

Ruth Bala successful in *Nash v Volkswagen Financial Services (UK) Ltd* [2023] EWHC 2326 (KB)

Freedman J has handed down judgment in *Nash v Volkswagen Financial Services (UK) Ltd* [2023] EWHC 2326 (KB).

Ruth Bala successfully represented Volkswagen FS, instructed by Lester Aldridge LLP. The case concerned a newly purchased motor vehicle which had caught fire: the purchaser's expert said that the most likely cause was an electrical defect, whereas Volkswagen FS' expert said the most likely cause was travelling burning brands from a discarded cigarette.

The trial judge concluded that the claimant had failed to discharge the burden of proving that the vehicle was defective. The issue on appeal was the correct approach to factual causation where there were competing theories. In dismissing the appeal, Freedman J rejected the appellant's argument that the trial judge was bound to select which of the competing theories he preferred; he was entitled to confine himself to the unitary question of whether the appellant's electrical defect theory was more probable than not (at [47]-[50]; *Rhesa Shipping Co S.A. v Edmunds (The Popi M)* [1985] 1 W.L.R. 948 applied). While the trial judge did not evaluate how probable the competing cigarette theory proffered by the respondent was, he did not discount it as wholly improbable (at [55]).

The trial judge was entitled to "remain agnostic" and an aspect of that was his passing mention of the possibility of a third, unknown explanation (at [63]-[64]).

Full judgment available here: [Nash v Volkswagen Financial Services](#)