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Case No: CO/2859/2021

IN THE HIGH COURT OF JUSTICE
KINGS BENCH DIVISION
DIVISIONAL COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 24/01/2024

Before:

LORD JUSTICE COULSON
MR JUSTICE JOHNSON

- -

Between:

The King on the Application of Nigel Lloyd Hannon)	**Claimant**
- and -	
The Crown Court at Bristol	**Defendant**
- and -	
The Director of Public Prosecutions	**Interested Party**

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- -

Ellis Sareen (instructed by **Direct Access**) for the **Claimant**
Lucy Organ (instructed by **Crown Prosecution Service**) for the **Interested Party**

Hearing date: 24 January 2024

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Approved Judgment

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LORD JUSTICE COULSON

LORD JUSTICE COULSON:

Introduction

1. This is the judgment of the court, to which we have both contributed.

2. On 3 September 2020, the claimant was charged with one offence of driving without due and attention. On 11 January 2021, he was convicted by the Bath Magistrates' Court. He appealed to Bristol Crown Court. On 28 May 2021, after a rehearing at which the claimant was represented by Mr Sareen of counsel, the claimant's conviction was affirmed. The reasons for his conviction were set out by Judge Horton ("the judge") in a detailed *extempore* judgment at the end of that hearing.

3. The claimant sought permission to apply for judicial review against that judgment. The lengthy Statement of Facts and Grounds contained various instances of what were said to be unfair interventions by the judge. When considering the application for permission, Chamberlain J was unimpressed with the generality of that complaint, noting that "the number of interventions by the judge tells one very little. Many of them appear to have been perfectly proper attempts by the judge to clarify and understand the evidence." But he identified one exception to that:

> "However, it is arguable that the sustained passage of questioning from the judge to the claimant at pages 74 to 81 of the transcript were in the nature of cross-examination and went beyond the proper limits described by Lord Brown for the Privy Council in *Michel v The Queen* [2009] UKPC 41; [2020] 1 WLR 879, [34]."

4. Accordingly, the claim for judicial review comes before this court on that limited ground. Mr Sareen fairly acknowledged that limitation, although he did say that some of the other complaints about other interventions formed part of the background to his particular complaint about the passage at pages 74 to 81. We have considered them and taken them into account on that basis. We should say that we agree with Chamberlain J that the interventions were, in the main, proper attempts to clarify and understand the evidence. One potential issue, arising out of what Mr Sareen said was the judge stopping him asking a question arising out of the Police Constable's evidence, we address separately below.

The Background Facts

5. On 14 June 2020, the claimant was driving a Volkswagen van, towing a boat and trailer and travelling westbound between junctions 18 and 19 of the M4. At around 9.25 in the morning he was stopped by PC Andrew Barnes who questioned the manner in which the claimant was driving. The claimant's immediate response was:

> "Sorry, I was just on cruise control. I wasn't paying that much attention, to be honest."

6. There were three constituents of the charge of driving without due care and attention. Although, as we note below, there was some debate about their precise formulation at the subsequent hearing, in general terms they can be summarised as: i) the speed, which PC Barnes stated had been around 70 mph, as compared to a speed limit on a motorway

of 60 mph when towing; ii) the right indicator was flashing for a lengthy period; iii) the claimant's vehicle moving from side to side, such that the wheels of the trailer were sometimes in the right-hand lane and sometimes drifting left, crossing over the raised strip between the carriageway and the hard shoulder.

7. At the hearing before Bath Magistrates' Court, the claimant had obtained assistance from Mr Giles, a retired police officer, and produced evidence from a GPS tracking device installed in his van which, it was said, showed the speed of the van for a period of approximately 10 minutes prior to his being stopped by PC Barnes. That tracking data showed that the van travelled at a maximum of 66 mph during the relevant period, and averaged just over 60 mph. The prosecution produced a video, taken from a forward-facing camera mounted on PC Barnes' vehicle, which gave an indication of speed between 66 and 72 miles per hour, although this only showed the minute or so before the claimant's vehicle came to a stop. The Magistrates convicted the claimant and sentenced him to a fine of £1000 and 5 penalty points. The claimant appealed.

The Appeal Hearing

8. The appeal hearing took place on 28 May 2021 at Bristol Crown Court, before the judge and two lay Magistrates. There is a full transcript of the appeal hearing, with internal page numbering running from page 1 to page 110, including the *extempore* judgment at the end of the hearing. The important elements of the trial can be summarised as follows.

9. There was evidence from PC Barnes. His evidence in chief was at pages 4-14. He referred at page 6C-D to the lateral movement of the trailer within the lane "going towards the hard shoulder". At page 7B-C, when asked where the swaying had occurred, PC Barnes referred to the raised strips (the 'Vibraline' strips) that divided the carriageway and the hard shoulder, which made a vibrating sound when a wheel went over them. He said the trailer was going "from as far over as the Vibraline, getting towards lane 1's divider, so the wheels of the trailer were on the white lines". PC Barnes was cross examined (pages 15-43), primarily about the speed at which the claimant was driving. He reiterated that the claimant was "wandering around with the trailer in the lane" (page 31D-E). He was challenged about whether the trailer actually crossed onto the hard shoulder and he confirmed that it did (Page 34C-D).

10. One of the difficulties was that most of the questioning in cross-examination was about what could be seen on the (short) video, rather than what PC Barnes actually saw. In order to clarify this, at page 41 of the transcript, the judge asked PC Barnes what it was that had first drawn his attention to the claimant's vehicle. PC Barnes reiterated that it was the lateral movement of the trailer which he said was "excessive" (page 41E-F).

11. The claimant gave evidence in chief from pages 45-68 of the transcript. He did not refer to the Vibraline strips, but complained vociferously about the state of the road, with which he was very familiar. He also referred to what he called "the tramlines" namely ruts in the road produced by HGVs. He said that these created "a very, very serious, serious situation" and that "great caution" was required driving that stretch of road (page 49). During his evidence, at pages 59-60, it became apparent that the claimant was suggesting that PC Barnes had *not* mentioned the vehicle/trailer drifting when he had first stopped him. The judge noted that that was an important matter which had not been put to PC Barnes. Mr Sareen accepted that that was his mistake. However, nothing

seems to turn on that now. The claimant also gave a good deal of evidence about the advantages of cruise control, and the need to "feather the brake" when the trailer with the boat on was pushing the vehicle down the hill (page 64). He also repeatedly referred to the information from the tracking device.

12. The claimant was cross-examined as per the transcript between pages 68 and 74. At the end of his cross-examination, Mr Sareen indicated that he had no questions in re-examination, and asked the judge if he had any questions for the claimant. Then came the lengthy passage of questioning from the judge between pages 74 and 81 of the transcript, in respect of which permission to bring this application for judicial review was granted. We reproduce the entirety of that passage at Appendix A to this judgment. It will be noted that it is again primarily concerned with the trailer drifting across the lane.

13. There was then evidence from Roger Giles, the status of which was uncertain. He was not a witness of fact. Mr Sareen told the judge that he was not an expert witness: see the transcript at 91F. Although his calculations were not disputed, and it again makes no difference to the outcome of this application for judicial review, we consider that Mr Giles's evidence was probably inadmissible.

14. There was no closing speech from the Crown, because the judge said that the Crown only had a right to make a speech in an appeal against conviction on a point of law (transcript page 102B-D). We are not sure that he was right about that: this was a rehearing, so the prosecution may well have had the same right to make a speech as they would have had in the Magistrates Court (see Crim PR 24.3(3). But it is irrelevant to this application for judicial review, so we say no more about it. At the outset of the closing speech on behalf of the claimant, the judge reiterated the importance of the vehicle going over the line between the carriageway and the hard shoulder which had been the subject matter of the exchanges in Appendix A.

15. The judge's *extempore* judgement, in which he found that the claimant was driving without due care and attention, is at pages 105-108 of the transcript. The principal reason for the conviction was the drifting of the vehicle across the line when the vehicle was being driven at 60 mph or above. In particular, the judge said this:

> "On 14 June 2020 the Appellant in this case was driving a company van with which he was well experienced, pulling a trailer with which he was well experienced, carrying his own personal boat, which *we* say was something he was very familiar with. He was travelling along the motorway on a route with which he is very familiar and, more importantly in this case, on a part of the motorway where he was very familiar with the particular hazards known to long distance lorry drivers such as the Appellant and those who are familiar with the dangers of his speciality of pulling trailers of all sorts along motorways. And that is what is described as the tramline effect, well known to this Court and sadly well known to road users, particularly of large vehicles. But it is, as the Appellant himself has conceded, a particular problem and a particular danger to those who pull trailers. It is for that reason that, with the knowledge of this road, he adopted a position on the motorway which left him keeping the nearside wheels of both his van but most particularly the trailer close to the lines separating the motorway from the hard shoulder.

The evidence commences, and we have considered the evidence with considerable care, with the police officer in this case, who came up driving an unmarked police vehicle, and PC Barnes described how at 9.25am on the M4 he saw the Appellant driving his motor vehicle pulling a trailer, and the rear of that trailer swaying over the demarcation of the hard shoulder and the motorway. The officer recognised immediately the specific dangers of that. In fact, in fairness to the Appellant, we have heard from him, and he also recognised the dangers of that. And there is his evidence in relation to it which is no less than common sense upon the facts of this case that slowing the speed of a vehicle down and close control over the speed of a vehicle is particularly essentially, particularly given the evidence of the Appellant himself that the trailer of this vehicle was heavy and the effect of this trailer was to push the van that was pulling it forward and increase the speed of that vehicle when it travelled downhill, and thus control of that vehicle was essential.

We are sure that the reason that PC Barnes first noticed the Defendant, the Appellant in this case, was because the trailer of that vehicle was crossing over that line into the hard shoulder. We do not feel, given the length of time, that the evidence given by the officer in relation to that was incorrect, and his notes to which he was referred make it very clear that that was the view that he had.

The Appellant has provided in this case his own expert evidence which has been placed before the Court. The significance of that evidence is the telemetric equipment set into his company vehicles which means that a GPS signal can be obtained which really, for his business purposes, is a safety system to ensure the safety of vehicles and ensure that if any of the vehicles are being driven in a way which was unacceptable or dangerous, that would soon be capable of being reviewed under that system. However, in this case, a good deal of time has been spent looking at the video recording of the last part of this journey. We, however, have the evidence from his own vehicle that for a period of approximately 1,000 metres at a time when the vehicle, according to him, must have been pushed by the trailer, causing the speed of the vehicle to speed up, meant that this vehicle between 9.20.27 and 9.21.44 was exceeding the speed limit, was exceeding the speed limit consistently over that Period.

The Appellant's evidence relating to that is that at that time one has to be extremely careful about slowing the vehicle down too slowly, because that will cause the swaying of the vehicle and cause a problem. The Court accepts that. What the Court does not accept is that the safe course, knowing everything that the Appellant did about this area of the road, was satisfied by what he in fact did. These features which he gave in evidence, he knew the road extremely well, he knew the dangers exceptionally well, he knows that a reduction in speed would be essential, he knew that a rapid reduction in speed would make it more dangerous. And if follows, therefore, on this particular piece of the road which he said was the most dangerous part and certainly a dangerous area of the motorway, it was for him to be paying particular attention to its speed and not having it on automatic cruise control.

> We look at the figures and we look at what appears on that system over the period that I have described, and in our judgment that appears entirely consistent with that vehicle and that trailer in particular crossing over into the hard shoulder and that that is entirely consistent with the first view and the reason why the officer in this case decided the vehicle was driving without due care and attention and had to be stopped and reported…"

16. The judge said that the court was not going to decide the period of time during which the indicator had been on. He noted the claimant's vast amount of experience of driving these vehicles and driving on this road. He also noted the appellant's immediate explanation when he was stopped ("I wasn't paying that much attention") and rejected the claimant's explanation for that, which was that he believed and accepted the view of an experienced police officer that he had been exceeding the speed limit. Instead, the judge said that it was the kind of forthright response which the claimant had been making when he gave evidence to the court (so that, in terms, the claimant had meant what he had said).

The Issues Before This Court

17. As noted at the outset, this Court will focus on the one point that Chamberlain J said was arguable, namely whether the exchanges set out in Appendix A went beyond the bounds of fairness, resulting in an unfair trial and therefore an unsustainable conviction. We touch on one or two other matters raised on behalf of the claimant as we address that central issue.

The Relevant Principles

18. Although a number of authorities were cited to us on the subject of judicial interventions, the core principles are straightforward and very well-known. Helpfully, counsel indicated that they were not in dispute about the applicable law.

19. In *R v Hamilton* (113) Sol Jl. 546, Lord Parker CJ stated that whether judicial interventions would give ground for complaint was a matter of degree. He said that:

> "…the interventions which give rise to a quashing of a conviction are really three-fold: those which invite the jury to disbelieve the evidence for the defence, which is put to the jury in such strong terms that it cannot be cured by the common formula that the facts are for the jury…the second ground giving rise to a quashing of a conviction is where the interventions have made it really impossible for counsel for the defence to do his or her duty…and thirdly, where the interventions had the effect of preventing the prisoner himself from doing himself justice and telling the story in his own way."

20. More recent cases have emphasised that the old convention, whereby the judge sat in silence throughout the trial, is a thing of the past. As the Court of Appeal made plain in *Southwark LBC v Kofi-Adu* [2006] EWCA Civ 281; [2006] H.L.R. 33, "nowadays, of course, first instance judges rightly tend to be very much more proactive and interventionist than their predecessors". But, as the subsequent cases demonstrate, there remain proper limits on such proactivity and interventions, particularly in criminal cases tried with a jury.

21. In *Michel v The Queen* [2009] UKPC 41; [2010] 1 WLR 879, there were repeated interventions by the judge, and many of his questions were inappropriate because they suggested a theory of guilt which differed from that advanced by the prosecution. Here, the court moved away from the three elements of the *Hamilton* test to focus more generally on the fairness of the trial. Lord Brown of Eaton-Under-Heywood said:

> "27 There is, however, a wider principle in play in these cases merely than the safety, in terms of the correctness, of the conviction. Put shortly, there comes a point when, however obviously guilty an accused person may appear to be, the appeal court reviewing his conviction cannot escape the conclusion that he has simply not been fairly tried: so far from the judge having umpired the contest, rather he has acted effectively as a second prosecutor. This wider principle is not in doubt. Perhaps its clearest enunciation is to be found in the opinion of Lord Bingham of Cornhill speaking for the Board in *Randall v The Queen* [2002] 1 WLR 2237, 2251,para 28 where, after remarking that "it is not every departure from good practice which renders a trial unfair" and that public confidence in the administration of criminal justice would be undermined "if a standard of perfection were imposed that was incapable of attainment in practice", Lord Bingham of Cornhill continued:
>
> > 'But the right of a criminal defendant to a fair trial is absolute. There will come a point when the departure from good practice is so gross, or so persistent, or so prejudicial, or so irremediable that an appellate court will have no choice but to condemn a trial as unfair and quash a conviction as unsafe, however strong the grounds for believing the defendant to be guilty. The right to a fair trial is one to be enjoyed by the guilty as well as the innocent, for a defendant is presumed to be innocent until proved to be otherwise in a fairly conducted trial.'
>
> 28 Lord Bingham was, of course, right to recognise that by no means all departures from good practice render a trial unfair. So much, indeed, was plainly implicit in the judgment of the European Court of Human Rights in *CG v United Kingdom* (2001) 34 EHRR 789 which rejected the complaint that the trial proceedings as a whole were unfair notwithstanding the court's finding that the judicial interventions had been "excessive and undesirable". Ultimately the question is one of degree. Rarely will the impropriety be so extreme as to require a conviction, however safe in other respects, to be quashed for want of a fairly conducted trial process."

22. The facts in *Michel* were extreme. Lord Brown made clear the ways in which the judge had allowed the trial to become unfair:

> "34 Naturally, in Jersey, where the facts are decided by the jurats (the commissioner retiring with the jurats but not joining in the fact-finding unless the jurats disagree), the facts are not summed up so that the Nelson approach is not available to the commissioner. But that cannot begin to justify the commissioner seeking to give the jurats the benefit of his analytical powers by way of his own extensive examination of the witnesses, or indicating his

> thinking by the nature of his questions and comments. Indeed, it does not entitle him to conduct the hearing in any way different from that ordinarily required of a judge at trial. Of course he can clear up ambiguities. Of course he can clarify the answers being given. But he should be seeking to promote the orderly elicitation of the evidence, not needlessly interrupting its flow. He must not cross-examine witnesses, especially not during evidence in-chief. He must not appear hostile to witnesses, least of all the defendant. He must not belittle or denigrate the defence case. He must not be sarcastic or snide. He must not comment on the evidence while it is being given. And above all he must not make obvious to all his own profound disbelief in the defence being advanced.
>
> 35 Regretfully the commissioner's interventions during this trial breached each one of those canons. One can understand his incredulity during parts of the defendant's evidence. But quite why he thought it necessary to manifest it is altogether more difficult to follow. Not only was it improper, but he could scarcely have thought the jurats unable to perceive for themselves many of the defence's "implausibilities, inconsistencies and illogicalities".
>
> 36 Tempting though it is to include within this opinion a number of further citations from the transcript, the Board will not succumb. As already stated, no one has sought to justify the bulk of these interventions and in the end it is their sheer volume which compels the conclusion that this conviction cannot stand."

23. The essential principle, that what matters above all is the risk to a fair trial, was confirmed by the Supreme Court in *Serafin v Malkiewicz* [2020] UKSC 23; [2020] 1 WLR 2455. There, the Supreme Court concluded that the question was not bias but whether the judge's conduct – which consisted of many interventions and comments during the evidence - rendered the trial unfair. In that case, they concluded that the judge's conduct, which the Court of Appeal had described as bullying, had led to an unfair trial.

24. Finally, in the criminal context, we note the recent decision of the Court of Appeal in *R v Binoku* [2021] EWCA Crim 48, in which the appeal against conviction was based on the judge's interventions, and in particular his questioning of the defendant. The Court of Appeal accepted that, at times, the judge had appeared to cross-examine the defendant. They made plain that that was not the judge's function. However, they concluded that the judge's departure from good practice was not so gross, or so persistent or so irremediable that the trial was unfair[1]. Dingemans LJ explained at [54]:

> "…This is because the appellants were able to and did advance their respective cases in a trial where so much of the evidence was shown by CCTV and storyboards, on which all the parties relied and about which all the parties addressed the jury. It is also because the judge's interventions were not in such terms that they could not be cured. It is apparent from the verdicts that the respective cases were fully and fairly evaluated by the jury."

[1] A similar outcome can be seen in the earlier case of *R v Aujla* [2015] EWCA Crim 853.

Analysis

25. In our judgment, certainly viewed with hindsight, the judge did overstep the bounds of proper judicial conduct and improperly descended too far into the arena when conducting the questioning set out at Appendix A. But we are equally certain that this did not result in any unfairness. There are a number of reasons for these conclusions.

26. The authorities are plain that a judge should not descend into the arena in such a way as to cross-examine a witness or a defendant. That is not the judge's role. There can sometimes be a fine line between asking for clarification on a particular point that troubles the judge, and acting as a second prosecutor, but there were times here, in the exchanges set out in Appendix A, when the judge overstepped that boundary. There were times, indeed, when the tone and style of cross-examination is manifest (such as when, at page 80G-H of the transcript, the judge said "I'll ask a third time and give you an opportunity, ok? This is the last time I'll ask you and give you an opportunity.")

27. There is, we think, some mitigation for the length and tone of the exchanges set out in Appendix A. We do not consider that the claimant always gave a direct answer to the judge's questions: indeed, on a number of occasions, he appeared to evade the question altogether or gave an answer he knew to be wrong (such as when he claimed he was always within the speed limit, when his own tracking data showed that he was not). Furthermore, it is plain that the claimant could see what was most troubling the judge, and gave oblique and sometimes argumentative answers in order to avoid being drawn into making admissions.

28. However, the point that the judge was pursuing in this passage could not have been more straightforward. The claimant accepted that the road was bumpy and hilly and there were "inclines and declines". When making adjustments, the 6-tonne vehicle would, as he put it, "go ahead of itself and you have to check and bring it back to the correct speed". And because he was driving at and sometimes over the speed limit of 60 mph, these difficulties meant that, according to PC Barnes, there were times when the trailer drifted across the lane and over the Vibraline strip. It was this drifting which was of most concern to the judge.

29. It was fundamental to Mr Sareen's argument that this point was new; that it was, to use his expression, "a new case theory". We respectfully disagree with that. In our view, this point was always in issue. That can be seen from the following:

(a) PC Barnes' contemporaneous notes which stated:

> "Reported for the offence of driving without due care and attention after witnessing the trailer and load crossing over onto hard shoulder and into LN1"

(b) PC Barnes' original statement which, having referred to a speed of 70mph, went on to say:

> "The second matter that drew my attention was that the driver was travelling with his right indicator flashing constantly. The driver, who I now know as Nigel Hannon, seemed to be having difficulty in controlling that van and trailer as it was moving

> from side to side, the wheels of the loaded trailer and van moving at times partially into lane 2 and back again crossing over the Vibraline onto the hard shoulder"

(c) PC Barnes' oral evidence in chief that what had initially drawn his attention to the claimant's vehicle was that "the boat appeared to be wavering within its lane, going from the hard shoulder moving straight to the divide of lane 1 to lane 2" (page 6 of the transcript).

(d) PC Barnes' subsequent evidence, both in chief and in cross examination, which we have summarised in paragraphs 9 and 10 above, in which these points were reiterated.

30. Furthermore, the drifting was accepted by Mr Sareen as being one of the issues in the case: when he identified the three elements noted by PC Barnes on which the prosecution turned (page 30B of the transcript), he summarised them as the speed, the indicator, and "the movement, the lane movement".

31. In our view, the highest it could be put was that, by the time of PC Barnes evidence in chief, the main focus of the prosecution was on the speed, with the swaying trailer as a secondary point. But that hardly justifies the complaint that the swaying trailer was somehow a new point: it manifestly was not. Furthermore, we are inclined to think that some of the other matters emphasised by Mr Sareen as showing a changing case (such as the fact that, contrary to PC Barnes' evidence, the trailer was not seen to be moving across the Vibraline strips on the short video) were not the fatal blows to the prosecution case that he had suggested.

32. Furthermore, the series of questions introduced by the judge at the end of the evidence of the claimant could also be said to arise out of his own explanations. The claimant made much of his experience and knowledge of the road and the particular difficulties of pulling a trailer along it. His evidence about particular slopes, and where braking was required and where it was not, informed much of the judge's questioning in the passages in Appendix A.

33. Accordingly, in our view, the drifting of the trailer across the Vibraline strips was a matter that was squarely in issue in this case, and had been from the start. That was only emphasised by the claimant's own evidence. So the judge's desire to clarify the points arising from it (which he considered to be important) did not involve the raising of some new point about which the claimant had had no notice, or which was different to the basis on which the prosecution had been put; on the contrary, it was a more detailed exploration of something which had been in issue from the start.

34. In addition, we note that, when the judge had completed this exercise, he expressly asked Mr Sareen if there were any questions arising. Mr Sareen said No, and the case then moved on (see the end of Appendix A). Three points arise out of that.

35. First, it again points away from any unfairness. The judge was keen to ensure that, if there were any questions arising from these questions and answers, Mr Sareen had the opportunity to ask them. There were no such questions – unsurprisingly perhaps, because the ground had been well and truly trampled by then. But Mr Sareen had been given the opportunity to clarify further, so that if the judge might otherwise be left with a wrong impression, that could be corrected.

36. The second point arises out of the first. Not only was there no obvious unfairness, but there was not even a suggestion of unfairness at the time. The authorities contain a number of incidents in which counsel was obliged to protest to the judge as to his conduct and interventions. *Southwark LBC* is a particularly egregious example of that. But that did not happen here. Mr Sareen did not suggest to the judge that the line of questioning about the drifting of the vehicle (as set out in Appendix A) was unfair or had given rise to an unfair trial. The absence of any such complaint at the time is not, of course, fatal to this application for judicial review, but it is a strong pointer that, at least at the time of the relevant exchange, no-one thought that it had given rise to any problems. In our view, that is perhaps the best evidence that it was not, on analysis, unfair.

37. The third point is this. In his oral submissions today, Mr Sareen sought to suggest that he had not raised any issue with the judge at the end of the contested passage because he had sought to raise an issue following the judge's questioning of PC Barnes, and had been rebuffed. He indicated to this court that he was not prepared to run that risk again.

38. In our view, that could not in principle explain the absence of a protest: if, as it is now alleged, this passage was unfair, Mr Sareen should have said so in no uncertain terms. But, on analysis, the suggestion that he was earlier prevented from asking a further question of PC Barnes itself goes nowhere. That is because, as the transcript makes plain, the question which he wanted to ask was not a question at all, but simply to make the point that the emphasis of the prosecution case had changed during the hearing, from the speed to the movement of the trailer. That was a point that he could make - and indeed did make – front and centre in his closing speech. As it happens, it was not a good point because, for the reasons that we have already set out, the lateral movement of the trailer had always been a feature of the prosecution case.

39. Is there anything else to say about the passage in Appendix A? At one point, Mr Sareen suggested that the judge had alighted on a new point, namely that the claimant should not have been on cruise control, and so was running a case that the prosecution were not. We disagree: the fact that he was in cruise control was apparent from the claimant's initial response to being stopped, and at no point in the judgment does the judge make any mention of this as a further element of the careless driving charge.

40. Finally, as a sense check, it is instructive to compare this case with some of the authorities. None of the three factors in *Hamilton* arose here: there was no jury; for the reasons we have explained, it was far from impossible for Mr Sareen to do his duty; and the judge's questions gave the claimant ample opportunity to do himself justice and tell his story in his own way (an opportunity of which the claimant availed himself to the full).

41. And again, if we compare it with paragraph 34 of the judgment in *Michel* (to which Chamberlain J drew attention when granting permission), it can be seen that this case falls easily on the right side of the line. The judge did not seek to "needlessly interrupt the flow of the evidence": although to some degree he did cross-examine the claimant, he did so at the end of his evidence, not during evidence-chief, and gave counsel an unqualified opportunity to ask further questions by way of clarification. He did not belittle or denigrate the claimant's case; he was not sarcastic or snide; there is no suggestion he raised his voice; and he did not comment on the evidence whilst it was

being given. It is clear that he was concerned about the drifting of the trailer, about which PC Barnes had already given evidence, but that is a very different matter.

42. In many ways, we consider that this case is similar to *Binoku*. As happened there, this judge also erred in cross-examining the claimant to the extent and in the way that he did. But in the circumstances of the case as a whole, that conduct was not unfair, and did not render the claimant's conviction unsafe.

Conclusions

43. We agree that the judge should not have descended into the arena to the extent and in the way he did. Even allowing for the claimant's evasiveness, he could have clarified the points about the drifting trailer more shortly. He should not have used the sort of vernacular common in cross-examination. But the issue that he was asking about was important; it was not new or in any way a surprise, but had instead featured in the case from the very outset; and the judge was entitled to seek a fuller explanation, particularly given the nature of the claimant's own evidence. None of that gave rise to an unfair trial, and no such unfairness was suggested to the judge at the time.

44. For all those reasons, this application for judicial review is refused.

Appendix A

"…

His Honour Judge Horton: Let's just see if I understand this correctly, because I'm really asking about your experience, which is, you know, as you can tell, it's pretty much second to none and you're very familiar with the problem with tramlines.

Mr Hannon: Yes.

His Honour Judge Horton: And the problem with tramlines is, particularly when you're pulling a trailer of substantial weight, is that once you hit those tramlines, they're, the tail is very difficult to control, isn't it?

Mr Hannon: *If driving,* if you drive in, in accordance with the speed limit, no, it's not. You have to be very careful, but it's not difficult to control.

His Honour Judge Horton: *I mean,* I'll ask the question again. When you travel in tramlines with a trailer, with a heavy one behind you, it becomes difficult to control, doesn't it?

Mr Hannon: if you go, if you, if you, *by, I mean,* the tramlines themselves, yes, it is.

His Honour Judge Horton: Right, and because of the problem on the motorways with the large number of the roads now having a particular problem with tramlines, that, that's something that you take particular care about, isn't it?

Mr Hannon: Yes.

His Honour Judge Horton: Because you have to.

Mr Hannon: Yes.

His Honour Judge Horton: *I see, right.* There are portions of the motorway where it's almost impossible actually to get away from tramlines, isn't it?

Mr Hannon: *Yes.*

His Honour Judge Horton: And you'll give me an example of that, I'm sure.

Mr Hannon: Yes.

His Honour Judge Horton: Where?

Mr Hannon: Bristol to Bath.

His Honour Judge Horton: Right. Now in relation to those tramlines, the only way of stopping it becoming a hazard is if you drop your speed dramatically, isn't it?

Mr Hannon: Yes.

His Honour Judge Horton: OK. This was an area where you were hitting tramlines, correct?

Mr Hannon: Correct.

His Honour Judge Horton: You were aware that you may have to drop your speed if it became uncontrollable.

Mr Hannon: But 60 miles an hour is a controllable speed.

His Honour Judge Horton: I'll ask the question again. You were aware that you have to drop your speed considerably if you had a problem with it.

Mr Hannon: I don't follow the question, Your Honour.

His Honour Judge Horton: You were in tramlines. You were in a different area of the motorway. You were aware that you would have to alter your speed, slow down dramatically if you ran into a problem. You can't predict whether the tramlines are going to give you a problem you can't control, so you have to be able to slow down dramatically, don't you?

Mr Hannon: At 60 miles an hour, it's perfectly controllable.

His Honour Judge Horton: What about at 65 miles an hour?

Mr Hannon: I wasn't doing 65 miles an hour.

His Honour Judge Horton: Let's have a look at, let's have a look at A12 again, shall we? The useful thing about this to have in mind here for our purposes is that we have a finite, a very given period over which you were driving this vehicle, and we have, according to your expert, a speed at which you were travelling, correct?

Mr Hannon: Correct.

His Honour Judge Horton: Well, this, certainly from this, appears to be that between 9.20 and 27 seconds and 9.21 and 44 seconds that you were driving exceeding the speed limit by between 5 and 6 miles an hour, barring one small section in the middle. You've got it in front of you.

Mr Hannon: Going down the hill, yes.

His Honour Judge Horton: Well, why weren't you braking to stop yourself exceeding the speed limit, bearing in mind you were in a dangerous tramline area?

Mr Hannon: I did brake.

His Honour Judge Horton: And you couldn't, you couldn't reduce it below 65.

Mr Hannon: Well, I was, from 65 I, I feathered the brake back to the correct speed, *but* you have to be very careful when you make, do this manoeuvre because you can do it too quickly.

His Honour Judge Horton: Yeah.

Mr Hannon: And it can happen in, in, in a very short *period* of time.

His Honour Judge Horton: Well, why, why, why can't you do it too quickly?

Mr Hannon: Because the, the, the boat will jack-knife and will hit you from behind, so you have to just *try and do it* quite slowly and carefully.

His Honour Judge Horton: And that's why it's dramatically important to be able to control your speed below and at least, at the very least, to the speed limit, and you were not. You set this vehicle on auto cruise on the maximum you thought you could drive it at, 60, without any, any regard to the tramlines, and you didn't take it off the auto cruise, did you?

Mr Hannon: Every time I peddle the brake, it goes off and it's gone.

His Honour Judge Horton: So, throughout this period, you deliberate, did you, because that's what it looks like, it appears for the period we're talking about, between 9.27.27 and 9.21.44, you were therefore deliberately allowing the speed of that vehicle to go up to, to 65?

Mr Hannon: No.

His Honour Judge Horton: So you couldn't control it to the correct speed limit.

Mr Hannon: Of course I could.

His Honour Judge Horton: So why is it, why is it over the speed limit for that period?

Mr Hannon: *Because* there was an –

His Honour Judge Horton: Why is it *over* –

Mr Hannon: There was an incline between –

His Honour Judge Horton: If you could control it, why was it over a period –

Mr Hannon: There was incline, Your Honour, between Bath and Bristol which is quite severe.

His Honour Judge Horton: I wonder if you'd answer the question. If you could control it, why is it for that period that it's exceeding the speed limit by more than the 1 or 2 miles an hour you suggested earlier and is over the speed limit by 5 or 6 miles per hour –

Mr Hannon: Because –

His Honour Judge Horton: In a difficult, dangerous tramline area? Why is that?

Mr Hannon: There's an incline going down the, through the junctions, and it's, it's 6 tonnes in weight, *and it's always* in total. It will, it will just, it's *got* momentum, and I feathered it back to the correct speed.

His Honour Judge Horton: Let me ask *you a* question. How often do you take your boat to Ireland?

Mr Hannon: Regularly.

His Honour Judge Horton: You know this road extremely well.

Mr Hannon: Yes, I do.

His Honour Judge Horton: You know this stretch of road extremely well.

Mr Hannon: Yes, I do.

His Honour Judge Horton: And you know the tramlines in this area are extremely bad.

Mr Hannon: And I've never crashed.

His Honour Judge Horton: *OK.*

Mr Hannon: I've always driven carefully, *so I haven't* –

His Honour Judge Horton: So you knew perfectly well, from knowing this road, that you were going to run into trouble where your speed was going to exceed the speed limit down this *little* piece of motorway where it's downhill, as you're telling me, didn't you?

Mr Hannon: Correct.

His Honour Judge Horton: So why didn't you take it off auto cruise and control the speed so you could control it down that hill without having to say that you couldn't, because you could if you'd been paying attention, couldn't you?

Mr Hannon: But I was paying attention.

His Honour Judge Horton: Then why didn't you?

Mr Hannon: It was several miles *up* the road and this is the speed *it went*. I was prosecuted for the, the, the section on the video here.

His Honour Judge Horton: Well, this is your document. I'm asking about it. It's, look, look at the timing here, how, how short a period before this is, it happens.

Mr Hannon: My understanding was I was *prosecuted* because of the police video, which states –

His Honour Judge Horton: Right.

Mr Hannon: Which states that I was going between lane 1 and over the hard shoulder

Vibraline at speed *and* put my indicator on for no reason, when they've obviously withdrawn those allegations. The indicator was on for good reason. I wasn't speeding and I wasn't weaving between the two lanes.

His Honour Judge Horton: What we know is the officer first had *essentially acknowledged* you because he says, we accept it's another matter, he says he saw you drifting over that line. That is what happens when you go over tramlines and you're not controlling it, isn't it?

Mr Hannon: I was controlling it.

His Honour Judge Horton: That is what happens if you go over tramlines and you're not controlling it, isn't it?

Mr Hannon: But I wasn't out of control.

His Honour Judge Horton: I'll ask a third time and give you an opportunity, OK? This is the last time I'll ask you and give an opportunity. That is what happens when you go over tramlines and are not controlling it, isn't it?

Mr Hannon: No

His Honour Judge Horton: What does cause it to go over, cause you to drift over that line then? What would cause you to drift over that line then?

Mr Hannon: You're driving a 6 tonne vehicle which is going to be affected by the road, the road is bumpy and hilly and there's a, there, there's vehicles, inclines and there's declines. All the time you're making adjustments, *that* 6 tonne vehicle will occasionally momentarily go ahead of itself and you have to check and bring it back to the correct speed, which I was doing all the time.

His Honour Judge Horton: Except here.

Mr Hannon: But I did bring it back. I went from, back, back to my correct speed. It wasn't continuous if it wasn't going on for miles. It was, it was brought back and checked to the proper speed.

His Honour Judge Horton: So *we'll go back to the beginning.* Why have it on auto cruise?

Mr Hannon: Because it's safer for me. I have the same on my HGVs. I prefer it on auto cruise. It's safer. It's more controllable. It will not go, as a rule, you can, you can monitor your speed all the way.

His Honour Judge Horton: Any questions arising?

Mr Sareen: No, thank you, now.

His Honour Judge Horton: Yes.

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