

IN THE MANCHESTER COUNTY COURT

BETWEEN:

NYOMIE MORRISON

Claimant

-and-

**[1] FINGLANDS COACHWAYS LIMITED
[2] QBE INSURANCE (EUROPE) LIMITED**

Defendant

RESERVED JUDGMENT

Introduction

1. In this claim the Claimant claims damages for personal injury and certain financial losses alleged to have been occasioned by her on Sunday 6th February 2011 at about 20.48 hours when she was a passenger on a public service bus, registration number YX08 FWE, which collided with a Mercedes motorcar, registration number KU55 UKY, on Wilmslow Road, Rusholme, Manchester. She alleges that the accident was the fault of the bus driver, who was employed by the First Defendant, whom, she alleges, negligently drove into collision with the Mercedes in front of him and failed to brake, steer or otherwise control his vehicle so as to avoid the collision. The Claimant pursues her claim against both the First Defendant and against the Second Defendant under the European (Rights against Insurers) Regulations 2002.
2. In a detailed Amended Defence, the Defendants stand shoulder to shoulder in alleging that the Claimant's claim is fraudulent and that she was one of a number of persons who had conspired together to be present on that particular bus on that evening which they knew in advance would be deliberately crashed into another vehicle for the purposes of enabling those persons to make dishonest claims for damages for personal injury. The Defendants also maintain that the accident was deliberately induced in that both the drivers of the Mercedes and of the bus had conspired together and with some of the passengers and others to cause a deliberate collision to facilitate the bringing of manufactured claims for damages. In support of

their case, the Defendants contend that a significant number of persons on the bus and others involved in the conspiracy were well known to each other as evidenced, they contend, by the existence of mobile telephone and social media links. The Claimant has not challenged the evidence of these links as adduced in evidence by the Defendants. So far as the Claimant is concerned, the Defendants contend that she is linked to certain of these persons. I shall return to the detail later. The Defendants do not accept that the Claimant suffered any injury at all notwithstanding the medical report dated 22 September 2011 adduced in evidence from Dr Andre Bauer. The Defendants contend that the opinion of Dr Bauer is unreliable because it is entirely dependent on the veracity of the Claimant's account and that she is not a witness of truth. In the alternative, the Defendants contend that, if the Claimant sustained any genuine injury, she should be denied damages because she should not be permitted to profit from her own criminal act.

3. The Claimant has served a Reply to the Amended Defence in which she avers that she had and has no knowledge that the collision was deliberately induced and neither admits nor denies that the bus collision was induced. She essentially maintains that, whatever the position as regards the involvement of others in a fraud, she herself had no knowledge of this, that she was an innocent passenger and that hers is a genuine claim.

4. At trial I heard oral evidence only from the Claimant who was cross-examined comprehensively about the various accounts which she has given, about CCTV footage taken from the bus' security cameras as to her behaviour and conduct on the bus and as to her alleged injuries and her conduct after the accident as regards seeking medical attention and as to what she told Dr Bauer. Dr Bauer's report was adduced in evidence in writing; he did not give oral evidence. I was also taken through the CCTV footage relating to the conduct of other persons on the bus which the Defendants allege demonstrates their involvement in the fraud. I have reviewed this again for the purposes of preparing this judgment. I have also been provided with a large number of documents contained within eight lever arch files and referred to some of these; many of these documents recorded the raw detail of connections between other alleged participants in the fraud. It has been helpful that much of this detail has been digested into two documents; one is a chart which graphically shows many of the links between the various *dramatis personae* and the other is a table which shows the social telephone calls made and their timings between various of the *dramatis personae*. The fact of these links and telephone calls is not in dispute between the parties

before me. The issue for me is what inferences I may safely draw from the primary facts.

5. I am grateful to Mr Hughes of Counsel who appeared for the Claimant and to Ms Symington of Counsel who appeared for the Defendants for the care which they have taken in the preparation and presentation of the case, for providing opening skeleton arguments, a chronology [Ms Symington] and for their written closing submissions.
6. During this judgment I shall refer to timings by reference to the 24 hour clock, this being the designation used in relation to telephone calls referred to in evidence.

The law

7. The Claimant has the burden of proving that she had an accident as alleged and she must discharge that burden on the civil standard of proof, namely on the balance of probabilities.
8. The Defendants allege dishonesty on the part of the Claimant. This is a serious allegation. Having made that serious allegation the burden is on the Defendants to prove it to the civil standard of proof, that is, on the balance of probabilities. In order to discharge this burden the evidence adduced must be strong, cogent and compelling: ***Hornal and Neuberger Products [1957] 1 QB 247, R (N) v. Mental Health Review Tribunal (Northern Region) and others [2006] Q.B. 468***, the authorities cited in ***Markel International Insurance Company Limited v. Higgins [2009] EWCA Civ 790*** at paragraph 50 and ***Locke v Stuart and Axa Corporate Solutions Services Limited [2011] EWHC 399 (QB)***.
9. The Defendants also allege dishonesty on the part of individuals who were not before the court; some of these individuals at one stage had sought to pursue a claim for damages but others had not. It is in the very nature of their defence that the Defendants must make such allegations against these individuals; if they were not permitted to do so, they would be very much hamstrung in their contention that the Claimant's claim is a fraudulent one. These other individuals have not given evidence before me and have not therefore had an opportunity to challenge what the Defendants say about their motivation and conduct. I have considered the approach of Edis J. in ***Locke*** [supra] at paragraphs 11 and 17 in which he held that it was appropriate to make findings about the alleged fraud against persons not

before the court but that such findings would not be binding on those persons. I agree with this approach. Accordingly, I will proceed to consider the conduct of these other individuals but only to the extent that I consider relevant and necessary to determine whether the Defendants have proved to the requisite standard that the Claimant was engaged in fraudulent conduct. To the extent that I am satisfied that on the balance of probabilities any such individual was involved in the fraud, such finding will not be binding on him or her.

The Claimant's evidence as regards the collision and its aftermath

10. Preparatory to trial, the Claimant served written Responses to a CPR Part 18 Request dated 18th March 2015 and two witness statements dated 15th May 2015 and 23rd August 2015. The Claimant had signed a statement of truth in relation to each of these documents and she confirmed in evidence in chief that she had had the opportunity to review the statements and the Part 18 Response and that the contents of each document was true. These documents were deployed as her evidence in chief. She was also cross-examined in detail. There were internal inconsistencies within the written accounts as well as between her written and oral accounts.

11. The following matters are not disputed:

- a. At the date of the accident the Claimant was a 32 year old mother of a daughter, who was then aged 13 years, and a son, who was then aged 12 years, both of whom lived with her at an address in Stretford. The Claimant did not live with their father but the children saw their father regularly, including on Sundays, the arrangement being that he would return them by 21.30. The Claimant said that he could be difficult and it was usually later than that and between 21.30 and 22.30.
- b. On Sunday 6th February 2011 while the children were with their father the Claimant went to visit her mother, as she regularly did on a Sunday. Her mother resided in a flat at 53 Brighton Grove, Fallowfield in Manchester. The Claimant travelled from Stretford to Fallowfield by bus, taking two buses, one into Manchester City Centre and another out to Fallowfield. She arrived in the afternoon.

12. However, in relation to other matters relating to events up to boarding the bus the Claimant has given accounts, which are in material respects inconsistent.
13. In her Part 18 Responses the Claimant said that, when she left her mother's flat, she intended to catch the bus into the city centre and then to catch either a bus or a tram back to Stretford. She walked to the bus stop and, when she could not see a bus coming, she went to the McDonalds takeaway next to the bus stop, purchased fries and walked back to the bus stop. She said that it was on the way back to the bus stop that she heard her name being called by Zara Wilson-Fredericks [hereinafter "Zara"], who was waving to her from in a beer garden on the other side of the road. Zara came over and said that she was going into town to go ice-skating with friends and asked whether the Claimant would like to go as well. The Claimant declined because she had to get home because her children were due back from their father's. After a short while she saw a bus approaching at which point Zara asked her if she could use her phone as, so far as her own mobile phone was concerned, she had texting credit only and her battery was almost dead and she wanted to tell her friends that she was outside. The Claimant said that she agreed to lend Zara her mobile phone. She did not know whom Zara rang but a group of people then crossed the road, only one of whom she knew; this was Zara's brother, Lewis Fredericks. The other persons appeared to know Zara. When the bus arrived she boarded it. The implication in the Part 18 Responses was that Zara used the Claimant's mobile telephone only once.
14. The other accounts presented by the Claimant in her witness statements and in oral evidence are as follows:
 - a. In her first witness statement dated 15th May 2015 the Claimant stated that she left her mother's house at 20.00 to walk to the bus stop near McDonalds which was about a 15 minute walk away in order to return to Stretford. At McDonalds she said she bought a fillet of fish burger meal and took that with her to the bus stop which was outside McDonalds. She says that it was getting dark. When she was coming out of McDonalds she saw Zara, whom she knew because they both worked together on a voluntary basis at the Meridien Project School in Fallowfield. She said that Zara was across the road in a pub beer garden when they spotted each other and Zara then came across the road to say hello. Zara said that it was her birthday and that she was going ice-skating and invited the Claimant to go along but the Claimant said she needed to get back before her children who

were due to return home soon. Zara stayed talking with her and then people who appeared to be her friends came to join her. She said that the next bus arrived quite quickly and this is the bus that she and the others boarded.

- b. In her second statement dated 23rd August 2015 the Claimant said that she now thought that she left her mother's flat on Brighton Grove closer to 19.00.
- c. During cross-examination the Claimant said that she left her mother's house at about 19.00, which was the time that she normally left her mother's. Later, as appears below, she suggested that she might have left her mother's flat at 19.30.
- d. Again, during cross-examination the Claimant was also asked about the lighting on the evening of 6th February 2011. She said that it was dark, but not pitch black. The CCTV footage showing the forward progress of the bus reveals that it was indeed night time as is evidenced by the street and vehicular lighting. I take judicial notice of the fact that certainly by about 8pm on an evening in early February in England night time lighting would have been firmly established and that any residual daylight would have long since been extinguished.
- e. Again, during cross-examination she said that she then walked towards the bus stop; this was a walk which took about 15 minutes; I pause to observe that an estimate using a function of Google demonstrates that walking this route from Brighton Grove along Wilmslow Road away from Manchester city centre to the bus stop is 17 minutes.
- f. Again, during cross-examination the Claimant was asked why she had chosen to walk towards McDonalds away from the city centre, which was a walking distance of 15 minutes when there were bus stops much closer to the end of Brighton Grove on Wilmslow Road to which she could have gone and from which she could have caught a bus into the city centre, a journey of about 15 to 20 minutes, where she could have purchased takeaway food or why, when there were takeaways in Rusholme on the "Curry Mile" much closer to the junction of Brighton Grove with Wilmslow Road which in turn were closer to the city centre, she chose to walk a longer distance away from the city centre to McDonalds. The Claimant said that she wanted a McDonalds

meal, which was why she went there although she accepted that she could have purchased a McDonalds meal once she had arrived in the city centre. She said that the kebabs available on the "Curry Mile" were not fast food and she disliked having to walk in this area because of unwanted attention from males. She accepted that she could have adopted either of these alternative options to obtain fast food but denied that the reason she had walked out of town along Wilmslow Road to the McDonalds takeaway there was to join in with others in the fraud.

- g. It is not in dispute as the photographs show that Wilmslow Road is an arterial route carrying traffic into the city centre; specifically, at this point it has four lanes, two for traffic travelling in opposite directions.
- h. During cross-examination the Claimant accepted that, if a bus had been coming up as she approached the bus stop, she would have got on it straight away and gone to a takeaway once she arrived at Piccadilly Gardens bus station. However, there was no bus coming. She said that it was at that stage before she went into McDonalds, and not - as she had said both in her Part 18 statement and in her first witness statement - after she had been into McDonalds, that she saw Zara across the road; she maintained that Zara saw her even though she was quite a distance away, being the width of the four lanes of Wilmslow Road and that it was dark. Zara came across the road and invited her to the ice rink but the Claimant declined because she needed to get home for her children. The Claimant was asked about this in some detail but maintained in her oral evidence repeatedly that she had met Zara before, and not after, she went into McDonalds. Zara then asked if she could use her mobile telephone and the Claimant agreed. The Claimant said that she now knows that Zara used the mobile to telephone Chezelle Mousah but the Claimant says that she did not know this person. The Claimant said that it was only Zara, and not the Claimant herself, who ever telephoned Chezelle Mousah. Zara made the mobile telephone call to tell Chezelle that she was outside. Later in cross-examination the Claimant said that Zara used the Claimant's mobile telephone twice to make calls and that on the first occasion no-one answered and so she tried again. This account, which the Claimant had never previously set out, is at odds with the account given in her Part 18 Responses where the Claimant said that she did ring that number once when she got home to inform Zara, who had asked her to do so, that she had returned

home safely. I pause to observe that the CCTV footage on the bus shows Zara using her own mobile telephone; whatever the position as regards credit, it seems clear that her mobile telephone battery was not fully discharged. In cross-examination the Claimant said initially that she could not now recall if she made the second phone call at all and then conceded that she had not done so. At that stage the Claimant and Zara went to McDonalds to get a takeaway and returned to the bus stop. When they returned to the bus stop a group of people came across the road and the next bus came near enough straight away.

- i. It is clear from the documentary evidence relating to phone calls made from the Claimant's mobile telephone that a phone call was made from the Claimant's mobile to Chezelle Mousah's mobile telephone on two occasions and not only on one occasion, these calls being as follows:
 - i. At 19.13.18 for 26 seconds duration; this call was answered and did not go to voicemail.
 - ii. At 19.24.31 for 12 seconds duration; again this call was answered and did not go to voicemail.
- j. According to the timings on the bus' CCTV system, the accuracy of which has not been challenged, the bus arrived at the bus stop at 20.39. The Claimant expressed surprise that the bus had arrived as late as this. It was at this stage that the Claimant suggested that she may have left her mother's at 19.30. Initially, in cross-examination she said that she would have been at the bus stop 40 minutes or so after leaving her mother's house assuming she left at 19.00; this allows for a 15 minutes to walk to the bus stop, 10 minutes talking with Zara and 15 minutes to obtain takeaway food and return to the bus stop. If that were correct, the Claimant would have been back at the bus stop to take the next bus into the city centre by about 19.40. The only explanation which she was able to give for the hour which, on this scenario, would have elapsed between 19.40 and 20.39 was that she lost track of time while talking with Zara. She said that she must have been with Zara when the first mobile phone call was made to Chezelle Mousah at 19.13 and so must have left her mother's flat slightly before 19.00. She denied that she did not leave her mother's flat until 20.00 and denied that it was she who had made the two mobile

telephone calls to Chezelle Mousah while she was at her mother's flat. She denied altering the time at which she said she had left her mother's flat from 20.00 to 19.00 in order to make the timings fit in with her story that she was with Zara when telephone calls were made. I shall come to the significance of the suggestion that it was the Claimant who made the telephone calls to Chezelle Mousah shortly. The Claimant suggested at one point that it was possible that no bus had come along Wilmslow Road travelling into the city centre but then relented and accepted that there are many buses which travel that common route. She therefore maintained that she had simply not noticed the passage of time.

- k. On boarding the bus, the Claimant is seen on the CCTV to sit on her own just behind the stairwell facing across the seat initially. She did not sit with Zara, as she asserted in her first witness statement.
- l. I deal below with the physical effect of the collision on the Claimant. Suffice it to say that in oral evidence she contended initially that her wrist had become trapped between the bus rail and her chest. She alleged that she sustained wrist injuries which were immediately apparent to her but her chest and neck pain were not immediately apparent and were not painful. She provided her contact details to the bus inspector and left the bus when she felt she was allowed to do so. This was, according to the CCTV footage at 21.21. She denied that she did not suffer any injury as a result of the collision.
- m. As to persons who were travelling on that bus the Claimant accepted some linkage with others but denied others. Her evidence was to the following effect:
 - i. She knew Zara because they worked together at the Meridien Project together;
 - ii. She knew Lewis Wilson-Fredericks, Zara's brother, slightly;
 - iii. She was "following" Celestine Charles on Facebook; Celestine Charles was known to Zara. However, the Claimant says she did not know Celestine Charles personally and had never met her before boarding the bus that night.

- iv. She was “friends” with Mark O’Grady on Facebook because he promoted nights out in Manchester and she had “friended” him for this purpose but that he was not known to her personally and that she would not have known who he was if he had let on to her on the bus.
- v. She denied knowing or having any prior connection with Chezelle Mousah before the collision and denied having made the two telephone calls made from her mobile phone to Chezelle Mousah’s mobile phone.

15. The significant internal discrepancies in the Claimant’s own various accounts may be summarised as follows:

- a. Although she says she left her mother’s flat at the normal time, she variously asserted this to be 20.00, then 19.00 and, finally, 19.30.
- b. She initially asserted that she met Zara after she had purchased her fast food at McDonalds but later asserted that she met Zara before she went into McDonalds.
- c. As part of her altered account that she met Zara before she went to McDonalds she also initially asserted in oral evidence that she had spoken with Zara for about 10 minutes before going to McDonalds but then, when it was pointed out to her that, on her case, she must have been with Zara at 19.13 when her phone was first used to call Chezelle Mousah and that the bus did not arrive until 20.39 she asserted that she must have lost track of time and spoken to her for a much longer period.

16. The Claimant’s case as regards personal injuries is that, as a result of the collision, she sustained injuries to her neck, right hand and chest.

17. She was examined for the purpose of a medico-legal report by Dr Bauer on 22nd September 2011, some nine months after the accident. The Claimant said that her appointment with Dr Bauer lasted about half an hour. Dr Bauer’s report contains the first account of her injuries. He recorded that the Claimant told him that she was able to brace herself before the accident. The Claimant denies that she told him this. The CCTV shows that the Claimant was seated behind the stairwell and could not have seen the forthcoming collision. She was not braced in any obvious position, such as the CCTV

appears to show Zara and Celestine Charles practising bracing themselves at an earlier stage in the journey. I do not know where Dr Bauer could have obtained this account except from the Claimant herself. Despite the fact that the CCTV does not appear to show the Claimant bracing herself and although there is no logical reason why she would have informed Dr Bauer that she did if she did not, I am driven to the conclusion that Dr Bauer has recorded what the Claimant told him. In arriving at this conclusion I am influenced by my decision, as is set out below, in relation to the issue whether the Claimant's account as recorded by Dr Bauer concerning the mechanism of the alleged wrist and chest injury is true or not. The Claimant ultimately and belatedly asserted that Dr Bauer had misunderstood her and recorded this incorrectly. I have concluded that he recorded what he was told by the Claimant.

18. As to the consequences of the collision, the Claimant told Dr Bauer that she was looking straight ahead at the time of the accident, was jolted backwards and forwards and hit her chest against the rail of the stairways and her right wrist was squeezed in between her chest and the rail. She told him that she experienced moderate chest pain immediately after the accident which improved after two months and was mild and intermittent only by September 2011. She said that she developed moderate pain and stiffness in her right hand on the day of the accident which also improved after two months and was mild and intermittent only by September 2011. She said she developed intermittent moderate pain and stiffness and discomfort in her neck one week after the accident which improved after two months and was mild and intermittent only by September 2011. The Claimant said that she attended her GP two days after the accident and the GP advised her to use painkillers and to apply ointment locally. She informed Dr Bauer that she took two months off work after the accident. Although Dr Bauer has recorded that she was employed as a Support Teacher, she was in fact working as a volunteer at the Meridien Project, which role was unremunerated save for travel expenses. It may be that Support Teacher was Dr Bauer's shorthand description of her role, but I find that nothing turns on any discrepancy here.
19. Dr Bauer's opinion was that the Claimant had sustained soft tissue injuries, His prognosis was that she would experience occasional tightness in her chest and intermittent symptoms due to a sprain in her right hand and soft tissue injuries to the neck for about 10 months.
20. During cross-examination it was put to the Claimant that she had pre-existing depressive symptoms and used to attend her GP about these. It was put to

her that on 7th February 2011, the day after the collision, she attended to see her GP but that the consultation was about her depressive symptoms and that she never informed her GP about any injury or symptoms relating to the collision and she received no advice from the GP, the GP records being entirely silent about any such complaint or advice. The Claimant maintained that she did mention that she had wrist, but not neck, pain, to the GP, that the GP examined her wrist and then gave the advice about which the Claimant subsequently informed Dr Bauer. I should observe in relation to the Claimant's response to the cross-examination that the GP records do not reveal that any examination of the wrist took place either. The Claimant then belatedly suggested in cross-examination that she did complain about her neck and chest pain but that the GP did not examine either site. She denied that she was not telling the truth on this topic and said that if she had been putting it on she would have played up to the doctor.

21. The effect on the Claimant of the collision is shown on the CCTV footage. This shows that the Claimant's wrist did not become trapped in between her chest and the rail, which was the Claimant's account to Dr Bauer. On the CCTV footage, The Claimant is seen sitting sideways and to fall slightly forwards but there is no trapping of her anatomy, such as was recorded by Dr Bauer. During cross-examination the Claimant accepted that the rail was not in front of her at the moment of the collision and that her right arm was not squeezed between her body and the rail. She then gave a different explanation and asserted that her injuries to her chest and wrist occurred when her arm hit her chest. She agreed that she was not jolted backwards and forwards, as was recorded by Dr Bauer. At all times she was holding a bottle of water in her right hand. Sometime after the collision the CCTV footage shows the Claimant holding her neck while still sitting on the bus. The Claimant's explanation when asked about this during cross-examination was that she may have hurt her neck then without realising it was hurting. However, the Claimant's account to Dr Bauer and earlier in her oral evidence was that her neck pain did not come on until about a week after the accident and, until almost the end of cross-examination on this topic, she asserted that she did not mention this to the GP the day after the accident, although she eventually said that she did. She denied that in holding her neck while on the bus she was exaggerating and "acting up". She accepted that on the bus after the collision she was laughing and singing. She said that this might have been due to nervousness and relief after the collision. Ultimately and belatedly, the Claimant asserted that Dr Bauer had wrongly recorded that her wrist had been squeezed between her chest and the rail. However, she also accepted that she had not referred at any stage in her witness statement to

any such error on the part of Dr Bauer even though she had pointed out two other matters which she asserted were errors.

22. It is also clear from Dr Bauer's report that his understanding from the Claimant was that she was unable to work after the accident due to her injuries. However, during cross-examination the Claimant said that she informed Dr Bauer that she required time off work due to her injuries and that time off work was due to her depression. Again, this was not a matter which the Claimant had not pointed out in her witness statement as an error on the part of Dr Bauer. The Claimant was also asked to explain why, in the claim notification form, it had been asserted that she had had to take two days off work due to the collision. The Claimant's response was that she never gave those instructions to her then solicitors, Versus Law.
23. In his written closing submissions, Mr Hughes invited me to exercise caution and not to draw the inference of and to make any finding of fraud, as sought by the Defendant. He points to the fact that the Claimant is uneducated, not a sophisticated individual and has suffered from depression. He invited the court to see the Claimant's conduct in the round and to understand that there may be innocent explanations for her conduct. To take but a few examples, he says that the sharing of a cigarette may be socially acceptable between certain persons in society and, again, on the bus she kept herself to herself and does not behave as part of a larger group. He also contends that the Claimant's explanation for remaining on the bus is not unreasonable.

The Defendants' case as regards the fraud and its extent

24. The Defendants' case is that this was an induced accident; that is, a planned collision, not a true accident, perpetrated for the express purpose of manufacturing fraudulent claims for damages for alleged personal injury and financial loss. The Defendants contend that there was a pre-arranged agreement between certain persons who would contrive to be present on the bus when the collision occurred and between the vehicle drivers to cause the deliberate collision in conjunction with a marker car driver and a bus inspector who would coordinate the taking of all contact details and their forwarding to the First Defendant. The Defendants contend that the participants to the fraud included:
 - a. Raja Shahzad, the driver of the bus and an employee at the time of the First Defendant;

- b. Tariq Iqbal, the driver of the Mercedes car;
- c. Asan Akram, a bus inspector and an employee at the time of the First Defendant;
- d. The unidentified driver of what the Defendants contended was a marker car parked close to location of the collision to “mark” where the collision should take place.
- e. A large number of passengers on the bus, many of whom were already known to each other.

25. The Defendants’ case is that the participants who were to be passengers on the bus had agreed to board the bus on Wilmslow Road albeit from different bus stops although a large number boarded at the bus stop near McDonalds where the Claimant also boarded. Raja Shahzad would then drive the bus along the bus route into Manchester. At some point Tariq Iqbal was to join Wilmslow Road in his Mercedes travelling immediately in front of the bus in the same direction and, at the location indicated by the marker car, a deliberate collision would be induced between the vehicles by the drivers by way of a rear end shunt and the bus would stop. At this stage Asan Akram, the bus inspector would attend and take the relevant contact details of all the participatory passengers who were to make a manufactured claim.

26. I have viewed the CCTV footage which shows the passengers boarding the bus and interaction between some of them and Raja Shahzad; I shall summarise the detail below. The bus then proceeded along Wilmslow Road. The Mercedes car is seen to join Wilmslow Road and to pause from time to time by the kerb to allow the bus to catch it up. Immediately prior to the collision the Mercedes car is in front of the bus. To the offside there is a car parked with its lights on. The collision then occurred at 20.48.51. An unidentified male then boarded the bus; the Defendants contend that this was probably the driver of the marker car. Tariq Iqbal then boarded the bus and went upstairs. Asan Akram arrived and boarded the bus to take the names of the passengers. The Claimant and Chezelle Mousah smoked in front of Asan Akram. Although the bus was a non-smoking area as designated by law, Asan Akram did not ask the smokers to desist. The Claimant did not leave the bus until 21.21.

27. As to passenger participation, the Defendants have assembled considerable evidence which, they contend, implicates many passengers in the fraud. I am

concerned with one claim only and have therefore concentrated on the evidence which, in this case, is in reality relied on by the Defendants as implicating the Claimant in this fraudulent manufacturing of claims. I must necessarily touch on the evidence of the conduct of some others. The evidence adduced by the Defendants is based largely on documentation demonstrating mobile telephone and social media links between the passengers and others, the volume of claims notified to the First Defendant and the speed with which these claim were notified, the conduct both prior to and after the accident of the passengers and others apparent on the bus' CCTV footage and admitted criminal offences resulting in convictions before the Crown Court. It may broadly be summarised as follows:

- a. The number of claims and the speed with which they were intimated: 27 claims for damages for personal injury were intimated to the First Defendant. Amongst these were Zara, her brother Lewis, Celestine Charles and Chezelle Mousah. Of these, 25 were represented by the same solicitors, Versus Law and each had signed up to a CFA between 14th and 17th March 2011. This was a short time after the accident on 6th February. The Defendants contend that there is an inference to be drawn from the fact that 27 allegedly unconnected passengers engaged the same solicitors' firm to act for them and that, in the absence of any explanation, the probability is that this was a part of the pre-arranged plan and evidence supportive of the fraud. The Defendants were alerted to the possibility that these were fraudulent claims brought by persons having prior knowledge of the induced collision. All such intimated claims were rejected for the same reasons as are relied on by the Defendants in this claim. Not all intimated claims resulted in proceedings being commenced. However, six claimants including the Claimant in this trial did commence proceedings. As at the start of this trial, all claims other than the Claimant's had either been struck out or had been discontinued.
- b. The unusual number of passengers on the bus: A large number of passengers, 41 in all, were present on the bus on 6th February 2011 at the time of the collision as compared with the numbers on previous Sundays when there were 5 passengers on 30th January and 11 on 23rd January.
- c. The mobile telephone links establishing connections between various individuals: I do not feel it necessary to set these out exhaustively. The relevant links for the purposes of this claim are:

- i. A number of calls both received and going to voicemail between Asan Akram and Tariq Iqbal on a very regular basis leading up to the collision including on 3rd February 2011 [3 calls], 4th February [5 calls] and 5th February 2011 [5 calls] and many more calls after the accident on 7th February [7 calls], 8th February [3 calls], 11th February [13 calls] and 13th February [40] calls, some of these last calls went to voicemail.
 - ii. Raja Shahzad also contacted Asan Akram on his mobile telephone at 15:42:35 on 5th February 2011.
 - iii. On 5th February a call was made from Chezelle Mousah's mobile telephone to that of Lewis Fredericks.
 - iv. A call was made from Tariq Iqbal's mobile telephone on 6th February at 18.39.28 to Lewis Fredericks before the latter boarded the bus.
 - v. On 6th February calls were made from the Claimant's mobile telephone to that of Chezelle Mousah at 19.13.18 and at 19.24.31.
 - vi. It appears from an analysis of the mobile telephone cell sites used by Tariq Iqbal and Raja Shahzad's mobile telephones that the two phones were in the same location at around 16.00 on 7th February 2011.
- d. Facebook "friends" links establishing connections between various individuals: Again, I do not feel it necessary to set these out exhaustively. The relevant links for the purposes of this case are:
- i. The Claimant was "friends" with Mark O'Grady, but is now not;
 - ii. The Claimant's profile lists her as "following" Celestine Charles on Facebook.
 - iii. The Defendants have adduced evidence of a number of "friends" connections between passengers on the bus who subsequently intimated claims. I have not heard any other

evidence about these passengers or their conduct. In this age of feverish and almost instant digital communication and ready access to social media websites I am not disposed to draw any conclusion about this either as a single piece of evidence or in conjunction cumulatively with other evidence.

e. The CCTV footage: The footage is taken from different cameras located around the bus and enabled me to watch, in some instances, the same sequencing of event from different angles in real time. Amongst other features, the footage shows:

- i. Lewis Fredericks, having boarded the bus, then pauses at the foot of the stairs and appears to direct other passengers upstairs.
- ii. Mark O'Grady sits at the front of the upper deck. The Defendant contends that he acts as a look out for the collision;
- iii. The Claimant boards the bus behind Celestine Charles and Zara. She speaks with Lewis Fredericks as she walks along the aisle and also later when at her seat.
- iv. On boarding the bus, the Claimant is seen on the CCTV to give a piece of paper to Celestine Charles.
- v. Celestine Charles and Zara Wilson-Fredericks practise the brace position on two occasions prior to the collision.
- vi. Both Celestine Charles and the Claimant draw in the condensation on the bus window in turn.
- vii. Zara uses her own mobile telephone when she is upstairs on the bus for one minute 10 seconds.
- viii. Lewis Fredericks speaks with Raja Shahzad, the bus driver and they refer to a piece of paper tucked behind the ticket machine. While the Defendant cannot be sure what was written on this paper it is clearly related to the accident and is likely to be a description of the car make and/or its colour and/or registration number and/or the location where the accident is to take place.

- ix. Tariq Iqbal's Mercedes can be seen to pull in front of the bus at the corner of Platt Lane and Wilmslow Road.
- x. When the bus stops at a bus stop the Mercedes pauses at a layby ahead. When the bus moves off again, the Mercedes pulls out of the layby ahead of the bus again.
- xi. Shortly before the collision Mark O'Grady moves from the front seat to the seat behind and held on to the seat in front; the Defendants' case is that he was looking for the imminent accident and then moved back from the front seat to protect himself against the risk of injury.
- xii. The Mercedes brakes at a location where there is a car parked on the opposite side of the road. The Defendants contend that this was the marker car to indicate where the collision should take place.
- xiii. At 20.49.51 the collision occurs.
- xiv. An unidentified male, the Defendants contend this male was probably the driver of "marker car", speaks first to Tariq Iqbal and then to Raja Shahzad.
- xv. At 21.00 Asan Akram, the bus inspector, arrives at the scene and boards the bus.
- xvi. Asan Akram collects contact details from the passengers. Paula Dewhurst, one of the passengers, is seen to remove a piece of paper from behind the ticket machine.
- xvii. After the accident the Claimant shares a cigarette with Celestine Charles. They also talk together on two occasions, the second occasions being for several minutes.
- xviii. After the accident the Claimant speaks with Chezelle Mousah. She also passes her a lighter with which Ms Mousah lights a cigarette. She is not seen to return the lighter.

- xix. After the accident the Claimant can be seen laughing, apparently holding her neck and smoking in front of Asan Akram, the bus inspector. She stayed on the bus until 21.21. There is no evidence of any keenness to leave the bus earlier. The Defendant relies on the apparent lack of concern on the part of the Claimant at any time after the collision about alighting from the bus to get home to her children by 21.30. Indeed, she stayed on the bus, smoked in front of the bus inspector and was laughing after the accident. The Claimant said that she did not know whether she could get off the bus and was waiting to be told what was happening. She said she used her mobile telephone to call her son to tell his father that she would be delayed because she had been involved in an accident. Accordingly, she says that she did not feel any sense of urgency to get home and denied that the reason she was not in a rush was because she had always planned to be involved in the induced collision that night. She denied that she stayed on the bus until 21.21 to ensure that her personal details were taken as part of the incident to promote the bringing of a claim. Initially she denied that she would have given her home address as well as her name and telephone number to the inspector but when the list of passengers provided by the inspector to his employer, the First Defendant was shown to her she conceded that she must have provided her address. The Defendants say that all those involved in the fraud adopted the same approach to ensure that their contact details were provided to the First Defendant. The Claimant denies that it was part of the plan that all details would be logged before the passengers alighted from the bus.
- xx. On the CCTV none of the passengers is seen at any time to be in a state of physical or psychological distress.
- f. The criminal convictions of Asan Akram and Tariq Iqbal: The Defendants must have become concerned that the collision had been induced because so many claimants had intimated claims within a short time after the accident, all using the same solicitors. The police became involved. Both Mr Asan and Mr Iqbal admit that this was a “slam-on” induced collision, that is a collision caused by the driver of the first vehicle applying his brakes often as an emergency stop when there was no justification for so doing and thereby causing the

following second vehicle to collide with the first vehicle. Sometimes this can happen without the second vehicle driver being a party to the induced collision but here, despite the absence of any conviction against Raja Shahzad, the Defendants contend that both drivers were aware in advance of what was planned. Ultimately criminal proceedings were commenced against both Asan Akram and Tariq Iqbal which resulted in convictions before the Crown Court at Manchester on 11th November 2014 for conspiracy to commit fraud and the following sentences:

- i. Asan Akram: 16 months imprisonment;
- ii. Tariq Iqbal: 12 months suspended for 24 months with requirements to carry out 250 hours of unpaid work and to observe a curfew from 10 pm to 7 am each day for 4 months.

28. In the light of this evidence the Defendants contend, so far as this claim is concerned, that Zara, Lewis Fredericks, Celestine Charles, Chezelle Mousah, Mark O'Grady and Paula Dewhirst amongst others and the Claimant joined the bus solely to participate fraudulently in the induced collision. The Defendants also deny that the Claimant was injured at all or that, if she was, any injuries she sustained were caused by her own decision to participate in the crash.

29. The Claimant claims that she suffered both personal injuries and certain out of pocket expenses by way of special damages, namely the cost of physiotherapy [£390] and miscellaneous expenses [£50].

Discussion

30. The Defendants contend that the extent of participation in the fraud involves certain named individuals who either are no longer claimants in relation to this collision, their claims having been either struck out or discontinued, or who never have been. None of these individuals gave oral evidence before me to explain their behaviour and conduct. However, the very nature of the Defence raises issues of dishonesty on which I must make such findings as I consider necessary for determining this issue one way or another; insofar as these are findings of involvement in fraud against any individual not a party to these proceedings, they are not binding on that individual in any other proceedings.

31. Between March and September 2015 the Claimant has presented so many different, competing and mutually inconsistent versions of events relating to a relatively small period of time on 6th February 2011 that it is scarcely surprising that I find that her evidence is inherently unreliable. The significant inconsistencies relate to:

- a. The hour of the night at which she left her mother's flat [19.00 or 20.00];
- b. Whether she met Zara before or after she had been to McDonalds;
- c. Whether Zara used the Claimant's mobile telephone once or twice.

32. Of course, these are not the only issues on which the Defendant relies to found an allegation of dishonesty; these are only the ones about which she herself has been inexplicably inconsistent.

33. I observed the Claimant giving evidence for much of Monday 21st September 2015 and for some time on the morning of Tuesday 22nd September. I listened carefully to how she sought to explain the significant inconsistencies in the documents in respect of which she had signed a statement of truth. I also listened carefully to the answers and explanations which she gave to questions put to her in cross-examination on these and other issues which was to the effect that she was not telling the truth. I have kept firmly in mind that the Claimant is not a sophisticated individual and that she has a history of depression. However, neither of these features is so potent that it could either of itself or in combination exclude a finding, if otherwise appropriate on the evidence, that the Claimant had willingly become involved in a fraud arranged by others. I have at all times considered whether there could be an innocent explanation for her conduct such as should give me pause and which may satisfactorily explain the conduct relied on by the Defendants as, the Defendants contend, proving her involvement in fraud.

34. I have come to the conclusion that the Claimant was not an honest witness striving to tell me the truth albeit with the handicap which the passage of time naturally imposes on the accuracy of recollection. To the contrary, I find that she dishonestly adjusted her account where she could do so before trial and embellished it "on the hoof" while in the witness box, as I shall now elucidate.

35. I find the Claimant's account that she left her mother's flat on Brighton Grove at 19.00 on 6th February 2011 incredible and I reject it. In her first witness statement she had put the time at 20.00. In oral evidence she said that she left at 19.00, which would be the normal time for her to leave. I accept that the Claimant would probably have left her mother's flat at an habitual time each Sunday she visited in order to return home in time for 21.30 so as to be home when her children returned from seeing their father. The return journey home for her, whether by bus or by bus and tram, usually took about one hour. This provided her with time to settle before her children returned home. I find it significant that in her first statement she said that she left her mother's house at 20.00. If this had not been the normal time at which she left I cannot understand why she would have said it was this time. I have come to the conclusion that the account given by the Claimant that the time at which she had left was 19.00 and then 19.30 was untrue and known by her to be untrue and the reasons for her assertion that it was a time other than 20.00 have more to do with trying to make this timing fit other evidence than anything else. I am satisfied on the balance of probabilities to a high degree that she left at 20.00. The reason why she has sought to adjust the time seems to me to be clear. She affects to have had no prior knowledge of or contact with Chezelle Mousah and has asserted that she did not make the telephone calls from her mobile phone to Ms Mousah's. The phone calls were made at 19.13 and 19.24. If her account were true she would have had already to have been in Zara's company by 19.13. I do not accept that she was on Wilmslow Road at that time and spent an hour or more then in Zara's company before boarding the bus at 20.39. Her earlier accounts were that she was in Zara's company a relatively short time before the bus arrived. To that extent, I accept that her evidence is accurate and it is overwhelmingly more probable that she arrived on Wilmslow Road at the bus stop having left her mother's flat at 20.00. It therefore follows that when the phone calls were made to and received by Ms Mousah at 19.13 and 19.24 the Claimant cannot have been with Zara. This compels me to find that it was the Claimant herself who made the two telephone calls from her mobile phone to Ms Mousah and that establishes that there was some arrangement for her to do so. The Claimant has always denied that she knew or even knew of Ms Mousah prior to the bus journey. The question arises why she denies this connection with Ms Mousah. The irresistible inference which I draw is that she wanted to deny any connection with Ms Mousah as she was one of the other persons on the bus; so far as I am concerned, the Claimant well understood how important it was that she should admit to knowing as few persons on the bus as possible. Further, I find that the fact that the Claimant made the two phone calls to Chezelle Mousah is part of the evidence which,

taken cumulatively, implies prior knowledge on the Claimant's part on 6th February 2011 that there would be a collision between the bus and the Mercedes which was to be deliberately induced to manufacture false claims for damages for personal injury of which one would be hers.

36. I also find the Claimant's explanation as to the route which she took to get into Manchester city centre incredible. Her evidence was that she had to get back to Stretford by bus or bus and tram by 21.30, a journey of about one hour for her children and liked to have some time to settle herself before they arrived back from their father's. The Claimant accepted that she could have boarded a bus at a bus stop on Wilmslow Road much more proximate to the junction with Brighton Grove. Instead, in doing what she did, she chose not to use one of two bus stops close to that junction and instead walked some 15 minutes away from the city centre towards McDonalds. I also doubt her explanation that she wished to avoid unwanted attention from males in Rusholme, given that she was apparently content to walk a considerable distance along Wilmslow Road in Fallowfield albeit in the opposite direction. She accepted that she could have instead purchased food when she reached Piccadilly Gardens bus station and that she could have obtained a McDonalds takeaway there. Her account is inherently unbelievable and I am satisfied on the balance of probabilities to a high degree that the reason she took the route she did was to participate in the claims to be manufactured by the induced accident.

37. I also reject the Claimant's evidence that, on arriving at McDonalds, Zara observed her by chance from the garden of the public house across the width of four lanes on Wilmslow Road at a time after 20.00 on a dark February evening. Given that any such coincidental sighting would have been at a time when it was already dark and the distance the Claimant would have been away from Zara I find this implausible. That her account is probably untrue is underpinned by her complete *volte face* on the issue whether Zara met her before or after she went to McDonalds, I have come to the conclusion that the reason why the Claimant changed her mind on this issue is that she realised that, if she were to continue to assert that she had only met Zara after she had purchased her takeaway, this would add a further 15 minutes to her timescale such that she would, on her preferred account, have had to have left her mother's house at about 18.45 so as to be in Zara's company by the time the first phone call from her mobile phone to Ms Mousah was made at 19.13. When Zara saw her at the bus stop near McDonalds, which I accept that she must have done, I find that it was not a matter of happy coincidence but an important component in the pre-arranged conspiracy to be present on

the bus which it was known in advance would be involved in a planned collision.

38. I also find that the Claimant had more numerous connections with persons on the bus than she has been prepared to admit in writing and in her oral evidence. In particular I am satisfied on the balance of probabilities to a high degree that:

- a. the Claimant knew Celestine Charles personally before the night of the collision because of her conduct after boarding the bus in passing a piece of paper to Celestine Charles; this was an act which, to my mind, is explicable only on the basis of a degree of prior connection not admitted by the Claimant and for which she had no explanation at trial. I also infer from the fact that both Celestine Charles and the Claimant drew in the condensation on the bus window when they were sitting so close together that they were comfortable in each other's company doing that and that such conduct implies a prior connection. The subsequent conduct of sharing a cigarette with Celestine Charles also strongly implies a level of intimacy explicable only on the basis that they already knew each other. I do not accept that the sharing of a cigarette is to be explained away on the basis that it may be that it was socially acceptable as between the Claimant and Celestine Charles. The context is all-important as is the other evidence connecting them. They also talk together on two occasions, the second occasion being for several minutes. Taken together, I am satisfied to a high degree of probability that the interaction between the Claimant and Celestine Charles operates synergistically so as to compel me to find that they knew each other well before they boarded the bus. I consider that the Claimant's denial of this relationship is explicable only on the basis that she was seeking during the case and at trial to distance herself from persons with whom she had an apparent connection so as to improve her chances of maintaining that she was only ever an innocent passenger on the bus. Her denials constitute further evidence that she knew full well in advance that the bus would be involved in an induced accident.
- b. the Claimant also knew Chezelle Mousah personally before the night of the collision because of her conduct after boarding the bus. I have already found that the Claimant was at her mother's flat and not in the company of Zara on Wilmslow Road when the Claimant's mobile phone was used to ring Chezelle Mousah's mobile number at 19.13

and 19.24. The Claimant must have had some prior connection with Chezelle Mousah to be able to do this and must have known her mobile telephone number. On the bus the Claimant is seen to speak briefly with Chezelle Mousah at 20.40.52. I did not understand the Claimant to deny that she had done so. However, Mr Hughes, who represents the Claimant, has in his closing submission challenged the interpretation of the CCTV. In the circumstances, I make no finding on this point. Further, following the collision the Claimant is unable to explain why she passed a lighter to Chezelle Mousah, a person whom she claimed not to have known. I do not think it matters whether the lighter is returned or not. It is the action in sharing it at all in conjunction with other features and, in particular, the phone calls, which taken together, is significant. Again, I find that the interaction between the Claimant and Chezelle Mousah taken together synergistically so as to compel me to find that they knew each other well before they boarded the bus. As in the case of Celestine Charles, the Claimant's denial of this connection is explicable only on the basis that she was trying to distance herself from persons whom she knew had been involved in the fraudulent conduct of the induced accident and strongly imply that she knew well in advance that the bus would be involved in an induced accident.

39. I have therefore come to the conclusion that there is strong, cogent and compelling evidence supportive of the Defendants' contention that, on the balance of probabilities, the Claimant knew the following people on the bus prior to boarding it: Zara, Lewis Fredericks, Celestine Charles and Chezelle Mousah.

40. I have also come to the conclusion that, while there is not enough evidence to conclude that the Claimant knew personally each and every of the other persons on the bus or whom it is alleged were involved in the alleged fraud [for example, there is no evidence to connect the Claimant directly with Paula Dewhirst, Tariq Iqbal and Asan Akram], nonetheless she was clearly connected with people who were involved [Zara, Lewis Fredericks, Celestine Charles and Chezelle Mousah] and I am satisfied on the balance of probabilities that that some of these were connected with others who also plainly were and that there were others present on the bus, with whom the Claimant may have no direct or indirect connection, who were involved; I shall refer to the roles of Paula Dewhirst and Mark O'Grady later in this judgment.

41. As to the Defendants' contention that the Claimant knew Mark O'Grady prior to boarding the bus, whilst I have some suspicions that she may have done so, I am not able to conclude on the balance of probabilities that she did so. The only evidence that she was connected with him is that she was "friends" on Facebook with him but she says that she had not met him personally and, as she did not "live on Facebook", had not seen changed profile photographs of him. The Defendants have been unable to prove that she must have seen these and, while she may have done so, I have been unable to conclude that she probably did.
42. I am also satisfied on the balance of probabilities to a very high degree that the Claimant was intent on joining in what she knew was a fraudulent enterprise by boarding the bus, knowing that a collision was to be induced and in ensuring that her contact details were collected for onward transmission to the First Defendant. For the reasons set out above, I am similarly satisfied that she knew that participants to the fraud included Zara, Lewis Fredericks, Celestine Charles and Chezelle Mousah. I have come to the conclusion that the Claimant had specifically made arrangements to be on the bus for the purpose of making a fraudulent claim for personal injuries and that her various explanations as to the time at which she left her mother's flat, what I find to be her untruthful account in denying that it was she who had telephoned Chezelle Mousah [I have found that she made both telephone calls], the route she took to the bus stop and the reasons for not heading straight into the city centre, her contradictory accounts as to the stage at which she met Zara and as to the passage of time, her conduct on the bus both prior to and after the collision and her apparent lack of concern about trying to get home prior to 21.30 to meet her children are all pieces of conduct which, in the context of this claim, drive me inexorably to the conclusion that the Claimant's account to me in evidence is, in all the material respects that are controversial as between the parties, factually inaccurate and untruthful, as she well knows. I have specifically considered whether there is any room in this case for the legitimate conclusion that the Claimant's recollection has been honest and genuine but factually inaccurate due to a genuine mistake or mistakes. The number and type of issues which are in dispute are legion and cannot be satisfactorily explained on this basis. I regret that I have not been able to conclude that the Claimant is an honest but mistaken historian; rather, I have come, sadly, to the conclusion that the Claimant has knowingly told me a series of untruths. She had explanations for almost every inconsistency, all of them, on analysis, I have found to be untrue. On one rare occasion she had no explanation for handing a piece of paper to Celestine Charles whom she did not know. This evidence is yet

another piece of the jigsaw of detail which, taken together, amply demonstrates that, in my judgment, the Claimant was involved with the others named in this fraudulent enterprise. I am not able to conclude from the CCTV that the Claimant knew that Asan Akram, the bus inspector was also involved in the fraud; she may have done and her conduct, as with the conduct of others, in openly smoking in front of him may suggest that she was content that such misbehaviour would not be challenged because he was involved in the fraud. However, it is not necessary that I make a finding here and do not so.

43. It may be that the Claimant did not know personally all of the other persons on the bus prior to boarding it. If not, it seems to me highly likely that it must at the least have become clear to her at some stage that others whom she did not know were also seeking to benefit from the imminent induced collision. I infer from the fact that many on the upper deck of the bus did not seek to leave the bus after the collision had occurred that they were more keen to pass on their contact details to the First Defendant, despite any obvious sign of distress or injury, than to continue with their onward journey on a mid-to-late Sunday evening. For example, there does not appear to have been any impetus on the part of Zara or her friends to go to the ice rink, despite that having been the plan to celebrate her birthday. There is conduct on the part of two passengers which makes sense only if they were also involved in the fraud. Paula Dewhurst went to remove the piece of paper from behind the machine in the driver's cab; whatever, was written on the paper she must have known that it was important to remove it. This conduct is explicable only if she too was involved in the fraud, which I find that she was. Again, I infer that Mark O'Grady's conduct in moving back one seat from the very front of the upper deck just prior to the collision demonstrates that he too knew what was about to happen.

44. There is also other conduct which strongly implies operational pre-planning in relation to the fraud. Most compelling of all are telephone calls made on 6th February 2011 prior to the accident between Tariq Iqbal and persons who were subsequently passengers on the bus, namely Taurean Edwards and Lewis Fredericks. There is also a common third mobile number [07407 359194] which both Tariq Iqbal and Chezelle Mousah rang prior to the accident. After the accident, Mr Iqbal calls this number several times. He also rings Taurean Edwards on four occasions. Lewis Fredericks and Chezelle Mousah were also in contact with each other by telephone. There is no innocent explanation which can account for these connections and I therefore accept that this demonstrates to a very high degree the probability

that this was some part of the preparation for the collision to take place later that day.

45. Others who were not themselves passengers were also involved in arranging and perpetrating this fraud: They include Tariq Iqbal and Asan Akram, whose involvement has been the subject of their convictions on the basis of their own confessions. I have concluded that on the balance of probabilities the bus driver, Raja Shahzad was also involved in the fraud. Why else was a piece of paper placed behind a machine in the driver's cab and later removed? According to the CCTV, the collision was a gentle one. Following the accident, Mr Shahzad did not take exception to Tariq Iqbal, the Mercedes driver entering his bus nor the unidentified male. This is remarkable. None of this conduct makes any sense to my mind unless the explanation is that Mr Shahzad was himself content that this should happen because he was implicated in the fraud.
46. I draw no conclusion from the fact that so many potential claimants instructed the same firm of solicitors in the first place. This is not an unusual feature where there are genuine claimants. In the current climate it would be unsurprising if an entrepreneurial solicitor who had heard of one or a small number of claims did not then aggressively pursue any leads and perhaps collect a large number of claims from persons who may or may not have had any prior connection with each other.
47. The issue for me is whether the Claimant genuinely suffered personal injury because she was an innocent passenger who has made a genuine claim which has been incorrectly viewed with suspicion by the Defendants or whether the Claimant's conduct, behaviour and evidence prove that she too has been a participant in this fraud.
48. At all times during this judgment I have kept firmly in mind that I should only reach the conclusion in this case that the collision was fraudulently induced and that any person was knowingly involved in that collision for the purpose of bringing a manufactured claim for personal injury if such a serious allegation is supported by strong, cogent and compelling evidence and that such a finding is justified on the balance of probabilities. For all the reasons set out above, I am satisfied to a very high degree on the balance of probabilities that the accident was fraudulently induced, that the Claimant knew in advance that this would be done and that she knew that certain others would by arrangement be on the bus to enable them to bring manufactured claims and that she joined in this dishonest conspiracy.

49. If she had suffered any personal injury her criminal conduct would operate to deny her any remedy in damages by application of the legal maxim *ex turpi causa actio non oritur*.

50. I have additionally considered her evidence as regards her alleged injuries. I have it clearly in mind that, although a collision may be staged, it does not follow that such a collision can always be so controlled as to avoid the occurrence of injury altogether. However, in this case I find that the Claimant did not suffer any injury or financial loss at all. I specifically find that at no stage did she ever mention her injuries to her GP. I am satisfied on the balance of probabilities that the reason why her GP records are silent as to any examination of her wrist on 7th February 2011, the day after the accident, was that she did not complain of any injury; the reason for the absence of any complaint was that she had not suffered such an injury. I find that her explanation to Dr Bauer as to how she sustained her injuries was untrue; the CCTV shows clearly that her wrist did not become trapped between the rail and her chest. Her conduct on the bus in holding her neck at a time when she was not in pain, on her own account, and when she was apparently in a happy mood was nothing other than play-acting. As she suffered no injury and no ensuing financial loss, she has no remedy in damages.

51. I have therefore come to the conclusion that the Defendants have discharged the burden of proving on the balance of probabilities to a very high degree that the Claimant has been dishonest and fraudulent as alleged and that the Defendants have discharged that burden by adducing strong, cogent and compelling evidence. The Claimant's claim therefore fails. The Claimant's case was that, whatever the involvement of others may have been in this fraud, she had no foreknowledge of any such fraud and that hers was a genuine claim. Although she has claimed that she sustained injuries as a result of a road traffic collision while she was an innocent passenger on the bus and that she was unaware of any fraudulent conspiracy involving an induced collision, I have come to the conclusion that she has been comprehensively untruthful in her accounts to me. In my judgment, she commenced and pursued to trial a blatantly dishonest attempt to obtain damages for personal injury to which she has at all times known that she was not entitled. She was a party to the attempt fraudulently to manufacture claims for damages for personal injury; in her case, she sustained no injury at all.

52. I therefore dismiss the Claimant's claim.

Costs

53. Counsel for each party has provided written submissions as to what each contends is the appropriate costs order in the light of my findings and has indicated that there is no objection to my determining this issue without a further oral hearing. In the light of the written submissions that is what I propose to do.
54. Both parties agree that the appropriate order is that the Claimant should pay the Defendants costs. However, they are not agreed to the basis on which costs should be ordered. While the Defendants seek an order on the indemnity basis the Claimant contends that I should order these on the standard basis. Both agree that I have a discretion as to what order I make. My attention has been drawn to **CPR 44.2**, **CPR 44.3** and the decision of the Court of Appeal in ***Esure v Quarcoo [2009] EWCA Civ 595***.
55. Ms Symington, on behalf of the Defendants, contended that the law is clear that that in the light of the clear reasoning in the judgment of Waller LJ. at paragraph 27 in ***Esure*** I should exercise my discretion to award costs on the indemnity basis.
56. Mr Hughes, for the Claimant, reminded me that the Claimant is an unemployed single parent who has two children at home and who is of limited means and whose cost will not be met by her ATE Insurance policy in the light of the findings of her fraudulent conduct which I have made in this case and contends that, in those circumstances, I should award costs on the standard basis only because this would ensure that I achieve the overriding objective to deal with the case justly.
57. It is clear to me both from first principles and from the judgment in ***Esure*** that the reference to conduct in **CPR 44.2** is a relevant consideration when deciding on the basis of cost under **CPR 44.3**. Any other construction would be nonsensical. **CPR 44.2(5)** provides that:

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; and

(d) whether a claimant who has succeeded in the claim, in whole or in part, exaggerated its claim.

58. As I have found in this case, the Claimant has from first to last advanced and maintained an entirely fraudulent claim. Having regard to **CPR 44.2(5)** in its entirety and to the reasoning of Waller LJ. in **Esure** it seems to me that, where the Claimant has been involved in such conduct, the Defendants are entitled to have their costs paid on the indemnity basis, not just because of the extra cost which the Defendants almost certainly have incurred in defending such a claim but so that others are discouraged. Notwithstanding Mr Hughes' submissions to the contrary, the Claimant's personal circumstances are not a relevant consideration in relation to the basis of the order which I have to determine. Whether they may be relevant to subsequent issues is not a matter for me.

59. Accordingly, the order I make is that the Claimant will pay the Defendants' costs of the claim on the indemnity basis.

60. Miss Symington, on behalf of the Defendants, has effectively asked me to indicate whether I would be in a position to deal with any committal proceedings and as to the advisability of the Defendants pursuing committal proceedings against the Claimant. Committal proceedings can only be pursued before a judge of the High Court. I am not authorised to sit as a deputy judge of the High Court. It would not be appropriate for me to express any views on the advisability of committal proceedings and I do not do so.

61. I direct that Ms Symington should draw up the appropriate order and agree it with Mr Hughes and submit it to the court for sealing by no later than 4pm on Monday 9th November 2015.

Recorder David Heaton QC
23rd October 2015