



Neutral Citation Number: [2023] EWHC 2550 (KB)

Case No: G90MA355

IN THE HIGH COURT OF JUSTICE
KINGS BENCH DIVISION
MANCHESTER DISTRICT REGISTRY

The Civil Justice Centre
Manchester

Date: 17 October 2023

Before :

His Honour Judge Bird sitting as a Judge of this Court

Between :

JAKE HAMMOND
(by his litigation friend LESLEY WALLER)

Claimant

- and -

JANE GIBBON

Defendant

Mr Christopher Melton KC (instructed by **Simpson Miller LLP**) for the **Claimant**
Mr James Rowley KC (instructed by **DWF Law**) for the **Defendant**

Hearing dates: 5-7 June 2023

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 BIRD SITTING AS A JUDGE OF THIS COURT

His Honour Judge Bird :

A. Introduction

1. On Saturday 18 September 2004 Jake Hammond suffered serious and life changing injuries in a road traffic accident when he was run over by a Land Rover Freelander driven by the Defendant as he attempted to cross Bruce Glazier Terrace (“the Road”) on a quiet residential estate in Shotton near Durham at around 3.45pm. He was 4 years and 7 months old at the time. The weather was clear, visibility was good, and the road surface was dry.
2. Jake suffered a number of traumatic injuries to his head, brain and body. In summary he suffered fractures to both sides of his skull, a fracture of the base of the skull and some haemorrhaging around the brain. He had soft tissue injuries to the left side of his face and his chest. His left shoulder blade was fractured as was his left first rib. It is now accepted that the Land Rover drove over Jake’s head and upper body. Jake lacks capacity and so brings this claim by his mother and litigation friend Lesley Waller.

B. The factual evidence in outline

3. I am invited to make factual findings based on the written and oral evidence of Miss Waller, Jane Gibbon the Defendant, and her son Ricky Hutchinson. I am also invited to consider other evidence in the form of statements given to the police, in one case under caution. It is notable that the factual evidence falls into 3 categories: evidence provided to the police in the 5 weeks or so following the accident, written evidence compiled for this claim between April 2022 and May 2023 some 17 and a half years after the accident and oral evidence given at trial more than 18 years after the accident.
4. Miss Waller has provided 3 witness statements, dated 13 April 2022, 27 April 2022 and 24 May 2023. It has been agreed that I should consider each of them. The first was only disclosed to the Defendant in the trial bundle, the second was served in normal course and the third has recently been served.
5. I have seen and considered the following additional evidence in the form of statements given to, or in one case an interview conducted by, the Police:
 - i) A police witness statement from Ricky Hutchinson, the Defendant’s son dated 22 September 2004. He was the front seat passenger in the Land Rover.
 - ii) A police witness statement from Katie Dowson, the Defendant’s daughter dated 22 September 2004. She, with her infant son Marcus, was a rear centre seat passenger in the Land Rover.
 - iii) A police witness statement from Alison Hardy dated 3 October 2004
 - iv) A police witness statement from the Lesley Waller dated 9 October 2004
 - v) A record of interview with the Defendant from 10 October 2004.
 - vi) A questionnaire from Richard Foster dated 22 October 2004. He was the driver of a Golf motor car waiting to turn in Bruce Glazier Terrace. From the car he was able to observe the accident. Neil Mason was also in the car. I have read an undated questionnaire from him. Each questionnaire contains a hand drawn plan.
 - vii) A questionnaire dated 26 October 2004 from Andrew Hart who was a back seat passenger in the Land Rover

6. In addition I have seen statements from police officers who attended the scene, an accident report compiled on 18 September 2004, various photos taken on the day and a site plan prepared by the police.
7. In addition I heard expert evidence from accident reconstruction experts: Mr Peter Sorton on behalf of the claimant and Mr Paul Fidler for the Defendant. I also heard from an expert consultant paediatric neurosurgeon Professor Vloeberghs for the claimant and an expert consultant neurosurgeon, with past paediatric experience, Mr Robert Macfarlane for the defendant.

C. The agreed evidence

C1. Locations and layout

8. The Road runs roughly from north to south, downhill. Houses on the eastern side have an address on Bruce Glazier Terrace. Houses on the western side have addresses on William Morris Terrace.
9. Shortly before the accident, Miss Waller was in the garden of 24 William Morris Terrace (“24”) with her cousin Alison Hardy and others. Alison Hardy lived at 88 Bruce Glazier Terrace (“88”) which was directly on the other side of the Road. Miss Waller’s location at the time of the accident is a matter of dispute.
10. 24 has a driveway. The mouth of the driveway is directly opposite the garden of 90 Bruce Glazier Terrace. It also has a pedestrian gate. The gate is opposite the garden of 89 Bruce Glazier Terrace. Numbers 87, 88, 89 and 90 Bruce Glazier Terrace form a terraced block. Number 87 and number 90 have mansard roofs, and the main door is on the gable end of each. Each has a driveway. They stand a little forward of 88 and 89 which are of more traditional construction. At the midpoint of the terrace, between 88 and 89 is an alleyway or ginnel. The front gardens of 88 and 89 are not separated from each other but there is a fence which runs parallel to the Road. A path lies between them as a continuation of the ginnel to a gate in the fence and then to the pavement. There is a driveway at 90 with a dropped kerb immediately in front of it. There is a grid just before the dropped kerb.
11. Continuing down the Road, heading south, it takes a sweeping bend to the right. There is a T-junction just beyond 24 as the Road starts to bend and beyond the junction a large expanse of grass known locally as “the Green”.
12. A speed bump runs across the Road outside number 88. Alison Hardy’s family caravan was parked so that the tow bar pointed north, up the Road. The other end of the caravan covered the speed bump to the width of the caravan. There were a number of parked cars on each side of the Road, up to and beyond the caravan. A Volkswagen Passat was parked between the caravan and the T-junction. There is a dispute as to whether it was parked on the road or partly on the pavement.
13. The width of the Road appears to be relatively consistent so that a car proceeding down the Road (heading south) would need to position itself in the middle of the Road.
14. Alison’s daughter Demi and Jake had been in the garden of 24 with the adults. They were both around 4 years old. There were older children playing on the Green, but Demi and Jake were too young to do that. At some point Jake and Demi crossed the Road safely and went into the garden of 88. At some point Jake left 88 and moved south along the pavement, heading down the hill. He passed the caravan and came to the Passat.

15. At the same time Mrs Gibbon was returning home with her son, her daughter, her grandson and a friend of the children (respectively Ricky in the front seat, Katie in the back in the middle seat, Marcus to Katie's left and Andrew Hart to Katie's right). Mrs Gibbon lived at 100 Bruce Glazier Terrace, opposite the Green, a little further down the Road.

C2. Jake

16. At some point after Jake left the pavement and entered the Road from behind the Passat, Jake came into contact with the Land Rover driven by the Defendant. At the point of impact the Land Rover was travelling at no more than 10 mph (or 4.47m per second). It came to a stop about 21m from the speed bump. It is agreed that the side of the Land Rover was about 3.5m from the kerb of Bruce Glazier Terrace so that Jake would have to travel around 3.5m from the pavement before he could come into contact with the Land Rover. If Jake was struck by the front of the Land Rover at the point its nearside front headlight met the grill of the car, he would need to travel about 0.49m further. This comes from fig.1 of Mr Fidler's second report.
17. There is no direct evidence of Jake's height or that he was taller or shorter than the average. The average height for a boy of Jake's age is agreed at 1.06m. If Jake was standing directly in front of the Land Rover when it was stationary, some, but not all, of his head would have been visible to the driver.
18. It is agreed that the Jake's running speed was likely to be in the range of 3.15 m/s to 4.5 m/s and that when Jake was running his perceived height would be reduced because he would be leaning forward. After the collision, Jake came to rest on the Road, behind the Land Rover and between the Land Rover and the caravan. He had suffered the injuries I described above.

D. Disputed evidence

19. It is not unusual in serious accidents of this kind for the Court to have the benefit of detailed maps of the scene as it was at the relevant time. Those maps will often show the position and orientation of the injured party and the precise location, in a case like this, of any parked cars, obstacles or road markings. Little, if any, of that sort of detail is available in this case. The police report contains photographs taken some time after the accident by which time cars had been moved and quite possibly new cars arrived. The map of the scene prepared by the police is unhelpful at best and misleading at worst. It only shows the parked position of the caravan and the stationary position of the Land Rover. It shows no other cars.
20. Photographs taken at the scene show the point at which the Land Rover stopped and may (but this is far from clear) show some blood or cerebral spinal fluid spilt at the scene which may or may not indicate Jake's resting spot.
21. It is therefore unsurprising that the reconstruction experts have agreed that the events leading up to the accident are very difficult to reconstruct. One of the very important tasks accident reconstruction experts assist with is the determination of speed at the time of an accident. Often speed is an important factor for the court when it considers liability. Here, there is no real dispute about speed. Mrs Gibbon's evidence is corroborated by the absence of any discernible damage to the Land Rover, by the fact that Jake came to rest behind the Land Rover and by the general witness evidence provided in the few weeks after the accident.

D1. Events and the lay evidence

22. In the statement she gave to police on 9 October 2004, a few weeks after the accident, Miss Waller describes being in the garden of 24 with her cousin. Her evidence to the police was that Jake and Demi were not in the garden at 24 but were "*playing together opposite* [in the garden of 88]". She describes watching Jake walk down the footpath "*to get past a caravan*

and parked car". She describes her position as "*on the west footpath*" (on the same side as 24). She recalled seeing one car pass and then the Land Rover. She continues: as the Defendant "*came off a speed bump I heard one of the other children in the street shout at Jake [to cross the road]. I saw Jake start to cross and I shouted at him to "STOP".*" She continues: "*I am certain that Jake turned to go back, but was hit by [the Defendant's car]. I saw him knocked into the air and then I believe the car drove over the top of him*". By the time the statement was given, as Miss Waller notes, Jake had been released from hospital and was home.

23. Miss Waller's first witness statement confirms the recollection of the accident set out in the police statement but adds some detail. She says the following (reproduced exactly as it appears in the statement)

"11. I was standing on the opposite side of the road to Jake having crossed to over to outside of the garden of another friend who lived at 24 William Morris Terrace Shotton Colliery where my cousin Alison Hardy was.

12. Jake and Alison's daughter Demi had been playing together Jake had gone to get his scooter and was standing on the opposite side of the road waiting to cross the road holding his scooter in his hand.

13. I had asked him to wait for me on the pavement as I was coming back to him and I recall that he was standing with his scooter and at least two cars passed as he stood there.

14. I remember that there was a caravan parked some way up the road probably at least two car lengths away from where Jake was stood and there was a speed ramp near the caravan which can be seen in the police photographs.

15. I recall that someone had shouted to Jake to cross and I looked over to him as I saw the approach of the defendant's car.

16. I saw Jake starting to cross and had reached about the middle of the road and I shouted to him to stop! It seemed to me that Jake may have also turned to go back but was hit by the car and I saw him knocked into the air and the car drove over the top of him."

24. In her statement of 27 April 2022 Miss Waller simply confirms her police statement.
25. In her third statement of 24 May 2023 she comments on police photographs taken on 18 September 2004. She recalls in that statement that Jake came to rest in line with the grid about 1m from it. She refers to water in the photograph "*which is where the police washed away Jake's blood into the grid*".
26. In her oral evidence Miss Waller told me that when Jake left the pavement, he was about 1m from any parked car. She recalled that she had left 24 and crossed the road with Jake to go to 88 to get his scooter. She said she walked him "*down to where it was clear*" and then went back over the road towards 24 so that she was directly opposite Jake. She told me that Jake started to cross the road, stopped and "*turned round to go back the way he came*". He was knocked into the air to a "medium" height, so not high in the air but higher than would be the case if his feet were just off the ground. She recalled that there was a car between where Jake crossed and the caravan.
27. Alison Hardy describes being at 24 with Miss Waller. She says that Jake and Demi were playing in her garden at 88. She also saw Jake on the opposite footpath, she says "*outside 89*

and 90". She describes hearing Miss Waller shout, "STOP THERE" and comments that she did not know "*why Jake was trying to cross the road when he did*". She looked to where Jake had been and saw the Land Rover. She saw "*its rear lift and saw Jake appear from its passenger side rear underneath. It was obvious that the car's rear wheel had run over the top half of Jake*"

28. None of the Land Rover passengers saw Jake before the collision. There is a consensus amongst them that the Land Rover had moved over the speed bump when they first noticed anything out of the ordinary. Ricky felt the car "*run over something*". His witness statement and oral evidence added little.
29. Katie Dowson refers to feeling the rear nearside wheel "*pass over another object*". Andrew Hart describes feeling a bump "*but did not actually see anything*".
30. Mrs Gibbon said in her police interview that she came over the speed bump and felt "*a little bit of movement on the nearside back wheel as if I'd driven over something*". She was clear that she had been in first gear to travel over the speed bump and then changed into second. She is clear that parked vehicles obscured her view of the footpath.
31. In her oral evidence Mrs Gibbon told me that there are 3 speed bumps on the Road (she called the Road "the big bank" indicating that it ran on a slope). She said that at every speed bump she would "*almost stop the car, go into first, go over slowly and move away in second*". Consistent with her police interview, she told me that once she was in second gear, she "*felt something*".
32. Neil Mason and Richard Foster had a clear view of the site of the accident because they were ahead of that point in a car at the T junction facing the scene. They had driven down the Road in front of the Land Rover. Neil Mason was the passenger. He describes how, as the Land Rover approached the T-Junction "*a child ran out from a garden past the parked cars and straight in front of the Land Rover*". He says, "*as the boy ran out from the parked cars, he was immediately hit by the Land Rover which then ran over him*". Richard Foster describes the Passat as being "*parked half on the kerb*". He says:

"The child who was knocked down ran out from behind a parked VW Passat. As he ran out, he ran directly into the nearside front of the vehicle. He was knocked to the floor and under the wheels"

33. Mr Mason and Mr Foster drew plans of the scene. Mr Foster's plan shows only 3 vehicles, the Golf at the T-Junction (with the 2 men in it), the Land Rover and the Passat. It shows the Passat clearly parked half on and half off the pavement. It shows no buildings. Mr Mason's plan shows cars parked on each side of the road. It shows no caravan and no car parked half on and half off the pavement. It indicates that Jake passed between 2 parked cars and very close to one.

D2. Events and the expert evidence

D2.1 Injuries

34. Jake's injuries are agreed to be crush injuries. In other words it is common ground that they were caused by the application of force over a period of time. It is agreed that the injuries cannot have been caused by the dynamic forces exerted at the point at which Jake first hit the Road. It is common ground that the injuries were caused by the Land Rover.
35. It is now common ground that the head injuries, soft tissue injuries and fracture may have been caused by a wheel of the Land Rover moving over Jake's head and upper body. Whilst

this scenario appears to be inherently unlikely and contrary to common sense, a number of research papers have been produced by Mr Macfarlane which provide examples of such events. Duhaime and others explain (see “Crush Injuries to the Head in Children” published in Neurosurgery vol.37 no.3 in September 1995) that the extent to which the brain remains undamaged in crushing injuries is “remarkable” and “greater than might be anticipated intuitively”.

36. Professor Vloeberghs expressed the view that the crush injury was likely to have been caused not by the Land Rover driving over Jake, but by the underside of the vehicle somehow dropping onto him. He felt that a wheel would have left tyre marks on Jake’s body and that Jake would not have survived the crush. After Mr Rowley KC had cross examined Professor Vloeberghs Mr Melton KC abandoned Professor Vloebergh’s hypothesis.
37. Whilst the common position means I need make no findings, I prefer Mr Macfarlane’s explanation of the mechanism of injury and reject Professor’s Vloeberghs’ position. Mr Macfarlane also expressed the view that Jake’s injuries were consistent with both the front and rear nearside wheels running over him. He explained that it is the calvarium (the top of the skull) which, in conjunction with the brain, provides the hydrostatic support which enables the skull to withstand the static pressure of a crush injury. As the calvarium had not been damaged the double crush injury was possible. Professor Vloeberghs felt that the double injury was “*inconceivable*”.
38. Mr Macfarlane’s industry in locating the published papers and dealing with them was of great assistance to the Court.

D2.2 Reconstruction

39. Permission was given for each side to rely on expert reconstruction evidence. Mr Fidler was instructed by the defendant and Mr Sorton for the claimant. The experts produced a joint report dated 25 January 2023. They agree that this is a “particularly difficult case to reconstruct”. That aside, they agree very little of positive relevance to the issues as they now stand. They do agree that if (as is now accepted) Jake emerged from behind the Passat, they have insufficient data to be able to assist me with the time Mrs Gibbon may have had to observe Jake and so react.
40. Mr Sorton produced a new report on 25 May 2023, shortly before trial and once he had seen Miss Waller’s witness statement of 24 May 2023 which describes Jake’s resting place after the accident. Mr Fidler produced a new report on 6 June 2023 part way through the trial. These late reports are helpful.
41. Mr Sorton accepts Mr Fidler’s position that the momentum of the Land Rover would have displaced Jake over a distance of about 2m so that he would have come to rest on the Road about 2m in front of the point of impact. The angle of that projection would depend on a number of variables but is a function of the nature (and angle) of the surface that Jake made contact with (in particular if that surface was curved) and the interaction of the momentum of the Land Rover and Jake’s momentum.
42. Mr Sorton points out that the point of impact may have been in the area directly opposite the section of footpath between the pedestrian gate of 24 and its driveway.
43. Dealing for the first time with the Passat, Mr Sorton notes that a 1994 Passat had a width of 1.72m. Depending on whether the car was parked fully on the Road or half on the Road and half on the footpath, it would have covered around 1.72m or 0.86m of the Road surface laterally from the kerb edge.

44. One of the issues the experts have found it very difficult to express an opinion on is how Jake might have been run over by the rear nearside wheel (which all of the occupants of the Land Rover comment on) but not by the front nearside wheel. The difficulty arises because the experts agree that the Land Rover maintained a straight course after striking Jake.
45. Mr Sorton felt that the best explanation was that Jake was running back to the nearside kerb at the point of collision. If that was the case, Mr Sorton felt that if Jake was running in that direction, momentum may have carried him under the Land Rover so that he was missed by the front wheel but crushed by rear wheel. Mr Sorton also expressed the view that if Jake was running, he would have been propelled forward by his momentum towards the offside of the Land Rover.
46. Mr Fidler disagreed. His view was that Jake's momentum would have been significantly overborne by the momentum of the Land Rover so that if he was running from Bruce Glazier Terrace within his expected range of speed and was struck by the front nearside of the Land Rover he would have been displaced only slightly, if at all, to the offside.

E. Findings

E1. General points

47. The nature of the evidence in this case presents certain difficulties when it comes to making findings about what happened. The passage of time naturally has an impact on memory and the impact is all the greater when the events being recalled are traumatic events. The absence of clear and direct evidence as to where the collision actually occurred means that the reconstruction experts have a difficult job. These difficulties have to an extent been exacerbated in this case because, until I allowed an amendment (by agreement) at trial, the experts had proceeded on the basis that Jake had emerged onto the Road from behind the caravan. It is now common ground that he emerged "from behind a parked motor car". It became common ground that this car was the Passat observed by Mr Foster.
48. In my judgment, where there is a conflict between evidence given to police in the weeks after the accident and evidence provided in the form of witness statements for trial more than 18 years after the accident, it will generally be safe to conclude that the evidence given closer to the time is more reliable. I accept that is not a hard and fast rule.

E2. Specific findings of fact

49. Just before the accident I find that Jake was in the garden at 88 and Miss Waller was in the garden at 24. I find that Jake left the garden at 88 and walked along the footpath until he passed the caravan and the Passat. It is much more likely than not that he was running at the time. I find that Miss Waller noticed Jake running along the pavement and left the garden at 24 and went onto the footpath of William Morris Terrace on the opposite side of the Road to Jake. She saw him running toward to the Passat and saw him begin to run out from behind the car. At some point she had seen the Golf driven by Mr Foster with Mr Mason as a passenger drive by. She also saw the approaching Land Rover. She shouted to Jake to stop, and Alison Hardy heard her. Jake did not hear or ignored his Mother's warning, perhaps because children on the green were a distraction. I am satisfied that he ran from the pavement, round the parked Passat and immediately into the path of the Land Rover.
50. Mr Mason and Mr Foster had a clear view of the accident. Their evidence supports my findings in all material respects. They make no mention of Jake crossing the road, stopping and heading back towards Bruce Glazier Terrace as Miss Waller suggests. I am satisfied that there was no change in course.

51. I am satisfied that the Passat was parked half on and half off the footpath of Bruce Glazier Terrace. Mr Foster was specific about the point in his responses to the witness questionnaire and also in a diagram he drew at the time.
52. I am also satisfied that the evidence of Mr Mason and Mr Foster about the point at which the Land Rover struck Jake is, in the absence of any substantive guidance from the reconstruction experts or medical experts, the best evidence I have. I find that Jake ran out from behind the Passat and was struck by the front of the Land Rover on the nearside so that the Land Rover came into contact with him at some point to the passenger side of the front of the car.
53. I find that the rear nearside wheel of the Land Rover passed over Jake's upper body and skull and was responsible for the crushing injuries. I am satisfied that the front nearside wheel did not pass over Jake. The evidence from those in the Land Rover is that they were either aware of generally driving over something or specifically of the back nearside wheel rising. This is consistent with Alison Hardy's evidence too.
54. I am satisfied that my finding that Jake was struck by the front of the Land Rover as he ran across its path from the Bruce Glazier Terrace side of the Road to the William Morris Terrace side of the Road is not inconsistent with the accepted position that the crush injury was inflicted by the rear nearside wheel alone. I find that the most likely explanation for the mechanism of the injury is that Jake shifted his position as the Land Rover passed over him so that his upper body and skull avoided the front nearside wheel but suffered crush injuries inflicted by the rear nearside wheel.

F. *Liability*

55. Against the background of these findings I turn to consider the issue of negligence and so liability. In short, did Mrs Gibbon's driving on that day fall short of the standards to be expected of a reasonably competent driver?
56. There is no pleaded allegation that Mrs Gibbon's speed was excessive. Instead the pleaded allegations are all about a failure to keep a proper look out.
57. Given my findings it is clear that Mrs Gibbon had a very small window of opportunity to see Jake. Jake had to travel a little more than 4m from the kerb in a straight line to reach the point at which he made contact with the Land Rover (Mr Fidler puts that distance at 4.042m, Mr Sorton puts it at 4.009m). Once Jake had cleared the Passat, he would need to cover a distance around 3.14m (4m minus 0.86m). Mr Fidler puts the distance at 3.192m in his second report, because he takes the width of the Passat to be 1.7 m (so that if parked exactly half on and half off the kerb it would protrude by 0.85m) and he takes his exact measurement of 4.042m.
58. On any view, Jake had had to change course just before he ran out from behind the Passat; he had been running straight along the footpath and then had to deviate, turning through a right-angle towards William Morris Terrace. I think it therefore unlikely that he would be running at the top of the range of possible speeds. Taking the lowest speed in the range of 3.15m Jake would need 0.98s to cover 3.192m and 1.003s to cover 3.15m. The precision in these figures is artificial. It is safe to proceed on the basis that Jake would have been clear of the Passat for about 1 second before he was struck by the Land Rover.
59. The experts agreed that at speeds of around 10mph the Land Rover would stop quickly when the brakes were applied. The stopping distance is agreed at 2.2m (see Mr Fidler in the joint report at paragraph 72 and Mr Sorton at paragraph 249 of his first report).

F1. *PRT*

60. The perception reaction time is the time taken between the recognition of a hazard and the reaction to that hazard (here, braking). Mr Sorton cites research undertaken by David Krauss to suggest that PRT for most drivers is between 1.5 seconds and 2 seconds where the hazard appears almost straight ahead and is “relatively conspicuous”. In his first report Mr Sorton expresses the view, at paragraph 260, that Mrs Gibbon would have been capable of reacting around 1 second after noticing Jake (or perceiving the hazard). There was some discussion at trial as to whether Mr Fidler had accepted that PRT in the joint report. He used the figure in illustrative calculations at paragraph 72 of the joint report, but I find that he does not accept it.
61. Mr Fidler deals with PRT for the first time in his second report. He makes the following points. First, the larger the angle (referred to as “eccentricity”) between the forward line of sight of the driver (where the driver is looking) and the hazard, the longer the PRT will be. Discussing tests conducted by Cohen in 1987 he notes that in test conditions (where the subjects were highly motivated and were waiting for the appearance of a “hazard” – in that case LED lights) the PRT when the hazard was directly ahead was about 1.2 seconds. When the hazard was at a 30 degree angle to the forward line of sight the PRT increased to 1.6 seconds. A study conducted by Muttart in 2004 looking at 147 real-life collisions at a given traffic intersection in Helsinki found a greater PRT if the hazard did not appear straight in front of the braking vehicle. Further work by Muttart in 2019 (corroborated by Wu in 2009) noted that PRT would increase by about 0.3 seconds for each 10 degree increase in eccentricity. Given the angle of eccentricity in the present case (from the forward sight line to the point at which Jake would have been visible) was about at least 38 degrees, Mr Fidler’s expresses the view that the eccentricity would have increased PRT by about 1 second.
62. None of the study references was challenged in cross examination.

F2. *Findings on liability*

63. I am satisfied that Miss Gibbon did not fall below the standards to be expected of a reasonably competent driver. I am satisfied that she had no opportunity to brake in time to prevent the collision. Had Jake been visible from the moment he emerged from in front of the parked car, he would have appeared at an angle of eccentricity of at least 38 degrees. Miss Gibbon’s PRT at best would have been in the region of 2 seconds and on any view, longer than 1 second. (The actual PRT would have been the sum of (a) the PRT if Jake had appeared dead ahead of the Land Rover and (b) about 1 second being the additional PRT attributable to the eccentricity). Given the opportunity to react was about 1 second, it is clear that nothing Miss Gibbon could have done could have avoided the accident.
64. The position in my judgment is even clearer in this case because some time should be added for Miss Gibbon to notice Jake. He did not present a clear hazard because he was moving quickly, was small and was almost certainly almost entirely obscured by the Land Rover so that Miss Gibbon may not have been able to see him at all.
65. I therefore find that nothing Miss Gibbon could have done would have prevented the injuries suffered by Jake. I reject the submission therefore that Miss Gibbon drove negligently and dismiss the claim.

G. *Conclusion*

66. It would be remiss to conclude this judgment without paying tribute to Miss Waller and to Jake. He was present in court throughout and listened attentively to everything that was happening. At no time did he become frustrated or angry. His concern it seemed to me was always for his Mother. She gave her evidence on the express basis that she bore no ill will towards Miss Gibbon and spoke clearly and passionately about difficulties she has faced and

overcome. Despite the fact that the events she recalled were traumatic she gave her evidence with great dignity.

67. My rejection of some parts of Miss Waller's evidence should not be taken as any criticism of her evidence or conduct. Miss Waller was simply mistaken in parts of her recollection. I find that to be entirely understandable.
68. I am grateful to Leading Counsel for their assistance.