Neutral Citation Number: [2025] EWHC 3178 (KB)

Case No: KA-2023-BHM-000044

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BIRMINGHAM DISTRICT REGISTRY

Birmingham Civil & Family Justice Centre

Date: 2 December 2025

Before :

MR JUSTICE CAVANAGH

- -

Between :

Motor Insurers Bureau

Appellant

- and -

Drewy Houston

Respondent

- -
- -

Steven Turner (instructed by **Keoghs LLP**) for the Appellant
Andrew Hogan (instructed by **Express Solicitors Ltd**) for the Respondent

Hearing date: 2 December 2025

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Approved Judgment

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Mr Justice Cavanagh:

1. This is an appeal against two aspects of an award of damages that was made to the Respondent following a road traffic accident that took place on 15 June 2019. At the time of the accident, the Respondent was a passenger, and his brother was the driver, but the car belonged to the Respondent. The other driver involved in the accident was uninsured, and so, as the funder of last resort, the Appellant had a contingent liability to meet any judgment that was entered in favour of the Respondent. Liability was disputed and a trial of liability and quantum took place before Recorder Brown at Birmingham County Court on 30 June 2023. The uninsured driver and the Appellant were First and Second Defendant, respectively. Recorder Brown gave an ex tempore judgment at the end of the hearing.

2. The Recorder found that the uninsured driver was at fault for the road traffic accident. There is no appeal against this. The Recorder therefore went on to consider quantum. She made awards under several heads of claim that are not now subject to challenge. The Respondent was awarded a sum of £5,000 by way of general damages, and a sum of £315 in respect of physiotherapy. The greater part of the award of damages, however, related to the two matters that are the subject of this appeal.

3. The first relevant head of loss relates to the cost of hiring a replacement vehicle. The vehicle damaged in the accident was a 2008 Chevrolet Captiva, with a pre-accident value, "PAV", of £2,320 gross (£2,134.40 net of salvage). On 17 June 2019, an engineer's report confirmed that the Respondent's vehicle was a write-off. As a substitute for his damaged vehicle, pending the purchase of a replacement, the Respondent hired a 2018 Mercedes GLA from a company called Easidrive, pursuant to a credit agreement. The cost was £224.29 per day (£1,570.03 per week). The hire period began on 15 June 2019 and continued until 28 December 2019, a period of 197 days or about six and a half months. The Recorder awarded the Respondent the full cost of the 197 day hire of the Mercedes car. She found that the Claimant could not afford to replace his vehicle prior to being placed in funds by the Appellant. This had happened on 18 December 2019, when the Respondent's representatives received a cheque from the Appellant in the amount of the PAV of the Respondent's car.

4. The second head of loss relates to the cost of storage of the damaged car. The vehicle was kept in storage until 4 November 2019, when it was removed from storage and scrapped.

5. Permission to appeal was granted by Julian Knowles J on 15 April 2024.

6. The grounds of appeal, in short summary, are:

   (1) The judge failed to place any or any sufficient weight upon the fact that the Claimant had failed to comply with the court's order in relation to financial disclosure;

   (2) The judge failed properly to apply the law in relation to mitigation of loss; and

   (3) The Recorder's conclusion that it was reasonable, in the circumstances, for the Respondent to hire a relatively expensive car for a period of over six months, and to store a written-off vehicle for about five and a half months was plainly wrong and/or perverse.

7. The Respondent contends that none of the grounds relied upon by the Appellant has any force.

8. Both parties invite me, if I were to consider that the Recorder's decision cannot stand, to substitute my own view in relation to the hire costs and the storage costs.

9. The Appellant has been represented before me by Mr Steven Turner and the Respondent by Mr Andrew Hogan. Neither of them appeared below, though both the Appellant and Respondent were represented by other counsel at trial. I am grateful to Mr Turner and Mr Hogan for their very helpful submissions, which were of a high standard.

The parties' pleaded cases about hire costs and storage fees

10. In the Claim Form, the Respondent claimed the sum of £44,305.52 in respect of credit hire. He said that he had needed a hire vehicle throughout the period of hire, whilst his own vehicle was unroadworthy as a result of the accident. He said that he needed it for work, shopping, and social, domestic, and pleasure purposes on a daily basis. The Respondent pleaded that both the period and rate of hire were reasonable. He further pleaded that he was impecunious at the date of the accident, at the start of hire, and for the duration of hire. He said that he did not have access to reasonable funds to pay for the credit hire up front or to pay for a replacement vehicle out of his own funds. He said that his financial position was such that the only reasonable means of replacing the vehicle for the period of hire was on a credit hire basis. He further said that he incurred the hire charges in mitigation of losses that would otherwise have been incurred by way of loss of earnings.

11. In its Defence, the Appellant put the Respondent to proof on this head of loss. The Respondent was put to proof on his need for a replacement vehicle. As for impecuniosity, the Appellant said that the Respondent was required to prove it, and, in particular, to prove that he was unable to pay for hire at the basic hire rate; to utilise funds to repair the Chevrolet; or to replace the Chevrolet, without making sacrifices that exposed himself or his family to a loss or burden that was unreasonable.

12. In its Defence, the Appellant requested disclosure of financial evidence, such as bank and building society accounts and details of the Respondent's income over the hire period, failing which the Appellant warned that it would seek an order from the Court debarring the Appellant from relying on impecuniosity at a final hearing. The Defence stated "The [Appellant] for clarity avers that arguments to impecuniosity relate to all issues not just rate."

13. The Appellant also pleaded that if the Respondent was found not to be impecunious, his entitlement to hire charges should be limited to the lowest reasonable rate available from a mainstream or local reputable provider. The Appellant put the Respondent to proof that the duration of hire was reasonable, and reserved the right to allege that the Respondent had failed to mitigate his loss by hiring a vehicle on credit when it was unreasonable to do so, and had hired a vehicle for an unreasonable period, and at an unreasonable rate.

14. The Respondent also claimed the sum of £5,246.40 for storage and recovery.

15. So far as this latter head of claim is concerned, the Appellant did not admit loss. The Appellant pointed out in its defence that the Claimant had presented two invoices in relation to this head of loss which were inconsistent. One was dated 30 December 2019 in the sum of £5,426 and the other was dated 21 January 2020 in the sum of £4,159.20. The Appellant averred that the damaged car should have been removed from storage and disposed of within a reasonable period following the assessor's report dated 17 June 2019, in which the vehicle was assessed as being a write-off. The Appellant further put the Respondent to proof on this head of loss, and required

him to prove the need to have the vehicle recovered; why he could not store it at his home address; why the claimed storage charges were reasonable and proportionate; the duration of storage; what happened to the car when it ended; and that he had paid the storage charge or that there was an enforceable credit agreement.

The ‘‘debarring’’ order

16. On 22 November 2022, Deputy District Judge Mahmood allocated the claim to the Fast Track, and made directions in the case. These were made without a hearing, but after considering the pleadings and the directions questionnaires.

17. Amongst the directions made by DDJ Mahmood was the following: “the [Respondent] shall be debarred from relying upon the fact of impecuniosity for the purposes of determining the appropriate rate of hire unless within the documents disclosed the [Respondent] serves copies of a number of documents set out in the order, including wage slips and bank and credit card statements.”

18. It is not in dispute that the Respondent did not comply with this order. He provided the Appellant with documentation relating to a Lloyds Bank account but not with documentation relating to a number of other bank and building society accounts. There is a dispute between the parties as to the effect of this failure that I will address later in this judgment.

The Recorder’s ruling on hire charges and storage costs

19. It is convenient to set out in full the part of the Recorder’s judgment that deals with hire charges and with storage costs:

> “21. Finally, I have to consider whether the claimant has proved any other losses arising from the collision. The bulk of this claim is in relation to the credit hire claim. The first aspect I have to consider is whether the claimant needed to hire a replacement vehicle. I am satisfied that Mr Houston has proved that he did. He needed the vehicle for work and family commitments. He has explained that whilst quite unusually he did have six other vehicles in his possession, none of them were driveable, and I accept his explanation as to why that was.
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> 22. I am satisfied that throughout the period, based on his evidence, he did not have any spare cash to purchase a replacement without the write-off and salvage values of the vehicle.
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> He has explained in his statement that even at the time he was needing to lend [the judge must mean borrow] bits of money from friends and family, and that even once he got the write-off value and the salvage value he was not immediately in a position to go out and buy a replacement. So I accept that the full hire period was needed.
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> 23. Was it reasonable in all the circumstances to hire the particular type of car that was actually hired? This point has not been taken. Mr Davis makes no comment on the Mercedes that was hired being a betterment and therefore I conclude that it was reasonable that the vehicle that was hired to be hired.

24. Was the claimant impecunious? No, because that has not been proved. I am making no judgment on whether Mr Houston was impecunious or not, but he has not proved in the course of these proceedings that he was.

[THE UNINSURED DRIVER]: What does impecunious mean?

RECORDER BROWN: Does not have enough money to afford to replace the car or to hire it from his own pocket.

25. Have the defendants proved a difference between the credit hire facility that Mr Houston actually used and the cost of hiring a car without credit? Yes, they have, based on the statement of Mr Davis, and what is the difference between the credit hire rate and the basic hire rate that I find Mr Houston is entitled to? It brings the total value of the claim down to £40,918.34 based on the calculation included in Mr Davis's statement.

26. Mr Houston has also claimed for storage and delivery. I accept his evidence that he could not move the vehicle because of the damage to it, and that he had nowhere to store it whilst he waited for the Motor Insurance Bureau to sort the situation out. I accept his evidence as to the description of the available facilities he had to leave a car in.

27. Therefore, there was a need for storage and delivery but I do limit that to the earlier November invoice because the evidence is that the vehicle was scrapped in November and not December and therefore the amount awarded is £4,159.20."

The evidence before the Recorder

20. The Appeal Bundle includes the Respondent's witness statements and the statement of Mr Liam Davies, a witness proffered by the Appellant, who dealt with rates of hire. The Appeal Bundle also includes a transcript of the hearing. It is clear from the transcript that the Respondent's witness statements stood as his evidence in chief and he was then cross-examined by counsel for the Appellant.

21. In his witness statements, the Respondent said that he was a part-time vehicle trader and worked part-time in a coffee shop. He said that he needed a car after the accident, and would not have been able to work without it. He said that he had a van but it was broken down and unusable. He said that he did not have enough money to buy a replacement car, or to hire a car in the normal way and so he hired one on a credit hire basis. He did not ask for the Mercedes: this was the car that the credit hire company gave to him. He said that friends and his mother lent him some money during this period as he was struggling. He said that as soon as he received payment for his car, he returned the hire car to the credit hire company, Easidrive. The Respondent said that his damaged car was stored by a company called VRN until it was scrapped, because he did not have anywhere to store it.

22. The Respondent exhibited an invoice from Easidrive, stating that that the total value of the daily rate charges for the hire period was £44,305.52. The daily charges were £224.29. He also exhibited two invoices from the vehicle recovery and storage company. One was on the basis that the Respondent was charged for recovery and

storage from 24 June to 4 November 2019, in the sum of £4,159.20, and the other was a charge from the period from 24 June to 18 December 2019 in the sum of £5,426.40. The Respondent said in his second witness statement that he thought that the lesser of the two figures was the accurate figure, as it aligned with the date when he believed that the vehicle had been scrapped.

23. The Respondent said that he was paid the sum of £1,600 for his written off car.

24. Early in the hearing itself, counsel for the Respondent acknowledged that, as there was no documentary evidence of impecuniosity, the Respondent would have to be limited to the basic hire rates. The Respondent's bank statements were not before the court.

25. In cross-examination, the Respondent said that he worked part-time in the motor trade and part-time as a carpenter. He said that at the time he owned six other cars as part of his motor business, but none of them was roadworthy. He said that he believed that he had received the scrap value of the Chevrolet in November and then received the PAV on 18 December 2019. It was put to him that he had received the PAV in November 2019 and so could have brought the hire period to an end at that stage. The Respondent said no. It was also put to the Respondent in cross-examination that the Chevrolet had not been worth very much and he could have afforded to buy a replacement vehicle before the hire period ran out. The Respondent denied this, saying that he was in debt on his Tesco credit card in the amount of £1,500 during the relevant period and could only borrow small amounts from other people. It is fair to say that the Respondent did not provide much information about his finances, beyond this, and beyond saying that he did not have much money going in or out of his bank accounts at the time. The Respondent was not cross-examined about the details of the Lloyds Bank statements that he had disclosed, or asked about the sum of £4,000 that the Appellant's counter-schedule said that the Respondent had access to at the material time.

26. It was also put to the Respondent that he did not necessarily need a Mercedes and would have been happy with any vehicle. The Respondent said that he needed a bigger vehicle because he has children.

27. The witness on behalf of the Appellant, Mr Davies, is an expert into the rates of hire for specific vehicles at specific locations. He obtained a quotation for the hire of the same type of vehicle from a hire company, Europcar, on a non-credit hire basis. The total charges, if the car had been hired on that basis, would have been £40,918.34. Mr Davies was not required to attend for cross-examination.

28. In his closing speech, counsel for the Appellant conceded that, apart from contending that the right figure for storage was the lower figure, there was nothing he could say on storage. Counsel acknowledged that it had been conceded by the Respondent that impecuniosity was not an issue, and so the figure for hire must be based on the basic hire rate, not the credit hire rate. Counsel did not submit that the evidence had established that the Respondent did not need to hire a car at all, or that the car hired was an unduly expensive model. He did submit there should be a reduction for the fact that the Respondent had not proven impecuniosity. He had not provided his statements, and had owned a low-value car. Counsel submitted that damages for the hire period should be limited to six weeks' hire, as being a reasonable period within which to buy a relatively cheap replacement car.

29. In her closing submissions, Counsel for the Respondent once again accepted that she could not maintain a claim for the credit hire rate on behalf of her client. She submitted, however, that to limit the hire period to six weeks would be entirely

arbitrary. She said that there was evidence that the Respondent could not afford to buy another car instead of hiring one, because that is what he had said in his oral evidence. Also, he had children and said that he had debts. She invited the Recorder to conclude that the Respondent had shown himself to be an honest witness. Counsel pointed out that the Respondent had not managed to buy a new car with his PAV payment until January 2020. She said that details of the Respondent's finances had been provided to the Appellant during disclosure, but the Appellant had not used them to advance an affirmative case, as pleaded in the counter-schedule of loss, that the Respondent had access to funds in excess of £4,000 as of 8 November 2019. In any event, that is a period of 4 and ½ months, not the period of 6 weeks that was contended for by the Appellant.

Discussion

30. The starting point is that, as the Court of Appeal said in **Zurich Insurance plc v Sameer Umerji** [2014] EWCA Civ 357, at paragraph 9(1):

> "A claimant whose car has been damaged as a result of the defendant's negligence is entitled to recover for the cost of hiring a replacement vehicle to the extent, but only to the extent, that it was reasonable for him to incur that expenditure. If authority is needed for so basic a proposition, it can be found in the speech of Lord Hope in **Lagden v O'Connor** [2004] 1 AC 1067, at para. 27 (pp. 1077-8)."

31. Whether the steps taken in mitigation were reasonable is a question of fact: **Payzu v Saunders** [1919] 2 KB 581, at 588. A claimant is not entitled to charge the defendant by way of damages with any greater sum than that which he reasonably needs to expend for the purpose of making good the loss. Where there are choices to be made, the least expensive route that will achieve mitigation must be selected : **Darbishire v Warren** [1963] 1 WLR 1067 (CA), and **Lagden v O'Connor**, at paragraph 34, per Lord Hope of Craighead. A court can reasonably ask what an uninsured person would have done if spending their own money: **Le Blanche v London & North Western Rly Co** (1876) 1 CPD 286, at 313; **Clarke v McCullough** [2013] NICA 50, at paragraph 17. The burden of proving that a claimant has failed to take reasonable steps to mitigate his loss rests with the defendant. However, the burden of proving impecuniosity, that is an inability for financial reasons to afford to take steps which would have reduced the cost of something done in mitigation, rests with the claimant: see **Umerji** at paragraph 37. A useful summary of these principles, in the context of credit hire cases, can be found in **Pattni v First Leicester; Bent v Highways and Utilities** [2011] EWCA Civ 1384; [2012] RTR 17, at paragraphs 29-38.

32. Unless the judge has made an error of law, a judge's conclusion on an issue of mitigation can only successfully be challenged on appeal if that conclusion was plainly wrong. It is not enough that the appellate court would have reached a different conclusion; an appellant must establish that the decision under appeal is one that no reasonable judge could have reached. The judge does not have recite or discuss every piece of evidence in her judgment. Unless there is compelling reason to the contrary, the appellate court must assume that the trial judge took the whole of the evidence into consideration. Reasons should not be subjected to a narrow textual analysis, or picked over or construed as though the judgment was a piece of legislation or a contract. All of these points were made by the Court of Appeal in **Volpi and anor v Volpi** [2022] EWCA Civ 264, at paragraph 2.

33. It is fair to say that the reasons given in her judgment by the Recorder for her findings on quantum were relatively brief, and it is also the case that she did not set out in

detail the findings of fact that underpinned them. However, this is not, in itself, a valid reason to criticise the Recorder's judgment. As I have said, this was an ex tempore judgment, in a Fast Track case, and no doubt the Recorder was under pressure to deal with other matters in a busy County Court list. It was addressed to parties, two of whom were represented by counsel, who were well aware of the issues in the case. The evidence had been relatively brief.

34. On behalf of the Appellant, Mr Turner submitted that there is an inconsistency at the core of the Recorder's judgment. This is that she has stated expressly that the Respondent was unable to prove impecuniosity but, at the same time, found that he was entitled to claim for the entire hire period because he could not afford to buy a replacement car during that period. Mr Turner pointed out that the Court of Appeal in the **Umerji** case made clear that impecuniosity applies not just to rate of hire but also to duration of hire. He submitted, therefore, that there was an error of logic at the heart of the judgment. If the Respondent could not rely upon impecuniosity, it meant that there was nothing to justify the conclusion that the Respondent could not afford to buy a replacement car, just as there was nothing to justify the conclusion that the Respondent had no choice but to go for the more expensive credit hire option.

35. I am unable to accept this submission. In my judgment it is clear, both from the judgment itself and from the legal argument, that, in the context of this case, the judge was using the word "impecuniosity" solely to mean impecuniosity as to rate; in other words whether a lack of funds meant that the Respondent had to resort to more expensive credit hire, rather than basic hire.

36. In his directions dated 22 November 2022, Deputy District Judge Mahmood had ordered that, unless certain conditions were complied with, the Respondent would be debarred from relying upon the fact of impecuniosity. Those conditions were not complied with. However, the Deputy District Judge's order stated in terms that the Respondent would be debarred from relying upon impecuniosity "for the purposes of determining the appropriate rate of hire". It may well be, as Mr Turner suggested, that the form used for this order was an out of date or "legacy" version of a standard form order, but nonetheless the order must be given it ordinary and natural reading.

37. Two things are clear from this, in my judgment.

38. The first is that the Respondent was debarred from relying upon impecuniosity, which is only another way of saying lack of funds, for the purposes of justifying the rate of hire. In this context, this meant that the Respondent was debarred from relying upon his lack of means to explain why he had to hire a car through a credit hire agreement, rather than a basic hire agreement. But there was no order that the Respondent was debarred from relying upon impecuniosity or lack of means for any wider purpose, such as to explain and support the claim for a hire period of six months or so. He was not debarred by the Deputy District Judge's order from saying that he could not afford to buy a replacement vehicle until he received his PAV in December 2019.

39. The second point is that, in my judgment, it is clear that, at the trial, the Recorder, and counsel for the Appellant and the Respondent, used the word "impecuniosity" to mean inability to hire a car other than by means of a credit hire agreement, rather than using it in its more general and perhaps more normal meaning of overall lack of funds. That was the way in which "impecuniosity" was used in the Respondent's counsel's concession, at the start of the trial, when acknowledging that he would be unable to recover the additional cost of the credit hire arrangement – see the transcript, at page 56 of the Appeal Bundle. That is also the way in which "impecuniosity" was used in the judgment. "Impecuniosity" was a shorthand way of referring to the argument that was not open to the Respondent to pursue in relation to

the extra cost of a credit hire arrangement. It made sense for it to be used in this way, because it had been the word used by the Deputy District Judge in his debarring order.

40. It is true, as Mr Turner pointed out, that in the **Umerji** case the Court of Appeal used "impecuniosity" in a broader sense, and stated in terms that, in that case, "impecuniosity-as-it-relates-to-rate" cannot be distinguished from "impecuniosity-as-it-relates-to-duration" (see the judgment of Underhill LJ, at paragraph 37). However, that was said in the context of an appeal which centred upon the meaning of the words used in a debarring order made by a District Judge which had "purported straightforwardly to prevent the claimant from relying upon his impecuniosity without qualification" (**Umerji**, paragraph 34). As the Court of Appeal held, a failure to comply with the conditions of the debarring order in that case meant that the claimant in that case was prevented from relying upon his impecuniosity not just in relation to rate but also in relation to the duration of hire. In my judgment, the Court of Appeal was not ruling that, as a matter of law and for all purposes, the word "impecuniosity" must cover arguments relating to lack of funds both where they are concerned with rate of hire and also with duration of hire. Rather, the Court of Appeal was ruling upon the meaning and effect of the Deputy District Judge's order in that case. That is made clear by paragraphs 15, 16, 23, 31, 34, 35 and 36 of **Umerji**. The present case is different because the Deputy District Judge's order stated in terms, that if the Respondent failed to comply with the specified conditions, he would be debarred from relying upon impecuniosity for the purposes of determining whether the rate claimed, the credit hire rate, was reasonable. Nothing in the Deputy District Judge's order had the effect of debarring the Respondent from relying upon impecuniosity to justify the duration of the hire period.

41. At paragraph 36 of the judgment in **Umerji**, Underhill LJ recognised that other orders might have a different effect from the order in **Umerji**, if the clear terms of the order had a different meaning. Here they did have a different meaning. That different meaning was understood and shared by trial counsel for the Respondent and the Appellant, and by the judge. It is significant that counsel for the Appellant at trial did not seek to argue that the Respondent was debarred from relying on his lack of means, i.e. his impecuniosity, as a basis for justifying the length of the hire period.

42. It is also true, as again Mr Turner pointed out, that when, in the course of giving judgment, the Recorder said that it had not been proved that the Respondent was impecunious, the unrepresented First Defendant interjected to ask "what does impecunious mean?", and the Recorder responded, "Does not have enough money to afford to replace the car or to hire it from his own pocket…". This is, of course, the broader meaning of "impecuniosity". However, this comment did not form part of the judgment. It was an off-the-cuff response and it does not mean that, in the judgment itself, the Recorder was using the word "impecunious" in the broader sense, or that she had found that the Respondent had not proved that he was unable, for financial reasons, to replace the car until the PAV was received. Nor does it mean, as Mr Turner submitted, that the judge had failed to apply the law as she herself knew it to be.

43. Still further, it is true that, at paragraph 24 of the judgment, just before the intervention of the First Defendant, the Recorder said that she was making no judgment on whether Mr Houston was impecunious or not, but he has not proved in the course of the proceedings that he was. In my judgment, however, it is clear from the context that all the Recorder was saying in this paragraph was that the Respondent had not proved impecuniosity in relation to rate, because he had failed to provide the bank and building society documents and had been debarred. It is clear elsewhere in the judgment that the Recorder was satisfied that the Respondent had proved lack of funds or impecuniosity in relation to period.

44. Mr Turner drew my attention to the case of **Diriye v Bojaj** [2020] EWCA Civ 1400. That was a case in which a claimant in a credit hire case was criticised for providing very limited information on impecuniosity. However, in my judgment this does not assist in the present case. **Diriye v Bojaj** was a case about relief on sanction in circumstances in which the claimant had failed to comply with an Unless Order requiring him to particularise the grounds for his claim of impecuniosity, in part because the particulars eventually provided were inadequate. This case was not cited to the Recorder and it does not, as a matter of law, set limits on the evidence that can amount to proof of lack of funds or impecuniosity.

45. The next issue is whether the judge's conclusions that it was reasonable, in the circumstances, for the Respondent to hire a relatively expensive car for six months, and to store a written-off vehicle for about five and a half months were plainly wrong and/or perverse. Mr Turner submitted that the judge had failed to address what a reasonable person would have done in the circumstances, and failed to take account of the undisputed facts that the Respondent was a part-time motor trader; that the damaged car had a low value, of £2,134.40; that the Respondent was paying credit hire charges amounting to £1,570.03 per week, meaning that the hire charges exceeded the value of the Respondent's car after only 10 days; that the Respondent knew after 3 days that his car was a write-off and would have to be replaced, and that the other driver was uninsured and so that no insurer would be making an early payment to fund replacement of the damaged vehicle. Mr Turner submitted that, in all of the circumstances, the conclusion that the hire of a Mercedes on an expensive credit hire arrangement for approximately six months was perverse.

46. Mr Turner further submitted that it was perverse to award damages for storage for nearly six months at a cost of £28.80 per day, when the vehicle was a write-off, and the Respondent had been told this very soon after the accident. Also, there was no request by an insurer to inspect the vehicle, which might have necessitated it being kept in storage.

47. In my judgment, it is clear that the judge asked herself the correct questions in relation to mitigation. There is nothing in the judgment that suggests otherwise. There is nothing to suggest that this experienced Recorder was unaware of the fundamental legal principles that a claimant must take reasonable steps to mitigate his or her loss and that a claimant is only able to recover funds reasonably spent in mitigation.

48. Furthermore, in my judgment, there was ample evidence to justify the Recorder's conclusions both in relation to the hire period and to the storage cost.

49. Taking first the hire period, as I have said, though the Respondent was debarred from relying on impecuniosity for the purposes of justifying the credit hire rather than basic hire, he was not debarred from relying on lack of funds in order to explain and justify the length of the hire period. Whilst the court was not provided with the Respondent's bank statements, there was nevertheless evidence before the court which provided a factual basis for the Recorder's conclusion that the Respondent could not afford to buy a replacement car until he received the PAV in December 2019. This was in the form of his own evidence, tested by cross-examination. The Respondent said that he was in debt, and was only able to borrow small sums from his mother and friends. Though he ran a small car trading business, his evidence was that all of the other cars were unroadworthy. The Respondent maintained this account in cross-examination. It was corroborated, to an extent, by the fact that the Respondent did not buy a replacement car for some weeks even after the PAV was made to him. The Respondent's truthfulness was supported by the fact that he volunteered that the lower of the two figures put forward for storage costs was the right one because, to his recollection, he had agreed in November 2019, rather than

December 2019, that the car could be taken out of storage and scrapped. In my judgment, the Recorder was entitled to accept the Respondent's evidence on this issue and there is no basis for overturning her conclusion. She was undoubtedly aware that he had not disclosed details of other bank accounts, in breach of the Deputy District Judge's order, and that the Appellant relied on this as demonstrating that he had not proved lack of funds, even though she does not mention it at paragraphs 21 to 22 of the judgment. Another judge might well have taken a dimmer view of this. However, her ruling was not plainly wrong, or perverse. The Respondent had given evidence to support the conclusion that his financial position was such that he could not afford to obtain a replacement vehicle until the PAV was paid to him. The judge said, at paragraph 22 of her judgment, that she was satisfied of this from the Respondent's evidence. There was no illogicality in finding that the Respondent was debarred from relying on impecuniosity for rate, because he had failed to comply with the Deputy District Judge's order, and yet in finding that on the basis of the evidence at trial the Respondent had made out that he had a reasonable explanation for the length of the hire period.

50. In oral argument before me, Mr Turner pointed out that the declaration was not sent by the Respondent to the Appellant until 23 August 2019. However, this was not a point that was taken against the Respondent at trial, and, as Mr Hogan pointed out, this was something of a double-edged sword, as the Appellant not act promptly thereafter, and delayed until December 2019 before paying over the PAV to the Respondent.

51. As for the fact that the car that the Respondent had hired was relatively expensive, certainly in comparison to the damaged Chevrolet, the judge cannot be criticised for declining to reduce the amount of damages as a result. It is clear from the transcript that the then counsel for the Appellant accepted that he was not in a position to challenge the daily rate. This was understandable, as the Respondent's evidence was that he had had no say in the selection of the car, and there was no evidence to support any suggestion that he had deliberately picked a relatively valuable car. The Appellant did not put forward any evidence about "betterment" and, as the Recorder observed in her judgment, this was simply not an issue at trial. The central matter at issue, following the concession on behalf of the Respondent that he could not succeed in the claim for the credit hire rate, was period of hire. This was spelt out by the judge for the benefit of the unrepresented party towards the end of the hearing and counsel for the Appellant confirmed the judge's understanding was correct. He described the judge's analysis of his submissions as "blinding". Given the position that was taken on behalf of the Appellant at trial, the Appellant should not be permitted to take a new point on appeal which was not taken at trial and which would no doubt have been explored in greater detail in evidence at trial if the point had been taken at that stage (see **Singh v Das** [2019] EWCA Civ 360, at paragraphs 15 and 17).

52. Similarly, in my judgment, the argument that the Recorder's finding in relation to the storage cost was plainly wrong or perverse must also fail. There is no doubt that the car was in storage between June and November 2019. The Respondent gave an explanation as to why, namely that he had nowhere to store the damaged vehicle and he stored it until the Appellant paid the scrap value, whereupon it was scrapped. The judge was plainly entitled to accept this explanation and to regard it as reasonable. In accordance with the evidence, she awarded damages under this head by reference to the lower of the two invoices. In his oral argument, Mr Turner described the argument about storage as being essentially a "piggy-back" argument with the hire period argument. As I have rejected the hire period argument, this is not a reason to allow the appeal as regards the storage period. Also, as Mr Hogan pointed out, the storage point was not put at trial by counsel for the Appellant as being parasitic upon the hire period point.

53. In any event, by the time of closing submissions, it was clear that the Appellant was not challenging the storage cost, provided that it was on the lower basis. Counsel said that there was nothing he could say about storage. The Appellant abandoned the argument that the vehicle should have been scrapped earlier at trial and it would be wrong to permit the Appellant to revive that argument now.

54. For these reasons, and notwithstanding Mr Turner's excellent submissions, the appeal is dismissed.

55. I will conclude with the following observation. Though I have found that the Recorder was not plainly wrong to find in the Respondent's favour on the impecuniosity as to period issue in this case, the Respondent was perhaps fortunate to achieve this outcome. In many cases, a failure to give full disclosure of bank and building society statements or other documentation, especially if in breach of a court order, would be fatal to a claimant's credibility on the impecuniosity issue.