



Neutral Citation Number: [2020] EWHC 3403 (Admin)

Case No: CO/182/2020

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT

Cardiff Civil and Family Justice Centre
2 Park Street Cardiff CF10 1ET

Date: 15 December 2020



Before:

HIS HONOUR JUDGE JARMAN QC
Sitting as a judge of the High Court

Between:

THE QUEEN (on the application of ASTRID LINSE) Claimant
- and -
THE CHIEF CONSTABLE OF NORTH WALES Defendant
POLICE

The claimant represented herself assisted by Celine Belli
Mr Darren O'Keefe (instructed by **Legal Services, North Wales Police**) for the **defendant**

Hearing dates: 26 and 27 November 2020

Approved Judgment

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

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HIS HONOUR JUDGE JARMAN QC

HH JUDGE JARMAN QC:

1. By a judgment handed down on 29 May 2020, NC number [2020] EWHC 1288 (Admin), I determined that a decision made on 19 December 2019 on behalf of the Chief Constable of North Wales Police was unlawful. The decision was to refuse the claimant Mrs Linse to remove her vehicle, a Mercedes Benz Unimog U1300L (the vehicle), from police custody even though she then produced what I determined to be a valid certificate of motor insurance in respect to the vehicle within the meaning of the Road Traffic Act 1988 (Retention and Disposal of Seized Motor Vehicles) Regulations 2005 (the Regulations). Police officers had seized the vehicle on 29 October 2019 under section 165A of the Road Traffic Act 1988 (the 1988 Act) on the basis that they had reasonable grounds for believing that the vehicle was being driven without a valid certificate. Mrs Linse was then unable to produce such a certificate. She produced such a certificate on 19 December 2019 but police officers dealing with the matter, after making inquiries with the insurers NFU Mutual Insurers (NFU), decided that the certificate was invalid because of material non-disclosure.
2. I determined that that was not a correct view of the law. The correct position is that under sections 151 and 152 of the 1988 Act, even though an insurer may be entitled to avoid the policy, they must meet any damages for personal injury or damage to property award to any third party against the insured, unless the insurer had obtained a declaration that they were entitled to avoid the policy on the grounds of non-disclosure or misrepresentation. No such declaration had been obtained in this case. I determined therefor that the certificate remained in force for the purposes of the 1988 Act and valid for the purposes of the Regulations (see also *Durrant v McClaren* [1956] 2 Lloyd's Rep 170).
3. By the time of the hearing, despite North Wales police being aware of these judicial review proceedings which Mrs Linse had issued in January 2020 challenging the lawfulness of the refusal to allow her to recover the vehicle and that a hearing was listed, it was decided to dispose of the vehicle by auction. It was sold in March 2020 for £6,260.
4. The effect of my determination was that the detention of the vehicle and its contents on 19 December 2019 and/or its sale in March 2020 was unlawful. Accordingly, I

gave directions for a hearing for the assessment of damages. That hearing came on before me over two days, and this is my judgment on that hearing.

5. Mrs Linse represented herself at this hearing as she had done at the liability hearing, with the assistance of a friend Celine Belli. She did so via video platform and she and Ms Belli and her son Tazio Linse gave oral evidence by video. Her husband Nils Linse had also filed a witness statement, but Ms Linse did not call him to give evidence, saying he was too unwell, although no medical evidence was produced to corroborate this.
6. The Chief Constable was represented by counsel Mr O'Keefe. He and his witnesses attended court. He called seven witnesses to give oral evidence. Three were police officers, namely PS Diamond, PC Martin, and PCSO Jones. Three were employees at the garage in Llandudno Junction, Hough Green Garage (the garage) where the vehicle was stored, namely Colin Stephenson, Christopher Willey and Sylvester Wilson. Finally, he called Alan Clayton, an employee of NFU.
7. The main heads of damages claimed by Mrs Linse were the value of the vehicle, the value of some of its contents at the time of seizure which have not been recovered, and loss of income. There is a wide disparity between the parties. Mrs Linse's schedule of loss totals just under £400,000. The Chief Constable's counter schedule accepts just one head, the value of the vehicle, and that is said to be the amount obtained at auction, namely £6,260.
8. The background to the losses is that Mrs Linse and her husband are German artists who have achieved success in the contemporary art world in their home country and other European countries, and are members of a recognised group of artists called Artists Anonymous. At the time when the vehicle was seized they were staying in North Wales and helping Ms Belli with a project to convert a chapel in Caernarfon into an art centre. Mrs Linse says that she and her husband were living in the vehicle. It has on the back a detachable cabin (the cabin) which she says they had adapted to living accommodation and had installed wooden shelving to carry their artwork. She says that she and her husband intended to return to Germany in November 2019 to sell pieces of artwork which they had been produced over the preceding couple of years. They intended to do this by visiting the homes of established clients with whom

they had built up a relationship of trust over the years, in the hope that they could persuade them to buy more of their artwork.

9. The first main head of damage relates to the value of the vehicle. This is to be determined by the market value of the goods at the time of conversion, and not on the basis of a new for old valuation (see *Kuwait Airways Corporation v Iraqi Airways Co (Nos 4 and 5)* [2002] UKHL 19). No expert valuation evidence was relied upon before me. This valuation exercise is not straightforward. Mercedes Unimogs were transporter HGVs produced for the German military, up to and including the 1980s (as the vehicle was). As was clear from online advertising material adduced by Mrs Linse, Unimogs currently enjoy something of an enthusiasts' following for conversion into mobile homes. The prices she relies upon, between £89,000 to £100,000, are based on the asking price for such conversions which are advertised as being in perfect or completely rebuilt condition.
10. Mrs Linse said that her vehicle was a prototype produced by a medic for use as a field medical vehicle. The main feature of the prototype was the detachable cabin. Mrs Linse said that the prototype was not taken up and she purchased it from the medic in 2010. She said that she then spent time and money converting the cabin into living accommodation, with the use of natural materials, mainly wood. PS Diamond who assisted in the emptying of the contents of the cabin, then still attached to the vehicle at the garage, on 28 January 2020, took a video of the process on his body camera. When most of the contents were emptied, it was clear from the recording that the cabin was fitted with wooden shelving. The shelves had restraining bars and there were many books, as well as other items, neatly stacked on the shelves. There was a gas hob and a basin fitted into wooden worktops. At the far end there was a low wooden dais on which there was housed a two seater sofa next to which flat cushions had been put on the dais, which could be used as a double bed. There was also a single armchair.
11. With that support from the video recording, I accept Mrs Linse's evidence about the work which she undertook to the cabin. However, as she accepted, that was to her own personal taste and lifestyle. The paintwork on the outside of the vehicle displayed various shades colouring, although there was no suggestion that there were any structural defects or that it was not properly maintained. I do not find the evidence of

the asking price of converted Unimogs in perfect or very good condition to be of great assistance as to the market value of the vehicle at the time of conversation.

12. On the other hand, the sale price of it after an online auction is not of great assistance either, conducted as it was without documentation relating to the vehicle, or without any history save perhaps that it was a sale after being compounded on behalf of the police. Moreover it is a left hand drive vehicle which since seizure has remained in the UK. In July 2020 the buyer advertised the vehicle for sale, minus the cabin, for £15,000. Mr O’Keefe invited me to find that it is likely that the buyer detached the cabin as it was thought the vehicle was more valuable without it, but there was no evidence of that and it is just as likely that the chassis and the cabin had a higher total value when separated. Mrs Linse, to her credit, accepted in her oral evidence that enquiries had been made of the buyer by her or on her behalf which came to nothing and she did not think that the vehicle had been resold.
13. There were other advertisements adduced by Mrs Linse for the sale of other Unimogs, of a similar model and age to the vehicle but with no indication of condition. One of these was for £13,000.
14. One piece of evidence relied upon by Mr O’Keefe is a reply given by Ms Belli to an NFU employee when she was seeking to insure the vehicle in order to secure its return. She said that it was she who did this on behalf of Mrs Linse, as the latter was not in a good state by this time and although her English is of a high standard it is not word perfect, and that is how it came across in the hearing. Ms Belli said that although she had been in the vehicle many times travelling with Mrs Linse and her husband to European countries, she had not discussed its value with anyone. When asked the question as to value, in the context that the prime objective was to secure the return of the vehicle so that Mrs Linse and her husband could travel to Germany, Ms Belli accepts that she replied, “a grand and a half.” She said that she got this figure, without consulting or telling Mrs Linse, from a price which she had paid for a HGV vehicle for £2,500 not long beforehand, which was a bigger vehicle and that she “scaled down” her estimation of the value of the vehicle from this. This was a somewhat convoluted explanation, although Ms Belli in my judgment gave it in a straightforward way. Moreover, even on the Chief Constable’s case, it is a significant

undervalue. I accepted Ms Belli's explanation, and accordingly this piece of evidence is not of great assistance either.

15. The written evidence adduced by Mrs Linse and her son made no reference to the price which she had paid for the vehicle in 2010. She explained this by saying she thought she had to focus on its value at the time of conversion. Litigants in person are expected to familiarise themselves with the Civil Procedure Rules, but on the other hand I must pursuant to the overriding objective deal with the case justly and so far as practical ensure that the parties are on an equal footing. I accept that an appreciation of the rules may not extend to an understanding of the nuances of writing witness statements and give due allowance for that.
16. Mrs Linse said in her oral evidence that she paid €40,000 for the vehicle in 2010. No documentary evidence in support was filed. Her son said in oral evidence, that when he was 16, so in that year, his parents asked him to travel some distance across Germany with €25,000 in cash to hand to the seller of the vehicle as the final payment. He was aware that his parents had had prior communication with the seller and had wired some money as a down-payment, but he did not know how much this was. When asked why one of his parents could not take the final payment he said he thought they were too busy. Mrs Linse said in her oral evidence that when selling artwork, she dealt in cash.
17. Mr O'Keefe submitted that the arrangement for a 16 year old to travel some distance in Germany with this amount of cash was highly unusual, if not suspicious. In my judgment that is a fair description. He realistically accepted that Tazio Linse gave his evidence well on the whole, but submitted that he became defensive when being questioned about taking the cash. In my judgment he did come across as an impressive witness, and although I accept that there was a defensive element in his evidence about taking the cash, that is likely to be because he recognised that it was a highly unusual if not suspicious arrangement.
18. It is not the sort of arrangement which he is likely to mis-remember. It is more likely that his evidence about it was the truth, or made up. If he was going to make up evidence to support that of his mother as to what price she paid for the vehicle, it would have been easier and more plausible to do so by simply saying, for example,

that he was present when the purchase price was paid by his mother. As unusual as the arrangement was, in my judgment it is likely that he was telling the truth about it and I accept his evidence.

19. It may well be, as Mrs Linse said, that such a unique vehicle is likely to increase rather than decrease in value over time. Against that, however, must be taken into account the extensive travel which the vehicle had clocked up travelling in different European countries over a period of some nine years, even if it had been well maintained.
20. Pulling all those pieces of evidence together, in my judgment the most likely figure to reflect the market value of the vehicle in 2019 is £25,000.
21. I turn now to the possessions which Mrs Linse says was in the vehicle at the time of seizure. The items in the front cab were returned to her. The items emptied from the cabin on 28 January were photographed, itemised and then put into 23 bags. The items included a whole range of clothing from underwear to jackets (including leather, corduroy and ski jackets), tools, audio equipment, bedding and sleeping bags books and five passports (only one of which, that of Nils Linse, was still valid). These were brought to court for the damages hearing, and arrangements were then made to return them to Mrs Linse. She had seen the video and the photographs and inventory. These account for the vast majority of items in her schedule of loss. It is noticeable that in many cases, her schedule is based on on-line “current listings” rather than market value.
22. There are however, six items which Mrs Linse says were in the cabin at the time of seizure which were not amongst the items photographed itemised and bagged. The first was a Toshiba Portege laptop with an individual invoice of £1210 and current listing of £1962. There were then an oil painting on panel called Elf 1 and a photographic afterimage with a gallery pricelist price of £6,500 and £4,500 respectively. Both these measured 30 x 24 centimetres. There was a Catwalk Designer fur coat valued at £3,000 to £5,000, and four Herr Von Eden tailored suits with a current listing of £3120.
23. As Mr O’Keefe submitted, this is a factual issue as to whether the items were in the cabin or not. It was not in dispute that if they were, the Chief Constable would be

liable for their disappearance from the vehicle whilst it was in police custody. He relied upon witness statements made by Mrs Linse and Ms Belli in a complaint to the police that a former landlord had disposed of valuable paintings in a skip, something which the landlord denies. No claim has yet been made in respect of these, as it may still be, but Mr O'Keefe submitted that this is a similar complaint to the evidence of these valuable items being in the cabin at the time of seizure. However, the circumstances are dissimilar and there has been no resolution of the claim against the landlord. I do not find the witness statements made in the complaint to be of much assistance in the factual dispute in the present claim.

24. It is not in dispute that Mrs Linse attended at the garage with her husband and Ms Belli on 4 November 2019 and asked for her possessions from the cabin but was told for insurance purposes she could not retrieve them herself. Mr Stephenson said in his oral evidence that he then offered to drive the vehicle out of the compound so that this could be done, something which Mrs Linse with some support from Ms Belli, denies. This offer did not appear in his witness statement, which was professionally drawn, even though Mr Stephenson accepted that in making his statement he was asked to say what had happened on the day. Given that his statement was directed to what happened on one particular visit that does cause me to be cautious about accepting this part of his evidence and on balance I am not satisfied that his recollection on the disputed offer is accurate and I do not accept it.
25. Ms Belli in her oral evidence said that she had purchased the laptop in her name as a present for Nils Linse, who mentioned the laptop on the visit to the garage on 4 November 2019. She could not recall if anyone else mentioned it, but she said she recalls quite well that it was mentioned. She also recalls Mrs Linse mentioning that it would be nice to pick up the fur coat as it was cold, but said there was no mention of the paintings as it was not relevant given that she had been told she could not retrieve her items.
26. Mr O'Keefe also submitted that it would be highly unlikely that such valuable items would be left in the vehicle upon seizure without a specific reference to them and a request for their return. In my judgment there is some force in that submission. On the other hand, the vehicle was then in secure custody. Moreover, Tazio Linse in his evidence said that he had been packing the cabin for his parent's trip to Germany over

some three days some two to three days before seizure. He said that after doing so there was still floor space and that he specifically recalls putting the laptop in the cabin “along with the bubble wrapping the Elf painting,” as he put it in his witness statement. He did not mention the other valuable items. Again, that evidence was given in a straightforward way.

27. It is not in dispute that when the cabin was unlocked on 28 January 2020 there were piles of clothes on the floor and other surfaces. The police officers who attended accepted in their oral evidence that it looked as if the cabin had been ransacked. Mr Wilson said that the vehicle arrived at the garage the same day it was seized. It was not then searched. Although this was not in his witness statement, he said in his oral evidence that he looked through the windows of the cabin a couple of days later and could see what he called a jumble of clothes. I accept he did this, but the windows in the cabin are small and high up and in my judgment this does not give a reliable indication that he saw what the officers accepted looked like a ransacking when the cabin door was opened on 28 January 2020. At first Mr Wilson didn’t think he had a key to the cabin, but it was later discovered that one of the keys on the ignition ring fitted the rear door. The front cab remained unlocked. The only time the cabin was searched at the garage was when the police officers attended on 28 January 2020.
28. In my judgment it is highly unlikely that the missing items were taken by a police officer or an employee at the garage. Outside working hours, the compound is alarmed, and CCTV is in operation. Moreover, the window of opportunity for an opportunist thief to take them was extremely limited, but such an event could have occurred between the time the keys were taken from Mrs Linse on the industrial estate in Conwy and when the cabin was first searched on 28 January 2020.
29. On the other hand, it is unlikely in my judgment that Mrs Linse or her son would have simply thrown the clothes into a heap on the cabin floor as they were seen in the video recording. Unsurprisingly, the photographs of the clothes afterwards show that some were dusty and crumbled, but for the most part they did not have the appearance of discarded items. Again, in my judgment it is likely either that Tazio Linse is telling the truth when he says he packed the cabin for his parents’ trip and did so in a way that there was floor space and that he recalls packing the laptop and the painting in bubble wrap, or he is making it up. There is little room for mistake.

30. On this part of his evidence too he came across as an impressive witness and I accept it. It is likely that, however limited the window of opportunity was, whilst the attention of the police and/or a garage employee was elsewhere an opportunist thief entered the cabin and ransacked it looking for valuable items.
31. I accept that those items taken are likely to have included the laptop, on the evidence of Mrs Linse with some support from that of her son and Ms Belli. I also accept that the fur coat was taken, as Ms Belli recalls reference to that on the visit to the garage on 4 November 2019. On the evidence of Mrs Linz and her son I accept that the oil on panel painting “Elf 1” was also taken. Her son specifically mentions that in his witness statement but does not mention the afterimage. I am not satisfied that Mrs Linse’s recollection that that or the four tailored suits were also in the cabin at the time of seizure is accurate.
32. It remains to put a market value on the laptop, the fur coat and the painting. Although the laptop was quite new it was not unused. Having regard to its purchase price of £1200, in my judgment the likely market value was £1000. As for the fur coat, it is likely that the figures given by Mrs Linse reflect the current listing price in line with other items in her schedule. Taking the lower of the two figures namely £3000 as such a price, in my judgment the likely market value was £500. As for the painting, this was listed in the Berloni Gallery as having been created in 2013 with an asking price of £6,500. Mrs Linse says in her witness statement that galleries can charge commission of 50%. However, this painting had evidently not sold at that price and Mrs Linse had moved away from this type of marketing. In my judgment therefore the market value of the painting is likely to have been significantly less than this listing and I would award £4000.
33. By far the biggest head of damage is the loss of income which Mrs Linse says she would have earned from sale of artwork by using the vehicle to visit clients in Germany and other European countries, namely £135,000. Mr O’Keefe submitted that as a matter of principle such a head of damage is not recoverable. Damages for conversion must be reasonably foreseeable to be recoverable (see *Kuwait Airways*). There was nothing about the vehicle or the circumstances in which it was unlawfully detained or sold to suggest that it could be used to generate such income. In my judgment there is force in that submission and I accept it.

34. In case I am wrong about that I will deal with the factual issues surrounding this head. Mr O’Keefe questioned whether the vehicle could be used as living accommodation, but I am satisfied on the evidence of Mrs Linse and her witnesses and the video evidence that it could. Next he submitted that any income would be very modest, given the undisputed fact that in the two years prior to the seizure of the vehicle Mrs Linse and her husband had earned very little from their artwork and were relying on thousands of pounds paid to them during that period by Ms Belli as an investment in their artwork. Mrs Linse explained that this was a period of transition when she and her husband were producing artwork to take to customers, which is how they became successful originally. However, success led to a different marketing strategy namely sale through exhibitions and galleries, which meant that commission had to be paid. There were disputes with gallery owners and litigation in 2018, and so she and her husband decided to return to their original approach. When giving this oral evidence it was clear that Mrs Linse is passionate about her artwork, the relationship of trust which she has built up with clients over many years, and her lifestyle. I accept her evidence on these points and that it is likely that had the vehicle been returned to her in December 2019 she and her husband would have gone to Germany in the vehicle and would have sold artwork.
35. However, to her credit, Mrs Linse accepted in cross-examination that in the events which happened this personal approach, which she emphasised was most important to her and her clients, would not have been practical after lockdown restrictions because of the pandemic were brought into force in Germany in early March 2020 and in other European countries two weeks or so later. She also readily accepted during her oral evidence, again to her credit, that she still has the artwork which she was hoping to sell, and that she is still hoping to sell it when she is able to do so. She also readily accepted that since the seizure of the vehicle she has produced several new pieces of artwork, which she hopes in due course to sell.
36. In my judgment therefore, the income has not been lost but the receipt of it has been delayed. If any sums were recoverable under this head of damages, it would in my judgment be in the nature of loss of use of income until March 2020 and would amount to hundreds rather than thousands of pounds.

37. Another head of damages is money borrowed from Ms Belli in the sum of £16,481.88. Since seizure of the vehicle, Mrs Linse and her husband have been accommodated in a makeshift studio in part of the chapel in Caernarfon. However, in my judgment they would have incurred living expenses in any event. The accommodation provided in the chapel was makeshift, and there was no evidence before me of payment for such accommodation being demanded or expected. Accordingly, it is not appropriate to make any award under this head.
38. Mrs Linse also claims £5,000 for herself and her husband for the emotional upset due to being homeless and unable to move, live and work freely. As already indicated, I accept that Mrs Linse has a passion for her art and her lifestyle, and I also accept that there has been significant emotional upset caused by not being able to secure the return of her vehicle and to make the planned tour. Mr O’Keefe submitted that damages for injury to feelings caused by unlawful interference with chattels are not recoverable and relied on observations to that effect in *Cash & Brown v Chief Constable of Lancashire* [2008] EWHC 396 Ch. I accept that submission, but as Mr O’Keefe properly conceded, such upset may be relevant when considering aggravated or exemplary damages, and it is to that final head of damages which I now turn.
39. Mr O’Keefe submitted that such damages are not appropriate in the present case, because the failure to return the vehicle in December 2019 was based on a mistake of law and its sale in March 2020 was based on the same mistake and a lack of internal communication in the police concerning the litigation which by then had commenced. In my judgment the conduct of the police goes beyond a mistake of law. The power to seize and detain the vehicle derives from the 1988 Act and the Regulations. Sections 151 and 152 are clear as to the effect of a certificate of insurance which is liable to be avoided for material non-disclosure.
40. A sergeant in the North Wales Road Policing Unit, PS Collins, emailed Ms Belli and a colleague PC Morris on 22 December 2019 to say she had confirmed that the NFU insurance was valid, and that if Mrs Linse took that insurance document to a police station, the document would be stamped, and she could go and collect the vehicle. Mrs Linse says that she had the money to pay the recovery and storage charges in respect of the vehicle and that was not in dispute before me. Despite that email however, PC Morris liaised with another colleague PC Birkby who made enquiries of

NFU. It is not clear why they did not comply with the instruction of PS Collins. In my judgment that conduct was arbitrary by a servant of the government.

41. As such it comes within the first category of cases where it is appropriate to award exemplary damages laid down by Lord Devlin in *Rookes v Barnard* [1964] AC 1129. Accordingly, it is exemplary or punitive damages which is appropriate in my judgment rather than aggravated damages. Exemplary damages are most commonly ordered against the police in false imprisonment and malicious prosecution cases, typically in a wide range of awards from hundreds of pounds to tens of thousands of pounds. This case is not as serious as most of those, but as I have already indicated I accept that the failure to return the vehicle had a significant impact upon the freedom of Mrs Linse and her husband to return to Germany, to follow their chosen lifestyle and to sell their artwork. In the event that much of that impact was over a shorter time span than would otherwise have been the case as the lockdown restrictions in March 2020 would have curtailed further travelling.
42. Mr O’Keefe also submitted that in determining the amount of such an award account should also be taken of the fact that the vehicle was being driven without a valid insurance certificate when seized and that Mr Linse has been convicted of such an offence under the 1988 Act. Mrs Linse maintains that the vehicle was insured by a German insurer Huk24 and that she took the certificate to Caernarfon Police Station the day after seizure. PCSO Jones says she contacted Huk24 by telephone and was told that only a quote and not a certificate had been issued by them in respect of the vehicle. Huk24 do not deal with customers by telephone, only by email, but it is likely that employees would deal with telephone enquiries from the police. I accept the evidence of PCSO Jones and that accordingly the police continued to have reason for believing that the vehicle was not insured, and that was sufficient to justify detention under the 1988 Act. However, Mrs Linse said that her husband’s conviction will be appealed, and I am prepared to accept that she believed and believes that there was valid insurance for the vehicle.
43. In my judgment the appropriate award to reflect the punitive element of damages for the arbitrary action identified above is £6,000. I have taken into account the impact of this action upon Mr Linse and her husband in arriving at that figure and in my judgment it is not appropriate to award a separate head of aggravated damages.

44. In conclusion, Mrs Linse is entitled to an award of damages in the total sum of £36,500. The parties should attempt to agree consequential matters such as interest and costs. A draft order should be filed within 14 days of the handing down of this judgment, together with any written submissions on any such matter which cannot be agreed and any application for permission to appeal.