Neutral Citation Number: [2024] EWHC 3445 (KB)

Case No: KB-2023-003904

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: Wednesday 16th October 2024

Before:

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

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Between:

AVIVA INSURANCE LIMITED	**Claimant**
- and –	
(1) ATIQUILLAR NADEEM **(2) MASOUD SIDIQI**	**Defendants**

- -

Mr S Kong for the **Claimant**
Mr L Varnam for the **First Defendant**
Mr C Christensen for the **Second Defendant**

Hearing dates: 14th, 15th and 16th October 2024

- -

Approved Judgment

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

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HIS HONOUR JUDGE TINDAL.

HHJ TINDAL:

Introduction

1. This is an application for committal for alleged contempt of court after findings of fundamental dishonesty in a personal injury trial. It raises an interesting issue of the status of the findings in such a trial in subsequent contempt proceedings and how far those findings create an issue estoppel as between the parties.

2. The litigation arises out of a road traffic collision, now accepted to have taken place on 14 April 2018 between the Mercedes of the Second Defendant (whom I shall call Mr Sidiqi) and the Citroen of Ms Hibbert, who is not a party but is a witness to these proceedings. Both cars sustained damage. There is no suggestion of any staged accident and Ms Hibbert subsequently admitted liability for negligently causing the collision.

3. Mr Sidiqi did not bring a claim arising out of the collision. However, the First Defendant (whom I shall call Mr Nadeem) did do so, saying (as does Mr Sidiqi) that he was a passenger and sustained minor whiplash to his neck and back. Mr Nadeem saw a GP medical expert, Mr Bansal (also a witness in the present trial) who prepared a medical report on 16 August 2019. Mr Nadeem issued a personal injury claim on 19 June 2020. In support of that, Mr Sidiqi gave a witness statement on 24 March 2021, whilst Mr Nadeem gave his witness statement on 31 March 2021.

4. Only Mr Nadeem gave evidence at his personal injury claim before DDJ Goodman at Willesden County Court on 3 June 2021 and she found his claim fundamentally dishonest. Indeed, DDJ Goodman was persuaded to make findings to the criminal standard of proof following the practice in *Aviva v Kovacic* [2017] EWHC 2772 (QB). I will come back to *Kovacic* later. As a result, the present Claimant Ms Hibbert's insurers, Aviva Insurance Limited (whom I shall call 'Aviva') issued these committal proceedings on 29 September 2023, which have continued with the permission under CPR 81.3 of Goss J given on 25 March 2024.

5. In *Kovacic*, Martin Spencer J held that findings of fundamental dishonesty at a personal injury trial, such as those made by DDJ Goodman in this case, could be taken into account in subsequent committal proceedings. However, Mr Varnam for Mr Nadeem submits such findings do not create an issue estoppel, whether made on the civil or the criminal standard of proof at the original personal injury trial and their weight in the committal proceedings depends on the circumstances of the case. Mr Christensen for Mr Sidiqi says DDJ Goodman's findings are not even admissible as against his client who was not a party to the personal injury claim. Mr Kong for Aviva submits DDJ Goodman's findings are not binding in these committal proceedings, but are admissible and of substantial weight. However, he accepts DDJ Goodman's findings cannot be wholly determinative because she focused on the injuries (or lack of them) sustained by Mr Nadeem in the collision, whereas Aviva's case is more fundamentally that Mr Nadeem was not in the car at all. However, when I clarified at the start of trial, Mr Kong confirmed that it is not Aviva's alternative case

that, even if Mr Nadeem was in the car, that he was not injured in any event. It is also not suggested before me that it matters if he was in the car whether he was in the back or front seat at the time. I say that because that is briefly mentioned in the updated schedule of eleven grounds of contempt. I can summarise them in four groups.

6. Grounds 1 to 3 relate to alleged false statements by Mr Nadeem to Dr Bansal on 16th August 2019 at the appointment for the preparation of his medical report. Firstly, that Mr Nadeem said that he was in the car at the time of the collision (Ground 1), secondly as to the extent of his injury (Ground 2), and thirdly that he had seven days off work due to it (Ground 3).

7. Grounds 4 to 5 relate to Mr Sidiqi and his witness statement of 24th March 2021. Ground 4 is that Mr Sidiqi made a false statement in saying Mr Nadeem was in the car, and Ground 5 is that he made a false statement in saying Mr Nadeem and himself were both injured as a result of the accident.

8. Grounds 6 to 8 alleges that there were three false statements in Mr Nadeem's witness statement for the personal injury proceedings on 31st March 2021. Ground 6 alleges that he made a false statement that he was in the car; Ground 7, a false statement about the extent of his injury; and Ground 8, that he was off work for seven days.

9. Grounds 9 to 11 relate to Mr Nadeem's oral evidence at the trial before DDJ Goodman on 3rd June 2021. Ground 9 again is that he said in evidence he was in Mr Sidiqi's car; Ground 10 that he said he was injured; and Ground 11 that he was off work for seven days as a result.

10. So, there is a degree of repetition in the individual grounds and (save for a complication on Grounds 2, 7 and 10 which I will discuss at the end), they are suggested to stand or fall together against each defendant. It is not disputed that Mr Nadeem and Mr Sidiqi said these things (at least to some extent), the issue is whether those statements were knowingly false.

Factual Background

11. I will go through the factual background and litigation history in some detail and in doing so I am assisted greatly by the statement of Aviva's solicitor, Ms Barry, who put forward, as is consistent with Mr Kong's presentation of the case, a scrupulously fair and balanced analysis of the documentation leading Aviva to initiate these contempt proceedings. If I have criticisms of anyone in relation to this case, it is not of Aviva. In making some of those background findings to the criminal standard of proof because these are committal proceedings (on legal principles discussed below), I have taken into account my views on the credibility of the witnesses, which it is more convenient to set out later before turning to my central conclusions as to whether Mr Nadeem was in Mr Sidiqi's car and was injured in the collision.

12. Mr Nadeem runs two garages and works as a mechanic. Mr Sidiqi is a taxi driver. Both are friends originally from Afghanistan. Mr Sidiqi gave evidence in his first

language of Dari, with the assistance of an interpreter. Mr Nadeem's English was strong enough to give evidence without an interpreter (to which I return later).

13. The accident location is most helpfully seen in an overhead 'Google Earth' photograph attached to Ms Hibbert's most recent Affidavit. It is a roundabout with five roads coming off it. As a clockface, at 12 o'clock is Rayners Lane (or as it has been helpfully referred to Rayners Lane North). Clockwise east at 3 o'clock is Suffolk Road. Then going directly south at 6 o'clock is Rayners Lane South (as it has been called). Just next to that at around about seven o'clock, is Church Avenue. At about ten o'clock is Whittington Way. I set out that simple description from the start because at times Ms Hibbert's accounts have been rather muddled.

14. It is now agreed that the accident took place on 14 April 2018 and that Ms Hibbert was travelling on Whittington Way and heading down what would have been her third exit south down Rayners Lane South. It is also agreed Mr Sidiqi was travelling towards Rayners Lane North. There is still a dispute between the parties whether he entered the roundabout from Rayners Lane South as he says, or Church Avenue as Ms Hibbert says.

15. It is also agreed Mr Sidiqi was in his black Mercedes and when he was on the roundabout, his rear passenger side corner and back of the rear passenger door was scraped by the front passenger side corner of Ms Hibbert's silver Citroen. It is fair to say that the damage to Mr Sidiqi's car was relatively limited - it is just scraping damage. That is also consistent with the scraping damage to the front passenger side corner of Ms Hibbert's car, although there is some photographic evidence to the effect that the bumper was slightly displaced on that side.

16. The photographs I have referred to of Mr Sidiqi's black Mercedes were taken at the accident scene themselves and are significant because it is Mr Nadeem's case that he was sat in the front passenger seat, effectively directly in front of the location where the photograph was being taken. But it is Ms Hibbert's case Mr Nadeem was not in the car: that the front seat passenger was a bald white man who got out the car and went to urinate against a tree. Mr Nadeem was and remains bearded with a full head of hair and would not describe himself as 'white' but as Central Asian. He is totally different from Ms Hibbert's description of the passenger.

17. I will return at the end to my central findings whether Mr Nadeem was in Mr Sidiqi's car and injured in the collision. However, it is not disputed that Mr Nadeem did not attend his GP after the date of the collision. His first treatment appears to have been a fortnight later on 28 April 2018. Notably the physiotherapy notes that day refer to his solicitors. I shall not name those solicitors (who I immediately say are not his present solicitors) in this judgment. Both DDJ Goodman and myself have criticisms of those solicitors. As I will explain, it was a classic case of how a solicitor should not conduct personal injury litigation for a claimant.

18. Be that as it may, Mr Nadeem certainly had already instructed the solicitors concerned, as indeed it is clear Mr Sidiqi had done. Mr Sidiqi explained that he works for a taxi company and they deal with a broker if there is an accident. Likewise, Mr Nadeem

suggested that they were put in contact with the solicitors by someone Mr Sidiqi knows. So, this seems to be a standard referral from an insurance broker to a firm of solicitors. Unfortunately, as is typical in my experience, one does not see the same level of preparation and care in that sort of high-volume County Court litigation as one sees in litigation in the High Court.

19. The physiotherapy notes on 28 April 2018 recorded Mr Nadeem as having 'pain in his back and a headache'. There was no reference to neck pain. Moreover, on 25 July 2018, Mr Nadeem attended a walk-in centre where he referred to back pain for the last few days with no specific precipitant. It is notable that in both his statement in the original personal injury proceedings and in his evidence before DDJ Goodman, Mr Nadeem was clear that he was not suggesting that his back pain in July 2018 was still referrable to the accident. However, there is plainly some confusion, because Dr Bansal recorded Mr Nadeem as having said he had back pain referable to the accident which lasted four months. That would have been *after* the attendance at the walk-in centre. That is the complication I noted on Grounds 2, 7 and 10 that I address at the end of this judgment.

20. On 2 May 2018, the now-Defendants' then-solicitors put forward a Claims Notification Form ('CNF') for Mr Sidiqi, describing him as having soft tissue injury and two days off work. However, it was not until 19 June 2018, six weeks after the CNF for Mr Sidiqi, that the same solicitors submitted a CNF for Mr Nadeem, which I note was well before his attendance at the walk-in centre on 25 July 2018. Mr Nadeem's CNF records him as having sustained a soft tissue injury but having had no time off work. That gives rise to a particular issue on Grounds 3, 8 and 11. Mr Nadeem says that that is wrong and in fact he did have a week off work in the garage itself, but, as I shall return to later, he says he still did some work from home in the sense that he made phone calls and conducted management responsibilities for the garage.

21. On 6 August 2019, well over a year after the accident, a questionnaire was filled out relating to Mr Nadeem as preparation for his appointment with Dr Bansal. The circumstances of the filling-out of that questionnaire are important. Mr Nadeem says that he did not fill it out and does not know who did. Dr Bansal obviously did not know who filled out the questionnaire but said that it was understanding that this was done by claimants themselves rather than by solicitors. Whoever filled it out, the questionnaire for Mr Nadeem is at least confused, if not downright wrong. For example, it records on a series of what looked like dropdown boxes or fields on an electronic form that the first impact type was 'my vehicle was hit by another vehicle', which was a car, 'at low speed from the passenger side', and then a second impact as 'my vehicle was hit by another vehicle, car, at low speed' from the front. That suggests there were two impacts in the accident. No-one suggests that was the case, so that questionnaire is plainly incorrect. It is notable that later (as I will describe), Mr Nadeem told his then-solicitors that a suggestion about multiple impacts or vehicles in Dr Bansal's medical report was wrong. In my judgment, that is clear evidence that Mr Nadeem did not fill out this form. Whether or not he was in the car, he would not have filled out a form suggesting that there were two different impacts when he proactively told his own solicitors during the proceedings that there were not.

22. I am not able to find positively who filled in that questionnaire (although I strongly suspect it was Mr Nadeem's then-solicitors who did not distinguish themselves by their care in running his case). Certainly, I am satisfied that it was done on behalf of Mr Nadeem rather than by him personally given that in 2018/19 his English was relatively limited. He was born in Afghanistan in 1985 and he arrived in this country when he was 16 in 2011. He suggests that his English has improved dramatically over the last few years as he has married a schoolteacher and had children. That, in my judgment, is evidence which is consistent with the other evidence and of importance when understanding the level of understanding and English Mr Nadeem had at the time of the medical report by Dr Balsal in 2019 and his witness statement and evidence at trial in 2021.

23. On a related point, Mr Sidiqi had the benefit of an interpreter when giving evidence and whilst he was taken to some emails which at first sight suggested that he had relatively good English, he explained that he had used a translation tool to write them. It is also clear from other evidence that Mr Sidiqi has recently been referred for a dyslexia assessment, which is of relevance when considering his witness statement.

24. In any event, Mr Nadeem then saw Dr Bansal at an appointment on 16 August 2019. Dr Bansal was candid that he had up to ten appointments a day, about 20 minutes each. The only way he was able to conduct assessments at that pace for medico-legal reports is because the medical report form was a standard form from the agency, Premier Medical, which was pre-populated with information from the questionnaire. Therefore, Dr Bansal confirmed that he had neither written, nor obtained from Mr Nadeem himself, the account in the report of 'the accident', which instead had been compiled by Premier Medical from the questionnaire. It said:

> "The accident occurred during the night. Mr Atiquillah occupied the rear passenger seat in a car. He was wearing a seatbelt. A head restraint was fitted. An airbag was fitted but it did not deploy. At the moment of impact the Claimant's car was moving at a roundabout and the first impact the Claimant's vehicle was struck by another car at low speed. The impact came from the passenger side. In the second impact the Claimant's vehicle was struck by a third car at low speed. The impact came from the front. The combined force of the two impacts was sufficient to cause minor damage to the car. Mr Atiquillah was thrown in all directions. He was able to get out of the vehicle unaided."

Another indication of the fact that the questionnaire was done on Mr Nadeem's behalf and not by him personally, is that there was transposition of his full name and surname. His name is Atiquillah Nadeem, but he was described in this form as Nadeem Atiquillah (a similar error as in his later witness statement drafted by his solicitors, which again may support the suggestion that they completed the questionnaire for him).

25. It is entirely common for advocates and judges in personal injury cases to look at what a claimant has apparently 'told' a medical expert in the medical report: I commonly do

it myself and DDJ Goodman understandably did so. However, her findings about 'what Mr Nadeem had told Dr Bansal' transpire now to have been based upon an understandable but incorrect assumption. Indeed, it was not even clear until Dr Bansal's own affidavit in the contempt proceedings – after DDJ Goodman's judgment - that the account of the accident circumstances was entirely pre-populated from a questionnaire. Whilst Dr Bansal suggested he 'would have' checked it with Mr Nadeem, naturally he has no specific recollection of doing so and for reasons I return to when considering the witnesses before me, I find that Dr Bansal did not check that account with Mr Nadeem, not least because it contained the suggestion that there were two separate collisions involving three vehicles which as I have said Mr Nadeem specifically told his solicitors was incorrect when he later saw the report.

26. Linking Dr Bansal's 2019 medical report to the grounds of alleged contempt, Ground One is that Mr Nadeem told Dr Bansal that he was occupying the rear passenger seat of the car when it was involved in the collision. Certainly, that is what the medical report records, but Dr Bansal confirmed that information came from the questionnaire. Yet again, that is consistent with Mr Nadeem not filling it out himself, because his case has always been that he was a front seat passenger, as has been Mr Sidiqi's case about Mr Nadeem. It is unlikely that Dr Bansal double-checked the point about Mr Nadeem being in the rear passenger seat, because Mr Nadeem would have corrected him at the time. That is consistent with the point that the details of the accident and location were pre-populated from the questionnaire and in a hurried appointment Dr Bansal probably did not double-check the accident circumstances with Mr Nadeem. After all, as Dr Bansal told me, he undertook up to ten medico-legal appointments on days when he was conducting them, somewhere between 100 and 150 a month and understandably could not possibly remember the details of individual consultations.

27. Ground Two is that Mr Nadeem told Dr Bansal that he had severe neck pain which resolved after two months and severe low back pain which resolved after four months. Dr Bansal did confirm that when the medical report records Mr Nadeem reporting severe neck pain resolving after two months and severe low back pain resolving after four months, that information did indeed come from Mr Nadeem in the appointment. I accept that, because (unlike the details of the accident) the duration of symptoms is bound to have come up at appointment for the preparation of a medical report about them. However, as I will discuss later, that is not entirely easy to square with the fact Mr Nadeem went into a walk-in centre three months after the accident complaining of back pain which he accepts was not related to the accident. However, one would have thought that if if Mr Nadeem was being dishonest in a medical appointment a year after the accident, he would not have limited his symptoms to four months at most but at other times said three months.

28. Ground Three relates to what Mr Nadeem accepts telling Dr Bansal and what it also says on the questionnaire, but not the CNF – that Mr Nadeem took a week off work. Again, I accept Dr Bansal would have checked that information with Mr Nadeem who would have confirmed it. I return to the inconsistency with the CNF.

29. On 24 June 2020 a personal injury claim relating to the collision was issued on behalf of Mr Nadeem. The Particulars of Claim on behalf of Mr Nadeem described him as being a passenger of Mr Sidiqi, their car being hit by Ms Hibbert and him sustaining

injury. Even though those contentions by Mr Nadeem form part of the contempt proceedings in relation to other grounds, the assertions in the Particulars of Claim themselves are not themselves alleged grounds of contempt. It may be Aviva thought they added nothing to the assertions in the witness statement and medical evidence.

30. Three months later, the Defence on behalf of Ms Hibbert was submitted where liability was admitted on the basis that she accepted colliding with Mr Sidiqi's car on the roundabout. However, whilst negligence is conceded, it is far from clear from the Defence why that is. Ms Hibbert's account in the Defence was that she looked carefully before she entered the roundabout when Mr Sidiqi entered the roundabout at speed. So, her account is more consistent with it being his fault rather than hers. This internal inconsistency within Ms Hibbert's position is a point Mr Christensen emphasised on behalf of Mr Sidiqi.

31. More centrally, in her Defence Ms Hibbert contended that Mr Nadeem was not in the car. She described the driver, whom Aviva accepts was Mr Sidiqi, as a middle-aged man in his 50s, tall with wavy hair (which as I shall explain, is not an accurate description of Mr Sidiqi who is plainly younger). She described the front seat passenger, as I have indicated, as a middle-aged white man with a bald head. There was no reference in the Defence to the passenger getting out the car and going to urinate. However, the Defence did say Ms Hibbert had been shown a passport photograph of Mr Nadeem (which is plainly his passport and looks like him sat in front of me now) and she had contended he was not the passenger of the car.

32. Ms Hibbert's Defence also pointed out inconsistencies between the Particulars of Claim and medical report with some of the other documents I have already mentioned. The Defence itself refers to the case of *Richards v Morris* [2018] EWHC 1289 (QB) on the significance of CNF forms, the equally well-known judgment by Spencer J *Molodi v Cambridge VMS* [2018] RTR 25 on whiplash claims and the leading judgment of the Court of Appeal in *Howlett v Davies* [2018] 1 WLR 948. The Defence specifically pleaded fundamental dishonesty by Mr Nadeem. I come back to those authorities later.

33. On 18 February 2021, there is a file note from Mr Nadeem's then-solicitors which records that he was unable to recollect the incident other than that he was a front seat passenger not rear seat passenger in the Mercedes which was hit by Ms Hibbert's Citroen. Mr Nadeem was asked by his solicitors about his medical report which refers to two impacts with three vehicles involved. He told his solicitors there were just the two involved and the medical report was incorrect. I noted this earlier in explaining my finding that Dr Bansal did not ask him about this at the appointment, otherwise he would have corrected it, as he did with his solicitors (although there is no evidence they went back to Dr Bansal to correct his report). Mr Nadeem also said that Ms Hibbert was mistaken that he was not the passenger and he said that he had remained in the car throughout.

34. On 24 March 2021 the same solicitors received back from Mr Sidiqi a statement in support of Mr Nadeem's claim with an email in English approving it but explaining he was in Dubai en route to Afghanistan because there was a family emergency. Mr

Sidiqi's statement is central to Grounds Four and Five on the contempt alleged against him because the statement was supported by the usual statement of truth which said:

> "I believe the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who 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."

However, I remind myself, as I have already said, that Mr Sidiqui needed the benefit of an interpreter to give evidence. He explained that the email of 24 March about which he was cross-examined with care and skill by Mr Kong had been drafted by him with the assistance of translation software on his phone. I also remind myself about the fact that he has been referred for a dyslexia assessment.

35. Mr Sidiqi said in evidence yesterday he remembered reading paragraph 7 of his witness statement saying he was the driver of the Mercedes and the front passenger seat was his friend Mr Nadeem and they were wearing their seatbelts, but he did not really read the rest of it. Aviva says Mr Sidiqi's statement saying Mr Nadeem was in the car with him was a false statement and so Mr Sidiqi is in contempt of court. That is Ground 4.

36. Ground 5 relies upon paragraph 18 of Mr Sidiqi's 2021 statement, which said:

> "As a result of the accident, we both sustained injury, Nadeem to his neck and lower back and I suffered travel anxiety, lower back and neck pain."

And paragraph 19 which says:

> "I am aware that Nadeem visited his GP because of back pain and later had physiotherapy and a medical examination arranged by his solicitor."

37. I observe that these paragraphs in Mr Sidiqi's statement were plainly drafted not by him (with his limited English and suspected dyslexia), but by his solicitors. It perhaps shows how slapdash they were that they referred to Mr Nadeem as having visited the GP when they knew from Mr Nadeem that he never did so. As I said, Mr Nadeem visited a walk-in centre with back pain in July 2018, but did not suggest that was due to the road traffic collision. Be that as it may, Mr Sidiqi signed the statement as true and in particular, as he said himself, the part that mattered was that his friend Mr Nadeem was in the car. Perhaps given Mr Sidiqi's limited English, possible dyslexia and family emergency it is unsurprising that he did not read his statement carefully – after all, it was not his claim but that of Mr Nadeem.

38. I now turn to the 31st March 2021 statement of Mr Nadeem himself – now the First Defendant, but then a personal injury claimant. It had the same statement of truth in it and I will quote at more length from it because it is obviously directly relevant to Grounds 6, 7 and 8. Mr Nadeem's statement said at the first paragraph that his name was Mr Nadeem Atiquillah. But that is wrong: his name is Mr Atiquillah Nadeem, which rather undermines the assertion at paragraph 2 he could read, write and give

evidence in English because, as I have said, in 2021 Mr Nadeem's English was not as strong as it is now. The statement added at paragraph 7:

> "At all times relevant to this claim I was a front seat passenger in a Mercedes E class motor vehicle registration LT66 MKM which was being driven by my friend Mr Masood Sidiqui. We were wearing our seatbelts."

That paragraph constitutes the alleged false statement in Ground 6 of the grounds of contempt – that he said he was a passenger in the car when he was not (the significance of his position in the car is not pressed).

39. Mr Nadeem's 2021 statement has a number of errors in it. It said the collision took place at about 10.15 on 14 March 2018. Again, that date was wrong; it was in fact 14 April 2018. The statement gives a description of how the accident came to happen, which I can paraphrase, essentially saying that Mr Nadeem and Mr Sidiqi in the latter's car were going across the roundabout to take the exit on to Whittington Way (again wrong – no-one suggests that). It said that Ms Hibbert merged from Church Avenue (again no-one suggests that either), failed to give way to them and collided with the passenger rear of the car (which is agreed). The statement said that Mr Nadeem had been looking ahead at the time of the collision and not expecting Ms Hibbert to collide with them, so he did not have the opportunity to brace himself for the impact, a point made by Mr Sidiqi in his evidence to me. It said at paragraph 21 said Ms Hibbert hit them side-on, they were shunted sideways and he was thrown in all directions in his seat.

40. Mr Nadeem's statement continued that Mr Sidiqi pulled over the car and got out to speak to Ms Hibbert, whereas he, Mr Nadeem, stayed in the car. Paragraphs 22 and 23 of Mr Nadeem's statement said that Ms Hibbert was incorrect to say in her Defence he was not in the car when in fact he was. It went on at paragraphs 24 and 25 to say this:

> "The Defence mentions an attendance I made at the walk-in centre on 25 July 2018 which was after I sought legal advice and brought a claim for personal injury. My back was sore and I attended a walk-in centre. I did not mention it was accident-related as it was not accident-related. I have a long history of back issues which I think is due to my work."

Therefore, it was not and never asserted by Mr Nadeem that his 25 July 2018 walk-in attendance was related to the accident. He was explicitly clear in his statement that it was not, as he was in his evidence, as I will come to in a moment. His statement went on at paragraphs 26 and 27 to refer to the fact that the CNF had been filled in by solicitors and not by him and was mistaken in saying he had no times off work because he took seven days off work. The statement also stated at paragraph 28 that the reference in the medical report to two impacts was wrong as well.

41. Mr Nadeem's statement gave a description of his injury at paragraph 30:

> "Immediately after collision I was in a state of shock. My hands were trembling, I felt unsteady and dazed. I have never been injured in a road traffic accident before and it really shook

> me up. Physically I suffered immediately from severe pain in my neck and lower back. I did not attend hospital or my GP as I felt my injuries were not serious and I would be able to deal with the symptoms by taking painkillers. I took ibuprofen and paracetamol at regular intervals and gradually over time my symptoms did improve so I did not seek medical attention. On 28 April I had a physiotherapy triage assessment followed by an initial assessment and one physiotherapy session. I feel this treatment was beneficial to my recovery. I did attend my local walk-in centre on 25 July due to back pain which I had experienced for a few days."

However, that back pain was, as he had already said, not related to the accident.

42. Mr Nadeem's statement went on to say at paragraph 38 of the attendance with Dr Bansal in August 2019:

> "At the time of the examination, I had fully recovered from my injuries and I informed Dr Bansal my neck injury took two months and my back injury four months from the date of the accident."

Paragraph 38 is the basis for Ground 7 of the alleged contempt: that Mr Nadeem informed Dr Bansal that his neck injury took two months and his back injury four months to resolve and it certainly says that. However, in doing so, it is internally inconsistent with Mr Nadeem's statement at paragraphs 24 and 25 that back pain prompting him to visit the walk-in centre in July 2018 (three-months post-accident) was not accident-related.

43. Ground 8 of the alleged contempt is said to be constituted by the statement at paragraph 41 of Mr Nadeem's 2021 statement:

> "Due to my injuries I had to take seven days off work as I felt physically unable to do my job. For my work I have to bend, stretch, twist and lift heavy objects which at that time I was unable to do. When I returned to work I restricted my duties to lighter work for a further week then I would not aggravate my injuries."

Mr Nadeem later said in his evidence to DDJ Goodman (and to me) that in fact for those seven days he had not gone into work in the garage but had worked at home with telephone calls and administration etc.

44. On 1 April 2021, which happened to be the day after Mr Nadeem's statement was signed, Ms Hibbert prepared her witness statement for the personal injury proceedings. It too is now accepted to have been wrong in several respects. It described Ms Hibbert as driving along Rayners Lane before the roundabout when in fact she now says she was driving in Whittington Way. It said she intended to drive straight over the roundabout to Rayners Lane South, but that is not straight over the roundabout from Whittington Way. The statement also said there was a road to the right-hand side of Whittington Way and that her view of it was slightly blocked by street furniture. It

transpired in cross-examination that what she meant was that she was on Whittington Way and there was a fence between it and Church Avenue to its right. However, Whittington Way in fact splits at its end onto the roundabout into two; the left-hand lane going north up Rayners Lane North, the right-hand lane going onto the roundabout. Mr Christensen suggested to Ms Hibbert that in fact she was on the left-hand lane going left up Rayners Lane North, realised she had made a mistake and turned sharply right onto the roundabout which explains why the damage is to the passenger side of her car. She rejected that.

45. Ms Hibbert's 2021 statement went on to say at paragraph 14, "The claimant came from the right and turned left at Suffolk Road." However, Ms Hibbert in her evidence to me accepted Mr Sidiqi came from Church Avenue and turned left up Rayners Lane North. Ms Hibbert maintained her account in her statement that the contact was minor and not enough to shunt any vehicle in either direction. They pulled over to exchange details. She spoke with the driver of the vehicle which was a taxi. They inspected the vehicles for damage. She described the damage inaccurately, because she said her vehicle had a slight scuff to the front right-hand (i.e. driver's side) bumper. In fact, it is clear from the photographs it was the passenger side of her car, i.e. the left-hand side, as Ms Hibbert again later accepted in evidence to me. Her 2021 statement also described there being damage to Mr Sidiqi's vehicle, a scuff to the left-hand wheel arch, which is correct (although there was slightly more than that).

46. Crucially, Ms Hibbert's 2021 statement also said this:

> "While I was at the scene, I had a clear view of the Claimant's vehicle and while I was speaking with the driver of the taxi, a passenger got out the taxi and began to urinate behind a tree. I believe the passenger was a fare-paying passenger. Due to his behaviour I assumed he was drunk. He was a white man. He was bald."

Ms Hibbert later said that she had seen a passport image of Mr Nadeem and confirmed that he was not the passenger that exited the taxi. As I have said, Mr Nadeem looks nothing like Ms Hibbert's description.

47. The case then came on for trial before DDJ Goodman at Willesden County Court on 3 June 2021. We must not overlook the fact that June 2021 was in the middle of the COVID Pandemic. Speaking as a former Designated Civil Judge, I remember vividly that it was an extremely challenging time for the Courts when there were significant backlogs and lists were often quite heavy. This might explain why, although listed for a trial, the matter did not start until just before 11 o'clock rather than at 10 and indeed, DDJ Goodman apologised for that at the start of the hearing.

48. Mr Nadeem (then the claimant) was represented by counsel whom he had only met shortly before the hearing (entirely consistently with my own experience at the junior personal injury bar). The barrister had just told him there were inconsistencies in the evidence, including some inaccuracies in his statement, as I have said. However, it would not have been apparent to anyone at Court that day what Dr Bansal has since clarified that large sections of the medical report had come from the questionnaire. Another problem which would have rattled Mr Nadeem at that trial was that Mr Sidiqi,

his witness, was not there. This was something which obviously troubled DDJ Goodman, although the apparent explanation was, as he had explained to the solicitors in the email in March 2021, that he had to go to see family in Afghanistan.

49. The trial before DDJ Goodman started with Mr Nadeem's evidence, without the benefit of an interpreter. Mr Nadeem explained to me in his evidence yesterday (also without an interpreter) that his English now is much better than his English in 2021. Having had the benefit of him give evidence in front of me in October 2024 and comparing that to the very detailed transcript of the evidence he gave to DDJ Goodman in June 2021, I entirely accept that. His answers to me were fluent and fluid, clear, cogent and measured, whereas his answers to DDJ Goodman were often muddled, short and confused. For example, Mr Nadeem was not sure even of the date of the accident. He initially suggested to DDJ Goodman it was in May 2018, but then said it was in March 2018 when in fact it is agreed that it was in April 2018. He initially said that he went to see the GP, although it later transpired that he was talking about going to the walk-in centre with back pain, which as I said he was clear to the judge (as he had been clear in his witness statement) that was not accident-related.

50. Mr Nadeem then insisted in his evidence that he had taken seven days off work and was not sure why the CNF had not mentioned that. Notably his counsel made the point that the CNF was not even in the bundle when he was being asked about it, which cannot have helped. DDJ Goodman interrupted cross-examination to say to Mr Nadeem ‘You said one thing in one statement and another in another’, suggesting that even by that stage she was starting to get irritated with his evidence. Indeed, at pages 19 to 20 of the transcript, DDJ Goodman started questioning Mr Nadeem in relation to this issue and on what work he was or was not doing.

51. Mr Nadeem explained to DDJ Goodman that whilst he had not gone into the garage for seven days, he had been in telephone contact. Ms Hibbert's counsel at the time suggested that was effectively like work so the CNF was correct and his evidence was wrong. However, it has consistently been Mr Nadeem's case that he took seven days away from the garage but not that he stopped work completely. He was making phone calls from home, as I said. That is the most likely explanation of the apparent inconsistency between what he was saying about seven days away from the garage and the fact that his solicitors put in the CNF that he had no time off work as such. As Ms Hibbert’s counsel himself said, “That's like work" to which DDJ Goodman replied "I am saying nothing." Neither seems to have considered that straightforward explanation of the discrepancy between what Mr Nadeem was saying and the CNF. In my experience of road traffic fast-track claims, it is hardly the first CNF to be unhelpfully Delphic in the information that it provides.

52. Mr Nadeem was then cross-examined about Dr Bansal’s medical report and by this stage it is apparent from the transcript that DDJ Goodman was getting more and more irritated with Mr Nadeem's evidence. She at one stage pressed him almost in the manner of cross-examination whether or not the seatbelt tightened. He was asked about head restraints and gave confused answers about that and about whether his symptoms had been immediate. What is apparent from the whole passage of evidence and indeed from DDJ Goodman's judgment (to which I will come in a moment) is that it was clearly assumed by everyone that the accident circumstances in Dr Bansal’s

medical report, had actually come from Mr Nadeem (as the then-claimant). In fact, it is clear from Dr Bansal's evidence that is not right; that information had come from the questionnaire which I have found was not filled out by Mr Nadeem, for the reasons I have already explained. I have also found that contrary to Dr Bansal's usual practice, he had not checked the circumstances with Mr Nadeem.

53. I turn to the particular parts of evidence relied on for Grounds 9, 10 and 11 of the contempt. The first passage of the transcript is internal page 10, from supplementary questions from Mr Nadeem's barrister, where he stated the medical report was wrong and he was the front seat passenger. That, as I say, forms now part of Ground 9, although it alleges he made a false statement without an honest belief in its truth, that he was the front seat passenger of a car when it was involved in a road traffic accident on 14 April. However, as Mr Kong has fairly said, the real point is Mr Nadeem' contention that he was a passenger in the car at all, not whether he was in the front or the rear. Nevertheless, it is obvious that Mr Nadeem said he was a passenger in the car. The only issue on Ground 9 is whether that was a lie.

54. Ground 10 alleges a false statement in evidence by Mr Nadeem to the effect that he had neck pain which started probably about three days after the accident. It is taken from page 19 of the transcript of the evidence and was again plainly said by Mr Nadeem. Confusingly, he had said he had neck pain which started about three days after the accident and then immediately went on to say that his back pain started at five months after the accident which he then clarified to mean three months after the accident, which he then apparently suggested was related to the walk-in centre, which he had already said was not accident-related. In fairness to DDJ Goodman, one can perhaps see in the circumstances in fairness why DDJ Goodman had got rather irritated with Mr Nadeem's evidence. It was, to use a colloquial expression, all over the show.

55. Ground 11 is the alleged false statement that Mr Nadeem took a week off work but worked from home, which again was something he clearly said in evidence at internal page 25 of the transcript. Again, the only issue is whether that was a lie. I will reach my conclusions about that below, but have already set out his explanation of the apparent inconsistency with the CNF which seems to me to be the most plausible explanation.

56. As I said, I well remember the stresses of a busy court list in the middle of the Covid Pandemic. I am sure all judges who sat through that period can look back on hearings we could have handled better. However, even making allowances for that, it was unfortunate that part-way through Mr Nadeem's rather muddled evidence, albeit on a fairly peripheral point whether Mr Sidiqui had sustained an injury, DDJ Goodman expressed herself in a way I am sure she would prefer to have phrased differently. She said to Mr Nadeem: "You're just making this up, are you not?". (All judges have thought that, but it is hardly ideal to say it during evidence).

57. That may well have played a part after re-examination in Mr Nadeem's barrister asking for time with her client and opponent. It probably was fairly obvious to the lawyers in the room, including DDJ Goodman, that what she was really saying is that she was going to have a conversation about whether the claim should be discontinued. DDJ Goodman plainly wished to encourage that result, because she then said, "Well, that's

good because I am going to consider my case management powers at this stage and we may not to hear evidence from the defendant." In other words, she was getting close to inviting, a half-time submission.

58. After the ten-minute break, Mr Nadeem's barrister said that they had not made headway, in other words, they had not been able to agree some sort of basis of discontinuance. It is important to note that she invited DDJ Goodman to hear Ms Hibbert's evidence before deciding the case. However, Ms Hibbert's barrister (hardly surprisingly given the judge's earlier comments) simply said there was no case to answer.

59. Highly unusually DDJ Goodman did not then invite further submissions on the merits or credibility of Mr Nadeem from his barrister. She simply began the judgment which forms one of the keys to this case. In other words, as Mr Varnam quite rightly said, DDJ Goodman's judgment Aviva now relies on was given without hearing meaningful submissions from Mr Nadeem's own counsel. That was extremely unfortunate. However, I do not doubt for a moment that at the height of an unprecedented time for the Courts, it was a passing aberration in DDJ Goodman's long judicial career (as she mentioned in her judgment, over 20 years). Against that factual background, I turn to DDJ Goodman's judgment itself, but also the consequential rulings, including her findings on the criminal standard of proof which are relied on by Aviva.

DDJ Goodman's judgment and consequent rulings

60. It is fair to describe DDJ Goodman's judgment (where Mr Nadeem was obviously referred to as 'the Claimant') as trenchant. She started by saying:

> "I have rarely seen a case where the evidence is so inconsistent as that before me today. I have been hearing cases for over 20 years and this is one of the worst examples I have heard. I have only heard evidence from the Claimant this morning and I have no hesitation in saying that none of his evidence stacks up to anything near a 51 per cent burden of proof."

At paragraph 2, she mentioned the confusion over the date of the accident. She said at paragraph 3 this:

> "His injuries, which form the subject of the claim today, have no bearing in fact whatsoever in my judgment. He did not go to the walk-in Pinn Medical Centre until 25 July 2018, some three months after the accident. He did not then say that he was suffering from an injury as a result of a road traffic accident, and he was at pains to tell the court today that he went there in relation to an injury to his lower back, which he was adamant was totally unrelated to the road traffic accident on 14 April. He said that the pain he complained about, which was related, started some few days after he had been to the Pinn Medical Centre and was on the left side of his back which he said was in the middle of the lower."

DDJ Goodman then went on to say:

> "4. There is nothing in my judgment or even his to link any pain in his back with the index accident, none at all. There is no evidence he has provided that can possibly link any back pain with an accident in April 2018. He had pain unrelated to the accident in the middle and he himself said he did not know when the left side pain started, nor did he give any account at all as to why he thought it was linked to the road traffic accident in April. He said he had pain in his neck he told us, and he said he had seven days off work.
>
> 5. He said at the time he owned two garages, but he did not go to the doctor. He told the medical expert it had caused problems for two months and he told us today it was not severe. He did not need to go to the doctor. He took some painkillers, he said, but he was hazy about when he took them. He said he carried on working but from home making phone calls. I do not accept that at all. There is no evidence of any injury whatsoever, and this is a man who ran two garages. He said there were six of them altogether and he took part in not only the books and the administration but actually doing the servicing.
> 6. He has shown no evidence to this court that he took any time off work and I do not accept a man owning two small garages with a very small workforce would take any time off work. He is lying to me. He is lying to the court throughout."

I pause there to interpose that it is not entirely clear to me from reading DDJ Goodman's judgment why it would necessarily be inconsistent with someone running a small garage if injured to carry on working from home if he was unfit to attend the garage and whether she bore that in mind in potentially explaining the inconsistency with the CNF.

61. DDJ Goodman went on to say at paragraphs 7 and 9 of her judgment:

> "7. He has so many discrepancies in what he told the doctor as against what he put in his witness statement and, indeed, what was in the CFA [I think that must mean CNF] and what he said today, but I will just mention a few but it is clear what he told the doctor is a tissue of lies. He told the doctor, for example, and I should say at this point the report was on 16 August 2019 which is some consider time after the accident, alleged accident I should say, that he was a rear passenger. He said today that is a mistake. He was a front passenger. He said he had head restraints. He said today that there weren't any head restraints and seemed not to understand what a head restraint was, which is a bit strange for someone that runs a garage. He told the doctor there was a second impact with a third vehicle. He said that that is not true, there was no second impact….
>
> 9. Those are just the discrepancies that came to mind immediately when I compared this evidence today in his witness statement and what he told the doctor. I fully accept

> the doctor was accurate in what he wrote down and of course the doctor did not examine him. The Claimant was hazy as to whether the doctor examined him or not.
>
> 10. He did not tell the doctor that he had lower back pain which was unrelated to the accident and the pain he was complaining about for the purpose of today and the court case was in the middle to left side."

But all of that presupposes that Mr Nadeem told the doctor the things that DDJ Goodman was saying that he told him. I can perfectly understand why DDJ Goodman thought that he had told him because that appeared to be what the medical report said. She could not be expected to know and I was surprised to learn that in fact much of that information, apart from the detail of the injury and pain itself, had been pre-populated from a questionnaire and, as I have already explained, I have found that questionnaire was not filled out by Mr Nadeem. So, the assumptions upon which DDJ Goodman's judgment is based are in fact incorrect, albeit entirely understandable.

62. It is notable, however, that in her short judgment of only 15 paragraphs, DDJ Goodman reserved a paragraph of trenchant criticism for Mr Nadeem's then-solicitors:

> "I have to blame at some point the solicitors who clearly did not do a very good job of assessing this man's evidence at any stage whatsoever because it should never have come to trial. There are so many discrepancies I can't tell what is true at all and, quite rightly [Ms Hibbert's barrister] put to [Mr Nadeem] he was not even in this accident. I do not know that he was. I've got insufficient evidence to say he was connected with this accident. Certainly, his description does not tally with the defendant's evidence at all, and of course his witness, Mr Sidiqui, who also at some point has brought a claim or is still bringing a claim with the same solicitors I note is not here and has apparently gone to Azerbaijan [I think DDJ Goodman meant Afghanistan]."

63. DDJ Goodman went on to conclude at paragraphs 14 and 15 of her judgment:

> "14. [Mr Nadeem] is completely unreliable. The medical evidence he gave to the doctor is therefore unreliable. There is no other medical evidence. He did not get and see his doctor even though he took seven days off work allegedly with back pain and with neck pain. The evidence he has given is completely unreliable, inconsistent and untruthful. As far as I am concerned, it is rare to say that I say it in such strong terms. He actually admitted, 'After I had legal advice I went to the walk-in centre'. This is an attempt by the man to make money out of the legal system. That is all."
>
> "15. I have no difficulty in saying that there is no evidence at all upon which to base this claim. This is a man who is completely untruthful. This claim should never have got this

> far. It should never have been brought and the claim is dismissed."

64. I am sure I have expressed myself many times over the years badly and indeed got things wrong (as counsel have sometimes told me just after I have given an oral judgment and indeed counsel may well tell me just after this one). However, DDJ Goodman's observations were at times difficult to reconcile with the evidence she had heard. In saying "He actually admitted 'After I had legal advice I went to the walk-in centre' that's an attempt by this man to make money out the legal system. That is all". Yet DDJ Goodman had noted herself earlier in her judgment that Mr Nadeem had been at pains in his statement and evidence to make clear that he went to the walk-in centre with back pain which was unconnected to the accident.

65. Be that as it may, what is notable for present purposes is that however robust she was, DDJ Goodman did not actually go so far as to find Mr Nadeem was not in the car at all. I repeat what she actually said about that:

> "Quite rightly [Ms Hibbert's barrister] put to [Mr Nadeem] he was not even in this accident. I do not know that he was. I've got insufficient evidence to say he was connected with this accident."

I accept that is consistent with a finding on the balance of probabilities that Mr Nadeem had not proved he was in the car, because of course at that stage the burden of proof was upon him, but it is not a positive finding that he was not in the car. Indeed, in fairness to Mr Kong, he does not suggest DDJ Goodman actually ever explicitly and positively found that Mr Nadeem was not in the car.

66. After DDJ Goodman gave judgment, she adjourned for lunch and then heard from Mr Hibbert's barrister who invited her to make a number of consequential findings given her ruling there was no case to answer. The first was to invite her to find fundamental dishonesty. The second was to make such a finding to the criminal standard (as in *Kovacic*, discussed below). The third was a reference to the CPS. DDJ Goodman interrupted:

> "All right, well let me just consider these issues. One is for fundamental dishonesty *which I have done*. Number two, fundamental dishonesty to a criminal standard. Three is presumably what follows from a reference to the CPS? Yes. Then four, are we on notice to show cause as well?"

Therefore, DDJ Goodman raised fourth the possibility of wasted costs against Mr Nadeem's solicitors, but Ms Hibbert's barrister confirmed that was not sought. However, I have italicised what DDJ Goodman said about having 'done' fundamental dishonesty at least to a civil standard. In other words, she considered (perhaps understandably) that she had already made such a finding.

67. Mr Nadeem's counsel then intervened and said:

> "Madam, could I just raise one point. I understand the judgment was very powerful in terms of what was said about the Claimant. I understand you have indicated you have indeed made a finding of fundamental dishonesty. Ordinarily I would

> have responded to any application but I appreciate what was noted in your judgment. Just so I have said it on behalf of the Claimant, madam, I do not know if you are willing to change your mind about the finding at all.
>
> JUDGE GOODMAN: No."

Mr Nadeem's counsel persisted in what I must say in the best traditions of the Bar when faced with a trenchant judicial stance:

> "But all I will say, ma'am, is that the Claimant -- there is a two-stage approach to the finding of this, there is the subjective and objective element. Subjectively I say the Claimant in terms of his evidence genuinely and honestly believe what his evidence was, but I understand objectively you may judge it to be unreasonable in terms of the filing. All I say, madam, is that in terms of the finding of fundamental dishonesty, I did not get an opportunity to respond to any application so I simply make that --
>
> JUDGE GOODMAN: No, I am going to make -- you will have an opportunity, the finding of fundamental dishonesty stands."

DDJ Goodman must have said 'you will have no opportunity' or 'you've had your opportunity', because she went on immediately to say, 'The finding of fundamental dishonesty stands'. In other words, DDJ Goodman, having made a finding of no case to answer without calling on Mr Nadeem's then counsel in any detail, then confirmed her finding of fundamental dishonesty without giving her any opportunity to make submissions.

68. In explanation of that, DDJ Goodman went on to say:

> "I did not specifically mention it in the judgment, I should have done as part of the judgment, so it should effectively be for the purpose of the record the last point of the judgment itself that it is obviously implicit if not explicit, and I make it explicitly so, fundamental dishonesty is part of the judgment."

In fairness to DDJ Goodman, she then did acknowledge that Mr Nadeem's barrister was trying to do her job and was under a duty to her client.

69. DDJ Goodman then invited submissions from Ms Hibbert's barrister about making the finding of fundamental dishonesty to a criminal standard of proof, in other words, the *Kovacic* approach, and there was some discussion of *Kovacic*. In fairness on this particular point, which DDJ Goodman, like many County Court judges, was perhaps less familiar with, she did call on Mr Nadeem's barrister to make submissions to her. Indeed, the barrister made submissions in detail seeking to distinguish the present case from *Kovacic*, which was a case based upon surveillance evidence. DDJ Goodman, having heard from both counsel, then said:

> "I said in my judgment that I had rarely come across a case of such dishonesty, b*ut there are so many discrepancies that it was impossible even to place the Claimant at the scene of the accident, let alone that he had any injury whatsoever*

> *as a result*. I was unable to find anything in his favour. It seemed to me, and I said so in my judgment, he lied from beginning to end. If I did not say that explicitly, which I say to you he very much did, I say that now. I referred to the defendant's witness statement and of course we did not hear from the defendant, but her evidence did not even place him there in terms of the identification and lack of coherence of any points of his evidence, whether it is in his claims notification form, which must have been his initial instructions to his solicitor, to the doctor that he went to see in August 2019 to his witness statement today, four points, none of them coincided at all. In my judgment, a complete lack of transparency, coherent evidence, honesty at all, leads me inexorably to the conclusion that the fundamental dishonesty which I have found is not only to the civil standard. *He did not get to the 50 per cent, he did not get anywhere at all. Now, the standard of proof on a criminal basis is beyond reasonable doubt as opposed to the balance of probabilities, but I could not find any doubt to give him at all. It certainly was, in my judgment, the situation today that he failed to convince me on any basis at all as I am invited to do by [Ms Hibbert's barrister], I have to find that the criminal standard of fundamental dishonesty is met*. I do find that this is an unusual case, but in a case where he lied on every single point, even where his witness was let alone medical evidence, the facts, everything, there is not a single point in his favour. Yes, I have considered it as we have been speaking. I have looked at the case of *Kovacic* and I find I am able to make a finding of fundamental dishonesty which is so exaggerated that it is to the criminal standard." (my italics).

70. There are three points I would make immediately about that ruling. The first is that DDJ Goodman rightly differentiated the civil and criminal standards of proof. Secondly, she did express a finding that the Mr Nadeem was in the car, as she said: '*there are so many discrepancies that it was impossible even to place the Claimant at the scene of the accident, let alone that he had any injury whatsoever as a result'*. Yet, Mr Knong rightly did not rely on that as an explicit finding that the Claimant was not in the car. In any event, as I have explained many of the 'inconsistencies' DDJ Goodman referred to arose through her (understandable but inaccurate) misapprehensions as to how the medical report was prepared. Thirdly, DDJ Goodman she appears to have reversed the burden of proof in saying: '*He did not get to the 50 per cent, he did not get anywhere at all. Now, the standard of proof on a criminal basis is beyond reasonable doubt as opposed to the balance of probabilities, but I could not find any doubt to give him at all. It certainly was, in my judgment, the situation today that he failed to convince me on any basis at all.'* It is clear from that passage that DDJ Goodman was talking about Mr Nadeem 'having failed to convince her on any basis at all', in other words, that she was still placing the burden of proof on Mr Nadeem and simply saying not only did he fail to prove his case on the balance of probabilities, he had failed to establish any doubt at all, as opposed to Ms Hibbert having proven to the criminal standard that Mr Nadeem had lied. That might seem a fairly pedantic distinction, but anyone who has practised in the criminal courts

understands the incidence of the burden of proof is a fundamental guarantee of fairness in our law. In any event, as a result of that, DDJ Goodman made not only a declaration that the claim was dismissed, that QOCS was disapplied for fundamental dishonesty but also a specific declaration that 'upon the court making a finding the Claimant has been fundamentally dishonest to the criminal standard'.

The contempt proceedings

71. DDJ Goodman's robust finding of fundamental dishonesty of Mr Nadeem to the criminal standard of proof obviously encouraged Aviva to pursue these contempt proceedings. Nevertheless, they have rightly thought carefully about them and they have been the subject of extremely careful presentation and preparation by Ms Barry. She diligently collected affidavits, both from Dr Bansal and from Ms Hibbert in August 2022, but did not issue the contempt proceedings until September 2023.

72. Dr Bansal's affidavit goes into the context of the preparation of the medical report and in particular the role of the questionnaire. Dr Bansal said in that affidavit, as he did in his evidence, that he 'would have' checked the accident circumstances and he would have also in particular checked pain and the consequences of the accident before reaching his conclusion and talking through the report. However, whilst I have found he would have checked the symptoms and their duration and the time off work with Mr Nadeem, he cannot have checked the accident circumstances, because they were plainly incorrect as Mr Nadeem later told his solicitors. I will elaborate on some those points about Dr Bansal's evidence in the next section of this judgment.

73. Ms Hibbert's affidavit was much more detailed than her initial statement in the personal injury proceedings. In particular, she corrected some mistakes. However, she did not correct the details of her route over the junction. In her affidavit, she was still saying that she was going along Rayners Lane, which she now accepts is wrong, and she was still saying that she was going straight over the roundabout down Rayners Lane, when that is not straight over the roundabout from Whittington Way where she actually had come from. She gave a description of the accident in these terms:

> "11. I brought my vehicle to a complete stop at the entrance to the roundabout. The view to my right was compromised a little owing to street furniture and the presence of another lane to my right. However, there were no other vehicles or pedestrians around as I was waiting. After waiting a few moments, I formed the view the roundabout was clear and therefore entered the roundabout.
>
> 12. As I entered the roundabout, a Mercedes, which I believe was being driven by Mr Sidiqi, suddenly appeared to my right from Whittington Way. I was surprised as I had not seen this vehicle when I had been waiting at the roundabout. I remember thinking that it must have been travelling very quickly. The Mercedes vehicle continued forwards towards the Suffolk Road exist which would have been my first exit. Whilst in the process of passing my vehicle, the scraping contact occurred between the two vehicles. At the point of

> contact, my vehicle was travelling at approximately 5 miles per hour. I had just set off. I cannot say for certain that the Mercedes was travelling but I remember thinking that given we were travelling through a residential area he was driving far too fast. The point of contact was between the lower section of my front bumper on the left-hand side …[i.e. the passenger side - a correction from her earlier statement in the personal injury claim]…… and the left-hand of the Mercedes. Then Mercedes appeared from my right. He came into contact with my vehicle as it was passing across my front bumper as it was veering left to take the Suffolk Road exit travelling at speed. It just so happened that it caught and scuffed my front bumper on the left-hand side. The contact was very minor and did not shunt my vehicle. I very much doubt it shunted the Mercedes either."

74. On that more detailed account, it is even more difficult to understand why Ms Hibbert ever accepted liability for the accident. That is a description of her making proper observations before she entered the roundabout and Mr Sidiqui, the now Second Defendant, effectively travelling over the roundabout when she was already on it far too fast, veering in front of her and then making contact with the passenger side front corner of her car. It is also good illustration of how Ms Hibbert has, to a certain extent, reconstructed the circumstances of the accident in her mind four years afterwards. Much of that detail was not in her original statement prepared a year earlier and closer to the accident. Some of the detail was actually different, for example, the fact that the impact was on the left-hand side of the front rather than the right-hand side of the front.

75. In her 2022 affidavit Ms Hibbert described pulling up alongside the grass verge and speaking to Mr Sidiqi who had exited the Mercedes. She said there were no other cars or pedestrians when they first pulled over. She said that the car driver was very tall and slim. He had dark wavy hair and was Asian appearance. She said: "I do not recall the clothes he was wearing but they were smart." She made no reference to a beard.

76. Ms Hibbert went on to say in her affidavit that they began to inspect the vehicles but recalled that: "The street lighting was not particularly bright. It was more orange than yellow in colour. As such, any assistance with visibility offered by the street lighting was limited." She said she could see her vehicle had damage to it, as did the Mercedes. She corrected her earlier statement in the personal injury proceedings that the damage was on the driver's side of her car. Ms Hibbert confirmed it was the passenger's side of the car and she also exhibited the photographs she had taken at the time. She said a passer-by had stopped to assist her by lighting the car with her phone so that Ms Hibbert could take the photographs. One of the photographs was obviously taken by Ms Hibbert standing on the verge with the car parked a foot or so away from the kerb. The helpful passerby can be seen partly in shot lighting the damage to the Mercedes for Ms Hibbert to take the photograph. The rear window of the Mercedes can be clearly seen in that photograph, but it is plainly black. One cannot see through to the inside very easily. There is what appears to be a shape in the triangle back window, but Ms Hibbert accepted in evidence that that appears to have been a reflection. The photographs from that point in time are obviously focussed on the damage, not the occupancy of the car.

77. The photographs do not show the front passenger seat window, which is where Mr Nadeem says he was sat and from where Ms Hibbert says the bald white man emerged. She went on to give a description in her affidavit. She said an individual got out the vehicle. He was quite short: roughly 5'6" but he was taller than her, she is only 5'1". He was of chubby build, a white man with a bald head. She estimated he was in his late 50s. He could not remember the clothes he was wearing. As he got out, she could remember him looking at her, walking across the grass verge next to where the Mercedes had pulled up towards a tree and then he was staggering. She thought he was drunk. She added: "As he was walking off, he said something along the lines of 'You just stay with the driver. I want to go home'", which led her to believe that he was a taxi customer. She did not respond and he proceeded to urinate on the tree. The passenger was only gone a few moments when he returned to the Mercedes and got into the vehicle using the same front passenger door. She added "He did not speak to me again when getting back in." While he did so, she was still speaking to Mr Sidiqi. In other words, the only description of the passenger's face in the poor lighting conditions that Ms Hibbert could give in her affidavit was when he turned towards her and spoke to her as he was walking off towards the tree. However, her evidence to me was that the passenger spoke to her on the way back from the tree. So there is an inconsistency between her oral evidence and her affidavit. Ms Hibbert went on in her affidavit to confirm the passenger was not Mr Nadeem and indeed it is not suggested that he (as a younger Afghan man with hair and a beard) could have been mistaken for a middle aged bald white man.

78. Having obtained those affidavits and obtained other evidence (such as the transcripts of DDJ Goodman's judgment and the trial), the Claimant initiated contempt proceedings on 29 September 2023, including the 11 Grounds that I have already summarised. On 26th June 2024, Goss J gave permission to bring proceedings on all eleven grounds against both defendants.

79. As a consequence, both Defendants prepared detailed affidavits themselves, Mr Nadeem on 4 July 2024, Mr Sidiqi on 9 July 2024. I have already dealt with much of the details of those: for example, the question of Mr Nadeem's English. On 6th October – only the week before this trial - Mr Sidiqi prepared a second affidavit, firstly exhibiting photographs of himself at the time as having had a beard and looking essentially the same as he looks now, which of course was relevant then because at that stage Ms Hibbert did not describe the driver of the car (accepted to be Mr Sidiqi) as having a beard. He also raised points of correction in relation to Ms Hibbert's description of the junction and her route across it, which she accepted in a last-minute affidavit on 8th October. The matter then has come on before me for trial this week and I have had the benefit of hearing evidence from Dr Bansal, Ms Hibbert and the First and Second Defendants and, as I say, detailed and learned submissions from their barristers.

Witnesses

80. It follows from that that I am in a very different position from DDJ Goodman, who only had the benefit of hearing Mr Nadeem's evidence. I also have much more information than she had, in particular the evidence of Dr Bansal. In his evidence, he confirmed in this case the part of the medical report headed 'Accident circumstances'

had already been pre-populated. It is clear from the questionnaire and Dr Bansal's evidence that someone at Premier Medical had effectively taken those one-or-two-word answers and turned them in to the paragraph concerned. For example, the questionnaire says, "Position in car: back passenger. Car location: roundabout. Car movement: moving. Number of collisions: 2. First impact type: my vehicle was hit by another vehicle. First impact source: car. First impact speed: low speed. First impact direction: passenger side. Second impact type: my vehicle was hit by another vehicle. Second impact source: car. Second impact speed: low speed. Second impact direction: the front. Damage to vehicle: minor. Body motion: in all directions. Helped out of vehicle: no." That was turned into by someone at Premier Medical, not Dr Bansal and certainly not Mr Nadeem, into the following text:

> "Mr Atiquillah occupied the rear passenger seat in the car. He was wearing a seatbelt. The head restraint was fitted. An airbag was fitted but it didn't deploy. At the moment of impact, the Claimant's car was moving at a roundabout. At the first impact the Claimant's vehicle was struck by another car at low speed. The impact came from the passenger side. In the second impact, the Claimant's vehicle was struck by a third car at low speed. The impact came from the front. The combined force of the two impacts was sufficient to cause minor damage to the car. Mr Atiquillah was thrown in all directions. He was able to get out the vehicle unaided."

Therefore, for example the phrase, "The combined force of the two impacts was sufficient to cause", are words which come entirely from Premier Medical, rather than even from the questionnaire, even though I accept it is a natural inference from it. The potential for misunderstanding (including in subsequent litigation) as to who said what to whom is obvious.

81. Whilst Dr Bansal suggested he ‘would have’ checked the accident circumstances with Mr Nadeem, as he admitted himself, it was five years ago and one of ten appointments of no more than 20 minutes on that day out of 100-150 a month, so thousands over the course of a year. He was clearly doing his best to help me but, understandably, had no clear recollection of that precise appointment on that precise day and would have had absolutely no reason to remember it. However, when he produced his report, Mr Nadeem himself raised with his solicitors the details of the accident circumstances were wrong: for example, the suggestion of two impacts. Such was the time pressure Dr Bansal was under, I do not accept it was checked by him with Mr Nadeem, who certainly would have pointed out there were not two impacts. For those reasons it is certainly not clear to me that Dr Bansal checked with Mr Nadeem any of the information about the accident circumstance as such (as opposed to injuries and symptoms), including the rear seat passenger part, which again Mr Nadeem was clear with his solicitors was wrong. I do not blame Dr Bansal for that, but it does rather undermine much of the force of DDJ Goodman's findings about the medical report because she was assuming this information had come from Mr Nadeem. In my judgment, I have found it probably came from the solicitors and was not checked by them or Dr Bansal with Mr Nadeem. By contrast, what I do accept did come from Mr Nadeem and was checked with him by Dr Bansal was that he had two months of severe neck pain and four months of severe back pain. I accept Dr Bansal checked that because it was clearly was relevant to his diagnosis and prognosis. It can also only have

come one way or another from Mr Nadeem. Likewise, I accept Mr Nadeem confirmed to Dr Bansal that he had seven days off work as well, which was not only in the questionnaire, but is consistent with Mr Nadeem's evidence (in the context I have described that he worked from home for a week).

82. Turning to Ms Hibbert's evidence, Mr Kong commended it to me as honest and independent and I do not doubt that for a moment. The real question is the reliability of her recollection in evidence six years after the event, and I say that because, of course, she did not give evidence to DDJ Goodman. She did say to me when giving evidence this week that she remembered the accident like it was yesterday. However, I am afraid that smacks more of misplaced confidence in the power of her memory than it does of reliable evidence, for the following three reasons.

83. Firstly, Ms Hibbert accepted that until a week ago she had been getting the road wrong from which she had entered the roundabout. But notably and more importantly, she also maintained in cross-examination that she was adamant that Mr Sidiqi had entered from the next lane round, namely Church Avenue, rather than entering from Rayners Lane South as he said. But it was apparent in cross-examination that Ms Hibbert accepted that she had not actually seen Mr Sidiqui's car until it was already on the roundabout and consequently cannot have known what road he entered the roundabout from. Therefore, her adamance in the face of a lack of knowledge is relevant to how much weight I can give the rest of her evidence, even though she corrected herself on numerous other mistakes she had made.

84. Secondly, Ms Hibbert's account of the accident was not entirely consistent with her admission of liability, whether in the Defence, in her 2021 statement in the personal injury proceedings, or in the 2022 affidavit in these proceedings. Nor was it consistent with her oral evidence, where yet again she maintained that she had undertaken proper observations and then Mr Siddiqui had entered the roundabout too quickly, again suggesting that it was his fault not hers. In Ms Hibbert's first committal affidavit, she came up with an explanation for the damage which in turn corrected itself from her personal injury statement where she had got the damage on the wrong side of her own car. Her theory (and it is no more than that) was that she was already on the roundabout and that Mr Siddiqui had veered across the front of her and clipped the passenger side of her car, which is completely inconsistent with her having accepted liability, as she unquestionably did. In my judgment, this is a classic case of someone mis-remembering the details of an accident having convinced herself that she was not at fault when in fact she had admitted nearer the time that she was. In any event, her account cannot explain properly for the impact to the left-hand side of her car unless the accident was effectively entirely Mr Siddiqui's fault, which she has accepted it was not. I agree with Mr Christensen that the damage to the passenger-side of both cars and Ms Hibbert's admission that she entered the roundabout from Whittington Way (which splits left up Rayners Lane North and right onto the roundabout) is consistent with her taking the wrong lane left then correcting herself turning back onto the roundabout, exposing the passenger-side of her car to Mr Sidiqi's oncoming vehicle and causing the collision – which is also consistent with her admission of liability.

85. Thirdly, Ms Hibbert's description of Mr Sidiqui was totally wrong. She described the driver, whom Aviva accept was Mr Sidiqi, as in his 50s (which Mr Sidiqi plainly is

not) and with wavy hair (which he did not have at the time, nor does he have now). Nor did she mention in any of the various accounts she has given the driver having a beard despite Mr Sidiqi having one then (from the photograph from 2018 he recently exhibited) and now. Indeed, it is remarkable that in cross-examination before me, when the photograph of Mr Sidiqi at the time was shown to her with him now sat only a few feet from her in this courtroom, Ms Hibbert accepted the driver had a beard but she was still adamant it was not Mr Sidiqui, even though it had been agreed that he was. That, in my judgment, is totally fatal to Ms Hibbert's reliability: she even disputes agreed facts.

86. Given that Ms Hibbert is plainly incorrect about Mr Sidiqui, that calls into question the reliability of her non-identification of Mr Nadeem. I certainly accept that her description of a bald, middle aged man cannot have been Mr Nadeem. However, the point is not whether I am sure that there was a bald, white middle aged man urinating against a tree which, in the early hours of a weekend morning there may well have been. The question is whether I am sure that that bald, middle aged man urinating against a tree got out of Mr Sidiqi's car. That is, in my judgment, the crucial weak point in Ms Hibbert's evidence about the passenger.

87. By contrast, Mr Nadeem gave evidence in a completely different way than he had done before DDJ Goodman. He was clear, calm, measured and careful with fluent and cautious English. Indeed, as I have already said, he explained his English has improved dramatically since he got married in 2019 and has had children. It seems obvious from comparison of his evidence then and now that his English is probably a lot better than it was three years ago when he gave evidence to DDJ Goodman. Certainly, one point that she made herself about him appearing not to understand what a head restraint was when he ran a garage might, it might be thought, be more attributable to his understanding of English than his understanding of head restraints, but that was not something that she bore in mind when making that observation. Certainly, however, it is indicative of the fact that his English has improved, as is the fact that the fluency and the detail of his answers in evidence to me were very different than his short and sometimes confused answers to DDJ Goodman. Yet Mr Nadeem's account was internally consistent – he has always said he was a passenger in the car, was injured and took seven days off work albeit at home and that his symptoms resolved within a few months, even if he tied himself up in knots before DDJ Goodman (without the benefit of an interpreter when his English was much less strong) about when those injuries resolved. He made fair and reasonable concessions, not least about the inadequacies of his statement and evidence in the original personal injury proceedings. Yet given that he brought errors to the attention of his former solicitors which they did not address and made other errors even as basic as getting his name wrong, in my judgement the essential inconsistencies in his evidence back in 2021 are probably down to misunderstandings and his previous solicitors' failings, not dishonesty by him.

88. Mr Kong suggested that it was implausible for Mr Nadeem to have been picked up by Mr Sidiqui in a taxi and then taken to his girlfriend's house when the questionnaire suggested he had been given a lift home. I consider it is entirely plausible, indeed entirely natural, for a taxi driver to give a friend a lift if he did not have another fare, which Mr Sidiqi clearly did not. It is also an entirely plausible thing to happen that they were travelling to Mr Nadeem's-then girlfriend's address. The fact that the

questionnaire suggested he got a lift home, in my judgment, really does not mean anything. I am not satisfied that Mr Nadeem filled in that questionnaire because it spoke of two impacts when there plainly were not and besides, 'giving a lift home' is rather ambiguous in any event. It may well be at that stage he was with his girlfriend and saw that as home. Whilst he did not call evidence from his then-girlfriend, but they have since separated in not entirely amicable circumstances. In those circumstances it is perfectly natural that she has not come to give evidence.

89. Finally, Mr Siddiqui gave evidence through an interpreter as I have said. Whilst at times we got a little bit bogged down in some of the details in relation to the circumstances of the making of his statement, he was crystal clear and has been consistent throughout that Mr Nadeem was in the car. Mr Sidiqi also explained he believed that Mr Nadeem was injured because he had told him so and he would have had no reason to doubt it. Mr Sidiqi was also correct about the junction details. It was his affidavit last week which prompted Ms Hibbert's second affidavit correcting her evidence. I found Mr Sidiqi broadly reliable.

Legal Principles

Combatting dishonest personal injury claims

90. In the well-known case of *Summers v Fairclough* [2012] 1 WLR 2004 (SC) at [32], Lord Clarke noted that Toulson LJ (as he then was) in the Court of Appeal had described dishonest road traffic claims as an 'epidemic'. In *Summers* the Supreme Court grappled with how to address that epidemic, finding that it was open to the High Court in the exercise of its inherent jurisdiction to strike out a claim for an abuse of process even up to trial, although it would only do so in exceptional circumstances. Quite aside from that, Lord Clarke referred to the adverse costs consequences should a dishonest claim fail and indeed, contempt proceedings as he endorsed observations in an earlier case that "those who make false claims can expect to go to prison".

91. *Howlett v Davies* [2018] 1 WLR 948 CA, referred to in Ms Hibbert's Defence, was concerned with the preservation of a costs sanction for dishonest claims, following the introduction of qualified one-way costs shifting ('QOCS') in 2013 after the *Summers* judgment. As explained in *Howlett*, CPR 44.16 disapplies qualified one-way costs shifting in personal injury cases if a defendant proves on balance of probabilities that a claim is fundamentally dishonest, which did not need to be pleaded but did need to be fairly raised and squarely put to the claimant.

92. In *Molodi v Cambridge* [2018] RTR 25, Martin Spencer J noted that the Civil Liability Act 2018 had introduced tariffs for whiplash (as since discussed in *Rabot v Hassam* [2024] 2 WLR 949 (SC)). He added that whilst CPR 44.16 only gave defendants benefit of disapplication of QOCS if a claimant lost, s.57 Criminal Justice and Courts Act 2015 now provided that a claimant who would otherwise succeed can be deprived of their damages if they have been found to be fundamentally dishonest on the balance of probabilities. That is a wider jurisdiction than the very limited exceptional circumstances jurisdiction recognised at common law in *Summers*. In well-known

guidance quoted up and down the County Courts of this country in road traffic cases and with which DDJ Goodman said that she was familiar, in *Molodi* Martin Spencer J added:

> "The problem of fraudulent and exaggerated whiplash claims is well recognised and should, in my judgment, cause judges in the County Court to approach such claims with a degree of caution, if not suspicion. Of course, where a vehicle is shunted from the rear at a sufficient speed to cause the heads of those in the motorcar to move forwards and backwards in such a way as to be liable to cause 'whiplash' injury, then genuine Claimants should recover for genuine injuries sustained. The court would normally expect such Claimants to have sought medical assistance from their GP or by attending A & E, to have returned in the event of non-recovery, to have sought appropriate treatment in the form of physiotherapy (without the prompting or intervention of solicitors) and to have given relatively consistent accounts of their injuries, the progression of symptoms and the timescale of recovery when questioned about it for the purposes of litigation, whether to their own solicitors or to an examining medical expert or for the purposes of witness statements. Of course, I recognise that Claimants will sometimes make errors or forget relevant matters and that 100% consistency and recall cannot reasonably be expected. However, the courts are entitled to expect a measure of consistency and certainly, in any case where a Claimant can be demonstrated to have been untruthful or where a Claimant's account has been so hopelessly inconsistent or contradictory or demonstrably untrue that their evidence cannot be promoted as having been reliable, the court should be reluctant to accept that the claim is genuine or, at least, deserving of an award of damages."

93. The Defence in this case also referred to *Richards v Morris* [2018] EWHC 1289 where again Martin Spencer J emphasised the importance of claims notification forms (CNFs). He suggested the signature of a solicitor to such a form was taken to be authorised by the Claimant under CPR 22 and it was therefore not enough for a claimant to say that an inconsistency in the CNF is down to a solicitor.

94. In my experience, *Summers, Howlett, Molodi* and *Morris* are sometimes inappropriately deployed in the County Court on behalf of defendants to suggest that any departure by claimants from paradigmatic behaviour standards is in some way ‘diagnostic’ of a fundamentally dishonest claim or claimant. However, in those cases, the Supreme Court, Court of Appeal and Martin Spencer J never said anything of the kind. In *Molodi*, Martin Spencer J to give general guidance about what Courts would ‘normally expect’ from honest claimants but stressed that sometimes claimants would innocently make errors. All cases must turn on their facts.

Contempt of Court in respect of dishonest personal injury claims

95. The observations in *Summers* in relation to the availability of contempt back in 2011/2012 are unaffected by the subsequent introduction of QOCS, s.57 of the 2015 Act or the 2018 Act. For example, in *Zurich Insurance plc v Romaine* [2019] 1 WLR 522 CA, where a personal injury claim made in 2015 was discontinued in 2017 (in other words, after all those changes except the 2018 Act), the Court of Appeal reversed a High Court Judge's refusal of permission to bring contempt proceedings under CPR 81.18(3), despite the absence of a warning of contempt in the personal injury claim and its discontinuance. There was no suggestion in the Court of Appeal that there is no longer any risk of contempt proceedings because those other measures since *Summers* such as QOCS and s.57 of the 2015 Act offered sufficient protection. As emphasised by the Court of Appeal in *Romaine*, a case of contempt turns on a strong *prima facie* case of dishonesty and whether it is in the public interest to bring contempt proceedings, which can be the case even in a low-value claim. Although I have not seen the judgment of Goss J in this case, but doubtless that is consistent with what he found, not least given DDJ Goodman's trenchant findings.

96. The present context does not involve contempt of court in the sense of breach of a Court Order (which traditionally is called 'civil contempt'), but rather interference with the administration of justice (traditionally called 'criminal contempt': see *ADM International v Grain House* [2024] EWCA Civ 33 at [52]-[53]). In turn, two types of criminal contempt are relevant here, the elements of which were both helpfully summarised by HHJ Gosnell in *Aviva Insurance v Nazir* [2018] EWHC 1296 (QB). The first type of contempt is deliberate deception with intention to interfere with administration of justice, which he set out at [5]:

> "(i) the defendants deliberately set out to deceive the Claimant by falsely claiming that they were injured in a genuine accident….; (ii) the defendants must have intended thereby to interfere with the administration of justice; (iii) the conduct complained of must have had a tendency to interfere with the administration of justice."

Grounds 1 to 3 and 9 to 11 here allege Mr Nadeem deliberately falsely claimed to Dr Bansal he had been involved in an accident and suffered injury (Grounds 1 to 3) and in evidence at trial before DDJ Goodman (Grounds 9 to 11). Aviva must prove so that I am sure in relation to each of those grounds that: firstly, Mr Nadeem deliberately made a false statement; secondly, that he intended thereby to interfere with the course of justice; and third, his conduct had a tendency to interfere with the course of justice. On that third limb, *Advantage Insurance v Harris* [2024] EWHC 626 KB shows it is unnecessary for Aviva to prove deliberately false statements actually succeeded in interfering with the course of justice. That is why someone can lose their personal injury trial – even spectacularly as did Mr Nadeem in this case - and yet still face contempt proceedings.

97. Grounds 4 to 8 concern the second type of relevant 'criminal contempt'. They allege the making of false statements by both defendants in witness statements verified by the statement of truth in the terms I will requote:

> "I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt may be brought against anyone who makes or causes to be made a false

> statement in a document verified by a statement of truth without an honest belief it was truth."

That is effectively an encapsulation of CPR 32.14(1) which confirms that proceedings for contempt of court can be made for a false statement verified by a statement of truth without honest belief in its truth.

98. In relation to this different form of contempt, as Judge Gosnell also said in *Nazir* at [8], a claimant must prove:

> "…(i) the statement in question was false; (ii) the statement has, or if persisted in would be likely to have, interfered with the course of justice in some material respect; (iii) at the time it was made the maker of the statement (a) had no honest belief in the truth of the statement; and (b) knew of its likelihood to interfere with the course of justice

99. I move on to the procedural requirements of a contempt application in CPR 81.4(2):

> "A contempt application must include statements of all the following …
>
> (a) the nature of the alleged contempt …"

[I need not quote (b) through (g) because it relates to civil contempt for breach of a court order which does not arise in this case]:

> (h) a brief summary of the facts alleged to constitute the contempt, set out numerically in chronological order;
>
> (i) that the defendant has the right to be legally represented in the contempt proceedings;
>
> (j) that the defendant is entitled to a reasonable opportunity to obtain legal representation and to apply for legal aid which may be available without any means test;
>
> (k) that the defendant may be entitled to the services of an interpreter;
>
> (l) that the defendant is entitled to a reasonable time to prepare for the hearing;
>
> (m) that the defendant is entitled but not obliged to give written and oral evidence in their defence;
>
> (n) that the defendant has the right to remain silent and to decline to answer any question the answer to which may incriminate the defendant, but that the court may draw adverse inferences if this right is exercised;
>
> (o) that the court may proceed in the defendant's absence if they do not attend but (whether or not they attend) will only find the defendant in contempt if satisfied beyond reasonable doubt of the facts constituting contempt and that they do constitute contempt;

> (p) that if the court is satisfied that the defendant has committed a contempt, the court may punish the defendant by a fine, imprisonment, confiscation of assets or other punishment under the law;
>
> (q) that if the defendant admits the contempt and wishes to apologise to the court, that is likely to reduce the seriousness of any punishment by the court;
>
> (r) that the court's findings will be provided in writing as soon as practicable after the hearing; and
>
> (s) that the court will sit in public, unless and to the extent that the court orders otherwise, and that its findings will be made public."

100. Therefore, committal proceedings for contempt are quasi-criminal (confusingly whether they are 'civil contempt' or 'criminal contempt' – see *ADM*) for the purposes of Article 6 of the European Convention of Human Rights. Consequently, there is a very high standard of procedural fairness. In *Re Oddin* [2016] EWCA Civ 173, Vos LJ (as he then was, the current Master of the Rolls), said at [73] and [74]:

> "… The alleged contemnor is entitled to know precisely the particulars of the charge he faces; put in layman's terms, he is entitled to know what precisely he is said to have done wrong. It is simply not fair to proceed with a hearing that leads to a finding that a person has committed a contempt of court by which they are punishable by imprisonment without identifying precisely the allegation which the evidence to be relied upon is directed at proving against him. …The process of committal for contempt is a highly technical one as this case shows. But it is highly technical for a very good reason, namely the importance of protecting the rights of those charged …"

101. Most importantly, the criminal standard of proof is different, namely that the Court must not just be persuaded there was a contempt on the civil standard of the balance of probabilities but must be 'sure' of contempt (in the old-fashioned language, beyond reasonable doubt). That is axiomatic, but it was explained a little further by Collins Rice J in the recent case of *Tesco v Mouradi* [2024] EWHC 1466 at [43] to [44]:

> "This fact-finding exercise must be conducted according to the criminal standard of proof. I may not make any disputed finding of fact unless I am *sure* of it, beyond reasonable doubt. The burden is squarely on Tesco to make me sure of what it alleges against [the defendant]. The judge in the personal injury proceedings had herself made a series of findings of fact in relation to the matters in dispute before me. Her findings were made to the civil standard only – the balance of probabilities – and accordingly do not bind me. … But her task and mine are fundamentally different. She was hearing an undefended civil counterclaim in the absence of the defendant or his representative. I am engaged on a disputed fact-finding

> exercise for the purpose of considering committal for contempt of court. I approach that task entirely afresh, with the criminal standard firmly in mind."

102. Likewise, as Wall J said in *Re B (Contempt of Court)* [1996] 1 WLR 627 at page 639:

> "Whilst the analogy with criminal proceedings should not be taken too far and criminal procedure is not 'imported wholesale indiscriminately', in civil proceedings for contempt the court will introduce those safeguards necessary for the protection of the contemnors."

So, for example, Collins Rice J in *Mouradi* on the question of identification from a photograph said it was unnecessary to apply the elaborate requirements of the Code of Practice D to the Police and Criminal Evidence Act 1984 as would be applied in a criminal trial. As she put it at [66]:

> "Had this ID exercise been conducted by the police in the course of a criminal investigation, it would no doubt have been done differently. The guidance which would have applied to such circumstances is not directly applicable to my task, but I have nevertheless borne in mind the nature of that guidance and, more importantly, the reasons why care is needed before weight is placed on this kind of evidence."

103. Therefore, Mr Kong agreed with Mr Varnam's suggestion that I should give myself in this case a *Turnbull* direction in relation to Ms Hibbert's identification (or should I say 'non-identification') of Mr Nadeem. A *Turnbull* direction is derived from the criminal Court of Appeal case of *R v Turnbull* [1977] 1 QB 224, a case known to all criminal law practitioners. Lord Widgery CJ said at page 228:

> "First, whenever the case against an accused depends wholly or substantially on the correctness of one or more identifications of the accused which the defence alleges to be mistaken, the judge should warn the jury of the special need for caution before convicting the accused in reliance on the correctness of the identification or identifications. In addition, he should instruct them as to the reasonable need for such a warning and should make some reference to the possibility that a mistaken witness can be a convincing one and that a number of such witnesses can all be mistaken. Provided this is done in clear terms, the judge need not use any particular form of words.
>
> Secondly, the judge should direct the jury to examine closely the circumstances in which the identification by each witness came to be made. How long did the witness have the accused under observation? At what distance? In what light? Was the observation impeded in any way as, for example, by passing traffic or a press of people? Had the witness ever seen the accused before? How often? If only occasionally, had he any special reason for remembering the accused? How long elapsed between the original observation and the subsequent

> identification to the police? Was there any material discrepancy between the description of the accused given to the police by the witness when first seen by them and his appearance."

104. Just as a mistaken witness can be convincing, a truth known to judges for the last 50 years, so too they can convince themselves when they are mistaken, a truth which Lord Leggatt (as he now is) famously recognised in *Gestmin v Credit Suisse* [2013] EWHC 3560 (Comm) but which had been acknowledged for years, not least by Lord Bingham in his seminal article 'The Judge as Juror' in *'The Business of Judging'* (2000). That is particularly apposite in the case of Ms Hibbert, but also applies to Dr Bansal's assertions of what he 'would have' checked with Mr Nadeem.

The status of DDJ Goodman's judgment

105. The reason why Collins Rice J in *Mouradi* said that she was not in High Court contempt proceedings bound by the findings of dishonesty made by the County Court was because they were made on a different standard - the civil standard of proof of the balance of probabilities of proof. As she said, in contempt proceedings, she was determining allegations of a criminal standard of proof so that she was 'sure'. Indeed, it is typical in committal cases, such as *Mouradi*, *Nazir*, *Harris* and many other cases, for the High Court to make its own findings of fact on the criminal standard, not simply adopt County Court findings on the civil standard.

106. However, what if a County Court makes findings, highly unusually, on the criminal standard of proof ? That practice has been deprecated in relation to fact-finding in family cases by Knowles J in *Re Z (Care proceedings: reopening of fact-finding)* [2024] 1 FLR 433. However, as discussed in *Re Z*, the civil concept of issue estoppel does not apply in family cases. Indeed, in *Aviva Insurance v Kovacic* [2017] EWHC 2772 QB, a personal injury trial judge, HHJ Bidder QC although sitting in the High Court not the County Court, made findings of fundamental dishonesty in the extent of an injury in an admitted liability road traffic collision due to surveillance evidence. At the conclusion of his judgment, the then-counsel for the insurers, who I should say was not Mr Kong, invited Judge Bidder to indicate whether he was satisfied to the criminal standard in respect of his findings of fundamental dishonesty and Judge Bidder did so. In granting permission to bring contempt proceedings in that case, Sir David Eady declared Judge Bidder's findings would be admitted as evidence in committal proceedings but said no more than that. In those committal proceedings, Mr Kovacic was still unrepresented. Counsel for the insurer in that case then submitted to Martin Spencer J at the committal hearing itself that he was bound by Judge Bidder's findings. However, as Martin Spencer J pointed out, that is not how issue estoppel works:

> "36. It is unnecessary for me to explore the legal principles in any detail. The basic principle, for present purposes, is that a domestic judgment of a court of competent jurisdiction which includes a decision on a particular issue forming a necessary ingredient in the cause of action being litigated will be binding as to that issue in subsequent proceedings where that issue is relevant, but there is an

> exception where there has become available further material relevant to the correct determination of the point: see *Phipson on Evidence* (18th ed. 2013*)* at paragraph 43-15. [I interpose to say that is a reference to issue estoppel in *Phipson*. Martin Spencer J continued]:
>
> "37. For the purposes of this application I proceed on the basis (1) that the judge's findings are evidence of the facts found, including adverse findings as to the defendant's credibility and the deliberate exaggeration of his continuing disability, and (2) that I am entitled to treat them as conclusive evidence on those matters unless there is now further material to show that the finding in question was not justified. I bear in mind that these are, in effect, criminal proceedings. The defendant cannot be shut out from putting forward material which may cast doubt on a particular finding. On the other hand, as I made clear to the defendant at the outset of this evidence, he is not entitled to reopen all the matters upon which the judge found against him.
>
> 38. [Counsel] accepted, very properly, that in addition to considering the findings of the judge, which naturally carry very great weight, I have to consider all the evidence, including the defendant's evidence in these proceedings, in order to decide whether any given allegation of contempt is proved to the criminal standard in accordance with the principles already identified."

107. So, even if issue estoppel applies, it does not prevent the reopening of that particular issue if there is relevant further material. That is consistent with the leading case on issue estoppel of *Arnold v National Westminster Bank* [1991] 2 AC 93 where Lord Keith also approved the statement by Lord Diplock (as he became) in *Thoday v Thoday* [1964] P 181, 198, to which Mr Varnam referred at the permission hearing in this case:

> "Issue estoppel is an extension of the same rule of public policy as *res judicata*. There are many causes of action which can only be established by proving that two or more different conditions are fulfilled. Such causes of action involve as many separate issues between the parties as there are conditions to be fulfilled by the plaintiff to establish his cause of action; and there may be cases where the fulfilment of an identical condition is a requirement common to two or more different causes of action. If in litigation upon one such cause of action any of such separate issues as to whether or not a particular condition has been fulfilled is determined by a court of competent jurisdiction, either upon evidence or upon admission by a party to the litigation, neither party can, in subsequent litigation between one another upon any cause of action which depends upon the fulfilment of the identical condition, assert that the condition was fulfilled if the court has in the first litigation determined that it was not, or deny that it was

> fulfilled if the court in the first litigation determined that it was."

108. Therefore, in relation to Mr Nadeem, issue estoppel can only bite where the issue is a 'requirement' that is determined as either fulfilled or not, as it is sometimes put 'fundamental' (see *Barnes, The Law of Estoppel*, paragraph 9-100) for the first court or, as Martin Spencer J put it in *Kovacic*, if it 'forms a necessary ingredient in the cause of action being litigated'. Yet, because Martin Spencer J did not have the benefit of bilateral argument in *Kovacic*, it was not suggested to him that Judge Bidder's findings on dishonesty to the criminal standard were unnecessary for a finding of fundamental dishonesty to engage either s.57 of the 2015 Act or CPR 44.16. So, it was not argued before Spencer J that in fact issue estoppel did not apply to Judge Bidder's criminal standard findings because it was not necessary for him to make them to adjudicate the civil trial.

109. However, Mr Varnam does make that submission in relation to DDJ Goodman's findings here and I accept he is entitled to do so, because whatever the position in *Kovacic*, here it was entirely unnecessary for DDJ Goodman to make findings on the criminal standard of proof in order to determine fundamental dishonesty so as to disapply QOCS under CPR 44.16 which was a finding that was necessary to her decision – indeed one which she had already made (and reaffirmed refusing further submissions on it) before she even heard submissions on the criminal standard of proof. To all intents and purposes, DDJ Goodman's finding of dishonesty by Mr Nadeem to the criminal standard was *obiter dicta* and so does not give rise to any issue estoppel, nor is it even conclusive in the absence of further material.

110. I am satisfied there is no issue estoppel even against Mr Nadeem, and in fairness to Mr Kong, he did not press for that in the way in which described at paragraph 37 of *Kovacic*. Instead, he pressed for only what was described at paragraph 38 of *Kovacic*, namely that I should give weight to the findings, but assess them in the light of all the evidence to decide whether the contempt is proved to the criminal standard of proof.

111. However, in my judgement, the weight I can give to DDJ Goodman's findings is limited for three reasons. Firstly, I have a much fuller evidential picture than she had (for example as to the preparation of the medical report given Dr Bansal's evidence). Secondly, DDJ Goodman made those findings of dishonesty without Mr Nadeem's barrister having an opportunity to make proper submissions on either no case to answer or fundamental dishonesty under CPR 44.16, even if she could make submissions on the criminal standard of proof, by which time the horse had very much bolted. Thirdly, DDJ Goodman's judgment did not clearly square the fact that she was satisfied on the criminal standard of proof that the Claimant was dishonest on one hand, whilst on the other hand describing Mr Nadeem's claim in her no case to answer judgment as 'not stacking up to anything near a 51 per cent burden of proof'. As I said, she seems to have reversed the burden of proof on the criminal standard, which was not something that Judge Bidder did in *Kovacic*. So, for those reasons, in addition to the other reasons pressed upon DDJ Goodman by Mr Nadeem's then counsel to the effect that *Kovacic* was a quite different case on the facts, *Kovacic* is readily distinguishable from this case.

112. As against Mr Sidiqi, the position is even clearer that DDJ Goodman's findings are not binding. As is clear from both *Thoday* and *Arnold*, issue estoppel only applies as between the same 'parties', here only Mr Nadeem, or their 'privies', for example Aviva, to Ms Hibbert. It cannot even apply in principle to Mr Sidiqi who was not a party or privy to the original proceedings. That was clear from the case of *Hollington v Hewthorne* [1943] KB 587. In *Rogers v Hoyle* [2015] QB 265 CA, Christopher Clarke LJ noted criticism of *Hollington* but justified the rule on the following basis at [39] and [40]:

> "As the judge rightly recognised the foundation on which the rule must now rest is that findings of fact made by another decision maker are not to be admitted in a subsequent trial because the decision at that trial is to be made by the judge appointed to hear it ('the trial judge'), and not another. The trial judge must decide the case for himself on the evidence that he receives, and in the light of the submissions on that evidence made to him. To admit evidence of the findings of fact of another person, however distinguished, and however thorough and competent his examination of the issues may have been, risks the decision being made, at least in part, on evidence other than that which the trial judge has heard and in reliance on the opinion of someone who is neither the relevant decision maker nor an expert in any relevant discipline, of which decision making is not one. The opinion of someone who is not the trial judge is, therefore, as a matter of law, irrelevant and not one to which he ought to have regard. In essence … the foundation of the rule must now be the preservation of the fairness of a trial in which the decision is entrusted to the trial judge alone."

That is the position that applies to a non-party in original proceedings, such as Mr Siddiqui. It obviously does not apply to a party in original proceedings because the finding does generate an issue estoppel but, as I have explained, not an issue estoppel as to findings on the criminal standard of proof in a civil trial where such findings are not a necessary ingredient in the civil court's task.

113. Indeed, another case referred to in Mr Varnam's pre-permission skeleton argument was *Hunter v Chief Constable of West Midlands Police* [1982] AC 529, where the House of Lords were considering whether a claim by those imprisoned for the Birmingham Six bombings (over a decade before they were subsequently cleared I hasten to add) could not bring a civil claim in relation to it because it would be a collateral attack on a criminal conviction. The principle in *Hunter* was summarised in *Allsop v Banner Jones* [2021] 3 WLR 1317 (CA) by Marcus Smith J at [45]:

> "If the parties to the later civil proceedings were not parties to or privies of those who were parties to the earlier proceedings then it will only be an abuse of the process of the court to challenge the factual findings and conclusions of the judge in the earlier action if *(a)* it would be manifestly unfair to a party to the later proceedings that the same issues should be re-litigated or *(b)* to permit such relitigation would bring the administration of justice into disrepute."

(I did not take Counsel in this case to *Allsop* because it is not suggested that DDJ Goodman's findings bind Mr Sidiqi or indeed even affect his position on Grounds 4 and 5 which are the allegations that he faces).

114. I would summarise the position in this way. The status of a personal injury trial judge's findings of fundamental dishonesty against a personal injury claimant in later committal proceedings is in my judgment as follows:

(1) The personal injury judgment is certainly admissible against the party found to be dishonest in it: *Kovacic*. On whatever standard findings are made that a personal injury claimant was fundamentally dishonest, those findings will plainly be relevant to the grant of permission for committal proceedings and whether there is a strong *prima facie* case of dishonesty. That is particularly true if the findings are expressed in a criminal basis as they were in *Kovacic*, which doubtless that is why the insurers asked for it in that and other cases, including this one.

(2) However, even if findings are expressed on the criminal basis, they do not bind third parties (as I shall describe non-party privy or non-privies), and indeed may not even be admissible against them, as is clear from *Hollington* and *Rogers*. Even if those findings are admissible, for example as background, it is certainly not an abuse of process by a third party in subsequent litigation to seek to reopen those findings made by a judge in litigation to which he was not a party, unless it is 'manifestly unfair to the claimant or would bring justice into disrepute': *Allsop*.

(3) If fundamental dishonesty findings in the original personal injury judgment simply do not cover a particular issue at all (e.g. a finding of dishonest exaggeration of symptoms but not one that an accident was staged where the latter is the issue in contempt proceedings), even in respect of a party to the previous proceedings, it cannot give rise to an issue estoppel on that issue and is therefore entirely a matter for the committal court.

(4) If findings do cover an issue, for example whether or not a claimant was injured, if they are expressed on the civil standard of proof as would be normal, they do create an issue estoppel against a personal injury claimant like Mr Nadeem in relation to subsequent ordinary civil proceedings arising out of the same accident. One situation would be a further personal injury claim arising out the same accident by a third party, which involves both of the original parties; where between the original parties but not the third party, there is an issue estoppel (an example of this not uncommon situation is *Sellen v Bailey* [1999] RTR 63 (CA)). However, in contempt proceedings, findings on the civil standard of proof obviously do not create an issue estoppel binding the committal court making findings on the criminal standard of proof as Collins Rice J said in *Mouradi*.

(5) Even if the personal injury trial judge, as in this case, unusually expresses findings on the criminal standard of proof, they still do not bind the committal court, either because they are not necessary for the civil personal injury judge to making findings on the criminal standard of proof, so no issue estoppel arises at all, or even if it was necessary (as assumed but not argued in *Kovacic*) because further evidence before the committal Court may suggest those findings are wrong. Even then, that approach should be careful not to reverse the burden of proof in committal proceedings, which always remains fairly and squarely on the claimant.

Conclusions

115. Since the burden of proof is on Aviva, to succeed it must satisfy me so that I am sure that Mr Nadeem was not in Mr Sidiqi's car, rather than Mr Nadeem having to prove on the balance of probabilities that he was in the car. In fairness to DDJ Goodman, that was a difference that she pointed out in her judgment. Yet ironically, just as DDJ Goodman made findings which were unnecessary to her determination, I am driven to the conclusion that it would be preferable for me also to do so. This is because not only am I not sure Mr Nadeem was not in the car (a potentially confusing double negative), whilst unnecessary for me to do so, I can go further. It is better for me to say loud and clear that I would find on the balance of probabilities that Mr Nadeem *wa*s in fact in Mr Sidiqi's car. It follows, therefore, that the committal proceedings must fail, as Mr Kong fairly accepted were I to reach that conclusion. However, I will explain my reasons and go on to deal briefly with the individual grounds in the Contempt Notice.

116. As Mr Kong fairly accepted, the central allegation that Mr Nadeem was not in Mr Sidiqi's car stands or falls on Ms Hibbert's evidence. Mr Nadeem says he was in the car, Mr Sidiqi says he was in the car, Dr Bansal cannot say one way or the other and DDJ Goodman did not make a clear and positive finding that Mr Nadeem was not in the car. In any event, even if she did (and she came closest in her ruling on the criminal standard of proof by saying that 'it is impossible even to place the Claimant at the scene') I have heard quite different evidence from Mr Nadeem and DDJ Goodman did not have the benefit of hearing Ms Hibbert being cross-examined, as I have done. Whilst Ms Hibbert was clearly an honest witness doing her best to assist me, I do not accept that she was independent because she was the defendant in the personal injury proceedings and whilst she formally admitted liability, she also minimised the extent of her liability as I have explained. That does not mean that she was deliberately lying; it simply gives her a reason to convince herself that the person suing her was not in the car. As I have already said, Ms Hibbert was muddled about what junction she was entering the roundabout from and where she was going. She was muddled about the accident circumstances, which were difficult to reconcile with her admission of liability. Most obviously, in my judgment, she claimed Mr Sidiqi, who is accepted to have been the driver of the other car, was not the driver of the other car.

117. In those circumstances I really do not think I can place an awful lot of weight on Ms Hibbert's 'non-identification' of Mr Nadeem. It is entirely possible there was a bald white man running around in the early hours of the weekend who was urinating against a tree who was not Mr Nadeem, but that does not mean Mr Nadeem was not in Mr Sidiqi's car. His and Mr Sidiqi's evidence was that he was in the car and Ms Hibbert's evidence on this point was so confused as to when the passenger got out, when he spoke to her, which direction he was facing and so on, that even to the extent that this is not a case of identification, her evidence is hopelessly muddled and cannot possibly get anywhere near discharging the criminal standard of proof. Ms Hibbert's mistake is explained by the circumstances of her identification. It was night-time, there was very little street lighting which she described herself as more orange than yellow. She had to enlist the support of a passer-by to light the car to enable her to take photographs. Her focus was on the damage and on her conversations with Mr Sidiqi. Although Ms Hibbert described a passenger getting out the car, running to the tree and urinating, and I accept Mr Kong's point that in ordinary circumstances that would be

memorable, in fairness it did not emerge until over two years after the accident. The first account we have from Ms Hibbert is her Defence in September 2020 which did not mention the passenger getting out to urinate against a tree. So, her account has grown in the telling. That is not a suggestion that she is being dishonest, but rather a suggestion that she has convinced herself: she has put two and two together and made five.

118. In those circumstances, if Ms Hibbert saw a white man near the scene urinating, and if she is faced with a claim from someone not matching that description saying he stayed in the car, it is understandable that she has convinced herself that that cannot be right. She remembers a white man urinating and she has decided he must have got out the car, just as she has now decided that Mr Siddiqui clipped the passenger side of her car when he was driving unsafely in front of her, even though that was not an account she had previously given and she had previously admitted liability. This is a classic example of how a memory can be distorted over time, as Lord Leggatt said in *Gestmin*, but the Court of Appeal were live to it in *Turnbull* 50 years ago. Giving myself a *Turnbull* warning, if Ms Hibbert saw any passenger or driver, he only would have been visible to her for a very brief period of time. It would have been difficult to see into the windows of the car, as is clear from the photographs that Ms Hibbert herself took, certainly she would not have been able to see his face if he was facing the other way, or indeed facing her way, unless he was immediately next to the car and in such light as there was. Therefore, the only time Ms Hibbert would have had a clear view of the passenger if he had got out the car, was when he was getting out of and getting back into the car. Even on her own case, she has muddled the description of that because in her affidavit she says that the passenger spoke to her as he got out, and in her oral evidence she said that he spoke to her as he got in. In those circumstances I cannot, I am afraid, come to any other conclusion than Ms Hibbert's evidence on this point was unreliable.

119. By contrast, Mr Nadeem's evidence, whilst not perfect, was, in my judgment, reliable. Whilst of course I approach his evidence with some caution given he has been found to have been fundamentally dishonest by a judge previously, the circumstances of that finding are sufficiently unusual and unfortunate for the reasons I have already given for me not to be able to place very much weight on them. Not only were DDJ Goodman's findings about Mr Nadeem not the subject of proper argument by his barrister, they were based upon Mr Nadeem's answers when giving evidence in his second language at a time when his English was less strong than it is now, and at a time where he clearly got himself into a muddle. Mr Nadeem was a poor witness in front of DDJ Goodman, but a poor witness is not necessarily a dishonest one. The conclusion that DDJ Goodman reached to the contrary was based upon misunderstandings, in particular in relation to the status of the medical report and where the information in it had come from. In short, I actively prefer to the evidence of Ms Hibbert the evidence of Mr Nadeem and Mr Sidiqui who gave evidence on the core issues clearly and straightforwardly. I find on the balance of probabilities that Mr Nadeem was in Mr Sidiqi's car.

120. On the individual grounds of alleged contempt, I turn first to Grounds 4 and 5 alleged against Mr Sidiqui. I found him to be an honest and straightforward witness. I accept that Mr Nadeem was in the car, as he said, and I accept that Mr Nadeem told him he

was injured, which is really the point of Ground Five. For that matter I accept, if it is necessary to do so, that Mr Sidiqi was himself the subject of a minor injury. Whilst, as Mr Kong said, there was a slight impact, it was an impact which Mr Sidiqi properly explained is one which was unexpected and in which he and Mr Nadeem had no time to tense. In those circumstances, very minor whiplash injuries - and these were very minor whiplash injuries indeed - can be expected. It is not necessary for me to make a positive finding to that effect, still less to encourage personal injury proceedings by Mr Sidiqui which would be out of time in any event. I am simply making the observation that for those reasons I dismiss Grounds 4 and 5 and the case against Mr Sidiqi.

121. So far as Mr Nadeem is concerned, turning back to the point about Dr Bansal, in the grounds of contempt, Ground 1 alleges:

> "Atiquillah Nadeem on the 16th day of August 2019 with intent to interfere with the administration of justice did an act which tended to interfere with the administration of justice in that during a consultation for a medical report he made a false statement to Mr Sanjiv Bansal without an honest belief in its truth, namely that he, the said Atiquillah Nadeem, was occupying the rear passenger seat of a car when it was involved in a road traffic accident on 14 April 2018."

My findings in relation to that point are that: Mr Nadeem did not make a false statement because in my judgment on the balance of probabilities, he was in Mr Sidiqi's car and, in any event, I am certainly not sure that he was not in the car. DDJ Goodman made no clear and explicit finding that he was not and to the extent that she came close to doing so, it does not bind me and is of little weight for the reasons I have given. The question of whether Mr Nadeem was a rear seat passenger or front seat passenger is effectively moot. In those circumstances, I dismiss Ground 1.

122. I deal next with Ground 3 next. It is in similar form: that Mr Nadeem made a false statement to Dr Bansal without an honest belief in its truth, namely that he took a week off work as a result of a road traffic accident on 14 April 2018. However, for the reasons explained, I am not sure that was a false statement. Indeed, on the balance of probabilities, I find that Mr Nadeem did take a week off working *in his garage* after the accident, but he was still working at home. In short, he took a week off the garage but not off work. That explains the apparent inconsistency between Mr Nadeem's evidence and the CNF completed on his behalf which suggests he took no time off work at all. I find Mr Nadeem probably did not work in a garage for a week and to that extent I am certainly not sure that Ground 3 is proven. Whilst DDJ Goodman found Mr Nadeem was not injured at all, I have already explained why I cannot give her findings much weight and I find they are outweighed by the much wider range of evidence that I have and accept, including Mr Nadeem's evidence.

123. Ground 2 is rather more problematic. It says:

> "Atiquillah Nadeem on 16 August 2019 with intent to interfere with the administration of justice did an act which tended to interfere with the administration of justice in that during a consultation for a medical report he made a false

> statement to Mr Bansal without an honest belief in its truth, namely that he, the said Atiquillah Nadeem, suffered as a result of a road traffic accident on 14 April 'severe neck pain which resolved after two months and severe lower back pain which resolved after four months'."

Given the difficulties with Mr Nadeem's evidence before DDJ Goodman, it seems to me unwise for me to make a positive finding, even on the balance of probabilities, that what Mr Nadeem said was totally correct. However, I am certainly not persuaded to the criminal standard that I am sure that what he said was knowingly false. Mr Nadeem has been consistent in his account that he did sustain neck pain as a result of the accident which resolved after a relatively short period of time. I find on the balance of probabilities that he did sustain minor both neck and back injuries in the collision which explains his time 'off work'. That is not actually inconsistent with any of the other evidence in the case and indeed even the physiotherapy records. Whilst Martin Spencer J in *Molodi* did say that a court would normally expect a claimant to see a physiotherapist without the instigation of solicitors, he did not say that if a claimant sees a physiotherapist on the instigation of solicitors, then the Claimant is inevitably dishonest and in my judgment Mr Nadeem is not.

124. Mr Nadeem's contention that he suffered severe lower back pain which resolved after four months is the most problematic aspect because it does not seem to me to be entirely consistent with what he said in relation to the walk-in centre only after three months after the accident when he reported back pain unrelated to the accident. However, the very fact that Mr Nadeem was so consistent in saying that the back pain after three months was not attributable to the accident is in my judgment, the best evidence that he was not *lying* to Dr Bansal when he was talking about severe lower back pain resolving within four months. In short, I find there was a misunderstanding between Dr Bansal under time pressure and Mr Nadeem, whose English at the time was not good and who had no interpreter. I find Mr Nadeem was talking about two different types of back pain which is what he was trying to describe in his evidence to DDJ Goodman, but Dr Bansal rolled those two things together and considered 'back pain related to the accident' lasted about four months, because that was consistent with what Mr Nadeem had told him, namely that his (non-accident-related) back pain resolved about a month after the walk-in clinic. That seems to have been a simple misunderstanding between Mr Nadeem and Dr Bansal as opposed to a deliberate lie by the former to the latter. Even if I am wrong about that, I am not sure Mr Nadeem lied by saying he had severe neck pain which resolved after two months or severe lower back pain which resolved after four months. As he said himself in his evidence, severe is a word he is unlikely to have used with the state of English that he had in 2019. I dismiss Grounds 1, 2 and 3.

125. For the reasons I have already given, I dismiss Grounds 4 and 5 against Mr Siddiqui on the basis that he was correct, in my judgment, to say that Mr Nadeem was the front passenger seat in his car and believed that as a result of the accident, he sustained injury and Mr Nadeem sustained injury. Indeed, whilst unnecessary for Ground 5, I have made a positive finding that Mr Nadeem was injured as was Mr Sidiqi. Even if I am wrong, I am certainly not satisfied to the criminal standard of proof that Mr Sidiqi was lying. I specifically exonerate Mr Sidiqi from any allegation of contempt of court.

126. As I said at the start, Grounds 6, 7 and 8 are essentially a reiteration of Grounds 1, 2 and 3 made in terms of Mr Nadeem's witness statement as opposed to what he said to Dr Bansal. Technically, as discussed in *Nazir*, it is a slightly different form of contempt, but the elements at least in this case, are basically the same. I have found on the balance of probabilities that Mr Nadeem was indeed a front seat passenger in a Mercedes driven by Mr Siddiqui, that he suffered immediately from severe neck and lower back pain and took seven days off work as he felt physically unable to do his job. Even if I am more comfortable making those findings than I am about the precise extent and duration of his accident-related symptoms, for the reasons I have already given, I do not find (still less am I sure) there were any lies in his statement and I dismiss Grounds 6, 7 and 8.

127. Finally, Grounds 9, 10 and 11. I find myself in the difficult judicial situation of making a finding about whether evidence to another judge was a lie when that other judge found that it was a lie. However, DDJ Goodman's findings, even on the criminal standard of proof, are not conclusive, for the reasons I have explained. Nevertheless, even though Mr King has not asked me to, in fairness to Aviva, I am prepared to apply the approach in *Kovacic*. Out of respect for DDJ Goodman's advantage in seeing Mr Nadeem's evidence to her, I therefore accept her findings should stand unless there is good reason to depart from them on the basis of new material not available to her. Indeed, I go even further. Following the approach in *Arnold*, as clarified by the Supreme Court in *Virgin Atlantic Airways Ltd v Zodiac* [2013] 3 WLR 299 (SC), I am content that I should only take into account that further evidence as reopening those findings if it could not have been available to Mr Nadeem with reasonable diligence at the time.

128. I can reach that conclusion because the further evidence not available to DDJ Goodman is extensive, not reasonably available to Mr Nadeem at the time and shows Mr Nadeem's evidence to DDJ Goodman in a completely different light to that which she saw. Firstly, there is the oral evidence of Ms Hibbert which DDJ Goodman did not have because she found no case to answer, when Mr Nadeem's barrister specifically asked DDJ Goodman to hear from Ms Hibbert. DDJ Goodman was not aware that there were multiple errors and inconsistencies in Ms Hibbert's evidence, because she did not permit that evidence to be tested in cross-examination. Secondly, there is the evidence of Dr Bansal which was not clear to Mr Nadeem at the time of the trial before DDJ Goodman, in particular about the preparation of his report and the questionnaire. As I said that evidence undermines some of the assumptions that DDJ Goodman made. Therefore, even leaving aside the unfortunate circumstances in which DDJ Goodman made her findings, even on the strict issue estoppel approach taken in *Kovacic*, I am entitled to reopen the findings that DDJ Goodman made and to substitute my own conclusions even about the evidence Mr Nadeem gave to her. Even appeal courts are entitled to re-open findings of trial judges based only on written evidence and a transcript, let alone courts which have heard subsequent oral evidence from witnesses not heard by the original court. I am satisfied, for the reasons I have already given, that on the balance of probabilities Mr Nadeem was in Mr Sidiqi's car at the time of the accident. Even if I am wrong about that, I am certainly not sure that he was lying to DDJ Goodman in saying that he was in the car. I therefore dismiss Ground 9. Likewise, I find on the balance of probabilities Mr Nadeem did sustain some sort of injury and even if I am wrong about that, I am not sure that he was lying to DDJ

Goodman in saying that he did (including for the reasons I gave when dismissing Ground 2). I therefore dismiss Ground 10. Finally, I find on the balance of probabilities that Mr Nadeem took a week off because of the accident and in any event, I am certainly not sure that he was lying to DDJ Goodman in saying that he did. In those circumstances, I dismiss Grounds 11 and hold Mr Nadeem is also not in contempt.

129. Judges sometimes say that a particular case does not present personal injury litigation in a very good light. What they normally mean is that either a personal injury claim has been presented in a dishonest way, or it has been presented in a shamblingly incoherent way. In this particular case, the former is not true. Mr Nadeem did not present a dishonest personal injury claim and certainly I am not sure that he or Mr Sidiqi committed contempt of court. But I am sure (as in fairness was DDJ Goodman) that Mr Nadeem's personal injury claim was presented with something close to incompetence on behalf of his previous solicitors. Likewise, DDJ Goodman approached her task, doubtless under a busy list, in a way which I am sure she in retrospect would recognise was far from ideal. Certainly, if *Kovacic* sets a precedent for the making of a finding to the criminal standard of fundamental dishonesty, it should not be done in the way that it was done in the present case. For that Aviva are not responsible, nor indeed their barrister before DDJ Goodman. As I started by saying, they brought this claim quite properly because of the trenchant and clear findings that DDJ Goodman had made. They were her findings on the evidence she heard; they are not the same as my findings on the evidence that I have heard. Be all that as it may, this case was not a good illustration of how to conduct personal injury litigation.

130. On the contrary, this case has been an extremely good illustration of how to conduct contempt proceedings, on the defence side fully and fairly and with conspicuous skill, by Mr Varnam for Mr Nadeem and Mr Christensen for Mr Sidiqi and those that instruct them. However I pay particular tribute to the Claimant's side, with fairness, clarity and assistance to the Court from Mr Kong and from Ms Barry sitting behind him and I am extremely grateful to them. Nevertheless, for the reasons I have given, I dismiss these proceedings for contempt.