Neutral Citation Number: [2020] EWHC 2843 (Comm)

Case No: CL-2016-000799,
CL-2018-000106,
CL-2018-000109

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (QBD)

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 26/10/2020

Before :

MR JUSTICE JACOBS

- -

Between :

MICHAEL ANTHONY TUKE	**Claimant**
- and -	
(1) DEREK HOOD	**Defendants**
(2) J D CLASSICS LIMITED (in Administration)	
(formerly JD CLASSICS HOLDINGS LIMITED)	
- and -	
KEVIN HELLARD AND AMANDA WADE	**Interested**
(As Joint Trustees in Bankruptcy of Derek Hood)	**Party**

- -
- -

Alexander Wright and Edward Jones (instructed by **Wilmot & Co Solicitors LLP**) for the **Claimant**
Derek Hood as a litigant in person
James McWillams (instructed by **Dechert LLP**) for the **Interested Party**

Hearing dates: 18th and 19th March,
13th, 14th, 15th, 16th, 20th, 21st, 22nd, 23rd, 28th and 29th July 2020.

- -

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 2pm 26th October 2020.

.....

MR JUSTICE JACOBS

Contents **Paragraph number**

A: The parties and the claim **1**

B: The witnesses **19**

C: Overview of the relevant events **37**

D: Legal principles **131**

D1: Agency **131**

D2: Deceit **138**

D3: Dishonest assistance in breach of fiduciary duty **149**

D4: Knowing receipt **176**

D5: Conversion **182**

D6: Exemplary damages **186**

E1: The XKSS purchase **194**

E2: The AC Aceca purchase **231**

E3: Mercedes Gullwing purchase **278**

E4: Group C part-exchange transaction **292**

E5: Aston Martin exchanged for Jaguar XK 120 **395**

E6: Broadspeed and Mark II Jaguar part exchanged for Mark II and XK 150S **433**

E7: C Type part exchanged for Costin Lister and Allard **461**

E8: XKSS part exchanged for Lister Knobbly **491**

E9: GT 40(s) part exchanged for Ferrari TR 250 replica **557**

E10: XK 120 (JWK registration) part exchanged for E type Lightweight **591**

E11: Gullwing **622**

E12: Conclusion **634**

F: Loss of investment opportunity **637**

F1: The issues and the parties' arguments **637**

F2: Discussion **649**

G: Conclusions **683**

G1: Individual transactions **684**

G2: Loss of investment opportunity **685**

G3: Compound Interest **686**

G4: Exemplary Damages **687**

G5: Conversion, account of profits, knowing receipt **688**

Mr. Justice Jacobs :

A: The parties and the claim

1. In December 2009 Mr. Michael Tuke ("Mr. Tuke"), the claimant in these proceedings, visited the showrooms of a classic car business, JD Classics Ltd. ("JDC"). Mr. Tuke had enjoyed a successful career in orthopaedic engineering, and had recently sold his business to Johnson & Johnson ("J&J") for a figure in excess of £ 60 million. He had identified classic cars as a potential investment which would achieve returns greater than those then available, in the aftermath of the global financial crisis, from placing funds on deposit with banks.

2. JDC was at that time a leading retailer of classic cars, and a market leader in terms of volume and values achieved. It sponsored leading classic car race meetings such as those which take place each year at Goodwood and Le Mans. In addition to retail, its business included car restoration. Potential buyers of classic cars, and lenders, would often be impressed by the workshops, which were all on site. JDC was a market maker and to some extent set prices which others followed. A car which was presented at JDC, and which had been restored or partially restored or prepared for sale by JDC, might command a 15% higher value than cars purchased from other retailers: the company was at the top end of retail. At that time, and indeed subsequently, it appeared to be a very successful business.

3. JDC had been founded and built up by Mr. Derek Hood. Until August 2016, when the business was acquired by a private equity-led consortium, Mr. Hood was either the sole or majority owner of the company, and controlled its business. At the time of his meeting with Mr. Tuke in 2009, he was clearly a man of considerable drive and energy and a very persuasive salesman. He was, and remains, extremely knowledgeable about classic cars, having spent more than 30 years in the business.

4. At that meeting, Mr. Tuke agreed to buy 4 classic cars which he had seen on his visit, for a total sum in excess of £ 4 million. Thereafter Mr. Tuke's dealt with JDC over a number of years in a large number of transactions, some of which involved a degree of complexity. There were essentially three phases to the parties' dealings.

5. First, there was an "acquisition" phase. This began with the showroom visit in December 2009 and ended in September 2010. During that time, Mr. Tuke bought from 21 classic cars from JDC for a total sum in the region of £ 20 million. 7 of these cars were extremely expensive, costing in excess of £ 1 million each: Ford GT 40 race car (£1,400,000); Jaguar C-Type (£ 3,000,000); Jaguar XKSS (£ 3,456,000); Jaguar XK 120, registration number JWK 651 (£ 1,200,000); Mercedes Gullwing (£ 1,800,000); Jaguar Lightweight E-Type (£ 2,941,175); Allard J2X (£1,300,000). The prices for the remaining cars under £ 1 million varied.

6. The acquisition period came to an end because Mr. Tuke no longer had sufficient liquid resources to buy further cars, and indeed needed to sell cars in order to meet tax liabilities arising on the sale of his business to J&J and also

because the possibility arose, in around of April 2010, of Mr. Tuke buying back part of his business which J&J no longer wished to operate.

7. Secondly, there was a phase between September 2010 and April 2011 culminating in the "Group C" transaction. During this time, Mr. Tuke, via JDC, was seeking to sell cars in order to raise money. This was generally unsuccessful, save for the "Group C" transaction which Mr. Hood presented to Mr. Tuke in January 2011. It ultimately involved Mr. Tuke selling 4 of the previously acquired cars for £ 4 million, but at the same time agreeing to buy 5 Jaguar "Group C" racing cars for £ 10 million. (Group C was a category of motorsport introduced by the FIA in 1982.) Of the £ 10 million, Mr. Tuke borrowed £ 8 million from Close Asset Finance (or an associated Close company) ("Close"). The balance of £ 2 million was financed from the sale of the 4 cars. Through this series of agreements, Mr. Tuke therefore raised £ 2 million, less certain commissions and charges. However, it resulted in Mr. Tuke having to meet significant interest payments, as well the capital repayments which were required from August 2011 onwards.

8. The Group C transaction is a pivotal transaction as far as the present claim is concerned. Mr. Tuke claims that he was misled into entering into the transaction, and that it brought significant financial problems in its wake.

9. Thirdly, there was a phase (following the Group C transaction) between June 2011 and July 2013 when Mr. Tuke sold 14 cars by way of part exchange transactions. These included nearly all of the most expensive (£ 1 million plus) cars which had been acquired during the acquisition phase. A further expensive car, the Gullwing, was sold for cash in December 2013.

10. Against this background, Mr. Tuke seeks damages or equitable compensation or an account of profits exceeding £40 million against the Mr. Hood. His claims are brought in deceit, dishonest assistance in breach of fiduciary duty, knowing receipt and conversion. The trial was concerned with three separate consolidated claims which Mr. Tuke had commenced at various times against both JDC and Mr. Hood. There are 12 individual transactions which are in issue. These comprise: (i) three of the purchase transactions during the acquisition phase; (ii) the Group C transaction; and (iii) 8 part-exchange transactions, albeit that one (relating to a Bugatti) has been settled.

11. The present trial of 3 consolidated claims has taken place in the context of a further action which was heard by Lavender J. in March 2018: *Michael Antony Tuke v J.D. Classics Ltd.* [2018] EWCH 755 (QB). In that action, Lavender J. decided, in relation to the purchase transactions during 2010, that JDC was authorised by Mr. Tuke to act, agreed to act, and either did act, or purported to act, as agent for Mr. Tuke in negotiating and concluding the purchase of cars by Mr. Tuke in 2010: see paragraph [63] of his judgment. In relation to the Group C transactions and the other sale transactions which took place from 2011 onwards, Lavender J. held that Mr. Tuke appointed JDC as his agent to negotiate and conclude the sale of cars and receive payments on his behalf: see [170]. That agreement remained in force throughout each of the subsequent sales transactions: [170].

12. That decision therefore established, as between Mr. Tuke and JDC, the existence of an agency relationship between Mr. Tuke and JDC in relation to all of the transactions with which I am concerned. The case led to the production by JDC to Mr. Tuke of extensive documentary material relating to the various transactions, but Lavender J. was not concerned with the financial consequences of the finding of the existence of the agency relationship. Moreover, the claim was against JDC alone. Mr. Hood was the individual who gave instructions and signed statements of truth and gave witness statements in connection with those proceedings, but he was not a party to them. The findings of Lavender J. do not therefore, as Mr. Wright accepts, formally bind Mr. Hood: i.e. they do not give rise to an issue estoppel.

13. JDC is now in administration, and therefore the claim has proceeded against Mr. Hood alone. Until February 2020, shortly before the trial commenced, Mr. Hood was represented by solicitors and counsel. However, following a bankruptcy order made against him, Mr. Hood has represented himself.

14. The trial began on Wednesday 18 March 2020, following 2 days of pre-reading. Mr. Wright opened the case on behalf of Mr. Tuke, and Mr. Hood made an unsuccessful application to adjourn. However, circumstances then did result in an adjournment of the trial. Mr. Hood was unwell on the following day, and I was provided with medical evidence that Mr. Hood had been advised to self-isolate for 14 days in view of the symptoms which he had described to his doctor. On 23 March 2020, in consequence of the Covid-19 pandemic, the UK government-ordered 'lockdown' started. At that time, it was envisaged that the present trial (involving fraud allegations and a litigant in person) would need to continue as an ordinary trial in court – albeit with some witnesses giving evidence by video link. Since such an ordinary trial could not resume in the then immediate future, the case was adjourned to restart on 13 July.

15. On 22 June 2020, I held a 'remote' hearing, using Skype for Business, of an application by Mr. Hood for additional disclosure. This also provided an opportunity for discussion as to how the trial should proceed on its resumption. Mr. Hood's preference and submission was that the hearing should be entirely remote. He referred particularly to difficulties in transporting papers to London and the burden that daily hearings in London would present to him. Mr. Tuke did not oppose the idea that significant parts of the hearing should be conducted remotely, and indeed a number of his witnesses had previously expressed their desire to give evidence by video link and the difficulty of doing otherwise. However, it was submitted on Mr. Tuke's behalf that it would be appropriate for the principal factual witnesses (himself and Mr. Hood) to give evidence in person. This would mean that the evidence of other witnesses, including experts, would be given remotely, as would closing submissions.

16. I decided at that stage (with the possibility of reconsidering matters later) that the trial should proceed remotely, except for Mr. Hood's evidence and (if Mr. Hood wished) Mr. Tuke's evidence. However, following discussion with the parties after conclusion of the evidence of the Claimant's factual witnesses, and half a day of cross-examination of Mr. Hood remotely, I considered that there was no reason why the whole of Mr. Hood's cross-examination should not

proceed remotely (as Mr. Hood wished). The entire trial was therefore conducted remotely, and there were relatively few technical difficulties which were encountered.

17. Shortly before the resumed trial, Mr. Hood's trustees in bankruptcy applied to be joined as defendants for the purposes of enabling them to make submissions as to the quantum of Mr. Tuke's claim. There was no substantive objection to that course, and indeed I have been grateful for the assistance of Mr. McWilliams who has represented the trustees.

18. The resumed trial occupied 8 days in which evidence was given, following which the parties were given the opportunity to prepare written submissions. Oral closing arguments then took a further 1.5 days.

B: The witnesses

Factual evidence for the Claimant

19. On the Claimant's side, the principal witness was Mr. Tuke himself. I consider that he was a fair-minded witness; certainly as fair-minded as one could reasonably expect a claimant to be in circumstances where he considered that he had been the victim of serious frauds carried out by Mr. Hood. His evidence was generally consistent with the documentary record, and he was ready to accept that there were shortcomings in the way in which he dealt with matters. At one stage, he described himself as having been foolhardy. He acknowledged areas where he had an imperfect recollection of events, or indeed may have blanked matters out from his mind. He accepted that, during the period in late 2010 and early 2011, prior to the consummation of the Group C transaction, he was becoming increasingly desperate. Perhaps unsurprisingly, he found difficulty in answering some questions as to what would have happened if certain events had not transpired; for example, as to whether or not he might or would still have concluded the Group C transaction if he had known the full facts. This was because the questions, which are important to issues of causation and damages, postulated a scenario which did not happen, against a background where Mr. Tuke had limited options but where, on his case, he was deceived into doing what he did.

20. Overall, I considered that Mr. Tuke was a reliable witness when giving evidence as to what actually happened, and how he actually understood matters at the time.

21. The Claimant's other principal witness was Mr. Richard Hudson-Evans. He is very well-known in the field of motoring and classic cars, for example as a writer and broadcaster, and also because he has carried out many thousands of valuations. He was an immensely knowledgeable witness, whose evidence gave a helpful independent view of the market with which the present case is concerned. He had carried out an independent valuation for Close of the 5 Group C racing cars in early 2011. He had also carried out one other contemporaneous valuation of one of Mr. Tuke's cars. He gave thoughtful answers, and I considered that he was a witness upon whom I could rely. Although he was not called as an expert witness, it is clear that he had rather more expertise in classic

car valuations than either of the expert witnesses who were in fact called. His contemporaneous valuations are in some respects relied upon by Mr. Hood in support of his own case as the values of cars, in particular the Group C racing cars.

22. The other factual witnesses called by Mr. Tuke were Mr. Sam Thomas and Mr. Jason Moore.

23. Mr. Sam Thomas is a relatively young man who races cars and has a classic car business. He established a friendship and business relationship with Mr. Tuke in around 2012, and thereafter assisted in finding buyers for a number of Mr. Tuke's cars. He was far less impressive as a witness than Mr. Tuke or Mr. Hudson-Evans, and was somewhat evasive (or at least not forthcoming) when asked questions about problems encountered in the companies that he had run. However, his evidence did not seem to me to be of particular importance to most of the issues which I need to resolve. His attempts to find buyers had in many cases been successful, but had often resulted in relatively low prices when compared to the prices paid by Mr. Tuke. In so far as his evidence is relevant, I refer to it in Section E below in the context of the issues concerning the values of the various cars bought, sold and part-exchanged

24. Mr. Jason Moore gave a short witness statement relating to a conversation with Mr. Hood in 2016, concerning sales or possible sales of the Jaguar XKSS which Mr. Tuke had previously owned. I see no reason to doubt Mr. Moore's evidence as to what he was told by Mr. Hood. However, I have no reason to think that Mr. Hood's statements on that occasion were any more accurate or reliable than the allegedly dishonest statements which he made in connection with the transactions with which I am concerned. I therefore did not think that Mr. Moore's evidence was of any significance.

25. A brief witness statement was served from Mr. Nigel Morris. His company had built an E-type Jaguar which is the subject of one of the relevant transactions: see E 10 below. I address his evidence in that context.

Factual witnesses for Mr. Hood

26. Mr. Hood gave evidence under cross-examination for the best part of 2 ½ days. Since he was conducting his own defence, I have had the opportunity to observe him for a considerable period. A number of judges have previously made adverse comments as to his truthfulness and reliability, but I considered that it was essential for me to form my own view.

27. On the positive side, Mr. Hood is clearly a very intelligent and articulate person. Despite (as he sometimes told me) a lack of understanding of court procedures or experience in conducting a case, he was able to put across his points well. His cross-examination of the Claimant's factual and expert witnesses was carried out fairly, concisely and with some degree of skill. He had made a number of unsuccessful applications to adjourn the present trial, but once it became clear to Mr. Hood that this trial was indeed going to continue, it seemed to me that he knuckled down and got on with it. When cross-examined, he

generally sought to answer all the questions which he was asked. He was not a witness who sought to be evasive.

28. That said, I did not consider that I could place any reliance on Mr. Hood's account of disputed events, at least unless it was supported by contemporaneous documentation or was inherently probable. As will become apparent from consideration of each transaction in Section E, the e-mail correspondence with Mr. Tuke is littered with statements which were untrue, or which presented a misleading picture. There are false statements as to the amounts which potential sellers are prepared to accept: the figures put forward were not the sums which the seller was requesting, but the amounts at which Mr. Hood wanted Mr. Tuke to pay. The statements made in the context of the Group C transaction deliberately gave the impression that there were individual third party collectors who were selling their vehicles, and taking Mr. Tuke's vehicles in part exchange, when in truth no such collectors existed. Similar statements were made in the subsequent part exchange transactions. Although Mr. Hood usually had a ready answer to the point that was being put to him in cross-examination, on critical issues these answers did not stand up to scrutiny.

29. There are other aspects of Mr. Hood's conduct of the present, and wider, litigation which reinforce my conclusion that I cannot rely on his evidence. It is is sufficient to give two examples.

30. First, in the agency proceedings, Mr. Tuke's solicitors pressed for disclosure of certain documents, on the basis that JDC must have maintained an electronic or manuscript record of transactions including car sales and purchases. Mr. Hood provided a witness statement, dated 24 August 2017, in which he stated:

> [11 (b)] Further, during the period relevant to Mr. Tuke's claim, JDC did not maintain any separate electronic or manuscript record of car sale or purchase transactions which could have captured the transactions related to the Sold Cars other than the invoices which were prepared.

31. Mr. Hood was asked about this statement at the beginning of his cross-examination. The disclosure which Mr. Tuke had subsequently obtained, as a result of the agency proceedings and then the present proceedings, showed that this statement was not true. Mr. Hood had no explanation for what he had said. He said: "I don't understand that paragraph, because we would have had to have separate electronic [records] for accountants". He described it as a mistake, but agreed that it looked as though he had put in a statement that was untrue. It was put to him that this was an attempt to mislead the court. His candid response was: "It looks that way, yes. Yes it does". In my view, this statement was indeed a deliberately misleading statement.

32. Secondly, in the present proceedings, Mr. Hood belatedly produced a letter dated 28 September 2010 in support of his case. I address this letter in detail in Section C below. I am quite satisfied that this letter was neither written nor sent at the time.

33. Mr. Hood called two other witnesses to give oral evidence. Mrs. Valerie Shelton had been Mr. Hood's PA for at least 18 years. Her evidence was principally relevant to Mr. Hood's reliance on the 28 September 2010 letter. For reasons set out in Section C below, I do not accept that Mrs. Shelton had any recollection of typing or sending this letter, or that it was sent at the time. There was, however, no suggestion that Mrs. Shelton was deliberately lying or that she was a dishonest witness. Indeed, as Mr. Tuke's closing submissions correctly identified, her evidence as to JDC's invoicing procedures, and communication with customers such as Mr. Engelhorn, was candid and unhelpful to Mr. Hood.

34. The other factual witness was Mr. Riedling. There was no suggestion that his evidence was unreliable, and indeed following his evidence Mr. Tuke did not pursue one aspect of his case of fraud in relation to one vehicle (an allegation relating to the originality of the XK 120 part exchanged for Mr. Tuke's Aston Martin – see Section E5). Mr. Riedling gave some evidence in relation to the E-Type Lightweight which Mr. Tuke received in exchange for his XK 120 (registration JWK). This evidence did not, however, advance the case of either party.

35. For the Claimant, expert evidence on valuation was given by Mr. Peter Neumark, and on provenance and authenticity by Mr. Tim Griffin. Mr. Hood's expert on both issues was Mr. Guy Broad. In my view all of these witnesses gave their evidence well, and with a view to assisting the court.

36. Mr. Neumark's work on valuation was certainly more thorough and comprehensive than that of Mr. Broad, who had been consulted very late (prior to the March trial) and had then been told to stop work once Mr. Hood's solicitors ceased to act. Mr. Griffin's evidence, which concerned three cars in issue, was also thorough and comprehensive. Both of these experts had done a very considerable amount of work; far more than Mr. Broad. I take that into account in assessing their evidence. Nevertheless, Mr. Broad was clearly very knowledgeable about many of the cars with which I am concerned. As will be seen from my consideration of the issues in Section E, I generally prefer the evidence of Mr. Griffin on provenance/ authenticity where it conflicted with Mr. Broad. In relation to the valuation issues addressed by Mr. Neumark and Mr. Broad, I have approached each car on a case-by-case basis. On some occasions, I have accepted what one or other expert has said. On other occasions, my conclusion is that the value of a car lies somewhere between the figures given by the two experts.

C: Overview of the relevant events

37. In this section, I set out an overview of the events, as I find them, which are relevant to these proceedings. I deal separately below (Section E) with the chronology relating to each specific transaction in issue.

December 2009

38. Mr. Tuke had first been in contact with JDC in February 2006, when he had purchased a Jaguar XK 140. There was another contact in 2007. After the sale of his business to J&J, Mr. Tuke visited JDC's showroom and a long and

amiable meeting took place with Mr. Hood on 18 December 2009. Mr. Tuke had not carried out any detailed research into classic car values for the purpose of that visit, but he had a broad idea of values as a result of reading magazines and attending events. He had an instinct that an investment in classic cars was likely to prove sound, and there was some discussion between the men as to investment potential. Mr. Hood told Mr. Tuke that a limited number of transactions were free of Capital Gains Tax each year. Mr. Hood was enthusiastic at the prospect of Mr. Tuke building up a collection of cars for investment purposes, and offered to use his expertise to help.

39. On that occasion, Mr. Tuke agreed to buy four cars. These were the following: Jaguar Mark II; Bugatti Veyron; Ford GT 40 race car with chassis number P 1101, together with a collection of parts which, it was agreed, could be used to build up a finished GT 40 road car; Jaguar C Type. The most expensive was the C Type at £ 3,000,000. The agreed price for these 4 cars (including the collection of GT 40 parts) was £ 5,400,000. Mr. Tuke wrote a substantial cheque for £ 2 million, there and then, for the deposit. There was a discussion about a discount for this bulk purchase, and the above price allowed for a reduction of £ 30,000.

40. It is clear that at this stage the relationship between Mr. Tuke and JDC was that of buyer and seller. Mr. Tuke does not suggest that any agency relationship arose at this stage. Mr. Tuke subsequently received an invoice from JDC for the balance of £ 3,400,000 which was due. The invoice from JDC identified Mr. Tuke as the "Vehicle Buyer". Mr. Tuke assumed that JDC was the owner of three of the cars, and was selling them to him. He had been told by Mr. Hood that the Bugatti was owned by the racing driver, Jenson Button, and that Mr. Hood needed to check with Mr. Button that it could be sold. Mr. Button gave the go-ahead, and therefore the Bugatti entered Mr. Tuke's collection along with the other cars.

41. Despite the large size of this transaction, and those which followed, there was a considerable degree of informality about the process of sale. JDC did not draw up and require the signature of any contracts of sale. It is the invoices which evidence the fact that cars were being purchased.

42. The evidence from Mr. Hood, supported by a number of witnesses, is that there were in existence standard terms and conditions for JDC. These provided as follows, so far as material:

> JD Classics are unique in that we are the largest independent classic car dealer, restorer and race car preparer in Europe trading from our own purpose built showrooms and workshops. JD Classics are not classic car brokers, car sale agents or car consultants.
>
> Any personally financed vehicle transaction you undertake with JD Classics will be on the strict understanding you are buying from JD Classics not any other third party.

> If you purchase from or sell a vehicle to JD Classics you are not under any obligation to buy or resell that vehicle with JD Classics.
>
> Any sale or purchase of a vehicle financed through a third party finance provider will be on the understanding JD Classics are transacting the business with the finance company not with yourself. The finance provider will provide the legal and personal financial terms required to purchase or sell the vehicle directly to you. The finance provider will directly instruct JD Classics and yourself of when to invoice and any other requirements needed to conclude the purchase/sale of the vehicle with the finance company.
>
> …
>
> JD Classics may use its own car stock and or its own finances to purchase/ exchange vehicles to conclude a transaction between a third party, JD Classics and yourself.
>
> …
>
> JD Classics receive financial gain buying, selling, exchanging vehicles and from the workshop services it offers you.
>
> Your decision to conclude the purchase/ sale of a vehicle with JD Classics is on the understanding and acceptance you agree to JD Classics Terms of Business and you are satisfied that in all respects you accept the condition and the price of the vehicle and you agree it is your decision to complete the transaction."

43. These terms and conditions made a very late appearance in the litigation concerning Mr. Tuke's cars. They are not referred to in any of the invoices sent to Mr. Tuke, or indeed in any of the extensive communications between the parties. No reference was made to them during the course of the 'agency' proceedings before Lavender J. There is no allegation that they were ever given to Mr. Tuke, or that they were referred to during the course of the parties' dealings over many years. The administrators of JDC did not have a copy of these standard terms, and an accounting staff member who joined in around 2014 was apparently unaware of them. Their existence was only disclosed by Mr. Hood and relied upon by him in witness evidence served shortly before the trial in March 2020. At one stage, it appeared that Mr. Tuke intended to argue that the terms and conditions had been fabricated, and had not existed at the material time. In the event, however, Mr. Tuke did not challenge the witnesses who spoke to the existence of these terms, and the fact that they were visible on the walls of JDC's showroom.

44. Since these terms were never referred to in any of the communications between the parties over many years, I do not consider that they can properly be considered to have been incorporated into such agreements as were made, over the years, between Mr. Tuke and JDC. Whilst I accept that they may have been placed somewhere on the walls of JDC's showroom, those showrooms were very large and the walls were covered with large numbers of photographs. Even though these terms may have been there, along with numerous other items on the walls, this is not sufficient to draw their attention to Mr. Tuke.

45. In any event, as described below, Mr. Tuke and Mr. Hood on behalf of JDC reached express agreement in September 2010 as to the basis on which potential sales of Mr. Tuke's cars would take place. I do not see how JDC's standard terms and conditions, which were never referred to or discussed in that or any other context, could prevail over the express agreement.

The acquisition phase in 2010

46. Following this initial purchase of 4 cars in December 2009, Mr. Tuke purchased 17 further classic cars in the first 9 months of 2010. These comprised 3 cars in January; 5 cars in February/ March; 2 cars in April; 4 cars in June; and 3 cars in August/ September.

47. In relation to these 21 cars purchased over that period of time, Mr. Tuke claims in respect of only 3 of the transactions. These concern the Jaguar XKSS purchased for £ 3,456,000 in January 2010; the AC Aceca purchased for £ 254,000 in March 2010; and the Mercedes Gullwing purchased for £ 1,800,000 in April 2010. In each of these three cases, Mr. Tuke alleges that JDC made a secret profit on the transaction, and that this was impermissible because JDC was acting as his agent. Mr. Hood's liability is said to arise because he dishonestly assisted the breach by JDC of its duties as agent. In relation to the AC Aceca and the Gullwing, Mr. Tuke also, separately, alleges that fraudulent misrepresentations were made to him which induced the transactions, and he claims for the damage allegedly suffered. Such damage comprises, in essence, the difference between the amounts which he paid for those two cars, and what he alleges to be their true market value.

48. Although only 3 of the 21 transactions during this period are impugned, the acquisitions provide an important backdrop to the events which followed. Mr. Tuke's claim includes a claim in respect of what have been described as the 'Investment Cars'. These are cars that Mr. Tuke contends that he would have sought to retain, and would have retained, but for Mr. Hood's fraudulent activity which resulted in their sale in disadvantageous part exchange transactions. They comprise the following cars: (i) GT40 race car and associated road car, purchased for £ 1,400,000 at the original December 2009 visit; (ii) Jaguar C Type, purchased for £ 3,000,000 at the original December 2009 visit; (iii) Jaguar XKSS, purchased for £ 3,456,000 in January 2010 and which is one of the three cars which is the subject of claims for secret profits; (iv) Jaguar XK 120 (registration JWK 651) purchased for £ 1,200,000 in January 2010; (v) Aston Martin Vantage Volante, purchased for £ 680,000 in February 2010; (vi) Jaguar Lightweight E-Type, purchased for £ 2,941,176 in April 2010. The Bugatti

Veyron purchased in December 2009 did initially feature on this list, but the claim in respect of that car has settled.

49. Accordingly, in relation to the acquisition phase, Mr. Tuke's case is that he in fact purchased some very valuable cars, and that these cars would have become even more valuable over the years. Of the 21 cars purchased, there are only two cars (the Aceca and the Gullwing) where Mr. Tuke brings a claim on the basis that he paid an excessive price as a result of misrepresentations or dishonest assistance on the part of Mr. Hood. In relation to all the other cars, Mr. Tuke's evidence was that he considered that he had overpaid, and that this was one of the reasons why he had less money available in 2010 when he started to need to sell. However, it is only in respect of two cars that any case based on overpayment, resulting from alleged dishonest representations, is put forward.

April – September 2010

50. In around April 2010, the possibility arose of Mr. Tuke buying back part of his business from J&J. Over the next few months, the e-mail correspondence including regular discussion between Mr. Tuke and Mr. Hood of the possibility of sales of some of the cars, albeit that Mr. Tuke could not resist the opportunities presented to him by Mr. Hood to purchase further cars. In addition to needing money for the possible reacquisition, Mr. Tuke was facing a hefty tax bill in January 2010. On 30 July 2010, Mr. Tuke referred to the need to raise £ 3 million plus the money about to be spent on the Allard (£ 1.3 million) by way of sales "before many weeks have gone by to ensure liquidity for tax and possibly business investments". As matters transpired, no sales were accomplished in the following weeks. The first sale did not occur until April 2011, when the Group C transaction was consummated. The net cash amount raised by Mr. Tuke on that transaction, which was financed by Close, was less than £ 2 million; i.e. well below the £ 3 million that Mr. Tuke had been discussing in July 2010.

51. On 24 September 2010, Mr. Tuke e-mailed Mr. Hood as follows.

> "£50k on E type Ok but must have around £5m back by end Nov from something, preferably not C Type, JWK, AM, or XKSS. Rest are up for go with racers top of list to lower my adrenaline levels.
>
> …
>
> How it work for JD on selling, 10% on uplift from purchase seems sensible?"

52. The correspondence between Mr. Hood and Mr. Tuke throughout their relationship was by e-mail. I was not referred during the trial to any letter that was sent by either person to the other, save for one disputed letter discussed below. Nor were letters sent as attachments to e-mails: both Mr. Tuke and Mr. Hood conveyed what they needed to convey in the text of their e-mails.

53. This particular short e-mail captures a number of matters which are significant in the context of the present case.

54. First, Mr. Tuke was looking to raise a significant sum: £ 5 million by the end of November. In fact, he was unable to raise any money from sales by that time, and it is apparent that there must have been a degree of flexibility in the amount which he actually needed to raise by that time. As I have said, he first raised funds through a sale in April 2011, and then less than £ 2 million. Mr. Tuke's evidence was that he liked to operate on the basis that he had money in hand to cover expenses going forward.

55. Secondly, Mr. Tuke identified the cars which he preferred to keep. Three of these cars (C Type, the XK 120 with the JWK registration number, and XKSS) were Jaguars. The "AM" was an Aston Martin. Apart from the C Type, these were all road cars which he could enjoy driving. He identified the racing cars as those which were on the top of his list for sale. In an earlier e-mail, he had described the track cars as a "cash drain".

56. Thirdly, and perhaps most importantly, he made a proposal as to the terms on which Mr. Hood (who would be acting for JDC) would sell his cars: a 10% uplift on purchase.

57. Mr. Hood responded on 27 September 2010:

> "I am on the case with the sale of cars, more interested in moving cars for you than think of my uplift on the profit at the moment but 10% sounds fair.
>
> If you want me to steer away from selling the C, XKSS, AM and XKSS [a typo for XK120] my avenues get a bit tighter. Lightweight E is a car to sell next year as it's the 50th anniversary and an invite to Pebble."

The September 2010 exchange and the Lavender J. judgment

58. This e-mail exchange, supplemented by later correspondence which referred back expressly or impliedly to it, was at the heart of the Mr. Tuke's argument in the proceedings before Lavender J. At paragraph [73] of his judgment, the judge said:

> "For reasons which I will develop later, I find that by this exchange of emails the parties made a contract by which Mr Tuke agreed to pay JD a fee calculated as 10% of his "uplift from purchase" if JD sold a car for him, i.e. as his agent. Moreover, whether or not this agreement constituted a contract, it involved Mr Tuke conferring authority on JD to act as his agent in negotiating and concluding the sale of Mr Tuke's cars and receiving payment on Mr Tuke's behalf."

59. Lavender J. then considered the subsequent transactions and correspondence in considerable detail, and his conclusion in paragraph [170] referred back to the September exchange:

> "Having considered all of the evidence and submissions, I am satisfied that Mr. Tuke did appoint JD as his agent to negotiate and conclude the sale of cars and receive payments on his behalf. He did so in September 2010, when the parties agreed that JD would receive a commission for doing so. That agreement remained in force throughout each of the subsequent Sales Transactions."

60. I have read and re-read Lavender J's judgment on a number of occasions. It describes much of the correspondence which I have considered during the trial. It is sufficient to say that I see no reason at all to disagree with his key conclusions as to the existence of the agency relationship between Mr. Tuke and JDC in relation to the sales transactions concluded subsequent to September 2010. I also agree substantially with his reasoning which led to those key conclusions, and I do not consider it necessary to lengthen this judgment by repeating or even summarising that reasoning here, although from time to time I will refer to documents, in the context of particular transactions, which to my mind demonstrate the correctness of Lavender J's conclusions.

61. The important documentation relevant to the issue of agency comprises the e-mails and other written communications, such as invoices, which passed between Mr. Tuke and Mr. Hood. The essential documentation to which I have been referred at trial is essentially the same as that which was considered by Lavender J. The only additional and potentially material documents are:

a) JDC's standard terms and conditions. However, for reasons already given, Mr. Tuke had no notice of these, and they were not therefore incorporated into the agreement between him and JDC. In any event, these could not displace the agreement which was subsequently reached in the exchange of September e-mails. That agreement was for a 10% uplift on any profit that Mr. Tuke achieved via JDC's sale of his cars. I cannot see how JDC could then properly claim to be entitled to make far greater profits, undisclosed to Mr. Tuke, on the grounds that JDC was in fact doing no more than buying and selling cars from and to Mr. Tuke on a principal to principal basis.

b) A letter dated 28 September 2010. For reasons explained below, I consider that this letter is a recent fabrication by Mr. Hood, and that it was not sent to Mr. Tuke at the time.

c) An e-mail allegedly sent by Mr. Hood at 14.33 on 13 March 2011. This e-mail is discussed in Section E7 below. I was not satisfied that this e-mail was in fact sent.

62. In addition to the documentation, I have (unlike Lavender J.) heard evidence from Mr. Hood himself. As explained elsewhere, Mr. Hood is not a witness upon whose evidence I can rely. In any event, there was nothing in his evidence which caused me to doubt the conclusions and analysis of Lavender J.

63. In these circumstances, it is unnecessary for me to address in detail Mr. Tuke's argument that it is an abuse of process for Mr. Hood to seek to relitigate the agency issue which was decided against JDC by Lavender J. As I have said, Mr. Tuke did not contend that Mr. Hood was bound by that decision by reason of an issue estoppel. If I had concluded that Lavender J's conclusions as to agency were wrong in material respects (for example because of evidence which was not available to Lavender J.) I would have been reluctant to decide that it would be abusive for Mr. Hood so to argue. The authorities indicate that abuse of process only arises rarely in circumstances where there is no issue estoppel: see e.g. the judgment of Simon LJ in *Michael Wilson & Partners v Sinclair* [2017] EWCA Civ 3, para [48 (5)]. Furthermore, this is not a case where Mr. Hood has sought to start fresh proceedings having previously lost a case. Rather, it is a case where Mr. Hood was not party to the previous proceedings, but is now sued as a defendant for fraud and dishonest assistance. Mr. Hood's denial of an agency relationship in the present proceedings is consistent with his prior such denial in the agency claim. It seemed to me that there is a parallel between Mr. Hood's position, and that of Mr. Conlon in *Conlon v Simms* [2006] EWCA Civ 1749, where a defendant's denial was held not to be abusive. However, I do not need to consider these arguments in detail, because I consider that Lavender J. was right, essentially for the reasons that he gave, in relation to the agency relationship that existed in the context of the sales transactions. Indeed, any other conclusion would be strange in view of the emphatic rejection by Lewison LJ. of JDC's application for permission to appeal against Lavender J's judgment.

64. Before leaving this topic, two further points should be noted. First, as will be apparent from my discussion of the three relevant 2010 purchase transactions (Sections E1 – E3 below), I was doubtful whether there was an agency relationship in relation to the XKSS purchase, and more generally whether in relation to the three purchases there was any agency relationship which went further than Mr. Tuke conferring authority on JDC to convey offers which he wished to make for the purchase of the relevant cars. The important question, however, is not whether there was a relationship of principal and agent in relation to those purchases, but whether any relevant fiduciary duties arose such as to enable Mr. Tuke to advance claims based on dishonest assistance. In relation to the sales transactions, however, I had no doubts as to the existence of the agency relationship and the relevant fiduciary duties.

65. Secondly, at various points in the case, including in his cross-examination of Mr. Tuke, Mr. Hood made the point that the business of a company such as JDC could not operate profitably on the basis of commission payments in respect of sales of the cars of its clients. I can well understand that a high-end classic car retailer such as JDC would indeed generally wish to buy and sell cars as principal, making a profit based on the difference between the prices at which it bought and sold. As will be apparent from my decision in relation to, for

example, the XKSS purchase, I consider that JDC were entitled to make a profit in that way on that car, and indeed that Mr. Tuke understood that JDC was so doing. I can also understand that the payment terms proposed in Mr. Tuke's 24 September 2010 e-mail (a 10% uplift on profit) may not in themselves have provided a strong incentive for Mr. Hood to put in time and effort in trying to find purchasers for Mr. Tuke's cars; particularly bearing in mind that an uplift on profit may be difficult to achieve in circumstances where buyers were being sought not long after JDC had made retail sales to Mr. Tuke, and where the market had not moved upwards to any significant degree. If, however, the proposed terms were unattractive to Mr. Hood and JDC, then Mr. Hood could and should have made that clear to Mr. Tuke and explained why. Instead, his e-mail response to the offer was that Mr. Tuke's proposal sounded fair, and Mr. Hood sought to give the impression that he was not particularly interested in making money on the sales: he was "more interested in moving cars for you than think of my uplift on the profit at the moment". This was all part of Mr. Hood's overall approach of presenting himself as being on the same side as Mr. Tuke.

The letter dated 28 September 2010

66. In February 2020, Mr. Hood disclosed a letter dated 28 September 2010. It was relied upon by him in his witness statement, where he stated that he believed:

> "that the letter made clear to Mr. Tuke that JDCL did not act, and would not act for Mr. Tuke on an agency or commission basis. Rather JDCL bought and sold cars in its own right, and except where JDCL brought about a principal to principal transaction between a seller and a buyer to which JDCL was not a party, that is how it would act in relation to the sale of Mr. Tuke's cars. In accordance with that practice, in the normal course JDCL would locate potential buyers for Mr. Tuke's cars and, if a transaction went ahead, it would involve Mr. Tuke selling the relevant car to JDCL, either for cash and part exchange. JDCL would then sell the car, at a later date, to a potential buyer, on terms independent of Mr. Tuke"

67. The letter stated as follows:

> "Dear Mike
>
> Further to our e-mail exchange over the last few days regarding your suggestion of commission on car deals I need to clarify the basis of a commission sale and JDC sales before we agree any commission deals because as previously discussed JDC are dealers and do not sell on a commission. JDC buys and sells cars and takes a profit on the difference between the price we negotiate the purchase of and sell a car for.
>
> **Commission Sale.**

> A commission will be payable to JDC when JDC have introduced a customer, agent or dealers to your car and that customer, agent or dealer invoices you for the sale/purchase. Once you have been invoiced by the third party and agreed and signed their invoice JDC will send you a 'Commission Car Sales Invoice'. Any JDC commission sale will be pre agreed on a deal by deal basis.
>
> **JDC Sale.**
>
> All JDC invoices headed 'Car Sales Invoice' represent JDC as the owner/principle of the cars it is selling to you and you as the owner/principle buying from JDC. All JDC invoices headed 'Car Purchase Invoice' represent JDC as the buyer/principle purchasing the car/cars from you and you as the car/car's owner/principle selling to JDC. JDC sales are not commission sales they are direct purchase sales between JDC and yourself.
>
> All the best
>
> Derek

68. I have no doubt that this letter was not prepared contemporaneously and that it was not sent to Mr. Tuke in September 2010. Rather, it was prepared by Mr. Hood at around the time that he served his witness statement in February 2020. There are a number of reasons which lead to that serious conclusion.

69. First, the letter was not disclosed, by either party, in the course of the agency proceedings. Nor was it disclosed in the course of disclosure within the present proceedings. This is notwithstanding that there have been four separate disclosure exercises: (i) standard disclosure given by Gowlings in the agency claim on 13 July 2017; (ii) disclosure of agency materials provided by JDC with the account ordered in July/ August 2018, following Lavender J's judgment; (iii) disclosure provided by Mr. Hood on 24 May 2019; (iv) extended disclosure provided by Mr. Hood on 15 November 2019. Had the letter been sent and received, it could reasonably be expected to have been identified in the course of one of these disclosure exercises, bearing in mind that Mr. Hood's evidence was that the letter would have been typed by his personal assistant, Mrs. Shelton, in the ordinary course of her work at JDC.

70. Secondly, given the importance of the agency issues, one might reasonably expect Mr. Hood to have mentioned this letter – or at least his belief that such a letter existed – in the statements made in the course of the agency proceedings, or in the pleadings in the various actions. He did not do so.

71. Thirdly, I do not consider that a satisfactory explanation has been provided as to how this letter came to be found in February 2020. Mr. Hood's evidence was that he had found it in a box of miscellaneous papers that he had retained. However, enquiries were made by Wilmots (Mr. Tuke's solicitors) in February

2020 of the administrators, represented by Quinn Emanuel Urquhart & Sullivan UK LLP ("QE"). Mr. Harding of QE advised that the documents referred to in the letter dated 28 September (by which he obviously meant the letter itself) had not been located following a search of available electronic documents, albeit that hard copy documents offsite had not been searched. He also advised that after the appointment of the administrators (which was in September 2018), they "contacted Mr. Hood requesting him to return any documents in his possession and he subsequently brought 19 boxes of documents to JDCL's premises a few days later". The administrators were not able to confirm that these were all the documents which Mr. Hood held.

72. However, Mr. Hood's previous solicitors (Fieldfisher) had previous advised Wilmots, on 1 October 2019, in relation to a question as to why no hard copy documents of Mr. Hood had been searched:

> "Mr. Hood left all hard copy documents at JDCL's premises when he left the company, and has not retained any contemporaneous hard copy documents. The only hard copy documents held by him in relation to this matter are privileged."

73. Accordingly, it appears that Mr. Hood must have carried out some search for hard copy documents at around that time, in order to make the statements made in Fieldfisher's email of 1 October. It was then clearly stated that he had not retained any hard copy documents.

74. Fourth, I can see no reason why Mr. Hood would have communicated on the subject of commission, as set out in the September 2010 letter, by letter rather than e-mail. All of the parties' correspondence was on e-mail, and I was not referred to any other letter which was sent by Mr. Hood to Mr. Tuke or vice versa. It would have been more difficult for Mr. Hood to fabricate an email containing the matters set out in the September letter: he would need to know how to alter the metadata, as well as to explain why there was no electronic record of the e-mail in any of the disclosure.

75. Fifth, I do not consider that the letter makes any sense in the context of the contemporaneous correspondence. The first paragraph of the letter refers to a previous discussion: "as previously discussed JDC are dealers and do not sell on commission". However, there is no record in the prior correspondence of any statement to the effect that JDC did not sell on commission. Moreover, the email exchange on 24 and 27 September 2010 established that JDC would sell on commission: Mr. Hood said that a 10% uplift on profit sounded fair. If the position were that JDC did not sell on commission, one would have expected Mr. Hood to have made that clear in response to Mr. Tuke's e-mail of 24 September, rather than describing the proposed uplift as fair.

76. In that context, I also note in passing that the 28 September letter is inconsistent with the case advanced by JDC in the agency proceedings. In those proceedings, it was argued that the 10% uplift referred to was not a commission payment, but

was a profit sharing agreement. However, the 28 September uses the word "commission" on many occasions.

77. Sixth, I do not consider that the procedure envisaged in the 28 September letter was in fact followed. The first of the sale transactions which took place, and which I shall describe in more detail, was the Group C sale which was concluded in April 2011, whereby Mr. Tuke sold 4 cars and received the 5 Group C racing cars. There can be no doubt that this was a commission sale. Mr. Hood prepared an invoice, headed "Invoice Number 3635" for a "Commission charge of 10% on your sale of vehicles". This stated that the "Profit after all invoicing for each vehicle" was £ 1,327,073.70, and commission was charged at 10% accordingly, albeit with a discount. This invoice was subsequently amended, because Mr. Hood had mistakenly included the Jaguar Broadspeed in the calculation, and this car had not in fact been sold.

78. It is clear that these invoices reflected the agreement made in the e-mail exchange in September 2010, rather than the 28 September letter which states that JDC did not "sell on a commission". Even though this clearly was a commission sale, there is no third party invoice as contemplated by the second paragraph of the 28 September letter. JDC did not send any "Commission Car Sales Invoice" as also provided for in that letter. What JDC did send was a "Used Car Purchase Invoice". This is not exactly the same as an invoice "headed 'Car Purchase Invoice'", as referred to in the third paragraph, but it is perhaps close enough. But the important point is that this "Used Car Purchase Invoice" was sent in the context of what was clearly a commission sale of the 4 cars in question, notwithstanding the third paragraph of the letter.

79. Mr. Hood suggested in evidence that the reason that this was a commission sale, rather than a sale in accordance with the 28 September letter, was that the parties had specifically agreed this in relation to this sale. I reject that explanation. There is no documentary evidence of any specific agreement, in effect varying the 28 September letter, for the Group C transaction. Rather, the position is straightforward. The parties had agreed the basis of remuneration for sales of Mr. Tuke's cars in the September exchange: i.e. 10% on uplift. That arrangement continued to apply thereafter, and (as Lavender J. held) applied in relation to all subsequent sales. The invoicing of the 10% commission for the cars sold as part of the Group C transaction was in accordance with what had been agreed in the September e-mail exchange. It was not in accordance with the 28 September 2010 letter, because that letter had never been written at that time nor sent to Mr. Tuke.

80. Similarly, there was a transaction in May 2012 whereby Mr. Tuke sold his Lightweight E-Type to a company called Morris & Welford. That sale is unusual in that there was a direct contract between Mr. Tuke and Morris & Welford. There is no dispute that this was a commission sale. Thus, on 2 July 2012, Mr. Tuke asked whether the payment would "allow your 10% uplift" to which Mr. Hood responded that "[m]y 10% uplift comes out the balance due back to you." It is clear, in my view, that Mr. Tuke and Mr. Hood were here referring back to the September 2010 exchange. There is no other written

exchange which establishes the entitlement to a 10% uplift, and there is nothing in this exchange which is referable to the 28 September 2010 letter.

81. Moreover, the documents on that transaction again do not correspond with those which are contemplated by the "Commission Sale" paragraph of the 28 September 2010 letter. There is no record of any invoice from the third party, Morris & Welford, nor any record of such invoice having been signed by Mr. Tuke. Indeed, in the context of a sale of a car from Mr. Tuke to a third party, one would not expect there to be any invoice issued by the third party (as contemplated by the letter); since Mr. Tuke would be the seller and would be the party issuing the invoice. Furthermore, there is no record of any "Commission Car Sales Invoice" having been produced by JDC. And although Mr. Hood in his evidence suggested that such an invoice did exist, I was not shown any such document.

82. Rather, the position in relation to this sale (which was a commission sale) is that invoices were created which are in substance materially the same as the invoices created on other transactions. Thus, there is a "Used Car Purchase Invoice" dated 6 June 2012, which identifies Mr. Tuke as the Vehicle Buyer of the E Type. (This was wrong: he was the seller). The purchase price was said to be £ 4,392,360. This represented the contract price of £ 4,500,000 less JDC's commission. The invoice then deducted £ 3,000,000 paid directly to Close, leaving a "Balance Due" of £ 1,392,360. Although described as an invoice, it was in effect (because Mr. Tuke was the seller) a credit note, because Mr. Tuke was entitled to be paid (and was not required to pay) the balance due. At the same time, notwithstanding that this was a direct sale between Mr. Tuke and Morris & Welford, JDC issued a separate "Car Sales Invoice", in the sum of £ 4,500,000 to Morris & Welford. This stated that £ 3 million was to be paid directly to Close Vehicle Leasing, and the balance was payable to JDC.

83. Three points emerge from this. First, as I have said, the procedures contemplated in the 28 September 2010 letter for "Commission Sales" were not followed, even though this was a commission sale. Secondly, the parties appear to have been operating on the basis of a 10% commission on uplift: i.e. the arrangement which had been agreed in September 2010. Thirdly, as Lavender J. noted in paragraph [136] of his judgment, the invoice issued to Mr. Tuke in this case, when JDC was not the buyer, was in materially the same form as the invoices issued in the case of other sales transactions: for example, on the Group C sale there was a "Used Car Purchase Invoice" in respect of the four cars sold in the total of £ 4,000,000. As Lavender J said:

> "It follows that one cannot treat those invoices [i.e. the invoices on transactions other than Morris & Welford] as an indication that JD was, or even that JD believed that it was, the buyer in any of these transactions".

84. Mr. Hood sought to corroborate his case as to the 28 September letter by the evidence of Mrs. Shelton. When she gave her evidence, she was unable successfully to operate the video facility on Skype for Business, and therefore neither I nor the parties could see her. Nevertheless, she was able to hear and

respond to questions in cross-examination and re-examination. Mrs. Shelton's evidence was that she did recall writing this letter, because it was unusual for JDC to sell cars on a commission basis.

85. I do not accept that Mrs. Shelton has any such recollection, although it is reasonable to assume that she may have persuaded herself that she does. I reach this conclusion for the following reasons.

86. First, one would not ordinarily expect a witness such as Mrs. Shelton, who was dealing with administrative matters in a busy organisation, to have a recollection of having written a letter some 10 years ago. If she did have any such recollection, then one would expect that she might have mentioned it to Mr. Hood at some stage during the course of the litigation commenced by Mr. Tuke, of which she was aware.

87. Secondly, Mrs. Shelton's evidence as a whole indicated to me that she did not have a particularly good recollection of events many years ago. During her re-examination, she sometimes needed to be prompted by Mr. Hood to give the answer that he was seeking. For example, she initially indicated that she would correspond with a client, Mr. Engelhorn; but, after prompting, said that this was with his trust.

88. Thirdly, for reasons already given, the letter does not fit with the contemporaneous correspondence, and no satisfactory explanation has been given for why it was not previously disclosed and how it came to be located. Indeed, Mrs. Shelton's evidence is that she was shown the letter by Mr. Hood and this jogged her memory. She did not therefore support the explanation provided by Fieldfisher in their letter of 12 February 2020; i.e. that the letter had been located by Mrs. Shelton herself.

89. Fourth, Mrs. Shelton clearly had a sense of loyalty towards Mr. Hood. I do not suggest that she was fabricating her evidence as to her recollection of this letter. However, she accepted in cross-examination that she would never have believed that Mr. Hood would fabricate a letter. It is therefore not surprising that, when shown the letter by Mr. Hood himself, she would readily believe that it was genuine and persuade herself that she recalled writing it.

October 2010 – December 2010

90. Following the exchange of e-mails in September, the parties' focus was on sales. On 28 September 2010, Mr. Tuke for the first time turned down the opportunity to buy another car, telling Mr. Hood that: "You will have to have this one". The e-mail reflected the fact that Mr. Tuke knew that if he was unwilling to purchase, JDC might well purchase it for its own account with a view to looking for a different buyer.

91. In October 2010, Mr. Tuke expressed his unhappiness at the lack of sales: "I had understood these investments were realisable". He spoke of the need to "do something soon for around £ 5 million". Mr. Tuke was suffering a lack of liquidity, with recent 'big bills' adding to his difficulty. During the period of the parties' relationship, Mr. Tuke spent substantial sums on car restoration and

servicing, paying JDC just short of £ 3 million. The 'big bills' included monies invoiced by JDC, with Mr. Tuke indicating that he could not pay them immediately without breaking a deposit with a serious financial penalty.

92. On 9 October 2010, Mr. Hood said that he was struggling with Mr. Tuke's valuation on the XKSS and the XK 120, and if "we set figures lower you will still get a very good return and I will have more of a chance". He said that if "you want to sit with your valuations, I will get it but it will take time". The e-mail is consistent with and supportive of Lavender J's agency analysis: it shows that Mr. Hood was looking for a purchaser on behalf of Mr. Tuke, but that he wished to have some greater flexibility on the limits of his authority in relation to pricing.

93. Mr. Tuke's response, by e-mail dated 10 October 2010, was that the three cars referred to in Mr. Hood's email (the XKSS, the XK 120 and the Aston Martin) were at the top of Mr. Tuke's keep list. Mr. Tuke went on to refer to the need to raise £ 5 million soon, and then said:

> "I can let go the following with lower returns although the return has to cover the purchase plus extra costs of course, if we can get plus 10% on total for any these I cannot complain. GT40 pair, MDU [which was an XK 120 with an MDU registration, in contrast to the JWK registration which Mr. Tuke wanted to keep], Costin, Lotus, Aceca, Lt wt E, 220, Broadspeed, Elite, Allard
>
> I will have return of some funds mid next week around 21st and cannot break it till then, sorry, nothing liquid and no overdraft allowed."

94. Mr. Tuke was therefore contemplating the possible sale of most his vehicles, although he was unwilling at that stage to contemplate sales which did not cover the costs which he had incurred in purchasing a vehicle together with the additional costs incurred (for example on restoration and servicing). Certainly at this stage, Mr. Tuke was not inclined to sell any vehicle at a loss, let alone look for a "fire sale" in order to raise the money which he needed.

95. It seems to me that this illustrates what the Nobel Prize-winning psychologist Daniel Kahneman describes in his book "*Thinking, Fast and Slow*" as the "sunk cost" fallacy. Those who have spent money on investments are reluctant to sell at a loss, not least because such a sale would give rise to strong feelings of regret and self-criticism for having invested money in the first place. The converse of this is that a sale at a profit is attractive not simply because money is made, but also because it engenders a feeling of satisfaction at the soundness of the investment made. The attraction of Mr. Hood's later proposal involving the Group C cars included the fact that the cars to be sold by Mr. Tuke into the deal were realising a significant profit, an attraction which Mr. Hood emphasised. The evidence shows, however, that this was only because those cars were overvalued.

96. By November and December 2010, no cars had been sold. Mr. Tuke's explanation was that he had overspent on the cars. In his second witness statement, served in connection with an application to strike out his claim for loss of investment opportunity, he said that he had been deceived into buying the AC Aceca "at a gross overvalue, as with virtually all the others". In his third witness statement (his main statement for the present proceedings) his evidence in relation to the period November/ December 2010 was:

> "In the next few weeks I told Mr. Hood that I needed money back and cars sold with a profit by mid-December. I said that I wanted to put the cars in auction. He told me that this would be an extremely bad idea. I know now of course that if I had put in the cars at auction, I would have had a realistic guide as to their value, which would have been about half or a third of the prices that I had paid for them".

97. I note, however, that no claim is made in the present proceedings in respect of any of the purchases except for the XKSS, the AC Aceca and the Gullwing. No case is therefore advanced against Mr. Hood for any alleged dishonesty or other default in relation to the other cars on which Mr. Tuke considered that he overspent. Furthermore, no case is advanced against Mr. Hood relating to the advice not to auction the cars. Nor is any case advanced that Mr. Hood was legally responsible for the fact that no buyers were forthcoming in 2010 for any of the cars which Mr. Tuke had purchased during the spending spree that had occurred in the first 8 months of 2010.

98. The position at the end of 2010, therefore, was that Mr. Tuke was – as he said in evidence – in desperate need of additional funds, but that his predicament and lack of liquidity largely (i.e. save insofar as complaint is made in respect of the XKSS, Aceca and Gullwing) resulted from the decisions which he had taken earlier that year, and the amount of money which he needed to raise.

January to April 2011

99. On 9 January 2011, Mr. Tuke sent a lengthy e-mail to Mr. Hood. He said that time was now running out. He said that the cars he most wanted to keep were the XKSS and Aston, and so it was 'extra painful' that they were now on the sellable list. However, he said that any of the cars 'you have there are now available for sale at some reasonable return on total spends, at least something might go?'

100. In the e-mails which followed, Mr. Hood suggested that Mr. Tuke should contact Neil Hardiman. His business, Stoke Park Finance Ltd., specialised in raising money on classic cars or arranging finance for their purchase. Mr. Tuke's email of 14 January 2011 said that he would "need to have deal with Neil ready to start if some other routes not coming through by end month". One possibility which Mr. Tuke investigated in early 2011 was simply raising finance on his existing cars. However, it became clear that this would be an expensive option, and it does not appear to have been attractive to Mr. Tuke.

101. On 18 January 2011, Mr. Hood indicated that he had come up with a way of Mr. Tuke building his collection with other cars on finance, and then transferring funds which would leave Mr. Tuke's current cars free of finance 'and able to enjoy and wait for the opportunity to sell as we first discussed last year, then pay down the finance when the big cars sell'. He would put it Mr. Tuke when he had 'pieced it together'.

102. This was the origin of what became the Group C transaction, and I will describe the correspondence leading to that transaction in greater detail in due course: see Section E4 below. For present purposes, it is sufficient to say that the transaction involved Mr. Tuke selling 4 cars from his collection, and purchasing 5 racing cars with the assistance of finance from Close. This enabled him to raise £ 2 million, less charges such as JDC's commission.

103. The Group C transaction was the first of the sales transactions which took place. Lavender J. said at paragraph [79] in relation to all of these transactions, that:

> "(3) The Sales Transactions were all presented to Mr. Tuke on the basis that there was a third party buyer (or buyers) of Mr. Tuke's car(s) and that the price paid by the third party buyer(s) (after any part exchange) would be the price paid to Mr. Tuke.
>
> (4) There was never any suggestion that JD would make a "turn" by buying the cars itself from Mr. Tuke and selling them on."

104. Having considered the evidence in relation to each sales transaction, and which I will describe in more detail in Section E below, I consider that Lavender J's factual conclusions were entirely correct.

105. The Group C transaction resulted in Mr. Tuke having to meet considerable repayment obligations. These were, initially, £47,000 per month, plus a substantial lump sum payment of £ 3 million due later in 2011. Mr. Tuke was later required to pledge many of his other valuable cars as security to the finance company, Close. As such, not only did these arrangements place Mr. Tuke under financial strain, but when other parts of Mr. Tuke's collection were eventually sold, the proceeds of sale needed to be paid to Close, rather than being released for Mr Tuke's own use.

May 2011 – July 2013

106. Mr. Wright submitted, correctly in my view, that the Group C transaction set the pattern for what followed. During the rest of 2011, Mr. Tuke sold many of his vehicles, including those which were most valuable, by way of part exchange. In most cases, he received cash in addition to the vehicle in return. The particular part exchange transactions with which I am concerned in these proceedings are (using the transaction number in Lavender J's judgment):

a) Transaction 2: Mr. Tuke's Aston Martin SWB Vantage V was part exchanged for a Jaguar Competition Alloy XK120 plus £ 200,000 in cash.

b) Transaction 3: Mr. Tuke's V12 Jaguar Broadspeed and Jaguar Mk 2 were exchanged for a different Jaguar Mk 2 and a Jaguar XK 150S. This was a straight swap, with no money changing hands.

c) Transaction 4: Mr. Tuke's Jaguar C Type was exchanged for a Jaguar Costin Lister and an Allard J2X, both of which Mr. Tuke had previously owned. They had been sold as part of the Group C transaction, but came back to Mr. Tuke via this transaction. Mr. Tuke also received £ 1 million in cash.

d) Transaction 8: Mr. Tuke's XKSS was part exchanged for a Lister Knobbly Ecurie Ecosse, plus £ 2 million in cash.

e) Transaction 10: Mr. Tuke's GT 40 race car was part exchanged for a Ferrari TR 250 replica plus £ 500,000 in cash. There is an issue as to whether the transaction also involved the part exchange of the GT 40 road car.

f) Transaction 11: Mr. Tuke's XK 120 (with the JWK registration) was part exchanged for an E Type Lightweight, plus £ 750,000 in cash.

107. Mr. Tuke claims that these transactions were induced by fraudulent misrepresentations on the part of Mr. Hood. These representations concerned, in particular, the existence of third party buyers who wished to part-exchange, and the value of the cars which were received by way of part exchange. He alleges that he was fraudulently persuaded to trade the most valuable cars in his collection for inferior stock always said to be owned by a third party but invariably owned by JDC or Mr. Hood personally.

108. In addition to these part-exchanges, I am also concerned with transaction 14, whereby Mr. Tuke sold his Mercedes Gullwing. This car was then sold on by Mr. Hood at a profit of £ 162,000 and Mr. Tuke claims that sum or damages. The sale of the Gullwing in December 2013 was an exception to the general pattern, in that it did not involve a part exchange. Another exception was the sale, already described, by Mr Tuke to Morris & Welford of a Jaguar Lightweight E-Type in May 2012. That cash transaction is not alleged to have been at an undervalue. But the Lightweight E-Type is one of the investment cars in respect of which Mr. Tuke claims.

2016 – 2018

109. On 12 August 2016, all the shares in JDC Classics Holdings Ltd were purchased by Daytona Bidco Ltd ("Daytona Bidco"), an SPV incorporated by Charme Capital Partners, a private equity fund, for the purpose of acquiring and holding the shares in JDC. Mr. Hood remained CEO and director, and a major beneficial

shareholder. Mr. and Mrs. Hood received consideration in excess of £38m in respect of that sale. Daytona Bidco and the administrators of JDC have now each brought proceedings against Mr. and Mrs. Hood. The allegations in those proceedings include that Mr Hood. inflated "the value of vehicles artificially by a pattern of repeat sales and purchase involving part-exchange or full exchange of vehicles with close associates"; invented false or misleading sales invoices and ledger entries, and invented fictitious transactions. In June 2020, I conducted the case management conference in those proceedings, but the trial will not take place for some time.

110. I consider that the relevance of those proceedings is limited in the context of the issues which I need to decide upon the evidence presented to me during the trial. There was some cross-examination of Mr. Hood relating to his knowledge of the complaints made in those proceedings. Specifically, Mr. Hood was cross-examined on a passage in his main witness statement where he said that the consolidated proceedings brought by Mr. Tuke are "the only proceedings issued, or serious complaints made against me or my companies, by any individual customer in over 30 years of trading". It was, however, clear from a witness statement served in support of a freezing order against Mr. Hood, that Mr. Hood did know of serious complaints made by a number of customers after the appointment of the administrators. In addition, the nature of the allegations made in those proceedings (which have been pleaded in great detail), whilst currently unproven – when taken to together with the recent fabrication of the 28 September 2010 letter – indicate to me that I may need to apply a degree of caution when considering the internal books and records of JDC. This is potentially relevant in the context of Mr. Tuke's claims against Mr. Hood for an account of the profits made by JDC, as well as claims for damages which are calculated by reference to sales prices to third parties achieved by JDC. For example, one document relied upon by Mr. Tuke in both contexts is an invoice for the sale GT 40 road car for £ 2,500,000. The purported buyer of that car has denied having purchased it, and the price realised is, on the evidence of Mr. Neumark, many multiples of its true value.

111. The agency proceedings were started by Mr. Tuke in September 2016. In December 2016, Mr. Tuke brought proceedings in respect of the Group C transaction: the timing of the claim being influenced by the possible expiry of the limitation period in April 2017. In April 2017, proceedings were started in respect of the Aston Martin/ XK 120 exchange which had taken place in June 2011. Finally, in November 2017, proceedings were brought in respect of the "Additional Cars"; i.e. all the remaining cars with which I am concerned, apart from Group C and XK 120. At a case management conference held in November 2017 (only shortly after the "Additional Cars" claim had been issued) HHJ Waksman QC (as he then was) declined to consolidate the three later actions with the agency claim. That agency case therefore went forward on its own to a hearing in March 2018 before Lavender J., and resulted in the judgment to which I have referred.

112. JDC asked for permission to appeal at the handing down of judgment but that was refused. That application was renewed before the Court of Appeal by JDC's

Appellant's Notice, filed on 16 May 2018. Permission was refused on all grounds on 29 October 2018 by Lewison LJ.

The account provided by JDC

113. On the same day as it lodged its grounds of appeal, JDC purported to provide the disclosure and the account that had been ordered (the "account") by Lavender J. following his judgment. This was verified by a witness statement of Mr. Hood, who still described himself as "a director and major beneficial shareholder". The account so provided was considered unsatisfactory by Mr. Tuke, and this led to an application on 18 May 2018 by Mr Tuke to enforce compliance with the order of Lavender J. That application was consented to, and JDC was then ordered to provide an account verified by a witness statement (from a director "other than Derek Hood") in connection with any dispositions of the sold cars to third parties.

114. In the interim, Mr. Hood ceased to be CEO and a director of JDC on 10 July 2018. The bankruptcy judgment, referred to below, says that he was dismissed following allegations of misconduct and the making of misleading statements in respect of the sale of his shareholding in JDC. Mr. Hood's evidence was that he resigned before he was dismissed. The resolution of that issue is not material to the issues which I need to decide.

115. Thereafter, JDC engaged new solicitors, Goodman Derrick, in place of WLG Gowling, and Mr. Hood engaged Freeths then Fieldfisher to act for him. JDC provided an amended account on around 26 July 2018, verified by a witness statement of Christopher Fielding a director of JDC. He acknowledged having no first-hand knowledge of the underlying facts, but in any case provided documents "generated by Derek Hood, who has since left the business and in whom the current board members have no confidence". JDC provided extensive further documentation and disclosure. These materials, referred to by Mr. Tuke as the "Agency Material" were extensive.

116. An updated account followed on 23 August 2018, verified by a witness statement of Martyn Evans, a director of JDC. Mr. Tuke considered this amended account still to be defective, and therefore submitted a counter-schedule setting out his position thereof. The issues arising out of the amended account were to be determined in these proceedings, but those determinations have been stayed as a result of JDC's administration.

117. The documents disclosed by JDC together with the accounts (i.e. the Agency Material) were provided by Mr. Tuke to Mr. Hood's solicitors, Freeths, by way of disclosure, on 29 October 2018. All of that material has therefore been available to Mr. Hood. These materials, together with all the disclosure within the present proceedings, were uploaded by Mr. Tuke's solicitors to a document management platform known as "Relativity". Mr. Hood was granted access to that platform, at Mr. Tuke's expense, in June 2020, some time before the resumed trial. He was also provided with instructions on how to use it, and it is apparent that he has been able to do so.

The administration of JDC

118. JDC entered administration on 10 September 2018. Administrators, Alvarez & Marsal Europe LLP ("A&M") were appointed, and instructed QE. Mr. Tuke's claims against JDC have therefore been stayed, and JDC has not pleaded to Mr. Tuke's re-amended (or amended) case.

2019 – 2020

119. On 1 March 2019, a joint CMC was held in these actions, at which the claims were consolidated by Bryan J.

120. In the course of February/March 2019, however, Mr. Hood sought unsuccessfully to propose an IVA in order to obtain a moratorium of the claims against him. On 14 March 2019, Mr. Hood's IVA proposal came before ICC Judge Mullen on notice. He was critical of the application, and Mr. Hood, in various respects.

121. On 15 May 2019, HMRC presented a bankruptcy petition (claim number BR-2019-000627) in respect of a debt owed by Mr. Hood in a sum subsequently agreed to be £ 940,000 ("the Bankruptcy Action").

122. On 23 May 2019, the Administrators sought a freezing order against Mr. Hood, on the basis inter alia that Mr. Hood "has committed a serious and substantial fraud in breach of his fiduciary duties to the Company by causing the Company to enter into fictitious and fraudulent transactions … there is substantial evidence that Mr. Hood is a dishonest individual who will seek to dissipate his assets if allowed the opportunity to do so." The affidavit supplied in support of that application stated that the Administrators "have rarely, if ever, seen a fraud which is as multi-faceted or as wide-ranging as Mr. Hood's fraud is now thought to be …" including that: "a. at least 29 of JDCL's top 50 sales by profit were fictitious, of which 28 were entirely fictitious; b. at least a further 15 sales, including four of the top 50 sales by profit, related to a transaction with a third party which was allegedly not concluded but was recorded in the books and records; c. in addition, outside the top 50 sales, a further 8 sales were entirely fictitious; … f. Mr. Hood was only able to accomplish this alleged fraud because, in large part, he appears to have either grossly overstated the value of sales and purchase transactions which did occur, or to have generated entirely false sales and purchase transactions in JDCL's books and records."

123. Mr. Hood consented to the making of the freezing order that was sought.

124. On 24 May 2019, Mr. Hood provided disclosure of some 1,500 documents in these actions. Mr. Tuke's solicitors considered that the disclosure was defective. Mr. Hood initially said that there would be "…little, if any, relevant material…to which your client does not already have access…" On 14 June 2019, Mr. Tuke applied for an unless order in respect of Mr Hood's failure to comply with his disclosure obligations. Mr Hood submitted to the making of such an order by consent.

125. In view of the presentation of the bankruptcy petition, Mr. Hood needed to obtain validation of his costs of complying with the extended disclosure which Bryan J. had ordered at the CMC. Validation was successfully obtained in October 2019, on the basis that such an order would be to the benefit of the creditors as a class. Extended disclosure was subsequently provided by Fieldfisher on behalf of Mr. Hood.

126. In the meantime, on 11 September 2019, HMRC's petition came before the Insolvency Court. This application was heard over two days between 16 and 17 December 2019 before Deputy ICC Judge Cheryl Jones at which Mr. Hood was represented by Leading Counsel.

127. On 17 January 2020, Mr. Hood applied to adjourn the present trial (due to start in March 2020). The application was dismissed by Butcher J.

128. On 28 February 2020, Mr. Hood was adjudged bankrupt. He was subsequently granted permission to appeal, and the hearing of his appeal will take place in November 2020.

129. As previously described, the trial of this action started in March 2020 and was adjourned on the second day. It restarted on 13 July 2020.

D: Legal principles

D1: Agency

130. The relevant principles concerning the existence of an agency relationship are set out in paragraph [4] of the judgment of Lavender J. in the following 6 propositions. There was no substantial dispute as to the relevant legal principles in that regard.

131. Agency is a fiduciary relationship which exists between two persons, one of whom expressly or impliedly manifests assent that the other should act on his behalf so as to affect his relations with third parties, and the other of whom similarly manifests assent so to act or so acts pursuant to the manifestation: see *Bowstead & Reynolds on Agency* (2018), 21st Edn, para 1-001.

132. There is no particular formality to the creation of agency. In cases not involving ratification, agency arises by the conferring of authority by the principal on the agent, which may be express or implied from the conduct or situation of the parties: *Bowstead*, para 2-001.

133. Agency may be implied where one party has conducted himself towards another in such a way that it is reasonable for that other to infer from that conduct assent to an agency relationship: *Bowstead*, para 2-029.

134. In determining whether or not there is an agency relationship between the parties, the Court may look at the matter objectively: *Bowstead*, paras 2-030 to 2-032.

135. As Lord Pearson said in *Garnac Grain Company Incorporated v HMF Faure & Fairclough Ltd* [1968] AC 1130, at p. 1137, the question for the Court is whether the parties:

> "have agreed to what amounts in law to such a relationship, even if they do not recognise it themselves and even if they have professed to disclaim it, as in Ex parte Delhasse. But the consent must have been given by each of them, either expressly or by implication from their words and conduct. Primarily one looks to what they said and did at the time of the alleged creation of the agency. Earlier words and conduct may afford evidence of a course of dealing in existence at that time and may be taken into account more generally as historical background. Later words and conduct may have some bearing, though likely to be less important."

136. As set out by Donaldson J in *Teheran-Europe Co Ltd v S. T. Belton (Tractors) Ltd* [1968] 2 QB 53, at pp. 59-60, in principle an agent may contract on behalf of his principal in one of three ways:

a) by creating privity of contract between the third party and his principal without himself becoming a party to the contract;

b) by creating privity of contract between the third party and his principal, whilst also himself becoming a party to the contract; and

c) by creating privity of contract between himself and the third party, but no such privity between the third party and his principal.

137. For reasons discussed in the context of the XKSS transaction (Section E 1), the identification of a relationship as being that of principal and agent does not itself answer the question of what duties and obligations were owed by the agent. The issues which arise are, however, best addressed in that context.

D2: Deceit

138. It was common ground between Mr. Wright and Mr. McWilliams that the law relating to the tort of deceit was as set out in paragraphs [130] – [159] of my judgment in *Vald. Nielsen Holding A/S v Baldorino and others* [2019] EWHC 1926 (Comm). Unsurprisingly, Mr. Hood did not make any submissions relating to the applicable legal principles. There was therefore no significant dispute between the parties as to the legal principles relating to the tort of deceit. The principles which have a bearing on the arguments in the present case areas follows.

139. The tort of deceit requires Mr. Tuke to show that: (i) Mr. Hood made false representations to Mr. Tuke; (ii) Mr. Hood knew the representations to be false, or had no belief in their truth, or was reckless as to whether they were true or

false; (iii) Mr. Hood intended Mr. Tuke to rely on the representations; (iv) Mr. Tuke did rely on the representations; and (v) as a result, Mr. Tuke suffered loss and damage.

140. *Representation:* In order to be actionable, a representation must be as to a matter of fact. A statement of opinion is therefore not in itself actionable. However, a statement of opinion is invariably regarded as incorporating an assertion that the maker does actually hold that opinion. Hence, the expression of an opinion not honestly entertained and intended to be acted upon amounts to fraud. In addition, at least where the facts are not equally well known to both sides, a statement of opinion by one who knows the facts best may carry with it a further implication of fact, namely that the representor by expressing that opinion impliedly states that he believes that facts exist which reasonably justify it. Different statements at different times must frequently be read or construed together in order to understand their combined effect as a representation. Whether any and if so what representation has been made has to be judged objectively according to the impact that whatever is said may be expected to have on a reasonable representee in the position and with the known characteristics of the actual representee.

141. *Falsity:* The representation must be false. A representation may be true without being entirely correct, provided that it is substantially correct and the difference between what is represented and what is actually correct would not have been likely to induce a reasonable person in the position of the claimant to enter into the contract.

142. *The mental element:* Nothing short of proof of fraud will do. In order to prove fraud, it must be shown that a false statement has been made (1) knowingly, (2) without belief in its truth, or (3) recklessly, careless whether it be true of false. It is not necessary that the maker of the statement was 'dishonest' as that word is used in the criminal case. What is required is dishonest knowledge, in the sense of an absence of belief in truth. It is in that sense that I use the word 'dishonest' in this judgment. This ingredient of dishonesty (in that sense) must not be watered down into something akin to negligence, however gross.

143. *Intention:* Actionable fraud involves an intention on the part of the representor to induce the representee to act as he did. This requires an intention that the representation should be acted on: the specific action of the claimant does not have to be intended.

144. *Inducement:* There is an evidential presumption of fact (not law) that a representee will have been induced to act by a fraudulent misrepresentation intended to cause him to enter into the contract, and that inference will be very difficult to rebut. It is sufficient for the misrepresentation to be an inducing cause of the claimant entering into the transaction on the terms that he did. It is not necessary for it to be the sole cause.

145. *Causation and loss.* If the representee would have acted in the same way even in the absence of the fraud, the claim will fail.

146. *Damages.* The measure of damages in deceit is the loss incurred by the claimant's reliance upon the false statement. Damages are intended to put the claimant into the position in which he/she would have been had the statement not been made or had the claimant not relied upon it, but not the position in which the claimant would have been had the statement been true: *Doyle v Olby (Ironmongers)* [1969] 2 QB 158.

147. Mr. McWilliams also relied upon the principles relating to causation and damages which are summarised in paragraphs [484] – [491] of *Vald. Nielsen*. I did not understand Mr. Wright to dispute the principles set out in those paragraphs, and indeed his closing submissions relied upon paragraph [491]. There was therefore no dispute that the general rule is that where a fraudulent misrepresentation has induced a claimant to enter into a contract of purchase, the measure of damages is the difference between the contract price and the true market value of the property purchased. However, the rule that the relevant date is the date of the contract of purchase is not an inflexible one. A different approach may be required in order to give effect to the general principle that damages should compensate for the loss suffered, and for the generous approach to damages in the case of fraud (in particular as to the recovery of consequential loss) which was stated in *Doyle v Olby (Ironmongers).* Accordingly, there were likely to be many cases when the general rule has to be departed from in order to give adequate compensation for the wrong done to the plaintiff.

148. In so far as there was any dispute as to the law as summarised in *Vald. Nielsen*, it was within a relatively narrow compass. On behalf of Mr. Tuke, Mr. Wright did not fully accept the analysis in paragraphs [541] – [567], or at least its applicability to the case where there was a purchase at an overvalue rather than a sale at an undervalue. In those paragraphs, I held that the general principle that the measure of damages was the difference between the contract price and the true market value of the property purchased was the starting point for the assessment of damages, but was not necessarily the finishing point. In the case of a sale at an undervalue, a claimant was therefore not automatically entitled to recover damages by reference to the objectively assessed true value of the asset sold. It may, depending on the facts, be relevant to consider the chances of the claimant being able to realise the true value of the asset that was the subject of the sale. I shall return to this issue in the context of Mr. Tuke's claims concerning the AC Aceca and the Mercedes Gullwing.

D3: Dishonest assistance in breach of fiduciary duty

149. Although Mr. Tuke's claims against Mr. Hood were all (save for the XKSS claim addressed in Section E1) advanced as claims in deceit, claims were also brought on the basis that Mr. Hood had dishonestly assisted JDC to breach its fiduciary duties to Mr. Tuke. The factual foundation of this claim was essentially the same conduct relied upon in support of the deceit claim. The principal significance of this cause of action was that it was said by Mr. Wright to lead to a potentially wider remedies against Mr. Hood, in particular for an account of the profits which JDC had made.

The arguments of the parties

150. The starting point in the analysis, on Mr. Tuke's case, was that JDC owed fiduciary duties to Mr. Tuke in relation to those cases where JDC had acted, or at least purported to act, as Mr. Tuke's agent. Those fiduciary duties required JDC not to take any secret profit without the informed consent of Mr. Tuke; to act in good faith; and not to place itself in a conflict of interest or duty. They also required JDC, when giving advice to Mr. Tuke in connection with the acquisition and disposal of cars, to give their true and honest advice, in particular in relation to valuation of cars, and to act with such reasonable skill and care as would ordinarily be expected of a reasonably competent expert in the valuation of classic cars. These obligations were said to reflect well-established orthodox principles stated in, for example, *Bristol & West v Mothew* [1998] Ch 1, 16 – 18 and *Snell's Equity* 34th edition, paragraphs 7-007 – 7-008.

151. The next stage in the analysis was Mr. Hood's potential liability for dishonestly assisting JDC to breach its fiduciary duty. The ingredients of the relevant cause of action for dishonest assistance are (a) the existence of fiduciary duties owed to the claimant; (b) the breach by the fiduciary of those duties; (c) the defendant's assistance of those breaches, and (d) that assistance being dishonest. These ingredients were derived from a recent decision of the Court of Appeal: *Group Seven Ltd. v Nasir* [2019] EWCA Civ 614, paragraph [29], where the court considered the analogous case of dishonest assistance for breach of trust.

152. *Group Seven* also establishes that the test for dishonesty in this context is to be derived from the decision of the Supreme Court in *Ivey v Genting Casinos* [2017] UKSC 67. At paragraph [58], the Court of Appeal held that:

> "… once the relevant facts have been ascertained, including the defendant's state of knowledge or belief as to the facts, the standard of appraisal which must then be applied to those facts is a purely objective one. The court has to ask itself what is essentially a jury question, namely whether the defendant's conduct was honest or dishonest according to the standards of ordinary decent people."

153. The final stage in the analysis was to identify the remedies available to Mr. Tuke for dishonest assistance. In that respect, Mr. Tuke's case was that two remedies were potentially available: equitable compensation and an account of profits. Mr. Tuke could elect as between these remedies at any time prior to the making of a final order.

154. The first remedy, equitable compensation, was (Mr. Wright submitted) a "loss-based remedy analogous to but distinct from damages". Mr. Wright did not suggest that a claim for equitable compensation would result in any wider recovery than Mr. Tuke's claim for damages for deceit. The decision of HHJ Havelock-Allan QC in *Airbus Operations v Withey* [2014] EWHC 1126 (QB) paragraph [505] is authority for the proposition that it does not do so.

155. However, he did submit that an award of equitable compensation (unlike a claim for interest on the deceit claim pursuant to the Senior Courts Act 1981) would permit the court to award compound interest. That proposition is established by the decision of Cockerill J. in *FM Capital Partners v Marino (No. 3)* [2019] EWHC 725 (Comm), paragraph [33].

156. Mr. McWilliams on behalf of the trustees, rightly in my view, did not substantially dispute the above analysis, certainly as far as the sales transactions were concerned.

157. It was, therefore, common ground that the claim in equitable compensation did not add anything to the claim for damages in deceit, save in relation to the claim for compound interest. In that respect, there was no dispute that if the ingredients of dishonest assistance were established, a claim for compound interest could be made. During closing submissions, the parties were agreed that the quantification of any such claim should be addressed as a 'consequential' matter following the handing down of the present judgment.

158. There were, however two areas concerning the claim for dishonest assistance where (leaving aside factual disputes) the submissions of Mr. Wright and Mr. McWilliams diverged.

159. The first concerned the three purchase transactions (the XKSS, the AC Aceca, the Mercedes Gullwing). There was a significant argument, described in more detail in Section E1 below, as to whether Mr. Tuke could complain about and claim profits made by JDC, in circumstances where (in summary) he was well aware that JDC would be making a profit from the purchase monies paid by Mr. Tuke.

160. Secondly, and potentially more important in financial terms, there was a substantial dispute as to Mr. Tuke's ability to advance a claim for an account of profits.

161. Mr. Tuke's case was that Mr. Hood could be ordered to disgorge the profits made in consequence of the dishonest assistance, as if a constructive trustee. Further, it was submitted that where profits have flowed to a company wholly controlled by a defendant (as was JDC until 12 August 2016), equity can in an appropriate case impose personal liability on the defendant equivalent to the profits obtained by the company. Not only was Mr. Hood (together with his wife) the sole owner of JDC at the material time, but the evidence clearly showed that there were internal transactions between Mr. Hood and JDC whereby cars were regularly 'interchanged' between the two. In relation to these submissions, and the availability of a remedy in principle, reliance was placed by Mr. Wright on a number of authorities, in particular: *Cook v Deeks* [1916] AC 554; *CMS Dophin v Simonet* [2002] BCC 600 (Lawrence Collins J.); *Shell International Trading & Shipping Co. Ltd. v Tikhonov* [2010] EWHC 1399 (QB) (Jack J); *Airbus Operations v Withey* [2014] EWHC 1126 (QB) (HHJ Havelock-Allen QC); *Novoship (UK) Ltd v Mikhayluk* [2014] EWCA Civ 908. Reliance was also placed in two Australian decisions, *Sewell v Zelden* [2010]

NSWSC 1180 and *Andrews Advertising Pty Ltd. v Andrews* [2014] NSWSC 318.

162. A difficulty which confronted this submission, and the claim for a remedy against Mr. Hood for an account of the profits made by JDC, was the decision of Lewison J. in *Ultraframe (UK) Ltd. v Fielding* [2005] EWHC 1638. In that case, Lewison J. rejected the argument that a dishonest assistant could be held liable to account for profits made by the defaulting fiduciary. Lewison J. considered the issue at paragraphs [1589] – [1600] of his judgment, and concluded:

> [1600] I can see that it makes sense for a dishonest assistant to be jointly and severally liable for any *loss* which the beneficiary suffers as a result of a breach of trust. I can see also that it makes sense for a dishonest assistant to be liable to disgorge any profit which he *himself* has made as a result of assisting in the breach. However, I cannot take the next step to the conclusion that a dishonest assistant is also liable to pay to the beneficiary an amount equal to a profit which he did not make and which has produced no corresponding loss to the beneficiary. As James LJ pointed out in *Vyse v. Foster (1872) LR 8 Ch App 309*:
>
> > "This Court is not a Court of penal jurisdiction. It compels restitution of property unconscientiously withheld; it gives full compensation for any loss or damage through failure of some equitable duty; but it has no power of punishing any one. In fact, it is not by way of punishment that the Court ever charges a trustee with more than he actually received, or ought to have received, and the appropriate interest thereon. It is simply on the ground that the Court finds that he actually made more, constituting moneys in his hands "had and received to the use" of the *cestui que trust* ."
>
> [1601] I was not referred to any authority binding me so to hold; and I decline to do so.

163. This aspect of Lewison J's decision was followed by HHJ Havelock-Allan in *Airbus,* paragraph [504]:

> "The liability of an assister in breach of fiduciary duty is fault based, not restitutionary. The assistant is liable to pay equitable compensation for any loss shown to have been caused by his assistance in the breach of duty. But the remedy is only compensatory. It can and will extend

> to stripping the assistant of any profit he himself has made out of assisting the fiduciary in his breach of duty. The assistant may be held liable to account in the same way as the fiduciary he assisted is liable to account, even though he may have owed no fiduciary duty himself. However, the liability of the assistant to account does not extend further than the profit he himself made by his assistance in the breach of fiduciary duty. It does not extend to the profit made by others" (internal citations omitted)."

164. In *Novoship (UK) Ltd. v Mikahlyuk and others* [2012] EWHC 3586, the same issue was considered by Christopher Clarke J. He quoted paragraphs 1600 and 1601 of *Ultraframe* with approval, and rejected the claimants' argument that a dishonest assister is liable to account not only for his own profits but also for the profits made by the fiduciary. At paragraph [99], he said:

> "The difference between losses suffered and profits made is that wrongdoers responsible for losses should prima facie be made to pay for them since the innocent party has suffered the losses and they have caused them. But the disgorgement of profits made which are not the counterpart of losses suffered requires the existence of some equity to require it. If a fiduciary acquires a profit as a result of his breach of fiduciary duty equity will regard the profit thus derived as due to the person to whom the duty was owed, for which the fiduciary must account. The same applies to a profit derived by the dishonest assister from his assistance in a breach of fiduciary duty. But there is no equity to compel someone who has not made a profit from his breach, or dishonest assistance in that of another, to account for a profit which he has not made and which does not represent a loss which the principal has suffered."

165. The decision of Christopher Clarke J. in *Novoship* was the subject of an appeal, but there was no challenge to his decision to follow Lewison J. in *Ultraframe* on this point

166. Mr. McWilliams on behalf of the trustees drew attention to these authorities, and submitted that there was no basis for claiming from Mr. Hood an account of the profits made by the defaulting fiduciary, JDC, in circumstances where it was common ground that the relevant profits were made by JDC rather than Mr. Hood. Whilst an account of profits might be available in respect of Mr. Hood's own profits, that was not the claim that was being made. The purpose of an account of profits is to strip the accounting party of the profits actually made by him. Lewison J. (and subsequent English judges) were right to recognise that the disgorgement compelled by the remedy is not by way of punishment.

167. In response to this line of authority, Mr. Wright submitted that Mr. Hood ought to be liable for profits made by JDC on the unusual facts of the present case: reliance being placed, as described above, on Mr. Hood's position as sole director of JDC and sole shareholder (with his wife), as well as the internal sales that took place between Mr. Hood and JDC. If necessary, however, Mr. Wright submitted that *Ultraframe* should not be followed. He submitted that Lewison J. had been wrong, in an earlier part of his judgment, to hold that a true fiduciary could not be liable for profits made by "his company". He accepted that there is no English authority requiring a dishonest assistant to disgorge profits earned by his company, but referred to two Australian decisions to contrary effect. It would be unsatisfactory if profits could be "channelled into a company" controlled by a wrongdoer so as to avoid any disgorgement. Since the trustees had accepted that an order for disgorgement could be made whether the company booking the profits was no more than an *alter ego* of its controller, it was only an incremental step to extend that principle to cases where the company is under the control of the wrongdoer more generally. (In his oral closing submission, Mr. Wright made it clear that "we are not seeking to pierce the corporate veil" and that the present is not an 'alter ego' case). This did not offend against any principle that the equitable jurisdiction is not penal, but would be a realistic recognition that the law would be deficient if a wrongdoer could innoculate himself against an account of profits by booking those profits into his wholly controlled company.

Discussion

168. I approach the present argument on the basis that, as a matter of judicial comity, I should follow the decision of another judge of first instance, unless I am convinced that the judgment is wrong: *Police Authority for Huddersfield v Watson* [1947] 1 KB 842 , 848. More recently, in *Willers v Joyce* [2016] UKSC 44, Lord Neuberger said at [9]:

> "So far as the High Court is concerned, puisne judges are not technically bound by decisions of their peers, but they should generally follow a decision of a court of co-ordinate jurisdiction unless there is a powerful reason for not doing so."

169. The present legal issue has been directly considered by three judges of co-ordinate jurisdiction, and each has come to the same conclusion, namely that a dishonest assister is not liable to disgorge profits which he has not made. I have not been convinced that their judgments are wrong, or that there is any powerful reason for not following those decisions. As Mr. Wright accepted, there is no decided English case which establishes the contrary proposition. Even if (which was controversial) a different approach has been taken in Australia, this is not a sufficient reason to decline to follow a number of English decisions which consider the issue expressly.

170. The question therefore becomes, in my view, whether the principle established by these decisions has no application because of the particular facts of the present case, which Mr. Wright submitted were unusual. I do not consider that

there is anything sufficiently unusual about the facts of the present case which would warrant a disapplication of the established principle. As Mr. McWilliams correctly submitted, this is not a case where there is any basis for piercing the corporate veil on the basis that JDC was a mere cloak or alter ego of Mr. Hood. On the contrary, JDC was an established company and Mr. Tuke dealt with that company over a considerable period of time. Indeed, the very premise of the dishonest assistance claim is that JDC owed fiduciary duties to Mr. Tuke. This claim therefore recognises the real existence of JDC and its separate legal personality. The basis of the claim is that the defaulting fiduciary was JDC, not Mr. Hood. It is only because JDC is in administration that the claim made directly against that company has not been adjudicated upon in the present trial. Furthermore, the claim in the present proceedings has benefited from the account obtained pursuant to the earlier proceedings against JDC alone, following Lavender J's decision that there was an agency relationship between Mr. Tuke and JDC.

171. Against this background, there is and can be no suggestion that the profits made by JDC are in reality the profits of Mr. Hood, in which event (as in some of the cases relied upon by Mr. Tuke) a defaulting fiduciary or a dishonest assistant might well be required to disgorge "his" profits which have been channelled or diverted into a company which he owns. The relevant profits here are those made and booked by JDC pursuant to transactions between JDC and Mr. Tuke, and in relation to which invoices were raised by JDC.

172. Accordingly, I consider that this is a straightforward case involving profits made by an allegedly defaulting fiduciary (JDC), and where there is no good reason to disapply the principle established by the authorities that the alleged dishonest assistant should only be required to disgorge any profits which he made. I agree with Mr. McWilliams that to disapply the principle on the facts of the present case would not be a small incremental step, but would in substance involve a decision to disregard the separate legal personality of JDC.

173. I do not consider that this conclusion is affected or negated by the evidence, on which Mr. Wright placed some considerable reliance, that it was the practice of Mr. Hood and JDC for cars to be bought and sold between them, effectively as a way of Mr. Hood providing additional finance for JDC. This practice appears to have been unknown to Mr. Tuke at the time, or (if he was aware of it) at least not to have been of any significance to him. The practice was, however, explained in a 'transaction pack' which was prepared in the context of the possible sale of JDC to outside purchasers. The documents in the pack indicated that the sales to Mr. Hood were always at market value, and that these sales took place in order to provide JDC with liquidity. Cars would be returned to JDC where there was "price appreciation potential", ensuring that JDC "books resulting profit".

174. I did not consider that these dealings took Mr. Tuke's argument in relation to account of profits any further. It was not suggested that they led to the conclusion that this was an 'alter ego' case, or that it was a case where there has been diversion of sums payable directly to Mr. Hood into JDC. On the contrary, they were dealings which were between Mr. Hood and JDC as principals, and

therefore reinforce the conclusion as to JDC's separate legal personality. Even if these transactions or their scale were to be regarded as unusual, I do not see how they lead to the conclusion that the principle established by *Ultraframe* and subsequent authority should be disapplied.

175. I have not made findings as to the amount of JDC's profits in this judgment. That is not a straightforward task, in circumstances where there are allegations (see paragraph 122 above) of fictitious transactions being recorded in JDC's books and where the evidence before me, as to prices allegedly achieved by JDC on certain sales to third parties, is that some prices were vastly in excess of the market value of the car: the sale of the GT40 road car worth around £ 300,000, allegedly for £ 2.5 million, is an obvious case in point. In the event that an appellate court were to decide that Mr. Hood is liable for the profits made by JDC, it would be necessary to determine the amount of such profits hereafter.

D4: Knowing receipt

The issue and the parties' arguments

176. In his written closing submissions, the claims against Mr. Hood in knowing receipt were said to arise relation to four cars which had been transferred to Mr. Hood personally. In the course of his oral submissions, however, Mr. Wright indicated that the only car where a knowing receipt claim added anything to Mr. Tuke's other causes of action concerned the Jaguar Broadspeed. The claim in respect of that car is £ 430,000, and that figure was accepted by the joint trustees in the event that liability was established. The relevance of the knowing receipt claim was potentially to convert the figure of £ 430,000 from a purely personal claim into a proprietary claim; something which may be valuable in the light of Mr. Hood's bankruptcy. Accordingly, in relation to the Broadspeed, Mr. Tuke sought a declaration as to the existence of a proprietary claim in relation to £ 430,000.

177. There was no dispute as to the basic principles relating to claims for knowing receipt: see *El Ajou v Dollar Land Holdings Plc* [1994] 2 All ER 685, 670 (per Nourse LJ); *Bank of Credit and Commerce International v Akindele* [2001] Ch 437, 455; *Madoff Securities International Ltd. v Raven and others* [2013] EWHC 3147 (Comm). A claimant must show: (a) receipt of the claimant's assets (or their traceable proceeds) by the defendant; (b) such receipt arising from a breach of fiduciary duty or trust owed to the claimant by a third party; and (c) knowledge on the part of the defendant that the assets he received are traceable to a breach of fiduciary duty or trust, sufficient to make it unconscionable for him to retain the benefit of the receipt.

178. In *Madoff Securities*, Popplewell J. said at paragraph [368]:

> "Where the claimant is a company, and the claim is in respect of monies paid out by the company under a contract, then unless that contract is set aside as being invalid, the recipient may rely upon the contract to justify the receipt. In such circumstances no question of knowing receipt arises: *Criterion Properties plc v.*

Stratford UK Properties LLC [2004] 1 WLR 1846, per Lord Nicholls at [4]:

> "If ... the agreement is found to be valid and is therefore not set aside, questions of 'knowing receipt' by [the defendant] do not arise. So far as [the defendant] is concerned there can be no question of [the company]'s assets having been misapplied. [The defendant] acquired the assets from [the company], the legal and beneficial owner of the assets, under a valid agreement made between him and [the company]"."

179. Mr. McWilliams submitted that the principle to which Popplewell J. referred provided a complete answer to all of the claims for knowing receipt, including that in relation to the Broadspeed. The essence of the argument, taking the Broadspeed as an example, was that Mr. Tuke had sold the car under a valid contract of sale which had never been set aside. Mr. Tuke had received consideration for the sale by way of the purchase price paid (which, in the case of the Broadspeed, involved the part exchange of other vehicles). Whilst claims might be made for damages for fraudulent misrepresentation relating to the alleged sale at an undervalue, a claim for knowing receipt could not arise.

180. Mr. Wright submitted that this principle only applied where there was a contract for full value without notice by a bona fide purchaser, and that neither Mr. Hood (who had subsequently acquired the car from JDC) nor JDC itself fell within this category. He relied upon paragraph [383] of the judgment of Popplewell J. in *Madoff*, where the judge upheld a defence of certain defendants to the claimant's proprietary claim, on the basis that the relevant property had been received by them as bona fide purchasers for value without notice of the wrongdoing. Mr. Wright also drew attention to *Lewin on Trusts* 20th Edition, paragraph 42-054. In that paragraph, the authors discuss the situation where there is a receipt of trust property by a company whose share are owned in whole or in part by the defendant. In that context, the basic rule is that this is a receipt by the company rather than the defendant shareholder. However, the authors go on to say:

> "Further, if the receipt of the trust property by the company directly or indirectly from the trustee is followed by a receipt of that property or its traceable proceeds by the defendant from the company, then the requirement of receipt by the defendant is satisfied since there is no need for the defendant to be a direct recipient from the trustee. That would be so, for example, if the trust property were, after its receipt by the company, sold by the company on to the defendant as a purchaser with notice. In such a case the knowing receipt claim could be brought against both the company and the purchaser from it (though not so as to achieve double recovery)."

Discussion

181. I consider that the principle stated by Popplewell J. in paragraph [368] of *Madoff* is applicable to the sales by Mr. Tuke of the cars, including specifically the Broadspeed, which are alleged to give rise to the knowing receipt claims. Mr. Tuke entered into contracts under which he agreed to transfer cars which he owned for consideration which comprised or included the receipt of other cars by way of part exchange. Albeit that it is alleged in these proceedings that the relevant contracts were procured by fraud, no claim has been made to set those contracts aside, perhaps because it is recognised that such a claim would be problematic in view of the time which has elapsed and the fact that, at least in most cases, the cars have long been disposed of. In circumstances where Mr. Tuke's cars were sold by Mr. Tuke under contracts of sale which have not been set aside, I do not consider that there is the starting point for a claim for knowing receipt. Since there is no starting point, the issue discussed in paragraph [383] of *Madoff* and in the above passage of *Lewin* – i.e. whether Mr. Hood, as onward recipient from JDC, could successfully argue that he was a bona fide purchaser from JDC for value without notice – does not arise. There is, in my view, nothing in those passages which casts doubt on the principle set out in paragraph [368] of *Madoff.*

D5: Conversion

182. A claim against Mr. Hood in conversion arises in relation to one car: the second GT40 road car to be constructed from parts purchased at the showroom visit in December 2009.

183. There was no substantial dispute as to the law. The essential feature of the tort of conversion is the denial by the defendant of the possessory interest or title of the claimant in the goods. The authors of *Civil Fraud* identify the requirements of the tort at paragraph 8-003. The claimant must show (a) that there is or was corporeal personal property; (b) at the time of the conduct complained of, the claimant must have possessed the goods or had an immediate right to possess the goods which was superior to any enjoyed by the defendant; (c) the conduct in question must have been deliberate, inconsistent with the claimant's rights in respect of those goods, and so extensive to exclude the claimant from possession and use of the goods in question.

184. Thus, as stated by *Clerk & Lindsell on Torts* 22nd Edition, paragraph 17-22:

> "A delivery by way of sale on the part of a non-owner, even if ineffective to pass title to the buyer, is a conversion. By contrast, a mere bargain and sale without delivery is not, even if the non-owner purports thereby to transfer title to the would-be buyer. However, there is one exception to this latter rule. If the wrongful sale is effective, despite the absence of delivery, to transfer title to the buyer under one or other of the exceptions to the rule nemo dat quod not habet, then the seller does commit

> conversion vis-à-vis the true owner who is thus deprived of his title".

185. I address the merits of this claim in the context of the facts relating to that car: see Section E9 below.

D6: Exemplary damages

186. It was common ground between Mr. Tuke and the trustees that it was open to the court to make an award of exemplary damages in relation to a claim in deceit. In *Kuddus v Chief Constable of Leicestershire* [2001] UKHL 29, Lord Nicholls said (at paragraphs [63] – [65]) that

> "[63] From time to time cases do arise where awards of compensatory damages are perceived as inadequate to achieve a just result between the parties. The nature of the defendant's conduct calls for a further response from the courts. On occasion conscious wrongdoing by a defendant is so outrageous, his disregard of the plaintiff's rights so contumelious, that something more is needed to show that the law will not tolerate such behaviour. Without an award of exemplary damages, justice will not have been done. Exemplary damages, as a remedy of last resort, fill what otherwise would be a regrettable lacuna.
>
> …
>
> [65] … the availability of exemplary damages should be co-extensive with its rationale. As already indicated, the underlying rationale lies in the sense of outrage which a defendant's conduct sometimes evokes, a sense not always assuaged fully by a compensatory award of damages, even when the damages are increased to reflect emotional distress".

187. The availability of the remedy was discussed by the Court of Appeal in *Axa Insurance UK PLC v Financial Claims Solutions Ltd.* [2018] EWCA Civ 1330. The claimant insurer successfully recovered exemplary damages in respect of "cash for crash" fraud, which had become far too prevalent and which adversely affected all those in society who are policyholders who face increased insurance premiums. The conduct in that case involved a series of frauds and production of false documentation, and the Court of Appeal referred to the need to deter the respondents and others from engaging in that form of fraud. Exemplary damages in that case came within the 'second category' of case which had been identified by Lord Devlin in *Rookes v Barnard No 1* [1964] AC 1129 at 1226-8: i.e. where the defendant's conduct had been calculated by him to make a profit for himself which may well exceed the compensation payable to the plaintiff.

188. In his judgment, Lord Devlin had said:

> "In a case in which exemplary damages are appropriate, a jury should be directed that if, but only if, the sum which they have in mind to award as compensation (which may. Of course, be a sum aggravated by the way in which the defendant has behaved to the plaintiff) is inadequate to punish him for his outrageous conduct, to mark their disapproval of such conduct and to deter him from repeating it".

189. The Court of Appeal in *Axa* indicated, in agreement with the trial judge, that Lord Devlin's remarks are not to be read as though they were an Act of Parliament, and also that the word 'calculated' does not mean that there has to be a careful mathematical calculation. In his analysis and conclusions, Flaux LJ (delivering the judgment of the Court of Appeal) said (at paragraph [25]) that it was important to keep in mind that exemplary damages remain anomalous and the exception to the general rule. It was therefore inappropriate to extend the circumstances in which they could be awarded beyond the three categories of case identified by Lord Devlin. But if the defendant's conduct has been calculated to make a profit for himself which may well exceed the compensation payable to the claimant, then exemplary damages may be awarded to deter and punish such cynical and outrageous conduct.

190. The issue between the parties was therefore not as to the applicable law, but how it applied on the facts of the present case. Mr. Wright contended that the present case involved a number of outrageous and increasing brazen frauds perpetrated over three years in the context of a relationship of trust and in circumstances where Mr. Hood knew that his fraudulent conduct was causing real financial hardship to Mr. Tuke and his attempts to buy back his business. This took place in the context of Mr. Hood's purported cultivation of a friendship with Mr. Tuke. It was accepted that any award of exemplary damages should not exceed £ 50,000.

191. On behalf of the trustees, Mr. McWilliams submitted that irrespective of the extent to which Mr. Tuke succeeded on his case as to wrongdoing, this was not one of those rare cases where exemplary damages is warranted and appropriate. If the case against Mr. Hood were to succeed, then a substantial award of compensatory damages would be made against him. Mr. Hood would not escape without serious consequence, such that the court's intervention was required in order to punish him. Moreover, in reality any award that the Court did make would punish not Mr. Hood but his creditors.

192. I will return to this issue following detailed consideration of the facts of the present case.

193. There is in my view nothing so significant in the present case which distinguishes this case from many cases of fraud which come before the Commercial Court and indeed other courts. In all or nearly all such cases, there has been conduct which could properly be described as outrageous or brazen, and yet it is important to bear in mind that exemplary damages remain anomalous and an exception to the general rule. If such damages were to be

awarded in this case, it would in my view be tantamount to saying that exemplary damages are the norm in fraud cases, and this would clearly not be right. Given that a very substantial award of damages has been awarded against Mr. Hood – a figure which it appears likely to be well beyond his resources – this is not a case where the sums awarded as compensation are inadequate to punish him for his conduct. I consider that justice in the present case is well served by an award of very substantial compensation in favour of Mr. Tuke.

E1: The XKSS purchase

Introduction

194. The XKSS purchase is the only one of the 11 transactions in issue where no claim is made for the tort of deceit is made. Mr. Tuke paid £ 3,456,000 for the car in the circumstances described below. No case is advanced that the price paid by him was above the market value for a rare and special car of this kind. Indeed, not long after the purchase, Mr. Tuke had the opportunity to re-sell the car at a substantial profit, but he preferred to retain it. This car is one of the 'investment' cars that Mr. Tuke says that he would have retained until the present day when, on Mr. Neumark's evidence (which in this respect was not challenged) it would now be worth £ 7.5 million. Accordingly, this is not a case where Mr. Tuke alleges that he would not have entered into the purchase transaction at all but for Mr. Hood's alleged wrongdoing, or that he would not have done so at the price which he in fact paid.

195. The basis of the claim is that JDC made a secret profit on the purchase transaction in breach of a fiduciary duty owed by JDC to Mr. Tuke, and that Mr. Hood dishonestly assisted the company to do so. The claim is not, as I understand it, for an account of profits as such, in which case it would fail because Mr. Hood is not liable to account for profits made by JDC. Rather, the claim is for equitable compensation.

196. There is no dispute that JDC did make a very significant profit on the transaction. Mr. Hood had successfully sourced the XKSS in the USA from an American collector, and found a willing buyer in Mr. Tuke. The transaction in due course took the form of a sale of the car by the US collector, Mr. Larson, to JDC, and a sale of the car by JDC to Mr. Tuke. Although colloquially one might say that Mr. Hood on behalf of JDC brokered a deal between Mr. Larson and Mr. Tuke, this was not the legal form that the transaction took. There was no contract entered into between these two men. The contract was therefore no different to that which was concluded in December 2009 when there is no dispute that JDC sold all four cars as principal, including the Bugatti which (as Mr. Tuke was told at the time) was owned by Jenson Button.

197. A significant issue between the parties is whether, even assuming that JDC was in certain respects Mr. Tuke's agent in relation to this transaction, any fiduciary duties were owed of a kind which could give rise to an obligation on the part of JDC to disclose or be required to disgorge the profit which it made on this transaction. The authorities are clear that the characterisation of one party as the

agent of another is only the beginning of the enquiry, and does not automatically impose a set of duties.

198. Thus, in *Kelly v Cooper* [1993] AC 205, the plaintiff employed a firm of estate agents to sell a house in return for a commission, and therefore there was no dispute that a contract of agency existed. The agent did not disclose that the firm was also acting for the owner of an adjacent house, nor that the prospective purchaser of the plaintiff's house had also agreed to buy the house next door. A claim for breach of the agent's fiduciary duties failed. The Privy Council quoted (at page 214-215) from earlier decisions which established that (i) rules of equity have to be "applied to such a great diversity of circumstances that they can be stated only in the most general terms and applied with particular attention to the exact circumstances of the cases", and (ii) the "fiduciary relationship cannot be superimposed upon the contract in such a way as to alter the operation which the contract was intended to have according to its true construction". The Privy Council held that the contract between the agent and the plaintiff did not include the various terms upon which the plaintiff relied. A significant reason for this conclusion was that the plaintiff was "well aware that the defendants would be acting also for other vendors of comparable properties and in doing so would receive confidential information from those other vendors". The agency contract could not therefore have included terms (a) requiring the agents to disclose such confidential information to the plaintiff, (b) precluding the agent from acting for rival vendors or (c) precluding the agent from seeking to earn commission on the sale of the property of a rival vendor.

199. More recently, in *Medsted Associates Ltd. Canaccord Genuity Wealth International* [2019] EWCA Civ 83, the Court of Appeal considered the nature of an agent's fiduciary duties in the situation where the agent's client (or principal) knows that he is receiving payment from the counterparty to the transaction. The factual background was that the claimant company, Medsted, was an agent whose business was to act as an introducing broker for certain clients. It introduced business to the defendant financial institution, and received commissions from the defendant for so doing. The defendant subsequently entered into business directly with some of the clients. This cut out Medsted from any right to claim its commissions. Medsted sought damages for lost commissions. The judge allowed the claim in principle, but held that by failing to inform the clients of the extent of its share of the commission, Medsted had been in breach of its fiduciary duty to its clients, and therefore on public policy grounds only nominal damages should be awarded. The Court of Appeal reversed this decision.

200. The case is relevant to the facts of the present case (further described below), because the Court considered the position where a client knows that his agent is receiving payment from the counterparty to the transaction. Thus, the Court of Appeal reviewed prior authority and said at paragraph [42]:

> "It follows from all this, in my judgment, that even if the relationship of Medsted and its clients was a fiduciary one, the scope of the fiduciary duty is limited where the principal knows that his agent is being remunerated by

> the opposite party. As *Bowstead and Reynolds* say, if the principal knows this, he cannot object on the ground that he did not know the precise particulars of the amount paid. He can, of course, always ask and if he does not like the answer, he can take his business elsewhere. *Bowstead* does add that where no trade usage is involved (and no usage was alleged in the present case), the principal's knowledge may require to be "more specific". In *Hurstanger* the court held that it did need to be more special "because borrowers (such as the Wilsons) coming to the non-status market were likely to be vulnerable and unsophisticated". The contrary is the case here since, as the judge found (para 90) the clients were wealthy Greek citizens and it is likely that they were experienced investors (Mr Komninos, for example, had already dealt through MAN)".

201. The case is also important because it reiterates the principle, apparent in *Kelly v Cooper,* that simply labelling a relationship as one of agency or a fiduciary relationship does not establish the terms of the agreement. It is necessary to look at the "facts of the case". At paragraph [45], Longmore LJ referred to a well-known statement of a fiduciary's duty by Millett LJ in *Bristol and West Building Society v Mothew* [1998] Ch 1 and said:

> "But this statement of principle does not absolve the court from deciding the scope of the fiduciary's obligations. If, in fact, the agent has, in the light of the facts of the case, no obligation to disclose the actual amount of commission he is paid when his principal knows he is being paid by the third party to the transaction, it does not advance the matter to say that, because he is a fiduciary, he must disclose the actual amount he is being paid. It is the scope of the agent's obligation that is important, not the fact that he may correctly be called a fiduciary. As Lord Wilberforce said in *New Zealand Netherlands Society 'Oranje' Inc v Kuys* [1973] 1 WLR 1126, 1130A "the precise scope of [the duty] must be moulded according to the nature of the relationship." See also *Hospital Products Ltd v United States Surgical Corporation (1984) 156 CLR 41*, 102 per Mason J:- "… it is now acknowledged generally the scope of the fiduciary duty must be moulded according to the nature of the relationship…"

202. The Court's conclusion was that, on the facts of the case, the broker was not under a duty to the clients to disclose the exact amount of the commission it was receiving; or "to put the matter another way, to the extent that Medsted was the fiduciary of its clients it was not in breach of that duty for it not to disclose the amounts of commission it was receiving".

203. Against this legal background, I describe in more detail the relevant facts of this transaction.

The facts

204. The XKSS was the first car purchased after the initial showroom purchases in December 2009. At that meeting, there had been some discussion between Mr. Hood and Mr. Tuke about the latter building a collection of classic cars, with Mr. Hood indicating that if the right cars were bought and sold at the right time, Mr. Tuke could double his money. There was, however, nothing in the conversation that amounted to the appointment by Mr. Tuke of JDC as his agent for any purchase transaction. Rather, the parties would have envisaged that if a suitable and attractive car became available, JDC would sell it to Mr. Tuke. The four cars which Mr. Tuke did agree to buy at the December meeting were straightforward sales by JDC to Mr. Tuke. No formal contract was drawn up, but an invoice was sent by JDC to Mr. Tuke for the balance owed and this was paid. Ordinarily, an invoice evidences a contract of sale between the issuer of the invoice and the recipient. At this stage of the relationship, there was in my view nothing more complex than an ordinary sale. Mr. Tuke knew that one of the cars belonged to Jenson Button, but the sale of that Bugatti was nonetheless a sale between JDC and Mr. Tuke. I also consider that Mr. Tuke appreciated that there were advantages in purchasing a car from an established and apparently reputable dealership such as JDC. If, for example, there was any subsequent dispute, whether about title or genuineness or quality, Mr. Tuke could have recourse to JDC. Indeed, the evidence indicates that breakdowns did arise from time to time on one or more of the cars purchased, and JDC's service included picking up the car and effecting necessary repairs.

205. Although the parties no doubt envisaged that further cars might be purchased as Mr. Tuke built his collection, Mr. Tuke did not ask Mr. Hood to source any cars for him. He did nothing at the meeting to confer any authority on JDC to do anything on his behalf.

206. On 9 January 2010, Mr. Hood e-mailed Mr. Tuke as follows:

> "While I was away I was offered registration 9 BUG for the Bugatti, if it is of any interest to you I will pursue it.
>
> I was also offered a Genuine Jaguar XKSS, one of 16 cars built. These are one of the most sought after cars in the world, I have been calling the US owner twice a year for the past 5 years to see if he would sell, he left a message for me over Christmas, I have spoken to him and he said he wants a discreet sale, I have negotiated a price of $ 5.5 M US, currently around £ 3.44 Sterling. The car is Racing Green with Green interior; these are the ultimate high performance period road/rally cars. Only 2 XKSS's have come to market in the last 3 years, I sold one of the cars last year for £ 4.7 M Sterling. Mike this would be a very good buy at this figure, it has an excellent upside and is

> one of the best investment cars. The car would attract 5% VAT on the purchase price when it returns to the UK."

207. The e-mail was misleading in that it was not true to say that Mr. Hood had negotiated a price of US$ 5.5 million with the US seller. He had in fact negotiated a lower price, and the sum of US$ 5.5 million, or £ 3.44 million in sterling, was the amount which Mr. Tuke was being asked to pay. There was some dispute at trial as to the amount which Mr. Hood had negotiated: Mr. Tuke's case was that it was £ 2,476,428, although an e-mail from the seller (Mr. Larson) said that the price was in fact US$ 4.5 million. JDC's potential profit on the transaction was therefore in the region of £ 1 million (on Mr. Tuke's case) or US$ 1 million, (on Mr. Hood's case). In view of my conclusions on liability, I do not need to resolve this dispute.

208. What is clear in my view is that Mr. Tuke understood that the £ 3.44 million in the e-mail was the amount which he was being asked to pay, and that JDC would be taking a cut from the price paid. Mr. Tuke said in evidence, correctly in my view, that he was being offered the car "as a customer who might like one and has money to spare": in other words as a customer of JDC. He said that he fully expected Mr. Hood to be making money on the transaction. "That's what people running that sort of premises, that sort of outfit do. They wouldn't do it otherwise." He agreed that he had not asked Mr. Hood to get him a car: it was Mr. Hood who had gone off and found it. Mr. Tuke did not ask Mr. Hood what his cut was. He agreed that he could have done. But it was "early in a relationship where I could imagine he would avoid the question completely, perfectly reasonably, perhaps." He agreed that Mr. Hood's cut was a matter for Mr. Hood, because he had sourced the car. He said:

> "And if it was at right price, and I was willing to pay, then so be it".

209. It was clear from Mr. Tuke's evidence that, at this stage, he was not concerned as to whether a particular car was owned by JDC or a third party. He agreed that what ultimately mattered was whether he liked the car and whether he thought it was something that might appreciate in the future, rather than who happened to own it.

> "But in the purchase era, I don't think frankly it would have mattered where it came from. It just happened, maybe, that they all appeared to come from third parties because that was how he found them".

210. On the following day, there was a brief e-mail exchange. Mr. Tuke asked about pictures and provenance. Mr. Hood sent him some pictures, and said that the car was genuine. On 12 January, Mr. Tuke asked about the chassis number and provenance details. Mr. Hood replied saying that the car had an unbroken history and was genuine:

> "Mike it should be bought. Would you like me to call you later today".

211. A further conversation must then have taken place, because on 14 January 2010 Mr. Hood advised Mr. Tuke that the "XKSS is yours".

212. In due course, Mr. Tuke was invoiced for the XKSS by JDC.

The parties' arguments

213. On behalf of Mr. Tuke, Mr. Wright accepted that where an agent acts for multiple parties, the scope of its fiduciary duty may need to be qualified accordingly, and that particular difficulties arise where an agent for one party to a transaction is paid for by his principal's counter-party. He relied upon the decisions of the Court of Appeal in *Hurstanger Ltd v Wilson* [2007] EWCA Civ 299 and *McWilliam v Norton Finance (UK) Ltd.* [2015] EWCA Civ 186, in both of which the brokers were held to have broken their fiduciary duties because they did not obtain their principals' informed consent to a particular commission payment. The position of Mr. Tuke was closer, on the facts, to the principals in *Hurstanger and McWilliam*, rather than the principals in *Medsted*, because: Mr. Tuke was dealing as a consumer, was essentially a novice in the classic car market, and was looking for guidance as to when and how to buy and sell cars; Mr. Hood not only did not provide full disclosure of the remuneration that JDC was receiving, but he actively misled Mr. Tuke; and the level of margin achieved by JDC was enormous compared with a typical agent's commission or even a classic car dealer's margin (which Mr. Hudson-Evans had indicated might be 5-15%).

214. In his oral submissions, Mr. Wright said that the issue that the court would need to decide is whether Mr. Tuke's case was closer to the *Hurstanger/ McWilliam* or *Medsted* side of the line. He accepted that this could not be regarded, in the light of Mr. Tuke's evidence, as a secret profit case. But he submitted that it was a case where there was no informed consent to the level of remuneration which JDC received. As an "alternative string to [his] bow", Mr. Wright submitted that there may have been an implied representation that the level of commission was competitive, and that equitable compensation was appropriate in respect of the amounts over and above a reasonable level of compensation. In his reply submissions, Mr. Wright placed emphasis on the December 2009 meeting which he described as "some form of inchoate arrangement whereby Mr. Hood will provide advice to Mr. Tuke about investment on a rolling basis". He said that as an irreducible minimum, there were fiduciary duties of honesty and good faith, and these were breached by JDC with the dishonest assistance of Mr. Hood; because Mr. Tuke was told that a price of £ 3.44 million had been negotiated, when in fact it was nothing of that sort.

215. On behalf of the trustees, Mr. McWilliams questioned whether, in relation to the XKSS transaction, it could really be said (notwithstanding Lavender J's conclusions) that Mr. Hood acted as Mr. Tuke's agent. But even if it were to be accepted that there was an agency relationship, it did not follow that fiduciary duties were owed. Although the relationship between agent and principal is one in which fiduciary duties are ordinarily owed, the scope and content of the fiduciary duties which are presumed to be owed can be modified and attenuated by the agreement of those to whom they are owed: see Grant and Mumford *Civil*

Fraud: Law Practice and Procedure ("Civil Fraud"), 1st ed., paragraph 11-026. "Agreement" in this context is not limited to contracts in the strict sense: what is permissible within the bounds of a fiduciary's duties will be affected by considerations such as the terms of any contract of engagement, the scope and nature of the business in which his principal is engaged, his role within that business and any understanding between the parties (which may fall short of having contractual force and may be manifested only in a course of dealings) as to the other activities in which he might properly be engaged: see *New Zealand Netherlands Society "Oranje" Inc v Laurentius Cornelis Kuys* [1973] 1 WLR 1126 (PC) and *Civil Fraud* at paragraph 11-026.

216. Thus, where a sales agent (such as an estate agent or broker) operates a general agency business and acts for a number of vendors, it will be an implied term of the retainer (and an equivalent delimitation in the fiduciary duties owed) that the agent can act for other vendors whose interests may compete, and that he can keep confidential information that he has received from other vendors: see *Kelly v Cooper* [1993] AC 205 at p. 214 per Lord Browne-Wilkinson. It is therefore wrong to assume that all fiduciaries owe the same duties in all circumstances. The extent and nature of fiduciary duties owed will depend on the facts of the particular case: see *Henderson v Merrett Syndicates Ltd* [1995] 2 AC 145 at p. 206A-D per Lord Browne Wilkinson.

217. Mr. McWilliams placed reliance on the evidence of Mr. Tuke that he knew and believed that JDC had a commercial stake in each purchase transaction, including the XKSS transaction. He was entirely unconcerned by that fact. Even if a purchase agency did exist, the fiduciary duties that would otherwise have been owed must necessarily have been attenuated by agreement. Mr. Tuke freely accepted that he believed that JDC was making a profit, and he was perfectly content that it should do so.

218. In his oral submissions, Mr. McWilliams submitted that it was important not to conflate two separate issues. The first issue is the extent to which a fiduciary duty arises in the first place. The second issue is whether, if a fiduciary relationship does arise, the agent has obtained his principal's fully informed consent to depart from that duty. Neither *Hurstanger* nor *McWilliam* involved any issue as to whether or not the agents in those consumer cases owed fiduciary duties. The present case is different. No duties were owed. Mr. Tuke, spending £ 3.44 million on a single car, is a world away from the vulnerable individual borrowers in parlous financial circumstances in those cases.

219. As to the alternative claim for equitable compensation, based on a possible implied term that the level of commission was competitive: Mr. McWilliams submitted that *Medsted* showed that there may be cases where such an implied representation is made, and where the principal – who knows about the existence of the agent's remuneration by the other party but not its extent – would have a remedy. But any such claim would need to be pleaded out. This had not been done in the present case, and it was far too late for Mr. Tuke now to seek to rely upon any such representation. But the possible existence of such a remedy, on appropriate facts, attenuates any unfairness arising from a conclusion that no relevant fiduciary duties were owed.

Discussion

220. On this issue, I broadly accept the submissions by Mr. McWilliams as summarised above.

221. In relation to the XKSS purchase, there is in my view a real question to whether or not JDC could really be described as Mr. Tuke's agent at all. As I have said, there had been no discussion of agency, or any of the normal attributes of an agency relationship, at the December 2009 meeting. If cars were identified for possible purchase in the future, the relationship envisaged between the parties was that Mr. Tuke would be purchasing them from JDC. This is in due course what happened. No authority was conferred by Mr. Tuke upon JDC, and there was no discussion of any remuneration to JDC for acting as an agent. In that respect, there is an important distinction between the relationship in this acquisition phase, by contrast to the "sales" phase when the September 2010 exchange of e-mails established an agreed remuneration for JDC in respect of sales of Mr. Tuke's cars. It is important not to let the later analysis of the relationship, as it developed concerning sales, to colour the analysis of the relationship in the early months of 2010.

222. Lavender J's conclusions at paragraph [63] of his judgment, in relation to purchase agency, was that JD was authorised by Mr. Tuke to act, agreed to act, and either did act, or purported to act, as agent for Mr. Tuke in negotiating and concluding the purchase of cars by Mr. Tuke in 2010. I am doubtful whether any agency relationship at this stage, if it existed at all, went any further than Mr. Tuke giving Mr. Hood authority to convey an offer to the seller. This was done in circumstances where the parties were envisaging that if an agreement were reached, there would be a sale by JDC to Mr. Tuke in a way which was no different to the sales which had taken place in December and where one of the cars (the Bugatti) was then understood to belong to a third party. It was also done in circumstances where Mr. Tuke fully understood that JDC would be making money on the transaction, and where he was not concerned to enquire how much or the way in which the remuneration had been calculated (e.g. whether it was a percentage of the transaction, or a lump sum). Mr. Tuke did not ask because he did not think that it was any of his business to ask: JDC was a car dealer, and Mr. Tuke knew that it would be making money on sales. As he said, if Mr. Hood had been asked, it would have been reasonable for him to refuse to answer. Mr. Tuke was not offering to make any payment to JDC in respect of the work that Mr. Hood had carried out in sourcing the car, and persuading the owner to sell. This no doubt reflected the fact that he fully expected JDC's profit, whatever it was, to come from the purchase price paid.

223. Given this factual background, I consider that it makes no sense at all to hold that there were fiduciary duties, at this stage of the relationship, which would usually arise in the context of relations between principal and agent, and which would have the effect of requiring JDC not to make a profit on the transaction and to disgorge such profit to Mr. Tuke. Just as in the *Medsted* case, even if the relationship between Mr. Tuke and JDC were a fiduciary one, the scope of the fiduciary duty is limited where the principal knows that his agent is being remunerated by the opposite party. The present case is in my view a very long

way from the consumer transactions which were considered in *Hurstanger* and *McWilliam.* Mr. Tuke was buying an extremely expensive car, spending more money on a single vehicle than most people will earn in their lifetimes. He was a successful businessman, and his expenditure of £3.44 million on this vehicle came on top of expenditure in excess of £ 4 million in December. The case is, adopting Mr. Wright's approach, very firmly on the *Medsted* side of the line.

224. Any other result would in my view have very odd consequences. It would mean that JDC would have no entitlement at all to any profit on the transaction involving the XKSS, even though this was a rare and valuable car which Mr. Hood had successfully sourced and which Mr. Tuke wanted to buy, and even though Mr. Tuke fully expected JDC to make money on the transaction. It would result in Mr. Tuke's acquisition price being substantially below the price that he was prepared to pay, and where it is not specifically alleged that the price paid was above the market price for a car sold by a dealer to a customer in Mr. Tuke's position. In other words, it would enable Mr. Tuke to acquire the car at less than its retail market value.

225. It is also difficult to see why any distinction could be drawn between this XKSS car, and all the other cars which were presented during the acquisition phase as being owned by third parties, for the purposes of disgorgement of JDC's profit. In other words, JDC would be stripped of the profit made on all the purchase transactions, even though Mr. Tuke was aware that profits were being made. It would result in the court imposing, in effect, an obligation for JDC to seek Mr. Tuke's informed consent for the level of profit made, even though the circumstances were such that Mr. Tuke recognised that this was none of his business.

226. All of these consequences would flow in the context of a relationship which had begun only a month earlier, with an ordinary relationship between JDC and Mr. Tuke as retailer and buyer of cars; where there had been no discussion or agreement whereby the parties had agreed to change the nature of this relationship; and where the parties agreement for the purchase of the XKSS was reflected in an ordinary invoice from JDC as seller and Mr. Tuke as buyer.

227. Nor, in my view, is the case improved by the rather belated argument based on an implied representation that the level of JDC's commission or remuneration was competitive. It is in my view too late for Mr. Tuke to advance a case based upon such an implied representation. In a fraud case, it is essential for the representations relied upon to be pleaded with specificity. In any event, there is no evidence that Mr. Tuke understood that such a representation was being made to him, or that he relied upon any such representation. He did not know JDC's profit on the transaction, and was not concerned to enquire about its level. In any event, there is no satisfactory evidence before me as to what a "competitive" level of remuneration would be in the context of the private sale of a rare and valuable car such as the XKSS. Mr. Hudson-Evans' evidence as to a mark-up of up to 15% was, as I understood it, referable to the difference between what might be paid at auction and a subsequent resale by a dealer. If there had been pleaded issues as to competitive levels of remuneration for

classic car dealers, then there would and indeed should have been expert evidence directed towards that issue.

228. Furthermore, even if there had been a basis for imposing liability on Mr. Hood in respect of the XKSS sale, I was not persuaded as to the existence of any relevant remedy. The profits on the transaction were made by JDC, and I have already rejected Mr. Tuke's argument that a dishonest assistant can be liable to account for profits which he did not make. That means that any claim would have to be a claim for equitable compensation. It was common ground that although the legal basis for such a claim is different to the legal basis for a claim for damages for deceit, there is in practice no difference between the amounts recoverable as equitable compensation and damages. I do not think that any equitable compensation would be appropriate in the circumstances of the present case. Mr. Tuke acquired a valuable car, and does not specifically allege that he paid in excess of the market value for it. If compensation were to be ordered, it would result in his receiving, in effect, a windfall which would have the effect of reducing his outlay from the retail market price which he willingly paid to a lower sum. This seems to me to be the antithesis of equitable compensation.

229. Furthermore, if Mr. Tuke had not been willing to pay the price quoted to him, then he would have understood that he was at risk of not acquiring the car and that JDC could, if it wanted to do so, acquire the car for itself and seek a purchaser willing to pay the asking price. Mr. Tuke did not know who the seller was, and there is no basis for thinking that he might have been able to approach the seller directly in order to obtain a lower price. Mr. Tuke's choice therefore lay between paying the asking price (or seeking to negotiate a lower price, which he did not seek to do) or not acquiring the car. In the absence of any specific allegation that the car was acquired at above its market value, there is in my view nothing for which Mr. Tuke should be equitably compensated.

230. These conclusions apply equally to the claims in relation to the other two purchase transactions which are in issue, the AC Aceca and the Gullwing, in so far as such claims are based upon allegations of secret profits or failure to obtain informed consent and an account of profits or equitable compensation in respect thereof. However, in contrast to the XKSS, Mr. Tuke does advance claims for those cars based upon the tort of deceit. If such allegations are well-founded, then a remedy in damages, or equitable compensation in a like sum, is potentially available.

E2: The AC Aceca purchase

The facts in outline

231. On 22 February 2010, JDC acquired an AC Aceca from a Mr. Charles Fripp. The invoice recorded a price paid for that car of £ 84,000, but this was by way of part exchange for four other cars. Each of those cars was a Jaguar: the invoice recorded prices of £ 20,000 for three of these cars, and £ 24,000 for the fourth, making a total of £ 84,000.

232. On 11 March 2010, Mr. Hood wrote to Mr. Tuke as follows:

> "On Monday a very rare AC Aceca Bristol Competition Car came in for me to inspect and service for the coming season, I then got a call this afternoon asking if I wanted to buy it.
>
> This car is one of eight factory works competition cars, this car raced at Goodwood, Silverstone, Brands Hatch, Mallory Park, Snetterton etc between 1957 and 1962 taking podium finishes. The car has had only three owners from new and has complete history. The last two owners are father and son. This car has been invited to the Goodwood Revival for the last 10 years; it was also the Goodwood Poster car in 1962 hence the invites. We have inspected the car and it is in very good condition, it has current FIA papers. The engine was rebuilt last year prior to the Goodwood Revival.
>
> Mike this would be a great car for you to drive at the Revival if you ever wanted to have a go yourself, the Aceca is easy to drive, very well built, safe and rare.
>
> This offer is out of the blue and a perfect fit for your collection, you cannot go wrong with Goodwood Revival Competition cars, the owner wants a sale to be kept private. He wants £325k for it but I believe we should pay £270 to £280K. The added bonus is this afternoon I have looked in my record books and found one of the eight cars was used on the Mille Miglia in 1956 which would also make this car eligible, with these facts this is a £450K plus car.
>
> I will send pictures over to you."

233. On 13 March 2010, Mr. Hood wrote:

> "I do not want to let the AC opportunity to pass. Goodwood cars are getting more valuable as the event gets more popular every year, this car is ideal for the enthusiast who wants to take part. The car only needs basic safety checking and fettling say 5k to 10k of work. I would say the car is going to be a worth 400K plus by the end of the year. After speaking to the owner yesterday we have today to go in with a firm offer. We should do this one."

234. Later that day, Mr. Hood said that the "AC would have an immediate upside if you wanted to sell quickly" and that he "would like to go in with a bid of £ 250K."

235. On 17 March. Mr. Hood said that he did not want to let the AC opportunity pass:

> "I would say the car is going to be worth 400K plus by the end of the year. After speaking to the owner yesterday we have today to go in with a firm offer. We should do this one."

236. Mr. Tuke replied to Mr. Hood:

> "Oh OK then but for goodness sake don't tell Ruth [Mr. Tuke's wife]. Try for the 250 for quick action?"

237. At just after 1 pm on 17 March, Mr. Hood responded saying:

> "I have got the car for 254K. Do you want the invoice sent to home".

The parties' arguments

238. Mr. Tuke contends that there were misrepresentations as to the ownership of the car and as to its value. In summary, his case as to ownership is that, at the time of the e-mail exchanges with Mr. Tuke in March, the car was owned by JDC as a result of its purchase from Mr. Fripp in February. There was no third-party vendor with whom Mr. Hood was discussing a possible sale. As to value, Mr. Tuke contends that Mr. Hood did not genuinely believe that the car was or would by the end of the year be worth the figures that he was quoting; i.e. in the region of £ 400 – 450,000 plus. The true value was reflected in the price of £ 84,000 paid to Mr. Fripp, which was consistent with Mr. Neumark's valuation at £ 75,000 - £ 100,000.

239. Mr. Hood's case as to ownership, as explained in his evidence, was in summary as follows. By the time that Mr. Hood was corresponding with Mr. Tuke, a Mr. Richard Goddard had become the owner of the car in the sense that he had "put his name" to the AC Aceca for an agreed price of £ 250,000. Mr. Goddard had not taken delivery of the car, or paid for it. But he wished or was willing to cancel this purchase, provided that he received a profit. He was originally asking for £ 325,000 as referred to in Mr. Hood's 11 March e-mail. In the end, Mr. Goddard was prepared to accept the lower price of £ 254,000 which was put to Mr. Tuke. Mr. Hood had been willing to offer him a profit on the AC Aceca, because he was "moving" Mr. Goddard into another car. Mr. Hood could not identify the car that Mr. Goddard was moving into, because it was a very long time ago. But this is what Mr. Hood "did with customers": he "allowed them to move out of cars to move into a car." If they had put their name to a car, he would tempt them to come out of that car by giving them a profit, because he had a larger profit in the next car that they were actually moving into. Mr. Hood did a lot of business with Mr. Goddard and other customers on a handshake or over the phone. If they had agreed to put their name to a car, the car was theirs. That was how the business worked. Accordingly, there was a real third party, Mr. Goddard, with whom Mr. Hood was indeed discussing the transaction at the time of his correspondence with Mr. Tuke.

240. As far as value is concerned, Mr. Hood said that he did believe that the car was worth the £ 400,000 or £ 450,000 figures that he had quoted. The effect of his

evidence was that Mr. Fripp had sold the car for less than it was really worth. JDC had discovered a great deal more about the history of the car subsequent to the sale. It was a very important car – perhaps the most important AC Aceca in the world. He drew attention to the price for which the car was in due course sold by Sam Thomas. The invoiced price to the purchaser was £ 300,000, but the car for which it was exchanged was probably worth £ 400,000. In his written closing submission, Mr. Hood submitted that Mr. Tuke "had therefore purchased the car for the price that JD Classics considered that it was worth". If the invoice price of £ 300,000 is taken, then Mr. Tuke made a profit on the car and has nothing to complain about.

241. In summary, Mr. Hood contended that there had been an astute business purchase by JD Classics of a valuable car, and Mr. Tuke freely agreed to purchase that car. It was a vehicle which JD Classics continued to value highly, and at some stage had offered to repurchase the car for a value greater than that for which Mr. Tuke had sold it.

Representation as to ownership

242. I consider that the ownership of the AC Aceca was as reflected in the contemporaneous documents, and did not involve Mr. Goddard. The car had been sold by Mr. Fripp to JDC in February and was then sold by JDC to Mr. Tuke in March. There was no intermediate sale of the car to Mr. Goddard (who ran a company, Guernsey Classic Cars), or cancelled sale to him, or any deal whereby Mr. Goddard was "moved out" of the AC Aceca into a more profitable sale. In my view, this simply did not happen and I reject Mr. Hood's evidence in that regard.

243. Since Mr. Hood's account of third-party involvement on the AC Aceca is a recurring theme in his evidence about the later sales transactions, I will explain in some detail why I cannot accept his account. Much of what I say here is equally applicable to Mr. Hood's case on the ownership of other cars, where his explanation of statements made to Mr. Tuke about third-party owners was essentially the same: it involved a third party "putting his name" to a car, and then deciding to pull out or sell it in part exchange, usually for a profit, to Mr. Tuke via JDC, but without any documentation supporting the original acquisition by the third party or any corroborative evidence relating thereto.

244. As far as the AC Aceca is concerned, there is no documentary evidence of any sale of the car to Mr. Goddard in 2010. Had there been any such sale, then I would have expected there to be an e-mail or other contemporaneous document that referred to it. Although Mr. Hood has from time to time made the point that he does not have full access to JDC's documentation, it is clear that extensive searches for relevant material were carried out by JDC's solicitors at a time when JDC was still an active party to the present proceedings. Thus, on 14 August 2018, Goodman Derrick wrote on behalf of JDC in relation to the various orders which had been made consequential upon Lavender J's judgment. Their letter set out a lengthy list of electronic searches which had been carried out against JDC's database. This included search terms with the names of various cars in issue (although, in fact, not the AC Aceca) as well as

the names of various individuals who had by that stage been identified as relevant. The search terms included Mr. Goddard and "Guernsey", as well as other individuals who are alleged to have played a part in the sales or purchases of other cars in issue: for example, "Mark" and "Christie", "Terry" and "O'Reilly", "Engelhorn" and "Kurt", "Runners" and a large number of other names. These searches were general searches against the search terms: in other words, they were not connected to any particular vehicle or other search term. I was told some 22,000 documents were thrown up by these searches, and that the documents were then uploaded to the 'Relativity' document management platform which was later made available to Mr. Hood. It follows that if there had been any electronic record of any sale of the AC Aceca to Mr. Goddard or Guernsey Classic Cars, the search terms would have enabled the document to be identified.

245. In addition to expecting an e-mail or other documentary evidence of the sale, I would have expected the sale (if it had indeed taken place) to be evidenced by an invoice for the car to Guernsey Classic Cars or Mr. Goddard, and a credit note or other document recording the cancellation of the sale. There was at least one example of such documents in the hearing bundles, and JDC's internal documents also from time to time recorded a cancelled sale. Mr. Tuke's solicitors had made specific enquiries with the solicitors for the joint administrators of JDC in relation to documentation evidencing the cancellation of the purchase of the AC Aceca by Mr. Goddard in March 2010 (and a number of other transactions where a similar allegation had been made by Mr. Hood). The response was that the administrators had been unable to locate any such documentation.

246. Mr. Hood's written statement said that if a potential purchaser "put their name" to a car, an invoice with a specific invoice number would be generated. This makes sense: if a car was sold by JDC this would be important, and JDC would no doubt wish to send out an invoice promptly, particularly bearing in mind that JDC did not require customers to sign a contract. Thus, in Mr. Tuke's case, invoices were promptly prepared for the four cars sold in the December 2009 showroom visit, and for the XKSS (where the invoice was dated 15 January, the day after Mr. Hood had told Mr. Tuke that the car was his). For the AC Aceca, the invoice to Mr. Tuke was dated 17 March (the day when the emails record the conclusion of the transaction), and a handwritten notation by Mr. Tuke shows that payment was made on 23 March. The absence of any invoice, or indeed any internal record that Mr. Goddard was ever invoiced, is therefore significant.

247. Mrs. Shelton gave evidence as to invoicing procedures. She confirmed Mr. Hood's evidence that an invoice, with a specific invoice number, would be generated if a potential customer put their name to a car. She was asked a question in re-examination by Mr. Hood which was intended to encourage her to say that there were a select few customers who were not always invoiced. But her evidence was to the effect that all customers were invoiced, and that she would be responsible for the invoicing, although later on this was sometimes done by the salesman.

248. Had events been as described by Mr. Hood, one would also expect to see some documentary record of the sale of the car into which Mr. Goddard was being switched. However, JDC's internal records record no sales to Mr. Goddard or his company in 2010, in contrast to other years. Mr. Hood could not, as I have said, identify the car into which Mr. Goddard had switched.

249. There is therefore nothing in the documents which corroborates Mr. Hood's account, and such documents as exist evidence the straightforward sale by Mr. Fripp to JDC and then the onward sale by JDC. Nor has any evidence been given by Mr. Goddard – or indeed any of the other alleged owners of cars as described in relation to the later alleged frauds – to support Mr. Hood's account.

250. Furthermore, I consider that the account given by Mr. Hood is in any event inherently implausible. If Mr. Goddard had agreed to purchase the AC Aceca for £ 250,000 as alleged by Mr. Hood, and then more or less immediately wished to cancel the transaction, it is difficult to see how he could reasonably have been looking for an immediate profit of £ 75,000 by way of a proposed sale at £ 325,000. This was the price initially quoted by Mr. Hood to Mr. Tuke ("He wants £ 325K for it"). If £ 250,000 had indeed been the price agreed with Mr. Goddard, this would have been at the very top end of range of possible values put forward by Mr. Broad, the expert witness for Mr. Hood. It is therefore improbable that Mr. Goddard would be looking to make an immediate profit of £ 75,000. But in any event, Mr. Goddard had not paid for the car or taken delivery of it, as Mr. Hood confirmed in his evidence. Ownership therefore remained with JDC throughout, and Mr. Goddard was not in a position to ask for an immediate profit of £ 75,000 on a car for which he had not paid, and a price which would be significantly above any realistic view of the market value of the car (an issue which I address in more detail below).

251. In addition, Mr. Hood's e-mail of 11 March 2010 said that the "car has had only three owners from new and has complete history. The last two owners are father and son". The father and son were, as Mr. Hood confirmed, two members of the Fripp family. This statement leaves no room for an intermediate ownership by Mr. Goddard.

252. I therefore have no doubt that what Mr. Tuke was being told about ownership, and Mr. Hood's negotiation with the owner, was untrue to Mr. Hood's knowledge. The AC Aceca had not come in on the previous Monday for an inspection, and Mr. Hood had not received a call from the owner asking if he wanted to buy it. There was no "offer out of the blue", and there was no owner who wanted to keep the sale private, or with whom Mr. Hood was negotiating. The statements made in the later e-mails, about going in with a bid, and speaking to the owner, were similarly untrue. The car was owned by JDC, and Mr. Hood was simply trying to sell it. The reason that these statements were made, dishonestly in my view, was that this was Mr. Hood's way of encouraging a sale: a rare opportunity; an owner who is prepared to negotiate, but only 'under the radar'; the need to move quickly. The conversation would have been a very different one, and the 'sell' far more difficult, if Mr. Hood was, as was the case, simply trying to persuade Mr. Tuke to buy a further car from JDC's current stock.

253. Furthermore, the fiction of a third-party seller, willing to take a figure for a quick and quiet sale, was linked to the misrepresentations as to value which (as I will explain) were also made in relation to this car and indeed subsequent cars. Mr. Hood was seeking to give the impression of a third-party seller who was prepared to move in the course of a negotiation, thereby encouraging Mr. Tuke to believe that he was getting the car for a good price. The 'sell' would again have been more difficult if Mr. Tuke had been given to understand that he was, in reality, simply negotiating with Mr. Hood. Through the correspondence generally, Mr. Hood sought to give the impression that he was a friend of Mr. Tuke, and was on the same side as he was in relation to the negotiation. Although Mr. Tuke understood (for reasons already explained) that Mr. Hood would be making money on the sale, there would have been no sense that Mr. Hood and Mr. Tuke were in it together, with Mr. Hood advising Mr. Tuke as to what cars to add to his collection, if all that was happening was a negotiation between Mr. Tuke and Mr. Hood.

254. Mr. Tuke frankly accepted in his evidence that, in the purchase era, it would not have particularly mattered to him where the car came from; i.e. whether it was a sale by a third party or by JDC. What mattered to him was that he should acquire a good car with investment potential for a fair price. Accordingly, the representations as to value, to which I now turn, are more significant in terms of inducing the purchase of the AC Aceca than the representations as to ownership. For the reasons given, however, they cannot and should not be viewed in isolation from each other.

Representations as to value

255. The representations here were that the car was a "£ 450K plus car", and that "the car is going to be a worth 400K plus by the end of the year". The primary case advanced by Mr. Tuke is that Mr. Hood did not genuinely hold these opinions. An alternative case, that there was a fraudulent misrepresentation that there were reasonable grounds for the opinions expressed, did not feature to any significant degree in Mr. Tuke's argument. The absence of reasonable grounds for the opinions expressed was therefore relied upon in support of the proposition that Mr. Hood, as an experienced car dealer, did not in fact hold the opinions which he communicated to Mr. Tuke.

256. Internal stock lists were prepared by JDC during the period with which I am concerned. These listed the cars which were or had been in JDC's stock. They contained a number of columns. They identified the car, the cost (i.e. the purchase price) and the 'Holding Strategy' which could be short, medium or long. A column provided for a restoration budget. There were then columns headed 'Projected/ Anticipated Sale' and others for 'Date Sold' and 'Sale Price'. Mr. Hood accepted in evidence that the recorded information as to the holding strategy would have come from him. There can be no doubt that the figures for the projected/ anticipated sale, which Mr. Hood agreed was the retail price that JDC was looking to achieve on a particular car, also came from him. Mr. Hood said that he thought that the stocklists were prepared based on information that came from him. He also said that the anticipated sale price would be periodically updated in order to reflect movements in the market. In many cases, the actual

price achieved was broadly in line with the anticipated price recorded in the stock list.

257. In relation to the AC Aceca, the stock list prepared in April 2010 identified a cost of £ 84,000, which was consistent with the price recorded on the invoice to Mr. Fripp. It correctly recorded an actual sale price in March 2010 of £ 254,000. Most significantly, for present purposes, it included a projected/anticipated sale price of £ 185,000. I consider that this entry is the best contemporaneous evidence of Mr. Hood's actual view, at the time, as to the retail value of the AC Aceca. It is less than 50% of the value that he represented to Mr. Tuke. I have no doubt that Mr. Hood gave a figure to Mr. Tuke, in order to encourage him to purchase, which did not reflect his real view as to value and that in so doing Mr. Hood acted dishonestly. Given that the e-mail correspondence on this car contained a number of false representations relating to ownership and negotiations, which were intended to induce the sale, it is not surprising that the representation as to value was also false.

258. I do not therefore accept Mr. Hood's uncorroborated evidence that, subsequent to estimating the £ 185,000 as the projected sale value, he discovered further history on the car which made it worth £ 400,000 or £ 450,000. Mr. Broad did not support figures in that region. He placed a value of £ 200,000 - £ 250,000 on the car, which is a long way from the values represented by Mr. Hood. Mr. Neumark's figure was £ 75,000 to £ 100,000, is even further away. I will discuss the evidence as to values in more detail in the context of damages. However, there is in my view no material which provides any support for a valuation of this car in 2010 of £ 400,000 or £ 450,000 or any amount approaching that figure. The absence of evidence providing reasonable grounds for a belief in such values reinforces my conclusion that Mr. Hood did not in fact hold the views as to value which he expressed to Mr. Tuke.

Causation and damages

259. Mr. Tuke's evidence was that if he had known that the car was worth a lot less, then he would not have wanted to pay a lot more. I accept that if Mr. Tuke had known the true position, he would not have bought the car at the price that he did. When misrepresentation is alleged, it is necessary for the claimant to show, as a matter of causation, that he would not have entered the contract on the same terms that he did: see *Vald Nielsen* paragraphs [430]- [432]. Here, Mr. Tuke would not have paid the price that he did if the value had not been misrepresented to him.

260. Mr. Tuke's calculation of damages was based on the difference between what he paid and the market value of the car. Mr. Neumark's evidence was that the car was worth no more than between £ 75,000 and £ 100,000 at the time. If the midpoint of those two figures is taken (£ 87,500), the resulting claim for damages is £ 166,500 being the difference between £ 87,500 and the purchase price of £ 254,000. The trustees were, if liability were proved, prepared to admit a claim in that sum. However, Mr. Hood made no such admission, and in any event I do not consider that the position on damages is as straightforward as the trustees' concession would suggest.

261. There is no doubt that the starting point for the assessment of damages is the market value of the goods acquired. In a case where a claimant would not have entered into the relevant transaction at all, then the market value will usually be the end point as well. This is because the claimant in that situation would not have parted with the purchase price, and the loss naturally arising is the difference between the price paid and the value of the goods which are left in his hands.

262. In the present case, however, there is no reason to conclude that Mr. Tuke would not have purchased the Aceca at all. He was at this time in the middle of the acquisition phase, and was still buying many cars. There is nothing to suggest that the Aceca was in any way an undesirable car for his collection. Indeed, the speed at which Mr. Tuke took the decision to purchase the car, and the significant amount that he was prepared to pay, suggest that it was a car which he wished to add to his collection. Indeed, one aspect of his claim for loss of investment opportunity is premised on the proposition that money which he overspent, as a result of Mr. Hood's alleged deceits or the making of secret profits during the acquisition phase, would have been spent on additional cars which would have increased in value. Therefore, the AC Aceca is a car that Mr. Tuke would have purchased.

263. The question on damages therefore becomes: at what price would he have purchased the car if the misrepresentations had not been made? This is not necessarily the same as asking what the market value of the car is, although the figures are likely to be closely related – not least because a willing purchaser will generally be unwilling to pay a price which is significantly greater than the figure which could (without misrepresentation) be put forward as representing the value of the car. The facts of the case may, however, indicate that a particular purchaser was willing to pay prices which were above the objectively assessed mid-point market value within a range. This may reduce the damages when compared to the calculation on which the claimant relies.

264. This need to consider the particular facts of the case can be looked at as a question of causation. Thus, in the passage from *Copping v ANZ McCaughan Ltd* (1997) 67 SASR 525, 539, quoted in paragraph [431] of *Vald Nielsen,* Doyle CJ referred to the need to consider whether, quite apart from the representation, the claimant would "have entered into a transaction bringing with it the very risk which eventuated in the relevant transaction."

265. The same essential point can also be considered as a matter of quantification of damages. In *Vald Nielsen,* the seller had sold shares at an undervalue, and sought the difference between the price received and their true market value. It argued that it was unnecessary to look beyond the true market value of the shares or to consider questions as to whether or not the seller was in a position to realise their true market value. I considered that argument in some detail in paragraphs [541] - [567] of *Vald Nielsen,* and held that whilst the starting point for the calculation of damages in the case of sale at an undervalue was the market value of the asset sold, this was not necessarily the end-point. In that case, there were particular factors which meant that a discount should be applied, because the

seller for various reasons would have had difficulties in selling at the true market value of the shares.

266. I do not consider that, as Mr. Wright suggested, there is any difference in principle between the approach to be taken in the context of a sale at an undervalue (as in *Vald Nielsen*) or a purchase at an overvalue (as here). In each case, the quantification of damages is compensatory, and I need to consider the loss which Mr. Tuke actually suffered. If the evidence indicates that he would likely have paid a figure at the top of the range of market values for the AC Aceca, or that he would have overpaid, even if the misrepresentations had not been made, then the calculation of damages should allow for this.

267. In the case of the value of the AC Aceca, there was a significant difference between the experts: Mr. Broad's range of £ 200,000 - £ 250,000 was more than twice Mr. Neumark's range of £ 75,000 to 100,000. The underlying evidence described below, in particular as to the prices at which such cars had been bought and sold at around the relevant time, included a number of data points which did not present a consistent picture. In his expert report, Mr. Broad made the point that the valuation of a classic car is, for obvious reasons, not an exact science. The evidence on valuation as a whole indicated the truth of this statement.

268. An important starting point in terms of valuation is the sale price which Mr. Fripp received. This was a sale between a willing buyer and seller. The price was £ 84,000, which is within Mr. Neumark's range. However, this was not a cash sale. It involved the part exchange of a number of cars, and the value of the Aceca is therefore dependent upon the values to be ascribed to those cars, as to which there may be room for argument.

269. It is also possible, of course, that Mr. Fripp may have undervalued the Aceca which he was selling. This is the converse of a point that was put to Mr. Broad in cross-examination. Mr. Broad (unlike Mr. Neumark) had particular knowledge of AC Aceca cars, because he had himself purchased an identical road vehicle for £ 125,000 in early 2011. His evidence was that the vehicle that he purchased did not have the extensive competition history associated with the car purchased by Mr. Tuke. Mr. Broad's evidence was that he would therefore have jumped at the opportunity to buy Mr. Fripp's car for £ 84,000, if only it had been offered to him. It was a bargain compared to the £ 125,000 which he had paid. The point made to him in cross-examination is that the price of £ 125,000 which he paid may have been an excessive, rather than the price paid to Mr. Fripp being too low. Mr. Broad conceded this as a possibility, but was clearly of the view that Mr. Fripp's car was worth far more than JDC had paid.

270. The next relevant matter on valuation, and in my view a point of some significance, is the projected/anticipated sale price of £ 185,000 which was entered on the JDC stock list. I have already concluded that this is the best contemporaneous evidence of Mr. Hood's actual view, at the time, as to the value of the AC Aceca in question. This entry does indicate that Mr. Hood, at the time, believed that the car was worth far more than he had paid to Mr. Fripp. There was no obvious reason why, on an internal document such as a stock list,

Mr. Hood would have inserted a projected/ anticipated sale price for the AC Aceca which he did not think was achievable. This figure is much higher than Mr. Neumark's, and is not far from the bottom end of Mr. Broad's range.

271. Next, there was evidence from Mr. Sam Thomas as to the attempts which he made to sell the AC Aceca during 2015, by which time the market for classic cars had generally increased as compared to the time of the original purchase. Mr. Tuke was looking to receive a figure of £ 250,000, which was close to the amount which he had originally paid. However, the evidence of Mr. Thomas was that this was not an achievable price, with a number of potential buyers indicating that it was too high.

272. However, Mr. Thomas' attempts to find a purchaser were ultimately successful. The AC Aceca was swapped with a Shadow DN9 ex-Formula 1 racing car. The counterparty to the transaction was a French classic car dealership represented by a Mr. Micheron. The invoice prepared by Mr. Thomas, dated 2 July 2015, indicates that the Aceca achieved a high price. The invoice read:

> "- 1957 AC Aceca (49 VMT) and spares value to Mike Tuke 300,000 and bodywork to be undertaken over the winter 2015
>
> -1978 Shadow DN9 & spares valued at 300,000 – 400,000
>
> -Transport split between Michael Tuke and Xavier Micheron"

273. The substance of Mr. Thomas's evidence, however, was that neither the Aceca nor the Shadow were at that stage worth anything like the figures set out on the invoices. He said that Mr. Tuke had asked him to put a value on this invoice of £ 300,000 for the Aceca "merely because I think it made him feel better to see that on the invoice, bearing in mind that the car had cost him more than twice the amount it had gone for". His oral evidence as to the value of the Shadow did suggest, at times, that this car was worth, at the time, the £ 300 – 400,000 stated on the invoice. However, ultimately Mr. Thomas' evidence was that this was the value which he hoped that the Shadow would in due course attain, but that at the time it was worth considerably less than the invoice amount.

274. Mr. Neumark's expert report analysed with some care the prices which are publicly available via published market indices and other data. This evidence included a sale of an AC Aceca in October 2009 for £ 71,500 plus a sale premium; equating to a price at the bottom of Mr. Neumark's range. A moving average graph of sales for AC Aceca cars, produced by a subscription service called K500, indicated a maximum price of around £ 85,000 for an AC Aceca in the year either side of March 2010. For his part, Mr. Broad referred not only to the amount which he had personally paid in 2011, but also to the fact he understood that Mr. Tuke's AC Aceca had subsequently been sold in France (consistent with the fact that Mr. Tuke had sold, via Mr. Thomas, to a French buyer). Although he did not know the sale price achieved on this subsequent sale, he did know that the asking price was set at € 385,000.

275. Against this somewhat diffuse background, I consider that the value of the AC Aceca at the relevant time was £ 185,000, which was the figure which Mr. Hood himself estimated. As I have said, I see no reason why Mr. Hood would, at that stage, have inserted a false figure for his anticipated sale into JDC's internal stock sheets. That figure is also broadly consistent with the fact that Mr. Broad did actually himself buy an AC Aceca, without such an extensive competition history as Mr. Tuke's car, for £ 125,000 in 2011. It is also, in my view, more consistent with the figures contained in Mr. Thomas's invoice in 2015 which recorded the swap for the Shadow, and the values ascribed to the vehicles for that purpose. I was not convinced that there was any sensible reason why that contemporaneous invoice would have recorded values, both for the Aceca and the Shadow, which were such a long way from their alleged actual values. That conclusion is also more consistent with the price at which, on Mr Broad's evidence, Mr. Tuke's AC Aceca was subsequently marketed. Whilst I recognise that these figures are higher than the various data points identified in Mr. Neumark's report, the difference can perhaps be explained by for example the particular competition history of the AC Aceca, or because the publicly available data does not record all sales that take place (for example, the purchase by Mr. Broad at £ 125,000 does not seem to be reflected in the K500 prices).

276. Even if the figure of £ 185,000 is on the high side, there is in my view a further reason for assessing damages by reference to a high purchase price figure, rather than (for example) some lower figure representing the midpoint of a range. The evidence is that Mr. Tuke was on something of a buying spree in early 2010. He was willing to pay top dollar to a leading dealer for cars that he wanted in his collection. Indeed, his written and oral evidence was, to the effect that he had overpaid for every car that he had bought from JDC during the acquisition process, albeit that the case on overpayment advanced at trial concerned only 3 of the cars purchased during that phase. That evidence did reflect the fact that Mr. Tuke's approach to purchase was instinctive rather than careful, analytical or hard-nosed. Indeed, he was self-critical to the extent of saying in evidence that he thought that he was "foolhardy in going as far as I did", in circumstances where he was not being put under any "undue pressure" to purchase cars. In many respects, Mr. Tuke's instincts were sound: the claim in respect of the "investment cars" (which did not include the AC Aceca) shows that he did pick a number of cars that would, despite their significant cost, have been very profitable if he had been able to retain them. In relation to other cars, his instincts may not have been so sound. But the instinctive nature of his purchases is in my view relevant to the question of the price that he would have paid for this AC Aceca, even if no misrepresentation had been made.

277. Accordingly, in relation to the AC Aceca, I consider that Mr. Tuke is entitled to recover the difference between £ 254,000 and £ 185,000 by way of damages, namely £ 69,000.

E3: Mercedes Gullwing purchase

278. In April 2010 Mr. Tuke purchased a Mercedes Gullwing for £ 180,000. The sale came about after Mr. Hood had sent an e-mail to Mr. Tuke on 6 April in which he stated:

"The owner of the Stirling Moss Gullwing Mercedes came in on Saturday and called me today, I asked him if he would sell the car, he said no on Saturday but called today and said he would if he could have a quiet quick deal. The car is one off the earliest surviving cars, originally it was the Mercedes launch car for the Paris Motorshow, it was then brought over for the London Motorshow launch with Stirling Moss, Moss then tested the car with Autocar and raced it at Brands Hatch. Mercedes then prepared the car for the recce of the 1955 Mille Miglia for Moss and Jenkinson which they went on to win in the 300 SLR, one of Mercedes most famous wins. The car had laid unused in a collection in Manchester for 45 years prior to us being approached to restore the car last year by the then new owner after seeing our win at Pebble Beach. We are just completing the total restoration to original factory specification. This is a unique car that is a very important part of Mercedes Motorshow and race history. We have correspondence from Stirling authenticating the car as well as various period magazine articles relating to the car. The car also retains its original UK registration number. All factory numbers are matching; it's a 3-owner car including Mercedes who are the first owner in the original log book.

I have stuck a deal where I would buy the car at a fixed price to him for the restoration completed at £1.8M. The restoration will be completed by us in 6-8 weeks. You would not need to spend any more money on this car. It is stunning in its original factor silver paint and dark blue leather and cloth interior.

Mike we should do this one, any car with this type of history rarely comes up for sale, I have never told the owner what I think the car is worth, I have just got on with the restoration. I believe the car is worth in excess of £2.5M now, nearer £3M in 12 months time. It's a car you can name your price with when you get approached after it is seen at events with its Moss/Jenks connection. The car is an invite for the Mille Miglia because of its history and all of the world's prestigious events including Pebble. It's also a car to dangle in front of Mercedes for the Stuttgart Museum. The window is closing for these opportunities; this is a case of being in the right place at the right time."

The parties' arguments

279. Mr. Tuke contends that there were fraudulent misrepresentations as to the ownership of the Mercedes Gullwing and as to its value. The owner of the Gullwing had not come in on the previous Saturday, and there had been no negotiation for a purchase price of £ 1.8 million. This was because the car was at that stage owned either by JDC or Mr. Hood personally. It had been acquired by one or other of them in October 2009 for around £ 350,000, although by April 2010 the work to the car by JDC and the rise in the market meant that it was worth £ 900,000.

280. Mr. Hood's evidence in his second witness statement was that the Gullwing was, at the time of the 6 April e-mail, pledged to a customer of JDC, Mr. Terry O'Reilly. The car could not therefore be sold without his consent. Mr. Hood therefore considered Mr. O'Reilly to be the real owner of the car. Mr. Hood successfully persuaded him to release his entitlement, so that the car could be sold to Mr. Tuke. As far as value was concerned, Mr. Hood said that he genuinely believed the car to be worth in excess of £ 2,500,000 given its unique pedigree and association with Sir Stirling Moss. This too was the substance of his oral evidence at trial. He said that the car was "down as a sale" to Terry O'Reilly, a lawyer in America. He was the person who had come in on the previous Saturday, and he had committed to purchase the vehicle.

Representation as to ownership

281. I have no doubt that the e-mail of 6 April contained dishonest representations as to both ownership and Mr. Hood's opinion of the value of the Mercedes Gullwing, and that these induced the purchase by Mr. Tuke.

282. As to ownership, there are no documents which support Mr. Hood's contention that the car was pledged to Mr. O'Reilly, nor any correspondence recording the exchanges whereby Mr. O'Reilly was persuaded to release the pledge. An e-mail exchange with Mr. Paul Osborn of Cars International dated October 2009 records a transaction at that time whereby Mr. Osborn's company was to purchase an Aston Martin in consideration of payment of £ 300,000 cash and part exchange of the Gullwing "at 380,000". That e-mail is consistent with an explanation given by Mr. Hood to JDC's accountants as recorded in a file note of a meeting held in December 2012. It may be that the Gullwing was at some stage transferred to Mr. Hood. This is suggested by an entry in an internal spreadsheet prepared by JDC former financial controller, Charlotte Harper. The spreadsheet set out JDC's profits on transactions with Mr. Tuke. The spreadsheet ("The Harper Spreadsheet") was last updated on 17 April 2018 after Lavender J's judgment was handed down. It records a profit of £ 1,380,000 based on a JDC purchase price of £ 420,000.

283. However, whether the car was owned by Mr. Hood personally at some stage, or whether it was throughout owned by JDC, is not important for present purposes. What is clear is that there was no involvement of Mr. O'Reilly. There are no documents recording any pledge, nor any documents which suggest that he enjoyed any of the profits generated by the sale to Mr. Tuke. Furthermore, Mr.

Hood's e-mail referred to the car being a 3-owner car, including Mercedes. Given the ownership of Mr. Osborn's company, and the sale to JDC, there is no room for Mr. O' Reilly's alleged interest. I therefore reject Mr. Hood's evidence as to the involvement of Mr. O'Reilly.

Representation as to value

284. As to valuation, I do not accept that Mr. Hood believed that the Gullwing was worth £ 2.5 million at the time, or nearer to £ 3 million in 12 months time. Here, the figures given by both experts were relatively close.

285. Mr. Neumark considered a variety of data sources in support of his figure of £ 900,000 as the maximum value. For example, 11 Gullwing cars were sold in 2010 for an average price of less than £ 500,000. Whilst the association with Sir Stirling Moss was worth something in terms of enhanced value, this was no more than 10-15%. Sir Stirling had sat in and driven dozens of cars over the years, but this would not increase the value of a car in a manner comparable to a famous race win. There are three main providers of market and index data: K500 (to which I have referred in the context of the AC Aceca), the Historic Automobile Group International (or "HAGI") and an American insurer, Hagerty Group LLC ("Hagerty"). Data from Hagerty in relation to Gullwing cars indicated a value of £ 430,000 - £ 460,000 for cars in the "excellent" to "concours" range.

286. Mr. Broad's valuation, based upon the "rich provenance" of the car – involving not only Sir Stirling but also a famous motorsports journalist, competitor and author known as 'Jenks' (Denis Jenkinson) – was £ 1 - £ 1.3 million in 2013. Bearing in mind that the market had risen between 2010 and 2013, this valuation was not dissimilar to Mr. Neumark's figure of £ 900,000 in 2010. In cross-examination, Mr. Broad said, fairly, that he was not going to argue "drastically" with a figure of £ 900,000 as at 2010, whilst suggesting that there was room for an additional £ 100,000 or so, which could represent a dealer's mark up or commission for selling a car.

287. On any view, however, a valuation of £ 2.5 million was, on this evidence of both experts, insupportable. I agree with Mr. Neumark that there was no justifiable basis for valuing the car at £ 1.8 million, let alone at the figures of £ 2.5 million or £ 3 million in 12 months time which Mr. Hood gave to Mr. Tuke. The actual purchase price figure of £ 1.8 million is, as Mr. Neumark pointed out, three times the value of any comparable sale in the relevant period or the preceding few years, such that no honest or reasonable valuer could have ascribed it this value. Indeed, the car was eventually sold at Bonhams in mid-2014, after the market had risen, and at an auction where the car was the star attraction, for around £ 1.6 million. (This sale is the subject of a separate claim, discussed in Section E 11 below).

288. I am prepared to accept that Mr. Hood may have genuinely believed that the car, in a fully restored condition, was worth more than the £ 900,000 or thereabouts ascribed by the experts. JDC's internal stock list indicates an anticipated sale price of £ 1.5 million, and this is the best evidence of what he actually believed

at the time. This is, however, still a very long way from the figures given to Mr. Tuke.

289. Mr. Hood made a number of further points on valuation in his written closing submissions. He referred to an email from Mr. Tuke in November 2011 which showed that he was marketing the car for £ 1.45 million. He referred to the fact that the car was purchased for £ 1.8 million and then was "freely sold" for £ 1.5 million. I did not consider that any of these points affected my conclusions set out above.

290. I therefore consider that all the requirements for the tort of deceit are made out in respect of this car.

Damages

291. Mr. Tuke claims £ 900,000 being the difference between £ 1.8 million and Mr. Neumark's figure. The trustees agreed this figure. In view of my conclusion (see Section E2 above) that Mr. Tuke was at this stage paying high prices to a top-end dealer for cars that he wanted, I think that it is appropriate to take the slightly higher figure of £ 1 million as the starting point for the damages calculation, as Mr. Broad's evidence suggested. I therefore assess damages in the sum of £ 800,000 in respect of this car.

E4: Group C part-exchange transaction

Introduction

292. This is first of the transactions whereby Mr. Tuke sold cars which he had purchased. At that time, as described in Section A above, he was looking to raise money in order to meet his tax liabilities and the cost of reacquiring part of the business which he had sold to J&J. His primary interest was to sell cars, and he had stopped purchasing them some time earlier. It is therefore perhaps surprising that the effect of the Group C transaction was actually to increase his collection by one car: 4 cars were sold, but 5 were purchased. The transaction developed over some months, and was ultimately consummated in April 2011. The four cars that were ultimately sold ("Group C sale cars") were: Allard J2X, Jaguar Costin Lister; Lotus Elite; Jaguar XK 120 (registration MDU 524). (At a later stage, Mr. Tuke sold a different XK 120 which he owned. This had registration JWK 651.

293. The 5 cars purchased ("Group C racing cars") were 5 Group C Jaguar racing cars. The price ascribed to the 4 Group C sale cars was £ 4 million. The price of the Group C racing cars was £ 10 million. Of that £ 10 million, Mr. Tuke borrowed £ 8 million from Close against the Group C racing cars, by a Master Hire Agreement on which he was charged interest. The £ 2 million balance was funded out of the proceeds of the sale of the Group C sale cars.

294. With some variation, the misrepresentations relied upon in connection with this transaction are similar to those which were made on the Aceca and Gullwing purchases; i.e. representations as to ownership and value. Mr. Tuke's case is that he was given to understand that the 5 Group C racing cars were owned by

a number of individual owners, and that the deal involved Mr. Hood successfully persuading each of them to part with their vehicles so as to enable Mr. Tuke to own a valuable collection of such cars. Mr. Tuke was also given to understand that the cars that he was selling were going to those owners by way of part exchange. The reality however, on Mr. Tuke's case, is that JDC or Mr. Hood already owned all of the 5 Group C racing cars: they had been acquired some years earlier. There were, therefore, no third-party individual owners who were selling the cars, and equally no individual owners who were receiving Mr. Tuke's cars by way of part exchange. In addition, Mr. Tuke alleges that he was misled as to the value of the Group C racing cars that he was acquiring, including in relation to statements allegedly made by an independent valuer.

295. The claim relating to this transaction is more complex than a claim for the difference between the value of the cars acquired and their actual value (although that is one aspect of the claim). That is principally because the finance transaction with Close imposed considerable liabilities on Mr. Tuke. Mr. Tuke claims these liabilities by way of consequential loss resulting from a transaction which, on his case, he would not have entered if he had not been misled as to ownership, value and related statements. The claim is also complicated by the fact (on Mr. Tuke's case) that the Group C sold cars were overvalued for the purposes of the part exchange. The transaction also has a significant impact on Mr. Tuke's further claim for loss of investment opportunity. He contends that an important impact of the Group C transaction, and the liabilities that it imposed, was that he later had to sell valuable favourite vehicles which he would have been able to retain, and would have retained, if the Group C transaction had not been concluded.

296. In addition to issues as to whether dishonest false representations were made, there was a substantial issue as to causation. This issue was at the forefront of the submissions of Mr. McWilliams for the trustees and his cross-examination of Mr. Tuke. The argument in substance is that Mr. Tuke would have entered into the Group C transaction even if he had known the true position. This was because, by late 2010 and early 2011, he was desperate to raise money, and the Group C transaction was a practical and attractive way of doing so and in reality was Mr. Tuke's best and only real option.

297. There is a substantial documentary record relating to this transaction principally comprising e-mails between the parties as well as Mr. Neil Hardiman, who was involved in arranging the finance with Close. Its key features are as follows. In the course of this description, I identify and make findings relating to particular features of the correspondence which are significant to the parties' arguments.

The facts

298. On 18 January 2011, Mr. Hood told Mr. Tuke that he had come up with a way of:

> " …building your collection with other cars on finance, then transferring funds to you thus leaving your current cars free of finance and able to enjoy and wait for the

> opportunity to sell as we first discussed last year, then pay down the finance when the big cars sell. When I have pieced it together l will put it passed you. As you can see I am in a creative mind set".

299. The shape of the deal was then set out in an email sent on 20 January 2011:

> "I have come up with a deal that will work both ways for you. I have quietly brought together probably the best collection of Jaguar Works Group C cars, they are the whole Jaguar XJR11 team which comprises three cars with spare packages, jaguar XJR9 Le Mans with spares package which is one of the cards that crossed the finishing line together at Jaguar's 1988 Le Mans win and a Jaguar XJR10 one of two cars built to race in the American IMSA series with spare package.
>
> This collection is unique and it cannot be replicated anywhere. There were a total of 12 works Jaguar Group C cars, I have sold 11 of the cars over the years including the Le Mans winners. Works Group C cars have been under the radar for some time, they are the rarest of all works Jaguars and are about to see significant growth in values over the next year to 18 months.
>
> Neil [Hardiman] has had £10 million valuation and finance approval in principle for the Group C collection, which undervalues the collection by at least £1.5 million.
>
> The plan is to buy the Group C collection, with the sale proceeds I have arranged for the purchase of your Allard, Broadspeed, Aston Short Chassis, SS100, Jaguar XK 120 MDU, Jaguar XK150 S and Lister for £6 Million which gives you a profit of around £1.1 Million on the sale of these cars. You then have the £5 Million for your tax bill plus profit, the core cars in the collection are then free of finance and you will have the growth and enjoyment to look forward to in the collection we have built over the last year and the Group C cars.
>
> I would plan to bring the Group C cars to market in the spring starting with the XJR10, followed by the XJR 11 team and the XJR 12 Le Mans all being well realising £12 Million plus less the finance charges. Or if one of the original collection cars sells use the proceeds to pay down the Group C loan and watch the Group C values grow as well as the remaining core collection values.
>
> I have heard that one of the Le Mans winning Group C cars I sold 4 years ago for £2 million is just about to be brought onto the market for £7.5 million. If this car gets

> close to the asking price buying the collection will be a stroke of genius.
>
> We also have the bonus that wealthy young people now have money to buy classic cars and the cars they are turning to cars from the 70's and 80's cars they can race. Group C falls nicely into this category. This Group C race series is also getting television coverage this year this will add value to the cars mid season.
>
> Something to think about tonight Mike".

300. At this stage, therefore, Mr. Hood was contemplating the sale of 7 cars for £ 6 million. In due course, three cars dropped out and the sale was 4 cars for £ 4 million. As far as the Group C racing cars are concerned, Mr. Hood did not say anything at this point about individual owners. His statement that he had "quietly brought together probably the best collection of Jaguar Works Group C cars" was unspecific as to when and how this was done.

301. Mr. Hood's e-mail asserts that "Neil has had a £ 10 million valuation", and that this undervalued the collection "by at least £ 1.5 million". Neil was Mr. Neil Hardiman. There is no evidence, however, that Mr. Hardiman had in fact obtained a £ 10 million valuation for the cars. At a subsequent stage, the cars were valued by Mr. Richard Hudson-Evans, and the value ascribed was less than £ 10 million. Mr. Hood's statement as to the existence of a £ 10 million valuation was, in my view, an invention.

302. Issues also arises as to the statements in the e-mail that a £ 10 million valuation would undervalue the collection by at least £ 1.5 million, and whether this represented Mr. Hood's genuine opinion as to value or whether there was a reasonable basis for it. In similar vein, Mr. Hood's e-mail referred to bringing the cars to market in the spring, and "all being well realising £ 12 million" less finance charges.

303. On 21 January 2011, Mr. Hood wrote to Mr. Tuke as follows:

> "Evening Mike,
>
> A complicated deal from a complicated mind.
>
> We get finance to buy the Group C collection, I sell the Group C collection to you, I then buy the cars below from you separately after your purchase of the Group C cars. The cars below are then sold to the owners of the Group C cars, this is how the 6M comes back to you as a payment for your cars. I can begin to take shares in the Group C cars as my cashflow allows if want a partner in them.
>
> …

> Hope it all makes sense. I would like to get Neil & Co down to you ASAP to either do the Group C deal or stick to the original idea of finance on the current collections. Are you around next week?"

304. The e-mail is significant because it represents that there are third party owners of the Group C racing cars, and that these are the people who will be receiving Mr. Tuke's cars in return. This is, in my view, the only reasonable reading of the statement that the "cars below are then sold to the owners of the Group C cars". The "cars below" is clearly a reference to the cars which Mr. Tuke would be selling in return for the £ 6 million which "comes back to him as a payment for your cars". That representation was repeated in the subsequent correspondence. There is nothing in the e-mail which suggests, as was the case, that the Group C racing cars were at that stage already owned by JDC or Mr. Hood himself, having been acquired some years earlier.

305. The opening words of the main paragraph of the e-mail do indicate that the mechanics of the deal in both directions would involve sales via JDC ("I sell the Group C collection to you, I then buy the cars below from you separately after your purchase"). But the e-mail goes on to indicate that this was nevertheless a transaction which, at the other end, involved third-party owners other than JDC/Mr. Hood. This is how Mr. Tuke understood the position, and in my view this was not only a reasonable understanding but was also what Mr. Hood intended Mr. Tuke to understand. Mr. Hood did not wish to reveal that the true position was that he or JDC were already the owners of the 5 Jaguar racing cars, or that the economic benefit of the transaction would be for himself or JDC rather than for the third-party owners.

306. On 21 January 2011, Mr. Tuke wrote:

> "I am away till later tomorrow when will be better able to consider this. Is the group C finance plan with Neil? What terms around on the finance? The group C sellers chosen my 7 for a particular reason? Dealers or what? I have some concerns over the cap gains aspect of selling 7 in one go.
>
> I am around next week although dashing around a bit. Tuesday pm could work. Indeed something from Neil before that to consider if possible because time running out."

307. This email therefore shows that Mr. Tuke's understanding was that there were third party sellers. He wanted to know whether those sellers had "chosen my 7 for a particular reason". Mr. Hood's response on 22 January was that he had "put the 7 cars together and worked hard to get a possible deal to happen thinking this is a good way to raise finance to make money". He said that he had chosen those 7 because the other cars had the greatest potential for growth. The statement that he had "worked hard to get a possible deal to happen", in context, is consistent only with Mr. Hood dealing with outside third parties, rather than

with Mr. Hood himself simply deciding to sell and buy the cars involved in the proposed transaction.

308. On 24 January 2011, Mr. Hood wrote:

> "The 7 cars would go to the sellers of the Group C cars, some may have them prepped to race but probably to sit on. All of the seven would come off the market.
>
> I would get around to the capital gains by buying your cars at cost then give you the remaining funds as a loan. We need to talk face to face on this one."

309. The email therefore confirms prior statements that there were sellers of the Group C cars who would be receiving Mr. Tuke's 7 cars in return.

310. On 24 January 2011, Mr. Tuke wrote to Mr. Hood after having spoken to Mr. Hardiman. He said:

> "Neil was on the phone ok, but not very clued up on the deal. l asked him about funding the group C cars which he said were yours and wanted to know how much deposit I planned. I am [n]ot clear how this goes around if I have to pay any deposit, did you have the plan that it was a 100% loan from his outfit? Anyway he is putting together some figures on the 10m and alternative 6m on existing cars. Whatever way he said that ownership had to be their mans.
>
> Again I am not clear how this works. He also wants the deals to be on minimum 2 year plans with early payoff penalties. I want early payoff in June.
>
> Will wait for the figures."

311. Mr. Tuke's evidence was that he found the Group C deal complex, and he was not sure that he had ever properly understood it. That is reflected in his contemporary exchanges, including this e-mail. However, this email does also indicate that, at this stage, he was told by Mr. Hardiman that (as was in fact the case) the Group C cars were "yours": i.e. belonging to JDC or Mr. Hood. Mr. Tuke was puzzled by this, and seems to have attributed it to Mr. Hardiman being not very clued up on the deal.

312. Mr. Hood's response on 25 January 2011 was as follows:

> "I will be invoicing the sale of the cars from JD, once funds are in I pay the owners for the cars including exchanging the part exchange cars for the Group C cars. l then send £6M to you for payment of your 7 cars. The finance house keeps ownership of the Group C cars until the loan is paid in full, l would put a value on each Group

> C car for the finance house so when a car sold we can pay off the loan on an individual car. At that point we decide whether we take a profit from a car or use the profits of a sale to put towards paying off the whole loan, we can start to pay down the loan as cash flow allows. You will need to put in a minimum of £1M deposit to make this work
>
> Ownership of an item with a loan against it remains with a bank or finance house until the loan on an individual item is paid back in full, this is normal banking practice. It's the same principle if you borrow against a house, a bank takes a charge against it so you cannot self it until the loan is paid back in full.
>
> Neil is putting a deal together where you will have a fixed figure if you pay off early, 2 year deals are the shortest terms with finance houses so they get returns on their money.
>
> Mike I put this deal together so you did not tie up the whole collection on finance, I will understand if you do not want to go with my idea but it does make sense. Well to me it does. £11.5 of cars for £10M, you get £6M for your cars which is at least £1M profit which is a 20% return tax free. Group C cars owe £9M, you get your £5M for tax bill plus £1M to pay yourself back the deposit on the Group C deal or use the £1M to finance the loan until June. Leaving a potential profit of £1.5M plus on the Group C cars alone more if they are held for 12 months. This collection will appeal to a top end investment bank investing in cars, they are investing quietly buying high net worth collections for big returns. This is why people like Chris Evans and Bono are getting in."

313. That response continued the false assertion that there were third party owners of the Group C cars with whom he had "put the deal together" and who would be paid for the cars "once funds are in". It did not reveal that these cars had been purchased by JDC some time earlier, or that there were no third-party owners involved in the transaction who were to derive the economic benefit of the purchase and sale of the cars.

314. Mr. Tuke's reply, on 26 January 2011, began by saying: "Makes a bit more sense". He assumed that Mr. Hood would be at the RAC (i.e. the club in Pall Mall, London) on the following day, and that there might be a chance to chat. Mr. Hood, in response, apologised for not having explained the deal better.

315. On 30 January 2011, after Mr. Tuke had received some photographs of the Group C racing cars, he e-mailed Mr. Hood saying that the proposed deal would leave a heavy outgoing every month that he "would not want all of past August".

He told Mr. Hood to bear in mind that he had not managed to sell any cars yet. Mr. Tuke also pursued the question of the current ownership of the Group C cars:

> "Not clear about the deal with respect to who currently owns the 5 group C's, is this a consortium? If they taking the proposed 7 of mine what are they seeing this deal doing for them?
>
> What drove the list of the 7? What [t]hey wanted or just values? [sic]. They coming out of the race cars a bit? I shall propose changes to the list once have all the facts."

316. Mr. Tuke therefore understood (as he was intended to understand) that he was dealing with third-party owners, but was unsure as to whether they formed a consortium. He was thinking about revising the list of the 7 cars that he was to sell, but in order to do this he wanted some further information about those who were at the other end of the transaction.

317. In response to these questions, Mr. Hood could have revealed that there were in fact no relevant third-party owners who were selling their racing cars in return for Mr. Tuke's cars. He did not do so. His response on 31 January 2011 maintained that there were four individual owners who were involved.

> "Not a consortium, I have put a deal together with four owners individually as you can imagine it's been quite a job to get them to agree deals and move them into something else. As I said before it was one of those times when everything came together the line do you fancy selling worked each time, this enabled me to c[o]me up with an opportunity for you to take profit, pay the tax bill and move into the next major growth area.
>
> I put the list together so you kept the long term high growth cars and sold cars that have had a very good return in less than a year. I will wait on your list but remember I am dealing with four individuals. The owners would never believe I had a deal together to sell 5 Group C cars, if they did they would see the potential of the collection they could all get together and hold the collection.
>
> We can use one of your cars as a deposit, when you speak to the finance house only mention one car, I suggest the Allard otherwise it gets to complicated.
>
> The Group C cars will be good, they have never been together since the late 80's, all the cars are unique and this is the type of collection top end investors are looking to buy, cars with major growth potential, cars that are going to be the next big thing. All the cars you have

> bought from me have seen growth over the last year, we have another year of the same coming up. The cars I propose to exchange from your collection have peaked for the time being; now is the time to move them on, this deal moves you into the next profit.
>
> All the cars you have invested in with me have grown in value, this is another good move, you went with opportunities last year this is another."

318. In truth, Mr. Hood was not dealing with "four owners individually" who were being moved "into something else". Paragraph 16 of the agreed List of Issues recorded the parties' agreement that the Group C Racing cars were not in fact owned by four individual owners. JDC's internal documents show that the 5 racing cars had been acquired by JDC between May 2007 and September 2010. There had therefore been no difficult job in getting these individual to agree, and no-one had positively responded to the line "do you fancy selling". Nor was there any risk of the four individuals getting together to hold the collection as a consortium. All of this was, in my view, a fiction designed to mislead Mr. Tuke into believing that he was being presented with a unique and valuable opportunity, whereas in truth it was JDC that stood to benefit substantially on the sale for a substantial profit of the Group C racing cars which had been in its stock for some time. It was also untrue for Mr. Hood to say that the cars had never been together since the 1980s, because in fact he had himself already brought them together.

319. At times in his evidence, Mr. Hood asserted that there were outside owners, because the Group C racing cars were subject to finance, so that their legal ownership was with finance houses. In my judgment, however, this was not what was being conveyed to Mr. Tuke in the emails to which I have referred, in particular the email of 31 January 2011. Finance houses would not be regarded as "individuals". Their decisions as to whether or not to sell an asset on which they have loaned money will in all likelihood be determined by whether the amount realised will be sufficient to repay the finance which they have advanced. They will not require persuasion to move "into something else". Nor is there any real danger of finance houses deciding to form a consortium in order to retain ownership of cars which can then form a collection. When the correspondence is read as a whole, Mr. Tuke was clearly being given to understand that the ultimate counterparties to the transaction were individual collectors who were being persuaded to part with existing vehicles in return for others, and who were unaware of the fact that their cars were now being brought into a unique collection.

320. Later the same day, Mr. Hardiman forwarded to Mr. Hood ("For yours only") an exchange between Mr. Hardiman and Mr. Tuke over recent days relating to the proposed transaction. In that exchange, Mr. Hardiman had explained (in his email of Friday 28 January 2011) that the 5 Group C race cars would be purchased "from JD Classics for a combined sum of £ 10 million". He also explained later that the "structure detailed on Friday relates to the acquisition of the five cars from JD Classics", and that the deal proposed would not be

available simply for refinance of Mr. Tuke's existing cars. If there were to be finance for such a deal, it would have to be on a fixed rate basis and would be expensive involving an 11% interest rate.

321. Mr. Hood suggested from time to time that such emails, referring to JD Classics, showed that Mr. Tuke knew that he was dealing with JD Classics as a principal. Mr. Tuke's response was that this was simply a question of how the mechanics of the deal would work. He understood that the transaction did, notwithstanding the mechanics, involve third parties, as sellers of the racing cars and buyers of Mr. Tuke's cars, at the other end. I accept Mr. Tuke's evidence on this point. There were in my view clear representations by Mr. Hood that this was a deal negotiated with third party individual sellers. The fact that the deal was structured so as to involve JDC did not alter the nature of the representations, as to third-party involvement, that were made so as to induce the transaction.

322. Nor in my view do the mechanics of the transactions have any bearing on the question of whether or not JDC was acting as Mr. Tuke's agent in relation to the Group C transaction or indeed generally. The sale of the Group C sale cars was the first sale that took place, and there is no dispute that, in relation to this transaction, JDC charged and was paid the agreed commission on the profit which Mr. Tuke made on the 4 Group C sale cars that were ultimately sold. It is therefore obvious in my view that an agency relationship existed, notwithstanding the way in which the sale and purchase transactions were ultimately structured with the involvement of JDC. If JDC had simply been acquiring Mr. Tuke's cars as principal for its own economic benefit, there would be no reason why JDC should also be paid a commission.

323. Reverting to the chronology: on 31 January 2011, at 16:58, Mr. Hood responded to an e-mail which Mr. Tuke had sent earlier that day in response to the email where Mr. Hood had referred to the 4 individual sellers. Mr. Tuke had asked:

> "So each of the 4 sellers are taking up some of the 7 in the group as part exchange then".

His email went on to discuss which cars should actually be sold, and whether some cars should be retained.

324. Mr. Hood's response was:

> "They are taking all the exchanges, we need to keep your cars as part of the deal because that's how the cash is coming back to you, we are selling them your cars after the finance deal is done for a profit. Do you want me to try and swap the GT 40, Aceca and Elite into the deal and take the AM,SS100 and 150 out of the deal? It could mess things up but I will try if you want me to.
>
> Allard and Broadspeed will grow, going by your e-mails I was under the impression you would sell for a profit, this deal gives you a profit.

> Using the Allard as deposit is fine as it is one of the cars coming in exchange. We can use the GT40 if it comes into the deal, we must show a physical car for the part deposit.
>
> At the end of the day the less cars we put in exchange the less cash comes out at the other end, I have always looked at a minimum of £ 5M back to you, if £ 6M is not needed do you want me to remove some of your cars going in part exchange to get back to £ 5M coming back to you? You would still have a very good profit. Another thought do you want me to add the Le Mans 120 to the scenario to take some of your cars out of the exchange?
>
> I would keep to my original idea otherwise this could unravel a good angle for you to raise the cash and keep the core collection finance free. Remember we can buy cars back in a few months they are not lost.
>
> This could all be buttoned up in 7-10 days once you agree to go for it.
>
> Has Neil contacted you?
>
> At the end of the day Mike will work a deal for you but we do need to button this down. The HMRC clock is ticking."

325. This email therefore continued to represent that Mr. Hood was dealing with the four individuals who would be "taking all the exchanges". The email also represented that if an attempt were now made to alter the number or make-up of the cars going into the deal, then this might "mess things up". This is, again, only consistent with there being third-parties with whom Mr. Hood was negotiating, rather than a transaction where JDC was simply acquiring Mr. Tuke's cars. Had this been a straightforward transaction between principals, it would simply have been for Mr. Hood on behalf of JDC to decide the type and number of cars that he wished to purchase.

326. On 2 February 2011, Mr. Hood advised that he had "negotiated the AM to stay with you but the 150 has to stay in the deal but I have got a buy back on the 150 at £ 290K and SS100 at £ 420K within a 4 month period after the deal". He also said that:

> "With the negotiating I have done in the last 24 hours you owe me a beer as well as the bacon sandwich."

327. The reality, however, was that Mr. Hood had not been negotiating with any third parties. He had simply been deciding what was acceptable to himself and JDC.

328. Mr. Tuke's response on 3 February 2011 was:

> "Brain hurting now
>
> I guess if I understood this fully I would better appreciate the difficulties and nuances of what the people you are talking to are after. It seems odd that after all this the cars are there to buy back, albeit at a premium."

He asked a number of other questions on matters that were puzzling him.

329. Mr. Hood's response on 7 February stated he would

> "get you buy backs on the AM, 150 and SS100. My negotiation skills have become much more well honed over the last few weeks. I have a solid agreement with the owners we just need to push the finance house guys, Neil as the broker is fine. One finance needs to be kept confident[ial] so no mention of our buy back after the deal is done."

330. Following this correspondence, Mr. Tuke agreed in principle to move ahead with the scheme, with Close as the finance house. The process became somewhat protracted however, and Mr. Tuke expressed his frustration in e-mails sent from time to time. In the correspondence which followed, Mr. Hood made further reference to his (fictitious) negotiations with the sellers. In his email of 10 March 2011 he said:

> "Do you still want to buy back a couple of your exchange cars as we agreed within 3 months of the deal as this been a factor in my negotiations with the sellers".

In his email of 24 March 2011, Mr. Hood said:

> "I have never been so determined to beat the system as this, stay with me. I have explained the situation to the owners. They are still with us 100%."

331. In the meantime, on 21 February 2011, the Group C Jaguar racing cars were examined by Richard Hudson-Evans on behalf of Close. Later that day, Mr. Hood e-mailed Mr. Tuke in the following terms:

> "Inspection went well today. Valuer said they were good value"

332. Mr. Hudson-Evans' evidence was that he was sure that he had never said that the cars were good value, since he had no idea how much the proposed buyer was paying for them. Mr. Hudson-Evans was an impressive witness, and I accept his evidence on that issue. This statement made to Mr. Tuke on 21 February 2011 was another invention by Mr. Hood which was aimed at progressing the deal which he was interested in concluding, because JDC stood to benefit substantially from it.

333. On 22 February 2011, Mr. Hood emailed saying:

> "Your nervous, my finger nails are gone. Just had a call from the valuer, he said you have got a bargain. His report will be in this week."

334. Again, Mr. Hudson-Evans' evidence was that he would never have said what he was reported to have said. His view, as expressed in the report which he subsequently issued to Close on 25 February 2011 (but not seen by Mr. Tuke at the time) was that an 'Open Market' valuation of the cars was £ 9.675 million. The context in which this figure was given is of some importance. The relevant part of his report is as follows:

> "I am told by Derek Hood of JD Classics that, currently, the 5 XJR Group C cars are all independently owned, one of them, the XJR 9-188 by JD Classics themselves. But unlike so many old race cars, I am satisfied that the identities displayed on their chassis plates. as well as both period and retrospective history claimed for all 5 XJR, are absolutely correct.
>
> As for whether their value is enhanced by being offered not only as a complete set of XJR 9. XJR I 0 and XJR 11 models, but all 3 XJR 11 built, this would depend. I would suggest. on whether you were selling all 5 cars or wanting to buy an example of each and the entire run of XJR 11s. Certainly, as the seller of all 5, JD Classics consider they are worth more than they would retail them for individually. JD Classics, the seller in this matter, who have, it should be recognised, sold this type of car before and have been actively involved in the race-preparation and running or historic racing cars like these for many years, consider that all 5 cars and their spares kits (spare engines. gearboxes, suspension parts and body panels) represent a unique buying opportunity for a collector and are therefore worth £12.300,000 (twelve million, three hundred thousand pounds) on the open market. Their 'package price' can be broken down to £7,500,000 for all 3 XJR 11. £3,000,000 for the XJR 9, £1,300.000 for the XJR 10 and £500,000 for their spares kits.
>
> Having considered all of the above. and regardless of whether or not the £12,300,000 price for cars and spares is met by their client and the suggested valuation is achieved, I value the cars and spares differently, and certainly from a buyer's rather than as a vendor's point of view. My 'Open Market' valuation therefore would be a more conservative £9.675,000 (nine million. six hundred and seventy-five thousand pounds) for all 5 cars and

> spares, broken down as follows: £6,000,000 for all three XJR 11 purchased at once, £2,500,000 for the XJR 9, £975.000 for the XJR 10 and £200,000 (£40,000 per car) for the spares.
>
> If wishing to liquidate these specialist and for competition-only cars and spares at auction, however, either as a job lot in a fire sale, or, preferably, to maximise funds, individually over a couple of years at selected auctions at le Mans and in California and/or via specialist brokers on both sides of the Atlantic, it is doubtful whether anywhere near the £ 9,675,000 suggested could be realised. Having deducted auction entry fees, commissions, transport, storage and insurance charges, I would estimate the cars and spares minimum net return under the gavel would be a more realistic £ 7,500,000 (seven million, five hundred thousand pounds)."

335. Mr. Hudson-Evans said in his witness statement that he would never have said that the cars were a bargain, unless he had been told by Mr. Hood that the buyer was paying a price very substantially beneath the £ 7.5 million which he thought that the cars were worth in the circumstances set out in his report. However, since he was not told who the cars were being sold to, or (as his report indicates) the price for which they were being sold, he could not have said those words or their equivalent.

336. Again, I accept Mr. Hudson-Evans' evidence on this point. Given that Mr. Tuke was paying £ 10 million for the cars, and that Mr. Hudson-Evans' valuation was either £ 9.675 million or £ 7.5 million, he could not have said that the buyer had got a bargain. (The difference between these valuations is an issue to which I will return in due course.) This statement was another dishonest invention by Mr. Hood.

337. The same is true of Mr. Hood's statements as to the valuer's view of values in his email of 26 February 2011, when he told Mr. Tuke that he had spoken to the valuer yesterday, and that "although he agreed with the values and the cars were good value he was carrying out due diligence and would have the report ready Sunday night …" Mr. Hudson-Evans had not agreed with Mr. Hood's values, and had not said that the cars were good value.

338. In a number of e-mails sent in March and April 2011, Mr. Hood expressed the view that the Group C racing cars were worth £ 12.3 million.

    a) In his email of 17 March 2011, he said that the way that he had structured the deal "gives you a profit on the cars we are exchanging and a discount of £ 2.3M on the cars you are buying hence my insistence of hanging on in despite all the frustration …".

b) In his email of 13 April 2011, he said that he could not guarantee that "we will have the cars sold in August". He went on to say:

> "Mike at the end of the day I have got a very good deal for you on the cars going into the deal once the Group C cars are bought with the group C cars valued at £ 12.3M the maths add up".

c) In his email of 27 April 2011, he referred to the Group C cars being "yours with a £ 2.3M discount".

339. Although Mr. Tuke did not see Mr. Hudson-Evans' valuation until after the transaction had been concluded, Mr. Hardiman did give him some information about it in an e-mail dated 9 March 2011. Mr. Hardiman was reporting on a meeting of the Close credit committee, and told Mr. Tuke that the points raised should not "pose you any great issue, especially given your intention to settle the agreement in July 2011". He said:

> "The valuations received or the 5 cars, provide strong reading with a full retail value being stated at £ 12.3M, however the funder will always look on a worst case scenario that the cars are repossessed and are sold quickly normally at a discounted value. This figure is stated at £ 7 to £ 7.5M, which I know is, to say the least extremely harsh but nevertheless the number on which they based their decision. To this end they have asked for a degree of additional security to cover the perceived shortfall. Having discussed this element with Derek, he has suggested that the two GT40 cars be suitable for this purpose. The funder would merely take these two cars as additional security and release them once the agreement was settled".

340. The transaction was finally consummated at the end of April 2011, when Mr. Tuke entered into a Master Hire Purchase Agreement on 27 April with Close Leasing Ltd.

The parties' arguments

341. Mr. Tuke contended that there were a series of false representations which induced him to enter into the Group C transaction which he would not otherwise have done. These representations concerned:

a) The ownership of the Group C racing cars: these were not owned by individual owners.

b) The value of the Group C racing cars: Mr. Hood did not hold the opinion that these cars were worth the figures of £ 11.5 million and £ 12.3 million which were given to Mr. Tuke. Mr. Tuke

contends, relying on Mr. Neumark's report, that the cars were worth between £ 3.5m and £ 4.5m.

c) The statement in the email of 20 January 2011 that Mr. Hardiman had a valuation of the Group C Racing cars of £ 10 million: there was no such valuation.

d) The statements attributed to the valuer (Mr. Hudson-Evans) in the e-mails of 21, 22 and 26 February 2011: these statements were not made.

e) The statements made as to the acquisition by third party owners of the cars that Mr. Tuke was selling into the deal: the cars were not being acquired by third party vendors of the Group C racing cars, or by any third parties, but by JDC itself.

342. It was submitted on Mr. Tuke's behalf that the representations were important and were intended to induce Mr. Tuke to enter the contract. It was put to Mr. Tuke in cross-examination that he would have done the deal anyway had he known the truth. Mr. Wright relied upon Mr. Tuke's answer that: "I don't think I would, really, because it w[ould]n't have made sense the same way". He submitted that Mr. Tuke had a number of options, including to raise finance against his collection. This was a course which Mr. Hood had dissuaded him from taking so as not to tie up his collection. Mr. Tuke also had other assets, including substantial properties, which could have been used to raise finance if Mr. Tuke had not been misled into entering the Group C transaction.

343. Mr. Hood's written and oral closing submissions did not engage in any detail with these different aspects of the case on fraudulent misrepresentation, although Mr. Hood did maintain that, in relation to the valuation of £ 12.3 million, what he said was true. Mr. Hood put forward various arguments (in many respects similar to those advanced by Mr. McWilliams for the trustees) relating to causation and the quantum of the claim in respect of the Group C transaction. In particular, Mr. Hood submitted that Mr. Tuke was fully aware prior to concluding the Group C transaction, because Mr. Hardman had told him, of the forced sale value of £ 7.5 million. Ultimately, he made his own decision to buy the cars and trade his cars to JD Classics at an inflated value. The deal which he did was a very good one. A number of other points were made, including that Mr. Tuke had failed to mitigate his loss by declining various offers of settlement.

344. Mr. Hood's case and evidence as to the substance of the case on misrepresentation was, however, apparent from his answers to extensive cross-examination by Mr. Wright on Day 8 of the trial. In that evidence, Mr. Hood accepted that the premise of the Group C deal was that the Group C racing cars could be sold in the short term in order to address Mr. Tuke's need for cash, albeit that this was dependent on the market at the time. He was asked about the 20 January 2011 e-mail, referring to Mr. Hardman's £ 10 million valuation. Mr. Hood agreed that there was no "physical valuation". He was asked about the references in the emails to third party sellers of the Group C racing cars. He said

that the finance houses were interested parties, and also that there were customers who had put their names to "some of these cars". He accepted that the Group C racing cars were, in January 2011, all owned by JDC or by himself personally. But he said that people were buying the cars, and that he was moving people out of the Group C cars to buy cars to be sold by Mr. Tuke. After being referred to his witness statement – which made no reference to third party purchasers but rather referred to the owners being finance houses – he said that "the four individuals" referred to in his emails were the people interested "and also there's a crossover with the finance houses". However, when asked about the e-mail of 25 January 2011 ("once funds are in I pay the owners for the cars"), he said that in that context the owners were the finance houses, rather than the individuals interested in the cars. He said that everything had been explained to Mr. Tuke when they had sat down at the RAC Club in January 2011.

345. Mr. Hood's evidence concerning his reports of the positive views of the valuer was as follows. Mr. Hudson-Evans had said that the Group C cars were good value when compared to other works competition race cars such as C-Types and D-Types. In relation to value, Mr. Hood maintained that the value of £ 12.3 million which he had given to Mr. Tuke was reasonable and represented what he considered that the cars were worth.

346. On behalf of the trustees, Mr. McWilliams' submissions did not address questions relating to whether deliberately false representations were made. The focus of his argument was causation and related issues of quantum.

347. Mr. McWilliams submitted that Mr. Tuke would still have entered into the Group C transaction or something similar even if he had known the facts and matters in respect of which he now contends that he was misled. The trustees relied in particular upon Mr. Tuke's answers when, at the conclusion of his evidence, I asked him various questions concerning relating to whether he would have acted differently if given different (and accurate) information in relation to the Group C transaction. In that evidence, he said that it was difficult now to get his head around what he would have done if different information had been given to him in a different way, but he said that "I might well have gone ahead, but I think the deal would have been structured, perhaps, differently". The trustees submitted that this evidence was far from emphatic.

348. In further support of that submission, the trustees relied upon the fact that Mr. Tuke was, at the time that he had to make his final decision in April 2011, in desperate need of cash and had nowhere else realistically to turn. Other avenues of lending were expensive. He did not want to borrow on his home. He had been trying to sell cars, but this had not been successful. Furthermore, the Group C transaction was an attractive deal in many ways. It resulted in Mr. Tuke realising a significant profit on the cars which he was putting into the deal. The £ 10 million purchase price was not far off the figure of £ 9.675 million which was contained in Mr. Hudson-Evans report. Mr. Hudson-Evans' evidence was that the Group C racing cars were a good thing to be getting into at the time, although he added that they would need to be raced, exposed and maintained in a race ready condition. The trustees drew attention (as had Mr. Hood) to the e-mail from Mr. Hardiman sent on 9 March 2011, when Mr. Tuke had been advised of

the valuer's estimate of £ 7 – 7.5 million; a figure substantially below the figure that he was paying. They also referred to Mr. Tuke's willingness, in the acquisition phase, to trust what Mr. Hood and JDC recommended and to proceed with transactions knowing of JDC's financial interest, and without seeking a second opinion or an independent valuation. Mr. Tuke would not therefore have been unduly concerned if he had known that Mr. Hood owned the Group C racing cars at the time.

349. The trustees also submitted that Mr. Tuke had suffered little or no loss as a result of entering into the Group C transaction. This argument depended to a large extent on issues as to the values to be ascribed to the Group C racing cars, and to some extent the value of the Group C sale cars. I will address the detail of that argument below.

Representations

350. For reasons which have to some extent been covered in my description of the factual background, I consider that Mr. Hood made dishonest representations to Mr. Tuke in all of the respects advanced as part of Mr. Tuke's case.

351. On a fair and ordinary reading of the correspondence, Mr. Tuke was given to understand that this transaction involved individuals who were prepared to sell their Group C racing cars (not knowing that Mr. Hood had brought a number of individuals together) in return for receiving Mr. Tuke's cars in part exchange. This was untrue. There were no such individuals.

352. I reject Mr. Hood's evidence (which was a constant theme in his responses to the case against him) that there were individual owners who had put their names to the Group C racing cars owned by JDC or Mr. Hood (subject to finance), and who Mr. Hood then successfully persuaded to move into other cars. There is, as is invariably the case, no documentary or other corroboration for this evidence. Indeed, that evidence is not contained or reflected in Mr. Hood's witness statement, which indicates that the relevant "owners" were the finance houses. I also reject the case that the real position (as to the ownership of the cars by Mr. Hood or JDC) was explained at the RAC club dinner. That dinner was a social occasion, and there is no reference in the contemporaneous documents which suggests that the transaction was properly explained to Mr. Tuke at the dinner. On the contrary, the documentary evidence shows that, even after that dinner, Mr. Hood was maintaining that he was negotiating with four individual owners.

353. The statement by Mr. Hood in his email of 20 January 2011, that Mr. Hardiman had a valuation of £ 10 million for the Group C cars, was also untrue. There is no documentary or other evidence to corroborate that statement. It was made, in the context of a statement that £ 10 million undervalued the collection by at least £ 1.5 million, in order to interest Mr. Tuke in the deal, on the basis that he would be getting a bargain.

354. This was, similarly, the message which Mr. Hood conveyed to Mr. Tuke when he falsely reported statements which had not in fact been made by the valuer, Mr. Hudson-Evans. Those statements cannot in my view sensibly be read as

statements as to the value of the Group C cars as compared to other Jaguar works cars. They were clearly intended to convey to Mr. Tuke that the price that he was paying was favourable given the true value of the racing cars. This is, for example, the only reasonable meaning of the statement that Mr. Tuke had got a bargain.

355. As far as the value of the Group C Racing cars is concerned, I reject Mr. Hood's evidence that he believed that the Group C cars were worth £ 12.3 million or at least £ 11.3 million. These figures are significantly higher than those given by Mr. Hudson-Evans at the time, as well as those given by both experts at trial. JDC's internal stock list indicates that in April 2010 (some 8 months before the first of the statements was made to Mr. Tuke), the projected/ anticipated sale price for the XJR 9 was £ 1.4 million. That car was the most valuable the group. The projected/ anticipated sale price for another in the group, an XJR 11, was £ 1.35 million. The total figures for 4 of the cars was £ 5.15 million. No equivalent figure could be found in the internal documents for the 5th car, the XJR 11 (590). But it is clear that, at those anticipated prices, there was no way in which collection as a whole could be worth the figures that Mr. Hood was putting forward. The acquisition cost of the 5 cars, as shown in the Harper schedule, was £ 3,090,282. This is a very considerable distance from the representations as to value made by Mr. Hood, even allowing for the possibility of some increase in value in the time since the cars had been purchased. Given that Mr. Hood made a large number of false statements concerning the involvement of third party sellers/ buyers, the valuation obtained by Mr. Hardiman, and the statements made by the valuer, it is unsurprising that, in addition, false representations as to Mr. Hood's opinion of the value cars were also made. I therefore do not accept Mr. Hood's evidence that his valuation figures were genuinely held.

356. As far as inducement is concerned, Mr. Tuke is entitled to the benefit of the evidential presumption of fact that he was induced to act by a fraudulent misrepresentation intended to cause him to enter into the contract. That inference is difficult to rebut, and I do not consider that is any evidence which suggests that it is rebutted in this case.

Causation

357. The relevant question is whether, as the trustees contend, Mr. Tuke would still have entered into the Group C transaction even if he had known the facts and matters in respect of which he now contends that he was misled. If so, then the claim for losses flowing from the transaction would fail. The question is to be answered on the balance of probabilities and by considering all of the misrepresented facts collectively. For the reasons which follow, I do not consider that Mr. Tuke would have entered into this transaction if he had not been misled. Having re-read and considered Mr. Tuke's evidence as a whole, I accept his evidence that he would not have done so.

358. Mr. Tuke's written evidence was that he never liked the Group C racing cars, and that he only entered into this transaction as a means to an end. This was in my view clearly the case. For some months prior to the time when the

transaction was first mooted, Mr. Tuke was looking to sell cars. The cars which he wished to retain were his "favourite" cars which (with the exception of the C Type Jaguar) he could enjoy driving on the road. He had no reason or interest to own more racing cars. Indeed, he was at this stage looking to reduce his collection not to increase it. The Group C transaction was therefore not a transaction which he entered into with any enthusiasm.

359. Had the transaction been presented to him fairly and without misrepresentation, his natural instinct not to buy more racing cars would in my view have prevailed. The transaction would, if presented fairly, have lacked any clear economic rationale, not least because it could not properly be represented that the cars were worth more than the proposed £ 10 million purchase price. Questions would also naturally have arisen, to which there was no satisfactory answer, as to why it was necessary for Mr. Tuke to enter into a transaction of some considerable complexity with JDC involving, as it did, Mr. Tuke buying more cars from JDC when he had stopped doing so many months earlier, as well as needing to enter into an onerous financing agreement to do. Since it is also involved Mr. Tuke selling cars to JDC, the question would naturally have arisen as to why, if JDC wanted one or more of Mr. Tuke's cars, it could not simply buy them, without part exchange of vehicles which Mr. Tuke did not want and without complexity. The proposed transaction had some logic to it in circumstances where, as Mr. Tuke was being told, Mr. Hood was having no success generally in finding straight buyers for Mr. Tuke's cars, but was able to put together a very special and cleverly negotiated deal with a number of individuals which would result in bringing a unique collection of racing cars together, and who were willing to take Mr. Tuke's cars in part exchange. It would, however, have lacked that logic if Mr. Tuke had been told that what was really happening was that JDC was simply selling from its stock a group of racing cars which it or Mr. Hood had owned for some time.

360. Mr. Tuke said in his witness statement that if he had known that Mr. Hood/ JDC owned all the Group C cars, he would have sold other cars. If he had known of that ownership, he would have asked Mr. Hood more closely how this deal worked, where the extra premium was coming from if the Group C cars were already in one collection, and why he/ JDC was not selling them and instead involving Mr. Tuke. These would in my view have been highly pertinent questions, and I do not believe that truthful satisfactory answers could have been given such as to persuade Mr. Tuke to go against his instinct not to buy more racing cars. The evidence also indicates that Mr. Tuke was indeed interested in the ownership of the racing cars: who the sellers were and why they wanted to take his cars. He asked a number of questions on that issue in the emails to which I have referred.

361. In the context of the causation issue, I attach significance to the very fact that misrepresentations as to ownership were made. They were made because Mr. Hood recognised the unlikelihood of Mr. Tuke buying the Group C racing cars if this were presented to him as an ordinary part exchange between JDC and Mr. Tuke. The transaction was not described truthfully, even though Mr. Hood was fully aware of Mr. Tuke's need to raise cash: as Mr. Tuke said, he probably told Mr. Hood too much in relation to his financial concerns. Despite this

knowledge, Mr. Hood recognised that if Mr. Tuke was to bite when the transaction was dangled before him, it had to be presented as a transaction involving third parties, and one which had been cleverly put together and where there was good fortune that all of the third parties had been prepared to sell their racing cars. The misrepresentations themselves therefore provide an "evidential weapon" which supports the factual conclusion that Mr. Tuke would not have entered into the transaction if misrepresentations had not been made: see paragraphs [503] – [504] of *Vald Nielsen* and the authorities there cited. In short, Mr. Hood lied to Mr. Tuke because he recognised that the transaction which he was hoping to conclude, would be most unlikely to conclude if the truth was told. This is a strong reason to reject the trustees' argument on causation.

362. In his oral evidence, Mr. Tuke said, in response to questions from Mr. Hood, that he was not told at the RAC meeting that the current owners were a collection of finance houses who had been given the cars by Mr. Hood. He said that if he been told this at the RAC, it would have been very strange: he understood that they were coming from totally independent third parties. I accept this evidence, and reject Mr. Hood's suggestion (made for the first time in his oral evidence) that the position was explained at the RAC Club. The suggestion that the true position was explained at the club is inconsistent with the emails sent following the club dinner where Mr. Hood referred to the four individuals as being the sellers.

363. Mr. Tuke also said, in response to Mr. Hood's question in cross-examination, that he had known if they were owned by Mr. Hood or JDC, he would have treated the whole deal differently. He expanded upon this evidence in response to my questions at the end of his re-examination. He explained, convincingly in my view, that he would have looked at the transaction very differently, and would have been "very quizzical" if he had known that this was not a transaction which resulted from Mr. Hood's hard work in bringing together a number of third parties. It would have affected him "very differently" if this was a deal which Mr. Hood was totally in control of. It needed those individuals to be brought together "in order that I was getting a good deal". When I asked him directly whether he would still have done the deal, his answer was: "I don't think I would, really, because it w[oul]dn't have made sense the same way". Mr. Tuke's answer went on to recognise that there were difficulties in saying, in the context of the representations as to ownership, exactly what would have happened if the deal had been presented differently. However, I agree with Mr. Tuke that the deal would not have made sense in the same way, and that he would have recognised this at the time. This was indeed the very reason why the misrepresentations were made.

364. I have hitherto focused on the representations as to ownership, and most if not all of Mr. Tuke's answers (as to what would have happened if misrepresentations had not been made) focused on that issue. However, as Mr. Wright emphasised in his closing argument, it is also necessary to look at the other aspects of the misrepresentations relied upon, and in particular the representations as to value. Those representations, in different ways, were aimed at giving Mr. Tuke to understand that the Group C racing cars were, at £ 10 million, a bargain and a discount to their real value which was £ 12.3 million or

at least 11.5 million. They included statements that the valuer considered that Mr. Tuke had got a bargain. These representations too were false for the reasons I have given. In my view, the most that could fairly have been represented to Mr. Tuke as to value were the values which Mr. Hudson-Evans had given. His report did not provide any support for figures of £ 12.3 or £ 11.5 million, nor even as to the £ 10 million that Mr. Tuke was paying for the cars. His estimate of an open market value of £ 9.675 million was qualified by his views as to the potential difficulty of realising that sum either in an auction fire sale or even "individually over a couple of years at selected auctions in Le Mans and in California and/or via specialist brokers on both sides of the Atlantic", in which event a minimum net return of £ 7.5 million was more realistic.

365. Since this was the most that could properly be represented, it would have removed another aspect of the logic for the deal, its economic logic. The transaction involved Mr. Tuke paying £ 10 million for cars which, on the view of the expert valuer as I read his report, might possibly be able to command a slightly lower sum on an open market basis, but which more realistically would take some time to sell and then do so for the significantly lower price of £ 7.5 million. This was not the bargain that was being represented to Mr. Tuke. Furthermore, the time period for a sale contemplated by the report, even to achieve £ 7.5 million, was well beyond the time-scale that was being contemplated by Mr. Tuke (based upon what Mr. Hood was telling him) for achieving a sale. Mr. Hood was talking about bringing the Group C cars to the market in "the spring". I accept that this did not mean that the cars would necessarily be sold in the spring, and Mr. Hood did make it clear (in his email of 13 April 2011) that he could not guarantee that the cars would be sold and funds received by August. However, the potential time-frame for selling the cars meant that the transaction could not be viewed as a short-term fix for Mr. Tuke's need for funding, but at best might yield a recovery, at less than Mr. Tuke was paying, in the medium to long term.

366. Both Mr. McWilliams and Mr. Hood in their submissions placed reliance on Mr. Hardiman's email of 9 March 2011. Mr. Hardiman there told Mr. Tuke that "the funder will always look on a worst-case scenario that the cars are repossessed and sold quickly normally at discounted value. This figure is stated to be of £ 7 to 7.5 million, which I know is, to say the least extremely harsh". It was argued that Mr. Tuke was nevertheless prepared to proceed with the transaction, and did so knowing that there was a risk that he would not recover the price paid.

367. This argument does not persuade me that Mr. Tuke would have entered into the Group C transaction even if the misrepresentations had not been made. Mr. Hardiman's email does not affect the misleading statements as to ownership which are important for the reasons given. In relation to valuation, Mr. Hardiman's email did not (as Mr. McWilliams agreed) give an accurate account of the views of the valuer. His email said that the valuations "provide strong reading with a full retail value being stated at £ 12.3 million". This was highly misleading (although it was no part of Mr. Wright's case that Mr. Hardiman deliberately misled Mr. Tuke). In fact, Mr. Hudson-Evans valuation report made it clear that he did not agree with the figure of £ 12.3 million which Mr. Hood

had suggested to Mr. Hudson Evans. He said expressly that he valued the cars "differently" from JD Classics, irrespective of whether JDC had been able to find a buyer prepared to pay that sum. Mr. Hardiman's email therefore wrongly indicated that the valuer had provided support for the £ 12.3 million figure, and hence the possibility of Mr. Tuke making good money on the transaction, when in fact it did no such thing. Mr. Hardiman's e-mail also indicated that there was nothing to concern Mr. Tuke ("which in my opinion will not pose you any great issue, especially given your intention to settle the agreement in July 2011"). Given that Mr. Hudson-Evans had indicated, in the context of his minimum net return of £ 7.5 million, that the best way to maximise funds would be individual sales "over a couple of years", there would have been much to concern Mr. Tuke in view of his intention to repay the financing in July 2011. In short, Mr. Hardiman's email gave reassurance to Mr. Tuke in circumstances where Mr. Hudson-Evans' report called seriously into question the economic logic of the transaction.

368. Mr. McWilliams, in cross-examination and in his closing submissions, placed emphasis on the lack of alternative options for Mr. Tuke, in terms of raising funds. It is certainly the case that, as Mr. Tuke acknowledged in his evidence, his options narrowed as time went on. This was a consequence of the facts that: Mr. Tuke needed to raise money fairly quickly; he was, from early-mid February 2011, going down the road of the Group C transaction rather than other possible ways of raising funds; and there were delays in bringing the transaction to fruition. It seems to me, however, that the position needs to be considered on the basis that misrepresentations were made at the very start of the process, in January 2011. Had the misrepresentations not been made, and the transaction presented fairly, I consider that Mr. Tuke would have realised very quickly that this was not something for him. He would then have appreciated that he had to do something else in order to raise funds. The evidence indicated that Mr. Tuke was, at the beginning of 2011, relatively illiquid – in part as a consequence of his spending spree on cars in 2010 and the fact that he had not succeeded in selling any of them. However, Mr. Tuke was asset-rich. He had many assets on which it would have been possible to raise funds. This included his matrimonial home (which was mortgage-free), rental properties worth £ 5 million, and a car collection which Mr. Tuke valued in excess of £ 28 million. I did not consider that there were any significant obstacles to raising finance on these assets, and indeed it would ultimately have been possible for Mr. Tuke to sell some cars at auction. It is true that Mr. Tuke did not go down any of these routes at the time, but that does not mean that they were not open to him. The reason that he did not pursue them is that the transaction proposed by Mr. Hood seemed, as presented (and misrepresented) at the time, to be more attractive than the alternatives. Had the true position been known, Mr. Tuke would have recognised that one or more of the alternatives were better than the Group C transaction, and in my view there was sufficient time pursue one or more of them.

369. Accordingly, Mr. Tuke succeeds on the causation issue.

Quantum – the parties arguments in more detail

370. I have already outlined the parties' arguments in relation to quantum, but it is now appropriate to describe them in greater detail.

371. Mr. Tuke's claim in relation to the Group C transaction has some complexity. His success in establishing fraudulent misrepresentation and causation also has a wider impact on the significant claim that he makes in the present proceedings for loss of investment opportunity. This is because the Group C transaction required him to make significant capital and interest payments to Close, and it was then necessary for him to sell cars in order to meet those obligations. Had he not concluded the Group C transaction, then he would have been in a stronger position to retain cars which he in fact sold. For present purposes, however, I leave aside the loss of investment opportunity claim which I discuss in detail in Section F below.

372. Mr. Tuke's basic claim for damages relating to the Group C transaction is based principally upon the difference between what Mr. Tuke paid for the Group C racing cars (£ 10 million) and the value which, on Mr. Neumark's evidence, those cars were worth. Mr. Neumark's valuation was a range of £ 3.5 - £ 4.5 million, and a midpoint of £ 4 million. The equivalent valuation by Mr. Broad is £ 7.3 - £ 7.75 million, with a midpoint of £ 7.525 million.

373. However, Mr. Tuke does not claim the full £ 6 million difference between £ 10 million and £ 4 million for two reasons.

374. First, Mr. Tuke's claim in respect of one of the cars, the Jaguar XJR11 490, is to be excluded from the calculation, because the claim in relation to that car was settled in September 2016. An allowance made for that car meant that the relevant comparison was between a sale price of £ 7,833,333 and the market value of the remaining cars (on Mr. Neumark's figures) of £ 3,300,000; i.e. £ 4,543,333.

375. Secondly, Mr. Tuke accepted that he needed to give credit for what was described as the "overpayment" on the 4 cars that were sold; i.e. the Group C Sale cars. Those cars were: Allard J2X; Jaguar Costin Lister; Lotus Elite; and Jaguar XK120 (registration MDU 524). Mr. Tuke made a significant profit on the sale of these cars, when comparing the prices that he originally paid with the price received. However, his case was (and this was not disputed) that the price received was in excess of the market value of those sold cars. Based on Mr. Neumark's work, the overpayment was substantial. The cars were not worth more than around £ 1.7 million collectively (as compared to a purchase price of £ 4 million ascribed to them in the Group C transaction), and therefore there should be credit of some £ 2,295,000 based on their midpoint market value as at April 2011.

376. An additional potential complication here was that two of the cars which were sold (the Allard and the Costin Lister) later came back to Mr. Tuke as part exchange for the Jaguar C Type (see Section E7 below). Since there were issues as to their valuation in that context, it might be necessary to adjust the amount of the credit in the event that Mr. Neumark's evidence as to the value of those

cars was rejected. However, I consider that this complication can be left out of account, certainly at the present stage, since it should make no difference to the overall calculation of damages. If the claim in respect of the Jaguar C Type were to be reduced (because either the Allard or the Costin Lister were worth more than Mr. Neumark said), then the credit in the context of the present claim would reduce and the claim itself would increase by the equivalent amount. I shall therefore work on the basis, as did Mr. McWilliams in his submission, that the appropriate credit is indeed £ 2,295,000.

377. In addition to this calculation based on the value of the Group C racing cars, Mr. Tuke claimed the consequential loss comprising the financing costs paid to Close. These totalled £ 782,834.01. Mr. McWilliams did not dispute the calculation of this figure. Nor – bearing in mind the generous approach to the recoverability of consequential loss for fraudulent misrepresentation in *Doyle v Olby* – did he dispute its recoverability in principle in the event that I were to conclude (as I have) that Mr. Tuke would not have entered into the Group C transaction. He submitted, however, that the full amount claimed should not be awarded, because Mr. Tuke would have had to incur financing charges in any event if the Group C transaction had not happened: Mr. Tuke's illiquidity was such that he would have had to borrow and pay financing costs, for example, if he were to borrow against his existing collection.

378. The most significant argument of Mr. McWilliams, in financial terms, was that it was inappropriate to use Mr. Neumark's figure of £ 4 million as representing the value of the Group C racing cars. He submitted that the appropriate figure was the "open market" value of £ 9.675 million which was given by Mr. Hudson-Evans, contemporaneously, when he actually valued the collection in 2011. It was submitted that Mr. Hudson-Evans was a far more experienced valuer than either of the two experts who gave evidence at the trial, and that the court should adopt his figure. If so, then there was no loss on the Group C transaction itself. This was essentially because the open market valuation was close to the price paid by Mr. Tuke, who also received the benefit of a substantial payment for the Group C sale cars which was in excess of their market value. Even if Mr. Hudson-Evans' lower figure of £ 7.5 million were taken, then the resulting claim, again after credit for the excess receipt for the sold cars, would be very small: £ 321,167.01.

Quantum – discussion

379. I consider that Mr. Hudson-Evans' contemporaneous valuation of the Group C cars provides the most reliable guide to their value at that time. Mr. Hudson-Evans was, generally speaking, far more experienced in valuation than either of the experts who gave evidence before me. The valuation given at the time was for the purpose of a finance house taking an important decision as to how much money to lend on the security of the cars, and Mr. Hudson-Evans would have had to (and did) approach his task of giving a valuation professionally and carefully. His contemporaneous valuation is uninfluenced by the present litigation process, as well as by subsequent trends in the market which, on the evidence before me, has now weakened the appetite for the type of car that I am considering.

380. It is also fair to say that neither of the experts had any experience of valuing specialist cars such as the Group C Jaguars. There is, as Mr. Neumark explained, very little publicly available data for such specialised race cars. Mr. Neumark's valuation was based principally upon contacting a number of brokers and dealerships in order to get their opinions. He said that he spoke to persons "whose opinions I trust and felt accurately reflected the market for these cars." His report then described the opinions of 5 individuals. Whilst it may be that hearsay evidence of this kind is not inadmissible, I was doubtful as to its value. None of the persons, whose opinions Mr. Neumark trusted, could be questioned as to their opinions. I could form no view as to their reliability. There is a very real danger, depending upon the way in which Mr. Neumark asked them questions, of their answers being infected by "confirmation bias".

381. It then emerged in the course of his cross-examination that Mr. Neumark had in fact also spoken to another individual, a Mr. Henry Pearman: Mr. Hudson-Evans' report states that he too had spoken to Mr. Pearman. He is a collector and very knowledgeable about this type of car (i.e. the Group C racing cars). But Mr. Neumark had not included Mr. Pearman's opinion, which was far more positive than that of the other 5 individuals, in his report. It was unclear why this had been omitted, since it appears that it had been included in an earlier draft of this report. It certainly should have been included, bearing in mind Mr. Neumark's declaration (in standard form) that he had "endeavoured to include in my report those matters, of which I have knowledge or of which I have been made aware, that might adversely affect the validity of my opinion".

382. I do not suggest that Mr. Neumark's omission of Mr. Pearman's opinion casts doubt generally upon his impartiality or the reliability of his evidence. It was clear to me that Mr. Neumark had approached the writing of his reports and the giving of his evidence conscientiously, and with a view to assisting the court. He was not an argumentative or opinionated witness. Overall, however, the fact that there was another knowledgeable third party, who had expressed a different view to Mr. Neumark, reinforced my view that the best evidence as to value in 2011 was the contemporaneous view of Mr. Hudson-Evans, and that it was not satisfactory to rely upon the views of a selection of third parties – more knowledgeable than Mr. Neumark – whose evidence could not be tested.

383. The evidence of both Mr. Neumark, and indeed Mr. Broad (who again did not hold himself out as having any real expertise in valuing the Group C racing cars with which I am concerned) did however have some value, in that it confirmed that there was no justification for the figures of at least £ 11.5 million, and £ 12.3 million, which Mr. Hood had given at the time.

384. Having decided that I should be guided by Mr. Hudson-Evans report, the next question was whether, for the purposes of assessing damages, I should pay regard to the figure of £ 9.675 million – stated to be the Open Market Value – or the figure of £ 7.5 million, which was said to be the "minimum net return under the gavel". Indeed, based on answers which Mr. Hudson-Evans gave in re-examination, Mr. Wright argued for an even lower figure which was much closer to that of Mr. Neumark. Mr. Hudson-Evans was clear in cross-examination that he stood by the figures in his report. In re-examination,

however, Mr. Hudson-Evans was asked whether the £ 7.5 million would be achieved if someone was looking to liquidate assets within 90 to 120 days. He indicated that if there was a "distressed sale auction", getting rid of assets as fast as a person could, the price realised would be £ 4 million. If a broker was involved, again looking at the same time period, he said that the most that could be achieved would be £ 5.5 million.

385. In order to decide which figure it is appropriate to take, for the purposes of assessing damages, it is necessary to explain the basis of the various valuation figures which featured in the case.

386. In his evidence, Mr. Hudson-Evans explained that, in the context of valuation of classic cars, there are different figures which can be looked at. He described the "open market" value as being the price that would be agreed between a willing buyer and seller without any mark-up or profit percentage of a dealer or broker. In his view, the retail price or value, which would include a mark-up, would be above the open market value. Generally speaking, people would aim to buy at auction for a figure below the open market value, taking into account the buyer's premium which is charged by auction houses. The "hammer price", which is the price which the auctioneer announces as the sold price, does not include the buyer's premium. However, it is not the price received by the seller, since he will have to pay commission as well. Accordingly, he explained that, in descending order, there could be (by way of illustration) a retail price of £ 1.15 million; an open market value of £ 1.05 million and a hammer price of £ 900,000. The hammer price of £ 900,000 would mean that the buyer, after paying the auction house a premium, would pay just below the open market value. It would mean that the seller, after commissions, would receive around £ 800,000. In relation to the figures which were in his report on the Group C racing cars, he said that the difference between the £ 9.657 figure and the £ 7.5 million figure was made up by the vendor's commission charged, the buyer's premium charged and any local taxes.

387. In his oral closing submissions, Mr. Wright said that the expert witnesses (explicitly Mr. Broad, and Mr. Neumark as well) had been giving their opinions as to retail values, rather than auction values or fire sale values – albeit that auction prices achieved clearly impacted upon the views given by the experts. He agreed that the relevant value, for the purposes of the assessment of damages generally, was the retail value.

388. I consider that, in the context of the Group C claim, it is appropriate to assess Mr. Tuke's damages by reference to the £ 7.5 million figure which Mr. Hudson-Evans identified as being the "minimum net return under the gavel". I consider that this is the most appropriate method of quantifying Mr. Tuke's loss, in circumstances where Mr. Tuke did not understand that he was buying the Group C cars from a retailer, and where he was doing so on the basis that the cars would not be long-term investments but were intended to be sold in short order. In those circumstances, I consider that Mr. Hudson-Evans' £ 7.5 million figure most fairly reflects the value of the cars that Mr. Tuke was receiving, in circumstances where there was no intention to carry out individual sales "over a couple of years at selected auctions … and/or via specialist brokers" which

might have realised a higher price. I do not consider that the lower figures given by Mr. Hudson-Evans in re-examination should be adopted. Mr. Tuke and Mr. Hood were not contemplating that there would be a distressed sale at a more or less immediate auction, but rather that Mr. Hood as an experienced dealer would use his contacts in order to obtain the best price over a period of time which might, or might not, enable the cars to be sold by August. I did not think that Mr. Hudson-Evans' figures given in re-examination sat easily with the figures given in his report, where it was not suggested that even a "a job lot in a fire sale" would produce a figure as low as £ 4 or £ 5.5. million.

389. I also consider that this approach to quantifying damages meets the justice of the case, given that Mr. Tuke encountered significant difficulties in selling the Group C cars, and in the event they did not collectively achieve even the £ 7.5 million figure, even after taking into account the settlement reached in relation to the XJR 11. The total price ultimately achieved was £ 4,441,000. Even allowing for (i) Mr. Hood's criticisms of the inexperience and other shortcomings of Mr. Sam Thomas in selling cars, (ii) Mr. Hood's argument (discussed further below) that Mr. Tuke should have accepted a higher price offered by JDC to repurchase one of the cars, and (iii) any deterioration of the condition of the racing cars in the lengthy period before they were sold, these figures suggest that Mr. Hudson-Evans' figure of £7.5 million was not wide of the mark.

390. The relevant calculation of loss, on the basis that the 5 cars are to be valued at £ 7.5 million, was set out in paragraph 64 (2) of Mr. McWilliams' closing submission. I did not understand these figures to be challenged by Mr. Tuke. The value of the 4 relevant cars (excluding XJR 11 490) is £ 6,000,000. The purchase price of the Group C Cars, (again excluding XLR 11 490) was £ 7,833,333. The finance and other charges paid to Close were £ 782,834.01. The credit for the overpayment for the Group C Sale Cars is £ 2,295,000. Accordingly, the loss is:

> "£ 7,833,333 + £ 782,834.01 less £ 6,000,000 less £ 2,295,000 = **£ 321,167.01"**

391. In his written closing submissions, Mr. Hood made a number of other points on quantum which had not been made by Mr. McWilliams. I did not consider that any of these arguments were sound.

392. Mr. Hood submitted that JD Classics had a 5% interest in the Group C cars, as a result of a payments of monthly finance being made at a later stage. He said that therefore credit should be given for JD Classics' interest. In my view, this alleged interest does not diminish the loss suffered by Mr. Tuke in consequence of his entry into the Group C transaction. If well-founded, it may give rise to a claim by JD Classics against Mr. Tuke for a recovery from the proceeds of sale of the Group C cars.

393. Mr. Hood relied upon an offer of £ 1.8 million for the XJR9 which had been made at a later stage by Gowlings on behalf of JDC. He submitted that Mr. Tuke should have accepted this offer rather than selling the same car some six weeks

later through Mr. Thomas for only £ 1,250,000. I do not consider that this offer, even if it were made and should have been accepted, would diminish the loss suffered by Mr. Tuke on the basis claimed. The claim made was not based upon differences between the price paid for the cars, and the price ultimately received. The claim is based upon the difference in value between the price paid and the value of the cars at the time. I also note that no defence of failure to mitigate was pleaded by counsel on behalf of Mr. Hood. And although Mr. Tuke was asked in cross-examination about some of the offers that had been declined, he was not asked about this one. In these circumstances, the point on failure to mitigate is neither a good point nor an argument which Mr. Tuke could fairly be asked to meet at trial.

394. Mr. Hood also referred to an open letter from Gowlings made in August 2017 to compromise the Group C claim. Again, Mr. Tuke was not asked about this letter in cross-examination. There is no open offer of compromise contained in the letter, and there is therefore nothing in that letter which could give rise to a defence based on failure to mitigate or otherwise.

E5: Aston Martin part exchanged for Jaguar XK 120

395. Following the Group C transaction, this was the first of a series of part exchange transactions which, overall, had the effect that Mr. Tuke disposed of the cars which were most valuable and which he particularly liked. In his e-mail of 24 September 2010, Mr. Tuke had identified a number of cars which, preferably, he would not sell in order to raise the £ 5m that he was then hoping to achieve by the end of November. Those cars were three Jaguars (the C Type, the XK 120 (registration JWK) and the XKSS) and the Aston Martin. The Aston Martin was the subject of the sale in issue on the transaction which I will now describe.

The facts in outline

396. At this time (June 2011), Mr. Tuke had "pressing financial problems". He was not interested in buying any more cars, and what he wanted was to sell cars for cash. Generally speaking, however, the transactions which Mr. Hood presented to him were part exchanges. This present transaction involved the part exchange of the Aston Martin for a Jaguar XK 120 plus £ 200,000 in cash.

397. By an email dated 22 June 2011, Mr. Hood wrote to Mr. Tuke as follows:

> "Spoke to the guy who wanted a deal on the Alloy 120 and Lister again last night. I have talked him round to doing a deal with the 120 Alloy race car plus [£] 200k for the Aston. With the Le Mans Classic coming up people will be buying eligible cars in the next few months. With the buyback deal you got on the cars a few months back this deal is very attractive.
>
> Do you want me to pursue the XKSS guy?"

398. The Jaguar XK 120 (referred to in the above email as the "Alloy") had been described by Mr. Hood in an e-mail sent a few days earlier, on 18 June 2011 as follows:

> "… Competition Alloy XK 120 which is fully restored and Mille Miglia eligible … Alloy 120 is worth £ 750K plus …"

399. Later on 22 June 2011, Mr. Hood wrote:

> "The Alloy XK120 is an ex USA competition car that has had a total chassis off restoration to a very high standard. Lots of Americans will be looking for genuine competition cars they can take back home once they have competed at Le Mans, the car offered will be very appealing as it can also be used on the Mille Miglia. Mike this deal has the potential to return you over [£] 1M".

400. It was common ground between the parties, as set out in the consolidated List of Issues, that the XK 120 was not owned by a third party, but either by Mr. Hood personally or JDC. According to JDC's internal stock list, the car had been purchased in June 2009 for a price of £ 320,000 and had a projected/ anticipated sale price of £ 380,000. In fact, the price of £ 320,000 appears to have been an error: Mr. Hood agreed that the sterling equivalent of the purchase price was £ 230,000.

401. The transaction completed on 24 June 2011.

The parties' arguments

402. The parties' arguments took a familiar shape, and they can be summarised as follows.

403. Mr. Tuke contended that there were false representations as to the ownership of the car. Mr. Hood accepted in evidence that the car was not owned by a third party, but asserted that there was "potential interest" in the car. He was unable, however, to provide any details as to what this interest was, or who had expressed this interest.

404. Mr. Tuke also contended that there were false representations as to value. Mr. Hood accepted in evidence that his own internal assessment of the car was that it would achieve £ 380,000. But he said that once JDC had marketed the car and promoted it, it would have been worth £ 750,000 plus. This particular car had period American race history, and there was therefore a large market for it in the United States.

405. The claim originally also involved an allegation of fraudulent misrepresentation as to the originality of the car. That allegation was not in the event pursued.

406. As far as quantum was concerned, the claim was based upon the difference between the amount which Mr. Tuke in effect paid for the XK 120, and its actual

value. The amount effectively paid was £ 650,000, being Mr. Hood's valuation of the Aston Martin (£ 850,000) less the £ 200,000 which Mr. Tuke received in cash. On Mr. Tuke's case, the value of the car received was either £ 100,000 or £ 225,000, so that the claim was either (i) £ 650,000 less £ 100,000 = £ 550,000 or (ii) £ 650,000 less £ 225,000 = £ 425,000.

407. The difference between these two figures reflected a dispute as to whether or not the XK 120 had an original chassis (in which case it would have retained its identity as the original XK 120) or whether it did not, in which case it would be regarded as a replica. If the chassis was original, then Mr. Neumark valued it at between £ 200,000 - £ 250,000, as compared to Mr. Broad's valuation of £ 350,000 - £ 400,000. If chassis was not original, Mr. Neumark's figure was £ 100,000 (with Mr. Broad giving a somewhat lower figure of £ 60,000 - £ 70,000).

408. Subject to liability, the trustees were prepared to admit a claim of £ 450,000.

409. In his written closing submissions, Mr. Hood's principal arguments were that the value of the car was correctly given by him, and that there had been an unreasonable refusal by Mr. Tuke to accept an offer made by JDC to repurchase the car for £ 772,500 by way of full and final settlement of all claims in relation to the XK 120 or the acquisition of the car. In his oral submissions, Mr. Hood referred to JDC internal documents showing a range of values for various XK 120's.

Representation as to ownership

410. In relation to ownership, I again conclude that a dishonest representation was made that there was a third-party owner of the XK 120 who was interested in part-exchanging it for Mr. Tuke's Aston Martin. There was no "guy" with whom Mr. Hood was negotiating. Nor is there any evidence that anyone had expressed an interest in the XK120 such that Mr. Hood needed in some way to persuade him to agree to exchange that vehicle for Mr. Tuke's Aston Martin. The reality was that Mr. Hood was selling the XK 120 from JDC's stock, and he considered that the Aston Martin was a desirable car to purchase, not least because (as a result of his misrepresentations as to the value of the XK 120 as discussed below) he could do so at an undervalue.

411. This is therefore the fourth transaction where I have concluded that misrepresentations were made as to the existence of third-party owners with whom Mr. Hood was negotiating, and the second transaction (following the Group C transaction) where this happened in connection with the sale of Mr. Tuke's cars. One question which was addressed in Mr. Wright's oral closing submissions concerned why Mr. Hood misrepresented the position as to third party ownership to Mr. Tuke.

412. It seems to me that that this deception assisted Mr. Hood in various ways, and that there was a combination of reasons for the misleading approach which he consistently took. It enabled him to portray the opportunities as a bargain, with third-party sellers being unaware as to quite how valuable their cars were. It reinforced the idea that Mr. Hood and Mr. Tuke were on the same side, with

Mr. Hood working hard and diligently on his behalf, consistent with the agency relationship which existed between Mr. Tuke and JDC in relation to the sale of cars, in order to achieve beneficial results for him. The dynamic of Mr. Hood's discussions with Mr. Tuke would have been entirely different if Mr. Tuke had appreciated that he was simply dealing with Mr. Hood, who was trying to sell him further cars from stock but was willing to take Mr. Tuke's cars in part exchange. It is one thing to think that you are dealing with an interested third-party. It is quite another to know that you are dealing with the person who is purporting to act as your agent.

413. A natural question would also have arisen as to why, if Mr. Hood was interested in particular cars which Mr. Tuke owned, he would not simply pay cash for those cars, which was what Mr. Tuke really wanted (rather than part exchanges). Mr. Tuke's evidence, which I accept, was that he did from time to time ask Mr. Hood whether JDC would buy some of his cars, but this did not receive a positive response. The deception enabled Mr. Hood to make it seem that it was the third-party purchaser who was looking for a part-exchange, and was unwilling to pay cash, and that this was all that was currently on offer in the market. The deception also enabled Mr. Hood to continue the process of selling cars from stock and taking cars from Mr. Tuke in return. Given that (in accordance with my findings in this judgment) Mr. Hood was acquiring good cars for overvalued part exchange cars (i.e. acquiring good cars at an undervalue), it served a valuable economic purpose from Mr. Hood's perspective. Had the true position been known, it is unlikely that the part-exchange process, that continued for some time, would have started. But in any event, it would not have continued for as long as it did.

414. The deception also created the appearance that Mr. Hood was continuing to do the work of finding buyers for Mr. Tuke's cars with a degree of success, thereby giving Mr. Tuke to understand that Mr. Hood was on his side and was producing results. It also enabled him to dissuade Mr. Tuke from putting some cars into auctions, on the basis that there was a third-party purchaser who was offering a much better deal. Specifically in relation to the Aston Martin, Mr. Tuke told Mr. Hood about Bonham's interest in the car in an email dated 19 June 2011. Mr. Hood's response on 20 June was that Mr. Tuke should be careful with Bonhams because of the commissions payable: "the Aston is a car to sell off the radar, let me see what I can do this week".

415. There was therefore, in my view, ample motive for Mr. Hood to act as he did, and indeed there was nothing in Mr. Hood's evidence or submissions which suggested that there was no such motive.

Representation as to value

416. There was, here again, a misrepresentation as to value. The figure of £ 380,000 in JDC's stock list provides, in my view, the best evidence of what Mr. Hood's real opinion of the XK 120 was. Neither of the experts supported the figure of £ 750,000 plus which had been given by Mr. Hood. It is no doubt the case that, as Mr. Hood said in his oral closing, there is a range of possible values for different XK 120 cars. However, I am concerned with this particular car and I

do not accept that Mr. Hood genuinely believed that it was worth the figure which he gave to Mr. Tuke.

417. As with the other false representations which were made to him as described in this judgment, there is nothing to rebut the presumption that they induced Mr. Tuke to sell his Aston Martin.

Damages

418. The starting point for Mr. Tuke's damages claim was a value ascribed to the Aston Martin of £ 850,000 in the invoice dated 24 June 2011 signed by Mr. Hood. Mr. Tuke had bought this car 16 months earlier for £ 680,000. There was no expert evidence which cast doubt on the value of £ 850,000 so ascribed, and I therefore proceed on the basis that this represented the value of the Aston Martin.

419. As I have said, the claim was based upon the difference between the amount which Mr. Tuke in effect paid for the XK 120, and its actual value. The amount effectively paid was £ 650,000, being Mr. Hood's valuation of the Aston Martin (£ 850,000) less the £ 200,000 which Mr. Tuke received in cash. The calculation of damages therefore depends upon the value to be ascribed to the XK 120. The central issue was whether or not the XK 120 had an original chassis. The originality of a chassis is crucial to the valuation of a classic car, because the chassis is critical to the identity of the car. In short, if the chassis is original then the market considers the car to be the original vehicle even though there may have been very significant restoration work over the years to the car as a whole including the chassis itself. If it is not original, then the car is regarded as a replica. The issue between the experts was whether or not the evidence indicated that the XK 120 was indeed chassis number 670033.

420. Mr. Tuke's expert in this respect was Mr. Tim Griffin of CMC (Classic Motor Cars) based in Shropshire. He had initially inspected the vehicle at CMC's premises in February 2017. Shortly after removal of the car's trim, he engaged a technician from a company called Rennsport in order to carry out a forensic examination and imaging of the car. The report of Mr. Mark Waring of Rennsport was annexed to Mr. Griffin's report. This included a large number of photographs and other images. Mr. Griffin gave oral evidence at the trial, and he was a knowledgeable and impressive witness.

421. Mr. Broad had also inspected the vehicle. He had first done so in 2005 at a time when the car was owned by a Mexican gentleman. He had written a short article about the car, and he concluded that there was no doubt that it was an original 1949 chassis and "with a little scraping and sanding, most of the chassis numbers became apparent, although the addition of a Chevrolet engine had meant some add-ons of a rather crude nature". He had not, however, carried out any forensic imaging on that occasion.

422. Mr. Broad had then carried out a further inspection at CMC's premises in May 2017. He was then accompanied by a retired police officer, Kevin Collett, and a Jaguar historian, Mr. Jim Patten. The trial bundles contained typed statements of Mr. Collett and Mr. Patten, but these were not signed by them. Such

photographs as were taken on that occasion, or records of any other imaging carried out, were not produced. In Mr. Patten's typed statement, it was stated that although it would be impossible to categorically state that this was chassis 670033, he had "no hesitation in asserting that chassis number 670033 is correct and that this car is authentic". In the typed statement of Mr. Collett, the conclusion was that there was a "strong likelihood that this chassis is that of 670033".

423. Mr. Broad's expert report on the car was briefly expressed. He referred to his examination in Mexico, stating that he was satisfied that this was chassis number 670033 "having its original chassis frame, old body work, suspension and steering, a number of other exterior parts, and the all-important chassis vehicle identification plate and title documents tracing the car's history back to arriving in Mexico many years earlier". In his oral evidence under cross-examination, Mr. Broad maintained that view. He believed that he had seen, in Mexico and again at CMC, the final two numbers of 670033: i.e. 33. He pointed to the unlikelihood of the car, ending with a number 3, being anything other than this chassis, given that what he saw was clearly a 1949 chassis and that there would have been very few cars manufactured at that time ending in number 3. Moreover, he did not just see the chassis, but other components which were unlikely to have "accidentally" appeared in Mexico City other than on the original chassis.

424. Whilst I have no doubt as to the genuineness of the opinions expressed by Mr. Broad, I considered that the evidence on this topic of Mr. Griffin, supported by the photographic evidence and the report of Rennssport, was not only more detailed but also more persuasive.

425. Mr. Griffin identified in his report (and provided a helpful illustration of) the three places where the chassis numbers had been stamped on the car. This had been done at different times. On an original chassis, however, there ought to have been numbers in only two locations; above the brake cylinder, and at the front centre of the chassis. An additional chassis number had been stamped on the vehicle at some later stage. Whilst this additional stamping is curious and gives rise to suspicion as to why it happened, it would perhaps be of little consequence if the evidence indicated that the chassis numbers were present in the two places where they should have been present.

426. The first relevant location was above the brake cylinder. There was indeed a chassis number present there, but this was not the original chassis number. It was in a different font to the one which would have been used at the time. The part which would have had the original chassis number had been removed, and a more recent plate welded in place. The welding of that plate was not consistent with Jaguar factory welding. In his oral evidence, Mr. Griffin explained that the removal of the section where the original chassis number would have appeared could not be explained by normal restoration processes; because the actual brake bracket had not been changed. These circumstances are again curious, and I do not consider that any satisfactory explanation was given as to why this had happened. In any event, the factual position on the evidence is that the original

chassis number did not appear in one of the locations where it should have appeared.

427. The second relevant location is at the front centre of the chassis. There was no dispute that the full chassis number could not be seen at that location. The evidence indicated that the number in that location had been ground down by mechanical means. Mr. Griffin's view was that there was no legitimate reason to grind down the number in this way, and that it cannot have been done inadvertently. I did not think that Mr. Broad's evidence provided a good answer to this point.

428. All that did remain of the chassis number in that location was a very faint number 3. This may possibly have been visible to the naked eye (as Mr. Broad's evidence suggested), and it was certainly visible in a Magneto-Optical image that which Mr. Waring of Rennsport had taken and attached to his report. However, none of the other chassis numbers were visible in that photograph. Mr. Waring had also sought to obtain "Eddy current images". These are images obtained at increments of approximately + 0.2mm under the surface of the metal. However, no numbers were present under the surface. This suggested that at least 0.4 mm of metal had been altered or removed, thereby preventing the discovery of any numbers which did exist. Furthermore, as Mr. Griffin pointed out in his report, the remains of the number 3 did not appear to match the typeface that would have been used at the time. In the light of this evidence, I reach the same conclusion as I have reached in relation to the first location where a chassis number should have appeared: the original chassis number does not appear in this second location where it should have been. Furthermore, no satisfactory explanation has been given for the grinding down of the chassis number in that location.

429. I therefore conclude, on the balance of probabilities, that the chassis was not original. In reaching this conclusion, I have not lost sight of Mr. Broad's evidence which was that at least one additional number '3' was visible both when he inspected in Mexico, and on his subsequent visit with Mr. Collett and Mr. Patten. However, I consider the best evidence as to what is actually visible is contained in the Rennsport report. That report, and indeed Mr. Griffin's evidence on this topic, was carefully prepared and very thorough. I did not think that Mr. Broad's evidence – unsupported by any photographic evidence of either visit, and with only unsigned statements from Mr. Patten and Mr. Collett – provided a match for the detail of the evidence of Mr. Griffin.

430. Accordingly, I assess damages based on the value of £ 100,000 for the XK 120 which Mr. Neumark has given, and award £ 550,000.

431. It is true that, as Mr. McWilliams submitted, a valuation of £ 100,000 is below the price which JDC paid for the car in the first place (£ 230,000) or the price at which it was internally valued by him (£ 380,000). Mr. McWilliams submitted that Mr. Hood, with all his experience, would not have overpaid for the car. However, the evidence indicated that Mr. Hood paid a price based upon his understanding that the XK 120 was a "matching numbers" car; i.e. that all the key parts of the car (engine, body, gearbox, chassis) had stamped part numbers

that matched the car's heritage certificate or other information showing the parts that it left the factory with. Even leaving aside my conclusion in relation to the chassis, it was common ground that the car was not in fact a matching numbers car. The price which Mr. Hood paid cannot therefore be taken to represent the value of the car.

432. Finally, I reject the argument that Mr. Tuke failed to mitigate his loss by accepting an offer which was made. On 1 November 2017, Gowling WLG on behalf of JDC offered to settle the claim in respect of the XK 120 by re-acquiring the car for £ 772,500. This amount was calculated on the basis of a damages claim of £ 550,000 together with interest thereon. Mr. Tuke was not specifically asked about this offer in the course of his evidence, or why it had been turned down. As will be apparent from my consideration of other offers relied upon by Mr. Hood, I do not consider that it would be fair to Mr. Tuke to permit Mr. Hood to rely upon unpleaded allegations of failure to mitigate. In any event, there is no basis for concluding that Mr. Tuke acted unreasonably in declining this offer. Although this was a substantial offer, it was not a straightforward offer to purchase the XK 120 for the sum of £ 772,500. It required Mr. Tuke to release all his claims in respect of the acquisition of the car. This would include the substantial claim for loss of investment opportunity relating to the Aston Martin. Mr. Tuke did not act unreasonably in refusing that offer, and therefore the unpleaded case of failure to mitigate fails. I deal separately with the claim for loss of investment opportunity later in this judgment.

E6: Broadspeed and Mark II Jaguar exchanged for Mark II and XK 150S

Factual background

433. This was a pure exchange transaction which involved no cash. It was effected on 29 July 2011, which was not long before Mr. Tuke had to make his first repayment on the loan from Close. Mr. Tuke exchanged two cars. One was his Jaguar Broadspeed, which had been purchased for £ 550,000. The other was a Jaguar Mark II (registration GSL 675) which Mr. Tuke had bought for £ 140,000 in the December 2009 showroom visit. The combined value of these cars was £ 690,000. The values ascribed to the cars in the invoice from JDC to Mr. Tuke were the same as the price which Mr. Tuke had paid for them. In return, Mr. Tuke received a Jaguar Mark II (registration 423 XUH) valued – according to the invoice – at £ 500,000 and a Jaguar XK 150S LH valued at £ 190,000. The XK 150S was eventually sold by Mr. Sam Thomas for £ 160,000 in November 2019. The Jaguar Mark II has been retained by Mr. Tuke.

434. On 13 July 2011, Mr. Hood told Mr. Tuke:

> "I have managed to get a deal to exchange the JD Sport MK2 and 150 S Roadster for the Broadspeed and your MK2.
>
> You will have two cars owing over £1.2M for your cars owing around £650K."

435. On 14 July 2011, Mr. Hood referred to the proposed deal, and asked whether there was "[a]ny chance of a commission on this deal". Mr. Tuke's response was that:

> "I did not anticipate blue one lost in this swap given that what he paid did not represent realisable values so how realistic return will be at 1.2 is to be seen in due course. No uplift seen in this part of the deal therefore and no cash, commission would be on seeing the uplift hereafter although not looking for it at present. I do not want many transactions with tax implications but am looking for cash from LWE and XKSS as you know in short order. These get the commission from your sales but please get approval before completion."

436. On 15 July 2011, Mr. Hood responded:

> "Look at a realistic 950K on the two cars, guy went a bit wobbly yesterday on the deal waiting for a reply on my e-mail.
>
> My commission well what can I say, it's a very sweet deal for you and a lot of time for me.
>
> Had a big US collector on the phone till late last night, he says he has unlimited funds for the right cars, says he will buy the first car tonight. Heard it before but let's see what happens."

437. The exchange is of significance in relation to the issue, previously addressed, of whether JDC was acting as agent tasked to sell Mr. Tuke's cars or as principal who was buying cars from Mr. Tuke. The discussion about commission confirms that JDC was acting as agent. The reference to 'uplift' was to the September 2010 agreement. Mr. Tuke's position in the correspondence, understandably, was that the proposed transaction gave rise to no visible uplift at that time, but he was willing to pay commission "on seeing the uplift hereafter": i.e. if and when the cars taken in part exchange were sold for a price which reflected a profit when compared to the price paid for the cars which Mr. Tuke was putting into the exchange.

438. In relation to this part-exchange there was, in contrast to those described earlier, a third party who was in the picture, an American called Michael Gordon. However, as Mr. Hood accepted in evidence, the actual transaction was a "rather different deal to that being presented to Mr. Tuke". What in fact happened was that JDC had two Jaguar cars in its stock: an SS 100 3.5 litre and an XK 140 Drophead. These two cars had, according to JDC's stocklists, anticipated sale prices of £ 375,000 and £ 135,000 respectively: a combined total of £ 510,000. These cars had been acquired by JDC at prices of £ 212,404 and £ 65,703 respectively: a combined total of around £ 278,000. It was these two cars, rather than Mr. Tuke's cars, which were given to Mr. Gordon in part-exchange for two vehicles which he owned. The two vehicles which Mr. Gordon owned (the Mark

II and the XK 150 'S' Roadster) were the vehicles which Mr. Tuke then received. The value ascribed to the part exchange in the invoice from JDC to Mr. Gordon was £ 690,000 in both directions; i.e. the same value as stated in the invoice to Mr. Tuke.

439. Accordingly, what happened was that JDC – rather than a third-party buyer – acquired Mr. Tuke's two cars. In commercial terms, those two cars (valued at £ 690,000) were acquired by JDC as a result of part-exchanging two vehicles which had been bought by JDC for £ 278,000 and whose anticipated sale price was £ 510,000. It was, therefore, in reality a deal whereby JDC was able to trade up by disposing of its stock and acquiring cars from Mr. Tuke. The only distinction from the earlier transaction was that this was facilitated by an intermediate exchange with Mr. Gordon who was the recipient of the cars which were already in JDC's stock.

The parties' arguments

440. Mr. Tuke contended that Mr. Hood's representations as to the nature of the deal were dishonest. This was not a part exchange with a third party, albeit that a third party was involved.

441. Mr. Tuke also contended that the representation as to value, which had been given at £ 950,000 in the email of 15 July 2011, was dishonest. The cars received by Mr. Tuke were, in Mr. Neumark's view, together worth £ 285,000 at most (£ 175,000 for the Mark II and £ 110,000 for the XK 150S). Mr. Broad's view was that they were worth between £ 400,000 and £ 425,000 as a pair. Accordingly, in the view of both experts, they were worth neither the £ 690,000 which was the value of Mr. Tuke's cars (based on the amount for which he had purchased them), nor the £ 950,000 represented by Mr. Hood.

442. Mr. Tuke's damages claim of £ 430,000 was based on the difference between the value of the cars which Mr. Tuke sold (£ 690,000) and the value of the Jaguar Mark II received (£ 150,000 on the lower end of Mr. Neumark's calculation) and the Jaguar XK 150S received (£ 110,000 on Mr. Neumark's calculation). The trustees were prepared to admit the figure of £ 430,000.

443. Separately, Mr. Tuke advanced a claim (already introduced in Section D4 above) for knowing receipt in relation to the Broadspeed. The Broadspeed was, at some stage, transferred to Mr. Hood and, according to his evidence, was sold privately by him in December 2018. This sale was made at a time when Mr. Hood was aware that Mr. Tuke was advancing the present claim for damages, as well as a claim for delivery up of the car, and shortly after the joint administrators of JDC had threatened to obtain a freezing injunction against Mr. Hood on 30 November 2018. Mr. Tuke sought payment of the value of the Broadspeed which, on Mr. Tuke's case, was £ 750,000 being the amount that it was immediately financed for him with Liberty Finance. It was submitted that whilst the car may only have realised £ 460,000 on the sale by Mr. Hood, this did not detract from the claim for the full value of the car: that liability was to be assessed by reference to the value of the chattel at the time that it was transferred to him.

444. Mr. Hood contended in his written closing submissions that Mr. Tuke's valuations were disputed, and he referred to the evidence of Mr. Broad. He also contended that there had been a settlement agreement in relation to the Mark II Jaguar, and that he had asked the Claimant's solicitors for this settlement agreement without success. I was not shown any such settlement agreement.

Representation as to ownership

445. As far as ownership is concerned, I consider that there were dishonest representations. Mr. Hood's e-mails would convey to a reasonable recipient that the transaction was a part exchange with a third party "guy" with whom Mr. Hood had managed to get a deal. The true position was that the transaction involved three parties, and JDC's involvement was not disclosed. Mr. Tuke would, however, have understood that his cars were going to the third party, whereas in fact they went to JDC.

Representation as to value

446. The representation as to the value of the cars being acquired was also dishonest. The valuations of neither expert came anywhere close to the figure of £ 950,000 which was represented. The cars which Mr. Hood put into this transaction, and which were given to Mr. Gordon, had an anticipated sole value of £ 510,000, and there is no reason why Mr. Hood could or would have genuinely thought that Mr. Gordon's cars (which were being part-exchanged for JDC's cars) had a significantly higher value.

447. Both of these false representations induced Mr. Tuke to enter into the transaction.

Damages

448. Despite the trustees' acceptance of a damages claim of £ 430,000 in respect of this transaction, I did not consider that the evidence was sufficient to enable me to reach the conclusion that this was appropriate amount to award as damages. The starting point in Mr. Tuke's damages calculation was the sum of £ 690,000 which was the figure stated in the invoice, and which represented the combined total of the monies which Mr. Tuke had paid for the two cars (the Mark II and the Broadspeed) which he was putting into the transaction. It was on the basis that Mr. Tuke had thereby given value in the sum of £ 690,000 that damages were calculated.

449. However, I was not satisfied that the evidence justified this conclusion. It is true that Mr. Tuke had paid those sums for the two cars (in 2009 and 2010), and to that extent there is evidence that this was their retail value. However, the expert evidence at trial called into question whether the cars were in fact worth those sums.

450. Mr. Neumark's evidence did not address the value of the Broadspeed, but Mr. Broad did. His evidence was that it was one of the most original and unrestored of the Broadspeed cars, although it would cost considerable money to make race ready. He valued it at between £ 300,000 and £ 400,000 in July 2011. Mr. Broad

was not cross-examined on that part of his expert report. Some support for figures in this range can also be found in the price that was eventually obtained for this car by Mr. Hood in 2018: the car was sold, after a rise in the market, for £ 460,000.

451. The other car which Mr. Tuke put into the transaction was a Mark II Jaguar (registration GSL 675). Mr. Broad's valuation of that car in 2011 was between £ 100,000 and £ 125,000. This is lower than, albeit not too far distant from, the price which Mr. Tuke had paid in 2009. Mr. Neumark's report indicated that the amount paid was on the high side. The K500 data indicates a very large number of sales of Mark II Jaguars "in and around June 2010" and none of these was higher than USD 88,000 and the average price was far less than that. As Mr. Broad said, there would have had to be something very special about the specification of this car to make it worth considerably more than prices at this level.

452. On the basis of this evidence, I consider that the appropriate starting point for the assessment of damages is to take the higher end of the figures given by Mr. Broad for the value of the two cars which Mr. Tuke put into the deal: i.e. £ 400,000 plus £ 125,000 = £ 525,000. The higher end is appropriate because these figures are closer to the retail prices which Mr. Tuke had paid in the previous year. To some extent, the difference between the retail prices and Mr. Broad's valuation (e.g. £ 140,000 paid for the Mark II compared to Mr. Broad's figure of £ 125,000) may reflect no more than the fact that a top-end dealer will be able to sell a car at a premium price, whereas an owner such as Mr. Tuke will not be able to do so.

453. The next question is how to value the two cars which Mr. Tuke received in exchange. These cars had been extensively modified, with a number of modern features added. Mr. Neumark's evidence was that this would damage rather than increase their value. Basing himself on a value ascribed by a Mr. Nigel Goldthorp in 2016, Mr. Neumark's evidence was that the Mark II received by Mr. Tuke was worth between £ 150,000 and £ 175,000 in 2011. This figure was, as Mr. Broad said, far in excess of the average for a Mark II Jaguar, and could only have reflected the value of a very special car. Mr. Broad's valuation was £ 250,000, although he said that the car was more difficult than usual to value because due to its bespoke specification and unique enhancements.

454. I propose to take the midpoint in the range between the numbers given by the experts; i.e. between Mr. Neumark's low of 150,000 and Mr. Broad's figure of £ 250,000. I therefore conclude that the value of the Mark II car received, in 2011, was £ 200,000.

455. As far as the XK 150S is concerned, this was also a modified and modernised sports car. Mr. Broad's figures were £ 150,000 - £ 175,000. Mr. Neumark's K500 data showed an average price in June 2010 (a year before the relevant transaction) of US$ 100,000, with a price of US$ 229,000 being achieved in January 2011. A high price of US$ 324,000 was achieved in June 2011, and this was the equivalent of just under £ 200,000. But the vast majority of sales were

well below that, and indeed below US$ 200,000. Mr. Neumark's valuation was therefore "at most" £ 110,000.

456. I consider it appropriate to value this car at a point between the figures given by the experts, but closer to Mr. Neumark's figure since the K500 data tends to suggest that prices lower than those given by Mr. Broad were far more common for this type of car. I consider £ 125,000 to be the appropriate figure. This is not far from Mr. Neumark's 'at most' figure.

457. Accordingly, damages are the difference between £ 525,000 (the value of the cars that Mr. Tuke put into the deal) and £ 325,000 (the value of the two cars that Mr. Tuke received): i.e. £ 200,000.

458. I reject Mr. Hood's argument that there was a settlement in relation to this transaction. No documents have been produced which evidence any such settlement.

459. This leaves, finally, the claim for "knowing receipt" of the Broadspeed. The factual position was that the Broadspeed was at some stage transferred to Mr. Hood, and he sold the car (as he described it) "privately" in December 2018. This was shortly after Mr. Tuke had amended his pleading (in November 2018) to plead a claim for delivery up of the Broadspeed. This claim was made on the basis that "JDC had no authority to transfer this car to Mr. Hood and Mr. Hood knew or was least on notice that it had no authority to do so". This particular argument was not advanced before me. Alternatively, the claim was made for a declaration that Mr. Hood held the car on constructive trust for Mr. Tuke "as assets knowingly received in breach of fiduciary duty". Mr. Tuke sought an order for Mr. Hood to pay the monetary amount of the property, which was said to be £ 750,000 representing the amount of finance on the bar provided by Liberty Finance.

460. This claim gave rise to legal issues concerning a knowing receipt claim discussed in Section D4 above. I do not consider that there is a sustainable case of knowing receipt in circumstances where there has been no claim to rescind or otherwise set aside the part exchange transaction whereby Mr. Tuke sold the Broadspeed. Whilst a claim to set aside the transaction would have had a potential legal basis, in view of the fraudulent misrepresentations made to Mr. Tuke, issues would have arisen in view of, for example, lapse of time and the fact that Mr. Tuke has retained and apparently wishes to retain the Mark II Jaguar which he received in this transaction. As it is, the transaction has not been set aside, and I consider that this means that the claim for knowing receipt cannot succeed.

E7: C Type part exchanged for Costin Lister and Allard

Representation as to ownership

461. This transaction involved a part exchange of Mr. Tuke's Jaguar C Type, which he had bought for £ 3 million at the December 2009 showroom visit. This car was, as shown by the e-mail traffic, a particular favourite of Mr. Tuke's. In return, Mr. Tuke received £ 1 million in cash together with 2 cars which he had

previously owned, and which had been sold as part of the Group C transaction: a Costin Lister and an Allard.

462. It was common ground, as set out in the agreed List of Issues, that (in a series of emails dated 1, 2, 3, 4, 9, 11, 16 and 25 August) Mr. Hood had represented that he was negotiating with third party owners of the Costin Lister and the Allard. Mr. Tuke contends, as before, that there were no such third-party owners: the cars were in fact owned by JDC as at the date of the transaction. The List of Issues recorded Mr. Hood's argument, pleaded in his defence, that he believed that the cars were owned by Terry O'Reilly at about the time of the transaction, and that they were recovered from him for the purposes of the transaction.

463. In view of the common ground that representations as to third party ownership were made, it is not necessary to describe all of the correspondence. It clearly supports the common ground set out in the List of Issues. It is sufficient to describe the following.

464. On 1 August, Mr. Hood e-mailed Mr. Tuke saying that he "[m]ay have a deal on the C Type. Will you take £1M and take back the Allard and Moss Lister?" This clearly implied that Mr. Hood was negotiating with a third party ("may have a deal"), rather than putting forward a proposal from JDC as a principal who wished to purchase. Mr. Tuke's response on the same day was to express disappointment that the C Type was the car on which the offer had been received "Eek. Why is best chances on the ones I like".

465. Since the C Type was then held by Close as security for Mr. Tuke's borrowings, Mr. Hardiman wrote to Mr. Dramby of Close, copying in Mr. Tuke, to raise the possibility that C Type would be substituted by "two replacements with a combined value of £ 2.55 million". His e-mail, dated 2 August 2011, referred to £ 1 million "coming from JD Classics as part of the transaction to purchase the Jaguar C-Type". Mr. Tuke was, judging from his next e-mail dated 2 August, somewhat surprised by aspects of what Mr. Hardiman had said. He said to Mr. Hood:

> "I saw proposal go from Neil to Dramby today. How does this work now? Neil mentions 1m from JD to be paid as part of it with my 2m. Not sure which monies he thinks these are exactly. What really the chance on the C Type? Who actually owns the Allard and Lister? How do they suddenly get such silly values?"

466. Mr. Hood did not answer the question as to ownership truthfully. The actual owner of both cars was JDC, which had received them in the Group C transaction. JDC's records show no onward sale of either car, whether to Mr. O'Reilly or anyone else. In his evidence, Mr. Hood did not seek to support the case that the cars were owned by Mr. O'Reilly. His evidence as to third party ownership was vague. He said that he believed that there were two customers on this deal, but he was unable to identify them "off the top of my mind at the moment".

467. The statement that there were two owners fitted in with the information which Mr. Hood gave at the time, in his email of 2 August 2011.

> "Mike
>
> I have pulled the deal together so both the owners of the Allard and Lister pay 500k each plus the two cars for the C Type, thought of this cutting the grass on Saturday afternoon worrying where to find the £ 1M I promised you. After speaking to Thomas Dramby at Close today he has agreed it. I had to put the values on the cars to get it past Close to release the C Type, funds will go direct to Close to pay down the £ 3M."

468. This representation, that Mr. Hood had pulled a deal together with two owners who had each agreed to pay £ 500K in cash, as well as providing their cars, was false to Mr. Hood's knowledge. The representation repeated the fiction of third-party ownership which had been a consistent feature of Mr. Hood's dealings during 2011. Indeed, Mr. Hood had to lie about third party ownership of these two vehicles. If he had told the truth, it would have revealed that he had lied in relation to the Group C transaction, where Mr. Hood had represented that these two cars (now coming back to Mr. Tuke) were being part-exchanged with third party owners of the Group C racing cars.

469. Again, there is no evidence to corroborate Mr. Hood's evidence as to third party ownership, or his suggestion in evidence that there may have been two individuals involved at that stage, but that they may have dropped out so that "to get the deal over the line, JD Classics may just have carried on".

470. Mr. Tuke responded on 2 August 2011, expressing his disappointment at the transaction. He described the C Type as the "only race car I wanted to keep, and which has cost me 3.6m goes for 2 cars probably worth about 2.1 in the real world plus 1m cash (net loss 0.5m) which instead of coming to me goes to Close". He complained that he therefore would get no cash, which he needed, and now had 2 cars instead of one.

471. Mr. Hood's response on 3 August 2011 was that if Mr. Tuke wanted Mr. Hood "to call off the C Type deal I will". The email therefore maintained the pretence that the part exchange, which Mr. Hood might "call off", was with third parties rather than JDC itself.

472. Mr. Tuke's reply on 3 August 2011 was that he was not clear if the C Type deal had yet been done. He then discussed possible sales of other cars, saying: "I am not giving any more away like this". Mr. Hood's response was that he had negotiated a buy-back for Mr. Tuke on the C Type. In fact, he had negotiated no such thing, since there was no third party with whom he was negotiating. Mr. Hood again offered to call the deal off. On 4 August, Mr. Hood explained the buyback to which the fictitious third parties had agreed: "they take cars back plus £ 1.5m for up to 6 months after deal is done".

473. On 5 August, Mr. Tuke e-mailed in relation to the proposed transaction, and in particular a £ 50,000 fee that Close was proposing to charge. Mr. Tuke also raised the subject of the "uplift commission".

> "I remain in serious difficulty with my business by end of this month. I presume you will stand the 50k therefore, it can come out of uplift commission on XKSS if there is any. C Type deal I reckon is negative by around 500k so arguably has negative commission of 50k which would probably leave us neutral if XKSS does sell, and which in the circumstances is fair I think".

This e-mail therefore provides further confirmation that Mr. Tuke understood that the agreement reached in the September 2010 for the payment of uplift commission was still operative, both for the C Type transaction under discussion and for the prospective XKSS transaction. Mr. Hood did not dispute this, or give any indication that JDC was buying the C Type as principal without any third-party involvement. His email of 9 August said that the car was "being looked at on Thursday. If they are happy deal is on". His email of 25 August expressed some disappointment at the lack of remuneration on this transaction:

> "With all the work I am doing in the background with no charge to you as of yet this 50K fine you want me to pay is grating me".

474. On 5 September, Mr. Hood told Mr. Tuke: "I have sold more than three cars a year for you, the Lister, Allard, Lotus, Aston, Broadspeed and C Type". That e-mail, and the reference to selling a number of cars "for" Mr. Tuke, is consistent only with what I (and Lavender J.) consider to be the nature of the relationship which existed between Mr. Tuke and JDC in relation to sales, namely an agency relationship.

475. Mr. Tuke's case that there was a fraudulent misrepresentation as to third party ownership is therefore in my view clearly established.

476. In his written closing, Mr. Hood did not seek to press an argument that there were third parties involved in this part exchange transaction. He submitted, however, that the C Type was "a simple sale/ exchange transaction to JD Classics, with the result that there was no question of any agency arrangement". He submitted that Mr. Tuke knew that he was selling the C Type to JD Classics in return for the two cars coming from JD Classics. In that regard, Mr. Hood referred to some (but by no means all) of the correspondence which I have set out above, as well as communications between him and Mr. Hardiman to which Mr. Tuke was not party. He also referred to the documentation which was executed in connection with the transaction, including the invoice from JDC to Mr. Tuke and documentation relating to the financing arrangements with Mr. Tuke. He also referred to an e-mail sent some months later, in March 2012, where Mr. Hood had said: "No plans to race the C Type, just sell it if we be a deal together".

477. I do not accept these arguments, which in substance are the same as those advanced in relation to the Group C transaction. I reject the argument in the present context for essentially the same reasons that I rejected it in the context of the Group C transaction. If the contractual documentation, to which Mr. Hood referred, stood on own, it might well result in the conclusion that JDC and Mr. Tuke were simply buying and selling to each other. However, that documentation did not stand on its own, but was preceded by express and implied statements, which were untrue, that this was a part-exchange transaction involving third parties. None of the contractual documentation relied upon negated those false representations. Indeed, when Mr. Tuke expressly raised a question in his email of 2 August, following Mr. Hardiman's e-mail the same day, as to the ownership of the cars being exchanged, Mr. Hood gave a dishonest response. Mr. Hood did not give the simple answer, contained in his written closing, that this was a "simple sale/exchange transaction to JD Classics".

478. As for the March 2012 e-mail relied upon by Mr. Hood: this was sent many months after the part exchange of the C Type car, and Mr. Tuke was not asked about this document during the course of his evidence. He was therefore not given the opportunity to say what, if anything, he understood from Mr. Hood's comment about the C Type in that e-mail. In these circumstances, I would not think it fair or appropriate to draw any conclusion, adverse to Mr. Tuke, from this e-mail. In any event, I consider that the correspondence at the time that the transaction took place was clear, and would have conveyed to any reasonable person – and did convey to Mr. Tuke – that the transaction was a part-exchange with third party owners. I have no doubt that that was what Mr. Hood intended Mr. Tuke to think, and that this is what Mr. Tuke understood.

479. As with the other transactions, I have no doubt that the misrepresentation as to third parties induced the transaction, and in any event Mr. Tuke can rely upon the presumption of inducement. Mr. Tuke's evidence in his witness statement was that had he known that there were no third-party sellers, and that the buyer of the C Type was Mr. Hood himself, he would not have gone ahead with the transaction. I accept that evidence. I consider that his entire approach to the proposal would have been different, which was no doubt why Mr. Hood misled him.

Representation as to value

480. Mr. Tuke's case that there was also a fraudulent misrepresentation by Mr. Hood as to the value of the cars received in part exchange was less straightforward than the case that he was able to advance in relation to earlier transactions. The correspondence described above does not contain a clear express representation by Mr. Hood as to his opinion of the value of the Costin Lister and the Allard. It does contain some discussion as to figures given to Close, but Mr. Hood said (in his email of 2 August 2011) that he had had to put certain values on the cars in order to "get it past Close". For his part, Mr. Tuke's e-mails show that he was very doubtful as to whether the cars which he was receiving were worth the values which were being ascribed to them, or (taking into account the £ 1 million cash payment) the value of the C Type that he was putting into the deal.

481. These considerations may explain why the pleaded particulars as to "the representations and their falsity", set out in paragraphs 114T – 114W of the Amended Particulars of Claim, focused on the representations as to ownership rather than any representation as to value. They may also explain why neither the opening nor closing submissions of the Claimants clearly identified any pre-contractual representations as to value. A case was, however, advanced by reference to the invoice which Mr. Tuke received. This recorded a part exchange of the C Type for a purchase price of £ 3,500,000 million, part exchanged for the Costin Lister at £ 1,350,000 and the Allard at £ 1,150,000 and a "Balance paid by Finance House" of £ 1,000,000. However, there was no clear evidence that Mr. Tuke saw this invoice before he made his decision to part exchange the C Type, or before the transaction was concluded.

482. In view of these uncertainties and difficulties, I was not persuaded that there was a fraudulent misrepresentation as to value. Whether or not such misrepresentation was made does not, however affect the computation of damages flowing from the fraudulent misrepresentation as to ownership, since (as with all the sale transactions) I consider that this misrepresentation induced Mr. Tuke to enter into a part-exchange transaction which he would not otherwise have concluded. I assess damages on the basis of the difference between the value of the asset which Mr. Tuke sold, and the value of the assets received, leaving aside for present purposes the claim based on loss of investment opportunity.

Damages

483. The value of the C Type ascribed in JDC's invoice was £ 3.5 million, which broadly represented the original purchase price (£ 3 million) and the amount which Mr. Tuke had spent on the car.

484. I consider that there are difficulties in taking this figure as the starting point for a damages calculation. In his expert report, Mr. Broad said that the estimated value of this car (which was extremely desirable to all serious collectors because of its link to the famous racing driver Juan Fangio) was between £ 2 million and £ 2.5 million in 2010/2011. Mr. Neumark did not address this issue in his reports, and did not dispute Mr. Broad's figure. I think that Mr. Broad's figure is broadly consistent with Mr. Neumark's view that this car would now be worth between £ 4 and £ 4.5 million, representing a doubling or near doubling in value, depending upon which of Mr. Broad's figures are taken. A rough doubling in value is itself consistent with Mr. Neumark's analyses of published indices: his 'blended' average index gave an index value of 116.02 in 2011 and 248.64 in 2020. This conclusion as to value would mean that Mr. Tuke bought the car for a high price in late 2009, reflecting in part the fact that he was buying from an expensive top-end retailer.

485. For the purpose of assessing damages, I will take the highest figure within Mr. Broad's range (£ 2.5 million) as representing the value of this car in 2011. The question is therefore whether and to what extent he did not receive this value in return by way of cash and part exchanged vehicles.

486. Mr. Tuke in fact received £ 1 million in cash, plus the Allard and Costin Lister. Mr. Neumark's evidence was that the Costin Lister was worth £ 750,000, and the Allard £ 800,000: a total of £ 1,550,000. (Mr. Broad's figures were somewhat higher). On the basis of Mr. Neumark's figures, therefore, Mr. Tuke suffered no loss. He sold a car worth £ 2.5 million, and received in return £ 1 million in cash plus two cars worth £ 1,550,000.

487. In reaching this conclusion, I have not lost sight of the fact that the Joint Trustees were prepared to accept a damages claim of £ 950,000 based upon a value of £ 3.5 million to be ascribed to the C Type in 2011. In the light of the expert evidence as to the value of that car in 2011, however, I do not consider that a starting point of £ 3.5 million can be justified. Had that starting point been appropriate, then I would have accepted the damages calculation; because I thought that Mr. Neumark's reasoning which led to his figures, and the underlying data on which he relied, was more persuasive than Mr. Broad's.

488. I therefore conclude that, in 2011, Mr. Tuke did not sell the C Type at an undervalue.

489. It was also argued for Mr. Tuke that damages should be calculated on the basis of a sale of the C Type, recorded in JDC's books, to Guernsey Classic Cars in 2017. The price paid was, apparently, £ 8,500,000. This sale, if it took place at that price, would have been a sale for approximately twice what the car was worth, based upon Mr. Neumark's evidence of a value of £ 4 – 4.5 million in 2020 and bearing in mind that Mr. Neumark's market index for 2020 was approximately the same in 2017.

490. I can see no logical reason to assess Mr. Tuke's loss, by reason of selling his C Type in 2011, by reference to a sale apparently achieved by JDC at an inflated price in 2017. This is particularly so in circumstances where Mr. Tuke's evidence and case is that he did not want to sell this car at all, and where a claim for loss of investment opportunity is made on the basis that the car would, but for Mr. Hood's fraud, have been retained by Mr. Tuke to the present day. I deal separately with the loss of investment opportunity claim in Section F, where I will also consider more generally Mr. Tuke's argument that damages should be assessed by reference to specific sales alleged to have been made by JDC subsequent to the time when Mr. Tuke sold his cars.

E8: XKSS part exchanged for Lister Knobbly

Introduction

491. This transaction involved the part exchange of the valuable XKSS which Mr. Tuke had purchased in early 2010 (see section E1 above) for £ 3.456 million. In April 2012, Mr. Tuke part exchanged that vehicle for a Lister "Knobbly" Ecurie Ecosse car. On 22 December 2011, Mr. Hood told Mr. Tuke that this car was worth £ 1.5M plus. The invoice issued by JDC ascribed a value of £ 3.5 million to the XKSS, £ 1.5 million to the Lister, with a balance of £ 2 million "payable from JD Classics".

492. Mr. Tuke alleges three fraudulent misrepresentations.

493. First, there is the now familiar allegation that Mr. Tuke was given to understand that this was a part exchange with a third party. Mr. Hood's response is again familiar. He maintained, without any documentary or other corroboration, that the transaction did involve a third party. However, the principal argument advanced in his closing written submissions was that the chain of emails make it "completely clear that the Claimant knew that JD Classics were the buyer of the XKSS and the Seller of the Lister". The ground in relation to third party ownership was traversed by Lavender J. in paragraphs 116 – 132 of this judgment. His conclusion was that Mr. Hood falsely represented in the December 2011 emails, which led to this transaction, that the Lister belonged to the third-party buyer of the Jaguar XKSS. I will consider the relevant correspondence below, which has been supplemented by an additional e-mail on which Mr. Hood seeks to rely. My conclusion is, however the same as that of Lavender J.

494. Secondly, there is the (also familiar) allegation of a fraudulent misrepresentation as to the value of the Lister. On this issue, neither expert sought to support the figure of £ 1.5 million which Mr. Hood had given. Mr. Neumark's figure was that the car was worth no more than £ 400,000. Mr. Broad valued the car at between £ 900,000 and £ 1,000,000.

495. Thirdly, Mr. Tuke relies on a representation as to the provenance of the Lister. In his emails sent in December 2011, Mr. Hood described this car as "a very famous car and ready to race", and "the original Ecurie Ecosse team car fully restored and ready to race." In his closing submissions, Mr. Wright focused on the use of the words "the original". Mr. Tuke's case, supported by Mr. Griffin's evidence, was that this car was a reconstruction, with very little of the original car remaining after its chassis had been cut in half and fused to that of another car, with the resultant hybrid car having then been written off and declared a total loss.

Representations as to ownership

496. In an e-mail sent on 5 December 2011, Mr. Hood mentioned a possible transaction involving the Lister. He wrote:

> "I also may have a deal with the Ecosse Lister at £2M plus £2M cash but I have not got further with this one. Talking again tomorrow. Getting a straight cash deal is not happening at the moment."

497. The e-mail clearly implied that Mr. Hood was dealing with a third party: he was interested in a part exchange transaction, but not a straight cash deal. The involvement of this third party was repeated in Mr. Hood's email of 8 December:

> "Do you want me to try a deal with Ecosse Lister and XKSS as the guy is waiting for my call."

498. Mr. Tuke replied on 8 December:

> "I do not know the Ecosse Lister, why it worth 2m given what we are experiencing? If it really is then the argument to him is that he should sell it for that to pay me all cash and I would want you to push him at 4.5 cash.
>
> If he prefers it as a PEX then his car should be valued at 1.5 and he pay 3m cash.
>
> Keep up the strug[g]le"

499. Lavender J. said, correctly in my view, that Mr. Tuke thereby indicated his understanding that the Lister Jaguar Knobbly belonged to the third party who had offered to buy the Jaguar XKSS, and that it was the third party who was wanting to give the Lister Jaguar Knobbly in part exchange. The true factual position, however, was that the Lister Jaguar Knobbly belonged to JDC, which had acquired it in around August 2005. There was, therefore, no "guy" with whom Mr. Hood was discussing the transaction, and who was unwilling to pay cash rather than part exchange.

500. However, again as Lavender J. said, Mr. Hood did not correct Mr Tuke's misunderstanding. On the contrary, he encouraged it. On 11 December 2011 he wrote:

> "Mike everything seems to be P/ex at the moment. Ecosse Lister is a very famous car and ready to race, It's had the JD treatment. It is a good deal. We could include a buyback so once some other cars move on you can have it [i.e. the Jaguar *XKSS*] back".

501. On 16 December 2011, Mr. Hood wrote:

> "XKSS deal is on if you want it … if you do not fancy the Ecosse Knobbly, unique car and a serious long term investment car but the £2m cash in the deal is the limit. I would deal with the Lister. If we do not deal next week we may miss this one. Do not talk to Close about this because I want you to retain the maximum amount of cash from this deal. Leave it to Neil to negotiate getting the XKSS out as security from them. If you want to deal I will look into a buyback over the weekend".

502. This e-mail therefore maintained the pretence that Mr. Hood was dealing with a third party; that "we" might miss the deal if it was not done next week, and that Mr. Hood would try to negotiate a buy-back.

503. On 17 December, Mr. Tuke responded, saying:

> "We should keep the XKSS deal, but before I decide please explore buyback, but not at a cost to the deal, and I need to know what the Ecosse really worth, Bonhams

> price?? Is there something here that can bring back the C Type and maintain a sensible value in the moves".

504. Mr. Hood's response, on 17 December, was that he "will explore buy back on XKSS". The reference in both emails to exploring the buy back is consistent only with Mr. Hood negotiating with a third party. Otherwise, there would be nothing to "explore." A person buying for his own account would simply have said: "I will think about whether I will offer you a buyback" or something similar.

505. On 20 December, Mr. Tuke asked questions so as to enable him to "value the XKSS deal you are proposing. £ 2m cash plus what value in the pex for what in real today's money? Is the Knobbly in the Lister book?" The e-mail contained various complaints as to how matters had developed.

506. Mr. Hood responded on the same day, saying that he had

> "… moved heaven and earth to get you deals in a[n] increasingly worse financial environment.
>
> ….
>
> Do you want me to start listing what I have done for you this year at no cost to date.
>
> …
>
> Mike, I have worked very hard for the XKSS deal, if you do not want it just say. It's a good deal for you. If you do not want it, I will not bother spending more time on a buyback".

There was no hint in this email that the deals which Mr. Hood had obtained were in fact part exchanges with JDC, from which JDC stood to profit.

507. Later that day, Mr. Tuke repeated his request for information enabling him to value the proposed deal:

> "I most probably should have the XKSS deal, that does not mean the same as wanting it, but I do need to know what the deal is! I have no idea what value is nominally in the Knobbly or anything much about it. I have asked this more than once and also whether it is in the Lister book. If you tell me it is worth only [£] 1m I shall have a problem doing it".

508. It was in this context that Mr. Hood gave his opinion, in his e-mail of 21 December 2011, that the Ecosse Lister was worth £ 1.5 million plus:

> "Ecosse Lister is worth [£] 1.5M plus, it's a race ready front running/ winning car totally rebuilt by us over the

> last two years. Car is in the Lister book. It gets invited to all of the world's major events. Do you want me to call the deal on? If I can get a buyback I will put it past you first".

509. After a further email from Mr. Tuke, in which he had asked questions as to whether the buyer was a trader, Mr. Hood said on 22 December:

> "Ecosse is worth 1.5M plus. I do not want to go through another 4 or 5 month period where nothing happens on the sales front and start kicking ourselves about not taking a deal. When my finances are more secure I would have it".

This e-mail therefore repeated the valuation of the Ecosse at £ 1.5m, and represented that Mr. Hood would buy the car if his finances were more secure. The truth was, however, that JDC was already the owner of the Lister, and there was therefore no question of JDC lacking the finance to buy it. The e-mail also provides an illustration of Mr. Hood's pretence that he was working on Mr. Tuke's side with a third party (" … start kicking ourselves about not taking a deal").

510. On the same day Mr. Tuke told Mr. Hood to "go with the XKSS please". His question – "When will it be through" – reflected his understanding that Mr. Hood was dealing with a third party. Mr. Hood's response was:

> "Deal is done just got to nail down the buy back as low as I can. Don't spend anything until the money is in the bank".

511. This response maintained the fiction that Mr. Hood was dealing with a third party, with a continuing negotiation as to the terms on which Mr. Tuke could buy back the car.

512. The Jaguar XKSS was charged to Close, and its sale required their approval. This was given in an email from Mark Walker of Close on 14 February 2012, in which Mr. Walker set out his understanding that the Jaguar XKSS was being sold to Mr. Hood and that the Lister Jaguar Knobbly was currently owned by Mr. Hood.

513. This prompted Mr. Tuke to send an email to Mr. Hood on the same day in which he asked:

> "Why do they think you own the Ecosse and XKSS being sold to you Derek?".

514. Mr. Hood replied as follows on 14 February 2012:

> "Typo it should be JD.

> I am having to transfer the current debt on the Lister to my D type. The Lister ownership then transfers from its current owner to JD then to you then to Close as security, I will then have a £500K debt on my D Type, Close also get ownership of my D Type until the £500K is paid off. I have done this to get the XKSS deal done and get you cash. JD then pass the XKSS to its new owner".

515. This was a dishonest explanation. There was no "current owner" who was transferring the Lister ownership to JDC. Nor was there any intention for JDC to "pass the XKSS to its new owner", since there was no new owner other than JDC itself. The explanation also sought to portray the transfer of ownership to JDC in both directions as being the mechanics of giving effect to the transaction whereby the third-party owner of the Lister, and prospective owner of the XKSS, would transfer and receive title. It did not therefore affect the substance of the transaction, which was a part exchange with a third party.

516. Mr. Tuke's evidence (which I have set out in greater detail in connection with the Group C transaction) was that he understood that the involvement of JDC in the contractual documentation on the part exchanges was part of the mechanics of the process, and did not affect the nature or substance of the transaction. I have no doubt that this is what he understood. This is unsurprising: this is how Mr. Hood sought to explain the involvement of JDC in this e-mail when asked a direct question about why Close understood that the Lister was owned by Mr. Hood and that the XKSS was being transferred to him. An honest answer would simply have been that there was no third party, and that this was a part exchange which only involved JDC and Mr. Tuke. That explanation was, deliberately, not given.

517. Mr. Tuke's evidence in cross-examination by Mr. Hood was

> "The transfers from the current owner I did not take to be you. I took that to be the third party that I had been told this whole deal was with, on the XKSS and the Lister.
>
> There was a third party and the new owner was that third party as well …".

I accept that evidence from Mr. Tuke. It is the only fair reading of the e-mail of 14 February 2012, particularly when viewed against the prior correspondence.

518. Mr. Hood was asked about this sequence of e-mails, and in particular his e-mail of 14 February 2012, in cross-examination. He gave various explanations, which were neither consistent nor convincing. He accepted, at the outset of his cross-examination on this issue, that the deal was presented to Mr. Tuke on the basis that it was a deal with a third party. Later in his evidence (at the beginning of Day 8), he accepted that the current owner of the Lister and the new owner of the XKSS were the same person: "It was myself and the car was being transferred into JD". The two answers could not in my view be reconciled. If the transaction was with either Mr. Hood, or JDC, then it could not be regarded as a transaction with a third party.

519. Mr. Hood also at times sought to identify third parties involved in the transaction. There was, as usual, no documentary or other corroborative evidence as to the involvement of any third party. JDC's records show that the Lister was owned by JDC. In his evidence, Mr. Hood said (in familiar vein) that there was a third party who was going to buy the Lister, and he was then persuaded to part exchange it for the XKSS plus £ 2 million cash. I consider that this was an invention. Such a transaction made no sense: if the third party had the cash to buy the Lister, and also had the additional £ 2 million for the part exchange, then there was no reason why this could not have been an all-cash deal, which was what Mr. Tuke wanted.

520. At the end of Day 7, Mr. Hood was asked to identify the third party. He was unable to do so, although he then indicated that he was rather tired. On the following morning, he was asked further questions as to the third party. He referred to interest in the XKSS from Mr. Engelhorn and also from Chris Evans. There was no documentary support for this, and in any event it is fanciful to suppose that both of these individuals were also simultaneously interested in the transaction whereby they would buy the Lister and then immediately part exchange it for the XKSS. If either of them was interested in the XKSS, then I can see no reason why they would not simply have paid for it, or (if interested in a part exchange) would have exchanged a car that they already owned.

521. The truth was that Mr. Hood was himself very interested in acquiring the rare and highly desirable XKSS for the reasons which he explained in an e-mail to his accountants on 1 March 2012, namely a possible future profitable sale:

> "We have the opportunity to purchase outright the Jaguar XKSS in the showroom for £ 3.5m. It belongs to one of JDs major clients and was sold to him for £ 3.45m in 2009. It is worth something of the order of £ 5.0m-£5.5m if it is sold correctly".

522. I therefore reject Mr. Hood's various explanations for the correspondence. I agree with Lavender J. that Mr. Hood painted a false picture of the transaction. Lavender J. did not have the benefit of any evidence from Mr. Hood as to why this had happened, but he gave the following explanation in paragraph [130] of his judgment as to why the false picture had been presented:

> "[130] However, the answer to my question is clear: because Mr Hood thought that he was more likely to get Mr Tuke to agree to buy the Lister Jaguar Knobbly if he misrepresented the position than if he told the truth. He knew that by this stage Mr Tuke was desperate to sell cars and had no interest in buying a car like the Lister Jaguar Knobbly. He knew that he would have got nowhere if he had said to Mr Tuke, "Would you like to buy this car from JD?" Consequently, he knew that his only chance of selling this car to Mr Tuke was to pretend that it was being offered in part exchange by the buyer of

> the Jaguar XKSS. So that is what he did. This was deliberate and dishonest conduct by Mr Hood".

523. I agree with that conclusion. There was also a very significant financial incentive, as explained in the e-mail to its accountants, for Mr. Hood to acquire the XKSS if he could possibly do so.

524. Before leaving this issue, I should specifically address one e-mail on which Mr. Hood, in his written closing, placed particular reliance. This was an e-mail purportedly sent by Mr. Hood from his personal e-mail address (derekhood@btconnect.com) at 14.33 on 13 March 2012. This e-mail was produced by Mr. Hood very shortly before the trial resumed in July 2020, and it gave rise to an interlocutory application by Mr. Tuke for production of the native version of the email as well as service of a notice to prove.

525. In the documents which the parties disclosed in the course of ordinary disclosure, there was an e-mail chain of exchanges between Mr. Tuke and Mr. Hood at his company e-mail address (DerekHood@jdclassics.co.uk). The material part of the chain began with Mr. Hood saying that he should "have XKSS concluded by Wednesday": (e-mail sent at 11.43 on 12 March 2012). Mr. Tuke asked what was going on, because the money "should have been there last Thursday": (e-mail sent at 12.02 on 12 March). Mr. Hood said that there had been a "major wobble" last week, but that "money should be cleared with me tomorrow latest with funds to you and Close Wednesday": (e-mail sent at 12.23 on 12 March). This provoked a fairly angry response from Mr. Tuke, copied to Mr. Hardiman – "Not good enough Derek": (e-mail sent at 21.16 on 12 March). This also included the statement that Mr. Tuke was now in default to Close "and totally unaware of whether you have simply absconded with cars and cash".

526. Mr. Hood responded the next morning (08.08 on 13 March):

> "You really think I would abscond with your cars and cash? Your decision to have a tirade with Close directors last week almost caused the XKSS deal to collapse.
>
> I am the man who has put one of my cars up as collateral to Close to get you funds, the same guy you think is absconding with your cash. I have worked my arse off to keep the XKSS deal alive because of the Close delays.
>
> …
>
> I will be taking the money you owe me from last year and for the Mille prep from the XKSS funds that I hope in place. If you do not agree tell me now".

527. Mr. Tuke replied (13.03 on 13 March), denying that he had said that Mr. Hood was absconding with the cash, and setting out his views of the 'spat' with Close. He said that he had not "approved you taking deductions, Derek".

528. Mr. Hood replied (14.06 on 13 March) with a one-line e-mail telling Mr. Tuke to read the first line of his e-mail. This was a reference back to absconding in the second sentence of the e-mail sent at 21.16 on the previous evening. Mr. Tuke's response (14.31 on 13 March) was:

> "How bloody sensitive are you?? Can't you tell a figure of speech from an accusation? You told me you had the money at Christmas, was I supposed to take that literally? What was wrong with a cheque book? Close are on the warpath, when can I tell them they will get money for certain?"

529. There was a response to this e-mail on the e-mail string. It was sent by Mr. Hood at 18.38 on 13 March 2018, and specifically responded to the comment about "sensitive". It also responded to the earlier point which featured in the chain, as to whether Mr. Hood could make deductions from the XKSS monies received:

> "Sensitive, that is not how it reads.
>
> I am deducting the invoices".

530. None of this correspondence was of any assistance to Mr. Hood's case. Indeed, it reinforced the earlier correspondence, at the time when the transaction was agreed, as to the involvement of third parties, and hence the delays in receiving funds. There was certainly no suggestion that JDC which was awaiting funds for a purchase of the XKSS that it was itself making.

531. However, shortly before July hearing, Mr. Hood produced a document with a different response to Mr. Tuke's e-mail sent at 13.03 on 13 March 2012. This document omitted the three e-mails in the sequence which followed that 13.03 e-mail; i.e. the e-mails timed at 14.06, 14.31 and 18.38. Instead, there was a response, timed at 14.33 on 13 March 2012, which was in the following terms:

> "You do suggest I have absconded with your cars and cash; read your email back you sent me last night.
>
> Why should Dramby be asking where the money is? He knows JD are buying the XKSS, he knows JD are selling you my Ecosse Lister because the Lister is being used to replace the XKSS as security for the loan you raised for your business against the Group C cars. He has been aware of the possible deals on the XKSS since the meeting you had with him early Feb. He has corresponded and also raised all the paperwork to complete the deal with you since my idea for a deal on the-XKSS last year.
>
> We both need to calm down.
>
> To get this straight once and for all the deal is JD are buying the XKSS from you and JD are selling you the

> Ecosse Lister and I am using my D Type as extra security to Close. Pledging my D Type to Close gives you extra cash because by personally adding collateral to Close enables you to get the deal done and allows you a bigger share of the £2m. Typically my D Type has now had to be debt free for Close so l have paid the finance off both my D Type and lister. You now also have the certain knowledge you can tell your board you have the cash you require for. your business. I have raised the funds to pay off the D Type and. Ecosse Lister and also raised the funds to purchase the XKSS from you for this deal to happen. JD now has more time to sell the XKSS.
>
> No more aggressive emails please, it will only lead to more misunderstanding because of the pressure we are both under. It's easier to talk on the phone".

532. Had this e-mail been sent at the time, it would lend some support Mr. Hood's case that Mr. Tuke knew that the XKSS transaction was simply a transaction between Mr. Tuke and JDC. Mr. Hood's e-mail refers, for example, to "my Ecosse Lister", and later describes straightforward sales between JDC and Mr. Tuke.

533. This "14.33" e-mail was the subject of a notice to prove served on behalf of Mr. Tuke. No real attempt, however, was made by Mr. Hood to prove the authenticity of this e-mail. Mr. Tuke was not asked about it in cross-examination: it was not suggested to him that he had received it. Mr. Hood did not refer to it in any of his witness statements exchanged pursuant to the orders made by the court: the e-mail was produced after statements had been served. Nor did he refer to it in any of his answers in cross-examination.

534. Leaving those points aside, I am wholly unpersuaded that the 14.33 e-mail was sent by way of a response to Mr. Tuke's 13.03 e-mail. The documents that were disclosed in the proceedings show that a different response was sent to that e-mail, and this then led to two further e-mails in the string (i.e. the emails at 14.06, 14.31 and 18.38). The 14.33 email cannot sensibly stand alongside those e-mails. No explanation was given, or in my view could be given, as to why (in the string produced by Mr. Hood leading to the 14.33 e-mail), Mr. Tuke's e-mail of 14.31 was omitted; particularly bearing in mind that Mr. Hood clearly responded to that e-mail at 18.38.

535. Nor was there any explanation as to how the 14.33 e-mail could have been sent from Mr. Hood's personal e-mail account, when the e-mail string shows him using his jdclassics.co.uk e-mail address, including at 14.06 that afternoon.

536. Furthermore, the native version of the 14.33 e-mail has not been produced by Mr. Hood, despite requests and an application made by Mr. Tuke prior to the resumed hearing. Mr. Hood has said that it is not available to him, and an explanation was given as to why that was the case. It is not necessary for me to explore the validity of that explanation. The important fact is that there are

serious question-marks, as described above, as to whether this 14.33 email was sent at the time. These might perhaps have been dispelled by the production of the native format version of the e-mail. Not only do the question-marks therefore remain, but the non-production of the native format e-mail adds to them.

537. Finally, it seems to me that the terms of the 14.33 e-mail, and the explanation of a straightforward sale between JDC and Mr. Tuke, simply do not fit with the rest of the correspondence which I have described. This transaction was presented as one which involved a part exchange with a third party, and that pretence was maintained throughout, including when Mr. Tuke asked a direct question in February. It would also be expected, given the terms of that correspondence, that Mr. Tuke would have reacted in writing to the 14.33 e-mail, had it been sent, notwithstanding the entreaty at the end of the email to speak on the phone. Such reaction would be expected not least because the 14.33 e-mail presented a very different picture to that shown in the prior correspondence.

538. I therefore reject Mr. Hood's case, as advanced in his written closing, that Mr. Tuke knew that he was simply buying from and selling to JDC.

Representation as to value

539. The question here is whether Mr. Hood genuinely held the view that the Lister was worth £ 1.5 million plus as represented in the correspondence set out above. In his closing submissions, Mr. Hood maintained that this figure was an honest and correct assessment of what he thought it was worth. He said that it was "clearly valued and accepted by Bonhams at the time otherwise Close would not have accepted it as security for the replacement of the XKSS."

540. I do not consider that Mr. Hood genuinely believed that the car was worth £ 1.5 million plus. Neither of the experts' views as to the value of this car came close to this figure. Mr. Neumark's view is that it was worth no more than £ 400,000, and Mr. Broad's view was between £ 900,000 - £ 1,000,000.

541. Mr. Neumark's figure is not far from the figure of £ 500,000 which was the price paid, as recorded in JDC's books, for the transfer of the car from Mr. Hood to JDC in March 2012. The transfer at this price was also referred to in an email from Mr. Gilligan of PKF (JDC's accountants) dated 19 April 2012. Since Mr. Hood was selling the Lister to JDC at that time (having originally bought it for £ 380,000 in 2005), the figure of £ 500,000 is some evidence as to his view of the value of the car at that time (i.e. March/ April 2012). There is no reason to think that he would have had a radically different view in December 2011 when he was making representations to Mr. Tuke.

542. Mr. Hood sought to explain the £ 500,000 figure as being referable to the amount of finance which he had originally raised when he had first bought the car. However, I was not persuaded that this would have been a reason for Mr. Hood to transfer the car to JDC in March/ April 2012 for a figure which was significantly below his assessment of its market value.

543. The figure of £ 500,000 in early 2012 is, however, quite close to figure of £ 380,000 paid in 2005, when allowance is made for the rise in the market: Mr. Neumark said that this rise would be around 40%, producing an equivalent figure of £ 530,000 in December 2011. I accept that this figure of £ 500,000 may be a little low, bearing in mind that there is evidence of significant restoration work in the intervening years. But I do not consider that it is very far from what Mr. Hood actually thought.

544. Reference was made by the parties to a valuation of this car carried out by Mr. Hudson-Evans in November 2010. He gave a range of figures in his report, including £ 1.3m - £ 1.5m retail down to £ 800,000 - £ 1m at auction. His conservative valuation was a point between these figures, namely £ 1.15 million. These figures were, however, influenced by information given by Mr. Hood as to JDC's involvement in two recent sales and also offers for the Lister or a comparable car. The relevant comparator sale were, however, invented: there was in fact no record of either sale in JDC's books. Since Mr. Hudson-Evans placed some reliance on this information in reaching his figures, in circumstances where (as he said in his report), there were "very few definite results to analyze", I do not consider that it provides a reliable basis to support the £ 1.5m plus figure which was given by Mr. Hood to Mr. Tuke in December 2011.

545. Mr. Hood also referred to a Bonhams valuation. However, that valuation was not in evidence, and its amount is therefore unknown. Whatever it was, it appears to have resulted in Close requiring Mr. Tuke to provide additional security of £ 600,000 following completion of the deal involving the XKSS/ Lister swap.

546. I consider that the best evidence as to Mr. Hood's actual view, at this time, as to the value of the Lister, is it was around the £ 500,000 figure for which it was transferred to JDC, or perhaps a little more. However, I do not consider that he genuinely believed that it was worth the £ 1.5 million plus that he represented to Mr. Tuke.

Representation as to originality

547. It is sufficient, for the purposes of his misrepresentation claim, for Mr. Tuke to establish (as I considered that he has established) that he was fraudulently induced to enter this transaction either by the representation as to ownership, or by the representation as value, or indeed both. His case as to misrepresentation as to originality therefore adds nothing material to the case. It suffices to say that I was not persuaded by the argument that Mr. Hood made a dishonest representation in that regard.

548. Mr. Wright's argument proceeded from the basis that the concept of "originality" was different to the concept of a car's identity. Thus, although the Lister had a somewhat tortuous history, it could still fairly be said that the car sold to Mr. Tuke was properly described as Chassis 104. This was in essence Mr. Hudson-Evans conclusion in his 2010 report, where he said that he could "find no pretenders to this car's identity":

> "For although, as presented today, almost certainly the car has been largely if not wholly rebuilt, and on more than one occasion too, with few original components likely to have survived these rebuilds, the all-important BHL 104 chassis number would appear not to have been duplicated and the identity is unchallenged".

549. When Mr. Hood made his statements to Mr. Tuke as to the originality of this car, he also explained that it had undergone a very significant rebuild over a number of years. I do not consider that he was intending to say anything more than that the car did retain its original identity. I do not think that Mr. Tuke understood this representation in any different way. The history of this car was well documented in the available literature. I do not consider that Mr. Hood was intending to mislead Mr. Tuke into thinking that the car was a "matching numbers" car, even though in some contexts a representation as to originality might be equated with a representation that the significant components matched the original components. I therefore reject this argument.

Damages

550. For the purposes of assessing damages, I leave aside for present purposes the claim for loss of investment opportunity in respect of the Jaguar XKSS. I therefore address the question of the loss that Mr. Tuke suffered by virtue of the exchange itself. Here there is no difficulty in the starting point for the calculation: I accept that the value of the XKSS was at least the £ 3.5 million that was ascribed to the car in the JDC invoice. In return, Mr. Tuke did receive £ 2 million in cash. The damages question therefore turns on the value of the Lister that he received as part of the transaction.

551. The difficulty of valuing this car is apparent from the report which Mr. Hudson-Evans prepared in 2010. He had few data points to guide him, and those which he was given by Mr. Hood cannot be relied upon. The expert evidence from Mr. Neumark and Mr. Broad did not identify any comparative sales from which conclusions could be drawn as to the value of this Lister. Mr. Neumark's figure of £ 400,000 was based, substantially as I read his report, on information that he had been given by a trusted and knowledgeable contact, Mr. Andrew Hall. Mr. Broad's figure of £ 900,000 - £ 1,000,000 was based upon his general knowledge and experience, including that his family had owned Lister Jaguars since 1973. His report did not, however, discuss or draw attention to the chequered history of this particular car, or the fact (as shown by Mr. Griffin's evidence) that very little of the original car remained. This car was not a replica: it retained its original identity. However, it had (as Mr. Neumark said) been very substantially recreated.

552. There are two further data points of potential relevance. One is the sale that was ultimately achieved by Sam Thomas. This was £ 715,000 in November 2017, by which time the market would have risen by comparison with 2011/2012, although there are issues (which I cannot resolve) as to the skills of Mr. Thomas, who was young and relatively inexperienced, in achieving the best price. This

figure of £ 715,000 is, bearing in mind the rise in the market, not dissimilar to Mr. Neumark's £ 400,000 valuation.

553. Another data point, relied upon by Mr. Hood, was an offer made by JDC to repurchase the car for £ 1.4 million. This was also relied upon by Mr. Hood in support of an allegation of failure to mitigate. This offer was made by WLG Gowling on behalf of JDC in November 2017, in the context of the present litigation. I do not consider that an offer made to settle litigation provides a reliable data point for assessing the value of the Lister.

554. As far as mitigation is concerned, Mr. Tuke was asked about this particular offer in the course of his cross-examination. He gave two reasons for having declined it. The first was that it "came along with terms which were unacceptable. It wasn't a straight offer for cash." In my view, this first reason was a valid reason for declining this particular offer. The terms of the offer would have required Mr. Tuke, in effect, to abandon his significant claim for loss of investment opportunity in relation to the XKSS. I see no reason why he should have done so, and (even leaving aside the fact that a case on mitigation was not pleaded) his decision not to accept this offer was not unreasonable. He had a second reason, namely his concern that a sale back to JDC would involve him in a process "whereby I was allowing somebody else to have the same thig done to them as had been done to me. It was an unrealistic price for the car, and I did not want to perpetuate that going to anybody else." I consider that this too was a reason why Mr. Tuke was entitled, acting reasonably, to decline the offer made by JDC.

555. Returning to the question of how much the Lister was worth: I consider that Mr. Neumark's figure of £ 400,000 is too low. Mr. Hood had paid almost that sum in 2005, since which time the market had increased and there had been restorative work. The market increase alone would, by late 2011, take the value to just in excess of £ 500,000. It would not have taken it to figures which were as high as Mr. Broad put forward, although I am willing to accept that restoration work would have increased the value beyond that referable simply to the market increase since 2005. The price achieved in 2017 by Sam Thomas does also, in my view, provide a data point which is of some use. The market for classic cars had significantly increased since 2011: Mr. Neumark's indices showed that prices had more than doubled. If the car was (as Mr. Broad said) worth £ 900,000 - £ 1,000,000 in 2011, it might be worth twice that amount in 2017. It would, however, be very surprising if (even allowing for Mr. Thomas' inexperience) the sale price achieved in 2017 (£ 715,000) was vastly below a true market value of £ 1.8 - £ 2 million, as implied by Mr. Broad's figures. In all the circumstances, I consider that Mr. Broad's figures are too high.

556. I consider that the value of the Lister in 2011 lay somewhere between Mr. Neumark's £ 400,000 and Mr. Broad's lower figure of £ 900,000, but closer to Mr. Neumark's figures. I assess the value to be £ 600,000. I consider that this makes fair allowance for the market movement and restoration that had occurred since the original purchase for £ 380,000. It is below the price that Mr. Thomas achieved in 2017, by which time the market further increased, and makes some allowance for any deficiencies in Mr. Thomas' abilities or experience in selling

cars of this kind. I therefore assess damages at £ 900,000 being the difference between £ 1.5 million (being the non-cash element of the part exchange) and £ 600,000.

E9: GT 40(s) part exchanged for Ferrari TR 250 replica

Factual background

557. It was common ground (as set out in paragraph 18 (d) of the List of Issues) that this was a part exchange in December 2012 by which Mr. Tuke sold a GT40 race car said to be worth £ 1.8 million for a Ferrari 250 TR plus £ 250,000. In fact, the position by trial was somewhat different to that stated in the List of Issues. It was common ground that Mr. Tuke in fact received £ 500,000 (rather than £ 250,000) plus the Ferrari. There was no dispute that GT 40 race car was transferred in this part exchange. That race car had been purchased at the December 2009 showroom visit, together with parts which could be used to build a GT40 road car. There was, however, an issue as to whether the part exchange in December 2012 involved the road car as well as the race car, notwithstanding that the correspondence (described in more detail below) shows Mr. Tuke was willing to exchange both the GT40 race car and the GT 40 road car for the Ferrari plus £ 250,000.

Representations as to ownership

558. The List of Issues also recorded common ground that, by emails dated 28 October 2012 and 23 November 2012, Mr. Hood had represented that there was a third party owner of the Ferrari 250TR, who wanted to part exchange it for the GT40, and also that the Ferrari was worth £ 1.5 million.

559. In fact, the representation that this was a transaction with a third party – who owned the Ferrari and would be receiving the GT40 – was made in a series of e-mails. There was never any suggestion in this correspondence that the transaction was simply with JDC as buyer and seller.

560. Thus, on 29 August 2012, Mr. Hood advised that he had deals pending on Mr. Tuke's cars, because "things are hotting up now people are just getting back from holiday". He said that it looked like the first deal would be on the GT40, and that he "should be able to give you details tomorrow as there may be a very good part exchange". On 18 September 2012, Mr. Hood advised that the "GT40 guy talking this week". He went on to say

> "GT40 involved P/ex with a very special Ferrari, I want cash for you so I am trying to get the best deal".

561. Mr. Hood was therefore clearly representing that he was negotiating with a third party, trying to get the best deal. This email, and the sequence of correspondence as a whole, is inconsistent with Mr. Hood's submission in his closing submissions: i.e. that Mr. Tuke knew that JDC were selling him the Ferrari, and he was selling the original car and spares to JDC "such that it was not an agency transaction to a third Party and so no claim can arise in this regards".

562. On 22 October 2012, Mr. Hood advised that he "had a deal on the GT40's happening against a very good Ferrari with cash, should know Thursday". On 28 October, he said:

> "Guy wants to deal on the Ferrari with GT 40's? I think the Ferrari has an upside".

563. On 29 October, Mr. Hood asked: "Do you want me to do anything with the GT40/Ferrari deal". On 19 November, Mr. Hood told Mr. Tuke that he was working "on an angle for you to keep the road car". Accordingly, this email indicated the possibility that the deal, on which Mr. Hood was working (necessarily with a third party) would involve only the GT 40 race car, rather than both cars. However, on 22 November, Mr. Hood wrote:

> "GT40 deal is ready to push the button on, both cars for the Ferrari and £ 500k payable £ 100k per month. Could not work it any other way".

564. On 23 November, Mr. Tuke indicated his willingness to sell both cars. He said:

> "OK thanks Derek, let's go forwards with the GT40's please".

565. On 28 November 2012, Mr. Hood wrote that "GT 40 deal is done, should have papers done at end of week". Although some of the correspondence does refer the "GT 40 deal" (i.e. in the singular), I consider that read as a whole it is clear that Mr. Tuke understood that he was selling both cars, as was clear from the 22 and 23 November exchange set out above. Thus, in later correspondence when Mr. Tuke was pressing for payment of the money owed, he said (on 12 December 2012): "When the first 100k on the 40's"? Similarly, on 25 January 2013, Mr. Tuke wrote: "Next [£] 100k is due on GT40s". He was there referring to both cars.

566. In the meantime, JDC issued a "Used Car Purchase Invoice" on 5 December 2012. This gave the vehicle details for only one of the GT 40 cars (the race car), with a purchase price of £ 1.8 million. In the light of the correspondence, this was clearly an error. The e-mail correspondence both before and after the date of this invoice indicates the parties' intentions that both cars would be sold, albeit that Mr. Tuke understood that the transaction involved a third party who was exchanging his Ferrari for both of Mr. Tuke's GT40's.

567. Mr. Tuke said in his evidence that he was rather confused as to what was happening. Initially, it had been one car. Then two cars had been discussed. But when the paperwork turned up (he was referring to the invoice from JDC) it was back to one car. However, I do not consider that Mr. Tuke was confused at the time. His intention was to part exchange both cars, and this is what he understood to have happened.

568. In his witness statement, Mr. Hood said that at the time that he wrote his 28 October 2012 email, JDC had agreed to sell the Ferrari to Mr. Kurt Engelhorn. However, when Mr. Engelhorn learned that the GT 40s were for sale, he said

that he would be interested in acquiring them in part-exchange for the Ferrari. However, after he had written that e-mail, Mr. Engelhorn pulled out of the proposed transaction. This was not unusual in the business. Mr. Hood did not believe that there was any purpose in telling Mr. Tuke about Mr. Engelhorn's withdrawal from the transaction, "since it made no difference to him". JDC intended to step into Mr. Engelhorn's place and complete the purchase of the GT 40s by way of the Ferrari and the cash payment.

569. I reject this account. There is no evidence to corroborate the suggestion that Mr. Engelhorn was ever involved in this proposed transaction. Mr. Hood suggested in evidence that Mr. Engelhorn had put his name to the Ferrari, and that he believed that he had may even have put a deposit down on the car. There was no documentation to support this theory. The Joint Administrators of JDC had been asked, prior to trial, to carry out a further search for any "cancellation invoices, cancellation notes and credit notes" with reference to a number of search terms. These included the Ferrari allegedly purchased then cancelled by Mr. Engelhorn in October 2012. No documents were located in relation to this, or other searches. The reason, in my view, is that there was no such transaction.

570. It is true that Mr. Engelhorn did, at a subsequent stage, become interested in the GT40 race car, and indeed bought it. But this was later on, and had nothing to do with a cancelled purchase of a Ferrari, a part exchange for the GT 40, or JDC deciding to step into Mr. Engelhorn's shoes.

571. Again, therefore, this transaction was fraudulently presented to Mr. Tuke on the basis that there was a third party, and that the deal had to be by way of part exchange. In reality, JDC wanted to do the part exchange, with its own Ferrari, for its own commercial reasons, including that Mr. Hood wanted to acquire Mr. Hood's GT40s. My conclusion in relation to inducement is the same as in relation to the similar misrepresentations described on earlier transactions.

Representation as to value

572. The question here is, again, whether Mr. Hood genuinely believed that the Ferrari was worth £ 1.5 million.

573. Neither expert supported this figure. Mr. Neumark's assessment was £ 500,000 to £ 550,000. Mr. Broad's figure was £ 750,000. JDC's records are consistent with figures in this range. In a presentation made to Santander in January 2014 (contained in a set of slides called the "Derek-JD transaction pack"), Santander was informed of various transfers between Mr. Hood and JDC. This Ferrari was one of a number of cars "sold to Derek to provide WC liquidity to JD". These cars were "always sold to Derek at market value". The price for this Ferrari in January 2012 was recorded as £ 680,000. A later slide shows a transfer back to JDC in February 2013 (i.e. for the purpose of the sale to Mr. Tuke) at £ 700,000.

574. I consider that that the price recorded internally, whether £ 680,000 or £ 700,000, was Mr. Hood's view as to the market value of the Ferrari. His representation that it was worth £ 1.5 million false and fraudulent, and it too induced Mr. Tuke to enter into the transaction.

Damages

575. For present purposes, I again leave aside the claim for loss of investment opportunity.

576. A potentially complicating factor in the damages calculation for the GT 40s is that Mr. Tuke advances a claim for conversion in respect of the GT 40 road car. I have already described the relevant legal principles that claim in Section D5 above. The premise of that claim must be that there was no sale of the road car to JDC. Mr. Tuke accepts that he gave Mr. Hood authority to sell both GT 40s in part-exchange, but asserts that Mr. Hood retained one of those cars (i.e. the GT 40 Mk III) which he then wrongfully converted.

577. Although Mr. Tuke contends that on this transaction, as on the previous sales, he was misled into believing that he was dealing with a third party purchaser, he accepts that the mechanics of the various transactions did always involve a transfer of title in the cars to JDC. It seems to me that the question of whether or not there was a conversion must depend upon whether the mechanics here involved a sale and intended transfer of title to JDC of only the race car; or, conversely, whether it was a sale and intended transfer of title of both cars to JDC. Having reviewed the correspondence, I have no doubt that this was intended to be a transaction involving both GT 40s, and that the invoice recording the transaction incorrectly referred only to the race car. That invoice is, however, only one part of the evidence of what the transaction was, and in my view the correspondence as a whole shows that the transaction involved a sale of both GT40s. Mr. Hood's written submission was that the emails "make it clear the GT40s were being sold as a pair". I agree with that submission. On that basis, I consider that the claim in conversion must fail.

578. I do not think that this conclusion is affected by the fact that, subsequently, only one of the cars (the race car) was sold to Mr. Engelhorn. Mr. Tuke's argument was that whilst he had given "authority" for both cars to be sold to the third party purchaser, only one of the cars was in fact sold. This was a reference to the sale to Mr. Engelhorn some time later. I do not think that this "authority" argument is sufficient to ground a claim in conversion. In a sense, all the cars which Mr. Tuke was selling, by way of part-exchange, were retained by JDC "without authority"; because Mr. Tuke was always led to believe that there were part exchange transactions with third parties, when in fact this was not the case. However, Mr. Tuke does not suggest that a claim in conversion lies in respect of all the cars. In my view this is because, as Mr. Tuke accepts, the mechanics of each deal did involve a transfer of title to JDC of the cars that Mr. Tuke was putting into the deal, and a transfer of title by JDC of the cars being received by Mr. Tuke in part exchange.

579. The next question is the assessment of damages. This involves considering the value of the cars that Mr. Tuke put into the transaction, and the value of the Ferrari that he received together with £ 500,000.

580. The price ascribed to the (single) GT 40 race car on the JDC invoice was £ 1.8 million. This value is within the range which Mr. Broad gave (£ 1.5 million to

£ 2 million) for this car, and indeed is almost the mid-point of that range. It seems that when Mr. Hood included this figure in the invoice, he may have not have been thinking about the road car which was erroneously omitted. Given that £ 1.8 million is the figure ascribed to the car in the invoice, and given that this falls within Mr. Broad's range, I will assess damages on the basis that this was the value of the race car.

581. This leaves the road car, which should be taken into account as part of the damages calculation, since this was another asset which Mr. Tuke gave up as a result of the transaction. Mr. Broad did not value the road car in his report, but Mr. Neumark did – albeit that he gave a value in 2020 rather than 2012. Mr. Neumark's figure was £ 300,000 in 2020. It is reasonable to take a somewhat lower figure for the value in 2012, bearing in mind inflation and the fact that the market was higher in 2020 than 2012/2013. However, it was not clear to me that this reconstructed road car would necessarily have benefited from the same rise in the market as the other classic cars which Mr. Neumark was describing. There was an e-mail from Mr. Hood which indicated that Mr. Tuke had spent £ 275,000 on the road car. I will take that figure as representing the value of this car in 2012/2013.

582. Accordingly, in this transaction, Mr. Tuke gave up cars worth £ 2,075,000.

583. In return, Mr. Tuke received £ 500,000 cash and a Ferrari. Mr. Hood's damages are therefore the difference between £ 1,575,000 (£ 2,075,000 less £ 500,000) and the value of the Ferrari that he received.

584. Mr. Neumark assessed that value at between £ 500,000 and £ 550,000. He identified a comparator transaction involving a "sister" car in 2012, also built by Neil Twyman who does accurate replica work. This car sold for £ 450,000. Mr. Broad supported Mr. Hood's evidence that the Ferrari sold to Mr. Tuke was a better car, because it contained a larger quantity of original Ferrari components; albeit that Mr. Broad accepted that he was not a Ferrari expert as far as which are more and less valuable components. Mr. Broad's view was that the car was worth approximately £ 750,000, as a "perfect recreation".

585. I consider that it is appropriate in this case to take the figure of £ 680,000 which was used by Mr. Hood internally, and which he said was the price which was paid for the Ferrari in early 2012. This figure falls between those given by the two experts, and it seems to me to be the best evidence of value at that time.

586. Accordingly, I assess damages at £ 895,000, being the difference between £ 1,575,000 million and £ 680,000.

587. Mr. Hood raised a number of other points in the context of damages. These were similar to points which he raised in other contexts. In particular, he relied upon inadequate prices obtained by Mr. Sam Thomas and an offer from Gowlings, for the purchase of the Ferrari (subject to inspection) for £ 1.5 million.

588. As far as Sam Thomas is concerned: I have assessed damages by reference to the difference in value between what Mr. Tuke gave up, and what he received in return. That involves looking at the value of the Ferrari at the time that it was

transferred. The claim is not therefore based on the sales price for the Ferrari ultimately achieved by Sam Thomas. That price is, at best, some evidence as to the value at the time of its transfer to Mr. Tuke. But, as will be apparent from this judgment, I have been cautious in my approach to assessing the strength of that evidence.

589. As far as the offer from Gowlings in relation to the Ferrari is concerned: this mitigation argument was not pleaded, and Mr. Tuke was not shown about this particular offer in the course of his cross-examination. The question of why this particular offer was turned down, and whether it was reasonable to do so, was therefore not explored. In those circumstances, I do not think it right to try to decide whether there was a failure by Mr. Tuke to mitigate his loss in relation to the Ferrari. Indeed, more generally, I would not think it fair to reach conclusions adverse to Mr. Tuke on arguments based on failure to mitigate. The mitigation point was not pleaded, and in my view Mr. Tuke did not have a proper opportunity to prepare to meet such a case. Mr. Tuke was asked only a limited number of questions in cross-examination on the topic of mitigation, and such questions did not cover all the cars referred to by Mr. Hood in his closing written submissions on that topic.

590. In any event, I did not consider that subsequent offers for cars, such as the one relied upon here, would diminish the loss for which Mr. Tuke claimed. His claim was for the difference between what he gave up, and what he received in return, on the basis that he would not have concluded this transaction had he not been misled. This calculation is made as at the time of the transaction. An offer made some years later to acquire the asset which he received, however high the price, does not diminish that loss. The asset may, for example, have significantly appreciated in value because of market movements. But the party who has sold an asset at an undervalue, by acquiring another asset at an overvalue, is entitled to recover the loss which is suffered by reason of that transaction. The fact that the overvalued asset then subsequently appreciates in value does not reduce the loss suffered in consequence of the original transaction.

E10: XK 120 (JWK registration) part exchanged for E type Lightweight

Introduction

591. This transaction was a part exchange whereby Mr. Tuke sold a Jaguar XK 120SS (registration number JWK 651) which he had bought for £ 1.2 million in January 2010. In return, he received £ 750,000 and an E-type Lightweight Jaguar.

592. The List of Issues recorded common ground that by emails dated 8, 9, 23, 24 and 25 May, Mr. Hood represented that the Jaguar E-Type Lightweight was owned by a third party who had bought it from JDC for £ 2,000,000 and that it was an original competition car with original "matching numbers" including the original engine and gearbox. It was, however, also agreed that this E Type was "part of JDC's stock, and had been built as a replica for JDC by John Young, who had sub-contracted the work to Nigel Morris".

593. Based on the pleadings, Mr. Hood's case was summarised in the List of Issues to be that "he and JDC were misled by Mr. Young, and that he did not learn that the Jaguar E-Type Lightweight was a replica until late 2017. Mr. Hood also says that when he sent his emails, he had agreed to sell the car to Mr. Engelhorn for £ 2,000,000, but that Mr. Engelhorn had subsequently pulled out of the transaction.

Representation as to ownership

594. Mr. Hood accepted in evidence that the transaction was presented to Mr. Tuke on the basis that a third party had bought the E-Type. His e-mail of 8 May (referred to in the List of Issues) stated:

> "JWK deal I put together Monday is £ 700K cash now plus the period competition E Type Chassis No. 14 for £ 2M two weeks back".

595. As with the earlier transactions, Mr. Hood's e-mails presented the deal as one that he was negotiating with a third party. On 23 May 2013, he said:

> "Contacted my E Type guy last night, he is still on just, 700k is his limit but we need to move quickly. E Type will sell".

596. Mr. Tuke's e-mails at that time reflected a reluctance to sell his "JWK" car. Mr. Hood's email on 24 May sought to persuade him of the benefits of the transaction, maintaining that there was a third party who wished to part exchange:

> "I was trying to get funds to you sooner than later. The E was built by the competition department for competition. Guy wants to exchange. I thought this would work as once he gets money for the E Type he is looking to buy a Ferrari for £ 3m plus.
>
> If you are in a better position financially at the moment do you want me to stop the deal. Please call me".

597. The true position was (as with the previous transactions) that there was no third party owner or purchaser of E-Type: it was, as the List of Issues records, in JDC's stock. There is no documentary or other corroborating evidence to support Mr. Hood's assertion that Mr. Engelhorn was "down to buy the car", still less that there had already been a sale of the car for £ 2 million (as represented in Mr. Hood's email of 8 May). I reject Mr. Hood's evidence to that effect.

598. There was evidence that Mr. Engelhorn had an interest, certainly at a later stage, in Mr. Tuke's XK 120. Mr. Engelhorn's company, Runners Ltd., purchased the JWK in July 2013. According to JDC's invoice to Runners Ltd. dated 15 July 2013, the purchase price was £ 3.5 million, although there are some strange features of this document. The invoice refers to JDC having an option to

repurchase for £ 3 million (i.e. £ 500,000 less than Runners was paying), and the price of £ 3.5 million is extraordinarily high given Mr. Neumark's evidence that the value of the XK 120 even in 2020 was between £ 1 and £ 1.5 million. Mr. Hood was also cross-examined upon other documentation which purported to show a sale at a much lower price.

599. As far as the representation as to ownership is concerned, these aspects of the evidence are not significant. The significant point is the contrast between (i) the existence of documentation showing a cash sale to Runners within a matter of weeks after Mr. Tuke had agreed to sell the XK 120, and (ii) the absence of any documentation referring to any possible purchase by Mr. Engelhorn/Runners of the E-Type. The documentation thus shows that Mr. Engelhorn was interested in the XK 120, but there is nothing to show any interest in the E-Type. Nor was there, in my view, any sensible explanation as to why Mr. Engelhorn would in May have been prepared to buy the XK 120 by swapping the E Type, which had cost him £ 2 million (as per Mr. Hood's email of 8 May) plus £ 700,000 – a transaction value of £ 2.7 million – but would shortly afterwards have agreed to pay £ 3.5 million cash for the XK 120. The supposed involvement of Mr. Engelhorn in the part exchange was in my view, as with previous transactions, fictitious.

Representation as to value

600. The Harper schedule indicates that the E-Type was purchased for £ 126,000 in December 2012. This price was also recorded in the JDC stocklist of December 2012. That stocklist showed a projected/ anticipated sale price of £ 185,000.

601. Those figures are broadly in line with Mr. Neumark's valuation of a replica E-Type Lightweight in 2013; i.e. around £ 150,000 "which reflects directly the components used for the build, plus a reasonable allowance for overheads and profit".

602. Mr. Broad gave a significantly higher figure of £ 800,000 - £ 1 million on the basis that what was purchased was original chassis number 850014. His valuation, as he accepted in cross-examination, was not on the basis that this car was a replica. Mr. Neumark's equivalent valuation was £ 300,000. This would, in Mr. Neumark's view, have been the value if the car was chassis number 850014 and was therefore a genuine "priority list" car, but without period race history. The "priority list" comprised cars which Jaguar had not itself entered for racing competitions, but which were provided to certain prominent names with a motor racing background. But they were not competition cars which Jaguar entered into competitions.

603. All of these figures are significantly below the figure of £ 2 million which was given to Mr. Tuke. I do not consider that Mr. Hood genuinely believed the car to be worth £ 2 million or anything like that sum, bearing in mind that he had only recently purchased it for £ 126,000 and was anticipating a sale at £ 185,000. In my view, Mr. Hood's true view as to the value of the car was £ 185,000, as set out in the stock list. Again, therefore, fraudulent misrepresentations were made to Mr. Tuke as to the value of the car.

Representations as to originality, authenticity and provenance

604. The List of Issues recorded that the Jaguar E Type Lightweight had been "built as a replica by John Young, who had sub-contracted the work to Nigel Morris". A statement from Mr. Morris was served on behalf of Mr. Tuke, but Mr. Morris was unwilling to attend for cross-examination. I would usually be hesitant about attaching any weight to a statement whose maker was unwilling to attend. However, I consider that the material parts of the statement simply served to corroborate what the parties had already agreed; i.e. that this car was a replica. Mr. Morris explained that the car was constructed by using a new body shell which had been constructed in 2010, with a view to Mr. Morris building it up "to a full replica" using donor parts from an old E Type that his company (Valley Motorsport Ltd.) owned. This evidence was consistent with the evidence of Mr. Griffin, the expert called by Mr. Tuke on issues of originality, authenticity and provenance, as to the nature of the car. I describe this evidence in more detail below.

605. The question which then arises is whether Mr. Hood was acting dishonestly when he represented that the E-Type, which was a replica car, was an original competition car with original matching numbers including the original engine and gearbox. Since the car was a replica, it cannot have been an original competition car – even leaving aside the fact that Chassis 850014 had not been a competition car, but rather a "Priority List" car.

606. In my judgment, Mr. Hood was dishonest in the representations that he made. The price for which he had purchased the car, and for which he anticipated selling it, was inconsistent with the E-Type being an original competition car with original matching numbers. These amounts were significantly below the values given by both experts for such a car.

607. Furthermore, Mr. Griffin had inspected the car. His report was detailed, thorough and illustrated by photographs. His view was that it was "obvious that the E-Type Lightweight is a replica". In summary, the build features of the body shell were neither original nor period. The chassis number had the wrong typeface and placement. The chassis plate was in the wrong type and not original. The gearbox was completely the wrong type. The engine was a lightweight replica engine made from aluminium, rather than cast iron, and was a different shape to a period engine. The carburettors were obviously not period either. Mr. Griffin's said that anyone who deals in specialist race cars of any marque would carry out due diligence in the car, and would have it inspected, ideally before but if not after purchase.

608. Mr. Griffin's evidence in these respects was not significantly challenged in cross-examination. In any event, I accept Mr. Griffin's careful evidence on this car as set out in his report. Mr. Broad, by contrast, had carried out no inspection of the car. He valued the car on the basis that it was not a replica, but his evidence did not persuade me that Mr. Griffin's evidence about this car was incorrect in any material respect.

609. Much of Mr. Broad's evidence was in fact directed not towards the car that was actually sold and delivered to Mr. Tuke, but rather to a "monocoque" (or body shell) which was in storage at JDC. The evidence of Mr. Broad, and indeed Mr. Hood, was that this monocoque was that of the original chassis 850014. I considered that this evidence was rather beside the point. The car that was sold and delivered to Mr. Tuke was the replica. But in any event, Mr. Griffin had inspected the monocoque at JDC's premises, and his report explained – again convincingly – that this was not original to chassis 850014.

610. In relation to the car that was actually sold and delivered to Mr. Tuke, the position is that it would ordinarily be expected that Mr. Hood would have seen this car prior to purchasing it. There is no reason to think that this did not happen. In any event, Mr. Morris's evidence was that the car had been collected by JDC at the Goodwood Revival meeting in August 2012, and Mr. Hood would therefore have seen it prior to the negotiations to exchange it for Mr. Tuke's XK 120. Given Mr. Hood's experience, given the price paid, and given that it was obvious (or as Mr. Griffin said "very obvious") that it was a replica, I consider that Mr. Hood must have known that it was a replica at the time he was making the relevant representations to Mr. Tuke.

611. I consider that Mr. Tuke was induced by these false representations to enter into the part exchange. It is fair to say that the correspondence shows that he was somewhat sceptical as to the possibility that the E-Type was worth as much as £ 2 million. Mr. Hood's closing submissions referred to questions which Mr. Tuke had asked about the provenance and authenticity of the car, in support of a submission that Mr. Tuke "knew exactly what was going on in this transaction" and that he also "knew and questioned the provenance of the E-Type".

612. However, I have no doubt that he did believe that this was a part exchange with a third party. In that regard he was clearly misled.

613. He also did believe that he was getting (as he said in evidence) a very original Jaguar E-Type of a rare sought; not the rarest, but a car worth a good amount of money.

614. It is true that in his email of 16 May 2013 Mr. Tuke said that the E-Type:

> "sounds like a complete rebuild using some old bits from Chassis 14 which was 16 on priority list for road cars. I take it from what you say that the originally supplied engine and gearbox are with the car but it now has comp engine and ally body etc. so a brand new lightweight really".

However, Mr. Hood's response on 24 May was:

> "E is worth £ 2m plus, it's in the Revival. It's a factory-built competition car".

615. In a later e-mail on the same day, Mr. Hood repeated that the E-Type was "built by the competition department for competition". This was queried by Mr. Tuke who asked: "Rebuilt as comp car very recently makes it some kind of hybrid surely?" This question appears to have gone unanswered. But what is clear is that at no stage was Mr. Tuke told that (as was admitted in the List of Issues, and as I find to be the case) the E-Type was in fact a replica. Mr. Tuke therefore did not (contrary to Mr. Hood's submissions) know the provenance of the car, and did not know "exactly what was going on in this transaction".

Damages

616. The car which Mr. Tuke put into this transaction was described by Mr. Broad as "arguably the most important XK 120 factory works prepared car". He said that it had a colossal and amazing history and would easily make it the most desirable XK 120. He valued it at £ 1 million in 2010. (Mr. Tuke paid £ 1.2 million for it in 2010). He did not give a value as at 2013. Using Mr. Neumark's "average index", a car purchased in 2010 would have been worth about half as much again in 2013: i.e. £ 1.5 million.

617. Mr. Neumark described the car as possibly the most important Jaguar XK 120 in existence. He was not asked to value the car as at 2013 (the date of sale). He valued it at between £ 1 and £ 1.5 million in 2020. Using Mr. Neumark's index (which moved from 157.38 in 2013 to 248.64 in 2020), and a value of £ 1.5 million in 2020, the value of the XK 120 in 2013 would have been around £ 1 million.

618. The value ascribed to it in the invoice from JDC was £ 1.75 million, which is a price significantly above the values given by both experts.

619. I will take a figure of £ 1.25 million in 2013 as representing the value of the XK 120: this is midway between the 2013 figures implied, as described above, by the reports of Mr. Neumark and Mr. Broad.

620. Mr. Tuke received £ 750,000 in cash, and also the replica E Type. I accept Mr. Neumark's evidence that the value of that replica was £ 150,000; i.e. a figure around 15% above the price which Mr. Hood had paid. Damages are therefore £ 350,000; i.e. the difference between £ 1.25 million and £ 900,000. I again leave out of account, for present purposes, the claim for loss of investment opportunity.

621. Mr. Tuke was asked in cross-examination about an offer made by Gowlings in November 2017 on behalf of JDC to reacquire the E-Type for £ 1,250,000. This was not a straightforward offer: it was subject to inspection and subject to contract. It also contained a proposed non-disparagement clause which would prevent Mr. Tuke from making any allegations against JDC or Mr. Hood, relating to the car, or Mr. Tuke's acquisition of the car, outside of legal proceedings. Mr. Tuke's reason for declining this offer was that he did not fully understand the non-disparagement clause, but was not happy about being required to keep "quiet about the whole thing". I do not think that it was unreasonable for Mr. Tuke to take this view. Although Mr. Tuke did not specifically refer, in relation to this offer, to his concerns about what JDC would

then do with this car (see his evidence in relation to the Ferrari described in Section E9), I consider that he is likely to have had similar concerns and that these were reasonable. In any event, for reasons discussed elsewhere, I do not consider that the arguments based on failure to mitigate provide an answer to the claim as formulated.

E11: Gullwing

622. This is the final sales transaction which is the subject of a claim. Mr. Tuke sold the Mercedes Gullwing, which he had purchased for £ 1.8 million in early 2010, for £ 1.5 million. The List of Issues records that it was common ground that by e-mails dated 11, 13, 14 and 15 November 2013, Mr. Hood said to Mr. Tuke that the car would be sold to an American buyer. It records Mr. Hood's case that there was an American buyer, but that the deal fell through. It was also agreed that in due course the Mercedes Gullwing was entered into a Bonhams auction by JDC where it sold for € 2.1 million (£ 1,662,000). Mr. Hood's case, again as recorded in the List of Issues, was that after the American buyer pulled out, he sold either 50% or 100% of the car to a third party, and that the car was auctioned on Mr. Christie's behalf, at least as to 50%.

623. The misrepresentation alleged in relation to this transaction is that there was a third-party buyer, an American buyer, whereas the real purchaser was JDC.

624. In view of the common ground, it is not necessary to set out the correspondence in detail. There is no doubt that Mr. Hood represented that he was attempting to negotiate a deal with a third-party buyer. In an e-mail of 14 November, he said that he had "worked late last night on a deal for you". In a later e-mail sent that day, he said that: "We have a genuine buyer with no risk not a maybe". The correspondence at around this time shows Mr. Tuke being interested in putting the car into auction at Bonhams, and Mr. Hood seeking to dissuade him.

625. On 17 November, Mr. Hood advised:

> "The deal will be monthly stage payments and the car and documents stay with JD until the car is paid for in full. Deal will be with JD as the buyer is offshore".

626. Mr. Hood relied upon this email in support of an argument that Mr. Tuke knew that JDC was the purchaser. I disagree. The e-mail clearly represents that there is a third-party buyer, but that since the buyer "is offshore" the deal with be JDC. The reason for the deal being with JDC was, therefore, a question of the mechanics due to the buyer's offshore status. It did not mean that there was no third-party buyer at all; i.e. that JDC was simply buying on its own account.

627. The involvement of a third party was reiterated thereafter in the context of payment. On 22 November 2013, Mr. Hood said that "payment due to me on Wednesday then straight on to you". On 5 December 2013, Mr. Hood reported that: "guy has just been in for over an hour, he had a last minute wobble, money with us tomorrow". On 14 December 2013, Mr. Hood said that the "Gullwing money should be with me Monday." On 19 December, he said that: "Gullwing money due with me today".

628. As with the previous transactions, this was a dishonest pretence. Mr. Hood accepted in evidence that "JD did end up being the buyer". This was never revealed to Mr. Tuke. The true position was that JD was the buyer all along. There was no documentary evidence to support the suggestion that there was, at the time of the e-mails in late 2013, any third-party buyer.

629. Mr. Hood in his evidence gave inconsistent answers as to who the buyer was. He initially referred to Mr. Mark Christie. However, the documents showed that it was only in February 2014 that Mr. Hood offered the Gullwing to Mr. Christie. He told Mr. Christie that the "owner needs a quick sale at £ 1.5 million". As far as Mr. Tuke was concerned, however, he had already sold the car in late 2013, and (as the e-mails quoted above indicate) was awaiting payment.

630. Faced with the difficulty that Mr. Christie's involvement came too late, Mr. Hood then suggested that the buyer was Mr. Engelhorn. This was unsupported by any documentation, and there was a further difficulty: Mr. Engelhorn was not American. Mr. Hood then said that he had two or three people interested in the car: he did not name them. In his written closing submissions, Mr. Hood said that Mr. O'Reilly (an American) was the first person to pull out. He had not referred to Mr. O'Reilly in his oral evidence.

631. After identifying Mr. Christie, Mr. Engelhorn and the "two or three people", he said in evidence that he "ended up holding the car because the original person wasn't interested". This was not true. Mr. Hood (for JDC) bought this car because he thought that it was desirable and could be profitably sold, which in the end it was; albeit perhaps for a smaller profit than Mr. Hood had hoped.

632. Mr. Tuke was, in my view, induced by this fraudulent misrepresentation to enter into this transaction. He can again rely upon the presumption of inducement, and I accept his evidence that if he had known the true position he would have questioned the deal more closely. One obvious option would have been to auction the Gullwing himself, which is what Mr. Tuke was considering in November 2013 until dissuaded by Mr. Hood.

633. The assessment of damages is straightforward. The price realised at the Bonhams auction is the best evidence of market value. This produced a net amount of £ 162,000 above the amount paid to Mr. Tuke for the car. That figure is agreed by the Joint Trustees. I assess damages in that amount.

E12: Conclusion

634. Accordingly, I concluded that Mr. Tuke is entitled to the following sums by way of damages for fraudulent misrepresentation in respect of the transactions set out above, leaving aside the claim for loss of investment opportunity.

	Transaction	Damages
E1	XKSS	-
E2	AC Aceca	69,000

E3	Gullwing	800,000
E4	Group C	321,067.01
E5	Aston Martin for XK 120	550,000
E6	Broadspeed +MK II for MK II and XK 150S	200,000
E7	C Type for Allard and Costin Lister	--
E8	XKSS for Lister Ecosse	900,000
E9	GT40's for Ferrari	895,000
E10	XK 120 (JWK) for E-Type	350,000
E 11	Gullwing	162,000
Total		**4,247,061.01**

635. My conclusions as to Mr. Hood's dishonesty in relation to each of the transactions, coupled with the fiduciary duties owed by JDC in relation to the transactions involving the sale of Mr. Tuke's cars, entitle Mr. Tuke to equitable compensation in respect of those transactions. This does not, however, increase the amounts recoverable by Mr. Tuke, but it may enable compound rather than simple interest to be claimed.

636. In relation to the two relevant purchase transactions (the AC Aceca and the Gullwing), I do not consider that a claim for equitable compensation lies (and therefore only simple interest can be claimed). This is because although I have found Mr. Hood dishonest in relation to those transactions, I have not been persuaded that of the existence of the fiduciary duties upon which the claim for dishonest assistance depends. A claim can therefore only be made for simple interest in respect of those aspects of the claim.

F: Loss of investment opportunity

F1: The issues and the parties' arguments

637. I have assessed damages, in Section E above, in respect of Mr. Tuke's losses on each transaction by reference to the market value of the relevant assets, bought or sold, at the date of the transaction in question. However, Mr. Tuke advanced additional claims arising from the transactions, principally claims for consequential loss. The most significant such claim was for "Loss of Investment Opportunity". This was advanced on two bases.

638. First, during the acquisition phase, Mr. Tuke referred to the sums "overpaid" by him in respect of the three transactions in 2010 where there was alleged dishonesty or an obligation to account: i.e. the XKSS, the AC Aceca and the Gullwing. These monies, totalling just over £ 2 million, would (on Mr. Tuke's case) have been invested back into the classic car market, and he would have enjoyed a return on that investment. No specific cars were identified for the purposes of the calculation of that loss. Instead, reliance was placed upon the

index which Mr. Neumark had prepared, based on a number of sources of data, and which showed the increase in value between 2009 and 2020. This increase, between early 2010 and 2020, was in the order of 146%. Accordingly, Mr. Tuke claimed just under £ 3 million, representing the 146% increase on just over the £ 2 million paid. The premise of this claim was that the additional cars purchased would have been retained until the present day, so that Mr. Tuke would now enjoy the full value of those cars.

639. Secondly, in relation to the sales transaction phase, Mr. Tuke contended that he would not have had to sell certain cars, but would instead have retained them. These cars were referred to at trial as the "Investment Cars". These were cars which Mr. Tuke described in his third witness statement as his "most cherished cars". The basis of the claim was that if he had not been defrauded, he would "either have had ready cash or been able to part exchange my cars for other cars at a fair market price with the result that I would not have had to sell the most cherished cars in my collection and so benefited from the considerable rise in classic car values since I started dealing with the Defendants in late 2009". In his second witness statement, he said that if he had not been defrauded, he "could have kept all or most of my 22 cars, or part exchanged some for others with equal growth potential or sold some for other investment opportunities elsewhere".

640. With one exception, the cars so identified have been considered, in the context of their individual sales, in Section E above. They are the Ford GT 40 race and road cars (Section E9); Jaguar C Type (Section E7); Jaguar XKSS (Section E8); Jaguar XK 120, registration JWK 651 (Section E10); Aston Martin Vantage Volante (Section E5). The one exception is the Jaguar Lightweight E Type. This was sold to Morris & Welford for a substantial cash sum (£ 4.392 million) in May 2012, and did not give rise to a claim considered in Section E. (This particular E-Type should not be confused with the E-Type which Mr. Tuke received in exchange for his XK 120 in July 2013).

641. Some of these cars had been specifically identified by Mr. Tuke in his email of 24 September 2010 as being cars which he did not want to sell: i.e. the C Type, the "JWK" (i.e. the XK 120 with the JWK registration), the Aston Martin and the XKSS. His evidence in his second witness statement was that he would also "ideally" have wanted to keep the GT 40s, the Bugatti and the rare E Type. At trial, however, the Bugatti dropped out of the picture, because of a settlement in respect of that car. This left 7 cars which were the subject of this aspect of the loss of investment claim.

642. Mr. Neumark had valued these 7 cars, as at Q1 2020, at £ 23,790,000. The claim as advanced was by reference to the difference in value between the £ 23,790,000 and a figure totalling £ 11,542,360. This figure (set out in more detail below) comprised the credit to be given against the current value of the cars by reason of the fact that Mr. Tuke received both cash and some part exchange cars when the 7 cars were originally sold during the 2011 – 2013 timeframe.

643. As between Mr. Wright and Mr. McWilliams, it was common ground that these claims for loss of investment opportunity were, depending upon the facts, potentially available as a matter of law. Both counsel referred me to the decision of the Court of Appeal in *Parabola Investments Ltd. v Browallia Cal Ltd* [2010] EWCA Civ 486 where the leading judgment was delivered by Toulson LJ. At paragraphs [22] – [24], he addressed arguments advanced by the defendants in that case, to the effect that the claimant had not sufficiently proved that monies, of which he had been defrauded, would have been invested in successful trading. In rejecting the argument, Toulson LJ said:

> "[22] There is a central flaw in the appellants' submissions. Some claims for consequential loss are capable of being established with precision (for example, expenses incurred prior to the date of trial). Other forms of consequential loss are not capable of similarly precise calculation because they involve the attempted measurement of things which would or might have happened (or might not have happened) but for the defendant's wrongful conduct, as distinct from things which have happened. In such a situation the law does not require a claimant to perform the impossible, nor does it apply the balance of probability test to the measurement of the loss.
>
> [23] The claimant has first to establish an actionable head of loss. This may in some circumstances consist of the loss of a chance, but we are not concerned with that situation in the present case, because the judge found that, but for Mr Bomford's fraud, on a balance of probability Tangent would have traded profitably at stage 1, and would have traded more profitably with a larger fund at stage 2. The next task is to quantify the loss. Where that involves a hypothetical exercise, the court does not apply the same balance of probability approach as it would to the proof of past facts. Rather, it estimates the loss by making the best attempt it can to evaluate the chances, great or small (unless those chances amount to no more than remote speculation), taking all significant factors into account.
>
> [24] The appellants' submission, for example, that "the case that a specific amount of profits would have been earned in stage 1 was unproven" is therefore misdirected. It is true that by the nature of things the judge could not find as a fact that the amount of lost profits at stage 1 was more likely than not to have been the specific figure which he awarded, but that is not to the point. The judge had to make a reasonable assessment and different judges might come to different assessments without being unreasonable." (Internal citations omitted).

644. In his opening submissions, Mr. McWilliams on behalf of the Joint Trustees therefore accepted, in the light of this decision, that as a matter of principle a claimant who has fallen victim to a fraudulent misrepresentation can seek to recover sums which it would have earned in alternative profit-making ventures absent the fraud to which it was subject. He submitted that where a claim was made in respect of the loss of an alternative investment opportunity, the court would have to be satisfied on the balance of probabilities that, absent the fraud, the claimant would in fact have been willing and able to engage in that alternative investment opportunity. If so satisfied, then it estimates the loss sustained by the claimant by making the best attempt it can to evaluate the chances, great or small, unless those chances amount to no more than remote speculation, taking all significant factors into account. While the claimant does not necessarily have to identify a specific alternative transaction which would necessarily have been profitable, the court will proceed on the basis of the evidence available to it and it may be appropriate to reflect the necessarily imprecise task and the various contingencies by a process of discounting.

645. I accept these submissions as to the legal position. Indeed, they were not substantially challenged by Mr. Wright.

646. The key issues between the parties focused upon the facts. At the heart of the parties' submissions lay the undoubted fact that, by mid 2010 and thereafter, Mr. Tuke wanted and indeed needed to sell some cars in order to fund two pressing needs for cash. First, there was the potential and then actual repurchase of part of the business sold to J&J, requiring not only the reacquisition cost but also working capital to meet staff and other costs. Secondly, there was Mr. Tuke's tax liability arising on the original sale. Both of these matters required many millions of pounds. Mr. Tuke said in his oral evidence that, over a period of time, he had put in a ballpark sum of £ 12 million in cash in relation to the reacquired business. In relation to the tax liability, his evidence in his witness statement was that his accountant was able to negotiate with HMRC a payment in respect of tax amounting to £ 8.06 million, and that this tax was to be paid in advance of receipt of £ 7.5 million (paid by J&J in respect of the original sale) which was, at the material time in late December and early 2011, held in escrow.

647. This need for cash gave rise to Mr. McWilliams' argument that the first aspect of the claim (i.e. that monies "overpaid" in early 2010 would have been invested in other cars) should be rejected, on the basis that Mr. Tuke would not have invested further sums in cars once the acquisition phase had ended and he was looking to sell. As far as the acquisition phase itself was concerned, there were no cars that Mr. Tuke was offered that he turned down. As far as the second aspect of the claim was concerned, Mr. McWilliams argued that Mr. Tuke would not have been able to hold onto the investment cars, because the needs of his business were his first priority. Mr. McWilliams recognised that this argument was far stronger if I were to hold that Mr. Tuke would have entered into the Group C transaction in any event. But he submitted that even if the Group C transaction had not been concluded, Mr. Tuke would have sold the investment cars, or at least the majority of them, in order to fund his business. The cars would likely have been sold in the same sequence in which they were sold, and at around the same time. That sequence was: Aston Martin (June

2011); C Type (September 2011); XKSS (February 2012); Jaguar E-Type (May 2012); GT40s (December 2012); XK 120 (JWK) (July 2013). Mr. Tuke would therefore not have been in the position of retaining ownership of the best cars in 2020.

648. On behalf of Mr. Tuke, Mr. Wright submitted that if there had been no fraud, Mr. Tuke would have been very well positioned to retain his favourite cars. If there had been no Group C transaction, then Mr. Tuke would not have been facing the pressing liabilities to Close resulting from the financing. In his closing submission, he produced a table showing how much money Mr. Tuke had raised from various sales. In the period 2011 – 2015, sales through JDC had produced £ 12.5 million, and sales through Sam Thomas had produced £ 1.33 million. But the majority of these monies (around £ 8.5 million) had been paid to Close. If the Group C transaction was taken out of the picture, then Mr. Hood would not have had to sell as many cars as he did. His net position in those years, after deducting the payments made to Close, was that he raised only £ 5.2 million. Between 2016 and 2019, he raised an additional £ 4.5 million. The total amount raised (£ 9.7 million) could have been virtually covered by sales of various cars including the non-investment cars and the Bugatti, as well as some £ 2 million "overpaid" in relation to the purchase transactions. But in any event, the critical period was 2011- 2015. If Mr. Tuke could have retained his cars until 2015, he would have enjoyed the benefit of substantial upwards market movement. The market in 2015 was twice the level of 2009/2010, and was substantially higher than it had been in 2011- 2012 when most of the cars were sold.

F2: Discussion

649. Having heard the evidence, it is readily apparent that, as Mr. McWilliams said, there are many moving parts in the case in terms of different permutations of what might have happened, what Mr. Tuke might have done, and how everything would have worked out. As Mr. McWilliams rightly said: "it is almost unknowable the number of different ways this could have panned out".

650. This is a case where the assessment of damages must take into account the uncertainty, and where I must estimate the loss by making the best attempt I can to evaluate the chances, great or small, taking all significant factors into account. I start, however, by identifying a number of matters which in my view provide the framework for my assessment, bearing in mind that quantification of damages may be shaped by the fact-findings that the court is able to make: see *Vald Nielsen* at [491].

651. First, I consider that there is no realistic basis on which I could conclude that Mr. Tuke would have invested monies "overpaid" in early 2010 in additional cars. I consider that he would not have done so. This is for the simple reason that there were no cars which were offered to Mr. Tuke which he turned down during the acquisition phase. He bought all the cars that he wanted to buy, and financial constraint was never an issue. He was at this time only dealing with JDC, and so there can be no suggestion that he might have bought cars through other dealers. In relation to JDC, Mr. Tuke was not pressing or even asking Mr.

Hood to find more cars for him. Transactions came about because Mr. Hood got in touch with Mr. Tuke, and he was (as Mr. Tuke said in evidence) a very persuasive salesman. I therefore reject the first aspect of the claim for loss of investment opportunity.

652. This does, however, have a knock-on consequence which is helpful to Mr. Tuke in the context of the claim concerning the investment cars. On the basis of my decision in relation to the AC Aceca and the Gullwing, Mr. Hood's fraud had the consequence that Mr. Tuke was defrauded of £ 869,000. This is money that he would otherwise have had to meet his cash needs once the sales phase started.

653. Secondly, I have no doubt that Mr. Tuke would have wished, if he could, to retain the favourite cars in his collection. He clearly had a strong interest in cars and classic cars. His "Personal Net Worth" statement dated February 2011 showed that his collection then amounted to 42 cars, not all of which had been purchased from JDC or were "classic" cars: e.g. it included various cars dating from the 2000's such as a Bentley Continental dated 2006. Cars comprised Mr. Tuke's main assets (£ 28 million out of £ 41 million on that statement of assets). The classic car market was very obviously where he was looking to invest at this time and there is no reason to think, for example, that he would have been looking for an entirely different form of investment.

654. The contemporaneous evidence also supports Mr. Tuke's evidence that there were cars that he particularly liked and wanted to keep. The 24 September 2010 e-mail identified four specific cars. Later e-mails reflect Mr. Tuke's attachment to particular cars. For example, on 1 August 2011, after Mr. Hood advised him that he "may have a deal on the C Type", Mr. Tuke's reaction was: "Eek. Why is best chances on the ones I like." This was after he had recently sold the Aston Martin (one of the investment cars) as well as the Broadspeed and a Jaguar Mark II. On 2 August 2011, Mr. Tuke described the C Type in an email as "the only race car I wanted to keep". Whilst this strongly supports the case that Mr. Tuke would have tried to keep the C Type if he could, it does suggest that he was not so firmly attached to the GT40 race car: that car did not feature in the 24 September 2010 e-mail.

655. I also consider that Mr. Tuke would have particularly wanted to keep the XKSS and the XK 120 (JWK registration). Both of those cars were referred to in his September 2010 e-mail. The correspondence shows that he was particularly keen to have a buyback option on the XKSS, and was still interested in a possible repurchase even after it was sold in February 2012. His attachment to the XK 120 is evidenced by his e-mail to Mr. Hood in May 2013 when, prior to its delivery to the buyer, Mr. Tuke asked for a "last blast" in it. The thrust of Mr. Tuke's evidence, which I accept, is that he particularly enjoyed the road cars in his collection, because he could drive them.

656. Thirdly, there can be no doubt (as indeed was recognised in the submissions of both Mr. Wright and Mr. McWilliams) that the Group C transaction was pivotal in relation to the loss of investment opportunity claim. The claim for loss of investment opportunity would be more difficult, on the facts, if Mr. Tuke would have entered into this transaction in any event. I have held, however, that Mr.

Tuke was fraudulently induced into entering this transaction, and that he would not done so if he had known the true position. The Group C transaction had the effect of putting Mr. Tuke under considerable financial pressure, with the need to make loan repayments and interest payments necessitating the sale of cars. That pressure might have been eased if there had been sales of the Group C racing cars purchased by Mr. Tuke as part of that transaction. However, this proved extremely difficult, to say the least.

657. The significance of the Group C transaction, and its financial consequences, was apparent from the cash flow schedules which Mr. McWilliams and Mr. Wright produced as part of their closing submissions. Mr. McWilliams' schedule was premised on the assumption that Mr. Tuke did enter into the Group C transaction. He sought to show, in broad terms that (on that assumption) Mr. Tuke would have had to sell the investment cars in order to meet his cash flow requirements. In view of my finding that Mr. Tuke would not have entered into the Group C transaction if he had known the truth, it was Mr. Wright's schedule which was more revealing and relevant. This showed that during the period from 2011 to 2015, during which time all the investment cars were sold, Mr. Tuke realised around £ 13.8 million by way of sales: £ 12.5 million via JDC in 2011-2013, and £ 1.33 million via Mr. Thomas in 2013 and 2015. Of that sum, in round terms, £ 8.5 million, including interest charges, was paid to Close. This meant that the net amount of money which Mr. Tuke realised from all the sales during that time, and which could be used to fund his business or his tax liabilities, was only £ 5.2 million. Whilst this is a significant sum, it would (assuming that it was all that Mr. Tuke was looking to raise) have been a much more manageable figure from Mr. Tuke's perspective, bearing in mind (i) that he had a large number of non-investment cars, for which he had paid around £ 7.5 million, and which could potentially be sold, and (ii) that he would have had additional sums (£ 869,000 on my assessment) had he not been misled on the purchase of the AC Aceca and the Gullwing.

658. In these circumstances, I agree with Mr. Wright's submission that, but for the Group C transaction, Mr. Tuke would have been able to retain many of the cars that he really wished to keep, certainly during the period 2011 – 2015 when the Close transaction put Mr. Tuke under financial pressure.

659. It is true that Mr. Tuke then did sell further cars in the period 2016-2019, principally via Sam Thomas, realising some £ 4.5 million in total. However, Mr. Wright was able to argue, and I agree, that the claim for loss of investment opportunity would be soundly based provided that Mr. Tuke could hold on to the investment cars until the "landing stage" of 2015/2016. This was because Mr. Neumark's evidence showed significant increases in those years, compared to the market level at the time of the original purchases in 2009/2010, and the majority of sales of the investment cars in 2011/2012. Mr. Neumark's index figures for the relevant years, starting from a base of 100 in 2009, were as follows: 101.11 (2010), 106.02 (2011), 132.32 (2012), 157.38 (2013), 187.99 (2014), 216.64 (2015), 236.73 (2016), 247.93 (2017), 249.20 (2018), 255.57 (2019) and 248.64 (2020). On this basis, provided that Mr. Tuke could retain the investment cars until 2015 or 2016, he would have been in a position to

enjoy the most significant market rises. Mr. Broad did not challenge Mr. Neumark's figures in that regard.

660. Fourth, I do not accept Mr. McWilliams' argument that, in the counterfactual world (where there had been no fraud) the sequence of sales would likely have been the same or similar to the sequence which actually occurred. In my view, the sequence in which cars were sold was primarily driven by two factors which would not have existed in the counterfactual world. First, a very significant driver was the Group C transaction and the need to make payments to Close. This produced particular pressure in 2011 and 2012, when payments of nearly £ 8 million were made, in circumstances where sales of the Group C racing cars were not achieved. Secondly, the sequence was dictated by Mr. Hood himself, and the false representations which he made in order to obtain cars which he considered desirable. There is no reason to think that, in the counterfactual world, the sequence would have been the same. Indeed, I have already concluded that, but for the fraud, Mr. Tuke would have been able to keep many of the cars that he wished to keep.

661. Fifth, I consider that the net amounts (i.e. net of the payments to Close) which Mr. Tuke actually realised, via his sales of cars, provide a reasonable guide to the amounts of money which Mr. Tuke would have raised from car sales in the counterfactual world. This was £ 9.7 million comprising £ 5.2 million in 2011-2015 and £ 4.5 million in 2016- 2019.

662. I agree with Mr. McWilliams' point that it is not a perfect guide. It does not automatically follow that, because these were the net amounts actually raised, they were also the amounts that would have been raised if there had been no fraud. There are various factors at play here, and they do not all point in one direction. For example, the actual amounts raised reflected the money which Mr. Tuke was able to raise with the mix of cars then at his disposal. Prominent within that mix, by April 2011, were the Group C racing cars. These were difficult to sell, not least because there is a far more limited market of purchasers for such vehicles as compared to road cars which can be driven for enjoyment. Had a different mix of cars remained available, then Mr. Tuke may have found it easier to raise funds. The actual sales and their timing also reflected the financial pressure from the Close transaction which was imposed upon Mr. Tuke. Had that pressure not existed, then Mr. Tuke would have had more breathing space to choose the time to sell.

663. On the other hand, Mr. McWilliams made the fair point that Mr. Tuke might well, even if he had his original collection intact and had not been under the pressure imposed by the Close transaction, have nevertheless decided to sell cars in order to provide more capital for his business. Mr. Tuke's evidence was that he liked to maintain a degree of headroom in the operation of his business, and it is therefore perfectly reasonable to suppose that Mr. Tuke might have sold cars from his collection in any event; e.g. to maintain headroom between the needs of the business and the cash available, or simply to take a profit on a rising market. Mr. McWilliams also identified the fact that there may have been some advantage to realising a large amount from a sale of a single valuable car, rather than selling a number of less valuable cars with the consequent risk that HMRC

might contend that Mr. Tuke had become a dealer and hence face a tax liability. I was not persuaded that this was a point of great significance, or that it would have led Mr. Tuke to selling his favourite cars. After all, he did enter into the Group C transaction, which involved the purchase of 5 cars and the sale of 4 cars.

664. It is, of course, relevant that, in the final months of 2010 and the early months of 2011, and even before the Group C misrepresentations, Mr. Tuke was desperate to sell something, and he did recognise in the correspondence that he might well have to sell a favourite car. But it does not follow that he would have had to sell many favourite cars at that stage. I bear in mind that although larger figures are referred to in the 2010 e-mail correspondence as being amounts which Mr. Tuke was looking to raise, the Group C transaction did not in fact provide an immense amount of free cash to Mr. Tuke: he raised less than £ 2 million after charges.

665. These are factors that need to be considered in the overall assessment of damages in connection with the loss of investment claim. I also need to bear in mind the possibility that if Mr. Tuke had focused on selling the less valuable "non-investment" cars, rather than the more attractive cars in the collection, he may not have recovered as much money as he had spent to buy them; particularly bearing in mind that he had paid JDC high retail prices for those cars in 2010, and the market had not moved significantly by 2011.

666. It is, as I have indicated, impossible to come to a view as to exactly what would have happened in the counterfactual world, including which specific cars would actually have been sold or retained. This is an area which simply cannot be resolved with certainty. Mr. Tuke would have had to balance the needs of his business and other demands for cash with his desire to retain some favourite cars from his collection and the attraction of taking a profit on a rising market.

667. Mr. McWilliams argued that the uncertainty had been exacerbated by Mr. Tuke's failure to adduce evidence so as to provide "a full and complete account of what sums were going in, how he was putting monies into the business" and matters of that kind. He submitted that this should count against Mr. Tuke. I disagree. The assessment of damages in the present context is inherently uncertain. I have evidence as to how much money Mr. Tuke actually raised from sales at the relevant time. I also have contemporaneous evidence, in the form of the e-mail correspondence as to the amounts that he was looking to raise. I know what cars were sold and when, and the circumstances in which they were sold. I have evidence as to what Mr. Tuke was seeking to achieve. I doubt whether the provision of additional data, for example as to the precise needs of his business or how he actually funded those needs, would have enabled a more precise view to be formed as to what would have happened in a counterfactual world which did not happen.

668. Against this framework, and taking the various contingencies and uncertainties into account as described above, I consider that it is appropriate to award damages on the basis of 75% of the loss of investment claim as calculated below. This figure seems to me fairly to reflect the strong probability that Mr.

Tuke would, but for the frauds, have been able to retain at least the majority of the investment cars in his collection until 2020, or at least until 2015/2016 by which time the market had risen significantly. I also consider that he would have made real efforts to retain the C Type, XKSS, XK 120 (JWK) and Aston Martin, and that he could successfully have done so.

669. A discount from the full amount claimed is, however, appropriate in order to reflect the uncertainties. In particular, the 25% discount is influenced by my doubt as to whether Mr. Tuke would have wished or been able to retain all his cars, in circumstances where I agree with Mr. McWilliams that his priority would have been to ensure that his business was adequately funded, and where he would have been tempted to take a decent profit on a rising market. I am also doubtful as to whether Mr. Tuke would have picked out all the ultimate 2020 "winners" on a rising market, rather than selling one or more along the way. In reality, investors are rarely so clever. That said, it does seem to me that, in his initial purchasing decisions, Mr. Tuke did buy a number of cars which were very good indeed, and he was right to identify in 2009 that this was a market with strong growth potential. I also agree with Mr. McWilliams point that some allowance should be made for the costs of maintaining the cars over the intervening years.

670. As to the figure to which the 75% should be applied: the loss of investment claim was put forward as a claim for £ 12,247,640, being the difference between the present value of the cars and the "Original sale value (PXs at Neumark values)". Following conclusion of the trial, I asked the Claimant to provide an explanation as to how the "Original Sale value" had been calculated, since this was not readily apparent from the report of Mr. Neumark or the evidential references which the Claimant's schedule had provided. The explanation was that the "Original sale value" in fact represented the consideration for each transaction. In respect of the Jaguar Lightweight E-Type, this was the sale price achieved on the sale to Morris & Welford. In relation to the other cars, which were all part-exchanged, the consideration was the total sum received by Mr. Tuke: i.e cash paid plus the value of the cars received as calculated by Mr. Neumark. The basis of this approach was that Mr. Tuke sought to be put, in financial terms, into the position as if he had retained all the cars in 2020, but accepted that he should give credit for benefits received as a result of the various sales that took place between 2011 and 2013.

671. The claim as formulated and explained was therefore as follows:

Car make/ model	**Net benefit obtained by Mr. Tuke (Part Exchanges at Neumark values)**				**Present value (as at Q1 2020)**	**Loss (present value minus net benefit)**
	Cash to MT in transaction	**Cars to Tuke in PX transaction**	**Neumark value of cars to Tuke in PX - §4.5 [c1/1/19]**	**Benefit obtained by Mr Tuke (for which credit is given)**		

Ford GT40 Race Car (MKI)	500,000	Ferrari 250 Testarossa	500,000	£1,000,000	£3,840,000	£3,140,000
Ford GT40 Road Car (MKII)					£300,000.00	
Jaguar C Type	1,000,000	Jaguar Costin Lister and Allard J2X	1,550,000	£2,550,000	£4,000,000-£4,500,000	£1,700,000
Jaguar XKSS	2,000,000	Lister Knobbly	400,000	£2,400,000	£7,500,000	£5,100,000
Jaguar XK120 JWK651	750,000	Jaguar E Type Replica	150,000	£900,000	£1,000,000 to £1,500,000	£350,000
Aston Martin Vantage Volante	200,000	XK120 "670033"	100,000	£300,000	£1,400,000	£1,100,000
Jaguar Lightweight E Type	4,392,360	None	N/A	£4,392,360	£5,000,000 to 5,500,000	£857,640
Total				**£11,542,360**	**£23,790,000**	**£12,247,640**

672. I consider that this way of calculating Mr. Tuke's loss of investment is unobjectionable in principle – and I did not understand Mr. McWilliams to challenge the basic approach, as opposed to putting forward arguments (described above) concerning the factual basis for the claim advanced. I also note that Mr. Neumark's figures for values in 2020 were not the subject of challenge.

673. However, some adjustment to these figures is required for two reasons.

674. First, I have not in all cases accepted Mr. Neumark's figures for the value of the cars part exchanged. I have valued the Ferrari (exchanged for the GT40s) at £ 680,000 rather than £ 500,000. I have valued the Lister Knobbly at £ 600,000 rather than £ 400,000. This has the effect of increasing the "net benefit" by a total of £ 380,000 and therefore reducing the claim by a corresponding amount. The starting point for the claim is therefore a benefit of £ 11,922,360 and a corresponding reduction in the loss to £ 11,867,640 (£ 12,247,640 less £ 380,000).

675. Secondly, I presently consider that if the benefit to Mr. Tuke of the sales in 2011-2013 is to be fully taken into account, some allowance should be given for the time-value of the money which Mr. Tuke received as a result of those sales. As the column headed "Cash to MT in transaction" shows, those cash payments were significant, amounting to £ 8,842,000. (The cars received in part exchange

were in due course also sold for cash). The need to make an allowance for this benefit was not, however, a point that was raised during the trial.

676. I consider it appropriate for further submissions to be made as to the appropriateness of an allowance for the time value of money (effectively interest), and the amount of such allowance if appropriate. The possible need for such an allowance is highlighted by the claim which Mr. Tuke makes for a significant amount of compound interest on the losses suffered on the individual transactions. An anomaly may arise if such interest is awarded in respect of those transactions, but no allowance is made for interest in the context of the loss of investment opportunity claim. Since issues concerning the claim for compound interest have been reserved for determination hereafter at a "consequentials" hearing, that hearing can and should also address the issues concerning a possible additional credit in the context of the loss of investment opportunity claim.

677. Accordingly, subject to the question of whether the figure of £ 11,867,640 should be reduced to reflect the time value of the benefits received by Mr. Tuke in, particular, 2011-2013, I will award as damages 75% of that figure for loss of investment opportunity: i.e. £ 8,900,730.

678. It is convenient, finally, to deal with one other aspect of the case advanced by Mr. Tuke. In relation to certain cars which formed part of the "Loss of Investment Opportunity" claim, Mr. Tuke's damages also relied upon the price actually achieved by JDC upon sale of the cars in question. Sometimes, this sale occurred shortly after the transaction with Mr. Tuke: for example, the XK 120 (JWK) was sold to Mr. Engelhorn, allegedly for £ 3.5 million, relatively soon after the transaction with Mr. Tuke. In other cases, the transaction occurred some time later: in the case of the C Type, many years later.

679. Mr. Wright sought to rely upon the principle (see *Smith New Court*) that damages for fraud are not necessarily assessed by reference to the date of the transaction whereby an asset was acquired or disposed of in consequence of a fraudulent misrepresentation. An alternative valuation date, later in time, can be adopted in appropriate cases. I have not adopted this approach to damages in the present case for a number of reasons.

680. First, since I have accepted Mr. Tuke's case that he would have sought to retain the investment cars until 2020, and have awarded damages on that basis, there is in my view no room separately to consider an award of damages by reference to possible transactions with third parties at earlier points in time. Indeed, I did not understand Mr. Tuke to contend that damages could be awarded on both bases.

681. Secondly, even leaving aside the claim for loss of investment opportunity, I would not think it appropriate to value Mr. Tuke's loss on the various transactions by reference to dates other than the transaction date. That is when the loss was most obviously suffered; i.e. when Mr. Tuke, in the context of part exchange transactions, can be seen to give up a valuable car in his collection at an undervalue or (the opposite side of the same coin) to acquire a different car

at an overvalue. The expert evidence has addressed the issues relating to the values of the cars at that time, and I see no good reason to look at any alternative dates.

682. Furthermore, in circumstances where there are serious allegations of false accounting by JDC and Mr. Hood, in the context of the claim brought by the private equity purchasers of the business, I would be reluctant to base a damages award on figures which are significantly different to the values given by the experts. A particular example of this is the apparent sale of the GT40 road car for £ 2.5 million, in circumstances where Mr. Neumark's evidence is that it was worth around £ 300,000. I therefore agree with Mr. McWilliams' submission that the appropriate basis for the calculation of damages is market value, rather than the values recorded in sales transactions some time later.

G: Conclusions

683. This section summarises my conclusions and their financial consequences.

G1: Individual transactions

684. In relation to the 11 transactions (3 purchases, 7 part-exchange transactions, and one straight sale), I assess damages in the sum of **£ 4,247,061.01**: see Section E 12 above. The majority of this figure is also claimable, but not additionally, as equitable compensation.

G2: Loss of investment opportunity

685. I assess at damages at **£ 8,900,730** subject to potential adjustment: see Section F2 above.

G3: Compound Interest

686. An award of compound interest is potentially available in respect of the equitable compensation to which Mr. Tuke is entitled. This arises in relation to each of the sale transactions addressed in Section E above, but not the two purchase transactions. I will determine the appropriateness of an award of such interest, and the applicable rate, at a further hearing.

G4: Exemplary Damages

687. The legal principles relating to exemplary damages are set out in Section D6 above. I decline to award exemplary damages in the present case. I do not consider that this is an appropriate case for the award of exemplary damages.

G5: Conversion, account of profits, knowing receipt

688. I dismiss these claims.