

TRANSCRIPT OF PROCEEDINGS

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**IN THE HIGH COURT AT BIRMINGHAM
QUEEN'S BENCH DIVISION**

Priory Courts
33 Bull Street
Birmingham

Before THE HONOURABLE MR JUSTICE SAINI

IN THE MATTER OF

MONES MAHAJNA (Appellant)

-v-

**LONDON SCHOOL OF BUSINESS AND FINANCE (First Respondent)
FINANCE AND BUSINESS TRAINING LIMITED (Second Respondent)**

**THE APPELLANT appeared in person
MR ROGER LAVILLE and MR TONNARD appeared on behalf of the First and
Second Respondents**

**APPROVED JUDGMENT
11th DECEMBER 2020, 15.19–16.49**

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MR JUSTICE SAINI:

This judgment is in 8 parts as follows:

I.	Overview:	paras. [1-9]
II.	Materials and submissions:	paras. [10-13]
III.	Grounds:	paras. [14-17]
IV.	Ground 2: procedural fairness/irregularity	paras. [18-60]
V.	Ground 1: misunderstanding the case	paras. [61-80]
VI.	Ground 3: interest	paras. [81-86]
VII.	Ground 5: costs	paras. [87-101]
VIII.	Conclusion:	paras. [102-106].

I. Overview

1. This is an appeal brought by Mr Mones Mahajna, the appellant (who acts in person), against an order made by His Honour Judge Murdoch sitting in the County Court at Birmingham on 3 May 2019.
2. The order was made by the judge following a trial on quantum in a claim that Mr Mahajna had earlier successfully made against the London School of Business and Finance (UK) Limited and Finance and Business Training Limited, the two respondents to this appeal. That claim was the subject of a trial on liability which concluded with a judgment of Judge Allen dated the 24 January 2018, upholding certain of Mr Mahajna’s claims.
3. The judge’s reasons for making the order under appeal were contained in two judgments: a judgment of 1 March 2019 dealing with the quantum issues, and a costs judgment of 3 May 2019. Both are challenged before me with permission to appeal (on certain limited grounds) having been granted by Murray J on 6 April 2020 following an oral renewal hearing (after Jeremy Baker J originally refused permission on the papers). Under Murray J’s Order

of that date he refused an application to add 7 additional grounds of appeal, refused permission to appeal on Ground 4 (a matter to which I will need to return), and granted permission on Grounds 1, 2, 3 and 5 of the Grounds of Appeal.

4. I will begin by providing a broad description of the background facts. A fuller history is contained in Judge Allen's judgment on liability. In or around September 2008, Mr Mahajna enrolled on an MBA course in financial services provided by the second respondent at the Birmingham campus of the first respondent. Mr Mahajna claimed that he had been induced to enrol on the course by actionable misrepresentations by the respondents, which also amounted to breaches of contract. In essence, his case was that the respondents had represented, amongst other matters, that the MBA course would be validated by the University of East London; that completion of the course would make him eligible for a visa to work in the UK after completion; and that the course would increase his earnings potential.
5. At the trial on liability, Judge Allen held the respondents liable for misrepresentation and breach of contract regarding the validation of the course by the University of East London but dismissed the balance of Mr Mahajna's claims. Judge Allen did not give a judgment on quantum, but instead made directions for quantum to be tried separately.
6. After some delay, the quantum trial came on before His Honour Judge Murdoch and was the subject of a two-day hearing on the 14 and 15 of February 2019. Before the judge Mr Mahajna (acting in person) claimed sums in the region of £1.7 million by way of damages. This included claims for the cost of immigration fines and proceedings, loss of past and future earnings, loss of pension rights and what was called loss of security and home life. I will need to return in due course to particular heads of loss that were advanced before the Judge. Following the conclusion of the quantum trial on the 14 and 15 February 2019, the judge reserved judgment and in due course provided a

detailed written draft judgment dated 1 March 2019. I will call that the “quantum judgment”, and it is the subject of the first appeal.

7. In summary, the judge assessed the damages that Mr Mahajna was entitled to as the modest sum of £3,375.00 in respect of the course fee Mr Mahajna had paid, and the sum of £3,500.00 for mental distress, amounting therefore to a total of £6,875.00. He also awarded interest at 2 per cent from the date of payment of the invoice for the course. All of the other heads of loss which were the subject of Mr Mahajna’s claim were dismissed on the facts.
8. Given the nature of the issues which arise in this appeal and, specifically, the very serious criticisms made by Mr Mahajna of the judge (in respect of the claimed unfairness of the hearing on the 14 and 15 of February 2019, I have considered in full the transcripts of the hearing on those days.
9. There was then a hearing on the question of costs. By a judgment given on the 3 of May 2019, the judge ordered that Mr Mahajna should pay 30 per cent of the respondents’ costs and directed an interim payment towards those costs in the sum of £10,000. He also directed that the sums owed to Mr Mahajna under the quantum judgment could be offset against this interim payment

II. Materials and submissions

10. In addition to Mr Mahajna’s detailed written grounds and skeleton argument, I have also read and considered a further additional skeleton argument provided by him. This is a substantial document, prepared following the earlier procedural hearings in relation to this appeal (in particular, the permission hearing).
11. Mr Mahajna has also served a very helpful and detailed set of documents, which I received this morning. One document is entitled “The claimant’s oral submissions for some of the issues for the appeal hearing on the 11th December 2020.” This is a 38-page document and it is accompanied by an

annex, which contains a substantial number of documents. Although I was not able to complete the reading of the entirety of these documents this morning before we began, I was able to read the majority of the material. I did however manage to complete reading the materials during the lunch adjournment.

12. The grounds have also been explained more fully in Mr Mahajna's oral submissions. Aside from that, I have received a helpful and succinct skeleton argument by counsel for the respondents and a short oral address on certain points from him. I directed that each party have an equal division of time for the hearing of the appeal and Mr Mahajna took the allowance and a little extra time.
13. Before turning to the issues on appeal, I should say that Mr Mahajna has represented himself with skill before me and has shown a mastery both of the documents and the law; and he has made succinct and helpful oral submissions. His written documents are also clear in terms of setting out the nature of his complaints

III. Grounds

14. As explained above, following a renewed oral application, permission to appeal in relation to Ground 4 (unfairness at the costs hearing) was refused and I will need to return to that point in due course because that complaint has arisen again.
15. In relation to grounds where there is permission, and in very broad summary, the complaints are as follows. Ground 1 alleges that the judge misunderstood Mr Mahajna's case. Ground 2 is that the judge's decision following the quantum hearing should be overturned due to what Mr Mahajna calls "prejudice and unfairness" during the hearing on the 14 and 15 of February 2019. Ground 3 attacks the judge's decision to award 2 per cent interest on the damages, as well as the start date for the accrual of interest. Ground 5 alleges that the judge's costs decision, which was the subject of the separate

judgment of 3 May 2019, was wrong on the merits. Within Ground 5 Mr Mahajna has sought to introduce complaints originally made under Ground 4 where permission was refused.

16. Before I turn to the substance of the first of those grounds, I need to set out the terms of CPR 52.21 sub-paragraph (3):

“The appeal court will allow an appeal where the decision of the lower court was –

(a) wrong; or

(b) unjust because of a serious procedural or other irregularity in the proceedings in the lower court.”

17. I set that rule out because the main subject of the oral submissions to me (and indeed the subject upon which most of the written submissions concentrate) is that the judge’s decision should be overturned due to prejudice and unfairness during the hearing on the 14 and 15 of February 2019. That is Ground 2 to which I now turn.

IV. Ground 2: procedural fairness/irregularity

18. I will address Ground 2 as the first matter given the prominence it was given. Mr Mahajna has explained to me this morning that it is the most important of his grounds because it undermines the entirety of the judgment.
19. This ground itself has been helpfully divided by Mr Mahajna into 10 sub-points (or sub-allegations) which he has taken me through orally and which are also the subject of his skeleton argument. For the avoidance of doubt, that is the 40-page skeleton argument in the bundle for this appeal. At page 6 of that skeleton argument he sets out the first of his 10 sub-points.
20. I will address each sub-allegation in a moment, but it is appropriate before doing that to make some general observations as to the approach which I consider appropriate in this type of challenge. That is, when an appellant makes a complaint of fundamental unfairness or prejudice concerning a hearing and conduct of a judge.

21. In my judgment, the relevant question for me at the appellate level can be put in broad terms as follows. Bearing in mind the individual sub-points of complaint and also standing back and considering the proceedings as a whole, was the appellant's right to a fair trial at common law and under Article 6 of the European Convention on Human Rights respected? It does not seem to me that there is any real difference of substance between these two fair trial guarantees.
22. I do, however, need to add that one has to approach this question in practical terms and that will involve asking at least the following questions: (i) first, bearing in mind the exchange of pleadings (which alert the judge and each party to the issues to be decided) did the appellant get an opportunity to advance his case; (ii) second, did he get an opportunity to answer the case being put by the respondents; (iii) third, other than making appropriate procedural rulings to ensure that the case was conducted so that it could finish within the allotted time, did the judge do anything which could be regarded as robbing the appellant of a fair process?
23. I agree with Mr Mahajna that if there has been a serious violation of any of the safeguards which I have outlined, those would, in principle, entitle him to a new trial. However, one needs to underline a number of points. First of all, it seems to me that assessing whether there has been a fair process is an objective question. It is a matter for me to assess and it is not ultimately of relevance that an appellant may subjectively feel that they have had an unfair trial. Unfortunately, such perceptions are common not only of litigants in person but also on the part of represented parties.
24. I also need to make a further observation: one needs to approach these questions taking into account proportionality. The court's time and resources are not unlimited and, in deciding how to run a fair trial, a judge is entitled (and indeed obliged) to bear in mind proportionality considerations. The judge has to ensure that the court's resources are appropriately used and it is

unlikely that an appellate court will entertain any complaint of unfairness merely because an unsuccessful party complains they did not have enough time.

25. What the appellate court must consider is whether, given the nature of the issues in dispute and the need to act proportionately, the parties before the first instance judge were provided with an appropriate and fair allocation of time to deal with those issues. I underline that no party has the right to claim an unlimited amount of time to put their case.
26. I should also indicate that any assessment of the fairness of proceedings in a lower court need to be sensitive to the fact that the way in which a litigant in person will perceive proceedings is important. One needs to have regard to the statements made in the Equal Treatment Bench Book, which stresses that litigants in person are operating in an alien environment and they are trying to grasp concepts of law and procedure about which they have no knowledge. The Equal Treatment Bench Book also indicates that the judge is a facilitator of justice and may need to assist the litigant in person in ways that would not be appropriate for a party who has employed skilled legal advisors and an experienced advocate.
27. Before one gets to the first of the sub-points under Ground 2, I consider it is appropriate for me to describe the course the proceedings before the judge on the 14 and 15 of February 2019 as they appear from the transcript.
28. My reading of the transcript itself has led me to the firm conclusion that Judge Murdoch's approach to the trial was both scrupulously fair and courteous. In particular, it is clear to me that he was sensitive to Mr Mahajna's position and difficulties as a litigant in person.
29. As I have indicated, I have read the entire transcript, but a number of points struck me. First, at many parts of the transcript one can identify that Judge Murdoch granted indulgences to Mr Mahajna to allow him to submit

documents which were not either currently in evidence or which the respondents said they had not seen. There are a number of examples of this happening and I refer, in particular, to page 10 of the transcript of the 14 of February 2019 at line 13, where Mr Mahajna is clearly producing documents that counsel for the respondents (Mr Timothy Lau) had not seen.

30. The judge, in his typically courteous way, does not express concern to Mr Mahajna about this, but says “That’s OK, you concentrate on your evidence. I’m sure that Mr Lau ... will be able to say if there’s a document he has not seen. I will happily pass my bundle down.” I have picked that example, but the transcripts for both days are replete with examples of such kind behaviour on the part of the judge.
31. A further striking matter I noted in my reading of the transcripts is that, on occasion and as is understandable, Mr Mahajna became distressed and the judge offered to take a break or to carry on if Mr Mahajna wished to do so.
32. I also noted that, as regards the division of time, the judge ensured that when it came to submissions there was an appropriate allocation of time and explained towards the end of the hearing as follows at page 92, line 13 of the transcript: “No. I’m going to wrap it up now. You have both had equal time to give your submissions. I have to take a proportionate view of this. This is a case that was listed for a day and a half, it has now run over time. I’m not going to be able to give judgment today.” So, this shows the fair and proportionate approach being adopted by the judge.
33. I would add that not only was the judge acting fairly in my view throughout the proceedings, to a certain extent, he made significant allowances for Mr Mahajna. I note that when the trial began the first stage was meant to be Mr Mahajna’s oral evidence and the judge allowed Mr Mahajna to supplement his witness statement with oral evidence, which carried on over nearly 34 pages of the transcript.

34. Strictly, the evidence of Mr Mahajna should have been confined to his witness statement, together with any necessary supplementing of that witness statement. Instead, the judge permitted Mr Mahajna to supplement that evidence substantially and in effect, on my reading of those pages of the transcript, to make submissions in relation to his losses. Again, this underlines the scrupulous fairness with which the judge approached this matter.
35. I must say, having considered the transcript, the judge appears to me to have done everything reasonably possible to assist Mr Mahajna and indeed it might be said he had gone out of his way in this regard. I also note that Counsel for the respondents, Mr Timothy Lau, was polite and fair in his cross-examination of Mr Mahajna. Where he pressed Mr Mahajna, I detect no unfairness or oppression and Mr Lau was appropriately firm on occasion.
36. With those preliminary observations, I turn to the first of the 10 sub-points. Many of these sub-points overlap and I will indicate when that is the case.
37. The first sub-point concerns a complaint that the respondents served, in Mr Mahajna's words, "literally everything" on him in breach of court orders and in breach of the rules. This is essentially a complaint about the nature of the bundles that appeared before Judge Murdoch when he began the quantum hearing on the 14 of February 2019.
38. The judge began the hearing by making it clear what he had before him and I quote from page 1, line 1 of the transcript of the 14th of February 2019:

"Before we begin, I just want to see what documentation everyone has got, to make certain we have got all the same documentation. I have got bundles 1 through 9. But I've also got various other bundles, that come in a sort of treasury tag. I just want to see, as it were, what I'm supposed to have and make certain that we have all got the same things. In my bundles with treasury tags, I've got something called MN, bundle N1, bundle N3, some documents which are just completely loose, so I don't know what those are. It seems to be various court orders. Let's put that to one side for the moment. I've

also got submissions bundle N2, that has just been handed to me. I've not had a chance to look at that one, I'm afraid. Claimant's skeleton argument dated 31st of January 2019. A list of issues from the defendant, a list of issues from the claimant, the defendants' skeleton argument, a case summary which looks like it is from the claimant, it is in their typed font, witness statements of the claimant marked draft 16th of January 2018 and the claimant's amended particulars of claim dated 18th of December 2018. Some of those may appear in the bundles too, but those are all the documents I have got. Is there anything else I should have?"

39. At that point in time neither Mr Lau nor Mr Mahajna said that there was something missing or that there were documents which the judge had described and which he should not have had. Furthermore, as I have already indicated, the judge allowed Mr Mahajna to submit additional documents which had not been provided to the respondents.

40. Standing back, the essence of this complaint made by Mr Mahajna in his written documents and in the documents before me this morning is that somehow there was some unfairness because the respondents had served documents in breach of the rules. Pausing for one moment, one might have expected, if there was such unfairness or ambush, as it has been described in certain documents, that Mr Mahajna would have raised the issue. He was certainly able to complain when he felt that there was something to be concerned about and there are examples of him doing that in the hearing. But even accepting (for the purposes of argument) that there may have been some earlier procedural breaches in terms of compliance with court orders concerning service of documents, it does not seem to me that this complaint justifies the assertion that there was serious procedural unfairness requiring a new trial.

41. I would add that I have every sympathy with the judge's position in relation to the "mess", for want of a better word, with which he was faced in terms of documents. In his quantum judgment the judge explained (here I refer to the judgment by page numbers which I have added because this judgment does not have paragraph numbers) at page 2:

“The claimant is a litigant in person, so I bear that in mind when commenting on the procedural context. Nonetheless, I have been burdened with six lever arch files and at least four bundles prepared by the claimant himself. The claimant’s four bundles have no index and some were produced mid-cross-examination and contained documents that had no bearing on the case before me. I add that I gave directions limiting the bundles to documents relating to quantum. I give just a few illustrations of the documents that have caused fog to envelop this case: an extract from The Times headed ‘Top Shop boss, Sir Phillip Green, back to school with varsity deal with GUS’ to which the claimant has highlighted that the billionaire owner of Top Shop has diversified into education, backing a network of universities set up by a Russian/Israeli entrepreneur. Israelnationalnews.com, driving instructors block TA Jerusalem highway, court orders driving test examiners back to work. And a membership pack for Warwickshire County Cricket Club.”

42. I have quoted from the judgment in order to explain why the judge’s frustration was wholly justified. He was provided with materials which could have had no possible significance to these proceedings. It is clear to me that the judge was doing his best with the documents before him and little care had been taken by the claimant to limit his documents to those which were relevant to quantum. In my judgment, there is no basis for complaint under ground 2. At the highest, it could be said that there may have been some procedural breach in terms of documents and the lateness of them being provided but, if anything, the appellant was equally guilty in that regard, as the transcript shows.
43. More specifically, I am not satisfied that there was a relevant procedural breach as regards the fairness of the process in terms of the documents that were put before the judge. The Judge identified what he had and the time for complaint about the documents was the start of the trial.
44. The second sub-point concerns a broad allegation by Mr Mahajna that there was procedural unfairness and consequent prejudice because he was not entitled to “put his case” to the court. In essence, his complaint, as he has explained it this morning, is that he effectively went straight into giving evidence at the start of the hearing and had no chance to open his case.

45. I have no hesitation in rejecting that complaint. Having considered the transcript, in my judgment, it is clear that at the start of his oral evidence and by way of a very substantial indulgence to Mr Mahajna, the judge did indeed allow him to put his case for nearly 35 pages.
46. Aside from the fact that he did put his case, in my judgment, there is no procedural obligation on a judge in a quantum hearing to allow litigants to make lengthy or indeed any opening submissions. It all depends on the nature of the case. I note that Mr Lau for the respondent made no such submissions and proceeded immediately to cross-examination.
47. Further, in terms of being able to put one's case, I am satisfied that the judge gave Mr Mahajna a very generous opportunity to put his case in closing submissions where, as I have already indicated both parties had equal time. The judge was fully aware of Mr Mahajna's case and indeed dealt with it in some detail in the judgment under appeal. The fact that the case was difficult to follow and at points incoherent may have made understanding it hard, but it was certainly "put".
48. The third sub-allegation under ground 2 is described as follows: "a decision which is not in accordance with the law is an unjust decision, besides being wrong under 52.2.1 sub-paragraph (3)". In my judgment, this complaint adds nothing to the earlier complaints. It simply states the rule to which I have referred.
49. The fourth sub-allegation is a complaint made against the solicitors and other legal representatives of the respondents during the hearing and indeed at points prior to the hearing before the judge. As I indicated to Mr Mahajna this morning, these complaints about the conduct of the respondents' legal representatives, even if they are made out (on which I express no view) are not relevant to his appeal in relation to the quantum judgment or the costs judgment.

50. Specifically, to give an example, he makes a complaint that the respondents passed what he says was personal information concerning his private life or financial information to third parties. But that has nothing to do with his appeal against the judgments before me.
51. The fifth sub-allegation is again a complaint about legal representatives. It is said that there should have been a wasted costs order made against the legal representatives of the respondents because of alleged misconduct. Again, for the reasons I have already given, that is not relevant to the appeal before me.
52. The sixth sub-complaint is described as malpractice in contacting the courts diary managers without copying in the claimant. Again, that is not relevant to the appeal before me. It has no impact on the judgments.
53. The seventh sub-complaint is a complaint that reasons must be given for a judgment. It will be clear from even a cursory consideration of the judge's two judgments that he did give full reasons. The real complaint under this head appears to be about the judge's view expressed in his judgment that Mr Mahajna was "obsessed" with this case. It does not seem to me that this is a "reasons" complaint, and the judge was entitled to express that view. It does not seem to me that that in itself gives any support to a submission that there was some error of law or factual assessment by the judge. Indeed, one might say it was a fair observation given the history of these proceedings, but I do not express any such view.
54. The eighth sub-complaint is headed "Malpractice and unfairness in disclosure" and here the argument is that there was some evidence disclosed to the judge which was not disclosed to the appellant. On its face this might be a tenable complaint if it was evidenced.
55. However, the complaint made is in relation to the alleged non-disclosure of a claimed without prejudice offer which relates to the appeal against costs. I

will come back to that point in due course (when I deal with the appeal against costs), but I can indicate at this stage that it does not seem to me that this particular complaint is open to the appellant because it was part of Ground 4, which was the subject of Murray J's refusal of permission.

56. The ninth sub-complaint is that the trial was procedurally unfair because the appellant says he had to be given the opportunity to present his case, his evidence and his submissions, given that this serious case affected his life and his professional career. He has also complained that he was required to "do everything in one single go". This seems to be a complaint about his "opening" and oral evidence being put together. I do not accept this complaint. As I have already indicated from my review of the transcripts, I consider the approach of the judge was scrupulously fair. The appellant had ample opportunity to put his case.
57. The tenth sub-complaint is an overall complaint that the conduct of the judge was (a) wrong and/or unjust within the meaning of CPR 52.2.1 sub-paragraph (3) and this is a complaint that collectively the claimed procedurally unfair conduct of the judge gave rise to some injustice. In my judgment, this complaint fails because each of the sub-complaints themselves fail. It adds nothing.
58. In my judgment many of the Ground 2 complaints that are made by Mr Mahajna are not in reality complaints about procedural fairness, but they are really complaints about the merits of the judge's decision. So, Mr Mahajna may be entitled to complain about those underlying merits decisions as part of his other grounds of appeal, but it does not seem to me to be appropriate to argue that there was a procedural unfairness merely because a judge made decision which went against the appellant on the merits.
59. I should also indicate for completeness that within sub-ground 8 of Ground 2 there was a complaint made about some unfairness in disclosure. In so far as it is suggested by Mr Mahajna that there was a disclosure of documents to the

judge which were not disclosed to Mr Mahajna, there is absolutely no evidential basis for this. No document has been identified in relation to disclosure complaints which was relied upon by the judge and which should have been provided to Mr Mahajna.

60. Stepping back then and asking myself the question about overall procedural fairness of the quantum hearing, in my judgment Ground 2 fails. I turn then to the further grounds of appeal, which concern the underlying merits of the judge's decision.

V. Ground 1: misunderstanding the case

61. Ground 1 is a complaint that the judge misunderstood the appellant's case. That, in itself, is not the basis for a ground of appeal. It is crucial that the appellant establishes that the judge's misunderstanding led to a relevant error in his findings. In particular, one needs to bear in mind that where the appellant is challenging the findings of fact by the first instance judge, or indeed the evaluation and inferences to be drawn from the facts, it is not the role of the appellate court to make its own assessments, but rather to identify whether there is the type of error such as that identified by the court Re Sprintroom Limited [2019] BCC 1031 at [76]. This is particularly important in an appeal on quantum where the complaints made do not appear to me to raise matters of law but relate to factual conclusions on quantum issues, classically for a first instance court to assess.
62. So, one is looking for, for example, a gap in logic, a lack of consistency or a failure to take into account some material factor which undermines the cogency of the conclusions. I underline that last point: it is necessary for an appellant to show that the conclusion is wrong. With that introduction, I turn to the individual complaints which Mr Mahajna has very helpfully set out in his skeleton argument as alleged errors, by way of "examples".

63. The first example asserts that the judge erred in concluding that the relevant course started in September 2019. It is in fact correct that this was an error, the course started in September 2008. But that is not a finding which in any way impacts upon the judge’s findings. No submission was made to explain how it made any difference to the conclusions. I have also considered what is said in writing, but it is not explained how exactly this would have impacted upon any conclusions.
64. The second complaint is that the judge was wrong to find that the appellant paid fees on the 29 of October 2009. I will need to come back to this point when it comes to the issue of interest, but again I have not been persuaded that this error as to the date of the payment of fees undermines any of the relevant conclusions of the judge.
65. The third example given is that the judge made an arithmetical error in his judgment in concluding, and I quote, “Three transactions of £525, £200 and £700” make a total of £3,375”. It is clear that that is an arithmetical error, but it is of no relevance. The more relevant (and factually correct) point is that the judge came to a conclusion based upon the billing system of the respondents that a total of £3,375 had been paid.
66. The fourth example is that the judge made an error in relation to the qualification of the appellant for a PSW visa. The appellant was required to have, but did not have, £800 in his bank account for a period of two years, that is the intended period of a PSW visa. As to the £800 requirement, that is a requirement to hold £800 in a bank account intended to ensure that an applicant has sufficient funds to support themselves during the relevant period. That requirement is to be evidenced from a regulated financial institution showing a balance of £800 for at least the three-month period prior to the application. The judge, it seems, was in error in that he understood the requirement was to hold £800 for a 24-month period prior to the application. However, having considered the judgment as well as the transcript of the appellant’s cross-examination, in my judgment, the judge was entitled to find

that the appellant had not evidenced that he could have complied even with the three-month requirement. This point goes nowhere, and nothing was said orally or in writing to suggest a consequence.

67. However, there is a more important and basic point in this regard, and this arises from the quantum judgment at pages 11 to 12. Putting aside the £800 point, the judge found that on the evidence that the appellant had not properly evidenced that he would have qualified for a PSW visa in any event. That is a finding which cannot be disturbed on appeal.
68. There is a further issue in relation to the fourth example. It is said that the judge made an error in relation to whether the appellant's PSW claim had failed at the liability stage. He says there is a difference between the claim made by the appellant at the liability stage and the claim made in the proceedings before Judge Murdoch. The claim which failed at the liability stage seems to have been a claim that the respondents guaranteed that Mr Mahajna would receive a PSW visa. The claim which had not been determined by Judge Allen was a claim that the respondents' breaches denied Mr Mahajna the opportunity of obtaining a PSW visa.
69. In this regard, turning to the judge's findings, I note that he said as follows at page 10, sub-paragraph 3 "The claimant's own evidence was that his real inability to pay for continuing education stems from his inability to obtain a PSW. The claim in respect of a PSW has already been dismissed by Judge Allen. And if it has not already been dismissed, I dismiss it, as it has not been caused by the breach and all the representation found, namely that the MBA was not validated by UE". This is a finding of fact based on the evidence which it is not open to me to disturb on appeal.
70. I would add, for completeness in relation to those complaints, which are concerned with the head of loss called "Loss of family asset" in the judge's judgment at page 9, the judge dismissed this claim for four distinct reasons and a number of those reasons have nothing to do with the PSW issue. In

particular, the judge says at paragraph 1 at page 9 (bottom of page) in relation to the loss of family asset claim that “The claimant has produced no evidence to quantify any loss, if loss is proved, there is no valuation of the land, either pre- or post-sale. The only evidence is from his mother, who vaguely says that land prices have gone up”. Again, this is a factual conclusion that cannot be challenged on appeal.

71. I turn next then to a further sub-complaint in which the appellant challenges the judge’s finding that the appellant had abandoned his medico-legal report in support of his claim for pain, suffering and loss of amenity. Having looked at the transcript, it does seem to me the judge was right to say that the appellant abandoned his claim during the course of cross-examination. But, in any event, I note that the expert had failed to respond to the respondents’ questions in relation to his report and, further, the judge considered that the evidence contained in the medical notes led to a conclusion that the appellant had failed to prove a causal link between the respondents’ breaches and his medical complaints.
72. Stepping back, Mr Mahajna has relied upon these individual complaints, which I consider have little substance, to say that the whole judgment is tarnished. It does not seem to me that, even if there are some relatively minor errors in the judge’s approach, that they undermine the judge’s conclusions as a whole.
73. I need, in this regard (and before turning to the next ground of complaint) to identify the main issue before the judge, and that was what losses the claimant could prove he suffered as a result of the misrepresentation and the breach of contract. As indicated by the judge at pages 2 and 3 of his judgment, the pleaded case of the claimant shifted over time. So, the claimant’s original claim in the particulars of claim was that in reliance upon the representations he (1) sold his shares in the family business, (2) gave up his opportunity to complete a BSc at Oxford Brookes University, (3) gave up part-time work in

order to study full-time. He had then particularised, as identified by the judge at page 3, the loss and damage said to flow.

74. The judge had permitted Mr Mahajna, by an Order dated the 14 of December 2018, to amend his particulars of claim to include a claim for aggravated and/or exemplary damages. However, rather than making a relatively modest amendment to include such claims, as the judge records at page 3, Mr Mahajna amended his particulars of claim in a way which fundamentally and totally re-wrote the original particulars of claim, such that they were “less coherent and more rambling”.
75. The judge noted that at its conclusion the pleaded case put by Mr Mahajna had six sub-limbs (which I will not set out) and then there was added to those a schedule of loss which the judge described as “obscure”. It included claims for cost of living expenses, two years wasted time, costs of appeals and loss of immigration status. The judge observed with substantial justification that the voluminous documentation before him was “unstructured and unclear”.
76. It is not surprising that in those circumstances the helpful formulation of the losses which had been provided by the defendants’ counsel was regarded as being an appropriate structure under which to approach the quantum trial.
77. That formulation set out the claims under eight heads as follows:
 1. Fees paid for the MBA course.
 2. Loss of equity in family business.
 3. Loss of earnings during the MBA course.
 4. Cost of accommodation during the course.
 5. Loss of earnings or pension entitlement subsequent to the course.
 6. Damages for pain, suffering and loss of amenity.
 7. Costs of residing in the UK subsequent to the course.
 8. Various costs relating to the immigration status of the claimant, including legal proceedings.
 9. Damages for breach of human rights.

78. When one looks at the judgment, the judge, between pages 4 to 7, provided a comprehensive description of the claimant's evidence, both in his witness statement and at trial in a systematic and well-structured manner considered each head of claim, starting with the payment of the MBA course fee at page 7 and concluding at page 14 with the punitive damages and human rights claims.
79. I have considered each aspect of the judge's reasoning in relation to those matters and focused in particular upon the claimed misunderstandings by the judge. It seems to me that the judge dealt with each of the heads of loss in a way which was justified on the evidence and he gave reasons, sometimes concise, for his decisions.
80. Mr Mahajna has not persuaded me that there was any relevant error which he can argue should be corrected on appeal in this court, bearing in mind the case law to which I have made reference. At the highest it seems to me there was a potential error in the judge's identification of the period of time it was necessary to hold £800 prior to the PSW application, but that error, in my judgment, had no consequence in this case.

VI. Ground 3: interest

81. I turn then to the next ground of complaint, which is Ground 3. This complaint, which has three parts, concerns interest. First, that the rate of 2 per cent was wrongly applied by the judge. Secondly, the start date adopted by the judge, which was, I believe, the 29 of October. And, thirdly, a complaint that compound interest was not awarded.
82. Dealing with the first complaint in my judgment there was no error of law or assessment relevant to appeal which undermines the assessment of 2 per cent as an appropriate rate. That was well within the ambit of discretion of the judge applying Section 69 of the County Courts Act 1984. It does not seem to

me that the judge was obliged to give reasons for that exercise of discretion. It is well established that the court has no power to award compound interest for a breach of contract.

83. As to the second complaint, the start date for the payment of interest, it is not clear, based on the materials before me and the arguments that have been made, why precisely the judge picked the date he did for the interest period, specifically the date he picked from which interest would run. The judge's intention, it seems to me, was to make interest payable to the claimant from the date of payment of the course fees. As I have mentioned, in his judgment in respect of payment of course fees (see page 7 of the judgment) the judge made a finding that the claimant had paid a total of £3,375 for his course. In principle, the interest would run from the date of payment of those course fees, but it is clear to me, having looked at the transcript and the body of the judge's judgment, as well as the lack of clarity of the answers given to me both by Mr Mahajna and on behalf of the respondents, that it was not clear when precisely the appellant made payment of the course fees.
84. I do, however, note that at page 7 of the judge's judgment he noted, based upon evidence of the appellant himself, a document showed a number of payments had been made in September 2009. So, at best, the evidence before the judge appeared to show that in September 2009 there was a payment of certain fees, as opposed to in October 2009. Doing the best I can, I have to consider whether or not on appeal there is any relevant error in this regard. It seems to me the evidence before the judge at page 7 would have justified him finding that certainly from September 2009 there had been a payment of fees. It is fair to say that evidence does not explain why he chose the date of the 29 of October 2009 and neither party can help me with that.
85. The judge could have found that the fees had been paid by the 2 of September 2009 and it seems to me to be a *de minimis* complaint that he picked a date which is at the end of October 2009. I do not consider that this type of error, if there was indeed an error, is a matter which would justify in any way

interfering with the judge's order. It is a matter of interest for a period of maybe 27 or 26 days (at a low rate). It is also of significance that neither the appellant nor indeed the respondents, as I have indicated, have been able to help me with the date of the 29 of October 2009.

86. Specifically, if the appellant had been able to show a firm date of payment, a matter on which he was not able to satisfy the judge, he may have been able to justify going back some time. I pressed him as to the date but he could not provide one. Overall, I am not satisfied that there is an error which would justify me varying the judge's order on this very *de minimis* basis.

VII. Ground 5: costs

87. I turn to ground 5, which concerns the costs judgment of 3 of May 2019. As I have indicated already, at the conclusion of the proceedings the judge decided that the claimant should be required to pay 30 per cent of the defendants' costs. Before looking at the arguments in relation to the alleged error in the costs judgment, I remind myself of the case law underlining the difficulties faced by an appellant seeking to challenge a costs order made at first instance.

88. There are a number of cases which make this point and Tanfern v Cameron-Macdonald [2001] 1 WLR 1311 is such a case. Ultimately, there is a discretion on the part of the judge and the appellant needs to satisfy me either that there was an error of principle or that there was a relevant consideration that was not taken into account such that the ultimate decision of the judge is wrong. I emphasise this last point because what the appellant needs to show me is that on the material before the judge the ultimate conclusion that he should pay 30 per cent of the respondents' costs was "wrong".

89. There are a number of points made by the appellant and I should say, as I indicated earlier, it does seem to me that certain of the points he is making

about the costs judgment are points that he had made before Murray J under his failed Ground 4. That ground alleged certain fundamental errors and unfairness on the part of the judge in relation to costs matters and they included a complaint, which I will come to in a moment, as to whether the judge was in error in stating that settlement offers had been made to the appellant, not just once but on two subsequent occasions. I refer here to paragraphs 11 and 12 of the judge's costs judgment. The complaints made about this alleged error were firmly part of Ground 4 argued before Murray J and he refused permission to pursue those complaints. Mr Mahajna has no ability to pursue this complaint now.

90. That having been said and bearing in mind that Mr Mahajna is a litigant in person, I have allowed him to make submissions in relation to this complaint and will consider those submissions on their merits.
91. With that introduction, I turn to the costs complaints. The first complaint is that the costs submissions included documents that Mr Mahajna had not previously seen. I reject that complaint. On the basis of the materials before me, the costs submissions and statement of costs were served on the appellant in advance of the assessment before His Honour Judge Murdoch.
92. The second complaint relates to a matter to which I have already made reference, the settlement offer. Here I need to set out what the judge said at paragraphs 11 and 12 of his costs judgment:

“The defendant has made a Calderbank offer or should I say, I put it this way, using the terminology of the rule itself has made an admissible offer to settle, which was not a Part 36 offer. Their offer is clear, it says: it is dated 20th of November 2017. It is not material to me as to whether it was received by the claimant, he received it within the period given for acceptance, even if it was only a short period before. The offer is clear, it offers the claimant £25,000 in full and final settlement. It sets out the analysis of why they have reached that figure and it also, importantly in my view, says this “As for your legal costs ... this case has been going on for a number of years, the defence are prepared to pay you an additional, reasonable sum to compensate you for the time you have put in pursuing this claim. You are entitled

to propose a sum payable for costs”. The claimant has never proposed a sum payable for costs. That offer was not only made in November 2017 but has been made on two subsequent occasions, so that the claimant has had three opportunities to bring this litigation to an end by accepting the offer of £25,000, accepting an offer in relation to costs and by putting forward an amount that he would invite discussion on. He has failed to do so.”

93. Mr Mahajna complains that the judge was in error in saying that the offer of 20 November 2017 had been made on two subsequent occasions. The judge set out the offer in paragraph 11 of his judgment and it was made in an email. It seems to me, based upon the correspondence which has been attached to the respondents’ skeleton argument, the offer remained open at least on one further occasion.
94. However, even assuming that Mr Mahajna is right, in my judgment, the very fact that an offer had been made, even if only once on the 20 of November 2017, was a highly relevant matter to the consideration of the assessment of costs. What I need to consider is whether, assuming it had been made just once, the judge’s ultimate conclusion on costs was wrong in the round. I will come back to that matter after I have considered the two further complaints made in relation to costs.
95. The next complaint is that the judge did not take into account that Mr Mahajna had won on liability. I reject that because it is clear from the body of the judge’s judgment that he starts from the position that the appellant had indeed won and he would be, in principle, entitled to his costs.
96. As to the complaint made that the judge did not make any criticism of the respondents’ conduct, despite the invitation to do so, it does not seem to me that the judge had to make findings in this regard. He was entitled in his discretion not to make adverse findings in relation to conduct of the respondents. Where he did make findings on conduct (in paragraph 8 of the costs judgment) he was entitled to take into account conduct in relation to the bundles that he had been “swamped with”. That seems to me to be an

appropriate approach for him to take and not one that I can interfere with on appeal.

97. I need to stand back from what the judge has said (and even bearing in mind that the judge may have been generous to the respondents in saying that they had made their offers on more than one occasion) ask: is the judge's conclusion that the claimant should pay 30 per cent of the defendant's costs one that I can interfere with on appeal. Was it wrong?
98. In my judgment, this ground of appeal fails. On any view, the appellant had failed to achieve anything like the amount in damages he was seeking to recover and indeed he had turned down what in retrospect was a very generous offer in the email of the 20 of November 2017 (even if made once).
99. I note, in particular, that not only did that offer, as recited by the judge at paragraph 11, offer £25,000 by way of a cash sum, it also made an offer to pay additional sums to compensate Mr Mahajna for time. It seems to me that, taking into account what the judge says there and also paragraph 15 of his judgment, the ultimate costs order was wholly justified, and in some respects, it might be argued that it was unduly generous to Mr Mahajna.
100. Another judge could well have taken the view, bearing in mind the conduct of Mr Mahajna as described in paragraphs 15 and 16 of the costs judgment (that is conduct which made the litigation unduly complex and conduct and which suggested that difficulties were created for the court in acting in a reasonable and proportionate), the judge could have made an order in favour of the respondents that was more generous to them.
101. It does not seem to me that there was any relevant error by the judge. He was well within the substantial ambit of his discretion as regards costs and did not make any error. I reject Ground 5

VIII. Conclusion

102. I believe I have dealt with each of the appellant's individual grounds of appeal and the main ways in which they were elaborated before me.
103. I return however to where I began this judgment, which is the criticism made, sometimes in stringent terms, by Mr Mahajna of Judge Murdoch's conduct of the hearing on the 14 and 15 of February 2019.
104. I wish to underline the point that I consider that Judge Murdoch behaved in a scrupulously fair way and indeed in many respects went out of his way to accommodate the appellant in circumstances where the judge was regrettably faced with a mess in terms of evidence, pleadings and documentary material.
105. In my judgment, the judge did a commendable job in seeking to martial what was a very confusing and shifting case when he came to providing his reserved quantum judgment and the costs judgment
106. For those reasons, I dismiss this appeal.

We hereby certify that the above is an accurate and complete record of the proceedings or part thereof.