



Neutral Citation Number: [2022] EWHC 1313 (QB)

Case No: QB 2020 000651

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

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 26 May 2022

**Before:**  
**MR JUSTICE RITCHIE**

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**Between:**

**NORTH BRISTOL NHS TRUST**  
**- and -**  
**HOLLY REBECCA WHITE**

**Claimant**

**Defendant**

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**James Todd QC** (instructed by **DAC Beachcroft**) for the **Claimant**  
**Owen Greenhall** (instructed by **Hodge Jones and Allen**) for the **Defendant**

Hearing dates: 24, 25 and 26 May 2022

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Approved Judgment**Mr Justice Ritchie:****The Claim**

1. This is a claim for committal for contempt.

**The Parties**

2. Miss White is the alleged contemnor. The Claimant in this action is an NHS Trust. Because this claim arises out of an earlier clinical negligence claim brought by Miss White against the Trust in which the terms Claimant and Defendant were reversed I shall not use the terms Claimant and Defendant so as to avoid confusion.

**Bundles**

3. For the committal hearing there were 4 digital bundles. A mitigation witness statement from Miss White and a psychiatric report were handed up during mitigation.

**The Issue**

4. Sentencing for the contempts of Court by Miss White which were admitted on the day before the contested hearing was due to start.

**Background**

5. Miss White was born on the 6th of December 1992 and is now aged 29 and a half. Before the relevant events she had been brought up in the Barnstable area. Her parents separated when she was about 14 and as a result, according to her witness statement, she obtained poor GCSEs, got into a little trouble with the police and was a bit naughty.
6. As she matured in her late teens Miss White enjoyed horse riding and when she started working she went to the gym four times per week. After ending school at 16 she completed an NVQ 2 but failed to complete an NVQ 3. She was working towards achieving that in 2011. In the summer of 2011 she was working as a care assistant and/or trainee nurse for BUPA in a nursing home in Bristol and earning approximately 18,000 pounds gross per annum. She worked full time and enjoyed the job. In her witness statements she set out that she planned to have a career in nursing and or midwifery.
7. She had a partner called James Summerill who was also working and earning equivalent sums. They were building a life together.
8. Her mother had suffered cauda equina syndrome (CES) and had to self catheterise and also had to use anal irrigation. I shall explain more about that syndrome below.
9. Healthwise Miss White had a past history of irritable bowel syndrome. In April 2011 she strained her back at work helping an old lady out of a chair and the back pain lasted 2 weeks. On the 17th of May 2011 she reported to her GP that she had suffered some urinary leakage since the February of that year but had no lower back pain. A diagnosis of urinary tract infection (UTI) was made. On the 19th of May 2011 she called her GP complaining of lower back pain which was thought to be related to the UTI. On the 16th of June 2011 in a phone call with her GP she continued to complain of urinary

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leakage and lower back pain which, by that stage was going into her left leg. On the 20th of June 2011 she attended her GP complaining of lower back pain and informed her GP that her mother had suffered a slipped disc resulting in CES. The lower back pain was going into both her left and right legs. She was counselled on red flags relating to prolapsed discs. On the 25th of July 2011 the GP noted she had suffered faecal incontinence on holiday in Tunisia and she had lower back pain going into her left foot and urinary leakage. On the 12th of August 2011 the GP again noted increased lower back pain going into her left leg but no numbness around her bottom. On the 26th of August 2011 at a MATS clinic Miss White was upset due to her lower back pain and her concern that she herself might be was suffering CES. She was referred to the Frenchay Hospital in Bristol for an MRI. The examination of her perineal area was normal at that time.

10. Miss White attended the accident and emergency department of the Trust's hospital on the 18th of September 2011 complaining of leg pain and lower back pain. The leg pain being in both legs and running into her feet. There was no examination for CES and she was discharged because she was awaiting an MRI. No neurosurgical review took place. This was the genesis of the clinical negligence claim.
11. On the 11th of October 2011 Miss White underwent a decompression at L4/L5 for a central disc prolapse. She was in hospital for four days. She had presented on the 8th of October with lower back pain and increasing leg symptoms. A rectal examination had been carried out and an MRI scan which had disclosed the disc prolapse.
12. Miss White suffered CES due to an alleged delay in diagnosis between the 18th of September and the 8th of October 2011. The cauda equina is the horses tail of nerves running into the legs and pelvis from the bottom of the spinal cord. A disc prolapse at L4/5 can damage the nerves irreparably. Early treatment can stop the progress of the nerve damage. Miss White alleged that the CES led to three main areas of symptomatology: firstly her bladder; secondly her bowel and thirdly her left ankle which she asserted was weak. Ancillary to the bladder and bowel sensation issues Miss White alleged that she could no longer enjoy any feeling during sex.
13. Miss White took three months off work. The medical notes in November and December 2011 included statements by Doctors that her bladder and bowel were normal although Miss White disputed those notes. In December 2011 an MRI was taken which showed no continuing prolapse and no nerve root compression.
14. Miss White returned to work in approximately January of 2012 and continued working full time for approximately six months as a care assistant.
15. In March 2012 an MRI scan disclosed multi level disc disease with prolapse at L2/L3 but no compression. At this time Miss White was complaining of pain in her back, going down her left leg and some numbness.
16. By August 2012 Miss White underwent urodynamic tests because she was not voiding her bladder properly. The month after she was given advice on how to self catheterise and it was her case that she started self catheterising six times per day. She complained of rare faecal incontinence and that she was unable to feel when she was ready to go for bowel movement.

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17. Miss White had given up work by September 2012 having reduced her hours in July 2012, however it stands as a fact that she had worked as a care assistant full time from January to July 2012.
18. By December 2012 the medical notes disclosed that she was self catheterising six times a day.
19. Miss White gave birth to a son on the 27th of June 2013.
20. On the 15th of February 2014 Miss White underwent a second spinal operation which was an L5 nerve root decompression. It was her case that this made no difference to her bladder and bowel symptoms. The notes disclosed that her bladder and bowel sensation were reduced substantially after that operation.
21. By September 2014 the medical notes showed that her bladder and bowel were incompetent.
22. In February 2015 an MRI scan showed L4/L5 disc problems.
23. By April 2015 Miss White was using a bowel irrigation system to avoid manual evacuation which she had previously had to carry out.
24. In late 2017 Miss White suffered increasing right leg pain and this led to a third spinal operation on the 1st of February 2018 carried out by a surgeon called Mr. Chan. This was a revision discectomy at L4/L5. This was carried out at the Royal Devon and Exeter hospital and was successful in relieving the right leg pain. There is no suggestion that Mr. Chan advised that he could alter the pre-existing neurological symptoms caused by the original events in 2011 and in particular that this operation could relieve the continuing alleged left leg symptoms, bladder or bowel symptoms.
25. On the 3rd of April 2018 in a letter sent by Mr. Chan to Miss White's GP, Mr. Chan summarised that the response to the third spinal operation was very satisfactory in the leg [I assume the right leg]. Thereafter Miss White failed to attend physiotherapy three times and so was discharged.
26. Miss White had been claiming benefits from the Department of Work and Pensions since 2012, including income support, disability living allowance (both components) and housing benefits. She was provided with a Motability vehicle.

**The clinical negligence action**

27. The claim form was issued on the 23rd of September 2014 limited to a value of 50,000 pounds. In the particulars of claim Miss White alleged that the Trust had been negligent by failing to refer her for a neurosurgical assessment on the 18th of September 2011 and further asserted that had that referral taken place she would have been offered a spinal operation within 48 hours which would have frozen her symptoms in time and prevented any further deterioration.
28. In the Trust's defence dated 15th September 2015 liability was denied, as was causation.
29. The trial of the preliminary issue relating to liability was listed for the 22nd of May 2017, however before that date the parties reached agreement to settle liability on a

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50:50 basis and that agreement was approved by His Honour Judge Cotter (as he then was) on the 5th of May 2017. The Trust was ordered to pay costs of 82,000 pounds to Miss White's solicitors relating to the liability issue. The settlement covered causation of CES but did not cover causation in relation to the extent of the symptoms claimed by Miss White arising from CES.

30. Directions were then given in relation to evidence needed on the quantum of the claim.
31. The Trust made three interim payments to Miss White totalling 45,000 pounds, the first in June 2017, the second in March 2018 and the third in October 2018.
32. Miss White's schedule of loss was signed on the 10th of August 2018 and claimed £4.1 million excluding pain and suffering, so I work on the basis that the claim was for between 4.2 and 4.3 million pounds. She would of course only recover 1/2 of any damages assessed to be due as a result of the settlement on liability. The schedule included a claim for lifetime loss of earnings; substantial property adaptations due to substantial mobility symptoms; future medical treatment costs; future care and case management (claimed at over £2 million).
33. In October of 2018 the Trust instructed surveillance agents to video Miss White and they carried out surveillance between the 11th of October and the 26th of October. That surveillance showed Miss White visiting Tescos, Sainsburys and a Variety store called B&M. She drove to and from these stores, getting in and out of her car freely and easily. She walked around the stores without any apparent limp, slowness or disability. She bent down and sorted through clothes in the back of her car. She bent down and looked at calendars in the Variety store and she walked with a dog on a lead carrying various items. It was apparent to any objective observer of those videos that Miss White's complaints made to various medical and other experts and reproduced in the experts reports, signed by those experts under CPR part 35 with statements of truth, were false and misleading.
34. The videos were disclosed on the 11th of December 2018 and on the same day the Trust offered to Miss White that she withdraw her claim with no costs order made. This offer was not taken up.
35. Instead, Miss White through her lawyers served a witness statement dated the 17th of January 2019 setting out similar assertions to those that she had made all through the claim and asserting that she had not been dishonest despite seeing the video.
36. On the 13th of February 2019 Miss White offered to the Trust to have the claim dismissed with no costs on either side and the Trust refused to accept that offer.
37. On the 15th of February 2019 the Trust served its counter schedule pleading fundamental dishonesty and quantifying the claim at around 34,000 pounds plus pain and suffering on top. Therefore, on the Trust's figures the claim might have been worth anything between 80,000 and 150,000 pounds on a 100% basis and half of that taking into account the agreement on liability.
38. On the 28th of February 2019 Miss White's solicitors came off record.

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39. On the 18th of March 2019 the Trust applied to strike out Miss White's claim for breaches of various Court orders.
40. On the 8th of April 2019 His Honour Judge Gore QC struck out the clinical negligence claim for Miss White's failure to comply with directions and ordered her to repay the interim payments of 45,000 pounds. A costs order was made against her but because she had QOCS protection it was not to be enforced. I have seen counsel's note of the hearing and Miss White was clearly contrite during that hearing and did not oppose the striking out of her claim realising dishonesty had been identified.
41. As a result of the way that Miss White had run her clinical negligence claim the Trust had paid out 82,000 pounds to her solicitors on the issue of liability; 45,000 pounds in interim payments which are unlikely ever to be repaid; 57,000 pounds odd to the Compensation Recovery Unit and approximately 170,000 pounds in costs to their own legal team.

**Ms White's statements in the clinical negligence claim**

42. In her first witness statement dated February 2016 Miss White asserted that after the first spinal operation in 2011 she was still in a lot of pain and her left leg felt weak. She further asserted that, contrary to what the notes said from the neurosurgery clinic at Frenchay Hospital on the 15th of December 2011, her perianal sensation was not normal. She accepted her pain had significantly improved although not completely gone. She also recalled saying that the sensation between her legs and around her bottom was much better than it had been immediately prior to her surgery on the 11th of October 2011 however she would not say that it was normal.
43. In Miss White's second witness statement dated November 2017 she noted the medical records from Frenchay hospital dated 18th November 2011 stated that she had reported a "normal bladder" and "normal bowel function" and "normal perianal sensation" and she also noted the medical notes from 15th December stating her "perianal sensation had returned to normal" but that she had continuing stress incontinence.
44. She went on to assert that she had been suffering recurrent UT infections since being diagnosed with CES and during the urodynamic tests in the 14th of August 2012 she was advised to self-catheterise for the foreseeable future. She was shown how to do this in September 2012. She asserted she continued to self-catheterise five or six times per day ever since. She asserted that she felt numb in her genital area and gained no pleasure from sex and was anorgasmic. She asserted that her bowels were insensate but fortunately she rarely suffered faecal incontinence. She asserted that she used one elbow crutch whilst walking outside but managed without the crutch at home. She had ongoing weakness of her left ankle and ongoing balance problems and numbness in both feet. She experienced pain in her lower back and down both legs with the left leg being constant and a burning type sensation. Her partner did all of the lifting around the house. She asserted that simply lifting one of her son's toys or sitting for 30 minutes led to a significant increase in her pain. She alleged ongoing pain in her lower back, both legs, neck and shoulders and continuing weakness in her left ankle. She alleged the right leg had become worse over the last few years, although it was not as bad as her left leg. She asserted that her left leg pain became worse while she was working at the nursing home. She assessed her left leg pain at seven out of 10 on an analogue pain scale, increasing to 10 out of 10 once per week. She alleged that her partner did all of the

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cooking, washing, clothes washing, cleaning, gardening and shopping. She accepted she could wash and dress herself but did sometimes need help with socks and shoes. She asserted she was unable to work, she was depressed and taking sertraline tablets to treat that. She explained the breakup of her relationship with her partner and that she had been forced to move from Bristol to Barnstable as a result.

**The expert evidence in the clinical negligence claim**

45. Mr. N. Todd is a consultant neurosurgeon who reported on behalf of Miss White on the 17th of July 2018. He noted that before the first operation Miss White was examined on the 10th of October 2011 and neurologically the power in her right leg was four out of five and the power in her left leg was three out of five. He noted that post operatively the medical notes showed in mid November she had normal bladder and bowel function and normal perianal sensation.
46. He noted that Mr. Chan offered to carry out a (3<sup>rd</sup>) spinal operation in February 2018 to resolve the new right leg pain which was due to a recent disc herniation at L4/5 on the right side. In his preoperative letter to the GP he stated:
- “some residual symptom is likely to remain and the previous cauda equina type of symptoms and the residual pain and sensory disturbances in her left lower extremity would not be improved by addressing this new herniation on the right side.”*
47. Miss White told Mr. Todd in June 2018 that she had an insensate bladder and performed self-catheterisation five or six times a day; had a paralysed insensate bowel and used irrigation daily; had complete loss of genital sensation; had weakness of her left foot and ankle with regular falls; cruised the furniture at home for support and outside walked with one elbow crutch held in the right arm and had a maximum walking capability of 20 steps before she had to stop and rest. She also reported neuropathic pain, low back pain, depression and fatigue.
48. On the 31st of January 2019 Mr. Todd reported again to Miss White’s solicitors having seen the report of Mr. Jellinek the neurosurgeon instructed by the Trust. He noted that on examination Mr. Jellinek had found power at zero out of five for the left ankle movements and compared this with his finding of three or four out of five. He advised that zero meant *no movement*. Mr. Todd noted that Mr. Jellinek had pointed out that if the Court accepted the evidence of Professor Winslet, Miss White had only lost normal anal sphincter control after the second spinal operation in February 2014 and therefore that could not have been caused by the original disc prolapse or clinical negligence. However Mr. Todd pointed out that urological assessment in 2012 pointed to neurological problems of the bladder which predated the second spinal surgery.
49. Mr. Todd reviewed the surveillance videos noting Miss White walking freely without walking aids and showing no weakness of her left ankle or foot. He provided the opinion that the video evidence showed that Miss White was able to walk considerable distances with no walking aids outside. That was in *“complete contrast”* to Miss White’s statements both Mr. Todd and to Mr. Jellinek that she could only walk 10 to 15 steps with the aid of an elbow crutch. He opined that there was no evidence of weakness of the left foot and that Miss White was specifically seen to squat in one of the videos. He described Miss White’s statements made to him and the other neurosurgeon as

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*“deliberately misleading”*. He warned that *“unfortunately this brings the whole of Miss White's evidence into question”*. He went on to say:

*“as a Doctor I rely on patients giving me accurate information. If I find there has been deliberate misrepresentation in respect of walking I now have to question how much of what I was told in respect of other symptoms can be relied upon.”*

50. Denise Winks is an occupational therapist who reported for Miss White on the 10th of July 2018. She had assessed Miss White first in August 2017 and on the second occasion on the 12th of June 2018. On the first assessment Miss White asserted that her partner provided gratuitously all the care she needed and was responsible for childcare. On the second assessment the childcare was shared 50:50 with her partner, they having separated, but Miss White's mother and grandmother provided assistance with domestic tasks. She was in receipt of personal independence payments including care and mobility components having previously received disability living allowance with both care and mobility components at the higher rate. However in 2016 the care rate had dropped to the middle band and she was awarded no mobility component. Miss White had to surrender her Motability car in 2016 when this occurred. She appealed that decision and the benefits were reinstated to the higher rate. Therefore she recovered her Motability vehicle. Miss Winks observed Miss White's activities of daily living and movement. On the first assessment, due to reports of extreme pain on walking and weight bearing, there was not much mobility. On the second assessment Miss White walked short distances also reporting extreme pain. Miss Winks observed Miss White being very careful to avoid putting full weight on her left leg most of the time although occasionally weight bearing bilaterally and appearing to have great difficulty putting the left foot on the floor and fully relying on it. On one occasion she *“swore with pain”* on walking. On the second assessment Miss White appeared to be able to walk with a little more ease compared to the first assessment but now appeared to have difficulty putting weight through the *right* leg and was using her left leg more. She walked slowly and carefully but did not rely on walking aids or support. Miss Winks did not independently assess Miss White's ability to walk outside the bungalow due to her reported levels of *“severe pain”* on the day of assessment. Miss Winks was advised that Miss White used one crutch when going outside the bungalow.
51. When Miss Winks reviewed the surveillance evidence she reported on the 23rd of January 2019 that the presentation in the surveillance was quite different from that during her assessments. Miss Winks stated that the surveillance footage *“calls into question the reliability of her evidence to me during both assessments”*. She went on to say that the recommendations which she had made in her report were unlikely to be accurate as a result.
52. Doctor Munglani, a consultant in pain medicine, reported on the 14th of August 2018. His examinations of Miss White had taken place in October 2017 and on the 22nd of May 2018. He noted that when he asked her if she always had a crutch she stated that she did not. She stated that lifting a full kettle causes pain in her back which was *“horrendous”*. He asked whether he, Dr Munglani, would see her walking around a supermarket and Miss White responded that she did go out with help and assistance from her partner. She told him that she can walk with her crutch for roughly 20 steps and then has to stop due to pain in her lower back and her leg. She stated that walking was *“completely wonky”*. She asserted that although she was driving a manual Ford



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Focus she was changing to an automatic car because her left leg was dodgy. She stated that she could manage one step at a time going up and downstairs and then had to “have a breather”. He took a video of Miss White walking which suggested she had walking difficulties in line with what she had told him.

53. On the 1<sup>st</sup> of January 2019 Doctor Munglani provided his further opinion having seen the Trust’s surveillance evidence. He compared Miss White’s ability to walk in the surveillance videos with the video he himself had taken in his examination in 2018. This together with other obvious discrepancies led him to provide the opinion that “*unfortunately, in my view this does raise considerable doubts as regards her testimony as regards her physical disability.*” He went on to say “*it is likely that on the balance certainly at the time that she goes out which is seen on surveillance that she is likely to be able to perform in day to day activities such as shopping and driving in a more or less normal capacity.*”

### The Trust’s expert evidence

54. Mr. Jellinek first reported for the Trust in November 2018. He tied together the post operative notes from November and December 2011 and the detailed urology clinic assessment on the 14th of August 2012 which described Miss White as having normal anal sphincter tone and anal reflex indicating preserved anal sphincter sensation and combined that with Professor Winslet’s opinion that Miss White only lost normal anal sphincter control after the February 2014 operation, to advise on the balance of probabilities that the bowel issues were not related to the 2011 operation, the subject of the clinical negligence claim, but were related to the revision operation in February 2014. He advised that the second spinal operation was not influenced by the timing of the first spinal operation. So if his evidence was accepted at trial the bowel difficulties were not related to the claim.
55. Miss White had described left sided sensory disturbances at the T8 level of the thoracic spine which Mr. Jellinek said were absolutely incompatible with a CES injury at L4/L5. As to the motor neurological deficits in 2015 and again in 2017 when he examined Miss White he found unequivocal and clear *organic inconsistencies* in the presentation of her left leg. He had observed Miss White walking in the hospital towards and away from his examination and yet when he formally assessed the strength of her left ankle the power was zero out of five, indicating no movement whatsoever. He compared that examination with Mr. Todd’s examination in June 2018 showing the left ankle power to be five out of five. Both could not be right. Therefore Mr. Jellinek stated that he could not provide an organic explanation for the apparent profound motor deficit of the left leg.
56. Other reports were provided for the Trust from Professor Winslet, a colorectal expert, Mr. P. Guy, urological, Mr. D. Sanders, pain management, Mr. J. Scott, psychiatry and Miss L. Hudson, care and nursing. I will not go through all of the relevant mobility statements made by Miss White to those experts in this broad background summary.

### The contempt claim

57. The Trust issued a Claim Form on the 17th of February 2020 setting out allegations of contempt of Court against Miss White. Permission was granted for the contempt claim to proceed on the 24th of June 2021, matters having been delayed by the COVID

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pandemic. At the permission hearing Miss White, through her counsel, argued that the delay between the striking out of her clinical negligence claim, the issuing of the contempt claim and the hearing of the permission application should lead to a refusal of permission. HHJ Gargan sitting as a deputy High Court Judge did not agree and granted permission. In the 11 months since permission has been granted the parties have been in correspondence about the alleged contempts. After a five month delay Miss White instructed her solicitors to issue an open admission of some, but not all of the particulars of contempt, excluding allegations of dishonesty about pain and refusing to admit para. 65 and the subparagraphs therein which covered intention and knowledge. The Trust did not consider that the admissions were sufficient and so the claim trundled on until it was listed for a three to four day hearing before me in May 2022. The hearing was to be on evidence. The Trust had supported the application for contempt with an affidavit from J Wallace a solicitor and witness statements from 10 expert witnesses. During the run up to the hearing Miss White had agreed that three of those expert witnesses were not required for cross examination however seven were required for cross examination and were witness summonsed and four came to Court on Tuesday the 24th of May. The witnesses were Mr. Jellinek; Miss Hudson; Miss Winks; Miss Hibbert; Mr. Sanders; Mr. Todd and Doctor Munglani.

58. The night before the hearing Miss White agreed a clarified set of admissions and a document called a “basis of admissions” was agreed between the parties. I set it out below in full.

“The Defendant, Holly White (‘HW’), makes admissions to contempt of Court on the basis set out below.

1. In 2011 (when she was then aged 18), she attended A&E with back pain but was not referred for neurological examination. She later developed Cauda Equina and brought a genuine claim for negligence against North Bristol NHS Trust (‘NB-NHS’, the Claimant in these proceedings). It is not in dispute that the Claimant was 50% liable for the negligence claim.
2. On 01.02.18 HW underwent a L4/5 microdisectomy. Following the procedure her condition improved. She was reassessed by experts and made the following **false claims**:
  - i) Telling **Mr. Munglani** on 22 May 2018 that:
    - a) 50.3: she was unable to walk for 20 steps before having to stop;
    - b) 50.4: if she did not use a crutch she was only able to hobble;
  - ii) Telling **Ms Hodson** on 5th June 2018 that:
    - a) 53.3: she could walk for 10 meters before stopping;

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- b) 53.4: she could climb slowly if she stopped every three steps;
  - c) 53.5: she could drive for 20 minutes;
  - d) 53.6: she used a crutch outdoors;
  - e) 53.9: she was unable to move from kneeling to standing
  - f) 53.10: she required supervision in the shower and assistance with her shoes and socks;
- iii) Telling **Ms Winks** on 12 June 2018 that:
- a) 55.3: When she went out she used one crutch
  - b) 55.5: She had extreme difficulty with kneeling, squatting or working at low levels;
  - c) 55.6: She found it extremely difficult to get down onto the floor to play with her son.
- iv) Telling **Mr. Todd** on 28 June 2018 that:
- a) 57.5: outside she walked with an elbow crutch;
  - b) 57.6: she could walk for 10-20 steps before needing to stop and rest;
  - c) 57.9: She could not get in and out of the bath.
- v) Stating following in her **witness statement** of 17 January 2019:
- a) 63.10: “I have not been dishonest and I maintain that my disability has restrictions are as I have always maintained throughout this litigation”.
  - b) 64.3.3 She required someone to be in attendance when showering
  - c) 64.3.7 She was not able to drive a manual care.

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- d) 64.3.8 She required a mobility scooter when on holiday
3. The above statements were made without honestly believing them to be true and were grossly exaggerating her symptoms and disability for the purposes of her claim.
4. The above statements were made knowing they would be likely to have interfered with the administration of justice.”

The parties agreed that the admission at 4. above was in effect an admission of the whole of the original allegations in para 65 of the contempt particulars.

**Findings of fact**

59. On the basis of the admissions set out above I find as a fact that between May 2018 and January 2019 Miss White dishonestly and intentionally made false statements to four experts who were reporting to this Court on her physical condition. Further I find that those statements were made knowing that they would interfere with the administration of justice by potentially increasing her entitlement to compensation arising from her increased clinical negligence claim. In the context of a claim for around 4.3 million pounds I find beyond reasonable doubt that the false statements relating to Miss White's mobility had a value of at least 1,000,000 pounds gross on Miss White's own schedule and probably substantially higher than that.
60. In relation to Miss White's witness statement to which there was attached a statement of truth dated **17th January 2019** I find beyond reasonable doubt and on her admissions that she continued to propagate lies about her state of mobility as set out in the admissions with the same purpose: to increase the damages she might be awarded by this Court. I consider that the reason why the witness statement is important in these proceedings is that it was provided after the surveillance videos were disclosed. For Miss White to make further false statements in the face of the surveillance evidence and the opinions of her own medical experts compounds the dishonesty that she had practised from 2018. That behaviour showed a lack of insight towards the Court and the tax payer who funds the Trust and towards justice itself.

**The Law**

61. The powers of this Court when sentencing in relation to contempt of Court are set out in CPR rule 81.9 and the *Contempt of Court Act 1981 S.14*. This Court has the power to impose imprisonment, either immediate or suspended, for a maximum of 2 years; a fine, either on its own or in combination with imprisonment; the confiscation of assets; and any other punishment permitted by law.
62. Pursuant to CPR rule 32.14 proceedings for contempt of Court may be brought against a person who makes or causes to be made a false statement in a document prepared in anticipation of or during proceedings and verified by a statement of truth without an honest belief in its truth.

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63. When I approach sentencing in this case I have in mind the words of Mr. Justice Coulson in *Walton v Kirk* [2009] EWHC 703, in which he ruled as follows:

“14 ...I summarise the relevant principles as follows:

a) The applicant must prove each of the three elements of the contempt beyond a reasonable doubt. Given the quasi-criminal nature of contempt proceedings, any genuine doubt must be resolved in the respondent’s favour.

b) The three elements are: i) the falsity of the statement; ii) the false statement has or would have interfered with the course of justice; iii) when the false statement was made the maker had no honest belief in the truth of the statement.

c) Exaggeration of a claim is not, without more, automatic proof of contempt of Court. What may matter is the degree of exaggeration (the greater the exaggeration, the less likely it is that the maker had an honest belief in the statement verified by the statement of truth) and/or the circumstances in which any exaggeration is made (a statement to an examining Doctor may forgivably focus on the worst aspects of the maker’s physical condition, whilst it may be less easy to dismiss criticism of a similar statement made when the maker has been repeatedly asked to specify variations in his or her physical condition, and chosen only to give one side – the worst - of the story).”

64. On the admissions made by Miss White this is not a case of mere exaggeration. The falsehoods propagated by Miss White and admitted to by her go far beyond exaggeration.

65. I shall now set out below the authorities that are relevant to my consideration of the appropriate sanction in a clinical negligence claim where a party has admitted to or been found to be in contempt of Court by providing false statements in evidence and in particular in breach of a statement of truth.

66. In *South Wales Fire v Smith* [2011] EWHC 1749, the Divisional Court consisting of Lord Justice Moses and Mrs. Justice Dobbs were considering contempt of Court by a fireman in relation to the evidence he put before the Court in his claim arising from an accident at work. Smith’s contempt took various forms. He claimed 2 years loss of earnings valued at 15,000 pounds when in fact he had been a self-employed taxi driver during that time. The other falsities all span off the first one. He was sentenced to imprisonment for 12 months suspended for two years provided that within a period of two years he paid 10,000 pounds back to the fire service. I note that Smith did not dispute the contempt and the Court took into account that two years had passed since the contempt which the Court considered inhibited the Court from saying immediate imprisonment would be appropriate. Guidance was given that contempt claims should be dealt with urgently to send out the important message of deterrence (see paragraph 23).

67. Moses LJ gave the following guidance in his ruling:

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“2. For many years the courts have sought to underline how serious false and lying claims are to the administration of justice. False claims undermine a system whereby those who are injured as a result of the fault of their employer or a defendant can receive just compensation.

3. They undermine that system in a number of serious ways. They impose upon those liable for such claims the burden of analysis, the burden of searching out those claims which are justified and those claims which are unjustified. They impose a burden upon honest claimants and honest claims, when in response to those claims, understandably those who are liable are required to discern those which are deserving and those which are not.

4. Quite apart from that effect on those involved in such litigation is the effect upon the Court. Our system of adversarial justice depends upon openness, upon transparency and above all upon honesty. The system is seriously damaged by lying claims. It is in those circumstances that the courts have on numerous occasions sought to emphasise how serious it is for someone to make a false claim, either in relation to liability or in relation to claims for compensation as a result of liability.

5. Those who make such false claims if caught should expect to go to prison. There is no other way to underline the gravity of the conduct. There is no other way to deter those who may be tempted to make such claims, and there is no other way to improve the administration of justice.

6. The public and advisors must be aware that, however easy it is to make false claims, either in relation to liability or in relation to compensation, if found out the consequences for those tempted to do so will be disastrous. They are almost inevitably in the future going to lead to sentences of imprisonment, which will have the knock-on effect that the lives of those tempted to behave in that way, of both themselves and their families, are likely to be ruined.

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

68. In *Neild v Loveday* [2011] EWHC 2324, Sir Anthony May and Mr. Justice Keith in the Divisional Court had to deal with contempt by a claimant who had grossly exaggerated the extent of his injuries after a road traffic accident. The claimant’s wife was the second defendant to the contempt proceedings and had assisted in the deception by making untruthful statements herself. Mr. Loveday himself admitted some of the alleged contempts but it was his case that he did not know what he was purporting to verify because he did not read the documents properly. He was suffering from depression at the time. He gave evidence that he had to use a wheelchair when going out and that his

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wife had to help him and those were falsehoods. The claim was settled for £1,850, he having asserted the value was up to £50,000 pounds on the assertion that he was a recluse and always using wheelchair when he was outside. A video was obtained showing him walking outside without a wheelchair and without assistance from his wife, albeit in some discomfort. Mr. Loveday failed to make any admissions but findings of contempt were made against him. His wife did admit contempt. The Divisional Court took into account that their lives had fallen apart since the disclosure of their dishonesty. Mr. Loveday was suffering from depression and post traumatic stress disorder. The proceedings had been a crippling loss to them in relation to their house, their finances and their health. Mr. Loveday owed 40,000 pounds in costs. Sir Anthony May stressed that the severity of the sentence was in part intended to deter others. Mr. Loveday was given immediate imprisonment for nine months and his wife was given six months imprisonment suspended for 18 months.

69. Lord Justice Laws and Mr. Justice Simon determined a sentence for contempt in *Lane v Shah* [2011] EWHC 2962. The case concerned a personal injury claim in which the claimant had made falsehoods in witness statements with statements of truth attached. Mr. Shah was the supporting witness for his wife Mrs. Shah who was the claimant. The third defendant to the committal claim was their daughter. Mrs. Shah advanced a claim that she was wholly unable to work by reason of her injuries and signed a witness statement with a statement of truth asserting such and also her particulars of claim asserted such as did her schedule. She claimed over 600,000 pounds excluding general damages of which more than 450,000 pounds was for care provided by her husband and daughter. Video evidence obtained by the insurers showed Mrs. Shah working full time and shopping, walking, lifting, carrying and bending. The claim was eventually compromised for 10,000 pounds but with a set off of 7,500 pounds for the insurance costs of investigating the fraud. Very little money was recovered by the claimants. Mrs. Shah was given 6 months immediate imprisonment and her husband and daughter 3 months immediate imprisonment each. In this case the couple had a younger son at university who was reliant on his parents for income.
70. In *Homes for Harrogate v Fari* [2013] EWHC 3623, Mr. Justice Spencer was dealing with a committal for contempt arising from a personal injury claim following a minor accident. The first defendant made false statements to increase the value of the claim and her husband, the second defendant supported his wife's evidence. The claimant suffered a relatively minor knee injury which cleared up within four to five months but she sought to fool the medical experts into believing it lasted substantially longer and that she needed ongoing care from her husband. Videos disclosed the lie. She lied about paying her niece to care for her as well. At the contempt hearing she contested every allegation to the hilt resulting in a four day hearing. The first defendant had twin sons aged 15 and adult children aged from 18 to their mid 20s, two of whom had disabilities and the defendants had important roles in looking after these disabled children. Mr. Justice Spencer carefully considered the defendants' article 8 rights under the European Convention and those of the children and also the defendants' medical problems, including diabetes, and took into account that no damages had been recovered as a result of the frauds practised. He imposed a sentence of three months immediate imprisonment on the first defendant and two months suspended for 12 months on her husband.

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71. In *Surface Systems Limited v Wykes* [2014] EWHC 422, HHJ Graham Robinson sitting as a deputy High Court judge was considering a claim for committal for contempt arising from a personal injury claim following an accident at work. Three false statements verified by statements of truth were at issue arising from the particulars of claim, the claimant's schedule and the reply and defence to counterclaim. Admissions of contempt were made by Mr. Wykes who had suffered a right arm injury at work which was genuine, however he chose to exaggerate the nature and extent of his symptoms and was examined by a number of medical experts all of whom took him at his word. He asserted his right arm was virtually useless. The diagnosis was a complex regional pain syndrome. He made a claim in the region of 1.9 million pounds. Just over one and a half years after starting the claim notice of discontinuance was filed. Committal proceedings were started soon thereafter permission was granted and 25 allegations of untruthful statements contained within documents verified by statements of truth were put forward. The admittedly dishonest statements included assertions that he was severely handicapped on the labour market and had no realistic earning capacity and could not use his right hand. Initially Mr. Wykes blamed his mental health and lack of attention to detail. He alleged he had a belief that he had done nothing wrong in his original witness statement in the contempt proceedings. Surveillance evidence caught him out. The judge rejected Mr. Wykes assertions of failing to read the documents that he signed and his attempt to rely on his psychiatric conditions. The judge took into account the size of the claim made which was grossly overstated, the false statements, Mr. Wykes previous good character and the fact that he had recovered interim payments of £24,000 but incurred costs likely to be in the region of £35,000. The judge took into account that Mr Wykes had a child whose age was not disclosed in the report. He was sentenced to imprisonment for six months to be served immediately after a deduction of 10% for mitigating factors.
72. In *Amlin Insurance v Kapoor* [2018] EWHC 632, Mr. Justice Julian Knowles was dealing with a committal application for contempt arising from a personal injury road traffic accident. The claim was determined at trial where a finding of fundamental dishonesty was made that the accident had been staged. The committal claim concerned false statements in the particulars of claim, schedule of special damages and witness statements. The defendants to the committal claim were Mr. and Mrs. Kapoor. By the time of trial the damages claim was for over £170,000 pounds. At trial the insurance company's assertion was that Mr. and Mrs. Kapoor had deliberately slammed on their brakes to bring about a rear end collision with the insured's car. A finding of fundamental dishonesty was made and QOCS was disapplied and Mr. and Mrs. Kapoor were ordered to pay the insurer's costs on an indemnity basis. By the time of the contempt claim £11,000 of the total costs of £30,000 had been repaid. The defendants defended on the basis that they had been fooled by a claims management company and had signed documents without reading them properly. However they admitted their contempts at the committal hearing and the judge turned to sentencing. Evidence was given as to the scale of insurance fraud arising from road traffic accidents in England which was estimated at £2 billion per year. Reference was made to *Royal and Sun v Farhad* [2015] EWHC 1092, in which the accident was entirely contrived and an immediate sentence of 12 months imprisonment was ordered. In relation to aggravating factors the judge took into account the size of the claim, the persistence of the falsities in the face of a defence alleging fundamental dishonesty all the way through to trial and the waste of precious NHS resources in attending on GPs and medical experts. The judge took into account that the couple had three children who would have to go into



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care if both parents were imprisoned. Mr. Kapoor was sentenced to 12 months imprisonment immediate. Mrs. Kapoor, who was to care for the children in the absence of Mr. Kapoor, was sentenced to 9 months imprisonment suspended for 12 months.

73. In *Calderdale v Atwell* [2018] EWHC 2537. Mr. Justice Spencer considered an application to commit for contempt arising from a clinical negligence claim advanced at around £837,000. Atwell grossly and deliberately exaggerated the extent of his disability maintaining he was unable to drive, unable to lift and unable to pursue his career as a disc jockey. Findings of contempt were made by the judge at an earlier hearing. The claim was eventually settled for 30,000 pounds. The judge took into account that this was an attempted fraud on the National Health Service but also that Atwell did not persist in his dishonesty once it was uncovered. Instead rightly he abandoned his falsely exaggerated claim. Therefore the relevant NHS trust suffered no further financial loss. In addition the judge took into account that the claim was not dishonest from the start, there was a genuine claim underlying the gross exaggeration. The judge also took into account that Atwell failed to engage in the contempt proceedings and attempted to ignore or avoid service. The judge considered delay and the case of *Aviva v Kovacic* in which four years of delay occurred leading to a suspended sentence. The judge imposed an immediate sentence of imprisonment of three months.
74. Court of Appeal guidance on such claims was given in *Liverpool Victoria v Zaffar* [2019] EWCA 392 Civ. The Master of the Rolls together with Lord Justice Hamblen and Lord Justice Holroyde were dealing with committal for contempt by a medical expert, Doctor Zaffar, who was turning out word processed whiplash reports in very high volume. These were low value road traffic accidents and he was charging fixed fees for word processed reports, doing 5,000 per annum producing income to him of £350,000 per annum. In the relevant case he had reported in his first report that the injury had settled within one to two weeks but the claimant suggested that he had told him the injuries were continuing. In his revised report despite having carried out no further examination he gave a different prognosis. The solicitor served the 2nd report but put the first report in the trial bundle for trial. This led to the judge ordering a witness statement from Doctor Zaffar and one was provided saying that the original report was correct and the revised version was altered without his permission. Later he signed a witness statement saying that he himself provided the revised report. Both were signed with a statement of truth. At the committal hearing the Doctor defended and denied contempt but was found to be in contempt. The judge took into account in sentencing that he had lost his medico-legal practice and was struggling financially, was ashamed of himself and had brought shame on his family. The judge passed a sentence of imprisonment of six months suspended for two years.
75. On appeal the Court of Appeal considered that the sentence was too lenient but did not substitute a new sentence. In a joint judgment the Court ruled as follows:
- “49. In relation to fraudulent claims in respect of injuries said to have been sustained in road traffic accidents, Sir John Thomas P in *Liverpool Victoria Insurance v Bashir* [2012] EWHC 895 (Admin) referred to the great difficulty of detecting such fraud. The Court in that case concluded that the conduct of the defendants was of great seriousness and must attract a custodial sentence, even though they were only “foot soldiers” who had been recruited for a fee to make a false claim in relation to a

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contrived collusion, and even though the amount of the claim was only in the range £5,000 to £15,000. The Court initially had in mind sentences “well in excess of 12 months’ imprisonment”, but found two very important factors in the defendants’ favour: their early admissions of their fraud; and the assistance they had given to the insurers in relation to the wider fraud. One defendant was the mother of two children, the younger of whom was only four months old and was still being breast-fed. The Court made a very substantial reduction in the length of the sentence to reflect the factors in her favour, but committed her for an immediate term of 6 weeks.

...

58. In the context of a contempt of Court involving a false statement verified by a statement of truth, the contemnor may have acted dishonestly, or recklessly in the sense of not caring whether the statement was true or false. In either case, it is always serious, because it undermines the administration of justice. In considering just how serious it is in all the circumstances of an individual case, and in deciding the appropriate punishment for contempt of Court, we think that the approach adopted by the criminal courts provides a useful comparison, though not a precise analogy. In particular, the Sentencing Council’s definitive guidelines on the imposition of community and custodial sentences (see [30] above) and on reduction in sentence for a guilty plea are relevant in cases of this nature. It is therefore appropriate for a Court dealing with this form of contempt of Court to consider (as a criminal Court would do) the culpability of the contemnor and the harm caused, intended or likely to be caused by the contempt of Court. Having in that way determined the seriousness of the case, 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.

59. We say at once, however, that the deliberate or reckless making of a false statement in a document verified by a statement of truth will usually be so inherently serious that nothing other than an order for committal to prison will be sufficient. That is so whether the contemnor is a claimant seeking to support a spurious or exaggerated claim, a lay witness seeking to provide evidence in support of such a claim, or an expert witness putting forward an opinion without an honest belief in its truth. In the case of an expert witness, the fact that he or she is acting corruptly and makes the relevant false statement for reward, will make the case even more serious; but it will be a serious contempt of Court even if the expert witness acts from an indirect financial motive (such as a desire to obtain more work from a

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particular solicitor or claims manager), or without any financial motivation at all, and even if the expert witness stands to gain little financial reward by it. This is so because of the reliance placed on expert witnesses by the Court, and because of the corresponding importance of the overriding duty which experts owe to the Court (see [33-34] above).

...

64. As we have indicated, an order for committal to prison will usually be inevitable where an expert witness commits this form of contempt of Court, and counsel for the respondent realistically accepted that it was inevitable in this case. As to the appropriate length of sentence, it is important to emphasise that every case will turn on its particular facts. The conduct involved in a contempt of this kind may vary across a wide range. The Court must, therefore, have in mind that the two year maximum term has to cater for that range of conduct, and must seek to impose a sentence in the instant case which sits appropriately within that range. Where more than one contemnor is before the Court, as in the present case, it will of course be necessary to make a judgment as to the comparative seriousness of their respective misconduct. As we have noted at [49] above, Sir John Thomas P in *Bashir* had in mind as a starting point sentences “well in excess of 12 months” even for those who played the role of “foot soldiers” in the dishonest claims in that case.

65. In determining what is the least period of committal which properly reflects the seriousness of a contempt of Court, the Court must of course give due weight to matters of mitigation. An early admission of the conduct constituting the contempt of Court, before proceedings are commenced, will provide important mitigation, especially if it is volunteered before any allegation is made. So too will cooperation with any investigation into contempt of Court committed by others involved in the same proceedings or in other fraudulent claims. Where the Court is satisfied that the contemnor has shown genuine remorse for his or her conduct, that will provide mitigation. Serious ill health may be a factor properly taken into account.”

76. In *George Eliot hospital NHS Trust v Elder* [2019] EWHC 1813, HHJ Walden Smith was dealing with a contempt of Court claim arising from a clinical negligence claim resting on lack of informed consent. Lesley Elder had suffered a genuine injury and had a genuine case but covert surveillance and evidence from social media demonstrated that she grossly, dishonestly and repeatedly exaggerated her symptoms and her pecuniary claims. The particulars of claim, the schedule of loss and her witness statements were the subject of the false statements and her evidence was compounded by the involvement of her daughters, who provided statements in support of her exaggerated disabilities. Elder made certain admissions in relation to her contempt and then tried to resile from them. Expert evidence from a psychologist was relied upon to

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show that Ms. Elder suffered panic attacks, paranoia and suicidal thoughts. Sadly she had taken an overdose in between adjournments. The judge went ahead despite this and in the absence of Ms. Elder. Her claim was valued in her schedule at about 2.5 million pounds and at the trial her daughters gave evidence supporting her alleged disabilities. Video evidence undermined her case, as did images from her Facebook account. She had been at a party in Ibiza fully able to weight bear on her left leg. An award was made in her favour of 120,000 pounds. The judge took into account her previous good character and that the surgery had led to psychiatric difficulties. The judge took into account the delay of approximately 13 months. The judge started at 12 months imprisonment but due to mitigation reduced it to 5 months immediate.

77. Guidance on the practical approach to sentencing in contempt cases was also provided in *National Highways Ltd v Heyatawin and others* [2021] EWHC 3078 (QB), in which Dame Victoria Sharp (P) ruled at [49] as follows:

“The key general principles are as follows:

(a) The Court has a broad discretion when considering the nature and length of any penalty for civil contempt. It may impose: (i) an immediate or suspended custodial sentence; (ii) an unlimited fine; or (iii) an order for sequestration of assets;

(b) The discretion should be exercised with a view to achieving the purpose of the contempt jurisdiction, namely (i) punishment for breach; (ii) ensuring future compliance with the Court's orders; and (iii) rehabilitation of the contemnor;

(c) The first step in the analysis is to consider (as a criminal Court would do) the culpability of the contemnor and the harm caused, intended or likely to be caused by the breach of the order;

(d) The Court should consider all the circumstances, including but not limited to: (i) whether there has been prejudice as a result of the contempt, and whether that prejudice is capable of remedy; (ii) the extent to which the contemnor has acted under pressure; (iii) whether the breach of the order was deliberate or unintentional; (iv) the degree of culpability; (v) whether the contemnor was placed in breach by reason of the conduct of others; (vi) whether he appreciated the seriousness of the breach; (vii) whether the contemnor has cooperated, for example by providing information; (viii) whether the contemnor has admitted his contempt and has entered the equivalent of a guilty plea; (ix) whether a sincere apology has been given; (x) the contemnor's previous good character and antecedents; and (xi) any other personal mitigation;

(e) Imprisonment is the most serious sanction and can only be imposed where the custody threshold is passed. ...

(f) The maximum sentence is 2 years' imprisonment: s. 14(1) of the Contempt of Court Act 1981. A person committed

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to prison for contempt is entitled to unconditional release after serving one half of the term for which he was committed: s. 258(2) of the Criminal Justice Act 2003;

(g) Any term of imprisonment should be as short as possible but commensurate with the gravity of the events and the need to achieve the objectives of the Court's jurisdiction;

(h) A sentence of imprisonment may be suspended on any terms which seem appropriate to the Court.”

78. In *Calderdale NHS trust v Metcalf* [2021] EWHC 611, the same NHS trust as in the *Atwel* case brought contempt proceedings against another ex-patient. The proceedings arose from a clinical negligence claim in which the patient, Metcalf, had suffered a delayed diagnosis of CES. Fraudulent misrepresentations were made in the pleadings and witness statements and to experts. Covert surveillance disclosed the exaggeration of her disabilities which was described as “deliberate conduct over a long period of time” with a number of contempts. The losses were claimed at around £5 million. After service of the video surveillance evidence she agreed for her claims to be dismissed because of fundamental dishonesty and to repay the interim payments of 75,000 pounds. This she did repay. Nine months later the committal proceedings were commenced and within a month she made detailed admissions. Mr. Justice Griffith on sentencing considered: how dishonesty undermines the administration of justice and that committal to prison would usually be inevitable. He took into account the early admission of contempt and previous good character but also the range and number of contempts by Metcalf. He adopted a starting point of 18 months but moved down because of the fact that Miss Metcalf had a genuine claim, she had continuing poor health, she had previous good character and she admitted her lies at the first possible opportunity. She was also the mother of a young child now aged 2 and was the main carer. On the other hand her partner lived with her and care of the child would move to her partner and her mother. The judge also took into account delay and the effects of COVID on imprisonment. He reduced the sentence from 18 months to nine months and then down to six months due to the early admissions. However he was not prepared to suspend the sentence because suspension would not achieve the appropriate punishment required for so serious an interference with the administration of justice.
79. In *Hull NHS Trust v Colley* [2022] EWHC 854, Mr. Justice Bourne was dealing with a clinical negligence claim initially valued at over 7 million pounds brought by a mother on behalf of her daughter as litigation friend. Covert video surveillance and social media material demonstrated that the daughter did not have disabilities at the level evidenced by her mother. The daughter was born with hip dysplasia and the medical negligence made it worse. It was asserted but she was restricted in her mobility and would be wheelchair bound by her mid 40s. Some breaches of medical duty were admitted. The trust's medical evidence doubted whether the extent of the injuries was explained on an organic basis. In a re-amended defence the trust alleged fundamental dishonesty in relation to the child's mobility. Liability was eventually admitted in part and the case was re-pleaded at around 5.4 million. Just before trial notice of discontinuance was served. The claimant had been in receipt of legal aid. Legal advice had been given. The issue of fundamental dishonesty therefore was not determined by the Court. At heart the dishonesty related to assertions that Megan Colley was wheelchair bound whereas in fact at school she was entering dance competitions, she was also snowboarding,

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cycling and playing hockey. Findings were made by Mr. Justice Bourne of contempt against the mother. The potential value of the contempt was less than 1.4 million pounds. Not all of the allegations were made out at the contempt hearing. Part of the damages claimed would have gone to the mother. However, the family had lost the whole value of the clinical negligence claim part of which was genuine. The committal proceedings had hung over the heads of the family for three and a half years since the surveillance evidence was served and Mrs. Colley had psychological problems and was more vulnerable than an average person to the stress of the contempt proceedings. She was of previous good character and had to deal with the continuing disability of her daughter going forward. Mr. Justice Bourne was particularly persuaded by Mrs. Colley's difficult upbringing with a mother who was addicted to drugs, her own childhood pregnancy when she was only 16 and the very serious condition Megan developed after her birth. In addition she had a 6 year old son with significant medical issues to care for. She was a warm and loving parent. The 6 months sentence was suspended for two years.

**Sanction**

80. Miss White, I address the following parts of this judgment directly to you. Please remain seated.
81. When determining the sanction appropriate for your contempt of Court I take into account the purposes of the sanction in this claim are:
- i) punishment for your contempts;
  - ii) ensuring future compliance by you and all parties with the Court's requirements to be honest in all civil litigation;
  - iii) and rehabilitation of the contemnor.

**Culpability and harm**

82. You have been dishonest in the way that you misled many experts during your clinical negligence claim and that dishonesty was serious and substantial. Worse, you continued that dishonesty in your witness statement despite being shown the surveillance evidence which had exposed your dishonesty. Therefore you showed no insight, understanding or remorse in doing so. As to the harm you have caused, you have put the National Health Service, through the Trust, to additional expense in obtaining expert reports; expending legal fees and carrying out surveillance and bringing these contempt proceedings in circumstances where the tax payer has limited resources which are better used elsewhere. You have also used up valuable Court time and resources as a result of your dishonesty. You have also caused expenditure to the legal aid system which will never be recovered.

**Prejudice**

83. Your dishonest actions undermined the administration of justice and justice itself. You have caused prejudice to your family, the National Health Service Trust, the experts involved in this case, some of whom had to come to Court under witness summonses for these contempt proceedings, only to be told at the last minute that they were not

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needed because you had admitted your contempt. The Trust has spent considerable sums of money on legal fees, experts fees and internally on their staff dealing with this claim, none of which they will recover from you despite costs orders and an order to repay the £45,000 you received as interim payments.

**Deliberate contempt**

84. I take into account that your contempts were deliberate and for your own benefit. You were not acting under the direction or influence of any other family member or third party. You take full responsibility for your dishonesty.

**Insight**

85. It is a matter of regret to this Court that you do not appear to have shown insight into the effects of your dishonesty until very late in the day. After the service of the videos you denied matters and after the hearing at which the Trust was granted permission to continue with the contempt claim you had the ideal opportunity to admit your contempts and to bring the proceedings to a close midway through 2021. Instead you continued to delay dealing with the issues, providing only partial admissions in November of 2021 and then requiring 7 experts to come to Court and give evidence. Your counsel's skeleton argument asked for all charges to be dismissed. You only provided your admissions of contempt the day before the three to four day hearing was due to start. That intransigence does not give me cause to hope that you have insight into what you have done.

**Admission and apology**

86. In your mitigation you did apologise for your dishonesty from the witness box in Court. I take that into account. You did admit your contempts the day before the hearing. I take those admissions into account as well.

**Previous good character**

87. You gave evidence in your mitigation witness statement that you have no previous criminal convictions. This was done without supporting evidence from the national database but I accept what you have told me at face value. I take that into account. I do so against the context of your claims made against the DWP for mobility benefits and a Motability vehicle which clearly led to considerable paperwork, the granting of such benefits for some periods and the withdrawal for other periods. It is not the function of this Court during this set of committal proceedings to go into the details of those DWP claims so I will not.

**Personal Mitigation**

88. Your counsel ably put forward considerable personal mitigation on your behalf. The first matter I take into account is that you have a son who is nearly nine year years old and you are one of his carers. In your clinical negligence claim you asserted you could not care for him and others did. I accept you are one of his carers alongside his father and your own mother. His father also has care responsibilities on a weekly basis and you are currently living with your mother who also provides some care for your son. You told this Court in your mitigation evidence that were you to suffer imprisonment

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your son would be cared for by your mother at her home where he currently lives together with his father who lives close to his school in any event.

89. I take into account that you have already suffered as a result of your dishonesty. You have lost the residual value of your clinical negligence claim which could have been as high as £150,000. You have recovered 45,000 pounds of interim payments but you have been ordered to repay that sum.
90. I take into account that you have suffered have a horrible physical challenge as a result of your degenerate spine which first became symptomatic when you were in your late teens in 2011. As a result of that genetic vulnerability your dreams of being a qualified nurse or midwife were destroyed and your relationship with your son's father was likewise dissolved. These have been very tough challenges for you.
91. I take into account the psychiatric report from Doctor Jeremy Berman which was produced in mitigation, the full contents of which I will not repeat here for privacy reasons save to say that you have clearly suffered a major depressive disorder which has been recurrent and fluctuating. I take into account that that condition has had a disruptive effect on your decision making process and that many who suffer CES suffer similar mental health problems. I also take into account the evidence provided by the psychiatrist on the need to reduce imprisonment of women in the document dated 2017 from the *Prison Reform Trust*. I understand the negative effects that imprisonment would have on your mental health and the negative effects that imprisonment would have on your son's upbringing, particularly were you to be imprisoned a long distance away from his home.
92. I also take into account you and your son's rights under the *Human Rights Act* to a family life and your rights under the *Equality Act 2010* as a result of your physical disabilities.
93. I take into account the delay that has occurred between the end of your clinical negligence claim, the start of the contempt claim and then the permission hearing in June 2021. These proceedings have been hanging over your head for much longer than anyone would wish in an ideal world. Covid has clearly delayed matters considerably in this case. However, as I have set out above, the delay since mid 2021 in my judgement falls on your shoulders for failing to make full and frank admissions of your contempts until the last minute.
94. On your behalf it was accepted that the seriousness of your contempt justifies a custodial sentence. A suspended sentence was suggested.
95. I take into account the Sentencing Guidelines.

**Sentence**

96. A fine would not be sufficient on these facts.
97. Taking into account the case law and matters set out in detail above I consider that the starting point for your sanction is a sentence of imprisonment of 12 months.



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98. As a result of the mitigation set out above I consider that that sentence should be reduced to six months.

**Suspension**

99. Should that sentence be suspended? The sentencing guidelines urge this Court to weigh up the following factors:
- (1) whether the offender presents a risk or danger to the public;
  - (2) whether the appropriate punishment can only be achieved by immediate custody;
  - (3) whether there is a history of poor compliance with Court orders;
  - (4) whether there's a realistic prospect of rehabilitation;
  - (5) whether there is strong personal mitigation; and
  - (6) whether immediate custody will result in significant harmful impact upon others.
100. In particular I take into account the case of *R v Petherick* [2012] EWCA Crim 2214. My task is to balance the Article 8 rights of your son and yourself and consider the proportionality of interfering with those rights balanced against the legitimate aims of the sentencing exercise which I have set out above. Especially in cases which stand on the cusp of immediate custody those factors can tip the balance in favour of suspension.
101. I consider that you currently do present a risk to the public purse and public institutions as a result of your approach to your clinical negligence claim against a tax payer funded organisation. I do not consider a suspended sentence would adequately ameliorate that risk. I consider that you have shown a history of poor compliance with Court orders and Rules relating to statements of truth in the clinical negligence claim and in particular your interaction with the experts and your service of witness statements with statements of truth which contained dishonest falsities. No mitigation has been put forward to show that there is any past rehabilitation in relation to your interactions with the NHS Trust or the DWP or any realistic prospect of rehabilitation in your interactions with state funded organisations.
102. I do consider that you have strong personal mitigation through your maternal responsibilities and I do consider that immediate custody will result in an adverse impact on your son, however in view of the loving relationship between his father, his grandmother and him and the fact that he is living at his grandmother's home and at his father's accommodation, I consider that impact will be ameliorated.
103. Finally I do not consider that suspending the sentence will get the message across to you sufficiently strongly that: defrauding the NHS, which is funded by the taxpayer is utterly unacceptable. Nor would it send out the right message to those currently suing NHS trusts or those who will do so in future.
104. Therefore I do not consider that it is appropriate to suspend the sentence in your case. It will be served immediately.

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**Conclusions**

105. For your contempts you are sentenced to 6 months immediate imprisonment.
106. You will be entitled to release after serving one half of the sentence (3 months).

**Note**

107. I attach an Appendix setting out the relevant sentencing in the comparable cases set out above.

**Ritchie J**

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| <u>Case</u>   | <u>Breaches</u>  | <u>Culpability and Harm</u>  | <u>Mitigation</u>   | <u>Sentence</u>  |
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| <p><b><i>South Wales Fire and Rescue Service -v- Smith</i></b> [2011] EWHC 1749 (Admin)</p> <p>Date: 10 May 2011</p> <p>Judge: Moses LJ, Dobbs J</p> <p>Value of claim: more than £15,000.00 and less than £50,000.00.</p> <p>Outcome of claim: admission that claim was false and counterclaim admitted.</p>   | <p>Personal injury claim following accident at work.</p> <p>Four false documents verified by a statement of truth - (i) claim for damages; (ii) further disclosure statement; (iii) claim for loss of earnings; and (iv) amended particulars of claim.</p>   | <p>Dishonesty was deliberate and prevalent.</p> <p>Claim for loss of earnings when working as a taxi driver.</p>   | <p>Admissions made and contempt not disputed.</p> <p>Delay in bringing the contempt proceedings: admission made in April 2009 and the court was invited to deal with contempt which occurred back in 2007.</p>          | <p>12 months custodial sentence suspended for 2 years</p>  |
| <p><b><i>Nield v- Graham Jeffrey Loveday &amp; Susan Loveday</i></b> [2011] EWHC 2324 (Admin)</p> <p>Date: 13 July 2011</p> <p>Judge: Sir Anthony May, Keith J</p> <p>Value of claim: likely to exceed £50,000.00.</p> <p>Outcome of claim: Insurer's offer accepted by first defendant to compromise the claim but the damages ordered to be set off against the Claimant insurer's costs.</p> | <p>Personal injury claim following road traffic accident.</p> <p>Three false documents verified by a statement of truth - (i) particulars of claim; (ii) schedule of loss; and (iii) witness statement.</p> <p>The second defendant supported the deception by making an untruthful witness statement.</p> | <p>Covert surveillance footage showed a gross exaggeration of the extent of injuries.</p> <p>Failure of the first defendant to not make admissions regarding the contempt.</p> | <p>Breakdown of relationship with eldest daughter and grandchildren.</p> <p>Second defendant admitted the contempt.</p>   | <p>First defendant - 9 months custodial sentence.</p> <p>Second defendant - 6 months custodial sentence suspended for 18 months.</p>                               |
| <p><b><i>Lane v Shah</i></b> [2011] EWHC 2962 (Admin)</p> <p>Date: 5 October 2011</p> <p>Judge: Laws LJ, Simon J</p> <p>Value of claim: c. £1.1 million</p> <p>Outcome of claim: claim compromised in the sum of £10,000.00 to be set off against costs of the claimant insurer. First Defendant received (£870.78).</p>  | <p>Personal injury claim following road traffic accident. Three defendants (parents and adult daughter).</p> <p>Four false documents verified by a statement of truth - (i) particulars of claim; (ii) schedule of loss; (iii) list of documents; and (iv) witness statement.</p>                          | <p>Covert surveillance footage showed first defendant working despite claiming for loss of earnings.</p> <p>Admissions made either "footling" or "disingenuous".</p>           | <p>Admissions made regarding contempt and previous good character.</p> <p>Last contempt occurred almost two years before.</p> <p>Younger son at university who was reliant on parents (first and second defendant).</p> | <p>First defendant - 6 months custodial sentence.</p> <p>Second defendant - 3 months custodial sentence.</p> <p>Third defendant - 3 months custodial sentence.</p> |
| <p><b><i>Homes for Haringey -v- Barbara Fari &amp; Piper Fari</i></b> [2013]</p>  | <p>Personal injury claim following a minor accident.</p>   | <p>Deliberate exaggeration of personal injury claim.</p>   | <p>Twin sons under the age of 18 and two adult children with disabilities.</p>  | <p>First defendant - 3 months custodial sentence.</p>  |

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| <p><i>EWHC 3623</i><br/>(Admin)</p> <p>Date: 8 November 2013</p> <p>Judge: Spencer J</p> <p>Value of claim: not reported</p> <p>Outcome of claim: not reported</p>   | <p>First defendant made false statements to increase the value of her claim.</p> <p>Husband (second defendant) supported the wife's (first defendant) claims.</p>  | <p>Every allegation of contempt contested.</p>  | <p>Husband less involved in fraudulent behaviour and wife was the dominant partner.</p> <p>First defendant had genuine prior disabilities and was turning 60 the following day after judgment.</p>   | <p>Second defendant - 2 months custodial sentence suspended for 12 months.</p>  |
| <p><i>Surface Systems Limited -v- Danny Wykes</i> [2014] EWHC 422 (QB)</p> <p>Date: 10 February 2014</p> <p>Judge: HHJ Robinson (sitting as a Judge of the High Court)</p> <p>Value of the claim: c. £1.9 million</p> <p>Outcome of the claim: proceedings discontinued.</p>                               | <p>Personal injury claim following accident at work.</p> <p>Three false documents verified by a statement of truth - (i) particulars of claim; (ii) schedule of loss; and (iii) reply to defence and counterclaim.</p>   | <p>Covert surveillance footage showing exaggeration of the nature and extent of the injury. (Defendant argued continuing disability in that he had lost the use of his right arm)</p> <p>High value of the claim.</p>   | <p>Admissions made regarding the contempt (on the morning of the trial).</p> <p>Age of defendant at the time of contempt (19 years of age)</p> <p>Previous good character and positive reference from previous employer.</p> <p>Mental health condition considered as part of overall health when sentencing and the defendant also had a child who would be cared for by others whilst in prison.</p> | <p>6 months custodial sentence.</p>   |
| <p><i>Amlin Insurance Limited -v- Harjit Singh Kapoor &amp; Manjit Kapoor</i> [2018] EWHC 632 (QB)</p> <p>Date: 26 February 2018</p> <p>Judge: Knowles J</p> <p>Value of claim: c. £176,000.00.</p> <p>Outcome of claim: claim dismissed following trial and a finding of fundamental dishonesty made.</p> | <p>Personal injury claim following a road traffic accident.</p> <p>Documents verified by a statement of truth stated that defendants were involved in a genuine road traffic accident included (i) particulars of claim; (ii) schedule of special damages; (iii) witness statements.</p>                   | <p>Claim was determined at trial where a finding of fundamental dishonesty was made and a finding that the accident was staged.</p> <p>High value of the claim.</p> <p>Waste of NHS resources to bolster a bogus personal injury claim.</p>   | <p>Second defendant (wife) admitted the contempt followed by the first defendant (husband). Admissions made late in the day (on the morning of the trial).</p> <p>First defendant was the driver of the vehicle and the second defendant played a secondary role.</p> <p>Three children of the marriage who may have to go into care if both parents imprisoned.</p>                                   | <p>First defendant - 12 months custodial sentence.</p> <p>Second defendant - 9 months custodial sentence suspended for 12 months.</p> |
| <p><i>Calderdale &amp; Huddersfield NHS Foundation Trust - v- Sandip Atwal</i> [2018] EWHC 2537 (QB)</p> <p>Date: 1 June 2018</p> <p>Judge: Spencer J</p> <p>Value of claim: c. £837,000.00</p> <p>Outcome of claim: claim abandoned.</p>  | <p>Clinical negligence claim arising out of alleged negligent hospital treatment.</p> <p>Documents verified by a statement of truth stated that the defendant was suffering from a continuing disability included (i) particulars of claim; (ii) schedule of special damages; (iii) witness statement.</p> | <p>This case was the first of its kind pursued by the NHS demonstrating the nature and seriousness of the case.</p> <p>Defendant's failure to engage with the contempt proceedings. Repeated attempts to serve the defendant and prove service.</p> <p>Social media video posts demonstrated the deliberate and gross exaggeration of the extent of the defendant's injuries.</p> | <p>Admissions made but only after findings of contempt made in the absence of defendant.</p> <p>Claim abandoned by defendant once his dishonesty was uncovered. It followed that the NHS Trust suffered no loss save for the costs of the proceedings.</p> <p>Defendant had some degree of disability following the negligent treatment.</p>   | <p>3 months custodial sentence.</p>   |
| <p><i>Liverpool Victoria Insurance Company Limited - v- Dr. Asef Zafar</i></p>   | <p>After a lengthy contested hearing, 10 grounds of contempt found proven against the defendant. The</p>   | <p>Inherent seriousness of the defendant's conduct who as an expert should be putting forward an honest and independent opinion.</p>  | <p>In most respects the conduct was reckless rather than intentional.</p>  | <p>The appeal was allowed and a declaration made that the</p>   |

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| <p>[2019] EWCA Civ 392</p> <p>Date: 19.3.19</p> <p>Judge: Sir Terrence Etherton MR, Hamblen LJ, Holroyde LJ</p> <p>Value of claim: not reported.</p> <p>Outcome of claim: not reported.</p>  | <p>defendant was ordered to be committed to prison for 6 months suspended for 2 years.</p> <p>Defendant employed by the NHS as a registered GP and had a private medico-legal practice. He provided medical reports in low value personal injury claims.</p> <p>Defendant signed two witness statements verified by a statement of truth.</p> <p>The defendant provided a revised report following no further examination and which differed significantly from his original report.</p> <p>The defendant signed a witness statement to say that the original report was correct and the revised version was altered without his permission. The defendant signed a further witness statement some 2 months later stating that he himself provided the revised report.</p> | <p>The defendant was, at least, indirectly motivated by a concern for financial profit.</p> <p>The defendant persisted in the conduct which constituted contempt and on at least one of those occasions he acted with deliberate dishonesty.</p> <p>The defendant sought to blame others for his own misconduct.</p>   | <p>There was some delay but this was mostly attributable to the defendant contesting the proceedings.</p>  | <p>sentence was unduly lenient.</p> <p>The term of committal should have been longer than 6 months viz. 9-12 months; and that it should not have been suspended.</p> <p>The sentence was not increased but rather guidance was provided for sentencing for contempt of court.</p> |
| <p><b><i>George Elliot Hospital NHS Trust -v- Lesley Elder</i></b><br/>[2019] EWHC 1813 (QB)</p> <p>Date: 5 April 2019</p> <p>Judge: HHJ Walden-Smith</p> <p>Value of claim: c. £2.5 million</p> <p>Outcome of claim: Defendant recovered £120,000.00.</p> | <p>Clinical negligence claim in respect of unnecessary and invasive tape surgery for which the defendant had not given adequate informed consent.</p> <p>Number of false documents verified by a statement of truth - including (i) particulars of claim; (ii) schedule of loss; and (iii) witness statements; compounded by the involvement of others viz. daughters.</p>   | <p>Covert surveillance footage and evidence from social media demonstrated that the defendant “<i>grossly, dishonestly and repeatedly exaggerated her symptoms and pecuniary claims</i>”.</p> <p>Admissions made before an attempt to resile from them.</p> <p>Defendant’s daughters provided statements to support the defendant’s versions of events and alleged disabilities.</p> <p>Defendant has sought to defraud the NHS.</p> | <p>Defendant sustained a genuine injury and had a genuine cause of action.</p> <p>Some delay in the committal proceedings being brought.</p>   | <p>5 months custodial sentence.</p>   |
| <p><b><i>Calderdale &amp; Huddersfield NHS Foundation Trust -v- Linda Metcalf</i></b><br/>[2021] EWHC 611 (QB)</p> <p>Date: 11 February 2021</p> <p>Name of Judge: Griffiths J</p> <p>Value of claim: c. £5.7 million</p>                                  | <p>Clinical negligence claim in respect of delay in diagnosing <i>cauda equina</i> syndrome.</p> <p>The claim was founded on fraudulent misrepresentations in the pleadings, witness statements and presentation to experts.</p>   | <p>Covert surveillance showing an exaggeration of physical disabilities and infirmities.</p> <p>Deliberate conduct over a long period of time with a number of contempt’s.</p> <p>Defendant sought to defraud the NHS.</p> <p>High value of the claim.</p>   | <p>Admissions made before contempt of court proceedings and the interim payment of £75,000.00 repaid by instalments.</p> <p>Defendant had a genuine claim reflecting genuine disability and pain.</p> <p>Defendant is incontinent and has to wear a catheter.</p> <p>Defendant had no previous convictions and is the mother</p> | <p>6 months custodial sentence.</p>   |

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| <p>Outcome of claim: claim dismissed by agreement.</p>  |  | <p>Involved members of her family to support her claim by providing false statements.</p> <p>Defendant initially denied her dishonesty when provided with the covert surveillance footage and belatedly agreed to the dismissal of the claim some 3 months before trial; 4 months after disclosure of the footage.</p> | <p>and primary carer of her young son aged 2 years.</p> <p>Starting point of 18 months reduced to 9 months; and then credit given for full admissions made as soon as contempt proceedings issued.</p>  |   |
| <p><b><i>Hull University Teaching Hospitals NHS Trust -v- Natasha Colley</i></b> [2022] EWHC 854 (QB)</p> <p>Date: 11.3.22</p> <p>Name of Judge: Bourne J</p> <p>Value of claim: initially c. £7.3 million then re-pleaded at c. £5.4 million.</p> <p>Outcome of claim: claim discontinued.</p> | <p>The defendant was the litigation friend of her daughter who brought a claim for clinical negligence against the Trust.</p> <p>The claim was founded on making false statements verified by a statement of truth in two witness statements and schedule of loss.</p> | <p>Covert surveillance footage and social media material demonstrated that the physical capabilities of the complainant were exaggerated.</p> <p>The complainant was a child and the respondent was her litigation friend.</p>   | <p>Defendant's troubled family history and background.</p> <p>Her daughter had a serious medical condition.</p> <p>Defendant has mental health problems as does her husband who experiences depression and anxiety. They both support each other.</p> <p>Defendant is the mother and primary carer of her child aged 6 who has medical conditions.</p> <p>No sums were paid out by the Trust because the claim was abandoned.</p> <p>Delay in that committal proceedings brought almost 3 years after surveillance footage served.</p> <p>Defendant of previous good character.</p> | <p>6 months custodial sentence suspended for two years.</p> |