



Neutral Citation Number: [2022] EWHC 1725 (QB)

Case No: QB-2020-000183

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

**ON APPEAL FROM THE COUNTY COURT AT CHELMSFORD**  
**FROM THE JUDGMENT OF HER HONOUR JUDGE MURFITT**

Royal Courts of Justice  
Strand, London, WC2A 2LL

Date: 05/07/2022

**Before :**

**MR JUSTICE FREEDMAN**

**Between :**

**CHIEF CONSTABLE OF ESSEX POLICE**

**Claimant**

**- and -**

**FIONA ADENIJI**

**1<sup>st</sup> Defendant**

**- and -**

**LANGDON HILLS MOTOR COMPANY LIMITED**

**2<sup>nd</sup> Defendant**

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**Mr Amit Karia** (instructed by Clarke Kiernan LLP) for the **Second Defendant/Appellant**  
There was no appearance by the **Claimant** or by the **First Defendant/Respondent**

Hearing date: 16 June 2022

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**Approved Judgment**

**This judgment will be handed down by the Judge remotely by circulation to the parties' representatives by email and release to The National Archives. The date and time for hand-down is deemed to be 10.30am on Tuesday 5 July 2022**

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## MR JUSTICE FREEDMAN:

### I Introduction

1. This is an appeal against an order of HHJ Murfitt given on 24 July 2020. It was an order made on the application of the Chief Constable of Essex Police of an interpleader claim under CPR Part 86 for the Court to determine the ownership of a Porsche McCann Turbo SA motor car, registered number BL17 FKG (“the Porsche”). By the order of the Court of 24 July 2020, the first defendant (“the Respondent”) was declared to be the owner of the Porsche and the Porsche was ordered to be returned to the Respondent. This followed a trial on 13 July 2020. Judgment was delivered electronically to the parties on 16 July 2020 and formally handed down on 24 July 2020.
2. At the trial, the Claimant was neutral and PC Henry Foster attended for it. The Respondent appeared and Mr McKean of Counsel appeared on behalf of the Second Defendant (“the Appellant”). In view of the claimant’s role as an interpleader, it has not attended the appeal. Upon the appeal, the Appellant has appeared by Mr Amit Karia, who did not appear at the trial.
3. There has been no attendance by the Respondent. I refer to an earlier short judgment in which I decided to proceed without the Respondent. The most recent communication was on 16 June 2022 by the Respondent to the court and the parties in which she said the following:

*“I have confirmed with the appellant I will not be able to attend remotely today.*

*I am happy for the appeal to continue in my absence to bring this matter to a conclusion. If present, I would have no further information to present other than the original bundle and documents submitted to court (copy of which I have provided to the appellant).*

*This whole situation has caused me untold anxiety and the thought of attending another hearing, whether remote or in person, to be tied up in knots by legal professional again is having a detrimental effect on my wellbeing. I therefore ask the Court to continue with the hearing today in my absence, as I am keen for this matter to be concluded.”*

4. In view of this, I decided to conduct the hearing without the Respondent. However, I reserved the right to revisit that decision in the event that any matter arose that might have made it necessary to revisit the decision to proceed without her.
5. A brief chronology in respect of this case is as follows:

- (1) in September 2016, the Respondent commenced an intimate relationship with Mr Paul Pinnell;

- (2) in November 2017, the Respondent acquired the Porsche for a sum of about £69,000, and she became the registered keeper according to DVLA records;
  - (3) on 9 April 2018, the Respondent signed her agreement to Mr Pinnell becoming the registered keeper.
  - (4) By November 2018, the relationship of the Respondent and Mr Pinnell had broken down.
  - (5) The Appellant's case is that on 4 November 2018, Mr Pinnell sold the Porsche to them for the sum of £48,000 of which the sum of £12,000 was in part exchange for an Audi, the sum of £9,000 was paid in cash and the balance was to be paid in 9 monthly instalments of £3,000 each.
  - (6) On 18 December 2018, the Appellant leased the Porsche to Mr Gojka.
  - (7) On 27 December 2018, Mr Gojka was arrested in connection with drugs offences and the Porsche was seized by the police.
  - (8) On 4 December 2018 and further on 20 December 2018, the Respondent reported Mr Pinnell to the police about matters described below, and made a witness statement in connection with the Porsche on 23 December 2018.
  - (9) On 8 November 2019, the proceedings under CPR 86 were commenced by the Claimant.
  - (10) On 13 July 2020, the case was tried and subsequently in July 2020, the judgment was handed down and an order made.
6. There were two issues which were the subject of the judgment. They are both the subject of the appeal. The first was whether the Respondent had made a gift of the Porsche to Mr Pinnell. The second was whether the Appellant acquired title to the Porsche as a bona fide purchaser of the Porsche from Mr Pinnell. The first three grounds are directed to the first issue. In summary, it is submitted that the Judge was wrong to conclude that the Respondent did not transfer title to the Mr Pinnell.
  7. The second issue is the subject of the remaining eight grounds, namely whether the Judge erred in finding that at para. 27 that "*the second defendant [the appellant] failed in my judgement, to adduce adequate evidence to prove on a balance of probabilities that he [it] was a bona fide purchaser for value of this vehicle.*"
  8. The evidence at the trial comprised a witness statement of PC Foster. Oral evidence was given by Mr Afrim Ujka of the Appellant and by the Respondent herself. There was cross-examination of the Respondent, and it is evident from the judgment that Mr Ujka was asked questions at least by the Judge. Permission to appeal was granted on a paper application by an order on 13 May 2021. As part of the order given permission, it was ordered that "*for purposes of the appeal. the appellant has permission to adduce evidence from Mr Sonny Mileham and Mr Paul Pinnell relevant to issues raised in the grounds of appeal.*" A recital in the order was in the following terms "*upon concluding*

*that it is in accordance with the overriding objective to permit the appellant to adduce additional evidence in light of the issues raised by the appeal.”*

9. In the light of the additional evidence, the Appellant has amended its grounds of appeal to say that the Judge was wrong to draw adverse inferences from the failure of the Appellant to call Mr Sonny Mileham and from Mr Pinnell respectively (grounds 9 and 10), and in this regard, it relies on the statements of Mr Mileham and Mr Pinnell respectively. In this judgment, I shall consider all of the material now before the court including the evidence before the Judge and the new evidence. I shall first consider the criticisms of the judgment on the basis of the evidence available before the Judge, and I shall then consider the effect of the new evidence.

## **II Background**

10. The background history of the Porsche is as follows. By a purchase agreement made between the Respondent and the Porsche Centre in Sutton Coldfield, the Respondent became the legal owner of the Porsche on 19 November 2017. A sum of £68,600 (in addition to a deposit of £400) was paid from her account by bank transfer. She also became the registered keeper, according to the DVLA records. In September 2016, the Respondent began an intimate relationship with Mr Paul Pinnell. She described herself as being emotionally vulnerable at the time, having been recently widowed. She said that her deceased partner had left a legacy with which she had funded the purchase of the Porsche.
11. On 9 April 2018, Mr Pinnell became the registered keeper of the Porsche. The respondent signed her agreement. Mr Pinnell became the registered keeper in her evidence. She maintained that her agreement was obtained as a result of coercive control over her. She said that when she agreed to make him the registered keeper, she did not also give up ownership of the Porsche to Mr Pinnell. She said that she obtained his verbal agreement to return the Porsche to her should their relationship come to an end. No money exchanged hands between the Respondent and Mr Pinnell for the car. The Respondent said that she continued to meet the insurance and petrol costs of the car: see the judgment at para. 4.
12. During the currency of the relationship between the Respondent and Mr Pinnell, there were various text messages passing between them. A full transcript of those texts was prepared by the police. The Judge summarised the position at para 20 as follows.

*“The texts from November 2017, shortly before the Porsche was purchased by the respondent, certainly contained fulsome expressions of her love for Mr Pinnell, although she also appears quizzical when he calls her a ‘dirty bitch’ in response to a message saying she has a meeting but will be home soon. Another series of messages passing between the pair on 12-13 June 2018 detail the respondents mixed sentiments that the relationship is over. She expresses her sense of injury at his verbal abuse when she says has only been loyal. She apologises as he tells her ‘f...ing lost her mind’ and when he asserts it is her fault that the relationship is at an end. After a series of mutual*

*recriminations, Mr Pinnell mentions the log book for the car: "I give the log book for car said I sign it but you said no." He then writes: "I'll come drop you the car: I exactly care." Ms Adeniji replies "It's okay It's worthless the state it's in" to which he re-joins: "No, I being serious, you can com get it. I don't want it. I'm walking away from it." Ms Adeniji writes back: "I can't get to it. Sorry xx Park it at the yard xx."*

13. There were other texts to which the Appellant drew attention on the appeal (which were before HHJ Murfitt) including from Mr Pinnell *"I new (sic) you would take my car away x"* and from the Respondent *"You said I didn't want it but it's fine keep it now I see how it is x"* and *"It's in your name so it's ok babe keep it xx"*. Mr Pinnell said *"Ffs I'll just give it too you where are ya"* She said *"It's fine I'm not bothered xx"* and *"Hope your life works out. I'd never wish you anything bad"*.
14. During this period, there were other text messages saying of Mr Pinnell saying *"Just take it then"* and the Respondent saying *"No I don't want to do that to you xx"*. Mr Pinnell then said *"I won't see you stuck or ever in trouble x"* The Respondent said *"I'll be fine, honestly xx"* Mr Pinnell said *"Stop worrying about me. I'm not your concern anymore xx"* and *"Stop it I'll drive it over now and you can drop me in Basildon with my bags of clothes x"*
15. At para 22 of the judgment, the Judge said the following, referring to other texts at about the same time:

*"There is one exchange when she observes he can drop the car back after visiting probation and suggested afterwards 'Jed' can pick him up. When Mr Pinnell responds: "so you do what to take my car back, then x? She re-joins: "yes so it can be sold and then I'll see y right? Unless you want to pay me off xx I'm not being difficult but that's all the money I have left." In his turn Mr Pinnell did not interject to assert that the Porsche was not hers to sell either. Instead, he replied by texting: "It's ok, you can have it, I've got nothing so I'll just do what iv gonna doo to survive.... I knew you would take my car away." He goes on to suggest he may kill himself, and is abusive about 'Jed' suggesting that he may have been asked by Ms Adeniji to help get the car off him, which she refutes."*

16. In the context of the reporting of Mr Pinnell to the police in December 2018, the Respondent signed a witness statement dated 23 December 2018 in which she said the following:

*"I wish to make a statement in relation to me signing over my car to pull Pinnell. From when Poole was able to drive the car, he made continual requests for me to pass the ownership over to him. He justified this by saying. It would prove that I loved and*

*trusted him. In May or June 2018, I signed over the ownership to him. So I was still insured on the car when I signed over the ownership. We had a verbal agreement that were we ever to break up, he would return the car to me. following. [illegible] incidents, which have been repeated to the police, Paul and I broke up in early 2018.”*

17. The statement then continued as follows:

*“I would like the car returned. I have signed over the vehicle as part of an abusive relationship and it represents a significant investment for me and my children. I would be willing to go to court in connection with this incident and Paul's pattern of controlling behaviour which led to me signing over the ownership of the vehicle I have bank statements and receipts which show my payment”*

18. In a statement for the trial made on 27 April 2020, the Respondent wrote the following:

*“My relationship with Pinnell deteriorated. I was subject to physical violence if I used the vehicle despite it being registered in my name and he started to collect numerous PCN's and doing forecourt runs without payment. As the vehicle was in my name, all of these charges were coming back to me and amounted to in excess of £1500. He also used emotional abuse, claiming if I really loved him, I would sign this over to him as it would prove my love for him. I was in a very weak and vulnerable position and therefore agreed to sign the vehicle over to him on the proviso that if we were to split up, the vehicle would be returned to me as I had been the sole purchaser and had invested a large amount of money in the vehicle.”*

19. The statement concluded as follows:

*“Whilst I had signed the vehicle over to him so he was the registered keeper of the vehicle, I was still the legal owner - I had purchased the vehicle and paid the insurance for the vehicle but did not have the use of the vehicle on a day to day basis. The vehicle was not Pinnell's to dispose of and should not have been handed over without my consent. I therefore request the return of my vehicle.”*

20. A further part of the statement was summarised in the judgment at para. 17 as follows:

*“In November, she stated that Mr Pinnell disappeared, but that he would turn up occasionally thereafter, and if she asked where the car was and when he would be returning it, he would become aggressive and tell her it was being repaired and that he would not dream of getting rid of it. On 4 December, she states he threatened to harm her and her children and arrived at the house and tried to break in, and this led her to make her first report to the Police. She said she reported the car a stolen on 20 December 2018 not knowing where it was, but hoping that it may be picked up. Then on 19 January 2019, she stated that Mr Pinnell called to ask her to help him get the car back, claiming that an Albanian had taken it off him. Without paying him anything for it, she said that he told her she could have the car back if she helped him recover it. However, after that she said she heard nothing more until she was advised that the Police had impounded the car, after someone had tried to take it abroad.”*

21. It is the case of the Appellant that on 4 November 2018, Mr Pinnell sold to it the Porsche for a sum of £48,000. A purchase order of that date records a consideration of the sum of £48,000. An invoice of the same date on the notepaper of the Appellant records that there was a payment agreement between Langdon Hills and Mr Pinnell for the Porsche, and that payment was to be by an Audi vehicle to him worth £12,000, by sum of £9,000 in cash and by paying him £3,000 per month. On the document headed ‘invoice’, there are entries for the months December to September, and signatures in respect of each of the months. There is no entry for May, and there are signatures for each of 9 months. In the line under September, there is no additional month shown, but there is a signature. The judgment points out that the pounds sign is shown after and not before the references for the sums of 12,000, 9,000 and 3,000 per month. It also points out that the total sum of the remaining monthly instalments is expressed as “29,000£” instead of “£27,000”.
22. It appears that the change of registered keeper to the Appellant was on 19 November 2017, the delay being due a desire to have a change of registered keeper when the sale onwards would take place. In the event, there was no sale on by the time of the registration of the change of keeper: the detailed circumstances are set out at paras. 7-8 of the judgment. The Porsche had been loaned to a friend to test drive and ended up in a police pound, and its release was procured by Mr Mileham, an employee of the Appellant and Mr Pinnell.
23. In the judgment at para 9, it is stated that on 2 December 2018 the Porsche was leased to another friend, Luca Nardoni, who became involved in an incident which led to the car being impounded again. After the release of the Porsche, on 18 December 2018, the Porsche was leased to a man called Domeniko Gjoka. Mr Gjoka paid a deposit of £5000. And agreed to pay a rental thereafter of £1200 per month in cash. The deposit of £5000 was a set off against monies owed by Mr Ujka to Gjoka. No monthly lease payments were made. On 27 December 2018. Mr Gjoka was stopped as he was driving the Porsche at the Channel Tunnel. Mr Gjoka claimed to have purchased it from a friend

named 'Eric' for £25,000 and that he was on his way to Italy. He did not refer to the lease arrangement with the Appellant. He was arrested in respect of offences related to the supply of drugs and the Porsche was seized under section 19 of the Police and Criminal Evidence Act 1984. Mr Gjoka was subsequently convicted on 10 June 2019 in respect of a drugs offence and sentenced to three years' imprisonment. There had been a transfer of the name of the registered keeper to Mr Gjoka, but the Appellant stated that this was in case security checks occurred on Mr Gjoka and that no evidential weight should be attached to the change in registration.

24. In the meantime, on 4 December 2018, the Respondent went to the police to report that she had been in an abusive relationship with Mr Pinnell and that she was the victim of harassment, malicious communications and criminal damage. In the course of those investigations, on 20 December 2018, she also reported that Mr Pinnell had coerced her into signing over ownership of the Porsche to him. I have referred above to the witness statement made by Mr Pinnell. On 23 December 2018, the police (PC Holmes) categorised the complaint in relation to the Porsche as a non crime civil dispute, but stated that Mr Pinnell was circulated as "wanted" for other matters. On 25 January 2020, the police arrested Mr Pinnell in relation to all allegations made against him, including his alleged coercion to sign over the Porsche. He provided a no comment interview. As at the time of the judgment, evidence was given that Mr Pinnell was currently being held in prison on remand: see para 13 of the judgment.
25. It is apparent from the judgment that the Respondent was cross-examined in some detail. This can be seen in the judgment from paras. 17-19 as follows:

*17. "In her oral evidence Ms Adeniji said that it was Mr Pinnell who persuaded her to buy the car in the first place, and that she used a large part of her late partner's estate to do this. When Mr Pinnell began asking her to transfer the Porsche to him, she said she refused at first. Then on 18 March after she took the car out, she said he became very angry and smashed up the bedroom up such that she was afraid and told her children to hide. She described him grabbing her by the throat till she dropped the keys and gave them up, and that he then took them and slept with them under his pillow after that. She said that (in hindsight) she had been manipulated by his declarations of love at a time when she was low, but that it had also taken the pressure off to transfer it to him so that he was liable for the fines when they came in. She was adamant however that the ownership of the car remained hers. After they split she said she he would turn up in different cars to see his dog, and whenever she asked where the Porsche was, he would become angry and make up excuses that he had lent it to a friend, or that it was in for repair. She said that she knew he had a serious cocaine addiction, and that he owed a lot of money to an Albanian drug supplier in Basildon.*

*18. In cross examination it was put to Ms Adeniji that she had made no mention of the keys to the car being taken from her by force within her statements. She said that she told the Police all about his violence and that it was contained within her statements for the criminal proceedings relating to his physical*



*abuse, and she had not thought she needed to repeat the details in the civil proceedings about ownership of the car. She said that whilst she did not like rehearsing the details she was willing to give details of dates times and places if asked.*

*19. It was put to her that her case as to being coerced or controlled by Mr Pinnell was inconsistent since she had agreed to sign the vehicle over to Mr Pinnell, to which she responded that it was consistent, because she had only agreed when she had people chasing her for his debts, in between his protestations of love, and then violence towards her. She said she did not wish to accuse Mr Ujka of being involved in crime with Mr Pinnell, but she nevertheless believed that Mr Pinnell had sought to trade the Porsche to settle the debts, which he told her he owed to many Albanians in Basildon. She said she had noticed Mr Ujka had declared his nationality as Albanian at Companies House, but agreed she had no basis for saying that Mr Pinnell had debts to settle with Mr Ujka in particular. She denied (when it was put to her) that she had given the car to Mr Pinnell voluntarily, stating it was under duress and that she was coerced into agreeing due to the pressure of meeting his huge forecourt debts and PCNs; that the money was all she had, and that she had not just woken up one day and thought 'I'll sign it over'. She agreed she had not reported Mr Pinnell to the Police after signing the registration document, stating that she had remained in a relationship with him until November, and thereafter she had asked for it back, until the incident of violence in December led her to report his behaviour to the Police, and also to report the car as stolen in the hope of getting it back. During the relationship she said she had felt scared and vulnerable, as he had moved her to an isolated area where she was cut off from friends and family, and it was not just a simple matter of picking up the phone to the Police to say, "I've done something silly...". She said that he verbally agreed to return the car if they broke up, and that he had exploited her vulnerability by saying he would give it back. She mentioned that he also had a 'backhander' if she didn't agree with him, although she added she was not here to go into those details today. Where in her police statement it states she signed over the ownership to Mr Pinnell, she said she was referring to signing the car over to him as registered keeper, and that their agreement was that he would return it back into her name as registered keeper, and that she remained the owner notwithstanding, and paid for the insurance and petrol. She repeated that she agreed to him being the registered keeper to manage the stress she was under, and as a means of self-preservation to get back onto stable ground, but she did not do so willingly, and she never signed any transfer of ownership to him.*

### III The findings on the first issue

26. The Judge was impressed by the respondent's evidence. She said the following at para. 23:

*“In general, I found Ms Adeniji's evidence to be articulate and cogently given. She has been consistent in her evidence that her agreement to make Mr Pinnell the registered keeper was coupled with their verbal agreement that the car would be returned to her should the relationship come to an end. Given the vehicle represented most if not all of the money she had inherited from her late partner, the evidence does not lead me to conclude on a balance of probabilities that she wished to give away her capital interest to Mr Pinnell, even if she was persuaded to allow him the use of it whilst they were together. I find that the contemporary text messages recited above are also congruent with that understanding. Whilst in her police statement she did refer to signing over ownership of the car to him, I am satisfied she used that term loosely as a lay-person to refer to her signing of the DVLA documents to make him the registered keeper. There is no evidence that she signed any other document transferring the ownership of the car to him. Having read his text messages there are clear signs that Mr Pinnell was inclined to use self-pity and threats of self-harm to elicit Ms Adeniji's sympathy. I do consider he was manipulative in his attempts to justify himself in these texts, pointing the finger of blame at her for the ending of the relationship, which he had left. In some contrast in the wake of their broken relationship I note that Ms Adeniji was empathetic in her responses, amongst other things seeking to compliment Mr Pinnell's efforts in engaging with probation to combat his drug problem.”*

27. The Judge at para. 24 said she was satisfied that controlling behaviour including elements of “psychological, sexual, financial or emotional abuse” are likely to have been present in the respondent's relationship with Mr Pinnell and to have “played their part in influencing her decisions to invest her legacy in the purchase of the Porsche and later to transfer the vehicles, registered keeper from her name to his.”

28. At para. 25, the Judge found as follows:

*“She agreed when it was put to her that Mr Pinnell had been manipulative, and that she had made him the registered keeper under false promises, however she denied that she had made him the legal owner under false promises, as she repeated he was never the owner. I do not consider the evidence supports the conclusion that Ms Adeniji intended to create a trust whereby the legal interest in the Porsche would pass to Mr Pinnell whilst*

*Ms Adeniji retained a beneficial interest contingent upon their relationship coming to an end. Ms Adeniji was clear that at no point did she agree to pass the legal interest in the Porsche to Mr Pinnell. The fact that it was her money which wholly funded the purchase, and her money which sustained its upkeep on the road thereafter, is also consistent with this conclusion. For the same reasons I do not find that Mr Pinnell's deception as to his true intentions, caused her to pass her legal interest over to him either, even though it did play a part in persuading her to make him the registered keeper.”*

29. In the light of the foregoing, the Judge was not satisfied on a balance of probabilities that Mr Pinnell ever did become the legal owner of the Porsche.

#### **IV The findings on the second issue**

30. Even if Mr Pinnell had become the legal owner of the Porsche by fraud, the Judge found that the Appellant had failed to adduce adequate evidence to prove on a balance of probabilities that it was a bona fide purchaser for value of the Porsche. She found that the evidence was scant in the following respects, namely:

- (1) On 4 November 2018, the date of the purchase order, Langdon Hills Motor Co (Basildon) Ltd, the Appellant did not exist as a company. It was incorporated on 6 November 2018. There was another company called Langdon Hills Motor Company Limited (which was the Second Defendant), but this company was replaced as Second Defendant by the company Langdon Hills Motor Co (Basildon) Ltd. The company Langdon Hills Motor Company Limited was dissolved on 20 August 2019. Mr Ujka was unable to explain why an invoice had been made out in the name of the new company before 6 November 2018: see the judgment at para. 27.
- (2) The purchase order was made out in the name of Langdon Hills Motor Company. A total price was identified of £48,000 which was said to have been “paid in full”. Mr Ujka blamed this on Mr Mileham and suggested that these errors were the reason why he ended the employment of Mr Mileham in April 2019. There was an email at the time in which Mr Mileham had referred to himself as the sole owner of the car, but as the Judge said, he may have been purporting to write as the alter ego of Mr Ujka: see the judgment at paras. 10, 11 and 31;
- (3) The invoice included errors in the months of the year (missing out May), it had the ‘£’ symbol after rather than before the sums, nothing appeared in the quantity or unit price columns, the signature (under the “Costumer Sign” column) was in respect of blank amounts paid, and as noted above, it was also against the tenth blank line following the September line. As the Judge said in the judgment at para. 28: “*since no sum appears next to each set of initials,*

*the document does not actually confirm the receipt of any monthly payment by the signatory.”*

- (4) The arithmetic in the invoice did not add up in that it was said that the sum of £48,000 was paid, but the sums added up to £50,000 (£12,000 + £9,000 + [£3,000 x 9]). The signature of the customer was given 10 times, which would appear to show ten payments of £3,000, that is £30,000 and not £27,000. Mr Ujka said in his statement that the payments had been made in full by August (that is not September or thereafter), and in another account, PC Foster recorded that the Appellant had stated that only 8 instalments had been paid: see the judgment at para.29;
  - (5) There was no primary documentary evidence to prove payments for the Porsche, and there was no evidence of bank transfer of funds or company record showing a payment out of company funds. Mr Ujka had stated that he withdrew money from a car washing business, but the Judge said that such information would have been required for the preparation of company accounts: see the judgment at para. 30;
  - (6) The Judge was of the view that a reasonable precaution would have been to take steps to verify the seller’s title by asking to see a purchase receipt or other document verifying his interest: see the judgment at para. 32.
31. The Judge had commented about the absence of evidence from Mr Mileham and Mr Pinnell to support the evidence adduced by the Appellant about its acquisition of title: see the judgment at paras. 31-32.

## **V The law**

32. The Appellant accepts that appeals against findings of fact are to be discouraged. To this end, the Appellant has referred to a first instance decision, namely *Devoy-Williams v Cartwright* [2018] EWHC 2815 (Ch) which is an accurate summary of the law. Falk J said the following:

*18. “To the extent that there is a challenge to findings of fact, it also needs to be borne in mind that in order to succeed in an appeal, the appeal court will need to be satisfied that a critical finding was either unsupported by the evidence before the judge or that the decision was one that no reasonable judge could have reached (London Borough of Haringey v Ahmed and Another [2017] EWCA Civ.1861, at [31]). It does not matter that the appeal court considers that it would have reached a different conclusion. It will be particularly rare for a challenge to a primary finding of fact by a trial judge who has seen witnesses give evidence to succeed on appeal. Where an appeal court is asked to reverse findings of fact which are dependent on the credibility of witnesses, it will only do so if it is satisfied that the*

*judge was plainly wrong (Assicurazioni Generali Spa v Arab Insurance Group [2002] EWCA Civ.1642, at [12]).*

...

*20. An appellate court may, however, interfere if irrelevant material has been taken into account, relevant material has been ignored (unless it would not have made a difference to the outcome), there was a failure to apply the right principles or the decision was one which no reasonable court could have reached.”*

33. The Court referred the Appellant to Court of Appeal cases. In *Clin v Walter Lilly & Co Limited* [2021] EWCA Civ 136, Carr LJ summarised Lewison LJ’s oft-cited reasons in the case of *Fage UK Limited v Chobani UK Limited* (at para. 83 of the judgment of Carr LJ) for the reluctance of appellate courts to interfere with findings of fact by trial judges, and then expanded upon that in her own words (at paras. 85-86) as follows:

*“83. Appellate courts have been warned repeatedly, including by recent statements at the highest level, not to interfere with findings of fact by trial judges, unless compelled to do so. This applies not only to findings of primary fact, but also to the evaluation of those facts and to inferences to be drawn from them. The reasons for this approach are many. They include:*

*i) The expertise of a trial judge is in determining what facts are relevant to the legal issues to be decided, and what those facts are if they are disputed;*

*ii) The trial is not a dress rehearsal. It is the first and last night of the show;*

*iii) Duplication of the trial judge's role on appeal is a disproportionate use of the limited resources of an appellate court, and will seldom lead to a different outcome in an individual case;*

*iv) In making his decisions the trial judge will have regard to the whole of the sea of evidence presented to him, whereas an appellate court will only be island hopping;*

*v) The atmosphere of the courtroom cannot, in any event, be recreated by reference to documents (including transcripts of evidence);*

*vi) Thus, even if it were possible to duplicate the role of the trial judge, it cannot in practice be done.”*

(See *Fage UK Ltd v Chobani UK Ltd* [2014] EWCA Civ 5 at [114].)

....

*“85. In essence the finding of fact must be plainly wrong if it is to be overturned. A simple distillation of the circumstances in which appellate interference may be justified, so far as material for present purposes, can be set out uncontroversially as follows:*

*i) Where the trial judge fundamentally misunderstood the issue or the evidence, plainly failed to take evidence in account, or arrived at a conclusion which the evidence could not on any view support;*

*ii) Where the finding is infected by some identifiable error, such as a material error of law;*

*iii) Where the finding lies outside the bounds within which reasonable disagreement is possible.*

*86. An evaluation of the facts is often a matter of degree upon which different judges can legitimately differ. Such cases may be closely analogous to the exercise of a discretion and appellate courts should approach them in a similar way. The appeal court does not carry out a balancing task afresh but must ask whether the decision of the judge was wrong by reason of some identifiable flaw in the trial judge's treatment of the question to be decided, such as a gap in logic, a lack of consistency, or a failure to take account of some material factor, which undermines the cogency of the conclusion.”*

34. In an earlier case of *Farrar v Rylatt* [2019] EWCA Civ 1864, Coulson LJ expressed the matter (at para. 25) as follows:

*“Accordingly, for all practical purposes, in order to appeal successfully against the findings of fact made by a judge at first instance, an appellant has to show that there was no evidence to support the findings made, or there was a demonstrable misunderstanding of, or failure to consider, relevant evidence. If all the relevant evidence was considered by the judge then, even if the appellate court might have come to a different conclusion, an appeal against the trial judge's findings of fact will fail. That is why an appeal against a trial judge's findings of fact is such a high hurdle for an appellant to overcome.”*

## **VI Grounds of Appeal**

### **(a) Grounds 1-3**

35. The Appellant says that some of the grounds involve procedural fairness and overextension of judicial notice. Those appear to be in respect of the second issue, but not in respect of the first issue about the alleged transfer from the Respondent to Mr Pinnell.
36. The first ground was that the Judge placed insufficient weight on four facts and matters. They were (i) repeated statements that she had transferred ownership to Mr Pinnell; (ii) the V5 logbook, (iii) the fact that Mr Pinnell repeatedly asserted ownership of the Porsche to the Respondent and was not contradicted by the Respondent, and (iv) inconsistencies in the Respondent's evidence and in the police statements. It is said that in each of these respects, the Judge treated uncritically the Respondent's evidence.
37. In my judgment, this ground of appeal fails to pay any or any adequate weight to the following matters, namely:
- (1) The fact that the Judge heard the respondent give evidence, which is not an advantage available to the appellate court;
  - (2) The fact that evidently, the respondent's evidence was the subject of detailed cross-examination from Counsel;
  - (3) It is apparent from the judgment that the evidence of the respondent was the subject of careful scrutiny by the Judge;
  - (4) The Judge found her evidence to be in general not just articulate but cogently given and consistent.
38. The Judge did grapple with the four matters which were identified in the first ground of appeal. As regards the statements of transfer of ownership to Mr Pinnell, the Judge said that the agreement to make Mr Pinnell the registered keeper was coupled with their verbal agreement that the Porsche would be returned to her should the relationship come to an end. She also considered that the Porsche represented most if not all of the money which she inherited from her late partner. The Judge accepted the verbal agreement about returning the Porsche on the relationship coming to an end. She was entitled to do so for the following reasons, namely:
- (1) It was stated consistently in the witness statement to the Police in December 2018, in the statement for the court case in April 2020 and in cross-examination;
  - (2) It was cogent because it reflected a desire to hold on to the value of the Porsche given that it represented at least most of her inheritance;
  - (3) The Judge was clearly impressed by the evidence having heard it being tested.

39. The legal effect of the agreement to return the Porsche in the event of the relationship coming to an end in my judgment negated an outright gift. Its effect must have been to preclude its being dealt with as an owner since this would have prevented him from being able to return the Porsche or to return it unencumbered in the event that the relationship came to an end. The Judge has found in effect that this agreement about returning the Porsche was inconsistent with the making of a gift. It was in this context that the Judge interpreted the transfer of vehicle registered keeper as connoting something less than a transfer of ownership. Likewise, the reference to ownership in the various statements was, according to the Judge, used loosely to refer to the signing of the DVLA documents to make Mr Pinnell the registered keeper. It did not matter that there were repeated references to ownership: there were also repeated references to the agreement to return the Porsche in the event that the relationship came to an end. In view of the above, the Judge was not wrong to construe the position as she did.
40. There are submissions on behalf of the appellant (especially at para. 29 of its skeleton argument) which seek to subject various phrases to detailed analysis as if they were formal agreements or statutes. That is not the correct approach. The Judge considered carefully the reason to making Mr Pinnell the registered keeper, and in particular the desire to rid herself of the liabilities for PCNs and the like and coupled with the agreement to return the Porsche if the relationship came to an end.
41. The second of the four points was the significance of the V5 logbook being in the name of Mr Pinnell from 9 April 2018 to 15 December 2018. The Appellant relies on the reference in *Beverley Acceptances Ltd v Oakley* [1982] RTR 417 at 424 where Lord Denning MR referred, in a dissenting judgment, to the logbook being “the best evidence of title”. However, this is to ignore the view of the majority of Donaldson and Slade LJJ. At 432-433, Donaldson LJ said:

*“I do not see how a registration document, which on its face states that it records the name of the registered keeper and that the registered keeper is not necessarily the legal owner can possibly be said to be a document used in the ordinary course of business as proof of the possession or control of goods, or authorizing or purporting to authorize, either by endorsement or by delivery, the possessor of the document to transfer or receive goods thereby represented. It seems to me to do no more than specify who is the ‘keeper’ of the vehicle for purposes of a liability to pay the road fund tax and other such purposes: see Joblin v Watkins and Roseveare (Motors) Ltd [1949] 1 All ER 47 and Central Newbury Car Auctions Ltd v Unity Finance Ltd [1957] 1 QB 371. I do of course accept that this is a document which a prudent buyer will require to be produced and delivered with the motor car, but it is the absence of the document which casts doubt upon the seller’s authority. Its presence proves, or tends to prove, only the identity of the statutory ‘keeper’.”*

42. The third of the four points was the Respondent’s failure to contradict Mr Pinnell’s assertion of ownership. This was by reference to the text messages which were



considered in detail at paras. 20-22 of the judgment, which are set out above. The response of the Respondent referred to in para. 21 of the judgment does seem reasonable in the context of the evidence as a whole, contrary to an attempted textual exegesis on behalf of the Appellant. That textual approach seems to me to be the wrong approach for reasons already expressed. In any event, this part of the submissions of the Appellant ignores the point that Mr Pinnell did not contradict a much clearer point when the Respondent wrote in an exchange that she wished to sell the Porsche, Mr Pinnell did not say that it was not hers to sell. The Judge's approach to the text messages as part of a bigger picture, but being "congruent" with the overall understanding, is unexceptionable.

43. The fourth of the four points comprises alleged inconsistencies between the Respondent's evidence and the police evidence. These points were put in cross-examination and answered by the Respondent. These were set out at paras. 17-19 of the judgment. There was an incident of violence relating to the keys on 18 March 2018 when he grabbed her by the throat until she dropped the keys and gave them up. There was a further incident on 4 December 2018 (after they had split): the respondent stated that he threatened to harm her and her children and arrived at the house and tried to break in which led to the first report to the police: see Judgment para. 16.
44. The Appellant drew attention to the fact that the written statement to the police did not allege the violence. The Respondent was cross examined on why this did not appear in the written statements. As noted at para.18 of the judgment, the respondent said that she had informed the police about the violence in her statements relating to physical abuse. She did not think that she needed to repeat this in the civil proceedings about ownership of the car.
45. The clear point that was consistent throughout was that there was always an agreement to return the car if the relationship came to an end. The Judge was satisfied on the evidence as a whole that she did not wish to give away her capital interest in the Porsche even if she was persuaded to allow him to use it whilst they were together: see the judgment para. 23.
46. The second ground of appeal was that the judge was wrong to find that whenever the respondents said or implied that Mr Pinnell owned the Porsche, she meant only that he was the registered keeper of the Porsche. The appellant submitted that a layperson may well confuse being a registered keeper with being an owner, but the term "owner" is not a technical legal term and a layperson would not confuse being an owner with being a registered keeper. This submission does not give proper weight to the Judge's finding at para 23 of the judgment. The Judge found that the Appellant has been consistent in her evidence that her agreement to make Mr Pinnell the registered keeper was coupled with their verbal agreement that the car would be returned to her should the relationship come to an end. It was in that context that the term "ownership" was used in a loose sense by the Respondent. There is no reason to interfere with the finding of the Judge that the respondent did not intend to transfer ownership bearing in mind the condition that she would be entitled to the return of the Porsche in the event that the relationship ended and the absence of any document transferring the ownership of the car.
47. The third ground of appeal was that the Judge was selective in her findings and should have found that the effect of the transaction was that Mr Pinnell on her case acquired a voidable title by misrepresentation or duress. The Judge did not agree. In the finding

of the Judge, there was no intention to transfer title. Those circumstances included the reservation of title so as to give effect to the agreement that the Porsche would be returned in the event of that the relationship came to an end.

**(b) Conclusions on grounds 1-3**

48. This is an attempt by a litigant which lost a trial in which witness evidence was given to challenge findings of fact. An appeal against the judge's findings of fact is usually "such a high hurdle for the appellant to overcome": per Coulson LJ as cited above in the case of *Farrar and another v Rylatt and another*. It is not sufficient if all the relevant evidence was considered by the trial judge that it would suffice if the appellate court would have come to a different conclusion. It is apparent that the points made in Grounds 1-3 were each put to the respondent. She gave answers and she impressed the Judge by her answers.
49. Applying the judgment of Carr LJ in *Clin v Walter Lilley & Co Ltd* above, this is not a case where the trial judge fundamentally misunderstood the issue or the evidence or failed to take evidence in account or arrived at a conclusion which the evidence could not on any view support. There was no identifiable error, such as a material error of law. It was not a case where a finding lies outside the bounds within which reasonable disagreement is possible. In my judgment, there was no identifiable flaw in the trial judge's detailed reasoning such as a gap in logic, a lack of consistency, or a failure to take account of some material factor, which undermined the cogency of the conclusion.
50. The Judge had the advantage of hearing the evidence including the points being put to the respondent and her responses. In my judgment, this is not a case where the high hurdle of interference with findings of fact is satisfied. This is an attempt to retry a case without any identifiable error of the kind referred to in the above-mentioned authorities. The Judge considered all the evidence and was entitled to conclude on the evidence that on the balance of probabilities the respondent retained ownership of the Porsche. Of particular importance, the Judge was entitled to conclude that there was an agreement that in the event of the relationship of the Respondent and Mr Pinnell coming to an end, the Porsche would be returned to her. The effect of that agreement seen in the context of the case as a whole is that there is no reason to interfere with the Judge's finding that the Respondent remained the owner of the Porsche.

**(c) Grounds 4-11**

51. The effect of the above is that there is no strict need to go on to the remaining grounds, although after considering the remaining grounds, the Court will consider the effect of the additional evidence not before the Judge. The remaining grounds are only of importance to the second issue. Even if Mr Pinnell became the legal owner of the Porsche, the Appellant still had to prove that it became the owner in order to obtain an order in its favour in the interpleader proceedings.
52. As regards the fourth ground, the Judge was entitled to be critical of the fact that the transaction occurred on 4 November 2018, that is two days prior to the incorporation

of the Appellant, and at a time when the previous company still existed. Mr Ujka did not have an answer for this point: see the judgment at para. 27. It was not enough for the Appellant to answer the first issue. It had to prove how it acquired title. It came to court knowing that this was an issue, and hence sought permission to change the name of the Appellant from the old company to the new company. It should have been able to adduce evidence as to how the new company and not the old company obtained title.

53. As regards the fifth and sixth grounds, the same reasoning applies to the documents evidencing how title was obtained. This was not a point sprung on the Appellant but was a part of the process whereby it had to prove title. The point made by reference to the absence of a notice to challenge the authenticity of the documents is not a good one because there was no disclosure order in this case, and CPR r. 32.19 therefore did not apply. The Judge did not make a positive finding that the invoice and purchase order were not authentic or a sham: simply that the Appellant failed to adduce adequate evidence to prove that the Appellant was a bona fide purchaser of the Porsche. The Judge took into account not only the numerous points raised about the invoice and the purchase order, but considered the totality of the points raised against the Appellant.
54. As regards the seventh and eighth grounds about the absence of evidence in respect of the payment of moneys and the recording of the same in the Appellant's accounts, the Judge was entitled to take that into account. There were no pleadings in this case. Separately from the first issue, it was for the Appellant to prove that it had acquired the Porsche, and it was reasonable in the circumstances of such deficient primary documents (the invoice and the purchase order) to have evidence proving the payments made.
55. As regards the ninth ground, the Judge did not state that she was drawing an adverse inference in the sense of arriving at an unfavourable conclusion about the Appellant's case because it did not call Mr Mileham: it was simply another feature of the failure of the Appellant to adduce sufficient evidence to prove that the Appellant was a bona fide purchaser for value of the Porsche. There was nothing unreasonable about the comment: it was not a counsel of perfection to prove that the Appellant acquired title to the Porsche. That was central to the case. I shall return to this in connection with the impact of the new evidence for the appeal.
56. As regards the tenth ground, the failure to call Mr Pinnell was referred to in passing in the section of the judgment about the second issue and not the first issue (which was concluded at para. 26 of the judgment). Here too the Judge did not say that she was drawing an adverse inference was drawn. I shall return to this in connection with the impact of the new evidence for the appeal.
57. As regards the eleventh ground, this Court does not know the general practice of car dealers in connection with verifying title. Even if the Judge should not have reached a conclusion in this regard, it did not undermine the remainder of the reasoning, and there is no basis to believe that if the Court had not reached this conclusion, the decision on the second issue would have been different.
58. In all of the above circumstances, there is no basis to believe that the Judge was wrong in concluding that on the basis of the evidence as a whole, the Appellant had not provided adequate evidence to establish that it had acquired ownership of the Porsche. The same conclusions apply as in respect of grounds 4-11. It is an attempt to upset

findings of fact. The Judge was entitled to find that adequate evidence had not been adduced in all the circumstances. This too was not a case where the trial judge fundamentally misunderstood the issue or the evidence or failed to take evidence in account or arrived at a conclusion which the evidence could not on any view support. There was no identifiable error or flaw of reasoning.

## VII The effect of the new evidence

59. The new evidence has been allowed in on the basis of the overriding objective. There were no reasons identified by the Judge on granting permission other than to refer to the overriding objective. He did not necessarily apply rigorously mean the *Ladd v Marshall* criteria [1954] 1 WLR 1489, but he did take the approach that the justice of the matter for the hearing of the appeal was for the Court to have it in mind. The Courts have expressed that the admission of new evidence for an appeal simply provides an ability of the appellate court to consider the material: it is then necessary for the appellate court to consider the impact of the evidence and whether it should lead to an order to remit. In *Arundel Corporation v Khoker* [2003] EWCA Civ 491, Mummery LJ at [35] said the following:

*"I have reached the conclusion that the fresh material sought to be introduced on the appeal is, in all the circumstances, credible as prima facie evidence that, contrary to the evidence given by Mr Khokher at the trial, no valid counter-notice was served. Permission should be given for it to be adduced on the appeal. It will be for the court that hears the appeal to decide what impact the evidence has on the issue and whether it is such that the issue on the counter-notice should be remitted to the county court to be re-tried."*

60. The new evidence allowed in by the Judge giving permission to appeal comprises first the evidence of Mr Mileham adduced since the trial that he knew Mr Pinnell because they had mutual friends. He told him that his girlfriend had bought the Porsche for him, and he wanted to have something more economical in its stead. He did an HPI search and checked the chassis number against the vehicle keeper document. It was irrelevant to ask for a purchase invoice, which did not assist him as a motor dealer. The price had been agreed as £48,000. He described how he offered the sum of £12,000 for the Audi. He said that the Audi had been sold to his wife. He was not involved in the payment of the balance of £36,000. When the Porsche had been impounded, he went to the police to produce documents to show that the Appellant was the owner. Mr Pinnell may have also become involved. When it was impounded a second time after the leasing of the car, Mr Mileham said that he spoke to the police again to prove the Appellant's title.
61. The evidence of Mr Pinnell was that he has been in relationship with the respondent from September 2016. He was then subject to probation, and the Probation Service informed the respondent of his past and how he was a potential danger. She did not accept the advice, having been with Mr Pinnell for about five months by that stage. He learned to drive and she promised to buy him a car when he had passed his driving test.

He said that he liked the Porsche Macan, and she said that she would buy him one. She had also bought him a Rolex watch for £16,500. She said at the showroom “*I hope you like your present babe*”. The car was originally registered in her name. He said “*I did not coerce her or pressurise her to do so. She told me it was my car and she transferred it willingly*”: see para. 7 of his statement.

62. The car was bought before he passed his driving test. It was driven mainly by his friend, and only once by the respondent. Mr Pinnell said at para. 9: “*When the car was bought she did not say that although it’s your car if we split up you would have to give it back to me. This was a present and she always intended it to be my car*”. He said that they split up in August/September 2018, and he offered to give the car back, but she said (para. 11) that “*I could keep it, it was mine, she bought it for me.*” He said that there were a number of text messages confirming this.
63. Mr Pinnell said that he decided to sell the car and that he told her that he was selling the car. She said “*whatever babe do what you want I don’t want the car.*” Mr Pinnell said that he agreed to sell the car for £48,000, he saw an Audi on the forecourt and said that he would take that car on a part exchange as well as the cash. The Audi was £12,000. He said that he received £36,000 in cash although he would be paid monthly at the rate of £3,000 per month. He would have to sign an invoice every time he received a payment. He said at para. 15:

*“ When I had the money I called [the respondent] and told her that I had sold the car and I had the money and asked her if she wanted any of it. She said “no I don’t want anything from you.”*

64. As regards the evidence of Mr Pinnell:
- (1) There is no new documentary evidence to support the evidence of Mr Pinnell which he has exhibited to his statement. By contrast, the statement of the Respondent of 23 December 2018 provided to the police was proximate in time to the events in question.
  - (2) The evidence of Mr Pinnell was only adduced in February 2021 (it was said that he was not available at the time of trial because he was serving a prison sentence). This was despite the fact that he had earlier been cooperating with the Appellant in respect of the recovery of the Porsche from one of its stays in a police pound. It was only adduced after the trial and in the light of the result of the trial. Such a long delay impacts on any weight that the statement might otherwise have had.
  - (3) Despite the features about the transaction which are the subject of detailed questions in the judgment, Mr Pinnell has failed to address any of these points, and in particular to provide any documentary evidence regarding the cash payments of £3,000 per month. He has not referred to the payment of £9,000 up front. He has not referred to the ten signatures on the invoice. He has been silent about how or when he received money, and, if it were the case, how he received such large sums. It is to be noted on this account, he has

apparently handed over the car without any security despite on his case being owed at least 9 instalments of £3,000 per month. In the context of a statement designed to elicit evidence to support the fact that the transaction occurred and to deal with the shortcomings found by the Judge, the statement is particularly unsatisfactory.

- (4) In December 2018, the respondent made a complaint to the police about Mr Pinnell and in the same month reported that the Porsche was stolen. It is an incredible suggestion against this background that Mr Pinnell was in touch with the Respondent and was offering to pay her the proceeds of sale or any part. This evidence appears fanciful and provides a perspective about the remainder of his evidence.

65. On the basis of the evidence before the Court at the trial, the Judge was not wrong for all of the above reasons. Further, there was no serious procedural or other irregularity in the proceedings before the Judge. As regards the first issue comprising the first three grounds, it is not clear that the Appellant is adducing the evidence for the first issue. It appears from the form of the Grounds of Appeal that it was adduced towards the second issue: see the tenth ground of appeal.
66. Does the new evidence make a difference? In my judgment, it does not make a difference. The evidence of Mr Pinnell was very far from compelling for the reasons set out above. Mr Mileham and Mr Ujka have nothing to contribute to the first issue. However the evidence may have appeared at the permission stage, on the close analysis of an oral hearing, the evidence of Mr Pinnell at least as regards the first issue is unlikely to have had an important impact on the trial.
67. The Respondent participated fully in the trial. Her evidence was tested on all or virtually all of the matters which are now raised in the new evidence insofar as concerns her interactions with Mr Pinnell and the matters on which she was able to give evidence. The Judge was clearly impressed by the Respondent's evidence. The fact gathering exercise was thorough both in terms of the ambit of the cross-examination of the Respondent and the very thorough reasoning of the Judge evaluating the relevant points.
68. I am satisfied in all the circumstances that there was nothing wrong about the approach of the Judge. Further, the new evidence does not have sufficient weight and is not sufficiently compelling such as to merit a retrial or a remission of the case for further consideration in respect of the first issue. There is also no injustice in finding that the new evidence does not merit such further consideration. It follows that the appeal must fail in respect of grounds 1 -3.
69. It therefore follows that it is unnecessary to consider grounds 4-11, and the appeal must be dismissed. Does the new evidence affect the conclusions in respect of the second issue? The new evidence says nothing about the following central matters, namely:
- (1) The fact that the Appellant was not formed until 6 November 2018, and the transaction occurred at a time when the predecessor company was still in existence.

- (2) There was no further evidence to prove that the payments actually were made, whether evidence from the payer the Appellant or from Mr Pinnell the supposed payee.
  - (3) There was no satisfactory evidence to address all of the documentary details.
  - (4) Mr Mileham's evidence was very slender, addressing a little about the transaction and the subject of the eleventh ground.
  - (5) Mr Mileham was an employee who appears to have been removed by the Appellant in April 2019.
70. These shortcomings are so serious that in my judgment the new evidence does not have a significant impact on the second issue. The primary shortcomings addressed by the Judge in respect of the second issue remain. I therefore find that there is no reason to interfere with the Judge's conclusion in respect of the second issue.

## **VIII Disposal**

71. For all these reasons, the appeal is dismissed.