



Neutral Citation Number: [2025] EWHC 3091 (KB)

Case No: KA-2023-000247

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ON APPEAL FROM THE CENTRAL LONDON COUNTY COURT
HER HONOUR JUDGE BAUCHER

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24 November 2025

Before:

Mr Justice Birt

Between:

EDA YAMAN

Appellant

- and -

TESCO STORES LIMITED

First
Respondent

MANISH PARMAR

Second
Respondent

Philip Williams and Teri Howell (Direct Access Counsel) for the **Appellant**
Aaron Pulford (instructed by **Keoghs Solicitors**) for the **First Respondent**
The **Second Respondent** did not appear

Hearing date: 28 October 2025

Approved Judgment

This judgment was handed down remotely at 10.00am on 24 November 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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MR JUSTICE BIRT

MR JUSTICE BIRT:

1. This is an appeal from an order of Her Honour Judge Baucher (“the trial judge”) sitting at Central London County Court, which was made on handing down of her judgment on 17 November 2023 following a trial she heard on 23 and 24 October 2023.
2. The action had originally been commenced by the appellant (“Ms Yaman”) as an action for damages arising out of a road collision on 3 August 2019. The second defendant (“Mr Parmar”) was the driver of a van said to have hit Ms Yaman’s car (a BMW 3 Series) being driven by her husband, Mr Mustafa Zada (“Mr Zada”), and in which she was a passenger. Mr Parmar was a driver for the first defendant (“Tesco”). Before proceedings were commenced, Tesco had settled the claims of Ms Yaman and Mr Zada for general damages.
3. Ms Yaman brought the proceedings (in July 2021) seeking to recover further damages for credit hire charges. That claim was discontinued on 26 January 2022. However, in the meantime, in September 2021, Tesco had brought Part 20 proceedings against Ms Yaman and Mr Zada on the basis that the collision had been staged and that the claims for damages had been fraudulent. It was said that this claim was part of a wider “cash for crash” fraud ring. Damages were sought in the torts of deceit and conspiracy. The Part 20 claim had originally also been brought against Mr Parmar, but Tesco’s claim against him was stayed on 18 October 2021. The trial in October 2023 was of Tesco’s Part 20 claim against Ms Yaman and Mr Zada. At the trial, Ms Yaman was represented by Ms Teri Howell (as direct access counsel) and Mr Zada represented himself. Mr Pulford represented Tesco.
4. The judgment given on 17 November 2023 held Ms Yaman and Mr Zada liable in deceit and unlawful means conspiracy. Ms Yaman was ordered to pay £23,339.45 in compensatory damages and interest, plus £18,000 in exemplary damages. Mr Zada was ordered to pay £5,527.97 in compensatory damages and interest, plus £18,000 in exemplary damages. Tesco was also awarded its costs of the action on the indemnity basis.
5. This appeal against the trial judge’s order is brought by Ms Yaman (but not by Mr Zada) on two grounds for which permission to appeal was given by Tipples J in an order dated 13 December 2024. These are referred to as grounds 3 and 4 because permission to appeal was refused (by Eyre J in an order dated 10 May 2024) for the original grounds 1 and 2.

“Ground 3. That HHJ Baucher was so jaundiced and hostile in her approach to the Appellant’s evidence, her Counsel’s submissions on her behalf and Mr Zada’s evidence, it was unfair and would cause any fair minded observer to conclude that the HHJ Baucher was bias and/or that there was a procedural irregularity.

Ground 4. The judge was so excessive in her interventions during the cross examination of the Second Respondent and the First Respondent expert witness, Mr Peter Etherington, it was unfair and restricted the ability of the Appellant to fully examine the evidence and put forward her case.”

6. For completeness, the grounds for which permission to appeal was denied, which Mr Williams confirmed in his oral submissions the Appellant was not seeking to reopen, were as follows:

“Ground 1. It was wrong for the court to find that the Claimant and the Part 20 Defendant had conspired with persons unknown to stage an accident with the intention of seeking compensation from the Second Defendant as the way in which the trial was conducted was perverse and manifestly unfair.

Ground 2. The court was misled as to whether the First Defendant and the Second Defendant had an agreement regarding the referral to the Attorney General for prosecution following the conclusion of the trial. It was so unfair it was an affront to the administration of justice.”

The proceedings below

7. I have outlined the background to the proceedings above. The trial of Tesco’s claim against Ms Yaman and Mr Zada took place on 23 and 24 October 2023 at Central London County Court before the trial judge. Judgment was handed down on 17 November 2023 on the same day as four other cases, which had been linked to this action at an earlier procedural stage, and were all heard by the trial judge.

8. The parties’ basic positions at trial were summed up by the trial judge in paragraph 6 of her judgment as follows:

“Tesco’s case is that the accident on the 3rd August 2019 was staged by Ms Yaman, Mr Zada and Mr Parmar, assisted by other unknown individuals, and that this accident was, but one, of a series of targeted staged accidents involving drivers employed at the Greenford depot to recover compensation from Tesco. Ms Yaman and Mr Zada contend this was a straightforward road traffic accident caused by the negligence of Mr Parmar.”

9. At the trial, Tesco called a number of witnesses who gave oral evidence, including Mr Parmar, who was given a warning against self-incrimination before he gave his evidence. Mr Parmar said he had been involved in five staged accidents during his time employed by Tesco as a delivery driver, that they were arranged by two individuals he said he knew as “Nik” and “Dee”, and that he was paid for his involvement. His credibility was in issue at the trial. As described by the trial judge at paragraph 70 of her judgment:

“Ms Howell’s primary submission was Mr Parmar’s credibility. Ms Howell placed emphasis on Mr Parmar’s admitted drug habit and the complete volte face in relation to his evidence in respect of this accident. She said Mr Parmar’s evidence was riddled with discrepancies and alterations such as the positioning of Nik and Dee, where their Mercedes was located, whether he had seen the Blue BMW and whether Mr Parmar had exited his vehicle. Ms Howell contended that the photograph produced by Ms Yaman

proved Mr Parmar was mistaken when he said he had remained in his vehicle throughout. Ms Howell submitted his evidence was so unreliable it should be rejected....”

10. Tesco also relied upon evidence in writing from further factual witnesses (three former Tesco delivery drivers), as well as expert evidence given by i) Mr Peter Etherington, who the trial judge described as a forensic engineer, and ii) Ms Karen Caramiello, a handwriting expert. Mr Etherington had produced a report identifying the damage to Ms Yaman’s vehicle, which he appears to have done from documents and photographs as he did not conduct a physical inspection of the vehicle. He gave an opinion on the compatibility of the various areas of damage (he identified seven) with the suggestion that the damage was caused by a collision with the Tesco van. Of the seven areas of damage, the trial judge recorded that Mr Etherington said he had only been able to identify one which could be consistent with the car coming into contact with the Tesco van.
11. Ms Caramiello gave evidence about the handwriting on the “bump card” which was the initial collision report. This was supposed to be filled in by the driver of the Tesco vehicle, but Mr Parmar said it had been pre-filled in by Nik and Dee. Ms Caramiello had examined the handwriting on the bump cards for this accident as well as those for some of the accidents in other of the linked cases (in not all of which Mr Parmar had been the driver). Her evidence as recorded by the trial judge at paragraph 60 of her judgment was that there was “*strong evidence to support the proposition that those entries ... were made by one person..... and limited evidence that Manish Parmar made this writing.*” I also note that the trial judge recorded at paragraph 81 of her judgment that the driver’s name as first written on the card was crossed out, and the name then written was incorrectly written as “Mr Parmer”.
12. Ms Yaman and Mr Zada both gave oral evidence at the trial. They contended they were innocent parties who were not involved in any conspiracy.
13. It is apparent from the judgment that the trial judge carefully considered the evidence that had been given at trial. She relied on the bump card, and found (consistent with Ms Caramiello’s evidence) that it had not been completed by Mr Parmar. She spent time analysing photographs that Mr Zada and Ms Yaman had originally said were taken at the scene of the accident, but which the judge found was not correct, and that the photographs had been “*produced in an attempt to maximise the amount of compensation Tesco was obliged to pay in this case*” (at paragraph 85). She held Mr Zada and Ms Yaman had lied about this.
14. The trial judge found Mr Etherington to have prepared a comprehensive report and said he was an impressive witness. She set out a number of his views which supported Tesco’s case. She concluded that his report and oral evidence were “*extremely cogent and compelling evidence*” which she had “*no hesitation*” in accepting (paragraph 90).
15. She considered Mr Parmar’s evidence “*very carefully as he admits perverting the course of justice and other criminal offences [and] I am also aware the Part 20 proceedings against him have been stayed*” (paragraph 91). However, whilst there were discrepancies in his evidence, the trial judge was satisfied he was telling the truth in his oral evidence. She pointed out the consistency of his evidence with the other evidence

she had received from other former Tesco drivers at the same depot that they were approached for involvement in stage-managed crashes.

16. The trial judge was scathing about Ms Yaman and Mr Zada's evidence. She found they had "*from the outset constructed a fairy tale...*", and that part of Ms Yaman's evidence was "*bizarre*". I will not recount everything she said about their evidence, but suffice to say that over the course of paragraphs 92 to 95 of her judgment she analysed it and rejected it. She rejected their evidence that their vehicle was moving at the time of the accident, but rather found that it was stationery (which she noted was consistent with the expert evidence) and that Ms Yaman and Mr Zada deliberately allowed Mr Parmar to crash into their vehicle as a stage-managed crash.

17. Her conclusions (at paragraph 97 of her judgment) began as follows:

"I find that based on the evidence of Mr Suleman, Mr Salazar and Mr Palenta, Tesco drivers were being targeted to have staged crashes for cash payments. I am satisfied Ms Yaman, Mr Zada and Mr Parmar, with others unknown, worked together to create what on the surface looked like an accident. They chose a quiet crescent late at night when they hoped there would be little traffic and no pedestrians to witness their activity. On the evidence of Mr Etherington, the vehicle did not sustain any damage, which could have been sustained in the crash if the vehicle was moving. There is also extensive claimed damage which I find has been caused by a heavy blunt instrument when the vehicle was stationary. I find the entirety of the claim to be a total sham. I find Ms Yaman, Mr Zada and Mr Parmar contrived together with others for the sole purpose of unlawfully extracting compensation from Tesco."

18. She found that both Ms Yaman and Mr Zada had made false statements which they knew to be untrue in seeking to make a claim for the accident. She went on to hold that Ms Yaman and Mr Zada had conspired, with parties unknown, to intentionally cause a collision with Mr Parmar's van, for the purpose of receiving payment. She concluded that Tesco succeeded in its claims in the torts of deceit and conspiracy and ordered Ms Yaman and Mr Zada to pay the sums of money I have set out above.

The appeal

19. I have set out above the two grounds for which permission to appeal was granted – grounds 3 and 4. They contain allegations concerning the conduct of the trial, in particular (a) what is alleged to have been the hostility and jaundice of the trial judge to Ms Yaman's and Mr Zada's evidence, and to Ms Yaman's counsel's submissions, such that it was unfair, and that any fair minded observer would have concluded the trial judge was biased and/or there was a procedural irregularity, and (b) that the trial judge was so excessive in her interventions during the cross-examination of Mr Parmar and Mr Etherington that it was unfair and restricted Ms Yaman's availability to fully examine the evidence and to put forward her case. In support of these contentions, I was directed by Ms Yaman's skeleton argument to numerous extracts from the transcript of the trial, and was taken through a number of these in court at the hearing of the appeal. I was also provided with an audio file of the recording of the trial, and

was directed by Ms Yaman's skeleton argument to a number of extracts (running in aggregate to a length of time of just short of an hour) which I was asked to listen to. I have listened carefully to all of those extracts from the audio file, as well as to others relating to some of the other transcript extracts that were relied upon.

20. As I have noted, there is an allegation of bias against the trial judge. Ground 3 of the appeal made it clear, as did Mr Williams in his oral submissions, that the allegation was not one of actual bias, but of an appearance of bias, and that the alleged appearance was based upon the conduct of the trial judge during the evidence of Ms Yaman and Mr Zada and during Ms Howell's submissions on Ms Yaman's behalf. The allegation of bias did not extend any further than that.
21. There was no real dispute between the parties in relation to the test that the Court should apply when considering an allegation of appearance of bias. In *Porter v Magill* [2002] 2 AC 357 Lord Hope set out (at paragraph 103) the following formulation:

"The question is whether the fair-minded and informed observer, having considered the facts, would conclude that there was a real possibility that the tribunal was biased."

22. In relation to this inquiry, the opinion of the notional and fair-minded observer is that of an objective and informed observer, and is not to be confused with the opinion of the litigant: *Harb v Aziz* [2016] EWCA Civ 556 at paragraph 69. As Lord Dyson MR there went on to say:

"... the litigant is not the fair minded observer. He lacks the objectivity which is the hallmark of the fair-minded observer. He is far from dispassionate. Litigation is a stressful and expensive business. Most litigants are likely to oppose anything that they perceive might imperil their prospects of success, even if, when viewed objectively, their perception is not well-founded."

23. In relation to interventions of the judge during the trial which are contended to have been excessive, Mr Williams placed emphasis on a number of passages from the Court of Appeal's decision in *Shaw v Grouby and another* [2017] EWCA Civ 233, which included the following:

"5. I accept Mr Auld's submission that the question of whether there was a fair trial cannot be determined simply by the fact that the judge produced a coherent and reasoned judgment in which he resolved the factual issues in dispute between the parties. It requires one to consider the prior question of whether the judge's intervention prevented the witnesses from being able fairly to put their evidence before the Court and prevented the evidence which they did give from being fairly and properly adjudicated upon."

And:

"42. Guidance on what can amount to procedural unfairness was given by this Court in *Southwark LBC v Kofi-Adu* [2006] EWCA

Civ 281; [2006] HLR 33. In that case there were persistent interruptions by the judge including occasions when he told counsel that there was no point in cross-examining the witnesses or became involved in fairly heated exchanges with counsel about what evidence was relevant. At times the judge's interventions reached a point where the witness could, it was said, be forgiven for feeling that she was facing two simultaneous cross-examiners in the person of counsel and the judge. In his judgment Jonathan Parker LJ said:

“142. It is important to stress at the outset that, within the bounds set by the CPR, a first instance judge is entitled to a wide degree of latitude in the way in which he conducts proceedings in his court. However, that latitude is not unlimited. Ultimately, the process must always be the servant of the judicial function of dealing with cases justly (see the overriding objective expressed in CPR 1.1). In an adversarial system such as we have developed in this jurisdiction the discharge of that function requires the first instance judge (as Lord Denning M.R. put it in *Jones v National Coal Board* [1957] 2 Q.B. 55 at 63):

“... to hear and determine the issues raised by the parties, not to conduct an investigation or examination on behalf of society at large”

.....

145. Nowadays, of course, first instance judges rightly tend to be very much more proactive and interventionist than their predecessors, and the above observations (made, in the case of Lord Denning M.R., almost 50 years ago, and, in the case of Lord Greene M.R., more than 60 years ago) must be read in that context. That said, however, it remains the case that interventions by the judge *in the course of oral evidence* (as opposed to interventions during counsel's submissions) must inevitably carry the risk so graphically described by Lord Greene M.R. The greater the frequency of the interventions, the greater the risk; and where the interventions take the form of lengthy interrogation of the witnesses, the risk becomes a serious one.

146. It is, we think, important to appreciate that the risk identified by Lord Greene M.R. in *Yuill v Yuill* does not depend on appearances, or on what an objective observer of the process might think of it. Rather, the risk is that the judge's descent into the arena (to adopt Lord Greene M.R.'s description) may so hamper his ability properly to evaluate and weigh the evidence before him as to impair his judgment, and may *for that reason* render the trial unfair.” ...

43. The question therefore for us is whether Judge McCahill became so involved in the examination of the witnesses that he either made it impossible for Mr Auld properly to conduct his clients' case or lost the ability to reach balanced and objective conclusions on the evidence which he heard. ...

46. ... The allegation of unfairness requires one to look carefully at what were the real issues in the case and how the judge's conduct impacted on them. I acknowledge that if the judge's treatment of the witnesses displays a hostility which gives an impression of bias or a complete lack of objectivity as in *Kofi-Adu* then the Court of Appeal has little option but to order a re-trial."

The matters complained of on the appeal

24. Ms Yaman's skeleton argument set out a list of points which it was contended demonstrated the complaints made about the trial judge's conduct. These were grouped in relation to Ground 3 and Ground 4. I will deal with each of these in turn.

Ground 3

25. The first set of examples under ground 3 was said to demonstrate the trial judge's "*hostility and jaundice*" towards Ms Yaman and her case. They were as follows:

- i) Ms Yaman complains that, when she sought in her evidence to explain her presence at the location of the crash by reference to her having visited an unnamed friend at an unidentified address, and having been asked to identify her friend and refused to do so (saying the friend "*didn't want to be involved*" and "*I can't give her information*"), the trial judge stated "*So you are refusing to answer the question?*" and then followed that with a question to Tesco's counsel asking "*Do you want me to make a note of that?*". Ms Yaman contended that this exchange left an impression of bias. It was said that there was no good reason why the trial judge would ask Tesco's counsel whether he would like her to make a note. The tone used by the judge when addressing Ms Yaman was also criticised.
- ii) Ms Yaman contended that the trial judge continued to interject in her cross-examination, expressing her disbelief in her evidence when the judge said: "*so you were on your way back from seeing this person that you refuse to name to go and see somebody you were about to hire.... at 10:30 at night*". It was said the interjection was unnecessary, that nothing about Ms Yaman's evidence on this had been unclear and that it only served to demonstrate to Ms Yaman that the trial judge did not believe her. This was said to be demonstrated by the recording.
- iii) A little while later, Ms Yaman contends that the trial judge interjected in her cross-examination and spoke to her in an "*admonishing tone*" in the following exchange when the trial judge asked, in the context of a photograph the witness was being shown, to "*Have a close look please*", to which Ms Yaman responded "*I mean I can see a white bit here, but I don't really see...*", and the trial judge

in turn responded: “*There’s a white line on the ground there, can you see the ... white line*”. Ms Yaman contended that Tesco’s counsel had put questions to her, and was perfectly capable of asking the questions, such that there was no reason for the trial judge’s intervention which, she said, demonstrated “*a level of bias and frustration at the Appellant*”. Again, this is said to be demonstrated by the recording.

- iv) The last of these examples related to the trial judge asking a question about how much Ms Yaman said she had recovered, as a result of the accident, from a GAP insurance policy. Ms Yaman contended that the trial judge “*interjects*” over Tesco’s counsel, and took “*an admonishing tone*” with Ms Yaman when she asked “*How much?*” and, in response to Ms Yaman’s answer “*I don’t recall honestly, sorry*”, then said “*have a think*” before asking more questions. It was alleged this was “*distinctly different*” from the way in which the trial judge approached Mr Parmar’s cross-examination. Again, my attention was drawn to the tone used by the trial judge in the audio recording.
26. In fact, none of these examples demonstrated any level of “*hostility and jaundice*” towards Ms Yaman or her case, still less did they indicate (nor would they have indicated to any fair minded observer) that the trial judge was biased or that there was any form of procedural irregularity. I will make some comments about each of the examples in turn, but it is important before doing so to note that judges are not passive spectators at a trial. They are entitled, when appropriate or necessary, to intervene, including to seek clarity in the evidence and to ensure they understand what is being said. Care, of course, must be exercised when they do so, as the passage from *Southwark LBC v Kofi-Adu* quoted in *Shaw v Grouby* (set out above) makes clear. Moreover, attempts to seek to infer a trial judge’s intention from the “tone” used through listening to an audio recording are fraught with difficulty. Nonetheless, I have, as I have already noted, listened carefully to the audio extracts in question to assist in understanding the submissions being made and in bringing to life the transcript extracts, as well as in seeking to discern whether a hostile “tone” was used (as Ms Yaman alleged).
27. As to the first example identified above, in circumstances where Ms Yaman was being asked to explain her reason for being in the place where the “accident” took place, the fact that she had not, and did not want to, identify the friend who she said she had just visited was clearly a point to be pressed by a cross-examiner. When the witness did not identify the person, it is not surprising that the trial judge asked her to answer the question and, when Ms Yaman said she would not do so, to record that the witness was refusing to answer the question. None of that displayed any hostility or “jaundice” towards Ms Yaman, and the tone that was used was, in my view, entirely appropriate. Nor is there any criticism to be levelled at the trial judge for following up the exchange by asking Tesco’s counsel whether he wanted her to make a note of the refusal. Of course the trial judge was able to make a note whether counsel wanted her to or not, but the trial judge by saying this was obviously communicating to the parties that she found Ms Yaman’s refusal to answer the question to be significant, and to underline to Ms Yaman the seriousness of the position that she was taking. It also may have been an inquiry seeking to understand from Tesco’s counsel whether the lack of an answer to this question was likely to form part of his case. In any event, such a remark or question is not a sign of hostility nor does it suggest any appearance of bias on the part of the trial judge.

28. As to the second example, this was a simple attempt by the trial judge to summarise the gist of what she understood was the evidence being given to ensure she understood it. There was nothing out of the ordinary about it at all, in particular when it is read in the context of the preceding exchanges between counsel and the witness. There was nothing in the trial judge's intervention that suggests "*expressing her disbelief*" in Ms Yaman's evidence, either in the words used or in the way that they were delivered (including by reference to listening to the audio recording of this intervention). It was wholly unobjectionable.
29. As to the third example, this formed part of Ms Yaman's evidence about a photograph that she had said was taken at the scene of the accident. Mr Pulford's line of questioning was that there was a white parking bay line in the photograph, whereas there were no such white parking bay lines on the road where the accident was said to have happened. After having asked Ms Yaman some questions about the photograph, and what it showed, he pressed her with the point that it seemed that, when the photograph was taken, the car was in a painted bay next to a white car. Ms Yaman's response was:

"I mean I can't say, I can't really see honestly".

Following that, the trial judge intervened to try to get Ms Yaman to focus on the photograph and answer the questions in the following exchange:

"Her Honour Judge Baucher: Have a close look please.

Mrs Yaman: I mean I can see a white bit here, but I don't really see ...

Her Honour Judge Baucher: There's a white line on the ground there, can you see the –

Mrs Yaman: Yes.

Her Honour Judge Baucher: White line?

Mrs Yaman: Yes.

Her Honour Judge Baucher: Yes, well look at the photograph, what's being said is you can see a white car reflecting in it. What's your answer to that?

Mrs Yaman: I mean it's because when we stopped I think when we did, we did move so we weren't blocking the road because the Tesco vehicle, they'd moved to the left side of where he was and we parked along the picture that you had provided where the black car was right there, that's where we stopped."

Mr Pulford then resumed his questions.

30. There was nothing objectionable in the trial judge intervening in that way to seek to get the witness to focus on the photograph and the questions being asked. It was said on behalf of Ms Yaman that the trial judge adopted an "*admonishing tone*" in doing so. I have to say that, having listened to the audio file of this extract, I do not recognise that

at all. The trial judge intervened with courtesy and care, and with no obvious “tone” suggesting hostility or admonishment. (And, for the avoidance of doubt, the trial judge’s intervention “*There’s a white line on the ground there...*” was not an interruption of Ms Yaman’s previous answer – as is clear from the audio, Ms Yaman’s previous answer trailed off, followed by a period of silence before the trial judge’s next question.) The suggestion in Ms Yaman’s skeleton argument that the way the trial judge addressed Ms Yaman in this exchanged demonstrated “*a level of bias and frustration*” at her was entirely unwarranted.

31. As to the fourth example, Mr Pulford asked Ms Yaman whether she had, in addition to the compensation received from Tesco for the damage to the car, also received money from her GAP insurer. She confirmed she had done. The trial judge then asked her how much she had received in the following exchange:

“Her Honour Judge Baucher: How much?

Mrs Yaman: I don’t recall honestly, sorry.

Her Honour Judge Baucher: Have a think.

Mrs Yaman: Maybe £3,000 to £5,000 I think it was. Don’t remember.”

Mr Pulford then continued with his questions.

32. Again, it was suggested the trial judge took an “*admonishing tone*” in that exchange and, as above, having listened to the audio file I do not recognise that description at all. There was nothing objectionable in the trial judge asking this question, or having received the answer “*I don’t recall*”, to press the point with “*Have a think*”. Ms Yaman also complained that, after the end of the cross-examination, the trial judge continued to ask questions and then “*invite[d] Mr Pulford to continue*”. However, there was nothing objectionable in the exchanges, which were as follows:

“Mr Pulford: Your Honour, I have no more questions for this witness. Do you have any questions for Ms Yaman?

Her Honour Judge Baucher: How much did you get for the car, how much did it cost you to repair the car?

Mrs Yaman: I think it was £18,000.

Her Honour Judge Baucher: You spent £18,000 repairing the car?

Mrs Yaman: Yes.

Mr Pulford: On that –

Mrs Yaman: It was between £13,000 and £18,000.

(pause)

Her Honour Judge Baucher: Sorry, did you say you wanted to ask something about that?

Mr Pulford: Yes, one matter arising, Your Honour. ...”

33. There is nothing out of the ordinary in a judge asking their own questions after the completion of cross-examination or in then asking whether there is anything arising out of the answers to her questions on which counsel wants to follow up. In addition, there is nothing in the suggestion that the way the trial judge acted here was “*distinctly different*” from how she approached Mr Parmar’s cross-examination. There was certainly nothing in these exchanges that suggested hostility towards Ms Yaman or appearance of bias in any respect.
34. The second matter advanced under ground 3 was that the trial judge had demonstrated “*hostility and jaundice*” towards Mr Zada when he gave his evidence. This was said to be based on the trial judge’s intervention to ask Tesco’s counsel, “*Are we going to be looking at the page on 590?*” and “*Are we going to be looking to the fact that there’s six accidents recorded there –*”, which is said to have given the impression the trial judge had drawn conclusions about what Mr Zada should be cross-examined about. It was contended that the trial judge effectively took over the cross-examination of Mr Zada, who (it was emphasised on the appeal) did not have English as a first language and that, when he sought to explain, his evidence was met with the trial Judge’s “*retort*” of “*please answer the question ... the third time*”. This was said to give the impression that the trial judge was “*directing how and what evidence is presented*”. Reliance was also placed on the “*tone that was taken with Mr Zada*”.
35. There was nothing in these points that suggested any bias on the part of the trial judge, or that there was any procedural irregularity. The trial judge was, in short, seeking to get evidence straight from a witness whose evidence tended to be rather unclear. In addition, part of the difficulty with Ms Yaman’s submissions on this was that they tended to take isolated points out of context. However, the context is important when looking at why the trial judge intervened to say what she did.
36. It is not surprising that the trial judge was aware of the other previous accidents – the court had a bundle of documents setting out the claim histories of Ms Yaman and Mr Zada, and in his opening submissions counsel for Tesco had explained he would be addressing those previous claims. When he had cross-examined Ms Yaman, Tesco’s counsel had asked questions about her previous claim history, including a claim involving Mr Zada. Shortly before the intervention complained of in relation to Mr Zada, Mr Pulford had been asking Mr Zada about his previous accidents, and was putting a document to him (referred to as a cache record) which, it appears from the transcript, Mr Zada was struggling to understand. It is apparent from the transcript that the trial judge’s intervention, with the reference to page 590, was made for the purpose of seeking to avoid Mr Zada having to be taken through lengthy documentary records which, it was clear, he was struggling to follow. The full quotation from the transcript of what the trial judge said is important (rather than the cropped version set out in Ms Yaman’s skeleton argument):

“Her Honour Judge Baucher: Are we going to be looking at the page on 590?

Mr Pulford: We will, Your Honour.

Her Honour Judge Baucher: Yes well I would, I would suggest that given the difficulty that we've already been told about *from* Ms Yaman with Mr Zada looking at documents perhaps that we keep the reference documents as short as possible. Are we going to be looking to the fact that there's six accidents recorded there

—

Mr Pulford: Yes, Your Honour.

Her Honour Judge Baucher: Yes, well it's a matter of record isn't it?

Mr Pulford: It is, but one of them has salient content which I intend to deal with here.

Her Honour Judge Baucher: Well I think can we go straight to the —

Mr Pulford: Very good.”

37. Far from this being an intervention of the trial judge trying to “direct” Tesco’s cross-examination in a way which she thought would favour Tesco, this was the trial judge making clear what was in issue and seeking to avoid the need for lengthy questioning about what were matters of record and to focus the questions on the issues.
38. Moreover, it is not a fair characterisation of matters to say that the trial judge “took over” the cross-examination of Mr Zada. The passage of evidence in question, where Mr Zada was asking to explain matters concerning the location of the accident and what he could see at the time, was not clear. From both the transcript and the audio, it is apparent that Mr Zada’s account of these matters, including his own road position, what he saw and where he said the Tesco van had been, were all somewhat difficult to follow. I am not at all surprised that the trial judge sought clarity on what he was trying to say. After an unclear answer about his position in the road, for example, the trial judge sought to get him to confirm her understanding of what he had been saying as follows:

“Her Honour Judge Baucher: So you’re saying there were cars parked both sides and you’re —

Mr Zada: Both side in —

Her Honour Judge Baucher: You’re proceeding down the middle of the road?

Mr Zada: That, both side and here.

Her Honour Judge Baucher: Yes, one each side so you —

Mr Zada: One in this side —

Her Honour Judge Baucher: Were moving down the middle of the road –

Mr Zada: And then when I drive there –

Her Honour Judge Baucher: Yes, I've got it.

Mr Zada: Not in here.

Her Honour Judge Baucher: Yes.”

39. In relation to a series of questions about where the Tesco van had been and what he had been able to see, his evidence was particularly unclear. The trial judge clearly wanted to get it straight. She intervened to ask a question herself with that in mind, and when it was still not clear she emphasised what was being asked and made it clear it was important that Mr Zada address the question:

“Her Honour Judge Baucher: Please answer the question, this is

Mr Zada: Yes.

Her Honour Judge Baucher: The third time –

Mr Zada: Come on.

Her Honour Judge Baucher: And it's me that's putting the questions to you.

Mr Zada: OK.

Her Honour Judge Baucher: It's me that's putting the question. Would you please listen carefully?

Mr Zada: Sure.

Her Honour Judge Baucher: And I'm putting the question because you're the one that's pointed to the photograph and I'm making sure I understand your evidence.

Mr Zada: OK.

Her Honour Judge Baucher: You pointed to that white van, and you said it wasn't parked there, it was on the other side, and Mr Pulford's asked you and I've asked you now for the second time, so that's three times you've been asked this question, would you please think?

Mr Zada: Sure.

Her Honour Judge Baucher: How did you know it was parked –

Mr Zada: Because according to the photo –

Her Honour Judge Baucher: On the other side?”

40. This was not the trial judge “taking over” the cross-examination, as Ms Yaman contended. It was the trial judge doing her best to get the witness to give clear evidence and to focus on the question that was being asked. She was working to ensure that Mr Zada’s evidence on this point was as clear as it could be, and to ensure he had a chance to give clear evidence, that he understood the importance of giving clear evidence and addressing the question, and that she understood the answer he was giving.
41. I should also note that, although a point was made in Ms Yaman’s skeleton argument that Mr Zada’s first language was not English, it was no part of the grounds of appeal that the trial was in any sense unfair as a result, or that Mr Zada had not been able to understand the trial or to properly participate in it (as a litigant in person) and Mr Zada has not himself sought to appeal the order. In addition, the trial judge recorded this in her judgment, in relation to which no criticism was levelled by Ms Yaman on this appeal:
- “During the course of his evidence Mr Zada stated on more than one occasion that if there was any confusion in respect of his answers this was because English is not his first language. Whilst English may not be Mr Zada’s first language Tesco offered to pay for, and arrange, an interpreter to assist Mr Zada on 17th October 2023 to prevent any such difficulty and he declined. I am satisfied Mr Zada was therefore given every opportunity to tender before this court his best evidence. I also do not consider that any of the perceived difficulties were caused by any language barriers; to the contrary I consider it was used by Mr Zada as a convenient shield.”
42. In summary, there was nothing in the matters advanced by Ms Yaman to suggest that the trial judge demonstrated “*hostility and jaundice*” towards Mr Zada, still less that any fair minded observer would have concluded as a result of the points relied upon that the trial judge was biased or that there was any procedural irregularity.
43. In relation to the Judge’s interventions in Ms Yaman’s and Mr Zada’s cross-examination, I acknowledge that there were a number of interventions, and that the trial judge pressed a number of points. I recognise that the Court in *Shaw v Grouby* said, at paragraph 46, that “*if the judge’s treatment of the witnesses displays a hostility which gives an impression of bias or a complete lack of objectivity as in Kofi-Adu then the Court of Appeal has little option but to order a re-trial.*” However, that was far from the case here. The trial judge’s interventions did not display a hostility giving any impression of bias nor a lack of objectivity.
44. The third matter advanced under ground 3 was the contention that the trial judge demonstrated hostility towards Ms Yaman’s counsel (Ms Howell) at trial. I should record that, at the appeal hearing, Ms Howell confirmed that what was meant by this was not hostility to her personally, but rather hostility towards her as a representative of her client, Ms Yaman. Indeed, it is apparent from the transcript that the trial judge was concerned for Ms Howell after she had asked for a moment because she was feeling a little faint during her cross-examination of Mr Parmar, was then quick to call a break in proceedings, and asked after her well-being thereafter. It is also clear that the trial

judge was grateful to Ms Howell for stepping in to conduct the case for Ms Yaman as direct access counsel, as she recorded in court at the end of Ms Howell's closing submissions:

"Thank you. Ms Howell, thank you, it's not, it's never easy to take on a case late on and it's never easy to take on matters as direct access counsel. I understand that and Ms Yaman should be very grateful for the representations you've made on her behalf. I've had to, you might think, be quite trenchant and ask you quite a lot of questions but the reason I've done that is to make sure that I've got your arguments in respect of all the matters that I'm going to have to address. So, thank you for that."

45. The "*hostility*" alleged was said to be apparent during the course of Ms Howell's oral closing submissions, in which it was alleged the trial judge was "*confrontational from the outset*" and taking "*entrenched positions*". It was alleged that, before considering submissions on the evidence heard at trial, the trial judge had "*made findings of fact in her own mind*" and Ms Yaman's skeleton argument on this appeal set out 10 sub-paragraphs said to support that.
46. In fact, those sub-paragraphs were a mix of examples of different kinds, including suggestions that the trial judge made findings with no or inadequate evidential basis (which was not the sort of challenge that fell within either of the grounds of appeal for which permission had been given). The central point that was being made, however, was that during those closing submissions the trial judge had already made up her mind, became "*confrontational*" when counsel sought to challenge that, was reluctant to hear submissions opposing her view.
47. The appeal is not brought on the ground that the trial judge had pre-determined any of the issues, or had a closed mind to the issues or the outcome. It is made on the basis that she was "*jaundiced and hostile*" in her approach to counsel's submissions, such that any fair minded observer would conclude she was biased and/or that there was a procedural irregularity. I can see that an appearance of pre-determination might relate to the allegation of hostility to counsel in her submissions, but it would be at best a support for that, rather than a ground in itself given the way in which the grounds of appeal (for which permission has been given) were formulated.
48. In any event, there was no basis to suggest that the trial judge had pre-determined any of the issues. To take some of the examples given in Ms Yaman's skeleton argument:
 - i) In support of the contention that the trial judge had "*made findings in her own mind*", Ms Yaman relied upon a comment made by the trial judge in closing submissions in response to Ms Howell's suggestion that, if Mr Parmar had conspired to cause a collision, it was Ms Yaman's case that she was an innocent party and "*merely passing by whatever event was taking place*":

"Her Honour Judge Baucher: Well, let, let's put it this way, I'm just trying to think of the logic of this. So, if I find that Mr Parmar was paid, which he clearly was on his evidence, if I accept his evidence that he was paid to have this crash, how, how is your, I don't understand how your client's the innocent

party in that. Are you saying it's all down to Mr Zada, are you? There's no part, there's no part 20 proceedings alleging that."

That was in no sense a "pre-determination" of the issue, or a statement about whether she *would* find that Mr Parmar had been paid. Rather, it was the testing of a hypothesis, looking to explore what conclusions could be reached if certain findings were made.

- ii) It was also suggested that the trial judge had attempted to "*control the submissions*", in particular those about the credibility of Mr Parmar when she asked counsel in response to the submission that Mr Parmar's evidence was "*unreliable*" and "*should be dismissed*" the following:

"Her Honour Judge Baucher: Right, in what way is it unreliable? I'm not going to hear generalisations. It's, it's a very, very important case for everybody, Tesco and your client and obviously Mr Zada, so if you're going to put to me that his case, evidence is unreliable I want to know chapter and verse as to why."

That was not evidence of pre-determination or hostility. It was making it clear that allegations of unreliability in respect of Mr Parmar's evidence would not carry weight if made only on a general level, but needed to be particularised. That is an unsurprising remark for the trial judge to have made during closing submissions. Nor is it correct to characterise the trial judge's questions of Ms Howell in relation to this as "*confrontational*". It is clear that she was asking for clarity and precision in the submissions that were being made, and was taxing counsel on the relevance of her points in a way that is far from unusual in closing submissions at trial. None of it demonstrated any pre-determination of the issues.

- iii) It was contended that the trial judge was "extremely reluctant" to consider Ms Yaman's case that there was no pre-existing damage to a vehicle in another, previous, case which was said to be inconsistent with Mr Parmar's evidence. The following was submitted in Ms Yaman's skeleton argument:

"Mr Parmar's evidence was challenged in respect of his evidence on a previous case (Narmar) but having interjected, HHJ Baucher was extremely reluctant to consider the Claimant's case that there was no pre-existing damage to the vehicle in that case, despite being directed to the video footage that clearly contradicts Mr Parmar's version of events. It was clear that there was a reluctance to make a finding that the footage showed that there was no pre-existing damage to that vehicle, contrary to Mr Parmar's statement."

However, it is apparent from the transcript (and audio recording) of the closing submissions that, when Ms Howell sought to make her point, the trial judge said she was not sure about the extent of the evidence on video footage that had previously been shown, so the trial judge suggested replaying it in court, which

then took place. There was then an exchange between the trial judge and Ms Howell about what the video showed in relation to pre-existing damage in which the trial judge was trying to work out what was in fact shown. It finished with the trial judge summarising what she understood the position to be as follows:

“Her Honour Judge Baucher: All right. So, you’re saying because of that he may be lying about the Namdar case and that makes him inconsistent, is that what you’re saying?”

Ms Howell: That’s right. In respect of that, that one point. ...”

None of the exchanges demonstrated that the trial judge was “*extremely reluctant*” to consider Ms Yaman’s case or that she had otherwise pre-determined this issue.

- iv) There was also a submission that the trial judge was unwilling to hear submissions against Mr Etherington’s evidence, including submissions relating to areas of inconsistency in the photographs of the damage to the car. However, it was not that the trial judge was unwilling to hear such submissions, it was that she noted what Mr Etherington’s evidence had been about what the photographs showed and when Ms Howell sought to give her own comparison in her closing submissions, the trial judge said:

“... it’s never been counsel’s position to give evidence and there is no evidence in any event to that effect. The evidence I’ve got is as per Mr Etherington and as per the photograph and he said in his, in cross-examination that his evidence hadn’t changed.”

- v) Ms Yaman went on to make submissions about the trial judge’s approach to Mr Etherington’s evidence, which shaded into criticism of the findings that the trial judge ultimately made in her judgment (which was not within the grounds of appeal for which permission had been given).
- vi) One particular further exchange relating to Mr Etherington’s evidence which Ms Yaman relied upon was the following:

“Her Honour Judge Baucher: ... I’m not going to dance on a pin in respect of this case. I’m making it abundantly clear. 3.17 I want an answer and an explanation for it.

Ms Howell: In respect of that particular photograph, Your Honour, we, what we say is that it’s highly likely that that damage has been caused after the accident.

Her Honour Judge Baucher: How, how do I get that on the evidence? Your client’s own evidence yesterday was these photographs were taken at the scene. You’re now saying, oh, well she didn’t know what photographs were taken. I said to you that even if I accept what Mr Zada’s told me this morning,

how do you explain 3.17? The answer is, there is no explanation, is there, on the evidence?

Ms Howell: On the evidence before the Court, without making reference to 477 and, and a direct comparison to that, that's as far as I can take the point for Your Honour.

Her Honour Judge Baucher: Yes. So, the answer is, and so that your client hears it loud and clear, there is no explanation for it."

The reference in that extract to "3.17" was a reference to paragraph 3.1.7 of Mr Etherington's report, in which he had highlighted particular separate impact areas on the door panel of the car, which he said (at paragraph 3.1.6) were "*not compatible with being caused as a result of contact with*" the Tesco van, but rather (at paragraph 3.1.7) were "*more consistent with deliberately inflicted damage to the door by striking the door in the three areas of maximum deformation.*" When Ms Howell said her case was that was caused after the accident, the trial judge asked her how that conclusion could be reached on the evidence. Ms Howell conceded that, without performing a direct comparison between photographs of the damage, which the trial judge had already noted (as set out above) was a matter for the expert evidence that had been given, not for a fresh comparison by counsel in oral closing submissions, she could take it no further. The trial judge then effectively repeated back to her that there was, therefore, no explanation for it. This was not symptomatic of an illegitimate pre-determination of the issue, but a testing of it in court, and an example of a judge giving counsel the opportunity to address the points which she considered important.

vii) Moreover, following that exchange, after Ms Howell had asked whether the trial judge would like her to address other unrelated damage, the trial judge made it clear that: "*I'm not wanting to curtail your submissions, so please address me on whatever you think is appropriate.*"

49. There was, therefore, no basis for the suggestion that, before considering submissions on the evidence heard at trial, the trial judge had already made findings of fact. It is not uncommon for trial judges to form provisional views on certain matters during the course of a trial, and for those then to be tested in closing submissions. The fact that is done does not mean there was a pre-determination. The exchanges do not demonstrate that the trial judge had prematurely come to a concluded view or that she had closed her mind to the argument.

50. Ms Yaman's submissions also drew attention to the fact that the trial judge said, in the extract quoted above, "*So, the answer is, and so that your client hears it loud and clear, there is no explanation for it*", suggesting that was a determination. As appears from the context of the comment, and what I have said about it above, that does not appear to me to be the case. The trial judge was clearly keen that she flush out whether there was any answer to Mr Etherington's point on this, and when it appeared there was not to ensure that the fact there was not was made clear to all in court, including Ms Yaman. In a note that she attached to the transcript of the trial after she had approved it, the trial judge explained the following:

“I do consider it is necessary for me to say something about Ms Howell’s closing submissions and my exchange with her. This was, and remains, a very serious case for all concerned. Ms Howell did not have the benefit of solicitors and was commendably dealing with the matter as Direct Access Counsel. She was also only representing one party with Ms Yaman’s husband appearing in person. My concern throughout the exchange was to ensure that Ms Howell had every opportunity to address the evidence which I saw presented enormous difficulty for her client. I was also concerned as to whether Ms Howell’s client actually appreciated the strength and significance of certain aspects of the evidence and indeed, whether because of the direct access position that Ms Howell was in with Mr Zada also involved in the case, whether her client was able to listen to counsel and appreciate anything Ms Howell was explaining to her. It was also against the background that Ms Howell had felt unwell in court on the first day such that I provided a break and specifically checked she was content with the start time for the second day of the trial. I did not know whether that further difficulty had impacted Ms Howell’s opportunity to discuss with her client the full manifestations of the evidence. I have never previously addressed a party to proceedings directly in closing submissions, but because I was so concerned about Ms Yaman and her ability to navigate potentially what would lie ahead, I said “so your client hears it loud and clear there is no explanation for it.” In so doing my intention was to ensure that Ms Yaman understood the significance of the evidence and to make Ms Howell’s task easier when explaining matters to Ms Yaman in due course.”

51. In the skeleton for her appeal, Ms Yaman challenged that explanation, saying it was not accepted, and that the trial judge had no basis for thinking that Ms Yaman did not understand the evidence against her or the seriousness of the claim made against her, pointing out that (i) she had said in cross-examination that she understood she was “*facing serious allegations*” and that Tesco said she had perpetrated a fraud and (ii) that she had attended and had been visibly upset throughout the trial. However, that does not seem to me to cast any doubt on what the trial judge said were her reasons for expressing herself as she did. In short, none of (a) the fact that trial judge said in the course of closing submissions, “*So, the answer is, and so that your client hears it loud and clear, there is no explanation for it*”, or (b) the fact she felt it necessary to add the post script to the transcript of the hearing that she did, or (c) the content of that post script, suggest that the trial judge had pre-determined any issue before hearing Ms Yaman’s closing submissions, or indeed that any fair-minded observer would conclude that she was biased.
52. Moreover, none of the examples given of the trial judge having allegedly made “findings of fact in her own mind” or the similar points made on behalf of Ms Yaman demonstrate what was described as “hostility” on the part of the trial judge to Ms Yaman’s counsel.

53. It is clear from the transcript, and the audio recording, that the trial judge did ask a lot of questions of Ms Howell in her oral closing submissions. Indeed, as the trial judge noted in the extract I have quoted above from the end of those closing submissions, the trial judge herself noted that she had been “*quite trenchant and ask[ed] ... quite a lot of questions*”. However, that does not suggest that the trial judge had pre-determined any of the issues, nor were the questions asked in a way that can be described as “hostile”.
54. As I have already said, I was urged not only to read the transcript of Ms Howell’s oral closing submissions, but also to listen to the audio file of the entirety of them, which I have done. There was, no doubt, a series of robust exchanges between the Bar and the bench, and the trial judge was testing various points, and putting matters clearly to Ms Howell to respond to. On a number of occasions, the trial judge was effectively inviting Ms Howell to engage with what the trial judge saw as the difficulties in her client’s case and to address the concerns that the trial judge had with that case. However, I did not detect anything that crossed the line into hostility, or anything that was out of the ordinary at the end of a trial of this sort. I reject the submission that the trial judge was “*confrontational from the outset*” and presented entrenched positions on certain issues. She was, as I have said, seeking to test certain points, which may well have included provisional views that she had reached as a result of hearing the evidence. But none of that was done with a “hostility” that might suggest that the trial judge was biased against Ms Yaman, or that there had been some procedural irregularity.
55. In summary, I reject the contentions that the trial judge showed “*hostility and jaundice*” towards Ms Yaman and her case, or to Mr Zada, or to Ms Yaman’s counsel. There is no basis for the contention that any fair minded observer would conclude that the trial judge was biased or that the trial was procedurally unfair, whether based on the allegations that were said to demonstrate “*hostility and jaundice*” or otherwise. Nor was any procedural irregularity demonstrated by the matters complained of by Ms Yaman. Ground 3 of the appeal is therefore dismissed.

Ground 4

56. Under this ground, Ms Yaman contended that the trial judge was excessive in her interventions during Ms Howell’s cross-examination of Mr Parmar and Mr Etherington, such that it was unfair and restricted Ms Yaman’s ability to fully examine the evidence and to put forward her case. I will first deal with what was said in relation to the trial judge’s interventions in Mr Parmar’s evidence.
57. First, reliance was placed on a passage of cross-examination in which Mr Parmar, having said he had been asked (by an investigator) about one or two other accidents, was asked why they did not appear in his statement, with the submission that the trial judge “interjected” to say “*Whether he was asked about anything else is an entirely different matter. You might want to ask that, and he might say he can’t remember*”, the suggestion being that the trial judge intervened to suggest her own opinion or provide a possible response to the question. In fact, that presented a position that was too compressed, and did not take into account various other exchanges that were taking place. The position was:
- i) Ms Howell asked Mr Parmar about a statement he had given in relation a previous accident that had taken place on 12 July 2019, and asked him to

confirm he was not at that point asked about the accident on 3 August 2019, or about any of the other accidents. He then said “*I was asked about one or two of them*” and Ms Howell said they did not appear in his statement.

- ii) There then followed some discussion about what statement Ms Howell was referring to. It transpired this was not his trial statement, but a previous statement that was not in the trial bundle, of which Ms Howell had copies. After the trial Judge had said the witness ought to be taken to that statement, so that he understood what was being put, a copy was then handed up to him.
- iii) The trial judge then asked Ms Howell if the statement was about one accident, which Ms Howell confirmed was the case. Ms Howell then put it to Mr Parmar that this statement only dealt with one accident, to which he replied that it was, saying “*it’s the one with Nambar*”. That was followed by this exchange:

“Ms Howell: So when, so when I say you weren’t asked about the other accidents it certainly isn’t in this statement about the other seven incidents was it?”

(pause)

Her Honour Judge Baucher: Well he was asked on that date to make a statement in relation to the Namdar case, that’s as far as you can go. Whether he was asked about anything else is an entirely different matter. You might want to ask that, and he might say he can’t remember.”

- iv) Following an intervention from Mr Pulford to suggest that Mr Parmar have time to read the statement, the trial Judge said:

“Well I don’t think he is being asked any questions. He’s just being asked the one question: “Did you discuss anything else?” And it’s evident to me that it’s just about Namdar so the answer is no.”

- 58. This was not the trial judge suggesting a particular answer to the witness, or trying to stop the evidence. She was trying to keep things on track by understanding what was being put, and by ensuring things were put in a fair and sensible manner to the witness. In fact, the question that Ms Howell asked was for confirmation that no other accidents were dealt with in the statement, to which the trial judge was effectively trying to cut through it by pointing out that was indeed all that the statement dealt with. Moreover, no submission was made on the appeal in relation to this exchange that this intervention had closed off some particular line of questioning in relation to the case. In fact, Ms Howell then went on to ask Mr Parmar further questions arising from what he had said in that statement.
- 59. Second, Ms Yaman refers to questions Ms Howell was asking Mr Parmar about the contact he had had with Tesco in the preparation of the case. Taking it from Ms Yaman’s appeal skeleton argument:

“...it was specifically put to him that [Tesco] had continued to call him ‘*and they kept calling you*’ and HHJ Baucher interjected as he was answering the question stating ‘*he hasn’t said that they called, he said ‘I received written correspondence’* Recording exhibit REC1 demonstrates how quickly HHJ Baucher interjects and does not give the witness a chance to answer. Mr Parmar was taken to his statement where he referenced ignoring the calls of the investigator and he had confirmed speaking about ‘*one or two*’ of the accidents on his oral evidence.”

60. There was nothing untoward in this intervention. Mr Parmar had been asked (a page or two earlier in the transcript) how he had been contacted by Tesco, to which he said he “*Was sent letter and that to come through*” and that, in order to take his statement, Tesco contacted him “*Through letters*” and they did not make phone calls. Ms Howell then asked some other questions, before suggesting that Tesco kept calling him, to which the trial judge intervened to say that he had not said that, but had said he had received written correspondence. Ms Howell then put part of his statement to him, asking again whether he had received any calls, which he said he had not from Tesco, and his contact with Tesco to prepare the defence for this case was by letters sent to his house. The trial judge’s intervention, therefore, was to correct the basis of the question being put, and to get things clear, before the witness answered. This intervention was not unfair and did not restrict the ability of Ms Yaman to examine the evidence. Indeed, as I have noted, Ms Howell then went to Mr Parmar’s statement and asked him some more questions about how his contact with Tesco had taken place.
61. Third, there was a complaint that the questioning of Mr Parmar in relation to any agreement he had reached with Tesco was effectively curtailed. Reliance was placed on an exchange when the trial judge intervened in the questioning to say “*No, the agreement is that the proceedings are stayed. I’m not aware of any other agreement.*” What took place was this:
- i) Ms Howell first put it to Mr Parmar that Tesco had made a part 20 claim against him, which he agreed with, and then asked him to agree that “*it’s right that you’ve reached an agreement with ...Tesco, the part 20 Claimant in relation to that element isn’t it*”, to which Mr Parmar said “*Yeah.*”
 - ii) Ms Howell returned to that, some 17 to 18 transcript pages later, challenging his assertion that he had made his witness statement of his own free will, and referring to a “settlement” with Tesco:

“Ms Howell: That you make your statement of your own free will –

Mr Parmar: Yeah.

Ms Howell: That’s not quite right is it?

Mr Parmar: Why?

Ms Howell: Because if you didn't agree to a settlement with the Defendant –

Mr Parmar: There is no settlement.

Ms Howell: You agreed at the outset of this case that you'd reached an agreement with Tesco –

Her Honour Judge Baucher: No, the agreement is that the proceedings are stayed. I'm not aware of any other agreement."

iii) Ms Howell then went on as follows:

"Ms Howell: I'm grateful for the clarification, Your Honour. But it's right, isn't it, that by making the statement you've put yourself at a significant personal risk, and what I put to you is you've done that because Tesco have applied pressure to you to do that, it's not because it's your own free will.

Mr Parmar: It's ...

Her Honour Judge Baucher: I think that's, where is the evidence of that? That, you'll have to build the evidential bricks for that statement. It's a very serious one. You're, this is a national, or it might even be an international company because I'm not even sure if they've withdrawn from America or not, and you're alleging that they have forced this witness into the witness box. You need to build the evidential building bricks for that assertion or withdraw it.

Ms Howell: I'm, I'm happy to, to withdraw it and, and refer to submissions in that respect –"

62. There was no suggestion that Ms Howell had any further material to put to suggest that Mr Parmar had reached a "settlement" with Tesco or an agreement that went further than that the proceedings were stayed. She did not suggest anything at trial, and nor was it suggested on appeal that she was prevented from putting any further material to Mr Parmar about this. The intervention did not curtail any questioning on the motivation or reasons for Mr Parmar's change in evidence, but rather simply made clear that the only evidence of an agreement between Tesco and Mr Parmar was that they had agreed the part 20 proceedings between them would be stayed.
63. Moreover, as is apparent from the continued exchanges, Ms Howell did seek to put a case that Tesco had applied pressure to Mr Parmar for him to make his statement, which as the trial judge pointed out was a serious allegation for which a basis was required. No "evidential bricks" had been built for that suggestion, as the trial judge pointed out. Ms Howell did not, in response, suggest that she had any such "bricks" or assert that she had any basis for the suggestion she had made. Rather, she was happy to withdraw the suggestion to the witness, and said she would address the point in submissions. As it turns out, she did not subsequently do so.

64. As a result, it does not appear to me that the trial judge's intervention was unfair, nor did it unfairly restrict Ms Yaman's ability to examine the evidence or put forward her case. Mr Parmar was asked and he denied that there was any settlement between him and Tesco. If Ms Yaman had had any material to suggest there was a further "agreement" between Tesco and Mr Parmar, going beyond the stay of proceedings, it could have been put. Rather, however, when the trial judge pointed out what the evidential position was, Mr Howell was content to accept it and moved on. Insofar as Ms Howell then sought to put a case about pressure having been applied, it can be inferred, from the fact that the question was withdrawn and the suggestion that Tesco had "applied pressure" to Mr Parmar in relation to his evidence not pursued at any later stage of the trial, that there was no real case to put, and that the question as formulated had been entirely speculative. In short, the trial judge did not stop questions being answered, but pointed out there needed to be an evidential basis for matters such as this to be advanced.
65. It was also suggested that the trial judge did not intervene in similar ways during Mr Pulford's cross-examination of Ms Yaman and Mr Zada. That is not, in fact, the case. It is apparent from the transcript that the trial judge intervened on a number of occasions during Mr Pulford's cross-examination, for example to explain that the point being put was one for submissions, not for cross-examination.
66. None of the examples relied upon by Ms Yaman on this appeal demonstrated "excessive" interventions by the trial judge in Mr Parmar's cross-examination, or that the interventions were unfair or restricted Ms Yaman's ability to fully examine the evidence and put forward her case. In relation to those interventions, there is nothing in ground 4.
67. As I have already noted, Ms Yaman also complained under ground 4 that the trial judge had unfairly intervened in the cross-examination of the expert, Mr Etherington.
68. First, it was contended that the trial judge rephrased one of counsel's questions to suggest to Mr Etherington the answer she would like him to give. Mr Etherington was being asked about the damage in two photographs, and was asked by Ms Howell: "*In respect of that impact, that is consistent with the mechanism as described by Mr Parmar in 492 isn't it?*". It was contended that, before Mr Etherington answered, the trial judge "*rephrased the question entirely*", in saying: "*I think what you are being asked is why is that not consistent with the vehicle reversing out?*". Ms Yaman's contention was that the trial judge's rephrasing of the question was an attempt to suggest to Mr Etherington that he should answer the question "that is not consistent", an answer that would be consistent with Tesco's case, not with that of Ms Yaman.
69. There is nothing in this at all. It is clear that the trial judge intervened because counsel's question was unclear, and she was concerned that the witness would not understand what he was being asked. She did not intervene to prevent the witness answering counsel's question. On the transcript, after counsel's question a "pause" is marked before the trial judge spoke. Listening to the audio of this section, it is apparent that the pause was just over 10 seconds, during which pages can be heard being turned, no doubt the witness seeking to work out what it was that he had been asked about by counsel. In the circumstances, it is entirely reasonable for the trial judge, after that pause, to have spoken up to direct the witness to what he was actually being asked about.

70. The trial judge sought to clarify matters by identifying what it was that was being asked about, namely the consistency (or not) of the damage with the Tesco van reversing into the car. Her phrasing did not “suggest the answer” to the witness. It was contended by Ms Yaman that the “not” was what turned counsel’s formulation “on its head”. However, that does not seem to me to be right. Neither the fact that the trial judge sought to rephrase the question (to make it clearer) or the formulation that she used demonstrates any evidence of “*directing the questioning of the witness in a way that is bias in favour of [Tesco]*” as was alleged by Ms Yaman, still less that it was “*cogent evidence*” of the same, as was also alleged.
71. It is also difficult to see how this allegation fits into ground 4, in support of which it was advanced. Ground 4 was not and did not include an allegation of bias. The ground was that the trial judge’s interventions were unfair and restricted Ms Yaman’s ability to fully examine the evidence and put forward her case. This intervention was obviously not unfair, for the reasons set out above. Nor did it restrict Ms Yaman’s ability to put her case. The question as put by counsel was unclear. Moreover, the answer received from Mr Etherington to the above question was that there was an area of damage displaying an impact profile that could be consistent (with the Tesco van reversing), though he could not say for sure. Ms Yaman’s counsel then continued her questioning.
72. Second, it was contended that the trial judge “*specifically introduces evidence that is not within the expert’s report*” when she intervened to say: “*the discrepancies as referred to in terms of their differences tend to be the endcaps and cross members which is at the bottom of the vehicles.*” It was contended that this was “*not referenced anywhere in the expert’s report and has been introduced by*” the trial judge.
73. This needs to be seen in the context of the cross-examination leading up to it:
- “Ms Howell: But it’s right, isn’t it, that in terms of the vehicle itself you consider the general construction of the van, not the actual van involved in the collision?
- Mr Etherington: The, the Tesco vehicle are we talking about?
- Her Honour Judge Baucher: It’s being put to you you didn’t examine the actual van.
- Mr Etherington: No, it was a sample. I, I’ve examined quite a lot of similar Tesco vehicles.
- Ms Howell: But you do accept at, at your paragraph 3., 2.3.9 that changes may vary according to different vehicles.
- Mr Etherington: Sorry, which paragraph?
- Ms Howell: 2.3.9. (pause)
- Mr Etherington: Yes, there can be some minor changes.
- Her Honour Judge Baucher: Sorry, what are we, 2.3.9?

Mr Etherington: Yes.

Her Honour Judge Baucher: Yes.

Ms Howell: Are you able to confirm why those discrepancies aren't relation [sic] to different changes in the rear of the vehicle?

Her Honour Judge Baucher: Sorry I'm not, don't quite understand the question.

Ms Howell: So in respect of the, the, the discrepancies, Your Honour, we say that the, in terms of the rear of the vehicle, the vehicle hasn't been inspected and that any discrepancies in the height and profile could be in relation to the fact that there's changes and different discrepancies within the rear of the vehicle. It's not necessarily because the accident didn't happen in the manner –

Her Honour Judge Baucher: Sorry I, but I don't actually know what you're asking this witness. That's what, that's why I don't understand the question. The discrepancies as referred to in, in terms of their differences tend to be the end caps on the crossmembers which is the bottom of the vehicles. What are you actually asking him?"

74. Paragraph 2.3.9 of Mr Etherington's report, to which Ms Howell took the witness in the above passage, was in a section of his report describing the construction of the Iveco van, including through use of diagrams and pictures, in particular describing and showing where the alloy crossmember was (at the bottom of the rear of the vehicle). Paragraph 2.3.9 itself stated:
- "2.3.9. The overall general construction has been the same on the vehicles with minor changes such as the end caps on the crossmembers are sometimes metal or rubber. On some models the end caps are missing altogether."
75. It is, therefore, wrong for Ms Yaman to contend that the trial judge's statement ("*The discrepancies as referred to in, in terms of their differences tend to be the end caps on the crossmembers which is the bottom of the vehicles*") was one that she "introduced" rather than it being part of the expert's evidence. It was in the section of the report the expert had just been taken to, and in particular in paragraph 2.3.9. It is entirely understandable why the trial judge intervened at this stage in order to seek to clarify what the expert was being asked.
76. Related to the above, Ms Yaman contended that the trial judge went on to "*direct the expert to answer questions that have not been put to him and not contained within his report*" when she suggested, after having noted his evidence that the differences in different Iveco vans tended to be in relation to the end caps, that it might be helpful for him to explain how the vehicles were fitted together, having come in separate parts.

77. There is also nothing in this complaint. This was a continuation from the previous exchange about the Iveco vans, and any differences that there might be between different vans, where the trial judge was continuing to try to understand what was being asked and what Mr Etherington said about it. It seems in part to have been a reference to Mr Etherington's report at paragraphs 2.3.1 and 2.3.2, where he had described the Iveco as a conventionally constructed chassis cab which would be supplied to a specialist body builder who would manufacture and install the grocery delivery body. The trial judge was clearly trying to get straight what the question was that was being put to the expert in light of the evidence that he had given. She was not trying to extract new evidence from the expert, but to get him to explain his evidence such that questions could be put in an understandable way.
78. Third, it was said the trial judge continued to "*cross examine the expert*" when he was asked about differences in the photographs of the car, in particular in (so it was contended) suggesting the answer she expected from Mr Etherington in her intervention, "*so does it look like the damage that we can see in photograph 16? I think your answer is yes isn't it?*" and, later, "*you're saying to me that photograph 16 is the same as 477 for all intents and purposes, yes?*".
79. It is clear from the context that the trial judge was here effectively repeating back what the expert was saying in order to ensure she had understood it. The context is that Ms Howell had asked Mr Etherington to look at two photographs – one provided by Ms Yaman/Mr Zada, and one in Mr Etherington's report. The latter was a photograph on which, in his report, Mr Etherington had marked with yellow circles what he described thus:
- "2.6.26 These are what appear to be three separate impacts in the main area of damage on the door (yellow circles). These are rounded type impact profiles, but there are no horizontal contact marks anywhere on the forward section of the door and no contact marks linking the three separate areas of damage."
80. Ms Howell then asked Mr Etherington to identify the marks he had highlighted with yellow circles in his report on the photograph provided by Ms Yaman/Mr Zada:
- "Ms Howell: I'm grateful and, and if, if you are able to, are you able to identify those marks on, on that vehicle?"
- Her Honour Judge Baucher: Sorry, what are we looking for now?
- Ms Howell: For, for the –
- Her Honour Judge Baucher: We're looking for the yellow circle marks?
- Ms Howell: That, that's right, Your Honour.
- Mr Etherington: Yes. The, the top one is on the, is, is this one, Your Honour, behind the door handle and it, you can see the dent in that –

Her Honour Judge Baucher: Yes.

Mr Etherington: Press in line, that's the top one. The lower one in the centre is visible in there in that you can see it in the reflections where they are distorted. And the forward one isn't as visible, this is the one that's on the edge of the rear door and, and front door immediately behind the doorhandle. On this one you can see some very slight deviation in the reflections. You can see where the hand, door handle is on the front door –

Her Honour Judge Baucher: Yeah.

Mr Etherington: And just behind it there's some deviations in the reflections but they are not clear that the, the damage in that area isn't as severe as the damage to the two areas immediately behind it.

Her Honour Judge Baucher: So does it look like the damage that we can see in photograph 16? I think your answer is yes isn't it?

Mr Etherington: Yes, it's the same damage –”

81. In other words, Mr Etherington had been through each of the yellow-circled areas of damage on one photograph and identified them on the other photograph. The trial judge, in saying “*So does it look like the damage that we can see in photograph 16? I think your answer is yes isn't it?*” was simply confirming back to him by way of summary what he had already said in detail in order to check she had understood. Ms Howell did not then take issue with any part of Mr Etherington's answer or seek to suggest to him that he had not correctly identified the yellow-circled areas or that he was wrong to have said that the damage in the photographs was the same. Moreover, the fact that, after counsel had finished cross-examining, and after Mr Pulford had asked a question in re-examination, the trial judge asked her own questions, including ensuring she had clear Mr Etherington's evidence that the damage on the two photographs was the same does not advance matters further. This again was not the trial judge seeking to “*direct the evidence in favour of*” Tesco but rather ensuring she had properly and fully understood the expert's evidence on an important point.
82. Fourth, it was said that the trial judge then went on to suggest that the damage had been caused by a hammer, which was said to be completely new evidence she was putting to the expert without any foundation, and where no-one had previously alleged that Ms Yaman or Mr Zada had taken a hammer to the vehicle.
83. This related to Mr Etherington's evidence, which had been in his report at paragraphs 3.1.4 to 3.1.7, where he referred to the areas of damage to the car door that he had circled in yellow in his report:

“3.1.5 There are no horizontal lead in or lead out contact marks in these separate areas of damage to the door and these three areas of damage are consistent with being incurred when the BMW was stationary.

3.1.6 There is nothing on the rear body of the Tesco Iveco that would be consistent with causing these different types of impact damage into the door panel. These separate impact areas are not compatible with being caused as a result of contact with the Iveco.

3.1.7 These areas of damage are more consistent with deliberately inflicted damage to the door by striking the door in the three areas of maximum deformation.”

84. The exchange between Mr Etherington and the trial Judge which Ms Yaman complained about was part of the trial judge’s questions to him after both counsel had asked their questions:

“Her Honour Judge Baucher: ... you’re saying that the areas shown there are more consistent with deliberately inflicted damage.

Mr Etherington: In the, in –

Her Honour Judge Baucher: Yes.

Mr Etherington: In the circular yellow –

Her Honour Judge Baucher: Yes.

Mr Etherington: Yeah, yeah, that, that, that damage has not occurred as a result –

Her Honour Judge Baucher: Yes.

Mr Etherington: Of any contact.

Her Honour Judge Baucher: So that sort of business that I can see, if I may put it in lay terms where it looks to me as if the door’s sort of pushed in, is that what, do you say that’s part of the accident or you’re, are you pointing to those pressure points which have caused the pushing in of the door, do you understand what I’m saying?

Mr Etherington: Yes, I do, Your Honour, the –

Her Honour Judge Baucher: Thank you.

Mr Etherington: The three areas of contact in the circles have caused the surrounding metal to be distorted, induced damage so to speak –

Her Honour Judge Baucher: Thank you. So, for instance, if just for saying’s sake, and obviously it is for saying’s sake, I were to use, I was going to look at something on the bench, but I don’t think it would be heavy enough, what you’re saying is that if

somebody hit that with a hammer or some sort of, then that would cause the panel to deflect in like that?

Mr Etherington: Yes, Your Honour.

Her Honour Judge Baucher: Yes?

Mr Etherington: That, that's, if I had to recreate that damage that's what I would use, a heavy hammer."

85. The trial judge's reference to a hammer was clearly an attempt to understand what Mr Etherington had been saying. She was casting around for an example of something that she thought he was saying could have caused this sort of damage – first by looking around her bench for an object, and then thinking of a hammer. Ms Yaman's skeleton argument described this as "*Inexplicable*", but I find it entirely explicable and understandable that the trial judge would put it in this way as she sought to understand Mr Etherington's evidence.
86. In short, none of the points made by Ms Yaman on this appeal in relation what the trial judge said during Mr Etherington's evidence suggest she was doing anything other than seeking to ensure that she and the expert understood counsel's questions and that she had understood properly his evidence. None of it was unfair, nor did it restrict Ms Yaman's ability to fully examine the evidence or to put forward her case. Nor, for completeness (though it was not part of ground 4 of the appeal) does it suggest any appearance of bias on the part of the trial judge.
87. There is, in short, nothing to support ground 4 of the appeal.

Summary and conclusion

88. I have been through each of the specific matters of which complaint was made. None of them support the grounds of appeal.
89. It is also appropriate to step back and to look not only at the individual points made separately, but also to consider the cumulative effect of the interventions that were relied upon. It was suggested by Mr Williams that even if a particular example on its own might not indicate bias or a closed state of mind, the collection of points as a whole does so. However, that does not assist Ms Yaman. The "*hostility*" and "*jaundice*" alleged were not present, either in the individual examples relied upon or in any broader sense. No fair-minded observer could have concluded that the trial judge was biased whether looking at the individual examples relied upon or considering the conduct of the trial as a whole. There was nothing at all to suggest an appearance of bias on the part of the trial judge. In addition, looking at the transcripts as a whole, whilst there were a number of interventions from the trial judge at various stages, it simply cannot be said that the trial judge's interventions were so excessive as to be unfair or to have restricted Ms Yaman's ability to examine the evidence or to put forward her case.
90. This was not a case where, as in *Kofi-Adu*, the judge's treatment of the witnesses displayed a hostility giving an impression of bias or a complete lack of objectivity. Nor did the trial judge prevent Ms Howell from conducting her cross-examination, or making her submissions. To put it the way of the question identified paragraph 43 of

Shaw v Grouby (appropriately revised): the question is whether the trial judge became so involved in the examination of the witnesses that she either made it impossible for Ms Howell properly to conduct her client's case or lost the ability to reach balanced and objective conclusions on the evidence which she heard. It is clear that she did not.

91. Having been through all the transcript extracts relied upon and listened to those parts of the audio recording of the trial I was asked to (as well as others), it does not seem to me that the trial, and the trial judge's conduct of it, was anything other than proper, reasonable and fair.
92. As a result, each of grounds 3 and 4 fails. The appeal is dismissed.