that allegation to the court dealing with the claim in which the statement of truth or disclosure statement has been made. (Emphasis added)

(2) The court may –

- (a) exercise any of its powers under the rules;
- (b) initiate steps to consider if there is a contempt of court and, where there is, to punish it;

(Practice Direction RSC 52 and CCR 29 makes provision where committal to prison is a possibility if contempt is proved²)

(c) direct the party making the allegation to refer the matter to the Attorney General with a request that the Attorney General consider whether to bring proceedings for contempt of court.

28.2

(1) A request to the Attorney General must be made in writing and sent to the Attorney General's Office at 20 Victoria Street, London, SW1H 0NF. The request must be accompanied by a copy of the order directing that the matter be referred to the Attorney General and must –

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

(2) The Attorney General prefers a request that comes from the court to one made direct by a party to the claim in which the alleged contempt occurred without prior consideration by the court. A request to the Attorney General is not a way of appealing against, or reviewing the decision of the judge.

28.3

Where a party makes an application to the court for permission to commence proceedings for contempt of court, it must be

² They also deal with fines: see RSC 52.9.

supported by written evidence of the facts and matters specified in paragraph 28.2(1) and the result of the request to the Attorney General made by the applicant.

28.4

The rules do not change the law of contempt or introduce new categories of contempt. A person applying to commence such proceedings should consider whether the incident complained of does amount to contempt of court and whether such proceedings would further the overriding objective in Part 1 of the Civil Procedure Rules.

20. Paragraph 8 of the Rule 31.23 PD states that the procedure in paragraph 28 of the Part 32 PD applies to cases of false disclosure statements.
21. Mr Gofur in the first case submitted that the effect of Rule 32.14 (and thus also of Rule 31.23) and paragraph 28 of the PD is to narrow down the remedies for an alleged contempt of this kind. Given (as is accepted by all) that the contempts described in these two Rules cannot be dealt with by a county court, he submits that the only remedy for these contempts if committed in county court proceedings is a request to the Attorney General to take proceedings. He submits that the provisions of RSC Order 52 do not apply to such contempts if committed in county court proceedings. He relies on the PD which, as I have set out, states:

Where a party alleges that a statement of truth or a disclosure statement is false the party must refer that allegation to the court dealing with the claim in which the statement of truth or disclosure statement has been made. (Emphasis added)

Thus he submits that the PD requires a party in county court proceedings to refer the allegation of contempt to the county court dealing with the proceedings in which the alleged contempt was committed.

22. I set out the provisions of RSC Order 52.1 first before reaching a conclusion about this submission.
23. Order 52.1 makes provision for, amongst other things, the jurisdiction to punish contempt by a term of imprisonment. It provides:

(1) The power of the High Court ... to punish for contempt of court may be exercised by an order of committal.

(2) Where contempt of court –

(a) is committed in connection with –

(i) ...

(ii) ... or

(iii) proceedings in an inferior court; or

(b) ...

then, ..., an order of committal may be made only by a Divisional Court of the Queen's Bench Division.³

...

24. For these purposes the county court is an inferior court.
25. I should refer to RSC Order 52.9 which deals with punishment for contempt other than prison. It provides, under the heading "Saving for other powers":

Nothing in the foregoing provisions of this order shall be taken as affecting the power of the court to make an order requiring a person guilty of contempt of court, or a person punishable by virtue of any enactment in like manner as if he had been guilty of contempt of the High Court, to pay a fine or to give security for his good behaviour, and those provisions, so far as applicable, and with the necessary modifications, shall apply in relation to an application for such an order as they apply in relation to an application for an order of committal.

26. The RSC Order 52 PD states in para. 1.3 that in relation to contempts of the kind with which these cases are concerned, a "committal application must be made in the High Court".
27. I return to Mr Gofur's submission that a claimant in proceedings of the kind with which these three cases are concerned cannot come directly to the Divisional Court but must ask the county court judge to refer the matter to the Attorney General.
28. In my view the submission is wrong. Notwithstanding the language of Rules 32.14 and 31.23 and, in particular, the language of paragraph 28 of the PD, it seems to me that a party in county court proceedings is entitled to come to the Divisional Court under RSC Order 52 and obtain from the Divisional Court an order of committal to prison or other penalty and is not obliged to follow the procedure in para. 28 of the PD to Rule 32. It may be that paragraph 28 is of more importance in proceedings before a judge in the High Court.
29. I find some support for this conclusion in *KJM Superbikes Ltd* (see above para. 6). In that case Moore-Bick LJ said:

14. It is convenient to consider at this point ... [the] submission that the court should generally decline to give permission to a private litigant to pursue proceedings for contempt in cases of this kind and should instead direct that the matter be referred to

³ By virtue of section 66 of the Senior Courts Act 1981 (previously known as the Supreme Court Act): (1) Divisional courts may be held for the transaction of any business in the High Court which is, by or by virtue of rules of court or any other statutory provision, required to be heard by a divisional court.

(2) Any number of divisional courts may sit at the same time.

(3) A divisional court shall be constituted of not less than two judges.

(4) Every judge of the High Court shall be qualified to sit in any divisional court.

the Attorney-General for her to consider whether proceedings should be instituted. Such a course was said to be more likely to promote consistency of approach and thus greater confidence in the administration of justice.

15. Consistency of approach is, of course, highly desirable, but I do not think that to refer all cases of this kind to the Attorney-General is the only way in which it can be achieved. Cases are bound to differ widely, both in the nature and circumstances of the alleged contempt, and whether the matter is determined by the Attorney-General or the court, each will have to be considered on its own facts. In practice complete consistency is unlikely to be unattainable, but it is possible for the courts through individual decisions to establish and develop a body of principles which will provide guidance to judges who have to deal with applications of this kind and which will by their nature promote the necessary degree of consistency. ... Paragraph 28.2 of the Practice Direction supplementing rule 32 directs attention to the different courses open to the court once a possible contempt of this kind has been drawn to its attention. The court is free to take whichever course appears most appropriate in the circumstances and I can see no good reason for saying that the most appropriate course is normally to direct that the matter be referred to the Attorney-General. (Emphasis added)

30. However, *KJM Superbikes Ltd* was at all times a case proceeding in the High Court.
31. I feel that I should say something, albeit briefly, about a number of cases in which a judge of the High Court has taken jurisdiction on his or her own to deal with contempts in county court proceedings by the making of false statements. Following the conclusion of the cases in the county court, the proceedings were transferred to the High Court.
32. In one case (*Kirk v Walton* [2008] EWHC 1780 (QB); [2009] 1 All ER 257) the judge, Cox J, at the application stage, accepted jurisdiction (so we were told) on the basis that the parties agreed that she should have jurisdiction. At the next stage ([2009] EWHC 703 (QB)) Coulson J considered RSC Order 52 briefly and concluded that he did have jurisdiction. He said:

5. At the outset of the trial, I raised with the parties my concern as to jurisdiction. This concern arose out of the somewhat convoluted terms of **RSC 52.1** which, on one reading, appeared to suggest that, whilst a High Court Judge had the power to consider committal proceedings arising out of contempt *in the face of* the County Court, only the Divisional Court could deal with a committal if the contempt arose *otherwise in connection with* those proceedings. Given that, pursuant to **RSC 52.1 (3)**, a High Court Judge has the jurisdiction to deal with a contempt of court of any description arising in the High Court, this distinction, if that is what it was, seemed anomalous.

6. When I raised the matter, both counsel submitted that I did have the necessary jurisdiction, and they both disavowed any intention to take a jurisdiction point. On the contrary, they both indicated that their respective clients wanted me to try the case. They pointed to the fact that Silber J had dealt with a very similar case in Swansea just over two years ago (*Caerphilly County Borough Council v Matthew Hughes and others*, 1st December 2006, unreported). They also made the point that the issue of jurisdiction had been considered by Cox J in the present case in June/July 2008, when she concluded that she had the necessary jurisdiction to grant permission for the claim to be brought before and tried by a High Court Judge.

7. Both Silber and Cox JJ referred to and relied upon **CPR 32.14** which provides as follows:

...

8. In the light of the cases referred to above, I have concluded that, despite the opaque nature of **RSC 52.1**, **CPR 32.14** does provide a High Court Judge with the necessary jurisdiction to deal with a committal for contempt of court arising out of documents verified in the County Court by way of a statement of truth. I consider that this conclusion is strengthened by reference to *Malgar Limited v Re Leach Engineering Limited* (1st November 1999, unreported), a decision of the Vice-Chancellor in the Chancery Division, and the decision of Pumfrey J granting permission for a committal application in *Sony Computer Entertainment and Others v Ball and Others* [2004] EWHC 1192 (Ch).

33. As to the two cases cited by the judge in the last paragraph, neither of them was or had been a county court case.

34. RSC Order 52(3) provides:

Where contempt of court is committed in connection with any proceedings in the High Court, then, subject to paragraph (2), an order of committal may be made by a single judge of the [High Court] (Emphasis added)

35. It seems to me to be doubtful whether a single judge of the High Court has jurisdiction over a contempt of court committed by the making of a false statement in county court proceedings and that the judge does not obtain the jurisdiction by an order transferring the proceedings (at least after their conclusion) to the High Court. The county court is an inferior court for the purposes of RSC Order 52 rule 1(2) and, in tentative view, the effect of the rule is to require the committal proceedings to be in the Divisional Court and, by virtue of RSC Order 52 rule 2(1) only with the permission of the Divisional Court. I make it clear, however, that we heard only the briefest argument on the point, it not being directly relevant to these proceedings. Mr

Grant, for the claimant in the third case, takes the view that the High Court does not have jurisdiction.

36. I understand that the Civil Procedure Rules Committee is in the process of looking at RSC Rule 52 and CCR 29. It may be that the Committee will wish to consider this matter.
37. I turn to the principles to be applied by a court when deciding whether to grant permission to commence committal proceedings.

The principles to be applied by a court when deciding whether to grant permission to commence committal proceedings for the punishment of an alleged contempt of court by the making of a false statement in a document verified with a statement of truth and (in one case) in a false disclosure statement

38. In a number of cases this issue has been considered in relation to the making of an allegedly false statement in a document verified with a statement of truth. There seems to be no good reason why the same principles should not apply to an allegedly false disclosure statement.
39. Cox J in *Kirk v Walton* gave a useful summary of the law applicable to an application for permission to commence proceedings for the punishment of an alleged contempt of court by the making of false statements:

29. I approach the present case, therefore, on the basis that the discretion to grant permission should be exercised with great caution; that there must be a strong prima facie case shown against the Claimant, but that I should be careful not to stray at this stage into the merits of the case; that I should consider whether the public interest requires the committal proceedings to be brought; and that such proceedings must be proportionate and in accordance with the overriding objective.

40. *KJM Superbikes Ltd* concerned a witness, Mr Hinton, who had made a witness statement which (and there was no dispute about this) was completely untrue to support what turned out to be an unsuccessful strike-out application. The trial judge had refused an application for permission to bring proceedings against Mr Hinton. KJM appealed that refusal and succeeded on appeal. Moore-Bick LJ gives important guidance to courts when considering applications for permission to commence proceedings for the punishment of an alleged contempt of court by the making of false statements. Moore-Bick said:

16. Whenever the court is asked by a private litigant for permission to bring proceedings for contempt based on false statements allegedly made in a witness statement it should remind itself that the proceedings are public in nature and that ultimately the only question is whether it is in the public interest for such proceedings to be brought. However, when answering that question there are many factors that the court will need to consider. Among the foremost are the strength of the evidence tending to show not only that the statement in

question was false but that it was known at the time to be false, the circumstances in which it was made, its significance having regard to the nature of the proceedings in which it was made, such evidence as there may be of the maker's state of mind, including his understanding of the likely effect of the statement and the use to which it was actually put in the proceedings. Factors such as these are likely to indicate whether the alleged contempt, if proved, is of sufficient gravity for there to be a public interest in taking proceedings in relation to it. In addition, the court will also wish to have regard to whether the proceedings would be likely to justify the resources that would have to be devoted to them.

17. In my view the wider public interest would not be served if courts were to exercise the discretion too freely in favour of allowing proceedings of this kind to be pursued by private persons. There is an obvious need to guard carefully against the risk of allowing vindictive litigants to use such proceedings to harass persons against whom they have a grievance, whether justified or not, and although the rules do not prescribe the class of persons who may bring proceedings of this kind, the court will normally wish to be satisfied that the applicant was liable to be directly affected by the making of the statement in question before granting permission to bring proceedings in respect of it. Usually the applicant will be a party to the proceedings in which the statement was made, but I would not exclude the possibility that permission might be granted to someone other than a party if he was, or was liable to be, directly affected by it. In my view there is also a danger of reducing the usefulness of proceedings for contempt if they are pursued where the case is weak or the contempt, if proved, trivial. I would therefore echo the observation of Pumfrey J. in paragraph 16 of his judgment in *Sony v Ball* that the court should exercise great caution before giving permission to bring proceedings. In my view it should not do so unless there is a strong case both that the statement in question was untrue and that the maker knew that it was untrue at the time he made it. All other relevant factors, including those to which I have referred, will then have to be taken into account in making the final decision.

18. Paragraph 28.3 of the Practice Direction supplementing Part 32 directs the applicant to consider whether proceedings for contempt would further the overriding objective and that is a matter which the court itself should plainly have in mind. It is important not to allow satellite litigation of this kind to disrupt the progress of the substantive proceedings and it may not be possible to assess the strength of the complaint until those

proceedings have concluded. This danger was well described by David Richards J. in *Daltel Europe Ltd v Makki*⁴ as follows:

“Allegations that statements of case and witness statements contain deliberately false statements are by no means uncommon and, in a fair number of cases, the allegations are well-founded. If parties thought that they could gain an advantage by singling out these statements and making them the subject of a committal application, the usual process of litigation would be seriously disrupted. In general the proper time for determining the truth or falsity of these statements is at trial, when all the relevant issues of fact are before the court and the statements can be considered against the totality of the evidence. Further, the court will then decide all the issues according to the civil standard of proof and will not be applying the criminal standard to isolated issues, as must happen on an application under CPR Part 32.14.”

19. In some cases, of which this is an example, it may be possible to deal with an application of this kind at a much earlier stage, especially if the alleged contempt relates to a statement made for a limited purpose which has passed and has no continuing relevance to the proceedings. Although we did not hear argument on this point, I think that in general a party who considers that a witness may have committed a contempt of this kind should warn him of that fact at the earliest opportunity (as the appellant did in this case) and that a failure to do so is a matter that the court may take into account if and when it is asked to give permission for proceedings to be brought. However, it is important not to impose any improper pressure on a witness who may later be called to give oral evidence. In particular, if the alleged contemnor is to be called as a witness, an application under rule 32.24 should not be made, and if made should not be entertained by the court, until he has finished giving his evidence.

20. A court dealing with an application of this kind must, of course, give reasons for its decision, but I need hardly emphasise that if the judge decides that permission should be granted he should be careful when doing so to avoid prejudicing the outcome of the substantive proceedings. At the stage of the application for permission the court is not concerned with the substance of the complaint; it is concerned only to satisfy itself that, if established, it is one that the public interest requires should be pursued. If, as in the present case, some aspects of the complaint have been admitted, the judge is free to refer to them, but it will usually be wise to refrain from

⁴ The appeal from the decision of David Richards J is reported in [2006] 1 WLR 2704, [2006] EWCA Civ 94, which I cited in paragraph 7 of this judgment.

saying more about the merits of the complaint than is necessary.

21. ...

22. In my view the judge was wrong to refuse KJM permission to bring proceedings in this case. Although he described the alleged contempt as serious, he did not give it the weight it deserved and he was unduly influenced both by Mr. Hinton's experience in cross-examination and by his perception that proceedings for contempt would not be likely to result in a significant penalty or significantly affect the administration of justice in the future. Any witness in Mr. Hinton's position could expect to have a difficult time in cross-examination, but the judge can be expected to ensure that he is not treated unfairly and in my view that is not a factor that should carry much, if any, weight on an application of this kind. In the present case Mr. Hinton did not make things easy for himself by prevaricating and displaying an initial reluctance to face up to what he had done, although it is fair to say that he did eventually do so. Whether the contempt, if proved, would be likely to attract a serious penalty is not something the judge hearing the application can be expected to ignore entirely because it is a reflection of the seriousness of the allegation. Inevitably, therefore, it plays a part in assessing the overall public interest in bringing proceedings. However, it is necessary to bear in mind that any penalty ultimately imposed will reflect not only the true nature and seriousness of the contempt that has been committed but also other factors, including factors personal to the contemnor. Those are not matters that the judge hearing the application for permission is well placed to assess, but having regard to the established approach of the court to attempts to interfere with the administration of justice, I find the judge's comment surprising. It may be that Mr. Hinton displayed a degree of remorse once he realised the gravity of his conduct, but that is generally something to be taken into account when deciding what penalty should be imposed if the alleged contempt is established.

23. The judge's conclusion that proceedings for contempt in this case would be unlikely to promote the integrity of the legal process or respect for it in the future is one which I find difficult to accept. It is true that only prominent examples of the kind that are widely reported in the press can be expected to make an impression on the public at large, but that is to ignore the fact that the pursuit of contempt proceedings in ordinary cases may have a significant effect by drawing the attention of the legal profession, and through it that of potential witnesses, to the dangers of making false statements. If the courts are seen to treat serious examples of false evidence as of little

importance, they run the risk of encouraging witnesses to regard the statement of truth as a mere formality. That is not a matter which the judge appears to have taken into consideration. In my view the prosecution of proceedings for contempt in the present case would be likely to have a salutary effect in bringing home to those who are involved in claims of this kind, of which there are many, the importance of honesty in making witness statements and the significance of the statement of truth.

41. I draw the following propositions from this judgment:

- i) A person who makes a statement verified with a statement of truth or a false disclosure statement is only guilty of contempt if the statement is false and the person knew it to be so when he made it.
- ii) It must be in the public interest for proceedings to be brought. In deciding whether it is the public interest, the following factors are relevant:
 - a) The case against the alleged contemnor must be a strong case (there is an obvious need to guard carefully against the risk of allowing vindictive litigants to use such proceedings to harass persons against whom they have a grievance);
 - b) The false statements must have been significant in the proceedings;
 - c) The court should ask itself whether the alleged contemnor understood the likely effect of the statement and the use to which it would be put in the proceedings;
 - d) “[T]he pursuit of contempt proceedings in ordinary cases may have a significant effect by drawing the attention of the legal profession, and through it that of potential witnesses, to the dangers of making false statements. If the courts are seen to treat serious examples of false evidence as of little importance, they run the risk of encouraging witnesses to regard the statement of truth as a mere formality.”
- iii) The court must give reasons but be careful to avoid prejudicing the outcome of the substantive proceedings;
- iv) Only limited weight should be attached to the likely penalty;
- v) A failure to warn the alleged contemnor at the earliest opportunity of the fact that he may have committed a contempt is a matter that the court may take into account.

42. I turn now to Article 6 of the ECHR. In *Daltel Europe Ltd* (above para. 7) Lloyd LJ said:

It is clear that committal proceedings are to be categorised as criminal proceedings for the purposes of article 6, whether the contempt involved is classified as civil or as criminal.

43. Article 6 gives an alleged contemnor the following rights:

1. In the determination of his civil rights and obligations or of any criminal charge against him, everyone is entitled to a fair and public hearing within a reasonable time by an independent and impartial tribunal established by law. ...

2. Everyone charged with a criminal offence shall be presumed innocent until proved guilty according to law.

3. Everyone charged with a criminal offence has the following minimum rights:

(a) to be informed promptly, in a language which he understands and in detail, of the nature and cause of the accusation against him;

(b) to have adequate time and facilities for the preparation of his defence;

(c) to defend himself in person or through legal assistance of his own choosing or, if he has not sufficient means to pay for legal assistance, to be given it free when the interests of justice so require;

(d) to examine or have examined witnesses against him and to obtain the attendance and examination of witnesses on his behalf under the same conditions as witnesses against him;

(e) to have the free assistance of an interpreter if he cannot understand or speak the language used in court.

44. Both at the application stage and, if the application is granted, thereafter, Article 6 is important.

45. When deciding at the application stage whether the case is a strong case, it must be borne in mind that the court will only be able to make a finding of contempt if the claimant proves the contempt to the criminal standard.

46. We heard no detailed argument on the Article 6 right to a trial within a reasonable time. When does the period start? The answer to that may be when the alleged contemnor is first told that he may be proceeded against for contempt. What is a reasonable time? What are the consequences if the trial does not take place within a reasonable time? These are questions which have been much debated in the context of criminal trials.

47. It may be that this issue will have to be considered in the future. It is sufficient to say that, in my view and without reference to Article 6, the fact that a claimant has delayed in bringing the proceedings is a significant factor which the court should take into account. In the second of the three cases, it was the fact that there had been a very long delay before the proceedings for contempt had been instituted which led us to decide that the application should be refused. It would not be appropriate for me to

lay down any general principles, other than to say that a court may well be reluctant to grant permission if the fact that false statements have been made is discovered before the conclusion of the main proceedings and there is a significant period of delay between the conclusion of the main proceedings and the application for permission. In some cases it may be appropriate to start the contempt proceedings before the conclusion of the main proceedings but the passage already quoted from *KJM Superbikes Ltd* should be borne in mind:

However, it is important not to impose any improper pressure on a witness who may later be called to give oral evidence. In particular, if the alleged contemnor is to be called as a witness, an application under rule 32.24 should not be made, and if made should not be entertained by the court, until he has finished giving his evidence.

48. Different considerations apply if the falsity of the statement is only discovered after the conclusion of the main proceedings.

49. I now briefly turn to the procedure for making an application to the Divisional Court

The procedure for making an application to the Divisional Court

50. RSC Order 52.2 provides:

(1) No application to a Divisional Court for an order of committal against any person may be made unless permission to make such an application has been granted in accordance with this rule.

(2) An application for such permission must be made without notice to a Divisional Court, except in vacation when it may be made to a judge in chambers and must be supported by a statement setting out the name and description of the applicant, the name, description and address of the person sought to be committed and the grounds on which his committal is sought, and by an affidavit, to be filed before the application is made, verifying the facts relied on.

(3) The applicant must give notice of the application for permission not later than the preceding day to the Crown Office and must at the same time lodge in that office copies of the statement and affidavit.

(4) Where an application for permission under this rule is refused by a judge in chambers, the applicant may make a fresh application for such permission to a Divisional Court.

(5) An application made to a Divisional Court by virtue of paragraph (4) must be made within 8 days after the judge's refusal to give permission or, if a Divisional Court does not sit within that period, on the first day on which it sits thereafter.

51. Paragraph 2.4 of the PD provides:

If the permission of the court is needed in order to make a committal application –

(1) the permission must be applied for by filing an application notice (see CPR rule 23.2(4));

(2) the application notice need not be served on the respondent;

52. In one of the three cases a draft claim form was served (although it was not as clear as it could have been that it was only a draft).

53. Although notice is not required, notice was given in all three cases. In the first case, counsel for the alleged contemnor attended. In the second case the alleged contemnor appeared in person. She sought an adjournment but, having regard to our decision not to grant permission, no adjournment was necessary. In the third case the alleged contemnor and those representing him decided not to attend but await the outcome of the application.

54. The statement to which the rule refers is vitally important. Consistent with elementary principles of fairness and Article 6(3)(a) of the ECHR, the statement must (in my view) clearly set out the critical and material passages in the document(s) verified by a statement of truth and/or in the disclosure statement(s) which are said to be false to the knowledge of the defendant at the time he made them. Paragraph 2.5(2) of the PD states that the Part 8 claim form which is served after permission has been granted (in cases where, as here, permission is required):

... must set out in full the grounds on which the committal application is made and must identify, separately and numerically, each alleged act of contempt including, if known, the date of each alleged act;

55. It would seem sensible to include that detail in the statement.

56. It will usually be unhelpful in the statement to refer to other alleged falsities which were not verified by a statement of truth or which are not material. The statement should also contain a summary of the reasons why it is said that any statement is false to the knowledge of the defendant at the time he made it.

57. It will be helpful if the required affidavit (a witness statement is not sufficient) includes a chronology of the events, including a chronology of the proceedings. Given that undue delay may (in my view) lead to permission not being granted, it is important to explain any delay or absence of delay. In the third case we ordered a further affidavit dealing with the issue of delay and reserved judgment on the application until we had seen it. The claimant must of course comply with the duty of “utmost candour” given that the application for permission will normally be made *ex parte*. The PD makes it clear that the only documents required to be served on the court are the application, the statement and an affidavit and it is to be hoped that any other documents will be kept to a minimum.

Orders to be made if permission granted

58. In the first case, having granted permission, we made orders designed to identify the issues in dispute. It seemed important to us that the defendant should have an opportunity to make admissions so as to help the court on the hearing of the committal application and reduce the burden of costs for both the claimant and, more particularly, the defendant.
59. We were shown an order from another case involving allegedly false statements in which the judge, having granted permission, had directed that the defendant should have legal aid pursuant to section 12(1)(f) of the Access to Justice Act 1999. That subsection in fact deals only with contempt in the face of the court, being the only contempt which falls within the definition in that section of “criminal proceedings”. In the light of Article 6(3)(c), it is important, if permission is granted, that any legal aid issues are resolved as soon as possible.
60. Against this background I turn to the individual cases.

Barnes (trading as Pool Motors) v Seabrook

61. The application for permission was first listed for hearing on 2 October 2009 before Pill LJ and Silber J. It was adjourned at the defendant’s request for a fortnight on the grounds of his ill health and then adjourned again for the same reason. Mr Gofur did not ask for any further adjournment but prayed in aid the defendant’s medical condition as reason for refusing permission. I return to that shortly.
62. Legal aid has been granted to assist the defendant in the contempt proceedings.
63. The draft CPR Part 8 Claim form reads in part:
 1. At all material times the claimant carried on business as a taxi proprietor and engaged one Peter Terney as his servant or agent to drive one of his taxis. The defendant is and was at all material times also a taxi driver.
 2. On about 6th April 2006 the claimant’s servant or agent Peter Terney drove a taxi into collision with the rear of the defendant’s taxi and the defendant commenced proceedings against the claimant in the Ilford County Court entitled *Seabrook v Pool Motors* (a firm) claim number 81G 02278.
 3. On 28th July 2008 in the course of which said proceedings the defendant verified and served on the claimant a schedule of loss which stated among other things:

“As a result of sustaining the accident the claimant was absent from work completely for a period of some 32 days, returning to work on 22nd May 2006.

Following the claimant’s return to work, he was thereafter only able to work every other day due to pain and discomfort arising from the injuries sustained in the index accident. The

claimant continues this pattern of working until 30th April 2007. At that point in time the claimant was physically unable to continue working, ceased working completely as a consequence.” (Emphasis added)

4. Further on 19th January 2009 the defendant verified and served on the claimant a witness statement which stated among other things:

“2. I am presently retired but was a self-employed taxi driver for 20 years.

.....

13. I reduced my working days to three and on occasions, when it was really bad, reduced my hours that I did during the day. This continued on and off until about April 2007 when I decided that enough was enough and I packed it in and retired.

.....

27. Losses incurred as a result of this collision are shown in the attached Schedule of Loss marked ‘MS1’.”

5. The said Schedule of Loss contained a claim for loss of earnings as a taxi driver continuing to the date of trial in the sum of £164.10 per week, and thereafter at the rate of £7,220.40 per year.

6. In fact the defendant had not retired as a taxi driver. On 14th, 17th and 18th November 2008 and on 23rd, 26th, 27th and 28th January 2009 the defendant was continuing to work as a taxi driver.

7. The statement made by the defendant in his schedule of loss set out above, and the statements made by the defendant in his witness statement dated 19th January 2009 set out above were false, were known by the defendant to be false, and were made by him with the intent to mislead the court and the claimant and secure for himself an award of damages to which he was not entitled.

Particulars

a. At the time when he verified his witness statement on 19th January 2009, the defendant was working and knew he was working but said he was not working;

b. In his witness statement he referred expressly to his Schedule of Loss which contained a claim for continuing loss of earnings, and he made and verified his witness

statement in order to attempt to prove such a loss of earnings although he was not entitled to do so, being still working.

64. Subsequently video surveillance evidence in November 2008 and January 2009, shows, says the claimant, that the defendant was working full time as a taxi driver. This led to the serving of a counter schedule which alleged fraud and included the following on the first page:

Breach of duty has already been admitted in the Defence dated 30.10.08. Causation of injury and consequential loss are put in issue. Fraud is alleged. Permission to commence committal proceedings for contempt against the claimant is intimated, either in the event of the claimant discontinuing his claim or on the court dismissing his claim. ...

65. In a further affidavit Mr Lezemore wrote:

5. After the defendant in the main action served Mr Seabrook ... the counter-schedule ... I was informed by Mr Seabrook's solicitor that a conference was arranged with counsel. In an open telephone conversation with Mr Seabrook's solicitor from Waring & Co on 29.05.09 I was informed that Mr Seabrook had "*come clean. It was him in the videos, he feels very bad about what he has done. He is very apologetic. He knows he has deceived us and the court and his own solicitors....*" ...

6. Following that call Waring & Co advised me that they were applying to come off the court record. They made an ex parte application which was heard and acceded to by HHJ Hand QC on 29.07.09. ...

7. In July 2009 a proposal was made on the defendant's behalf to offer the sum of £500 towards Mr Seabrook's general damages claim to be offset against a costs order requiring him to pay £3,000 towards the defendant's costs, leaving him with a net set-off balance of £2,500. In the event the defendant's were nearer £7,000, much of it comprising the disbursement for 7 days of surveillance. A compromise was struck to reflect the fact that Mr Seabrook may well have suffered some modest soft tissue injury in the accident and may well have incurred some legitimate costs in pursuing his compensation claim for the modest injury element of his claim.

8. Mr Seabrook acceded to the defendant's proposal and the agreement was reflected in a Tomlin order dated 06.07.09 but in fact not signed by the parties before 28.07.09 when Mr Seabrook signed the Tomlin order and sent a cheque for £2,500.

9. I then served a committal notice [in the High Court] and my 1st witness statement and a cheque for £75 on the court under cover of a letter dated 05.08.09.

10. On 07.08.09 there was a telephone hearing before HHJ Collender QC at the Central London County Court where the terms of the Tomlin order were acknowledged by the court. The learned judge believed that I would be asking for permission to commence committal proceedings from him that day. I indicated that while I believed he had concurrent jurisdiction with the High Court to grant permission, that the permission application had been addressed to the High Court and it was preferable to make the application to the High Court, not least because Mr Seabrook had elected not to join in on the telephone hearing. Given the gravity of the application, I felt it was not appropriate to be dealt with by telephone. HHJ Collender QC agreed.

66. In my view this material, not disputed by Mr Gofur, reveals a strong case against the defendant that he knowingly made false statements verified by truth which were very material as to a central issue in the proceedings, namely the amount of damages that would be awarded. I have no doubt that it would be in the public interest for proceedings to be brought. There has been no significant delay and the defendant was warned in the counter schedule that contempt proceedings might be taken.
67. Mr Gofur submitted that permission should not be granted because of the defendant's ill health. He relied on medical evidence which was served only very shortly before the hearing. In the light of the very late service we decided to grant permission. Mr Melville asked for an opportunity to have the defendant examined by a doctor instructed by the claimant (and we made an order to achieve that if the defendant wished to rely on his ill health) and Mr Melville agreed that the claimant would reconsider whether to continue with the proceedings upon receipt of the report.
68. For these reasons we granted permission.

Mandy Hill v Agnes Gough

69. The defendant suffered a whiplash injury in a road traffic accident in August 2001. She claimed substantial damages, at some point claiming £1.7 million. After discovery of what the claimant submits is fraudulent conduct on the defendant's part in relation to the claim, the defendant, by way of a consent order, in March 2006, received £5,000 by way of damages, had to repay nearly £80,000 which she had received in the form of interim payments, had to pay the claimant's costs in the sum of £40,000 and received no costs from the claimant.
70. Starting in 2002 and in the course of the proceedings the defendant made what are alleged to be a number of false statements verified by statements of truth to the effect that her medical condition had not improved, she suffered constant pain, she could only drive for 45 minutes, could only spend some 30 minutes on a computer and was very restricted in what she could do. The medical evidence supported her contention that her range of movement was very limited.

71. Covert video surveillance evidence was obtained in 2003 by an insurance company other than the one liable to meet any award of damages arising from the traffic accident. That, so it is alleged, showed that her claims were fraudulent.
72. By May 2004 the medical experts in the proceedings agreed in a joint report that there was a discrepancy in the level of disability claimed by the defendant and the objective evidence from the video. In their view the defendant was fit to return to work.
73. Following the resolution of the proceedings in March 2006, we were told orally that “within months” the matter was handed over to the police for investigation. The defendant was interviewed by the police in December 2007 and by early 2008 the claimant was aware that no proceedings were taken. Two years later the application for permission to commit the defendant for contempt was made. In my view this information should have been provided in writing.
74. I have no doubt that the delay in this case is such that the application should be refused. To permit the application would, in the circumstances of this case, now be oppressive.

South Wales Fire and Rescue Service v. Anthony Smith

75. The defendant was employed as a fireman. He commenced proceedings in the county court against his employer, the claimant, alleging that he had slipped on a pool of water on 18 October 2005 in the fire station when climbing out of the cab of a fire engine.
76. He is alleged to have made both a false disclosure statement and false statements verified with a statement of truth in order to obtain damages in the sum of some £15,000 for net loss of earnings over two years. Because it was thought that he was not working (so it is alleged) the defendant received payments in the sum of some £24,000 from the claimant employer and received disability benefits.
77. The alleged false statements are:

In his list of documents verified with a Statement of Truth on 14.08.07, under item #3 he disclosed “*Post-accident earnings information*” that was confined to the monies received from the applicant after the accident and which made no reference to his earnings from his taxi driving.

At para 30 of his witness statement verified with a Statement of Truth on 19.09.07 he stated “I have been unable to work since the accident and I am currently surviving on state benefits. My employment with the Fire Service was terminated in January 2007 and I have not been able to find any alternative form of employment since”.

At para 30 of his witness statement verified with a Statement of Truth on 19.09.07 he stated: “As my only source of income at present is [sic] the state benefits that I am receiving. I am at a significant financial disadvantage”.

At para 30 of his witness statement verified with a Statement of Truth on 19.09.07 he stated: "I have difficulty walking, I cannot sit for any length of time and I am unable to carry out any physical activities".

78. By early 2008 it became clear (so it is alleged) that he had obtained in 2006 a licence to drive a taxi stating that he suffered from no disability likely to interfere with the discharge of his duties as a taxi driver. The claimant also obtained the logs of a taxi firm which showed (so it is alleged) that he was working full time as a taxi driver. In April 2008 the defendant was informed of this and in June 2008 the claimants served an amended defence and counterclaim alleging fraud, reclaiming the some £24,000 received from the Fire Service and warning that committal proceedings would be commenced. In the same month the defendant filed a notice of discontinuance of his claim and the claimant obtained a default judgment on the counterclaim. The defendant sought to set that aside and filed a statement of truth accepting that he had worked as a taxi driver. In May 2009 that attempt to set aside the default judgement was rejected, the Deputy District Judge recording an admission from the defendant that he had been dishonest. Shortly thereafter the claimant (understandably) took steps to have the alleged contempt dealt with by the High Court (relying on *Kirk v Walton*). The application for permission to commit was lodged in the Divisional Court in February 2010 after it had been decided by those representing the claimant that the application should be made in the High Court.
79. In my view the material put before us by the claimant reveals a strong case against the defendant that he knowingly made false statements verified by truth which were very material as to a central issue in the proceedings, namely the amount of damages that would be awarded. It is right to say that the sum claimed is not huge, some £15,000, nonetheless it is a significant sum. I have no doubt that it would be in the public interest for proceedings to be brought. There has been no significant delay and the defendant was warned in June 2006 that contempt proceedings would be taken.
80. I would therefore grant permission to bring committal proceedings and invite the claimant's legal representatives to draw up an order which, in so far as admissions etc are concerned, is in similar terms to the order made in the first case.

Mr Justice Kenneth Parker

81. I agree.