Case No: A3/2014/2419

Neutral Citation Number: [2017] EWCA Civ 2068
IN THE COURT OF APPEAL (CIVIL DIVISION)
ON APPEAL FROM THE COUNTY COURT AT CENTRAL LONDON
HIS HONOUR JUDGE GERALD
3CL10108

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 8 December 2017

Before:

LORD LLOYD-JONES
and
LORD JUSTICE DAVID RICHARDS

- -

Between:

JASON PATRICK	**Appellant**
- and -	
DAPHNE McKINLEY	**Respondent**

- -
- -

Gillon Cameron (instructed by **direct access**) for the **Appellant**
William McCormick QC and Angus Gloag (instructed by **Keystone Law**) for the **Respondent**

Hearing dates: 21 and 22 June 2017

- -

Judgment

Lord Justice David Richards:

Introduction

1. The Appellant, Jason Patrick, appeals against the dismissal of his claims for a declaration of a proprietary interest in two freehold properties and in the shares of a company owning a third property or, in the alternative, for payment for work done by him on the properties on a quantum meruit basis. The claim was made against the Respondent, Daphne McKinley, who at the material times was, subject to these claims, the sole beneficial owner of the two properties and the shares in the company. The claim was tried by HH Judge Gerald, sitting in the County Court at Central London. The trial lasted 12 days, much of which was taken up with the oral evidence of the parties and the witnesses called by them.

2. There was no dispute before the judge, or before us, over the legal principles to be applied to the claim. The appeal is concerned solely with the Judge's findings of fact. The lengthy reserved judgment, running to 313 paragraphs and some 57 pages, is almost entirely concerned with issues of fact. As I will later detail, the judge found the Appellant to be a highly unsatisfactory witness and rejected his evidence on all or most material issues, whereas he found the Respondent's evidence to be generally truthful and in key respects to be supported by the evidence of her witnesses whom he found to be reliable.

3. Permission to appeal was refused by the judge and by Sir Timothy Lloyd on the papers, but was granted by Kitchin LJ, "not without considerable hesitation", at an oral hearing.

4. The grounds of appeal state three principal grounds. First, the judge was "fundamentally wrong in his assessment of the credibility" of the Appellant and the Respondent. Second, on a number of key areas of factual dispute, the judge "failed to correctly analyse the evidence before him". Third, the judge "conducted a large part of the trial in a way that was not even-handed". I should say at once that this last ground of appeal was not pursued before us, notwithstanding that 500 pages of transcripts of evidence were in the appeal bundles. I have seen nothing that would support this serious allegation.

5. The grounds of appeal also set out ten paragraphs, most of them divided into a number of sub-paragraphs, that are stated to "contain some of the more significant illustrations of the above grounds". In giving permission to appeal, Kitchin LJ said that the Appellant was not entitled to open up every issue decided by the judge but was restricted to the particular issues raised in the ten paragraphs. For convenience, I refer below to these paragraphs as the Grounds.

Background

6. The Appellant, aged 42 at the time of the trial in 2014, left the Royal Air Force in February 2003. He was at that time going through an acrimonious divorce. He and his then wife had two daughters, aged 19 and 16 at the time of the trial. The Judge recorded that, although the Appellant was reluctant to admit it, he had virtually no assets at that time.

7. The Respondent is and was at all material times, as the Judge also recorded, a wealthy woman, aged 58 at the time of the trial. She and her former husband had established a successful business and had also bought and developed various properties. They had two children, a daughter Jade who was 25 at the time of the trial and a son Sean who would have been 27 if he had not died in 2013. By 2003, the Respondent and her husband were engaged in divorce proceedings. They reached a financial settlement in February 2003, under which the Respondent was to receive £9.5 million in cash and other assets. The assets included a freehold property called Faylands in Henley (Faylands) and the shares in Canterbury Properties Investments Limited (Canterbury) which owned a villa at Cap d'Ail in the South of France (the Cap d'Ail property). The Respondent's husband subsequently challenged the settlement, but the challenge was dismissed in October 2003 and an appeal was dismissed in 2005, following which title to Faylands and the shares in Canterbury were transferred to the Respondent.

8. In March 2003, the Respondent employed the Appellant as "housekeeper/manager" at Faylands. The evidence of the Respondent and her witnesses, which the Judge accepted, was that his duties were general assistance and maintenance. It is not in dispute that an intimate relationship developed between the parties. What was very much in dispute before the Judge was whether they lived together in a permanent committed relationship and whether in that context the Respondent made the assurances and promises on which the Appellant's case relied and whether as part of the arrangements between them the Appellant undertook the role of project manager in relation to the properties.

The claim

9. The declaration sought by the Appellant was that the Respondent held the following on trust for them both: Faylands, the shares in Canterbury and a freehold property in Carshalton Road, Sutton, Surrey (Carshalton Road) purchased by the Respondent in September 2007. Faylands was valued at £2.9 million for the purposes of the financial settlement in 2003 and was sold by the Respondent in November 2008 for £6.75 million. The Cap d'Ail property was valued at £677,000 in 2003 and was said to be worth about 2.25 million euros at the time of the trial. Carshalton Road was bought as an investment for £499,500 and was said to be worth about £695,000 at the time of the trial.

10. The basis of the Appellant's claim for a proprietary interest in these properties, pleaded in unspecific terms in the particulars of claim, was that the parties agreed to develop each of the properties, with the Appellant undertaking the work and the Respondent providing the finance, on the basis of an assurance or promise by the Appellant that the properties would be jointly owned by them. The claim was pleaded either as a constructive trust or as a proprietary estoppel, but it was common ground that there was no material difference between them.

11. Some particularity was ultimately provided by the Appellant in his response dated 16 July 2012 to a request under CPR Part 18. Three specific conversations were identified and relied on:

    i) In May 2003, on a visit to the Cap d'Ail property, the Respondent was alleged to have said: "This is owned by Canterbury Properties Investments Limited. It's going to be ours soon. I'm pretty sure I'm going to get it in my divorce.

Will you develop it with me when we get the company? We can either live here or rent it out for an income for us to live off when it's finished." The Appellant alleged that he agreed.

ii) On a holiday in Greece in June 2003, "it was cemented between them that they would develop properties together in order to secure a joint future for themselves and their children, and it was on this basis that the Claimant first believed that any work undertaken in this regard would be pursuant to his own beneficial interest in the properties that were to be developed".

iii) In September 2003, at Faylands, it was alleged that the Respondent had expressed her desire to start renovations on Faylands to develop a family home for the two of them but said she was nervous about taking the first step because she had never done anything like that before. The Appellant alleged that he picked up a hammer and removed the picture rails from the wall "proclaiming "there, now we have started", understanding that this would be the first step in commencing their joint property development enterprise".

12. The Judge observed that none of the above conversations was mentioned in the Appellant's six witness statements. In the course of his oral evidence at trial, the Appellant for the first time gave evidence of a conversation which he said occurred in early 2004. His evidence was that, while he and the Respondent were driving back from London, the Respondent said, "We have a company and we can develop Faylands and anything else". He understood the company to mean Canterbury Properties Investments Limited.

The judgment

13. The Judge helpfully set out a summary of his conclusions early in his judgment at [11]-[16]. He noted that there had been extensive cross-examination of almost every aspect of the intimate and other features of the relationship between the parties in its various stages, with "voluminous documentation and allegations of destruction of documents, failure to properly disclose, dishonesty, lies and deceits".

14. The Judge said that the Respondent's version of events was broadly consistent with the evidence of key witnesses adduced by her and with the contemporaneous documentation. The only way the Appellant could explain the contemporary documentary evidence was to challenge the veracity of his own (and the Respondent's) sworn evidence in previous custody and bankruptcy proceedings and benefit claims, alleging that they had lied on the advice of lawyers or at the instigation of the Respondent.

15. The Judge concluded that there was no reason to think that any of the contemporaneous documentation was materially inaccurate. The Appellant had "throughout this trial shown himself to be an unreliable and unconvincing witness, ready to be dishonest and manipulative when faced with evidence in contradiction of his own case, making it up as he goes along and making unfounded accusations against Ms McKinley". Serious allegations were put to her that had no evidential basis.

16. The Judge's conclusion on the claims was that the Respondent did not at any stage make any of the alleged promises and assurances and there was no credible evidence that the Appellant had done any work for which he had not, or did not regard himself as having been, already adequately remunerated.

17. At [24]-[40], the Judge summarised the essential evidence given by the Appellant and the Respondent. At [41]-[46], he summarised the evidence given by other witnesses. He explained that, because of the nature and seriousness of the allegations made against the Respondent, the approach he had adopted was, where possible, to focus on the evidence of other witnesses to see whether it was consistent with the evidence of either of the parties. The Appellant had left court while her witnesses gave evidence. The two witnesses that the Judge had found most impressive and reliable were Catherine Casey, the Appellant's book-keeper employed at Faylands from 2005 to 2008, and Taryn-Lee Robinson, her personal assistant from January or July 2007 to June 2009. They gave reliable and accurate evidence as to the nature of the relationship between the parties and the Appellant's role, which was broadly consistent with the Respondent's evidence. Neither gave any hint of being partisan or trying to favour the Respondent. The evidence of Mr Emmett, an architect employed by the Appellant, contradicted much of what the Appellant said about his work at Faylands.

18. At [50]-[61], the Judge discussed the evolution of the alleged promises and assurances said to have been given by the Respondent, noting that they did not form part of a coherent narrative in any of the appellant's six witness statements but were to be found principally in the pleadings and the letter before action, all of which were confirmed as true in examination in chief.

19. The Judge set out his approach to the case in a discussion at [62]-[65], which has not been challenged and in which he emphasised that the Appellant's case depended on establishing that the alleged promises or assurances had been made in 2003-2004:

> "62. The first question, therefore, is whether or not on the basis of the circumstances which actually existed at the time the initial promises and assurances are said to have been made in 2003 and early 2004, there is any credible evidence that they were made. This is to be answered without the benefit of hindsight extrapolated from subsequent events in the parties' relationship. That said, subsequent events may shed light on whether or not those initial promises and assurances were in fact made: if the parties have at all times acted consistent with them, they will tend to support Mr Patrick's version of events.
>
> 63. The second question, it seems to me, is whether or not those initial promises and assurances, or ones tolerably similar to or consistent with them, were repeated during the currency of the parties' relationship. However, in this case, if Mr Patrick fails to establish that the initial promises and assurances were made it must follow that his claim fails because he is not to be believed about any subsequent repetition of them.

> 64. I say this because it is Mr Patrick's case that he was, virtually from the outset, to have a beneficial interest in the three properties as part of a joint property venture or partnership. It is not his case that the promises and assurances changed during the course of the relationship, although as a matter of logic it must be the case that 120 Carshalton Road was acquired as part of their joint business as it was not acquired until four or five years after the initial promises and assurances had allegedly been given.
>
> 65. Neither is it suggested that this is one of those cases where the common intention of the parties can be inferred from their conduct during the whole of the relationship. If there was no initial agreement, that is an end of it. For completeness, it should also be recorded that it is not Mr Patrick's case that Ms McKinley gave any promises and assurances about looking after him or his family in return for him working for her or such like. The case is based upon promises and assurances given relating to the beneficial ownership of the three properties."

20. At [66] the Judge took as his starting point the circumstances surrounding the giving of the alleged promises and assurances, depending in the first instance on the credibility of what the Appellant said about the circumstances and his overall reliability as a witness. He continued: "In those respects, I found him to be an unreliable witness, incapable of giving straightforward and simple answers to straightforward and simple questions, prone to obfuscate and evade and lie with a tendency, as Ms McKinley said, to fantasise". At [67]-[72] the Judge gave examples from the Appellant's evidence to illustrate these findings.

21. The Judge addressed the Appellant's contract of employment dated 9 March 2003 at [73]-[80]. The description of his role as "housekeeper/manager" in the contract was, the Judge found, broadly in line with the evidence of the great majority of the witnesses who testified as to how the Appellant had been introduced to them as well as how he himself mostly described himself ("property manager" or "administrator"). Mrs Casey testified that he undertook general maintenance work and Mrs Robinson described him as the handyman, with much of the coordination of work being undertaken by her in the Respondent's absence.

22. In cross-examination, the Appellant denied for the first time that he had signed the contract of employment. The Judge rejected this evidence and concluded that the reason for this late challenge to the authenticity of the contract was that in broad terms it was consistent with and accurately encapsulated the work that the Appellant did, and was required to do, at Faylands. The Judge accepted that the Appellant carried out other duties, such as providing security for the Respondent on overseas trips and doing work at the Cap d'Ail property.

23. At [83] - [95], the Judge addressed the relative skills and experience of the parties. It was an important part of the Appellant's case that they both embarked on a steep learning curve in their new property development venture. This ignored, the Judge

found, that the Respondent was "already a successful business woman with many years of successful upscale property developments under her belt". When pressed with this, he "rather disdainfully and contemptuously and angrily dismissed her as being 'an ex-model'". He in fact had no knowledge of her previous experience and his evidence was designed not only to portray her as a novice but also to gloss over the fact that his only substantial experience was as a painter and decorator.

24. The Judge rejected the Appellant's evidence that in September 2003, Faylands was in a bad state of repair. He accepted the contrary evidence of Mr Emmet and the Respondent. The further works were to get Faylands ready to sell, not, as the Appellant would have it, to put it in a fit state to be their family home.

25. At [98] - [104], the Judge dealt with the Respondent's evidence that from an early stage the appellant was proposing marriage to him, that he had proposed to her on a trip to Ireland at Easter 2004 and that they exchanged Claddagh rings. This is one of the ten points on which the Appellant relies on this appeal and I will deal with it later.

26. At [106] - [115], the Judge stated his conclusions on whether the alleged promises and assurances had been given by the Respondent, finding that they had not been. He identified a number of reasons for this conclusion. First, it was not credible that it took the Appellant so long to put forward the lynchpins of his case, only adding the fourth during cross-examination. Second, the claim had changed in material respects, starting as a claim to an interest in six properties and then reduced to three. Third, many of the promises and assurances were "too vague or ambiguous to be of any materiality". Fourth, the only plausible explanation for the alleged promises and assurances was that the parties were in a committed relationship. The Appellant said that they were living as "man and wife" but that, the Judge found, was a lie:

> "Mr Patrick was employed by Ms McKinley although they had started an intimate relationship. He did not believe, and had no reason to believe, that the work he had done during 2003 and was going to do and started doing would be anything other than under his contract of employment. Ms McKinley had made clear she did not want a committed relationship or marriage. She was a shrewd businesswoman who was in the midst of fighting hard for her and her children's due and had her own family to look after."

27. Fourth, the Respondent did not need any financial security. She had already received a lump sum of £3.5 million from her ex-husband and was likely to receive Faylands and the shares in Canterbury. The Judge reasoned that "Having fought so hard to secure her entitlement to benefit herself and also her own children, it is fanciful to suggest that she would have agreed to share it in any way with Mr Patrick (whom she had just employed) or his children (whom at this early stage she barely knew)".

28. Fifth, the Respondent was already a successful property developer. She did not need or want a business partner and, in any event, the Appellant had no skills or expertise of relevance that he could offer. "The disparity of skills and financial resources was such that it is fanciful to suggest that Ms McKinley would even have considered going into business with Mr Patrick as business partner…"

29. Sixth, Faylands was not in need of repair and was not being developed to provide a family home but was being refurbished prior to its sale. She had already put a substantial amount of time and money into its development. She had also spent about £1.3 million on the Cap d'Ail property, which was described by Bodey J in the family proceedings in October 2003 as "her" project.

30. Seventh, the Judge said:

> "113. There is nothing in the evidence relating to subsequent events which casts doubt upon these findings, much of which amounted to an attack on the integrity of Ms McKinley, asserting that it was she who had dishonestly manipulated Mr Patrick into making witness and other statements and claiming benefits in order to conceal the true nature of this business relationship and his interest in Faylands so as to protect it from the claims of others, particularly in respect of his bankruptcy.
>
> 114. If that were all true, it would indicate that Ms McKinley is a person who goes to extreme and dishonest measures [sic] to keep a tight grip on her own assets. If that were so, it militates against the kernel of Mr Patrick's evidence that within a few weeks or months of his being employed Ms McKinley so readily gave or agreed to give any interest in her properties to an essentially impecunious ill-qualified man to benefit him and also his children whom she barely knew.
>
> 115. Rather, the allegations regarding subsequent events serve to reinforce and confirm my findings, specifically, that at no material time did Ms McKinley give any promises and assurances that Mr Patrick would have any interest in any of her assets, or the three properties, and at no material time did Mr Patrick believe that he would have any interest in any way, shape or form in any of her assets, or the three properties, or that there was any form of business relationship or partnership with her or that he was, or is, entitled to anything more than what he has been paid and invoiced for."

31. At [116]-[172], the Judge considered the statements made by the Appellant in custody and bankruptcy proceedings and in his benefits claim, which contradicted his case at trial and supported the Respondent's case. This forms one of the ten points on which the Appellant relies and I will return to it later.

32. The Judge dealt with the issue of work done at Faylands and at Carshalton Road at [173]-[194] and at the Cap d'Ail property at [227]-[233].

33. At [195]-[226] and [235]-[259], the Judge dealt with the evidence concerning the parties' relationship after Faylands was sold in November 2008, which is again the focus of one of the Appellant's ten points.

34. At [260]-[270], the Judge dealt with the evidence concerning the payments made to the Appellant, which he concluded showed that the Appellant was at all times an employee and also at various times invoiced for additional work, all of which was inconsistent with his claim of a joint venture.

35. At [271]-[285], the Judge addressed allegations that the Respondent had removed the hard drives from computers in 2012 and removed documents in order to frustrate the Appellant's attempts to obtain disclosure of relevant documents. These are also among the Appellant's ten points and I shall return to them later.

36. Finally, so far as this appeal is concerned, the Judge dealt with and rejected the quantum meruit claim at [288]-[303].

The approach to appeals against findings of fact

37. It is well established that appellate courts must be very cautious in overturning findings of fact made by a trial judge. The judge will have seen all the evidence in the case, rather than the necessarily limited selection put before the appeal court and, if (as in this case) there has been oral evidence, the judge will have seen and heard the witnesses giving the entirety of their evidence.

38. The approach to be taken on an appeal against findings of fact was considered, again, by the Supreme Court in *McGraddie v McGraddie* [2013] UKSC 58; [2013] 1 WLR 2477. The claim, brought in Scotland, was for the recovery of £285,000 paid by a father to his son and his son's partner. The father claimed it was a loan, while the defenders said that it was a gift. The Lord Ordinary, the trial judge, heard oral evidence from the parties. He considered the father to be a convincing witness who, despite some inconsistency, appeared truthful on the central issue, whereas he found the defenders to be neither credible nor consistent. Credibility was a critical factor. Preferring the father's evidence to that of the defenders, he concluded that none of the other evidence materially undermined the father's evidence on the central issue. On appeal, the Inner House of the Court of Session reversed the decision and substituted their own decision, dismissing the father's claim. They identified a number of aspects of the evidence which they considered undermined the father's evidence and concluded that the trial judge had gone plainly wrong.

39. The Supreme Court allowed the father's appeal. In giving the judgment with which all the other members of the Court agreed, Lord Reed reviewed leading cases both in the House of Lords and the Supreme Court and in the United States and Canada. The headnote in the Weekly Law Reports accurately summarises the essence of his judgment:

> "*Held*, allowing the appeal, that it was a long settled principle, stated and restated in domestic and wider common law jurisprudence, that an appellate court should not interfere with the trial judge's conclusions on primary facts unless it was satisfied that he was plainly wrong, that the reasons justifying that approach were not limited to witnesses' evidence, but also included the fact that trial judges possessed expertise in determining issues of fact, that duplication of the trial judge's efforts on appeal was undesirable and considerations of cost

> and delay; that each of the points which the Inner House considered undermined the pursuer's account had been expressly taken into account by the Lord Ordinary in reaching his conclusion as to the pursuer's credibility, which was an issue of primary importance and pre-eminently a matter for the Lord Ordinary; and that, having regard to all the circumstances, there was no proper basis for the Inner House's conclusion that the Lord Ordinary had gone plainly wrong, nor that a reconsideration of the evidence should lead to the opposite conclusion"

40. Lord Reed made clear, as has repeatedly been said in the authorities, that an appellate court would interfere only if the trial judge was "plainly wrong" and he cited the dictum of Lord Greene MR in *Yuill v Yuill* [1945] P 15 at 19, itself frequently cited at the highest level:

> "It can, of course, only be on the rarest occasions, and in circumstances where the appellate court is convinced by the plainest of considerations, that it would be justified in finding that the trial judge had formed a wrong opinion."

41. In the later case of *Henderson v Foxworth Investments Ltd* [2014] UKSC 41; [2014] 1 WLR 2600, Lord Reed (with whom the other members of the Court agreed) explained at [67] what was meant by "plainly wrong" in this context:

> "It follows that, in the absence of some other identifiable error, such as (without attempting an exhaustive account) a material error of law, or the making of a critical finding of fact which has no basis in the evidence, or a demonstrable misunderstanding of relevant evidence, or a demonstrable failure to consider relevant evidence, an appellate court will interfere with the findings of fact made by a trial judge only if it is satisfied that his decision cannot reasonably be explained or justified."

General points

42. In the present case, there was no documentary evidence or independent witness to support the Appellant's case that the Respondent had given the oral promises or assurances in 2003 and 2004 on which his entire case to a proprietary interest rested. The Judge's decision was necessarily based on his assessment of the evidence of the parties and their credibility as witnesses. Counsel for the Appellant does not shrink from asserting that the Judge should have found that the Respondent lied in her evidence. In the light of the authorities to which I have referred, this is an ambitious challenge.

43. Leaving aside the quantum meruit claim, the only issue that the Judge had to decide was whether the Respondent had given the alleged promises and assurances to the Appellant in 2003-04. It was the evidence relating to that period that was of paramount importance. A great deal of the evidence, and hence of the judgment too, was devoted to later periods, particularly the relationship between the parties in those

later periods. Such evidence could be relevant only if (i) it concerned words or conduct which shed light on whether those promises and assurances had been given, being either consistent or inconsistent with them, or (ii) it went to the credit of either party. There was a limited amount of evidence falling within the first of those categories, but a very great deal that was said to fall within the second. Nonetheless, a substantial part of this appeal is based on challenging the Judge's findings in respect of the later periods.

44. A further striking feature of the Appellant's case is that it concentrates on challenging the Judge's acceptance of the Respondent's evidence, rather than challenging his rejection of the Appellant's evidence. In some cases, the acceptance of one party's evidence necessarily involves the rejection of the other party's evidence, but in this case many of the Judge's findings, which ground his conclusion that the Appellant was a dishonest and manipulative witness, are not challenged.

45. I propose to address each of the points on which the appeal is based, although not in the order in which they were argued, preferring instead a more chronological approach.

Grounds 3 and 4

46. The Appellant's case was that he and the Respondent lived together in a permanent relationship "as man and wife" from 2003 to 2010. Grounds 3 and 4 are directed to the Judge's rejection of this case and need to be taken together.

47. The Grounds are as follows:

> "3. Concerning the parties' relationship, the judge:
>
> 3.1 significantly understated the true picture in his assessment that DM had probably "underestimated the amount of time JP spent at Faylands before it was sold as well as her feelings for him" (para 298);
>
> 3.2 wrongly failed to characterise this "underestimation" as DM being dishonest;
>
> 3.3 in wrongly failing to characterise this "underestimation" as DM being dishonest, failed to consider why it was that DM was choosing to lie about the parties' relationship;
>
> 3.4 wrongly accepted DM's characterisation of the relationship as on-off, and her assertion that she had other boyfriends in this time;
>
> 3.5 failed to properly consider the nature and extent of the parties' relationship in the critical period after the sale of Faylands, including failing to give due weight to the evidence of JP's mother concerning her conversations with DM at the time;
>
> 3.6 ignored or gave insufficient weight to swathes of evidence which frequently contradicted the evidence that DM gave about the relationship.

4. In relation to the question of the parties' cohabitation, the judge was wrong:

4.1 in not finding that the parties lived together at Faylands;

4.2 in not finding that the parties lived together at Cavaye Place;

4.3 in not finding that the parties lived together with their families in Hasker St and that it was purchased for this purpose;

4.4 in not finding that the parties were planning to live as a family in Queens Gate Lodge."

48. By way of explanation, Cavaye Place refers to a flat at 16 Cavaye Place, London SW10. Hasker Street refers to a house at 34 Hasker Street, London SW3 which was let to the Respondent for one year from 16 October 2009. Queens Gate Lodge refers to a property at Queens Gate Lodge, London SW7 that the Respondent purchased in March 2010.

49. In his skeleton argument, counsel for the Appellant, writing generally about Ground 3, said "This case…involved almost as complete a factual dispute as it is possible to have between two parties, with [the Respondent] denying almost every aspect of the over 7-year romantic and business relationship that [the Appellant] asserted. It is [the Appellant's] case that [the Respondent] lied in almost all of her evidence about the parties' relationship." Counsel expressly accepts that it is "of course, very possible to have a long-term, loving and intense relationship without making any promises to share property or wealth" but this Court is asked to conclude that the Judge was wrong in his evaluation of their relationship and that he failed to consider why the Respondent was lying about it.

50. It is important in the context of this Ground to note again that the relevant promises and assurances are alleged to have been given in 2003-04. The state of their personal relationship in that period is clearly relevant to whether the Respondent gave those promises and assurances, but the way in which their personal relationship thereafter developed is of no relevance at all, leaving aside any actions or discussions consistent or inconsistent with the alleged promises and assurances. The Judge correctly identified the relevance of their relationship in 2003-04 in his judgment at [109]; "The only possibly plausible explanation for the alleged promises and assurances being given was that [the Appellant] was in a "committed relationship" with [the Respondent] and that they were living together as "man and wife", but that was a lie."

51. For the purposes of reversing the Judge's decision that no promises or assurances were given in 2003-04, it is therefore of great importance for the Appellant to demonstrate that the Judge was plainly wrong in his findings that the parties were not living as man and wife in a committed relationship in 2003-04 and that the Appellant lied when he said that they were living together in that way in that period.

52. In order to do so, the Appellant has listed various pieces of evidence relating to that period. Some of them are references to witness statements made by the Appellant himself. As he was cross-examined on those statements and the Judge disbelieved him, those references do not advance his case on appeal. The other evidence may be summarised as follows:

i) The Appellant's children came to stay with him at Fayland at weekends from soon after he started working and living there in March 2003.

ii) The Appellant spent most of his time at Faylands between March 2003 and November 2008.

iii) The parties, and in some cases all or some of their children, went on foreign trips and holidays together: the South of France for four days in May 2003; Greece for two weeks in June 2003; a month at the Appellant's house in Ireland in August-September 2003; Finland in December 2003; Brazil for three weeks in February 2004. The parties also went with the Respondent's daughter and her husband to stay at a friend's house in Antigua.

iv) The Respondent sent a Christmas card to the Appellant, in which she wrote: "Jason, on our first Christmas of many spent together. All my love to you. Dafs xxx".

v) The Respondent provided support to the Appellant in the proceedings under the Children Act relating to his children. In a witness statement made on 4 February 2004, she said: "My intentions towards the children are simply to continue to give them a happy, safe and secure family, to come to visit with their father. To care for them the same as my own children, and to be their friend." In a witness statement made by the Appellant in those proceedings on 23 March 2004, he said that his children enjoyed "staying overnight with Daphne and me".

vi) Dr Anwar Shea, a consultant psychologist and psychotherapist, provided a witness statement for the Appellant, on which he was not cross-examined, stating that both parties were patients of his for the majority of 2004 and that the treatment sessions were held at Faylands. It was his impression that Faylands was their family home. The Respondent referred to the Appellant as her "partner" or "boyfriend" and he concluded that they were living together as a family unit.

vii) In July 2004 (some considerable time after the last of the alleged promises or assurances had been given in early 2004), the Appellant bought the Respondent a ring for £470.

viii) In a witness statement made by the Respondent in the Children Act proceedings on 16 July 2004, the Respondent said: "I am currently domiciled in Monaco although I spend a lot of my time staying in this country at my property in Henley-on-Thames [Faylands]. Jason lives with me in this property and as such contact with his children often takes place at our home".

53. All of this evidence was before the Judge and he expressly considered much of it in his judgment.

54. The Judge recorded the Appellant's case at [24]-[26] that there had been a whirlwind romance, such that within a month or two of the start of his employment they were living together "in a committed relationship as man and wife" at Faylands as their family home, and that "[a]lmost at the outset, when the relationship became

"committed", they agreed to embark upon a property development joint venture" giving him a beneficial interest in the relevant properties.

55. The Judge recorded the Respondent's case that she had her first "dalliance" with the Appellant in June or July 2003 at a time when she was having a relationship with another man. It was not until later that year that she started what could be described as an "on/off boyfriend/girlfriend relationship" with the Appellant. He continued at [33]:

> "She made it clear at the outset, and has always made it clear, that she was not interested in any sort of committed relationship or ever getting married again. Theirs was a relationship of employer-employee who became good friends and companions with the occasional intimacy, or sex. She took Mr Patrick on many trips and holidays within Europe and further afield, variously describing him as an employee, a companion, a friend and sometimes to provide security because she was a single, wealthy high profile woman travelling alone and sometimes to countries where it is not safe for a woman to travel alone, such as Brazil."

56. In large part, the Judge accepted the Respondent's account of the relationship in 2003-04 and rejected the Appellant's account. In this respect, he attached weight to the evidence of Catherine Casey who was the Respondent's bookkeeper at Faylands from 2005 to 2008. Speaking of that later period, she said that "whenever she saw Ms McKinley on her monthly visits to Faylands she initially got the impression that she and Mr Patrick were a couple, but certainly nothing more than boyfriend and girlfriend". If that was true in 2005 onwards, it was certainly true in 2003-04 when the relationship was at an earlier stage. Moreover, the Judge examined the issue of whether, as she claimed, the Respondent was resident in Monaco throughout the relevant period and accepted that she was resident there.

57. As regards Dr Shea's evidence, the Judge commented that he was unaware of any suggestion that the parties had become engaged and gave no indication that the relationship was anything more than that of "boyfriend/girlfriend". In referring to the parties and the Respondent's children as a family unit, Dr Shea "was plainly mistaken because no-one has suggested that the four of them were a family unit".

58. Even looked at on its own, the evidence on which the Appellant relies falls far short of establishing a committed relationship in 2003-04. The evidence before the Judge included many days of oral evidence, some of which was directed to this period. In my judgment, the Appellant comes nowhere near establishing that the Judge was plainly wrong in his findings on the nature of the relationship in this crucial period and in concluding that the Appellant, not the Respondent, was lying in their evidence.

59. In his submissions under Grounds 3 and 4, counsel for the Appellant also concentrated on the parties' relationship in the period after Faylands was sold in November 2008, describing it as a crucial period. In my judgment, it was not in any way a crucial period. The issue was whether the Appellant had given the promises and assurances in 2003-04. No case is advanced on this appeal that there were discussions or conduct of the parties after November 2008 that demonstrate that the earlier

promises or assurances had been given. The relevance of the evidence for this later period could at most go to credibility.

60. The Judge was right when he said at [195]: "What happened after the sale of Faylands was hotly disputed. Given the findings I have already made, it is not relevant to the question of whether or not any promises and assurances were given by Mrs McKinley". Nonetheless, the Judge proceeded to address and make findings on the large volume of written and oral evidence that had been placed before him. I do not criticise him for doing so. In retrospect, it is easier to see that it was not relevant than it was at the trial and, having heard the evidence, he certainly cannot be criticised for making findings on it. But the fact remains that the Appellant mounted a case that appeared to require the whole course of the parties' relationship over six or seven years to be examined in detail, and the Respondent felt obliged to respond in kind, when in truth the claim turned on the events of 2003-04. In another case, later events might be very illuminating as to whether promises and assurances had been given. But in the present case, evidence of the period after early 2004 shed no light on the core of the Appellant's case.

61. It would not be legitimate to put the events of the later period in issue purely for the purpose of determining whether either or both of the parties were untruthful in what they said about those events. There are strict limits on the evidence that can be adduced for the purpose of challenging the credibility of a party or witness, to avoid satellite litigation of the sort that occurred in this case.

62. I do not therefore propose to spend long on examining the appeal so far as it relates to these later periods. Even if there were grounds for thinking that the Judge had wrongly acquitted the Respondent of giving untruthful evidence (which, as will appear, there are not), it would be a big step to conclude that it undermined his decision on the core issue of the alleged promises and assurances, in view of the several grounds for that decision.

63. Ground 3 challenges, in sub-paragraphs 3.1-3.3, a particular finding of the Judge at [299] that the Respondent had "most probably underestimated the amount of time [the Appellant] spent at Faylands before it was sold as well as her feelings for him". It is said that the Judge should have characterised this as dishonesty and should have gone on to consider why she was choosing to lie about their relationship. Sub-paragraph 3.4 asserts that the Judge wrongly accepted the Respondent's characterisation of the relationship as on/off and her evidence that she had other boyfriends. Sub-paragraph 3.5 refers to the period after the sale of Faylands in November 2008. Sub-paragraph 3.6 is too vague to constitute a proper ground for an appeal.

64. Insofar as the challenge to paragraph 299 of the judgment refers to the parties' relationship in 2003-04, I have already concluded that the Judge's findings are unimpeachable. As regards the years that followed, the Appellant relies on a variety of evidence of which the following appear to be the most significant:

    i) Emails to the Appellant from the Respondent which she signed as, for example, "Daphs xx".

    ii) The evidence of telephone calls made almost every day by the Respondent to the Appellant while the former was in New York in December 2008.

iii) The evidence of the Appellant's mother, Mrs Powdrill. His daughters lived with Mr and Mrs Powdrill in Yorkshire for about three years from 2005. In October 2008, the Appellant was proposing to move them to London. Mrs Powdrill was looking for reassurance as to their living arrangements once in London and spoke to the Respondent, who told her that she and the Appellant were looking for a family home where they could all live together and that they were committed to each other.

iv) The parties continued to go on holiday together, sometimes on their own and sometimes with some or all of their children.

v) The Appellant took a lease of a house in Hasker Street, London SW3 as a home for the parties and their families, after she and the Respondent had viewed several properties. The tenancy agreement provided that it would be occupied by the Respondent, the Appellant and their immediate family. The Respondent's PA emailed both parties on several occasions about the arrangements for moving from Cavaye Place to Hasker Street. The PA gave evidence for the Appellant that Hasker Street was rented as a bigger property while they looked for a property to buy. The Respondent's pleaded case that she rented Hasker Street and that the Appellant and his daughters stayed there "because the [Respondent's] son Sean had been threatened by a stalker and the Claimant was employed as security to remain with him during this period" was clearly untrue.

vi) On 2 November 2009, the Respondent made a statement to the police in connection with a harassment complaint made by her against a third party, in which she described the Appellant as "my partner" and stating that "[w]e have been together for six years and sometimes we work on the same projects".

vii) Particular emphasis was laid on two text messages from the Respondent to the Appellant, concerning the Respondent's purchase of a property at Queens Gate Lodge in early 2010. In the first, dated 16 February 2010, the Respondent wrote: "In amongst all this I forgot to tell you I exchanged this morning on the lodge. Maybe we finally have a home where we can put our heads down and have a life after 10 years to the day since I filed for divorce". It was the Appellant's case that "we" in that text referred to the Appellant and Respondent. In the second, dated 31 March 2010, the Respondent wrote: "Completed on the lodge we'll soon have a home and it will be better than Elvaston I promise Happy days! X"

viii) Affectionate emails were exchanged in August 2010.

ix) The Appellant spent significant periods at the Cap d'Ail property from January to November 2009.

65. In order, as counsel for the Appellant submitted, to demonstrate that the Respondent had lied about her relationship with the Appellant, he took us to a number of extracts from statements made by or on behalf of the Respondent. He started with paragraph 14 of a statement made by the Respondent on 29 November 2011:

> "I readily acknowledge that I did have a relationship with Mr Patrick. He is several years younger than me. He was, intermittently, my boyfriend. The relationship did not begin in early March 2003 as he suggests in paragraph 10 of his affidavit. It began in late 2003 or early 2004. The relationship, which can properly be characterised as "on/off", lasted until November 2008. So far as I am concerned, that was when it ended and that end coincided with the sale in November 2008 of the property known as Faylands. Thereafter I did for a while continue to associate with Mr Patrick by giving him work when I could (he seemed unable himself to find a job) and I would meet him socially for the odd meal or drink. The relationship was however over for me by November 2008. As to my own feelings concerning the relationship, at no time was I willing fully to commit myself. I became involved with him when I was at a particularly low ebb on account of the acrimonious divorce proceedings. I made plain to Mr Patrick time and time again that I would never live with him, marry him, or give him my commitment. He never accepted this and the disparity in our respective feelings was the cause of much friction between us."

66. In a statement made by the Respondent in March 2011 in support of her application for a possession order in respect of Cavaye Place, she referred to the Appellant as "a former friend of mine", whom she had invited to stay at the property in early February 2010 because he was threatened with homelessness.

67. The Appellant alleged that the Respondent was lying when she said that their relationship was over by the time Faylands was sold in November 2008. She was also lying when she said in a witness statement dated 27 August 2013 that she "rarely saw [the Appellant's] children, maybe 2 times a year".

68. All this evidence was before the Judge and he expressly considered a good deal of it in his judgment, between [195] and [259].

69. The Judge found that the Respondent ended the parties' sexual relationship in 2008 but their friendship continued. This had indeed been the Respondent's evidence. He expressly addressed the telephone calls from New York in December 2008. He dealt with the evidence of Mrs Powdrill at [201] – [203] and [218] – [219]. He dealt with the circumstances in which the Appellant's daughters moved to London and the part played by the Respondent. He dealt with whether the parties lived together at Cavaye Place, referring to her travel schedule for 2009 which was gone into at great length in one of her witness statements. The Judge found that at all material times the Respondent remained resident in Monaco. The evidence relied on by the Appellant to show that the Respondent lived with him at Cavaye Place is consistent with the Judge's finding that she stayed there from time to time, and it certainly does not plainly establish that they lived together at that address. He addressed the case as regards Hasker Street at some length at [237] – [249].

70. The Judge did not uncritically accept the entirety of the Respondent's evidence. He said:

> "247. It is therefore likely that Ms McKinley downplayed, or understated, certain aspects of the intimate relationship during the course of these proceedings and in the witness box as well as the amount of time which Mr Patrick spent time at Faylands after he had rebased himself up in Driffield. The amount of gifts and helicopter flying lessons and foreign trips and so on which she paid for are of such a level as to be consistent with an at times strong albeit "on/off" relationship of "boyfriend/girlfriend". She also showed a very great interest in the girls' education and welfare, visiting their schools, Miss Robinson occasionally looked after the girls and so on.
>
> 248. However, none of that, in my judgment, is inconsistent with the findings I have made. Ms McKinley had made it clear at the outset that she was not interested in a committed relationship, and there was no question of any sort of joint business venture or partnership. Her downplaying of certain aspects of the relationship is in my judgment more consistent with a woman who has been abused and now, in the cold light of day and over the years having ignored the advice of her friends such as Miss Gadoni and Miss Hastings, feels shame and remorse for maintaining the relationship for as long as she did, and making excuses for Mr Patrick in the way in which she did to her friends and also to herself rather than someone who is seeking to cover up the true nature of the relationship and mislead the court."

71. As regards the two text messages in early 2010 on which the Appellant placed great reliance, the Judge considered them at [257] – [258], finding:

> "Read in context, Ms McKinley's explanation that Queen's Gate Lodge was to provide a London home for herself and her children, she having realised when getting divorced that she would have to sell Faylands, which would provide a better "showcase" than 5 Elvaston Mews for her company's work is plausible. She was communicating to a friend and employee, sharing her excitement at the next stage of her and her company's development projects. The reference to ten years could not have been to Mr Patrick because they had only known each other for seven years."

72. The submissions made on behalf of the Appellant on the parties' relationship is an attempt to re-argue the case that was put to the Judge. The Appellant disagrees with the Judge's findings but I can see no basis on which it could be said that his findings were plainly wrong, as that test has been defined by the Supreme Court. For my part, I take the view that, on the necessarily limited material shown to us, the Judge's findings were well open to him.

Ground 5

73. Ground 5 is as follows:

> "The judge was not entitled, given the way the case was put to him, and the evidence he heard, to assert as he did during submissions that DM stayed with JP because JP was violent to her, and to state as he did at paragraph 296 of his judgment that there were "further bouts of violence from Mr Patrick", and at paragraph 284, that DM "was in an abusive relationship" with JP."

74. The Respondent and her witnesses gave evidence in their witness statements of physical violence by the Appellant against the Respondent on a number of occasions starting in mid to late 2004. The Appellant submits that it had been made clear at a pre-trial review by the Judge and counsel for the Respondent that "violence was not really an issue". In the course of cross-examination of the Appellant, which lasted three days, counsel for the Respondent put a small number of questions to him on this subject. The Judge observed to counsel that he was not sure whether the allegations of violence were relevant but "your side is making a big deal about it". Counsel replied that it was put as background. Some, but not all, of the witnesses for the Respondent who gave evidence of violence were not called. Counsel for the Appellant asked one witness about these allegations in cross-examination and the Judge put some questions to another witness.

75. It is clear that the allegations of violence had no relevance to whether the Respondent had given the promises and assurances relied on by the Appellant. All the incidents of violence occurred after the promises and assurances were alleged to have been given. But, if the full course of the parties' relationship was to be explored in evidence, as it had been, the alleged violent incidents had a part to play in understanding their relationship and its development. In that sense, counsel for the Respondent was right to describe them as background.

76. The comments of the Judge and the exchanges with counsel cannot reasonably be understood as meaning that the allegations of violence were, for the purposes of these proceedings, withdrawn or agreed to be wholly irrelevant. If that was the position, counsel for the Appellant would not have cross-examined one of the Respondent's witnesses on them nor would the Judge have asked questions of another witness.

77. The Judge was not therefore in error in referring to some of the allegations and treating them as proved. He did so in the course of dealing with the parties' relationship. They did not, however, play any part in the Judge's decision as to whether the promises and assurances had been given.

Ground 6

78. By this ground, the Appellant challenges the Judge's conclusion that the Appellant gave truthful evidence in his statements in the Children Act proceedings concerning his children and in his bankruptcy proceedings and that he made truthful statements in his application for housing benefit. The Appellant invited the Judge to find that he was lying in those statements, but the Judge found that he was in fact telling the truth.

79. These statements, although made after the times when the promises and assurances were alleged to have been made, were highly important because they were wholly inconsistent with the Appellant's case. The Appellant accepts this and also accepts

that there would need to be very strong reasons to justify the Judge in finding that he had in fact been lying in his statements.

80. As regards the statements made by the Appellant in the Children Act proceedings, the Judge said in a summary at [122] that is not challenged as inaccurate:

> "Recognising that this evidence contradicted what he is now saying, Mr Patrick stated, after the usual perjury warning had been administered, that he had lied in two respects. First, he was not in fact an employee because he had ceased being an employee within a few weeks or months of being first employed. He had lied because his solicitors had advised him that it would look better to the court if he was in employment. Ms McKinley was complicit in these lies because she had said the same in her witness statements. Secondly, he had not moved back to his parents but remained firmly in Faylands. In that regard, his mother confirmed that her son did not move to live with her up in Driffield not least because the house was too small to accommodate all and when he did visit he did not, or virtually never, stayed with her"

81. The Judge described the Appellant's explanation as "garbled and confusing". Although attesting to a relationship with the Respondent, he presented himself in the Children Act proceedings as an employee. If in truth he had been an equal partner in a joint venture to develop and sell properties, the Judge observed that this would have commended itself to the court because not only would he be in a committed relationship but he would also be in business with a wealthy and successful businesswoman. The Judge regarded it as incredible that a solicitor would advise a client to lie, particularly in a bitterly fought custody battle in which credibility was paramount.

82. It is submitted that the Appellant's description of himself as employed did not essentially contradict his case. It is said that the distinction between working and receiving regular payment and working on the basis of an understanding that he would benefit at a later stage "would not have been and did not need to have been spelled out in JP's custody statements". So far as his relationship with the Respondent was concerned "there are many reasons why JP may have chosen not to set out full details of his relationship with DM. He may have considered that it was private, presumptuous, irrelevant, or indeed, insensitive to his ex-wife."

83. These submissions have a strong element of speculation, but in any event they come nowhere near providing grounds on which this court could interfere with the Judge's conclusion that the Appellant was simply telling the truth in these statements.

84. Following his bankruptcy order, the Appellant answered a written questionnaire and was in the usual way examined under oath by the official receiver in November 2006. He referred to the Respondent as his employer, stated that he had no assets and that his monthly pay was £378 plus tax credits and child benefit. He stated that he lived in the North of England and did not cohabit with anyone.

85. The Appellant's evidence was that this was orchestrated by the Respondent, who filled in the questionnaire which he simply signed. The Judge commented at [161] that "it would follow that he simply did Ms McKinley's bidding not just in the custody battle but the claim for state benefits but also knowingly perjuring himself in the bankruptcy proceedings" and continued "I am unable to accept this". He described the Appellant's evidence as "another web of lies which Mr Patrick has spun".

86. The submissions made in support of the appeal on this issue concentrate almost exclusively on the circumstances in which the Appellant became bankrupt, rather than with the real issue, namely his statements to the official receiver which he says were deliberately untrue. They provide no basis for interfering with the Judge's finding on these statements.

87. The Appellant's claim for housing benefit was made in December 2008 very shortly after he and his daughters moved into Cavaye Place. In the benefit claim form, which he signed on 5 December 2008, the Appellant stated, among other things, that he did not have a partner, that he had moved home to Cavaye Place from his parents' home in Driffield, that no adults normally lived with him, that he had been employed by the Respondent since 3 March 2003 to undertake administrative work and was paid £95.50 per week for 16.5 hours' work, and that he did not own or partly own any property.

88. These statements were again wholly inconsistent with the Appellant's case.

89. The Judge dealt with this at [205]-[224]. He rejected the Appellant's evidence that he was forced by the Respondent to make the housing benefits claim, so as to pay the rent on Cavaye Place which the Respondent could then use to pay his daughters' school fees in London, and he accepted the Respondent's evidence to the contrary. He said at [224] that, if the parties had been living as "man and wife" at Cavaye Place, it would be very odd "given her wealth to put her so-called fiancée into the position of having to claim benefits to save what to her was an inconsequential amount of money". She was, in truth, assisting the Appellant and his daughters at a very difficult time for them.

90. The Appellant challenges these findings. He alleges, now as he did at the trial, that the "whole thing was a scam, instigated by" the Respondent. He accepts that this is "of course, very difficult to prove", but says that it relies on "an understanding of the dynamics of the parties' relationship and the financial and emotional influences on both sides". In this respect, the Appellant particularly seizes on the Judge's finding that their "intimate relationship" had ended by this time. This, it is submitted, is an almost impossible finding in the light of contemporaneous evidence that they were "clearly together and planning for a future together".

91. This submission misunderstands the Judge's finding in an important respect. By an "intimate relationship", the Judge meant a sexual relationship: see [200]. In this regard, the evidence of the Respondent's violence is important, because it was following a violent episode in about August 2008, that the Appellant ended their sexual relationship, but it was the Respondent's own evidence that their friendship continued. I do not propose to go through the documents said to show that the parties were planning a future together, but having read them I am satisfied that the Judge was entitled to find that there was no truth in that allegation.

92. In rejecting the Appellant's case on the housing benefit claim, the Judge noted at [223] that the Appellant "had previously come up with the idea of falsely claiming that he was receiving the minimum wage back in 2006". This refers to the claim made by him in November 2006 for various benefits.

93. In a declaration of earnings dated 21 November 2006 made by the Appellant for the purposes of claiming monthly child allowance and working tax and family credit, he stated that he was employed by the Respondent from 6 June 2005 to 5 April 2006 and that his total earnings for the period were £3897. This declaration was prepared by Mrs Casey, the Respondent's bookkeeper at that time. She said in evidence that throughout her employment the Appellant was paid a monthly wage. Her evidence was confirmed by Mrs Robinson, the Respondent's PA from mid-2007 to mid-2009, who said that she passed on timesheets filled out by the Appellant and sometimes filled out his wages cheques herself.

94. The Judge summarised the Appellant's case on the statements made in the declaration of earnings at [150]:

> "To deal with this most damaging evidence Mr Patrick said that the Declaration was all made up and was not his document and that Mrs Casey had lied as he was not working for Ms McKinley at all, he being her business partner. Miss Robinson, he said, would not have known anything about it:
>
> > "I was not receiving wages. I only received what looked like wages. Then they stopped."
>
> He was, he said, not entitled to claim benefits at all. It was all Ms McKinley's idea, to make it appear that he was on a very low wage and entitled to benefits and also so that he could demonstrate to the Official Receiver that he was not able to pay off his debts to his lawyers Dawsons who had bankrupted him"

95. The Judge dealt with this issue at [151]-[153]:

> "151 None of this was put to Mrs Casey in cross-examination. Mrs Casey and Miss Robinson were emphatic that he was paid wages, and had never been given any impression that he was Ms McKinley's business partner. Indeed, it was their unchallenged evidence that it was Ms McKinley's clear instructions that Mr Patrick was not allowed in the estates office at Faylands, and he did not even have his own desk there – somewhat odd if they were a "husband and wife" business team.
>
> 152 Mrs Casey, as I have said, I found to be an honest and straightforward witness. She attested to how she had prepared a schedule made from the cheque stubs detailing the payments made to and on Mr Patrick's behalf which is exhibited to Ms McKinley's evidence. She specifically recalled remembering Mr Patrick telling her that he was

> looking into claiming child benefit and, when told what the minimum wage was, required that his wages be recorded at the approximate level and that it was he who told her what his home address was for the Declaration. Although requested by Mr Patrick, she was instructed by Ms McKinley to prepare the Declaration as Mr Patrick had requested because she was her boss. I also found Miss Robinson to be an honest and straightforward witness.
>
> 153 I am unable to accept Mr Patrick's evidence. This provides an illustration of Mr Patrick coming up with a dishonest scheme – fraudulently claiming benefits – which he then inveigles Ms McKinley into by getting her to instruct Mrs Casey to inaccurately complete the Declaration. It was not, however, the other way around. Whilst Ms McKinley should not, acting honestly, have complied with Mr Patrick's request it is Mr Patrick who was primarily at fault."

96. There is no appeal against the Judge's findings on this issue, and he was in my view entitled to have regard to the Appellant's conduct in 2006 in reaching his conclusions on the housing benefit claim made in November 2008.

Ground 7

97. It is said that the Judge was wrong to conclude that the Appellant was being untruthful in his evidence about "the Claddagh rings". A Claddagh ring is a ring to an old Irish design, involving interlocking hands, heart and (sometimes) crown, representing friendship, love and loyalty.

98. It was an important part of the Appellant's case that the Respondent has on many occasions expressed her desire to marry him. One occasion, according to the Appellant's evidence, was in Ireland in August 2004. In the relevant witness statement, the Appellant said: "This was the year I gave Daphne a Claddagh ring. This is an engagement, love, friendship, loyalty, and wedding ring which she always wore." The Respondent denied in cross-examination that he had given her a Claddagh ring or that they had exchanged such rings.

99. In his judgment, the Judge said at [100] that it came a surprise when, in cross-examination, the Appellant said that it was he who had proposed to the Respondent in 2004 and not the other way round, as had previously been his evidence, and that she had accepted. He was now saying that the parties had become engaged, not just that the Respondent had proposed marriage. The Judge went on to record the Appellant's evidence that he had been unable to say this in his six witness statements because, in his phrase, he had been "gagged by the process".

100. In closing, the Appellant's counsel submitted that this evidence should be treated with caution because the Judge had pushed the Appellant "into a position he was not comfortable going to". The Judge rejected this submission. The Appellant's evidence was clear that he had proposed marriage and that the parties had then become

engaged. The Judge rejected that evidence and considered, reasonably, that it represented a significant change in the Appellant's evidence.

101. There is no transcript available of the relevant part of the Appellant's cross-examination (apparently, that day's proceedings were not taped or the tape has been lost). There does not appear to be any doubt that the Appellant gave the evidence ascribed to him by the Judge and there are no grounds for concluding that he was somehow pressured by the Judge into giving that evidence, If there had been grounds for thinking that was the case, his counsel could have dealt with it in re-examination.

102. The appellant also complains about the Judge's reaction to some photographs put, without prior disclosure, to the Respondent. They were said to show the Respondent wearing the Claddagh ring which the Appellant said he had given her. When it transpired that the photographs had been obtained overnight, during her cross-examination, from the Respondent's daughter's open access Picasa account, the Judge reacted angrily. Counsel for the Appellant started to cross-examine the Respondent on them but was stopped by the Judge until the provenance of the photographs was clarified. The following day, counsel abandoned this line of cross-examination. Counsel no doubt considered this to be a prudent tactical withdrawal – and he may well be right – but the Appellant cannot now complain that the Judge did not treat the photographs as evidence proving anything.

Ground 8

103. In the course of his cross-examination, the Appellant spoke to his mother about the case, despite the usual warning not to discuss it with anyone while still giving evidence. His mother was due to, and did, give evidence

104. This arose out of the Appellant's evidence about his engagement to the Respondent. The Judge said:

> "102 Mr Patrick would have told his mother Marilyn about it, to whom he was according to her very close especially as she said she had met Ms McKinley just after Easter 2004. He did not tell her. But he did try to recruit her to his cause. I say this because on Friday 2nd May 2014 I warned Mr Patrick in the clearest of terms not to talk to anyone about the evidence he was giving over the bank holiday weekend. When she gave evidence the following week, Mrs Powdrill said that she had been phoned by her son over the weekend and asked whether she remembered them being engaged, whether she recalled the Claddagh ring being described as an engagement ring. She could not.
>
> 103. By so doing Mr Patrick demonstrated that he well-understood the significance of his evidence the previous week, and that there was nothing "holistic" about what he had said. When recalled into the witness box, Mr Patrick was unable to give a straight answer as to why he had disobeyed my warning, saying that it had been an

> accident or such like. This I cannot accept. The purpose of telephoning his mother was to forewarn her of a likely line of cross-examination in the hope that she would be prepared to back him up. Mr Patrick realising that he had gotten himself into a serious problem having been caught "red handed" exaggerating and making up his evidence on the hoof. I regard this as a very serious matter which cannot just be shrugged off. It was a blatant attempt to interfere with and influence the evidence to be adduced to court in support of his case. The fact that it was unsuccessful does not alter the gravity of this conduct. It seriously undermines the reliability of his evidence."

105. The Appellant accepts that what he did was "wrong and foolish", but it is submitted that the fact that he did so contributes nothing to whether he was seeking to exaggerate his relationship with the Respondent. With respect, this is an obviously hopeless point. The Judge was certainly entitled to treat this as an attempt to bolster his own false evidence. It should be recorded that Mrs Powdrill did not rise to the bait.

Grounds 9 and 10

106. As an alternative to his claim for a proprietary interest in Faylands, Carshalton Road and the company that owned the Cap d'Ail property, the Appellant claimed sums by way of *quantum meruit*. The pleaded basis of the claim was that he was instructed "as developer, constructor, designer…and project manager" in relation to the Properties, while his case as presented at trial was that he "undertook works/project management" on the Properties.

107. The Judge found that the Appellant "did not do any project management but provided essentially manual labour in one form or another broadly consistent, so far as Faylands is concerned, with his contract of employment": [289]. Earlier in his judgment, the Judge dealt in detail with the evidence relating to the Appellant's work at each Property. In each case, he rejected the Appellant's case that he undertook any project management work or was in any way qualified to do so. The Judge's findings are based not only on the evidence of the Respondent but also on the evidence of other witnesses and the documents. These findings are not challenged.

108. Nonetheless, the Appellant submits that the Judge failed to have proper regard to the lack of correlation between work done by him and the payments schedule put before the Judge and overlooked significant evidence about the work carried out by the Appellant (Ground 9). The Judge concluded at [15] that there was no credible evidence that the Appellant had "done any work for which he has not been or does not regard himself as already having been adequately remunerated". It is said that the Judge was wrong to find that any work done by the Appellant over and above that for which he was paid was a pay off for the benefits of the relationship (Ground 10). In that respect, the Judge failed to make any proper analysis of the amounts paid to the Appellant and failed to set out how he quantified the relative values of the work done and the benefits to the Appellant of the relationship.

109. The Appellant's submissions appear to ignore that the Judge found that the Appellant undertook no project management work and did little more than manual labour. The

expert valuation of his work, which produces a figure of about £198,000, is based on the Appellant's account of the work he did, an account that the Judge rejected. The Judge found that the work carried out by the Appellant for which he expected payment was either within the terms of his employment or was separately invoiced by him and paid by the Respondent. Other work was undertaken in the context of their relationship from which, as the Judge found, the Appellant greatly benefitted. The parties did put estimates on the payments and value of benefits received by the Appellant (£175,000 according to the Respondent, £90,000 according to the Appellant, albeit excluding some payments agreed to have been made), but it is a futile task to put values on work undertaken or benefits received as part of and in the course of a personal relationship in circumstances in which it has been found as a fact that the Appellant was not expecting to be paid for that work.

110. In my judgment, there is no basis on which the Judge's findings and decision on the *quantum meruit* claim can be overturned on this appeal.

Grounds 1 and 2

111. Although the Appellant made Grounds 1 and 2 his first grounds of appeal, and laid great stress on them (describing them as "an absolutely fundamental part of the case"), they relate to events much later than any others to which the appeal relates and they are best understood in the context of what has gone before.

112. The Appellant alleged that in February 2012, after the commencement of proceedings between the parties and three months before the commencement of the present proceedings, the Respondent visited the storage facility where a large quantity of possessions belonging to her and to the Respondent were stored, and removed the hard drives from four computers and a substantial quantity of photographs and files to prevent the Respondent from having access to "crucial information which would support his claim".

113. The sequence of events is as follows. After the sale of Faylands, a large quantity of the parties' belongings were removed to a storage facility and, after a flood at that facility, they were removed to the premises of a salvage and storage company called Revival. A lengthy inventory of items prepared by Revival includes (besides much else) "3 x computer towers", "computer tower", files and photographs.

114. On or about 10 February 2012, the Appellant issued an application seeking, among other orders, an order against Revival that it provide confirmation that his computers were still held by Revival and that he be permitted to inspect "the computers in storage" and that an independent expert be permitted to take a copy of the hard drives of "the computer" and provide electronic copies to the parties. In a witness statement made on 10 February 2012 in support of the application, the Appellant stated that Revival held:

> "at least 2 computers that hold relevant evidence on the hard drives. This is because these were the computers that Daphne and I used at the family home. Further documentary and physical evidence relevant to these proceedings including personal correspondence, greeting cards, photographs, and bank statements are also held at the facility. I believe that the

> contents therein may prove, amongst other things, that Daphne was living in the property with me between November 2008 and October 2009, that we used to live together at Faylands, that I worked alongside her on an equal footing in our business, and generally speaking that we were in a long term relationship and lived as a family with our children."

115. We were not shown evidence as to the date on which this application and witness statement were served on the Respondent's solicitors.

116. On 24 February 2012, the Respondent attended Revival's premises. She removed a large number of items, listed by Revival on four pages. They included furniture, an electric piano, glassware, a spear, books, two boxes of pictures, three boxes of photographs, a pilot logbook and other documents, and a notebook computer. Also listed but crossed through were four computers.

117. In June 2012, the Appellant's solicitors were informed by the loss adjustors handling the claim for flood damage that the Respondent had attended Revival earlier in the year and removed a number of items.

118. The Appellant's application dated 12 February 2012 was heard on 28 August 2012. An order was made that Revival disclose a copy of the inventory made by them of the goods stored with it.

119. By a letter dated 21 February 2013, the Respondent's solicitors replied to a letter dated 30 January 2013 (which we have not seen) from the Appellant's solicitors enclosing an inventory prepared by Revival. The Respondent's solicitors also enclosed an inventory prepared by Revival which they said differed from that supplied by the Appellant's solicitors. They went on to say that it appeared from the enclosed inventory that there were no computers at Revival. The letter also stated that "If there are computers in storage (which our client believes is not the case), and depending to whom the computers belong and the state and condition of them, then at that point our client will happily consider allowing your client to inspect the items in question". In the same letter, the solicitors said: "We are instructed that our client has not attended at the Revival Company now for a considerable amount of time and certainly has not removed any items as suggested". As we have not seen the letter under reply, we do not know the significance of "any items as suggested".

120. In another letter dated 21 February 2013, the Respondent's solicitors replied to a number of other letters from the Appellant's solicitors, including a letter dated 29 January 2013, which again we have not seen. As to that letter, they said;

> "We are instructed that neither our client nor any of her representatives have visited the Revival Company and removed certain items. Would you be kind enough please in the first instance to confirm when your client says the alleged attendance occurred. We will then take our client's instructions. We have sent you a copy of the inventory prepared by the Revival Company which appears to make no reference to any computer towers. We are of the view that in the first instance (because of the discrepancy between the

> inventories that have been prepared by the Revival Company) the Revival Company should confirm what computers it has in its possession (if any) and the state and condition of those computers."

121. At a case management conference on 8 May 2013, an order was made that the Respondent should disclose whether she, or anyone acting on her behalf, had removed "the 3 computer towers previously held" at Revival's premises and, if so, disclose their whereabouts.

122. Her solicitors confirmed that she had not removed any computer towers from Revival, and it transpired that the computer towers were indeed still at Revival's premises.

123. The Appellant engaged forensic computer experts to inspect the computer towers. On 7 October 2013, Sarah Vella of Evidence Matters emailed the Appellant's solicitors to say that they had examined all four computers (three Pars computer towers and an X Blade computer tower) and none of them contained any hard drives. She added: "The hard drives appear to have been ripped out of the machines in a hurry (small amount of damage to the clamps/housing) but equally they could have been removed by someone who simply didn't know what they were doing". She asked if they wanted a statement. The answer was presumably positive because a report dated 8 October 2013 was prepared by Laura Johnson, a forensic computing technician, in a form suitable for use in criminal proceedings. She reported that none of the computer towers contained hard drives. She did not, however, say anything about damage to the towers or whether the hard drives had been ripped out or removed by someone who did not know what they were doing.

124. At a further case management conference on 18 October 2013, and presumably prompted in part by Laura Johnson's report, both parties were ordered to file witness statements dealing with the removal of any items from Revival, including any hard drives.

125. In a witness statement made by the Appellant on 22 January 2014, he said that the items stored at Revival included three Pars computer towers that "were all at the company office [i.e. the Respondent's company office] until September 2009 when they were replaced", his X Blade computer tower and his Apple laptop. In the same statement, the Appellant made the allegation that the Respondent had removed the hard drives from the computer towers when she visited Revival's premises on 24 February 2012. The basis for this allegation was that the towers appeared on the inventory of items removed by the Respondent but were crossed through. The Appellant suggested that the Respondent had briefly taken the towers out of storage, removed the hard drives, either at Revival's premises or elsewhere, and returned them. He explained that hard drives can be removed fairly easily by removing the side panel of the tower with a small screwdriver and unplugging the drive. This was supported, he said, by the comments made by Ms Vella in her email dated 7 October 2013 that the hard drives had been removed in a hurry or by an inexperienced person.

126. In this witness statement, the Appellant said that it was his contention that the hard drives contained "information concerning the works carried out, including e-mails to suppliers, architects and others involved, my meetings with the Defendant and other employees involved in the works, plans, project management notes and so on". He

also asserted that the family photographs removed by the Respondent from Revival on 24 February 2012 "would have clearly documented my relationship with the Defendant over the seven years that we were together, along with some of my work on the properties." He said the same was true of the documents that she had removed.

127. In a witness statement made on 18 February 2014, the Respondent stated that she had not at any time removed any hard drives from any computers. She said that she could not be clear as to when the hard drives were removed, but she added:

> "Now my recollection is that the hard drives would have been removed by members of staff at that time [when Faylands was sold] and destroyed. I wouldn't have a clue how to remove a hard drive from a computer and if that is what happened at the material time (I am not sure) it would have been dealt with by members of my staff."

128. The Respondent was cross-examined on these allegations at the trial. As to her solicitors' letters in February 2013, she was clear that the computers had always been in store, but suggested that the letters were referring to the Appellant's computers. Her solicitors in a later letter had said that she could not remember whether there were any computers remaining in storage and whether there was anything contained in them. To this she replied:

> "A. Well I was being asked all the time were there any computers from the office… from the Fayland's office with all the office information on them and I kept saying that as far as I was concerned there was no computers from the office there; that those computers had been transferred into the private office with Taryn. And I do recall at the time all material being wiped which is normal…what we do at the end of each year.
>
> Q. I am sorry; say that again; that it's normal to wipe the computers at the end of each year?
>
> A. It's normal in all our businesses to wipe computers – they've just done it now actually – and then retain any information, so whatever –
>
> Q. Retain any information where?
>
> A. They would retain information on hard disk, then transfer it into the new computer or wipe the computer and put it back in. And with these computers I remember there was a guy in the office with Taryn – Taryn got a specialist in – because I think we got new computers or new laptops and everything was transferred over to them, so as far as I was concerned the office computers that I was being asked about were not in storage, but they were actually in the office."

129. She denied removing the hard drives. She explained that when she went to Revival on 24 February 2012, all the items were in a huge room and she thought the computers

were at one end. Revival officers were with her the whole time. As to the photographs that had been removed, the Respondent said in cross-examination that they were pictures of her children and her entire life.

130. The Judge dealt with this at [271]-[289]. At [271] he recorded that the Respondent had attended Revival's premises, inaccurately stating that this was two weeks after she had been *ordered* to disclose the hard drives to the computers. He referred to Ms Vella's email but added that it "technically is not evidence because it did not form part of the expert's report and has not been verified under oath".

131. The Judge referred to the Respondent's somewhat inconsistent accounts of what happened to the computers and then said:

> "275. Whilst I did not find Ms McKinley's evidence relating to the alleged removal of the hard drives to be particularly satisfactory, I am reluctant to find that she did in fact remove them on the 24th February 2012. There are three specific reasons. First, there was no direct evidence that the computers contained the hard drives on that date. I do not see that it is necessarily odd to store computers without their hard drives.
>
> 276. Had the computers been removed and returned, I would have expected, in the absence of any evidence of Revival's procedures, that to be separately recorded rather than for the computers to be listed and then deleted on the same list. The computers were not little lap tops which can be easily shifted, but four quite big towers. This would tend to indicate the computers were not removed on this occasion. Thirdly, had the hard drives been "ripped out in a hurry" or whatever as Miss Vella described, that should have been part of the expert's opinion and not in a covering email but was not.
>
> 277. Overall, I have found Ms McKinley to be an honest witness who has given evidence which is broadly consistent with contemporaneous documentation although she has at times for example understated the nature of the intimate relationship with Mr Patrick and the amount of time spent at Faylands. I have taken that into account in relation to this aspect of the evidence. I also accept that it would have been in Ms McKinley's interest to track down the hard drives as they would have contained information supportive of her case. For example, as Mrs Casey said, the Quickbook files showing how much Mr Patrick had in fact been paid would have been on them."

132. Counsel for the Appellant submitted to us that it was "very difficult to see how the judge could conclude, on the balance of probabilities, that DM did not remove the hard drives from the four computer towers".

133. In support of this submission, he said, first, that it was wrong for the court to rely on the lack of direct evidence that the computers contained their hard drives when the Respondent visited Revival on 24 February 2012. I disagree. The Appellant's case could not get off the ground unless the hard drives were in the computer towers on that day, but there is nothing particularly surprising in hard drives being removed before computers are put into long term storage, all the more so if, as the Appellant himself said, the computers had been replaced. Against that background, there is nothing intrinsically improbable in the evidence given by the Respondent that they were removed by members of her staff and the data transferred to the new computers.

134. Counsel submitted, secondly, that the Judge was wrong to place weight on the lack of evidence of Revival's removal procedures. In my view, the Judge was right to do so. The Appellant was seeking to build a very serious allegation of evidence-tampering on the slender basis of the crossed-through references to the computer towers in the list of items removed by the Respondent. The obvious people to ask about the significance of this were Revival and their employees. The onus lay on the Appellant to establish this serious allegation and the Judge was entitled to take account of the failure to adduce evidence from an obvious source.

135. Third, counsel submitted that the Judge should have had regard to the contents of Ms Vella's email dated 7 October 2013, which counsel says was "a fundamental part" of the expert report provided by Ms Johnson of Evidence Matters. I think the Judge was right. Ms Vella did not give evidence either as an expert or a witness of fact. What she wrote in her email could not be tested. If the Appellant wished this matter to be in evidence, he should have asked for it to be included by Ms Johnson in her report (only if, of course, Ms Johnson agreed with what Ms Vella had said). In any event, this is not a major point, because Ms Vella's comments, even if accepted, say nothing about when the hard drives were removed or by whom.

136. Counsel alleged that the Respondent was guilty of lying in statements made in letters from her solicitors. The Judge did not find that she had lied in those letters and, having read them in context, I am satisfied that it is not open to this court to say that she was lying.

137. That is not to say that the Appellant's evidence was entirely satisfactory in relation to the hard drives, but the Judge commented on this. He took that into account in finding as a fact that she had not removed the hard drives. He was entitled to have regard to his assessment of her evidence on other matters as an honest witness. He was entitled to take into account that it would have been in her interests to track down the hard drives or their contents.

138. I am clear that it is quite impossible for this court to conclude that the Judge was plainly wrong in his rejection of the Appellant's case as regards the hard drives.

139. Moreover, contrary to the Appellant's submissions, it is highly improbable that the contents of the hard drives would have made any difference to the outcome of the case. The Appellant accepts that they would not have contained evidence relating to 2003-04 when the alleged promises and assurances were given. As for the allegation that the Appellant was a project manager, the Judge had a wealth of evidence before him, including from independent witnesses, that he undertook no project management work and had neither the experience nor the expertise to do so.

Conclusion

140. Inevitably, this judgment has concentrated on those aspects of the judgment challenged on this appeal, but that has a distorting effect on the overall scope and impact of the long and careful judgment given by the Judge. He saw and heard both parties being cross-examined at length, as well as hearing from other witnesses, some of whom he found to be reliable. Over and again, he found the Appellant to be a thoroughly dishonest witness, and in a large number of instances those findings are not challenged, nor could they be challenged. Equally, he found the Respondent to be overall an honest witness.

141. I conclude that this appeal comes nowhere near satisfying the test for allowing an appeal on the basis that the Judge's findings of fact were wrong. I would therefore dismiss the appeal.

Lord Lloyd-Jones:

142. I agree.