



Neutral Citation Number: [2024] EWHC 1956 (KB)

Case No: H90MA024

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
BIRMINGHAM DISTRICT REGISTRY

Birmingham Civil and Family Justice Centre
33 Bull St
Birmingham
B4 6DS

Date: 26/07/2024

Before :

MR JUSTICE JULIAN KNOWLES

Between :

JACQUELINE COLIZZI
(A Protected Party proceeding by her Mother and
Litigation Friend, SUSAN CHINN)

Claimant

- and -

(1) ADAM COULSON
(2) UK INSURANCE LIMITED

Defendants

Richard A. Hartley KC (instructed by **Simpson Millar LLP**) for the **Claimant**
Brian McCluggage (instructed by **Keoghs LLP**) for the **First and Second Defendants**

Hearing dates: **12-14 February 2024**

Approved Judgment

This judgment was handed down remotely at 10.30am on 29 July 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mr Justice Julian Knowles:

Introduction

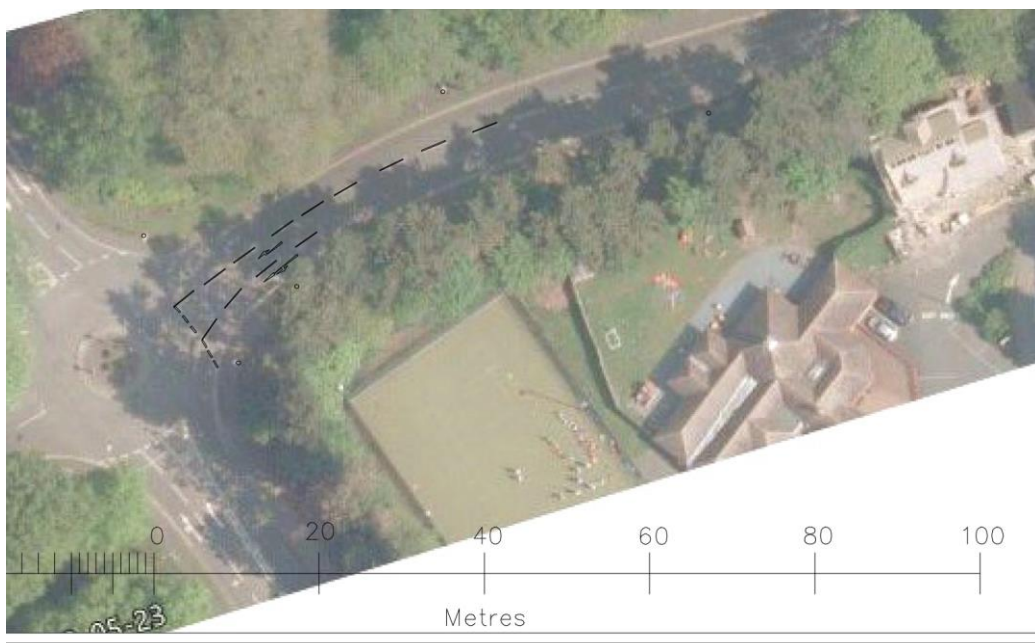
1. This is my judgment following a preliminary liability and causation trial arising out of a road traffic accident in 2015 in which the Claimant, Jacqueline Colizzi (C), was seriously injured after being hit by a car being driven by the First Defendant (D1), insured by the Second Defendant (D2). She was 45 years old at the time of the accident. Nothing I say is intended to minimize the loss and suffering of Ms Colizzi, her family or her friends. As everyone accepts, this is a tragic case.
2. C is represented by Mr Hartley KC and D1/D2 by Mr McCluggage. I am grateful to both of them and their teams for their assistance. D2 is indemnifying D1 and is a party as a matter of legal formality, but has taken no direct part in the proceedings.
3. As well as my detailed notes, I have consulted the audio recordings of the hearing in preparing this judgment. There was a lot of detail in the trial, with three important eyewitnesses and four expert witnesses. My failure to mention a particular point does not mean it has been overlooked.

Background

4. The following facts are not in dispute.
5. The accident occurred on Myton Road, Warwickshire, at about 5.15pm on 9 November 2015. The speed limit where the accident occurred is 30mph.
6. Myton Road runs roughly west to east between just south of Warwick and Leamington Spa. At its western end is a roundabout where vehicles heading west generally either go around the roundabout and head north towards Warwick, or go left and southwards towards the M40 (there is another smaller residential exit road, which I do not need to consider).
7. The southern, westbound, carriageway of Myton Road is wide enough for two lines of cars as it approaches the roundabout. In that stretch of the carriageway there are dashed white lines separating the lines of traffic, and arrows directing vehicles to turn either north or south at the roundabout. The northern carriageway of Myton Road heading east from the roundabout is only wide enough for a single line of cars.
8. The 9 November 2015 was a Monday. By 5.15pm the sun had set and it was dark. The area where the accident occurred was reasonably well-illuminated by street lights and car headlights. There may have been some light precipitation around the time of the accident. Visibility was described as having been generally good.
9. The traffic at the time was reasonably heavy, it being rush hour. There were two lines of traffic approaching the roundabout westbound along Myton Road. The traffic was effectively stop-start and ‘bumper to bumper’, although the left

hand lane of traffic in the westbound carriageway may have been moving slightly more easily than in the other lane in that carriageway, which was stationary. The traffic in the eastbound carriageway towards Leamington Spa was flowing freely.

10. The accident occurred about 25m or so eastwards along Myton Road from the roundabout junction, just before the beginning of the white lines in the westbound carriageway separating the lines of traffic. The road has a gentle right-hand curve (travelling eastwards) at the point of the accident. There is an automated pedestrian crossing about 100m further eastwards from that point. Below is a Google Maps image of the *locus* taken from one of the expert reports (the lines are shown black for clarity; the top of the picture is north):



11. This image shows the section of road where the accident occurred concerned looking west:



Google Street View image taken in March 2010

12. C was seen walking eastbound along Myton Road on the pavement on the southern side of the road. She then turned to her left to cross Myton Road heading north. She entered the (more or less) stationary lines of traffic in the southern westbound carriageway, and passed between the cars, before reaching the centre line of the road. As she crossed that carriageway, she passed immediately in front of a Renault Clio being driven by Lewis Malin, which was stationary. His girlfriend Sophie Bryant was in the front passenger seat. They were in the outer lane of the two lines of traffic of their carriageway and both witnessed the accident. A Ms Anderson, who gave a statement but was not called as witness, was in the car to their left, and C passed in front of her car before passing the Clio.
13. After C had crossed in front of Mr Malin's car and had entered the eastbound carriageway, or was in the process of entering it (and that, and how she was moving, eg walking or running, are some of the matters I have to decide), she was struck by a Ford Fiesta Zetec being driven by D1 along the eastbound carriageway.
14. D1 had just left work and was driving with three colleagues to an after work football game. He had approached the roundabout from the south, gone around it, and then entered Myton Road heading east. He was driving well under the speed limit, at between 10mph and 20mph at the point of collision. He had just moved up from first gear to second gear and was accelerating. He was in the middle of his carriageway at the point of impact.
15. D1's car struck C in the area of the front offside bumper near the fog lamp. It is common ground that it is most likely that C's leading leg was struck by the Fiesta, which caused her to spin or rotate, and then travel a distance down its side. She then fell, and her head struck the Clio around the rear driver's side wheel/wheel arch, and her head then hit the ground.
16. D1 pulled up a short distance down the road and came back to assist.

17. Those who witnessed the accident provided help to C before the police and ambulances arrived. She was unconscious and obviously seriously injured. She was taken to hospital, where she underwent emergency surgery.
18. As I am only concerned with liability and causation, it is not necessary to set out C's injuries in any detail. She suffered very serious skull and brain injuries. These were two skull fractures and axonal injury (which is where the two hemispheres of the brain 'shear' as a result of a lateral force, causing brain damage). She has been left with severe neurological deficits and has been resident in hospital and rehabilitation units for the more than eight years since the accident. She is a protected party and cannot give evidence. She will never be able to work again and will require 24/7 care for the rest of her life.

The alleged negligence and D1's defence

19. C's case is that the accident was caused by D1's negligent driving. It is not said on behalf of C that D1 was travelling at an excessive speed. The particulars of negligence are as follows (Particulars of Claim (PoC), [7]):

“The First Defendant was negligent in that he:

- (a) Failed to observe, notice or heed the Claimant as she crossed the slow moving and/or stationary traffic on the opposite side of the road on which he was travelling;
- (b) Failed to observe, notice or heed the Claimant as she approached the centre of the road – and in particular when she stopped and then set off again – her presence and anticipated progress should have put the Defendant on the highest of alerts;
- (c) Failed to see the Claimant until the moment of the collision – as described in his account to the police;
- (d) Failed to sound his horn at any time before the collision;
- (e) Failed as aforesaid when the presence of pedestrians crossing the road was both reasonably foreseeable and to be expected;
- (f) Failed to approach the area with any or any sufficient and reasonable care and caution – and in particular to cover his brakes, to reduce his speed or to anticipate that the Claimant may move into his path;
- (g) Failed on his approach to slow or to give a wide berth to the Claimant and/or to sound his horn so that if she were to step forwards a collision would be avoided;
- (h) Failed to swerve or otherwise take action necessary to avoid the said collision.

(i) In the alternative, even if, (which is not admitted) the Defendant was unable with reasonable care to stop his vehicle before it reached the Claimant, (such that a collision of some sort was unavoidable) failed to slow his speed to such a speed that the injuries would have been substantially reduced – and in particular the Claimant’s major head injuries would have been avoided. Expert evidence is likely to be needed from (1) an engineer and (2) an expert in emergency medicine and/or Neurosurgery as to the likely speed of collision below which the Claimant’s injuries would, on a balance of probabilities, have been avoided. The Claimant will seek the Court’s permission for such evidence. The Defendant told police officers that he was travelling at a speed of not more than 20mph but that no braking or evasive action had been taken before the collision. It is therefore probable that almost any braking such as to cause any reduction of speed would have had a significant effect in reducing the injuries.”

20. Mr Hartley put it thus in his Opening Skeleton Argument, [8]-[12]:

“8. Whilst there is undoubtedly contributory negligence in this case, the primary issue for the Court is whether the First Defendant was negligent in the control of his vehicle and whether, had he driven non-negligently, the collision could have been avoided or reduced in severity such that the Claimant’s catastrophic brain injury would have been avoided entirely or significantly reduced.

9. The Claimant had crossed between stationary and/or slow moving traffic in the westbound lane. The Claimant’s case is that she stopped at or near to the centre white line of the road – or possibly just before it - and looked either left or right, or possibly both ways, before then stepping forward. Accounts of witnesses vary on some details. She ought to have looked further or better or again to her left before setting off and her failure to do so will doubtless sound in contributory negligence. However, this Skeleton will focus upon the main issue of primary liability.

10. It is the Claimant’s case that as she crossed the first half of the road (and in particular when she stopped at about or just before the centre line), she ought to have been visible to and seen by the First Defendant as he approached.

11. If the First Defendant had been looking properly and driving reasonably, he ought to have seen her and reacted. Any pedestrian in that position would pose an obvious hazard.

12. Excessive speed is not an allegation in this claim. The Claimant accepts that the Defendant was driving at a speed of “no more than 20 mph” as averred in the Defence. The Claimant’s expert has used 20mph for his calculations – although elsewhere the Defendant suggests he was travelling even more slowly. What is suggested is that the Claimant ought to have been visible so that the First Defendant ought to have braked and/or moved to his left in which case a collision would have been avoided or reduced to an inconsequential event. ”

21. Mr Hartley accepted that if I found that C moved out into the eastbound lane without stopping then his claim would fail because it would follow inevitably that D1 would not have had time to take avoiding action. However, if she stopped, he said allied issues were: where she stopped (ie, how far past Mr Malin’s offside headlight); and for how long.
22. A related issue on where she stopped was how far to the left or right of the mid-line between the Clio and the car in front of it C was. That other car was generally described as a 4x4 that was bigger than the Clio. Mr Hartley said if C was hard against the 4x4 then that would have reduced her visibility to D1, whereas if she was closer to the Clio (as Ms Bryant said she was in one of her statements) she would have been more visible to D1.
23. His case is that C stopped just before the white line, and looked left and then right. He did not have a specific case on how long she stopped for. He did not suggest D1 was racing, but his case was that a driver driving that stretch of road at night during rush hour, which he knew well (as D1 said he did), would know that people crossed and that pedestrians had to be anticipated. He said C was there to be seen (ie, she had good ‘conspicuity’). All the witnesses said visibility was good. He said if she was there, having looked left, she was a hazard, and D1 should have ‘eased off’ the accelerator and perhaps moved left.
24. Therefore, his primary case is that with reasonable driving from D1, he having been put on notice, the collision was avoidable.
25. C’s secondary case is to do with the threshold of serious injury. Mr Hartley said the collision took place at about 20mph. There was no braking before collision. The mechanism of accident was unusual and unpredictable. C’s leading leg struck the bottom right hand side of the Fiesta and she was spun and made contact with the Clio and then the ground. Even if the collision could not have been avoided entirely, the opportunity was there for a reasonable driver to take avoiding action short of a collision; ie, D1 ought to have collided with C at a slower speed and serious injury would likely not to have occurred. She would not have struck the Clio. It would have been a frontal impact at c. 15mph and not a side impact at 20mph. On the balance of probabilities, in light of the medical experts’ evidence, serious injury was very unlikely at 15mph and at 10mph would have been almost impossible. She would have suffered some injury, but not the catastrophic injury she suffered.

26. Mr Hartley accepted that either way there was contributory negligence by C. He accepted C had made a mistake.
27. In response, D1 pleads as follows (Defence, [5], [6]-[10]),

“5. The First Defendant was keeping a proper lookout and travelling at a reasonable speed, which he estimates to be no more than 20 mph. He was in second gear. His driving was consistent with what would be expected of a reasonable prudent driver.

...

6. It was dark at the time of the accident and the Claimant was wearing dark clothing. The Claimant either did not look in the direction of the First Defendant’s vehicle before she collided with it or she did not look properly and timeously.

7. It is not accepted that the Claimant stopped. If she stopped, she is put to proof as to how long she stopped for.

8. There was a pedestrian crossing a short distance from the scene of the accident which the Claimant did not use. She should have done.

10. For the reasons set out above it is denied that the First Defendant was negligent in his management and control of his vehicle. Dealing with the particulars individually,

a. The First Defendant recollects that he saw movement which turned out to be the Claimant around the time of the collision. It is not accepted that he was in breach of duty in failing to see her before he did;

b. See (a) above;

c. See (a) above;

d. This is not a realistic allegation. If the Claimant wishes to pursue it, then she is invited to set out the respective positions of the parties when it is suggested the First Defendant should have sounded his horn and why he should have done so;

e. This allegation adds nothing to those already pleaded;

f. The First Defendant’s speed was reasonable;

g. This allegation adds nothing to those already pleaded;

h. This allegation adds nothing to those already pleaded;

i. The Claimant has not set out what her case is as to the speed the First Defendant was travelling at, what speed it is alleged he should have been travelling at and what the mechanism of the Claimant's head injury was. These are necessary foundations before any argument based on medical causation can be advanced."

28. As well as denying negligence, D1 advances a positive case that the accident was caused by C's negligence, in whole or in part.

29. The pleaded particulars are as follows (Defence, [11]):

"The Claimant was negligent in that she:

a. Failed to use the nearby pedestrian crossing;

b. Failed to keep any or any proper lookout;

c. Failed adequately or at all to look to her left before moving into the path of the First Defendant's vehicle;

d. Failed to allow the First Defendant's vehicle to pass;

e. Moved at a jogging pace into the side of the First Defendant's vehicle;

f. Failed to take any or any sufficient account of the fact that it was dark and she was wearing dark clothing which reduced her conspicuity;

Should the Defendants' case that the accident was solely caused by the Claimant not be accepted, then it will invite the court to find that the Claimant's negligence contributed to it and to apportion liability accordingly."

Issues

30. Some of the principal issues of fact which may fall for determination seem to me to be as follows

a. How did C cross the westbound carriageway: did she walk, or jog, or a mixture of both?

b. Did C stop at or around the centre line, or did she continue to move in one continuous movement from the westbound to the eastbound carriageway and into D1's path?

c. Can it be inferred from C's movements immediately before impact that she attempted to get out of the way of D1's car?

- d. If C stopped at any point when crossing Myton Road: (a) where did she stop, relative to the offside of the vehicles to her left and right, and to the centre line of the road?; and (b) how long did she stop for?
- e. When, if ever, did C become visible, or ought to have become visible, to the D1?
- f. Was D1's ability to see C (ie, her conspicuity) affected by the clothes she was wearing and/or the lighting conditions?
- g. What was the position of D1's car in his lane, and at approximately what speed did he approach the point of collision?
- h. Was there anything about the stretch of Myton Road where the accident occurred which should have alerted D1 to an increased risk of a pedestrian stepping into his path?

Legal principles

- 31. Before turning to the evidence, it will assist if I set out some legal principles. These are not materially in dispute.
- 32. The burden of proving the claim rests upon C. She must prove her case on the balance of probabilities. The burden of proving contributory negligence rests upon D1, again on the balance of probabilities.
- 33. A driver owes a duty to use reasonable care to avoid causing injury to persons or damage to property; reasonable care means the care which an ordinarily skilful driver would have exercised, under all the circumstances: *Charlesworth & Percy on Negligence* (15th Edn) at [11-202]. The reasonably careful driver is deemed to be armed with common sense and experience of the way other road users are likely to behave.
- 34. In *Chan v Peters* [2021] EWHC 2004 (QB), a case whose facts in some ways resemble the facts of the present case, Cavanagh J distilled the main principles from earlier cases (in particular, *AB v Main* [2015] EWHC 3183 (QB)) that may be in play when the court is considering liability and contributory negligence in a road traffic accident case.
- 35. In that case, the claimant was 17 when he was struck by the defendant's car as he was crossing a road near his school at lunchtime in circumstances of good visibility and weather conditions. The defendant was driving at 25 mph, well within the speed limit. The criticism of her driving was that she had failed to meet the standard of the reasonably competent driver in relation to her observation of potential hazards or the precautionary steps taken. The claimant had emerged into the road from between two parked vehicles (a car and a bus) on the defendant's nearside. He did not look before doing so; the defendant's view of the claimant was obscured because of the parked vehicles. The defendant saw the claimant when he emerged from between the parked vehicles, 0.6 seconds before the collision. She immediately slammed on the brakes but could not avoid a collision.

36. Due to his significant injuries and inability to recall the incident, the claimant was unable to give evidence, but other eyewitnesses were called. CCTV from a nearby bus was obtained, enhanced and analysed; collision reconstruction experts were called to give oral evidence at trial; and vehicle examiners and the police took part in the proceedings.
37. Whilst recognising that it was a ‘back to basics’ discussion, the judge set out the relevant principles as follows:
- a. the defendant will be liable in negligence if she failed to attain the standard of a reasonable careful driver and if the accident was caused as a result;
 - b. the burden of proof rests with the claimant;
 - c. stating the obvious, it is for the claimant to establish on the balance of probabilities that the defendant was negligent;
 - d. the standard of care is that of the reasonably careful driver, armed with common sense and experience of the way pedestrians and particularly in this case, children, are likely to behave: *Moore v Pointer* [1975] RTR 127;
 - e. if a real risk of a danger emerging would have been reasonably apparent to such a driver, then reasonable precautions must be taken;
 - f. if the danger was no more than a mere possibility, which would not have occurred to such a driver, then there is no obligation to take extraordinary precautions: *Foskett v Mistry* [1984] 1 RTR 1.
 - g. the defendant is not to be judged by the standards of an ideal driver, nor with the benefit of ‘20/20 hindsight’: *Stewart v Glaze* [2009] EWHC 704 (QB);
 - h. drivers must always bear in mind that a car is potentially a dangerous weapon: *Lunt v Khelifa* [2002] EWCA Civ 801;
 - i. drivers are taken to know the principles of the Highway Code;
 - j. in *Lambert v Clayton* [2009] EWCA Civ 237, Smith LJ cautioned trial judges against making findings of fact of unwarranted precision when that was not justified by the evidence. To do so might be turning ‘guesstimates’ into secure findings of fact, which could easily lead to an unjust result either way. At [39], Smith LJ said this:

“If there are inherent uncertainties about the facts, as there were here, it is dangerous to make precise findings. This may well mean that the party who bears the burden of proof is in difficulties. But that is one of the purposes behind a burden of proof; that if the case cannot be demonstrated on the balance of probabilities, it will fail.”

- k. trial judges must also exercise caution in relation to the evidence of accident reconstruction experts. In *Stewart*, Coulson J warned of the danger of: (i) such experts giving opinions on matters beyond their expertise and acting as advocates seeking to usurp the role of the judge; and (ii) elevating their admissible evidence about reaction times, stopping distances and the like into a, 'fixed framework or formula, against which the defendant's actions are then to be rigidly judged with a mathematical precision.'
 - l. the assessment of whether a defendant's driving fell below the requisite standard cannot be conducted in a vacuum; it must be done by reference to the actual circumstances of the actual collision against which the standard is to be judged: per May LJ in *Sam v Atkins* [2005] EWCA Civ 1452;
 - m. as for contributory fault, in *Jackson v Murray* [2015] UKSC 5, when giving the judgment of the majority of the Supreme Court, Lord Reed said at [28] that, 'the apportionment of responsibility is inevitably a somewhat rough and ready exercise';
 - n. the age of a claimant is not in itself a relevant factor for the determination of the extent of contributory negligence.
38. In *Chan*, whilst regretting the effect his decision would have on the claimant, Cavanagh J found the defendant had not been negligent in her driving in the circumstances of the case, and the claim was therefore dismissed.
39. Of course, that was a conclusion on the particular facts of that case. But I find the judge's recitation of legal principles to be helpful.
40. I also remind myself of the cautionary observation of Laws LJ in *Ahanonu v South East London & Kent Bus Company* [2008] EWCA Civ 274. [23]:
- "The judge ... has in effect sought to impose a counsel of perfection on the bus driver.... Such an approach I think distorts the nature of the bus driver's duty which was of course no more nor less than a duty to take reasonable care. There is sometimes a danger in cases of negligence that the court may evaluate the standard of care owed by the defendant by reference to fine considerations elicited in the leisure of the court room, perhaps with the liberal use of hindsight. The obligation thus constructed can look more like a guarantee of the claimant's safety than a duty to take reasonable care."

The eyewitness evidence

41. As is to be expected in relation to a sudden and traumatic incident occurring over eight years ago, the witnesses' recollections differed about what they had seen occurring. Added to that is that Ms Bryant, Mr Malin and D1 have given statements, variously, to the police and to C and D1's solicitors. D1 was also interviewed under caution by the police. In terms of the unusual length of time

it has taken for the case to come to court, I note that the claim form was not issued until 4 February 2021, over five years after the accident.

42. Let me say at once that I am satisfied that all of the witnesses did their best to give true and honest recollections of what they witnessed, and that any differences between them are explicable on the basis of the fallibility of human memory. No-one suggested I should take a different approach.
43. Sophie Bryant was C's first witness. She gave witness statements to: the police (on 11 November 2015); to C's solicitors (on 20 March 2017); and to D1's solicitors (on 2 August 2018). She adopted all of her witness statements as being true. She was in the front passenger seat of the Clio. Mr Malin was driving. They were heading west from Leamington Spa along Myton Road towards the roundabout.
44. To the police, Ms Bryant said they were in traffic and stationary and she had been looking at Facebook on her phone and then:

“All of a sudden I became aware of a woman walking across the road from my immediate left. She walked with deliberation, looking straight ahead as she stepped in front of Lewis' car, in between us and the silver car in front. There was nothing wrong in what the lady did as it did not cause us any issues with either us or anyone else at that point.

As the lady reached the front offside corner, she stopped, she looked to her left in the direction of the roundabout. She then looked to her right as well. She then started to step out to cross the road of the Leamington Spa bound lane. At this point I saw the headlights of the car approaching from the traffic island I knew instinctively that that the lady was going to be hit, or it would be a very near miss. In the next split second the lady tried to run, but she was hit in the region of the front offside corner of the oncoming vehicle which I recognised as black Ford Fiesta. As a result of the impact, the lady was 'bounced' off the Fiesta and back into the side of Lewis' Renault, which was still stationary. The lady came to rest on the road surface with her head adjacent to the rear offside wheel of Lewis' car.”

45. In her statement to C's solicitors, Ms Bryant said broadly the same thing, but added that she initially looked up because she heard Mr Malin make a comment about a woman trying to cross the road. Ms Bryant said:

“9. All of [a] sudden, I noticed that she was walking across the road from my immediate left. She was looking straight ahead and stepped in front of Lewis' car, in between us and the car that was in front which was a white 4x4.

10. As the female pedestrian reached the front offside corner of Lewis' vehicle she stopped. I note in my witness

statement given to the Police at page 2, attached as exhibit 'SB1', I say that she looked left in the direction of the roundabout. She then looked to her right as well. She started to step out to cross the entire road of the Leamington bound lane and it was at this point I saw the headlights of the car approaching from the traffic island.

11. I had originally thought that the Defendant's vehicle was making a left turn from Banbury Road into Myton Road. However, I am advised that the Defendant, Adam Coulson, has been interviewed by the police and advised that he was coming from Banbury Road onto Myton Road in a fashion that required him to make a right turn at the roundabout. This leads me to question now thinking back whether it was in fact the Defendant's vehicles headlights that I had seen, as I have stated in my Police statement at page 3 of 4.

12. As the lady began to step out from in front of Lewis' vehicle she had not yet reached the white line which separates the two directions of traffic flow. As she continued to step out into the other lane she was hit by the Defendant's vehicle. This all happened in a manner of a split second. I can confirm that the female pedestrian began to turn back to Lewis's vehicle, but it was too late and the collision occurred. I could see that she was hit by the offside driver's corner of the Defendant's vehicle. I can confirm this vehicle was a black Ford Fiesta with registration number [xx]."

46. In her witness statement to D1's solicitors she said:

"8. At the time the radio was on but it was on low volume. I was browsing Facebook on my phone. Lewis called out 'look at this idiot crossing'. At which point I looked up and saw the person who I now know to be Jacqueline Colizzi about to cross the road. She was to our left and at the near front passenger side of the vehicle next to us. The Claimant appeared to pause with a quick look and then stepped out in front of the BMW. She moved quickly across the front of the BMW and then across the front of Lewis's car. She appeared to be very close to the front of his bonnet.

9. I watched her cross the road. She appeared to stop just as she had cleared Lewis's bonnet and then looked to her right. She should have looked to her left which was the direction of the traffic she was about to step into. She then stepped forward and struck the side of a black Ford Fiesta which I now know to have been driven by Mr Adam Coulson.

10. She appeared to strike it at around midpoint of the front driver's wing. She bounced backwards and then struck

Lewis's car. She left blood on the car. Lewis was still stationary at this point with his handbrake on.”

47. In her evidence to me, she said that she was scrolling on her phone when she first saw C at the ‘top of her eyeline’ as she passed in front of her. She thought she turned to Lewis and said, ‘She’s going to get hit’. C went in front of Lewis’s car and stopped ‘for about a second’. C looked towards her left first and then to the right and then stepped out in front of the oncoming vehicle and was struck.
48. Ms Bryant said she thought C was stationary for ‘a second, two seconds’. C stopped on Lewis’ side of the vehicle at just about the headlight. In terms of how close to their car C was, Ms Bryant said it was as close as a pedestrian would cross in front of a vehicle, about a foot ‘maybe’. She stopped about a foot from the centre white line. As to C’s speed, Ms Bryant said she was not running or jogging but was ‘walking with purpose ... quite quick’. After stopping for the second or two, she ‘just put a foot out and that was it really’. She saw the lights of car that hit C as she stepped out.
49. The key point about Ms Bryant’s accounts is their broad thrust that she said C stopped, or appeared to stop, before entering the eastbound lane and being hit.
50. In cross-examination, she agreed it was dark and there was busy traffic with people going home. The vehicles in their lane were not moving much. The other lane was moving more freely. Given it was eight years ago, she was asked whether she had a clear recollection. She said ‘you do not forget something like that’, but her memory was ‘a bit hazed’. She agreed it was a surprising place for a pedestrian to cross because there is a crossing down the road. She recalled either her or Lewis saying something like, ‘Look at that idiot crossing’. She then agreed it was Lewis who said that. She did not see what direction C had come from, just that it was from the left side. As to how C walked, Ms Bryant said she was walking ‘how I would walk if I were late for a train’. She disagreed with the suggestion that D was doing a ‘slow jog’ but said she was taking ‘long strides ... like long quick strides’.
51. She was shown part of a police report which recorded under her details and the heading, ‘Initial Comments’, ‘Pedestrian ran out in front of vehicle’. She said she recalled speaking to a police officer because she needed medication from their car. She was crying and hysterical because of what she had seen. She did not recall telling a police officer that C had ‘run’ out in front of the vehicle. She agreed that although she was upset, events would have been clearest in her mind at that time.
52. The traffic to her left was moving more freely; the other line was moving more freely than her line of traffic, it was ‘stop start’. She agreed the car in front of them was wider and taller. She thought the tyres of the 4x4 were closer to the white line than their tyres. She said C paused at about the point of the headlight on their car on Lewis’ side. C moved her head towards the roundabout and then right. She demonstrated to me how C moved her head left then right, which I noted as ‘quickly’. She agreed it was not a ‘careful’ look, and that C should have looked back towards the roundabout before she stepped out. Ms Bryant said again that C stopped, ‘I want to say for a second or two’; looked

left, looked right; and then stepped out. She agreed that C paused and looked ‘as she came to that stop.’ She said that from where was sitting as a passenger C would not have been able to see far past the edge of the 4x4. She said C would ‘potentially’ have been shielded from oncoming traffic by the 4x4. She was ‘potentially’ by the brake light of that vehicle. C moved off quickly from that pause. She did not jog, but ‘took a wide step out’. She said everything that happened was ‘very quick’. She was shown a handwritten annotation to her witness statement to D’s solicitor where she wrote ‘Visibility was limited ! Driver did not see Mrs Colizzi as he was confused if he even hit anything’. She could not remember what she meant by the first part, but remembered D1 being confused as to what he had hit.

53. She was shown [9] of her statement to D1’s solicitors where she appeared to say C just looked right, but said she had looked both left *and* right.

54. In re-examination, she said that she knew there had been a conversation with D1 after the accident where he had said something along the lines that he knew had hit something, there had been a thud, but he did not know it was a lady. She was shown [12] of her statement to C’s solicitors where she said:

“12. As the lady began to step out from in front of Lewis’ vehicle she had not yet reached the white line which separates the two directions of traffic flow. As she continued to step out into the other lane she was hit by the Defendant’s vehicle.”

55. She clarified C stopped about a foot from the centre white line, at around about the offside front headlight of their car. She looked left and right then stepped forward. D1’s car was where she expected the car to be. When she said ‘cleared the bonnet’ in [9] of her statement to D1’s solicitor she clarified she meant C had been at about the front headlight of their vehicle.

56. That was C’s lay evidence.

57. Mr McCluggage then called D1.

58. D1 adopted his statement of 26 July 2018 as his evidence in chief. In that statement he said he had left work and was travelling with colleagues to a football game. He was familiar with the route.

59. Of the accident, he said that he left the roundabout going into Myton Road and was travelling at about 15-20mph and he had just changed up to second gear. He had his full attention on the road ahead. He was in the centre of his lane. He heard a noise (not a loud noise) from his side of the car and caught a movement out of the corner of his eye. His colleague Michael Johnson, who was in the front seat, said ‘What was that?’, and D1 replied, ‘I think it was a person’. He then pulled over and got out of the car and ran back, where C was being attended to by others.

60. The police then attended. There was damage to the front fog lamp; the handle on the driver’s door; and the offside sill of his car. He concluded:

“I had not seen the woman prior to the incident, there was no forewarning of her presence and so there was nothing I could have done to avoid the incident.”

61. He was then cross-examined.
62. He said that he did not know it was a lady until after he had hit her. It would be wrong to say he saw a lady out of the corner of his eye - he saw an *object* at the time of collision. It was like seeing a bird out of the side window. He did not recall anyone hitting the front. He recalled her hitting the wing mirror on the right hand side. He accepted that his car had first struck C's leading leg. He said from a vision perspective it was like a bird flying into the side. It was like something had been thrown at the car at the wing mirror or side window area of the car.
63. He said that he did not see C. 20mph was his maximum speed. He was going from first gear to second gear. The speed could have been anything from 10mph – 20mph.
64. He was shown various pictures from Dr Ninham's report (C's accident reconstruction expert), and agreed they showed the view he had would have been through the front windscreen
65. He was asked again about speed. He said it could have been up to 20mph but it was difficult to say. After some more questioning, he said his speed was 10mph to 15mph. He was in the centre of the lane at point of impact. He agreed one can stop very quickly at 10-15mph.
66. He said his stop was a safe stop, it was not an emergency stop. After the collision Michael, his front passenger, asked 'What was that?'. He responded that he thought it was a person. He then pulled over, switched on his hazard lights and got out. There was urgency to his stop, but it was not an emergency stop. It was a safe stop.
67. His car was 1.722m wide. He agreed with the suggestion that there was about 940cm on either side of his car (given its width and that of the lane he was in).
68. He was asked why he did not see C given she moved up to the centre line, and about a metre after that. He said he did not know and that 'maybe' she stepped out fast, late, 'she just wasn't in the line of visibility'. He agreed if she was over the white line waiting, he should have seen her. He said 'I honestly didn't see her – so it's difficult to explain why I didn't see her.' He said when he was driving he could not see anyone over the white line, on the white line, or in the traffic. He could have seen her when she was on his side of the road or on the white line. All he could remember was a line of parked traffic.
69. He said knew there were potential for pedestrians to cross Myton Road (eg walking from the Technology Park to Warwick town centre) because it was a short cut. It saves a couple of minutes compared with walking down to the pedestrian crossing.

70. He said he had a friend and two people he did not know going to football in the car. He said, 'There was no distraction in the car.' He agreed any danger of pedestrians would have come from the right.
71. In re-examination, he said he was not looking at his speedometer. His speed estimate was '10-15mph up 20mph'. He drove this route once or twice a week at this time. There was nothing out of the ordinary about how he accelerated onto Myton Road from the roundabout. He had not read any papers about the impact of a car's 'A pillar' on visibility of objects to the off-side. He was paying full attention to his driving. There was not a pedestrian standing on or about the white line. It is not too heavy a pedestrian area, it is not a large or heavy residential area. He had never seen a pedestrian doing this manoeuvre before. The traffic pattern was fairly typical.
72. In answer to a question from me, he said that if he had seen someone standing on the white line, and he had seen them, he would have taken his foot off the accelerator and, depending on their movement, put it over the brake pedal and driven cautiously and manoeuvred left, but he could not rule out that he might have stopped and let them cross if it was safe to do so (bearing in mind the possibility of cars behind). He said his stop had not been a sudden emergency stop but a 'controlled stop'.
73. The next witness for D1 was Lewis Malin, the driver of the Clio.
74. He made three statements: to the police, and to C and D1 solicitors. He had read through all three. He felt that his police statement (given on 10 November 2015, the day after the accident) was the most accurate about what he recalled happening. He was interviewed in person by an officer.
75. Whilst there were differences between them in some details, Mr Malin's accounts were consistent on the key issue that at no point did C stop as she tried to cross the road into the eastbound lane, in contrast to Ms Bryant's evidence.
76. In his police statement Mr Malin described seeing C (whom he calls 'female one') walking from Banbury Road into Myton Road, then losing sight of her briefly, and then seeing her take a step into the road from the pavement. He said that she:
- "... then started running. She ran in front of my car and behind vehicle two [ie, the 4x4 directly in front of Mr Malin's car]. She continued, and took two steps into the live lane next to my car which had no traffic on it. Cars had been passing freely flowing past me for the whole time I had sat there. As female one took the two steps she appeared to look to her left and tried, or seemed to try, and turn back. As she did so vehicle one [ie D1's Fiesta] hit female one."
77. He later said:

"In my opinion female one was in a rush. She was in dark clothing and ran from behind a car that probably concealed

her from the view of the driver from vehicle one. I don't feel the driver of vehicle one [ie D1] did anything wrong."

78. To C's solicitors, at [15]-[17] he said:

"15. As I noticed the pedestrian walking off the footpath across the vehicle next to me, I commented to my girlfriend as to enquire what she was doing. At this point I can confirm that there was stationary vehicles on the side of the road that I was on. I can confirm that the pedestrian was walking along the road that I was on. As she came up to my driver's side headlight she looked left and right and then began to take up what I would call a jog to try and cross the remainder of the road. However, at this moment in time she must have noticed the Defendant's headlight and tried to turn back. Unfortunately it was too late and she collided with the Defendant's vehicle.

16. I can confirm from my recollection that she was about 2 to 3 steps over the white line breaking the two directions of the carriageways when the collision happened.

17. I can confirm that the pedestrian was hit by the Defendant's vehicle on her left side of the body and back area. I can confirm that she then came back across to hit my vehicle on the driver's window/door side. I can confirm that it looked like it was her whole body but this time the right hand side and then she came to rest at the rear wheel of my vehicle. I can confirm that she was lying lengthways across the car."

79. To D1's solicitors he said:

"12. As I was looking around waiting to see if the traffic was moving I noticed to my left up ahead, closer to the roundabout, some pedestrians on the pavement. One of the pedestrians was on her own. I now know this person to be Mrs Jaqueline Colizzi.

13. Mrs Colizzi walked along the pavement and stopped at the kerb to the front of the silver BMW to my side. She briefly looked to the left and right and then walked out across the front of the BMW. As she proceeded she walked across the front of my car. Mid-way across the front bonnet of my car she started to jog forward. Mrs Colizzi then moved across into the other lane of traffic without looking to her left. As she moved forwards she then looked to her left and saw a car which was pretty much next to her. She obviously realised that she had failed to spot the car and tried to turn out of its way. As she turned she hit the side of the other vehicle which was a black Ford Fiesta. I now

know that that Ford Fiesta was being driven by Adam Coulson.

14. Mrs Colizzi hit the Fiesta on the driver's front wing, behind the front driver's side headlight.

15. As she struck the Fiesta she span round and collided with the side of my vehicle at the driver's side and then she fell to the floor, alongside my car."

80. Mr McCluggage clarified Mr Malin's evidence about what he recalled C wearing. To the police he said she had been wearing dark blue jeans; a red top; white top and brown boots. Later in his police statement, he said:

"In my opinion, Female One was in a rush. She was in dark clothing and ran from behind a car that probably concealed her from the view of the driver of Vehicle One. I don't feel the driver of Vehicle One did anything wrong."

81. He was asked if he could assist with what might be interpreted as a difference between 'dark clothing' and a 'red top'. He said it was hard to recall given it was some years ago, but that 'red can be quite a dark colour'. He did not remember C wearing a coat.
82. He was also asked about his car headlight which was found on examination after the accident not to be working properly (the offside front dim beam and side light bulbs were defective.' He did not know this and did not challenge it.
83. He was then cross-examined.
84. He was asked about [15] of his statement to C's solicitors and confirmed his comment to Ms Bryant was because something unusual was happening. He said C seemed to try to turn to the right and pull back and turn out of the way as she arrived at the front wheel of the Fiesta but it was too late.
85. It was put to him whether C moved with a purposeful walk rather than a jog. He said having thought about it, knowing this case was coming to court, he did not remember her stopping at any point. The way C moved was 'somewhere between' a purposeful walk and a jog. He did not remember her stopping 'at any point'. He said there was a difference between how she walked on the pavement, and how she crossed the road. On the pavement it was just a normal walk. As she stepped into the road in front of the car to his left, 'it turned into more of a jog'.
86. He agreed C was two or three steps over the white line when the collision happened.
87. His best recollection was that C had long hair, was wearing a white scarf, light tan boots, and was carrying some form of bag. Visibility was good on the night. He further clarified she was wearing brown boots.
88. In re-examination, he was asked whether she stopped. He said:

“From what I remember of the situation, she stepped off the curb on the left hand side of me into lane 1; looked left and right then; and from that moment on she was somewhere between a purposeful walk and a jog across the car next to me and the front of my car and behind the white 4x4 in front of me and out to the front corner of the car that struck her.”

89. In response to a direct question from me, namely, whether he would agree or disagree with the suggestion that C stopped for a second or two, he said he would disagree.
90. There were two agreed statements which were taken as read by agreement as hearsay and not challenged (but subject to the usual caution about such evidence), namely PC Rance, and Christopher Holmes who was in the Fiesta with D1. Mr Holmes said D1 was not driving fast, and he thought it was between 10-20mph.
91. The trial then moved to the expert evidence. It was agreed the relevant experts would be heard ‘back to back’, as is now common.

The accident reconstruction expert evidence

92. C’s accident reconstruction expert was Dr Andrew Ninham. D1’s expert was Mr Stuart Blackwood. They each produced lengthy reports covering a number of matters. They were also cross-examined at length. Both were agreed that, ultimately, matters would turn on my findings of primary fact about how C crossed the road and, in particular, whether she paused or stopped before she entered the eastbound carriageway and was hit; if she did, where she stopped; and where between the Clio and 4x4 she passed. I have had regard to their full reports and their evidence in cross-examination in producing this judgment.
93. They produced a joint report dated 28 February 2023. I summarise this as follows:
 - a. C passed in front of Mr Malin’s stationary Clio.
 - b. The front of Mr Malin’s car was approximately 26.5 metres from (east of) the roundabout junction’s ‘give way’ lines.
 - c. Dr Ninham acknowledges that his figures depict the Renault Clio a car length too far east (ie, too far from the roundabout). However, the depictions of the position of the approaching Fiesta at different times relative to the depicted position of the Clio, ie, its distance from the Clio, are correct, as are the underlying calculations.
 - d. They agreed that the marks on D1’s car highlighted by the police show that there was contact at the front offside ‘corner’, beneath the headlamp, and low down on the rear offside door. In addition Mr Dunham (the police vehicle examiner) described ‘cleaning marks’ on the offside of the bonnet and on the offside front door. On the basis of these marks they agree that C passed down the offside of the car as the car continued forwards, with the

likely sequence being her leg (probably her 'leading leg') being struck by the front of the car (causing the marks highlighted beneath the offside headlamp) which primarily caused her to be spun around, thereby making contact with the side of the car. She would also have been projected forward somewhat and toward the south (into contact with the Clio).

- e. They agree, therefore, that at impact C reached a position essentially level with the offside of the Fiesta rather than a position in front of the car.
- f. D1 described driving in the centre of his lane. That defines the lateral position of his car and hence the lateral position of the point of impact.
- g. They agree that there is no physical evidence from which the speed of the Fiesta at impact can be calculated. Dr Ninham's analysis of the approach of the Fiesta to the point of impact was based on D1's initial estimate of his speed at impact (of 20 mph) and an estimate of the speed at which the roundabout would be negotiated by a typical driver. Mr Blackwood estimated the speed at which the Fiesta might have been travelling at impact based upon observations of vehicles turning right at the roundabout and assuming constant acceleration between setting off to enter the roundabout and reaching the likely point of impact.
- h. They agree that there is no sound basis on which to suggest that Mr Coulson was driving at more than 20 mph at impact.
- i. They agree that the slower the Fiesta was travelling, the closer it would have been to the point of impact at any given time before impact.
- j. In relation to pedestrian conspicuity, they agree that C was wearing essentially dark clothing. In an environment such as Myton Road, at night pedestrians are most likely to be detected by silhouette contrast, ie, appearing darker than their background.
- k. The contrast is greater the brighter the background and the darker their clothing.
- l. They agree that there is a lamp column located about 15 metres north east of where the collision occurred, providing illumination 'behind' where C crossed the road from D1's perspective. The police photographs show that, from a position within the eastbound lane, the lamp head was not obscured within the tree canopy.
- m. They agree that some of the illumination from the headlamps of cars in a queue of traffic is projected through the rear and front windscreens of the cars ahead. Some is reflected forward from the road surface beneath cars ahead and some down the side of cars ahead.
- n. In Dr Ninham's opinion such illumination from behind Mr Malin's car would contribute to there being a light background behind C, and together with the streetlighting would assist in silhouetting a pedestrian.

- o. In Dr Ninham's opinion, notwithstanding the likely failed offside headlamp of the Clio (as found on police inspection after the accident), there would have been adequate silhouette contrast of a pedestrian in C's position to enable her presence to be detected.
- p. Mr Blackwood is of the opinion that C was crossing from an area of subjective darkness into a lighter area, thus as she crossed there was the potential for her to become progressively and increasingly more conspicuous, however to what level is unknown. The black Clio would not present a light background behind C. The failed offside headlamp of the Clio would also negate a pedestrian being silhouetted from that light source, with the degree of silhouette actually present being unknown. The quantity of ambient light from the street lamps or the vehicles to the rear of Clio is also unquantifiable. Further, other light sources may add visual clutter, thus make it more difficult for a driver to perceive her.
- q. They agree that light sources can be perceived as providing glare, for example if light was refracted through glazed surfaces so as to be scattered in random directions. Glare hampers a driver's ability to detect objects such as pedestrians. They agree that D1's eastbound Fiesta would have been clearly visible to C due to its illuminated dipped beam headlamps, provided C made appropriate observations towards it. Further, they agree that it would have been possible to detect the approaching Ford by virtue of the illumination of the road ahead of the car, as a result of light from the car's headlamps, for a short time prior to D1 being able to observe C.
- r. Regarding C's movement, they agree that there is no physical evidence of the manner in which C crossed the westbound lane of Myton Road, or of the manner in which she moved across the eastbound lane if that was different.
- s. They agree that it will be a matter for the Court to decide if C paused, and if so where and for how long.
- t. They have both considered the literature concerning the speeds at which pedestrians typically walk and run and the matter of their acceleration from rest. On the basis of that literature, they agree that shortly before D1 set off to enter the roundabout C was probably on the footway on the south side of Myton Road, ie, she had yet to enter the road.
- u. They agree that as C crossed most of the westbound lane she would have been obscured from D1's view by the queuing westbound traffic.
- v. They agree that if C jogged or walked across the road and into the eastbound lane without stopping, she would probably not have been in view to D1, ie, no longer obscured by the queuing traffic, long enough before impact for him to have taken any meaningful action in the time available (0.5 to 1 second).

- w. They agree that the situation would be different if it is the case that the Court finds C paused. An important related matter is where she paused (if she paused).
- x. Dr Ninham illustrated in his report C pausing in a position within the westbound lane but close to the line separating the eastbound and westbound lanes, as that was his interpretation of the position in which C paused as described by those witnesses who described her pausing.
- y. Mr Blackwood illustrated in his report C pausing in a position within the westbound lane and further from the line separating the eastbound and westbound lanes as this is where, in his interpretation, the witnesses describe her pausing.
- z. They agree that where C paused, if she did, will be a matter for me to decide. While perhaps an obvious point, the closer C was to Mr Malin's Clio and the closer she was to the centre white line, the earlier there would have been a line of sight to her, in other words she would have been in view to an eastbound driver from further away. The converse is of course true. The shape and size of the vehicle ahead of Mr Malin's car, as well as the distance between those vehicles, and their relative lateral position, are further important factors in determining when a line of sight to C might have become available. They agree that the availability of a line of sight does not necessarily mean C was conspicuous to D1 during this period.
- aa. They agree that if C paused, and did so in the position illustrated by Mr Blackwood in his report, and there was a 'boxy' vehicle to her left positioned as illustrated, it is unlikely she would have been within D1's line of sight until after she set off. It follows that before she set off she would not have been able to see directly the eastbound Ford although the light 'spill' from its headlamps might have been visible. They agree that for the pause position illustrated by Mr Blackwood, C would already have been in motion when she came into view to D1. That would have provided him with insufficient time and distance to take any meaningful avoiding action (the analysis set out at [8.22] to [8.32] of Mr Blackwood's report).
- bb. They agree that if C paused, and did so in the position illustrated by Dr Ninham in his report, and if Mr Coulson had seen her (ie, she was sufficiently conspicuous for him to have detected her presence) there would have been time for him to undertake some slowing (precautionary and/or emergency braking), and under some circumstances stop (the analysis set out at section 4.7 of Dr Ninham's report).
- cc. They agree that had C been moving quickly at impact her momentum across the path of the car would likely have caused her upper body to 'fold forward' and be struck by the offside 'A' pillar as she rotated, and therefore be projected largely forward; alternatively she would have continued across the bonnet. As neither occurred, we agree Mrs Colizzi was not moving quickly at impact.

- dd. They agree that had C used the traffic light control pedestrian crossing around 107 metres east of where she attempted to cross the road, then on the balance of probability a collision would not have occurred.
 - ee. They agree, on the basis that D1 did not see C in time before impact to slow, that had he slowed before impact his car would have reached C later than it did. In other words if he had slowed and a collision still occurred it would have occurred later than it did.
 - ff. They agree that had the collision occurred later than it did, C would have travelled further across the road than she did; alternatively if she was attempting to turn back she might have succeeded in moving out of the car's path.
 - gg. They agree that if C had travelled further across the road than she did she would likely have been struck bodily by the front of the car, rather than a glancing blow to one of her legs (probably her leading leg), by the lower front offside of the Fiesta. She would then have made contact further across the car and been projected forwards rather than at an angle forwards and sideways and she would not have struck Mr Malin's car, although she would still have struck the road surface.
 - hh. They agree that on the basis D1 was driving at no more than 20 mph when the impact occurred, had he slowed any impact would necessarily have been at a speed below 20 mph.
 - ii. Dr Ninham understands that the matter of the likely injury severity in a frontal impact at a speed of no more than 20 mph is being dealt with by the medical experts. Dr Ninham's understanding from the literature referred to in his report is that there is a rather low risk of 'non-minor injuries' or 'severe injury' at an impact speed of 20 mph or less.
 - jj. Mr Blackwood is aware of Ashton & MacKay (1979) referred to by Dr Ninham above, however the paper highlights there is significant variation in the severity of injury sustained for a given impact speed. It examples minor injuries having been noted at impact speeds greater than 40 km/h (25 mph). More recent studies by Cuerden and Richards (TRL 2007) suggests at speeds above 30 km/h (19 mph) pedestrians in a more recent data set were less likely to suffer a serious or fatal injury than those in the Ashton and MacKay data set.
 - kk. Regarding observations by C, they agree that had C made appropriate observations as she crossed Myton Road, and in particular before entering the eastbound carriageway and hence the path of the Fiesta, the collision could have been avoided.
94. Section 4.7 of Dr Ninham's report, referred to in (bb) above, analysed outcomes by reference to various different assumptions about: (a) the length of time between C arriving at the centre line and impact; (b) different assumptions about D1's reaction times to take his foot off the accelerator upon first seeing C at the centre line, and his reaction time before commencing hard braking upon

perceiving her moving. The two assumptions in (a) are, respectively, that the period in question was three seconds, and two seconds.

95. His Table 1 [at [4.7.11]] illustrated that on these various assumptions D1 would have stopped in time (on one set of assumptions only), or else would have been travelling more slowly at the point of impact by reason of his braking actions.

96. The table is:

		Time between Mrs Colizzi arriving near road centreline and the impact			
		3 seconds		2 seconds	
		Impact speed (mph)	Delay(s)	Impact speed (mph)	Delay(s)
First prt	1.00	Stop	Stop	15 mph	0.12 s
Second prt	0.50				
First prt	1.00	4 mph	0.78 s	16 mph	0.11 s
Second prt	0.75				
First prt	1.50	9 mph	0.36 s	17 mph	0.04 s
Second prt	0.50				
First prt	1.50	13 mph	0.30 s	18 mph	0.03 s
Second prt	0.75				

97. So, for example, at [4.7.4]-[4.7.5], he explains says that if C was visible (whilst waiting) to D1 for three seconds before impact (when his car would have been approximately 23m from her, as calculated by Dr Ninham) and he had seen her waiting there and decided to lift his foot from the accelerator after a one second perception-response time, the car could then have decelerated gently (under engine braking) for 1.33 seconds. By the end of that period C would have already begun to move across the road, and it would likely have been evident that she was in motion. If D1 had continued to watch her and had been covering the brake, he could have responded with a further perception-reaction time of 0.5 seconds (a very short perception-response time but applicable to someone observing a potential hazard). On these assumptions, Dr Ninham calculates the D1 would have stopped one metre short of the impact point (and so the accident would have been avoided).

98. At [4.7.9], assuming D1 had first seen C waiting near the centre of the road two seconds before impact, at that time his car would have been about 16m from the point of the accident. If he had reacted to her presence in 1.0 second and taken his foot from the accelerator and begun to cover the brake, then responded with emergency braking commencing a further 0.5 seconds after it became evident she was setting off, the car could have been slowed to a speed of approximately 15 mph on reaching the point where the impact occurred. The car would have reached that point about 0.12 seconds later than it did in the collision that occurred.

99. He concluded at [4.7.12]:

“4.7.12 As will be evident from the above analysis, the outcome of different circumstances is highly dependent upon when Mr Coulson might have been able to see Mrs Colizzi (provided it is the Court's finding that she stopped in about the middle of the road) and therefore where the car was, as well as upon his response. However in all cases, if he had seen her and decided to lift off the accelerator as a precaution, even if there was little or no time for braking, and as a consequence of at least a short period of travel of the car when it was not being accelerated, it would have been travelling more slowly at impact and would have arrived at the point where impact occurred at least a little later than it did.”

100. As to point (v) above, Dr Ninham accepted that if C went across the road without stopping (whether she was walking or running) then there would have been insufficient time for D1 to have avoided the accident. He said at [4.7.1] of his report;

“4.7.1. As discussed in paragraphs 4.4.5 and 4.4.6, if Mrs Colizzi entered the eastbound lane without stopping, she would not have been within Mr Coulson's view for long enough for him to have taken any meaningful action, if any at all before the collision. However, if she stopped close to the road centreline as described by Miss Bryant, she could have been within Mr Coulson's view for long enough for him to have taken some action. The manner in which Mrs Colizzi entered the eastbound lane, and if she stopped close to the centreline and if so for how long, will be matters for a Court to decide.”

101. He said at [4.4.5] and [4.4.6]:

“4.4.5 It is evident that if Mrs Colizzi ran continually across the road to the point of collision (Figure 5), she would have been in view, unobstructed, for a little over 0.5 seconds. Depending on the shape and precise position of the car immediately to the west of her position (i.e. to her left), her upper body might have become visible about 0.75 seconds before impact.

4.4.6 If Mrs Colizzi walked across the road to the point of collision without pausing (Figure 6), she would probably have been visible for about 1 second before impact. Again, the precise time depends on the shape and position of the car immediately to her left and her precise speed. At times much longer than 1 second before impact she would have been heavily obscured by the vehicle to her left.”

102. At [5.2] he said:

“5.2 If Mrs Colizzi walked or jogged across the road without pausing, the time for which she might have been seen, as in the time for which a sightline unobstructed by intervening vehicles might have existed, is within the range of a typical driver's perception-response time. Thus Mr Coulson would not have been able (he would not have had time) to take any effective action before impact.”

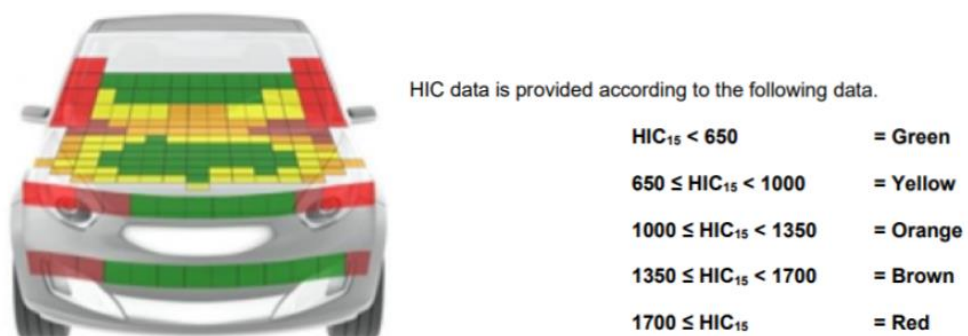
The expert medical evidence

103. Both sides also adduced expert medical evidence. C called Professor Michael Vloeberghs, a consultant paediatric neurosurgeon at Nottingham University Hospital, and D called Mr Robert Macfarlane, a consultant neurosurgeon. Again, I have carefully considered their evidence.
104. They also produced a joint report, dated 14 July 2023, which I can summarise as follows:
 - a. They agree that Ms Colizzi had no relevant pre-accident medical history.
 - b. On 9 November 2015 she was a pedestrian involved in collision with a Fiesta whilst attempting to cross the road from right to left in front of D1's approaching vehicle.
 - c. They defer to the accident reconstruction experts: ‘that Ms Colizzi passed down the offside of the car as the car continued forwards, with the likely sequence being her leg (possibly her leading leg) being struck by the front of the car (causing the marks highlighted beneath the offside head lamp) which primarily caused her to be spun around thereby making contact with the side of the car. She would also have been projected forwards somewhat and toward the south (into contact with the Renault Clio). (3.4) At impact C reached a position essentially level with the offside of the Fiesta rather than a position in front of the car (3.5)’.
 - d. They also note the other experts' agreement: ‘That there is no sound basis on which to suggest that Mr Coulson was driving at more than 20mph at impact’ (4.2).
 - e. They agree that C suffered two severe head strikes, one to the left squamous temporal/frontal region which was associated with a comminuted depressed skull fracture extending into the central skull base. She also suffered fractures of the facial skeleton. In addition, C also suffered a degloving laceration to the right parietal scalp associated with a parietotemporal fracture which extended into the floor of the middle cranial. They agree that her intracranial injuries comprised bitemporal haemorrhagic contusions, a contusion to the left cerebral peduncle and pons, traumatic subarachnoid haemorrhage and generalised brain swelling.
 - f. They agree, on the balance of probabilities, that C suffered one head strike with the wheel of the Clio which was stationary in a line of traffic from which she emerged, and the other from impact with the ground.

- g. They agree that she suffered an isolated head injury and, in particular, there is no report of any injury to either lower limb consistent with impact from a car.
- h. At the scene C was Glasgow Coma Score 7 and was bleeding from her nose and ears. She was intubated/ventilated at the scene. Her pupils remained small and reactive.
- i. C underwent surgery to elevate a depressed left temporal fracture and debride the right-sided scalp wound. An intracranial pressure monitor was inserted. Following a period of sedation/ventilation for the control of raised intracranial pressure, subsequently she underwent a percutaneous tracheostomy to assist with weaning from the ventilator.
- j. They agree that a subsequent MRI scan identified contusions to both temporal lobes, the left cerebral peduncle, pons and left middle cerebellar peduncle, as well as ligamentous injury at the craniocervical junction.
- k. Her clinical course at the outset was of a low awareness state from which she emerged to a state of ongoing severe cognitive and physical neurodisability.
- l. Physically, she suffered loss of the left eye, loss of hearing in the left ear, weakness of her right side, an unsteady gait, impaired speech/swallowing as well as loss of sense of smell/taste. There is also evidence of cognitive impairment, personality change and altered affect.
- m. They agree that she is now beyond the prospect of neurological recovery. They defer to expert opinion in relation to her reasonable needs.
- n. They note the opinion of the accident reconstruction experts in relation to the opportunity for the collision to have been avoided or to have occurred at a reduced speed. As far as the latter is concerned, they agree ‘that if Ms Colizzi had travelled further across the road than she did she would likely have been struck bodily by the front of the car, rather than a glancing blow to one of her legs ... She would then have made contact further across the car and been projected forwards rather than at an angle forwards and sideways and she would not have struck Mr Coulson’s car, although she would still have struck the road surface(7.3) ... We agree that on the basis Mr Coulson was driving at no more than 20mph when the impact occurred, had he slowed any impact would necessarily have been at a speed below 20mph’ (7.4).
- o. They note the literature cited by the accident reconstruction experts. They also rely on their own clinical experience which, in each case, is based on more than 30 years of the management of neurotrauma.
- p. In the opinion of Professor Vloeberghs, on a strong balance of probabilities, it is unlikely that such severe cranial injuries would have occurred at a speed below 19mph. The greater the reduction in speed below this, the less likely it is for such severe injuries to have occurred. In Professor Vloeberghs’

opinion, if the Court were to find that the impact speed should have been 15mph then he regards it as extremely unlikely and, at 10mph, virtually impossible, that there would have been any enduring traumatic brain injury.

- q. Mr Macfarlane notes that the accident reconstruction experts offer no evidence in relation to the actual interaction between C and D1's vehicle, other than it would appear to have been a glancing blow which was not sufficient to cause injury to her leg. Mr Macfarlane notes that despite the literature and the opinion of Professor Vloeberghs, it is a matter of fact that, despite it being agreed that the actual impact was no more than 20mph, nevertheless C still suffered a very severe TBI [traumatic brain injury] from a combination of two head strikes. Mr Macfarlane notes that the accident reconstruction experts offer no opinion as to whether Ms Colizzi would have been wrapped onto the front of the car, whether she would have suffered a head strike with the vehicle as well as the road surface and, in the case of the former, whether this would have been with the 'A' pillar, the windscreen or the bonnet. [The 'A' pillar is the part of a car's structure located at the front of the car on either side of the windscreen] Neither is any evidence offered as to whether she would have been lofted into the air or the speed below which she is likely to have been thrown down in front of the vehicle. Below is a diagram taken from data obtained from a Clio showing the variability in the *sequelae* to a head strike with different parts of the front of the vehicle, noting, for example, that the consequences of impact with the A pillar [ie the red edges of the windscreen below] (measured as head injury criteria HIC scores) are substantially greater than the centre of the windscreen or bonnet, which are more deformable structures.



- r. In either event, notwithstanding that the impact with the wheel of the Clio would have been avoided it would probably have been replaced with a head strike to the vehicle and impact with the road. In Mr Macfarlane's opinion, without findings of fact by the Court in relation to the sequelae to a different type of interaction between the claimant and the defendant's vehicle, there is simply too little information on which to form an opinion as to the likely outcome. Neither does Mr Macfarlane agree with Professor Vloeberghs that severe head injury is 'virtually impossible' at a speed of 10mph. The average recreational cycling speed is around 12mph and this can be sufficient to cause severe TBI and it can also be seen in runners or even pedestrians who trip and fall.

Submissions

105. Both sides produced written closing submissions, for which I was grateful, and I also heard oral submissions.
106. On behalf of C, Mr Hartley submitted as follows, in summary.
107. The issues before me were breach and causation. The standard of driving is that of the reasonably careful driver, armed with common sense and experience of the way pedestrians, are likely to behave: *Chan*, [17].
108. He said that in this case if the reasonable driver saw a pedestrian in the middle of the road, he should know that this was a real hazard. Any reasonable driver would know this. It is not a matter for expert evidence. Indeed D1 stated that if he had seen C in the centre of the road he would have regarded her as a hazard and would have had to decide whether to stop and let her across or continue with caution.
109. If a real risk of a danger emerging would have been reasonably apparent to such a driver, then reasonable precautions must be taken; if the danger was no more than a mere possibility, which would not have occurred to such a driver, then there is no obligation to take extraordinary precautions: *Foskett v Mistry* [1984] 1 RTR 1, per May LJ.
110. This is not a case of excessive speed. C's case is that she was there to be seen and should have been seen by D1, who should then have taken avoiding action by braking or steering away from her. If C walked or ran into the eastbound lane without stopping then her case fails, as was made clear in opening. However, if she stopped in a position where the reasonable driver in D1's position ought to have observed her, then C should succeed.
111. Whilst there is undoubtedly contributory negligence in this case, the primary issue for the Court is whether D1 was negligent in the control of his vehicle and whether, had he driven non-negligently, the collision could have been avoided (C's primary case) or reduced in severity (his secondary case) such that the C's brain injury would have been avoided entirely or significantly reduced. The avoiding action which D1 should have taken (and said he would have taken had he seen C) was to have taken his foot off the accelerator and/or steered away, or possibly even stopped completely (which he said he might have done, subject to other cars being behind him).
112. Mr Hartley invited me to find that C crossed between stationary or slow moving traffic in the westbound lane and that she stopped near to the centre white line of the road, about a foot away, according to Ms Bryant in oral evidence, and that she looked left and right before she stopped. She was walking purposefully, but was not jogging. He said that Ms Bryant had described C stopping, in all of her statements. He invited me to find she stopped for one to two seconds, *per* Ms Bryant's estimate.
113. It is C's case that as she crossed the first half of the road (and in particular when she stopped about a foot just before the centre line, she ought to have been

visible to and seen by D1 as he approached. If D1 had been looking properly and driving reasonably, he ought to have seen her; and if he had seen her he ought to have braked and/or moved to his left in which case a collision would have been avoided or reduced to an inconsequential event.

114. D1 has made much of what is no more than common sense – namely that C could not have been seen until she could be seen. But, said Mr Hartley, this is tautologous. Of course D1 could not see C until she was clear of the obstruction caused by the 4x4 vehicle to her left.
115. C looked left – it must be assumed that she could see alongside the 4x4 or she would simply have been looking at the back of it. Her error was in not looking again to her left, having looked right – not that she could not see if she had done so. It is also likely that she was about a foot from the white line.
116. In that position she could be seen, as shown by Dr Ninham.
117. Mr Hartley said that Mr Malin should not be preferred and made two points: the accident reconstruction experts found no evidence to support the suggestion that she was running or moving quickly at the point of collision. He also said Mr Malin had been wrong about C's clothing. He said Ms Bryant's evidence tallied with that of Alexandra Anderson, who was in a Nissan car behind the Clio on the near side, who said C stopped for 'maybe a second'.
118. Overall, Mr Hartley said on his primary case D1 failed to keep a proper lookout. If he had done he would have seen C and appreciated the hazard (just as D1 said in evidence he would have done). Instead, he failed to lift his foot off the accelerator and engine-brake. He failed to slow or steer a wider berth. Then when C moved forwards, he was unable to do anything – whereas he should have been able to do so.
119. On his secondary case, Mr Hartley said that if (which is denied) the collision was unavoidable then it ought to have occurred at a significantly lower speed such that, on balance of probabilities, the injuries suffered by the C would have been lessened. It is this secondary case to which the medical evidence is directed.
120. He relied on Professor Vloeberghs that if C had been hit at a slower speed she would very likely not have suffered such severe injuries because she would have been flung up and onto the bonnet.
121. Finally, Mr Hartley accepted that C was partially responsible for the accident, so that if I found for her, I would have to assess her contributory negligence.
122. On behalf of D1, Mr McCluggage submitted as follows, in summary.
123. I should find that C did not pause after entering D1's sightline. The experts agree that, if so, the collision was unavoidable. It does not matter whether she was walking, jogging, or something else. C's case can only succeed on primary liability on the very specific findings that: (a) C paused; (b) C paused in a position within D1's approaching line of sight; (c) that C paused for a sufficient

period of time that a reasonable driver could take action; and (d) that a reasonable driver would have avoided the accident, or reduced speed sufficiently to reduce the severity of injury.

124. He said that if C paused, the duration of the pause, and C's conspicuity, are too uncertain to establish D1 had the opportunity to react. Even if he could have slowed down, C cannot prove that her injuries would have been substantially reduced (ie, even on that basis, C's secondary case should fail). Alternatively, substantial contributory negligence applies.
125. Like Mr Hartley, he emphasised that this was not a case of excessive speed but was about perception and reaction. The standard is the 'competent and experienced driver': *Nettleship v Weston* [1971] 2 QB 691, 703. This is the standard of a reasonable, prudent driver, not a counsel of perfection or an ideal, infallible motorist.
126. Mr McCluggage said I should find the following facts (*inter alia*): (a) the road was likely damp and which would have increased glare from the headlights and added to the difficulties in identifying a pedestrian; (b) Mr Malin's Clio was 26.5m from the roundabout give way lines, likely the fourth or fifth queued car; (c) D1 turned right at the roundabout into eastbound Myton Road, driving his Fiesta within the 30mph limit at a maximum of 20mph with three adult passengers and was obviously a careful driver; (d) any other speed is a 'guesstimate' because D1 was not looking at his speedometer; (e) a pedestrian crossing lay 107 metres further east from the scene; (d) C was wearing dark clothing: a dark coat, dark trousers and brown boots; (e) C passed in front of Mr Malin's Clio, and a 'large' white 4x4 was queued ahead of the Clio; (f) the Clio's offside front light was defective, impacting C's conspicuity; (g) C was not moving quickly by the time of impact; (h) D1 saw C at the last moment from his peripheral vision. The obvious explanation for D1 not seeing C until out of the corner of his eye is because she strode out from a hidden position into the front offside of his vehicle.
127. The key issue is whether there was sufficient time/visibility for D1 to perceive and react. This question factually underpins breach and causation arguments. D1 articulates the issue: can C prove D1 had a line of sight enabling *any* reaction/braking before impact? If not, C's case must fail. If yes, Mr McCluggage said I would then have to consider avoidability, and/or reduced injury (the latter being C's secondary case) (Mr McCluggage's issues 2 and 3).
128. The evidence of Ms Bryant and Ms Malin is not consistent on whether C stopped. She says she did; Mr Malin says she did not. All are agreed that if C emerged without stopping, the collision was unavoidable as D1 could not reasonably have reacted. A short pause does not change this. Dr Ninham said at [6.2] of his report, there would have been no opportunity to avoid if she walked or ran continuously (or essentially so) across the road.
129. For C to succeed, a pause in itself is insufficient. C needs to prove that her pause and position (a) gave a sufficient line of sight, *and* (b) lasted for adequate time, *and* (c) allowed reasonable conspicuity, for a competent driver to heed danger and react. As to this, there are many possible permutations regarding if,

where and for how long C paused, making definitive findings challenging if not impossible. Mr McCluggage's essential point was that the underlying variables or factors which would need to be ascertained for such conclusions to be reached are too uncertain.

130. As to issue 2, what Mr McCluggage terms the counter-factual, namely, avoidability if C paused in line of sight, he made a number of criticisms of Dr Ninham's evidence, and in particular the assumptions on which his Table 1 ([4.7.11]) is based.
131. As to issue 3, Mr McCluggage made a number of points. He observed that the actual injuries suffered by C were produced by an unusual mechanism, namely, a blow to her leg (which itself did not cause any injury), followed by the spin into the Clio and then ground. He said that C's secondary case was far too speculative in that: (a) it is speculative as to how much progress C would have made in front of the Fiesta if it had slowed; (b) hence, it is speculative as to where C would have hit the vehicle. As Mr Blackwood explained, the A-pillar is hard. Both Dr Ninham and Mr Blackwood described the windscreen as potentially being forgiving, but as Mr Blackwood pointed out in cross-examination, if one hits around the edge of the windscreen it is very robust and has a structural nature. The bonnet is softer, but not all of it. Further, he said I had no evidence that an 'alternative head injury' would have led to functionally less severe symptomatology than C unfortunately suffered.

Findings of fact and discussion

132. I begin by saying that this has not been an easy case to decide. As I have already said, by the time the witnesses came to give evidence before me, well over eight years had passed since the sudden, quick and traumatic incident on 9 November 2015 in which C was tragically injured.
133. Ms Bryant, D1 and Mr Malin did their best to recall what they saw, but that passage of time and, as I have already remarked, the fallibility of human memory, mean that I have to look with care at their evidence. That is especially so because their accounts not only differed from each other, they differed from themselves in places. And of course, they have no doubt thought and spoken about the incident many times over the intervening years (perfectly understandably).
134. This eyewitness evidence is crucial. As I have said, the experts were all agreed that their opinions, and the reliability of their conclusions, depend on my findings of facts based upon the lay witnesses' evidence as to what occurred.
135. As to those facts, I am satisfied on a balance of probabilities:
 - a. it was dark at the time of the accident but the area was well-lit by street lamps and by car headlights;
 - b. it is possible the road was damp to some degree;

- c. the accident occurred about 25m from the roundabout junction of Myton Road and Banbury Road;
- d. there was a pedestrian crossing about 107m east of where the accident occurred;
- e. D1 knew that pedestrians could and did cross the road around the point of collision rather using the nearby pedestrian crossing, but they were not a particular hazard, and he had not seen a pedestrian emerge from stationary traffic there before;
- f. D1 was a careful and competent driver;
- g. D1 was driving properly for the conditions; below the speed limit; and was keeping a proper lookout;
- h. D1 was not distracted by anything occurring within the car;
- i. D1 went around the roundabout into Myton Road and then accelerated appropriately and not excessively to the point of collision;
- j. D1 was driving in the centre of his lane. A police sketch plan showing his car hard against the centre line is not accurate;
- k. It is not possible on the evidence to determine exactly how fast D1 was going at the point of impact, but it was not more than 20mph;
- l. C was wearing dark clothes, or clothes which would have been perceived as dark in the prevailing lighting conditions;
- m. C walked along the pavement, then turned and stepped into Myton Road, and then took up a fast walking or jogging pace which was noticeably different and faster as compared with how she had been walking on the pavement;
- n. she passed first across the front of the car to the left of Mr Malin's Clio (driven by Ms Anderson), and then in front of the Clio. Her speed and mode of moving was sufficient for both Mr Malin and Ms Bryant to have told the police in their first accounts minutes afterwards that C 'ran' across the road;
- o. there was a large 4x4 stationary directly in front of the Clio which was taller and wider than the Clio (and taller than C), and would have shielded C from D1's view until she emerged from behind it;
- p. C did not pause or stop for any appreciable length of time before entering the eastbound lane of Myton Road, at which point she was struck by the offside front of D1's car having taken about two paces;
- q. C did look left and right at some point as she moved across the southern carriageway, but did not do so properly so as to detect D1's oncoming car in the eastbound carriageway until it was too late, and not in a way which would have allowed D1 to see her;

- r. C did, at the very last moment, detect D1's car and started to try and turn out of its way, but could not do so in time to avoid being hit by it;
 - s. that action likely slowed or stopped her forward momentum;
 - t. C could not have been seen by D1 in enough time for him to have taken evasive action, through a combination of her not stopping before entering his lane, and being shielded until the last moment by the large 4x4 in front of Mr Malin's Clio;
 - u. D1 had no opportunity avoid the accident entirely, or to slow so as to lessen the impact;
 - v. C was hit around the area of the Fiesta's offside fog lamp, likely on her leading leg, then made contact with its side, and was spun into the Clio, and then the ground, in the course of which she sustained serious head injuries. There were no injuries to her legs;
 - w. D1 saw something in his peripheral vision just before or at point of impact;
 - x. at the point of impact D1 did not immediately know what had happened, nor did his front seat passenger, although he quickly realised that he had likely hit a person, pulled over, and went back to assist;
 - y. he thereafter cooperated fully with the police and in due course with D1/2's solicitors.
136. Overall, therefore, I find D1 was not negligent in any way and C's case fails on both its primary and secondary aspects. I find C to have been entirely responsible for the accident.
137. I have reached these conclusions on the basis of the weight of the evidence which I set out earlier, and for the following reasons.
138. On the key issue of whether C stopped for any appreciable length of time, I prefer Mr Malin's evidence that she did not, to Ms Bryant's evidence that she did.
139. Firstly, Mr Malin was the best and most complete witness to the incident. He was placed closest to where C was hit. Only he saw the whole of the incident from when C appeared on the pavement on Myton Road (having turned into it from Banbury Road) until she was hit. His attention was on her throughout.
140. In contrast, Ms Bryant only began observing part way through, having been on her phone until her attention was drawn to C, whom she said she first saw at the top of her eyeline. I interpreted this answer as meaning that while she was aware of C, she was not completely focussed on C in those moments.
141. Mr Malin said his account to the police on 10 November 2015 was his best account. Crucially, at the end of his evidence, I asked him directly whether C stopped at, or before, the centre line before she was hit, and he said she did not. I accept this evidence. On this key issue, what he said is consistent with what

he had said in his earlier oral evidence, and also with what he had said in his various witness statements, which I set out earlier.

142. This means, as all are agreed, that C's case cannot succeed on either its primary or secondary basis because D1 did not have sufficient time to react in order to avoid hitting C, or by slowing sufficiently to avoid serious injury.

143. I also rely on Mr Malin's first account as recorded in a police officer's notebook at 17.45 (so approximately 30 minutes after the accident). The officer recorded Mr Malin as having said:

“Female ran out directly across the road the headlight/front corner driver's side hit the woman”

144. I need to have regard in the usual way that this is a summary only, and hearsay, and so I have to be cautious about it. There is no reference to C stopping (or not stopping), but I think the clear import of this account is that she did not stop, and so is consistent with what Mr Malin said later. Also, Mr Malin's description of where the Fiesta struck C matches the objective forensic evidence. This supports, overall, the reliability of this account.

145. Ms Bryant said C did stop, and this is obviously the high point of C's case. I accept Ms Bryant was giving her best and honest accounts, however there are points of her evidence which are inconsistent, to a greater or lesser extent.

146. Firstly, there is what she said to the police minutes after the accident which I set out earlier, where she said that 'Pedestrian ran out in front of vehicle'. Although, again, I have to be cautious about this hearsay evidence, and Ms Bryant could not recall saying it, I consider it unlikely that the officer would have recorded her saying C 'ran out' if she did not say it. Given the obvious importance of an eyewitness's first account of such a serious accident. On a balance of probabilities, I find that was the phrase she used.

147. Second, Ms Bryant described the nature of the stop in somewhat different terms on different occasions. She said in her police statement that C 'stopped'. To C's solicitors on 20 March 2017 she also said C 'stopped'. To D1's solicitors she said that C '*appeared to stop ..*' (my emphasis). In her oral evidence to me she said that C stopped, 'I want to say for a second or two'. She demonstrated how C looked left and right as she stopped, which was quite quickly and not for two seconds. C also relies on Ms Anderson, in the vehicle to the Clio's left, who said in her police statement (but was not called) that C stopped 'for *maybe* a second' (my emphasis).

148. Third, I cannot rule out the possibility, as Mr McCluggage suggested, that what Ms Bryant and Ms Anderson were actually recalling was the 'stop and turning back' movement which Mr Malin, in all three of his statements, described C as doing just before she was hit, and to which Ms Bryant also referred.

149. Overall, I find the evidence of a pause or stop by C to be too vague and imprecise for me to be able to base any firm conclusion upon it in C's favour, and certainly not that she stopped for long enough so that D1 had a reasonable chance to avoid

or lessen the accident – in other words, that she was ‘there to be seen’ by D1, as Mr Hartley put it. No-one had a stop watch, and all Ms Bryant was able to do was give her subjective impressions of what she recalled C doing.

150. In her August 2018 statement Ms Bryant referred to Mr Malin having said something to the effect of ‘look at that idiot crossing’ when she was looking at her phone, which drew her attention to C. This account is at odds with her first statement to the police where she said that nothing C did had caused them concern, and also with Mr Malin’s statements to C’s solicitors and D1’s solicitors, in which he said something about how C was crossing to Ms Bryant. Ms Bryant also said to me that as C passed in front of their car she thought that she was going to be hit.
151. Looking at both Ms Bryant’s and Mr Malin’s evidence as a whole on this point, there was obviously something in the way that C moved from the pavement into the road and then crossed which caused Mr Malin sufficient concern to draw Ms Bryant’s attention to her. It may also have concerned Ms Bryant. I think this evidence is significant. I consider it to be unlikely that he would have had this reaction if C had done as Mr Hartley invited me to find, namely, that C crossed the road carefully and waited for an appreciable number of seconds just before the centre line whilst looking left and right.
152. At this point, I observe that various descriptions were given by witnesses as to how C moved across the road. It was variously described as a ‘run’; a ‘jog’; a ‘slow jog’; a ‘purposeful’ walk; walking with ‘deliberation’; and, as Mr Bryant said orally, how she would walk if she were late for a train. All of these are subjective descriptions, incapable of further precise definition. In many respects they shade into each other. However, the clear impression that I was given, and I so find, is that once C stopped into the westbound carriageway, she began moving at considerably more than a normal walking speed, and was in a hurry to cross the road, rather than proceeding carefully and cautiously. I was struck by the distinction Mr Malin drew between C first walking, and then running or jogging whilst she was still in his lane. That strongly suggests that there was a change in how C was moving and that she sped up as she tried to cross.
153. Coming back to the crucial question of whether C paused for an appreciable period of time, for the reasons I have given, I prefer Mr Malin’s evidence that she did not stop, to Ms Bryant’s evidence that she did or may have done.
154. But if I am wrong to accept Mr Malin’s accounts, I still consider Ms Bryant’s accounts to be too vague and imprecise to be reliable. Where this leaves me is with two witnesses who were literally sitting side by side witnessing the same incident, and who have then given different evidence on a central and crucial matter. In that case, I therefore cannot choose between them and determine who is right. Thus, the burden of proof comes into play. As Smith LJ said in *Lambert v. Clayton* [2009] EWCA Civ 237, [39]:

“The only point I wish to make is that there is a danger of doing injustice if judges make unwarrantedly precise findings of fact. Of course, if the evidence warrants a

precise finding of fact (on the balance of probabilities) that makes the judge's judgment easier. If there are inherent uncertainties about the facts, as there were here, it is dangerous to make precise findings. This may well mean that the party who bears the burden of proof is in difficulties. But that is one of the purposes behind a burden of proof; that if the case cannot be demonstrated on the balance of probabilities, it will fail.”

155. For this reason, and on this evidential scenario, C has not satisfied me, as she has to, on a balance of probabilities that she did stop for a sufficient period for D1 to have been able to see her. Her case must therefore fail on that alternative basis.
156. I turn to the allied point about *where* C stopped, assuming (contrary to my earlier finding) that she did. Here, again, it seems to me that there is too much evidential uncertainty for me to reach a conclusion in C’s favour. No-one had a tape measure, and so all I am left with are general impressions and ‘guesstimates’. In a case where fine margins make a considerable difference, this absence of firm evidence is very important.
157. That these unknown variables affect the potential evidential conclusions is made clear by the experts. Point (z) and (aa) of the Dr Ninham’s and Mr Blackwood’s joint report says this (my paraphrase and emphasis):

“(z) They agree that where C paused, if she did, will be a matter for me to decide. While perhaps an obvious point, the closer C was to Mr Malin’s Clio and the closer she was to the centre white line, the earlier there would have been a line of sight to her, in other words she would have been in view to an eastbound driver from further away. The converse is of course true. *The shape and size of the vehicle ahead of Mr Malin’s car, as well as the distance between those vehicles, and their relative lateral position, are further important factors in determining when a line of sight to C might have become available.* They agree that the availability of a line of sight does not necessarily mean C was conspicuous to D1 during this period.

(aa) They agree that if C paused, and did so in the position illustrated by Mr Blackwood in his report, and there was a ‘boxy’ vehicle to her left positioned as illustrated, it is unlikely she would have been within D1’s line of sight until after she set off. It follows that before she set off she would not have been able to see directly the eastbound Ford although the light ‘spill’ from its headlamps might have been visible. They agree that for the pause position illustrated by Mr Blackwood, C would already have been in motion when she came into view to D1. That would have provided him with insufficient time and distance to take any

meaningful avoiding action (the analysis set out at [8.22] to [8.32] of Mr Blackwood's report)."

158. Hence, it seems to me that there are at least three principal difficulties about determining C's position. Firstly, no-one was able to say precisely how far between the Clio and the 4x4 C passed, ie, whether it was along the mid-line between them, or closer to one or the other. Mr Blackwood gave a figure of 1.5m as the space between the two cars (report, [7.6]) but this was no more than a reasonable assumption. Second, no-one could say where *exactly* C stopped in relation to the centre of the road. Third, aside from a general agreement (as Ms Bryant said) that the 4x4 was bigger than the Clio, there was no specific evidence about its dimensions from which inferences can be soundly drawn.
159. As to the first of these points, Ms Bryant's evidence was that C crossed 'as close as a pedestrian would cross in front of a vehicle,' about a foot 'maybe'. It is no criticism of Ms Bryant, but I do not find that that evidence advances matters much.
160. As to the second point, the general thrust of the evidence is that *if* C stopped, it was somewhere around the driver's side headlight, give or take. In her police statement Ms Bryant said C stopped 'as she reached the front off-side corner'. Ms Bryant's statement to C's solicitors at [10] was similar; 'As the female pedestrian reached the front offside corner of Lewis' vehicle she stopped ...'. To D1's solicitors she said at [10] that, 'She appeared to stop just as she had cleared Lewis' bonnet ...'. In her oral evidence she clarified she meant the centre of the bonnet. She also said that C stopped about a foot from the centre white line, at around about the offside front headlight of their car.
161. None of these were, or purported to be, precise positionings, nor could they be. If C was in line with the Clio's offside headlight then she would likely have been inboard of the larger white 4x4, and out of D1's line of sight. I take Mr Hartley's point that she would not have stopped to look left at a point where she could not see left, but one possibility is that she was bodily out of sight but perhaps just peered around the 4x4. I cannot make a finding about this, but it is not necessarily the case that C *must* have stopped in place where she was in D's line of sight and 'there to be seen'.
162. As to the third point, it was agreed that the 4x4 was wider and taller/larger than the Clio (a relatively small car), and its wheels were closer to the white line than the Clio's. However, no-one was able to say what make it was; how wide it was; how long it was; how far in front of the Clio it was; and so were not able to say exactly how it would have impacted on the sight line from D1's car, other than if C was behind it she would have been hidden from his view.
163. It follows that I can place no weight on the conclusions Dr Ninham invited me to draw as to sightlines from the Fiesta to the impact point on the basis of where he interpreted C as having been standing and for how long she might have been visible for (report, [4.4.5], [4.4.6], [4.4.7]). This is even leaving aside his admitted error in positioning the cars. I accept his calculations remained correct because the relative positions of the Fiesta and the Clio are right, but given the accident took place on a bend, whether that error affects the sight lines as show

in his report, I do not know. But even assuming it did not, Dr Ninham himself qualified opinion his views by reference to unknown variables: see eg, [4.4.7] (my emphasis):

“If Mrs Colizzi set off from rest, walking (Figure 7 illustrates a 'starting' position at the offside edge of queuing traffic near the road centreline), *the time for which she might have been seen becomes very dependent on exactly where she stopped, for how long she stopped as well as the size, shape and position of the vehicle to her left and her speed.*”

164. Some of the lines drawn by Dr Ninham from the Fiesta when it was a distance away, to the point he interpreted C has having been standing, pass hard along the side of the 4x4 in front of the Clio. However, the cars are shown by generic pictograms which do not necessarily reflect the relative sizes of the vehicles – which as I have said is not known - and so I do not consider I can place any reliance on his illustrations as accurately depicting what the sight lines would have been.
165. Added to this is Ms Bryant’s evidence that from where she was sitting as a passenger, at the point C stopped, she would not have been able to see far past the edge of the 4x4. She also said C would ‘potentially’ have been shielded from oncoming traffic by the 4x4. On this point Mr Malin agreed with her. He said in his statement to D1 solicitors:

“19. Parked in front of me when Mrs Colizzi was crossing was a large white 4x4 vehicle. This was taller than Mrs Colizzi and would have obscured her view had she looked to her left as she was crossing the road.”

166. I come to the question of C’s conspicuity. On this, there are points going both ways. In their joint report the experts made a number of points tending to show that C had greater or lesser conspicuity. She was agreed to be wearing dark clothing (and Ms Bryant in her police statement referred to C wearing ‘a dark coloured trench coat’), but could potentially have been seen in silhouette. On the other hand, the hypothesis is that if she was standing where she could be seen, she would be in front the black Clio which had a defective headlight, reducing the ‘silhouetting’ of her. There is also reference to light ‘clutter’ and ‘glaring’, for example if light was refracted through glazed surfaces so as to be scattered in random directions. Dr Ninham and Mr Blackwood agreed that glare hampers a driver’s ability to detect objects such as pedestrians.’ (joint report, [5.7]).
167. Overall, I cannot reach any firm conclusions about how conspicuous C would have been if she had stood for any appreciable length of time in a position where she could (in theory) have been seen by D1. As I said during the hearing, I have to be cautious about placing too much weight on the photographs in the bundle which attempted to re-create the scene. A number of the photos have artefact on them (ie, details which do not exist in reality).

168. Drawing the threads together, I am not satisfied on a balance of probabilities that C was standing for any appreciable length of time in a place where she should have been seen by a reasonable driver, driving appropriately and keeping a proper lookout. In other words, I am not satisfied that C was ever in D1's line of sight before she emerged moving, by which time the accident could not have been avoided at all, or lessened by D1 taking avoiding action.
169. This conclusion makes it strictly unnecessary for me to consider Mr McCluggage's Issue 2 and 3. However, I will do so, in case I am wrong in my primary conclusions.
170. Regarding Issue 2, the key question is whether D1 could still have avoided the collision if C paused for sufficient time to be reasonably noticed.
171. C's case on this is principally based on Dr Ninham's table at [4.7.11] (set out above) where he set out the results of his calculations based upon D1's assumed perception reaction times, first on the assumption that C was visible to D1 and waiting for three seconds before impact, and then alternatively, that she was visible to D1 and waiting for two seconds before impact. He assumes two periods of reaction time by D1: (a) the time it would have taken him to have perceived C as a potential hazard, by releasing the accelerator and covering the brake; and (b) the time it would have taken him to react to C moving by braking fully.
172. Thus for example, assuming a visibility period to impact of three seconds; and the two reaction times having been one second and half a second respectively, then the Fiesta would have stopped in time, and the accident would have been avoided. These are the only parameters used by Dr Ninham which produced this result. In every other scenario he considered, there would still have been an accident, but with the Fiesta travelling at a lower speed.
173. I do not challenge the arithmetic of Dr Ninham's calculations *on the basis that his assumptions are correct*. But *whether* they are correct is the key question. On that, there are serious doubts about them, which mean I cannot reach any conclusion in C's favour based on Dr Ninham's table.
174. Firstly, the assumption on which his first set of calculations is based – that C was visible to D1 to point of impact for three seconds – is not supported by the eyewitness evidence. As the Court of Appeal emphasised in *Taylor v Raspin* [2023] EWCA Civ 613, [34], that evidence should be the primary focus.
175. I have already found Ms Bryant's evidence to be vague on the question of whether C stopped and, if so, for how long. The best Ms Bryant put it from C's point of view was in her oral evidence to me that C stopped for 'a second, two seconds' and it was then a 'split second' after she started to move that she was hit. In her various statements she did not give a length of time, but described the pause in terms of how long it took C to look left and right. In her evidence to me she demonstrated how how recalled C looking, and they were quick glances left and right. They certainly did not take two seconds. I therefore find it impossible to interpret her evidence as supporting the figure of three seconds assumed by Dr Ninham.

176. Hence, I consider the calculations in this part of Dr Ninham's table to be not supported by the evidence. I appreciate Dr Ninham calculates that the period from C setting off at a 'brisk pace' from rest near the centre line to her being hit would have been 0.94s (report, [4.7.3], meaning that (taking a pause period of two seconds from Ms Bryant's evidence – the longest she suggested) the total period was 2.94s. But in my judgment there is too much imprecision in the evidence to reach this conclusion. Ms Bryant was not asked what she meant by a 'split second'. It also cannot be determined how fast C moved once she started to cross. Some evidence speeds of female pedestrians in their mid-40s was given (see eg Dr Ninham's report, [4.3.5]), but these just demonstrate there are significant variations (as is to be expected)). And as I have said it is not known with sufficient precision where C stood at rest (if she did). Dr Ninham based his calculations on his interpretation of where C stood, but there is no evidence as to whether that interpretation is right or wrong.

177. Dr Ninham's evidence on reaction times is at [4.6.2]-[4.6.4]:

“4.6.2 The available research described in Krauss' text suggests that:

‘In an emergency situation in which the hazard is relatively conspicuous and first appears directly ahead or nearly so, available research suggests that most drivers will respond in about 1.5 to 2.0 seconds. The minimum time to respond is unlikely to be much less than 0.75 second. These are simple or straightforward situations.’

4.6.3 The reference to “most drivers will respond in about 1.5 to 2.0 seconds”, when considered in the context of the research, means that most drivers will have responded within 1.5 to 2.0 seconds; that is not an average time.

4.6.4 The above times are for straightforward but unexpected hazards. The situation is a little different when a driver has observed a potential hazard and is monitoring it for the possibility that the hazard becomes one requiring an emergency response. The research reported by Krauss shows that if a hazard is seen and monitored before it is necessary to take action, that 'monitoring' time does not form part of an eventual PRT, but can reduce it if the driver has already seen the potential hazard and is already prepared to take avoiding action. The work of Professor Olson (which is reviewed in Krauss' text) suggests that the minimum PRT in such instances would be about 0.5 seconds and the 50th percentile time would be about 0.7 seconds.”

178. Mr McCluggage therefore questioned the reliability of Dr Ninham's assumptions about D1's reaction times. He said that Dr Ninham had taken the

minimum times, and had not allowed for difficulties in C's conspicuity given her clothing and the conditions. I consider there to be force in that criticism.

179. Mr McCluggage also said braking (even hard braking) is not an instantaneous process, because there is a delay in a brake pedal being pressed and the braking process starting, which Dr Ninham had not allowed for. Again, I agree.
180. For these reasons, I cannot rely on Dr Ninham's first or second set of calculations (ie, those based on three seconds and two seconds respectively). Furthermore, this second set of calculations even if justified, show that the accident could not have been avoided, only that C would have been hit at a slower speed.
181. As Mr McCluggage said (Closing Submissions, [5.5]), and I agree, Dr Ninham's assumed figures for complete avoidance (three seconds/1.5s/0.5s) rely on excessive reaction time combined with factual speculation.
182. On this basis, C's case on avoidability fails on a balance of probabilities.
183. I come, then to Issue 3, and C's secondary case, namely that at lower speed C's injuries would either have been avoided or lessened. Here, I will assume in C's favour as a general proposition that if D1 had slowed, C would likely have been further out into the eastern carriageway to some degree when she was struck.
184. In my judgment there are just too many uncertainties to enable a conclusion to be reached in C's favour to the relevant standard. C's case relies upon her being hit by the Fiesta at a slower speed, and in a different place, so that she would have gone onto the bonnet and so not have been injured as she was. The central problem with this is that the mechanism of injuries in road accidents involves a multi-factorial analysis and the evidence is too imprecise and uncertain to allow that to happen.
185. The impossibility of making any sort of reliable assessment of outcome in that scenario is underscored by the fact that the mechanism of actual injury here was unusual, in that C was hit at a relatively slow speed and, in fact, so slow that she did not suffer any leg injuries despite being hit on her leg by the Fiesta, but that it was her spinning/twisting and falling and two head strikes whereby she sustained her tragic injuries.
186. C's witness, Professor Vloeberghs, referred in his report (which he adopted as his evidence in chief) to the paper by Cuerden and Richards, *Pedestrians and their Survivability at Different Impact Speeds*. They say (my emphasis, footnotes omitted):

“While speed is certainly a factor directly linked to the severity of injury during pedestrian-vehicle collisions, other factors also come into play, *making a pure assessment of the effects of speed very difficult*. For example one study has shown that a long bonnet on a car reduces the injury risk of pedestrians in collision with that car [4]. This difficulty is exacerbated by the varied nature of pedestrians, who will be

of all ages, and have very different biomechanical tolerances [2]. As people age their biomechanical strength decreases leaving them more vulnerable to injury for a given loading condition.

For several reasons, including those noted above, it is impossible to predict solely from the speed of an accident what the injury outcome of a given pedestrian will be. Fatal accidents have occurred at very low speeds, under 20 kph and as low as 12 kph; and slight injuries have been seen at much higher speeds (above 40 kph) [2] [4]”

187. Professor Vloeberghs broadly agreed with these paragraphs and acknowledged, as I have said, that a pedestrian’s outcome after being hit is a ‘multi-factorial issue’. As to the first sentence of the second paragraph he said ‘many things can happen’, but they become rarer at slower speeds. In his clinical practice he had dealt with cyclists who had suffered brain injury at 15mph even wearing helmets. He said that the sort of injuries C suffered (including bilateral fractures and axonal injuries), ‘you would not expect to see at low speed’. He agreed that fatal injuries could be caused by low velocity impacts, eg, by falling over, but would need to define what sort of injury is involved, eg an extra-dural haematoma. He referred to the exponential curve in the paper showing that the cumulative percentage of non-minor injuries starts to increase significantly above 20kph (about 12.4mph). The percentage at 20mph is about 25%. He agreed (although not in terms) it is unlikely that serious brain injury would be caused in a pedestrian being hit at 20mph.
188. At a minimum, I find Cuerden and Richards’ research does not assist C’s case.
189. Mr McFarlane gave evidence. He adopted his report subject to one minor immaterial correction in [104].
190. In cross-examination he accepted some energy had been imparted to C by the Fiesta, but he could not say how much, which caused C to rotate and fall. He thought the right side strike was with the wheel of the Clio and the left strike was with the ground. As a generality, he agreed if C had been hit at a slower speed, less energy would have been imparted to her.
191. He said that he had not considered the question of frontal impact because he had not had both reconstruction experts’ reports when he wrote his report. His opinion on this issue is set out in the joint statement with Professor Vloeberghs (see above at (q)).
192. He said, on the hypothesis C would have been hit more ‘square on’ by the Fiesta at lower speed, he said that predicting outcome would depend on number of factors, including how she interacted with the bonnet, and where her head hit, eg, on the windscreen (which is generally more ‘forgiving’) or the edge of the bonnet (which is not).
193. He said this accident occurred at substantially below the speed where one not have expected a severe brain injury of the type C suffered to have resulted;

whether a lower speed would have changed the outcome would depend upon findings of fact, rather than matters of medical opinion.

194. He said one of the problems with relying upon statistics is the that the type of impact (eg, glancing or frontal) all 'get lumped together'.
195. I accept Mr McFarlane's evidence that the predicted the outcome had C been hit at a slower speed depends on a number of variables, as I have already indicated. Having carefully thought about it, I have reached the conclusion that Mr McCluggage is right that there is simply too little objectively certain evidence to allow for these variables to be determined, and hence the outcome predicted. I could only uphold C's secondary case on the basis of impermissible speculation.
196. Among the uncertainties are these. I do not know and cannot determine: how slow D1 would have been travelling; where C would have been bit by the Fiesta had it been travelling at that speed, ie, how far along the bonnet (and Dr Ninham's calculations, if they show anything at all, show we are dealing in fractions of a second); how C would have reacted in that scenario, and what effect that would have had; how C would have interacted with the Fiesta; whether she would have been thrown up; whether her head would have impacted the car; if so, where (eg, the 'harder' A-pillar, or the 'softer' central windscreen); what injury would have been caused at that point; whether her head would then have impacted the ground after being thrown from the car; and if so, with what consequences.
197. For example, the second set of Dr Ninham's calculations have the car travelling at between 15mph and 18mph, and the impact occurring between 0.12s to 0.03s before it actually did. The difference is less than one tenth of a second. Given the inherent imprecision of the evidence, I simply cannot determine how far across the car C would have been in these fractions of a second and what effect that would have had.
198. In short, I cannot accurately or reliably determine whether a slower speed would have altered C's specific injuries and if so, to what extent, if at all.

Conclusions

199. For these reasons, whilst I have great sympathy for C, who has suffered serious and life changing injuries as a result of a moment's inattention, and for her family, I must dismiss her claim in negligence against the Defendants.
200. In light of this finding, the question of contributory negligence does not arise. Suffice it to say that if I had found D1 to have been negligent, I would have reduced C's damages very substantially to take account of her contributory fault.