Neutral Citation Number: [2017] EWHC 1096 (Admin)

Case No: CO/12739/2011

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

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24 May 2017

Before :

THE HONOURABLE MR JUSTICE SUPPERSTONE

- -

Between :

ACCIDENT EXCHANGE LIMITED	**Claimant**
- and -	
(1) NATHAN JOHN GEORGE BROOM	**Defendants**
(2) ELAINE CARLTON WALKER	
(3) ANDREW WATTS	
(4) DAVID JAMES	
(5) LAURENCE GRAY	
(6) KEEL BROOM	
(7) DUNCAN CARL SADLER	

- -
- -

John Charles Rees QC and Guy Vickers (instructed by **DLA Piper**) for the **Claimant**
Craig Barlow and Jamie Sawyer (instructed by **Norton Peskett**) for the **1st Defendant**
Alison Padfield (instructed by **Fleet Solicitors**) for the **2nd Defendant**
David Flood (instructed by **Canter, Levin & Berg**) for the **3rd Defendant**
Peter Gilmour (instructed by **Platt Halpern Solicitors, Manchester**) for the **4th Defendant**
Michael Coley (instructed by **Knights Solicitors, Oxford**) for the **5th Defendant**
David Giles (instructed by **Norton Peskett**) for the **6th Defendant**
Gemma Witherington (instructed by **Burton & Co**) for the **7th Defendant**

Hearing dates: 6 February-29 March, & 10-12 April 2017

- -

Approved Judgment

Mr Justice Supperstone :

Introduction

1. The Claimant, Accident Exchange Limited ("AE") applies to commit the Defendants to prison on the grounds that each of them engaged in conduct which interfered with the due administration of justice and they were thereby in contempt of court.

2. AE was part of Accident Exchange Group plc. It was a specialist car hire and claims management company whose main business was the hire of cars to victims of road traffic accidents. It operated a fleet of mainstream, specialist and prestige hire vehicles, and provided replacement cars on credit hire terms.

3. The Defendants, and each of them, were employed as rates surveyors by a company known as Autofocus Limited "(AF)". The First and Seventh Defendants were both rates surveyors and team leaders. The Second Defendant was a Director of AF.

4. AF provided forensic services principally to motor insurers when an issue arose in litigation in the County Court as to what daily rate of hire could be recovered by a car hire company through a claimant whose car had been damaged and who had hired a replacement car on credit hire terms (even though the claimant could have afforded to hire one on non-credit hire terms). Insurers, who in the ordinary way bore the proper cost of the hire, very often challenged the charge that was made.

5. Aikens LJ explained in *Dickinson v Tesco plc* [2013] EWCA Civ 36 (at para 4) that the House of Lords in *Dimond v Lovell* [2002] 1 AC 384 established that:

> "If a claimant hires a replacement car on credit terms when he could have afforded to hire one without credit terms, then, generally speaking, the damages recoverable for loss of use of the damaged car will be only that sum which is attributable to the basic hire rate of the replacement car, i.e. the hire rate stripped of the cost of any 'credit' elements. This 'basic hire rate' has more recently been dubbed the 'BHR'. Thus, if a claimant car driver brought proceedings to recover the cost of the repairs of the car damaged by a defendant driver and AE had provided the replacement car on credit terms, AE would, generally speaking, recover the sum awarded by the judge in respect of the basic cost of hiring the replacement car, by right of subrogation or assignment."

6. Aikens LJ continued at para 5:

> "In the nature of things, the insurer of the defendant driver would wish to demonstrate that the BHR was lower than the hire rate charged by the credit hire company, so that the sum the car hire company could recover should be only the BHR, not the actual hire rate charged. Through its research and its reports AF provided a service which was designed to assist in demonstrating that the relevant BHR was lower than the daily hire rate charged by the credit hire company."

7. The essence of the case against the Defendants is summarised at paragraphs 3-6 of the Amended Claim Form ("the Claim Form"):

> "3. Following road traffic accidents individual claimants who are thought to be without fault in such accidents are referred to the Claimant, typically by repairers of their vehicles, and the Claimant provides a suitable equivalent vehicle on credit hire. The insurers of the at-fault driver often seek to argue that where such claimants are not impecunious any part of the daily rate charged by the Claimant which is for 'additional benefits' (that is to say elements of the price which are thought to represent the cost of credit, claims management and other overheads which would not arise if the hire was being paid for up front) should be 'stripped out' of the daily rate.
>
> 4. In order to attempt to establish the amount that should be stripped out, such insurers often seek to adduce evidence from so-called rates surveyors purporting to show that there were lower daily rates on a non-credit hire basis (the Basic Hire Rate) available in the local market place at the time of hire and that the difference between those rates and the rate charged by the Claimant represents the value of the additional benefits which should be stripped out.
>
> 5. For the provision of such evidence insurers utilise the services of companies such as Autofocus who purport to specialise in the provision of rates reports based on both alleged databases of historic rates information and specific inquiries allegedly made by telephone of local car hire companies who were trading at the relevant time. Sometimes one surveyor would produce the report but claim that the telephone enquiries had been carried out by another surveyor. As many cases involving credit hire claims are heard up and down the country and, given the amounts involved, often in the busy lists of District Judges, it was normal for rates evidence to regularly be received in written form and Autofocus became a well-known and apparently trustworthy source of factual evidence concerning local spot rates whose evidence was routinely taken at face value.
>
> 6. Each of the Defendants has produced written surveys, reports and/or witness statements setting out details of alleged telephone enquiries carried out by him/her or (in some cases) another surveyor purporting to show basic hire rates (then known as 'spot rates') obtained by them as a result of those telephone enquiries. Each report or witness statement was signed with a statement that its contents were true. In some cases each of the Defendants went to court and gave evidence on oath confirming the contents of their report or statement to be true."

8. In summary the conduct complained of included:

   i) In respect of all the Defendants, verifying documents for use in various proceedings by signing them with statements of truth when they were false to their knowledge or when they did not believe them to be true;

   ii) In respect of the First, Third, Fifth and Sixth Defendants, causing documents for use in various proceedings to be signed with statements of truth when they were false to their knowledge or when they did not believe them to be true;

   iii) In respect of the First, Third, Fourth, Fifth and Seventh Defendants, giving false evidence on oath at the trial of various proceedings seeking to interfere with the course of justice.

9. Permission to bring this claim was granted by the Divisional Court on 1 February 2012. Irwin J (as he then was) (with whom Moses LJ agreed) said:

> "3. Autofocus found a niche within the market giving evidence as experts on behalf of defendant insurers seeking to reduce those claims. There have been literally thousands of such cases tried and settled. As the applicant here would say: tried and settled in very many cases, on the basis of evidence given by Autofocus witnesses, effective in reducing the claims. It is suggested the evidence was based on fraud and perjury. Again, in very short compass, the suggestion is that these named respondents, and others within Autofocus, consistently presented reports to the other side, and in those instances where matters were contested, gave oral evidence to the effect that they had checked the spot rates for comparable vehicles within the relevant locality, or at least the relevant market, demonstrating that the credit hire company's charges were inflated and the claims therefore excessive. The suggestion is that that evidence was based on lies, and there had not been the checks to establish the spot rates within the relevant markets that were claimed.
>
> 4. So far as Accident Exchange Ltd is concerned, there are said to be some 3,600 cases, and the suggestion is that overall there may be in the region of 30,000 cases concerned."

Noting that the allegations against AF involved literally thousands of cases tried and settled, Irwin J observed (at para 7) that "If these allegations were made out, as my Lord Moses LJ has said, this would be perjury on an industrial scale".

10. It is the Claimant's case that AF was involved in the systematic, endemic fabrication of evidence in which the Defendants and each of them knowingly and actively participated. The cases listed in the schedule to the claim "represent only an indicative sample of the cases in which the Defendants have committed contempt of court and/or perjured themselves" (Amended Claim Form ("the Claim Form"), para 10).

11. In his closing submissions (at para 24) Mr John Rees QC, on behalf of the Claimant, submits that:

> "The main perpetrators of this very serious perversion of the course of justice were Colin McLean, Suzy Forrest, Elaine Walker (D2) and Paul Wilcox, Chairman, Managing Director, and directors of Autofocus respectively, together with Stuart McLean, training officer and brother of Colin McLean, although the team leaders and rates surveyors were willing participants therein."

12. Mr Stephen Evans, chief executive of Automotive and Insurance Solutions Group plc (formerly Accident Exchange Group plc) and Director of its wholly owned subsidiary AE ("Mr Evans"), in his second affidavit dated 16 September 2016 says (at para 5):

> "The dishonest evidence [of AF] has … resulted in thousands of cases across the entirety of the United Kingdom being contaminated and countless first instance tribunals being routinely deceived as to the honesty of the evidence deployed. Since September 2009 the Autofocus fraud has resulted in a large volume of appellate litigation that was necessary in order to expose the deceit and to resolve the number of cases determined on a false premise at first instance."

13. The dishonest actions of AF and the Defendants had serious implications not only for the value of the shares of AE owned both by individuals and institutional investors such as pension companies which led to the loss of very substantial sums, but also for 300 employees of AE who were made redundant.

14. At this hearing the parties have been represented as follows: Mr John Rees QC and Mr Guy Vickers for the Claimant; Mr Craig Barlow and Mr Jamie Sawyer for the First Defendant; Ms Alison Padfield for the Second Defendant; Mr David Flood for the Third Defendant; Mr Peter Gilmour for the Fourth Defendant; Mr Michael Coley for the Fifth Defendant; Mr David Giles for the Sixth Defendant and Miss Gemma Witherington for the Seventh Defendant. I am indebted to Counsel for their assistance in the way they have conducted this case throughout this lengthy trial, and for their very helpful opening and closing submissions.

The factual background

15. In his first witness statement dated 6 January 2016 Mr Evans describes how in 2008, but more throughout the course of 2009, it became increasingly evident to AE that there was reason to doubt the accuracy of the rates evidence that was being produced by AF. The disparity between the sums the courts were awarding claimants based on AF's evidence and the hire charges incurred was becoming cumulatively extremely significant. In the latter half of 2009 evidence began to come to light that AF's reports were not only inaccurate, but contained information which inquiries suggested was simply made up. Mr Evans says, by way of example, car hire companies included in the surveys produced by AF were being quoted as having (1) given a rate that did not exist at the location referred to, (2) denied ever having employed an individual at the branch alleged to have given the quotation, (3) denied having had the

make and model of car for which they had allegedly quoted, and (4) denied the terms as to excess levels as stated in the reports produced by AF. This led Mr Evans to commence an investigation into a number of cases in which AF had produced reports and given evidence. As a result of those investigations AE identified 26 cases in which evidence had been obtained which suggested the evidence of AF was false, a further 20 cases in respect of which it wished to undertake further investigation as to the validity of the evidence, and an additional 20 cases where the award for hire charges had been reduced on the basis of AF's evidence and which were open to potential appeal.

16. By the end of September 2009 AE was aware of at least 2,000 claims where the evidence of AF had been relied upon in proceedings to assert that AE's credit hire charges should be reduced on the basis that a cheaper alternative could be obtained in the relevant locality. At that time Mr Evans made a provisional assessment that the direct loss to AE (and its individual shareholders) arising as a result of the use of AF's rate reports in those cases was approximately £20m. On or about 21 September 2009 AE issued an application against AF for pre-action disclosure of certain documents.

17. On 22 February 2010 Helen Hart, who was employed by AF as a rates surveyor between 1 June 2008 and September 2009, gave an undertaking to AE, which was subsequently approved by His Honour Judge Waine, to co-operate with AE and provide a witness statement on condition that AE discontinued contempt proceedings against her.

18. Following AE's investigations there were a number of individual rates cases appealed on the basis of the information provided by AF. In March 2010 the case of *Glossop v Salvesen* was adjourned and later compromised. Helen Whysall, the AF surveyor responsible for producing the rates report in that case, pleaded guilty to contempt of court by submitting reports for court proceedings in *Glossop v Salvesen* and other cases that were false to her knowledge. She was sentenced by HHJ Waine to 28 days' imprisonment, suspended for a year.

19. Miss Hart provided AE with a statement dated 13 May 2010, which has been verified by affidavit. She gave evidence of the working practices and culture within AF. She said that she became aware that her reports were being amended through the checking procedure, that because of the difficulty in sourcing available cars information that had been gathered previously to complete reports was re-used, and that surveyors were instructed to report that the local branch was providing the vehicle so local branch details were used as the hirer in the report although the vehicle was actually coming from elsewhere.

20. In May 2011 the appeal in the case of *Spencer v Hutton* was heard and Royce J decided in the appellant's favour on the basis that it was likely that with the benefit of the new evidence, in particular relating to Ms Whysall, a judge would conclude that the evidence of Duncan Sadler (the Seventh Defendant) was, at best, unreliable.

21. AE succeeded in its application for disclosure of documents in the High Court and at the subsequent appeal in the Court of Appeal. However no documents were provided by AF, who entered into administration on 29 July 2010. It was subsequently put into a creditors' voluntary liquidation. AE became a creditor. In 2011 Mr Evans requested that AF's liquidators give AE access to AF's electronic database of its

business records. In June and July 2011 he obtained the liquidator's permission to have access to the external hard drive containing some of AF's business records, which were encrypted. Mr Evans and his team at AE analysed this data and the results are set out in his witness statement dated 24 October 2011. That statement was produced for the purpose of applications to the Court of Appeal in four selected cases (referred to as *Purushothaman v Malik and others* [2011] EWCA Civ 1734) in which AF had given evidence in the county courts. The applications were for an extension of time in which to appeal, permission to appeal and to adduce "fresh evidence" on the appeal.

22. In November 2011 Price Waterhouse Coopers on behalf of AE attended the liquidators of AF and obtained a copy of the external hard drive onto which AF's liquidator had copied the computerised records of AF. It is referred to in the proceedings as the "Mirror Disk". Its contents are described in the claim form as follows:

> "9. The Mirror Disk contains the telephone records and other documentation relating to Autofocus which not only establishes the wide-ranging nature of the dishonesty and fraud within Autofocus but also, specifically, supports the allegations that these defendants made multiple reports and statements such as those described at paragraph 6 above [essentially, asserting falsehoods], including in the cases set out in the Schedule attached hereto, which they signed with a statement of truth."

A consent order was subsequently made by HHJ Mackie QC on 8 November 2011 that AE could use this material in legal proceedings. The disk contained 884,000 documents, over two million pages.

23. On 1 December 2011 the Court of Appeal granted AE permission to appeal in *Purushothaman v Malik* on the basis that there was a reasonable prospect of success in demonstrating that there were fatal flaws in the evidence of AF and therefore that the basis upon which the judges reached their conclusions on the BHR to be applied could not be sustained (per Aikens LJ at para 23). Subsequently those cases were settled before the substantive appeals came to a hearing.

24. In *Purushothaman* Aikens LJ (at para 24) indicated that the Court of Appeal was prepared to manage further appeals arising from similar allegations in the County Court case, which it did. This led to four further test cases coming before the Court of Appeal in December 2012 (*Dickinson v Tesco plc*). In giving judgment on 4 February 2013 Aikens LJ said at para 17:

> "An analysis of the AF business records on the Mirror Disk demonstrates (and this is not in dispute) that: (1) historic base hire rate data was fabricated by 'rates surveyors' of AF; (2) these fabrications affected the IRIS [Instant Rates Information Service] database as well as the SCRIP [Small Claims Rate Information Pack] and DRS [Detailed Rates Survey] reports produced by AF; (3) witness evidence by AF was routinely altered by other employees."

Aikens LJ noted at para 64 that "the general dishonesty of the AF system is not challenged". In each case the court decided that the appeals must be allowed to the extent that the decision of the judge on the hire rate to be recovered by the claimant must be set aside (para 107).

25. Following the decision in *Dickinson* all remaining insurers negotiated settlements with AE in relation to all outstanding appeals. However the settlement, Mr Evans explained, did not represent the full value that all the cases would have had if dishonest AF evidence had not been deployed and ignored the consequential losses which flowed from the dishonesty of AF. As such Mr Evans states that AE has still suffered a considerable loss as a result of the activities of AF. AE's parent company de-listed from the London stock exchange in February 2011. Mr Evans had held 45% equity in the parent company.

26. In addition to granting permission on 1 February 2012 the Divisional Court directed that the Attorney General be served with a copy of the application bundle and, within three months, indicate whether he also wished to pursue committal applications or take steps in the public interest. The Attorney General referred the matter to the City of London police. On 3 July 2012 Stanley Burnton J granted AE's application to stay the proceedings pending the police investigation.

27. On 26 March 2012 Mr Jason Lee of PCJ Solicitors Ltd wrote on the Claimant's behalf to the CPS stating:

> "It would be my client's intention to bring further contempt proceedings against those in the above list [which included Colin McLean, Paul Wilcox and Stuart McLean] not already proceeded against but for your involvement and my instructions are to refrain from such further proceedings until you have an opportunity to consider the position."

28. In August 2014, for reasons not relevant for present purposes, the City of London police decided not to commence a criminal prosecution. Following that decision this case was listed for mention and the stay was lifted. In May 2015 the First, Second, Fourth and Sixth Defendants issued applications to strike out the proceedings. These applications were heard on 21 July 2015 by the Divisional Court (Laws LJ and Nicola Davies J), judgment being given on 30 July 2015. Laws LJ (with whom Nicola Davies J agreed) concluded that this is not remotely a case in which the contempt claim should be struck out for insufficiency of evidence (para 16). It seemed to Laws LJ that "there is on the face of it a substantial case (I pass no judgment on its ultimate merits) to the effect that the course of justice has been comprehensively perverted up and down the country in the county courts; and that these Respondents have played their part" (para 23).

29. On 30 July 2015 the Claimant commenced proceedings in the Commercial Court against Colin McLean, Suzy Forrest and other defendants including three firms of solicitors for a sum in excess of £126m. The claim is summarised at paragraph 26 of the Particulars of Claim dated 26 October 2015:

> "On dates between 2005 and July 2010 ('the alleged conspiracy period'), the AF defendants [Mr McLean and Ms Forrest]

> conspired and/or combined with all or any or more of the Morgan Cole Defendants, the Keoghs Defendants, and the Lyons Davidson Defendants with the sole or predominant intention to injure or cause financial loss to those businesses operating in the credit-car hire industry including AE [AE] without justification and/or reached an agreement or understanding to embark upon concerted action with an intention to use unlawful means to injure or cause financial loss to members of that industry including AE, in both cases by creating producing and deploying false and misleading expert and/or witness evidence against AE (and other members of that industry) at trial and/or for the purposes of settlement negotiations in order to reduce systematically the amounts otherwise payable to AE by insurers, including insurer clients of the Morgan Cole Defendants, the Keoghs Defendants, and the Lyons Davidson Defendants and as a consequence loss and damage was in fact caused to AE."

30. On 16 October 2015 the Divisional Court (Davis LJ and Ouseley J), at a case management hearing, gave directions for the hearing of this claim. Davis LJ made it clear that the time limits given had to be complied with and that he hoped to get this case on for trial as quickly as possible, sometime in the October term 2016.

31. A further case management hearing took place on 4 May 2016 when Davis LJ again emphasised the need for the case to come on speedily. The court directed that a list of issues be agreed. This was done.

32. A pre-trial review took place before Cranston J on 12 October 2016 when he ordered that this case be heard by a single judge.

The Law

33. CPR 32.14(1) provides as follows:

> "Proceedings for contempt of court may be brought against a person if he makes, or causes to be made, a false statement in a document verified in a statement of truth without an honest belief in its truth."

34. In order to succeed in such an application, an applicant has the burden of proving contempt to the criminal standard (*JSC BTA Bank v Solodchenko and others* [2012] EWHC 1891 (Ch), per Vos J at para 159). The applicant must prove beyond reasonable doubt, in respect of each statement:

    i) the falsity of the statement in question;

    ii) that the statement has, or if persisted in would be likely to have, interfered with the course of justice in some material respects; and

iii) that at the time it was made, the maker of the statement had no honest belief in the truth of the statement and knew of its likelihood to interfere with the course of justice.

(See *Walton v Kirk* [2009] EWHC 703 (QB), per Coulson J at paras 9-11).

35. In *Berry Piling Systems Ltd v Sheer Projects Ltd* [2013] EWHC 347 (TCC) Aikenhead J (para 28) on balance concluded that it can be contempt of court for a witness to make a statement, supported by a statement of truth, recklessly, that is, saying something which it can be proved beyond reasonable doubt that he or she consciously has no idea whether it is right or wrong. The judge considered this is supported by the wording of CPR 32.14 and by the judgment of Sir Richard Scott VC in *Malgar Ltd v R.E. Leach (Engineering) Ltd* [1999] WL 1048 312 when he said that CPR 32.14 did not introduce a new category of contempt. However carelessness in the making of statements will not be sufficient to establish that a party deliberately or recklessly made a misstatement (para 30(c)).

36. In *Malgar* Sir Richard Scott VC said (at page 2):

> "I would think that it must in every case be shown that the individual knew that what he was saying was false and this false statement was likely to interfere with the course of justice."

37. Aikenhead J observed in *Berry Piling Systems* (at para 31):

> "It goes almost without saying after over 15 years of their deployment that statements of truth incorporated in witness statements or in pleadings are and must be regarded as important. People who sign or authorise the signing of such statements of truth must appreciate that there is a real possibility that the Court might act on the basis that they are true and that the opposing party might well have regard to them also. People who signed them knowing that the contents of the attested document are untrue must also appreciate that they may face contempt proceedings and, possibly, independent criminal proceedings."

38. Further, a person who makes a statement under oath in judicial proceedings about a material matter, which he knows to be false or does not believe to be true, is in contempt of court.

Different types of statements in this case

39. There are three types of statement in this case: two witness statements, which I will refer to as (1) the "witness statement", and (2) the slightly modified, earlier version ("the earlier witness statement"), and (3) the expert report. The "witness statement" and the "earlier witness statement" are often referred to as a "lay report". Mr Evans said that it depended essentially on the instructing solicitor as to whether an expert or a lay report was required. For larger claims they normally required an expert report or experienced persons making the statements.

(1) The witness statement

40. An example of the witness statement is that of Mr James, the Fourth Defendant, in the case of *Morgan-Graham v De Ville* dated 2 July 2009.

41. The relevant parts of the witness statement read as follows:

> "1. I, David Thomas James of Autofocus Ltd… will say as follows:
>
> 2. I am a Rates Surveyor for Autofocus Ltd…
>
> …
>
> 4. I was commissioned by Morgan Cole Solicitors to conduct a survey to ascertain the rate charged for hire of a Land Rover Freelander 2.0 or equivalent vehicle in the Doveridge area. I was told that this case concerns a person or company who hired a Land Rover Discovery 2.7 HSE automatic for a period of 53 days…
>
> 5. The agreement and statement of hire charges show that hire commenced on 03 April 2007, yet my instructions indicate that the accident occurred some days later on 07 April 2007.
>
> 6. The vehicle hired by Accident Exchange is a considerably higher value vehicle than Mrs Morgan-Graham's own car. I have attached web pages (DTJ8) from Parkers' Valuation …
>
> 7. To conduct the survey, a checklist/response sheet was prepared (DTJ1) to replicate the conditions of the hire in question. The essential characteristics of the checklist were:
>
> (a) hire of a Land Rover Freelander 2.0 or equivalent vehicle
>
> (b) one-off hire to a private individual in the Doveridge area
>
> (c) hire for a period that was unknown in advance but, which transpired to be 53 days
>
> (d) vehicle available for hire at the requested time and date
>
> (e) inclusion of any relevant additional charges
>
> 8. I conducted the spot hire survey on 02 July 2009. I telephoned ten companies in the order listed in Thomsonlocal.com for the Doveridge area (DTJ4.1), or referred by companies on that list, and asked each one to quote for hire of a Land Rover Freelander 2.0, or similar vehicle to start the following day at 10am…

> 9. Four of the companies telephoned (DTJ 4.2) were able to provide an appropriate car for the date and time required. … I told each company that the hire period was uncertain, but would probably be at least a week. I also asked what the charges would be if the vehicle was retained for a minimum of four weeks. I asked each company to give details of any additional charges including delivery and collection to Doveridge and to include VAT. The completed checklist/response sheets from this exercise are attached (DTJ5).
>
> 10. I established that all the surveyed companies were operating in April 2007 and that they all had the model quoted, or a similar vehicle, on fleet since the original hire, but unfortunately, none of them were available to advise me specifically of rates or availability at that time, so it was not possible to establish whether any of them would have had a similar car available on the specific day that Mrs Morgan-Graham hired from Accident Exchange.
>
> 11. Each company confirmed that the price quoted for a week was for a minimum period of a week. If the car was kept for longer than a week, the daily rate would be the same as the weekly quotation but further reductions were available for longer periods of hire, varying between two and four weeks. Each company also confirmed that the price quoted for four weeks was for a minimum period of four weeks, and if the car was kept for longer than that, the daily rate would be the same as the four week quotation. Specific reference was made to the fact that the hire period was unknown; each company confirmed that the relevant rate for the actual period of hire when the car was returned would apply.
>
> 12. The information from the response sheets was recorded in an Excel computer spreadsheet. Any relevant notes were also recorded on the spreadsheet for ease of reference. The spreadsheet was programmed to calculate the total charges for each company for a 53 day hire before and after delivery and collection charges. I attach the completed spreadsheet (DTJ2) showing all the rates surveyed compared to the Accident Exchange charges. This information is also graphically presented (DTJ3).
>
> …
>
> I BELIEVE THAT THE FACTS STATED IN THIS WITNESS STATEMENT ARE TRUE."

42. The witness statement is signed by Mr James and dated 2 July 2009.

43. DTJ4.2 lists the four companies (Sixt, SHB, Thrifty, and Enterprise) telephoned at the stated locations (branches), with the telephone numbers given.

44. DTJ5 contains the completed checklist response sheets for this exercise. DTJ5.1 gives the "Replicated Hire Details". The name of the company is Sixt; the location is Burton-on-Trent with a telephone number and postcode given. "Time at Location" is stated to be "More than three years". The "Operator Name" is stated to be "Naomi". Referred by "Self Drive, Classics, Rugely" (with telephone number given). In relation to the Sixt quotation it states in the "Notes/Comments" section: "Vehicle sourced from Manchester Airport".

45. Similar Car Hire Company information is given in DTJ5.2 for SHB; DTJ5.3 for Thrifty; and DTJ5.4 for Enterprise (where there was no referral).

46. The Replicated Hire Details in relation to the question "Prices at 03 April 2007" state in respect of these four companies as follows: "Don't know" (Sixt); "Sorry" (SHB); "Can't help" (Thrifty); and "Don't know" (Enterprise). The answer in each case to the question "Same vehicle or similar on fleet at date of original hire?" is "y [yes]".

47. DTJ2 is the spreadsheet which compares the AE rates with the rates allegedly given by the four companies. Under the heading "Notes" there are five bullet points.

(2) The earlier version of the witness statement

48. Before March 2009 the witness statement was in a slightly different form. An example of this earlier version is the witness statement of Mr James in the case of *Ghaffori v McKinnon* dated 11 September 2008.

49. Paragraph 9 is the material paragraph (which was subsequently replaced by para 10, see para 41 above). It reads:

> "It is a requirement of the Road Traffic Act 1988, c.52 s.172 for self drive hire companies to keep records of the whereabouts of fleet vehicles for potential police enquiries, but this information was not accessible to the staff responding to current availability and price enquiries. It was not possible, therefore, to establish whether any of the companies would have had a similar car available on the specific day that Mr Ghaffori hired from Accident Exchange, but it was established that all the surveyed companies were operating in August 2007. It was also established that all the companies had the model quoted, or a similar vehicle, on fleet since before the original hire."

50. In Appendix DTJ5 where the replicated hire details are given for the four companies telephoned who gave quotations, in respect of price as at 3 August 2007 the responses recorded are "Don't know" (Hertz); "Sorry" (Prestige Car Hire); "Can't help" (Europcar); and "Don't know" (Avis). In each case the answer to the question "Price as at 03 August 2007" is "y [yes]".

(3) The expert report

51. An example of an expert report is that of Mr Sadler, in the case of *Pasab Ltd v Kurangwa*. The format of this report is very different from that of a lay report, as is clear from the parts of the report set out below:

> "**Introduction**
>
> 1. My full name is Duncan Carl Sadler. I am a Rates Surveyor for Autofocus Ltd…
>
> 2. I have been employed at senior executive level in the vehicle hire industry since 1996… My CV is attached at Appendix A1.
>
> **Declaration**
>
> 3. I, Duncan Carl Sadler, declare that:
>
> (i) I understand that in providing this report, I am providing it to the court and that my duty to the court overrides any obligation to the party who has engaged me. I believe that I have complied with my duty.
>
> (ii) The words used in the report are my own and I have not, without forming an independent view, included or excluded anything that that has been suggested to me by others. I have indicated the source of all information on which I have relied.
>
> (iii) I confirm that I have not entered into any arrangement where the amount or payment of my fees is in any way dependent upon the outcome of the case.
>
> **Terms of Reference**
>
> 4. I was instructed by Morgan Cole Solicitors in relation to the case of Pasab Ltd v Kurangwa. My instructions were to provide a report of spot hire market rates for the hire of a Seat Leon 1.9 or equivalent vehicle in the Wednesbury area for a period of 61 days.
>
> …
>
> **Methodology**
>
> …
>
> 7. My colleague, Laurie Gray, conducted the spot hire survey on 23 April 2009. He telephoned eight companies, detailed at Appendix A4.1, all of which were listed in Yell.com, or referred by companies listed in Yell.com, and asked each one to quote for hire of a Seat Leon 1.9 or similar vehicle to start on 24 April 2009 at 1:00pm. …

> **Results**
>
> 8. Five of the companies telephoned, detailed at Appendix A4.2, were able to provide an appropriate car for the date and time required. All the companies surveyed were trading in December 2007, but were unable to advise rates available at that time for this type of enquiry. My colleague told each company that the hire period was uncertain, but would probably be at least seven days. He also asked what the charges would be if the vehicle was retained for a minimum of 28 days. He asked each company to quote for delivery of the car to Wednesbury and for collection at the end of the hire period. He asked each company to give details of additional charges and VAT. The completed checklist/response sheets from this exercise are attached at Appendix A5.
>
> …
>
> 11. The information from the response sheets was recorded in an Excel computer spreadsheet. Any relevant notes were also recorded on the spreadsheet for ease of reference…
>
> …
>
> I confirm that in so far as the facts stated in my report are within my own knowledge I have made clear which they are and I believe them to be true, and that the opinions I have expressed represent my true and complete professional opinion."

52. The report purports to be signed by Mr Sadler and is dated 13 May 2009.

AF's written procedures and documents

(1) CSR Reference Manual

53. In about November/December 2008 the Second Defendant produced the "CSR Reference Manual" ("the CSR Manual") which replaced an earlier guide ("Rates Surveying Step by step guide") which appears to have been written by Stuart McLean.

54. The CSR Manual includes the following:

> "**Yell/Thomsonlocal/<u>Google</u>** (page 5)
>
> …
>
> Yell.com/Thomsonlocal.com should be the first port of call for the vast majority of reports. Clark and Ardington stipulates that a claimant is entitled to (the highest) spot rate from a high street company in his locality. Yell and Thomsonlocal are electronic versions of the paper books which everyone is familiar with. A Yell/Thomsonlocal page is much stronger

evidence as it shows we have attempted to obtain rates from the claimant's locality.

Google

If a Google search does have to be used, the search criteria should be relevant to the CSR. Do not simply use 'Prestige Car Hire' for Google searches as this will bring up the same companies time and time again. A CSR is a case specific report, so if you are specifically looking for a BMW or an Audi make that your search criteria e.g. 'BMW Rental'. If you are looking for a sports car, again, incorporate that into your search criteria, e.g. 'sports car rental'. If you can, incorporate the location into the search criteria please do so e.g. 'Mercedes rental + Ilford', but this may not be possible as when you add a location Google can result in a multitude of unrelated results.

However, for very high prestige vehicles (P10+, SP10+ e.g. Bentley, Porsche 911, Aston Martin, Ferrari etc) I don't think anyone would expect a high street rental company to stock that kind of car. Therefore a Google page can be used in isolation.

Be aware, this is something you could be cross-examined about. The less specific you make your search criteria, the more difficult the cross examination is likely to be e.g. 'why didn't you search for companies in Birmingham? Your statement states that one of the characteristics on your checklist is a "one-off hire to a private individual in the Birmingham area", yet that's not what you've searched for'.

Search criteria

Search on the claimant's postcode first. If Yell/Thomsonlocal doesn't recognise the postcode search on the town/city.

Don't include Yell.com results where there are no results for the town/city and the search has been widened to county level. Only include searches that have been widened, if the widened area is sensible…

…

Visited links (page 6)

…Whilst it may be perfectly legitimate to have previously visited a site (during a previous survey) to get a telephone number, claimant counsel may suggest that because we were aware the surveyed companies had suitable vehicles, we manipulated the search criteria in order that they would appear in the search results. Showing links as having been previously

visited potentially invites unwanted questioning, and should be avoided.

Appendices (pages 7)

…

Requirements page (page 8)

Record the exact time for the original hire. Use the nearest half hour for the replicated hire…

…

Vehicle descriptions (page 9)

… The Requirements page is not issued as part of the report and the fields on it are simply a feed to the appendix 5 pages.

…

Additional notes (pages 11-12)

Please specify here any relevant notes e.g. things the checker should be aware of, why particular search criteria have been used, reminders for court etc. If more space is required, use the red bordered box at the bottom of the Requirements page.

…

You should record companies that have been ignored and give a brief indication of why they have been ignored. It is useful for (a) the person checking/issuing the report and (b) the report author several months later if/when the case goes to a hearing.

Appendix 3 (page 14)

This is a graphical representation of the data at appendix 2; anomalies may be more apparent here than on appendix 2.

Appendix 4.2 (page 14)

Ensure the surveyed companies are listed in the same order as they appear in the appendix 5 pages.

Referrals (page 15)

Where a referral has been specified, include the location in the Referred By Call…

Where a company refers you to their prestige department (e.g. Avis, Hertz, National etc) do not show this as a referral. In the

> comments field, state that delivery will be from London (or wherever it happens to be).
>
> Appendix 8 – credit hire rates (page 21-2)
>
> No saving (page 24)
>
> If any of the comparative [credit hire rates] are [greater than or equal to] 90% of the CHO charges… do not include these [credit hire rates] in the report…
>
> Exhibits (pages 28-29)
>
> … The following explains the differences between expert and lay reports.
>
> **Court attendance** (page 35)
>
> What to take with you
>
> Report
>
> You should take the following items with you…
>
> - The report, printed from the issued pdf as this is what was issued to the solicitor and what will be in the trial bundle
> - …
> - A copy of the Requirements page, but do not show it to counsel.
>
> …
>
> Pre-hearing discussions with counsel
>
> …
>
> Always be careful about what you say to counsel. …"

(2) Document for Communications meeting on 28 September 2007

55. On 27 September (and again on 1 October) 2007 Colin McLean sent a document entitled "**Preparation for Court Hearings**" to those attending a meeting on 28 September 2007. Those to whom it was sent included the First, Second, Fourth and Seventh Defendants. It includes the following:

> "2. The best preparation for court is to ensure that the CSR has been prepared correctly in the first place and imagine that you will have to face cross-examination personally for every CSR prepared. **If there are any flaws in the CSR, you are more likely to face difficult cross examination** …

4. Put yourself in the position of the claimant when preparing the CSR…

6. Always check the completed CSR (particularly App2) and consider the following:

- To comply with current case law, the relevant rate (as long as the claimant is not impecunious) is the 'spot rate for available vehicles within the locality of the claimant'. Clearly, there will be some licence to interpret 'locality' for non-standard vehicles, but a Google search should only be used as a last resort.

- Referrals from local companies are preferable and often necessary for prestige vehicles.

- Avoid one surveyed rate much higher or much lower than the others (it gives the Claimant's Counsel the opportunity to point out the wide range of rates in the market and helps to justify the CHO [credit hire operator] rate charged).

- Avoid too many calls to achieve four or five rates (anything over nine calls will be attacked to try to show the difficulty of availability).

7. Our evidence is high quality and very damaging to the Claimant's claim (if they could challenge it by providing an alternative survey, they would do it!). The only strategy left open to CHOs is to attack our credibility by suggesting that we have not carried out the job properly in some way, such as:

- Survey at a later time to the original is not valid because everyone knows that hire rates are volatile and vary considerably (**refer to Apps 6 and 7 to show that rate movement since original hire is immaterial**).

- Autofocus could not prove that vehicles were available at original date (**I had absolutely no difficulty when I called and I have never encountered any problem**).

8. Some barristers will ask how long it took to complete the survey (the ulterior motive is that they say a relatively long time like two hours or more, the next point will be that the claimant could not be expected to go through such an onerous exercise). (**Respond by saying that after preparation of the document to replicate the same conditions facing the claimant, it usually takes around twenty minutes to call the hire companies and record the information**) (32/10285)."

(3) Documents relating to preparation for court hearings

56. A series of documents which appear to be transcripts of mock trials where various AF directors, team leaders and rates surveyors assume the role of judge, counsel and claimant were found on the Mirror Disk in the folder of Stuart McLean who was responsible for training rates surveyors. The relevant parts of the documents are in similar form. A typical example is a mock trial in the case of *Hayles* (B810128) where Mr Sadler (the Seventh Defendant) is the judge and Ms Walker (the Second Defendant) is counsel for the claimant Mr Hayles. Mr Stuart McLean appears for the defendant. Mr Nathan George-Broom (the First Defendant) is called as a witness from AF. He is cross-examined by Ms Walker (ECW). The cross-examination includes the following:

> "**ECW** It's in your interest to obtain the lowest rates for the hire of a vehicle because that's what insurance companies require, isn't it?
>
> **Nathan** No, if the report was for a claimant or a defendant, it would be exactly the same.
>
> **ECW** How do you decide which companies to call to obtain rates?
>
> **Nathan** I look at Thomsonlocal and the search criteria I use is Car Hire for the claimant's locality. I then enter the claimant's postcode. This shows the companies nearest to the claimant's home. I then call these companies in strict order.
>
> **ECW** You called ten companies. How long does it take to make the phone calls?
>
> **Nathan** About 3 or 4 mins per phone call.
>
> …
>
> **EWC** Do you make any notes?
>
> **Nathan** No. I type the rate straight onto the spreadsheet as shown on the appendices 5.1 to 5.5."

57. After the evidence and submissions from counsel, Mr Sadler delivered a judgment.

(4) DRS reports

58. In September 2009, following the undermining of CSR reports, AF introduced DRS reports. A document entitled "New checking of DRS" was issued, which includes the following:

> "First check to establish if a CSR was issued and this DRS is to replace it.

> If so, on your pad write down the companies used on the CSR, the cars surveyed and the prices.
>
> Open the DRS on the C Summary and check that the DRS has been done on roughly the same companies. You should really get at least two of the originals and if possible all four. It is not always possible because the originals may not have a website or may not have the same cars now.
>
> Check that the DRS is roughly the same cost as the CSR. You need to bear in mind that if the CSR has been sent to the solicitor he may have made a Part 36 offer, based on the top spot rate we obtained. He will not be happy with our DRS if it's a big hike from the CSR.
>
> If there is a significant difference to the original top spot rate, it will need to be resurveyed. Be careful not to put anything incriminating in writing. A phone call will be the best means of communication."

The evidence of Mr Evans on behalf of the Claimant and of the Defendants

59. I find Mr Evans to be a thoroughly reliable and truthful witness. The hard work and perseverance of Mr Evans has fully exposed the dishonest working practices of AF and each of these Defendants. His mastery of the voluminous paperwork in this case is truly remarkable. Whenever there is a conflict between the evidence of Mr Evans and that of any of the Defendants I accept the evidence of Mr Evans.

The cases against individual Defendants

The First Defendant (Nathan George-Broom)

60. The Schedule to the Claim Form in relation to the First Defendant alleges that he:

> "Did verify documents for use in various proceedings by signing them, or causing them to be signed, with statements of truth when they were false to his knowledge or he did not believe them to be true in the following cases:
>
> 1. *Stewart v Rees* (Newcastle County Court 7KN00063)
>
> 2. *Archer v Skanska* (Sheffield County Court 9SE01648)
>
> 3. *Joyner v Bramley* (Swansea County Court 8SA00968) (calls allegedly made by the First Defendant but Report signed by the Second Defendant)
>
> And did give false evidence on oath at trial seeking to interfere with the course of justice in
>
> 4. *Archer v Skanska* (Sheffield County Court 9SE01648) on 28 August 2009."

61. The First Defendant denied these allegations. The position he adopted at the outset of the hearing was that AE would have to prove them to the criminal standard.

62. During the course of the hearing, after the conclusion of the evidence of Mr Evans, the First Defendant admitted both of the allegations in relation to the case of *Archer v Skanska* (Allegations 2 and 4). Mr Rees stated that in these circumstances the Claimant would not proceed with the allegations in the two other cases of *Stewart v Rees* and *Joyner v Bramley* (Allegations 1 and 3). I grant the Claimant leave to discontinue with the application in relation to those two allegations (see PD 2163, White Book, Vol.1 at para 16.3).

63. In the case of *Archer v Skanska* the First Defendant produced a witness statement, signed with a statement of truth, dated 28 April 2009. He said (at paras 6 & 7) that he had conducted a spot hire survey on that day and that, of the seven companies he telephoned, four (Guy Salmon (Leeds), Sixt (Manchester), Prestige (Hemel Hempstead), and Avis (Sheffield)) were able to provide an appropriate car for the date and time required.

64. As for the call he allegedly made to the Manchester branch of Sixt he stated in NJGB5.2 that he spoke to "Stefan" and that a Mercedes SLK350 Auto convertible was available at a rate lower than AE's credit hire rate. A statement dated 3 September 2009 was obtained from Tonia Drysdale, who had been rental manager at the Manchester branch Sixt for three years. She stated that no-one by the name of "Stefan" had worked at the Manchester branch during that time, that the rates allegedly quoted were incorrect and the vehicle was not available as alleged.

65. As for the call he stated he made to "Tim" at Avis, Sheffield, he stated in NJGB5.4 that a Mercedes SLK 350 Auto Convertible was available at a rate lower than AE's credit hire rate. A statement dated 3 September 2009 was obtained from Stuart Davies who had been the manager at the Sheffield branch of Avis Rent-a-Car since 1 January 2009. He stated that no-one by the name of "Tim" had worked at the Sheffield branch during his time as manager, and that the Sheffield branch did not stock any convertible vehicles and no Mercedes SLK350. He said that the telephone number allegedly called had nothing to do with Avis Rent-a-Car.

66. Subsequently an analysis of the itemised telephone records obtained from the Mirror Disk established that no telephone calls were made on 28 April 2009 to any of the seven numbers the First Defendant allegedly called on that date from any of the designated numbers AF provided to him.

67. In reply to evidence in rebuttal, the First Defendant provided a witness statement, signed with a statement of truth, dated 8 August 2009. He stated that the four companies telephoned by him confirmed both price and availability. He said that he personally had conducted the telephone survey. In fact it is clear from an e-mail dated 12 August 2009 from Helen Whysall that she drafted the statement of 8 August 2009 in the First Defendant's name.

68. At the hearing of the *Archer v Skanska* case on 24 August 2009 the First Defendant presented the witness statement dated 8 August 2009 as his own when he knew it had not been written by him. The trial judge (Mr Recorder Cameron) accepted that "Mr George-Broom gave careful and precise evidence about the researches which he

carried out on behalf of the Defendant". The judge accordingly reduced the amount awarded in respect of hire from £32,963.61 to £11,358.20. Subsequently an appeal was allowed by the Court of Appeal and a re-trial was ordered. At the re-hearing the rates evidence of the First Defendant was abandoned and permission was given by His Honour Judge Moore to AE to commit the First Defendant to prison. AE decided the appropriate forum for a committal to be the Divisional Court.

69. In his closing submissions Mr Barlow, on behalf of the First Defendant, made clear that the First Defendant does not suggest that Mr Evans was either untruthful or unreliable as a witness. On the contrary, he accepts that "Mr Evans was a meticulous, careful, scrupulously measured and fair-minded witness upon whose evidence the court can safely rely".

70. Save for making the above admissions, the First Defendant has throughout maintained his right to silence.

71. The First Defendant commenced employment with AF on 14 March 2005. He resigned on 17 September 2009. He was employed as a team leader and rates surveyor. The Third, Fourth and Sixth Defendants were in his team. It is the Claimant's case that he played a major role in (1) changing in significant ways witness statements of rates surveyors in his team (and others) and expert reports based upon their spot hire surveys, and (2) allowing witness statements of rates surveyors in his team (and others), and expert reports based upon their spot hire surveys, to be changed before being issued for service upon the court and the claimant in the proceedings.

72. The First Defendant accepts that he will be sentenced on the basis of the factual matrix as the court finds it.

The Second Defendant (Elaine Walker)

73. The Schedule to the Claim Form alleges that the Second Defendant

> "Did verify documents for use in various proceedings by signing them with statements of truth when they were false to her knowledge or she did not believe them to be true in the following cases:
>
> 1. *Joyner v Bramley* (Swansea County Court 8SA00968) (calls allegedly made by the First Defendant but Report signed by the Second Defendant);
>
> 2. *Thomson v Lansdowne* (Horsham County Court 8HM01306)."

Shortly before the commencement of the trial the Second Defendant admitted these allegations. I ruled that she will be sentenced in due course on the basis of the factual matrix as the court finds it to be.

74. In the case of *Joyner v Bramley* the Second Defendant provided an expert report, signed with a statement of truth, dated 9 June 2008. In that report she stated (at paras

8 & 9) that the First Defendant had conducted a spot hire survey on 23 May 2008 and that of six companies he telephoned that day, four (Hertz (Swansea), Prestige (Hemel Hempstead), Avis Prestige (London) and Guy Salmon (Birmingham)) were able to provide an appropriate car (a Mini Cooper S1.6 or equivalent) for the date and time required. She exhibited to her report the First Defendant's survey documents which included details of the telephone conversations he said he had and the terms quoted (see in particular appendix 5.1-5.4). The report was relied upon at trial and, as a consequence of the District Judge accepting the evidence contained in her report, the sum awarded for hire costs was about half of what was claimed.

75. The contents of the report were false in that the First Defendant did not make the telephone calls and obtain the quotes he said he did. The Second Defendant knew that was the case when she signed the report.

76. As for the quotes allegedly obtained, the evidence of Mr Stephen Evans in his witness statement dated 27 April 2010 shows as follows: (1) Rob at the Hertz branch in Swansea said that they only operated basic mainstream cars and did not own or operate an Audi TT 1.8 coupé on 23 May 2008 or the date of the accident, 23 November 2006, and that it did not have access to Hertz' corporate fleet at Heathrow airport as it was an independent licensee, and that accordingly they could not have quoted a rate of hire referred to by the First Defendant; (2) Justin at Avis in Swansea confirmed that it had no prestige vehicles and would be surprised if Avis Prestige would deliver cars to Swansea from Heathrow, and Simon of Avis Prestige confirmed it would not deliver cars to Swansea. Accordingly it could not have quoted the rate of hire referred to by the First Defendant; and (3) Will at the call centre of Guy Salmon confirmed that the Bristol branch of Guy Salmon was not open in 2008, and that delivery could not have been made from the Birmingham branch of Guy Salmon as that exceeded the delivery distance at that time. Accordingly it could not have quoted the rate of hire referred to by the First Defendant.

77. As for the telephone calls the First Defendant stated he had made, an analysis of the itemised telephone records obtained from the Mirror Disk established that on 23 May 2008:

i) a call was made from 01502-676107 to 01792-222133 (recorded by the First Defendant as a call to Days in Swansea where he claims he was referred to Hertz) at 14.59 which lasted 13 seconds. This is too short a time to obtain a referral;

ii) no call is recorded as having been made to 0870-0409-000 (recorded by the First Defendant as a call to Hertz in Swansea);

iii) no call is recorded as having been made to 0800-0185-826 (recorded by the First Defendant as a call to Brisco in Swansea where he was referred to Prestige in Hemel Hempstead, Avis Prestige in London and Guy Salmon in Birmingham);

iv) no call is recorded as having been made to 0870-4600-604 (recorded by the First Defendant as a call to Prestige in Hemel Hempstead);

v) a call was made from 01502-676107 to 020-7591-0444 (recorded by the First Defendant as a call to Avis Prestige) at 15.31 for 1 minute 18 seconds. No quote could have been obtained in that short time;

vi) no call is recorded as having been made to 0871-384-1091 (recorded by the First Defendant as a call to Guy Salmon in Birmingham).

78. I find that to obtain a quote over the telephone would take at least 3-4 minutes. AF instructed rates surveyors to say, if asked in court, that it would take 3-4 minutes to obtain a quote (see para 56 above). The evidence of Mr Evans was that it would take that time. The Fifth Defendant said it would take 5-6 minutes to obtain a quote. Mr Gilmour said that he knew the Fourth Defendant had given various answers to the question in his evidence but he thought the sensible estimate that was given by some Defendants was 3 or 4 minutes.

79. In the case of *Thomson v Lansdowne* the Second Defendant produced a witness statement, signed with a statement of truth, dated 13 November 2008. She stated (at paras 6 & 7) that on that day she conduced a spot hire survey and that of ten companies she telephoned, four (Hertz (Gatwick), National (Crawley), Avis (Crawley), and Sixt (Crawley)) were able to provide an appropriate car (a Mercedes SLK 350 automatic or equivalent) for the date and time required and set out details of the terms she alleged were quoted. The contents of the statement were false.

80. On 1 July 2009 the Second Defendant gave evidence on oath in accordance with her statement. The District Judge accepted her evidence and awarded damages on a substantially reduced basis. AE appealed the judgment to the Court of Appeal (as one of the four test cases on 1 December 2011, see para 18 above). Permission was granted to appeal and thereafter the insurers settled the case.

81. It is clear from the subsequent investigations made by AE, the results of which are set out in a witness statement of Mr Evans dated 11 April 2010, that the quotes stated in the Second Defendant's statement were false:

i) The number stated for Sixt in Crawley was a number for central reservations in Chesterfield. Marie of Sixt said that it was highly unlikely that a customer would be able to hire such a vehicle at Crawley as the prestige fleet is very small and located in central London. Further the excess figure quoted by the Second Defendant was wrong in that the minimum excess for such a vehicle was £1,000 not £75. No such vehicle was available for hire at any time in the five days following Mr Evans' enquiry.

ii) No person called Helen was employed by Avis in Crawley in 2008. Avis did not have a prestige branch in Crawley, nor at Gatwick Airport. Neither Avis at Crawley nor Avis at Gatwick Airport offered a delivery and collection service.

iii) When the number for Hertz Gatwick set out in the statement was called Brian from central reservations in the Republic of Ireland answered. He was unable to transfer the call to a specific branch. Its Prestige collection located at airport branches was reserved for account customers. Hertz had no Mercedes CLK or SLK available at any of their branches.

82. As for the telephone calls the Second Defendant stated she had made, an analysis of the itemised telephone records obtained from the Mirror Disk established that no telephone calls were made on 13 November 2008 to any of the ten numbers she allegedly called on that date from any of the designated numbers AF provided to her and very few calls were made on any such number during November 2008.

83. The Second Defendant commenced employment with AF in November 2005 as a rates surveyor. She was made a director on 1 November 2006. She resigned her directorship and employment on 20 September 2009. She and Mr Wilcox were the two Operational Directors. It is clear from the evidence that she was involved in the day-to-day business of AF. She produced the CSR Manual (see paras 53-54 above). She conducted mock trials with Stuart McLean in which rates surveyors were instructed to lie and were improperly coached as to what to say in court (see para 56 above). The evidence shows that she played a major role in changing in significant ways witness statements of rates surveyors and expert reports based upon spot hire surveys of rates surveyors. Numerous e-mails evidence her dishonesty. They include the following:

i) On 15 January 2008 the Second Defendant wrote to the First, Fourth and Seventh Defendants and others (copied to Colin McLean, Paul Wilcox, Stuart McPherson and Suzy Forrest):

> "For very high prestige cars… we sometimes have to use a Google page. However…
>
> … By including a Yell page, it shows that we have looked in the Claimant's immediate locality. If one of the first companies on the Yell page then suggests the internet, that's fair enough, but <u>do not</u> go straight to a Google search. A Google page on its own is much harder to justify in court then a Yell page."

ii) On 17 November 2008 she sent an e-mail to the Seventh Defendant (copied to Stuart McLean) in respect of the case of *Hasan Phi v RPS Transport Ltd* which was due to be heard at the Edmonton County Court, in which she said: "Surveyed by John, but I noticed in the folder that Bill had been booked for court in April next year. Because Bill had been witness summonsed I agreed with him that would just convert the report to be in his name". She then changed the identity of the author of the report from John Goudie to William Rowley, knowing that he had not carried out any of the telephone calls referred to in the report and she applied a digital signature to a statement of truth.

iii) On 12 February 2009 she gave the First Defendant feedback in the case of *Trivitt*. This was one of the cases that featured in the mock trials. In respect of one amendment she wrote:

> "This made the rates more in line with the historical data. The lowest surveyed rate was still lower than the lowest App 7 rate, but only just. If the surveyed rates don't tie in with the historical data, you'll get crucified in court."

iv) She provided the Third Defendant with her comments on his performance at a mock trial on 3 December 2008. In answer to the question "Do you ever make handwritten notes?", the Third Defendant said, "tend to enter data into the spreadsheet". The Second Defendant's commented: "Always say no and that information is recorded directly on the spreadsheet (as per para 10 of your statement). If you were to say you made handwritten notes, you would be asked why your statement hadn't referred to them and why those notes weren't submitted as part of the report. Plus it would contradict para 10. Whilst it's not something a claimant would do, the reason you do it is because you've been asked to collate the information in report format."

v) On 25 November 2008 she wrote to the Seventh Defendant giving feedback in the case of *Hobson* in respect of a survey done by John Goudie which she considered to be "a mess". She wrote:

- "The Enterprise rate was way, way higher than the other three rates (almost double), plus it was for a Pathfinder which was a bit on the big side. This was partly because two of the rates (County Car and Van and Sixt) were based on own insurance. However, the rate from Sixt had a comment saying 'vehicle supplied from Oldham branch'. When I looked at the rental firms in Oldham, the Sixt agent there is County Car and Van, so he'd effectively got the same rate twice. We can get away with including a rate from Sixt and a rate from the Sixt agent if there is some ambiguity in the addresses shown on the Yell/Thomson page, i.e. if there is no number given, only the street name. However, the fact that both were own insurance and there was only 9p difference in the daily rate from each of them looked too suspicious. Particularly when the like of Jill Yarwood is likely to be calling each of the surveyed companies.

- Plus some dodgy referrals – Glossop Motors in Glossop Derbyshire referred him to Elliots in Manchester – seems unlikely."

vi) On 6 September 2009 she wrote to the Seventh Defendant and Suzy Forrest in relation to the statement made by Pamela Walker dated 4 September 2009 following the meeting with her on 1 September when certain allegations were made against Pamela Walker. The Second Defendant wrote:

"Although a lot of Pam's letter is unsubstantiated, there are some pretty damning accusations in it. If we back down, it will effectively give her cart blanche to do whatever she likes in the future, as whenever something happens she doesn't like she will just trot this out – she will effectively have us over a barrel. Equally, we can't afford this to go to a tribunal, which I don't think she would have any qualms about doing. Much as it grieves me to say it, we may have to buy her silence and pay

her off – she will almost certainly know that John got three months' salary so I suspect she is angling for a settlement.

…

… We need to be careful not to push her into a corner.

… I think we need to get Colin's view on this too."

It is clear from notes on Miss Walker's letter that AF was concerned that Miss Walker had copies of feedback relating to checkers changing cars, that the call count should be manipulated, that the training manager requests that figures be manipulated and that surveyors are told that if asked in court if they make notes they are told to say they do not.

vii) On 27 March 2007 the Second Defendant wrote to the Fourth Defendant in relation to the case of *Print Factory* with regard to additional work required as follows:

"Can you make the calls again today please so that all the calls were made on the same day. Making calls and finishing off the following day is ok (ish, on rare occasions) but a two day gap between making phone calls may be seen as being selective. That's why I asked you to make the calls on Monday. You don't have to ask for those specific cars again, ask for any old thing, but the calls all need to be on your phone records for the same day. Please confirm when calls have been made and I'll amend the date on the Apps and statement and issue to Holly."

As Miss Hart said, the whole purpose of a "spot hire" survey is that it is conducted there and then over one day. The vehicle has to be available for the hirer at 10 o'clock on the following day. A spot hire survey is supposed to be a random survey carried out to replicate the situation that would have occurred when the original hirer was looking for a car. Accessibility and rates may differ from day to day, so there is a need for the phone calls to be made on the same day.

viii) On 7 July 2009 in relation to the case of *Ishak v Dairy Farmers of Britain* (see section on the Sixth Defendant below) the Second Defendant wrote to the Sixth Defendant (copy to the First Defendant) as follows:

"This probably should have been queried with the solicitor prior to the survey being undertaken, as we are now in the unfortunate position where a survey has been completed, so we need to charge for it. If we issue it with no saving (issuing only Apps 2 and 5 at a 50% fee) the client may feel somewhat aggrieved that we didn't point out the likelihood of little/no saving at the outset. I would be inclined to replace the highest two rates with:

- Hertz – XC90 (if cheaper than the ML)

- Thrifty – Discovery,
- Enterprise – Discovery/Pathfinder."

ix) On 11 January 2008 she gave feedback to the Fourth Defendant in the case of *Thomson*: she wrote:

> "I felt some of the vehicles were a little weak as the claimant owned/hired the Sport model. I changed the BMW 525 from Alamo to BMW 530 (they do have the odd one but not that many), the E240 from Avis to E280, Volvo S80 from Hertz to CLS320. The S80 is only a 2.4 and is only worth around 25k compared to the BMW 530 at around 33k! Although the CLS is a much better car, it's better to show better ones as long as they fit the price range."

x) On 23 January 2009 she wrote to the First Defendant with feedback in the case of *NDI Services*:

> "I was a bit uncomfortable about using the C200 rate – I think they'd argue that it's not a comparable car so I replaced it with a BMW525, which meant that there was no saving. The claimant was a company, so it will be hard for them to plead that they are impecunious anyway. Removed the CrH wording and made the Questor 'NJGB8'.
>
> The only other thing I changed was the comment for Avis. I changed 'Vehicle supplied by Avis Prestige' to 'Delivery and collection from London (prestige branch)' as it is a bit more vague. As Perry/Bradshaw [two investigators for AE] tend to contact some of the surveyed companies (although I'm not sure they always do, as one of them referred to Kerry from Avis Prestige in one of their statements as a woman!) I wouldn't want them to get overly friendly with Avis Prestige and have Avis P provide them with utilisation records."

xi) There are numerous more examples of the Second Defendant's dishonesty in changing reports in the documents at 25/8156-8204. Two further examples are:

a) On 24 July 2009, giving feedback to the Third Defendant in the case of *Lloyd*, she wrote:

> "Where 7 day rates are gathered, the left-hand side of the formula on 5.1-5.4 in the print area needs to be suppressed, which I have done."

b) On 16 June 2009, giving feedback to the Third Defendant in the case of *Plum*, she wrote:

- "Avis referral went straight to Stansted Airport (recorded as Stanstead throughout the CSR) but there is a branch much more local to the Claimant's address, and the company which provided the referral. I altered the Avis address to the Leigh-on-Sea branch with a car being available from Stansted Airport.

- It said nine calls were made: changed this to ten."

xii) In *Glossop* the Second Defendant told Miss Whysall that she could let Miss Hart prepare the evidence and the witness statement but that the witness statement would have to remain in her name due to the value of the claim exceeding £30,000 (see Miss Whysall's affidavit in the contempt proceedings at para 8).

84. In an affirmation dated 11 July 2016 the Second Defendant admits that:

i) Notes were made on the Requirements page. They included the sequence of companies called. She said that the page was not issued as part of the final CSR as it was "working documentation" (para 7.1).

ii) Every change that was made to a CSR during the checking process was fed back to the rates surveyor. Team leaders fed back any changes they had made to the rates survey concerned and Stuart McLean was also copied in on all feedback (para 47).

iii) A telephone was provided by the company and "I had no reason to use an alternative" (para 71).

iv) The Second Defendant says that instructions had increased to 200 per month by January 2008 (from 30 per month in 2006), with a deluge in February 2008 of 500-plus, and that a backlog was created from which AF never recovered (paras 30 and 37). She says that "clients were increasingly complaining about the amount of time it took Autofocus to produce a report and there was a real danger that Autofocus would start to lose business… The workload/backlog resulted in Autofocus becoming more about the volume through-put than the methodology with the result that the associated statement did not always describe correctly how those rates were obtained… I failed to see the bigger picture and why the culture of 'winning' was wrong. I became blinkered about impartiality and failed to recognise the significance and impact of the statement of truth and stating things under oath" (para 32).

85. These excuses do not provide the Second Defendant with a defence to what is clear from the evidence that she knowingly participated in endemic, dishonest working practices which were designed to and did interfere with the administration of justice. I agree with Mr Rees that there is little doubt that the Second Defendant was one of the prime movers within AF.

The Third Defendant (Andrew Watts)

86. The allegations against the Third Defendant set out in the Schedule to the Claim Form are that he

> "Did verify documents for use in various proceedings by signing them, or causing them to be signed, with statements of truth when they were false to his knowledge or he did not believe them to be true in the following cases:
>
> 1. *Pumphrey v Offord* (Worthing County Court 8WG02235)
> 2. *Lloyd v Jamburidze* (Nottingham County Court 8CD00610)
> 3. *Contractor v Qualol* (Guildford County Court 8GU01855)
> 4. *Young v Christien Salvesen* (Chelmsford County Court 8CM03964)
> 5. *Harrop v TW Sampson & Co Ltd* (Nottingham County Court 09NG00596)
> 6. *Neeve v Suffolk Mental Health* (Bury St Edmunds County Court 8BV00177) (calls allegedly made by the Third Defendant but Report signed by the Seventh Defendant)
> 7. *Athurs v Kinnersley* (Evesham County Court 9EV00298)
> 8. *Purdy v Butts* (Birkenhead County Court 8BI23155)
> 9. *ABR Head & Associates Ltd v Partridge* (Bolton County Court 8BL01873)
> 10. *NI Group Ltd v Watts* (9KH02840)
>
> And did give false evidence on oath at trial seeking to interfere with the course of justice in:
>
> 11. *Contractor v Qualol* (Guildford County Court 8GU01855) on 14 August 2009."

87. The Third Defendant gave evidence. In his evidence in chief he denied that he was guilty of contempt. However during the course of his cross examination he decided to admit that he was in contempt of court. He admitted all the allegations made against him. The particulars of the allegations are summarised in the Claimant's skeleton argument at paras 82-132. As Mr Rees observed, he did not qualify his admissions in any way. He basically accepted the way in which the Claimant put the case against him in relation to all these matters.

88. That being so it is not, as Mr Rees agrees, necessary for me to make individual findings of fact in relation to each of the cases. Having heard the evidence, and in particular the evidence that he gave under cross examination, I was left in absolutely

no doubt that the Third Defendant was fully aware of the endemic, dishonest working practices at AF in which he actively participated, knowing full well that what he was doing was dishonest (see by way of example e-mails giving feedback from him to the Seventh Defendant dated 21 May 2009 (*Worthington*), dated 16 June 2009 (*Plum*), and dated 6 August 2009 (*Weaver*); and from him to Helen Whysall dated 6 July 2009 (*Scheliga*) and 6 August 2009 (*Wilson*)). I did not consider him to be a credible witness. He did not tell the truth in his evidence about his conduct. However Mr Rees rightly observed that "to be fair to him he did have the decency to change his plea, albeit late in the day, when he realised what the position was".

89. The Third Defendant commenced his employment with AF on 7 April 2008. He was a rates surveyor in the First Defendant's team. Although not a team leader himself by 2009 he was sufficiently well thought of to be given the task of checking and changing in significant ways other rates surveyors' reports in which he was heavily involved. He resigned on 17 September 2009 with immediate effect.

90. Mr David Flood in his closing submissions on behalf of the Third Defendant invited me to make various findings of fact relating to the Third Defendant and in particular to the chain of causation that led to his contempt. The findings of fact that on the evidence I can make are as follows:

i) The Third Defendant, as far as is known, is a person of good character.

ii) Before he joined AF it was already operating dishonest systems and engaged in systemic dishonesty.

iii) At the time he joined AF it had the outward appearance of being a successful "bona fides" business being operated by respected and successful individuals.

iv) He was trained by Stuart McLean who, unknown to him, had devised and/or was operating a dishonest system.

v) The CSR manual he was given instructed him to compile his statements in a way that made those statements dishonest if adhered to.

vi) The "mock trials" provided a "script" of stock answers for those who attended court to repeat upon their court appearance.

The Fourth Defendant (David James)

91. The allegations made against the Fourth Defendant set out in the Schedule to the Claim Form are that he:

> "Did verify documents for use in various proceedings by signing them with statements of truth when they were false to his knowledge or he did not believe them to be true in the following cases:
>
> 1. *Ghaffoori v McKinnon* (Telford County Court 8WR00846)
>
> 2. *Dickinson v Unitruc Ltd* (Chester County Court 8CH02953)

3. *Morgan-Graham v De Ville* (Birkenhead County Court 7BI27862)

4. *Copley v Jones* (Leeds County Court 9LS01701)

5. *Ashmore v Zurich Insurance* (Sheffield County Court 9SE00055)

And did give false evidence on oath at trial seeking to interfere with the course of justice in:

6. *Ghafoori v McKinnon* (Telford County Court 8WR00846) on 8 December 2008."

92. The Fourth Defendant commenced his employment with AF on 27 May 2006. He was employed as a rates surveyor and he was a member of the First Defendant's team, together with the Third and Sixth Defendants.

93. He denies contempt.

94. He said that he genuinely carried out every survey he claimed to have carried out. He used several different telephones and would often ask companies to call him back. Complete itemised bills for each telephone he used are not available but it does not follow that a call was not made or that a survey was not carried out. The Fourth Defendant was provided with three telephone lines by AF. He says that he also used several telephones other than those provided by AF to conduct his surveys. That being so he says that any particular telephone call not shown on the itemised bills relied upon by the Claimant could have been made by him using another telephone.

95. He said that he did not state as a fact in any witness statement that he called a particular individual at a particular location using a particular telephone number. In explaining discrepancies in the telephone evidence the Fourth Defendant also stated that his calls to larger car rental companies were regularly answered by automated telephone systems, especially when he used a central reservations number to contact a larger company. Telephone calls to larger companies that operated in this way, he said, might not be handled by a member of staff in the local branch but by an operator in a call centre somewhere else.

96. There was some evidence from Defendants that when they dialled a number they went through to central reservations. However Mr Coley for the Fifth Defendant said that it was not his submission that there was a central reservations number as such, but rather that there were telephone numbers which through one mechanism or another connected to more than one branch. The Fifth Defendant's evidence was that he very rarely went through to central reservations. He said nothing about an automated phone system and Mr Evans did not recall any automated system operating at the material time. None of this is really material. The fact is that the Defendants represented in their spot survey reports that they spoke to specified individuals at specified locations.

97. The Fourth Defendant said it is apparent from the metadata contained in the Mirror Disk that the Fourth Defendant's statements and attached exhibits were altered by

others, after the Fourth Defendant had verified his statements with a statement of truth. His consent to the alteration of his statements was not sought or given. I accept the evidence of Mr Evans that the fact that the metadata indicates that a document has been modified does not mean it has been changed. Mr Evans explains at paragraphs 707-712 of his second affidavit the concept of the Meta Data and the "last modified" property.

98. The Fourth Defendant said that whilst working for AF he was under considerable pressure to increase his output. The Fourth Defendant says that the job made him unwell because of the stress of it and that he had to take medication for stress and anxiety because he could not get the work done quickly enough. He simply did as he was told as quickly as he could. He says that he joined what he thought was a legitimate company. He respected his superiors at the company, thought they were honest and he followed their instructions. When he verified his statements with statements of truth he honestly believed that the facts stated in the witness statement to be true. Further, he said, he had not made any false statements on oath.

99. The Fourth Defendant said that he was afraid of the Second Defendant. She was not someone you would want to disagree with too often. He said the best thing to do was to do your job to the best of your ability and to keep your head down. When his managers told him he had done something wrong he changed it. He did not think whether it was illegal. However he does now realise that he was breaking the law. I do not accept this explanation. It is clear from the evidence that he was actively participating in the dishonest working practices of AF.

100. Mr Peter Gilmour in his closing submissions on behalf of the Fourth Defendant submitted that the statement of truth on each witness statement specifically states that it applies to the witness statement itself. It does not, he submits, extend to the exhibits to that statement, which are separate documents. In support of this submission Mr Gilmour referred to the decision of the House of Lords in *Darker v Chief Constable of West Midlands Police* [2001] 1 AC 435. I reject this submission. *Darker* is concerned with the witness immunity rule and whether that rule applies to exhibits which are part of the investigatory process. *Darker* does not suggest that exhibits to a witness statement are not part of the statement.

101. The Fourth Defendant, and Mr Gilmour in his closing submissions, criticised the investigations carried out by the Claimant, the most significant flaw being said to be that there was no attempt made to investigate potential innocent explanations.

102. The Fourth Defendant accepted that the widespread practice of team managers and "checkers" changing the evidence of rates surveyors in significant ways, such as changing a vehicle or changing a rate, rendered the statements untrue. He also accepts that significant changes were made by others to a number of his statements and that he was usually informed of this by e-mail. However he says that of the five specified cases against him, significant changes were only made to his statement in the *Morgan-Graham* case and that there is insufficient evidence that he was aware of these changes. He says that whilst working at AF he did not see anything wrong with his superiors changing his statements and he never considered it created a risk of interference with the due administration of justice. Mr Gilmour submits that in any event the changes were carried out after the Fourth Defendant made his statements, and even if he allowed significant changes to be made or he was reckless as to

whether they would be, that does not impact upon his honest belief in the truth of the statements at the time he made them.

103. In his evidence the Fourth Defendant said that when seeking quotations he established that the rental companies were trading at the time of the original hire and that they had a similar vehicle on fleet at that time. Mr Gilmour refers to "the rambling nature of the Fourth Defendant's oral evidence", and suggests that the Fourth Defendant is perfectly capable of holding a long conversation with a car rental operative, ranging over many subjects. The Fourth Defendant said that he listed information about how long a particular branch had been open, the company's historic fleet and so on by making up stories that his friends and relatives had previously hired vehicles from the company in question and by disguising his voice with various accents. I do not consider this evidence of the Fourth Defendant to be credible. The Fourth Defendant said that even if the answers to these questions was "pre-populated" (meaning that the answer was already there when they got the spreadsheet to work with), he would still have had to check that it was accurate and so still would have asked the questions to ascertain the information so that he could check that it was accurate. Again, I reject this evidence. As some defendants accepted, there would have been no point in trying to elicit this information because it would immediately have put the company on notice as to what the caller was doing.

104. Moreover Mr Gilmour accepted that if the Fourth Defendant obtained the information he said he did he could not suggest that that information was realistically obtained in under a minute or anything like that (as the Fourth Defendant said in his evidence). The sensible estimate, Mr Gilmour said, that was given by some Defendants for the length of the call to obtain the required information was three or four minutes.

105. It was the Fourth Defendant's case that there was no significance in making enquiries of local companies. He said that it does not matter where the person who is giving the quote is and it does not really matter where the branch is so long as that company can get that car to the claimant.

106. Mr Gilmour submits that the point raised by the Claimant about the Requirements page not being disclosed is a disclosure point but it does not make the statement false and it did not make the Fourth Defendant believe his statement was false and not believe it to be true. I reject this submission for the reason given by Mr Rees.

107. The Fourth Defendant accepted that he had training to give evidence at the "mock trials", but he did not accept that it was coaching.

108. I do not find the Fourth Defendant to be a reliable and truthful witness. His evidence was not credible in very many respects, including the following:

    i) He said that he was a dinosaur on the computer but maintained that he was able to type all the information into the appendices as he was speaking to the car rental operator on the telephone. At different stages of his evidence he said that the minimum time to obtain a quote containing all this information was under a minute, a minute, a couple of minutes and one to two minutes. He could not have obtained the quotes that he said he did in any of these times.

ii) He said that he was asked many times in court whether he had any notes. He said he did not because he had no notes. He did not consider what was written on the Requirements pages to be notes. They were communications between staff, not notes. Plainly this is nonsense. The CSR manual refers to "Additional notes" on the Requirements page. I have no doubt that he knew there were notes on the Requirements page.

iii) In his affidavit sworn on 12 July 2016 he maintained that "minor errors were sometimes corrected by the checker" (para 18). However as he now accepts his reports were changed in substantial ways (although he said in his mind it did not make his spot hire reports false).

iv) He said that he did not recall seeing the "Preparation for Court Hearings" document prepared for the meeting on 28 September 2007 (see para 55 above) until very recently. However it is clear from e-mails dated 27 September and 1 October 2007 that it was sent to him once, if not twice.

v) His evidence as to the information he obtained during the course of conducting a spot survey as to (1) whether or not the car rental company had been operating at the stated address at the time of the original hire, (2) whether or not the car rental company at that location had an appropriate car on fleet and available for hire at the time of the original hire and (3) what the rates were for the hire at that time, as Mr Rees observed, "bordered on the farcical". He said that he made up a story about a friend or relative hiring such a vehicle sometime before and that he spoke over the phone in disguised accents. Helen Hart said that she would never have asked questions about "Time at location" and whether "same vehicle on fleet at time of original hire" because one's cover would be blown. That plainly would be so.

vi) His evidence that he made calls to car rental companies on his wife's personal land line, his mobile phone and his sister's landline to any material extent is not credible. It was not supported by his wife (Greta James), nor his sister (Linda Thompson) who gave evidence. Whilst he claimed expenses in respect of his landline up to April 2008 and his mobile up to July 2008, he claimed no expenses in respect of either thereafter. I agree with Mr Evans that it makes no sense why someone who is using an expensed company telephone to make business calls suddenly decides to use his own telephone, but only in respect of some calls. Further he claimed no expenses for the use of his sister's landline. By contrast he did claim very small amounts for other expenses, such as postage and parking. Additionally, although he was aware from September 2009 that the Claimant was alleging that rates surveyors had not made the telephone calls alleged, and he said he was desperate to obtain his itemised telephone records, he failed to obtain relevant records from the telephone providers.

109. Various documents show that the Fourth Defendant was knowingly a party to the dishonest, endemic working practices at AF from an early stage in his employment:

i) On 24 March 2007 at 15:55 the Second Defendant wrote to him in relation to "Additional Work Required" on the *Print Factory* case. She wrote:

"DTJ5 – Local Contract (aka 1-Car-1) – C200 not good enough – a C class is comparable with a 3 series, not a 5 series. You need an E class. One-Car-One won't do an E class, but Avis (next on the Yell page) will although D and C maybe Birmingham Airport. I have competed the apps for this, but obviously you need to make the phone calls.

…

Please make the phone calls on Monday and confirm when done so so I can issue to Holly on Tuesday."

At 21:35 on the same day the Fourth Defendant replied as follows:

"Phone call made 9.30 Sat night [i.e. 24 March] to Avis Barcelona call centre, Muria was the contact. Updated the apps 5.5. Will do the statement Monday and forward."

On Tuesday 27 March 2007 the Second Defendant wrote to the Fourth Defendant:

"Can you make the calls again today please so that all the calls were made on the same day. Making calls and finishing off the following day is ok (ish on rare occasions) but a two day gap between making phone calls may be seen as being selective. That's why I asked you to make the calls on Monday. You don't have to ask for those specific cars again, **ask for any old thing** [emphasis added], but the calls all need to be on your phone records for the same day.

Please confirm when calls have been made and I'll amend the date on the apps and statement and issue to Holly."

The Fourth Defendant said in his evidence that when the Second Defendant said "ask for any old thing" he thought that what she told him to do was wrong. He thought she was suggesting that he act dishonestly, but it didn't mean that he did. Plainly he did.

ii) On 14 May 2007 in relation to the case of *Arowojolu*, due for hearing on 17 May. the Fourth Defendant wrote to Paul Wilcox:

"Was chatting to COL [Colin McLean] unrelated to Autofocus and mentioned that these cars [prestige vehicles] can be very difficult to get hold of. He wasn't kidding no-one had them and my Yell count was soaring so I used a couple of bogus referrals to Yell 1 as the count was approaching 20, nightmare!

…

I also got a quote from Alamo for an F350 but it was going to work out over the 42 days at 8.5k so I used a later quote from Yell 2 and added it as a referral."

Paul Wilcox replied to the Fourth Defendant the following day, saying:

> "Please do not include text like that highlighted below in open correspondence."

In his evidence the Fourth Defendant said that he was referring to a couple of car companies that he considered to be bogus. He said that "bogus" was a derogatory term towards them. He said that he got genuine referrals from companies that were not mainstream companies that he called "bogus" companies. His evidence was not credible. Plainly Paul Wilcox knew what he was meaning when he referred to "a couple of bogus referrals".

iii) On 19 November 2007 Colin McLean wrote to the Fourth Defendant and others with regard to changes he had made to his report in the case of *Gunn v Greenfield*. The changes were substantial. Colin McLean wrote:

> "3. I also felt it would be useful to have at least one Volvo V50 in the survey (if possible) to negate such potential arguments [see 2 above]. I tried Volvo dealerships, but nearest I could find that offered hire services was in Swindon (50 miles away), so I replaced DTJ5.4 Hendy Hire (they were no longer in Yeovil, so a taxi journey to Salisbury would have been necessary anyway). Referral from Hendy to Yeovil Volvo to Motorworld in Swindon noted in Notes at DTJ5.4 and on Requirements sheet. The Volvo V50 was the lowest basic rate of all the surveyed cars, but the taxi costs make it the highest rate. I believe it is safer to include it, because it would give the claimant the choice of hiring a Volvo or taking one of the others locally."

On 5 December 2007 the Fourth Defendant gave evidence at the Yeovil County Court that his witness statement (which had been changed) was true. He knew that it was not. He said that he could not recall but Colin McLean may have asked him to re-survey this case. I do not accept that evidence. Colin McLean had told him that he had changed his report in various respects. He accepted that the change in relation to the Volvo was a material change to his report. It had a significant impact on the decision of the judge, as his report in the case makes clear.

iv) On 3 October 2007 Paul Wilcox gave the Fourth Defendant feedback on his report in the case of *McDowell*. In response to Wilcox's comment that the Fourth Defendant did not note the engine size on Barons Z4, the Fourth Defendant wrote on 4 October: "Yes I left it out deliberately as it was so cheap but still a Z4. I thought that would be okay or is that risky for court? Could they get away with it in court if I was challenged without showing the engine size?" In response Wilcox then replied: "If pushed in court you'll have to say they couldn't confirm the engine sizes, maybe say that as they have a number of Z4s on their fleet it will be down to what's available at the time (that way you show that they have availability of more than one)". In another comment Wilcox said: "Put the engine size of the Prestige [Porsche] Boxster in as it's over 3.0 litre". The Fourth Defendant responded: "I knew this was a 3.0 but

> left it out not to draw attention to the lack of engine size on the Z4". Wilcox replied: "Where you have the advantage use it. Whilst I cannot confirm the engine size of the Z4, and I concede it may be a 2.0, I draw your attention to the performance of the far superior Porsche Boxster". In a further comment Wilcox wrote: "Alfa on the Yell, did they not offer you their Audi convertible? (A4 3.0 Quattro, which would have done nicely)". The Fourth Defendant responded: "That's interesting I'm surveying now and in the past they say they never have anything like that and both Nathan, Pam and Helen say the same and just get referrals. Interesting!! I shall put that in my 'Cars from' file". Wilcox replied: "Have a look at their website, they've got four that I know of (but may only use them in London?). It's worth viewing any potential surveyed company's website beforehand to get a feel for what they offer".

When cross-examined on this e-mail by Mr Rees, the Fourth Defendant said he was asking for Wilcox's advice. He did not think Wilcox was telling him to lie in court. If he had said what he told him to say in court, that would be a lie. He said that he left out the engine size of the Prestige [Porsche] Boxster not to draw attention to the weakness in the report. He said it was his misunderstanding of the size of the engine. I reject the Fourth Defendant's evidence. Wilcox was plainly telling him to lie in court. He knew that and was perfectly willing to go along with it.

110. Other examples of the Fourth Defendant's dishonesty include the following:

i) In an e-mail dated 9 January 2008 he wrote to the Second Defendant in relation to the case of *Husain*:

> "The Hertz one is Horrendous so just MSN [message] me if you think I should remove it and I will update everything and make it four hits out of ten. The rates are very high but better without Hertz."

Here the Fourth Defendant is changing his report to make it appear better.

ii) In the case of *Hersey*, the Second Defendant provided the Fourth Defendant with feedback on 14 November 2007. She makes various points, and concludes: "As such, the report would not be robust enough to withstand cross-examination, but hopefully the report will assist you in your negotiations". The Fourth Defendant replied on the same day: "Thanks for that at the bottom Elaine I was a bit worried as to how I could squirm my way out of cross-examination so hopefully it won't go that far".

iii) On 21 December 2006 Pamela Walker was having difficulty trying for a prestige car. She sent an e-mail asking the First, Second and Fourth Defendants and Stuart McLean whether they had any problems that day (with a copy to Colin McLean). The First Defendant said that he had been trying Hertz all day as well. The Fourth Defendant replied as follows:

> "Sorry Pam, I haven't had such problems today, what I have done today is search Google for prestige in that area. Phone the local (Yell page branch whoever they are) ask them if they are a certain hire car company (from Google) when they say no!

> ask them if they have heard of them and then phone the branch from the Google search and use them as a referral anyway. I get a few that way."
>
> Pamela Walker replied:
>
> "Oh you cheeky devil. Will try that then. Cheers for that."
>
> This shows how the Fourth Defendant went about getting a bogus referral.

iv) On 15 November 2007 in relation to additional work required in the case of *Forster* the Second Defendant wrote to the Fourth Defendant:

> "I suggest you [do] the same rates you already had, but you will need to call the companies from the 'real' Yell-1. Your surveyed rates are predominantly from major national companies, so re-engineering the referrals shouldn't be a problem.
>
> …
>
> You don't need to do much – just make a few calls from Yell-1 (you'll need to change the apps so the calls were made today, and then the referrer details and re-order the DTJ5 pages [if] necessary. Remember to change the footers and also the order of the companies on the excess W/DTJ4.2 pages if you do re-order the DTJ5 pages."
>
> The Fourth Defendant replied later that day:
>
> "God Bless the referrals!! Every one a gem."

The Sample Cases in the Schedule

Ghaffoori v McKinnon

111. The witness statement of the Fourth Defendant in this case is referred to at paras 48-49 above (and see for completeness later version of the witness statement where parts in template mainly unchanged at paras 41-47).

112. The Claimant alleges that the Fourth Defendant made a false statement in this case and that he gave false evidence on oath. When giving oral evidence the Fourth Defendant confirmed the accuracy of his written statement.

113. At paragraph 7 of the statement the Fourth Defendant says that he carried out a survey on 11 September 2008. However on all of the exhibits the survey is dated as 10 September 2008. I accept that there may be an innocent error for the difference in dates as to when the survey was conducted.

114. However there are numerous other statements made by the Fourth Defendant which I am satisfied are false.

115. They are as follows:

i) The Fourth Defendant did not telephone six companies and ask each one to provide a quote as stated in paragraph 7 of his witness statement.

ii) He did not obtain quotes from four companies as stated in paragraph 8 of his witness statement.

iii) He did not establish that all the surveyed companies were operating in August 2007 as stated in paragraphs 8 and 9.

iv) He did not establish that all the companies he stated had given a quote had the model quoted, or a similar vehicle, on fleet since before the original hire as stated in paragraph 9.

v) He did not ask any of the companies that he stated had given him a quote whether they had a similar car available on the day of the original hire and, therefore, it was untrue to state in paragraph 9 that it was not possible to establish whether such a vehicle was available.

vi) He did not ask any of the companies that he stated had given him a quote what the rates were at the time of the original hire and, therefore, it was untrue to state in paragraph 8 that the companies told him that they could not advise as to such rates.

vii) It was untrue to state in paragraph 11 that any relevant notes were recorded on the spreadsheet DJT2 when he knew that other relevant notes were recorded on the requirements page and the suppressed area surrounding the DTJ5 appendices.

116. I am satisfied that DTJ5.1 is false in various respects. The Fourth Defendant said that he spoke to Rachel at Hertz and obtained the details set out in that exhibit. He said that this is an example of him calling the Hertz central reservations number. He said that this would have taken him through to an automated system and that his call was ultimately answered by Rachel, who he assumed would have been in a call centre and not at the Worcester branch. He said he was referred to Hertz by Enterprise. I reject this evidence. DTJ5.1 plainly states that he called Hertz at Worcester and spoke to Rachel. The evidence of Mr Evans who investigated this alleged quote is that nobody by the name of Rachel worked at Hertz in Worcester at the relevant time and in any event the Worcester branch could not have quoted for a Mercedes CLS320. Further I am satisfied that the Fourth Defendant did not establish that Hertz, Worcester was at the location WR2 5HP for "more than two years". I find that, in this case (and the same or similar comments in other cases), was inserted automatically when a date one year prior to the accident was typed into the computer. I also do not accept that the Fourth Defendant asked what the rates were as at 3 August 2007 and was given the answer "Don't know" as stated in the exhibit. Again, that was a recurring answer in respect of appendices 5.1. Another stock answer was "Y" (yes) to the question as to whether the same vehicle or a similar vehicle was on fleet at the time of the original hire. I do not accept that the Fourth Defendant asked that question.

117. The Fourth Defendant states in DTJ5.2 that he spoke to Vicky at Prestige Car hire, Hemel Hempstead and obtained a quote for a BMW 730 Auto. The Fourth Defendant said that he was referred to Prestige Car Hire by Sixt but that he had to get the number for Prestige Car Hire from Directory Enquiries. He recorded this as being two calls, and accepted in his evidence that he in fact made three calls. The telephone records do not show that calls were made by the Fourth Defendant to Sixt or to Prestige Car Hire on 10 or 11 September 2008 or at all in relation to this case.

118. The Fourth Defendant states in DTJ5.3 that he spoke to Gareth at Europcar, Worcester and obtained a quote for a Mercedes CLS350 Auto. The "Notes/Comments" on the appendix state "Delivery and collection from Guy Salmon". The Fourth Defendant points to the evidence of Ian Bradshaw who investigated this case and who contacted Guy Salmon, spoke to Jason, who had a Mercedes CLS320 CDi with an excess of £500 which Mr Gilmour contends partially confirms the evidence of the Fourth Defendant. I consider DTJ5.3 to be false in various respects. I find that no quote was given by Gareth of Europcar, Worcester and that no call was made to Europcar on 10 or 11 September 2008. What the Fourth Defendant said in evidence was that he obtained the quote from Gareth at an unknown branch of Guy Salmon. That is not what is stated in the appendix. Further, there is no evidence of a call to Guy Salmon.

119. The Fourth Defendant states in DTJ5.4 that he spoke to Brian at Avis, Worcester and obtained a quote for a Mercedes CLS350 Auto. In cross-examination he said that Brian was at Avis Prestige. Mr Gilmour submits that Mr Bradshaw who investigated this case understood that the Mercedes CLS350 Auto was to be "sourced" from Avis Prestige. He contacted the company, spoke to Brian and was quoted the same car with the same excess that the Fourth Defendant quoted. However that is not what is stated in DTJ5.4. The appendix clearly states that the quote was from the local branch of Avis, with delivery and collection from Avis Prestige. The evidence, which I accept, is that Avis Prestige is owned by Miles and Miles and is not part of Avis. Moreover there is no call to Avis Prestige referred to on the Requirements page. Telephone records show that a call was made to Avis Prestige at 18:00 on 10 September which lasted 7 seconds. A call was made to Avis, Newcastle-upon-Tyne at 15:52 on 9 September, which lasted 10 seconds, and a call was made to Avis Prestige at 15:54 on 9 September which lasted 30 seconds. The Claimant does not accept that any of those calls relate to this case. In any event those calls were too short for a quote to be obtained.

120. In DTJ5.2, 5.3 and 5.4 where the Fourth Defendant states, as he did in DTJ5.1, (see para 43 above) that a company was at a given location for "more than two years", or that he was given an answer to the question as to what the rates were as at a stated date or he stated the answer that he says he was given to the question whether the same vehicle or a similar vehicle was on the fleet at the date of the original hire, I do not accept that the questions were asked or the answers were given.

121. It follows that appendices DTJ2, and DTJ3 and DTJ4 were false (see also para 212 below).

122. I am satisfied that the Fourth Defendant gave false evidence in accordance with his witness statement at the Telford County Court on 8 December 2008 seeking to interfere with the course of justice.

Dickinson v Unitruc

123. The Fourth Defendant in his witness statement states that he telephoned eight companies and asked each one to quote for the hire of a BMW X5 3.0 automatic or similar vehicle (para 6); that five of the companies telephoned were able to provide an appropriate car for the date and time required (para 7); all the companies surveyed were trading in December 2007, but were unable to advise rates available at that time for this type of enquiry (para 7); all the companies had the model quoted, or a similar vehicle, on fleet since before the original hire (para 8); and any relevant notes were recorded on the Excel computer spreadsheet (para 10).

124. I am satisfied that each of these statements is false.

125. There is no evidence that any calls were made to any of the eight companies he says he telephoned. The Fourth Defendant says that the telephone calls are not recorded on the Claimant's bills because he used another telephone. I reject this evidence.

126. The Fourth Defendant states in DTJ5.1 that he spoke to Simon at Avis, Hayes. He admits there was no call to that branch. He said in evidence that he obtained a quote from Avis Prestige. However that is not what is stated on DTJ5.1. It is recorded that the vehicle was "supplied" by Avis Prestige, not that he obtained a quote from Avis Prestige. Moreover there is no call recorded to Avis Prestige.

127. On DTJ5.2 the Fourth Defendant states that he spoke to Peter at Hertz, Uxbridge and obtained a quote for a Mercedes GL320 Auto. He admits that he made no call to that branch. He said that he obtained a quote from Hertz at Heathrow Airport. The appendix records that the vehicle was "to be collected" from Heathrow Airport; it does not state that he obtained a quote from Hertz at Heathrow Airport. Further, there is no call recorded to Hertz, Heathrow Airport that relates to this case.

128. The Fourth Defendant records on DTJ5.3 that he spoke to Sanjay at Enterprise, Uxbridge and obtained a quote for an Audi Q7 3.0 Auto. On investigation it was found that no-one by the name of Sanjay worked at that branch. In his oral evidence the Fourth Defendant said that he called Sanjay at Enterprise, Heathrow Airport. On DTJ5.3 it is recorded that "Uxbridge will pick up and drop off driver for collection and delivery from Heathrow Airport". However it is not stated that a quote was obtained from Enterprise, Heathrow Airport. Further there is no call recorded to Enterprise, Heathrow Airport.

129. On DTJ5.4 the Fourth Defendant records that he spoke to Alex at Curry Motors, North London and obtained a quote for a Lexus RX400 3.3 Auto, having been referred to them by Heathrow Prestige. There is no record of any telephone call having been made either to Heathrow Prestige or Curry Motors.

130. On DTJ5.5 the Fourth Defendant states that he spoke to Michelle at National, Slough and obtained a quote for an Audi Q7 3.0 Auto. On investigation it was shown that no-one by the name of Michelle worked at that branch; and there was no record of any call having been made to that branch in relation to this case. DTJ5.5 records that "Delivery and collection from Guy Salmon prestige division". The Fourth Defendant said that Michelle must have been at Guy Salmon. He said that National and Guy Salmon are part of the same company; both companies are members of the Vanguard

group. However it is not stated on DTJ5 that the Fourth Defendant obtained a quote from Michelle at a branch of Guy Salmon (which is unspecified).

Morgan-Graham v De Ville

131. In his witness statement (see paras 40-47 above) the Fourth Defendant states that he telephoned ten companies and asked each one to quote for hire of a Land Rover Freelander 2.0, or similar vehicle. That statement is not correct because of the ten companies listed on the Requirements page one is recorded as not having answered the call.

132. He further states that he obtained quotes from four companies, one of those companies being Thrifty, Stoke-on-Trent (telephone number 01782-848413). However the only recorded telephone calls to Thrifty on that number at the material time lasted 6 and 17 seconds respectively. I do not accept that a quote could have been given during the course of those short calls.

133. As in the *Ghafoori* case DTJ5.1, 5.2, 5.3 and 5.4 were false in the following respects: "More than three years" on each of them, "don't know" on 5.1, "sorry" on 5.2, "can't help" on 5.3, and "don't know" on 5.4 and "Y" on each of them.

134. Paragraph 12 of his witness statement, which contained the statement that any relevant notes were recorded on the spreadsheet DTJ2 was also false when the Fourth Defendant knew that other relevant notes were recorded on the requirements page.

Copley v Jones

135. In his witness statement the Fourth Defendant stated that he conducted a spot hire survey on 22 June 2009, and that he telephoned six companies and asked each one to quote for the hire of a BMW 318 or similar vehicle (para 6); that four of the companies telephoned were able to provide an appropriate car for the date and time required (para 7); that all the surveyed companies were operating in October 2007 and that they all had the model quoted, or a similar vehicle, on fleet since before the original hire, but unfortunately, none of them were able to advise specifically of rates or availability at that time (para 8). He stated that any relevant notes were recorded on the Excel computer spreadsheet (para 10).

136. I am satisfied that the Fourth Defendant did not obtain quotes from four companies as stated in paragraph 7 of his witness statement. He recorded on DTJ5.1-5.4 quotes he said he obtained from Hertz, Budget, Thrifty and Enterprise respectively on 22 and 23 June 2009. However the telephone calls recorded to those companies lasted only 46 seconds, 2 minutes 22 seconds, 17 seconds and 12 seconds respectively. In an e-mail to Colin McLean on 8 October 2009 the Fourth Defendant wrote: "The calls as you will see are short so there is every possibility that as happens I have continued the calls on my home phone or mobile". If he had done so I am satisfied he would have produced his home telephone itemised call records, which he did not do.

137. Again DTJ5.1, 5.2, 5.3 and 5.4 were false in respect of "More than two years" on each of them, "Don't know" on 5.1, "Sorry" on 5.2, "Can't help" on 5.3 and "Don't know" on 5.4 and "Y" on each of them. His statement at paragraph 10 that any relevant notes were recorded on the spreadsheet DTJ12 was also false.

138. In this case none of the companies that are said to have provided the Fourth Defendant with quotes would have allowed the claimant's 20-year-old son to drive their vehicles. Mr Rees submits, that being so, all quotes were false and were nothing more than a charade in that each of them included a quote for Additional Driver Charges when the additional driver was below the minimum age allowed to drive the cars in question. It does strike me as a charade. However the details of the Additional Driver do record his age as 20 and the minimum driver's age of 25 is noted in the "Notes/Comments" section of the appendices. That being so I do not find the quotes were false in this respect. The reason why AF obtained quotes in these circumstances is clear from an e-mail from the Seventh Defendant where he suggests that a covering letter accompanying the statement when it is issued to instructing solicitors include the following: "You will obviously be aware that this is an issue the other side will seize upon, but hopefully the report will assist you in reaching a settlement".

Ashmore v Zurich Insurance

139. The Fourth Defendant in his witness statement stated that he conducted the spot hire survey on 22 July 2009 and that he telephoned ten companies and asked each one to quote for the hire of a Porsche Boxster S or similar vehicle (para 6), and that four of the companies telephoned were able to provide an appropriate car for the date and time required (para 7). He stated that he established that all the surveyed companies were operating in January 2008 and that they all had the model quoted, or a similar vehicle, on fleet since before the original hire, but unfortunately, none of them were able to advise him specifically of rates or availability at that time (para 8). He stated that any relevant notes were recorded on the Excel computer spreadsheet (para 10).

140. It appears from the Requirements page that one of the ten companies listed, 1Car1, had closed down; that being so the Fourth Defendant had not telephoned ten companies and asked each one for a quote as stated in paragraph 6 of his witness statement.

141. Further, of the four companies he said he obtained quotes from there is no record of calls having been made to three of them (Enterprise, Europcar and Avis Prestige). I reject the Fourth Defendant's evidence that he did telephone those companies using other telephones. As for the call to the fourth company (Prestige Car Hire), there was a call to that company on 22 July but it lasted only 1 minute 6 seconds. No quote could have been obtained in that time.

142. In his oral evidence the Fourth Defendant said that he obtained a quote not from Enterprise, Sheffield (DTJ5.1), but from Enterprise, Manchester Airport. On DTJ5.1 it is recorded in the Notes/Comments section "Vehicle to be collected from Manchester Airport". It does not state that a quote was obtained from Enterprise, Manchester Airport. Accordingly on the Fourth Defendant's evidence DTJ5.1 contains a false statement. Similarly, in respect of DTJ5.2 which states that he obtained a quote from Jane at Europcar, Sheffield. In his evidence he said that he obtained a quote from an unspecified branch of Guy Salmon. The Notes/Comments section records "Vehicle supplied by Guy Salmon". It does not state that a quote was obtained from Guy Salmon. Accordingly if his evidence is true DTJ5.2 contains a false statement.

143. Again, paragraphs 8 and 10 of his witness statement were false for reasons already given. Further, DTJ5.1, 5.2, 5.3 and 5.4 were false in respect of "More than two years", "N" (No) and "Y" on each of them for reasons already given.

The Fifth Defendant (Laurence Gray)

144. The allegations against the Fifth Defendant set out in the Schedule to the Claim Form are that he:

> "Did verify documents for use in various proceedings by signing them, or causing them to be signed, with statements of truth when they were false to his knowledge or he did not believe them to be true in the following cases:
>
> 1. *Martland v Fytrans S.I.* (St Helen's County Court 8CH04019);
>
> 2. *Gibbins v Huddart* (Tunbridge Wells County Court 8TN00860);
>
> 3. *Tang v Norwich Union* (Horsham County Court 8B127173);
>
> 4. *Pasab v Kurangwa* (Walsall County Court 9WV00083) (calls allegedly made by the Fifth Defendant but Report signed by the Seventh Defendant);
>
> 5. *Atkins v Novotny* (Uxbridge County Court 9UB00551);
>
> 6. *CJ Leonard & Sons Ltd v Ministry of Defence* (Middlesborough County Court 8BM03956);
>
> 7. *Chapman v P&O Ferrymasters* (Nottingham County Court 8NG05963);
>
> 8. *Syal v Sudera* (Nottingham County Court 8NG08514);
>
> And did give false evidence on oath at trial seeking to interfere with the course of justice in:
>
> 9. *Martland v Fytrans S.I.* (St Helen's County Court 8CH04019) on 3 September 2009."

145. The Fifth Defendant denies these allegations. In his closing submissions Mr Coley accepted that there was systematic interference with evidence at AF in order to provide AF's solicitor and insurer clients with the best chances to reduce the damages payable by their lay clients to AE's claim clients in numerous credit hire cases up and down the country. However Mr Coley submits that the evidence points towards the Fifth Defendant simply being "an unknowing dupe" whose evidence was doctored and drawn into the arrangement behind his back. I reject this submission.

146. The Fifth Defendant commenced his employment with AF in November 2008. He was employed as a rates surveyor. He was a member of the Seventh Defendant's team.

147. I find the Fifth Defendant to be an unreliable and untruthful witness.

148. The evidence of the Fifth Defendant in respect of the case of *Morrison v Dickinson* is an example both of the untruthfulness of his evidence before this court and that he knowingly and actively participated in the dishonest practices of AF.

149. The witness statement of the Seventh Defendant in that case dated 10 February 2009 states that it is the witness statement of the Seventh Defendant (para 1) and concludes with the words "I believe that the facts stated in this witness statement are true" above his signature. At paragraph 7 the Seventh Defendant states: "I conducted the spot hire survey on 10 February 2009". The Fifth Defendant told the court that "[he] did not have a hand in the production of that statement". However it is clear from e-mails that Mr Rees produced after he said he had nothing at all to do with the statement that he was very much involved in changing an expert report in the name of the Seventh Defendant, based upon his own spot hire survey, into a lay report in the Seventh Defendant's name.

150. It appears from the Requirements page that when the instruction was received in January 2009 it was for an expert report. At that point the Fifth Defendant was to do the research in order for the Seventh Defendant to make an expert report. The Requirements page records that the Fifth Defendant conducted the survey on 9 February. So the original expert report would have been on 9 February prepared wholly by the Fifth Defendant (putting, as he says was the practice, the Seventh Defendant's signature on it). On 9 February the client requested a lay report instead. On 10 February the Fifth Defendant wrote to Liz Long (in AF administration): "Now working on N901080 *Alasdair* [the name by which *Morrison* was known] changed to lay". At 09:34 on 12 February he wrote again to Liz Long: "N901080 Alasdair ready for checking".

151. On 12 February at 10:58 the Seventh Defendant sent the lay report off for issuing, noting on the e-mail that the survey had been done by "LMG", the Fifth Defendant. The call history that the Fifth Defendant said that he undertook is exactly the same as the call history that the Seventh Defendant said he undertook on 10 February. I agree with Mr Rees it is clear that the Seventh Defendant had not carried out the spot hire survey or, indeed, had anything to do with the report.

152. Mr Coley points to the metadata for "N901080 *Alasdair Morrison Partners* Statement DCS.doc" which shows that it was last modified at 10:36 on 12 February 2009. This is the document which states who carried out the research. Mr Coley submits that "it cannot be definitively established whether the corresponding appendices document was also changed at this time, as it was further modified at 13:17 on 12 February 2009, and the meta-data only lists the last modification. However, it is likely that it was". He submits that it can be inferred that "between the Fifth Defendant submitting his lay report at 09:34 on 12 February 2009 and it being issued at 10:58 on the same day, it was changed in some way at 10:36. The likely change would be to substitute the Seventh Defendant as the maker of the statement and to change the file name to reflect that by including the initials DCS. There is nothing, he submits, to show that

the Fifth Defendant was complicit in misleading the court over who did the research other than the Claimant's selective interpretation of the evidence". The Fifth Defendant does not suggest that it was the Seventh Defendant who made the change in this case. However he says that he cannot rule out the possibility that both he and the Seventh Defendant have been unwittingly manipulated by somebody who wished to ensure that the Seventh Defendant went to court to present the evidence rather than the Fifth Defendant. There is no basis for this suggestion. The evidence of Mr Evans, which I accept, is that the meta-data does not establish that a document has been modified, only that it has been opened.

153. I agree with Mr Rees that the dishonest conduct in *Morrison v Dickinson* followed a pattern of similar dishonest conduct pursued by the Fifth Defendant and others. The Fifth Defendant did the same in the cases of *Ebbs v Tesar*, *Ahmed v Sharifnur*, and *Sweetingham v Baji*. They were all cases where he prepared lay reports in the Seventh Defendant's name when the Seventh Defendant had nothing to do with them. I will return to these cases when I consider the case against the Seventh Defendant.

154. In *Ebbs* the Fifth Defendant sent an e-mail to the Seventh Defendant on 4 August 2009: "S906223 Ebbs is ready for checking. This is the lay case in your name. Shall I send it to Liz as normal or will you deal with it?". Indeed it was "normal" practice within AF for this to be done. In March 2010 Helen Whysall admitted contempt of court in respect of a number of cases in which Helen Hart had conducted the spot hire surveys, prepared the lay statements and put them in the name of Helen Whysall. I agree with Mr Rees that there are four cases in which the Fifth Defendant did exactly the same in relation to the Seventh Defendant as Helen Hart did with Helen Whysall.

155. I do not accept the evidence of the Fifth Defendant that the first he knew of any allegations of impropriety was when he attended court in the case of *Gibbins v Haddart* on 18 September 2009. At that hearing it was alleged that he had not made the calls he said he had made. However on 8 September in the *Glossop* case Helen Whysall had been accused of dishonesty and wide-ranging allegations of dishonesty had been made; and Colin McLean had sent a press release to all AF employees on 16 September referring to those allegations.

156. On 18 September he was interviewed by Colin McLean over the telephone. He was told of the allegation by the Claimant that calls had not been made by rates surveyors and that witness statements and reports had been changed. Mr McLean told him that he could stay with the company provided that he could show from his telephone records that he made the calls that he said he had made and that there was no change to the reports, otherwise if he gave evidence he would be committing perjury. The Fifth Defendant said that he took ten minutes out, rang him back and resigned. Later that day he wrote to Colin McLean:

> "Please accept this e-mail as my request to resign from Autofocus with immediate effect.
>
> I would like to thank you and Suzy for the past 12 months and wish you both all the best in the future."

Mr Rees points to the lack of indignation in the letter and suggests that that is not the letter of resignation one would expect from an innocent person. I agree.

157. In any event I do not accept the Fifth Defendant's evidence about his telephone records. He was not provided with an AF telephone. The Mirror Disk contained no telephone records attributed to the Fifth Defendant. His evidence was that he made calls to car rental companies during the relevant period on his mobile phone. He said that he set those costs off against his business when he submitted his business accounts to HMRC. He combined working for AF with running his own business. He claimed telephone and other expenses from AF until March 2009. The sample cases post-date 6 March 2009. He has not satisfactorily explained why he did not claim for telephone expenses after 6 March when he continued to claim expenses, including small amounts for items other than telephone expenses. Further, it was his evidence that he set the costs of the calls he made to car rental companies on his mobile phone off against his business when he submitted his business accounts to HMRC. Although he was obliged to keep those records for six years he did not produce any telephone records to prove he made the disputed calls. I do not believe that he made the calls that he said he did on his mobile phone (or on any other phone).

158. The evidence of the Fifth Defendant was not credible in various other respects. He said that he was not computer literate, he was a "one finger typist", but nevertheless he said that he was able to complete the appendices to his report as he was speaking to the car rental operator. At the same time he said he made up stories about a relative or friend hiring a car from the company on a previous occasion so as to obtain information on whether the company was trading at the stated location at the time of the original hire, whether the company had a relevant car on fleet at that time and as to such matters as the rates at the time of the original hire. I am satisfied from the evidence of other defendants, and an analysis of appendix 5 in the cases before the court, that these questions were not asked and stock answers were given.

The Sample Cases in the Schedule

Martland v Fytrans

159. The Fifth Defendant in his witness statement dated 11 June 2009 stated that he conducted the spot hire survey on that date, that he telephoned seven companies and asked each one to quote for hire of a Mercedes CLS320 automatic or similar vehicle (para 6), and that four of the companies telephoned were able to provide an appropriate car for the date and time required (para 7). Further he said that he established that all the surveyed companies were operating in October 2007 and that they all had the model quoted, or a similar vehicle, on fleet since before the original hire, but unfortunately none of them were able to advise him specifically of rates or availability at that time (para 8). Further he said that any relevant notes were recorded in an Excel computer spreadsheet (para 10).

160. I do not accept that he telephoned seven companies and asked each one to provide a quote as stated, nor do I accept that he obtained quotes from four companies as he stated.

161. In LMG5.1 he said that he spoke to Gemma at National, Wigan and obtained a quote for a Mercedes CLS320 Auto. In his evidence he said he obtained the quote from an unspecific branch of Guy Salmon. The Notes/Comments section in LMG5.1 records "car supplied by Guy Salmon". It does not state that he obtained the quote from Guy Salmon. In any event no call to Guy Salmon is recorded on the Requirements page.

162. In LMG5.2 he states that he obtained a quote from Sixt, Warrington WA2 7NT on the number stated. However that was the address and number of County Car & Van Rental. The evidence, which I accept, is that they did not have a Mercedes CLS320 on fleet and, for that class of vehicle, a non-waiveable excess of £1,000, not £75 as he stated would have applied.

163. In LMG5.3 he stated that he obtained a quote from Hertz, Warrington WA4 6QS. The location of Hertz, Warrington was WA3 6PH. Further, the evidence on investigation, which I accept, is that Hertz Warrington had no Mercedes CLS320 or similar vehicle on fleet.

164. In LMG5.4 he stated that he obtained a quote from Mark at Avis, Warrington. In evidence the Fifth Defendant said that he obtained the quote from Avis Prestige. Avis Prestige is owned by Miles and Miles. I accept the evidence of Mr Evans that it is not connected with Avis. The Notes/Comments section in LMG5.4 states: "Car supplied by prestige department". It is not stated in LMG5.4 that the Fifth Defendant obtained a quote from Avis Prestige. In any event there is no call to Avis Prestige recorded on the Requirements page. Mr Rees makes the point that by not referring to Avis Prestige the Fifth Defendant followed the feedback given by the Second Defendant in an e-mail sent to the Seventh Defendant on 15 April 2009 in the case of *Hodgkiss* where she says in relation to one change she made to the survey: "I changed 'Car supplied by Avis Prestige' to 'delivery and collection from Manchester' – I am wary about specifying Avis Prestige by name. Delivery/collection from London (or in this case Manchester) is a better way of noting it". I do not accept the Fifth Defendant's evidence that he understood that Avis Prestige was a different department of Avis and that being so there was nothing misleading about the wording of LMG5.1.

165. There is a further witness statement in this case dated 18 August 2009 in the Fifth Defendant's name (referred to in evidence as an addendum) responding to a statement of Mr Ian Bradshaw of AE dated 6 July 2009. He stated that he had been requested to respond to the statement of Mr Bradshaw.

166. At the trial of this case on 3 September 2009 at St Helen's County Court he gave evidence and confirmed that the contents of his two statements were true. Under cross-examination he confirmed the responses he had given in his second statement were correct.

167. The Fifth Defendant said that after the evidence of Mr Bradshaw was received he was contacted by Ms Whysall for his response. They spoke over the telephone and using the answers he gave her when she asked him about the matters raised by Mr Bradshaw she drafted the addendum which she sent him and he then checked and signed it. I do not accept the Fifth Defendant's evidence on this matter. The statement of Mr Bradshaw was detailed and complex. An e-mail dated 19 August 2009 from the Second Defendant for the issue of the addendum states: "Addendum prepared by HW" [Helen Whysall]. There is no evidence that the Fifth Defendant had anything to do with the preparation of the addendum. The evidence indicates that Helen Whysall was instructed to and did prepare the statement and that she put his signature thereon in accordance with standard practice. He accepts that there is no evidence that the addendum was sent to him, despite the fact that the solicitor had asked for him to prepare a response to Mr Bradshaw's statement.

168. I am satisfied that the Fifth Defendant committed perjury in relation to the addendum. He gave his evidence on 3 September, only two weeks after the date of 18 August on which the addendum was signed. He must have known that he had had no hand in making that statement. I am further satisfied that he committed perjury when giving evidence in relation to his first statement for the reasons I have already given.

Gibbins v Huddart

169. This was the case for which he attended court on 18 September 2009 when it was alleged that he had not made the calls he alleged he had made (see para 155 above). The case was adjourned and he did not given evidence.

170. In his witness statement dated 12 May 2009 the Fifth Defendant said that he conducted the spot hire survey on that day and that he telephoned eight companies and asked each one to quote for hire of a Jaguar XJR 4.0 automatic or similar vehicle (para 6). He said that four of the companies were able to provide an appropriate car for the date and time required (para 7). He said that he established that all the surveyed companies were operating in December 2007 and that they all had the model quoted, or a similar vehicle, on fleet since before the original hire, but unfortunately none of them were able to advise him specifically of rates or availability at that time (para 8). He said that any relevant notes were recorded on the Excel computer spreadsheet (para 10).

171. I find that the Fifth Defendant did not telephone eight companies and ask each one for a quote as stated in para 6 of his witness statement, and he did not obtain quotes from four companies as stated in paragraph 7.

172. On LMG5.1 he stated that he spoke to Simon at Avis, Crawley and obtained a quote for a Jaguar XF 3.0 Auto. In his evidence the Fifth Defendant said that he did not obtain the quote from Avis, Crawley on the number stated, but that he obtained the quote from Avis Prestige. The "Notes/Comments" on LMG5.1 state "Car supplied by prestige branch". It is not stated that the quotation was obtained from Avis Prestige. Further there is no call to Avis Prestige recorded on the Requirements page.

173. On LMG5.2 he states that he spoke to Ben at Europcar, Tonbridge and obtained a quote for a Jaguar XJ6 2.7 Auto. In his evidence he said that the quote was obtained from a branch (which he did not specify) of Guy Salmon. The Notes/Comments on LMG5.2 state "car supplied by Guy Salmon". It is not stated on LMG5.2 that the quotation was obtained from Guy Salmon.

174. I am satisfied that the Fifth Defendant in this case and in other sample cases knew that the contents of paragraph 8 of his witness statement were untrue. I am also satisfied that he knew, contrary to what he said in paragraph 10 of his witness statement, that other relevant notes were recorded on the Requirements page.

175. Further LMG5.1, 5.2, 5.3 and 5.4 were false in respect of "More than two years" on each of them, "Don't know" on 5.1, "Sorry" on 5.2, "Can't help" on 5.3, "Don't know" on 5.4 and "Y" on each of them.

176. Feedback on his survey was given by the First Defendant to his team leader, the Seventh Defendant by e-mail dated 27 May 2009. It included the following:

- "Didn't like all of the surveyed cars being 3.0 litre or lower for a 4.0 litre survey – change the S320s from City Inter Rent and Prestige to a S500 and CLS500 respectively.

- Change the BMW 730 from Avis to the Jag XF – again to get another Jag in."

It was falsely stated in the changed statement that the changed cars were part of the original spot hire survey conducted by the Fifth Defendant on the original date. The e-mail was not copied to the Fifth Defendant. Mr Coley in his closing submissions submits that it is likely that the Fifth Defendant was left out of this e-mail because he was not somebody who could be trusted to be made privy to the dishonesty within the company. I reject this suggestion. It is clear on the evidence that the Fifth Defendant was an active and willing party to the dishonest working practices in AF of rates surveyors' statements being changed before being issued.

Tang v Norwich Union

177. In a witness statement dated 31 July 2009 the Fifth Defendant stated that he conducted the spot hire survey in this case on 30 July 2009. He said that he telephoned eleven companies and asked each one to quote for hire of a BMW 530 automatic or similar vehicle (para 6), and that five of the companies telephoned were able to provide an appropriate car for the date and time required (para 7).

178. I find that he did not telephone eleven companies and ask each one for a quote as stated in paragraph 6 and he did not obtain five quotes as stated in paragraph 7.

179. On LMG5.1 he stated that he spoke to Mark at Avis, Gatwick and obtained a quote for a BMW 530 Auto. In evidence he stated he obtained the quote from Avis Prestige. The "Notes/Comments" section of LMG5.1 states: "Car supplied by prestige department". It is not stated that he obtained the quote from Avis Prestige. The Fifth Defendant puts forward the same explanation as he did in the case of *Gibbins*, which I reject.

180. On LMG5.3 the Fifth Defendant stated that he spoke to Liam at Gatwick Car, Crawley and obtained a quote for a Mercedes CLS 320 Auto. The Claimant's evidence is that Gatwick Car hire did not have a Mercedes CLS 320 on fleet and did not give the quote stated on LMG5.3. The Claimant relies on a statement by Adnan Usman taken by Peter Evans. Again, the Fifth Defendant criticises the investigation carried out by the Claimant. Mr Usman's statement refers only to a "Mercedes 320". A number of classes of Mercedes-Benz use the suffix 320, of which the CLS class is but one example. Mr Coley submits that on its face Mr Usman's statement does not sufficiently identify the vehicle he believed he was being asked about, and which he purported to not supply. Mr Coley expands upon this submission at paragraphs 99-100 of his closing submissions. In conclusion he submits that the evidence presented by the Claimant, whilst going part of the way to establishing its contention, is incomplete, and does not cross the criminal threshold. I reject this submission.

181. Further paragraphs 8 and 10 of the Fifth Defendant's witness statement are in standard form and were untrue. Similarly LMG5.1, 5.2, 5.3 and 5.4 were false in

respect of "More than three years" on each of them, "N" on each of them and "Y" on each of them.

Pasab v Kurangwa

182. The Seventh Defendant in his expert report in this case dated 13 May 2009 stated that the Fifth Defendant conducted the spot hire survey on 23 April 2009. The report was prepared by the Fifth Defendant who applied the Seventh Defendant's electronic signature to it. The Seventh Defendant stated that the Fifth Defendant telephoned eight companies, detailed at Appendix A4.1, and asked each one to quote for hire of a Seat Leon 1.9 or similar vehicle (para 7), and that five of the companies telephoned, detailed at Appendix A4.2, were able to provide an appropriate car for the date and time required (para 8).

183. I find that the Fifth Defendant did not telephone eight companies and ask each one for a quote as stated in paragraph 7 and he did not obtain five quotes as stated in paragraph 8. Of the eight companies listed on the Requirements page one, Practical, is recorded with the words "No ans [answer]".

184. On A5.3 it is recorded that the Fifth Defendant spoke to Rob at Hertz, Wednesbury WS10 7PA (telephone number 0121 567 3270) and obtained a quote for a Ford Mondeo 1.8. Adam Woodall, who was employed by Hertz car rental as the Vans Manager based at the Oldbury depot in a witness statement dated 2 September 2009 stated that this was not possible since the depot closed on 31 July 2008. At paragraphs 103-105 of his closing submissions Mr Coley makes various criticisms of the investigation that was carried out in this case. He suggests that it is possible, looking at the Yell results, that the telephone number may have led the Fifth Defendant to a central reservations line or re-directed him to a different branch and if he had been put through to a different branch he may still have believed that he was speaking to the Wednesbury branch. I reject this submission. I am satisfied that, as Mr Rees submits, this is an example of the Fifth Defendant taking a reference from Yell.com and making up a quote.

185. Again, the Fifth Defendant knew that paragraph 11 of the report that stated that any relevant notes were recorded on the spreadsheet was untrue when he knew that other relevant notes were recorded on the Requirements page. Further he knew that the appendices were false in respect of "More than two years" on each of them, "Don't know" on 5.1, "Sorry" on 5.2, "Can't help" on 5.3, "Don't know" on 5.4, "No idea" on 5.5 and "Y" on each of them.

186. I find that the Fifth Defendant caused the expert report to be signed with the Seventh Defendant's signature verifying the truth of it when he knew it was false.

Atkins v Novotny

187. In his witness statement in this case dated 5 June 2009 the Fifth Defendant stated that he conducted a spot hire survey on that date and that he telephoned seven companies and asked each of them to quote for hire of a BMW 316, or similar vehicle (para 7). He further stated that four of the companies telephoned were able to provide an appropriate car for the date and time required (para 8).

188. I find that he did not telephone seven companies and ask each one for a quote as stated and he did not obtain four quotes as he stated.

189. Of the seven companies listed on the Requirements page, by one, South Ruislip, is recorded "No ans [answer]".

190. On LMG5.4 the Fifth Defendant states that he spoke to Julie at National, Hayes UB3 5BQ (telephone number 020 8897 6536) and obtained a quote for a Saab 9.5 2.0. Mr Peter Evans in his evidence recounted what he had been told by Anita Turner, namely that no person by the name of Julie worked at that branch and the Saab 9.5 2.0 had been taken off fleet in April 2009. Mr Coley at paragraphs 108-114 attacks the accuracy of Mr Evans' evidence and submits that the weight which can be attributed to the hearsay evidence of Anita Turner is thereby greatly reduced. Mr Evans accepted that his statement contained an error in that it stated that he had met with Ms Turner on 25 September 2009, but he had dated the statement 24 September 2009. However I am satisfied that Mr Evans' evidence is accurate in the material respects I have set out. I reject the suggestion that having dialled the telephone number recorded on LMG5.4 the Fifth Defendant may have been re-directed to a branch other than the Hayes branch.

191. Once again it was untrue, as the Fifth Defendant well knew, to state in paragraph 11 of his witness statement that any relevant notes were recorded on the spreadsheet LMG2. Further LMG5.1-5.4 were false in respect of the stock answers given on them.

CJ Leonard & Sons Ltd v Ministry of Defence

192. In his witness statement in this case dated 17 March 2009 the Fifth Defendant stated that he conducted the spot hire survey on that date and that he telephoned eight companies and asked each to quote for hire of a Land Rover Discovery 2.7 automatic or similar vehicle (para 6). He further stated that four of the companies telephoned were able to provide an appropriate car for the date and time required (para 7).

193. On LMG5.1 the Fifth Defendant stated that he spoke to Darren at Car and Van Rental, Redcar and obtained a quote for a Land Rover Discovery 2.7 Auto. The evidence of Darren Lee, the franchisee of Practical Car and Van Rental, Redcar is that they have never had a Land Rover Discovery 2.7 Auto or any other Land Rover Discovery on fleet. Mr Coley acknowledges the strength of this evidence, but he points to the meta-data in this case which he suggests shows that the statement was modified after the Fifth Defendant had completed it. He therefore submits it is not possible to be sure that any discrepancies are attributable to the Fifth Defendant. I reject this submission. There is no evidence that the material part of LMG5.1 was altered.

194. On LMG5.2 the Fifth Defendant stated that he spoke to Simon at Avis, Stockton-on-Tees (telephone number 0844 544 6102) and that he obtained a quote for a Mercedes ML320 Auto. The Notes/Comments on LMG5.2 state: "Car supplied by Avis Prestige". The Fifth Defendant admits that he did not obtain a quote from Avis, Stockton-on-Tees on the number stated. He said that he obtained the quote from Avis Prestige. However LMG5.2 does not record that he obtained a quote from Avis Prestige. Further there is no call to Avis Prestige on the Requirements page.

195. On LMG5.3 the Fifth Defendant states that he spoke to Chris at Enterprise, Middlesbrough (telephone number 0870 3503 000) and obtained a quote for a Jeep Grand Cherokee 3.0 Auto. The evidence of Peter Watson, assistant manager of Enterprise, Middlesbrough in a witness statement dated 1 September 2009 is that there was no-one called Chris working at this branch in March 2009 (para 5), that it is standard company policy that a non-waiveable excess of £1,000 applied to the hire of the Jeep Grand Cherokee and not £500 as stated by Mr Gray (para 7), and it is standard company policy that the minimum age to hire such a car was 30 years, and not 25 as stated by Mr Gray (para 8). Mr Coley criticises the Claimant's investigative methodology. He says that the telephone number, which is the point of contact used by the Fifth Defendant, is a non-geographical one. It follows that if that telephone number connected to a call centre or re-directed to a different branch the evidence of Mr Watson as it relates to the Middlesbrough branch would be irrelevant. I reject this criticism. The Fifth Defendant stated that he spoke to Chris at the Middlesbrough branch.

196. Paragraphs 8 and 10 of the witness statement were untrue to the Fifth Defendant's knowledge as in the other cases with which he was concerned. Further LMG5.1-5.4 were false, as the Fifth Defendant well knew, in relation to the stock answers.

Chapman v P&O Ferrymasters

197. In his witness statement in this case dated 6 May 2009 the Fifth Defendant said that he conducted the spot hire survey on that date. He said that he telephoned nine companies and asked each one to quote for hire of a Jaguar X-type 2.0 automatic or similar vehicle (para 7) and that five of the companies telephoned were able to provide an appropriate car for the date and time required (para 8).

198. I find that he did not obtain five quotes as stated in paragraph 8.

199. On LMG5.2 the Fifth Defendant states that he spoke to Kevin at Avis, Nottingham (telephone number 0844 581 0014) and obtained a quote for a Jaguar X-type 2.2 Auto. The Notes/Comments section on LMG5.2 states: "Car supplied by prestige branch". In his evidence the Fifth Defendant admits that he did not obtain a quote from Avis, Nottingham on the number stated. He said that he obtained the quote from Avis Prestige. That is not what is stated on LMG5.2. There is no call to Avis Prestige on the Requirements page.

200. On LMG5.4 the Fifth Defendant states that he spoke to Will at National, Nottingham and obtained a quote for a Jaguar X-type 2.2 Auto. In his witness statement dated 22 September 2009 Richard Ridley states that he has been at the Nottingham branch for nine years. He says:

> "2. I have seen and read the witness statement of Laurence Gray dated 6 May 2009, alleging a conversation took place between him and Will relating to the hire of a Jaguar X-type 2.2 auto from this branch.
>
> 3. There is no-one called or named Will at this branch.

> 4. We have not got a Jaguar 2.2 auto on our retail rental fleet at this branch.
>
> 5. If somebody called asking for this type of car they would be told it would have to be sourced from elsewhere.
>
> 6. I know for a fact we had no Jaguar 2.2 on our fleet at the time of the enquiry so the rates cannot be correct [or] have been quoted."

201. Mr Coley submits that the use of the present tense in paragraph 3 proves nothing about whether there was anybody called Will working at the branch on the date of the survey, over four months' previously. I reject this submission. Mr Ridley was at the branch at the material time. Paragraphs 2 and 3 have to be read together. It is inconceivable that he would not have said Will was working at the branch on 6 May 2009 if that had been so. Further as for the suggestion made by Mr Coley that paragraph 5 raises the possibility that the company might have been able to source such a vehicle for a customer requesting one, the Fifth Defendant does not state that he was told that "it would have to be sourced from elsewhere".

202. On LMG5.5 the Fifth Defendant states that he spoke to Claire at Hertz, Nottingham who quoted for a Mercedes C220 Auto. Matthew Brennan, in a witness statement dated 22 September 2009 stated that he had been Customer Service Receptionist at the branch for 3½-4 months. He said that there is no-one called Claire at this branch. I am not satisfied to the criminal standard that a person named Claire was not working at the branch on 6 May 2009. However Mr Brennan, like Mr Ridley, does state that the surveyed vehicle is not on fleet at his branch, but it could be sourced from elsewhere. Mr Coley submits that again this raises the possibility that the quotation said to have been obtained by the Fifth Defendant might have been so obtained. Mr Brennan does not say, unlike Mr Ridley, that the person seeking the quotation would be told this was so. I do not consider that the Claimant has established his case on this evidence.

203. However, I do find LMG5.5 to be false in respect of the stock answers of "More than three years", "No idea" in relation to the price as at 5 April 2007 and the answer "Y" [Yes] in respect of the question "Same vehicle or similar on fleet at date of original hire?".

Syal v Sudera

204. In his witness statement dated 26 June 2009 the Fifth Defendant states that he conducted the spot hire survey in this case on 4 March 2009. He states that he telephoned six companies and asked each one to quote for hire of a BMW 320 or similar vehicle (para 7) and that five of the companies telephoned were able to provide an appropriate car for the date and time required (para 8).

205. I find that the Fifth Defendant did not telephone six companies and ask each one for a quote as stated in paragraph 7 and he did not obtain five quotes as stated in paragraph 8.

206. On LMG5.1 the Fifth Defendant stated that he spoke to Chris at Enterprise, Nottingham (telephone number 0115 985 0999) and obtained a quote for a BMW 320.

207. Ashley Houston in his witness statement dated 18 September 2009 says that he is the assistant branch manager at the Nottingham branch and that he has been in that position for 18 months. He says that there is no-one called Chris working at this branch in Nottingham or in either of the other two branches, and that no person called Chris has been working at his branch during the time that he has been there (para 4). Further he states that they could not have quoted for a BMW 320 at the time as it would not have been available to them (para 5). Mr Coley criticises this evidence on the basis that Mr Houston was not asked to confirm that the telephone number which appears on LMG5.1 connects to his branch. I reject this criticism. The Fifth Defendant states that he spoke to Chris at the Nottingham branch.

208. On LMG5.2 the Fifth Defendant states that he spoke to Julie at National, Nottingham and obtained a quote for a Saab 9.3 2.0. However in a witness statement dated 18 September 2009 Mr Ridley stated that there has definitely not been anyone called Julie working at the Nottingham branch in the last nine years (para 3). I accept this evidence. That being so it is not necessary for me to determine whether the excess would have been £600 as Mr Ridley stated rather than the excess level of £150 as stated by the Fifth Defendant.

209. On LMG5.3 the Fifth Defendant stated that he spoke to Kevin at Avis, Nottingham (telephone number 0844 581 0014) and obtained a quote for a BMW 320.

210. Sally Young, manager of the Nottingham branch, states in her witness statement dated 18 September 2009 that there has never been anyone called Kevin employed at the Nottingham branch. However she says that the telephone number 0844 581 0014 is not the telephone number of the Nottingham branch. Mr Coley submits that the fact that the telephone number is wrong renders the remainder of Ms Young's evidence meaningless. I do not accept this submission. The Fifth Defendant stated that he spoke to Kevin at the Nottingham branch of Avis. This cannot be true. In his evidence the Fifth Defendant suggested that he had obtained the quote from Avis Prestige. However, there is nothing on LMG5.3 to suggest that he did so and there is no call to Avis Prestige recorded on the Requirements page. Ms Young's evidence, which I accept, is that they would not have been able to quote for a BMW 320 (para 6).

211. LMG5.1-5.5 were in addition false in the respects identified in relation to the appendices in other cases.

212. In this and each of the sample cases appendices LMG 2, 3 and 4.2 were false. This is a consequence of the false statements that I have identified that the Fifth Defendant made in the sample cases. The same consequence flows from the findings of false statements that I make in this judgment in relation to the statements in a similar form made by each of the other Defendants. Similarly in their cases appendices 2, 3 and 4.2 to their statements were false.

The Sixth Defendant (Keel Broom)

213. The allegations made against the Sixth Defendant set out in the Schedule to the Claim Form are that he

> "Did verify documents for use in various proceedings by signing them, or causing them to be signed, with statements of truth when they were false to his knowledge or he did not believe them to be true in the following cases:
>
> 1. *Keegan v Harris* (Slough County Court 9HW00084);
>
> 2. *Rodgers v St Anne's Hostel* (Wolverhampton County Court 9WV00445);
>
> 3. *Cockayne v Ability Handling Ltd* (Leeds County Court 9LS01464) (calls alleged made by the Sixth Defendant but Report signed by the Seventh Defendant);
>
> 4. *Swan v Stones* (Southend County Court 9SS00062);
>
> 5. *Ford v Transalliance* (Chester County Court 8CH04296) (calls allegedly made by the Sixth Defendant but Report signed by the Seventh Defendant);
>
> 6. *Rekaj v Al-Enazi* (Watford County Court 9WD04472);
>
> 7. *Morris v Motor Parts Direct* (Reading County Court 9RG02712)."

214. The Sixth Defendant denies the allegations.

215. He commenced his employment with AF as a rates surveyor in September 2008. His probationary period ended in March 2009. He was a member of the First Defendant's team, together with the Third and Fourth Defendants. He is the brother of the First Defendant. He resigned on 17 September 2009. It is his case, as I understand it, that whilst it is now obvious that the working practices at AF were dishonest, he did not appreciate that at the time. What he did was, as Mr Giles put it, doing what he had always done in his working life, just doing his job. The Sixth Defendant said repeatedly in his evidence that he was acting on instructions and that it did not enter his head that he was doing anything dishonest.

216. I do not accept that this is so. I consider the Sixth Defendant to be an untruthful witness who knowingly and actively participated in the dishonest activities of AF.

217. Mr Giles said that the Sixth Defendant was given no training in any meaningful sense to understand what was relevant and what was not relevant in the witness statements he completed. Mr Giles pointed to two "subtle" differences between the original proforma witness statement and that in operation after March 2009. However what is really significant for the purposes of this case is whether the Sixth Defendant made the telephone calls that he said he made at all. Whether or not the training he received was adequate I have no doubt that the Sixth Defendant acted dishonestly.

218. In respect of the case of *Rekaj v Al-Enazi* he stated in his affidavit sworn on 11 July 2016:

> "101. I do remember this case. The first comment I would make about this report was that it was never supposed to be in my name. I received a phone call from Sue at Head Office and she advised that there was an urgent report that needed to be completed within five days. She advised me that someone had already made the telephone calls and that all I needed to do was finalise it and do a statement. I noticed that there was some information missing so I made one call only and this was to Thrifty in Harrow… This is the only involvement with telephone calls I had…
>
> 102. As can be seen from Mr Evans' evidence there is reference to the report having been altered by Helen Whysall. I raised my concerns about this case directly with Stuart McLean by e-mail, in reply to which he telephoned me and said he would get the report re-done…"

219. On his own case the Sixth Defendant made a statement in his own name saying that he had done the survey because he had been asked to do it because it was urgent and the other surveyor was not available when all he did was make one call to Thrifty. All the other calls were made by the other rates surveyor, who he did not identify, on a different occasion. By his own admission he was party to completing a false statement.

220. Helen Whysall then sent him an e-mail dated 15 July 2009 changing his statement in respect of Thrifty and suggesting he lie on oath if asked a certain question in court. She wrote:

> - "KDB5.4 – I removed the comment which said the Thrifty branch at Harrow has closed as you may get questioned on how you know this – e.g. did you phone them? If so, why isn't the call included in the call history? I've made of this on the Requirements page so that if you are asked at court why you went to the Wembley branch instead of the Harrow one (which the Thomsonlocal page shows as nearer to the claimant) you can just say that the referring company suggested Thrifty at Wembley and they didn't mention anything about a branch at Harrow."

KDB5.4 to the Sixth Defendant's witness statement in this case, as amended by Helen Whysall, states that he obtained a quote from Thrifty, Wembley. The requirements page, which of course was not disclosed, records under the heading "Additional Notes" what she had said in her e-mail in identical terms. At paragraph 10 of his witness statement he stated that any relevant notes were recorded on the spreadsheet. This, as he must have known, was not true. The note from Helen Whysall on the Requirements page was plainly relevant. There is no e-mail from him to Stuart McLean and the statement was not re-done as he alleged in his affidavit he was told it would be.

221. Another example of what Mr Rees described as the Sixth Defendant's deviousness concerned the spot hire survey conducted by his colleague, Clare Burton, in the case of *Harris*. He wrote on 8 September 2009 at 13:45 to the Second Defendant, with a copy to the First Defendant:

> "Hi Elaine, picked this case up for checking that Clare has completed had a quick look and firstly noticed that it included a BMW 325 from Avis Prestige, which to my knowledge they do not have although it is on Web Site, made a quick call to them which they instantly told me that they do not have any BMW on fleet and nor have they for some time – recommended normal Avis Select at major airports.
>
> I had a chat with Nathan with my concerns as if I know Avis Prestige don't do BMW, I would guess certainly Accident Exchange would know too, also is the rest of the info correct?..."

The Second Defendant replied later that day at 16:45:

> "Hi Keel – thanks for your note, you're right to query it. I've asked Helen to have a look and to speak to Clare about it."

What is significant is that the Sixth Defendant was not complaining that his colleague was being dishonest. What he was concerned about was that the dishonesty would be spotted by AE.

222. Indeed, between the sending of those two reports on 8 September at 17:53 the Sixth Defendant sent an e-mail to Helen Whysall, with a copy to Stuart McLean, giving feedback in the case of *Walker*, another case where Clare Burton conducted the spot hire survey. It shows him changing the report in this case to make it false. He wrote:

> "1. Call count; altered Terminus Contract Hire to 'Ignore' instead of 'No' should get away with this call count 5 from 9 instead of 10 (statement changed)
>
> …
>
> 3. A5.5 Avis Prestige excess noted as £1,250 reduced to £500 at £5 per day should be £1,500 reduced to £750 at £15 per day – confusion with Guy Salmon I think?
>
> …
>
> 5. Changed paragraph 7 in statement to wording as below, as text had wrong wording/grammar when Google used; I received this from Elaine from previous feedback, I've copied it into Word Doc and saved on disk top bring it up along side next statement when you use Google and change accordingly (don't forget to change date/figures!) If you want!

> My colleague, Clare Burton, conducted the spot hire survey on 03 September 2009. She telephoned nine companies, detailed at Appendix A4.1, all of which were listed in Thomsonlocal.com or Google, or referred by companies in those lists, and asked each one to quote for hire of a BMW 730 automatic or similar vehicle to start on 04 September 2009 at 9:00am. Although Thomsonlocal.com and Google indicated there were 97 results and 527,000 respectively, the pages attached are the companies referenced in the search."

223. Another case which shows the Sixth Defendant participating in the dishonest activities of AF is *Ishak v Dairy Farmers of GB*. Having completed the spot hire survey he wrote to the Second Defendant on 6 July 2009 at 15:41:

> "Hi Elaine, Nathan has asked if you could have a look at the case I've just completed… Instructions [do] ask 'would it have been possible to find another hire vehicle in the claimant's area at a cheaper rate' – answer is pretty much no. Highest APP7 rate is 92.8%. Nathan has asked if you agree with him to advise no savings. …"

The Second Defendant replied at 11:24 on 7 July:

> "This probably should have been queried with the solicitor prior to the survey being undertaken, as we are now in the unfortunate position where a survey has been completed, so we need to charge for it. If we issue it with no saving (issuing only Apps 2 and 5 at a 50% fee) the client may feel somewhat aggrieved that we didn't point out the likelihood of little/no saving at the outset. I would be inclined to replace the highest two rates with:
>
> - Hertz – XC90 (if cheaper than the ML)
> - Thrifty – Discovery
> - Enterprise – Discovery/Pathfinder."

At 12:53 on the same day the Sixth Defendant wrote to the First Defendant:

> "Nathan, I got rid of Hertz and replaced with Thrifty and Avis with Capital – all cheaper now!"

224. The Sixth Defendant's evidence in respect of the telephone bills he produced is not credible. He was aware of the allegations relating to telephone calls in September 2009 and yet he made no attempt to obtain his full mobile and landline records at that time. He exhibited to his affidavit dated 11 July 2016 page 5 of a seven-page BT telephone bill for the period 21 April 2009-24 July 2009 which contained a summary of the quarter's charges but did not show the tariff he was on. Following a request by the Claimant for the other six pages, he produced them on 17 February 2017 during the course of the trial. They indicated that he was on an unlimited evening/weekend

tariff, not on an anytime tariff which he said was the reason for not claiming telephone expenses during the relevant period. During the course of cross-examination he produced a telephone bill for the following quarter 25 July-24 October 2009 which showed that he was not on an unlimited anytime tariff until 14 August 2009. Questioned by Mr Rees as to where those telephone bills had come from he said that they were sent to him in a brown A4 envelope by BT in June 2012. He said that he attended his solicitors office and handed over the documents when he received them. His solicitors had no record of him having done so. Moreover the account he gave of handing them to his solicitors seems to be inconsistent with the terms of a letter written by his solicitors to BT on 15 October 2012 when they wrote:

> "As you are aware, we initially wrote to you on the 10th April 2012 requesting that you provide certain telephone records in relation to our Client's account and we enclose a further copy of this letter for your reference. We received a telephone response from you on the 15th May 2012 (from a telephone advisor named 'Briete', advising that you are unable to comply with our request due to the amount of time that has lapsed…)
>
> In light of such inability to comply with our request we would be grateful if you could please arrange to sign the enclosed statement to confirm why you are unable to provide the records…"

In any event it appears from the telephone attendance note dated 15 May 2012 that Briete advised that the Sixth Defendant had free evening and weekend calls in 2009, not that he had had free daytime calls. At paragraph 64 of his affidavit (the truth of which he confirmed when giving evidence) he said that in or around December 2008 BT had placed him on a new tariff which meant "[he] did not have to pay for daytime calls". I do not believe this to be so. It follows that I do not accept his explanation for not submitting claims for expenses to AF regarding telephone calls he made on his personal landline after January 2009. I am satisfied that many of the calls he said he did make when conducting spot hire surveys he did not make.

225. At paragraph 60 of his affidavit the Sixth Defendant said "I was aware that my reports and witness statements were subsequently being altered by other more senior people within Autofocus" (although he was not aware of all the occasions when the alterations took place). In his evidence he said that he knew his statements were changed in extremely significant ways before being issued; as for the changes he made to other persons' reports, he said they were significant. He continued to make such changes even after he says he had a conversation with Stuart McLean when he asked him if it was legal to change reports and Mr McLean allegedly told him he should not make changes because it was not legal to do so. His evidence about his conversation with Stuart McLean does not make sense.

226. I find the evidence of the Sixth Defendant not to be credible in numerous other respects, which include the following:

i) He said that he did ask his questions to establish if the car rental company was trading at the time of the original hire using a timeframe. That evidence, as Mr Rees observed, did not sit well with his account that he often rang central

reservations. He also, he said, established whether the company had a car on fleet during a similar period. I do not accept that he would have been able to establish these matters.

ii) He accepted that he did not ask what the rates were at the time of the original hire ("price as at"). Yet every one of his reports purport to say that he did.

iii) He said that he could obtain a quote in a minute.

iv) I do not accept his evidence that the first time he saw the "mock trial" scripts in his name that were found in his file was when his solicitor showed them to him during the course of the trial.

The Sample Cases in the Schedule

Keegan v Hannis

227. In his witness statement dated 29 June 2009 the Sixth Defendant said that he conducted a spot hire survey on that date. He said he telephoned seven companies and asked each one to quote for hire of an Audi A4 3.0 or similar vehicle (para 6), and that five of the companies telephoned were able to provide an appropriate car for the date and time required.

228. I am satisfied that he did not telephone seven companies and ask each one to provide a quote as stated at paragraph 6, nor did he obtain quotes from five companies as stated in paragraph 7.

229. On KDB5.1 he stated that he spoke to Lisa at Hertz, Slough SL2 1HA (telephone number 01753 820642) and obtained a quote for a Mercedes E280. Mr Evans said that on 8 April 2010 he called Hertz in Slough and spoke with Julian, who told him that nobody called Lisa worked at that branch either then or in June 2009. AF's telephone records do record a call being made on 29 June to Hertz on 0870 846 006, which is Hertz generic number. I am satisfied that he did not obtain a quote from Lisa at the Slough branch of Hertz as he said he did.

230. On KDB5.2 the Sixth Defendant stated that he spoke to Mag at Bucks Car Hire, High Wycombe (telephone 01494 463277) and obtained a quote for a Mercedes C220. There is evidence of a call being made to Bucks Car Hire on that number, but Mr Evans said that when he telephoned Bucks Car Hire on 8 April 2010 and spoke with Imran he was told that they did not have a Mercedes Benz car on their fleet and could not quote for a Mercedes C200. There is an e-mail sent by Helen Whysall to the Sixth Defendant on 15 July 2009 in which she states that she has changed the results of his survey to delete a quote for an Audi A8 from Bucks Car Hire, telephoned Bucks and swapped it for a Mercedes C220. The Sixth Defendant suggests that just as Helen Whysall made an alteration to the survey so anyone else may have made alterations to his original survey. I am satisfied on the evidence that the Sixth Defendant did not obtain a quote for a Mercedes C220 as he said he had done.

231. On KDB5.3 the Sixth Defendant said that he spoke to Simon at Avis, Hayes (telephone number 0844 581 0014) and obtained a quote for an Audi A4 2.7. No call was made to Avis on that number. In evidence the Sixth Defendant suggested he

obtained a quote from Avis Prestige. The Notes/Comments section on KDB5.3 says "Delivery and collection by prestige branch". It is not stated on KDB5.3 that the Sixth Defendant obtained a quote from Avis Prestige.

232. On KDB5.4 the Sixth Defendant stated that he spoke to Lisa at National, High Wycombe HP11 2EP (telephone number 01494 527853). The Notes/Comments section states "Delivery and collection by Guy Salmon". No call was made to National on that number. I am satisfied that the Sixth Defendant did not obtain the quote from National as he said he did.

233. On KDB5.5 he said that he spoke to Kingston at Budget, High Wycombe HP11 2EL (telephone number 01494 464640) and obtained a quote for a Mercedes E280. On 8 April 2010 Mr Evans spoke to Ajay at Budget, High Wycombe who told him that they did not have Mercedes Benz vehicles on fleet and there was nobody called Kingston employed there. There is a record of a call to Budget on a different number. I am satisfied that the Sixth Defendant did not obtain the quote that he said he did as stated on KDB5.5.

Rodgers v St Anne's Hostel

234. In a witness statement dated 3 August 2009 the Sixth Defendant said that on that day he conducted a spot hire survey in this case. He said that he telephoned seven companies and asked each one to quote for hire of a Mercedes C220 automatic or similar vehicle (para 6), and that five of the companies telephoned were able to provide an appropriate car for the date and time required (para 7).

235. I am satisfied that he did not telephone seven companies and ask each one to provide a quote as stated in paragraph 6 and that he did not obtain quotes from five companies as stated in paragraph 7.

236. On KDB5.1 he stated that he spoke to Raj at Terminus Contract Hire, Wolverhampton (telephone number 0844 5611 636) and obtained a quote for a Mercedes C220 Auto. The Sixth Defendant accepts that AF's telephone records do not record a telephone call to Terminus Contract Hire in Wolverhampton on the number stated in KDB5.1. However he says that 0844 is not the area code for Wolverhampton; it is 01902 424 0204, which he says is the telephone number for the local branch of Terminus Contract Hire, and there is a call duration of 2 minutes 24 seconds recorded. I am not satisfied that the Claimants have established that the Sixth Defendant did not obtain a quote from Terminus Contract Hire.

237. On KDB5.2 the Sixth Defendant states that he spoke to Peter at Hertz, Aldbury (telephone number 0878 850 2662) and obtained a quote for a Mercedes C200 Auto. A call was made to Hertz on that number. However it lasted one minute 34 seconds. He could not have obtained the quote that he did in that time.

238. On KDB5.4 the Sixth Defendant states that he spoke to Brian at Avis, Birmingham and obtained a quote for a Mercedes C220 Auto. The Notes/Comments section states "delivery and collection by prestige branch". No call was made to Avis on the number stated on KDB5.4. There is no call to Avis Prestige recorded on the Requirements page. In any event KDB5.4 does not state that he obtained a quote from Avis Prestige.

239. On KDB5.5 the Sixth Defendant states that he spoke to Andy at AVC, Wolverhampton (telephone number 01902 353393) and obtained a quote for a Mercedes C200 Auto. There is a record of a call to AVC on that day and Mr Anthony Brown, a sales administrator for the company, in a witness statement dated 8 October 2009 said that there was an Andy working at the Wolverhampton branch. However he said "Regarding hire of a Mercedes C200 we did not have this vehicle on fleet at that time and therefore would not have quoted any rates for it". No statement was obtained from Andy. On the evidence I am not satisfied that the Sixth Defendant did not obtain a quote for the Mercedes vehicle.

Cockayne v Ability Handling Ltd

240. This is a case where an expert report was prepared by the Sixth Defendant and the Seventh Defendant's electronic signature was applied to it by the Sixth Defendant, the report being based upon a spot hire survey conducted by the Sixth Defendant.

241. The Seventh Defendant's states at paragraph 7 of the report that the Sixth Defendant conducted the spot hire survey on 6 May 2009, that he telephoned nine companies and asked each one to quote for a hire of a Jaguar S-type 2.7 automatic or similar vehicle, and at paragraph 8 he states that five of the companies telephoned were able to provide an appropriate car for the date and time required.

242. I am satisfied that the Sixth Defendant did not telephone nine companies and ask each one to provide a quote as stated in paragraph 6, and he did not obtain quotes from five companies as stated in paragraph 7.

243. On A5.1 the Sixth Defendant states that he spoke to Scott at National, Leeds (telephone number 0113 277 7997) and obtained a quote for a Jaguar XF 2.7 Auto with "delivery and collection by Guy Salmon". No call was made to National, Leeds on the telephone number stated. In evidence the Sixth Defendant suggested that the quote was obtained from Guy Salmon. The Requirements page does not record any call to Guy Salmon. In any event it is not stated on A5.1 that he obtained a quote from Guy Salmon.

244. On A5.2 the Sixth Defendant states that he spoke to Clare at Enterprise, Leeds. There is a call recorded to the Leeds branch lasting 2 minutes 47 seconds. The likelihood is that that is too short a time in which to obtain the quote. However I am not satisfied to the requisite standard that the Claimant has established that he did not obtain the quote stated.

245. On A5.3 the Sixth Defendant stated that he spoke to Kerry at Avis, Leeds (telephone number 0844 581 0014) and obtained a quote for a Jaguar XF 2.7 Auto, with "Delivery and collection by prestige branch". There is no recorded call to Avis on that number. In evidence he suggested that he called Avis Prestige and obtained a quote from that company. There is no call to Avis Prestige recorded on the Requirements page. In any event that is not what A5.3 states.

246. On A5.4 the Sixth Defendant states that he spoke to Karen at Thrifty, Leeds and obtained a quote for a Jaguar S-type 2.7 Auto, having been referred by 1-Car-1, Leeds. I am satisfied that this is what is referred to as a "bogus referral". There was

no call to 1-Car-1. On the Requirements page it is recorded that 1-Car-1 is in administration.

247. On A5.5 the Sixth Defendant states that he spoke to Steve at Hertz, Leeds (telephone number 0870 846 0014) and obtained a quote for an Audi A6 2.4 Auto. The Notes/Comments section on A5.5 states: "Vehicle available from Manchester Airport branch". I am satisfied that he did not obtain the quote from Hertz Leeds as stated. On 8 May 2009 the First Defendant wrote to the Sixth Defendant giving him feedback and stating "Didn't like only four rates for S-type Jag, especially as three referrals – I added Hertz at the end (two more calls on Thomson) and got an Audi A6 from Manchester Airport". In an e-mail dated 14 May 2009 Helen Whysall informed the Sixth Defendant (and the First Defendant) that she had made further changes to the report which included changing paragraph 8 from 4 to 5 companies being able to provide a car. It is clear from the evidence that the Sixth Defendant was a party to these changes.

248. In relation to this case of *Cockayne* and the case of *Ford* (see paras 257-264 below) the Sixth Defendant caused the expert reports to be signed, because he actually put the Seventh Defendant's signature on them. It is the Sixth Defendant's evidence that those two reports are not the Seventh Defendant's expert reports at all they are his reports and they are false reports from top to bottom.

Swan v Stones

249. In his witness statement dated 21 July 2009 the Sixth Defendant states that he conducted the spot hire survey in this case on that date. He says that he telephoned seven companies and asked each one to quote for hire of a Mercedes S320 automatic or similar vehicle (para 6), and that five of the companies telephoned were able to provide an appropriate car for the date and time required (para 7).

250. I am satisfied that he did not telephone seven companies and ask each one to provide a quote as stated in paragraph 6, and that he did not obtain quotes from five companies as stated in paragraph 7.

251. On KDB5.1 he states that he spoke to Simon at Avis, Leigh-on-Sea and obtained a quote for a Mercedes S320 Auto. The Notes/Comments section of KDB5.1 states "Delivery and collection by prestige branch". No call was made to Avis, Leigh-on-Sea on the number stated. In his evidence he suggested that he obtained a quote from Avis Prestige. There is no record on the Requirements page of a call having been made to Avis Prestige. In any event that is not what is stated on KDB5.1. I reject the suggestion made by Mr Giles in his closing submissions that the possibility that he telephoned the Avis call centre and obtained the quote cannot be dismissed. Avis Prestige, whom the Sixth Defendant suggested he called, had nothing to do with Avis.

252. On KDB5.2 the Sixth Defendant stated that he spoke to Nadine at National, Basildon and obtained a quote for a Mercedes S320 Auto, having been referred by Drive & Go, Leigh-on-Sea. The Notes/Comments section of KDB5.2 states "Delivery and collection from Guy Salmon". On 30 September 2009 Mr Carl Mortimer, employed by Europcar (National and Europcar being part of the same group) at the Basildon branch stated that over the past two years no-one by the name of Nadine had ever worked there, the branch did not have a Mercedes 320 on fleet and it would not quote

for delivery. There is no record of a call to National on the day of the survey, nor is there a record of a call to Drive & Go. That was another bogus referral. The Sixth Defendant suggested in evidence that he obtained the quote from an unspecified branch of Guy Salmon. The requirements page does not record any call to Guy Salmon. In any event that is not what KDB5.2 states.

253. On KDB5.3 the Sixth Defendant stated that he spoke to Vicky at Prestige Car Hire, Hemel Hempstead and obtained a quote for a Mercedes S320 Auto, having been referred by Enterprise, Leigh-on-Sea. There is a record of a call to Prestige Car Hire at 13:26 on 21 July, which lasted one minute two seconds. The quote stated on KDB5.3 could not have been obtained in that time. As for the alleged referral by Enterprise, that was another bogus referral. A call was made to Enterprise at 14:27 on 21 July, but that was about an hour after the call made to Prestige Car Hire.

254. On KDB5.4 the Sixth Defendant stated that he spoke to Mandy at Bespokes, north London and obtained a quote for a Mercedes S320 Auto. There is a record of a call to Bespokes on the day of the spot hire but it only lasted one minute 13 seconds. The quote stated on KDB5.4 could not have been obtained in that time.

255. On KDB5.5 the Sixth Defendant states that he spoke to Dee at Signature Car Hire, Northolt and obtained a quote for a Mercedes S320 Auto. Again, there is a record of a call made to Signature on 21 July but it only lasted one minute 54 seconds, too short a time in which to obtain the stated quote.

256. There is no evidence to support the suggestion made by Mr Giles that the results of the telephone quotes given by Avis, Leigh-on-Sea, Drive & Go, Leigh-on-Sea or National, Basildon were not the subject of unilateral third-party alteration or manipulation.

Ford v Transalliance

257. This is another case where the expert report was prepared by the Sixth Defendant and the Seventh Defendant's electronic signature was applied to it, the report being based upon a spot hire survey conducted by the Sixth Defendant.

258. In the report dated 24 February 2009 the Seventh Defendant states that the Sixth Defendant conducted the survey on 16 February 2009, that he telephoned nine companies and asked each one to quote for hire of a Mini cooper 1.6 or similar vehicle (para 8), and that five of the companies telephoned were able to provide an appropriate car for the date and time required (para 9).

259. I am satisfied that the Sixth Defendant did not telephone nine companies and ask each one to provide a quote as stated in paragraph 8 and he did not obtain quotes from five companies as stated in paragraph 9.

260. On A5.1 the Sixth Defendant states that he spoke to Simon at Avis, Dover and obtained a quote for a Mini Cooper 1.6, having been referred by Manston Transport. The Notes/Comments section on A5.1 states "Delivery and collection by prestige branch (London)". There is a record of a call to Manston Transport on 16 February which lasted eight seconds. The call is recorded on the requirements page as being to an "Answer Machine". That was a bogus referral. Further the evidence of Mr Peter

Williams, an investigator, was that on 1 October 2009 he visited the Dover branch of Avis and spoke to Jane, an Avis rental manager who had worked at the branch since 2008. She said they had never had a Mini Copper 1.6 on their fleet at Dover and no-one called Simon had worked there. She also said that they would not deliver or collect on a private rental. The Sixth Defendant suggested in evidence that he obtained the quote from Central Reservations, but if he did so or if he obtained it from Avis Prestige that should have been stated on KDB5.1. It was not. In this case and in all other cases involving the Defendants the impression was given that the quote was obtained from the local branch.

261. On A5.2 the Sixth Defendant stated that he spoke to Sunny at National, Dover and obtained a quote for a Mini Cooper S 1.6, having been referred by Manston Transport, Ramsgate. There is no record of a call to Manston Transport. This was another bogus referral.

262. On A5.3 the Sixth Defendant states that he spoke to Chris at Enterprise, Canterbury and obtained a quote for a Volkswagen Golf 1.6, having been referred by Pierremonts, Ramsgate. The telephone records show that he called Pierremonts over an hour after he phoned Enterprise.

263. On A5.4 he states that he spoke to Callum at Europcar, Dover and obtained a quote for a Volkswagen Golf 1.6, having been referred by 1-Car-1, Canterbury. That was a bogus referral. There is no record of any call having been made to 1-Car-1.

264. On A5.5 the Sixth Defendant states that he spoke to James at Kendall Self Drive, Canterbury and obtained a quote for a Mini Cooper 1.6. There is a record of a call to Kendall Self Drive on 16 February which lasted two minutes. I do not accept that he could have obtained the quote he stated he did obtain in that time.

Rekaj v Al-Enazi

265. I have considered this case above (see paras 218 to 220) in relation to the Sixth Defendant's credibility.

266. In his witness statement in this case dated 9 July 2009 the Sixth Defendant stated that he conducted the spot hire survey on that date, that he telephoned seven companies and asked each one to quote for hire of a BMW X5 3.0 automatic or similar vehicle (para 6), and that five of the companies telephoned were able to provide an appropriate car for the date and time required (para 7).

267. I am satisfied that the Sixth Defendant did not telephone seven companies and ask each one to provide a quote as stated in paragraph 6, and that he did not obtain quotes from five companies as stated in paragraph 7. I can deal with this case shortly because, as I have noted (see para 218 above) he said that his involvement was only in relation to one call to Thrifty.

268. On KDB5.1 he states that he spoke to Lisa at Europcar, Edgware and obtained a quote for a Mercedes ML320 Auto. On KDB5.2 he states he spoke to Musa at Capital Hire, Edgware and obtained a quote for a BMW X5 3.0 Auto. On KDB5.3 he states that he spoke to Una at Sixt, Wembley and obtained a quote for a Mercedes ML320 Auto, following a referral by Carentals, Edgware. On KDB5.4 he states that he spoke to

Damon at Thrifty, Wembley and obtained a quote for a Land Rover Discovery 2.7 Auto, following a referral by Carentals, Edgware. On KDB5.5 he states that he spoke to Kerry at Avis, Park Royal and obtained a quote for a Mercedes ML320, following a referral by Eldan Rent-A-Car, Edgware.

269. There is no record of any telephone calls having been made on 9 July 2009 by the Sixth Defendant to any of the car rental companies referred to in these appendices, with the sole exception of a call to Eldan Rent-A-Car which lasted two seconds.

Morris v Motor Parts Direct

270. The Sixth Defendant made a witness statement in this case dated 25 June 2009 in which he stated that he conducted the spot hire survey on the previous day. He said that he telephoned six companies and asked each one to quote for hire of a BMW 330 automatic or similar vehicle (para 6), and that four of the companies telephoned were able to provide an appropriate car for the date and time required (para 7).

271. I am satisfied that he did not telephone six companies and ask each one to provide a quote as stated in paragraph 6, and that he did not obtain quotes from four companies as stated in paragraph 7.

272. On KDB5.1 he stated that he spoke to Lisa at Europcar, Reading RG30 1EA (telephone number 0118 958 3750) and that he obtained a quote for an Audi A4 2.7 Auto. The Notes/Comments section on KDB5.1 states "Delivery and collection by Guy Salmon".

273. On 24 September 2009 Mr Peter Evans attended the premises of Europcar at their branch at 6-8 Commercial Road, Reading RG2 0QZ. He spoke to Mr Crocker, the branch manager, who told him that Europcar had been trading from the premises in Commercial Road for approximately two years, having moved there from Portman Road, Reading RG30 1EA. He said that he did not know anybody by the name of Lisa at the branch then or in June 2009. Further he said that an Audi A4 2.7 Auto was not available for hire on their fleet, and that they do not quote for specific vehicles.

274. Mr Giles suggests that what cannot be ruled out is that the version of the witness statement and the appendices produced by the Claimant is not the same as the witness statement and appendices created by the Sixth Defendant as a result of his telephone survey and may be the product of unilateral third party alteration and manipulation. He makes the same point in relation to various other cases. There is no evidence that this has occurred either in this case or in the other cases to which Mr Giles has referred.

275. On KDB5.3 the Sixth Defendant states that he spoke to Brian at Avis Prestige in Kensington and obtained a quote for an Audi A4 2.7 Auto. There is no record of any call having been made to Avis Prestige on the telephone number stated. At paragraph 105 of his affidavit he says:

> "However, the telephone records do record a call on 25 June 2009 from my number to 0844 581 0014 and the call lasting 4 minutes 39 seconds at 16:08. That phone number is the generic number for Avis. I can only say therefore that either I dialled

> the specific number for Avis Prestige in central London and was re-routed via their call centre, or I dialled their call centre to get through to Avis Prestige in central London and wrongly recorded the number which I actually called."

However in an e-mail he sent to Susan Green at 14:48 on 25 June he said, referring to this case, that "the above urgent case is now complete". In his evidence he said that he no longer relied on the call referred to in his affidavit. I am satisfied that the sixth defendant did not make the call that he said he did in KDB5.3.

276. On KDB5.4 the Sixth Defendant said that he spoke to Jeremy at Prestige Car Hire, Hemel Hempstead and obtained a quote for a BMW 530 Auto. There is no record of any call having been made by him to Prestige Car Hire in this case.

277. In all these sample cases there was a statement in his witness statement or the expert report that any relevant notes were recorded on the spreadsheet. I am satisfied that he knew that other relevant notes were recorded on the Requirements page.

278. I am also satisfied that in all these cases the Sixth Defendant (1) did not establish that the surveyed companies were operating at the time of the original hire; (2) did not establish that all the companies he stated had given him a quote had the model quoted, or a similar vehicle, on fleet since before the original hire; (3) did not ask any of the companies that he stated had given him a quote whether they had a similar car available on the day of the original hire and, therefore, it was untrue to state that it was not possible to establish whether such a vehicle was available; and (4) did not ask any of the companies he stated had given him a quote what the rates were at the original hire and, therefore, it was untrue to state that the companies told him that they could not advise as to such rates (see also para 212 above).

279. Further in all the sample cases statements as to "Time at Location", "price as at [date of original hire]" and "Same vehicle or similar on fleet at date of original hire?" were false.

The Seventh Defendant (Duncan Sadler)

280. The allegations set out against the Seventh Defendant in the Schedule to the Claim Form are that he

> "Did verify documents for use in various proceedings by signing them with statements of truth when they were false to his knowledge or he did not believe them to be true in the following cases:
>
> 1. *Spencer v Hutton* (Blackpool County Court 7B130435);
>
> 2. *Lynds v NFU Mutual* (Torquay County Court 9TQ01418);
>
> 3. *Ebbs v Tesar* (Croydon County Court 9CR03198);
>
> 4. *Marshall v Squires* (Exeter County Court 0EX00104);

> 5. *Morrison v Dickinson* (Nottingham County Court 8NG07638);
>
> 6. *Ahmad v Sharifour* (Birkenhead County Court 8BI20546);
>
> 7. *Mount Street Caterers v Blake* (Central London County Court 8CL08064);
>
> 8. *Austin v Mascarenhas* (Maidstone County Court 8ME02050);
>
> And did give false evidence on oath at trial seeking to interfere with the course of justice in:
>
> 9. *Spencer v Hutton* (Blackpool County Court 7B130435) on 10 September 2009."

281. The Seventh Defendant denies these allegations.

282. He started to work for AF in August 2007 as a consultant, becoming a full-time employee in about July 2008. He was employed as a team leader and rates surveyor. The Fifth Defendant was a member of his team, as were John Goudie and initially Helen Hart, who was later replaced by Pamela Walker. The Seventh Defendant referred to himself as Field Operations Manager. He was involved in the recruitment and dismissal of staff and was a party to the correspondence about the need "to buy [Pamela Walker's] silence and pay her off" (see para 83(vi) above). Further he took a leading role in the development of DRS reports which for a short while replaced CSR reports after the "balloon went up". In an e-mail dated 29 September 2009 he wrote to Colin McLean and Suzy Forrest in which he suggested that "the best way forward" is "to go out to the clients and demonstrate the DRS product". He added that he was "more than willing to lead this initiative".

283. In her closing submissions Ms Witherington submits that the evidence indicates that he was unaware of the alleged malpractice of others prior to the end of 2009 and when he became aware of it, he immediately made it clear he was not part of it. She suggests that the wool was pulled over his eyes as to what was going on; another way of putting it, she says, is that he was duped. I disagree. I do not consider the Seventh Defendant to be a truthful and credible witness. It is quite clear that he was well aware of the dishonest working practices of AF and he actively participated in them.

284. In the case of *Ebbs v Tesar* the Seventh Defendant provided a witness statement, signed with a statement of truth, dated 5 August 2009. In it he stated that he had conducted a spot hire survey on 29 July 2009. He said that he telephoned nine companies and asked each one to quote for hire of an Aston Martin DB9 automatic or similar vehicle (para 6), and four of the companies telephoned were able to provide an appropriate car for the date and time required (para 7). In fact a note on the Requirements page found on the Mirror Disk makes it clear that the survey was completed by the Fifth Defendant. The Seventh Defendant now accepts that this is so. In his affidavit, at paragraph 75, he says he notes the value of the credit hire as £36,596 and therefore this would normally have been an expert's report. He says: "I may have assumed that this was an expert report and signed it off as one when in fact

it was a lay witness statement". It is in my view inconceivable that the Seventh Defendant made such a mistake as he suggests. The differences between a lay statement and an expert report are obvious (see paras 40 to 52 above). He had dealt with and read very many lay statements and expert reports during his time working for AF. He had held responsible positions in the past, the last one being a sales director of a subsidiary of Northgate plc. Moreover an e-mail sent by the Fifth Defendant to the Seventh Defendant on 4 August 2009 was also found on the Mirror Disk. It reads as follows: "S906223 Ebbs is ready for checking. This is the lay case in your name. Shall I send it to Liz as normal or will you deal with it?". The Seventh Defendant said that he agreed that to suggest it was a "mistake" to put the lay report in *Ebbs* in his name is "patently ridiculous".

285. What happened in *Ebbs* evidences a general practice of dishonesty. In both *Morrison* and *Ahmed* again there were witness statements in the name of the Seventh Defendant in which he stated that he had conducted the spot hire survey when in fact the alleged spot hire surveys had been done by the Fifth Defendant (see below). I reject Miss Witherington's submission that the Seventh Defendant was "careless" in respect of these reports which he said are lay statements when they ought to have been expert reports.

286. The case of *Spencer v Hutton* is a case of an expert report in his name even though he had no input into the report. The report was changed by Helen Whysall from Wilcox' name into the Seventh Defendant's name. Ms Whysall informed the Seventh Defendant that she had done this by e-mail dated 27 May 2009 because Wilcox was on holiday. She said that she re-dated the statement with the date of the e-mail. The e-mail states that the survey had been done by "JSG", that is Mr Goudie. Not only did he know that he had had no input into the report, but he knew that Goudie, a member of his team, was suspected of not making phone calls and of making up bogus referrals. On 9 February 2009 the Second Defendant had sent an e-mail to Paul Wilcox, copied to the Seventh Defendant, with the subject heading "JSG – Disciplinary", referring to grounds for Goudie's dismissal.

287. On 29 September 2009, after the balloon had gone up, the Seventh Defendant wrote to Colin McLean and Suzy Forrest saying that he did not wish to appear in court on cases. He wrote:

> "There are far too many unknowns, no phone records for surveys carried out by individuals who have now left; surveys completed by those who we know did not make calls, and finally cases that are in my name that I am not sure that I have had any input [to]."

288. On 17 November 2009 the Seventh Defendant wrote to the Fourth Defendant and others (copied to Stuart McLean, Colin McLean, Suzy Forrest and Stuart McPherson) on "Checking/Issuing DRS reports":

> "A couple of things to be aware of when checking/issuing DRS reports.
>
> - If your DRS is replacing a CSR take the time to check the new rates against the existing App2 sheet, we need to have

> the new reports/rates within the same range as the original report. There will always be a difference, but I have seen reports that have considerable differences between the two surveys, if we've gone to the same companies this should not be the case. There are two main reasons why this is important.
>
> A – The solicitor may have made an offer based on the first report so therefore cannot withdraw it.
>
> B – You could have a difficult time defending your report in court."

As Mr Rees observes in his closing submissions (at para 40) such DRS reports were flawed and could easily be manipulated.

289. On 10 December 2009 at Blackpool County Court the Seventh Defendant gave evidence on oath in this case. In his evidence he told the judge that "Mr Goudie made the telephone calls and I prepared a statement". This is not true. He did not prepare the report. It was changed into his name as noted above because Paul Wilcox was on holiday. Later in his evidence he said he "would have signed it [the report] after checking the details were all fed through correctly and that the information in there is true and accurate… I have signed this as my statement but as I have just said, my colleague has carried out a lot of the actual workings on it which feeds through to the statement. Then I pick it up and sign the statement having been satisfied that it is true and accurate". That also was a lie. The Seventh Defendant did not carry out any checks to ensure that the contents of the report were true.

290. He was also cross-examined in *Spencer v Hutton* as to whether AF had a "standard operating procedure":

> "Q. Is there a standard operating procedure that you have to comply to as a rates surveyor within Autofocus?
>
> A. What, a formulised document?
>
> Q. As the standard operating procedure for a rates surveyor?
>
> A. There is a methodology. There is a training programme for new people who join us. There is methodology that we would all follow similar to that I have described in compiling these reports. There is not a written procedure that starts at the very beginning and finishes at the end of the submission, no."

That again is a lie. The CSR manual was plainly a manual of standard operating procedures. In his evidence before this court when cross-examined by Mr Rees he continued to deny this was so. Of course, as Mr Rees observes, if he had referred to the CSR manual the dishonest working practices of AF would have been exposed.

291. *Thurlow Estate Ltd v Parrish Engineering* is another case in which he gave evidence and told the judge that there were no other notes or record relating to telephone calls

other than those in his report. HH Judge Maloney QC asked him (see page 49, lines 13-15 of the transcript): "So … you say there would have been no record other than what is contained on that document". He answered: "Yes". In fact the Requirements page is the only document that has the call history on it. When Mr Rees put that to him he said that you could work out what the calls were from the Thomsonlocal.com pages. You can not.

292. There were numerous other instances of lies told by the Seventh Defendant to this court:

i) He stated that he could get a quote in one minute 23 seconds. I do not accept that was possible.

ii) He denied taking part in the mock trials. Both the evidence of other defendants and the documents show that he did.

iii) He said that he had not seen the Preparation for Court document. In fact he was sent it twice (see para 48 above).

iv) He denied that he referred to himself as the Field Operations Manager. An e-mail dated 12 May 2009 that he sent to Claire Burton arranging for her to attend for an interview was put to him in cross-examination in which he wrote: "…you will be meeting Stuart McLean – training manager and myself, Duncan Sadler – Field Operations Manager". He said he could not understand where that title came from.

v) The Seventh Defendant said that he took the Requirements page to be a "working document" for the purposes of writing a spot hire report, and, as such, as I understand his evidence, he did not consider them to be "notes" (see para 291 above).

293. The Seventh Defendant maintained throughout the hearing that Mr Evans was pursuing these contempt proceedings in order to assist AE in the Commercial Court case. Mr Evans denied this was so. He said that he had acted at all times on the advice of Mr Andrew Edis QC (as he then was). Mr Giles, on behalf of the Sixth Defendant cross-examined Mr Evans on this aspect of his evidence but he did not pursue the point in closing submissions. I totally reject this allegation.

The Sample Cases in the Schedule

Spencer v Hutton

294. I have dealt with the expert report in the Seventh Defendant's name at paras 286-290 above. He had no input into the report. That being so I can take the false statements in the report shortly. They are summarised at paragraphs 4-15 on pages 2-3 of Schedule 4 to the Claimant's closing submissions. Just to give two examples. On A5.2 it is stated that Mr Goudie spoke to Ben at National, Morecambe and obtained a quote for a Mercedes C180. I am satisfied on the evidence of Mr David Linnett that no-one called Ben worked at the Morecambe branch of National at the material time and a quote would not be given for a specific car. The Seventh Defendant gave false evidence on oath in this case on 10 December 2009 at Blackpool County Court.

295. On A5.4 it is stated that Mr Goudie spoke to Sandra at Avis, Lancaster and obtained a quote for a BMW 320. I am satisfied on the evidence of Sally Thomas that no-one by the name of Sandra worked at Avis, Lancaster at the relevant time and the branch did not have BMWs for private hire.

296. Miss Witherington submits (at para 39 of her closing submissions) that the Seventh Defendant had no reason to think that calls were not made by Mr Goudie. I do not accept this (see paras 83(v) and 286 above).

Lynds v NFU Mutual

297. In his expert report dated 9 March 2009 the Seventh Defendant says that he conducted the spot hire survey on that date. He states that he telephoned nine companies and asked each one to quote for hire of a BMW 320 Coupé or similar vehicle (para 7), and that four of the companies telephoned were able to provide an appropriate car for the date and time required (para 8).

298. I am satisfied that the Seventh Defendant did not telephone nine companies and ask each one to provide a quote as stated in paragraph 7, and that he did not obtain four quotes as stated in paragraph 8.

299. On A5.1 the Seventh Defendant states that he spoke to Daniel at National, Exeter and obtained a quote for an Audi A5 Coupé 2.0, following a referral by Practical, Paignton. There is no record of a telephone call having been made to National, nor is there a record of a call having been made to Practical.

300. On A5.2 he states that he spoke to Reece at Avis, Exeter and obtained a quote for a BMW 325 Coupé, following a referral by Practical, Paignton. There is no record of a call having been made to Practical; that being so the alleged referral is a bogus one.

301. On A5.3 the Seventh Defendant states that he spoke to KB at Express, London and obtained a quote for a BMW 325 Coupé, following a referral by Chief, Paignton. The evidence shows that a Google search was made more than one hour before the Seventh Defendant called Chief, so the referral by Chief to the web is bogus.

302. On A5.4 the Seventh Defendant states that he spoke to Jerry at Prestige Car Hire, Hemel Hempstead and obtained a quote for an Audi A5 Coupé 2.0. There is no record of a telephone call having been made to Prestige Car Hire.

303. In his evidence the Seventh Defendant explained the absence of calls on the AF telephone log by the fact that he may have made calls from his landline or mobile. I reject this explanation. In any event, as Mr Rees observes, the evidence is that any absence of calls only relates to free-phone calls and that has no bearing on this case.

Ebbs v Tesar

304. In this case the Seventh Defendant purportedly made a lay statement dated 5 August 2009. I have dealt with this case at para 284 above. The whole statement is false. It was not the Seventh Defendant who conducted the spot hire survey. I reject his explanation that he signed the statement in error.

Marshall v Squires

305. This case is listed as number 4 in the Schedule to the Claim Form, but no case has been advanced by the Claimant in relation to it (see para 255 of the Claimant's skeleton argument and Schedule 4 to the Claimant's closing submissions).

Morrison v Dickinson

306. There is a witness statement in this case of the Seventh Defendant dated 10 February 2009. He states that he conducted the spot hire survey on that date and that he telephoned eight companies and asked each one to quote for hire of a BMW 525 automatic or similar vehicle (para 7), and five of the companies telephoned were able to provide an appropriate car for the date and time required (para 8).

307. The whole of this statement is false. It was not the Seventh Defendant who conducted the spot hire survey, but the Fifth Defendant. Originally this was to be an expert's report and then it was changed to a lay report. The Seventh Defendant said in evidence that he made a totally honest mistake and he did not intend to mislead anyone. I do not accept this is so.

Ahmed v Sharifnur

308. This is another lay statement made by the Seventh Defendant which is wholly false. He stated that he conducted the spot hire survey on 29 April 2009 and that he telephoned eight companies and asked each one to quote for hire of a Bentley Continental 6.0 automatic or similar vehicle (para 6), and that four of the companies telephoned were able to provide an appropriate car for the date and time required (para 7). He made no telephone calls and he did not obtain any quotes. The survey was conducted by the Fifth Defendant. On 29 April 2009 the Fifth Defendant sent him the statement for checking. He sent it to Autofocus Issue with his signature on it verifying the truth of the statement on the following day, with a draft comment to be added to the covering letter to be sent to the instructing solicitor, stating:

> "Please be aware that there are some potential difficulties with the attached report…
>
> Although there is some saving shown in the comparative spot hire rates shown at DCS2, there is almost no saving when looking at the Autofocus historical data at DCS7; the highest rate for 28-day hire is for a Group P12 vehicle was £954.69, which is 97.6% of the Accident Exchange charges. You should also be aware that Accident Exchange may have access to the relevant Autofocus historical data. As such, the report would not be robust enough to withstand cross-examination, but hopefully the report will assist you in reaching a settlement, …"

309. Again, the Seventh Defendant's explanation is that this was done in error and not intentionally. I do not accept this is so. It is plain this is a lay statement in the name of the Seventh Defendant. He read it and commented on it in a note for the instructing solicitor.

Mount Street Caterers v Blake

310. In this case the Seventh Defendant made a witness statement dated 30 June 2009. He stated that he conducted the spot hire survey on 3 June 2009, that he telephoned seven companies and asked each one to quote for hire of an Audi R S4 Avant 4.2 or similar vehicle (para 6), and that four of the companies telephoned were able to provide an appropriate car for the date and time required (para 7).

311. I am satisfied that he did not telephone seven companies and ask each to provide a quote as stated in paragraph 6, and he did not obtain four quotes as stated in paragraph 7.

312. On DCS5.1 he stated that he spoke to Helen at Avis, Central London (telephone number 0844 581 0014) and obtained a quote for an Audi Q7 3.0. On DCS5.2 he stated that he spoke to Palvinder at Europcar, Central London (telephone number 020 7491 0734) and obtained a quote for an Audi Q7 3.0. On DCS 5.3 he stated that he spoke to Tom at Hertz, West London (telephone number 0870 846 0011) and obtained a quote for a Mercedes ML280. There is no record of any calls having been made by the Seventh Defendant to Avis, Europcar or Hertz on those telephone numbers on 3 June.

313. In evidence the Seventh Defendant said that he did not make the calls up and Ms Witherington submits on the evidence that it would be dangerous to rely upon the lack of call data in the AF telephone records to reach the conclusion that the calls were not made. She submits that they may well have been made but the report has been amended unilaterally by a Director and that is why the call logs do not match the report. I reject this submission. There is no evidence that the reports were amended as suggested. The evidence of Mr Evans, which I accept, is that where the metadata refers to the content as "last modified", it does not mean that it was altered.

314. On DCS 5.4 the Seventh Defendant states that he spoke to Adam at Seymour Executive Cars, Central London and obtained a quote for a Range Rover 3.6. There is a record of a call made to Seymour Executive Cars on 3 June which lasted for two minutes one second. The Seventh Defendant could not have obtained the quote stated in DCS5.4 in that time.

Austen v Mascarenhas

315. In this case the Seventh Defendant made a witness statement dated 25 August 2009. He stated that he conducted the spot hire survey on that date, that he telephoned eleven companies and asked each one to quote for hire of an Audi A3 1.9, or similar vehicle (para 6) and that five of the companies telephoned were able to provide an appropriate car for the date and time required (para 7).

316. I am satisfied that he did not telephone eleven companies and ask each one to provide a quote as stated in para 6, and that he did not obtain five quotes as stated in paragraph 7.

317. On DCS5.1 he stated that he spoke to Matt at Enterprise, Maidstone and obtained a quote for a Mercedes C200, following a referral by Practical, Sittingbourne. The referral to Enterprise was a bogus referral. There is a record of a call made to

Practical which lasted 16 seconds, which is not long enough even for a referral. A call was made to Enterprise, which lasted one minute 23 seconds. I do not accept that the Seventh Defendant obtained the quotes stated on DCS5.1 in that time.

318. On DCS5.2 he states that he spoke to Cecil at National, Rochester and obtained a quote for a Mercedes C180, following a referral by Hiredrive, Gillingham. On DCS5.3 he states that he spoke to Carly at Avis, Maidstone and obtained a quote for an Audi A4 2.0, following a referral again by Hiredrive, Gillingham. There is a record of a call made to Hiredrive on 25 August which lasted 21 seconds. I do not accept that was long enough to seek a quote and obtain a referral to National and Avis as stated. These were bogus referrals.

319. On DCS5.4 the Seventh Defendant states that he spoke to Sharon at Hertz, Gillingham and obtained a quote for a Mercedes C200. There is a record of a call made to Hertz on 25 August which lasted 30 seconds. I do not accept that he obtained the quote stated in that time.

320. On DCS5.5 he stated that he spoke to Mike at Budget, Rochester and obtained a quote for a Mercedes C180. There is a record of a call made to Budget on 25 August which lasted for six seconds. He could not have obtained the quote stated in that time.

321. I make similar findings in relation to the Seventh Defendant in the cases of *Lynds*, *Mount Street Caterers* and *Austen*, as I made at paragraphs 277-279 in relation to the Sixth Defendant. (See also para 212 above).

Conclusion

322. The evidence that AF was involved in the systematic, endemic fabrication of evidence in which the Defendants and each of them knowingly and actively participated throughout the material time is overwhelming.

323. I accept that the cases listed in the Schedule to the Claim Form represent only an indicative sample of the cases in which the Defendants have committed contempt of court and/or perjured themselves.

324. The First Defendant has admitted both of the allegations in relation to the case of *Archer v Skanska* (Allegations 2 and 4).

325. The Second Defendant has admitted the allegations made against her in the cases of *Joyner v Bramley* and *Thompson v Lansdowne*.

326. The Third Defendant has admitted all the allegations made against him.

327. I am satisfied beyond reasonable doubt that all the allegations against the Fourth, Fifth, Sixth and Seventh Defendants have been proved.

328. The Fourth Defendant verified documents for use in various proceedings by signing them with statements of truth when they were false to his knowledge or he did not believe them to be true in the five cases listed in the Schedule in the material respects I have identified and he knew of the likelihood of the statements to interfere with the course of justice. Further he knowingly gave false evidence on oath at trial about

material matters seeking to interfere with the course of justice in the case of *Ghaforri v McKinnon*.

329. The Fifth Defendant verified documents for use in proceedings by signing them, or causing them to be signed, with statements of truth when they were false to his knowledge or he did not believe them to be true in the eight cases listed in the Schedule in the material respects I have identified and he knew of the likelihood of the statements to interfere with the course of justice. Further, he knowingly gave false evidence about material matters on oath at trial seeking to interfere with the course of justice in *Martland v Fytrans*.

330. The Sixth Defendant verified documents for use in proceedings by signing them, causing them to be signed, with statements of truth when they were false to his knowledge or he did not believe them to be true in the seven cases listed in the Schedule in the material respects I have identified and he knew of the likelihood of the statements to interfere with the course of justice.

331. The Seventh Defendant verified documents for use in proceedings by signing them with statements of truth when they were false to his knowledge or he did not believe them to be true in seven cases listed in the Schedule in the material respects I have identified and he knew of the likelihood of the statements to interfere with the course of justice. No case was advanced by the Claimant in relation to the fourth case in the Schedule (*Marshall v Squires*). Further, the Seventh Defendant knowingly gave false evidence on oath at trial about material matters seeking to interfere with the course of justice in *Spencer v Hutton*.