IN THE CENTRAL LONDON COUNTY COURT **CASE NO : 1IQ23770**

B E T W E E N :

(1) ARSHID MOHAMMED
(2) FAHIMULLAH KHAKSAR
(3) MUHAJIRA KHAKSAR
(4) ESMAT MIAKHEL

Claimants

and

(1) AUREL ALBISORU
(2) CIS GENERAL INSURANCE LIMITED

Defendants

Before District Judge Avent
4th March 2013

Mr Andrew McKie of Counsel (instructed by Messrs Dennison Greer) appeared for the Claimants

Mr Colm Nugent of Counsel (instructed by Messrs Hill Dickinson LLP) appeared for the Second Defendant

Pursuant to CPR PD 39A no official record need be taken of this Judgment and copies of this version as handed down may be treated as authentic.

JUDGMENT

Introduction

1. I have two applications before me. The first is dated 22nd January 2013 and is made by the Second Defendant, CIS General Insurance Limited ("CIS"), to set aside an order dated 7th January 2013. The second is an application by the claimants, Mr. Arshid Mohammad ("Mr.

Mohammed"), Mr. Fahimullah Khaksar ("Mr. Khaksar"), Mrs. Muhajira Khaksar ("Mrs Khaksar") and a Mr. Esmat Miakhel ("Mr Miakhel") for relief from sanctions.

The Facts

2. On the 25th March 2010 a road traffic accident took place between a Vauxhall Vectra motor vehicle driven by the First Claimant, Mr. Mohammed, and an Alfa Romeo motor vehicle driven by the First Defendant, who has taken no part in this litigation at all, Mr. Aurel Albisoru ("Mr Albisoru").

3. The Second, Third and Fourth Claimants, Mr. Khaksar, Mrs Khaksar and Mr Miakhel respectively were all passengers in Mr. Mohammed's motor vehicle.

4. In due course, on 31st March 2011, proceedings were issued by all four claimants against Mr. Albisoru. The matter was almost ready for trial, in the summer of 2012, when Mr. Albisoru's insurers, CIS issued an application seeking to be joined as Second Defendant which was granted.

5. Subsequently, on the 13th July 2012 the solicitors acting for CIS filed a Defence which left no doubt that their view was that the index accident was staged and that these proceedings were a deliberate fraud.

6. At or about the time that the Defence was filed, CIS served upon Mr. Mohammed and Mr. Khaksar a Part 18 Request. In relation to Mr. Mohammad it sought certain documentation and, in relation to both him and Mr. Khaksar, it enquired about any previous accidents in which they had been involved. Both subsequently served Replies, to which I shall come, but suffice to say that the Replies given were extremely brief, noncommittal or vague, or combination of these factors.

7. These disclosed that Mr Mohammed had had three previous accidents: one in 2003 and, unfortunately, two in 2009, on 21st February and 29th May that year. Importantly, for the purpose of this application, the February 2009 accident had been settled by Messrs Dennison Greer, the same Solicitors that represent him in relation to this accident.

8. Mr Mohammed disclosed the medical reports in relation to both his later accidents. It might be noted, in passing, that between the two reports his forename is spelt differently: "Arshid" and "Arshad". Of more significance, however (given the fact that there is no suggestion that

Dr Halpern recorded matters incorrectly), is the fact that when he was asked by Dr Halpern, in relation to the 29th May 2009 accident, as to whether he had previously been injured in a road traffic accident he said that he had not which, of course, was completely untrue.

9. The claim now advanced by Mr Mohammed includes some £7401.42 for credit hire charges incurred. He claims that this is because he was a minicab driver and needed to continue earning a living whilst his own car was off the road. To this end Mr Mohammed was asked for all his documents concerning the Licence or permit issued to him by the Public Carriage Office in respect of his vehicle and/or the replacement vehicle with which he was provided. He replied to the effect that he had already provided this to his solicitors, Messrs Dennison Greer.

10. He was also asked about a company called at UKML, responsible for the recovery and storage of his vehicle and in respect of which the sum of £2225.00 is claimed. Mr Mohammed indicated that he had also had previous dealings with this concern following his accident in February 2009.

11. Given that the claim includes a claim for credit hire charges, as regards the issue of impecuniosity, Mr Mohammed obviously was asked about his financial position and specifically asked about his income in the six months prior to the index accident to which he replied simply: "in tax return".

12. He was also requested to provide the times to two bank transactions which took place on the day of the index accident and which were apparent from the bank statements that he had produced. The reason for this request is obvious: all witnesses more or less pinpoint the time of the accident, and it is pleaded, as 4:10 p.m. If the bank transactions occurred around that time it would raise valid questions as to whether Mr Mohammed was actually at the accident scene or not. He replied: "do not remember".

13. As for Mr Khaksar, he disclosed his involvement in three accidents: one in 2008 (which predated the index accident), one on 6th November 2011 and a further accident on 15th January 2012. In the latter two accidents he was represented by two different solicitors but no details were provided, on the face of it, as to his representation in relation to the 2008 accident.

14. Indeed, overall, I think that it is fair to say that the Replies to the Part 18 Requests probably raised more questions than they answered. Consequently, it was understandable that CIS was anxious to press for substantive replies.

15. Therefore, on 7th September 2012, when the outstanding issues resulting from these Replies had still not been resolved, the matter came before His Honour Judge Freeland Q.C. As against Mr. Mohammed and Mr. Khaksar his order, at paragraph 2, was in these terms:

> "The First and Second Claimants do give specific disclosure of the classes of document set out in the schedules annexed hereto by 4 p.m. on 20th September 2012; or such form of authority by 4 p.m. on 20th September 2012 as is required to obtain the said information from any third party holding the documentation or information."

16. There were two schedules. The first, Schedule A, related solely to Mr Mohammed and sought:

> "1. Any accident report forms submitted to the first claimant's insurers arising out of the index accident;
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> 2. All documents (including medical reports) arising out of the accidents and subsequent claims for damages in which the First Claimant was involved in 2003 and 2009 (identified by the First Claimant in Reply 7);
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> 3. All documentation submitted to or by the Public Carriage Office by the First Claimant in respect of the index vehicle and/or any replacement vehicle (identified by the First Claimant in Reply 9)
>
> 4. Any documentation is submitted to or by UKML (a company) to or by the First Claimant (as identified in Reply 10)
>
> 5. All tax and income documentation for the years 2010, 2011 and 2012 (as identified in Reply 13)
>
> 6. Details of the times of all account transactions for account 80108103 dated 25th March 2010 (identified in Reply 14)
> 7. Any documentation submitted to or by ACH (a company) to or by the First Claimant (as identified in Reply 15).”

17. Schedule B, which related to Mr Khaksar, sought:

> "All documents (including medical reports) arising out of the accidents and subsequent claims for damages in which the second claimant was involved in 2008 and 2011 and 2012 (identified by the Second Claimant in Reply 4)."

18. If anything this order was wider in its ambit than the Part 18 Request because by reference to both Schedules A and B to which it applies, Mr Mohammed and Mr Khaksar were required to give specific disclosure of *all* documents relating to specific issues. These categories of documents were plainly considered by HHJ Freeland QC to be relevant to the issues in question. In some cases, such as the tax and income documentation and the documentation submitted to or by the Public Carriage Office the relevance is self evident. Mr Mohammed claims damages on the basis that he was a minicab driver and that he lost income so it is essential to see whether, in fact, he was licenced at the time of the accident and what his losses actually were.

19. The claimants were all represented by their Counsel at the hearing on 7th September 2012 so there can be no excuse that they were unaware of the terms of the order. However, there was no compliance by either Mr Mohammed or Mr Khaksar and so, on 27th September 2012, CIS issued on application supported by a witness statement from their solicitor, Louise Hilton, seeking an "unless" order.

20. That application was dealt with on paper by HHJ Collender QC on 18th October 2012 in these terms:

> "Unless the Claimant do comply with paragraph 2 Schedule A 1 to 7 as per the court order drawn by His Honour [sic] Freeland QC dated 7 September 2012 within 14 days then the Claimants claim be struck out with the Claimant to pay the Second Defendant's costs of the entire to be assessed if not agreed".

21. On 27th October 2012 both Mr Mohammed and Mr Khaksar signed witness statements which were served before the 14 day deadline. They contended that such statements addressed the classes of specific documents required by Schedules A and B. CIS however took the view that these witness statements were deficient and that neither claimant had fully complied with the terms of the unless order and, indeed, wrote to the Court to that effect on 2nd November last year.

22. That letter was eventually placed before HHJ Mitchell and on 29th November 2012 he made an order that:

> "The Claimants having failed to provide the information as set out in paragraph 1 of the order of 18th October 2012 each of the Claims is struck out and the Claimants shall pay the costs the Second Defendant to be subject to a detailed assessment if not agreed."

23. On 7th December 2012 the claimants applied to reinstate the case. This application was supported by a witness statement from a Mr Martyniak, a Legal Executive with Messrs Dennison Greer, their Solicitors. Having noted that both Mr Mohammed and Mr Khaksar had made witness statements, he went on to assert, at paragraph 14 of his statement, that they:

> "……..had fully complied with the disclosure ordered under the Court's Orders dated 7th September and 18th October 2012".

24. No doubt when that application and evidence came before HHJ Hornby on 7th January 2013 that alleged compliance was foremost in his mind because he set aside the order of HHJ Mitchell and reinstated the claims.

25. That order essentially invited the two applications I currently have before me. The first in time was the application by CIS dated 22nd January 2013 seeking to set aside the order of HHJ Hornby and which was supported by a further witness statement from Louise Hilton in which, as well as taking issue with the assertion of full compliance and setting out her reasons why, she also observed that there had been no application by any claimant for any relief from sanctions.

26. In turn therefore on the 14th February 2013 the claimants issued on application for relief from sanctions. Accompanying that application was a draft order from the claimants, Mr Mohammed and Mr Khaksar, which sought an extension of time until 21st February 2013 in which to comply with the order of 7th September 2012.

27. This draft order created some ambiguity. It was rather strange to seek an extension of time to comply with the earlier order when it had been asserted that compliance with that order had, in fact, already taken place. It may be, of course, that it was a question of interpretation; that the claimants felt that they had done all that they could - indeed, as Mr McKie, Counsel for Mr Mohammed and Mr Khaksar, put it in his submission in relation to Mr Mohammed "he

had made a reasonable go of it" - whereas if the Court concluded that they had not then they had the luxury of another seven days in which to comply.

28. It is perhaps helpful at this juncture to remind oneself of the provisions of CPR 3.9 which is as follows:

> (1) On an application for relief from any sanction imposed for a failure to comply with any rule, practice direction or court order the court will consider all the circumstances including –
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> (a) the interests of the administration of justice;
> (b) whether the application for relief has been made promptly;
> (c) whether the failure to comply was intentional;
> (d) whether there is a good explanation for the failure;
> (e) the extent to which the party in default has complied with other rules, practice directions, court orders and any relevant preaction protocol(GL);
> (f) whether the failure to comply was caused by the party or his legal representative;
> (g) whether the trial date or the likely trial date can still be met if relief is granted;
> (h) the effect which the failure to comply had on each party; and
> (i) the effect which the granting of relief would have on each party.
>
> (2) An application for relief must be supported by evidence.

The Submissions

29. In his submissions Mr Nugent, Counsel for CIS, took me through the categories of documents appearing in Schedules A and B. Dealing firstly with Mr Mohammed he accepts that, in fact, as no Accident Report Form was submitted by him to his insurers he cannot be held to account for failing to produce such a Report if it did not exist in the first place.

30. However, the same could not be said for documents relating to his previous accidents. Apart from the two medical reports in 2009, to which I previously referred, nothing else has been disclosed at all. Given that, certainly in relation to the February 2009 accident, he was represented by the same Solicitors as now, Mr Nugent was very concerned that there had been no disclosure at least in relation to that accident. He submitted that this could only allow for

one of two approaches: either there was a deliberate attempt not to provide disclosure or, alternatively, Mr Mohammed had given specific instructions for these documents not to be disclosed.

31. Turning to the Public Carriage Office ("PCO") documentation, Mr Mohammed has disclosed a host of documents relating to the hire car which he drove which did appear to have a Public Carriage Office Licence expiring on 13th October 2010 but this was granted to Accident Claim Hire Line Limited not Mr Mohammed and relates to a VW Passat. In relation to Mr Mohammed's Vauxhall Vectra he produced the V5 registration document, an MOT, a purported insurance certificate and an extremely badly copied Private Hire disc for that vehicle bearing the date "31 January 2011".

32. It is, however, entirely unclear whether that date is the beginning or the end of any particular period. But, more importantly, there is nothing from the Public Carriage Office or, indeed, Mr Mohammed, to say that he had applied to or had been granted a Licence before the accident took place or any reference number.

33. The request in relation to UKML relates to "any documentation" between that concern and Mr Mohammed. Accordingly, the disclosure duty was not confined solely to the index accident and such disclosure is clearly relevant to the issue of fraud. Given that UKML were involved in the February 2009 accident it is obviously relevant as to whether they, for example, received payment from Mr Mohammed for storage and recovery charges on that occasion or not.

34. Turning to the tax and income documents, Mr Mohammed maintains that he had provided all of these. It is true that his produced income and expenditure accounts for the relevant periods. But he has not disclosed any documents to show the source or receipt of funds such as his daily cash book or banking. What is indisputable however is that no tax returns at all have been provided but it is to these that Mr Mohammed specifically referred CIS in his Part 18 Reply.

35. In relation to the timing of the bank transactions no documentation has been produced, simply an assertion that he does not remember the time of day that these transactions took place and that upon enquiry of his bank he was told that they were not able to provide this information.

36. As to ACH, Mr Mohammed says in his witness statement that he submitted his driving documents to them together with his "PCO Licence". Mr Mohammed is obviously wrong on

this point because it is not a PCO Licence. Moreover, as his Part 18 Reply reveals, ACH dealt with the accident in February 2009 and all or any documents from that accident would be relevant to the issues of fraud in the index accident. Not least as to whether ACH ever demanded any money from Mr Mohammed in relation to that previous accident.

37. Turning to Mr Khaksar his disclosure obligation was in relation to "all documents (including medical reports)" in relation to all his previous accidents.

38. He has disclosed a medical report relating to the accident in 2008 which reveals that he was represented on that occasion by Messrs Coyne Learmonth. However, he has provided nothing further.

39. He has provided a form of authority in relation to the later to accidents and I understand documents have been obtained by CIS's Solicitors in consequence. Mr Khaksar was, indeed, entitled provide such an authority (this was the second part of HHJ Freeland QC's order) but no such authority has been provided for the 2008 accident.

40. Overall, Mr Nugent pursued a rather cynical line of submission in the face of such a failure by both of these claimant's to give anywhere near full disclosure, and certainly not adequate disclosure.

41. In light of the various points highlighted by Mr Nugent, Mr McKie drew breath somewhat before making his own submissions. Although bound by his instructions to assert that there had been compliance by both Mr Mohammed and Mr Khaksar with the unless order he was realistic enough to recognise that this was a very difficult position to maintain. The best he could really do was to submit that Mr Khaksar's default was less than that of Mr Mohammed and, on that basis, he proceeded to seek to persuade me that I should grant relief from sanctions in any event.

42. So far as Mr Khaksar was concerned he noted that he had in fact provided forms of authority – permitted, as I have noted, by HHJ Freeland QC's order – and, therefore, he had been at least part compliant. However, he accepted that disclosure in relation to the 2008 accident was very relevant because it predated the index accident.

43. Dealing with the CPR 3.9 checklist Mr McKie discounted those criteria relating to any previous default and the trial date on the basis that there had been no previous default alleged,

or of which he was aware, and a trial date has not yet been set. Nor could it be said that the application had been made promptly.

44. Further, in relation to whether the default was intentional or whether there was a good explanation, Mr McKie indicated that he was without instructions in relation to these criteria notwithstanding that he indicated that both Mr Mohammed and Mr Khaksar had been written to in this regard but no response had been received. In the absence of reply therefore he could not begin to address whether the default lay with either of the parties and/or their Instructing Solicitors.

45. This, therefore, effectively left as the only criteria which could objectively be considered, the interests of the administration of justice and the effect which the failure to comply had had on each party to together with the effect of granting relief.

46. As regards the first consideration, Mr McKie submitted that for the claim to be struck out would have serious implications for Mr Khaksar in view of the fact that fraud was alleged. He might, for example, end up on an insurer's blacklist although there was absolutely no evidence or reference to such likelihood in the witness statement of Mr Martyniak.

47. Criteria (h) and (i) might conveniently be dealt with together. Mr McKie submitted that Mr Khaksar would end up bearing his proportionate share of CIS's costs for the action for what might be viewed as a relatively minor non-compliance which would obviously be prejudicial, whilst if relief was granted CIS could put all these failings to Mr Khaksar in cross-examination.

48. Turning to the position of Mr Mohammed, Mr McKie effectively reiterated the same points as regards the CPR 3.9 checklist as he had done with Mr Khaksar. Certainly, he was in no better position and given the inadequacy of disclosure which I have already highlighted was possibly in a worse position compounded by the fact that he was without instructions in material areas.

49. Mr Nugent's response was that although Mr Khaksar's non-compliance might seem less serious than that of Mr Mohammed, nonetheless, looked at in context, Mr Khaksar was bringing the smaller claim but it was material that no details had been disclosed in relation to the 2008 accident.

50. He had no observations about Mr Mohammed no doubt because he considered the default spoke for itself.

51. Generally, he noted that this disclosure had been outstanding since last July and both claimants had not availed themselves of the several opportunities to rectify matters since then and, indeed, had not considered CPR 3.9 until prompted to do so by CIS.

52. In addition to these submissions, considering matters generally I note that Mr Martyniak concentrated his witness statement on certain points. Firstly, that the original disclosure order was unduly onerous; secondly, that both Mr Mohammed and Mr Khaksar had done their best to comply; thirdly, that as the majority of the disclosure went to the credit hire claim only it would be unreasonable for the whole claim to be struck out and, fourthly, that they have sought to obtain all relevant disclosure from various parties as far as reasonably and practicably able to do.

Analysis

53. I indicated to both Mr Nugent and Mr McKie at the outset of the hearing that I would reinstate the claims by a third and fourth claimants. It cannot be correct that their respective claims should have been struck out the failure to comply with an unless order which was not directed then in the first place. Paragraph 2 of the order dated 7th September 2012 only ever concerned Mr Mohammed and Mr Khaksar.

54. The starting point with regard to those two claimants is to consider the terms of the unless order, whether it has been complied with and, if not, whether the sanction of striking out is still applicable.

55. The unless order was clear: by 1st November 2012 Mr Mohammed and Mr Khaksar had to comply with the order of 7th September 2012 and if they did not their respective claims were to be struck out and they would have to pay CIS's costs

56. It is perhaps worth emphasising that there was no appeal against the order of HHJ Freeland QC. Whilst it may be the case that Mr Mohammed and Mr Khaksar now seek to argue that his order was unduly onerous, that was not their position at the time. Indeed, both of them were represented by their Solicitor on that occasion and they were perfectly able to object or to argue against the proposed order if they were not happy with it or to take matters further by way of appeal once it had been made.

57. That they did not means that they are bound by it. Accordingly, it is not in my judgment open to Mr Martyniak, or anyone else for that matter, to now suggest or argue that because the disclosure is now apparently too onerous it should somehow excuse or permit certain non-disclosure.

58. It is also germane that no appeal was ever made against the unless order itself, dated 18th October 2012, which specified the consequences of non-compliance, so it is perhaps difficult to accept the argument that only the hire claim, as opposed to the whole claim, should now be struck out, but I will return to that aspect in due course.

59. The fact of the matter is that neither Mr Mohammed nor Mr Khaksar complied with their disclosure obligations despite, and contrary to, their respective protestations that they had done so. It is only necessary to highlight certain features in this regard to easily demonstrate that point.

60. As regards Mr Mohammed's accident in February 2009, to assert that he has disclosed all the documents in his possession or control (i.e. only the medical report) is entirely disingenuous. I find it impossible to accept that out of all the communications and documents he would have received (or had within his control) as a consequence of that particular accident, the only document he would have us believe was retained was the medical report. No explanation has been advanced as to his failure to produce any other documents or, indeed, what has become of them or why only the medical report apparently survived.

61. This takes on somewhat more serious overtones when one considers that the very same firm of Solicitors as now instructed by Mr Mohammed dealt with the February 2009 accident. There is absolutely no suggestion that their file of papers has been lost or somehow destroyed and, as officers of the Court, Mr Mohammed's solicitors will naturally have advised him (a) of his duty to give disclosure and (b) that their file constituted relevant and necessary disclosure which was within his possession or control.

62. The fact that it is not been disclosed can mean only one thing: that there has been a deliberate and wilful act of nondisclosure. Whether that was because Mr Mohammed has instructed his Solicitors not to provide disclosure or otherwise is neither here nor there. What does matter is that there has been a flagrant breach of the Court order.

63. Turning to the PCO Licence Mr Mohammed's protestations are incredulous. All he needs to have done was to have contacted his "cab office [who] completed the procedure" and asked them to provide the copy documents which they submitted or, alternatively, to have contacted the Public Carriage Office directly for this purpose, but he has not done so. Both he and Mr Martyniak are quite simply wrong to assert that the 'PCO Licence' which has been produced (the very badly photocopied disc) is determinative of the position. It is not.

64. Further, Mr Mohammed's assertion that he has disclosed his income details has completely ignored his obligation to produce any tax documents particularly after he referred to a tax return in his Part 18 Reply which he supported by a statement of truth.

65. The times of the bank transactions on the day of the accident are obviously very relevant and material. To attempt to deal with this by saying that he has made inquiries of his bank but they were unable to deal with this is completely inadequate. In the absence of any letter from the relevant bank which categorically and unequivocally states that such transactions are not timed, I am not prepared to accept that assertion. There is no evidence, however, of any attempt whatsoever to obtain information of this nature.

66. Turning to Mr Khaksar, one must ask again is to why only the medical report relating to the 2008 accident has been disclosed amongst all the other documents he would inevitably have received in relation to that accident over which he had control. Again, there is no explanation for this or as to what has or may have happened to, or become of, those other documents. It is clear from the medical report that his Solicitors on that occasion were Messrs Coyne Learmonth but materially there is no suggestion that any attempt has been made to contact those Solicitors in order to obtain the further documents.

67. In each case it would have been blatantly obvious to both Mr Mohammed and Mr Khaksar - and most certainly to their solicitors – why the various documents covered by HHJ Freeland QC's order were sought and why they would be relevant. In each case they would not have been difficult to obtain and yet, several months after they were first requested, they have still not been disclosed or produced. To have both served witness statements to the effect that they had fully complied with that order is, in my view, deliberate obfuscation of the true position.

68. There has been a wholesale disregard and/or avoidance of what was necessary and no real attempt, other than to pay it lip service, to comply with the unless order. At best there was a

complete misunderstanding or ignorance of what their duty of disclosure was; at worst, both Mr Mohammed and Mr Khaksar have deliberately set out to avoid compliance.

69. Accordingly, I am perfectly satisfied that both Mr Mohammed and Mr Khaksar are in breach of the unless order. The question then arises as to whether they are entitled to be relieved from the sanction of the striking out?.

70. I do not regard these as minor breaches for the reasons that I have already given and neither Mr Mohammed nor Mr Khaksar are assisted by the fact that Mr McKie was without instructions in relation to three criteria of the CPR 3.9 checklist.

71. As regards the interests of the administration of justice, Mr Nugent properly referred me to the recent words of Jackson LJ in the recent case of *Fred Perry Ltd V. Brands Plaza Trading and Others [2012] EWCA Civ 224*, in which he indicated that relief from sanctions was being granted too readily to those who fail to comply with Court orders. He said:

> "I only wish to add a few words in relation to the defendant's application for relief from sanctions.
>
> Non-compliance with the Civil Procedure Rules and orders of the court on the scale that has occurred in this case cannot possibly be tolerated. Any further grant of indulgence to the defendants in this case would be a denial of justice to the claimants and a denial of justice to other litigants whose cases await resolution by the court.
>
> Mann J's applicant of Rule 3.9 to the facts of this case cannot be faulted. I should however draw attention to the forthcoming amendments to Rule 3.9. There is a concern that relief against sanctions is being granted too readily at the present time. Such a culture of delay and non-compliance is injurious to the civil justice system and to litigants generally. The Rule Committee has recently approved a proposal that the present rule 3.9(1) be deleted and the following be substituted:
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> "On an application for relief from any sanction imposed for a failure to comply with any rule, practice direction or court order, the court will consider the circumstances of the case, so as to enable it to deal justly with the application including the need –
> (a) for litigation to be conducted efficiently and at proportionate cost; and
> (b) to enforce compliance with rules, practice directions and court orders."

72. It is, of course, correct that this case falls to be considered under the provisions of what I might term the ‘old‘ CPR 3.9 but the sentiments expressed by Jackson LJ apply equally to that as well if one, at the same time, has regard to the Overriding Objective. It cannot be in the interests of the administration of justice for this litigation to have been held up for effectively six months by something which should have been dealt with in a very short period of time and was perfectly capable of being so dealt with. A trial date has not been fixed, it is true, but the conduct of both Mr Mohammed and Mr Khaksar has deprived the Court of effectively, efficiently and proportionally case managing this case which would have included the fixing of such a trial date. There is, in fact, no reason why this case should not have been tried by now.

73. I do not accept Mr McKie's submission that there has not been any previous breach of an order. Quite apart from the unless order, there was, of course, a breach of HHJ Freeland QC's order.

74. Considering the last two criteria in the checklist, as regards what effect the failure to comply and the granting of relief would have on each party, I do not accept the proposition, advanced by Mr McKie, that any deficiencies in disclosure could be rectified through cross-examination. That is only an effective solution if, in fact, full disclosure has been provided. In a case where fraud is alleged it is not sufficient to seek to expunge or sidestep a failure to give relevant disclosure by an offer to be cross-examined. As for CIS, it would be faced with going to trial in a case where Mr Mohammed and Mr Khaksar had knowingly not given full disclosure which clearly is no appropriate in such a case as this.

75. Lastly, the suggestion that it would be unfair in some way for these two claimants to have to pay CIS’s costs is really, with respect to Mr McKie, a hopeless argument. This consequence has been known since the 18th October 2012 when the unless order was made and it should not therefore now come as any surprise to be facing that consequence. All that had to be done to avoid it was to produce the disclosure that was required; that was entirely within the gift of both Mr Mohammed and Mr Khaksar.

76. Overall therefore it is quite clear that both Mr Mohammed and Mr Khaksar fail on all the CPR 3.9 criteria. Taking into account the Overriding Objective and all of the circumstances of the case it is abundantly obvious that there should be no relief from sanctions.

77. The only outstanding matter therefore is to consider whether, in relation to Mr Mohammed, his whole case should be struck out or just that aspect relating to the hire charges?

78. It is an undesirable fact that fraudulent road traffic accident claims are extremely prevalent. They tie up and use vast amounts of Court time but can be very profitable for the fraudster, particularly so if there is a multiplicity of claims by one or more claimants. Fraudulent claims also undermine the integrity of the Courts and of justice generally. As Mr Nugent observed in his Skeleton Argument, where fraud is front and centre of the Defence, two clear principles emerge: firstly, that public policy in the administration of justice require that claims of this nature be properly investigated and deterred where appropriate and, secondly, that this can only happen if the claimant gives full and frank disclosure. In a case where a claimant is alleged to have concocted their claim, it is probable that that claimant will not be willing to assist in establishing the fraud.

79. Indeed, in cases where the first defendant, as here, effectively disappears and takes no part in the litigation whatsoever, the insurance company, which is obligated by law to stand, in indemnity terms, behind their insured driver, will be conducting the litigation effectively blind and at an obvious and distinct disadvantage.

80. Therefore, where the claimant's solicitors are on notice of fraud then, in my judgment, they have a positive duty to advise their client to render as much assistance to the Court as possible which includes the proper disclosure of relevant documents. In practical terms this is no more or less than the claimant complying with his duty to further the overriding objective pursuant to CPR 1.3 by rendering that assistance. The disclosure of such documents is as central to the Defence as it is to the claimant who wishes to rebut allegations of fraud. Of course, a claimant in such a case may decide not to give this assistance but if he chooses to take that route then the calculus of risk must change.

81. The failure to provide the necessary disclosure in this particular case has deprived CIS of the ability to properly cross-examine and prepare its case and allow it, and indeed the Court, to get to the bottom of any fraud. As such disclosure is inextricably linked to the credibility of both Mr Mohammed and Mr Khaksar not only in relation to the hire claim (as regards Mr Mohammed) but the claim generally (as regards them both) it would be entirely wrong, in my judgment, for the claim as a whole not to be struck out. In addition, such is the fundamental and abject failure to give disclosure that, in all the circumstances, striking out their respective claims is not only in my view the correct option but is also the proportionate and reasonable one.

Conclusions

82. Accordingly, it follows that the application by Mr Mohammed and Mr Khaksar for relief from sanctions will be dismissed and, equally, the order of HHJ Hornby dated 7th January 2013, insofar as it relates to them, shall be set aside and the order of 29th November 2012 reinstated.

83. There will also be the need for further case management directions in relation to the claims of Mrs Khaksar and Mr Miakhel, the third and fourth claimants although given the lack of disclosure to date and the various issues that arise from the Defence, including those of credibility, it seems to me that such claims may face rather formidable problems, but that is a matter for them and their Solicitors.

84. I will therefore fix a date upon which to hand down this judgment at which time I shall also deal with the further directions, the issue of costs (which will generally, of course, follow the event) and any further applications that any party feels needs to be made. That said, both parties are ably represented by Counsel and these issues are not particularly difficult which would lead me to the hope that they can be agreed without the need for any party to attend. If that can be achieved then as long as the parties confirm the position in writing within 24 hours of the hearing there would be no need for anyone to attend. However, that should not preclude any party attending if they so wish.

85. Finally, it would be remiss of me if I was not to gratefully acknowledge the assistance which I received from both Mr Nugent and Mr McKie, which has made my task immeasurably easier.

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District Judge Avent

12th April 2013