Neutral Citation Number: [2018] EWHC 1289 (QB)

Case No: B21YJ808 (45/2016)

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
Manchester District Registry

Bridge Street West
Manchester M60 9DJ

Date: 24/05/2018

Before :

MR JUSTICE MARTIN SPENCER

Between :

(1) Susan Richards **(2) Zane McGrann**	**Claimants/ Respondents**
- and –	
Edna Morris	**Defendant/ Appellant**

Mr Paul Sweeney (instructed by **1 Law Solicitors**) for the **Claimants/Respondents**
Mr Daniel Wood (instructed by **DAC Beachcroft Claims Ltd**) for the **Defendant/Appellant**

Hearing dates: 16 March, 19 March and 26 March 2018

Approved Judgment

Mr Justice Martin Spencer:

Introduction

1. Pursuant to permission granted by Mr Justice Burton on 12 October 2016, the Appellant/Defendant appeals against the judgment and order of HHJ Main QC dated 11 April 2016.

2. By that order, HHJ Main QC granted judgment to each of the Claimants and awarded them £2,500 each by way of general damages for the personal injuries sustained in an accident on 18 July 2014. By her Notice of Appeal dated 29 April 2016, the Defendant seeks dismissal of the claim with findings of fundamental dishonesty, alternatively an order that the judgment and order of HHJ Main QC be set aside and a re-trial ordered.

The facts

3. The First Claimant was born on 23 June 1967 and the Second Claimant was born on 12 May 1971. On 18 July 2014, when the Claimants were respectively aged 47 and 42, they were travelling together in a Suzuki Wagon R motorcar with the First Claimant the driver and the Second Claimant the front seat passenger along St Paul's Road, Birkenhead, Wirral. As they reached the junction with New Chester Road, the Defendant was immediately ahead of them driving a Ford Fiesta motorcar and intending to turn right along New Chester Road where the traffic had the right of way. The Defendant pulled partly out into New Chester Road but could not turn right because of traffic coming from her left and then found herself partially blocking the passageway of traffic coming from her right. She put her car into reverse and, failing to notice the Suzuki car behind her, reversed at a slow speed and collided with the Suzuki. Liability is not and has never been in dispute for this accident.

4. Three days after the accident, on 21 July 2014, the First Claimant attended her General Practitioner who made the following note:

> "Problem other: road vehicle accidents (first)
> History: was involved in a RTA few days ago, c/o shoulder pains
> Car reversed when stationary
> Wearing seat belt
> No external trauma
> No bleeding/fluid from nose/mouth, no loc
> Examination: no obvious external injuries
> Slight tenderness trapezius b/l, FROM
> Comment adv re analgesia
> Review in 2-3 days/sooner if any worse/any concerns
> Review sos"

Although the First Claimant was a frequent attender upon her GP, and attended again on 31 July 2014, she did not seek any further medical help in relation to injuries sustained in the index accident.

5. So far as the Second Claimant, Mr McGrann, is concerned he appears not to have consulted his GP at all in relation to the index accident.

The Claims Notifications Forms

6. Both Claimants sought legal assistance from a firm of solicitors, 1 Law Solicitors of Birkenhead, Merseyside, who issued Claim Notification Forms ("CNFs") on behalf of each Claimant on 5 August 2014. Each of those forms were endorsed by a statement of truth, not signed by the Claimants themselves but by Mr Gary M Laiolo, a claims manager with 1 Law who signed on the Claimants' behalf. The endorsement stated:

> "I am the Claimant's legal representative. The Claimant believes that the facts stated in this claim form are true. I'm duly authorised by the Claimant to sign this statement."

7. I interpose to make two comments about CNFs generally. Firstly, CNFs are important documents because not only are they the first notification of a claim to the potential defendant's insurer in low value personal injury claims in road traffic accidents where the damages sought are between £1,000 - £25,000 but also they will often be the basis for early settlement of the claim. Thus, a claim may go no further than the submission of a CNF and an offer of settlement based on it, which is accepted.

8. Secondly, and linked to the first point, the statement of truth is thus important as it means, or should mean, that the insurer can rely on the accuracy of the contents of the CNF in assessing the damages and any offer of compensation to be made. Where the statement of truth is signed by a claims manager on the claimants' behalf, as here, the insurer trusts the claims manager and, through him or her, the firm of solicitors to have taken proper instructions and to have verified the accuracy of the contents of the document. It is worth remembering the provisions of the practice direction to Part 22 of the Civil Procedure Rules which states:

> "3.8 Where a legal representative has signed a statement of truth, his signature will be taken by the court as a statement –
>
> 1) that the client on whose behalf he has signed and has authorised him to do so,
>
> 2) that before signing he had explained to the client that in signing the statement of truth he would be confirming the client's belief that the facts stated in the document are true
>
> 3) that before signing he had informed the client of the possible consequences to the client if it should subsequently appear that the client did not have an honest belief in the truth of those facts."

CPR 32.14, relating to false statements, provides that "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 by a statement of truth without an honest belief in its truth."

9. For the above reasons, I cannot associate myself with the comment made by HHJ Main QC at paragraph 42 of his judgment where, referring to CNFs, he said:

> "I do not find them reliable documents. They are done shortly. They are all very summarised. They are simplistic documents which do not permit there to be details of clinical presentation that can be relied upon by a trial judge and I just ignore them."

On the contrary, in my view they are important documents: they provide the basis for possible proceedings for contempt of court, as seen, and they provide valuable information at an early stage in the litigation process. Endorsed with a statement of truth, as they are, CNFs should be reliable documents and should be taken seriously.

10. Turning to the CNFs in this case, the one for the First Claimant, Mrs Richards, set out in Section B the injury and medical details:

> "*What type of injury was suffered?* Soft tissue.
>
> *Please provide a further brief description of the injuries sustained as a result of the incident.*
>
> Injuries to neck, middle back and across chest from seat belt.
>
> ... 1.4 *Has the Claimant sought any medical attention?* Yes
>
> *If yes on what date did they first do so?* 21/07/2014."

It was confirmed that no medical professional had recommended the First Claimant to undertake any rehabilitation, that the First Claimant was claiming damage to her own vehicle and, at Section G, brief details of the circumstances of the accident were provided. At Section K, there is the opportunity for the Claimant to state why she believes that the Defendant was responsible for the accident. Section L provides notification of funding arrangements.

11. In relation to the Second Claimant, Mr McGrann, his CNF indicated that the injuries sustained were "injuries to neck and back". Again, it was indicated that the Second Claimant had sought medical attention on 2 August 2014, which does not appear to be true. There is no reference to such an attendance in Mr McGrann's medical records. In cross-examination at trial, there was the following exchange:

> "Q: You never attended a GP about this incident or any alleged symptoms from it did you?
>
> A: No
>
> Q: Why, in those circumstances, did you say that you sought medical attention on 2 August 2014, only three days before you're having this conversation with someone at your solicitors' office?
>
> A: Why, did I say I had sought it?

Q: Yes.

A: I do not know. I do not recall.

Q: But you were telling them something which was not correct?

A: I do not recall."

The Medical Reports

12. The next significant event appears to be that both Claimants were examined by a Dr Iqbal on 2 December 2014 for the purposes of providing medico-legal reports in relation to their claims. The medical report in relation to the First Claimant, Mrs Richards, is dated 10 December 2014 and reflects an examination on 2 December 2014, 14 months and 15 days after the accident. The First Claimant described to the doctor being jolted forwards and backwards in the accident and to the car being written off as a result of the accident. Section B.3.2 deals with treatment and Dr Iqbal recorded:

> "I've been told that following treatments have been received as a result of the index accident: Mrs Richards did not receive any treatment at the scene of the accident. She attended her GP's surgery two days after the accident. She was advised to use pain-killers and to do mobilising exercises. She took pain-killers. The treatment is on-going. She has been doing self-exercises since the accident."

Section B.3.3 deals with past medical history and states as follows:

> "Mrs Richards informed me of the following medical history: Mrs Richards was involved in a road traffic accident five years ago which caused injuries to her neck and lower back. She had fully recovered after few months. Mrs Richards has a history of intermittent low back pain. She has suffered from this over the last six years. It has been exacerbated by the accident."

13. So far as the injuries and symptoms sustained as a result of the index accident, Dr Iqbal recorded that Mrs Richards had complained of the following:

- Pain, stiffness and discomfort to the neck:

  "She developed moderate pain, stiffness and discomfort in the neck on the day of the accident. These improved and are now mild to moderate and intermittent."

- Pain, stiffness and discomfort to the right shoulder.

  "She developed moderate pain, stiffness and discomfort to the right shoulder on the day of the accident. These improved and are now mild to moderate and intermittent."

- Pain stiffness and discomfort to the lower back:

  "She developed moderate pain, stiffness and discomfort in the lower back on the day of the accident. These improved and are now mild to moderate and intermittent."

- Fear of travel:

  "Mrs Richards experienced moderate fear of travel immediately after the accident. This improved and is now mild to moderate."

14. Section D.2 deals with Dr Iqbal's examination of the First Claimant. He examined her neck and found "there was muscle spasm and soft tissue tenderness." Examination of the upper limbs "appeared to cause pain and discomfort" but there was a full range of movement. In the back, "there was muscle spasm and soft tissue tenderness."

15. In relation to the diagnosis and prognosis, Dr Iqbal recommended eight sessions of physiotherapy for the neck pain and stiffness and he anticipated that this symptom would fully resolve between 12 and 14 months from the date of the accident. He similarly recommended eight sessions of physiotherapy for the pain and stiffness in the right shoulder, with the same prognosis for recovery. The same applied to the pain and stiffness in the lower back. Finally, in relation to the "fear of travel" Dr Iqbal said:

> "Fear of travel problem is solely attributable to the index accident. For this symptom no additional treatment is required. I anticipate this symptom will fully resolve between 10–12 months from the date of the accident."

16. The layout of the medical report for the Second Claimant, Mr McGrann, was similar to that of the First Claimant. He gave a similar history of the accident. In relation to treatment, Dr Iqbal recorded:

> "I've been told that following treatments have been received as a result of the index accident: Mr McGrann did not receive any treatment at the scene of the accident. He has been doing self-exercises since the accident. He took painkillers regularly for the first three months then as required."

So far as past medical history was concerned, Mr McGrann revealed having been involved in a previous road traffic accident five years previously (which would have been in 2009). The injuries reported by Mr McGrann as having been suffered in the accident were as follows:

- Moderate shock and shakiness immediately after the accident which resolved after a few days.

- "He developed moderate pain, stiffness and discomfort in the neck on the day of the accident. These improved and are now mild to moderate and intermittent."

- "He developed moderate pain, stiffness and discomfort in the right shoulder on the day of the accident. These improved and are now mild to moderate and intermittent."

"Mr McGrann experienced moderate fear of travel immediately after the accident. This improved and is now mild to moderate."

17. Upon examination, Dr Iqbal reported finding "muscle spasm and soft tissue tenderness" in the neck. Examination of the upper limbs "appeared to cause pain and discomfort" but movement was normal. Examination of the back and lower limbs did not reveal any abnormality.

18. So far as treatment and prognosis were concerned, in relation to the pain and stiffness in the neck and right shoulder, Dr Iqbal, as with Mrs Richards, so with Mr McGrann, recommended eight sessions of physiotherapy and anticipated that these symptoms would fully resolve "between 12-14 months from the date of the accident." Equally in relation to the reported fear of travel, he opined this was solely attributable to the index accident, that no additional treatment was required and he anticipated "this symptom will fully resolve between 10-12 months from the date of the accident."

The Proceedings

19. Upon receipt of the reports from Dr Iqbal, proceedings were issued at the end of December 2014. The Particulars of Claim dated 30 December 2014 were endorsed with a statement of truth again signed on behalf of the Claimants by the same claims handler who had signed the statements of truth for the CNFs, Mr Laiolo of 1 Law Solicitors. In relation to the injuries sustained by the First Claimant, the Particulars of Claim stated:

> "The First Claimant refers the Defendant to the medical report of Dr Mohammed Iqbal dated 10 December 2014 which is annexed hereto and served herewith"

Exactly the same reference to Dr Iqbal's report was made in relation to the injuries sustained by the Second Claimant. Thus, by the Particulars of Claim, both Claimants were asserting, through their legal representative, that the reports of Dr Iqbal were true and accurate. The schedule of loss on behalf of the Second Claimant claimed £6 special damages for travel costs to/from medical appointments (£2), postage/phone call charges (£2) and medication costs (£2). The schedule of loss in relation to the First Claimant claimed £711, being the same amounts for the same reasons as the Second Claimant but, in addition, £705 being the value of the First Claimant's vehicle damaged beyond economical repair net of salvage. This reflected an engineer's report from Laird dated 12 August 2014 which found damage to the front of Mrs Richards' Suzuki motorcar which the expert estimated would cost £957.40 to repair. He estimated the value of the vehicle at £755 less salvage value of £50. He described the impact magnitude as "medium", the status of the vehicle as "total loss" and the claim in the schedule thus reflected the engineer's valuation of the vehicle less the salvage value.

Physiotherapy

20. On 19 March 2015, the Second Claimant attended an initial physiotherapy assessment. The report of that assessment states "Number of sessions recommended: 8" but it may well be that this reflected Dr Iqbal's recommendation rather than the physiotherapist's own recommendation.

The assessment report contained the following:

> *"Please outline below the areas injured following the accident and range of movement:*
>
> Neck full range of movement – minor pain
>
> Right shoulder full range of movement – major pain."

The assessment report recommended weekly treatment with an expected discharge date of 14 May 2015. In fact, Mr McGrann did not attend for any physiotherapy treatment at all. In due course, an invoice for the assessment on 19 March 2015 was issued in the sum of £90 on 5 April 2016 but no other invoice was raised for physiotherapy as Mr McGrann did not have any. However, on 12 November 2015, an updated schedule of loss was served on Mr McGrann's behalf in which the previous items were abandoned but the claim was now for £570 in relation to "physiotherapy treatment (on-going – final charges will be £570 as long as the Claimant recovers as anticipated)". This updated schedule was endorsed with a statement of truth signed again by Mr Laiolo on the Second Claimant's behalf indicating that the Second Claimant believed the contents of the schedule to be true.

21. So far as the First Claimant's treatment is concerned, she attended an initial assessment on 2 June 2015 and again the number of sessions recommended was 8. There was then the following:

> *"Please outline below the areas injured following the accident and range of movement:*
>
> Lower back restricted range of movement – major pain".

In answer to the question *"Did the client have any pre-existing conditions prior to the incident?"* The answer given is "No". However this seems inconsistent with the next question and answer:

> *"If yes, please provide the full details below*
>
> Previous RTA five years ago and intermittent back pain with activities this has increased the LBP [lower back pain] from VAS 5 to a level 8/10."

Thus the answer to the question "Did the client have any pre-existing conditions prior to the incident" appears to have been an error by the assessor and should have been answered "Yes". Again, the treatment recommended was weekly and the expected discharge date was 6 August 2015.

22. In contradistinction to the Second Claimant, Mrs Richards did in fact attend some physiotherapy, namely a session on 18 September 2015 and a further session on 16 October 2015. However, on the basis that Mrs Richards said in evidence, and the judge accepted, that the effect of the accident was spent after 8 months, which would have been in about March 2015, these sessions were not attributable to the accident. There is then a discharge report dated 24 November 2015. The discharge report indicates that the problem with the lower back which, at initial assessment, had been "flexion reduced by 50%" had improved with treatment so that, at discharge, the First Claimant was "self-managing with home exercise". Similarly, there had been improvement in relation to limitation in housework, driving, hobbies and work/education. On 12 November 2015, an updated schedule of loss was served on behalf of the First Claimant, again endorsed by a statement of truth signed by Mr Laiolo, claiming £1,275 being £705 of the value of the car written off and £570 for "physiotherapy treatment (on-going – final charges will be £570 as long as the Claimant recovers as anticipated)".

The Witness Statements

23. On 12 November 2015, both Claimants also served witness statements. So far as the First Claimant is concerned, she described the accident, stating it was not a gentle reverse by the Defendant but "she reversed sharply to avoid the cars coming towards her on the main road." She referred to the assessment of her motorcar by Laird. She then said this:

> "13. I started to feel discomfort in my neck, towards my lower back area and shoulder later that day. I also [had] minor discomfort across my chest where the seat belt was. I did however immediately feel shocked and shaken at the accident scene due to the collision. The pain and discomfort increased over the next day or so, so I decided to get checked out by my GP just in case. I saw my GP on 21st July and I was advised to take painkillers.
>
> 14. The pain and discomfort did not ease and I continued to take painkillers. I had a pre-existing problem with my back which the accident worsened. When I saw Dr Iqbal in December 2014 he recommended physiotherapy treatment. ...
>
> 17. Since the medical examination by Dr Iqbal I've been having physiotherapy treatment. That treatment is on-going. ...
>
> 19. As a result of the injuries I suffered in this accident I also seek to recover the cost of the physiotherapy treatment that my solicitors arranged for me. The total costs are anticipated to be £570."

However, as we know, 12 days later on 24 November 2015, the First Claimant was discharged from any further physiotherapy. Furthermore if, as she appears to have thought, the effect of the accident was spent within 8 months, that is by March 2015, it

is difficult to understand how she could honestly and truthfully have said that the physiotherapy treatment was "as a result of the injuries I suffered in the accident."

24. In her witness statement, the First Claimant also volunteered further details in relation to previous accidents. She said:

> "16. I've been involved in three previous accidents, on the 27/7/7, 12/7/10 and 5/6/12. I did sustain some injuries in these accidents but have fully recovered from those injuries by the time of the index accident. My lower back was painful at the time of the index accident, but this was constitutional, not accident related."

25. So far as the Second Claimant, Mr McGrann is concerned he stated in relation to his injuries as follows:

> "12. I started to feel discomfort in my neck and right shoulder later that day. At the accident scene I did feel immediately shocked and shaken by the collision. I took painkillers on a regular basis for the first few months, then as and when needed as my symptoms improved.
>
> 13. When I saw Dr Iqbal in December 2014 he recommended physiotherapy treatment. That physiotherapy treatment is on-going at the moment"

This was untrue. There was no ongoing physiotherapy treatment and there had been none at all, in Mr McGrann's case. Mr McGrann indicated that, after the accident, he struggled with swimming, exercising and helping Mrs Richards look after her horse, Harvey. He stated:

> "15. I've been involved in two previous accidents, on 27/7/7 and 12/7/10. I did sustain some injuries in these accidents, but have fully recovered from those injuries by the time of the index accident.
>
> 16. I have incurred some financial loss as a result of this accident, as set out within my updated schedule of loss, dated 12th November 2015, which I claim reimbursement of within this claim. These are estimated at £570 for physiotherapy treatment anticipated final costs."

Mr McGrann did not indicate in his witness statement that, contrary to the impression conveyed, despite the assessment on 19 March 2015, he had not undergone a single session of physiotherapy and, it would appear, did not intend to.

26. The Defendant, Mrs Edna Morris, was travelling with her sister-in-law, Karen Morris. The Defendant stated that, in her estimation, she was reversing "at a couple of miles per hour when the rear of my vehicle made contact with the front of a vehicle behind us. I would not call the contact an impact. It was more of a coming together of the

vehicles. I was not moved or displaced in my vehicle. My seatbelt did not tighten and I was not injured." The Defendant then said this:

> "15. [The driver of the vehicle behind] was angry and was shouting.
>
> 16. She told me that she was not injured but that she could get whiplash in the future and also commented that structural damage could have been caused to the underneath of her vehicle.
>
> 17. Karen informed her that this would not have been possible, we were not travelling fast enough to cause any damage and that insurers will not pay out for these types of claims. The driver made a comment in reply that she had received compensation from a similar incident earlier that year."

This account was confirmed by Karen Morris in her statement.

27. In relation to the proceedings, the court had issued Notice of LVI directions (that is directions specific for "low velocity impact accidents") on 10 June 2015. However, on 18 August 2015, District Judge Baker vacated the LVI directions hearing as "Defendant does not seek to appoint her own medical experts". Instead, the case was allocated to the fast track and other directions were given. The Claimants had issued their lists of documents on 3 July 2015 and the Defendant issued her list of documents on 12 September 2015.

The Part 18 Answers to Requests for Further Information

28. Although the proposal to treat the claim as coming within the LVI regime had been abandoned, it would appear that the witness statements of the Claimants raised questions, if not alarm bells, in the minds of those representing the Defendant. The next stage was therefore that the Defendant raised Part 18 Requests for Further Information against each Claimant on 7 March 2016. These were answered on 4 April 2016. The Part 18 Requests were raised in questionnaire form and a space was left for the response to each question. This was filled out in manuscript and the handwriting of the responses is clearly that of the same person in respect of both sets of answers. However, each Part 18 further information was signed by the Claimants personally in the statement of truth at the end; this time they were not signed by Mr Laiolo.

29. The Part 18 requests and answers for the First Claimant were as follows:

Request	Response
1. How long had you been stopped before the collision and what was the distance between your vehicle and the Defendant's vehicle in centimetres or metres?	Less than 1 minute. About 3 feet
2. As to paragraph 9 of your witness	10-15 mph

statement, at what speed do you estimate that the Defendant reversed?	
3. Was your vehicle shunted backwards? If so, please confirm the distance between the two vehicles in centimetres or metres immediately after the collision.	Yes. About 1 foot
4. Please confirm whether the vehicle you were travelling in had any pre-accident damage, and if so what damage and where?	Yes, scrape at rear nearside. Dent to rear left, just below window Left rear light case smashed
5. How would you describe the force of the collision between the two vehicles, on a scale of 1 to 10 (1 being non-existent and 10 being severe)?	5
6. Have you been involved in any previous accidents involving the Second Claimant or a relative before? If so, please provide full details of the traffic accidents with the particularity to be relied upon at Trial.	Yes 27/07/2007 – passengers in car rear end 12/07/2010 – my car hit side of another vehicle – my fault
7. For each of the accidents referred to at paragraph 16 of your witness statement, please confirm a) which of the listed accidents resulted in injury? b) which part of your body was injured in each occasion? c) how long did each injury take to resolve? d) have you recovered from each injury?	 27/7/2007 5/6/2012 Neck and back, I think Do not remember Yes

8. Have you been in any other accidents apart from those listed in your witness statement? If so, please provide full details of the accidents, with the particularity to be relied upon at Trial.	Do not recall
9. Please explain why you did not tell the medical expert about all your accidents.	I thought I only needed to inform him of any accidents that were my fault.
10. Why did you not mention your middle back and chest injuries to the medical expert?	I stated it was an injury to the middle of my lower back, not my middle back area. My chest injury was very minor and resolved in a few days from accident.
11. In your Claim Notification Form dated 11 August 2014, why did you not report your lower back and shoulder injury?	Lower back long term and accident just exacerbated it so just extra pain to what I was already having.
12. In your witness statement, you mention that later that day you started to feel discomfort in your neck, towards your lower back area and shoulder and went to the GP. The GP records make no mention of the lower back injury or chest pain. Please answer the following: (a) Did you injure your lower back that day? (b) Please explain why you did not mention this injury to your GP. (c) Did you injure your chest that day? (d) Please explain why you did not mention this injury to your GP.	 Yes As 10/11 above. Yes As 10/11 above.
13. Have you recovered from your injuries?	Yes

14. Prior to the index accident has your Suzuki Wagon registration W124 GUG ("the Suzuki") been involved in a previous accident? If so, please: (a) Confirm the nature of the incident (eg hit third party in the rear, hit from the rear etc); (b) Provide the dates of these accidents; (c) Confirm whether any damage was sustained.	Yes 1) Painted when vehicle scraped rear side (cement wagon I think) 2) I reversed into a post with regards to rear dent
15. What happened to the Suzuki after the index accident? For example, was it repaired, (if so for how much)? Was it scrapped? Was it sold or still in use without any repairs?	I still drove it in its damaged state. It was stolen in December 2015
16. Did you report the index accident and the damage to the Suzuki to your insurers?	No
17. Do you agree that you have had episodes of back pain since around 2004? If you do not agree, please explain why you disagree.	Yes
18. We note that you had physiotherapy, please confirm which areas of your body were treated. Please provide details to include the therapist attended and number of sessions.	3 sessions at Beechwood Health Centre. Inductions and then lower back/shoulder

30. The requests and responses for the Second Claimant were as follows:

1. Immediately before the incident, when you were stationary, what was the distance between your vehicle and the Defendant's vehicle (in centimetres or metres)?	3-4 feet

2. As to paragraph 7 of your witness statement, at what speed do you estimate that the Defendant reversed?	10-20 mph
3. Was your vehicle shunted backwards? If so, please confirm the distance between the two vehicles in centimetres or metres immediately after the collision.	Yes it was shunted. Cannot remember distance.
4. Please confirm whether the vehicle you were travelling in had any pre-accident damage and if so what damage and where?	Do not know
5. How would you describe the force of the collision between the two vehicles, on a scale of 1 to 10 (1 being non-existent and 10 being severe)?	5-6
6. Have you been involved in any previous accidents involving the First Claimant or a relative before? If so, please provide full details of the traffic accidents, with the particularity to be relied upon at Trial.	Yes 27/7/2007 – passenger in car rearwards 12/7/2010 – Susan was driving and I was a passenger when the side of her car hit another car
7. For each of the accidents referred to at paragraph 15 of your witness statement please confirm a) which of the listed accidents resulted in injury? b) which part of your body was injured on each occasion? c) how long did each injury take to resolve? d) have you recovered from each injury?	 Yes, both 2007 – neck, chest, left shoulder 2010 - do not remember Yes

8. Have you been in any other accidents apart from those listed in your witness statements? If so, please provide full details of the accidents, with the particularity to be relied upon at Trial.	No
9. In your Claim Notification Form dated 11 August 2014, why did you not report your right shoulder injury?	I did tell my solicitors
10. Why did you not mention your back injury to the medical expert?	It was not injured.
11. Did you injure your back in the index accident?	No
12. We note that symptoms to your neck and right shoulder presented later on the day of the accident. Please explain why you did not seek any medical attention.	I just took Susan's strong painkillers that she used for her pre-existing back pains.
13. We note that you had physiotherapy, please confirm which areas of your body were treated. Please provide details to include the therapist attended and number of sessions.	Neck and right shoulder
14. What happened to the Suzuki you were travelling in after the index accident? For example, was it repaired (if, so for how much)? Was it scrapped? Was it sold or still in use without any repairs?	Susan still drove it

The Updated Schedules of Loss

31. On 5 April 2016, an invoice for the First Claimant's physiotherapy treatment was issued in the sum of £218.20, together with the invoice of £90 for the initial assessment. On the same day the invoice for the Second Claimant's initial assessment in the sum of £90 was also issued. This was followed on 6 April 2016 by an updated schedule of loss on behalf of the First Claimant in the sum of £1013.20 being the value of the car written off in the sum of £705 and the cost of the physiotherapy

treatment in the sum of £308.20. An updated schedule of loss for the Second Claimant simply claimed £90 for the physiotherapy assessment, although erroneously expressed in the schedule as being for "physiotherapy treatment".

32. The trial then came before His Honour Judge Main QC on 11 April 2016 and on the same day, at a late hour, the Learned Judge delivered an ex-tempore judgment. He awarded judgment in favour of each Claimant but disallowed their respective claims for special damages. He awarded them each £2,500 general damages.

The Claimants' Medical History and Records

33. Before considering the judgment of His Honour Judge Main QC, I should mention what is revealed in the Claimants' respective medical records.

34. So far as the First Claimant is concerned, her relevant medical history appears to be as follows:

- 7 February 2002: she saw her GP complaining of neck sprain radiating into the shoulder
- 15.12.03: she consulted her GP with a four week history of low back pain
- 1.02.04: she saw her GP complaining of back pain after a fall
- 4 October 05: she suffered an episode of acute back pain in the thoracic area
- 30 July 07: she consulted her GP for neck pain radiating into the trapezie since a road traffic accident on 25 July when she was the passenger in the back seat of a vehicle which was hit from behind whilst stationary. I assume that this is the same accident as that which the First Claimant claimed in the Part 18 response had been on 27 July 2007;
- 23 July 2010: consulted GP with discomfort on the left side of the neck and left trapezius after motor vehicle accident the previous week when she was the driver of a car and hit a car in front;
- 13 May 2014: consulted GP complaining of a four day history of pain in the right side back of the neck radiating to the shoulder: on examination the GP found mild muscular tenderness to the right side back of the neck and shoulder with pain on turning the neck to the left.

35. So far as the Second Claimant is concerned, his medical notes reveal the following:

- 17 July 07: consulted GP (Dr Mawdsley) complaining of neck pain after a road traffic accident five days previously when the back seat passenger wearing a seat belt and was shunted from behind whilst stationary, thrown backwards and forwards. On examination the doctor found slightly tender trapezius, good flexion and extension and rotation reduced 50% and prescribed co-codamol tablets.

- 28 July 2010: consulted GP (Dr Mukherjee) complaining of stiffness and pain in the left upper shoulder and back following a road traffic accident one week previously when the front seat passenger, wearing a seat belt.

The judgment of HHJ Main QC

36. Having referred to the history, noting in passing the identical wording in relation to each Claimant contained in the report of Dr Iqbal (see paragraphs 12 and 15 above in this judgment), the Learned Judge referred at paragraph 11 onwards to the submissions by counsel for the Defendant, Mr Wood, in relation to the inconsistencies of both Claimants. Thus, the First Claimant, having told Dr Iqbal that she suffered her injuries and discomfort on the day of the accident, said in evidence that the onset of the discomfort was within 2-3 days of the accident. The Learned Judge remarked on the inconsistency in the First Claimant's accounts and commented that the First Claimant had been "extremely selective about what accidents she has referred to, when giving her history of the past medical history". Thus, she did not tell Dr Iqbal about all the previous accidents she had been involved in, nor about the history of her presentation with neck symptoms and in particular the GP entry 13 May 2014, only a few weeks before the accident. The Learned Judge commented that "it would be nice if Dr Iqbal could have expressed an opinion about that but as he was never told about it, he was never asked to review the medical records, the court is in the dark."

37. In addition, there was the period of the First Claimant's recovery. In her evidence, when asked by Mr Wood "how long do you say the symptoms in your neck and shoulder lasted after this incident?" The First Claimant answered:

> "Three to six months, something like that."

However, when the discrepancy between this and what is contained in Dr Iqbal's report was pointed out she said:

> "Well then I'm wrong about the three to six months obviously, am I not? I did say I cannot remember dates, times and numbers.
>
> Q: How long do you say it is then?
>
> A: It would have been six to twelve months. I cannot rightly remember. Sorry.
>
> Judge Main: If you cannot remember, why say for one moment three to six months and then a minute later it is six to twelve months?
>
> The witness: Because he's getting me all confused with his numbers and figures.
>
> Q: I'm not sure this is confusion that counsel's creating. It is a straightforward question.
>
> A: It is yes.

Q: You are being asked that your report from the doctor is suggesting it might go on for 12 to 14 months you volunteered actually it was three to six months. Now a minute later you're saying six to twelve months. That is not confusion caused by counsel that is obviously your ...

A: Sorry. Six to eight months.

Q: Six to eight months now?

A: Yes.

Q: So that is a third different answer, which am I to take?

A: Six to eight months.

Q: Any improvement on six to eight months?

A: No sorry.

Q: That is your final answer?

A: Yes."

This prompted the Judge to find at paragraph 17 of his judgment:

> "The Claimant was hopelessly inconsistent. Whether she was confused by the process, whether she was very nervous, whether she just has a very poor memory, maybe all those matters together, but she seemed to be suggesting in the first instance that she had recovered from her neck and shoulder problems within three to six months of the accident. Then when she was questioned further on it, and taken to the projection of 12 to 14 months by Dr Iqbal she revised that evidence to a period between six to twelve months then when she was taken to that yet further, she sought to stand back from that and reduce to between six to eight months.
>
> As seen now this is all done in the space of a minute from the witness box. All it does is to underline the point Mr Wood makes that in fact the First Claimant is an inconsistent witness. She does not have a good recollection and because she does not have a good recollection of the true nature of her condition she gives an inconsistent answer repeatedly. And even that is inconsistent with the information she has given to Dr Iqbal."

38. In view of the inconsistencies and problems with the First Claimant's evidence, the Learned Judge was invited by Mr Wood to find that the claim was a "try-on", that she (and Mr McGrann) had taken the opportunity from an innocuous piece of negligent driving on the part of the Defendant to take advantage when in reality they had not suffered any major injury at all. The Learned Judge rejected this approach, though, relying in particular on two aspects of the case. First, that the force of the accident was somewhat stronger, in his view, than the Defendant had suggested because there had been "separation" between the vehicles after the collision. He stated:

> "33. Ultimately I'm satisfied – I can only take a broad common-sense view about it – that there has been a sufficient collision to give rise to a potential injury to those in the vehicle behind."

39. Secondly, he relied upon the finding by Dr Iqbal on examination of Mrs Richards that there was a clinical "spasm". The Learned Judge observed that this is a consequence of an involuntary pain response which all individuals have when they suffer a nerve root injury, where there remains irritation to the nerve root. He found it of importance that "This is not a feigned or subjective response – it is elicited on objective clinical examination." He observed that the left and right trapezius muscles go down the side of the neck from the base of the skull over to the top of the shoulder girdle and therefore the tenderness in the trapezius muscles was indicative that the lower segment of the neck had been disturbed and had caused a pain response along the trapezius muscle.

40. In the light of those matters, and discounting the injury to the low back (which was part of her chronic presentation), the Judge stated:

> "[I] find it more probable than not that she has sustained a relatively short-lived neck injury which was still symptomatic albeit only mildly so by the time Dr Iqbal saw the First Claimant 4 ½ months after the accident. But when she says that it settled within 6-8 months of the accident, that seems to me to be probably about right. The fact that she needed a couple of sessions plus the original assessment session of physiotherapy, I do not think is unrealistic. Ultimately, it seems to me, she quickly recovered"

On the basis of an 8 month injury, he assessed her damages at £2,500. He disallowed the claim for special damages: the physiotherapy treatment was outside the 8 month period of her recovery and he disallowed the claim in respect of the vehicle because Mrs Richards had accepted that, in accordance with her Part 18 response, she had been paid the insured loss of the vehicle due to its theft and not because of the damage to it. Thus, in the result there had been no loss in relation to the damage to the vehicle.

41. So far as the Second Claimant, Mr McGrann is concerned, the Learned Judge came to a similar conclusion for similar reasons. He referred to the submissions made by Mr Wood in relation to Mr McGrann's case at paragraph 22 of the judgment stating:

> "He said in the witness box that he had experienced it two or three days or so after the accident whereas again, like the First Claimant, he stated to Dr Iqbal that it was immediately after the accident and on the day of the accident not later. He accepted he did not take any treatment at the scene, he did not receive any treatment or therapy in any way and appears only to have gone to take up the recommended physiotherapy a day after the 8 month period has ended – he himself saying that his symptoms lasted for about 8 months. That therefore gives rise to the fact that not only has he given an inconsistent account, an

account not given to Dr Iqbal, he appears to have started on a therapy regime at a point when his injuries had, if not improved, were almost better. He only had one session even though he has permitted the claim to be presented and to be extended until very late in the day when it has been withdrawn seeking physiotherapy over repeated therapy treatments which is not consistent with the account he now presents, he being well aware that this has been undertaken because it is referred to in respect of the information in his statement."

42. In relation to Mr McGrann, too, the Learned Judge relied upon the separation of the vehicles as showing that the impact was sufficient to cause injury and upon Dr Iqbal's finding of spasm in Mr McGrann's neck. He regarded the claim for injuries to his back contained in the CNF as an "aberration". He said:

> "42. ... I do not believe he did have a back injury. I'm not at all surprised; I see it all the time in Claims Notification Forms. I do not find them reliable documents. They are done shortly. They are all very summarised. They are simplistic documents which do not permit there to be details of clinical presentation that can be relied upon by a trial judge and I just ignore them.
>
> 43. The fact is there was a complaint. He did make a consistent complaint in respect of the neck injury. He did still have, at the time of examination by Dr Iqbal, a spasming in the neck, albeit an improving position. He accepts that he had recovered by 8 months after the accident. I do not believe that there was any basis for him to seek to go to see physiotherapy at that point in time when he had almost completely recovered. He was doing so, I suspect, because a complaint had been made by his solicitors and it was all part and parcel to present the most advantageous claim. I'm not satisfied that is referable to the accident and it is not recoverable. But I am satisfied he's entitled to damages to reflect the soft tissue injuries he sustained to his neck.
>
> 45. ... The fact that the spasm has to be explained in some way; it is a clinical finding, it is not a subjective malingering or exaggeration. I find that reflects an objective finding of an actual nerve root irritation and it is more probable than not that has been caused as a consequence of this accident. "

43. Thus, for an 8 month injury, the Learned Judge awarded the Second Claimant £2,500 but disallowed any claim for physiotherapy fees or other special damages.

The Appellant's submissions

44. For the Defendant/Appellant, Mr Wood submits that the Learned Judge should have found that the claim on behalf of both Claimants was dishonest and the claim should

have been dismissed. In relation to the claim of the First Claimant, Mrs Richards, Mr Wood relies upon three separate matters

i) The claim for special damages which was untrue both in relation to the physiotherapy and also the value of the motorcar;

ii) The untrue account given by Mrs Richards to her medico-legal expert, Dr Iqbal, in relation to her past medical history, an account endorsed by her (or on her behalf) by virtue of the reliance on it in the Particulars of Claim endorsed by a statement of truth signed on her behalf and with her authority;

iii) Mrs Richards' inaccurate identification of involvement in previous accidents and previous litigation.

With a low velocity impact claim, where, Mr Wood submits, the impact between the vehicles would not be expected to result in physical injury, and where the account of physical injury is wholly reliant upon the First Claimant's subjective evidence, in a context where claims for whiplash injuries are rife and claimants are all too ready to jump on the bandwagon and seek compensation where none is due, Mr Wood submits that the Learned Judge should have been significantly influenced by any aspects of the claim which indicated dishonesty or lack of candour on the part of the First Claimant. Mr Wood submits that the evidence in the present case was such that the Judge should have been driven to the conclusion that he could not accept that the Claimant had sustained the injuries which she claimed to have sustained and therefore the whole claim should have been dismissed. Mr Wood further submitted that the Learned Judge had gone significantly wrong in the course of his judgment. Thus, whilst the Learned Judge had correctly identified conflicts of evidence and elements in respect of which the First Claimant was wholly to be disbelieved, he had failed to resolve those conflicts or correctly to assess the effect of findings of untruthfulness or dishonesty, as he was obliged to do. He referred me to the decision of the Court of Appeal in *Yaqoob v Royal Insurance UK Limited* [2006] EWCA Civ 887 where, in relation to an insurance claim arising out of a fire where it was the defendant's case that the claimant had set the fire himself, Chadwick LJ said:

> "25. Unfortunately although in that passage the Judge identified the conflict of evidence, he did not resolve it. In my view he was required to do so. ... That is not to say that Mr Yaqoob could not be believed on other matters. But the Judge was bound to say why, if he did not believe him on this matter, he was able to accept the evidence that he had nothing to do with the fire."

Mr Wood submits that, analogously, if the Judge disbelieved the First Claimant in relation to matters as important as her previous medical history, her involvement in previous accidents and her claim for special damages, he was bound to resolve those matters and explain how he could accept her evidence in relation to the fact that she had suffered personal injury which deserved compensation.

45. Expanding on his submissions in relation to the three areas of dishonesty or fundamental inconsistency, Mr Wood referred the court to the following matters:

i) So far as special damages were concerned, a claim had been made for physiotherapy which had not been and was not intended to be undertaken, the updated schedule of loss of 12 November 2015 being signed and served at a time when Mrs Richards had been discharged from further physiotherapy. Furthermore, a claim was made for the value of the motorcar when Mrs Richards knew perfectly well that the motorcar had been stolen and she had been fully compensated for its value already, a fact that was only elicited shortly before trial as a result of the serving and answering of a request for further information under Part 18 of the Civil Procedure Rules.

ii) In relation to her past medical history, Mrs Richards had given a seriously misleading account to Dr Iqbal, an account which was then adopted by her in the Particulars of Claim. Thus, in relation to her past medical history, Dr Iqbal recorded Mrs Richards as telling him that she had been involved in a road traffic accident five years previously which caused injuries to her neck and lower back from which she had fully recovered after a few months. Otherwise she had a history of intermittent low back pain from which she had suffered for six years and which had been exacerbated by the accident. The records reveal a different picture with a neck sprain suffered in 2002, radiating into the shoulder, a four week history of low back pain in December 2003, a complaint of back pain after a fall in February 2004, an episode of acute thoracic back pain in December 2005, a complaint of gradually worsening neck pain radiating into the trapezii muscles in July 2007 after she had been the back seat passenger in a car hit from behind, a further injury in July 2010 when the driver of a car and had hit a car in front and when she had suffered discomfort in the left side of her neck and complained of a tender left trapezius muscle and, finally, an attendance upon her GP just two months before the index accident when she complained of a four day history of pain in the right side of the back of her neck radiating into her shoulder.

iii) Allied to the previous medical history and overlapping with it, Mr Wood referred to the First Claimant's inconsistency and lack of candour in relation to her involvement in previous accidents and previous litigation. Contrary to the single previous accident revealed to Dr Iqbal, in her witness statement Mrs Richards revealed that she had been involved in three previous accidents but she did not disclose that she had received £2,500 in compensation as a result of the accident in 2007. Thus, in cross-examination, there was the following exchange:

> "Q. Which one were you referring to when you told him that you had been involved in one five years ago?
>
> A. It would have been in 2007, which stands out in my mind because my back was injured badly.
>
> Q. That this is the one you had £2,500 compensation?
>
> A. It was, yes.

Q. How long did those symptoms last?

A. I'm still having intermittent pain in my lower middle back and I have done ever since then.

Q. That is from 2007?

A. Yes.

Mr Wood submitted that this history, had it been revealed to Dr Iqbal, might well have had a significant effect upon his opinion in relation to causation arising out of the index accident and, if any injury was suffered in the index accident at all, for how long symptoms were attributable to that accident as opposed to the effects of the previous accident (further exacerbated in 2010 and again in 2012) and Mrs Richards' inherent constitution.

46. So far as the Second Claimant, Mr McGrann, is concerned, Mr Wood makes similar and parallel submissions. He submits that the claim for special damages (physiotherapy treatment) was never an honest claim as, apart from the physiotherapy assessment on 19 March 2015, Mr McGrann never had any treatment at all and never intended to do so. There was not a single attendance for treatment. In those circumstances, the updated schedule of loss of 12 November 2015 claiming £570 for physiotherapy treatment was, he submitted, never an honest one. Mr Wood submitted that the Learned Judge failed to align this with his own finding that the effect of the accident had expired by the time of the physiotherapy assessment in March 2015 so that Mr McGrann would have known, by November 2015, that he had fully recovered from the accident and had been so recovered for some 8 months (this being on the basis of acceptance that this had been an 8 month injury). In relation to Dr Iqbal, Mr McGrann, when asked about his past medical history, simply stated "Mr McGrann was involved in a road traffic accident five years ago." However, his medical records reveal that he was involved in road traffic accidents in July 2007 and again in July 2010 when, on both occasions, he suffered injuries causing him to seek medical attention. In the Claims Notification Form dated 5 August 2014, it was asserted that Mr McGrann had sustained injury to his neck and back, the suggestion of an injury to the back being completely untrue. Furthermore, it was asserted he had sought medical attention as a result of the index accident when, in fact, he had done no such thing. In cross-examination, Mr McGrann revealed that he had received compensation for the accident in 2007 which he said was £1,600. Neither he nor Mrs Richards had disclosed any documentation in relation to previous claims for compensation.

47. In relation to the two matters relied upon by HHJ Main QC to justify his finding that there had genuinely been an accident capable of causing whiplash injury and his finding as to its duration, namely the separation of the vehicle after the collision and the finding of spasm by Dr Iqbal, Mr Wood submitted that the learned judge went beyond his proper judicial knowledge and made findings which fell outside the proper scope of judicial notice.

48. In support of this argument, Mr Wood referred me to a number of cases: *R v Bodmin JJ* [1947] KB 321; *Hughes v Lancaster Steam Collieries* [1947] 2 All ER 556; *R v*

Aberdare JJ ex p Jones (1973) Crim LR 45 DC; and *Schooley v Nye* [1950] 1 KB 335. For example, in *Hughes* Tucker LJ was critical of the reasoning of the judge at first instance who had said:

> "Here, the hernia might be due to natural causes, or to some strain outside his work, and I cannot accept the evidence of the two medical witnesses to the effect that the use of the machine contributed to the onset of the hernia as it is merely a matter of their opinion and is contrary to the volume of medical evidence I have had in previous cases."

Tucker LJ said:

> "There again the judge clearly went wrong, as he was not entitled to reject the uncontradicted evidence before him by reason of his preference for other evidence that had been given by other witnesses in other cases, although, no doubt, he is perfectly entitled to use the knowledge that he has acquired in this class of case in order to understand and test the evidence of the witnesses who were called before him."

Mr Wood submitted that the findings of HHJ Main QC in relation to the accident and the medical evidence were procedurally and substantively unfair.

The Respondents' submissions

49. For the Respondents/Claimants, Mr Sweeney submitted that inconsistencies are common and to be expected in cases such as this and may simply reflect an inability on the part of the Claimants accurately to remember events going back many years. He submits that the Learned Judge was entitled to find that although there were inconsistencies, they fell short of dishonesty and that he could accept the evidence of the Claimants when they said that their injuries had lasted for a period of 8 months. Mr Sweeney also invited the court to accept the inherent limitations which exist in these low value, fast track cases. Thus, the medical expert receives £180 for his report; the solicitor acts on the basis of fixed costs and, in order to make the work viable, unqualified practitioners are used to deal with large numbers of cases. He described it as a "race to the bottom to make it as efficient as it can be." This is a fact of life in this kind of case and that the kind of problems thrown up, for example arising out of the Claims Notification Forms, are common and inherent in the system. He said that such forms would usually be supplanted by medical reports and that it is common to find information in CNFs which is not later substantiated.

50. Mr Sweeney supported the approach of the Learned Judge which was inevitably robust because of the limitations of a fast track case where he does not have engineering evidence, nor medical evidence, from the Defendant. The frustration of the Judge on being confronted with a case where the Defendant was arguing dishonesty and yet had not sought directions pursuant to the "LVI protocol" was apparent. Thus, at paragraph 7 the Judge said:

> "7. The way this case has been presented in fact – shows the Defendant wants to have his "cake and eat it" – he asserts a low velocity impact incapable of causing injury to either Claimant

> but does not want to go to the trouble and expense of collating and providing the relevant expert evidence to establish it, even though he was given the opportunity to do so. The court therefore in the absence of the relevant evidence has been dragged into the technicality of the collision and whether the forces at play plausibly give rise to injury."

51. In that context, Mr Sweeney submitted that the Judge was entitled to draw on his own experience and knowledge of the mechanics of these cases together with his knowledge of the anatomy and the medical background. There were two matters which the Judge relied upon, in particular, in concluding that there was sufficient force in the impact between the vehicles to have caused the injuries respectively asserted by the Claimants and that those injuries were genuine. First, the Learned Judge relied upon the fact that the vehicles separated following impact. He said:

> "When vehicles come together and collide, there is a dissipation of energy. There is an absorption of the forces where one mass strikes the other. Where this happens there is very little force impacted or absorbed as between the vehicles, they do not separate. ... There is no restitution as the consequence of the absorption of the energy. In contrast, where the vehicles do separate, they separate with equal forces – the mass of the respective vehicles do not stay together, they pull apart from each other due to the energy that is not absorbed."

Thus, the Learned Judge was entitled to gauge, at least to some extent, the degree of force from the fact that the vehicles had separated after the collision and conclude that the force had been sufficient to cause whiplash type injuries. Mr Sweeney submitted, and the Judge said, that this was inevitable where a Defendant had not chosen to follow the "LVI protocol" and commission its own engineering evidence. Of course, the Judge was limited in how far he could go: thus, it would probably have been too far for the Judge to reach a specific conclusion as to the force of impact or the probable speed of the vehicles from physical findings at the scene but the Judge was aware of his limitations. A "broad brush" approach was within his judicial knowledge and discretion.

52. The second matter relied upon by the Learned Judge was the finding of muscle spasm in the neck or shoulder on the part of each of the Claimants. This was a finding recorded by Dr Iqbal in his report in relation to each Claimant, some 4 ½ months after the accident. Again, Mr Sweeney submitted that the Learned Judge was entitled to take account of his knowledge that muscle spasm is something which is observed and elicited by a medical expert, it is not something that is simply reported by the Claimants. The Learned Judge was, Mr Sweeney submitted, fully entitled to take this into account in deciding that there had been an injury genuinely sustained by each Claimant in the index accident which was still having an effect at the time of Dr Iqbal's examination. All that was therefore left was for the Judge to decide was for how long the effects of the accident had lasted and the Judge had accepted the evidence of each of the Claimants at trial that the period had been approximately 8 months. As the Judge who saw the witnesses and who was in the best position to judge their honesty and reliability, the Learned Judge was entitled to accept this part of their evidence and award them damages accordingly.

53. In relation to the First Claimant, Mrs Richards, Mr Sweeney submitted she was an unsophisticated witness: "She wasn't trying to mislead, she just wasn't very clever." Mr Sweeney gave examples of ways in which it could be shown that Mrs Richards was not dishonest. First, in relation to the theft of the car, that was something which she volunteered when, had she not done so, nobody would have known any different. The claim for the value of the car was fully substantiated through the evidence of Laird and her claim for £705 was a genuine and valid one, objectively substantiated. At the time that her witness statement was signed, in November 2015, she still had the car and therefore the claim remained valid. The car was then stolen in December 2015, she told the court, and she volunteered that she had been compensated by her insurer for its value. He said that this was a measure of her honesty, not dishonesty.

54. Secondly, he said that, had she been dishonest, Mrs Richards could and would have continued to rely on Dr Iqbal's prognosis of recovery within 12-14 months. This would have been unassailable and would have been consistent with the dates of her two physiotherapy appointments. However, when she gave evidence she accepted that her recovery had been within a shorter period than that which Dr Iqbal had anticipated and the fact that she said this to the Judge was a further measure of her honesty rather than her dishonesty. Whilst it is true, Mr Sweeney said, that the Particulars of Claim endorsing Dr Iqbal's report – including his prognosis – had been signed and served in November 2015, and therefore long after the time that Mrs Richards accepted she had recovered, the statements of truth were signed by the claims handler on her behalf and mistakes were made. It was when the matter came to trial, both in the immediate pre-trial period when the responses to the Part 18 request for information were signed (each being signed by the Claimants personally) and when the Claimants came to give their evidence that they fully concentrated on these matters and applied their minds to the issues. The inconsistencies which had arisen were, Mr Sweeney submitted, unfortunate but not uncommon in this kind of case ("race to the bottom" cases) and did not necessarily reveal dishonesty on the part of the Claimants.

55. In relation to Mr McGrann, Mr Sweeney made similar observations and relied upon the same submissions generally. The complaint of back pain in the CNF was an error on the part of the claims handler: Mr McGrann said that he had never complained of back pain arising from the accident and this was certainly true when he saw Dr Iqbal. In the absence of a complaint of back pain, the low back pain which Mr McGrann had suffered in 2003 could easily not have been thought to be relevant and having been 12 years before the accident, it was understandable it was not reported to Dr Iqbal. Mr Sweeney accepted that the medical report arising out of the 2007 accident would probably have been relevant, but he submitted that the Defendant could have sought specific disclosure had it wanted to.

56. Mr Sweeney submitted that, in the end, it was the judge who saw and heard both Claimants and was the best person to assess their honesty and credibility. There was evidence upon which the judge was entitled to conclude that there had been injuries sustained to both Claimants for a period of 8 months and to award damages accordingly. In these circumstances, he said that an appellate court should not interfere.

The relevant law

57. By CPR 52.21, an appeal to this court from the County Court is limited to "a review of the decision of the lower court". Pursuant to 52.21 (3) the Appeal Court will allow an appeal where the decision of the lower court was either wrong or unjust because of a serious procedural or other irregularity in the proceedings. By 52.21 (4) the Appeal Court "may draw any inference of fact which it considers justified on the evidence."

58. The scope of an appellate court was further elucidated by the House of Lords in *Benmax v Austin Motor Company Limited* [1955] AC 370 where it was held that there is a distinction between the finding of a specific fact and the finding of fact which is really an inference drawn from facts specifically found. In the case of "inferred" facts, an appellate tribunal will more readily form an independent opinion than in the case of "specific" facts which involve the evaluation of the evidence of witnesses, particularly where the finding could be founded on their credibility or bearing. In the course of his judgment, Viscount Simmonds LC cited from the judgment of Lord Cave LC in *Mersey Docks and Harbour Board v Proctor* [1923] AC 253 at 258-9 where Lord Cave said:

> "It is the duty of the Court of Appeal to make up its own mind, not disregarding the judgment appealed from and giving special weight to that judgment in cases where the credibility of witnesses comes into question, but with full liberty to draw its own inference from the facts proved or admitted, and to decide accordingly. "

Viscount Simmonds went on to say:

> "This does not mean that an appellate court should lightly differ from the finding of a trial judge on a question of fact, and I would say that it would be difficult for it to do so where the finding turned solely on the credibility of a witness. But I cannot help thinking that some confusion may have arisen from failure to distinguish between the finding of a specific fact and a finding of fact which is really an inference from facts specifically found, or, as it has sometimes been said, between the perception and evaluation of facts."

Thus, in the present case, it is submitted on behalf of the Appellant that it is in relation to the evaluation of the facts which he found that Judge Main QC principally went wrong although there is also a challenge to his perception of facts.

59. Also in *Benmax*, Lord Reid gave the following helpful guidance:

> "Apart from cases where appeal is expressly limited to questions of law, an appellant is entitled to appeal against any finding of the trial judge, whether it be a finding of law, a finding of fact or a finding involving both law and fact. But the trial judge has seen and heard the witnesses, whereas the Appeal Court is denied that advantage and only has before it a written transcript of their evidence. No-one would seek to

> minimise the advantage enjoyed by the trial judge in determining any question whether a witness is or is not trying to tell what he believes to be the truth, and it is only in rare cases that an Appeal Court could be satisfied that the trial judge has reached a wrong decision about the credibility of a witness. But the advantage of seeing and hearing a witness goes beyond that: the trial judge may be led to a conclusion about the reliability of a witness's memory or his powers of observation by material not available to an appeal court. Evidence may read well in print but may be rightly discounted by the trial judge or, on the other hand, he may rightly attach importance to evidence which reads badly in print. Of course, the weight of the other evidence may be such as to show that the judge must have formed a wrong impression, but an Appeal Court is and should be slow to reverse any finding which appears to be based on any such considerations."

This is said to be one of those rare cases where the weight of the other evidence, and in particular the inconsistencies and the failure truthfully to account to the medical expert in relation to previous medical history and previous accidents and the dishonesty in relation to the special damages are such as to justify overturning the finding of Judge Main QC that, having heard the Claimants, he could rely on their evidence as to the fact that they had been injured and as to the duration of their symptoms.

Discussion

60. In my judgment, the first point to make is that, this being a case where the Defendant is alleging that this was a "low velocity impact" case where the nature of the impact was such that it was impossible or very unlikely that the Claimants suffered any injury or any more than trivial injury, it is unfortunate that the usual procedure for such cases was not pursued. In *Casey v Cartwright* [2006] EWCA Civ 1280, the Court of Appeal gave guidance for Defendants who wished to raise causation as an issue. It was said that if a Defendant wished to raise the causation issue, he should satisfy certain formalities:

i) To notify the other parties in writing within three months of receipt of the Letter of Claim that he considered the matter to be a low impact case and that he intended to raise the causation issues;

ii) The issue should be expressly identified in the defence, supported in the usual way by a statement of truth;

iii) Within 21 days of serving such a defence to serve on the court and the other parties a witness statement which clearly identified the grounds on which the issue was raised, and which dealt with the Defendant's evidence relating to the issue, including the circumstances of the impact and any resultant damage.

iv) Upon receipt of the witness statement, the court would, if satisfied that the issue had been properly identified and raised, generally give permission for the Claimant to be examined by a medical expert nominated by the Defendant. If

upon receipt of any medical evidence served by the Defendant following such an examination, the court was satisfied on the entirety of the evidence submitted by the Defendant that he had properly identified a case on the causation issue which had a real prospect of success, then the court would generally give the Defendant permission to rely on such evidence at trial.

61. In the present case, by his order dated 18 August 2015, District Judge Baker made the following order by consent:

> "1. The LVI directions hearing on 11 August 2015 be vacated as the Defendant does not seek to appoint her own medical expert.
>
> 2. The case be allocated to the fast-track.
>
> ...
>
> 6. The Claimants do have permission to rely upon the medical reports served with the Particulars of Claim.
>
> 7. In the event that, following the disclosure of medical reports, the Defendant does not agree with the Claimants' medical reports the Defendant shall, not later than 4pm on 3rd November 2015, serve upon the Claimants' medical expert a list of questions under Part 35 CPR, with a copy to be served on the Claimant's solicitors. The responses to be served no later than 21 days from the date of receipt."

Despite these directions, it does not appear that Part 35 questions were served on Dr Iqbal. The implication of paragraph 7 of District Judge Baker's order is that, in the absence of such Part 35 questions, the Defendant was to be taken to agree with the Claimants' medical reports. However, at trial, it appears clear that the Defendant sought to pursue a case which involved significant challenge to Dr Iqbal's reports even though Dr Iqbal was not called to give evidence and the Defendant did not call her own medical evidence. That challenge raised the very issues which the Court of Appeal addressed in *Casey's* case: the suggestion that the velocity of the impact was too low to have caused the damage alleged and significant challenge to the assertions by the Claimants that they had either been injured at all or suffered injury for the length of time which they claimed. In the circumstances, one can only have sympathy with HHJ Main QC where he said:

> "7. The way this case has been presented in fact – shows the Defendant wants to have his 'cake and eat it' – he asserts a low velocity impact incapable of causing injury to either Claimant but does not want to go to the trouble and expense of collating and provide the relevant expert evidence to establish it, even though [she] was given the opportunity to do so. The court therefore in the absence of the relevant evidence has been dragged into the technicality of the collision and whether the forces at play plausibly give rise to injury."

62. The second general point to make is that it seems clear from a transcript of the hearing that, if for no other reason than shortage of time, the case was unsuitable for the Fast Track. Thus, when Mr Wood, for the Defendant, sought permission from HHJ Main QC to appeal, there was the following (rather unedifying) exchange:

> "Judge Main: You'll have to say in the next three minutes, otherwise I will not be in the building.
>
> (a short break)
>
> Mr Wood: Your honour, I'm very sorry about the lateness of the hour.
>
> Judge Main: So am I, because the building [is] closing in 11 minutes."

63. Despite the above, Mr Wood was correct in submitting that it remained for the Claimants to prove their case, that their cases depended very largely upon the credibility and reliability of their evidence, including the contents of Dr Iqbal's reports which were mainly derived from what he was told by the Claimants when he examined them on 2 December 2014 and it was open to the Defendant to submit to the Judge that, by reason of demonstrable untruths, inconsistencies and general unreliability, the claims should be dismissed. If I am satisfied that no reasonable judge, in the position of HHJ Main QC, could have failed to accede to the submission that the Claimants had failed to prove their case, then I would be entitled to allow this appeal and overturn the order made in this case. However, where a trial judge has heard the evidence and has not concluded that the Claimants were dishonest, I direct myself that it would require a very clear case indeed for an appellate court effectively to overturn the trial judge's conclusion in that respect, and find that the Claimants were dishonest despite not having seen them give evidence.

64. Thus, it seems to me that there are four possible courses which I can take on this appeal:

i) Dismiss the appeal and uphold the decision of HHJ Main QC;

ii) Allow the appeal and remit the case for re-hearing;

iii) Allow the appeal and dismiss the claim on the basis that the judge should have found that the Claimants had failed to prove their case;

iv) Allow the appeal, dismiss the claims, and make a finding of dishonesty or fundamental dishonesty on the part of the Claimants.

65. Before considering the particular issues in this case, it is also pertinent to recognise the problem that fraudulent or exaggerated whiplash claims have presented for the insurance industry and the courts. This was recognised in March 2018 when the Ministry of Justice published a Civil Liability Bill which aims to tackle insurance fraud in the UK through tougher measures on fraudulent whiplash claims, proposing new, fixed caps on claims and banning the practise of seeking or offering to settle whiplash claims without medical evidence. The problem of fraudulent and

exaggerated whiplash claims is well recognised and should, in my judgment, cause judges in the County Court to approach such claims with a degree of caution, if not suspicion. Of course, where a vehicle is shunted from the rear at a sufficient speed to cause the heads of those in the motorcar to move forwards and backwards in such a way as to be liable to cause "whiplash" injury, then genuine claimants should recover for genuine injuries sustained. The court would normally expect such claimants to have sought medical assistance from their GP or by attending A & E, to have returned in the event of non-recovery, to have sought appropriate treatment in the form of physiotherapy (without the prompting or intervention of solicitors) and to have given relatively consistent accounts of their injuries, the progression of symptoms and the timescale of recovery when questioned about it for the purposes of litigation, whether to their own solicitors or to an examining medical expert or for the purposes of witness statements. Of course, I recognise that claimants will sometimes make errors or forget relevant matters and that 100% consistency and recall cannot reasonably be expected. However, the courts are entitled to expect a measure of consistency and certainly, in any case where a claimant can be demonstrated to have been untruthful or where a claimant's account has been so hopelessly inconsistent or contradictory or demonstrably untrue that their evidence cannot be promoted as having been reliable, the court should be reluctant to accept that the claim is genuine or, at least, deserving of an award of damages.

66. In the present case, in my judgment, HHJ Main QC adopted a much too benevolent approach to evidence from Claimants which could be demonstrated to be inconsistent, unreliable and, on occasions, downright untruthful. Indeed, the Judge himself recognised the problems with which he was faced by the evidence of these Claimants. Thus, in the case of Mrs Richards, he said in terms that she was "hopelessly inconsistent" and I refer again to paragraph 17 of his judgment cited earlier in this judgment at paragraph 37. Despite these remarks and these findings, the Learned Judge did not, in my view, reflect them in his overall decision and approach to these claims, as he should have done. In my judgment there is force in the submission which Mr Wood makes based upon the decision of the Court of Appeal in *Yaqoob v Royal Insurance* [2006] EWCA Civ 887: see paragraph 43 above in this judgment. I refer again to paragraph 25 of the judgment of Chadwick LJ. There, the Judge had identified a conflict of evidence in circumstances where he was bound to say why, if he did not believe the claimant on one matter, he was able to accept the evidence of the claimant that he had nothing to do with the fire. So too, here, the Judge, having found that Mrs Richards' evidence was "hopelessly inconsistent", was duty bound to explain why he could nevertheless accept that evidence in relation to both the fact of injury and also the length of the time that the injury was suffered. The Learned Judge failed to give effect to the adverb he himself used, namely "hopelessly". How, if the evidence was hopelessly inconsistent, was the Judge nevertheless able to rely on it and find that the injury had been suffered for a period of eight months? Equally, there were similar problems with the evidence of the second Claimant.

67. In my judgment, through the evidence produced in this case to the court below, whether documentary or cross-examination of the Claimants, the Defendant presented an unanswerable case that the Claimants had failed to prove their case. The following points were all, to some extent, individual and collective nails in the coffin of these claims:

- The First Claimant, after seeing her GP on 21 July 2014 (three days after the accident), sought no further treatment for the injuries allegedly sustained in the accident, despite being a frequent attender upon her GP;

- The Second Claimant never sought medical attention at all whether at the time of the accident or later in relation to the injuries allegedly sustained in the accident;

- The Second Claimant's CNF falsely stated that he had sought medical attention on 2 August 2014, which the Second Claimant accepted in his evidence was untrue;

- Dr Iqbal was given inaccurate information by both Claimants in relation to previous medical history and previous accidents;

- The Second Claimant's CNF asserted that he had sustained a back injury when he had not;

- The Second Claimant asserted that he had sustained an injury to his right shoulder, yet this was not mentioned in his CNF;

- The First Claimant, in her evidence, said that the onset of discomfort was within two – three days of the accident, but told Dr Iqbal that the onset was on the day of the accident;

- Both Claimants, through their witness statements, relied upon and affirmed the truth and accuracy of Dr Iqbal's medical reports and yet they were demonstrated to be inaccurate;

- The schedules of loss in relation to both Claimants made claims which were not sustainable and, in the case of the Second Claimant, demonstrably dishonest in claiming for the cost of "on-going" physiotherapy when the Second Claimant never had any physiotherapy treatment and never intended to;

- In the physiotherapy assessment on 19 March 2015, the Second Claimant asserted that he had "major pain" in the right shoulder. The Judge found that the effects of the accident were spent by eight months from the accident, which would coincide with the date of the physiotherapy assessment. How then could the Second Claimant still be suffering from "major pain" in the right shoulder at the time of that assessment? Either the assertion of such pain was false or (perhaps implausibly) it was true but not associated with the accident. In reality, it should have been found that the assertion of "major pain" in the right shoulder on that occasion was false;

- The First Claimant's physiotherapy attendances were similarly at a time which was inconsistent with her evidence as to how long the effect of the accident had lasted and with the Learned Judge's findings in respect of the causative effect of the accident: if the accident's effects were spent within eight months (by March 2015), either the First Claimant

was having physiotherapy unnecessarily or, alternatively, she was having physiotherapy for a condition which was nothing whatever to do with the index accident, in which case no claim for the cost of such physiotherapy should have been made: either way: the claim for the costs of the physiotherapy appears to have been false;

- In her witness statement, the First Claimant said that she felt discomfort later on the same day as the accident, but, in her evidence, she said that the discomfort came on within two – three days of the accident and she did not attend to her GP until three days after the accident;

- In her witness statement, the First Claimant claimed the on-going cost of physiotherapy, but was discharged from physiotherapy 12 days later;

- The First Claimant maintained a claim for the total loss of her motorcar in the sum of £705 even though it had been stolen in December 2015 and she had recovered its value so that she had no loss in respect of the motorcar by the time of trial. An updated schedule of loss endorsed with the statement of truth, continued to claim for the value of the motorcar in April 2016;

- The First Claimant made a claim for a chest injury in her witness statement, but no such injury had been mentioned to Dr Iqbal;

- The GP note of the First Claimant's attendance on 21 July 2014 made no mention of any lower back injury;

- The First Claimant had consulted her GP on 13 May 2014 complaining of a four day history of pain in the right side back of the neck radiating to the shoulder, this being only three months before the index accident: no mention of this attendance was made to Dr Iqbal;

- In his Part 18 reply, the Second Claimant, when asked the question "13. We note that you had physiotherapy, please confirm which areas of your body were treated" replied "Neck and right shoulder". This was plainly untrue;

- The First Claimant's evidence at trial was, on the Learned Judge's findings, "hopelessly inconsistent";

- The Second Claimant gave a similarly inconsistent account in his evidence: see paragraph 22 of the judgment of HHJ Main QC (see paragraph 40 above).

68. Despite the above points, HHJ Main QC was prepared to accept the accounts of the Claimants and to award them general damages, essentially on two bases: his finding of "separation" between the vehicles after impact and Dr Iqbal's reported finding of "spasm" in relation to both Claimants. In my judgment these were wholly insufficient bases upon which to ignore, forgive or reject the substantial matters referred to in paragraph 66 above.

69. So far as the impact is concerned, in my judgment HHJ Main QC should have been deeply suspicious of the evidence of the Claimants by reference to their Part 18 responses. In the case of the First Claimant, she had suggested that the Defendant reached a speed of 10 – 15 mph when reversing a distance of 3 feet. In the case of the Second Claimant, he estimated that the Defendant had reached a speed of 10 – 20 mph over a distance of 3-4 feet. Judge Main QC should have recognised that these were impossible speeds to have reached over such a short distance and it is difficult to understand why he rejected the evidence of the Defendant and her passenger in relation to the nature of the accident. It was submitted on behalf of the Appellant that, in relation to his findings about the physical and mechanical aspects of the collision, the Judge went outside the scope of the evidence and his own proper "judicial knowledge": see paragraphs 46 and 47 above. I agree with those submissions and, in my judgment, HHJ Main QC fell into a similar trap as the judge at first instance had done in *Hughes'* case.

70. So far as the finding of spasm is concerned, a similar point can be made. In my judgment, the Learned Judge should have treated Dr Iqbal's reports with a degree of circumspection, if not suspicion, in any event. First, a critical element of the case for the Claimants was Dr Iqbal's finding that the Claimants' condition was attributable to, and caused by, the index accident. However, in my judgment his findings on causation were invalidated by the fact that he had not been given an accurate medical history or history in relation to previous accidents. He might well have taken a wholly different view if he had been told that, just a few weeks before the index accident, Mrs Richards had consulted her GP for a problem to her shoulder.

71. Furthermore, Dr Iqbal's reports were extremely formulaic and did not adequately distinguish between the two Claimants. In both reports he used similar wording ("these are now mild to moderate and intermittent) and, most importantly, he made identical recommendations for physiotherapy (eight sessions) and gave an identical prognosis (for resolution between 12 and 14 months from the date of the accident"). In respect of both Claimants he diagnosed "fear of travel" with an identical opinion in respect of the existence of this effect and the prognosis. However, this does not appear to have had a basis in reality in respect of either Claimant. In the circumstances, it is difficult to see how HHJ Main QC could have placed any proper reliance on these medical reports in view of the inconsistency and unreliability of the factual basis which lay behind them. A single finding of "spasm" was, in my judgment, an inadequate basis for HHJ Main QC to find that the Claimants had proved their case.

Conclusion

72. In conclusion, in my judgment the appeal should be allowed. I do not think that it would be right to order a re-trial: on my finding, the claims should have been dismissed. However, I am not going to make a finding of fundamental dishonesty: I have not seen or heard the Claimants for myself, nor had an opportunity to assess them as witnesses and I do not think that the matters referred to in paragraph 66 above are sufficient for me to make such a finding at an appellate level (HHJ Main QC could have done so, but declined to do so). In my judgment the correct course is to adopt course number 3 referred to in paragraph 63 above and to allow the appeal and dismiss the claims, but without a finding of fundamental dishonesty.

73. For the above reasons, the appeal will be allowed and there will be judgment on both claims for the Defendant.