

# Expert Witness Warning: Go directly to Jail - Do not Pass Go - Do not collect £350,000

**NICK DEAL • APRIL 02 2019**

In *Liverpool Victoria Insurance Co. Ltd v Zafar* [2019] EWCA Civ. 392, the Court of Appeal has set out guidelines to be followed by the courts when dealing with cases of contempt of court by expert witnesses.

In this case, Dr. Zafar was a GP who also had a medico-legal practice, producing about 5,000 reports per year, with a turnover of £350,000.

He examined the claimant in a road traffic case and produced a report, dated 17th February 2012, in which he stated that the claimant had fully recovered at the time of the examination, with symptoms having resolved within one week of the accident.

The claimant's solicitor then emailed Dr. Zafar, asking him to review his records as the claimant was stating that he had pain for over 2 months after the accident, some still continuing.

Dr. Zafar produced a second report, noting ongoing neck and shoulder pain at the time of his examination, and stating that symptoms should fully resolve between 6 to 8 months of the accident.

In effect, he adopted the solicitor's comments, without question and without further examination.

The second report was dated 17th February 2012 and made no reference to the first report. The matter came to light when the original report was mistakenly included in the trial bundle.

**“Experts must be transparent in identifying all their sources of information and vigilant in ensuring that they never mislead the court by adopting suggestions made by anyone else without considering them fully and carefully.”**

Dr. Zafar had verified both reports with the statement of truth and the declarations that he knew his duty to the court and had complied with that duty and that the opinions expressed were his own.

The insurers brought committal proceedings against Dr. Zafar for contempt of court, for making false statements in his second report, contrary to his declarations, and for lying in subsequent statements to their enquiry agent.

The judge at first instance found him guilty of contempt of court on 10 out of the 16 allegations made against him and committed him to prison for 6 months, suspended for 2 years.

The Court of Appeal found that sentence to be too lenient and set out the approach to adopt.

Firstly, the court should determine the seriousness of the case, by assessing the culpability of the individual in contempt ("the contemnor") and the degree of harm caused (or intended, or likely to be caused).

The presumption should be that making a false statement in a verified document *"will usually be so inherently serious that nothing other than an order for committal to prison will be sufficient"*. The case of an expert witness is even more serious a contempt *"because of the reliance placed on the expert witness by the court and because of the overriding duty which the expert owes to the court"*.

The Court went on to say that an expert who recklessly makes a false statement in a verified document is almost as culpable as one who does so intentionally, because the expert knows that the court and the parties rely on them to be truthful and they have made declarations about their duties and truthfulness.

Having determined the seriousness of the contempt, the court should then consider any mitigating factors including early admissions, cooperation with an investigation and genuine remorse.

**The true seriousness of this case was that the expert put forward the report as representing his own true opinions, based on his examination, when it did not.**

**In those circumstances, committal to prison for an expert witness is "usually inevitable"; it should also usually be served immediately, not suspended.**

In this case, the Court held that a sentence of between 9 and 12 months immediate imprisonment would

have been appropriate. The only reason they did not overturn the judge's original order was that it would have been unfair to Dr. Zafar to do so, as there had been no guidelines in existence at the time he was sentenced.

[View the full judgment](#)

Experts must be transparent in identifying all their sources of information and vigilant in ensuring that they never mislead the court by adopting suggestions made by anyone else without considering them fully and carefully.

**The courts take the declarations made by an expert witness seriously and will hold the expert to account for every part of their report; expert witnesses must take their declarations, and the exercise of their overriding duty to the court, equally seriously.**



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