Neutral Citation Number: **[2021] EWHC 611 (QB)**

Case No: G91LS473

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
LEEDS DISTRICT REGISTRY

Leeds Combined Court Centre
1 Oxford Row, Leeds LS1 3BG

Date: 11/02/2021

Before :

THE HONOURABLE MR JUSTICE GRIFFITHS

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Between :

CALDERDALE & HUDDERSFIELD NHS FOUNDATION TRUST	**Claimant/ Applicant**
- and -	
LINDA METCALF	**Defendant/ Respondent**

- -
- -

Claire Toogood (instructed by **Hempsons**) for the **Claimant**
Peter Gilmour (instructed by **Clifford Johnston & Co**) for the **Defendant**

Hearing date: 11 February 2021

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Approved Judgment

THE HON. MR JUSTICE GRIFFITHS :

1. This is the final hearing of an application by the claimant ("the Trust") to commit the defendant ("Ms Metcalf") for contempt of court.

2. Ms Metcalf has admitted the allegations and accepts that findings of contempt will follow. She also concedes that the facts of the case mean that the custody threshold has been crossed. The issue before me is the length of sentence and whether or not any sentence of imprisonment should be suspended.

3. Both parties have been exceptionally well represented by Counsel. I am grateful to both of them for their written and oral submissions.

Facts of the contempt of court

4. There is an Agreed Case Summary and an agreed Chronology which set out the facts in more detail than I need to here, given that they are agreed facts which are readily available for reference. However, I will summarise the essentials.

5. Ms Metcalf was born in 1984 and is now 37 years old. The Trust is an NHS Foundation Trust which provides clinical services at the Calderdale Royal Hospital ("the Hospital").

6. Ms Metcalf pursued a clinical negligence claim against the Trust, as a result of a delay in diagnosing her *cauda equina* syndrome in 2012. This is a severe type of spinal stenosis where all of the nerves in the lower back suddenly become severely compressed. It requires prompt treatment in order to get the best outcome. It was not, of course, alleged that the Trust was responsible for the original condition; but it was alleged (and the Trust conceded) that it became worse than it should have because of a negligent failure to act and diagnose more promptly. She attended the Accident and Emergency department of the Hospital on 30 June, 2 July and 4 July 2012 but she was not correctly diagnosed until she went again on 5 July and was given an MRI scan. She was then operated upon, and no complaint was made about the operation or subsequent care.

7. The Trust admitted liability at the pre-action stage, based on a failure of care on 4 July only. This was a failure which caused, therefore, one day of delay in treatment and it is alleged that serious consequences flowed from the delay. There was a formal apology and an early interim payment of £75,000 was agreed.

8. The case proceeded on the issue of quantum. Ms Metcalf now admits lying repeatedly between October 2015 when she was assessed by her care expert and 31 January 2019 when she served a Schedule of Loss making claims totalling £5,712,773.40 based upon fraudulent misrepresentations in her pleadings, her witness statements, and in her presentations to experts and others.

9. The lies all had a common theme: exaggeration of her physical disabilities and infirmities, amounting at times to outright invention. She dishonestly and falsely claimed that she could not walk unaided and was dependent upon aids such as a wheelchair, a walking frame or sticks. She also claimed that she was only able to go out socially to places with which she was comfortable and familiar, and took

relatively few holidays, and restricted herself to travel which was appropriate to her allegedly reduced mobility. She hid or lied about the fact that she was regularly taking holidays to a variety of places in this country and abroad, in none of which she appeared to have any difficulties with her mobility or to be failing to enjoy herself to the full.

10. To take just one example, on 13 March 2017 she told her care expert, Denise Winks, that:

> "…her ability to take part in leisure and social events were limited due to her mobility difficulties and levels of pain. There is no reference to her trips to Fuerteventura, France, Spain, Tenerife or Thailand since she was last interviewed by Ms Winks 7 months earlier, although she did state that he boyfriend visited her at her parents' home and she went on holiday with her family. [She] informed Ms Winks that her indoor and outdoor mobility had deteriorated to the extent that she needed to use two sticks for all walking and her walking distance was limited to approximately 30 metres. She reported that she hired a mobility scooter on outings to the local supermarket. Among other complaints, she reported that she could not sit herself up in bed on her worst days and her mother assisted with this. Her mother also assisted with washing and dressing if her pain levels were worse. [She] reported that she could not drive for more the 45 minutes due to pain."
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> (Detailed Statement of Grounds para 35)

11. Subsequently, she presented her condition as even worse: for example, unable to drive at all, and only able to stand supported, without walking sticks, "for a few seconds" (21 March 2018).

12. The surveillance evidence shows that this was untrue, and she now admits the dishonesty.

13. Her dishonesty, had it not been discovered, would have extracted millions of pounds from the Trust and, through them, from the funding of the National Health Service. An attempt was being made on a vast scale, over a period of years (between October 2015 to January 2019), systematically and shamelessly to pervert the course of civil justice with a view to financial gain. Whilst some damages were, no doubt, legitimately recoverable by reason of the Hospital's admitted negligence, it is agreed that they would have been in the region of £350,000, and yet her claims, based upon the extreme disability which she falsely alleged, were in excess of £5.5 million. She lied to a total of 13 different experts on 19 different occasions and she signed various statements of truth to matters which were not true.

14. In addition to the potential losses of up to £5 million to the NHS through the Hospital had her dishonesty not been discovered, she accepts that, as a result of her actions, both solicitors and counsel "have lost a lot of money" (first affidavit para 42). They worked on her behalf to pursue a complex claim on a conditional fee funding basis which has come to nothing because of the fundamental dishonesty of her case.

15. She has also involved members of her family in supporting and confirming what now turn out to be false statements and presentations, although they are not being separately pursued.

16. Full details of her various misrepresentations and false statements are set out in the Agreed Chronology and (undisputed, save as to para 152) Detailed Statement of Grounds in Support of Application for Committal, both of which should be read in conjunction with this judgment.

17. After service of the Schedule of Loss on 31 January 2019, the Trust served on Ms Metcalf's solicitors on 4 February 2019 evidence that her claims were based on lies, and her presentation of herself was a fabrication. The evidence took the form of covert surveillance (collected over 3 days in 2017, with further material in July 2018) and internet searches showing her travelling frequently and easily (in the UK and overseas) and walking without sticks or other assistance. A substantial amount of this footage has been played to me in court. On 9 April 2019, the Trust amended its Defence to allege that Ms Metcalf's claims fell to be dismissed because they were rooted in fundamental dishonesty.

18. Ms Metcalf initially persisted in her dishonesty even after the evidence against her had been disclosed. In an undated Reply (to the Amended Defence of 9 April 2019), verified by a Statement of Truth signed by Ms Metcalf personally, she denied fundamental dishonesty and reaffirmed reliance "upon the full witness statements, expert evidence and other evidence served on her behalf". The trial was due to take place in September 2019 and quantum investigations continued for a little while because of her denial.

19. Her position was, however, hopeless. She belatedly recognised this when, after failure of a round table meeting on 10 June 2019 to reach a substantial settlement, she agreed on 18 June 2019 (3 months before trial, 4 months after disclosure of the evidence against her, and nearly 4 years after she had begun her dishonest contempts of court in pursuit of a fraudulent claim) that her claims should be dismissed because of fundamental dishonesty and to repay the interim payment of £75,000. This repayment was made by instalments, which were completed in November 2020.

20. The Trust issued and served a Claim Form seeking permission to bring committal proceedings in March 2020. Ms Metcalf's solicitors admitted contempt on her behalf almost immediately, on 14 April 2020, and consented to the bringing of committal proceedings.

21. All the contempts now relied upon are admitted by Ms Metcalf and this is to her credit. Details of her admissions are contained in affidavits she swore on 18 May and 27 May 2020. The claimant's Statement of Grounds for Committal is dated 30 June 2020. The only Ground not admitted is an allegation that it was not true for Ms Metcalf to say in a witness statement dated 12 April 2019 that she did not follow any kind of plan to deceive when presenting her driving ability to the experts and that she did not consciously plan to hide her improvements in mobility (para 152). However, it is obvious that the only purpose of her conduct was to inflate the damages she recovered. She had obtained an admission of liability and, indeed, a formal written apology, even before proceedings were issued. Some examples will suffice to explain why I am sure that she was acting not only deliberately but systematically.

i) On 5 June 2018, Ms Metcalf presented a completely staged appearance of severe disability to her pain management expert, Dr Munglani, who videoed it in support of her claims; and I have watched two videos demonstrating this. He asked her (on the video) if he would ever see her in a better condition than she was presenting to him at that time. She said No. The surveillance video shows that this was a lie and para 23 of her first affidavit admits that.

ii) On 23 July 2018, she was interviewed at her parents' house by the Trust's accommodation expert, Marisa Shek. Ms Metcalf told her that she did not drive now but travelled as a passenger in the car and could not get in or out of the car without someone to help her. This supported very substantial claims for a support worker, including not only pay but also accommodation for such a worker. But Ms Metcalf had driven to the house in which she told Ms Shek this less than an hour earlier. She had driven herself in the car alone and unaided and she had got in and out of the car that very day without apparent difficulty. It is clear from the extensive video which was played to me during the hearing that she could get in and out of a car, drive herself, load and unload a car, carry bags, do shopping, and climb steps, without hesitation.

iii) On 30 July 2018, she went to Scarborough for an appointment with one of the experts, Professor MacFie (Statement of Grounds para 78). Before the appointment, she walked to the Grand Hotel and stood in the reception area for over half an hour, unaided. She was then driven to Professor MacFie for the consultation, where she transferred from the car into a wheelchair brought with her, which she was not seen using in any of the surveillance video of her in Stockport and Scarborough earlier in the day. She left his consultation rooms in the wheelchair and was driven back to Scarborough Promenade where she walked unaided to a restaurant. On leaving the restaurant, she walked along the promenade, without using a wheelchair or sticks, for about 20 minutes. She returned to her hotel and climbed the steps to go in without using the handrail. The use of the wheelchair and sticks when she was in or near the premises of experts she was misleading about the extent of her disability was not only unnecessary: it was obviously part of a plan, and I have been shown it adopted on video on more than one occasion. To the examples shown on the video, must be added the many other cases set out in the Agreed Chronology and the undisputed Statement of Grounds.

22. Ms Metcalf in her affidavits, and particularly the second, tries to play down the level of dishonesty by reference to her motives. In para 9, she says: "I was not thinking about my case in terms of cash value or as a way to obtain wealth or become rich. I saw it in terms of my future care needs…" She says "I did not have a carefully thought out plan for increasing the value of my claim though I recognise that the only outcome of my actions was increase the value of the claim" (para 11). She says that she did not know the value of her claim; was told it was worth less than £1 million, and that "The figures in the final schedule of loss came as a shock to me".

23. This line of argument is unsustainable and I reject it. The issue is not what Ms Metcalf planned to spend the money on ("my future care needs"); the point is that by lying and acting dishonestly in her presentation to experts, with a view to falsifying the evidential record in her case, she was dishonestly inflating the amount of money she would recover. What she would spend it on is no excuse. She was, by her

contempt of court, effectively stealing money from the NHS. There is no Robin Hood defence here: that it was all in a good cause. It was for her own personal benefit and it was money to which she was not entitled, insofar as it was based on a dishonest evidential case.

24. Similarly, whether or not there was a "carefully thought out plan", this was not a one-off incident, or a temporary loss of judgment on Ms Metcalf's part. It was a course of conduct which she sustained relentlessly over a period of years. It was not provoked, or done under some sort of pressure, for example out of fear of loss or under threat of punishment. She was not a beleaguered defendant. She was a dishonest claimant.

25. So far as the value of the claim is concerned, whatever figures were cited to Ms Metcalf as an estimate of her final recovery were based on her dishonest presentation of her condition, and her lawyers were duped by that just as much as everyone else. Moreover, when she was told that her (as she knew, dishonestly exaggerated) case justified a Schedule of Loss in the sum of £5,712,773.40, she did not take a step back. On the contrary, she verified the Schedule of Loss with a false Statement of Truth.

26. Per Moses LJ in *South Wales Fire and Rescue Service v Smith* [2011] EWHC 1749 (Admin) at paras 2-7:-

> "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.
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> 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.
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> 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.
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> 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."

27. The unanimous judgment of the Supreme Court in *Summers v Fairclough Homes Ltd* [2012] 1 WLR 2004 quoted these paragraphs verbatim "because we agree with them and in order to make clear to all what is the correct approach to contempt of court on the facts of cases such as this." (at paras 57-58).

28. The correct approach to assessing and punishing contempts of court such as those of Ms Metcalf in this case was set out by the Master of the Rolls giving the judgment of the Court of Appeal in *Liverpool Victoria Insurance Company Limited v Khan and Zafar* [2019] 1 WLR 3833 at paras 58-69, from which I take the following excerpts:-

> "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 para 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.
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> 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…

60. Because this form of contempt of court undermines the administration of justice, it is always serious, even if the falsity of the relevant statement is identified at an early stage and does not in the end affect the outcome of the litigation. The fact that only a comparatively modest sum is claimed in the proceedings in which the false statement is made does not remove the seriousness of the contempt. The sum in issue in the proceedings is however relevant, because contempt of court by an expert witness will be even more serious if the relevant false statement supports a claim for a large sum, or a sum which is grossly exaggerated above the true value of any legitimate claim.

61. As we have noted in para 36 above, the essential feature of this form of contempt of court is the making of a false statement without an honest belief in its truth. In principle, where a false statement is made without an honest belief in its truth, a contemnor who acts recklessly is less culpable than one who acts intentionally...

62. (…)

63. Also relevant to the culpability of an expert witness who commits this form of contempt of court is the extent to which the witness persists in the false statement and/or resorts to other forms of misconduct in order to cover up the making of the false statement…

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 defendant 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… As we have noted at para 49 above, Sir John Thomas P in the *Bashir* case [2012] ACD 69 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 co-operation 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. Previous positive good character, an unblemished professional record and the fact that an expert witness has brought professional and financial ruin upon himself or herself are also matters which can be taken into account in the contemnor's favour…

66. The court must also give due weight to the impact of committal on persons other than the contemnor. In particular, where the contemnor is the sole or principal carer of children or vulnerable adults, the court must ensure it is fully informed as to the consequences for those persons of the imprisonment of their carer. In a borderline case, such considerations may enable the court to avoid making an order for committal which would otherwise be made. In a case in which nothing less than an order for committal can be justified, the impact on others may provide a compelling reason to suspend its operation.

67. As to delay, we think it important to distinguish unreasonable delay, not attributable to any fault on the part of the contemnor, from the passage of time which is a necessary consequence of the proper litigation of allegations of contempt of court. Where a contemnor has made an early admission of wrongdoing, but for reasons beyond his or her control a long period of time then passes before a court imposes a sanction for the wrongdoing, the passage of time, attended as it inevitably would be by great anxiety, may be an important point in mitigation….

68. Having reached a conclusion that a term of committal is inevitable, and having decided the appropriate length of that term, the court must consider what reduction should be made to reflect any admission of the contempt. In this regard, the timing of the admission is important: the earlier an admission is made in the proceedings, the greater the reduction which will be appropriate. Consistently with the approach taken in criminal cases pursuant to the Sentencing Council's definitive guideline, we think that a maximum reduction of one third (from the term reached after consideration of all relevant aggravating and mitigating features, including any admissions made before the commencement of proceedings) will only be appropriate where

> conduct constituting the contempt of court has been admitted as soon as proceedings are commenced. Thereafter, any reduction should be on a sliding scale down to about 10% where an admission is made at trial.
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> 69. The court must, finally, consider whether the term of committal can properly be suspended. In this regard, both principle and the case law to which we were referred lead to the conclusion that in the case of an expert witness, the appropriate term will usually have to be served immediately, and that one or more powerful factors justifying suspension will have to be shown if the term is to be suspended. We do not think that the court is necessarily precluded from taking into account, at this stage of the process, factors which have already been considered when deciding the appropriate length of the term of committal. Usually, however, the court in deciding the length of the term will already have given full weight to the mitigation, with the result that there is no powerful factor making it appropriate to suspend the term. If the immediate imprisonment of the contemnor will have a serious adverse effect on others, for example where the contemnor is the sole or principal carer of children or of vulnerable adults, that may make it appropriate for the term to be suspended; but even then, as the *Bashir* case [2012] ACD 69 shows, an immediate term—greatly shortened to reflect the personal mitigation—may well be necessary."

29. These passages are of general assistance and application, and go beyond the particular facts of that case (which involved an expert witness).

30. In my judgment, the number of contempts, and the range of deliberate (not reckless) conduct, covering false statements of truth and the manufacture of false evidence by systematically deceiving expert witnesses on both sides, taken with the long period of time over which they took place, and the millions of pounds at stake, claimed from a National Health Service entity whose resources are fully committed to the health and welfare of patients, place Ms Metcalf's conduct in the upper bracket of the scale. This is a scale which ends at the maximum sentence of 2 years imprisonment. I adopt a starting point of 18 months but, from that starting point, I will move down substantially in order to reflect a number of mitigating features.

i) Ms Metcalf had a genuine claim, reflecting genuine disability and pain, suffering and loss of amenity caused by the Hospital's admitted negligence. She has now lost any prospect of compensation, because of the failure and abandonment of her proceedings by reason of fundamental dishonesty. She has also paid back the interim payment of £75,000, which was not an easy thing for her to do given her limited financial resources.

ii) Ms Metcalf is in poor health, not only as a result of the Hospital's negligence, but because of the underlying condition which caused her to go to the Hospital in the first place. It is difficult to say what the real extent of her ill health is, because it cannot be objectively ascertained and her credibility has been

destroyed by her own admissions of dishonesty and exaggeration. However, I do accept that she is incontinent and has to wear a catheter.

iii) Ms Metcalf has no previous convictions, and is to that extent a person of good character, although this is not a case in which I have heard evidence of positive good character.

iv) Ms Metcalf admitted the lies, not immediately, but well before proceedings for contempt were issued. She agreed to her claim being dismissed for fundamental dishonesty. She is entitled to some account to be taken of this in general mitigation, although much the most valuable credit for an early admission of liability for the contempt of court itself will come later.

v) I do not regard her levels of remorse as out of the ordinary, but I do accept that the discovery of her dishonesty has brought shame and humiliation on her, including with those close to her, and that she feels that deeply and it forms part of her punishment. That is not quite the same thing as remorse, and the special pleading in her affidavits leads me to believe that her remorse is mostly due to realising the consequences of her actions, particularly to herself. For example, to say "What I did was stupid rather than planned" (para 46 of her second affidavit) falls well short of recognising the enormity of the admitted dishonesty.

vi) Ms Metcalf is the mother of a young child, now 2 years old, and has so far been the main carer of the child. If she is imprisoned, care of the child during any term of immediate custody will pass to her partner (with whom she lives) and her mother. Nevertheless, there will be some impact on the young child from the absence of her mother and primary carer. The longer the absence, the greater that impact will be.

vii) Delay is also put forward as mitigation. There was no unreasonable delay here. The Trust has moved forward with all deliberate speed, at a careful pace appropriate to the seriousness of the implications, both for Ms Metcalf and in terms of the Trust's limited resources. However, the prospect of prison has been hanging over Ms Metcalf in the meantime and I accept that this has caused her anguish and may, therefore, be regarded as part of her punishment.

viii) The impact of the pandemic on prisons makes a prison sentence more onerous than it would usually be. This may affect the length of sentence and also whether it can be suspended: *R v Manning* [2020] 4 WLR 77 and *Lockett v Minstrell Recruitment Ltd* [2021] EWCA Civ 102.

31. Giving the fullest possible weight to all of these factors, I will at this point reduce the sentence from 18 months to nine months but, next, I will give credit for Ms Metcalf's full admissions, made as soon as the contempt proceedings were issued, and bring the sentence of nine months down to six months.

32. Finally, I will consider whether the term of committal can properly be suspended. As suggested in *Liverpool Victoria Insurance Co Ltd v Khan and Zafar* [2019] 1 WLR 3833 at paras 30 and para 58, the Sentencing Council's definitive guideline on the imposition of community and custodial sentences is relevant to this, on the basis that

"the approach adopted by the criminal courts provides a useful comparison, though not a precise analogy".

33. I accept that Ms Metcalf will have learned a harsh lesson from this and there is no risk of repetition or other danger to the public. There has been no history of poor compliance with court orders. There is personal mitigation, to which I have given full weight by halving the sentence from the starting point, even before credit for the early admissions, and that includes the impact of an immediate custodial sentence on others.

34. Ultimately, however, I cannot achieve the punishment appropriate to the facts of this case if I suspend the sentence and do not require any part of it to be served in prison. Appropriate punishment for faking evidence in support a claim inflated by some £5 million can only be achieved by immediate custody. I will therefore order the committal for six months to take effect immediately. However, Ms Metcalf will be entitled to automatic release, without conditions, after serving half the term of the committal: *Zafar* at para 40.

35. **Stand up Ms Metcalf.**

36. **For your admitted contempts of court, I sentence you to 6 months imprisonment. You must serve 3 months immediately and you will then be entitled to release for the remainder of the term.**

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