

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

[2024] EWHC 2142 (KB)

Before Ms Clare Ambrose sitting as a Deputy High Court Judge

B E T W E E N:

MISS JESSICA ROSE GADSBY
(A Protected Party by her Mother and Litigation Friend MS LAURA YOUMANS)
Claimant

and

MRS JULIE HAYES (formerly EMMS)
Defendant
Satinder Hunjan KC (instructed by Affinity Law) for the **Claimant**
Marcus Dignum KC (instructed by DWF Law LLP) for the **Defendant**

Hearing dates: 9-12 July 2024

Approved Judgment - 19 July 2024

Introduction

1. On Friday 31 October 2014 at around 3.35pm the Claimant, then aged 12 years, was using a pedestrian crossing in Leicester on her way home from school when she was run over by a Vauxhall Astra driven by the Defendant. She suffered serious injuries as a result, in particular fractures to her left femur, left wrist and also head, facial and scalp injuries.
2. The trial before me was on liability. The issue is whether the Defendant is liable for having negligently caused the Claimant's injuries, and if so, whether there was contributory negligence and what reduction should be made to account for that.

The parties' cases and the issues

3. In outline, the Claimant's primary case as to how the collision took place was based on the evidence of her sister Ms Kacie Gadsby, aged 11 years at the date of the accident, who said that that they were both on the nearside pavement waiting to cross with other children. When the lights changed in the pedestrians' favour, the Claimant and others crossed (but her sister Kacie stayed back). There was a group of about three or four children who were around two steps in front of the Claimant. Kacie called out to her to come back because she had seen a girl on the other side she thought was going to cause trouble. The Claimant turned back around half way across the crossing and was walking back towards the nearside pavement when the Defendant struck her left side. The pedestrian signals remained green in the Claimant's favour throughout.
4. The Claimant maintains that the Defendant was negligent because she was driving too fast and failed to take care and react appropriately at an earlier stage. She says that the Defendant's car hit the Claimant at around 20-25mph. The Defendant was negligent whether the Claimant had already been on the crossing (her primary case) or had run or stepped out (the alternative case if the Defendant's account was preferred). In closing the Claimant's counsel maintained that she should have been driving much more slowly, at 10mph or less, by the time she arrived at the zig-zag road markings around 10m from the crossing, and no more than 15mph in the earlier approach at 50-60m from the crossing. Even if the Defendant's version of events is preferred, she drove without proper concentration and observation. Even if driving at a higher speed a prudent driver would have been able to avert the injuries suffered if she been keeping a proper lookout, taking reasonable precautions and ready to react and avoid.
5. The Claimant's counsel maintained that whether the Defendant collided with the Claimant on her left-hand side (her case) or on her right-hand side (the Defendant's evidence) was a significant and determinative issue in deciding whether the Claimant's version of events should be accepted. If the Defendant's version is right then it would be impossible that the Claimant would have been injured on the left side, which in fact is what happened. The Defendant's attempt to explain the injuries by way of a rotation was bizarre and supported by no evidence whatsoever.

6. The Defendant accepts that if she had driven through a red light, or if the Claimant had been on the crossing for several seconds as described by Kacie then she was negligent in continuing to drive into the crossing. She also accepts that if it is found that she was driving above 25mph at the crossing then she was negligent.
7. The Defendant takes issue with Kacie's account and relies on the other eye witnesses' account. She says that she was looking out and took full account of there being a crossing with children around, and she had reduced her speed to around 15mph by the time she reached the crossing, having been driving at around 20mph when making her approach. Even if it is found she was travelling at 20mph she submits that this was reasonable as there was no indication that any of the children were about to try and cross the road. The lights were showing green for traffic and red for pedestrians, and when the Defendant was very close to the crossing (not more than about 1.25s away) the Claimant ran into the road having looked to her left but not right. She says her driving met the standard of a reasonable and prudent driver.
8. The main factual issues prior to trial were as to:
 - a) the Claimant's conduct immediately prior to the collision;
 - b) the side of the Claimant's body that was hit by the car;
 - c) the places at which the Claimant's body and the car ended up following the collision;
 - d) whether the traffic lights were green, red (or amber) when the Claimant entered the crossing and when the impact took place;
 - e) the speed at which the Defendant's car approached the crossing, and at which it hit the Claimant;
 - f) whether the Defendant's driving was negligent?
 - g) whether that negligence cause the Claimant's injuries? Would the same injuries have been suffered even if the Defendant had exercised reasonable care, observation and attention? Was there contributory negligence?

9. There were marked conflicts in the witness evidence and it is appropriate to test it against the expert evidence. Given that both sides relied heavily on the expert evidence in making their case on the basic underlying facts I have drawn not drawn the main conclusions on those facts until addressing these issues in the round.

The law

10. It was common ground that the Defendant is taken to know the principles of the Highway Code. Rule 206 states that:

"Drive carefully and slowly when in crowded shopping streets...or residential areas"

11. Rule 207 states:

"Particularly vulnerable pedestrians

Children and older pedestrians who may not be able to judge your speed and could step into the road in front of you."

12. Rule 208 states:

"Near schools. Drive slowly and be particularly aware of young cyclists and pedestrians. In some places, there may be a flashing amber signal below the 'School' warning sign which tells you that there may be children crossing the road ahead. Drive very slowly until you are clear of the area."

13. There was little dispute as to the law applicable, as outlined by Cavanagh J in *Chan v Peters* [2021] EWHC 2004 (QB):

16. 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. The burden of proof, on the balance of probabilities, rests with the Claimant.

*17. A very helpful summary of the law was set out by HHJ Stephen Davies, acting as a Deputy High Court Judge, in *AB v Main* [2015] EWHC 3183 (QB), at paragraphs 8- 14 , in which he said, in relevant part:*

"First, and stating the obvious, it is for the claimant to establish on the balance of probabilities that the defendant was negligent. The standard of care is

that of the reasonably careful driver, armed with common sense and experience of the way pedestrians, particularly (in this case) children, are likely to behave: Moore v Pointer [1975] RTR, per Buckley LJ. 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. 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, per Coulson J at [5].

Second, however, drivers must always bear in mind that a motorcar is potentially a dangerous weapon: Lunt v Khelifa [2002] EWCA Civ 801, per Latham LJ at [20].

Third, drivers are taken to know the principles of the Highway Code

....

Fifth, in another decision of the Court of Appeal, Lambert v Clayton [2009] EWCA Civ 237, [Smith LJ] also cautioned trial judges against making findings of fact of unwarranted precision when that was not justified by the evidence, on the basis that treating what could in truth be no more than "guesstimates" as if they were secure findings of fact could easily lead to an unjust result either way [35-38]. At [39] she 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."

Sixth, trial judges should also exercise caution in relation to the evidence of accident reconstruction experts. Lambert itself was a case in which the trial judge had relied heavily on the evidence of accident reconstruction experts and the calculations which they had produced. In Stewart v Glaze (ante) Coulson J, in §2.2 of his judgment at [8-10], 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; (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".

...

Eighth, a further danger...that of approaching the question of whether or not the defendant's driving fell below the requisite standard in a vacuum, without 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 .

....

19. In *Stewart v Glaze* , at paragraph 7, Coulson J said that, when considering allegations of negligence against the drivers of cars, "Compliance with speed limits and proper awareness of potential hazards can often be critical in such situations." At paragraph 10, Coulson J said:

"10. In my judgment, it is the primary factual evidence which is of the greatest importance in a case of this kind. The expert evidence comprises a useful way in which that factual evidence, and the inferences to be drawn from it, can be tested."

14. Coulson J also provides guidance in *Stewart v Glaze* [2009] EWHC 704 (QB):

"5. I have to apply to Mr Glaze's actions the standard of the reasonable driver. It is important to ensure that the court does not unwittingly replace that test with the standard of the ideal driver. It is also important to ensure, particularly in a case with accident reconstruction experts, that the court is not guided by what is sometimes referred to as '20-20 hindsight' . In *Ahanou v South East London & Kent Bus Company Limited* [2008] EWCA Civ 274, Laws LJ said:

"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."

6. In that case, the judge at first instance had found the defendant's bus driver negligent, although the damages were reduced by a finding of 50% contributory negligence. The Court of Appeal concluded that the judge's findings could not stand and they held that the bus driver was not negligent at all. In his judgment, Lawrence Collins LJ disagreed with the judge's finding that the bus driver should have carried on keeping an eye in his nearside mirror to look for pedestrians on a particular part of the carriageway at the entrance to Peckham Bus Station. He said that this was a "counsel of perfection and it ignores the realities of the situation."

The evidence

15. I heard oral evidence from the Claimant, and she called her mother and sister Kacie Gadsby. The Defendant gave evidence and called Mr John Skinner and Mrs Stacey Herbert.

16. The Claimant called expert evidence from:

- a) Mr Robert Elliott, an expert on accident reconstruction;
- b) Mr Peter J Kilpatrick, a neurosurgeon;
- c) Mr Daren Forward, an orthopaedic trauma surgeon;

17. The Defendant called expert evidence from:

- a) Mr Stephen Henderson, an expert on accident reconstruction;
- b) Mr Robert Macfarlane, a neurosurgeon;
- c) Mr R Gregory, an orthopaedic surgeon.

The background facts

18. Many facts were not in dispute. The accident took place at around 3.35pm on Friday afternoon on the westbound lane of Aikman Avenue on a pedestrian crossing about 6m away from the junction with St Oswald's Road.
19. Aikman Avenue has a generally east/west orientation and the westbound direction leads to a larger arterial road (New Parks Way). It is a fairly built up urban single carriageway with one lane for traffic in each direction with a speed limit of 30mph. Each lane is about 3.5m wide.
20. As you approach the crossing in a westbound direction there is a parade of shops on the north (offside) of Aikman Avenue. The junction with St Oswald's Road is on the other side, i.e. south (nearside). At the western end of this parade there is a pharmacy which is opposite the pedestrian crossing. There are parking bays on each side of the road alongside the parade of shops, with a bus stop around 130m before the crossing and not far after it.
21. Both St Oswald's Road and Aikman Avenue have a wide pavement in the area of the crossing and junction. The nearside footpath of Aikman Avenue next to the crossing is 7m wide and the pavement on the other side is of similar generous width. There were additional grassy verge areas beyond the pavement. All the witnesses' evidence was that there were children in the areas beyond the

pedestrian crossing and Mrs Herbert recalled seeing a large group of teenagers on the St Oswald's Road side.

22. There is a striped bollard and a number of concrete bollards on the edge of the pavement around the junction with St Oswald's Road but the corner of the junction is rounded and the bollards start about 3m from the entrypoint to the crossing.
23. The pedestrian crossing is a toucan crossing with traffic lights and buttons for pedestrian demand at each side of the crossing together with traffic signals for pedestrians and cyclists (with a green man or cycle, and also bleeping sound signals). A toucan crossing is effectively a pelican crossing that also provides signals for a cyclist but the traffic lights do not have a flashing amber phase (Highway Code Rule 199).
24. The entry point to the crossing is marked by paving of a different colour with bumps, and a lower kerb flush with the road, and the width of the crossing was 3.7m. On the carriage way the width of the crossing is marked by metal road studs. There are zig-zag markings for westbound traffic that start around 10m before the crossing.
25. At the time of the accident visibility was good. The road and weather conditions were dry and clear. As the reconstruction experts agreed, the crossing and traffic lights would have been in clear view to approaching drivers for about 50-60m and pedestrians at the crossing would have had a mutual view over that distance.
26. There was some differences on the evidence as to how many children were on the pavement at the crossing itself when the accident occurred. Based on all the eye witnesses and the Defendant's statement evidence, I find that there were around 3 to 5 children at either side.
27. The Claimant and her sister Kacie left school at around 3.20pm and approached Aikman Avenue by walking along St Oswald Road from their school which is south of the crossing.

Where did the car and the Claimant end up following the collision?

28. There was sufficient common witness evidence and consensus from the experts to conclude that the Claimant was struck by the nearside front aspect of the Defendant's car, and she was lifted to hit the bonnet but not the windscreen. There is also sufficient common evidence between the witnesses and the reconstruction experts to find that the car was proceeding along the middle of the left hand carriage way, and the Claimant entered the road around the middle of the crossing. It was also common ground that the Defendant did an emergency stop.
29. The Claimant was found lying on the ground face down, with her head facing towards the pedestrian crossing. The impact caused a tear in the right hand sleeve of her school blazer at the elbow. There had been an issue on the evidence as to precisely where the Claimant had fallen after the collision, and where the Defendant's car ended up. The Defendant's statement of 2015 suggested that her car ended up on the crossing on the nearside lane within the road studs
30. Kacie's statement of 2015 said the Claimant travelled along the road and finished up near the bollards at the junction of St Oswald's Road. In 2019 she said that she ended up in front of where the car had stopped just to the left of the car. The Claimant's solicitor had drawn up a sketch plan with some measurements which Kacie referred to and attached to her statement. Kacie rightly accepted in evidence that the solicitor's plan wrongly suggested that the crossing was 1.66m wide (it was actually 3.7m) and inaccurately placed the Claimant's body around 1.85m too far from the crossing. In evidence she also accepted that the car had stopped in the crossing (consistent with the other witnesses, including the Claimant's mother) and the Claimant had ended up just in front of the crossing which was still near the bollards.
31. The police were called and arrived very quickly as evidenced by the police report. The Defendant was breathalysed and questioned.

The injuries

32. The orthopaedic surgeons agree that the Claimant suffered the following injuries
- a) a Colles' type fracture of her left wrist;
 - b) a complex and serious injury to her left thigh involving a combination of a minimally displaced extracapsular neck of the femur fracture and a displaced midshaft fracture.
33. The extent of the head injury remained disputed for the purpose of quantum but the experts agree that she suffered a head injury which involved right-sided scalp and facial injuries. They agreed that she had a minor reduction in her Glasgow Coma Score which improved relatively quickly to normal levels of consciousness. The first CT scan taken at the time of admission to hospital showed swelling over the right tempoparietal region and swelling to the right orbit. It did not show any evidence of macroscopic intracranial damage which would result in bleeding but this does not discount a microscopic injury such as a diffuse axonal injury, which would have required an acute MRI scan investigation to detect.
34. The Claimant also had gravel rash on the right side of her head. The reconstruction experts and witnesses agreed that she impacted the bonnet of the car but not its windscreen. It was also common ground that the thigh fracture was caused by impact with the car whereas the head injury was caused when her head impacted with the road. The experts were not agreed as to whether the left wrist injury was caused by hitting the car or the road.

Damage to the car

35. As a result of the Defendant's car hitting the Claimant, it sustained damage to its bumper by way of a contact mark below the headlamp, to the nearside head lamp lens, which was cracked, and to its bonnet by way of two small indentations on the nearside, one on the leading edge, and the other roughly half way towards the bottom of the windscreen. These factual aspects were agreed by the accident reconstruction experts.

The eye witness evidence

36. All of the witnesses who gave evidence orally were honest witnesses who were genuinely doing their best to convey a truthful recollection of events. The accident happened in only a few seconds almost ten years ago when the witnesses were not expecting anything particularly significant to happen. It is not surprising that their recollections do not exactly coincide.
37. The Claimant has no recollection of the accident but was able to give helpful evidence of what she did remember. Her mother usefully noted that when she arrived on the scene the car was on the crossing.

Ms Kacie Gadsby

38. Kacie Gadsby's witness statement was given on 16 September 2015, almost 11 months after the accident and stated that it was given when she was 11 years old. She recalls leaving school with her sister at 3.20 and says that:

“We joined a group of children also waiting at the pedestrian crossing (I didn't know any of them), but I think they came from my school (there were 3 or 4 children). We all waited for the pedestrian lights to change. When the lights went to red for the traffic to stop and the green man came on the group of 3 or 4 people and Jessica started to cross on the pedestrian crossing towards the pharmacy. Jessica was following about two steps behind the other children.

I did not begin to cross (follow Jessica) because I thought [a named girl] who was on the opposite side of the pedestrian crossing the Pharmacy side, was going to cause trouble.

Jessica was about in the middle of the crossing (half way across) when I called her to come back to me.

Jessica turned around and was walking back to me (still on the crossing) and the green man still showing when a car coming from my right towards the direction of New Parks drove straight into Jessica.

Jessica had put her left hand out and touched the car to try to avoid it, but Jessica went over the bonnet and went into the air, then she hit the floor on her right-hand side. Then as she travelled along the road she finished up near the bollards at the junction of St Oswald Road.”

39. In a later statement in 2019 she said that:

“Jessica and I had left school together and were walking home. There was just the two of us as would be normal....Jessica started to cross the road whilst I remained on the pavement...I believe that Jessica thought that [the named girl] was shouting to me, but I knew she wasn't. Therefore I shouted to Jessica – “she's not shouting me, come back.” At this time Jessica was about half way across the road. Having heard me shout to her Jessica turned back around and started walking back towards the pavement and towards me. Jessica was walking at normal walking pace and was facing me as she walked. I recall that as Jessica was walking back towards me she was still looking to her right and left for traffic (as would be normal for both of us when we cross a road). ...

Jessica must have seen the car at that time as she raised her left hand/arm up as if she knew that the car was going to hit her.

Throughout this period of time I can remember hearing the bleeping sound for pedestrians to cross and seeing the green man still flashing...

I then remember the car hitting Jessica on the left hip. Jessica was about 1 step away from being on the kerb where I was stood at the time the car hit her. She was roughly about ½ way in the width of the crossing. Jessica's body was thrown up onto the bonnet of the car, then up towards the windscreen (although her body didn't hit the windscreen”.

40. As explained above, her statement had referred to a sketch plan of the collision site but she rightly accepted that this plan was inaccurate.
41. In her oral evidence she explained that she had been talking to her friends at the time, some 5 steps back from the Claimant.

The Defendant

42. The Defendant gave a short statement to the police around 25 minutes after the accident stating:

“I was driving down Aikman Avenue toward the junction of St Oswald's Road, when the young girl ran out in front of me. I was travelling at under 30mph. This was at the traffic lights and they were on green for me to go. She looked left but not right.”

43. In her witness statement dated 3 January 2015 she stated that:

*“I was travelling west along Aikman Avenue heading home at a speed of no more than 20 mph....
As I approached the pelican crossing and got around 5 yards away from the pelican crossing I noticed the pedestrian that I was to collide with for the first time. ...*

I would have slowed down as normal to around 15 mph ... I notice that the 12-year-old girl was on my nearside on the edge of the road at the pelican crossing. The traffic lights at the pelican crossing were still on green and they had been on green ever since I saw them. I noticed that the girl had looked to her left ... and then stepped out into the road across the pelican crossing and into my path. I reacted by doing an emergency stop but I was already so close to her. I noticed that the young girl looked to her right just before impact but by this point she had already stepped out into the road. The young girl put her right arm out onto my bonnet just as my front nearside corner collided with her right-hand side. I was already braking by this point and I stopped within a few yards with the young girl sliding to the floor in front of my vehicle. When I came to a stop I was straddling the pelican crossing with her head towards my vehicle on impact about 2 ft away.”

44. The Defendant’s oral evidence was confused and inconsistent in some respects, for example about how many children were at the crossing, suggesting at one point that there were no children there. I prefer the evidence of Mr Skinner, Kacie and Ms Herbert suggesting that there were 2 to 5 children near the crossing on each side. The Defendant also put forward a new account in saying that she saw the Claimant run up to the crossing (as opposed to running into the crossing) and I reject that evidence as inconsistent with the other evidence.
45. The Claimant’s counsel could properly criticise this evidence although I could understand how the Defendant became confused. Some questioning was critical of her use of language which understandably made her defensive. For instance she was questioned at length at the outset as to why she had said that the Claimant put her arm out on impact if she had meant that she put her hand out. I also accept the Defendant’s evidence that she has been traumatised by the incident which may have influenced her responses to repeated questions. The Defendant was trying her best to answer questions honestly and frankly, and the changes in her evidence were not self-serving. For example, she accepted without hesitation that she had apologised to the Claimant’s mother when she arrived on the scene ten minutes after the accident.
46. Overall, I find that the Defendant did not have a reliable independent recollection across all aspects when cross-examined 10 years after the event. The inconsistencies mean that I carefully test the statements she gave earlier to

see whether supported by other evidence. They did not, in themselves, justify rejecting the basic account she gave to the police at the time.

Mr John Skinner

47. Mr John Skinner gave a police statement on 9 January 2015, and confirmed it in a witness statement on 2 September 2021. He is a local refuse collector and he was waiting for his son to come out of school near the pharmacy on the north side of the crossing. He recalls being about 5m away from the crossing. His statement goes on to say:

“I could see school children on the other side of the road, a group of young girls crossed the road using the pedestrian crossing which was on green for them and red for cars. One of this group shouted to another girl who was still standing on the opposite side of the road from where I was still standing. I could hear this girl say something like “I will catch you up”. I then saw this girl look at her mobile phone in her hand and then just stepped out into the road on the pedestrian crossing. At this time the lights were on green for traffic and red for pedestrians. As soon as the girl stepped onto the crossing she was hit by a by a car which was traveling towards the fire station [which is on New Parks Boulevard]. The girl was lifted up and thrown forward. She landed on her head near to the junction of St Oswald’s Road.”

Ms Stacey Herbert

48. Ms Herbert is a local secondary school teacher. She gave a police statement on 30 November 2014. She had parked her car in a parking bay outside the pharmacy as she was picking up a prescription. In her statement she said that when getting out of her car she observed around 50 teenagers on the opposite side of the road. She clarified in evidence that this was not an exact estimate but reflected that she noticed there was at least the number of a class (i.e. more than 30 children). Mrs Herbert says:

“I saw a large group of teenagers approximately 50 in number standing at the opposite side of the road to me and around the pedestrian crossing and beyond. This group of teenagers were doing nothing at this time that caused me concern. I saw that the WAIT sign was lit on the pedestrian crossing but (sic) the red man was still showing. I was about to reach back into my car for my handbag when I saw a young lady step into the road. She appeared to be trying to run across the road and I saw that she only looked to her left towards New Parks Way and not to her right. I saw a white or light-coloured car approaching the pedestrian

crossing towards New Parks Way. At the time the young lady stepped out into the road this car was about 2 metres away. I cannot say at this point what colour the traffic lights were on for the car but my best guess would be either amber or green. I do not think they were red. None of the other teenagers standing at the pedestrian crossing had moved and this is what made the movement of the young lady stand out. I then saw a small group of girls approximately 5 in number standing at the same side of the road as myself. I believe that the young lady was crossing the road to be with this group. Because of the position of the small light coloured car I did not see the actual impact between it and the young lady but I did hear a loud bang and screams. I saw the young lady lofted about a foot up into air and then propelled forward about a metre in the direction of New Parks Way She landed on the road, close to the kerb with a loud thud, I saw that the light coloured car had stopped within the markings of the pedestrian crossing and I would say that she was about a metre forward of where the collision had occurred...I would say that at the time of the accident I was about 5 metres away.”

Mr Patrick Allen

49. I gave the Claimant permission to adduce a statement prepared for the purpose of litigation by Mr Patrick Allen dated 31 August 2015. He said he had been on a bus on the upper deck a couple of cars behind the Defendant’s car, and it had been going fairly fast and hit the girl while the traffic lights were still red, with the driver showing no intention of stopping. The Claimant’s solicitors had been told that he had no recollection beyond the statement and was unwilling to attend. His statement is to be given limited weight since he had no good reason for being unwilling to stand by his evidence. His statement was not contemporaneous and it was significantly inconsistent with all other witnesses in suggesting that the Defendant “did not stop and with no intention of the driver stopping”.

A.1 Expert evidence

50. The experts were able helpfully to reach agreement on several matters. All the experts gave honest evidence. They provided helpful expert opinion on some of the inferences to be drawn from the damage to the car, and from the nature of the injuries. The Claimant was diagnosed with Turner’s Syndrome some years after the accident took place. I take it into account as part of the background for the expert evidence and also some of the factual evidence.

A.2 Accident Reconstruction

51. Both experts were well qualified with Mr Elliott having the benefit of significant experience of attending and investigating accidents as a police officer. On some matters Mr Elliott's report had tended towards reconstructing the accident on the basis of Kacie's evidence. In particular he had relied on a sketch plan prepared by the Claimant's solicitors for a large part of his conclusions. His joint statement and oral evidence were more helpful.
52. The Claimant's counsel criticised Mr Henderson heavily for having missed the indentation on the main part of the bonnet in his first report. Mr Henderson had frankly accepted that this was a careless omission. He had properly addressed the relevant damage in his joint report and I considered that his earlier omission was not a matter that put his evidence in doubt.
53. The accident reconstruction experts reached considerable agreement as follows.
 - a) The traffic lights and crossing were clearly visible to approaching drivers but the limit of mutual view between the parties when the Claimant was at the nearside entry point to the crossing was about 50-60m.
 - b) The Claimant came into contact with the Defendant's car about 0.4m from its nearside extremity.
 - c) At the point of impact the Claimant was either stationary or moving slowly given the damage to the car. The angle of alignment of damage on the front of the car was not consistent with her running across the road when she was struck.
 - d) Assuming the Defendant's car was positioned centrally within its lane when impact occurred (which I have accepted for reasons set out above), the Claimant would have been positioned approximately 1.3m from the southern kerb entry point of the crossing when she was struck.
 - e) The indentation half way up the bonnet is likely to have been caused by a shoulder, head or elbow as she wrapped onto the bonnet. If she put her

arm out it was more likely to have come into contact with the outer edge of the bonnet. (There was a separate issue addressed by the orthopaedic experts as to whether the Claimant's left wrist fracture was caused by impact in that area thus causing that indentation, or when she hit the road).

54. The reconstruction experts agreed in their joint report that the speed of the Defendant's car at impact was likely between 15mph and 25 mph. This was based on the witness statements on both sides, the pattern of damage to the car, their experience, and also well-established methods for reconstructing an incident including analysis of pedestrian throw, reaction times and stopping distance.

Pattern and extent of damage

55. In relation to pattern of damage, Mr Elliott relied on research literature suggesting that at low speed impacts, typically below 10mph, there is only contact between the front of the car and the pedestrian resulting in little or no vehicle damage and very minor injury, if any, to the pedestrian. Impact speeds around 10 – 15mph, are usually sufficient to lift the pedestrian onto the vehicle bonnet, where a secondary impact occurs. Speeds around 20mph are usually sufficient to simply lift the pedestrian onto the bonnet and higher impact speeds, above 20mph, are usually sufficient to lift the pedestrian back into the vehicle's lower windscreen area. As the impact speeds increase above 20mph, the secondary strike is correspondingly higher on the windscreen, and at high impact speed, around and above 40mph the pedestrian is lifted to the roofline and above.
56. Mr Elliott said that his own personal experience led him to conclude that the profile and pattern of damage caused by the Claimant's interaction with the front of the car was consistent with an impact speed within the range of 20-25mph. He later explained that this was based on his subjective experience.
57. Mr Henderson suggested that the pattern of damage on the car was not a particularly reliable source of information for assessing impact speed, but could

be used as a cross-check. Here it was consistent with an impact speed under 20mph, as supported by the research literature referred to above.

Pedestrian throw/ Forward projection

58. A pedestrian will commonly be projected forward in a collision with a car. Calculations based on the pedestrian's centre of mass and distance thrown can be used to estimate the car's speed. As explained above, the experts agreed on where the collision happened but the distance the Claimant was thrown was initially less clear.
59. In his report Mr Elliott had relied on a sketch plan prepared by the Claimant's solicitor (and attached to Kacie's statement) for the purpose of identifying where the Claimant ended up. On this basis he calculated that the pedestrian throw had been 6.2m assuming she was in the middle of the crossing (with a range of 4.5m to 7.8m if she had been at either side of the crossing).
60. Using research on the principle of pedestrian throw dated from 2000 his opinion was that a throw distance of 6.2m suggested an impact speed of about 20mph +/- 5mph (with 95% confidence). The same research showed that if the throw range was between 4.5 to 7.8m then the impact speed would be 12 to 27mph (i.e. 17-22 mph +/- 5mph), giving a mid-range figure of 19.5mph. He explained that he had discounted the lower end of this range because based on his own experience, he did not consider that the pattern of damage seen was indicative of the speed being as low as 12mph.
61. Mr Elliott also referred to more recent research from 2009 which suggested an impact speed of 17 to 22mph for a throw of 6.2m giving 19.5mph as the mid-range figure, and an impact speed of between 15mph to 25mph for a throw range of between 4.5 to 7.8m.
62. Using the same approach Mr Henderson gave an estimated impact speed range of 16 to 20 mph applying the Claimant's mass and using a 6m throw, and 14 to 23mph (with 95% confidence) giving 18.5mph as the mid-range figure for impact speed.

63. As set out above, Kacie accepted that the sketch plan attached to her statement was incorrect. The pedestrian throw was not 6.2m or 7.8m, but more like 4.5m. This places the relevant distance at the bottom end of the range 4.5m to 7.8m that Mr Elliott had applied. Mr Henderson's evidence was that the reduced pedestrian throw would suggest a reduction in impact speed of roughly 3mph from the midpoint figure in the range (i.e. 2mph less for every metre of reduction in throw distance). On this basis the earlier estimate of impact speed for both experts giving midpoint figures of 18.5mph or 19.5mph respectively based on a throw distance of 6.2m should be reduced giving a midpoint of 16mph, and a commensurately lower range.

Stopping distances

64. The Defendant's statement was that she was already braking by the time of impact, although Kacie said she only did an emergency stop after impact. All the witness evidence was consistent with sudden stopping, and it is most likely that the Defendant braked on impact, or momentarily before.
65. The speed of a car can be assessed based on braking distances, and the experts used common friction values for this purpose. As explained above, the experts agreed on the place where the collision took place (i.e. 1.3m from the nearside kerb in the middle of the crossing) and I make findings of fact to the same effect.
66. Mr Elliott took the view that the maximum distance between the collision and car coming to rest was 7.8m and the impact speed could not have been as high as 27mph because the braking distance would have been much higher than 7.8m. He did not assess stopping distance on any other basis.
67. Mr Henderson also assessed stopping distance based on the car ending up within the crossing and this gave an impact speed of 13mph, and 22 mph if it had come to rest further forward by the junction with St Oswald's Road. Mr Elliot agreed that if the car stopped on the crossing (which I have found above) then 13mph reflected the figure for impact speed derived from the stopping distance.
68. Both experts acknowledged that if the Defendant had braked before the collision then the approach speed would be greater than the impact speed. Mr Henderson

suggested that if she was braking when impact occurred then the speed derived from the pedestrian throw calculations would be similar to the impact speed, but if she was not braking the impact speed would be less than the figures given by the pedestrian throw figures. Mr Henderson explained that brake lag means that brakes will not work instantly so momentary pre-impact braking may make little difference to impact speed. His figures assumed instantaneous application of maximum braking which would overestimate the vehicle speed on braking, but give some allowance for the brakes having been activated. I considered that this was an appropriate approach.

Reaction times

69. The experts agreed that if the Claimant entered the crossing from the south (nearside) kerb and travelled about 1.3m to the point of impact this would have taken her about 0.75 seconds to achieve if she was walking, and around 0.3s if running.
70. They agreed that if the Claimant had walked from the nearside kerb to the middle of the road and then walked back before being hit then she was on the crossing for 3.1 seconds before being hit. If she was walking slowly (as Kacie suggested in evidence, and the Claimant maintained) then she would have taken longer.
71. They agreed that when struck the Claimant was within about 0.75s of reaching the safety of the nearside pavement. If the Claimant had turned around immediately prior to impact then Mr Elliott agreed that the time taken to respond and turn would have been up to an additional 0.5s, and accepted that this would add up to around 1.25s if added to the time estimated for her to travel to 1.3m from the nearside kerb.
72. Based on the Defendant applying her brakes upon impact Mr Elliott suggested that research showed an average perception response time (“PRT”) of 1 to 1.1 seconds (with a range of 0.7 to 1.9 seconds).

A.3 Trauma and orthopaedic surgeons

73. The orthopaedic surgeons helpfully agree that *“given the configuration of the fracture, a direct blow from the left represents a credible mechanism of injury”* and the fracture cannot be explained on the basis of a direct blow to the right thigh. They also agree that if the Claimant had turned to either side during the immediate pre-impact period, particularly in an anti-clockwise direction (to her left), the point of impact would have been the postero-lateral aspect of the left femur and this could also explain the injury pattern. Overall, they agree that the mechanism of injury was a blow to the left leg, either directly from the left or from the left side rear. Mr Forward accepted that the fact of impact on the left side (including the left posterior side) would not be conclusive as to the direction the Claimant was facing prior to impact.
74. Mr Gregory accepted that the greater the impact velocity, the greater the extent of soft tissue and bone damage to be expected. However, the evidence of Mr Forward, the Claimant’s orthopaedic trauma expert went much further. He gave the following written opinion *“Regarding the speed of impact, it is my opinion that there is a significant increase in risk of injury above 20mph, and on the balance of probability, had the Claimant been struck at less than 20mph it is likely that she would have avoided serious injury.”* While Mr Forward can usefully give an opinion on the risks and probability of orthopaedic injuries, this opinion was of limited assistance, in part because he put forward no reasons for it, and more significantly it is not an expert’s role to make findings of fact on the balance of probability.
75. In evidence Mr Forward went further and stated that in his opinion it would be impossible for the Claimant to have suffered the femur injuries at an impact speed of 15mph. He based this view on his 15 years of experience. I preferred the view of Mr Gregory who considered that the femur injuries could have been sustained with an impact velocity of less than 20mph but such injuries would be a remote prospect if the impact velocity was less than 10mph. Mr Forward’s opinion excluding the possibility of this femur fracture at 15mph demanded rather more justification and evidence than the fact of his 15 years’ experience in

a major trauma centre. His view was inconsistent with the well-known literature on the relationship between impact speed and serious injury, including that published by Brian Tefft in 2011. This research shows that while risks of severe injury increase exponentially with increased speed, the average risk of severe injury for a pedestrian struck by a vehicle reaches 10% at an impact speed of 16mph. Mr Forward provided no evidence to suggest that femur fractures are an outlier and Mr Gregory's evidence on the index injury was to be preferred. Traffic injuries are multi-factorial. While risks of severe injury are significantly reduced as speeds reduce and there is higher risk at 20mph than at 15mph with low risks at 10mph, there was no evidence to suggest that a femur fracture of the type suffered could not happen at 15-20mph or that this was only a remote prospect.

76. There was some debate about whether the Claimant's wrist fracture was caused by her putting her left hand out to the bonnet (suggesting a left side blow), or when she fell to the ground. The Claimant's counsel suggested that it was caused when she put out her left hand, further supporting Kacie's version. He relied on Mr Forward's view that it was probably caused by a direct blow from the vehicle, whereas Mr Gregory considered that the left wrist fracture was unhelpful in determining the Claimant's direction of travel since it could as easily have been caused by her hitting the ground, and might have been suffered at lower speed. I find that the wrist fracture was of limited weight in determining the Claimant's direction and speed of travel. It was caused by impact with the road or car but either way it was consistent with a blow from the left.

A.4 Neurosurgeons

77. The neurosurgeons agreed that the Claimant did not suffer a head strike with the car, and her head was injured on impact with the road. They left open the possibility of a microscopic injury such as diffuse axonal injury ("DAI").
78. There was some debate as to the influence of the vehicle speed on the severity of any head injury. This would have been relevant if I had made a finding of

liability since the Claimant made a positive case that if the collision had taken place at a slower speed then the serious injuries would have been avoided. The Defendant for its part put the Claimant to proof that substantially the same level of injury would have been suffered at a non-negligent speed and the experts addressed whether any injury to the brain would have been avoided or reduced if the Defendant had been travelling at a slower speed.

79. The Claimant's expert, Mr Kirkpatrick, suggested that the Claimant's horizontal velocity would affect the likelihood and severity of injury because a body (including a pedestrian) projected through the air horizontally under the influence of gravity will come to ground at a higher velocity than one that hits the ground merely being dropped from a vertical height.
80. The Defendant's expert, Mr Macfarlane, suggested that her cranial injury could occur even at the lower end of the 15-25mph range. He explained that it is of the type of injury that might be seen if a person falls from a bicycle travelling at recreational speeds (12-18mph), and diffuse axonal injury can also arise from such injuries.
81. Mr Macfarlane also suggested the Claimant's head injury severity is related to the vertical height from which she fell rather than her horizontal velocity (unless there was evidence of her head being brought to an abrupt halt which had not happened here as evidenced by the gravel rash), and that it would only have been mitigated by lower speed if the court finds that the Claimant was lofted into the air by the collision, since this would not have been the case with an impact at lower speed.
82. In my view, while Mr Macfarlane was correct to suggest that the Claimant's injury was consistent with impact at the 15-25mph range (and Mr Kirkpatrick did not seriously challenge this), his evidence did not show that increased horizontal velocity was wholly irrelevant to the severity of this type of head injury and Mr Kirkpatrick was right to suggest that severity is not solely related to vertical forces.

83. However, fortunately, the difference between these experts is not material since I find that the Claimant was lofted into the air because all the witnesses noted her being lifted up onto the bonnet. The loft was sufficient to give the Claimant's fall the vertical height that would cause the index head injury even if Mr Macfarlane were right on the effect of horizontal velocity. A similar force would have been experienced at 15-25mph because she would still have been projected onto the bonnet and then forward onto the floor. This was supported by the evidence of the reconstruction experts which suggested that impact speeds at 15-25mph are sufficient to lift the pedestrian onto the bonnet and cause a secondary impact on the car.

Discussion on the issues

Which side of the Claimant's body was hit?

84. There was conflict in the evidence as to whether the Defendant's car hit the Claimant on her right or left side. The Defendant's evidence was that before impact the Claimant put her right arm out onto the bonnet, and the car hit her on her right side. Kacie said that the Claimant that put out her left hand before being hit, and was struck on her left side.
85. The Claimant's counsel maintained that liability turned on whether she was hit on her right or left side. He emphasised that Kacie's account was more credible because it was her evidence that the Claimant was hit on her left side, whereas the Defendant's persistence in maintaining that the Claimant was hit on her right side undermined her credibility. He also suggested that the Defendant could not properly contend that the Claimant had turned or recoiled when on the crossing since they had not amended their case, and this account was inconsistent with the Defendant's statement evidence. In addition the Claimant maintained that there was no evidence of a turn sufficient to explain the injury.
86. These submissions had limited weight. The Claimant's arguments sometimes lost sight of the fact that liability depended not on the side of impact but whether the Claimant could show that her injuries were caused by the Defendant's negligence. The impact happened in a traumatic instant and the question as to

whether it was on the right or left side was not something that a witness would necessarily remember or get right. The Defendant's recollection on this was inaccurate but it was not self-serving or inconsistent evidence. Kacie gave evidence that the Claimant had recoiled and flinched before impact. This would have involved turning around and was consistent with her putting her left hand out before impact.

87. The orthopaedic experts surgeons agreed that the pattern and nature of the thigh injury was consistent with her having turned to her left immediately prior to impact and been hit on the left rear side of her thigh. The reconstruction experts agreed that a pedestrian might take 0.5s to stop and turn around in response to an emergency situation and this timing was consistent with the average response times that the reconstruction experts put forward. Neither Kacie's evidence of a recoil, nor the orthopaedic experts' opinion on an impact consistent with her turning left depended on the Claimant making a 180 degree turn.
88. The Defendant did not admit that the Claimant was hit on the left side. Kacie's evidence and that of the orthopaedic surgeons was a consistent and proper basis for the Defendant to dispute the Claimant's account on the basis that the Claimant entered the road from the nearside kerb and was struck on her left side when she recoiled immediately prior to impact. It also meant that the witness evidence as to whether she was struck on her right or left side was not determinative of which account was to be preferred.
89. The orthopaedic expert evidence was consistent with both the Claimant and Defendant's case as to where she was hit and I find that the Defendant's car impacted the Claimant on her left side at thigh level, most probably towards the rear side of her left thigh.

Which witness's account is preferred?

90. On the central issue of whether the Claimant was only hit after having walked to the middle of the crossing following behind other girls, and then turned around to walk back to the nearside kerb, I prefer the evidence of Mr Skinner, Mrs Herbert, and the Defendant's police statement given at the time of the accident.

They all said she was hit immediately after she emerged from the nearside pavement.

91. Mr Skinner was an independent and consistent witness and was close to the crossing. His police statement was fairly contemporaneous and reflected careful observation and a good recollection. He was 5-10m away (Mr Elliott's measurements put him at 10m away on the basis that he was at the pharmacy but his evidence was that he was near the pharmacy). His evidence that there had been shouting between the girls on either side of the crossing was consistent with Kacie's own evidence that the Claimant thought she had heard a girl shouting from the pharmacy side, and Kacie herself had shouted from her side. His evidence that she stepped into the road (as opposed to running into the road) was also consistent with the reconstruction expert's evidence suggesting that the Claimant was either stationary or moving slowly when she was hit.
92. The Claimant's counsel suggested that Mr Skinner's evidence was not credible because he was a peripheral witness who had only taken a fleeting glance whereas Kacie was a participant. His evidence was also criticised because in cross examination he could not recollect whether Jessica had been hit on the left or right side. It was also submitted that he was the only witness who suggested that she had looked at her mobile phone so he must have got the wrong person. These criticisms were unjustified and I accept Mr Skinner's evidence. The Claimant's case did not address whether she had a mobile phone in her hand or could have been looking at it, beyond making the submission that she had been alert enough to respond to Kacie's shout, and this was far from decisive on that question. In all probability the Claimant had a mobile phone with her and may have looked at it before entering the road.
93. Mrs Herbert was also independent and her police statement was given fairly contemporaneously. She was close enough to have a good view. Her evidence was unjustifiably criticised because she accepted she had not seen the collision. Her recollection is consistent with careful observation and I accept it. Even though the experts' evidence suggested that her distance measurements

were unreliable (her estimates of 5m, 2m and 1m were all too small) this did not put her overall reliability into issue.

94. The Defendant's police statement was given immediately to the police (rather than to her own instructing solicitors) and was consistent with the evidence of Mr Skinner and Mrs Herbert, and I accept it.
95. The Claimant maintained that Kacie Gadsby had the best view and gave the most consistent and credible evidence, whereas Mrs Herbert and Mr Skinner were peripheral and had only taken a fleeting glance.
96. In my view, Kacie was placed in a difficult position in giving evidence by way of statement and answering questions in cross-examination. I accept her evidence that she was in shock after the accident. She was traumatised at the time and the events have had a profound effect on her and her family. She told me that she had nightmares and flashbacks about the incident.
97. No statement was taken at the time and then she was asked to provide a statement to the Claimant's solicitors almost a year after the event, and another 4 years later when she was 15 years old. It would be challenging for anyone accurately to piece together matters of this sort a year or several years later. For a traumatised 11 or 15 year old that had lived through the accident and its consequences over the previous years it would be more difficult. Her statements and evidence were given honestly and she did her very best to assist the court. She was able to capture parts of what she saw, for example that she stayed behind, there had been shouting between girls near the crossing, the Claimant put her arm out to avoid the car and she had the awful sight of seeing the Claimant being thrown up onto the bonnet but not onto the windscreen. She also rightly acknowledged the shortcoming of the sketch plan provided to her in 2019.
98. While I recognise the difficulty she and her family have faced, I have to weigh up all the available evidence. Having taken account of all the witness evidence and the experts' analysis, I find her evidence less reliable than that of Mr Skinner and Ms Herbert, and prefer theirs where there is conflict.

- a) Kacie's statement was not contemporaneous since it was not given until almost a year after the incident.
- b) The fact that Kacie was a participant in the incident did not give her evidence more reliability. She was not independent.
- c) The statement made by Kacie in 2015 and the details added in 2019 formed an ex post facto reconstruction long after the events. For example in 2019 she said that she remembered the Claimant looking left and right while crossing the road and said that she knew this because "she always looks both ways when crossing". There was also some inconsistency since the statements suggested that she was on her own with the Claimant whereas her oral evidence suggested she was with friends, and a few steps back.
- d) Kacie's evidence could not be reconciled with that of Mr Skinner and Mrs Herbert, whose statements were more contemporaneous, and both gave a consistent account independently.
- e) Her account was a less likely explanation. On Kacie's account the Claimant had been crossing for well over 3 seconds and looking both left and right at all times so she should have seen the Defendant's car throughout. The Claimant's counsel suggested that there was nothing the Claimant could have done but 3 seconds would have allowed her to return to the nearside kerb or go to the other side of the road if she was looking out. Likewise, if she was on the crossing for 3 seconds it was less likely that the Defendant would persist in driving into a red traffic light, or if lights were green, into a pedestrian on the crossing.

99. The Claimant's case was also difficult to reconcile with the account put forward on her behalf in a letter before action sent two months after the accident. At this stage it was said that the Claimant "was walking across a pedestrian crossing with her younger sister and friends away from the shops and had nearly reached the opposite kerb when she was hit". The Claimant's counsel attempted to suggest these accounts were consistent but he failed to provide a good

explanation for why this account was put forward at the outset if Kacie's account was the best evidence. The more likely explanation is that there were discrepancies in what Kacie could remember.

100. There was a further issue as to whether the Claimant was running or walking when she moved into the road, and also some debate as to whether she had taken one step into the road.
101. The Defendant was criticised for oral evidence that the Claimant had put one step onto the road before she was hit on grounds, among others, that this was simply not possible. This criticism had limited weight since several of the witnesses (Kacie, Mrs Herbert, and the Defendant) had used the language of "one step" to describe the distance of the Claimant from the kerb when she was hit (which the reconstruction experts concluded was around 1.3m). Mr Skinner also used the language of her being hit as soon as she stepped onto the crossing. Kacie had also used "two steps" to describe the Claimant being behind other girls when describing her turning around half way across the road (which was 3.5m). The witnesses were not using the term "one step" to make a precise statement as to whether a single step or stride had been taken, or as to its precise distance. However, they were probably referring to the Claimant taking a stride and their common use of language for her distance to the place of impact suggested as much.
102. I find that the Claimant stepped into the road and reached around 1.3m into the crossing before being hit so she would have taken more than one step, but probably not more than two strides.
 - a) The fact that the Defendant said in her police statement that the Claimant ran into the road (and indeed Mrs Herbert also mentioned the Claimant running) does not make those statements unreliable. It reflected their perception (shared also by Mr Skinner) of her entering the crossing suddenly. The Claimant's counsel suggested that Kacie could only have been moving slowly and was not capable of running or walking quickly

based on her movements in court (and Jessica's evidence that she does not run) but I am assessing her movement before the accident.

- b) The reconstruction experts agreed that the Claimant was probably either stationary, or walking slowly when the collision took place which suggested that she was probably not running when she entered the crossing.

Did the Defendant drive into a red light?

103. On the question as to whether the lights were red or green when the collision took place I find that they were green because I prefer the evidence of Mr Skinner and the Defendant's police statement to that of Kacie Gadsby. Their evidence is also supported by that of Mrs Herbert who saw the WAIT signal. The Defendant gave her police statement covering this question minutes after the accident and she was wholly consistent on this point.

104. Kacie's evidence was also a less likely explanation. As Mrs Herbert noted, it would have been surprising that the Claimant was the only person crossing if the green man had been in pedestrians' favour throughout. More significantly, Mr Elliott accepted that if a car at a crossing like this ran through a red light and knocked over a child in plain sight of a large group of teenagers with adults also present, and the police attended immediately (as they did) there would have been police reports of this. However, there were none at the time or subsequently.

What was the car's speed on impact and on approach.

105. The Claimant relied on hospital and ambulance notes noting the car's speed at 30mph. She relies on the fact that the Defendant said in her police statement that she was going under 30mph and it would have been curious to say that if she had been going at 15mph. I do not consider that this evidence had weight in suggesting she was driving near 30mph. The Defendant's statement was referring to the applicable speed limit and it was likely that either she or the police officer interviewing her was addressing whether she was driving over that limit. It is also relevant that these records were made in 2014 when 20mph limits would have been less common and understood.

106. Mr Elliott's estimate of 20-25mph, and the agreed estimate of 15-25mph was based on a sketch plan which gave an inaccurate assessment of the throw distance and the position of the car on coming to rest. This inaccuracy influenced the experts' overall conclusions, especially those based on pedestrian throw and stopping distance.
107. Mr Henderson concluded that the pattern of damage was consistent with speeds under 20mph. The pedestrian throw of 6.2m gave an impact speed range of 14 to 23mph, with a midpoint of 18.5m. Both experts' original figures were based on an inaccurate assessment of where the car and body had turned up. The more accurate figure of 4.5m for pedestrian throw gives a lower midpoint of around 16mph. Both experts accepted that stopping distance calculations giving an estimated impact speed of 13mph.
108. There was not a great deal between the experts by the time they gave evidence. but I preferred Mr Henderson's approach because he looked more thoroughly at both sides' versions. His assessment of the available evidence suggested a range between 13 and 20mph. While I take into account that Mr Elliott did not consider that the pattern of damage reflected an impact speed of 12mph, his overall calculations based on the evidence produced an impact speed below 20mph. He did not provide sufficient objective justification for having added around 5mph (an uplift of around 25%) to his estimated range of impact speed on the basis of his subjective experience. This level of uplift was not consistent with the available facts and research he had relied upon.
109. Overall taking account of the facts found and all the experts' views I find that the Defendant's impact speed was around 16-17mph with a range of 15-20 mph. Even though the Defendant probably braked momentarily before impact, the car would not have been travelling materially faster immediately prior to impact.

Was the Claimant's driving negligent?

110. I find that the Defendant was proceeding along Aikman Avenue at around 20mph and had reduced her speed to 15-20mph when she reached the crossing. When she was around 1.25s away from the crossing the Claimant stepped into

the crossing from the nearside kerb (at around midway in the width of the entry point) looking left but not right. Immediately before impact the Claimant recoiled and put out her left hand out, and was impacted on her left rear side. The Defendant did an emergency stop, at or momentarily before impact, and on impact the Defendant's car was still travelling at around the same speed.

111. The Claimant suggested that the fact that this was a pedestrian crossing required heightened caution and submitted that the authorities suggest that crawling speed is required where a child may run into the road (*Gavin Kelly v Elizabeth Nugent* [2011] NIQB 79 [13]). However, this conclusion was based on the particular facts of a 78 year old driver passing a small group of houses on a very narrow country road where there was an extremely small margin for error, and the more significant factor was that the driver had failed to notice the child emerge. It is not authority that a car must proceed at crawling speed in any place where there is a possibility that children could run into the road.
112. The Claimant relied on other authorities (*Eagle v Chambers* [2003] EWCA Civ 1107 and *Melleney v Wainright*, 3 December 1997 (CA), where the driver was held liable where a child claimant had acted unpredictably but these were where the driver should have perceived a red flag such as small children already on a dual carriageway, or being drunk or in the middle of the road, or where it was shown the driver could have taken action to avoid (*Ehari v Curry* [2007] EWCA Civ 120).
113. In deciding whether the Defendant's driving was negligent I take careful account of the law set out above, and the Highway Code requirements, and in particular that cars should drive very slowly near to schools. The crossing was a 15 minute walk from the Claimant's school and the accident took place at a time when school children were coming out. It is significant that there was a large group of teenagers in the areas around the crossing and beyond. A much smaller number of children were using the crossing.
114. However, I am not satisfied that the setting required a reasonable driver to proceed through the crossing at 10mph or less even if traffic lights were green,

or require that a driver at 15mph approaching the crossing must have such heightened awareness that they can brake in time even if a child steps out in front of them.

115. This was a busy junction but not a dangerous one because visibility was good from all sides. While there were a lot of teenagers in the area at that time of day there was space for them to linger and the traffic signals meant that both pedestrians and drivers knew when and where they should pass. A driver should be alert to the presence of these teenagers (as made clear by the Highway Code), but it did not require especially heightened awareness. All the factual witnesses were local and familiar with the schools in the vicinity. None suggested that it was crowded or chaotic or that there was a surprisingly large group of children in those areas at that time. As Mrs Herbert commented, their presence did not provide grounds for extra concern on the part of a driver. The situation did not require a driver to proceed at crawling speed through a green light.
116. While it is of limited weight, I take into account that Mrs Herbert and Mr Skinner commented to the police that they considered that the accident was unavoidable. Mr Allen was the only adult who reported that the Claimant was driving too fast.
117. The Claimant suggested that apart from reducing her speed, the Defendant should reasonably have reacted in time to avoid the accident. Mr Elliott suggested that a reasonable driver should have a raised sense of awareness and be prepared to stop in the circumstances of this crossing where there was potential for unpredictable users, whether by reducing speed or hovering the brake pedal, so as to reduce the average PRT to about 0.6-0.7 (with a range from 0.3 to 1.5 seconds). These views on reasonable driving amounted to a counsel of perfection by which a reasonable driver is expected to guarantee the safety of a pedestrian. They ignore practical reality in suggesting that the reasonable driver must not only slow down but also have 20/20 hindsight and develop improved response times whenever there is a possibility that a child might enter the road.

118. The experts more realistically agreed that if the traffic lights were showing green in favour of traffic, then had the Claimant entered the crossing from the nearside kerb and then travelled 1.3 metres to where she was struck, the collision was unavoidable. This reflects the reaction time that could be expected from a reasonable driver at this crossing and I accept their opinion.
119. When the Defendant was approaching the junction at 50-60m or indeed at 10m there was no child on the crossing or running towards the crossing. There was a possibility of a child stepping or running onto the crossing notwithstanding the traffic lights being green (or turning green). Reasonable precautions required the Defendant to keep a lookout for children and reduce her speed to 20mph or less even if the lights were in her favour, and she did so. There was a large group of children beyond the crossing but only 3 to 5 of them actually waiting at the entry point on either side. Reasonable precautions did not require the Defendant to reduce her speed to 10mph (or indeed 14mph) when driving up to a green light at this crossing at this time of day.

Causation and contributory negligence: Would the same injuries would have been suffered even if the Defendant had exercised reasonable care, observation and attention?

120. Given that I have found that there was no liability, no finding on contributory negligence needs to be made. It would be unhelpful for me to attempt to make hypothetical findings of fact on that issue on the basis of factual allegations that I have declined to accept. I briefly address the evidence on causation that was debated in detail.
121. If I am wrong in finding that the Defendant's driving was non-negligent then the Defendant failed to show more broadly that the head injury and femur injury would have occurred in any event even if the Defendant had been driving non-negligently save that the orthopaedic surgeons' evidence shows that the thigh injuries would not have happened if the Defendant's impact speed had been 10mph or less. This conclusion is also supported by the evidence from the reconstruction experts on pattern of damage. If the Defendant's car had hit the

Claimant at or under 10mph she would not have been lofted and would not have suffered the injuries she now has, including the head injury.

122. In relation to speeds up to 25mph (above which was admitted as negligent) I do not accept Mr Macfarlane's evidence as supporting a conclusion that the same head injury would have been experienced whatever the speed of collision, and this was not consistent with that of the reconstruction experts.
123. The burden would be upon the Defendant to show that even if she had been driving carefully at a non-negligent speed the Claimant would have suffered the same injuries (*Phethean-Hubble v. Coles* [2012] EWCA Civ. 349 [89,90]). While the head injury was of the type that could be suffered from a relatively low speed impact (for example, recreational cycling), the Defendant failed to show that the same injuries (whether the femur, the head injury or both) would have happened at any speed up to 25mph even if the Defendant had been driving non-negligently.

Overall conclusions

124. For these reasons, while I have great sympathy for the Claimant and realise that my decision will be disappointing for her, I find that the Defendant is not liable in negligence for the Claimant's injuries and dismiss the claim. The quantum evidence was not discussed but I acknowledge the support given by her mother over the years as her litigation friend and more widely.
125. The Defendant's name had changed following her marriage after proceedings were commenced. The Claimant's mother's name had not been spelled properly in the heading. The parties agreed that the names should be corrected. I allow this and insert the correct names in the heading.