



Neutral Citation Number: [2020] EWHC 2596 (QB)

Claim No: QB 2019-003298

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 2/10/2020

Before :

MR JUSTICE GRIFFITHS

Between :

**NORTH OF ENGLAND COACHWORKS
LIMITED**

Applicant

- and -

MOHAMMAD ASIF KHAN

Respondent

Jonathan Cohen QC (instructed by Sherrards Solicitors LLP) for the Applicant

Adrian Eissa QC (instructed by Tuckers Solicitors LLP) for the Respondent

Hearing date: 24 September 2020

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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.

MR JUSTICE GRIFFITHS

Approved Judgment**Mr Justice Griffiths :**

1. This is an application by North of England Coachworks Ltd (“NECL”) to commit the Respondent Mohammad Khan (“Mr Khan”) to prison for contempt of court.
2. The application is made under CPR 81.18(1)(a) in respect of false statements of truth. The application required the leave of the Court, which was granted by His Honour Judge Dight on 13 May 2020 after a contested hearing.
3. It was adjourned by Kerr J in order to enable Mr Khan to obtain legal representation and he has been represented before me by Adrian Eissa QC. NECL has been represented throughout by Jonathan Cohen QC. I am grateful to both of them for their written and oral submissions.

The contempts of court alleged

4. NECL’s amended Grounds of Application specify the contempt of court alleged as:

“...a false statement of truth on a statement of case filed and served by Mr Khan entitled “Counter-schedules to defence of first defendant” dated 16 December 2019 (“the Counter-Schedules”). The statement of truth was signed by Mr Khan’s solicitor to certify Mr Khan’s belief in the truth of the content of the Counter-Schedules.”
5. The Grounds then allege that some of the entries in the Counter-Schedules were false. Not all those allegations are pursued. Those which are still maintained (following admissions by Mr Khan) are entries relating to:
 - i) a person called on the Counter-Schedules “G Massey” (or her company “Massey Enterprise”);
 - ii) a person called on the Counter-Schedules “S Merryfield” (spelled in the Grounds of Application as “S Merrifield”);
 - iii) a person called on the Counter-Schedules “K Summers”; and
 - iv) a person called on the Counter-Schedules “J Thomas”.

The issues in the action

6. The context of these entries is that the Particulars of Claim in the action allege that Mr Khan “perpetrated a substantial fraud on NECL” (para 8). They plead that he was employed by NECL from 2010 to 3 July 2019 (para 2) and they allege that the fraud took place “from an unknown date to the termination of his employment in July 2019” (para 8). They plead that the alleged fraud was conducted by four methods:
 - i) By writing cheques on NECL’s account to himself, his wife, his sister, or “a range of third parties” for services which were for his or his wife’s benefit and which were not for NECL’s benefit. Appendix 1 sets out details of each such cheque relied upon.

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- ii) By using NECL's credit card for transactions for his and/or his wife's joint benefit. Appendix 2 sets out details of each such credit card transaction relied upon.
 - iii) By making electronic money transfers from NECL's bank account, either to himself or "a range of third parties", for services which were for his or his wife's benefit and which were not for NECL's benefit. Appendix 3 sets out details of each electronic transfer relied upon.
 - iv) By using cash payments from NECL's customers "for his own purposes, putting false entries into NECL's records so as to pretend that the cash was being spent for NECL's purposes." (para 15). There is no Appendix in relation to this part of the claim and it does not feature in the committal application.
7. The action was brought against three Defendants: Mr Khan (First Defendant), his wife (Second Defendant) and his sister (Third Defendant).
 8. A joint Defence was filed on behalf of Mr Khan and his wife, coupled (in the same document) with a Counterclaim on behalf of Mr Khan only. This pleads that "NECL has never been run in a conventional manner" (para 3). It says that the "ultimate beneficial owner and de jure director", Mr John O'Sullivan, was "reluctant to invest his own money", or "significant time" in NECL, and left "both the operational and corporate aspects of its running" to its "de facto Managing Director", Mick Warren, and to Mr Khan "who at all material times reported to Mr Warren" (para 3). It says that "the financial expectations made of [Mr Khan] were unorthodox in the extreme" (para 6). In particular, Mr O'Sullivan expected Mr Warren and Mr Khan himself "to make use of their own financial resources to assist NECL with... cash-flow", and demanded "that they run NECL's business as if they were... running their own company on a highly informal basis and advancing it loans as and when its business needs required" (para 6). The Defence alleges that a total of "some £826,980.97 of his personal funds" was paid by Mr Khan to NECL over the period of 2011 to 2019 "over a series of some 214 payment transactions". It sets out a fluctuating balance which it pleads was owed by NECL to Mr Khan from time to time over the period 2015-2019 "by way of example only" (para 6). It also pleads that Mr Khan used "some £47,406.44 of his personal funds so as to pay off liabilities NECL owed to third parties" between 2011-2019 "over a series of some 44 payment transactions" which were "never reimbursed to Mr Khan" although it was "understood and agreed that they should be".
 9. The Defence then pleads that Mr Khan never had a written contract of employment, and "the terms on which [he] was employed were characterised by vagueness" (para 7). His initial salary was £30,000 per annum "but NECL never paid him in accordance with its PAYE obligations". He never received monthly salary on a defined date (para 7). "Over time as his role developed it was agreed that he would be compensated in excess of £30,000 p.a., to reflect both his increased responsibilities and the extent of his financial assistance to NECL" but "by how much was never clearly defined" (para 7) and "the form of such additional payments (as at all times authorised by Mr Warren) was sometimes unorthodox" (para 7).
 10. The Defence then defines repayments to Mr Khan of sums he had personally advanced to NECL, and also payments of remuneration or enhanced remuneration to

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him as “Remuneration Payments” (para 8). These were said to be “delineated” by Mr Warren and Mr Khan “with full knowledge of Mr O’Sullivan and Karen Jennings”, and to have been “effected by way of cheque payments” which, “in keeping with the informal running of NECL’s business” Mr Khan would “from time to time, and with the authorisation of Mr Warren”, pay by cheques to himself, his wife or his sister “or to other third parties” (para 8). Further the Remuneration Payments “were in any event authorised in their entirety by Mr Warren” and, “in their near-entirety”, when made out to Mr Khan, his wife or his sister personally “were further countersigned by Mr Warren, as a mark of his authorisation of the same” (para 8).

11. To this general case of authorised, if unorthodox, payments from NECL to Mr Khan and others, including “third parties”, by way of “Remuneration Payments” as defined, NECL has not pleaded in any detail (its short Reply dated 10 January 2020 is lacking in particulars and was filed, it says in para 2, “to comply with time limits”).
12. The Defence of Mr and Mrs Khan then addresses the four methods of fraud alleged in the Particulars of Claim.
 - i) The cheque fraud is denied, and “Mr Khan will in due course serve a counter-schedule” (Defence para 16) in respect of the Claimant’s schedule of cheques (i.e. the Claimant’s schedule in Appendix 1 to the Particulars of Claim).
 - ii) The credit card fraud is denied (Defence para 17).
 - iii) The money transfer fraud is denied (Defence para 18) and “Mr Khan will in due course serve a Counter-Schedule in relation to the Claimant’s schedule of the Money Transfers” i.e. the Claimant’s Appendix 3.
 - iv) The cash payments claim is also denied (Defence para 19) but, as I have said, there was no Appendix to the Particulars of Claim for cash payments and no Counter-Schedule. No point arises on it on this committal application.
13. The Defence pleads at para 18(d)(iv) that “the net position is that NECL owes Mr Khan £31,345.64” and Mr Khan’s Counterclaim is for that sum (para 29).
14. The Defence and Counterclaim are signed with statements of truth on behalf of Mr Khan and Mrs Khan separately, although both are given by their solicitor. The committal application (as is clear from the Grounds which I have cited above) is not based on these statements of truth. They are dated 22 November 2019.
15. The brief and provisional Reply and Defence to Counterclaim was served on 10 January 2020. In the meantime, however, the First Defendant (not the Second Defendant) filed the Counter-Schedules on the basis of some parts of which the committal application is made.

The Counter-Schedules

16. The Counter-Schedules form part of a self-contained document of 71 pages entitled “Counter-Schedules to Defence of First Defendant”. The first 2 pages contain the following preamble in 5 numbered paragraphs:

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“1. These Counter-Schedules have been prepared by Mr Khan. The Claimant, North of England Coachworks Limited (NECL) has issued what is plainly a Chancery Division Claim in the Queen’s Bench Division, such that it has not come under the obligations of the Disclosure Pilot Scheme. It has generally behaved oppressively in relation to time extensions. Mr Khan has done his best to remember the reason for a great many transactions made over the course of many years, without the benefit of NECL’s records and accounts over the material time, such that he has been unable to check his recollections or use the full range of materials which would otherwise assist in jogging his memory or help him to more accurately recall the purpose of the payments addressed below. These Counter-Schedules represent Mr Khan’s best efforts under straitened circumstances at the present date, and he reserves the right to amend them upon provision of disclosure in due course. The three individual Counter-Schedules set out hereafter commence on pages 3, 26 and 47 below.

2. In preparing these Counter-Schedules, Mr Khan is cognisant that some transactions listed in the “Personal” columns may yet prove to be for the benefit of NECL. Pending disclosure, he is allocating such costs to himself, on a conservative basis.

3. All transactions set out in these Counter-Schedules were authorised by Mr Mick Warren and/or by Mr John O’Sullivan. In the case of Counter-Schedule 2, all transactions were authorised by Mr Mick Warren on a monthly basis and by Mr John O’Sullivan on an annual basis, at least.

4. Items that were for Mr Khan’s personal benefit were expressly agreed by Mr O’Sullivan to be perks of his job / Remuneration Payments, to compensate him in part for the lack of proper salary increases and/or in respect of the loans of his personal monies to NECL.

5. In the case of Counter-Schedules 1 and 2, the transactions were put through the NECL accounts with Mr O’Sullivan’s full knowledge as purchases, thereby reducing NECL’s VAT liability.”

17. There has been no pleaded response, and (of course) no evidence in response to these assertions. Perhaps all or some of them will prove to be true.
18. The rest of the document consists (as indicated by paragraph 1 of the preamble above), of three separate Counter-Schedules which respond, transaction-by-transaction, to the three Appendices to the Particulars of Claim. It concludes with Mr Khan’s statement of truth, dated 16 December 2019 and is signed on his behalf by his solicitor. This says:

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“The First Defendant believes that the facts stated in these Counter-Schedules are true.”

It is this statement of truth which is the basis of the committal application.

Procedural context

19. The application before me is made and heard before any progress has been made in the action beyond the close of pleadings. Disclosure, for example, has not taken place, and neither has exchange of witness statements. However, para 8 of the order of His Honour Judge Dight dated 13 May 2020, giving permission for the application to proceed, states:-

“Any fact found proved by the Judge hearing the committal application shall be conclusive as between the parties at the trial of this matter, unless permission is sought and given in advance of trial for re-opening any finding on the basis that fresh material has become available which has the reasonable potential to allow the court to reach a different conclusion.”

20. Mr Cohen has made no bones about his clients seeing the committal application as advancing their interests in the action. He cites *JSC BTA Bank v Ereshchenko* [2013] EWCA Civ 829 at para 74 in support of the proposition that it is their right to use it in that way. My reading of that case gives it a somewhat different emphasis, particularly when read in the context of the judgment as a whole (including Lloyd LJ at para 5; Elias LJ at para 68; and Beatson LJ at paras 70-76). However, there can be no question about NECL’s right to bring the application, and to bring it now, because that has been decided in their favour by His Honour Judge Dight when giving permission.
21. No-one has suggested that it would be right for me to make any finding of fact which might pre-judge the issues that may eventually be considered at a trial, and I make it clear that I have no intention of doing so. Indeed, I have not been given the evidence which would make it even possible, let alone appropriate, for me to do so. I will dispose of this application – and I have been invited to dispose of this application – on the basis of what are now agreed contempts, and I will not venture beyond them into the underlying disputes between the parties. Consequently, whether (as NECL alleges in its Particulars of Claim) the transactions relied upon were dishonest, or whether (as Mr Khan and his wife allege) they were authorised and legitimate, in the context of the unusual environment at NECL pleaded in the Defence and Counterclaim, is not for me to decide and I do not decide it.

The admitted contempts of court

22. Most of the Counter-Schedule responses, both in number of transactions, and in their money value, are not challenged in this application as being untrue statements put forward in contempt of court. A relatively small number, however, are. Those in question are all the subject of admissions by the First Defendant in a document indexed as “Khan – Points of Defence” and headed “Basis of Plea”, which was filed on or about 2 September 2020. NECL has not sought to go beyond those admissions when pressing its committal application at the hearing before me. Consequently, Mr

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Khan is to be dealt with in this committal application on the basis of his “Basis of Plea”.

23. The admissions are contained in the first three paragraphs of the “Basis of Plea”. The final paragraph denies certain other contempt allegations, which NECL does not pursue. Consequently, the contempts which are admitted, and which I have to deal with on NECL’s committal application, are limited to those in paras 1-3 of the Basis of Plea, which describe and admit them in the following terms:-

“1. The Respondent accepts that information that is contained in the document titled “Counter-schedules to defence of first defendant” dated 16/12/2019 (“the counter-schedules”) is misleading.

2. The Respondent accepts that he caused his solicitor to sign the statement of truth verifying the counter-schedules and at the time of doing so he knew that at least some of the information that was contained therein was false. The Respondent acknowledges that the provision of the misleading information has resulted in unnecessary time and expense being incurred by the Applicant and Court and accepts that he is guilty of interfering with the administration of justice.

3. The Respondent accepts that G Massey, S Merrifield, K Summers and J Thomas are prostitutes and that payments to them can properly be regarded as being for his personal benefit.

a. In relation to G Massey, the Defendant accepts that the attribution on the counter-schedules of 50 payments to G Massey totalling £68,319.13 is false. The Respondent accepts that he knowingly falsely attributed such payments as legitimate company expenses when they were in fact for his personal benefit.

b. In relation to his attribution of the payments to S Merrifield, K Summers and J Thomas, the Defendant accepts that the entries were misleading. The Respondent accepts that he recklessly, that is to say not caring whether the attribution was true or false, attributed such payments as legitimate company expenses when they were in fact for his personal benefit.

c. The Respondent accepts that given the amount of money that he spent on prostitutes, he knew that a significant proportion of money drawn from the Claimant’s account for his benefit would not have been immediately apparent and that payments to these individuals would have been contained within the subset of questioned transactions:

i. In relation to S Merrifield, the Respondent accepts that the attribution of the single payment on his

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counter-schedules for £335 as relating to “M WARREN” is misleading. This was reckless but not a deliberate deception by the Respondent; at the time of producing his counter schedule he did not associate the name “S Merrifield” with the person calling herself “Chloe” but he accepts that attributing the payment to a category other than one which signified that he was not certain of its purpose is misleading.

ii. In relation to K Summers, the Respondent accepts that the attributions on his counter-schedules of the seven payments, totalling £2,090, to K Summers are misleading. This was reckless but not a deliberate deception by the Respondent; he did not associate K Summers and Lucy Summers (which is what the payee called herself to the Defendant) as being one and the same but he accepts that attributing the payments specifically to any category other than one which signified that he was not certain of their purpose would mislead the Applicant.

iii. In relation to J Thomas, the Respondent accepts that the attributions on his counter schedules of the seven payments (totalling £1,850.13) to J Thomas are misleading. He did not recognise the name but speculated they may have related to a former employee whom he believed had the surname of Thomas. He accepts that attributing the payments specifically to any category other than one which signified that he was not certain of their purpose would mislead the Applicant.”

24. These admissions only relate to the entries on the Counter-Schedules relating to the four individuals I have referred to in para 5 above, namely:

- i) “G Massey” (or her company “Massey Enterprise”);
- ii) “S Merrifield”;
- iii) “K Summers”; and
- iv) “J Thomas”.

All the entries in the Counter-Schedules relating to these four individuals (including G Massey’s company “Massey Enterprise”) are covered by the “Basis of Plea” admissions.

Seriousness of the contempts

25. A helpful effort has been made to summarise the number of transactions and the total sums of money attributable (in the Appendices and, consequently, in the Counter-

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Schedules) to each of these four women who are admitted (in para 3 of the “Basis of Plea”) to be prostitutes “to whom payment can properly be regarded as for Mr Khan’s personal benefit”. There are some discrepancies in calculation, but it is agreed that they are not material, and that I should proceed on the following basis, which takes the figures in the “Basis of Plea”:

- i) G Massey (and her company “Massey Enterprise”). Total transactions in the Counter-Schedules: 50. Total value of those transactions: £68,319.13.
- ii) S Merrifield. Total transactions in the Counter-Schedules: 1. Value of that transaction: £335.
- iii) K Summers. Total transactions in the Counter-Schedules: 7. Total value of those transactions: £2,090.
- iv) J Thomas. Total transactions in the Counter-Schedules: 7. Total value of those transactions: £1,850.13.

26. For comparison, the total value of the transactions alleged in the action to be fraudulent is said in the Particulars of Claim to be:

£692,782.06	(Particulars of Claim para 10 and Appendix 1; cheques)
£53,106.50	(Particulars of Claim para 12 and Appendix 2; credit card)
£193,429	(Particulars of Claim para 14 and Appendix 3; money transfers)
£203,960.27	(Particulars of Claim para 15; cash from customers)

27. This analysis shows that the vast majority of the contempts relate to G Massey and her company, in a total sum of £68,319.13. These payments are admitted (in para 3.a. of the “Basis of Plea”) to have been attributed in Mr Khan’s Counter-Schedules “as legitimate company expenses when they were in fact for his personal benefit”, and Mr Khan admits that the attributions were, not only false (in the sense of wrong) but that Mr Khan made the statements “knowingly falsely” (para 3.a.).

28. The fewer and smaller sums in the Counter-Schedules now accepted to be attributable to S Merrifield, K Summers and J Thomas respectively are admitted to have been dealt with incorrectly in the Counter-Schedules, but not “knowingly falsely”. Rather, Mr Khan admits only that the entries were “misleading” and to have verified them with the statement of truth “recklessly, that is to say not caring whether the attribution was true or false”, when he “attributed such payments as legitimate expenses when they were in fact for his personal benefit” (para 3.b.). He explains his case (which for the purposes of the committal application is accepted by NECL) in more detail in relation to each of these three women: see para 3.c.i. (S Merrifield), para 3.c.ii. (K Summers) and para 3.c.iii. (J Thomas), quoted in full above, for these explanations.

29. That, then, is the factual nature and extent of the false entries verified by the statement of truth of which complaint is now made, and which are the subject matter of the application to commit Mr Khan for contempt of court.

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30. Perjury and false statements verified by statements of truth are very serious indeed. Litigants and others should be terrified of the consequences if they lie to the court, whether on oath, or backed with the modern solemnity of a statement of truth. So much of the process of justice depends on evaluating contested assertions, or on accepting uncontested assertions, that it is a point of the greatest possible importance that everyone, honest and dishonest alike, should be in no doubt that lying to the court is not an option. For those who are honest and conscientious, it is to be expected as a matter of principle that lies will not be told in the formal context of verification by a statement of truth. But for those who are slapdash or even dishonest, it is right that the consequences of saying, verified by a statement of truth, something untrue – knowingly or recklessly untrue – should be severe enough to demonstrate that it is also against their own interests to do it, and unthinkable, for that reason too, that they should do it. Not only punishment, but also deterrence, comes into play.

NECL's knowledge of the truth

31. The extent to which NECL was ever misled by the Counter-Schedules was not addressed in the evidence. However, I was helpfully given information about it by Mr Jonathan Cohen QC (for NECL) in answer to questions I asked in the course of the hearing.
32. The Claim Form is dated 18 September 2019 and the Particulars of Claim followed a little later, on 11 October 2019. However, NECL had before issue of proceedings made an ex parte application to Jacobs J on 17 September 2019 for a freezing and disclosure order. Mr Cohen (who appeared before Jacobs J at the ex parte hearing on 17 September 2019) gradually refined and clarified his position on what NECL already knew about payments to prostitutes at that early date, with the assistance of reminders (provided by Mr Eissa QC, who now appears for Mr Khan) from Mr Cohen's skeleton argument before Jacobs J and Mr Cohen's solicitors' note of his ex parte application to Jacobs J, which were not in the bundles for the hearing before me.
- i) Mr Cohen's skeleton argument of 16 September 2019 said "One may speculate that the relationship between [Mr Khan] and [G. Massey] is romantic (but the Claimant has insufficient evidence to make any such assertion)".
 - ii) The notes of Mr Cohen's submissions on 17 September 2019, during the hearing before Jacobs J, say: "Massey. p 146. JC [i.e. Mr Cohen QC] web page came thru this morning and I need to explain (handed up!). JC. Think this is the G. Massey. Her position different as she's giving consideration for money received." Shortly after, Jacobs J is noted as saying to Mr Cohen: "If I assume she's provided escort services, not a *Chabra* type case?".
 - iii) The web page handed up to Jacobs J on 17 September 2019 was the same – Mr Cohen was able to inform me after I had reserved this judgment - as the web page exhibited by NECL in support of the committal application before me (Jennings affidavit of 19 March 2020 para 13 and exhibit "KJ2" at p 396, Bundle 2 p 399) which advertises "High Class Escort GEMMA MASSEY XXX £600 30 mins/ £1000 1 hour".

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33. Therefore, well before the Counter-Schedules were served, NECL already knew that the entries relating to G. Massey and her company referred to a person who self-described as a “High Class Escort” offering sex-worker services for money.
34. All the evidence relied upon in Ms Jennings’ affidavit of 19 March 2020 is evidence from NECL’s own internal records or in public records. NECL’s latest position is (from Mr Cohen after I had reserved judgment) “As to the discovery of the emails between Mr Khan and the four women that are relied upon in the contempt application, I am told that this was a process of accretion. Some had been discovered by NECL prior to receipt of Mr Khan’s counter-schedules on 16 December 2019.”
35. I am satisfied that, before or at least very soon after NECL received the Counter-Schedules dated 16 December 2019, it knew the essential truth about the entries which are now identified as false statements and relied upon in support of the committal application (with the possible exception of those relating to Ms Thomas). It certainly never believed what it was told in the Counter-Schedules. After pushing Mr Khan hard for them, and insisting that they should be verified with a Statement of Truth (although they were not served with or annexed to the Defence and Counterclaim, which had been served the previous month), NECL notified Mr Khan almost immediately (on 16 January 2020, after service of the Counter Schedules on 16 December 2019) that it could prove certain entries, particularly including dealings with Ms Massey, Ms Merrifield and Ms Summers, to be false. It invited all the Defendants to concede the entirety of NECL’s claims, threatened an application for summary judgment and indemnity costs, and concluded:
- “We invite your clients’ capitulation by return and in any event within 7 days.”
36. On 17 February 2020, NECL’s solicitors emailed to say they were preparing a committal application.

Interference with the course of justice

37. The application notice is made under CPR rule 81.18(1)(a) but CPR rule 81 regulates the procedure rather than creating or defining the jurisdiction to commit for civil contempt of court.
38. For there to be a contempt of court in relation to the statement of truth, I have to be satisfied beyond reasonable doubt that, in respect of each of the entries in question:
- i) It is false.
 - ii) It has, or if persisted in would be likely to have, interfered with the course of justice in some material respects.
 - iii) At the time it was made, the maker of the statement had no honest belief in its truth and knew of its likelihood to interfere with the course of justice.

See *AXA Insurance UK plc v Rossiter* [2013] EWHC 3805 QB at para 9.

39. Mr Khan admits the contempt but, in assessing its seriousness, it is important to have regard to all the elements of it. The Application Notice and the Grounds were

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defective in not spelling them out. The correct form, which clearly identifies all the elements, can be seen, for example, from *Liverpool Victoria Insurance Co Ltd v Khan and Zafar* [2019] 1 WLR 3833 para 18. In particular, whilst there is a brief reference to Mr Khan's subjective knowledge and intention in relation to the effect on the course of justice in para 4, there is no reference in the Application Notice and Grounds or Amended Grounds to the point that a false statement of truth must have, or if persisted in must have been likely to have, interfered with the course of justice in some material respects as a matter of objective fact. It is this which is the real mischief.

40. Mr Khan's own "Basis of Plea" addresses and admits that aspect, in these terms:

"The Respondent acknowledges that the provision of the misleading information has resulted in unnecessary time and expense being incurred by the Applicant and Court and accepts that he is guilty with interfering with the administration of justice."

41. As interference goes, this is less serious than it might be. Since NECL already knew the essential truth about the sex-worker entries in the Counter-Schedules, and had in its own possession the material to prove it, it was able to call Mr Khan out within weeks of receiving them, although those weeks coincided with the Christmas and New Year period and also some ill-health in its legal team. NECL was primed and ready to pounce, which is what it did. All the "unnecessary time and expense incurred by the Applicant and Court" has been incurred, not in a wrong-turn in the preparation, consideration or determination of the action, but in the immediate pursuit – suspending, meanwhile, any progress in the substantive action – of Mr Khan, for contempt of court. I am satisfied – given, particularly, Mr Khan's admission – that this element has been proved, but I regard it as falling very much at the bottom end of the scale.
42. In saying this, I do not overlook the important point that actual interference with the course of justice does not have to be proved; only interference which is likely in the event that the contempt is persisted with, even if it is not persisted with and no actual interference is achieved. The cases are discussed and summarised in *Neil v Henderson* [2018] EWHC 90 Ch per Zaccaroli J at paras 70-78.
43. The case is worse if damage is done because people are misled, than if it fools no-one and is nipped in the bud.
44. Moreover, in the present case, the fact that the false entries were buried in a mass of other, similar entries, which are not the subject of this committal application, means that, even in a worst-case scenario of all of them being pursued to trial, they were never going to make much difference. With or without these entries, both the Claimants' case, and the Defendants' case, remains essentially the same, at least on issues of liability (and liability is very much in issue). If anything, the entries were so palpably false (that is, so easily proven to be false on the basis of material readily available to the Claimants from its own internal records) that including them made Mr Khan's case worse rather than better, because of their potential to undermine his credibility generally. That they were palpably false was emphasised in the Claimants' evidence in support of the application.

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45. I also note that the preamble to the Counter-Schedules which I have quoted in full above put them forward only tentatively. Paragraph 1 said:

“Mr Khan has done his best to remember the reason for a great many transactions made over the course of many years, without the benefit of NECL’s records and accounts over the material time, such that he has been unable to check his recollections or use the full range of materials which would otherwise assist in jogging his memory or help him to more accurately recall the purpose of the payments addressed below. These Counter-Schedules represent Mr Khan’s best efforts under straitened circumstances at the present date, and he reserves the right to amend them upon provision of disclosure in due course.”

46. Mr Khan’s motive for the false entries in the Counter-Schedules was to deflect attention from the fact that the payments were made to prostitutes, rather than to advance his interests in the action. I accept the statement from his wife, which says:

“...his reasoning to why he lied was to protect himself from me, our relationship and our new, growing family through sheer embarrassment and guilt, not directly [NECL] or the Court.”

47. The committal application proceeds on the basis that the only spending Mr Khan tried to cover up with deliberate or reckless falsehood was the spending on prostitutes. I am satisfied that he was motivated by shame rather than gain. That does not excuse what he did, but there are cases with worse motives.
48. Again, I emphasise that this does not excuse what he did. Very often in litigation shameful things come to light, and the integrity of the process does not leave any room for them to be dishonestly misrepresented. If shameful evidence is irrelevant, it will not be admissible; and, if it is relevant, there is usually a right to silence. A right to silence does not extend to a right to say something which is not true.

Counterclaim

49. Mr Khan did not put these transactions forward in the first place. He was responding to a case which called for his explanation of them and, in the case of these particular transactions, he did not tell the truth.
50. Mr Cohen submitted that the false entries were essential to the maintenance of Mr Khan’s Counterclaim. I am not sure that is correct.
51. The Counterclaim is based on two elements:
- i) advances made by Mr Khan to NECL which should have been repaid to him (para 6(c) of the Defence); and
 - ii) the shortfall remaining once such repayments as were made are taken into account (para 18(d)(iv) and para 29 of the Defence and Counterclaim).

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52. Mr Khan's case is that it was agreed that he would be paid more than his initial salary of £30,000 per annum (Defence para 7(d)) and also that the salary he did receive was not compliant with NECL's PAYE obligations (Defence para 7(b)). He pleads that the form of his enhanced salary payments "was sometimes unorthodox, and for example would on occasions take the form of payments for holiday bookings" and that these unorthodox enhanced remuneration payments were "as at all times authorised by Mr Warren" (Defence para 7(d)(ii)). He pleads that "such informality and vagueness notwithstanding", any repayments to Mr Khan of his advances to NECL were distinguished from payments to him representing enhanced remuneration (Defence para 8). This was done by ensuring that the enhanced remuneration was "by way of cheque payments", and these were cheques authorised by Mr Warren which might not be made out to Mr Khan, but might, instead, be made out to Mr Khan's wife or sister "or to other third parties" (Defence para 8). Therefore, it seems to me that converting false entries in the cheques Counter-Schedule (the Counter-Schedule to Appendix 1) from NECL expenses to their true nature as payments to the four women for Mr Khan's personal benefit does not necessarily convert them into repayments of Mr Khan's advances to NECL (on his case) but potentially into part of his enhanced remuneration. Most of the Counter-Schedule entries relied on as admitted contempts of court by Mr Khan are in the cheques Counter-Schedule (responding to Appendix 1 in the Particulars of Claim), in a total sum of £67,040.35.
53. The only false entries relied upon in support of the committal application (following concessions) are in the bank transfers or money transfers Counter-Schedule (responding to Appendix 3 in the Particulars of Claim) which total £22,562.96, and which Mr Khan pleads were all "made properly in the circumstances set out in paragraph 6 above". This does seem to be an allegation that they were by way of repayment of advances. But even that is not clear, because para 18(d)(ii) of the Defence also pleads that some of the money transfers were made at Mr Warren's request "and with his full authorisation (some of them being made to Mr Khan to reimburse him for expenditure that Mr Khan had made at Mr Warren's request)".
54. Para 5 of the preamble to the Counter-Schedules themselves, which I have quoted in full above, also said:
- "4. Items that were for Mr Khan's personal benefit were expressly agreed by Mr O'Sullivan to be perks of his job / Remuneration Payments, to compensate him in part for the lack of proper salary increases and/or in respect of the loans of his personal monies to NECL."
55. It would follow that the Counter-Schedule entries now admitted to be false would or might not reduce the Counterclaim even if recharacterized, because on Mr Khan's case they were not repayments of his advances to NECL, and he would still be entitled to claim repayments of those advances in full, or (in the case of bank transfers) they might still have been made at Mr Warren's request, and with his authorisation, for purposes other than paying down Mr Khan's advances to NECL such as "perks of his job / Remuneration Payments, to compensate him in part for the lack of proper salary increases" (Counter-Schedule preamble para 5).

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56. However, Mr Eissa QC, in order to put Mr Khan in the best possible position, as he throws himself on the mercy of the Court in relation to his admitted contempt, told me on instructions that Mr Khan will not be pursuing his Counterclaim at all now.

Admissions by Mr Khan

57. The Counter-Schedules were served on 16 December 2019 and challenged, as I have said, by letter dated 16 January 2020. The first suggestion of a committal application of which I am aware is in emails on 17 February 2020. The Application Notice is dated 19 March 2020, as is the evidence in support. Solicitors who had from the outset acted for both Mr and Mrs Khan (the First and Second Defendants) filed evidence in opposition dated 20 April 2020, working remotely from home (Brett 1 para 1). This evidence primarily resisted the committal application as being inappropriate at that stage of the proceedings, arguing that it would “create delay, stifle the proper administration of the claim and drain the already scant resources of both parties” (para 32). It tried to avoid “detailed response to the facts of the allegations” (para 22) and, although it said that “the Respondent now accepts that [the Counter-Schedules] contain some inaccuracies” (para 15) it does not accept, as Mr Khan now accepts, that any statements that he made “were either deliberately or knowingly false”. On the contrary, it defended them.
58. Mr Khan’s efforts to have the committal proceedings stopped or adjourned until the end of the proceedings (cf Brett 1 para 33) failed at the hearing before Judge Dight on 13 May 2020. Although that submission failed, I think that Mr Khan was entitled to make it. I agree with Green J that, contrary to NECL’s suggestion in their letter of 16 January 2020 that the only response to Mr Khan being caught out was that all Defendants should have “capitulated” (as they put it) to all the claims against all of them, “A contemnor is not bound to roll over and play dead in litigation simply to convey a message of good faith to the court dealing with the contempt where there is a proper basis for raising a defence.”: *International Sports Tours Limited (trading as Inspire Sports) v Shorey* [2015] EWHC 2040 QB at para 48.
59. An application was made to relax the stringency of the freezing order and adjourn the committal application, which failed before Lambert J 2 July 2020 (after a new point was taken by Mr Cohen in his skeleton argument, which Mr Khan’s lawyers were apparently unable to address in the short time left to them: Order (Reasons) of Lambert J on costs dated 29 July 2020). Mr Khan’s solicitors then came off the record for him (although they are still on the record for Mrs Khan) on 21 July 2020. Thereafter, Mr Khan was in terrible difficulty in finding legal representation, partly because he had no money and was limited to firms willing to act on legal aid, partly because he had very little time, and partly because of COVID19; and he set out in a letter to the Court on 22 July 2020 his efforts in that respect. His present solicitors came on the record for him on 18 August 2020 “in relation to the committal only”. The Basis of Plea was then produced on 2 September 2020.
60. The Basis of Plea is a complete admission of all the contempts in respect of which the committal application proceeds before me. I regard it as a relatively timely admission. It is not made at the first opportunity – that would have been in response to the letter of 16 January which first called out the falsehoods, or at latest in response to the Application Notice dated 19 March 2020. But it is made before the hearing and as soon as Mr Khan had legal advisors concentrating on the substance of the committal

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application, rather than the timing of it. His previous solicitors, who had focussed primarily on the timing question, may have found themselves conflicted, both because they were acting for Mrs Khan (who is not implicated in the contempts) as well as Mr Khan, and because they had (on Mr Khan's instructions) signed the offending statement of truth. As well as being relatively timely, the Basis of Plea is unequivocal. The application has proceeded on the Basis of Plea, without any evidence or argument having to be addressed to go beyond it or behind it. That is to Mr Khan's credit.

Personal mitigation

61. Mr Khan has expressed sincere remorse, which I accept. His wife's statement says that he is "devastated" and "to date what he has been through has crushed him mentally and the guilt lives with him every day".
62. I accept the evidence put before me that he has suffered what for him are unprecedented levels of mental ill-health in the last few months, including suicidal ideation, for which he has been referred by his GP to mental health services and prescribed anti-depressant medication.
63. I accept from Mrs Khan that Mr Khan "is working very hard with his Counsellors to deal with his inner demons, his depression, and I see and feel this every day."
64. Mr Khan has been beggared by the legal costs, as NECL apparently envisaged he would be (Jennings affidavit of 19 March 2020 at para 48). He has only himself to blame for this; but it is part of his punishment. I accept the evidence put before me that the resulting financial hardship has been so severe that his family has been impacted and they have had to resort to local food bank options on several occasions.
65. Mr Khan is 42 years old and of previous good character. He has never been arrested, cautioned or convicted of any offence.
66. Mr and Mrs Khan had in and before 2018 suffered personal tragedy, losing four children, three of them by miscarriage and the fourth in still-birth. In 2019, they moved past that and, by September 2019 when the proceedings was launched, they had one child of 6 months and Mrs Khan was pregnant with a second child. Those two children are now 17 months and 7 months old respectively.
67. Mrs Khan has been shocked by revelations in the action, but she says "I have reached the stage where I am willing to accept his mistakes and forgive and help him learn from his mistakes."
68. Mr Khan has found work and his wife is coming to the end of a period of maternity leave. He currently works as a delivery driver and has been offered a new job, working from home which would allow him to support his young family, starting on 26 October 2020 as an Account Software Advisor and Training Consultant.
69. Although his wife is going to return to work after her maternity leave, his wife and children depend on Mr Khan for financial and (with the children, especially when their mother returns to work) practical support.

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70. In addition to his wife and young children, Mr Khan has two elderly parents, both aged 82, who depend substantially on him for support. One of them has dementia.

Sentencing for contempt of court

71. *Liverpool Victoria Insurance Co Ltd v Khan and Zafar* [2019] 1 WLR 3833 [2019] EWCA Civ 392 provides recent guidance on sentencing for civil contempt of court, in the course of dealing with a very different set of facts. Quoting the headnote [2019] 1 WLR 3833:-

“When dealing with a contempt of court which consists of deliberately or recklessly making a false statement in a document verified by a statement of truth, within CPR r 32.14(1)1, it is appropriate for a court to begin by determining the seriousness of the case by considering the culpability of the contemnor and the harm caused, intended or likely to be caused by the contempt. Having done so, the court must consider whether a fine would be a sufficient penalty. If it would, committal to prison cannot be justified, even if the contemnor’s means are so limited that the amount of the fine must be modest. However, such a contempt will usually be so inherently serious that nothing other than an order for committal to prison will be sufficient, whether the contemnor is a claimant seeking to support a spurious or exaggerated claim, a lay witness seeking to provide evidence in support of such a claim, or an expert witness putting forward an opinion without an honest opinion in its truth. The appropriate length of sentence will depend on the particular facts of the case. The court should have in mind the fact that the two-year maximum term has to cater for a wide range of conduct, and must seek to impose a sentence which sits appropriately within that range (post, paras 58—60, 64).

The seriousness of the contempt is increased if: (i) the false statement supports a claim for a large sum, or a sum which is grossly exaggerated above the true value of any legitimate claim; (ii) the witness persists in the false statement and/or resorts to other forms of misconduct in order to cover up the making of the false statement; or (iii) the contemnor acted intentionally rather than recklessly, although an expert witness who acted recklessly will usually be almost as culpable as one who acted intentionally and the culpability of a contemnor who acted recklessly will be increased if he made a false statement knowing of circumstances which cast doubt on its accuracy (post, paras 60—63).

The court must give due weight to matters of mitigation, which include: (i) an early admission of the conduct constituting the contempt of court, especially if it is volunteered before any allegation is made; (ii) co-operation with any investigation into contempt of court committed by others involved in the same

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proceedings or in other fraudulent claims; (iii) genuine remorse; (iv) serious ill-health; and (v) previous positive good character, an unblemished professional record and the fact that an expert witness has brought professional and financial ruin upon himself (post, paras 65—67).

Having reached a conclusion that a term of committal is inevitable, and having decided the appropriate length of that term, the court must consider what reduction should be made to reflect any admission of the contempt. The earlier an admission is made in the proceedings, the greater the reduction that will be appropriate. A maximum reduction of one third will only be appropriate where conduct constituting the contempt has been admitted as soon as proceedings are commenced; thereafter any reduction should be on a sliding scale down to about 10% where an admission is made at trial (post, para 68).”

72. In the body of the judgment, in addition to the points summarised in the headnote, I have been referred to or found relevant paras 58-62, and 65-66, and 68-69.
73. Mr Khan’s Leading Counsel accepts that his conduct crosses the custody threshold, but urges a suspended sentence.
74. I agree that the custody threshold is crossed, because of the inherent seriousness of the false statements of truth and the fact that they were maintained until the Basis of Plea was offered.
75. I have identified a number of features which reduce the harm and, to a lesser extent, the culpability presented by these civil contempts. I also take account of what I regard as important mitigation, which I have also identified.
76. In all the circumstances, the appropriate sentence for these contempts had they not been admitted would, in my judgment, have been a term of 12 weeks’ imprisonment.
77. The appropriate reduction for the full admissions in the Basis of Plea, in my judgment, bearing in mind the approach suggested by *Liverpool Victoria Insurance Co Ltd v Khan and Zafar* [2019] 1 WLR 3833 [2019] EWCA Civ 392 at para 68, brings that down to a term of 10 weeks’ imprisonment.
78. Finally, and in accordance with *Liverpool Victoria Insurance Co Ltd v Khan and Zafar* [2019] 1 WLR 3833 [2019] EWCA Civ 392 at paras 66 and 69, I consider whether the term of 10 weeks’ committal can properly be suspended.
79. In doing so, I follow the suggestion in *Liverpool Victoria Insurance Co Ltd v Khan and Zafar* [2019] 1 WLR 3833 [2019] EWCA Civ 392 at para 30 (on suspension), and para 58, that the Sentencing Council’s definitive guideline on the imposition of community and custodial sentences is relevant, on the basis that “the approach adopted by the criminal courts provides a useful comparison, though not a precise analogy”.

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80. I am satisfied that Mr Khan has learned his lesson, and presents no particular risk or danger to the public. I am satisfied that he recognises his wrongdoing, and is taking significant steps to rehabilitate himself with the help of others. There is no prior history of poor compliance with court orders. There is very strong personal mitigation. It is clear that immediate custody would result in significant harmful impact on his wife and children, and also on his dependent parents. This is not a case in which appropriate punishment can only be achieved by immediate custody. I will therefore suspend the sentence of 10 weeks for a period of one year.

SENTENCE

81. **Mr Khan, stand up. For your admitted civil contempts of court, and on your Basis of Plea, I sentence you to a term of 10 weeks' imprisonment suspended for one year.**

Afterword

82. Finally, I wish to say a few words about the future conduct of this case.
83. The committal proceedings have taken time, resources and focus away from the purpose of the action which is to resolve the dispute between the parties.
84. A substantive response to the Defence is now urgent, to replace the holding Reply and Defence to Counterclaim served in January. Directions to trial should be agreed or applied for, to include disclosure, exchange of witness statements, and setting down for trial.
85. There have been hints that NECL thinks it might be able to disprove other elements of Mr Khan's Counter-Schedules, over and above those admitted to be false in the Basis of Plea (see Jennings affidavit of 19 March 2020 at para 7). If that is the case, the first time and place for that to be attempted is at the trial of the action. I do not envisage that there should be further contempt applications until the substantive dispute between the parties has been fully determined in accordance with the overriding objective.
86. Targeted scrutiny of one side on issues which do not involve the other is good tactics, but it is not always good case management. The overriding objective generally favours determination of as much as possible, as soon as possible, and (so far as possible) on a single occasion. That is why a trial may be a better forum for addressing disputes of fact, including allegations of dishonesty, than a one-sided application. Of course, it is different if the application is truly urgent, or if it may genuinely and fairly be said to be determinative. But it is always something to bear in mind.