Bernard Carl v Vikash Limbani

No Substantial Judicial Treatment

Court
Court of Appeal (Civil Division)

Judgment Date
6 July 2026

Case No: CA-2025-000298

Court of Appeal (Civil Division) on appeal from the High Court of Justice Business and Property Courts of England and Wales Business List (ChD) Simon Gleeson sitting as a Deputy Judge of the High Court [2025] EWHC 1104 (Ch)

[2026] EWCA Civ 856, 2026 WL 01942946

Before Lady Justice Falk , Lord Justice Jeremy Baker and Lord Justice Foxton

6th July 2026

Hearing date: 15 June 2026

Royal Courts of Justice

Strand, London, WC2A 2LL

Representation

Kevin Leigh and Philip Williams (instructed by Rippon Patel & French LLP) for the Appellant
Sean Brannigan KC (instructed by Malvern Law) for the Respondent

Lord Justice Foxton :

1. This appeal arises out of proceedings brought by the Respondent ("Mr Carl") against the Appellant ("Mr Limbani") and a number of other individuals and three companies. The trial was heard in May 2024 by Mr Simon Gleeson, sitting as a Deputy Judge of the High Court ("the Judge"), and he handed down judgment on 22 August 2024 ("the Judgment"). The Judge dismissed Mr Carl's claim against Mr Limbani. Following a consequentials hearing on 23 January 2025, the Judge handed down a further judgment dated 7 May 2025 ("the Consequentials Judgment"). The Judge made no order as to costs as between Mr Carl and Mr Limbani. Mr Limbani now appeals against that costs order with the permission of Newey LJ.

The background to the claims against Mr Limbani

2. The proceedings arose out of claims by Mr Carl that money he had paid over to intermediaries to acquire historic sports cars had not been applied for that purpose (albeit false reports as to cars acquired with the funds provided had been made to Mr Carl) and/or that sports cars acquired with his money and on his behalf had never been delivered to him.

3. The key defendant was a Mr Richard Edwards, a lifelong car dealer introduced to Mr Carl in 2010 (Judgment, [22]). As the Judge explained (ibid, [2]):

> "Mr Edwards' *modus operandi* appears to have been to offer to purchase cars for clients, to take money from them for that purpose, and to divert the money received into transactions entered into in his own name, (I think) in the hope that the profits received from those transactions would enable him to make good the defalcations. Since he appears to have specialised in purchasing cars in the UK for clients based in the United States and abroad, this was an eminently practical strategy –even if a client did appear seeking to examine his car, an equivalent car could always be borrowed to show to him as if it were his own."

4. Mr Edwards was one of three original defendants in these proceedings, the others being Mr John Hawkins, and a company linked with Mr Hawkins, SCM, with whom Mr Edwards claimed to have stored a number of cars acquired with funding provided by Mr Carl.

5. By September 2015, Mr Carl was demanding delivery of the vehicles which he had been led by Mr Edwards and Mr Hawkins to believe had been acquired on his behalf and were in Mr Hawkins/SCM's possession. For the purposes of explaining the claims later made against Mr Limbani, it is sufficient to focus on two of those vehicles:

i) A Ferrari F40. Contrary to the statements made to Mr Carl by Mr Edwards and Mr Hawkins, no such vehicle had ever been purchased, and accordingly there was no such vehicle at SCM's premises.
ii) A Porsche 959 tourer which had been purchased, and was at SCM's premises in October 2015, but which Mr Edwards and/or Mr Hawkins were seeking to sell to someone else.

6. In the absence of a satisfactory response to his increasingly insistent demands, on 9 October 2015 Mr Carl issued an application against Mr Edwards, Mr Hawkins and SCM for delivery up of the eight vehicles which Mr Carl had been led to believe SCM were holding for him. This created an obvious problem for Mr Edwards and Mr Hawkins, because three of those vehicles had never been purchased, one had been sold in July 2015, another pledged in support of a loan, and another was not at SCM and was being offered for sale by another dealer.

7. Accordingly, between the date of issue of the application and the hearing, Mr Edwards and others turned up at SCM's premises and removed those cars which were there, in an event which was referred to in the case as "the raid", and which the Judge found to be a co-ordinated strategy arranged by Mr Edwards and Mr Hawkins together. Mr Edwards told Mr Carl that he had taken the cars (but not where), and Mr Hawkins made statements to Mr Carl to the same effect.

8. The order sought by Mr Carl was duly made on an interim basis on13 October 2015, and was made permanent on 20 October 2015. Mr Carl applied to commit Mr Edwards for breach of the order in failing to deliver up the eight vehicles. In his evidence in answer, Mr Edwards claimed to have delivered the vehicles to an individual called "Vic" (clearly Mr Limbani) who worked for a Mr Trevor Smith (someone said to be active in criminal circles and Mr Limbani's boss). Mr Edwards' statement included "Vic's" telephone number, which was Mr Limbani's number.

9. The "raid" and Mr Edwards' account of it were brought to the attention of the police. A DC Lucy Robson of North Yorkshire Police contacted "Vic" using one of the phone numbers obtained and had a conversation with him. On 19 December 2015, DC Robson sent Mr Carl the following email giving an account of that conversation:

> "You will be pleased to know that I have spoken to the man who identified himself as 'Vic' on [number] who states that he is self-employed and organises transportation of vehicles. He was asked by a male he knows as Trevor Smith to organise the removal of 5 vehicles from a place in Wandsworth to another location he cannot recall at this time. He remembers there being 5 vehicles –3-4 Porsche's, an F40 and a Maserati. He believes this took place 1-2 months ago. He does not know where they are going to and does not know anyone by the name of Richard Edwards. I have obtained his personal details through Police records and will forward these to Thames Valley police. I cannot disclose them to you, I am afraid. Vic informed me that Trevor Smith is out of the country and will not be returning until the New Year."

10. On 5 January 2016, a witness statement in DC Robson's name with her electronic signature was produced which was in similar terms.

11. The significance of the statement as recorded by DC Robson was not only an admission by "Vic" to involvement in removing cars in the "raid", but more specifically, that "Vic" claimed to have moved an F40 from SCM's premises when no such vehicle had ever been purchased (albeit Mr Edwards and Mr Hawkins had led Mr Carl to believe the contrary, and were in dire need of an explanation for why no such car could be produced). The account given, therefore, was a false one which served Mr Edwards' purposes.

12. The Porsche 959 was removed in the "raid". Mr Edwards said that he had contact with Mr Limbani in early 2016 and through him was put in contact with a car dealer called Mr Aman Thukral who at one stage appears to have been involved in efforts to sell that car. Mr Carl later discovered the Porsche 959 being offered for sale by a close friend of Mr Limbani's employer, Mr Trevor Smith, through a Marbella car dealership in 2017. The Porsche 959 was eventually released to Mr Carl by the Spanish court. Mr Thukral was called by Mr Limbani to give evidence at trial, at which he offered conflicting accounts of why his efforts to sell the Porsche 959 had ceased (Judgment, [126]).

13. Reverting to the proceedings commenced against Mr Edwards, Mr Hawkins and SCM in October 2015, these were stayed on 18 August 2016 while Mr Carl sought to pursue proceedings in the US. Mr Limbani was one of the named defendants to the US proceedings. The US proceedings were dismissed on jurisdictional grounds on 21 February 2018.

14. In May 2018, Mr Carl applied to lift the stay of the English proceedings, and to join a number of additional defendants including Mr Limbani. The claim against Mr Limbani principally concerned his alleged involvement, on Mr Edwards' account, in collecting cars in the "raid" as apparently accepted in the statement made to DC Robson, and Mr Limbani's subsequent alleged involvement in attempts to sell the Porsche 959.

15. Judgment in default was entered against Mr Limbani on 14 November 2018. Mr Limbani contended that he had not been given notice of the proceedings against him, and that default judgment was set aside (on terms that Mr Limbani pay the costs) and a defence served. The Judge described that document as a "stonewall" defence (Judgment, [152]). It stated that Mr Limbani had worked as Mr Smith's chauffeur, and in that capacity had occasionally driven Mr Edwards as a passenger in Mr Smith's car, always in Mr Smith's presence. In the defence, Mr Limbani claimed that he had provided Mr Edwards with Mr Thukral's phone number after Mr Edwards had asked if he knew of anyone in the business of buying and selling cars. Mr

Limbani claimed that, beyond that, he had had no dealings with the defendants nor knowledge of or involvement in any sale of the cars. There was no mention of the "raid", the conversation with DC Robson or any arrangement involving payments being made by Mr Edwards' wife to Mr Limbani's wife (to which I return below).

16. Directions for trial were given by Master Kaye at a hearing on 7 and 8 January 2020, paragraph 9 of which required disclosure of documents by all parties in the usual way. Mr Limbani took the position in correspondence that he had no documents to disclose and informed Mr Carl's solicitors of this, but served no disclosure certificate. He was made subject to a debarring order for his failure to do so, but was granted relief against sanctions. He then filed a disclosure certificate stating that he had no relevant documents to disclose.

17. In March 2021, Mr Limbani exchanged his witness statement for trial. In that statement he gave essentially the same limited account of his interactions with Mr Edwards as in his defence.

The trial

18. After a lengthy and troubled procedural history, the proceedings came on for trial before the Judge in May 2024. Mr Carl conducted the trial in person. The only defendants who appeared were Mr Limbani, Mr Howarth and Mrs Edwards. Mr Williams acted for Mr Limbani and, from a late stage and on incomplete instructions, for Mr Howarth, and was the only lawyer who appeared at the trial. Mrs Edwards appeared in person. There was no agreed set of trial bundles, the trial being conducted by reference to what the Judge described as a "loosely catalogued assembly of what appears to be every document which has ever been disclosed or alluded to by any party" and which amounted to "a shambolic mess" (Judgment, [14]). Th Judge's ability to deliver a thorough and reasoned judgment following tha chaotic trial is very much to be commended..

19. Mr Limbani gave evidence at trial remotely from his home, having filed medical evidence (which was not disputed) that he was in poor health and unable to attend the trial in person. It emerged during his cross-examination that the sum of £500 per month had been paid by Mr Edwards from his wife's bank account to Mr Limbani's wife's bank account for several months after the "raid", with each payment having the legend "storage". In circumstances in which it was Mr Carl's case that Mr Limbani had been involved in moving cars from SCM in the "raid" to assist Mr Edwards in frustrating the impending order for delivery up, that reference to "storage" was highly suggestive. Mr Limbani's explanation was that the payments related to some form of secretarial services provided to Mr Trevor Smith.

20. Mr Limbani was also questioned by reference to DC Robson's account of her telephone conversation with "Vic" in December 2015. He did not deny that the telephone number which DC Robson's statement said that she had called was his, but he denied that he was the person who had spoken to DC Robson, suggesting someone else must have answered his phone when DC Robson rang it, and then spoken to DC Robson pretending to be him.

The Judgment

21. The Judgment was circulated in draft to the parties on 13 August 2024, and handed down in final form on 22 August 2024.

22. The Judge made a number of important findings relating to Mr Limbani.

i) Mr Limbani was "clearly more than merely a driver" (Judgment, [65]).
ii) Mr Edwards had contacted Mr Thukral in relation to the sale of the Porsche 959 through Mr Limbani ([126]).
iii) Mr Limbani's explanation for the £500 per month paid into his wife's bank account was "entirely unconvincing" (and, implicitly, false) (Judgment, [153]).

iv) Mr Limbani was "an unsatisfactory witness, who clearly knew a great deal more than he was prepared to disclose" (Judgment, [154]).

23. In relation to the two specific allegations against Mr Limbani (involvement in the "raid" and the sale of the Porsche 959) the Judge made findings at [378]-[385].

24. As to Mr Limbani's involvement in the "raid", the Judge found as follows:

i) Mr Limbani had spoken to DC Robson in December 2015, his evidence that he had not done so being "dismissed" ([382]).
ii) The false statements made by Mr Limbani in that call must have been made at Mr Edwards' instigation (despite Mr Limbani having told DC Robson that he had no knowledge of Mr Edwards) (Judgment, [381]) for the purpose of concealing the fact that the F40, for which Mr Carl had paid but which he had never received, had never in fact been delivered to SCM's premises.
iii) Mr Limbani's evidence as to his limited contact with and knowledge of Mr Edwards in his defence, witness statement and oral evidence was rejected (Judgment, [381]), it being implicit in the Judge's findings that that evidence was dishonest.
iv) Nonetheless, the evidence was not sufficient to support a finding that Mr Limbani "was actually involved in the 'raid'", albeit "he may well have been" (Judgment, [383]).

25. Turning to the attempted sale of the Porsche 959, the Judge's findings were as follows:

i) Mr Edwards' evidence in his committal statement that he had got Mr Thukral's telephone number from Mr Limbani was "entirely plausible" (Judgment, [384]).
ii) The Judge accepted Mr Thukral's evidence that Mr Limbani played no part in steps taken by Mr Thukral to market the car (ibid).
iii) Mr Limbani had adopted a "stonewall" response in his defence and in disclosure and co-operation with the court process, and it was "entirely clear" that some of his witness statement was untrue (Judgment [385]).
iv) He was not persuaded that Mr Limbani was involved in the conspiracy to convert Mr Carl's cars, Mr Limbani acting "as the instrument of Mr Smith" (ibid).
v) Mr Limbani's evidence that he had never spoken to Mr Edwards was not true, and he had not told the truth in his evidence (ibid).
vi) Mr Limbani did facilitate the attempted disposal of Mr Carl's cars (ibid).
vii) However, he did not have sufficient possession of the cars to be liable in conversion, and the totality of the evidence made it clear he was not liable in conspiracy and conversion (ibid).

26. The Judge's analysis appears to reflect principles of law addressing the circumstances in which those acting, in effect, solely in their capacity as employees for their principal's purposes can be liable for conspiracy (*Clerk & Lindsell on Torts* (24th) [23-106]) or whether they can be said to be in possession of goods held by them to the instructions of their employer for the purposes of the tort of conversion (ibid, [16-24] and [16-56]). The Judge explained how he had approached issues of law in a case largely comprising unrepresented parties at Judgment, [16]-[17]:

> "A final point in this regard is that the facts of this case raise quite a large number of legal issues. I have had to deal with these largely without the benefit of counsel. Mr Williams, representing the 5th and 9th defendants (Mr Howarth and Mr Limbani), was instructed by Rippon Patel for Mr Limbani, and was also at a late stage and with the consent of Mr Limbani, instructed by Mr Howarth on a direct access basis. He appeared before me, and I was grateful for his assistance. However, not only was he instructed by Mr Howarth shortly before trial, but there were a number of points during the trial where it was clear to me that he did not appear to have received complete instructions from his lay client and was therefore constrained in his ability to make appropriate representations.
>
> The upshot of this is that I am required, as regards all of the defendants in person, to consider what legal arguments might have been put had they been represented, even though these arguments

> were not actually advanced and, more importantly, that the other parties involved have had no opportunity to controvert them. This is a difficult exercise for an English judge (although it would be familiar to a continental investigating magistrate). However, I think that where it leaves me is this. The mere fact that a litigant in person has not taken a particular point of law does not mean that I can disregard that point – as a judge, I must apply the whole of the law. However, it is not my role to identify every point which, if taken, might assist that litigant. I must therefore apply my own legal analysis, steering between the Scylla of advocacy and the Charybdis of failure to acknowledge established law. I have not found this an entirely straightforward exercise."

27. It is appropriate to highlight this aspect of the Judge's approach, which might be said to involve conspicuous fairness to Mr Limbani's benefit, because at times in the course of the appeal, Mr Leigh suggested that the Judge's "no order as to costs" ruling reflected the Judge "taking against" Mr Limbani for no or no good reason.

28. No doubt conscious of the troubled procedural history of the case, and in the hope of avoiding the unnecessary incurring of costs in its closing stages, in the closing paragraphs of the Judgment, the Judge offered preliminary views on the incidence of costs:

> i) He confirmed that he was "prepared to hear further submissions on both the award and the quantum of costs before making a final determination, since the parties should have the opportunity to clarify their positions" but he set out his "preliminary views" (Judgment, [427]).
>
> ii) So far as Mr Limbani is concerned, the Judge noted that Mr Carl had made an open "drop hands" offer of settlement shortly before the commencement of the trial which Mr Limbani had rejected (Judgment, [431]).
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> iii) At Judgment, [433], the Judge stated:
>
> "There will be no order for costs in respect of Mr Limbani. The reason for this is that he has escaped examination of his conduct through a policy of evasion and non-disclosure. I have insufficient evidence before me to determine whether or not he was part of a conspiracy, but I am entirely clear that he knew of and disregarded court orders in respect of cars, and that he has not provided the disclosure which he was ordered to provide. I note in this regard that Mr Carl put to Mr Limbani in the witness box that he had given no disclosure, and Mr Limbani testified that there was absolutely nothing to disclose by way of communications. I think that this was clearly untrue. I have no problem in principle with the "deny everything" defence, but once it has become clear that a party is seeking to avoid examination of their actions through a strategy of deliberate non-disclosure, I think that that party, even if successful in deflecting liability, should not have their costs incurred of the action."

29. While the Judge's statement at Judgment, [433] was expressed in categoric terms, Mr Brannigan KC accepted that it is properly and fairly to be understood as an expression of his preliminary view, subject to further submissions, both because the Judge had introduced the costs paragraphs with a statement to that effect, and because Mr Limbani had not yet had an opportunity to make submissions as to the appropriate costs order (this being the very reason why the Judge had rightly stated that the opinions expressed about costs were necessarily preliminary in nature).

30. I will refer to the Judge's findings as to Mr Limbani's actions in relation to the cars claimed by Mr Carl, and his criticism of Mr Limbani's conduct in the course of proceedings, as "the Limbani Conduct Findings".

The consequentials hearing

31. The "further hearing" to which the Judge had referred at Judgment, [435] took place on 23 January 2025. It was held on a remote basis. The reasons for the extended delay before the consequentials hearing took place are unclear, but the events which followed reinforce the importance of resolving all consequential issues within a short period of the handing down of judgment (something emphasised in a number of cases in the Business & Property Division, including *Royal Sun Alliance Insurance Ltd v Tughans (A Firm) [2022] EWHC 2825 (Comm), [2022] 4 WLR 110* and *Contra Holdings Ltd v Bamford [2022] EWHC 2799 (Comm)*).

32. Mr Carl and Mrs Edwards filed skeleton arguments for that hearing. Mr Carl's skeleton was filed on 11 October 2024. It is apparent from paragraph 95(d) of that document that Mr Carl was proceeding on the understanding that the Judge's view expressed in the Judgment that no order as to costs was appropriate as between Mr Carl and Mr Limbani was not provisional, but a final ruling. Mr Limbani's legal team did not serve a skeleton, or otherwise engage with Mr Carl's skeleton. That was unfortunate, as doing so would have identified the issues Mr Limbani planned to address at the hearing, and crystallised the difference in understanding as between Mr Carl and Mr Limbani's team.

33. Some 90 minutes before the hearing Mr Limbani served a bundle of documents on Mr Carl containing correspondence which set out offers to terminate the proceedings; previous cost orders; and an extract from *Barton v Wright Hassall LLP [2018] UKSC 12* intended to support a submission that litigants in person, as well as represented parties, were obliged to comply with the Civil Procedure Rules. Beyond that bundle, Mr Limbani did not provide any material to Mr Carl or the court identifying the issues which Mr Limbani intended to raise at the consequentials hearing.

34. At the start of the hearing, Mr Williams explained that he no longer represented Mr Howarth, who had filed for bankruptcy, and that he was attending "exclusively to deal with Mr Limbani's position and particularly Mr Limbani's position in respect of costs", describing his position as "a very narrow one" (Transcript, page 9). Mr Williams informed the Judge:

> "I suspect you will only hear me at the end. My Lord, I know you will know what my arguments are likely to be. They are very narrow, and you will not be hearing much from me. This is not my fight to have at the moment, my Lord … I am literally going to sit back. I am the last defendant with the narrowest point. I hope that assists you."

35. While I understand why Mr Brannigan KC emphasised that paragraph, I find it difficult to draw from that statement alone a sufficient indication that there was to be no challenge to the Judge's provisional view on the appropriate costs order. A wide number of issues were canvassed at that hearing which were of no concern to Mr Limbani: in addition to permission to appeal and costs as between other parties, there were issues as to interest, suggested ambiguities as to the effect of the Judgment, and issues as to the relief to be ordered in Mr Carl's favour including the assessment of damages.

36. Mr Williams began his submissions on behalf of Mr Limbani by referring to the bundle his solicitors had recently filed (Transcript, p.18). Rather than beginning with what might be thought to have been Mr Limbani's primary position if the provisional view was to be challenged, his opening submissions addressed the significance in the costs context of offers sent on Mr Limbani's behalf asking Mr Carl to give up the claim and to make a contribution to Mr Limbani's costs, as well as arguing that costs consequences should follow from Mr Carl's failure to comply with the preaction protocol (which it was said should of itself lead to a £5,000 costs order in Mr Limbani's favour). The Judge also heard submissions on prior costs orders (which he had made clear would stand). Having dealt with those points, Mr Williams asked the Judge if he wished to hear from Mr Carl in response, with the Judge asking Mr Carl "to deal with this specific point" (Transcript, p.23). It will be apparent that, at this point, Mr Williams had yet to identify any challenge to the Judge's preliminary view that the general costs order so far as Mr Limbani was concerned should be "no order as to costs". However, I accept Mr Williams' statement to the court that he was intending to raise this issue with the Judge, and had come prepared to do so.

37. In the course of responding to the costs submissions which Mr Williams had made, Mr Carl did refer to the "no order" indication in the Judgment (Transcript, p.23):

> "The court made a finding, and I can point to the multiple places in the opinion that it did so, deciding that Mr Limbani was dishonest in his disclosures and in his evidence, and therefore the court was going to exercise its discretion to deny him any costs in these proceedings. That is a judgment -- a finding in a judgment of the court, and I mean, there is one -- and I believe at this point Mr Limbani's remedy would be to ask for permission to appeal from that judgment. That is the court -- what Mr Williams is asking is for the court to now vary a judgment already given, and to do so with no notice to me and no opportunity to review the documents he has presented. Moreover, a significant element of Mr Williams' argument is that some Part 36 claim, or at least that is the implication, but Mr Williams repeated offers to drop hands, "We will drop hands as long as you pay my client's costs". It is very clear, given the judge's decision, that no costs would be awarded to Mr Limbani. He did not do better than his offer and therefore there cannot be any claim for costs based on that issue. So I would suggest to your Honour there be no costs awarded to Mr Limbani, because that is what the court already decided, and if Mr Williams disagrees with that, he has a remedy at the Court of Appeal, and it seems to me we should move on to other issues."

38. That submission treated the Judge's statement at Judgment, [433] as a final determination rather than as a preliminary view. I have already explained why I am satisfied that interpretation is not correct. However, the Judge agreed with the submission, stating:

> "Okay. Well, I am not about to revisit my judgment, which is that Mr Limbani will not receive costs in the main proceedings because of his unwillingness to participate in them."

39. The Judge was not at any point taken to the relevant paragraph in the Judgment, and the period of time which had elapsed since the handing down of the Judgment (some 5 months) cannot have assisted.

40. At the end of Mr Carl's submissions, Mr Williams asked if he could try to assist the court, stating "because I have not finished my submissions" (Transcript, p.25). He then proceeded to take the Judge through the prior costs orders which had been made. The Judge then asked, "had you finished on Mr Limbani?" (Transcript, p.30), to which Mr Williams replied:

> "Your Lordship, you have said that you are not minded to revisit no order as to costs ----
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> JUDGE GLEESON: No.
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> MR WILLIAMS: So you do not want to hear any submissions from me?
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> JUDGE GLEESON: No, not on that point. That is for the Court of Appeal.
>
> MR WILLIAMS: It is just that the paying applicant -- my Lord, sorry, just for my benefit, so I can shut up ----
>
> JUDGE GLEESON: Yes.
>
> MR WILLIAMS: -- there is no point in making submissions to say why we should have got our costs of the main action? Is that door closed, my Lord?
>
> JUDGE GLEESON: Yes, it is. Yes, it is."

41. In those circumstances, Mr Williams confined his further submissions to the cost consequences of Mr Carl's failure to comply with the pre-action protocol.

42. As the parties had not come to the consequentials hearing equipped to deal with all of the issues which arose, the Judge permitted them to file additional written submissions on various identified topics. He sought to focus the parties, and encourage a degree of realism, by circulating a detailed list of the issues raised at the consequentials hearing by an email dated 27 January 2025, in the course of which he expressed views on the merits of those arguments. However, the email stated that it was "not a judgment or ruling of any kind".

43. The Judge also stated that the time for giving leave to appeal against the Judgment had expired, such that leave would have to be sought from the Court of Appeal (a correct statement of the law in relation to matters determined by the Judgment: see for example *McDonald v Rose [2019] EWCA Civ 4, [2019] 1 WLR 2828*). However, the Judge explained that the parties were still in time for seeking leave to appeal against any order made in the consequentials hearing, "e.g. as regards costs." In the context of Mr Carl's argument that he should recover costs under Part 36 against Mr Limbani, the Judge summarised Mr Carl's argument as being that "since my judgment was that Mr Limbani was not liable to Mr Carl but his conduct was such that he should not have his costs", it followed that Mr Limbani had failed to better Mr Carl's Part 36 offer. The Judge identified various reasons why he did not think that argument had merit.

44. The parties filed further submissions, both on those issues on which the Judge had permitted such submissions and on additional matters on which no further submissions were permitted. The Judge handed down the Consequentials Judgment, having circulated a draft of that judgment to the parties in advance so that they could identify any typographical errors or obvious errors or omissions, only to be subjected to yet more unsolicited substantive written submissions.

45. In the Consequentials Judgment, the Judge rejected Mr Limbani's argument that a costs order should be made in his favour to reflect Mr Carl's failure to comply with the pre-action protocol. The Judge assumed in Mr Limbani's favour that no form of pre-action correspondence was sent ([21]) but he held that Mr Limbani fully understood the issues in the case which had been ventilated in US proceedings of which Mr Limbani was aware, and found that it was "extremely unlikely" that Mr Limbani would have engaged with any pre-action correspondence ([23]). Accordingly the Judge concluded that it was reasonable and proportionate not to send a pre-action letter, and that there should be no cost consequence for not doing so. There is no challenge to that conclusion as a free-standing costs determination, nor could there realistically be one.

46. The court initially issued an order on 7 May 2025 which was sealed on 12 May 2025. That order purported to extend the time for seeking permission to appeal against the Judgment (handed down on 22 August 2024) to 21 days from the date of the order, and also extended time for seeking permission to appeal against the Consequentials Judgment (handed down on 7 May 2025) to 21 days from the date of that order. A further order was sealed on 18 September 2025 which extended those two dates to 21 days after the date of *that* order.

47. Mr Limbani's Notice of Appeal was filed on 13 February 2025, before the Consequentials Judgment was handed down, but the application was not progressed due to the lack of a sealed order. A further Notice of Appeal was filed on 28 May 2025 which was in time for an appeal against the costs ruling of 7 May 2025. While at one stage Mr Carl took the point that the Notice of Appeal was served out of time, Mr Brannigan KC did not maintain that point, and he was right not to do so. Until the court had made a ruling adverse to Mr Limbani, there was nothing for Mr Limbani to appeal against (there being in general no right to bring free-standing appeals against factual findings: *Boreh v Djibouti [2017] EWCA Civ 56, [35* (ii)]).

The Grounds of Appeal

48. Mr Limbani advances two grounds of appeal:

> i) Ground 1:
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> "The Learned Judge was simply wrong to disallow the Appellant his costs. The learned Judge took into account something (purported non-disclosure) which was not a material consideration before him, was not an issue before him, and no evidence or submissions made on it."
>
> ii) Ground 2:
>
> "The learned Judge would not hear or allow any submissions on costs, despite the earlier order. This was manifestly wrong, in breach of natural justice and emphasised the jaundiced approach the learned Judge had adopted by taking into account immaterial considerations".

49. I address Ground 2 first which raises the logically prior question of whether the Judge's order involved a serious procedural error. If the appeal on Ground 2 succeeds, it will be necessary for the court to exercise the costs discretion afresh.

Ground 2

The rival submissions in summary

50. Mr Leigh's central submission on Ground 2 can be put very succinctly. He submits that as the Judge had only expressed a preliminary view on the appropriate costs order in the Judgment precisely because he had heard no submissions on that issue, it was an obvious serious procedural irregularity for him to refuse to hear further submissions from Mr Williams on the basis that the issue had already been finally determined.

51. While Mr Brannigan KC sought to resist that argument in writing, at the hearing he realistically accepted that "something had gone wrong" at the hearing, but he pointed to conduct on behalf of Mr Limbani which appeared to have played a part in that mishap: the failure to serve a skeleton, or at any stage to identify the points Mr Limbani intended to raise at the hearing; the sequence in which the points were raised orally; and the terms in which Mr Williams introduced them.

52. Those points were well made, but Mr Brannigan KC rightly accepted that those matters were not, of themselves, a complete answer to the procedural complaint advanced in Ground 2 of the appeal.

Analysis and conclusion

53. I accept the essence of Ground 2 of the appeal, namely that having set out what was expressly stated to be a provisional view that no order as to costs was appropriate in the Judgment on the basis that there would be an opportunity for the parties to make submissions on that issue, the Judge misdirected himself and occasioned a serious procedural irregularity in then refusing to hear further submissions. The Judge appears to have taken that position because, by the date of the consequentials hearing some five months after the Judgment, it was his understanding that he had already finally determined that issue, such that it was a point which had to be raised before the Court of Appeal. As I have stated, it is unfortunate that no one took the Judge back to the terms of the closing paragraphs of the Judgment.

54. In these circumstances, I am satisfied that the Judge's costs order should be set aside because the decision involved a serious procedural error or irregularity in the proceedings of the lower court (CPR 52.21(3)(b)). In my assessment, that error cannot be characterised as anything other than serious – it involved reaching a decision to depart from the established starting point for the exercise of the costs discretion in a significant respect without permitting Mr Limbani to make any submissions on that question.

55. Both Mr Limbani, in his Notice of Appeal, and Mr Carl through Mr Brannigan KC's skeleton argument, proceeded on the basis that, if the Judge's costs order is to be set aside, then this court should exercise the discretion afresh on the basis of the submissions made in the appeal, in the exercise of its powers under CPR 52.20(1) and (2)(e) .

The position before the Court of Appeal

56. It was not disputed before us that, for the purpose of the Court of Appeal exercising the costs discretion afresh, the Limbani Conduct Findings remain binding, save to the extent that they have been and are successfully challenged in the appeal.

57. Subject to one qualification, Mr Brannigan KC accepted that in circumstances in which the Judge's decision was vitiated by a serious procedural error, the deference which an appellate court will generally show to the exercise of a discretionary power by the first instance judge is not engaged. However, he argued that the task of this court on this part of the appeal was to take the provisional view expressed by the Judge in the Judgment as its starting point, and then reach its own independent view as to whether the submissions now made by Mr Limbani on appeal were of sufficient force to displace that provisional view.

58. I have difficulty with that approach, particularly in this case. The giving of provisional indications, particularly on costs issues, can be a very valuable judicial tool for reducing unnecessary disputes and avoiding consequential hearings. However, it is of the essence of such views that they are expressed without hearing argument, and that they do not represent a judicial determination against which an appeal can be brought. In those circumstances, I find the suggestion that the expression of such a view can materially affect the task of the appellate court if the judge's eventual determination is vitiated by a procedural error counterintuitive. It would also mean that the task for the Court of Appeal hearing an appeal from a costs order which involved a serious procedural error would differ depending on whether or not the judge had expressed a provisional view on costs prior to the error occurring.

59. For that reason, I have approached the issue of what costs order is appropriate on the basis that the issue of costs is fully at large before this court, albeit the Limbani Conduct Findings remain binding unless they can be independently challenged.

What costs order should be made as between Mr Carl and Mr Limbani?

The applicable principles

60. As is well-known, CPR 44.2 gives the court a discretion as to whether costs are payable by one party to another, in what amount and when. It provides:

> "(2) If the court decides to make an order about costs –
>
> (a) the general rule is that the unsuccessful party will be ordered to pay the costs of the successful party; but
>
> (b) the court may make a different order.
>
> (4) In deciding what order (if any) to make about costs, the court will have regard to all the circumstances, including –
>
> (a) the conduct of all the parties;
>
> (b) whether a party has succeeded on part of its case, even if that party has not been wholly successful; and
>
> (c) any admissible offer to settle made by a party which is drawn to the court's attention, and which is not an offer to which costs consequences under Part 36 apply."

61. CPR 44(5) provides:

> "The conduct of the parties includes –
>
> (a) conduct before, as well as during, the proceedings and in particular the extent to which the parties followed the Practice Direction – Pre-Action Conduct or any relevant pre-action protocol;
>
> (b) whether it was reasonable for a party to raise, pursue or contest a particular allegation or issue;
>
> (c) the manner in which a party has pursued or defended its case or a particular allegation or issue;
>
> (d) whether a claimant who has succeeded in the claim, in whole or in part, exaggerated its claim; and
>
> (e) whether a party failed to comply with an order for alternative dispute resolution, or unreasonably failed to engage in alternative dispute resolution."

62. We were referred to various authorities considering the circumstances in which it would be appropriate for the court not to make a costs order in favour a successful party (a claimant who had made a recovery in proceedings or a defendant who had successfully defended them) by reason of that party's reprehensible conduct before or during the litigation. A number of those cases quoted from other relevant court decisions.

63. In *Widlake v BAA Ltd [2009] EWCA Civ 1256, [2010] 3 Costs LR 353* the claimant had "beaten" the defendant's payment into court in a personal injury case, but the claim had been deliberately and significantly exaggerated. At [20], the court referred to the "general rule … that the unsuccessful party pays the costs of the successful party", and identified factors which might justify a court in departing from the general rule. In that case, the claimant's conduct in exaggerating the claim had had a significant effect on the costs of the trial ([39]). The Court stated at [41] that:

> "In addition to looking at it in terms of costs consequences, the court is entitled in an appropriate case to say that the misconduct is so egregious that a penalty should be imposed upon the offending party. One can, therefore, deprive a party of costs by way of punitive sanction. Given the judge's findings of dishonesty in this case, that may be appropriate here. I sound a word of caution: lies are told in litigation every day up and down the country and quite rightly do not lead to a penalty being imposed in respect of them. There is a considerable difference between a concocted claim and an exaggerated claim and judges must be astute to measure how reprehensible the conduct is."

64. In *Abbott v Long [2011] EWCA Civ 874, [2012] RTR 1* , the Court of Appeal refused to interfere with the trial judge's decision to make no order as to costs in a case in which the claimant had recovered a relatively small proportion of the sum claimed, and certain heads of claim had failed altogether. At [16], the Court approved the statement in *Walsh v Singh [2011] EWCA Civ 80, [2011] 2 FLR 599, [25]* that the court could reflect the poor conduct of a successful party both when the conduct in question had had costs consequences, and, even when it had not been causative of any or any significant waste of costs, provided it was a proportionate response to the behaviour in question. Ward LJ summarised the position pithily in that paragraph of *Abbott* :

> "If the court is going to deprive a party of costs on the grounds of misconduct which has not been causative of a waste of costs, it should be satisfied that that sanction is a proportionate sanction."

65. Finally, the court was referred to the Court of Appeal decision in *Ward v Donnellan [2026] EWCA Civ 729* , handed down on the working day preceding the hearing of the appeal. The focus of that case was the principles applicable to costs orders in a case in which both the successful and unsuccessful parties had acted dishonestly or otherwise engaged in conduct of a kind which fell within CPR 44.2(4)(a) and (5) . At [46]-[49], Lewison LJ summarised the applicable principles as follows:

> [46] Where the court is asked to make some out-of-the-ordinary costs order in consequence of the alleged misconduct of the party against whom the application is made, the court must bear constantly in mind the conduct of the party making the application: Bank of Tokyo-Mitsubishi at [28].
>
> [47] *Hutchinson v Neale [2012] EWCA Civ 345, [2012]* 5 Costs LR is an instructive case. It concerned a boundary dispute. In the course of proceedings Mr Hutchinson, the defendant to the claim, dishonestly altered a plan attached to an abstract of title. Instead of admitting their dishonesty the defendants made witness statements alleging that Mr Neale, the claimant, had been responsible for the forgery. The claim failed, and the trial judge made a detailed order for costs, the overall result of which was that the successful defendants received none of their costs of defending the claim,

> even those which had been reasonably and necessarily incurred. This court set that order aside. At [28] Pitchford LJ said:
>
> 'The starting point for the consideration of any order for costs of an action is (CPR 44.3(2)(a)) that costs should follow the event. It is from this point that the court will, in an appropriate case, consider the conduct of the parties (rule 44.3(2)(b)). There is no general rule that a finding of dishonest conduct by the successful party will replace the usual starting point. What is required is an evaluation of the nature and degree of the misconduct, its relevance to and effect upon the issues arising in the trial, and its tendency to create an unwarranted increase in the costs of the action to either or both of the parties. As Briggs J observed at para 19 of his judgment in Bank of Tokyo the full range of measures is available to ensure that the dishonest but successful party does not gain, and the honest but unsuccessful party does not lose, in consequence of the wrongdoing established.'
>
> I note at this point that the objective is not merely that the dishonest but successful party does not gain from his dishonesty but also that the honest but unsuccessful party does not lose. This is not addressing a situation where the unsuccessful party is also dishonest.
>
> [49] At [30] Pitchford LJ stressed the point that the fact was that the claimant had launched an action on grounds which failed. He pointed out that the defendants' dishonesty was isolated from the issue upon which the claim was founded. It was not a case in which the grounds upon which the claim was brought was infected by that dishonesty. At [31] he said:
>
> 'At issue is whether the defendants' dishonesty so infected the action that justice requires that they should recover no costs at all in successfully defending the action. For the reasons I have given, it cannot be said that the defendants brought the action on themselves or conducted the proceedings as a whole as an abuse of the process of the court. The judge placed weight upon the fact that Mr Neale was justified in proceeding to trial in order to clear his name. However, it must be remembered that the judge separately provided for the costs of that exercise. In my view, the judge's starting point should have been an order for costs in the defendants' favour subject to adjustments to ensure that they did not recover any costs which may have been incurred in advancing a dishonest case.'"

66. As these decisions make clear, a costs order will generally seek to address the costs consequences of dishonesty (or similarly reprehensible conduct) on the part of the successful party. In *Ward* , Lewison LJ referred to Briggs J's judgment in *Bank of Tokyo-Mitsubishi UFJ Ltd v Baskan Gida Sanayi Ve Pazarlama SA [2009] EWHC 1696 (Ch), [2010] 5 Costs LR 657* , where he noted at [8] that "an otherwise successful party should not normally obtain costs incurred in advancing that false case, and that the otherwise unsuccessful party should normally obtain an order for payment of its costs in revealing the falsity of that case" (see also *Ward* , [48]). At [9], Briggs J referred to "the purely remedial consequences of orders of this type".

67. In addition, the courts have regard to the effect of reprehensible conduct before and during litigation where it has fuelled the claimant's suspicion that the defendant has committed an actionable wrong, and thus can be said to have been a motivating factor in the claimant's commencement or pursuit of proceedings. In such cases, it can be said that the successful defendant has, at least to some degree, brought the action on themselves.

68. In *Bank of Tokyo* , [18], Briggs J referred to the decision of Mance LJ in *Grupo Torras v Al-Sabah* 5 July 1999 as a case of this type.

69. Applying the CPR , Mance LJ made costs deductions of between one half and two thirds from cost orders in favour of successful defendants to a conspiracy claim which succeeded against other defendants. It is of interest to look briefly at the orders he made and why:

i) As to Mr Moukarzel, he had been involved in the deliberate back-dating of documents for a dishonest purpose not connected with the fraud on Grupo Torras (of which he was unaware), and he had sought to conceal his dishonest conduct at the trial. In addition, he had shown a general incompetence in his actions as a director which "can be said to have put

him in a position where the defendants [sic plaintiffs] would quite naturally consider him as a potential conspirator", a view reinforced by his answers in interview. He recovered only 50% of his costs.
ii) As to Mr Soler, he was involved in producing false documentation without being aware of the fraud practised on Grupo Torras, and he gave dishonest evidence about those documents at trial. He was also involved in deceiving the group's auditors. Mance LJ noted that Mr Soler's misconduct "can … be linked with the commencement of this litigation" because his misconduct "was likely to encourage the plaintiffs to think that Mr Soler was deliberately dishonestly involved." Mance LJ had some doubts as to whether Mr Soler should obtain a costs order at all, but he was awarded 33% of his costs.
iii) The same outcome, for essentially similar reasons, was reached for Mr Coll, Mance LJ noting that "his conduct, too, was of a nature likely to lead the plaintiffs to think that he was more deeply involved in a conspiracy and dishonesty than he actually was" and that "he can, like Mr Soler, be linked with the commencement of this litigation in this sense".

70. Mr Leigh argued that reprehensible conduct was only relevant to a successful party's entitlement to a costs order in their favour where the conduct was relevant to the outcome of the case (a submission which I understood to relate to the position where a party had succeeded overall, but lost on some point or issue); and when (and only to the extent that) the conduct had caused additional costs to be incurred.

71. However, it is clear from the authorities that I have set out that there can be conduct which is of sufficient seriousness that, regardless of its consequences on the costs of the litigation generally, the court is entitled to impose a costs penalty on the successful party (*Bank of Tokyo* , [9]). Such an order will only be appropriate where and to the extent that it is a proportionate response to the conduct in issue, having regard to all of the circumstances of the case including the conduct of the party seeking a costs order of this type (*Bank of Tokyo* , [19(ii)]; *Widlake* , [41]; *Abbott* [16]). In an appropriate case, a proportionate response could extend to disallowing the whole of the successful party's costs, or even an order that they pay all or part of the unsuccessful party's costs (*Bank of Tokyo* , [19(ii)]).

72. T he importance of considering the conduct of both parties when asked to make a costs order of this type was emphasised in *Ward* , [47] and *Bank of Tokyo* , [28] where Briggs J explained:

> "Whenever the court is asked to make some out-of-the-ordinary costs order in consequence of the alleged misconduct of the party against whom the application is made, the court must bear constantly in mind the conduct of the party making the application. I consider this to be so for two main reasons. The first is that the conduct of the party making the application may have been, in some respect, a contributory cause of the conduct complained about. It may even lead to the conclusion that the conduct complained about, although unsuccessful, was nonetheless not unreasonable in the circumstances."

73. When it is said that the successful party's conduct should lead to a departure from the usual costs order in their favour because it has caused costs to be incurred which would otherwise have been avoided, it is important to remember that CPR 44 is a statutory discretion arising by way of a procedural power. Findings about the causal effects of conduct in this context are not approached in the same way as when issues of causation arise as an ingredient of a cause of action. This reflects the fact that the incidence of the costs of litigation is to be dealt with in an essentially summary manner, and not to be the subject of a trial in itself (something which is as true of inter partes costs orders as it is of wasted or non-party costs orders, where observations as to the inherently summary nature of costs determinations are frequently made). In particular, issues of this kind will invariably be determined without evidence and cross-examination, but by the drawing of common sense inferences from the factual findings in the case and the inherent probabilities. Further, in many cases, the counterfactual position but for the reprehensible conduct may be unclear or uncertain, but it will be clear enough that matters may well have been different, and that the behaviour was of a kind which made the case more difficult for the claimant and the judge, even if it is impossible to arrive at a precise quantification of that effect.

74. In *Sulaman v Axa Insurance plc [2009] EWCA Civ 1331, [2010] 3 Costs LR 391* , the successful party challenged the judge's decision to award him only one third of his costs by reason of his misconduct on the basis that the causal consequences of that conduct had not been determined with sufficient precision. Longmore LJ rejected that contention at [17]:

> "The complaint that there was insufficient calculation by the judge of the time and expense taken up by these lies is misconceived. Any such calculation is bound to be speculative. It is not sufficient to say (as Mr Singh does) that the question in these matters only took 35 minutes or even any particular time. Lies maintained and repeated in a complex case are insidious. If Ms Sulaman had said from the beginning of the trial that she could not recall the circumstances in which she made the telephone calls to the insurers but (in accordance with insurers' note) that she finally did ask them to carry on with the policy and she accepted she was dishonestly assisting Essa to obtain money to which he was not entitled in relation to the cheque, the case against her might well have taken a completely different course. So indeed might the case against Essa. But it is incontrovertible that the litigation was made more difficult and the judge's task more intractable as a result of Ms Sulaman's lies."

75. For that reason, while I accept that the trial judge will invariably be better placed to arrive at a broad assessment of the causal consequences of specific misconduct on the costs of the trial, where there has been no such determination (as here), or the determination is vitiated by a sufficiently serious error, it will generally be possible for an appellate court to reach its own view.

76. Finally, a court can make a single costs order intended both to achieve the remedial consequences which Briggs J referred to in *Bank of Tokyo* , and as a proportionate sanction for conduct which is sufficiently serious to merit a penalty of this kind irrespective of its consequences on costs. In *Sulaman* , [18], Longmore LJ rejected a challenge to the costs order in that case on the basis that the first instance judge had made a single costs order to address both of these factors, observing:

> "There is, in my judgment, no need for the judge to apportion different parts of his order between lies which prolong the trial process and lies of which he merely disapproves."

The submissions of the parties

77. Mr Brannigan KC submitted that, approaching the matter on a *de novo* basis, we should make the same order as the Judge had made, namely no order as to costs. He submitted that was the appropriate order to reflect both the causal consequences of the Limbani Conduct Findings, and to sanction that conduct.

78. Mr Leigh and Mr Williams advanced the following arguments:

i) First, the argument as to the limited circumstances in which it was said reprehensible conduct by the successful party was relevant to the issue of costs which I have summarised at [70]-[71] above and rejected.
ii) Second, although the argument was advanced principally in writing with limited development orally, that the Judge had not been entitled to make the Limbani Conduct Findings.
iii) Third, that the conduct in this case, particularly when viewed in the light of Mr Carl's conduct, did not justify "no order as to costs": Mr Limbani was entitled to all of his costs, or at least a substantial proportion of them.

Is Mr Limbani entitled to challenge the Judge's findings as to his conduct, and, if so, do those challenges have merit?

79. Mr Brannigan KC did not press the argument that it was not open to Mr Limbani to pursue his challenges to the Limbani Conduct Findings on appeal. He pointed to the fact that they barely featured in the Grounds of Appeal, although it is right to say that they appear more extensively in the skeleton filed before permission to appeal was given.

The challenges to the Judge's findings

80. Tczhe challenges made on Mr Limbani's behalf to the Limbani Conduct Findings can be summarised as follows:

i) The findings "did not form part of any questioning, submissions or oral evidence".
ii) Mr Limbani could have had no conceivable idea that the matters relating to disclosure were going to be dealt with in the Judgment and the Judge's finding that Mr Limbani had failed to comply with his disclosure obligations had no or no sufficient evidential basis.
iii) In his comments on the honesty of Mr Limbani's trial evidence, the Judge failed to pay adequate regard to the evidence of his ill-health.
iv) There was no or no sufficient evidential basis for the Judge's finding that Mr Limbani had failed to engage sufficiently with the proceedings.
v) DC Robson's statement was inadmissible hearsay evidence (or, as it was colourfully put, "the non-existent evidence of a purported Police Officer").

81. For the purposes of addressing these arguments, it is helpful to distinguish between (a) findings as to Mr Limbani's pre-action conduct and the honesty of his evidence about that conduct at trial and (b) other findings relating to his conduct of the litigation.

82. As to the former:

i) Mr Limbani's relationship with Mr Edwards, his involvement in the "raid" and his actions relating to the Porsche 959 were all pleaded issues in the litigation about which Mr Limbani was questioned.
ii) The Judge was clearly entitled to make findings on those matters, and as to the truthfulness of Mr Limbani's evidence in relation to them. Mr Limbani's written closing submissions acknowledged that allegations of fraud and dishonesty had been made against him. That document made a strong attack on Mr Carl's credibility and described Mr Limbani as a "forthright and patently honest witness". It must have been obvious that the court might not accept those submissions, and find to the contrary.
iii) The findings that Mr Limbani had given untruthful evidence were not made on the basis of his demeanour, but the inherent improbability of his explanations and their inconsistency with other evidence (see in particular [22(iii)], [24(i)-(iii)] and [25(v)] above). The medical evidence relating to Mr Limbani could not conceivably provide an answer to those difficulties, and no reference is made to it in Mr Limbani's written closing.
iv) The challenge to the use made of DC Robson's evidence of her conversation when she called Mr Limbani's phone by reference to its hearsay status is hopeless. First, there does not appear to have been any challenge before the Judge (and certainly there was none before us) that the email and statement from DC Robson were genuine documents. It would have been for Mr Limbani to dispute their authenticity (CPR 32.19 ; The Chancery Guide 2022 [12.68]) and he did not do so. Second, the Judge did not rely on the statements made to DC Robson as evidence of the truth of their contents: on the contrary he found that they were false. He relied on the statement only to establish what were in any event the essentially undisputed facts that DC Robson had phoned Mr Limbani's number and had a conversation with whoever answered the phone to the effect recorded, the Judge relying on the inherent probabilities and the undisputed fact that the number called was Mr Limbani's to find that Mr Limbani was the person DC Robson had spoken to. Third, hearsay evidence is admissible in civil proceedings, subject only to matters of weight (s.1(1) of the Civil Evidence Act 1995). The most that Mr Limbani could say is that, to the extent that the statement was hearsay, Mr Carl failed to serve the required notice under s.2 of the 1995 Act , but that does not affect the admissibility of the document but only goes to weight and costs (s.2(4)). There is, in any event, a real issue as to whether such a notice was required. First, DC Robson's statement was referred to in Mr Carl's witness statement, engaging CPR 33.2(1)(a) . Second, The Chancery Guide 2022 [12.69] provides that if a party wishes to argue that documents in the trial bundle cannot be treated as evidence of the truth of their contents they must write a letter to the court to that effect. That rule, which is intended to ensure that the judge understands the evidential status of the documents before them, applies in this case which appears to have been conducted on the basis that every disclosed document was placed before the Judge. No such letter was sent. Whatever the position in relation to the DC Robson witness statement (see the discussion in Charles Hollander, Documentary Evidence (15th), [30-32]-[30-33]) these provisions clearly applied to DC Robson's contemporaneous email to Mr Carl which was essentially to the same effect (see [9]). Finally, any suggestion that the Judge ought to have excluded DC Robson's statement (which had been referred to in Mr Carl's Particulars of Claim) unless DC Robson was called to give evidence about a short conversation she had had nearly 10 years before, of which the best evidence was the contemporaneous email and witness statement, is wholly fanciful. In short, the hearsay objection is devoid of merit.

83. Turning to Mr Limbani's conduct in the case, Mr Williams particularly criticised the Judge's finding that Mr Limbani had failed to comply with his disclosure obligations and court orders, and also that he had failed to engage with the court proceedings. It is not practical in this appeal to determine whether Mr Limbani breached his CPR 31 disclosure obligations or failed to engage in the proceedings, or whether he breached any other court orders. The Judge does not expand on these findings, and we were not taken to the events in the lengthy procedural history of this case said to justify them. Accordingly, I place no reliance on these matters.

84. However, the Judge's finding of non-disclosure in a more fundamental sense – the failure to give an accurate account of his involvement in the matters in dispute, and instead to offer a minimalist account which suggested that he had had far less involvement than was in fact the case – cannot be gainsaid. On the basis of the findings as to his conduct which the Judge was entitled to make, Mr Limbani's defence and witness statement were misleading, and failed to address significant aspects of his involvement of obvious relevance to the issues in the case.

On the basis of these findings, what costs order is appropriate?

85. I accept Mr Brannigan KC's submissions that it is appropriate for the costs order as between Mr Carl and Mr Limbani both to reflect the consequences of Mr Limbani's conduct on the proceedings, and to constitute a proportionate sanction for that conduct.

86. As to the former, it is obvious that Mr Limbani's statement to DC Robson that he had been involved in moving a number of cars from SCM's premises, including the untruthful evidence relating to the F40, was an important factor in Mr Carl's decision to pursue proceedings against him. The Judge found that this account, including the false statement relating to the F40, was given to the police at Mr Edwards' instigation and for the purposes of offering Mr Edwards an excuse for not delivering up certain vehicles as the court had ordered. Mr Limbani's statement was relied upon by Mr Carl in the application to join him to the proceedings, and in the Particulars of Claim. On the basis of these facts, Mr Limbani can be said to have brought the proceedings on himself. In addition, (i) Mr Limbani's dishonest account of his relationship with Mr Edwards, (ii) his statement and the false statement relating to the F40 and (iii) his involvement in introducing Mr Thukral to Mr Edwards who offered the Porsche 959 for sale and, in the Judge's finding at Judgment,[385], facilitating the attempted disposal of Mr Carl's cars were all likely to fuel Mr Carl's belief that Mr Limbani was a party to a conspiracy with Mr Edwards to deceive Mr Carl and to convert his property. Finally, Mr Carl's claim against Mr Limbani failed to a significant extent not because Mr Limbani had not done any of the things which Mr Carl alleged he had done, but because of a combination of the lack of evidence and the Judge's findings as to the capacity in which and the purpose for which he acted.

87. In addition, Mr Limbani's conduct in the litigation plainly required a costs sanction irrespective of its costs consequences. In his defence, supported by a statement of truth, his witness statement and his oral evidence, he gave a dishonest account of his relationship with Mr Edwards, and his evidence was found to be untruthful as to his conversation with DC Robson and as to the purpose of the payments made through Mrs Edwards to his wife. He did not address either of those topics in his written evidence.

88. In my assessment, the combination of those two factors justifies a decision that there should be no order as to costs as between Mr Carl and Mr Limbani. The only matter said to point the other way is the suggestion that Mr Carl too behaved inappropriately, on the basis that it is apparent from the Part 36 letters sent by Mr Carl that he only brought proceedings against Mr Limbani in the hope that the claim could be settled on terms that Mr Limbani would give evidence against Mr Edwards and others. However, Mr Carl had a plainly arguable claim against Mr Limbani, which in its factual aspects succeeded to a significant extent. While any damages award against Mr Limbani might well have been pyrrhic, I am not persuaded that Mr Carl is to be criticised for pursuing a viable claim in the hope that it could be settled on terms providing for assistance against other, more centrally involved, defendants.

89. As to Mr Carl's conduct generally, the Judge's finding at Judgment, [142] is clear:

> "Mr Carl gave his evidence clearly and well, and was in my view an impressive witness. He has clearly devoted many years of his life to pursuing the vehicles of which Mr Edwards sought to deprive him, and his detailed research – set out and documented in his numerous witness statements – was both thorough and comprehensive. He cross-examined the witnesses who did

> appear with tact and sensitivity, and at times exhibited a great deal of self-restraint. I note that a good part of the defence put forward by Mr Hawkins and Mr Howarth was liberally laced with unevidenced personal allegations against Mr Carl, ranging from dishonesty to deceit to fraud. Mr Carl sought at one point to introduce evidence to rebut these allegations, a request which I was obliged to refuse, since they formed no part of the case before me. However, I can say that, having considered these allegations with the benefit of the documentary evidence before me, they were entirely unsupported and should never have been made. It is difficult to constrain a litigant in person in the oral presentation of their case, and I must content myself with finding that Mr Carl's conduct has, on the evidence before me, been blameless throughout."

90. In short, there is nothing about Mr Carl's conduct which would render an order of "no order as to costs" inappropriate.

91. F or these reasons, looking at the matter afresh I would arrive at the same costs order as the Judge. In those circumstances I would dismiss the appeal.

Lord Justice Jeremy Baker

92. I agree.

Lady Justice Falk

93. I also agree.