



Neutral Citation Number: [2021] EWHC 1099 (QB)

Case No: QB-2020-006666

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
MEDIA AND COMMUNICATIONS LIST

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 06/05/2021

Before :

THE HONOURABLE MR JUSTICE JULIAN KNOWLES

Between :

WILLIAM SPICER
- and -
**COMMISSIONER OF POLICE FOR
THE METROPOLIS**

Claimant

Defendant

Robert Sterling (instructed by **Carruthers Law**) for the **Claimant**
Gervase de Wilde (instructed by **Directorate of Legal Services, Metropolitan Police Service**)
for the **Defendant**

Hearing dates: 1-3, 5 February 2021

APPROVED JUDGMENT

Mr Justice Julian Knowles:

Introduction

1. This is a claim for libel but at its heart is the tragic death of Hina Shamim, 21, on 31 March 2015. Nothing in this judgment is intended to minimise the loss and suffering of her family and friends.
2. Ms Shamim was a student at Kingston University studying sports science. At about 9pm that night she was crossing Penrhyn Road, in front of the University, when she was struck by a white BMW M3 driven by Farid Reza, 36. He was travelling far above the 30mph speed limit. Ms Shamim died almost immediately. After striking Ms Shamim, Reza's car hit a bus and spun out of control. He had five children in his car, one of whom was seriously injured.
3. Immediately behind Reza was William Spicer, the Claimant, then aged 26. He was also a student at the University. Like Reza, he was driving at a grossly excessive speed. He was in a hired dark grey BMW 300d. Having witnessed the accident, the Claimant drove past the scene and parked his car. He then returned to where Ms Shamim had been hit. He left the scene shortly afterwards to collect his car without making himself known to the police.
4. It was ascertained within minutes that Reza's car was being followed by a dark coloured car when he struck Ms Shamim. The Claimant was quickly identified. He was interviewed under caution by the police on 2 April 2015 and made a statement. He was interviewed again under caution on 13 April 2015. On neither occasion was he arrested.
5. In due course the Claimant and Reza were charged with causing death by dangerous driving and causing serious injury by dangerous driving, contrary to ss 1 and s 1A of the Road Traffic Act 1988 (RTA 1988) respectively. They both pleaded not guilty.
6. In January 2017 they stood trial at the Old Bailey. The prosecution's case was that the two men knew each other and that they had been racing and showing off at the time of the accident. Prosecuting counsel said to the jury in her closing speech:

“And the evidence suggests that they drove at that speed and in that way, not because they had to, but because they chose to, because they were showing off to one another, because they were competing with one another in those high performance cars and effectively raced it, each tacitly encouraging the other to drive in a reckless and dangerous way ... All the evidence, members of the jury, clearly suggests, in my submission, that on 31 March ... Mr Reza was not driving dangerously because he had no choice, he drove dangerously because he liked to speed and he thought he could maintain full control of his vehicle because he was racing with Mr Spicer and showing off; ‘My BMW is better than your BMW’ ... If you conclude

that Spicer was driving dangerously that night, you then have to go on to consider whether his driving caused or contributed to the collision that subsequently occurred. Now the prosecution case, on this point, as I have said, is that Mr Spicer and Mr Reza were competing with each other and thereby encouraging one another to drive at excessive and dangerous speeds. And if you conclude that Mr Spicer intentionally encouraged Mr Reza to put his foot down and that as a result Mr Reza did so and drove dangerously and thereby causing collision, then it follows, as a matter of common sense, that Mr Spicer also bears some responsibility for it ...”

7. The case against the Claimant was therefore that he had been driving at a grossly excessive speed and racing Reza, thereby encouraging him to drive at a similar speed which, in turn, was a cause of the accident.

8. The trial judge summed up the case this way:

“Turning now to the case against Mr Spicer. You will, of course, appreciate that he is in a different position to Mr Reza in that his vehicle was not in collision with the victim and, indeed, emerged from this incident entirely unscathed. The way in which the prosecution put the case against him is that he was driving at a grossly excessive speed and that he was, in effect, racing with Mr Reza and was thereby encouraging Mr Reza to drive at the same or a similar speed which in turn was a contributory cause of the accident. If you are sure so far as Mr Spicer was concerned that that was the case he would in law be equally responsible for the fatal collision provided that you are sure that the manner of his driving was dangerous as per the definition at paragraph 7 above, and that: (a) he intended to encourage Mr Reza and did encourage him to drive dangerously and (b) his actions thereby contributed to the cause of the collision.”

9. The Claimant was initially jointly indicted with Reza for the two offences I have mentioned. At the close of the prosecution’s case the judge permitted the prosecution to add alternative counts of dangerous driving (contrary to s 2 of the RTA 1988) and careless driving (contrary to s 3) against the Claimant.

10. Reza was convicted by the jury of the s 1 and s 1A offences and was sentenced to a total of five years and three months’ imprisonment.

11. The Claimant was acquitted of these two offences and dangerous driving, but was convicted of careless driving. He was fined and his licence was endorsed with nine penalty points.

This claim for libel and the statement complained of

12. This claim concerns a press release published by the Metropolitan Police's Directorate of Media and Communication (DMC) (ie, its press office) on 26 January 2017, the day of the verdicts and sentencing. I will refer to it as 'the Article'. It was as follows. (The paragraph numbering is taken from Warby J's ruling on meaning which I discuss later. The underlined paragraphs are those to which the Claimant took particular objection):

"Two guilty of killing a woman while racing their cars

News Jan 26,2017 17:21 GMT

[Picture Hina Shamim]

[1] Two men who raced their high performance cars along a street in Kingston, leading to the death of a young woman, have been found guilty by a jury.

[2] Farid Reza, 36 (3.04.80) of Surbiton Road, Kingston was convicted at the Old Bailey today, Thursday, 26 January, of causing death by dangerous driving and also causing serious injury by dangerous driving after a young boy inside his car suffered multiple fractures.

[3] He was sentenced to five years and three months for causing death by dangerous driving and three years imprisonment for causing serious injury by dangerous driving, to run concurrently. He was also disqualified from driving for five years, will be required to take an extended retest and must pay a victim surcharge of £120.

[4] William Spicer, 28 (6.06.88) of Somervell, Harrow, was found not guilty of those two offences but guilty of careless driving.

[5] He was given nine penalty points on his licence, a £1,000 fine and ordered to pay £500 costs.

[6] Hina Shamim, 21, was killed instantly when she was struck by a BMW – driven by Reza who had five children in the car with him – as she crossed Penrhyn Road on 31 March 2015.

[7] Detective Sergeant Jeff Edwards, from the Met's Roads and Transport Policing Command, said:

"Reza and Spicer were essentially showing off, racing each other to see who had the fastest car.

[8] "Miss Shamim didn't stand a chance; at the speed Reza was travelling it was impossible for him to stop in time and avoid the collision. Not only that but he had five children in his car

whose lives he also put in danger through his incredibly reckless and needless actions. One was badly injured.

[9] I would like to commend Miss Shamim's family for their dignity throughout the trial, undoubtedly an incredibly difficult time for them, as well as the police investigation and prosecution teams for their tireless work to secure these convictions."

[10] The court heard that around 21:00hrs Reza was racing his white convertible BMW M3 against a dark grey BMW 330d, driven by Spicer who had three friends with him. They drove from the area of Kingston town centre towards Surbiton, reaching speeds of almost 70mph in a 30mph zone as they came into Penrhyn Road.

[11] Miss Shamim, a student studying sport science at Kingston University, was crossing the road as she made her way to the campus library.

[12] She was hit at speed by Reza's car.

[13] The vehicle then crashed into a bus before spinning and stopping on the pavement.

[14] Witnesses heard crying and saw Reza trying to get young children out of the car. Miss Shamim was lying motionless on the pavement beside the vehicle.

[15] Spicer continued past the collision and made an illegal right-hand turn into Surbiton Road.

[16] Police were called and commenced CPR but Miss Shamim died at 21:43hrs.

[17] They identified that five children – aged four, four, eight, 12 and 16 – had been in Reza's car. The 16-year old was still trapped and had to be cut out of the vehicle by the London fire brigade.

[18] The children were taken by ambulance to St George's Hospital with shock and cuts and bruises. Following a scan, one of the four-year olds was found to have fractures to his skull, jawbone, collarbone and a bone in his face. He has since recovered.

[19] A post-mortem examination of Miss Shamim found she died from multiple injuries, including fractures to her arms, left leg and pelvis and a brain injury.

[20] Examination of Reza's car found no child seats and only two seatbelts in the back of the vehicle, meaning at least two of the children were unrestrained.

[21] Collision investigators estimated both vehicles were travelling at around 62 or 63 mph at the time of the collision. Had Reza been travelling within the 30mph speed limit, officers found he would have stopped in time upon seeing Miss Shamim in the road ahead.

[22] Reza was arrested on 1 April 2015. Following further enquiries officers arrested Spicer the next day.

[23] Reza and Spicer, who were not friends but knew each other locally, were subsequently charged.

[24] At the conclusion of sentencing the trial Judge HHJ Marks commended the Forensic Collision Investigator PC Simon Palmer saying 'his evidence was central to the case and was presented and delivered in a thoroughly professional manner.'

[25] In an impact statement, Hina's father Shamim Khan said: 'On the day Hina died, a part of me died with her. Her death has left a void in my life that can never be filled.'

[26] 'Hina was my eldest child. I was in my mid-40s when Hina was born and I had waited so long to become a father so the day of her birth was the happiest day of my life. For every parent, their child is precious. In my case, Hina was my life.'

[27] 'In our culture, people tend to favour sons over daughters but for me, Hina was everything. Hina was a delightful child who grew up to become a compassionate and selfless woman, always placing the wishes and needs of others before her own. She loved her family and her family loved her. She had so much to live for.'

[28] 'Hina had diligently pursued her studies at Kingston University. Had she not been killed she would have graduated in three months and we as proud parents would have attended her graduation. Not long before her death she was invited to attend an interview for a specialist nutritionist food company. The start of such a promising career or so we thought. She also had ambitions to continue studying for her Masters degree such was her passion.'

[29] 'My wife and I had nurtured so many dreams for Hina's life but sadly none of these will ever be fulfilled. She was

robbed of her life and we have been robbed of a daughter and, my sons, a sister.

[30] 'My wife and I take each day as it comes without respite from the heartache of losing Hina. Not a day has passed without my wife crying. The upset has caused her eyesight to suffer and she has been diagnosed with glaucoma. She is truly heartbroken.

[31] 'No parent should outlive their child. I remember her as a newborn baby; now our last memory of Hina is seeing her inside a coffin at our local mosque.

[32] 'I had to break the news of Hina's death to her already ill grandmother in Pakistan. As soon as she heard the news she went into shock and as a result is completely bedridden. I now live mostly outside the UK in order to look after my mother.

[33] 'Our local community was also deeply affected by what had happened. At the funeral we estimated 4,000 to 5,000 mourners came to pay their respects. Their love and support has been truly wonderful.

[34] 'A 'Just Giving' page was set up in Hina's memory. The funds raised, approximately £24,500, enabled a mosque to be built in an impoverished area in Pakistan. Further to that, in the Philippines a house was built for a poor family and 11 water wells were constructed for affected areas as well as community income generating projects set up. A separate charity was also set up in Hina's memory. This raised £4,500 and was spent constructing a large water well, supplying water to an African village. These donations did not come from the UK alone but from overseas, as news of Hina's death and the circumstances surrounding it became known, such was the impact.

[35] 'Although Hina is buried we as a family have not yet been allowed to mourn properly due to the ongoing court case. Both men charged with causing Hina's death had an opportunity to own up to their terrible lack of judgement and to apologise to us openly and honestly. In time I'm sure that we as a family could have found peace in that. Instead we have endured lies and false sentiment. Mr Reza shed tears during his evidence but they weren't tears for Hina or for his family but more for his predicament, we are no fools. Mr Spicer started so humbly only for his true arrogant character to surface. Not only was he disrespectful to the barristers but to us as a family. Suffice to say all the lies have compounded and prolonged our grief. I ask them, what

gives you the right to put so many people's lives in danger by your dangerous driving, such unbelievable arrogance.

[36] ‘Each day, I wake up hoping that it was a bad dream but sadly, that will never be the case. I am hopeful that with the passage of time, my sons will come to terms with the loss of their sister but for my wife and I, feel that our lives will forever remain desolate.’”

13. The Article was published on the Metropolitan Police’s website, and a link to it was posted on its Twitter account. It was also circulated to other news outlets. The extent to which the Article was viewed was summarised thus in the Claimant’s trial Skeleton Argument at [24(3)]:

“3. Although, it appears, the Article on the Metropolitan Police Service website received 2,642 views, it was published simultaneously on its Twitter account, which shared a platform with the website, enabling whatever was published on the website to be sent directly to the Twitter account ... Paragraph 10 of Ms Wickers’ statement [she works for the press office and gave evidence: see below] also shows that, simultaneously with the Article being published on the website, there was some type of automatic feed by email to a number of media contact groups. The Metropolitan Police Service has also disclosed a log of 21st April 2017, which states that the email had been opened 468 times by 200 unique people, 19 of them having clicked a link ... While Ms Wickers will say that the Article and the tweet were removed on 26th April 2017, there is clear evidence that the tweet of the Article can be seen online ... In any event, the retention of the Article online for a period of 3 months by the Metropolitan Police Service, which must be regarded as the most authoritative reporter of the matters referred to in the Article, was capable of causing the most serious harm to Mr Spicer. It also received very wide publication by other media, as Mr Spicer evidences.”

14. The Claimant issued proceedings for libel complaining that the Article wrongly accused him of causing Ms Shamim’s death, a charge of which he had been acquitted. He complained, in particular, about the headline and the underlined words.
15. The meaning attributed to the words complained of by the Claimant was first set out in a letter from his solicitors to the Defendant dated 13 November 2017 and repeated in his Particulars of Claim. He alleged that he had been libelled by the Article in the following meaning:

“William Spicer and Farid Reza have been found guilty by a jury of unlawfully killing a young woman pedestrian,

Hina Shamim, at about 9pm on 31st March 2015 while recklessly racing their high performance BMWs against each other at more than 60 mph in a 30 mph zone in Kingston town centre. Spicer also failed to stop and illegally drove on. He was later found by the Police, charged and arrested.”

16. The Defendant disputed this meaning. Her case, as advanced in correspondence and at the trial of meaning before Warby J, was that the Article meant:

“There are reasonable grounds to suspect that [the Claimant] was involved in racing his high-performance car against another similar vehicle at more than 60 mph in a 30 mph zone in Kingston Town Centre. The other vehicle struck a young woman, Hina Shamim, who was killed instantly, and its driver was convicted of causing death by dangerous driving. The Claimant failed to stop at the site of the collision, and then made an illegal right-hand turn. He was arrested the following day and charged with causing death by dangerous driving, and causing serious injury by dangerous driving. He was found not guilty of those two offences, but guilty of careless driving, and was given nine penalty points on his licence, a £1,000 fine, and ordered to pay £500 costs.”

17. At the trial of meaning the Claimant expanded his case in relation to arrest and charge. He submitted that the implication of the report of arrest and charge was that there were reasonable grounds to suspect the Claimant of the offences in question.
18. The trial of meaning took place before Warby J in June 2019: *Spicer v Commissioner of Police for the Metropolis* [2019] EWHC 1439 (QB). At [2] the learned judge framed the issue in this way:

“This has been the trial of the issue of meaning, as a preliminary issue in the action. The main issue for resolution, putting it broadly, is whether the headline encapsulates or reflects the natural and ordinary meaning of the article, read as a whole. Put another way, does the article mean that the claimant was one of two found ‘guilty of killing a woman while racing their cars’? The answer is that it does not. Established legal principle holds that the meaning of a published article or statement must be collected from the article or statement as a whole. The law does not permit a claimant to sue for damages in respect of a headline, however defamatory, if the headline and article are mismatched, and the impact of the headline is contradicted or neutralised by the remainder of the article. That is this case.”

14. At [14] the judge said the common law test of what is defamatory was not controversial and had been summarised by him in *Allen v Times Newspapers* [2019] EWHC 1235 (QB), [19]:

“(1) At common law, a statement is defamatory of the claimant if, but only if, (a) it imputes conduct which would tend to lower the claimant in the estimation of right-thinking people generally, and (b) the imputation crosses the common law threshold of seriousness, which is that it ‘[substantially] affects in an adverse manner the attitude of other people towards him or has a tendency so to do”: *Thornton v Telegraph Media Group Limited* [2010] EWHC 1414 (QB) [2011] 1 WLR 1985 [96] (Tugendhat J).

(2) ‘Although the word ‘affects’ in this formulation might suggest otherwise, it is not necessary to establish that the attitude of any individual person towards the claimant has in fact been adversely affected to a substantial extent, or at all. It is only necessary to prove that the meaning conveyed by the words has a tendency to cause such a consequence’: *Lachaux v Independent Print Limited* [2015] EWHC 2242 (QB) [2016] QB 402 [15(5)].”

15. The judge said that all the meanings proposed by the parties had been agreed to be defamatory meanings, by these criteria.
16. At [17] the judge referred to the ‘time-honoured’ language of ‘bane and antidote’ and the exposition of the principle by Alderson B in *Chalmers v Payne* (1835) 2 Cr M & R 56, 159:

“[If] in one part of the publication something disreputable to the plaintiff is stated, but that is removed by the conclusion, the bane and the antidote must be taken together.”

17. At [18] he explained:

“Headlines commonly feature in bane and antidote arguments. Experience shows that there is quite often a disconnect between a headline and the body of an article. One reason for that may be that many headlines are written by editors or sub-editors, who aim for something eye-catching and may be less familiar with the nuance of the text than its author(s). A headline can create a libel, even if the text contains none: see *Gatley on Libel and Slander* 12th ed para 3.30, text to n 349. That is especially so, when one bears in mind the (reasonable) tendency of ordinary readers to give weight to that which is most prominent, and most negative. But there are cases in

which the text neutralises what would otherwise be a libel in the headline - the headline being the poison, to which the body of the article provides the antidote.”

19. At [31] the judge said he had no hesitation in rejecting the Claimant’s contention that the Article meant that the Claimant had been ‘found guilty by a jury of unlawfully killing’ Hina Shamim. He said that no reasonable reader of the whole Article could have drawn that conclusion.

20. At [38] the judge said:

“I accept that the article, read fairly, spells out what happened in a logical and chronological sequence. In my judgment, the defendant’s meaning underplays what the article suggests about racing. The article would leave the reasonable reader in no doubt that the claimant was a participant in a hazardous road race at speeds over twice the legal limit, and that he did so to show off. Both matters are presented as fact: see the headline, paragraphs [1] and [7]. This is bolstered by the reported allegations in paragraphs [10] and [21], which are tantamount to direct allegations, given the absence of any balancing or contrary assertions. I do not agree with Mr de Wilde that the sting of those paragraphs is effectively neutralised by the report of the claimant’s acquittal of dangerous driving. The ‘racing’ allegation (as Mr de Wilde has labelled it) is thus at *Chase* level one, not *Chase* level two. The article clearly suggests that the claimant failed to stop but drove past the scene of the accident and away. Finally, I accept the modification of the claimant’s meaning advanced by Mr Sterling. A *Chase* level two imputation, of reasonable grounds to suspect guilt of causing death and serious injury by dangerous driving, is clearly implicit in the report of the claimant’s arrest, charge, and acquittal.”

21. At [39] the judge said that the Article bore the following defamatory natural and ordinary meaning about the Claimant's behaviour on and in relation to 31 March 2015:

“39. The Claimant (1) took part with an acquaintance, Farid Reza, in a car race in the streets of Kingston upon Thames, in which they showed off by driving their high-performance cars at speeds of almost 70mph along public roads in an urban area at around 9pm, to see who had the fastest car; (2) did so with three friends in his car; (3) when Mr Reza's car struck and killed a pedestrian, Hina Shamim, failed to stop but drove past the accident and away from the scene; (4) was for those reasons reasonably suspected of being jointly responsible with Mr Reza for causing the death of Hina Shamim, and of causing serious injury to a young boy who was one of Mr Reza's

passengers, by dangerous driving; (5) was arrested for, charged with, tried for and acquitted of those offences (Reza being convicted of both); but (6) was guilty and convicted of careless driving.”

22. Following this ruling the Claimant amended his Particulars of Claim to allege this meaning (APOC).
23. The Defendant served her Defence on 6 July 2019. She raised the following matters by way of defence (*inter alia*):
 - a. No serious harm: the Article had not caused the Claimant serious harm, as required by s 1 of the Defamation Act 2013 (DA 2013);
 - b. Substantially true: the Article, in the meaning found by the Warby J, and set out at [7] of the APOC, was substantially true for the purposes of the defence of truth in s 2 of the DA 2013;
 - c. Statutory absolute and qualified privilege: the Article consisted of a fair and accurate report of legal proceedings in public brought against the Claimant which was published contemporaneously. Accordingly, the Article was published on an occasion of absolute privilege pursuant to s 14 of the Defamation Act 1996 (DA 1996). Further or alternatively, the Article was published on an occasion of qualified privilege pursuant to s 15 and Sch 1 of the DA 1996.
24. In 2020 Saini J considered two applications: *Spicer v Commissioner of Police for the Metropolis* [2020] EWHC 1778 (QB). The first was an application by the Claimant to strike out the defence of substantial truth as an abuse of process. It was said to be abusive for a defendant in a libel claim to advance a defence of truth when the claimant argues that this defence is in substance a form of collateral attack on the result of earlier criminal proceedings, in which the claimant was acquitted. The second application was by the Defendant, who sought an order requiring the Claimant to remedy deficiencies in his Reply. Complaint was made about the failure of the Claimant in his Reply to address (beyond bare denials) the facts and matters pleaded in the Commissioner’s Defence on the issues of truth and privilege.
25. Saini J dismissed the first application and made an order requiring the Claimant to amend his Reply to comply with the relevant pleading rules (which I need not go into). An Amended Reply was duly served.

The evidence

26. I held a trial by Microsoft Teams on 1, 2, 3 and 5 February 2021. I reserved my decision.
27. The Claimant gave evidence in support of his case. The Defendant then called the following witnesses: PC Simon Palmer, a Metropolitan Police forensic collision investigator who investigated the accident and gave evidence at the criminal trial; retired Detective Sergeant Jeff Edwards, who became the Senior

Investigating Officer (SIO) in the criminal investigation into Ms Shamim's death in September 2015; and Samantha Wickers, a Senior Media and Communications Manager for the DMC, who was involved in drafting the Article. Then two experts on telematics data gave evidence back-to-back: first, the Claimant's expert, Dr Chaz Dixon, followed by Dr Ray Ford for the Defendant, who also gave evidence at the criminal trial. I will explain what telematics data is later in this judgment.

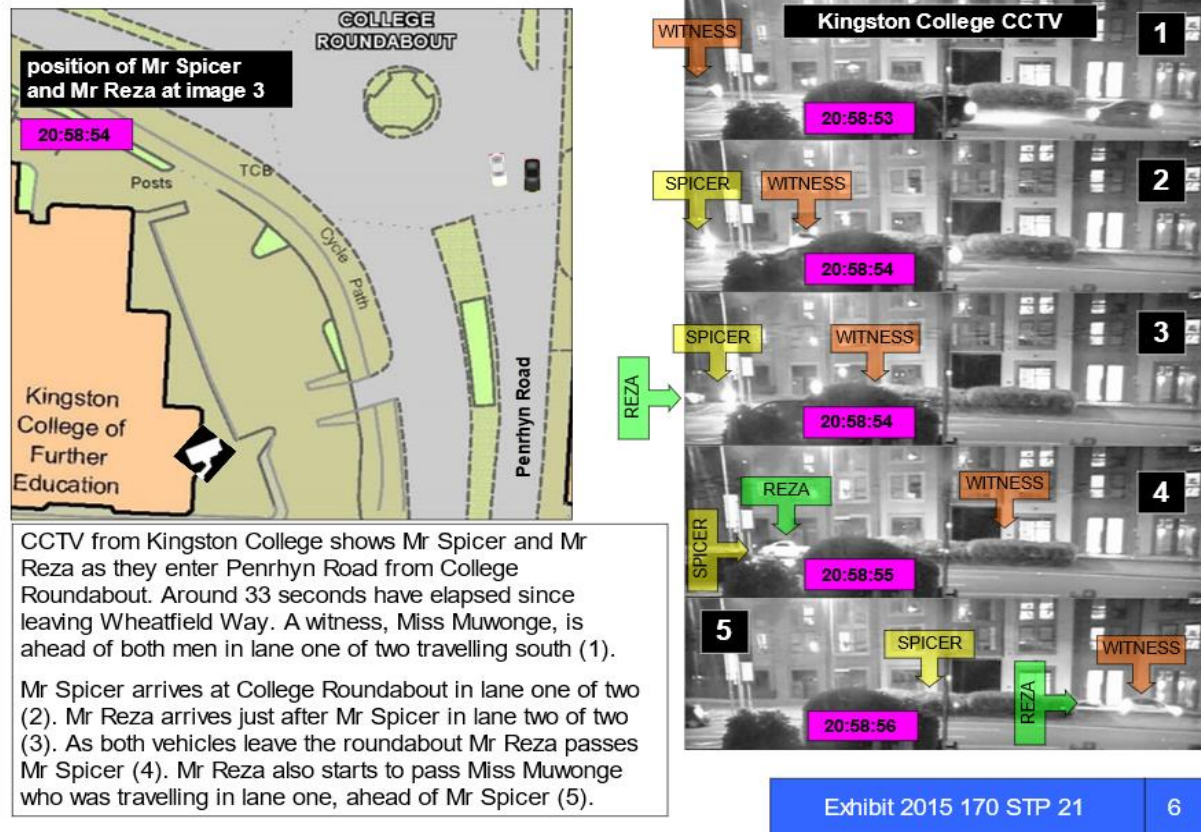
The Claimant's case

(i) The Claimant's evidence

28. The Claimant adopted his witness statement of 17 December 2020 as his evidence in chief. He is now 30 years old and works in finance as a business analyst. In March 2015 he was in his second year of a computer science with business degree at the University and he went there three or four times a week. He lived in Harrow. He was familiar with Penrhyn Road. On 31 March 2015 he had been driving a hired dark grey BMW 330d M Sport automatic while his own car was being repaired following an accident (which was not his fault). He described the hire car as 'pretty quick and pretty smooth' but not as powerful as some BMW models. He denied racing or showing off on the night in question.
29. PC Palmer's evidence was that both the Claimant's car and Reza's car were capable of doing 0-60mph in less than six seconds, and that both were speed limited by BMW to 155mph.
30. On the afternoon of 31 March 2015 the Claimant arrived at the University. He worked in the library until the evening. He got talking to three other students whom he knew but said were 'not friends'. They were called Engin, Luka and Daniel. They ordered pizzas for 8pm delivery at the University but the pizzas arrived late and were not satisfactory. The Claimant phoned Domino's to order fresh pizzas for collection from its shop on Kingston Hill.
31. The Claimant's hire car was fitted with a telematics device capable of measuring the starting and stopping time of journeys; the car's location; its speed; rates of acceleration and braking; g-forces on the car (in simple terms, the forces on the car produced by acceleration/deceleration expressed as a units of the Earth's gravitational force ('g'), including when the car accelerates or brakes harshly (a harsh event is one in which the g-force exceeds a pre-set value on the device); moments when the car was subject to particularly high-g forces (high-g events), eg, in a collision; engine revolutions (RPM); and other performance data. Such devices can give a very accurate picture of how a car is being driven. They are often fitted to hire/fleet vehicles for monitoring purposes. Some insurance companies also require them as a policy condition.
32. The experts explained that there were two speed inputs into the telematics device: the speed measured by the device's GPS system, and the speed measured by the car's own system (known as the 'VDU' or 'CANbus' speed). The telematics device constantly monitored these inputs and recorded the lower of the two. The experts agreed that although the two speed measurements at any

given point could differ for technical reasons, the difference was only marginal and not of any significance.

33. The telematics device showed that the journey to Domino's began near the University at about 20:28. I will refer to this journey as 'the penultimate journey' (or, adopting Dr Dixon's numbering, Trip 7). The Claimant said his three acquaintances went with him. He said they were asking about the car and how fast it could go. He replied that it was 'pretty quick'. The data captured by the device shows that the Claimant drove significantly in excess of the speed limit on this journey. The Claimant freely accepted in his evidence that he regularly drove more than the speed limit. The device also recorded two harsh acceleration events and three harsh braking events on this journey. The device also recorded excessive engine RPMs at one point on this journey.
34. When they got to Domino's at 20:35 their pizzas were not ready, so they decided to go to a Pizza Hut in Tolworth instead. They left on that journey at about 20:57. Their route would take them west on Fairfield North, then south down Wheatfield Way/Penrhyn Road past the University, and on towards Tolworth. It was on this trip, which I will call 'the incident journey', or 'Trip 8', that the accident occurred.
35. The Claimant said that he approached the Kingston College Roundabout (the Roundabout) on Wheatfield Way and entered using the left lane/inside lane. He emerged from the first exit of the Roundabout using the left lane (ie, essentially going straight on), with the intention of carrying on from the Roundabout down Penrhyn Road. The Roundabout is approached from the north by three lanes (one a bus lane), and there are two exit lanes heading south from the Roundabout.
36. As the Claimant was leaving the Roundabout on the inside lane he was overtaken by Reza in his white BMW in the outside lane. This manoeuvre was captured on CCTV and is the sixth slide in the PowerPoint presentation, Ex STP/21, which PC Palmer produced for the criminal trial:



CCTV from Kingston College shows Mr Spicer and Mr Reza as they enter Penrhyn Road from College Roundabout. Around 33 seconds have elapsed since leaving Wheatfield Way. A witness, Miss Muwonge, is ahead of both men in lane one of two travelling south (1).

Mr Spicer arrives at College Roundabout in lane one of two (2). Mr Reza arrives just after Mr Spicer in lane two of two (3). As both vehicles leave the roundabout Mr Reza passes Mr Spicer (4). Mr Reza also starts to pass Miss Muwonge who was travelling in lane one, ahead of Mr Spicer (5).

37. I have included this graphic because of the potential significance of this overtaking manoeuvre by Reza. PC Palmer's opinion was that it was the catalyst for the change in the Claimant's speed and driving behaviour on Penrhyn Road from about this point to the site of the accident.
38. The Claimant said that as he left the Roundabout, a silver Vauxhall Corsa was ahead of him. This was being driven by Ms Tamina Muwonge and is the car marked 'Witness' on the graphic. The Claimant said that he travelled behind this car for a short time.
39. At the criminal trial the prosecution said that Reza's overtaking manoeuvre led to a race between the two men along Penrhyn Road which ended when Reza hit Ms Shamim. Reza's case was that he had not driven dangerously and so was not guilty of causing death or serious injury by dangerous driving. He also ran a duress defence. He said that the Claimant was angry at being 'cut-up' by him, and so had chased and 'tailgated' him down Penrhyn Road at speed. Reza said he had only driven at speed because he had to because of the Claimant's driving. The Claimant admitted speeding but denied driving dangerously and denied racing Reza or tailgating him as Reza alleged.
40. The Claimant said that he overtook Ms Muwonge's vehicle prior to reaching the traffic lights at the junction of The Bittoms and Penrhyn Road, a short distance south of the Roundabout. PC Palmer's tenth slide in STP/21 shows the Claimant overtaking Ms Muwonge at 20:59:02 on Penrhyn Road:



Footage from Kingston Crown Court shows the moment at which Mr Spicer overtakes Miss Muwonge. Mr Reza's car is mostly obscured behind a van in picture 1 but can be seen clearly in picture 2.

Exhibit 2015 170 STP 21

10

41. The Claimant said he overtook Ms Muwonge because she was travelling at 20mph in a 30mph zone. He said that although he now knew that at this point he was approaching Reza's car from the rear, he had not been aware at the time that it was Reza.
42. In his summing-up, the judge summarised Ms Muwonge's evidence as follows:

“She was in her silver Vauxhall Corsa with her 8-year-old daughter driving in the direction of Surbiton. Her attention was drawn to two other vehicles. It is clear, you may think, from the video evidence that initially she was in front of both of the BMWs but in the stretch of road between the roundabout and The [Bittoms] lights that she was overtaken by both of the defendant's vehicles. In fact, she said that she deliberately slowed down in order to allow Mr Spicer's darker vehicle to overtake her, on account of the fact that she said that it was being driven aggressively and was very close behind her, and as she put it, he was the sort of driver that she ordinarily tried to avoid. Further up the road, she saw the light-coloured vehicle, that driven by Mr Reza, spinning out of control and going onto the opposite side of the road and into the oncoming bus at which point she saw Mr Spicer's dark car as it were undertaking Mr Reza's white vehicle and

continuing along the main road. And she responsibly stopped and spoke to a police officer at the scene.”

43. The Claimant said he first saw Reza’s car at The Bittoms traffic lights. He was approximately 10m or 15m behind the vehicle when he noticed the registration plate. He did not know it was Reza driving. The Claimant said he had not noticed it before and had not noticed it overtaking him.
44. Reza owned a computer shop not far from the University in Surbiton Road. The Claimant’s said that he recognised the white BMW M3 by its registration, having seen it parked near the University and being interested in cars; that he recognised Reza by sight; but that he did not link him to the BMW until after he returned to the scene of the accident and saw Reza there.
45. Reza’s and the Claimant’s vehicles approached The Bittoms traffic lights in the outside lane (Penrhyn Road being four lanes at this point). In [24] of his witness statement the Claimant said:

“24. When approaching The Bittoms traffic lights, I recall Luka commenting on Mr Reza’s car, something along the lines of ‘that’s a nice car. Is the car we are in faster than that car?’ I responded to Luka stating, ‘That car’s faster’, which I knew to be true as I know a little bit about cars. I recall saying something along the lines of ‘I wouldn’t have a chance with that car’, which I knew to be true [because] on paper Mr Reza’s car was faster. This was my thought process as an M badge was a much higher spec than my vehicle. We were talking about other things as well, like the food we were going to be getting as we were all hungry, it was just general conversation between us.”

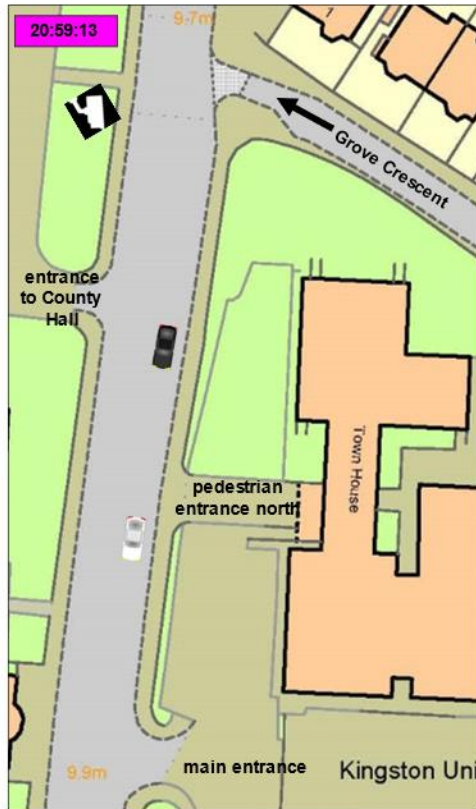
46. At [26] he said:

“26. It was an unfortunate coincidence that we were both fast drivers and were travelling along the same stretch of road at the same time. If I hadn’t been there, I whole heartedly believe Mr Reza would have driven in the same way. This was supported by live witness evidence in the criminal trial, with one witness saying that Mr Reza typically drove like he was on a ‘racing circuit’ in that area, the same witness also stating ‘He was an accident waiting to happen, the man was going to kill somebody someday.’”

47. Just after The Bittoms traffic lights Penrhyn Road becomes a two-lane highway. The Claimant said that he followed Reza through the lights on green. He accepted accelerating harshly around this point from about 18mph or 19mph to 38mph. The Claimant denied driving in this way as a result of being ‘egged on’ by his passengers to keep up with Reza, and said that it was part of overtaking Ms Muwonge.

48. The Claimant said in his statement that at no time was he close to Reza, and that from then on there was about a 20m gap between their vehicles.
49. The Claimant accepted that the telematics data showed that after The Bittoms traffic lights and a small speed drop, his speed then increased from 27mph up to 69mph over a period of about 12 seconds. He said, however, that he had not appreciated at the time how fast he was travelling because he did not look at his speedometer. At [33] of his witness statement he said:

“I was shocked on subsequently learning the speeds I had been travelling at various points during the incident journey. However, I didn’t notice the speed as being any different to my usual driving style. It was established at the trial from the telematics data analysed that there were 15 harsh driving events over the 24-hour period and 12 of those took place before the incident journey which was part of the evidence of Raymond Ford. I appreciate this is not acceptable behaviour and I don’t condone that driving style. I have made great efforts to be more aware of my speed now.”
50. The Claimant said that as he approached the University, he was still 20m behind Reza. At that point he said he was beginning to anticipate that there was a curve in the road ahead, being familiar with that stretch of road, and therefore he prepared to slow down by taking his foot off the accelerator and pressing his brakes gently.
51. Slide 16 in SJP/21 shows the cars in Penrhyn Road approaching the University at 20:59:13; they were then travelling in excess of 60mph:



Mr Reza and Mr Spicer continue south on Penrhyn Road from The Bittoms towards the main campus entrance of Kingston University. The cars travel around 135 metres with no CCTV coverage for 8 seconds until they enter the field of view of Local Authority Camera 22. The two cars are separated by around 20 metres. Both cars are travelling in excess of 60mph.

Exhibit 2015 170 STP 21

16

52. Slide 18 is timed at 20:59:17. Ms Shamim can be seen on the CCTV half-way across Penrhyn Road at about the junction with Penrhyn Gardens as Reza's car approaches her. PC Palmer estimated the Claimant to have been about 20m behind Reza at that point:



These three frames show the position of the two cars immediately before Mr Reza collides with Miss Shamim. There is clear separation between Mr Reza and Mr Spicer.

53. The Claimant said that he saw Reza’s brake lights come on and that Reza then appeared to lose control and veer to the right across the dividing line in the road and into the oncoming lane. Reza’s car struck Ms Shamim and then collided with a bus travelling in the opposite direction. His car ended up on the pavement with its back end through a garden wall.
54. According to PC Palmer, the distance from the Roundabout to the scene of the accident was about 450m.
55. The telematics data shows the Claimant’s car undergoing a high-g event at about 20:59:18. I will discuss this in more detail later when I come to the technical evidence.
56. At [39]-[40] the Claimant said:

“39. I believe I was at a safe distance away from Mr Reza’s car at all times. I did not react to the collision because it happened very quickly and I did not have to do anything to avoid it, I merely continued onwards as I was doing before he veered off to the right hand side of the road. If I had been racing Mr Reza I would have been much closer to him and been required to brake harshly, perhaps even being involved in the collision myself. The evidence of Mr Ford supports my recollection as there was

no telematics data suggesting a harsh braking event at this point rather was after the incident.

40. It all happened very quickly but I recall seeing Mr Reza's car collide with the left-hand side of the double-decker bus, spin to the right in the air, all four wheels were off the ground, and then before coming to a stop it spun around on the pavement. I did not realise that Mr Reza had knocked a person down. I did not see Ms Shamim which I now know was because she stepped out from behind another car on the right-hand side of the road, behind an overtaking bus, my view was obstructed by Mr Reza's car"

57. The Claimant said he was 'a little bit in shock' after seeing the accident. He drove past it, but denied intentionally failing to stop. According to the telematics data, at 20:59:24 he braked harshly. He then made an illegal right turn from Penrhyn Road into Surbiton Road (a short distance from the accident scene) because, he said, he knew there was a place he could park. This was a carpark underneath a block of flats called McMillan House.
58. The Claimant denied failing to stop because he knew he was culpable in some way for the accident. He said that he went back to the scene after parking up, and it was only at that point he realised someone had been injured. He said there were people trying to help Ms Shamim, so he did not think there was anything he could do to assist. He saw Reza at the scene.
59. The police and an ambulance arrived and cleared the area. The Claimant waited for a time but did not speak to the police because, 'I didn't consider I was anything to do with the accident and couldn't offer much help'. Shortly after that he left the scene to collect his car.
60. The Claimant's case in relation to the accident was that it was entirely Reza's fault. He said Reza was known in the area as a fast and dangerous driver and referred to evidence to that effect from witnesses at the criminal trial.
61. I turn to the Claimant's evidence about the Article.
62. He said that after the Article had been posted, it had been re-tweeted, with some people making comments such as, 'Two people's actions have destroyed a family forever' and, 'Sometimes I wish the police would take people like these two somewhere quiet and beat them'. He said he was frightened of being attacked.
63. At [88] of his statement the Claimant said he estimated that there are about 50 people he knew from around the University that he was no longer in contact with. In essence, his case is that he has been shunned by these people as a result of the Article. They include people he knew well from his course and others he would say hello to in passing. He then gave the name of 25 of these people. He said that he attributes the response of those 50 people directly to the Article because before its publication he was being supported by them.

64. He also said he had been shunned by Kingston University alumni groups and that requests for references from lecturers had been ignored. He said they had not ignored him after he was prosecuted or during the trial, but only afterwards. He also said that there had been a campaign by some people at the University to have him stripped of his degree. He said he was told that this was as a result of the Article. He said that there is a permanent online narrative about him caused by the Article's ripple effect.
65. The Claimant was then cross-examined by Mr de Wilde on behalf of the Defendant.
66. The Claimant said that he has an interest in cars, especially BMWs. He accepted the car he was driving that night was 'pretty quick with a pretty quick acceleration', but that it was not as fast as Reza's M3. But he it was a fast powerful car which could go at 'quite a lick' if he chose to drive it that way. He agreed that when he sees a powerful car he wonders, 'What does that move at?' He accepted that at the time he regularly drove in excess of the speed limit. He said it was not acceptable and he no longer drove like that.
67. He was shown Dr Dixon's report. Dr Dixon analysed the telematics data from the Claimant's car and looked at the 11 trips recorded by the device from the early hours of 31 March 2015 to the early hours of 1 April 2015. Five of those trips did not involve any abnormal events (ie, harsh acceleration; travelling in excess of the speed limit, etc) and were not further considered. Mr Spicer agreed, therefore, that on that day he drove above the speed limit on six out of 11 journeys, ie, more than half the time.
68. It was put to him that Trips 7 and 8, when he had passengers, were different from the other journeys. He agreed that 'factually' this was correct. But he said that there were other factors at play besides just having passengers. He said he was in a rush because of his coursework, and he was annoyed about the pizzas. He disagreed that these other factors were 'trivial' compared to having passengers in the car.
69. He agreed his was a nice car for a student to have; in his police interview he said his passengers had commented how nice it was; and they were impressed by it. He denied driving exceptionally fast to show off to them on Trips 7 and 8. He said he did not need to because they were already impressed.
70. Mr de Wilde then turned specifically to Trip 7. The Claimant accepted that there was a similar pattern of harsh acceleration and braking on this trip as on the incident journey.
71. The Claimant agreed with Dr Dixon's analysis that there had been two harsh acceleration events on this trip. (There were also three harsh braking events on this trip, and at one point the engine RPM threshold was exceeded).
72. Turning to the incident journey, Trip 8, Dr Dixon identified a harsh acceleration event from about 18mph to 38mph at 20:59:06 (Dr Ford has this as 19mph to 38mph; the slight difference is immaterial). Mr de Wilde put to the Claimant

that the speed increases were much less on the penultimate journey (viz, 14 to 20mph and 0 to 5mph respectively) than on the incident journey. The Claimant replied the reasons were different; on the incident journey he was performing the overtaking manoeuvre of Ms Muwonge. He disagreed with the suggestion put to him that the real reason for the difference was that on the penultimate journey he was not racing, whereas on the incident journey he was.

73. He denied there was a long or significant conversation between him and his passengers about the speed of the car. The main conversation was about pizzas and getting back to studying. There may have been a passing comment about the car's speed.
74. It was pointed out that in his police interview he had said his passengers were 'encouraging him'. He said he had probably used the wrong word. He said that the others had said that it was a fast car, but there was not a discussion or a debate. He denied driving fast at the encouragement of the others.
75. He agreed saying he had been driving 'pretty decently'. He said he been feeling the vehicle's torque; he had 'played with it'; and this meant things like feeling the torque of the vehicle: 'like if I was at stop, I would accelerate pretty briskly, yeah but I wouldn't, I wasn't like going 60 and 70 and then 70 to 60, I was going from like 0 to 35 real quick'.
76. He was then asked about the incident journey. He said he knew the roads around the University well and he knew students crossed Penrhyn Road when leaving and entering the main University building. There is a pedestrian crossing in front of the University. He accepted that students might not always cross at the crossing.
77. Before the incident, he said he knew Reza by sight and he believed, but was not certain, that he knew he had a computer shop on Surbiton Road. He had seen the car separately to Reza. He did not know Reza was its driver.
78. It was put to him that his case on this point had changed, because in his police statement of 2 April 2015 he had said that when he returned to the scene immediately after the accident:

"There was (sic) kids screaming everywhere and then I saw the owner of the vehicle running towards his kids from another direction. I know he was the owner because I have seen that car before and he owns the computer shop on Surbiton Road"

and in his Part 18 replies of 29 September 2020 he had said:

"Prior to the accident, the Claimant had seen Mr Reza facially on no more than 3 occasions. He had also seen the white BMW M3 registration no. YH61 WOD on about 5 occasions as it was regularly parked outside the University. On none of these occasions did he associate Mr Reza with the white BMW or the white BMW with Mr

Reza. Further, prior to the accident the Claimant did not know that Mr Reza worked at the computer shop. Nor did he know who drove the white BMW, even by sight.”

79. The Claimant denied this suggestion. He said that when he said, ‘I know he was the owner ...’ in this statement, that was something he had been told *after* the accident when there had been a lot of talk about it; he did not know that fact *before* the incident. He denied Mr de Wilde’s suggestion that, in fact, before the accident he knew the car and Reza’s identity as its driver, even if he did not know Reza’s name.
80. He said Reza’s M3 was the ‘top top top car’ in BMW’s 3-series models. Brand new it would be about £60 000.
81. He agreed he had told the police he had seen Reza’s car ‘hundreds of times’ but said he had ‘overcooked the describing words’. He said he had ‘seen the car a few times so I said a hundred.’ He accepted he was familiar with it. It was put to him he was so familiar with it he could quote the registration to the police. He replied that he had a good memory for the registrations of cars he was interested in. He admitted telling the police he ‘knew of’ Reza and he called him ‘the computer shop guy’.
82. Mr de Wilde then returned to the incident journey. The Claimant agreed that before encountering Reza on that journey he had not driven especially fast. He again accepted that his driving had changed when he saw Reza. He said he approached the Roundabout behind Ms Muwonge; at that point Reza was behind both of them. He agreed that it was on or just after the Roundabout that Reza overtook him and Ms Muwonge. He said his account to the police on 2 April 2015 where he said he had ‘given way’ to Reza at the Roundabout was wrong. He said that had been ‘the most logical explanation’, so that is what he had told the police. He said the first time he saw Reza’s car was at The Bittoms traffic lights. He denied the suggestion that he must have seen Reza overtake him, given his interest in BMWs. He said he did not overtake Ms Muwonge immediately after Reza overtook him, but it was about eight seconds later. He denied overtaking her to keep up with Reza’s car.
83. The Claimant agreed that the telematics showed the first harsh acceleration event had been him going from about 18mph or 19mph to 38mph and he said this was likely to have been him overtaking Ms Muwonge. It was put to the Claimant that the harsh acceleration was to catch up with Reza. He said the harsh acceleration was ‘to do with a lot of things’ including overtaking and enjoying the car, as he put it, ‘feeling the punch’ of the speed increasing from a slow 19mph.
84. The Claimant said that at this point his front passenger asked something ‘along the lines of’ whether his car was faster than the white car. Mr de Wilde put it to him this comment prompted his fast driving immediately afterwards. He denied that suggestion and the suggestion that his speed had been because of Reza. He said he had driven fast on the penultimate journey when Reza had not been about.

85. He was asked what had prompted him to drive so fast in that area, when it was not particularly late at night and there would have been students about, as he would have known. He said he did not drive like that now. Looking back, he claimed to be 'shocked' at his manner of driving. He now drove a 'slow family 4x4'. He asserted the road was not a residential road. But he accepted his speed was unacceptable and he should not have done it. He denied being a dangerous driver. He said Penrhyn Road was a long straight road and he was driving within the car's capabilities. He said he was not trying to belittle the tragedy that happened, but at the time it was 'normal' and there was no thought behind it. He said was enjoying himself. When Mr Reza pulled away he thought, 'Great, I have space'. He said he always drove fast on that road and 'everyone did'. He said he had been 'stupid' and had paid the price and was sorry for it.
86. He denied driving at 69mph in a 30mph area was dangerous and said it was just 'normal everyday driving'.
87. Mr de Wilde then moved to question the Claimant about some of the data. He agreed that from about 20:59:03 to about 20:59:18 he put in an initial burst of speed from about 18mph or 19mph to 38mph; slowed briefly to about 27mph; then accelerated up to 69mph until a high-g event was recorded and his speed dropped, and that this had taken place over about 500m. He denied the bursts of speed were to catch up with Reza.
88. These speeds are shown in a graph produced by Dr Ford which I will reproduce later.
89. He was asked about the reason for the increase from 27mph to 69mph over about eight or nine seconds. In the course of a long answer he gave various explanations. He said it was a straight road; a fast road; a road he regularly indulged in speeding on as a lot of cars did; 'I didn't wink at it'; he said he was not even aware he was doing the speed he did, 'I thought I was doing 45[mph]'; 'it felt normal'; 'it felt comfortable'; 'it felt safe'. The Claimant took issue with the description of this burst of speed as 'rocketing up'. He said this did not trigger a harsh acceleration event. He said he was using the car within its capabilities.
90. The Claimant said no-one in the car mentioned his speed or asked him why he was racing. He said they were just talking. He said it did not feel fast. But he added what he had done was unacceptable but that he had 'paid the price'. It was something he did in a split second; it had nothing to do with any comments; it was not a reaction to Reza. 'It was just me enjoying the car, using a performance car as it was designed well within its capabilities. I'm not using it to its max power. I could have done a lot more. I could have done 80, I could have done 90, I'm not glamourising it, it's completely unacceptable. It was not a race, it was just bad speeding'. He reiterated it was not a race and that if he had wanted to show-off he would have driven a lot faster
91. Mr de Wilde said the Defendant's case was that having caught up with Reza with the initial burst of harsh acceleration, 'he slowed down, you slowed down because you'd caught up to him within 20m, he sped away, and you sped away'.

The Claimant said this was ‘a bit incorrect’. He said the reason he braked was because he was slowing down and, ‘I was closing in on him which I did not want to do. I did not want to join in competition. I broke because I was coming too close. I believe I came about 5m or 10m of Reza when I was braking. I gave him 20m. I allowed him to move off. I then did my thing. I was not in pursuit. I allowed the gap to get bigger.’

92. The Claimant was shown a CCTV still showing the two cars on an otherwise empty stretch of Penrhyn Road. Mr de Wilde said they were both travelling at 60mph and that the only reasonable conclusion was that they were racing. The Claimant disagreed with that suggestion.
93. The Claimant said that he did not see Reza hitting Ms Shamim but saw him hitting the bus. He said that he did not panic or slam on the brakes. He said he used the word ‘slammed’ in his police interview, but it was the wrong adjective. He did not come to a stop but reduced his speed.
94. He was shown Dr Ford’s graph at and confirmed his speed reduced sharply from 69mph to 43mph in just under 1.5s. He did not accept this was the high-g event recorded by the telematics system. He said the high-g event could have been triggered by driving over a painted line in the road.
95. He was asked, if his case was that it was just a coincidence he was speeding on the same stretch of road as Reza, and that the accident was entirely Reza’s fault and nothing to do with him, why he had performed an illegal right turn and parked his car out of sight. He said he could not fully explain how he had reacted; it was a split-second decision. He had seen Reza smashing into the bus and that was where his attention was. He felt what he did had been reasonable. He denied driving on because he did not want to draw attention to his role in this incident. He said he did not think there was any safe place to stop and that he was going too fast to stop. He was shown photographs of empty parking bays near the crash site but again denied he could have stopped and parked up. He accepted he performed the illegal right turn into Surbiton Road because he was in shock and panic. He denied trying to get away from the scene of the accident because he knew that he had been involved. He said he assumed he would be caught on camera. He said that doing that illegal manoeuvre was essentially saying ‘come and get me if you want me.’
96. The Claimant agreed he parked his car underneath McMillan House. He disagreed he was trying to hide his car. He knew the carpark because he had stayed there in the past with a former girlfriend. He admitted not being entitled to park there and that it was residents only parking but also said he did not need a permit.
97. He went back to the accident site and realised straight away that someone had been killed or seriously injured. People were performing CPR on Ms Shamim. He saw Reza in a distressed state. He did not make himself known to the police. It was put to him that he knew he was a key witness to what had happened. He explained that he had had a *laissez-faire* approach at the time; he had seen what happened, but he did not want anything to do with it; his main thought was his

exams and coursework; and he did not want to have to start giving statements. He agreed he had not previously mentioned coursework as a reason, but had said he had not spoken to the police because he thought he could not offer much help.

98. He said he knew about extenuating circumstances for students and exams. He agreed that being a witness to a fatal accident would have counted. But he said if he had deferred it would have had a knock-on effect.
99. He agreed that this explanation about coursework, etc, had not previously featured in his case. He also said (I paraphrase) that he had been brought up in an environment where the police were not liked. He said was not one to 'run to the police'. He agreed he had not advanced this reason before.
100. Mr de Wilde then moved on to the Claimant's case that he had suffered serious harm as a result of the Article. The Claimant said he was now respectable and had a good job. He said he knew a lot of people had shunned him because of the Article. He said he could not give percentages. 'People have shunned me because of the Article, strictly because of it', he said.
101. It was put to him that the real damage to his reputation had taken place because of his prosecution and criminal trial, not the Defendant's Article. He disagreed. He said during the trial he had a lot of support from his peers, and colleagues at work. Then the Article came out, with undertones that he had got away with it.
102. He agreed the trial was high-profile. There was a lot of media interest. There was interest at the University and around Kingston, including among friends of his and others. He agreed that they followed the trial.
103. It was suggested that what was said at the trial was much more damaging to him than the Article, because of Reza's defence. As I have said, Reza's case was that the Claimant had chased him and that the Claimant had been real cause of the collision. He disagreed.
104. He said (per his APOC) that 38 people who had re-tweeted the Article thought it was true. He could not say if he knew them. He was asked if he did not know them, how he knew what they thought. He said he thought by re-tweeting the Article they were endorsing it.
105. He maintained there were 50 people from University he no longer had contact with because of the Article. He was unable to give any details of these people. He gave further examples of being shunned at University and said people would not sit at the same table in class or the lunch hall or would go silent when he walked in. This was after publication. He said he did ask people what was going on, why they were not talking to him. He said lots did not respond, but he was told by third parties that it was because he had been racing.
106. Mr de Wilde put to the Claimant that he had not adduced any evidence from the third parties who had told him he was being shunned because of the allegation of racing in the Article. He said it was wrong to assume they were on his side;

even they did not want to talk to him. He said there were only two people from University that he still speaks to, and he was someone who was quite popular. He said that he could not speak to lecturers or get a reference.

107. Mr de Wilde said the Claimant had failed to adduce any supporting or corroborative evidence on harm. He replied that the Defendant's case was absurd because if you have published that he had raced, which has led to killing someone, and that was the headline, then that would have changed people's opinion of him.
108. Mr de Wilde said it had been four years since the Article and the Claimant had not been able to find a single witness to say that it had damaged his reputation. He replied it was hard to prove.
109. Mr de Wilde said that there was no evidence to show that the Claimant had been excluded from alumni groups because of the Article, as he claimed. The Claimant said you do not get rejection emails with the reason for the rejection.
110. Mr de Wilde then took the Claimant to his libel claim against Associated Newspapers Ltd (publishers *inter alia* of the *Daily Mail*, and its online version, *MailOnline*), in respect of an online article on 26 January 2017, which had been settled for £12 500. The Claimant would not accept that *MailOnline* is a large and well-read news website. He said it was 'not believable' and he did not read it.
111. The Claimant agreed that the article had referred to him having 'mown down' Ms Shamim and having been convicted of seriously injuring a child. He agreed these were serious untrue allegations, but said to Mr de Wilde they were not 'as serious as your ones.'
112. It was put to the Claimant that it was not possible to separate the damage to his reputation caused by the *MailOnline* article from the damage caused by the Defendant's Article. He said that you could, because 'no-one believes what the *Mail* say, whereas everyone believes what the police say'.
113. He agreed that the claim in respect of the *MailOnline* was premised 'to an extent' on it being believable, but added that the level of the settlement was a reflection of 'how believable'.
114. Mr de Wilde said the Claimant's evidence referred to other articles based on the Defendant's Article. The Claimant agreed. He said the police had published their version to multiple news outlets. He complained about the police because everyone believed them.
115. He finished by saying that people do not want to talk to him which is why there are no statements from them.

The Defendant's case

(i) PC Simon Palmer

116. PC Palmer is a forensic collision investigator who investigated this accident and gave evidence for the prosecution in the criminal trial as an expert witness. He adopted his witness statement of 11 December 2020 as his evidence in chief. He also prepared two reports for the criminal trial.
117. PC Palmer attended the scene on the night and carried out forensic work. He later calculated the speeds of the vehicles using CCTV and prepared an album of key CCTV frames and annotated maps (Ex STP/21) for the criminal trial. These showed the movements of Reza's car, the Claimant's car and Ms Muwonge's car as they travelled from Fairfield North across the Roundabout to the accident site, which was at about the junction of Penrhyn Road with Penrhyn Gardens.
118. CCTV showed that the Claimant arrived at the Roundabout in the inside lane, lane one of two. Ahead of him was Ms Muwonge. Reza arrived at the Roundabout just after the Claimant, in lane two of two. He then overtook the Claimant and Ms Muwonge. At that point, the Claimant moved into lane two and also overtook Ms Muwonge. By the time Reza and the Claimant reached the junction with The Bittoms, the Claimant was directly behind Reza. Earlier on this trip he had averaged about 38mph. Moving towards the Roundabout at about 20:58:37 the Claimant was travelling at about 23mph.
119. PC Palmer's opinion was that the Claimant's driving before being overtaken by Reza had been unremarkable, but that it changed at that point and Reza's presence seems to have been the catalyst for that change.
120. PC Palmer's analysis of the CCTV showed that both the Claimant and Reza were travelling in excess of 60mph shortly before the collision occurred. The Claimant was travelling at around 62mph as he passed a pedestrian crossing outside the University, a short distance before the collision. The telematics data recorded the Claimant's peak speed as 69mph slightly further down the road towards the collision.
121. PC Palmer said that at a speed of 30mph, the Highway Code gives the stopping distance in the dry as 23m. The Code gives the stopping distance at 70mph as 96 metres. The Highway Code states that the safe rule is to never get closer than the overall stopping distance. In relation to fast moving traffic, the Code also advises that at higher speeds a two-second gap should be maintained between other vehicles. At 69mph a two second gap equates to just under 62m. (One mile is 1609.3m; therefore, a speed of 69mph equates to 111 041.7m per hour, or 30.8m per second. Hence, in two seconds at that speed a car will travel 61.6m).
122. PC Palmer said that he had seen [13] of the Claimant's Amended Reply, where he asserted that he had 'maintained a sufficiently safe distance from Mr Reza's BMW M3'. PC Palmer said he estimated the distance between the two cars as they approached the University as having been around 20m. He said that even at 30mph, the gap between the two vehicles was insufficient to comply with the Highway Code. At 69mph Mr Spicer would have covered the 20m gap in around 0.65 seconds. Therefore, according to the guidance in the Highway

Code, the Claimant was driving much too close to Reza. In his report for the criminal trial, he said that his opinion was that the Claimant and Reza had driven dangerously because of their speed; the hazards in the road, eg junctions and bus stops; and foot traffic to the University, among other factors.

123. In cross-examination PC Palmer confirmed that Reza, the Claimant and Ms Muwonge had all gone through the traffic lights on green; that the Claimant appeared to be braking at this point; and that the telematics data appeared to show that the Claimant's speed dropped from 38mph to 27mph before increasing.
124. PC Palmer said measuring the performance of Reza's car against the Claimant's car was complex. Reza's vehicle was capable of 0-60mph in 5.1s. The engine produced 414bhp. The torque (turning power) was 400N-m. The 0-60mph figure for the Claimant's car was 5.4s. It had a higher torque, 560N-m, but its engine only produced 254bhp. Those were the figures for a car in 'showroom condition'. Reza's car was four years old at the time and he was carrying five child passengers. The Claimant's car was virtually brand new, and he was carrying three adult males. Overall, PC Palmer said he thought the actual performance of the two cars was likely to have been similar.
125. He said there was nothing on the CCTV to indicate any overtaking attempt by the Claimant. But he qualified that by saying there was a stretch of road of about 135m from The Bittoms going south towards the University which was not covered by CCTV. He said that his measurements showed that from this point, where the cars re-emerged onto the CCTV, to the point of the collision, the cars remained about 20m apart.
126. He agreed there was no physical evidence of harsh braking by the Claimant, but added with ABS there might not be any.
127. He agreed it took the cars about 23 seconds from the Roundabout to the collision site and that the Claimant had been behind Ms Muwonge for about eight seconds, meaning that he was behind Reza for about 15 seconds before the collision.

(ii) (Retired) Detective Sergeant Jeff Edwards

128. He adopted his witness statement as his evidence in chief.
129. On 23 September 2015 he was appointed as SIO in the inquiry into Ms Shamim's death. He reviewed the evidence and in his view it was clear that Reza and the Claimant had driven dangerously by reason of their speed in a residential built-up area close to the University.
130. He said the Claimant's failure to stop at the scene and his failure to offer information to the police suggested to him that the Claimant had been involved in a race. Like PC Palmer, Mr Edwards disputed the Claimant's claim to have kept a safe distance and said this also suggested he was attempting to keep up with Reza.

131. He said the Claimant's illegal right turn manoeuvre could have taken him into oncoming traffic and he disputed the Claimant's assertion he had parked in the first practical place.
132. He described the unsuccessful efforts to take statements from the Claimant's passengers, who had been traced via the University but had declined to assist in the investigation.
133. Moving to the trial, Mr Edwards said that there was a lot of media interest. As SIO, he was the point of contact for the police's DMC team. He provided case updates to the DMC for dissemination to the media and he approved press lines prior to their publication.
134. He updated the DMC at the conclusion of the criminal trial and saw the Article on the day it was published. Mr Edwards said that he understood that the Claimant's complaint was initially about the headline, which he said meant that he had been found guilty of unlawfully killing Ms Shamim. Mr Edwards said he accepted that the headline when read on its own might have wrongly given this impression, but that when the Article was read as a whole, as Warby J found, it did not bear this meaning. He maintained, in particular, that [1]-[6], [10]-[21], and [23], were a fair and accurate report of the proceedings against the Claimant and Reza, and their outcome.
135. In cross-examination, Mr Edwards said the Article was drafted by the DMC on behalf of the police. He was involved in the drafting. It was read to him after the verdict and then published. He did not see it before it was published.
136. He was shown the first page of article. He said that the headline was not on the version that was read to him. He was nothing to do with headline. He did not know how headline came to be on it.
137. He said he had seen a draft of the Article, possibly during the trial. He was shown a draft of the Article from 11 January 2017. Mr Edwards agreed it was similar to the Article as it was eventually published and that he had approved the draft. It contained the quote from [7] of the Article as published.

(iii) Samantha Wickers

138. She adopted her witness statement as her evidence in chief. She works as a Senior Media and Communications Manager in the DMC.
139. She said that the Article had received 2462 views.
140. She first became aware of the accident on 31 March 2015, when the DMC began to receive media calls about a fatal road traffic collision on Penrhyn Road in Kingston. They issued initial information later that evening and provided follow-up as the police investigation progressed.
141. She was the DMC point of contact for the criminal trial, which began on 9 January 2017. It was her responsibility to provide media updates.

142. She was provided with information by DS Edwards and DC Haffenden, and drafted a press release to be issued at the conclusion of the trial. The press release was used to prepare an article for the Metropolitan Police's website (news.met.police.uk), which was published at 17.22 on 26 January 2017. This website is open to all but is primarily aimed at the media. It allows members of the media to view police press releases and download related images, footage and other material. However, it can also be seen by the general public and is accessible via the Metropolitan Police's main website.
143. At the time the Metropolitan Police used a provider called Mynewsdesk (MND) to publish articles and other material (images, video, etc). In summary, MND allowed the Article to be published on the website; emailed to news outlets and email contact groups; and a link posted to the police's Twitter account.
144. Ms Wickers said there is no way to determine retrospectively the number of individual contacts who received and may have read the Article. However, and for the purposes of illustration and comparison only, at the time of writing, she said the numbers involved were Crime Reporters' Association (67 contacts); news agencies (142 contacts); London newspapers (100 contacts); London TV and radio (193 contacts); BAME media (29 contacts); local media (55 contacts) These listed groups form the entirety of the media contact groups who were sent the Article directly on 26 January 2017.
145. Following notification from the court, the sentences passed on Reza and the Claimant were added to the Article at 19.15 on 26 January 2017. The Article was not recirculated.
146. It is the Metropolitan Police's policy to remove news stories from the news website and Twitter account three months after publication. According to Ms Wickers the Article and the Tweet were therefore removed on 26 April 2017. MND now has an automated process for removal of publications, but in April 2017 this was a manual process with a colleague assigned to delete stories that met the three-month threshold. (In fact, according to the Second Witness Statement from the Claimant's solicitor, which was filed with my leave after the close of the evidence, the link was still available on the police's Twitter account as of 4 February 2021).
147. Ms Wickers says that MND provides analytics, and her colleague had extracted the following statistics for the Article prior to its deletion:
- “You've had 2,642 views since the beginning of the story. Your email has been opened 468 times by 200 unique people, 19 of them have clicked a link. Your top three sources were Mynewsdesk, Twitter and Facebook. 1,472 views on mobile.”
148. The Article was covered by a range of media, including national, pan-London and local sources, but Ms Wickers does not have any information as to precisely how extensive this coverage was.

149. In cross-examination Ms Wickers said she said was not sure when the headline was drafted, but the usual process was to draft a headline at the point a story is to be distributed and placed on the website. Where there is material to be distributed, eg CCTV, a page is built in advance with a view to it going on the website, so that it is 'ready to go'. They did that here. It might have been that the headline was drafted at the same time, but she did not know. But she said that given headline was not accurate, it was probably drafted earlier than the verdict. The headline would have been drafted when they began to create the page for the website.
150. She was asked to give the 'go-ahead' for circulation of the Article. She said that they would make sure the Investigating Officer was happy with the press lines before publishing; the copy would be checked/sub-edited; and then it would be sent out. She saw the Article before it was sent out.
151. She was asked, once the verdicts had come in, why the headline was not amended to reflect the fact that the Claimant had been acquitted of causing death by dangerous driving. She said she did not know when the headline was written, but accepted that it either should have been amended or not written in the way that it was.
152. Mr Sterling put to Ms Wickers that the Claimant found it 'very unsatisfactory and deeply hurtful' that the headline referred to him being associated with Ms Shamim's death by dangerous driving. He asked whether she did not see it as 'part of her duty' to make sure the Article was fully accurate. She said they always want to be accurate. She said the headline was inaccurate and they did not want to be inaccurate.

(iv) Expert evidence

153. I then heard from Dr Dixon and Dr Ford in relation to the telematics data. They were both supplied with the raw data from the telematics device and used it to produce their reports, which contain a number of charts, maps and diagrams. These illustrate the timing and location of unusual or abnormal events (eg, excess speed and harsh braking/acceleration) recorded by the device on 31 March 2015.
154. Their reports contain quite a lot of technical detail. In the summary which follows I have only included those details necessary for a proper understanding of their evidence. Fortunately, there was a broad degree of agreement between them.

Dr Chaz Dixon

155. He adopted his report and his joint report with Dr Ford as his evidence. During his evidence he helpfully made clear that where he did not explicitly disagree with Dr Ford then he agreed with him. He clarified a couple of points orally. He said that he thought that the Claimant stopped in a sensible place almost as soon as he could have and that to suggest that he could have stopped sooner was 'very subjective'. He said there was a high-g event at 20:59:18 and that at the speed the Claimant was then going, the RAC published stopping distance is

96m. Surbiton Road is about 100m beyond the point of the high-g event, so Dr Dixon said with an emergency stop the point of stopping would be at about that right turn.

156. He was asked if he knew where the Claimant actually parked. He said he thought initially he had parked at the end of Bridle Close, but now understands he parked in a car park accessible from Surbiton Road ‘behind a building’. (In fact, he parked underneath a building, out of sight).
157. Dr Dixon then referred to the point where the high-g event was recorded. No harsh braking was recorded by the telematics device. But, he said, having discussed the matter with Dr Ford, a high-g event takes precedence because the telematics device interprets it as a collision. Here, the device was wrong because there was no collision. He said it may have been triggered by a bump in the roadway or a marking on the road, but the recording of the high-g event might have masked what might have been recorded as a harsh braking event. There was deceleration for two seconds in that vicinity; the car went from 67mph to mid-40mph quite rapidly, therefore braking must have occurred.
158. Dr Dixon identified 11 journeys on 31 March 2015, going from the early hours of that day until the early hours of 1 April 2015. As I have said, the penultimate trip and the incident trip were Trip 7 and Trip 8 respectively. Dr Dixon assessed the data in order to identify abnormal events such as excess speed, harsh events, etc. There were no such events on five of the trips (Trips 2, 4, 5, 9, 10) and these were not further examined. There was at least one such event on the other six trips that day.
159. The data in Dr Dixon’s Figure 26 clearly summarises the abnormal events on these trips, as follows. I reproduce it as follows:

TRIP	START AND END TIMES	DURATION, MINUTES	‘ABNORMAL’ EVENTS
1	01:00:02 to 01:04:36	4:34	Speeding for 1½ minutes at 80 mph or faster when speed limit was believed to be 50 mph. ‘Harsh Braking’ recorded once Speeding for 1 minute at 49 mph when speed limit was believed to be 30 mph
3	13:02:41 to 13:58:45	56:04	Speeding for 2-3 minutes at up to 59 mph when the speed limit was believed to be 50 mph

6	16:37:07 to 16:42:58	5:51	Speeding for 1½ minutes at up to 55 mph when the speed limit was believed to be 30 mph. ‘Harsh Acceleration’ recorded twice ‘Harsh Braking’ recorded once
7	20:28:05 to 20:35:29	7:24	Speeding at up to 44 mph Speeding for 1½ minutes at up to 66 mph when the speed limit was believed to be 30 mph. ‘Harsh Acceleration’ recorded twice ‘Harsh Braking’ recorded three times ‘High G’ recorded twice ‘RPM Threshold Exceeded’ recorded once.
8	20:56:23 to 21:01:02	4:41	(Fatal Accident (not involving this vehicle) occurred during this trip) Speeding for a period of 18 seconds, with a peak speed of up to 67 mph recorded when the speed limit was believed to be 30 mph. ‘Harsh Acceleration’ recorded once ‘Harsh Braking’ recorded once ‘High G’ recorded twice
11	00:32:38 to 00:49:51	17:13	Speeding for 2-3 minutes at up to 46 mph when the speed limit was believed to be 30 mph.

160. In relation to Trip 8, the timing details of the recorded events are probably most clearly shown in one of Dr Ford’s graphs, which I will set out later. I should point out that the speed of 67mph which Dr Dixon recorded was charted by Dr Ford as 69mph, for the reasons I explained earlier. Dr Dixon did not regard any difference as significant.

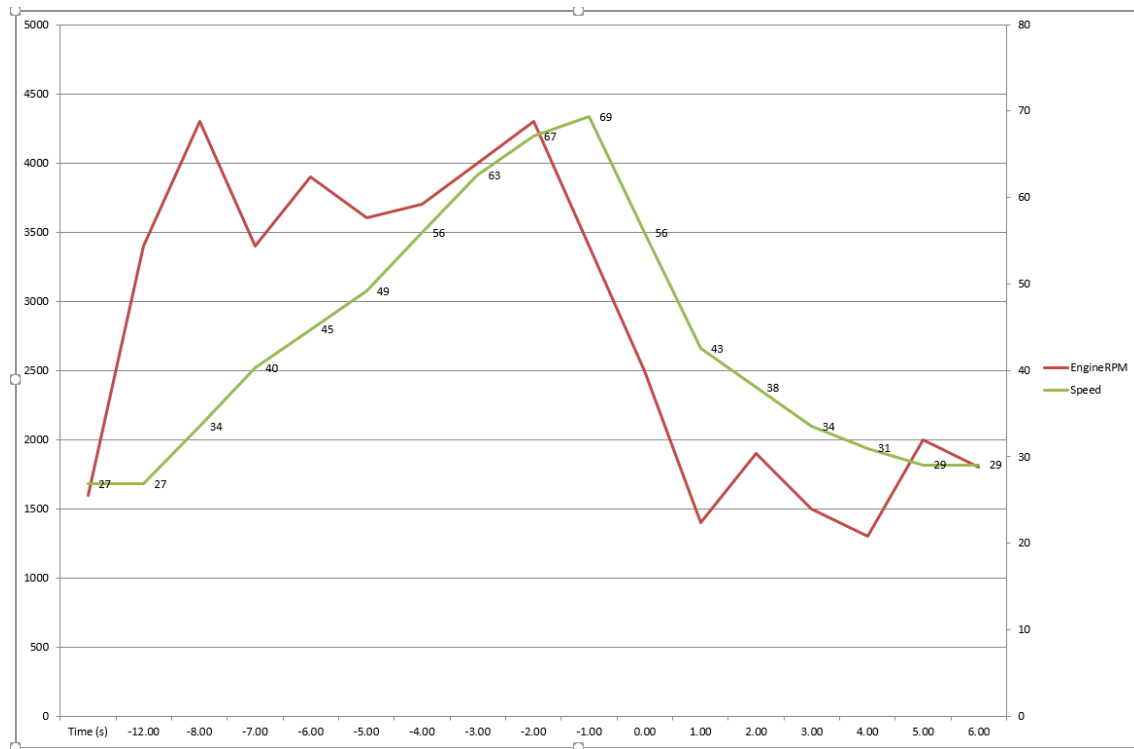
161. Dr Dixon was then cross-examined.
162. He agreed there were two trips where the Claimant travelled at double the 30mph limit: on Trips 7 (66mph) and 8 (67mph/69mph). He agreed that Trips 7 and 8 showed higher maximum speeds relative to the speed limit than other trips. He also agreed that both trips were marked by harsh events.
163. In relation to vehicle separation, Dr Dixon said that neither he nor Dr Ford were competent to overrule PC Palmer's conclusion on the 20m gap.
164. Although he admitted he was not a driving safety expert, he said that at 70mph the suggestion there should be a 96m gap was harsh given that one did not see such separation on motorways. It was put to him that a suburban road like Penrhyn Road was different because of the presence of buses etc. He said he had not studied the CCTV, and a different expert might therefore have a better view than him.
165. In relation to the high-g event at 20:59:18, Mr de Wilde said it was Dr Ford's view that this was caused by harsh braking. Dr Dixon said he recalled that at the criminal trial Dr Ford had said it could have been the Claimant passing over a line in the road, which he thought was plausible.
166. Dr Dixon was then asked about the Claimant's driving immediately after the high-g event. He said he did not feel there was any scope for saying that he did not stop at the scene. He said he did not think it was a fair presentation of the facts. I asked if there was any reason why the Claimant could not have just carried on down Penrhyn Road and parked as soon as he could. Dr Dixon agreed that he could have done that.
167. Dr Dixon said it was not unreasonable for the Claimant to have taken an illegal right turn into Surbiton Road and parked on the roadway and walked back.
168. He agreed that there are two components to a stopping distance: thinking distance and stopping distance. Mr de Wilde put to Dr Dixon that the Claimant was already braking at the high-g point. Dr Dixon replied said that the high-g event is an instantaneous record from accelerometer. He agreed that there was braking at the high-g point and the vehicle slowed by about 20mph. It was therefore put to Dr Dixon that the thinking distance did not need to be included because it had already taken place – the Claimant was braking at the high-g event point. He said the Claimant had said at the criminal trial that he was starting to brake because of the upcoming left-hand bend in Penrhyn Road. He may not have been braking because of an unfolding incident. Dr Dixon said that reaction time to the collision still needed to be factored in.

(ii) Dr Ray Ford

169. Dr Ford appeared as an expert witness for the prosecution at the criminal trial. He adopted his report for these proceedings and his joint report with Dr Dixon as his evidence in chief.

170. Dr Ford said that the device fitted to the Claimant's car was a sophisticated one that could record a number of parameters. Dr Ford explained that the device captured force/acceleration data in three axes (x, y and z) very quickly, many times a second. Imagining looking at a car from above with the rear to the left and the front to the right, the x-axis runs from back to front; the y-axis from bottom to top; and the z-axis vertically towards the viewer.
171. The device recorded a high-g event where a value of 1.25g was exceeded over a 50ms period (ie, 1/20 of a second). In a similar way, the device could capture acceleration and deceleration in excess of a pre-set value (the figure given by Dr Ford is 0.27g) for 500ms or more. As I explained earlier, these are known as harsh acceleration or harsh braking events.
172. Dr Ford said that high-g events are rare (I do not need to set out the technical details behind this assertion, which I accept).
173. In his report from Section 6 onwards Dr Ford addressed in detail the incident journey (Trip 8). This trip began when the device recorded ignition on at 20:56:24 and ended with ignition off at 21:01:02.
174. The device recorded two harsh events on this trip. The first event was harsh acceleration which took place on Penrhyn Road adjacent to the junction with Grove Crescent (ie around The Bittoms traffic lights). The speed of the vehicle at the trigger point was 38mph and the maximum acceleration measured was 3.1ms^{-2} , or a gain in speed of 7.5mph per second. The duration of the acceleration was three seconds, so the vehicle's speed increased by about 22mph during this period.
175. The second event was high-g event. This occurred at 20:59:18 on Penrhyn Road at a point outside the University. According to Dr Ford, at the trigger point the Claimant's car was travelling at 69mph, or more than double the speed limit. The event was a harsh deceleration from that speed.
176. In [8.2] of his report Dr Ford said this:
- “In Diagram 4(b) I have illustrated the speed profile and engine rpm profile for the duration of this High G event. It is important to note that at no time was the vehicle brought to a stop or pulled over despite the incident occurring in front of the driver (Claimant); the other party who hit the victim (Reza) was approximately 20m ahead of Claimant throughout the time whilst on Penrhyn Road (from CCTV), and struck the pedestrian at approximately 70mph, before subsequently crashing into an oncoming bus. As can be seen from the speed profile even though Claimant's vehicle has continued to accelerate throughout the period on Penrhyn Road he did not make up any ground to the Reza BMW vehicle preceding him, thus Reza's speed must have been increasing similarly to maintain distance separation from Claimant.”

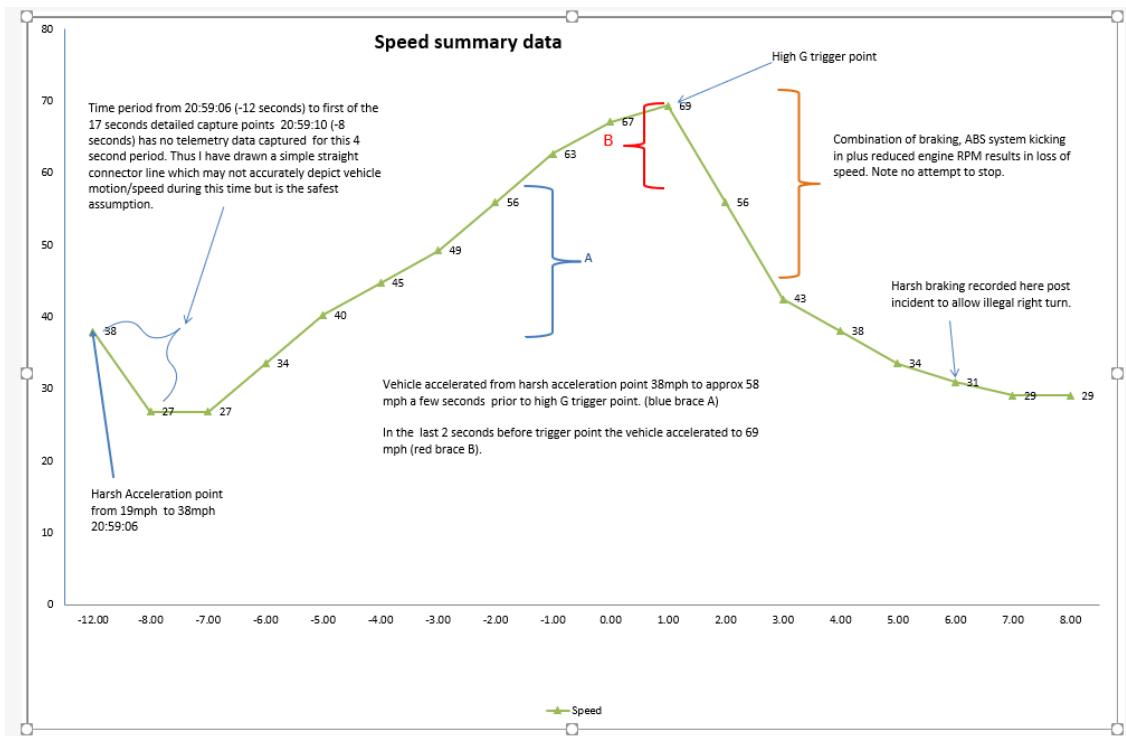
177. Figure 4(b) is this:



178. The left-hand vertical axis shows engine RPM; the right-hand axis shows speed in mph. The line going up to the first peak between 4000 and 4500 is the engine RPM; the other line is the vehicle’s speed. Time zero on the horizontal axis is 20:59:18, when the second high-g event was recorded (at the point of the accident).

179. Thus, Dr Ford said it is clear that the Claimant’s vehicle accelerated from around 27mph through to 69mph before braking brought the speed down to 43mph in 1.4 seconds (the braking involved being of sufficient magnitude to be recorded as a high-g event). The speed then dropped from 43mph to 29mph over a period of about 4.5s – 5s.

180. Dr Ford’s Figure 4(c) is also helpful in understanding the sequence of events:



181. Dr Ford's caption for this graph is as follows:

“Diagram 4(c) illustrating the speed line shown previously in 4(b) but with additional comments to explain key points in this data capture. Note the first harsh acceleration point 12 seconds before High G then the harsh braking event discussed below post incident around 6 seconds later. This braking allowed the illegal right turn into Surbiton Road where the Claimant later parked his vehicle behind domestic buildings in a car parking area.”

182. There was thus a harsh braking event recorded about 6s after the sudden drop in speed at the point of the second high-g event at time zero; Dr Ford interpreted this as being the point when the Claimant made the illegal right turn into Surbiton Road and needed to brake harshly in order to do so.

183. At [8.4] Dr Ford summarised his opinion as follows:

“8.4 In summary from the above High G data capture plus CCTV captured at various points along the journey ... (a) It can be assumed that the Claimant knew the locality well (he was a student at the University), (b) he knew the speed limits and the change in carriageway width from two lanes to a single lane southbound along Penrhyn Road (driven this route many times) (c) he was following the Reza vehicle continuously once he was overtaken at the roundabout by Reza (from CCTV) (d) it was his decision to drive in the manner he did to attempt to either catch or overtake the Reza vehicle (speed data) (e) he triggered

harsh acceleration when overtaking the other road user immediately prior to Penrhyn Road narrowing (f) he made no attempt to stop or pull over at the locality of the incident even though it happened immediately in front of him and was compelled to brake vigorously (speed data and accelerometer trace) (f) he was aware of the magnitude of the speeding (g) he carried out an illegal right turn to then find a parking location a short distance away from the scene. It will be a matter for the court to ascertain the reasons for this behaviour.”

184. In Section 10 of his report Dr Ford examined the other journeys made by the Claimant before and after the incident journey on 31 March 2015, to assess if the Claimant’s driving behaviour on the incident journey was atypical. He agreed with Dr Dixon that some of these journeys showed abnormal events. Dr Ford described the style of driving on the penultimate journey as having been ‘spirited or aggressive’. He said that journey was ‘littered’ with harsh acceleration and deceleration events, and that there were also two high-g events. At one point the engine RPM threshold limiter alert was triggered. During this journey the vehicle travelled in excess of 60mph (in a 30mph zone).

185. At [10.10] of his report Dr Ford said:

“10.10 In summary by plotting all the trips from 16:37:08 onwards up until 00:49:51 I have illustrated every harsh event including High G events except one that was triggered at 01:01:37 on the morning of the 31st March 2015. It is apparent that the Claimant can drive the vehicle without triggering any harsh events if he chooses to do so, as illustrated in journeys taken after the index journey. However, for reasons known only to the Claimant he appears to have driven the vehicle in an aggressive or inappropriate manner immediately prior to and during the index journey. It is very clear that the Claimant has issues with driving within the road speed limits on occasions and where or when he feels like it has no issue with driving at speeds in excess of double the official limit. The Claimant clearly knows the University Campus, uses the surrounding roads regularly and therefore would have known the Penrhyn Road layout and speed limits on the day of the incident. It will be a matter for the court to ascertain why the Claimant chose to drive like he did on this day and specifically why was the driving so different for the preceding and index journey.”

186. Dr Ford analysed the data from the high-g event at 20:59:18. By plotting the forces in the three axes as measured by the telematics device, which showed synchronous pulsing in each axis, he was able to determine that at the point of this event there was human input and then ABS braking, causing a ‘pulsing’ trace in each of the three axes.

187. He concluded at [13.12]:

13.12 I have shown by comparison with CCTV captures and the telematics data that the Claimant did willingly and knowingly follow another vehicle along a public road in a manner that would suggest to the other driver that he was either trying to catch up with him or maintain a defined separation between the two vehicles, no matter what speed the leading driver drove at.”

188. Dr Ford was then cross-examined.

189. He maintained his view was that the high-g event at 20:59:18 was attributable to braking hard and there was no swerving. He emphasised the accelerometer data was the best evidence as to what happened at the high-g event.

190. He was taken to his evidence at the criminal trial. It was put to him that when he was asked about the high-g event he did not mention harsh braking. The judge suggested ‘slight braking and undulation in the road’ to which he responded, ‘Undulation in the road, yes.’.

191. He said that if you hit an undulation at 70mph the suspension will expand/contract and the vehicle will move up and down in the z-axis. He said the movement in the z-axis for this event was consistent with braking/ABS. Later, he said that the inputs were happening too rapidly for a human to achieve; it was the automated ABS braking system.

192. He said that he believed that he did say at the criminal trial in 2017 that the high-g event was triggered not by an impact with a car, but by retardation through braking. There may or may not have been an undulation, but the significance is not there; this was caused by braking, and that it was not a ‘casual’ touching of the brakes. The deceleration was caused by the rapid continuous ABS actions of the car which brought it to 43mph in less than two seconds.

193. He reiterated that he thought he had referred to harsh braking in the criminal trial 2017. It was suggested that he was saying something different now. He said he may not have taken on board counsel’s words. He said that driving over a white line or undulation would not have caused this high-g event. There may have been a white line or undulation which caused a reaction in the vehicle, but the principal g-force during this event was in the x-axis, not up-down (z). Undulation may have been a small factor, but the main cause was braking. There had not been a collision.

194. Mr Sterling then moved to the topic of whether any of the other journeys undertaken by the Claimant on 31 March 2015 were comparable to Trip 8 in terms of harsh acceleration/harsh braking, high-g events etc. Dr Ford said that the two journeys that were of interest when compared with the incident journey were the penultimate journey and the journey before that (ie, Trips 6 and 7). He

said that he could only look at the data in isolation. Generating harsh events is not easily done. It is even harder to generate a high-g event. Here, he said Trips 6, 7 and 8 in his view were different to other trips before and after on that day.

195. He agreed with the proposition that generally, a driver has to be driving in a particular way to trigger harsh or high-g events. He amplified this answer and said telematics devices fitted to hire cars were generally set so they only recorded events when the driver kept pushing the car to a high level of exertion. He said if a driver wanted to trigger a harsh acceleration then they had to 'go for it'. He said the concern to hire companies was not so much speed, because if a driver exceeded 100mph the car would likely be taken off them. But he said harsh events took some doing, and that is why in his opinion the penultimate journey and the incident journey in particular were different to the other trips.
196. AIS insurance was his old employer many years ago. They had about 10 000 vehicles, worth about £90 million. Part of his responsibility was to design the telematics systems so the company might at least get its cars back in the same condition as they were given out.
197. He said that when a driver was generating harsh braking and acceleration then the only way to describe that is aggressive driving. Dr Ford said that the Claimant was driving aggressively on Trip 7 and Trip 8, and possibly the journey going southbound to the University that afternoon (Trip 6). He said there had been the opportunity for the Claimant on these journeys to 'push it on'.
198. He was asked how many events were necessary for the Claimant to have 'displayed his driving habits'. He said it was not just a matter of how many events there were, but a question of where those events take place and what were the contributing factors. If there is a plausible explanation as to why there was a harsh event (eg, someone pulls out in front suddenly, or traffic lights suddenly change) then you would not bother looking at them. But if repeated harsh events were seen not attributable to anything, or not knowing the road, or driving inappropriately for the time of day, this would prompt the question, 'What is going on here?'
199. Dr Ford then explained again how harsh events are calculated and he reiterated that harsh events are quite difficult to trigger. That is why the repeated harsh events in this case showed aggressive driving behaviour. He also pointed out that a harsh event might have an explanation, eg, sudden braking when a child ran into the road, but harsh braking for no reason would be another thing. He said that often harsh events occur on roads a driver is familiar with and where he knows what he can 'get away with'.
200. Dr Ford was then taken to Trip 6, which took place at about 16:30. He agreed there were three harsh events and high speeds. He said you needed to look at where was occurring. He agreed there were speeds of 55mph and 45mph. He said that if there was no good reason for these events then they were indicative of aggressive driving.

201. He was then asked about Trips 7 and 8. Dr Ford said that there was agreement between him and Dr Dixon on how to interpret the data. They agreed that the events shown happened at the values shown and that Trip 7 is relevant to Trip 8. Dr Ford said that Trip 7 and 8 stood out above all other trips on that day.

202. He was then asked about his report at [8.4]:

“In summary from the above High G data capture plus CCTV captured at various points along the journey (see exhibit 2015 170 STP2) is that (a) It can be assumed that the Claimant knew the locality well (he was a student at the University), (b) he knew the speed limits and the change in carriageway width from two lanes to a single lane southbound along Penrhyn Road (driven this route many times) (c) he was following the Reza vehicle continuously once he was overtaken at the roundabout by Reza (from CCTV) (d) it was his decision to drive in the manner he did to attempt to either catch or overtake the Reza vehicle (speed data) (e) he triggered harsh acceleration when overtaking the other road user immediately prior to Penrhyn Road narrowing (f) he made no attempt to stop or pull over at the locality of the incident even though it happened immediately in front of him and was compelled to brake vigorously (speed data and accelerometer trace) (f) he was aware of the magnitude of the speeding (g) he carried out an illegal right turn to then find a parking location a short distance away from the scene. It will be a matter for the court to ascertain the reasons for this behaviour.”

203. Of these factors, Dr Ford said that he assumed (a) because he had been informed that the Claimant was a student at the University. For the same reason he thought (b) was a fair assumption. In relation to (c), the Claimant was following Reza continuously after he had been overtaken. The pursuit was for about 12 – 15 seconds from The Bittoms lights/Roundabout, ie, three seconds from the Roundabout to The Bittoms, and then 12 seconds from The Bittoms to the accident. It was put to him this was a short journey. He said in the context of all the journeys, 15 seconds was short, but in the context of this incident there was only that period of time from when Reza overtook the Claimant.

204. He disagreed that (d) was getting into the Claimant’s mind. He said it was a fact that the Claimant made the decision to drive in the manner he did. Dr Ford said that could not say whether this was for a good or bad reason.

205. As to (e), the harsh acceleration was triggered near traffic lights as he overtook and it was the driver’s voluntary decision.

206. He said that the pattern of speeds on Trips 7 and 8 was atypical and showed the car was being driven at its limits. It was not necessarily a good driving manner.

207. In relation to (f), Mr Sterling asked whether Dr Ford had used any data to work out how easy or difficult it would have been for the Claimant to stop. Dr Ford said that there was harsh braking from 69mph to 43mph, which led to a high-g event. After that he pointed out the less steep gradient of the speed; if deceleration had continued at the same rate it would have dropped to 10 or 12 mph in a further two seconds. But Dr Ford pointed out that the speed continued from 43mph to 38mph to 34mph. He said this was indicative of 'no real braking' at this point; it was engine braking. The engine revolutions had dropped 'massively'. They then went up, showing the driver used the throttle to keep the vehicle going. He did not attempt to brake after the event until the harsh braking event where he turned right.
208. Dr Ford emphasised this was a high-end car with lots of driver aids, eg ABS, which could stop much more quickly than the figures given in the Highway Code. The car would have been able to stop within a few seconds from 43mph. He disagreed with the suggestion it would have taken 100m to stop. He estimated that if the car could do from 69mph to 43mph in two seconds, it could have reached zero in about five seconds or so.
209. In relation to (f) and the opinion that, 'he was aware of the magnitude of the speeding', Dr Ford said this was common sense, in that the driver would have been able to see his speedometer.
210. In relation to (g), 'he carried out an illegal right turn to then find a parking location a short distance away from the scene,' Dr Ford said he did not mean a distance in the order of 20m or 30m. Dr Ford conceded that he did not know the area. He pointed out that the Claimant did not use the car park on Surbiton Road. He chose to drive underneath a domestic dwelling and park there. Dr Ford said that if he was asked to comment, this was not a reasonable place to park after a serious road accident.
211. He was asked about the comment in his report at [10.10], 'for reasons known only to the Claimant he appears to have driven the vehicle in an aggressive or inappropriate manner immediately prior to and during the index journey.' He agreed the driving could have been both aggressive and inappropriate. In the next sentence he said, 'It is very clear that the Claimant has issues with driving within the road speed limits on occasions and where or when he feels like it has no issue with driving at speeds in excess of double the official limit.' Dr Ford said that he was not there to say whether the Claimant was a good or bad driver. But as a road user Dr Ford said having repeatedly driven significantly over local speed limits was completely inappropriate, and that it seemed the Claimant thought that speed limits did not apply to him.
212. Dr Ford said that Reza was not included in his report because there was no telematics data for Reza. The fact that at no point did the Claimant catch or reduce the distance between his car and Reza's car indicates that Reza was driving in same way and manner as the Claimant.
213. Dr Ford was then re-examined. He said that the GPS speed and the speed from the vehicle's own system (known as the VDU speed or the CANbus speed) were inputted into the telematics device, and the lower of the two was recorded.

214. Dr Ford said that in Trips 7 or 8 the speeds are consistently higher than other trips. They are different in many respects. He said there was taking bends inappropriately, quickly, and harsh braking. Dr Ford said it almost looked like they were doing ‘mini-racetrack drive’.

Joint report

215. In their joint report at [2.5] Dr Dixon and Dr Ford agreed that the telematics device had correctly recorded ignition on and ignition off events, and that the other events such as harsh braking and harsh acceleration and high-g events had also been correctly recorded. At [2.9]-[2.10] they said:

“2.9 We agree that from the point Reza overtook Spicer on the College Roundabout, (prior to Penrhyn Road) then Spicer remained behind Reza at all times until he passed Reza’s crashed vehicle. We also agree that Spicer maintained separation between the vehicles to around 20m or so, whilst on Penrhyn Road single carriageway, up to the point where the incident occurred, at which point separation would have reduced as Reza’s vehicle rapidly lost velocity.

2.10 At the locale and time where the incident occurred, the Telematics data shows that Spicer’s vehicle rapidly lost speed (from 67 or 69 mph to 43 mph in about 2 seconds). This triggered a ‘High G’ record; there was no actual vehicle contact at any time during the incident. The only explanation for the identified speed loss was that the vehicle braked hard. Deceleration was calculated as 0.5G during this 2-second period; the threshold for raising a ‘Harsh Braking’ record is 0.267G. The advent of the ‘High G’ event prevented a harsh braking event being recorded by the Telematics at this juncture.”

216. There were three principal points of disagreement between the experts. First, they disagreed whether there was anything particularly distinctive about Trips 7 and 8 in terms of abnormal harsh events as compared with other trips. Dr Dixon thought that because harsh events were recorded in more than one journey, these events were not unusual and thus would not necessarily point to aggressive driving in a particular journey over another. Dr Ford, on the other hand, was of the opinion that Trips 6,7, and 8 were demonstrably different from all the other journeys that day because of the number of harsh events (joint report, [3.1]).
217. Second, they disagreed about whether the Claimant had sufficient time to brake and stop the vehicle on Penrhyn Road once he had avoided Reza’s vehicle. Dr Dixon disagreed with Dr Ford’s opinion that the Claimant had ‘made no attempt to stop or pull over at the locality of the incident’ (Ibid, [3.3]).
218. Third, as recorded in the joint report at [3.5]:

“Dixon disagrees with summary statement in Ford’s report 13:12: ‘I have shown by comparison with CCTV captures and the telematics data that the Claimant did willingly and knowingly follow another vehicle along a public road in a manner that would suggest to the other driver that he was either trying to catch up with him or maintain a defined separation between the two vehicles, no matter what speed the leading driver drove at.’ Dixon believes that Spicer did travel behind the leading vehicle, he did maintain a steady separation distance of approximately 20 meters, even when speeding, but this behaviour would not have indicated anything to the driver in front (if noticed at all). Ford stands by his conclusion ...”

Submissions

219. I had the benefit of written opening and closing submissions from Mr Sterling and Mr de Wilde. In preparing this judgment I have considered all of the points made in them.

The Claimant’s submissions

(i) Truth

220. On the Defendant’s defence of truth pursuant to s 2 of the DA 2013, Mr Sterling said that the key issue was the truth of the principal defamatory meaning or imputation determined by Warby J in [39] of his judgment. He accepted that the defence of truth would be made out if the Defendant established its substantial truth. Mr Sterling submitted that, given the gravity of the allegations, clear and compelling evidence was required: *Bento v Chief Constable of Bedfordshire Police* [2012] EWHC 1525 (QB), [12]-[14].
221. He said the primary imputation (which, as found by the judge, was at *Chase* level one) was contained in [1]-[3] of Warby J’s meaning:
- “The claimant (1) took part with an acquaintance, Farid Reza, in a car race in the streets of Kingston upon Thames, in which they showed off by driving their high-performance cars at speeds of almost 70mph along public roads in an urban area at around 9pm, to see who had the fastest car; (2) did so with three friends in his car, (3) when Mr Reza’s car struck and killed a pedestrian, Hina Shamim, failed to stop but drove past the accident and away from the scene ...”
222. He said the established evidence pointed away from the conclusion that there had been a race between the Claimant and Reza. He said the Defendant needed to show there had been some sort of contest or competition. Mr Sterling emphasised the short duration and distance of the alleged race, which he said showed there had not, in fact, been one; that the Claimant’s vehicle was no

closer than 20m to Reza's vehicle (but not necessarily a constant 20m); that the Claimant had remained in control of his vehicle; there was no evidence that the Claimant and Reza had ever spoken, and thus could not be described as acquaintances; there was no evidence that the Claimant's passengers had encouraged him to drive fast or race Reza; there was no evidence the cars had ever been side by side; the Claimant had not attempted to overtake Reza; and the Claimant went back to the scene.

223. Mr Sterling also submitted that the Claimant was, generally, a fast and aggressive driver and that his driving on the incident trip was not markedly different from the other trips that had been analysed.
224. Mr Sterling also invited me to reject the suggestion that the Claimant had intentionally failed to stop at the scene. He pointed to the speed he was travelling at, and the short distance from the scene of the accident to the right turn into Surbiton Road, and that there had been good reasons for him not to make himself known to the police.
225. Mr Sterling referred to the criminal trial and the jury's acquittal of the Claimant of dangerous driving, and relied upon it.
226. Mr Sterling said the Article contained a second imputation that there had been reasonable grounds to suspect the Claimant of having committed the offences of causing death by dangerous driving and causing serious injury by dangerous driving (a *Chase* level two imputation) by reason of his arrest, charge and trial as found by Warby J in [38] of his ruling. Mr Sterling pointed out that it was common ground that the Claimant had not, in fact, been arrested, and therefore this imputation was not substantially true.

(ii) Privilege

227. In relation to the statutory defences of privilege in ss 14 and 15 of the DA 1996, Mr Sterling made clear in his opening submissions that no point was taken on the Article having been published contemporaneously, but said that it was not a fair and accurate report.
228. Mr Sterling said the Article was grossly unfair and substantially inaccurate because of [1], [7], [10] and [15] of the Article in that, *per* [1], the Claimant was not racing, his driving did not lead to the death of a young woman and, which was to be implied in [1], the Claimant was not guilty of killing a woman whilst racing his car against Reza; *per* [7], the Claimant was not showing off to Reza, nor was he racing against him to see who had the fastest car; *per* [10], the Claimant was not racing against Reza nor, which Mr Sterling said was implied by this paragraph, were they driving together nor had the Claimant reached a speed of almost 70mph on more than one occasion; *per* [15], the Claimant did not, as implied, intentionally continue past the collision at speed, fail to stop and make an illegal right-hand turn into Surbiton Road without reason.
229. Mr Sterling said, in short, that unless the Defendant proved racing, showing off and showing off and racing to see who had the fastest car, these paragraphs must in substance be unfair and inaccurate.

(iii) Serious harm

230. Mr Sterling also submitted that the Article, because of its grave defamatory meaning, was self-evidently harmful (*Lachaux v Independent Print Limited* [2018] 1 WLR 2640; *Duncan and Neill on Defamation* (5th Edn), [4.08]-[4.17]). and on the evidence caused serious harm to the Claimant among his friends, peers and academic staff. He said it was clear that the Claimant had been shunned and ignored in the ways he described, not because of the prosecution but because of the Article. He also relied on the extensive viewing of the Article on the police's website and via its Twitter feed.

The Defendant's submissions

(i) Truth

231. Mr de Wilde first referred me to s 1 and s 1A of the RTA 1988. He also referred to the judgment of Toulson LJ in *R v L* [2011] RTR 19 on the question of causation, which established that for these offences to be made out, the defendant's driving must have played a part not simply in creating the occasion for the fatal accident, ie, causation in the 'but for' sense, but in actually bringing it about. Mr de Wilde said that the criminal trial had been mainly focussed on the question of causation, and its outcome was in no way determinative of the issues I had to decide. He said the jury's verdicts (to a different standard of proof) could not be interpreted as having a bearing on the issues before me.
232. Mr de Wilde then invited me to consider the sting of the libel in this case. In reliance on *Simpson v Mirror Group Newspapers Limited* [2016] EWCA Civ 772, [9], [17], [19]-[20], and *Turcu v News Group Newspapers Ltd* [2005] EWHC 799 (QB), [103]-[105], he submitted that the sting was different from, and narrower than, the defamatory imputation in [1]-[3] of Warby J's meaning. In particular, he said it did not extend to the allegation of racing, and thus that the Defendant did not have to prove the racing allegation in order to succeed.
233. In determining the sting, Mr de Wilde said that the test was an objective one, namely, what the ordinary reasonable reader would regard as the core or thrust or gist of the defamatory meaning found by Warby J. He argued such a person would regard the core of the allegation against the Claimant as being his dangerous and irresponsible driving at high speed in an urban area, whether or not he was racing at the time.
234. He submitted that the evidence and in particular the telematics data proved the Claimant had driven in such a manner, in particular on Trips 7 and 8, given the number of incidents of excessive speed and harsh braking/acceleration and high-g events that had been recorded. He referred to Dr Ford's evidence that these trips looked like 'a mini race-track' drive.'
235. Mr de Wilde invited me to conclude that on the penultimate and incident trips the Claimant had been showing off to his friends in the car and that explained the distinctive and aggressive style of driving on those journeys (Closing Submissions, [35]).

236. On the *Chase* level two imputation of reasonable grounds to suspect found by the judge arising from the Claimant's arrest, charge and trial, Mr de Wilde said there was sufficient evidence to prove this. Mr de Wilde accepted that the Article's assertion that the Claimant had been arrested was not true, but said that the defence of truth did not fail for that reason because of s 2(3) of the DA 2013 and/or because it was merely a peripheral detail.

(ii) *Privilege*

237. Mr de Wilde submitted the Article was entitled to absolute, alternatively, qualified privilege under s 14 or s 15 of the DA 1996 as a fair and accurate report of proceedings in court. I will set out the statutory provisions later, but in order to be absolutely privileged under s 14 the report must be published contemporaneously. Mr de Wilde pointed out that the editors of *Gatley*, supra, draw attention at [13.37] to the lack of decisions on the meaning of the word 'contemporaneously' in s 14, and suggest that at the very least it means, 'as nearly at the same time as the proceedings as is reasonably possible'. As I have indicated, the Claimant does not dispute that the Article was published contemporaneously given that it was published on the day of the verdicts.
238. In support of his submission that the Article was fair and accurate, Mr de Wilde relied on *Curistan v Times Newspapers Ltd* [2009] QB 231, [26]-[28], [51], [87] and [94], and *Dingle v Associated Newspapers Ltd* [1964] AC 371, 411. He said that the test was whether extraneous material included within an article also containing material which was *prima facie* privileged was such as to deprive the privileged material of the quality of fairness.
239. Mr de Wilde submitted that the Article was in large part a report of the outcome of the criminal trial, at which the Claimant was acquitted of the offences with which he was charged. He said any extraneous material did not deprive these parts of the qualities of fairness and accuracy.

(iii) *Serious harm*

240. On the question of serious harm (s 1 of the DA 2013), Mr de Wilde said the Defendant accepted the general difficulty of people in the Claimant's position being able to adduce 'positive negative reasons' for how they have been treated as a result of the defamation. He referred to *Barron v Vines* [2016] EWHC 1226 (QB), [21(2)], [21(5)]:

"21(2) The existence and scale of any harm to reputation may be established by evidence or inferred. Often, the process is one of inference, but evidence that tends to show that as a matter of fact a person was shunned, avoided, or taunted will be relevant. So may evidence that a person was treated as well or better by others after the libel than before it.

...

21(5) A person who has been libelled is compensated only for injury to the reputation they actually had at the time of publication. If it is shown that the person already had a bad reputation in the relevant sector of their life, that will reduce the harm, and therefore moderate any damages ...”

241. Mr de Wilde said that the Claimant’s case on serious harm did not stand up to scrutiny because (*inter alia*): his case on how he found out why he was being shunned as a result of the Article was that this information came from unidentified third parties, but he accepted that he had not put in any evidence as to those third parties’ knowledge of others’ reactions; he had not put in any evidence to support his claim of an inability to access alumni groups; nor had he evidenced being ignored by tutors whom he had approached for references. More fundamentally, the Claimant could not demonstrate serious harm flowing *from the Article specifically*, as opposed to, for example, widespread coverage of the trial and the prosecution’s case that he had been racing Reza and this caused the accident, or the *MailOnline* article which had libelled him by accusing him of ‘mowing down’ Ms Shamim. Overall, he said the Claimant’s case was too general and too vague and unparticularised.

Discussion

(i) Truth

242. It was common ground that the Defendant bears the burden of proving the defence of truth. The standard of proof is the civil standard, namely on the balance of probabilities, and this is so even where the defamatory words and the plea of truth alleges the commission of a criminal offence: *Hornal v Newberger Products* [1957] 1 QB 247, 258. However, I bear in mind what Brooke LJ said in *Chase v News Group Newspapers Ltd* [2002] EWCA Civ 1772, [35]:

“The burden of proving justification rests on the defendant. Although the standard of proof is the balance of probabilities, the more improbable an allegation the stronger must be the evidence that it did occur before, on the balance of probabilities, its occurrence will be established.”

243. The statutory defence of truth in s 2 of the DA 2013 replaced the common law defence of justification:

“(1) It is a defence to an action for defamation for the defendant to show that the imputation conveyed by the statement complained of is substantially true.

(2) Subsection (3) applies in an action for defamation if the statement complained of conveys two or more distinct imputations.

(3) If one or more of the imputations is not shown to be substantially true, the defence under this section does not fail if, having regard to the imputations which are shown to be substantially true, the imputations which are not shown to be substantially true do not seriously harm the claimant's reputation.

(4) The common law defence of justification is abolished and, accordingly, section 5 of the Defamation Act 1952 (justification) is repealed.”

244. Paragraphs 13-16 of the Explanatory Notes to the Act state:

“13. This section replaces the common law defence of justification with a new statutory defence of truth. The section is intended broadly to reflect the current law while simplifying and clarifying certain elements.

14. *Subsection (1)* provides for the new defence to apply where the defendant can show that the imputation conveyed by the statement complained of is substantially true. This subsection reflects the current law as established in the case of *Chase v News Group Newspapers Ltd* [[2002] EWCA Civ 1772, [34]], where the Court of Appeal indicated that in order for the defence of justification to be available “the defendant does not have to prove that every word he or she published was true. He or she has to establish the ‘essential’ or ‘substantial’ truth of the sting of the libel”.

15. There is a long-standing common law rule that it is no defence to an action for defamation for the defendant to prove that he or she was only repeating what someone else had said (known as the “repetition rule”). Subsection (1) focuses on the imputation conveyed by the statement in order to incorporate this rule.

16. In any case where the defence of truth is raised, there will be two issues: i) what imputation (or imputations) are actually conveyed by the statement; and ii) whether the imputation (or imputations) conveyed are substantially true. The defence will apply where the imputation is one of fact.”

245. I begin with the Defendant's submission based on *Simpson*, supra, and *Turcu*, supra, that the sting of the *Chase* level one imputation found by Warby J is more narrow than that imputation, and does not extend to all the matters alleged, in particular, the allegation of racing.

246. *Simpson* was an appeal against a decision by the judge at first instance to strike out the newspaper's defence of justification. Mr Simpson was a Premier League footballer. The newspaper published an article about him; Stephanie Ward, the mother of his child who was in relationship with the Claimant; and a celebrity called Tulisa Contostavlos, with whom Mr Simpson had also had a relationship between November 2012 and May 2013. The judge found the article to have the following meaning:

“By entering a romantic relationship with the celebrity Tulisa Contostavlos the claimant was unfaithful to his loyal partner Stephanie Ward, with whom he was in a long-term and committed relationship, living with their daughter as a family; he did so despite Ms Ward having sacrificed her legal career to have his children, and being, as he knew, pregnant with their next child; and by doing so he callously destroyed his relationship with Ms Ward and broke up an established family unit which was soon to be joined by the child they were expecting.”

247. The newspaper pleaded justification and the Claimant applied to strike out this defence. The judge summarised the effect of the draft amended particulars of justification in [34]-[35] of his judgment as follows:

“34. ... [T]he couple met in 2006 and had an intermittent relationship for the next four years, during which she obtained a law degree and worked at a solicitors' firm. They began a committed relationship in June 2010, and Ms Ward 'did not continue with her legal career'. They lived together in a house in Newcastle from late 2010 until the birth of their daughter in July 2011 and thereafter – with a break from the end of 2011 into early 2012 – until about April 2012. At that time, Ms Ward moved with their daughter into a house in Manchester owned by the claimant, whilst he lived in Newcastle. The family is not said to have lived together at any time between April 2012 and the publication of the article seven months later.

35. It is also said that during that period there were frequent visits by Ms Ward to Newcastle and two holidays together, one with their daughter. It is alleged that they had a continuing though evidently intermittent sexual relationship, including a night together on 4 November 2012, and that Ms Ward was sexually faithful to the claimant, and thus loyal. The defendant's case is that the couple eventually resumed their relationship in July 2013 and moved back in together in January 2014. This is all well after publication, but is relied on as an indication of the committed and long-term nature of the relationship generally. Although the Defence does not seek to justify

the epithet 'callous' I do not see that as a difference that would necessarily be held material at a trial.”

248. In his judgment at [9], Laws LJ set out how the judge had addressed the application to strike out the defence of justification in his judgment at [36]-[37]:

“36. At this stage of the case I have to make allowance for the fact that I am addressing a pleaded case and not evidence. Even so, the account of events contained in the draft amended particulars remains in my judgment clearly and significantly different from that which emerges from the article. It is conspicuously not alleged that Ms Ward gave up her legal career for the sake of having children with the claimant, let alone that the claimant knew this. More importantly, the particulars of justification nowhere allege, nor could the facts there set out support findings, that the claimant and Ms Ward were living together as a family with their daughter at the time the claimant began his relationship with Ms Contostavlos; or that the Claimant's infidelity broke up an established family unit. On the contrary, it is clear from the particulars that this is not said to be the case.

37. There are therefore components of the defamatory meaning of the article which in my judgment would inevitably be held to contribute significantly to their defamatory sting, the truth of which could not be established by proof of the defendant's particulars or proposed amended particulars.”

249. Laws LJ said that the judge had correctly directed himself at [27] that a defendant pleading justification has to prove the whole of the defamatory sting and that it was clear from [32]-[33] of his judgment that the judge considered that the assertion of a ‘committed relationship and an established family unit ... living together’ ([32]) and the reference to Ms Ward ‘having given up a legal career to have children with the claimant’ ([33]) were both part of the defamatory sting of the article.
250. The Court of Appeal allowed the newspaper’s appeal against the judge’s decision to strike out its defence of justification. In his judgment, Laws LJ said:

“17. In my judgment, therefore, the Judge's unappealed ruling on meaning does not close off MGN's submissions on the strike-out decision. The meaning having been found, it remains open to MGN to raise arguments as to the intensity of the libel's sting. I accept, of course, that in some instances the meaning of words and their defamatory sting (and its intensity) ineluctably go together; but not always. Just as in some areas of life there are different views among reasonable people of moral and immoral

conduct, so there may be different views as to the gravity or otherwise of the sting of a libel.

...

19. The ascertained meaning here refers to a committed family relationship unqualified by references to 'stable' and 'secure'. The essence of the sting surely consists in the assertion of a selfish disruption of that committed family relationship with father, mother, child and another child to come. As Eady J said in *Turcu* [2005] EWHC 799 (QB) at [105], '[i]t becomes important... to isolate the essential core of the libel and not to be distracted by inaccuracies around the edge – however extensive'.

20. In my judgment the extent to which the factors of cohabitation and Ms Ward's career go to this essential sting are matters upon which reasonable people might disagree. It is therefore to be ascertained by the fact-finding tribunal at trial, and not to be determined at an interlocutory hearing on the pleadings. The meaning of the published words does not, in the circumstances here, drive the conclusion as to the intensity of the sting. I would accept Mr Wolanski's submissions both as regards the cohabitation issue and Ms Ward's legal career."

251. Mr de Wilde also relied on *Turcu v News Group Newspapers Ltd* [2005] EWHC 799 (QB). In that case the claimant was accused of being party to a conspiracy to kidnap Victoria Beckham, and the primary issue in the trial, which the claimant did not attend or give evidence at, was whether the defendant was able, on the balance of probabilities, to prove that the defamatory sting of its allegations against the Claimant was substantially true. The parties advanced competing meanings (since this issue was not, at that time, decided as a preliminary issue). There were parallel criminal proceedings whereby five members of the gang had been charged with conspiracy to kidnap, but the prosecution abandoned the charges and offered no evidence well before trial, see [41].
252. Eady J concluded at [103]-[105], that the defence of justification was made out because:

"103. My own conclusion is quite clear. The Claimant was willing to participate in criminal activities and to make a contribution, in particular, to the discussions about the proposed Beckham kidnap. I believe that most reasonable onlookers would think that sufficient to support the sting of the libel. The allegations against the Claimant are therefore substantially, if not wholly, accurate.

104. There may be a good deal of sloppiness and inaccuracy in what was published. There was no plot to kidnap the Beckham children as such. Gashi managed to extract comments to the effect that they would be kidnapped if they happened to be with their mother – but that was as far as it went. Nor could the gang be said to be ‘on the brink’ of the kidnap. Nor was there any evidence that the Beckhams’ Cheshire home was being kept under surveillance. The Claimant was not allotted a surveillance role; nor had he done or said anything to support the allegation – at least anything which the *News of the World* journalists knew about. There was nothing to justify the assertion that he was in charge of surveillance. The only conclusion I can draw is that it was a bit of creativity on the part of Mr Mahmood or one of the sub-editors.

105. Nevertheless, the Claimant's willingness to participate in apparently genuine discussions about kidnapping Victoria Beckham, the timing of the operation, and the feasibility of obtaining several million pounds at short notice is said to be enough to establish that the sting of the libel is substantially true. It becomes important in such a case to isolate the essential core of the libel and not to be distracted by inaccuracies around the edge – however extensive.”

253. Mr de Wilde submitted that my first task was to determine the sting or core of the libel(s) contained in the Article, and that the sting was not the same as the imputation(s) contained in the Article’s meaning. He relied upon the passages from Laws LJ’s judgment in *Simpson* that I have set out, in particular, the sentence in [17], ‘I accept, of course, that in some instances the meaning of words and their defamatory sting (and its intensity) ineluctably go together; but not always’ in support of his submission that the defamatory sting of a statement may be different from, and more narrow than, the defamatory meaning or imputation contained within the statement as found by Warby J.
254. In particular, he said that in this case the allegations of ‘racing’ and ‘showing off’ did not form part of the sting, so that the Defendant did not need to prove these elements in order to prove the substantial truth of the sting. He put the matter as follows in his closing written submissions:

“18. Where the meaning of the Article has already been determined by Warby J, what is the nature of the exercise that the Court must undertake in assessing the defence of substantial truth? D submits that the Court’s task is to ascertain the ‘sting’ of the libel, and to determine whether the facts which have been admitted or proved would, in the view of most reasonable onlookers, be sufficient to support the sting. This is an objective test and its formulation by Eady J, a very experienced Judge and

former specialist practitioner, clearly reflects the importance of objective standards (imposed in relation to meaning by reference to ‘the ordinary reasonable reader’) in this area of the law.

...

20. What is the core of the libel here, the sting, as regards C? At the heart of the way in which the meaning would lower C in the estimation of right-thinking people generally is not the discrete issue of the alleged race, but of C’s dangerous and irresponsible conduct before, during, and after a collision in which a young woman was killed.

21. While the meaning identified by Warby J has provided a clear and useful structure for the development of the litigation and the evidence at trial, the need to assess the sting of the libel points away from adhering too closely to each individual element ...”

255. The interpretation of *Simpson* for which Mr de Wilde contends has not commanded support. The authors of *Gatley*, supra, say in [3.12]:

“Logically anterior, therefore, to the question of whether the words are capable of being defamatory in law¹³² is the question of what meaning or meanings the words are reasonably capable of bearing.¹³³”

256. I need not set out Footnote 132. Footnote 133 states:

“Of course it is not necessarily the case that both issues are in dispute and if they are they may be run together, but they are analytically different: *Arab News Network v Jihad al Khazen* [2001] EWCA Civ 118 at [11]. In *Simpson v MGN* [2016] EWCA Civ 772; [2016] E.M.L.R. 26, Laws LJ stated that ‘The meaning having been found, it remains open to [the defendant] to raise arguments as to the intensity of the sting’ (at [17]). Read at one level, this would seem to imply that ‘meaning’ and ‘sting’ are different concepts. It is true, as the judge recognised, that the meaning that is arrived at may not be defamatory (at [14]) but, to the extent that he was suggesting that meaning and sting (or imputation) are different concepts, it is argued that this is wrong in principle and contrary to authority. In an action for defamation, the judge must determine the meaning of the words according to the principles set out in [*Jeynes v News Magazines Ltd* [2008] EWCA Civ 130, [14]]. The outcome of that process is the ‘meaning’, ‘sting’ or ‘imputation’ and that then governs the rest of the action. Thus, the judge must decide whether

the words in the meaning they have been found to bear are defamatory. So too, if truth is in issue, as it was in *Simpson*, the judge must decide whether the words are substantially true in the meaning, sting or imputation that they have been found to bear. There is in this respect no difference between meaning, sting and imputation. An alternative, and it is suggested better, reading of Laws LJ's judgment, is to say that he was concerned with the question whether every element of the defamatory meaning must be shown to be true in order for the whole to be found to be substantially true under Defamation Act 2013, s.2, only requires that the imputation conveyed by the words (or the meaning or sting of the words) is *substantially* true. The imputation does not have to be wholly true and it is open to the court to conclude that the defence is made out notwithstanding that elements of it are not true ...”

257. In [11.7] the authors state:

“If the gist of the libel can be proved, then there is no need also to prove peripheral facts that do not add to the sting of the charge or introduce any matter that is separately actionable: ‘it is sufficient if the substance of the libellous statement be justified ... as much must be justified as meets the sting of the charge, and if anything be contained in a charge which does not add to the sting of it, that need not be justified.’⁵⁴”

258. In footnote 54 they say:

“*Edwards v Bell* (1824) 1 Bing. 403 at 409 per Burrough J. See also *Clarke v Taylor* (1836) 3 Scott 95; *Morison v Harmer* (1837) 4 Scott 524; *Walker v Brogden* (1865) 19 CB (NS) 65 (second plea); *Rofe v Smith’s Newspapers Ltd* (1924) 25 NSWSR 4 at 23; *Sutherland v Stopes* [1925] AC 49; *Hoare v Jessop* [1965] EA at 227; *Aaron v Cheong Yip Seng* [1996] 1 SLR 623 Sing CA. In *Berezovsky v Forbes Inc. (No.2)* [2001] EWCA Civ 1251; [2001] EMLR 45 at [12], the Court of Appeal affirmed that the requirement to prove the sting of a libel was not a disproportionate restriction of the art.10 right to freedom of expression. An apparent distinction was drawn by Laws LJ in *Simpson v Mirror Group Newspapers Ltd* [2016] EWCA Civ 772; [2016] EMLR 26 between the meaning that the words have been determined to bear and the sting of those words, which may, but will not necessarily, be the same. The decision shows that a determination of meaning does not prevent a defendant from submitting, in support of a plea of truth, that he can justify the essential sting, even if his

plea does not reach every aspect of the meaning that has been found.”

259. In *Duncan & Neill on Defamation* (Fifth Edn), the authors state at [12.07]:

“At common law, the word ‘imputation’ was used interchangeably with terms such as ‘sting’ and ‘charge’ to represent the defamatory meaning (allegation) conveyed by the material complained of.¹ It has the same meaning here. Once the court has determined the single meaning of a statement, applying the principles identified in Chapter 5 above, it is that meaning (imputation) which the defendant must prove to be substantially true.²”

260. In Footnote 2 they say:

“See *Bokova v Associated Newspapers Ltd* [2019] QB 861 at [37]-[43]. In *Simpson v MGN Ltd* [2016] EMLR at [14]-[17] Laws LJ purported to draw a distinction between the single meaning of a statement and its ‘sting’. It is submitted that this is incorrect. *Simpson* is better explained as a case concerning whether proof of the pleaded facts would be sufficient to demonstrate that the statement, in the meaning the court had determined, was substantially true. At common law it was permissible to seek to justify – prove the truth of a defamatory comment (expression of opinion): see *Sutherland v Stopes* [1925] AC 47. Presumably this will remain the case.”

261. In *Bokova v Associated Newspapers Ltd* [2019] QB 861, [37]-[40], Nicklin J – a judge with massive experience in this field – doubted whether *Simpson* represented a new approach to proof of the defence of truth, although he did not finally decide the issue:

“37(i) The only relevant and permissible route open to a defendant who wishes to advance a defence of truth following a determination of actual meaning is to plead, if it can, that it will prove the imputation(s) substantially true. If it is unable or unwilling to prove true one or more imputations, then it should identify those which it does not contend are true.

...

38. There was some suggestion in argument by Mr Caldecott that variance between the actual meanings and pleaded *Lucas-Box* meanings was legitimate in order to encapsulate the sting of what the defendant sought to prove true in accordance with the principle in *Simpson v MGN Ltd* [2016] EMLR 26 ...

39. I reject that submission. If the principle in *Simpson's* case adds anything to the concept of proving the substantial truth of an imputation, then it operates at the point the court comes to consider whether, on the evidence, the defence of truth succeeds. At one point, I feared the spectre looming that, having determined meaning, the court would then have to go on and interpret that meaning to divine the 'sting': a sort of linguistic Russian doll: a sting, inside an imputation, borne of a meaning, arising from a publication. However, Mr Caldecott disavowed that he was advocating such a course.

40. Since it was decided, *Simpson's* case has not benefitted from any application in practice. For my part, I am doubtful that it extends much beyond the established principle that it is sufficient to prove the substantial truth of a defamatory imputation. In argument, I tried to think of a case in which *Simpson's* case might have application. I came up with a meaning: 'the claimant, a care worker in a hospice, had stolen thousands of pounds from residents.' What is the sting of that meaning? That the claimant stole money? In breach of trust? From vulnerable people? Would proof that he had stolen money from co-workers and visitors be sufficient? If not, would proof also of a theft from one resident make the difference? This example seems to me to demonstrate that the search for a sting quickly collapses into the question of whether proof of the various elements contained in the meaning is sufficient for the court to be satisfied that the allegation was substantially true. Plainly, it will be a highly fact-sensitive exercise.

41. Whatever the answer to this interesting point, it does not arise on the facts of this case ..."

262. For my part, in line with these textbook passages, and the view which I respectfully think Nicklin J was inclined towards, I do not read *Simpson's* case as having laid down any new rule. The court's task, where the defence of truth is relied upon, is to determine whether the sting of the libel, in other words, the defamatory imputation arising from the meaning of the statement complained of, is substantially true. In determining substantial truth, as Eady J said in *Turcu*, supra, minor inaccuracies or 'inaccuracies around the edge' can be ignored. I read Laws LJ's judgment as meaning in that case he regarded it as a matter for the jury (as opposed to the judge on the strike out application) to determine whether the facts to which the newspaper had not pleaded in its defence (eg, about Ms Ward having given up her legal career) were merely inaccuracies around the edge or whether they were part of the sting of libel, such

that failure to prove them would mean the defence of justification would fail because the newspaper could not prove the sting to be substantially true.

263. I turn, then, to the imputations arising from the Article's meaning as found by Warby J. In my judgment there are two with which I am concerned:
- a. The Claimant took part with an acquaintance, Reza, in a car race in the streets of Kingston-upon-Thames, in which they showed off by driving their high-performance cars at speeds of almost 70mph along public roads in an urban area at around 9pm, to see who had the fastest car. The Claimant did so with three friends in his car. During the race Reza's car struck and killed a pedestrian, Hina Shamim, following which the Claimant failed to stop but drove past the accident and away from the scene. At [38] of his judgment Warby J said this was a *Chase* level one imputation (ie, an actual accusation of guilt of impugned behaviour).
 - b. There were reasonable grounds to suspect the Claimant of guilt of causing death and serious injury by dangerous driving, in respect of which the Claimant was arrested, tried and acquitted. Again at [38] of his judgment, Warby J said this was a *Chase* level two imputation (ie, an imputation that there were grounds to suspect that the claimant is guilty of the impugned behaviour) which arose from [4] and [5] of his meaning.
264. This was Mr Sterling's analysis of the imputations arising from the Article's meaning (Closing Submissions, [7]), and I agree with him.
265. In respect of the first imputation – which I will call the primary imputation – the question is whether the Defendant has shown it to be substantially true. As I have said, in making this determination, minor inaccuracies can be left out of account. In *Sutherland v Stopes* [1925] AC 47, 79, Lord Shaw gave the following example of a case where the plea of justification would not fail merely because of the defendant's failure to prove the truth of every detail alleged:
- “If I write that the defendant on March 6 took a saddle from my stable and sold it the next day and pocketed the money all without notice to me, and that in my opinion he stole the saddle, and if the facts truly are found to be that the defendant did not take the saddle from the stable but from the harness room, and that he did not sell it the next day but a week afterwards, but nevertheless he did, without my knowledge or consent, sell my saddle so taken and pocketed the proceeds, then the whole sting of the libel may be justifiably affirmed by a jury notwithstanding these errors in detail.”
266. In relation to the second imputation, there is a specific approach to the defence of truth where the imputation is one of 'reasonable grounds to suspect'. *Gatley*, supra, refers at [11.13] to the summary of the relevant principles by Eady J at first instance, in a passage then approved by the Court of Appeal in *Musa King v Telegraph Group Ltd* [2004] EWCA Civ 613, [22]:

“22. The judge said that this was one of those cases where the defence of justification depended upon establishing at least “reasonable grounds to suspect” the claimant (of involvement in terrorist activity). After referring to *Lewis v Daily Telegraph* [1964] AC 235, *Evans v Granada Television* [1996] EMLR 429, *Stern v Piper* [1997] QB 123, *Shah v Standard Chartered Bank* [1999] QB 241, *Bennett v News Group Newspapers* [2002] EMLR 39 and *Chase v News Group Newspapers* [2003] EMLR 11, the judge accepted counsel's formulation of the following principles:

(1) There is a rule of general application in defamation (dubbed the “repetition rule” by Hirst LJ in *Shah*) whereby a defendant who has repeated an allegation of a defamatory nature about the claimant can only succeed in justifying it by proving the truth of the underlying allegation—not merely the fact that the allegation has been made;

(2) More specifically, where the nature of the plea is one of “reasonable grounds to suspect”, it is necessary to plead (and ultimately prove) the primary facts and matters giving rise to reasonable grounds of suspicion objectively judged;

(3) It is impermissible to plead as a primary fact the proposition that some person or persons (eg law enforcement authorities) announced, suspected or believed the claimant to be guilty;

(4) A defendant may (for example, in reliance upon the Civil Evidence Act 1995) adduce hearsay evidence to establish a primary fact - but this in no way undermines the rule that the statements (still less beliefs) of any individual cannot themselves serve as primary facts;

(5) Generally, it is necessary to plead allegations of fact tending to show that it was some conduct on the claimant's part that gave rise to the grounds of suspicion (the so-called “conduct rule”).

(6) It was held by this court in *Chase* at paras [50]–[51] that this is not an absolute rule, and that for example “strong circumstantial evidence” can itself contribute to reasonable grounds for suspicion ...

(7) It is not permitted to rely upon post-publication events in order to establish the existence of reasonable grounds,

since (by way of analogy with fair comment) the issue has to be judged as at the time of publication.

(8) A defendant may not confine the issue of reasonable grounds to particular facts of his own choosing, since the issue requires to be determined against the overall factual position as it stood at the material time (including any true explanation the claimant may have given for the apparently suspicious circumstances pleaded by the defendant).

(9) Unlike the rule applying in fair comment cases, the defendant may rely upon facts subsisting at the time of publication even if he was unaware of them at that time.

(10) A defendant may not plead particulars in such a way as to have the effect of transferring the burden to the claimant of having to disprove them.”

267. I begin with the primary imputation and whether the Defendant has proved it to be substantially true. By way of preliminary observation, I agree with the Defendant that the Claimant’s reliance on the outcome of the criminal trial is of little assistance. There were obviously issues in play in that trial which do not feature in this case, for example, whether – even if he had driven dangerously – the Claimant’s driving was a cause of Ms Shamim’s death in the way explained by Toulson LJ in *R v L*, supra. Interpreting the jury’s verdict is necessarily speculative. In his judgment on the strike-out application last year, Saini J said this at [48(iii)-(v)], with which I respectfully agree:

“... (iii) Third, the jury's verdict that Mr. Spicer was not guilty of the more serious charges which he faced did not amount to positive ‘factual findings or conclusions’ about the conduct by him which led to the criminal proceedings. It simply meant that his criminal liability was not established (which could have been for a number of reasons, none of which can be known with certainty). This is very different to the situations in *Hunter* and *Amin*, which are both cases in which positive findings had been made in relation to evidence by the trial judge, during a *voir dire*, which the convicted criminal defendant then effectively sought to challenge in civil proceedings. That is far from the situation before me.

(iv) Fourth, even if one could infer that the jury had rejected the ‘racing’ and ‘showing off’ allegations, they did that asking themselves if they were ‘sure’ that this had been established, as opposed to applying the civil standard which the libel judge will apply (whether or not the Commissioner has been able to establish a defence ‘on the balance of probabilities’).

(v) Fifth, as to the argument that there is a nexus between the Particulars of Truth and the charges faced by Mr. Spicer, the offences with which he was charged were those of causing Ms. Shamin's death by dangerous driving, and causing serious injury to the young boy who was one of Mr Reza's passengers, that only goes so far. HHJ Marks QC's summing up explained that the questions for the jury at the criminal trial were whether Mr. Spicer was guilty of causing death or serious injury by dangerous driving because he was (1) driving at a grossly excessive speed, (2) in effect, racing with Mr Reza, (3) thereby encouraging Mr Reza to drive at the same or similar speed, and that this in turn was a contributory cause of the accident. By contrast, the meaning found by Warby J is not focused on whether or not Mr. Spicer did in fact through his driving encourage Mr Reza so as contribute to the accident and its consequences. Rather, its focus, and the resulting focus of the Commissioner's defence of truth, is on the conduct by Mr. Spicer in driving his car in the short period of time before the accident took place, which then led to him being reasonably suspected of causing death and serious injury by dangerous driving.”

268. The following aspects of the primary imputation are either common ground or else plainly proved by the evidence: (a) the two BMW cars involved were high performance cars; (b) they travelled at speeds approaching 70mph on a public road in an urban area; (c) at the time the Claimant had three fellow students in his car; (d) Reza’s car struck and killed Ms Shamim; (e) the Claimant drove past the accident and away from the scene.
269. The following aspects of the primary imputation are in dispute: (a) whether the Claimant and Reza were acquaintances; (b) whether they took part in a race; (c) whether they were showing off; (d) whether they were seeing who had the fastest car; (e) whether the Claimant drove past the scene of the accident intentionally, or whether he drove past because he could not stop in time.
270. I am satisfied that the Claimant and Reza could properly be described as acquaintances and I reject Mr Sterling’s submission that because there was no evidence they had ever met or spoken to each other, they were not acquaintances. In his interview on 2 April 2015 the Claimant told the police that he knew Reza’s car because he had seen it before and knew Reza was its owner and that he owned a computer shop on Surbiton Road. He said he knew him as ‘the computer shop guy’. Here, it is clear he was talking about his knowledge of Reza at the time of the accident, not what he learned later. I reject the Claimant’s evidence to me that he believed, but was not certain, that Reza owned a computer shop. He expressed no such doubts in his interview. This was an attempt by the Claimant belatedly to distance himself from Reza.
271. I regard it as probable that the Claimant knew Reza at least by sight at the time of the accident. In his Part 18 replies and in his witness statement he admitted

to having seen Reza in person before the accident. Also, in his interview on 13 April 2015, he told the police that he had seen Reza's car '100 times before'. Whilst I accept he was not meaning to give an exact figure, he plainly meant he had seen it often, and I do not accept his evidence that he had, in fact, only seen it a few times and that he had 'overcooked' his words to the police (whatever that was intended to mean). That is because a couple of lines earlier in his interview he had emphasised his wish 'to make sure everything's 100%', which I take to mean he wanted to be completely accurate. Further, he was able to give the car's registration, the name of Reza's computer shop, and its exact location. He said he did not know him but 'knew of him'.

272. Overall, there is sufficient flexibility in the term 'acquaintance' to cover the connection between the Claimant and Reza. But if I am wrong, this is a peripheral or minor detail which does not affect the substantial truth of the primary imputation, all other things being equal. I think the hypothetical reasonable reader would conclude that whether the Claimant and Reza were acquaintances does not, in the end, matter, if the evidence shows that they engaged in a high-speed race at the end of which Ms Shamim was killed.
273. On the question of whether there was a race, I have rejected Mr de Wilde's submission that I can narrow the primary imputation to exclude the allegation of racing. I also reject any suggestion that the allegation of racing is something which, if not proved, can be left out of account as a minor inaccuracy. To my mind the allegation of racing was an important part of the Article and, together with the speed driven by the Claimant, lay at the heart of the reprehensible behaviour alleged against him.
274. In summary, I am satisfied the Defendant was right to submit that there was a significant and marked change in the Claimant's driving on the penultimate and incident journeys as compared with earlier journeys. Indeed, in his evidence the Claimant accepted that his driving was different on these journeys. Dr Ford's reference to a 'mini race-track', was striking. PC Palmer's evidence was that being overtaken by Reza appeared to be a 'catalyst' for the change in the Claimant's driving on the incident journey, which had not been remarkable up to that point. I attach significant weight to this evidence.
275. On the incident journey, I am satisfied that from the point at which Reza overtook the Claimant on the exit from the Roundabout there was a marked change in his driving which saw him overtake Ms Muwonge whilst suddenly accelerating harshly from about 18mph or 19mph to 38mph; that his speed then dropped briefly; and that there was then a sustained period of acceleration as he followed Reza down Penrhyn Road to the point of the accident, by which time he was travelling at about 69mph, the fastest speed he had driven that day.
276. In my judgment the inference to be drawn from the evidence, and in the absence of any convincing explanation from the Claimant why he suddenly accelerated and drove so fast approaching the University, is that he was chasing Reza in an effort to keep up with him, if not to overtake him. I am equally sure Reza was aware that the Claimant was accelerating behind him and that he accelerated in order to try and maintain his advantage. I am therefore satisfied that what

happened can properly be described as a race. It may not have been pre-arranged, and there may not have been a starting gun, or a prize, but I am sure that both the Claimant and Reza drove at accelerating speeds as they did because they were reacting to the presence and speed of the other car. I am sure that what they were doing was trying to gain or maintain distance in relation to the other driver, in other words, racing.

277. I turn to the evidence in detail to explain why I have reached these conclusions.
278. The starting point is the Claimant's propensity to break the speed limit. There was ample evidence of this. He admitted it, and said he was (or had been) a 'thrill seeker'. He described himself in his Amended Reply at [13] as a 'fast driver', a fact which is borne out by the telematics data. In his witness statement ([11]) he admitted that the car he was driving on 31 March 2015 was 'pretty quick and pretty smooth'. Dr Dixon's analysis showed excessive speed and other abnormal events (ie, harsh acceleration/braking; high-g events; excessive RPM) on six of the 11 trips taken by the Claimant in that 24-hour period. This shows that the Claimant was someone who could and would drive at excessive speed when he felt like doing so.
279. Although the Claimant argued that the fact he was a fast driver weighed against the suggestion he was racing, it is necessary to consider the evidence with care. In my judgment there were two particularly distinctive features of the penultimate and incident trips. Firstly, on these journeys the Claimant drove more than 100% above the speed limit. He had not exceeded the speed limit by such a wide margin on any of the earlier trips that day. Dr Dixon accepted that it was possible to categorise these trips separately from the others based on such excessive speed. The second feature is the number of abnormal events (ie, excess speed; harsh braking/accelerating; high-g events; excessive RPM) on these journeys. Taking the totals from Dr Dixon's Figure 26 (see the table above) there were 10 events on the penultimate trip, and five on the incident trip. There were more such events on these trips than on the four other abnormal trips that day combined. On the penultimate trip the telematics showed excessive engine RPM for the only time that day.
280. I regard it as significant that on these trips the Claimant had others in the car with him. I am satisfied that the Claimant's driving on the penultimate trip and incident trip was, in significant part, influenced by their presence. There may be other factors at play also, eg, a desire to get pizza and get back to the library, but I am sure that the presence of the passengers and their encouragement of the Claimant played a significant role in how he drove.
281. In his interview on 13 April 2015 the Claimant told the police that his passengers had been talking about 'how nice' the car was; that they had asked him how fast it was; that he had told them it was 'pretty quick'; and that they had 'encouraged' him on the penultimate trip. The Claimant said to the police that his passengers were, 'encouraging me to go from like, from the university to like the pizza shop and stuff ... Like we was already driving like pretty decently'. I reject his evidence that he did not mean 'encouraging', and that he had used 'the wrong word'. The Claimant is intelligent and articulate and knew

what he was saying. This explanation in his interview was an admission that his passengers had been interested in how fast his car was, and that they had encouraged him to drive fast.

282. I am unconvinced by much of the Claimant's evidence about his driving from the point that Reza overtook him, except where it is corroborated by independent evidence. First, I do not believe that he failed to notice Reza's BMW when it overtook him, and that he only saw it for the first time at The Bittoms. That is because the Claimant was interested in cars; he knew Reza's car and could recite its registration to the police; and he described it to me as a 'top, top, top car' that has a list price of £60,000. He also said that when he saw a powerful car, he would ask himself, 'What does that move at?' He said to the police that Reza's was a 'loud car, so you know when it's accelerating', and he described it to me as a 'head turner'. Reza's car was very likely accelerating when it overtook him. For these reasons, the Claimant could not have failed to notice it.
283. I regard his account to the police on 13 April 2015, when he said he first saw Reza on the Roundabout, as being closer to the truth, although I reject his account then that he 'gave way' to Reza. In his evidence to me he admitted that answer had been wrong, and said he had given it because it was 'the most logical explanation'. I did not understand that answer. In my judgment what the Claimant said to the police was an attempt to minimise what happened thereafter by suggesting he had driven in a courteous and restrained way, rather than in an aggressive way. I accept PC Palmer's evidence, based on the CCTV, that there was an overtaking manoeuvre by Reza which took him past the Claimant on the exit from the Roundabout, and that this marked the start of the Claimant's sudden accelerating driving which, apart from one brief period, lasted until the point of the accident.
284. The telematics data shows there was harsh acceleration by the Claimant from about 18mph or 19mph to 38mph at 20:59:06. The Claimant attributed this to overtaking Ms Muwonge, who he said was travelling at below 20mph. Whilst I accept that the Claimant did overtake her at around this point, because his speed after that rose to nearly double his previous speed, and double her speed, I conclude there were others factors at play which influenced the Claimant's behaviour, namely, being overtaken by Reza and the encouragement of his passengers.
285. The Claimant admitted in his witness statement ([24]) that at The Bittoms traffic lights Luka had pointed out Reza's car (by then immediately in front of them) and asked, 'That's a nice car. Is the car we are in faster than that car?' to which he said he responded, 'That car's faster'. In fact, PC Palmer's evidence was that the performance of the cars would have been similar, given that Reza's car was four years old, and the Claimant's car was virtually brand new. The Claimant told the police, '... I mean I could have put my foot down and I would have kept up with it ... I would have never been able to overtake it, but I could have kept up if I'd wanted.' I conclude that that is precisely what the Claimant then tried to do.

286. An important question in relation to the allegation of racing is *why* the Claimant suddenly accelerated to 69mph within the space of a few seconds having been overtaken by Reza. It is for the Defendant to prove the substantial truth of the primary imputation and in considering whether she has done I must carefully examine the Claimant's evidence about his driving.
287. I asked the Claimant this question directly. In my judgment he had no convincing answer. I do not accept his account to the police on 13 April 2015, repeated before me, that he was not aware of his speed and only thought he was doing up to 45mph. As an experienced fast driver driving a brand-new sophisticated car, he would have known how fast he was going, especially because, he told the police, he had been 'playing with it' by accelerating up and down on the penultimate trip. It strains credulity to suggest that he suddenly lost his awareness of his speed just as he was accelerating after Reza. Although the car was not his own, he had been driving it for several weeks. By 31 March 2015 he would have been familiar with its performance and capabilities. Indeed, part of his justification for his speed was that it was within the car's capabilities. His explanation that what he did was normal; that he was just enjoying the car; and that he regularly indulged in speeding (including on that road), does not explain his sudden grossly excessive and unprecedented speed at that time and at that place. I reject his evidence that what he did just took a 'split second'; the data shows that there was a sustained acceleration over a period of seconds until the accident. Whilst I do not seek to go behind the jury's acquittal of the Claimant on the charge of dangerous driving, and the Claimant would not accept that speed alone could be dangerous, I regard travelling at 69mph in a 30mph zone outside a busy university as being dangerous.
288. The Claimant's evidence was also contradictory. He said he had braked because he was getting close to Reza's car at The Bittoms lights (which, contrary to what the Claimant said in interview, remained on green). He said that Reza had then accelerated away from them, so that he thought, 'Great, I have space'. I accept the Claimant's brake lights are showing in PC Palmer's slides and that he did brake at that point. But if it really was the case that he wanted to give Reza space, then accelerating quickly after Reza was a way for the gap to diminish if, for example, Reza stopped accelerating. The Claimant's evidence about what he said he thought is therefore contradicted by the objective evidence of what he did.
289. I am quite certain that Reza and the Claimant both accelerated together along Penrhyn Road. The Claimant said that after braking there was a 20m gap between him and Reza at The Bittoms lights. PC Palmer's slide 16 shows that the cars travelled for about 135m from that point with no CCTV coverage before they were picked up by a local authority camera further down Penrhyn Road, at which point they were still separated by 20m and travelling at about 60mph. Thus, accepting the Claimant's evidence about the initial distance, because it is known that the Claimant was accelerating and the distance between the two cars remained the same, it must have been the case that Reza was also continuing to accelerate. The inference I therefore draw is that the Claimant was trying to keep up with Reza, ie, was racing him and that Reza was accelerating to maintain his lead.

290. I am not persuaded by the Claimant's evidence that he could not have been racing because, if he had been, he would have driven even faster. He was still accelerating at the point of the accident, and it was that and only that which caused him to brake. It is a reasonable inference that he would have continued to accelerate but for the accident. The Claimant said he had started to brake before the collision in anticipation of an upcoming bend in Penrhyn Road. The telematics data does not show any drop in speed at this point, however. It appears that the Claimant continued to accelerate until the high-g event and did not, at any point until then, decrease his speed.
291. I come to the evidence of Rosie Jones at the criminal trial. Whilst this was hearsay evidence before me, which I bear in mind, her evidence was tested in cross-examination and the following part of it was not challenged. She was waiting at a bus stop on Penrhyn Road and saw the cars approaching from the Roundabout. She said:
- “Q. And as they passed you, I think you said in your statement that they were going too quickly for you to be able to see who was inside, who was driving either vehicle ?
- A. That's correct.
- Q. But as they passed you, what did you think about what might happen?
- A. I just was shocked and thought, oh my gosh, they are going to crash into something. It was really very fast.”
292. One of the photos in the exhibits shows Ms Jones standing at the bus stop. Her attention has clearly been attracted by the cars as they go past her. The Claimant agreed in his evidence that the photo showed Ms Jones' shock.
293. I come to the high-g event which was recorded when the Claimant's car was travelling at 69mph. For the reasons given by Dr Ford, as I have said, I am quite sure this event was triggered by the Claimant braking suddenly upon seeing Reza veer across the road, and that it was not a bump in the road as suggested by Mr Sterling. Dr Ford was quite clear that the forces along the x-axis recorded by the telematics device (as shown in Diagram 11 of his report) could only be explained by the car's ABS braking system 'pulsing' to slow the car without locking the brakes. There was little side-to-side (y-axis) movement, demonstrating that the Claimant continued in a straight line upon braking. There was no 'spike' in the z-axis (vertically) which would have been caused by hitting a bump or undulation. There was synchronicity in the movements in the three axes. And the graph from Dr Ford shows that at this point the Claimant's speed did suddenly drop, demonstrating beyond doubt that there was heavy braking. The experts both agreed in their expert report this event was caused by braking.

294. In his first police interview the Claimant said he had ‘panicked and slammed on the brakes’; before me he said that ‘slammed’ was the ‘wrong adjective’. I am satisfied that that is exactly what he did.
295. I am also satisfied that the speed he and Reza were travelling meant that the distance of 20m between them was wholly inadequate and unsafe for the reasons given by PC Palmer. I reject the Claimant’s evidence that he maintained a safe distance from Reza.
296. I draw further support for my conclusion that the Claimant and Reza were racing from the Claimant’s behaviour immediately after the accident, namely, his failure to stop; his illegal right turn into Surbiton Road; and parking his car out of sight (effectively) underground. During the hearing I referred to my scepticism about the Claimant’s evidence on this aspect of the case, and this scepticism only deepened in my further consideration of the evidence.
297. I accept the point made by Mr de Wilde that the Claimant’s case in relation to his opportunity to stop was inconsistent with his case on his driving prior to the collision. His evidence about the period before the collision was that he was in complete control of his vehicle. He referred several times to the capabilities of the vehicle as a justification for his speed. His evidence about the opportunity to stop, by contrast, was that it would have been dangerous to do so in the circumstances and/or that he did not have the opportunity to do so. I do not accept that.
298. The photographs show there were parking spaces at or very near to the crash site. One photograph shows empty parking bays on Penrhyn Road just past the crash site, whilst another one shows empty bays near debris at the crash site as the Claimant’s car goes past them at 20:59:20 with his brake lights seemingly illuminated.
299. Dr Ford’s evidence is that the Claimant was driving a modern car with a variety of safety aids and so could have stopped quickly – ‘in a few seconds’. I accept this evidence. It was common ground there was about 100m of Penrhyn Road between the point of the high-g event where the Claimant applied his brakes and the illegal right-hand turn into Surbiton Road. The data shows he went from 69mph to 43mph in about 1.5s, and was slowing rapidly, but then made no further attempt to brake until the harsh braking event which immediately preceded his turn into Surbiton Road.
300. I am therefore satisfied that the Claimant – who was well used to fast driving and sudden braking - could easily have stopped at or near the scene on Penrhyn Road, whether at the spaces shown in the photographs, or some short distance beyond them, had he wished to do so. He did not, but instead he performed an illegal right turn into Surbiton Road and then parked out of sight.
301. I am satisfied that the inference can properly be drawn that the Claimant acted as he did in order to get his car away from the scene as quickly as possible. That can only have been because he knew that he been involved in the events prior to the accident. He knew he had been chasing Reza down Penrhyn Road at

speeds nearly double the speed limit. Even though he did not know when he drove past that Ms Shamim had been killed, he knew something serious had happened that he might be connected to.

302. The Claimant's illegal right turn took him away from the collision to McMillan House, where he accepted he was not entitled to park. If the Claimant really needed to turn into Surbiton Road to park at McMillan House then he could have driven on and performed a legal 'u-turn' and come back up Penrhyn Road to take the lawful left turn into Surbiton Road. It was not necessary for him to perform a sharp illegal right turn into Surbiton Road, thereby risking a head-on collision had another vehicle been coming in the opposite direction. The fact that he did so is only consistent, in my judgment, with a desire to get away from the scene as quickly as possible because he knew he had had some involvement in what had just happened.
303. My conclusion is further reinforced by the Claimant's failure to make himself known to the police after he returned to the scene of the accident, even though it was immediately clear to him that someone had been killed. He had followed Reza over several hundred metres; he knew the sort of speed Reza had been travelling at; and he saw him veer across the road. It would therefore have been obvious to him that he was a key witness who had potentially valuable information to give to the police. It follows that I do not accept that his excuse in [45] of his witness statement that, 'I didn't speak to the police as I didn't consider I was anything to do with the accident and couldn't offer much help', accurately reflects what he thought at the time.
304. The Claimant's explanation on this aspect of the case has varied significantly. What he said to me is different from what he said in his witness statement of 2 April 2015: 'Everyone was asking each other what happened. I did not wanna (sic) sound like I was involved, someone asked me what happened and I said I don't know and I just left it at that'. In his 13 April 2015 interview he said people were asking what was going on, and 'I was just like I don't know what's going on, it was just like everyone else was like they don't know what's going on and I just left it at that'. In none of these three versions did the Claimant advance the other reasons he gave before me, namely, his general distrust of the police and his desire not to disrupt his university work.
305. In summary, although I accept that the Claimant had upcoming exams and coursework to hand in, he knew that a young woman had been killed in an accident that he had witnessed. I find it inconceivable that the Claimant would not have identified himself to the police as a witness if he had genuinely believed that that was all he was. I find his failure to do so, along with failing to stop, the illegal driving manoeuvre, and hiding his car, were all part of a concerted attempt by him to distance himself as far as possible from the accident. He did that because he knew he had had some involvement in the events immediately prior to it.
306. For all of these reasons, I am satisfied that the Defendant has proved that the Claimant took part in a race with Reza which ended when Reza hit and killed Ms Shamim.

307. I turn to the allegation of showing-off. For the reasons I have given I am satisfied that the Claimant drove as he did in significant part because of the presence of his three friends in the car, and because of their encouragement of him, and that he was showing off the car's capabilities to them. I also cannot rule out that an element of the Claimant's motivation may have been a desire to attract the attention of pedestrians to his fast driving.
308. Next is the allegation that the Claimant and Reza raced to see who had the fastest car. I am unable to say that there is sufficient evidence to prove this aspect of the primary imputation on the balance of probabilities. The Claimant and Reza just happened to encounter each other on the Roundabout, and the subsequent race was a spontaneous event with each driver increasing his speed as a reaction to the other's presence, as I have explained. However, I regard this detail as an inaccuracy at the edge of the primary imputation: I consider that a reasonable onlooker would think the exact reason why the two men raced did not matter.
309. Mr Sterling made the point that Warby J found that the Article meant that the Claimant and Reza had raced on 'streets' (plural) when the alleged race only took place on one road, Penrhyn Road. There is nothing in this point. Reza overtook the Claimant on or about the Roundabout. There is no precise evidence whether the Roundabout is a different road from Penrhyn Road, but even if 'streets' was an inaccuracy it is another example of a minor inaccuracy which does not affect the question of substantial truth.
310. I am therefore satisfied that the Defendant has proved the substantial truth of the primary imputation on the balance of probabilities.
311. I turn to the *Chase* level two imputation found by Warby J that there were reasonable grounds to suspect that the Claimant was guilty of the offences of causing death and serious injury by dangerous driving.
312. In accordance with the *Musa King* principles, I am satisfied that the Defendant has proved primary facts and matters which gave rise to reasonable grounds of suspicion that the Claimant committed these offences, objectively judged.
313. This conclusion largely follows from my conclusion that the Defendant has succeeded in proving the primary imputation. For the reasons I have set out, the Defendant has proved the following facts and matters: the Claimant took part in a race with Reza in Kingston-upon-Thames on the evening of 31 March 2015; the Claimant and Reza were both driving high performance BMWs; the Claimant had three passengers in his vehicle; in the course of the race the Claimant accelerated from 38mph to 69mph; they drove at speeds approaching 70mph along Penrhyn Road with the Claimant immediately behind Reza; Reza collided with, and killed Ms Shamim as she crossed the road, then hit a bus, and seriously injured a passenger in his car; the Claimant drove past the scene instead of stopping, performed an illegal driving manoeuvre, parked his car out of sight, and returned to the scene but did not make himself known to the police as someone who had witnessed the accident; the Claimant was charged with these two offences and tried for them; the case was of sufficient strength to go to

the jury; and the Claimant was acquitted of them but convicted of careless driving.

314. The misstatement in the Article that the Claimant was arrested was a minor inaccuracy which does not affect the truth of the secondary imputation.
315. It follows that the Defendant's defence of truth succeeds in respect of both imputations arising from the Article.
316. I therefore do not, strictly, need to address privilege or whether publication of the Article caused serious harm to the Claimant's reputation, however I propose to do so.

Privilege

317. There are two species of privilege under the 1996 Act. The first is absolute privilege, pursuant to s 14 of the Defamation Act 1996 (DA 1996) (s 14 privilege), which provides:

"14. - Reports of court proceedings absolutely privileged.

(1) A fair and accurate report of proceedings in public before a court to which this section applies, if published contemporaneously with the proceedings, is absolutely privileged.

...

(3) This section applies to—

(a) any court in the United Kingdom."

318. The second is qualified privilege, pursuant to s 15 and Sch 1 of the DA 1996 (s 15 privilege). Section 15 provides:

"15. - Reports, &c. protected by qualified privilege.

(1) The publication of any report or other statement mentioned in Schedule 1 to this Act is privileged unless the publication is shown to be made with malice, subject as follows.

...

(3) This section does not apply to the publication to the public, or a section of the public, of matter which is not of public interest and the publication of which is not for the public benefit."

319. Paragraph 2 of Sch 1, to the DA 1996 refers to:

“2. A fair and accurate report of proceedings in public before a court anywhere in the world.”

320. *Curistan*, supra, was an appeal in relation to a trial of the preliminary issues as to the availability of qualified privilege under the DA 1996, and of the question of meaning. The defendant newspaper had published a hybrid report containing both statements made by the newspaper itself, and statements said to be covered by qualified privilege because they had been made in the House of Commons by Mr Peter Robinson MP. Arden LJ considered fairness and accuracy in relation to [1] of Sch 1, which concerns a report of proceedings in public of a legislature anywhere in the world.
321. In her judgment at [22] Arden LJ set out five propositions which she said were established by the authorities:
- a. section 15 of the DA 1996 constitutes a mandatory rule of law that fair and accurate reports to which it applies, and which satisfy the conditions set out in that section, are entitled to qualified privilege;
 - b. one of the requirements of a fair and accurate report is that the quality of fairness must not be lost by intermingling extraneous material with the material for which privilege is claimed;
 - c. the maker of a report will be liable in defamation for allegations entitled to reporting privilege if he adopts them as his own;
 - d. on the facts, the judge correctly applied these principles to the privileged passages and correctly concluded that they were entitled to qualified privilege;
 - e. in the case of an article consisting in part only of passages entitled to reporting privilege, the meaning of the non-privileged passages is to be ascertained on the basis that:
 - (i) the privileged passages merely provide the context in which the statements in the non-privileged passages were made, and
 - (ii) the repetition rule has no application to the privileged passages.
322. The repetition rule has the effect that, ‘for the purpose of the law of libel a hearsay statement is the same as a direct statement ...’, *per* Lord Devlin in *Lewis v Daily Telegraph Ltd* [1964] AC 234, 284. It is a rule which means, generally, that the law does not allow a person to evade liability by attributing a statement to some other person. If the defendant states, ‘C murdered X’, then a defence of truth requires him to show that C did murder X. If, however, the defendant states that ‘A told me that C murdered X’ or that ‘there is a rumour that C murdered X’, the defendant is still required to prove that C did murder X in order to establish the defence. It does not matter that, taken literally, the statement is true in the sense that the defendant can show that he was told the information by A or that such a rumour does exist. In short, as was said by

Greer LJ in *Cookson v Harewood* [1932] 2 KB 478, 485, and approved by Lord Devlin in *Lewis*, supra, pp283-284:

“If you repeat a rumour you cannot say it is true by proving that the rumour in fact existed; you have to prove that the subject matter of the rumour is true”.

323. The purpose of the rule is to protect the individual’s right to his reputation: ‘repeating someone else’s libellous statement is just as bad as making the statement directly’: per Lord Reid in *Lewis* at p260.

324. Arden LJ elaborated on the second of these five propositions about extraneous material at [26] et seq of her judgment:

“26. There are a number of authorities on what constitutes a fair and accurate report. It need not be a verbatim report. It can be selective and concentrate on one particular aspect as long as it reports fairly and accurately the impression that the reporter would have received as a reasonable spectator in the proceedings: see generally *Cook v Alexander* [1974] QB 279 and *Tsikata v Newspaper Publishing plc* [1997] 1 All ER 655

27. However, these appeals are principally concerned with the quality of fairness. Fairness in section 15 has been held to mean fairness in terms of presentation rather than fairness between the speaker and the subject of the statement: see per Lord Denning MR in *Cook v Alexander* [1974] QB 279, 289. A report does not cease to be fair because there are some slight inaccuracies or omissions: *Andrews v Chapman* (1853) 3 C & K 286 , 290. It follows that if there is a substantial or material misstatement of fact that is prejudicial to the claimant's reputation, the report will not be privileged. If the report refers to an accusation made on a privileged occasion which is in fact untrue, the defence of fair comment may be available if it is in terms which would be fair if the accusation were well-founded and provided that the comment is made in good faith and without malice: *Mangena v Wright* [1909] 2 KB 958 , 977.

28. Fairness can also be lost by the presence of extraneous material. This proposition is supported by a memorable passage in the speech of Lord Denning in the *Dingle* case [1964] AC 371: see para 33 below.”

325. The reference to *Dingle v Associated Newspapers Ltd* [1964] AC 371 was to p411, where Lord Denning held that if a newspaper:

“... adds its own spice and prints a story to the same effect as the parliamentary paper, and garnishes and embellishes it with circumstantial detail, it goes beyond the privilege and becomes subject to the general law. None of its story on that occasion is privileged. It has ‘put the meat on the bones’ and must answer for the whole joint. If it cannot justify it, it must pay damages: and it cannot diminish these by reference to the privileged reports which it and others may have given previously.”

326. Arden LJ held at [47] that where there was material which was alleged to be excessive, the question was ‘whether the excessive extraneous material deprived the report of the parliamentary proceedings of its quality of fairness’. At [69] she said that a report would not be entitled to qualified privilege if the writer had adopted the allegations made in the privileged passages ‘or so intermingled them with extraneous material that the privilege was lost’. She approached the question of intermingling by considering three matters ([47]): (a) whether there was a recognisably distinct report of parliamentary proceedings; (b) how far Mr Robinson went and (c) whether the excessive extraneous material deprived the report of the parliamentary proceedings of its quality of fairness.

327. At [69] she said:

“69. Once the repetition rule is disapplied, there is no reason why a fair and accurate report entitled to qualified privilege under section 15 should be read as anything more than a statement that the allegations mentioned in the report were made. The report would not of course be entitled to qualified privilege if the writer had adopted the allegations made in the privileged passages or so intermingled them with extraneous material that the privilege was lost.”

328. Short concurring judgments were given by Laws LJ and Lord Phillips CJ. At [87], Laws LJ, before citing Lord Denning’s comments from *Dingle*, supra, observed in relation to the question of embellishment and adoption that:

“It is plain that there will be no qualified privilege in an account of parliamentary speech if the publisher has so embellished the material that it cannot be said to be a fair and accurate report.”

329. At [94] Lord Phillips CJ identified the relevant issue on this aspect as:

“(iii) Was reporting privilege in respect of those parts lost by reason of the comments made by *The Sunday Times* in the remainder of the article ?”

330. In *Alsaiifi v Trinity Mirror plc and others* [2018] EWHC 1954 (QB), [6], [12(i)], Nicklin J described the effect of Arden LJ’s fifth proposition as being:

“6. ... for the purposes of determining meaning, the parts of the article protected by privilege could not be treated as words complained of.

...

12(i). The effect of *Curistan* is not to remove privileged paragraphs from a publication. Whilst they cannot be relied upon as words complained of, for the purposes of meaning, they remain as context for the non-privileged parts of the publication: *Curistan* [22(v)(1)] *per* Arden LJ; [84] *per* Laws LJ; and [102] *per* Lord Phillips MR.”

331. In relation to context and meaning, in *Koutsogiannis v The Random House Group Limited* [2020] 4 WLR 25, [12(viii)], Nicklin J said:

“(viii) The publication must be read as a whole, and any 'bane and antidote' taken together. Sometimes, the context will clothe the words in a more serious defamatory meaning (for example the classic "rogues' gallery" case). In other cases, the context will weaken (even extinguish altogether) the defamatory meaning that the words would bear if they were read in isolation (eg, bane and antidote cases).”

332. In *Gatley*, *supra*, [30.8], the editors say that the fifth proposition is to the effect that:

“30.8 ... where one part of an article is privileged as a report of proceedings in Parliament and another part is not, the meaning of the privileged part was to be determined on a different basis from the meaning of the remainder: so far as the privileged words were concerned, the repetition rule was to be disapplied. In consequence, a reported (privileged) allegation is to be treated as meaning only that the allegation has been made, and as not to bear any connotation that the matter alleged is true.”

333. In the case before me, at [10] of her Defence the Defendant pleaded that:

“10. The Article consisted of a fair and accurate report of legal proceedings in public brought against the Claimant which was published contemporaneously. Accordingly, the Article was published on an occasion of absolute privilege pursuant to s14 of the Defamation Act 1996. Further or alternatively, the Article was published on an occasion of qualified privilege pursuant to s 15 and Schedule 1 of the Defamation Act 1996.”

334. Five particulars of privilege were then pleaded:

“10.1 The Claimant was prosecuted for causing death and serious injury by dangerous driving at the Central

Criminal Court in London between 9 January 2017 and 26 January 2017.

10.2 On 26 January the Claimant was found not guilty of the said offences, but was found guilty of careless driving and was given nine penalty points on his licence, a £1,000 fine, and ordered to pay £500 costs.

10.3 To the extent that the words complained of referred to the said criminal proceedings against the Claimant, namely paragraphs 1 to 6, 10 to 21 and 23 of the Article, they constituted a fair and accurate report of the said proceedings which took place in public before a court in the United Kingdom.

10.4 The Article was published contemporaneously with the proceedings, being published on the day of the Claimant's conviction and sentence.

10.5 In the premises, the publication of the said words is protected by absolute privilege pursuant to s 14 of the Defamation Act 1996, further or alternatively by qualified privilege under s 15 and paragraph 2 of Schedule 1 of the Defamation Act 1996.”

335. In her Defence at [11.3] the Defendant relied in extinction or mitigation of damage on such paragraphs of the Article as are protected by privilege.
336. In his Amended Reply at [29], the Claimant pleaded as follows:

“29. The allegations at paragraph 10 are denied. The article was not nor did it consist of a fair and accurate report of the legal proceedings in public, which was published contemporaneously. Further, with regard to the particulars under paragraph 10:

(1) Paragraphs 10.1 and 10.2 are admitted.

(2) The Claimant denies that paragraphs 1-6, 10-21 and 23 of the Article constituted a fair and accurate report of the said proceedings, which had taken place in public before a Court in the United Kingdom. On the contrary, paragraphs 1, 7, 10 and 15 of the report rendered the report as a report of the proceedings grossly unfair and substantially inaccurate.

(3) Further, the Claimant relies upon the meaning of the report as determined at paragraph 39 of the judgment of Warby J in these proceedings on 7th June 2019.

(4) Consequently, the report was grossly unfair and substantially inaccurate as it related and meant, which was untrue, that the Claimant had taken part in a car race with an acquaintance, Mr Reza, in which they were showing off by driving their high performance cars to see who had the fastest car, that the Claimant, after Mr Reza's car had struck and killed a pedestrian, Ms Shamim, had failed to stop but had driven past the accident and away from the scene, and that for these reasons the Claimant was reasonably suspected of being jointly responsible with Mr Reza for causing the death of Ms Shamim and of causing serious injury to a young boy who was one of Mr Reza's passengers by dangerous driving.

(5) Paragraph 10.4 is admitted.

(6) Paragraph 10.5 is denied, given that the report was not fair and was not accurate."

337. In reference to [29(2)], Paragraphs [1], [7], and [10] of the meaning ruling referred to a 'race', or 'racing'. Paragraph [15] referring to the Claimant continuing past the collision and making an illegal right-turn into Surbiton Road.
338. Pursuant to CPR Part 18, the Defendant sought further information (*inter alia*) about [29(2)], including how [1], [7], [10] and [15] of the Article rendered it 'grossly unfair and substantially inaccurate'.
339. The Claimant said in his Response 7:

“(7)(a) Paragraph 1 read: ‘Two men who raced their high performance cars along a street in Kingston, leading to the death of a young woman, have been found guilty by a jury.’ This paragraph is grossly unfair and substantially inaccurate in that the Claimant was not racing, his driving did not lead to the death of a young woman and, which is to be implied under paragraph 1, the Claimant was not guilty of killing a woman whilst racing his car against the other driver Mr Reza.

(b) Paragraph 7 read: ‘Detective Sergeant Jeff Edwards, from Met's Roads and Transport Policing Command, said ‘Reza and Spicer were essentially showing off, racing each other to see who had the fastest car.’ This paragraph is grossly unfair and substantially inaccurate in that Mr Spicer was not showing off to Mr Reza, essentially or otherwise, nor was he racing against Mr Reza to see who had the fastest car.’

(c) Paragraph 10 read: ‘The Court heard that around 21:00 hrs Reza was racing his white convertible BMW M3 against a dark grey BMW 330d, driven by Spicer who had three friends with him. They drove from the area of Kingston town centre towards Surbiton, reaching speeds of almost 70mph in a 30mph zone as they came into Penrhyn Road.’ This paragraph is grossly unfair and substantially inaccurate in that the Claimant was not racing against Mr Reza. Nor, which is implied by this paragraph, were they driving together nor had the Claimant reached a speed of almost 70mph on more than one occasion.

(d) Paragraph 15 read: ‘Spicer continued past the collision and made an illegal right-hand turn into Surbiton Road.’ This paragraph is grossly unfair and substantially inaccurate because the Claimant, did not, as implied, continue past the collision at speed, failed to stop or make an illegal right-hand turn into Surbiton Road without reason.

(e) Further, paragraphs 1, 7, 10 and 15 individually and collectively portray a grossly unfair and inaccurate report of the trial and its outcome and what was heard and said in Court.”

340. In relation to [29(3)] of the Reply, the Defendant asked the Claimant to explain the reliance placed by him on the meaning of the report, for the purposes of a response to the defence of absolute, alternatively qualified, privilege.

341. Response 8 was as follows:

“To claim the benefit of absolute privilege or qualified privilege the Defendant must establish that the report was fair and accurate. The Claimant relies upon paragraph 39 of Warby J’s judgment as the threshold evidentially that the Defendant must establish to have reasonable grounds to suspect the Claimant as having been jointly responsible with Mr Reza for causing the death of Ms Shamim and of causing serious injury to a young boy who was one of Mr Reza’s passengers, by dangerous driving.”

342. Thus the questions for me are (a) what parts of the Article consist of a report of court proceedings ?; (b) are they, by themselves, fair and accurate of such proceedings ?; (c) are they rendered unfair and/or inaccurate by extraneous material ?

343. As I have said, the Claimant does not now maintain that the Article was not published contemporaneously, and so I am only concerned with fairness and

accuracy. I am not concerned with public interest/public benefit (s 15(3)), which were not raised by the Claimant in any event.

344. In my judgment the Defendant was correct to submit that the following paragraphs of the Article were a report of the court proceedings, including its outcome, parts of the evidence, and the way in which the case was put by the prosecution, for the following reasons: [2] and [3] detailed the outcome of the trial as regards Reza; [4] and [5] detailed the outcome as regards the Claimant; [6], [8], [11]-[14], [16] and [19] related to Ms Shamim; [10] related to evidence which was presented during the trial and the way in which the prosecution put its case, including that the Claimant had taken part in a race. This is made clear by the words ‘The court heard ...’; [15] also reflected evidence given at the trial; [17], [18], [20], and [21] related to the occupants of Reza’s car and his driving; [22] and [23] related to the events which led to the prosecution; and [24] quoted the judge’s sentencing remarks. Paragraph [25] et seq quoted verbatim the victim impact statement from Ms Shamim’s father.
345. I will refer to these paragraphs as ‘the privileged paragraphs’ whilst recognising that Mr Sterling’s submission is that that they lost their privileged status by reason of [1], [7], [10 and [15], for the reasons I have set out.
346. The material in the Article which can properly be described as extraneous is the allegation of racing in [1]; DS Edwards’ remarks in [7] and [9]; and the suggested connection between the Claimant and Reza in [23]. Mr de Wilde conceded that [1] contains extraneous material. I think that was right; I do not consider the jury’s verdict in relation to the Claimant can be interpreted as necessarily implying that he had raced although that was the prosecution’s case. Paragraph [7] is plainly reporting DS Edwards’ view or opinion about what occurred on the night of the 31 March 2015, whilst [9] is a comment by him about Ms Shamim’s family. The connection between the Claimant and Reza in [23] presents as fact that which the prosecution argued the evidence showed.
347. I do not regard this extraneous material as having deprived the privileged paragraphs of the necessary qualities of accuracy and fairness. That is for the following reasons.
348. First, Mr Sterling’s main complaint relates to the allegations of racing in [1] and [7]. However, racing was a central core component of the prosecution’s case against the Claimant and Reza, and the hypothetical reasonable reader would therefore have understood these references as a reiteration of what the prosecution had said at trial. Second, the Claimant’s name is not mentioned in [1] and it is not until [4] that his name first appeared. The hypothetical reasonable reader would therefore read and understand [1] and its reference to racing in the context of [4], where his acquittals were referred to, as well as his conviction of the lesser offence of careless driving. They would have understood the clear implication of the Claimant’s acquittal as being that he was not criminally liable for causing death or serious injury. They would also read it in the context of [10], where the nature of the prosecution’s case was set out.

349. Overall, I agree with Mr de Wilde’s submission that while the jury did not find the Claimant guilty of causing death or serious injury by dangerous driving, and the allegations of racing in [1], [7], and [10] amounted to material extraneous to the report, the material in them was contained in the balance of the paragraphs, and hence did not distort the Article so as to render the privileged paragraphs unfair or inaccurate so that the privilege was lost
350. So far as [7] as a whole is concerned, this was recognisably distinct from the privileged paragraphs. The reader would therefore have clearly understood this to have been DS Edward’s personal opinion about the case and what the evidence showed. Such a reader would have read and understood this paragraph in the context of what the prosecution said at the trial had happened, and would not have been surprised that he was of the same mind.
351. There is nothing even potentially objectionable in [9].
352. Lastly, so far as [23] is concerned, this represents something of a gloss on what the evidence showed, but given the evidence about the Claimant’s knowledge of Reza that I set out earlier (which broadly) mirrored his evidence at the criminal trial, this small detail (not of itself defamatory) does not affect the fairness and accuracy of the privileged paragraphs. In any event, no complaint was made about this paragraph.
353. For these reasons, the privileged paragraphs did not lose their privilege by reason of extraneous material in the Article. They were absolutely privileged under s 14. Mr de Wilde did not press his written submission that if I upheld the privileged of parts of the Article then the whole of the Article was privileged.

Serious harm

354. In *Gubarev v Orbis Business Intelligence Ltd* [2020] EWHC 2912 (QB), Warby J explained:

“37. The law, since 1 January 2014, is that a libel claim cannot succeed unless the claimant establishes that the statement complained of satisfies each of three requirements: (a) the common law requirement, that the statement should have a defamatory tendency; (b) a requirement, emanating from statute, that the publication of the statement must have caused actual damage that is more than minimal; and (c) a further, and more demanding, statutory threshold for actual defamatory impact.

[38] The common law requires that the offending statement should have a tendency to cause a substantial adverse effect on the attitude of other (right-thinking) people towards the claimant: *Thornton v Telegraph Media Group* [2011] 1 WLR 1985, [94] (Tugendhat J). This is an

objective test, depending on the extent to which the meaning of the words has an inherently harmful character. The requirement of more than minimal actual damage was recognised by the Court of Appeal in *Jameel (Yousef) -v- Dow Jones & Co Inc* [2005] QB 946, where the Court held that the Human Rights Act 1998 imposed on it a duty to dismiss a libel claim which was so trivial that its continuation would involve a disproportionate interference with freedom of expression.

[39] The higher statutory threshold was laid down by s.1 of the Defamation Act 2013, which contains what I have called the serious harm requirement:

‘1 Serious harm

(1) A statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant ...’

[40] The correct interpretation of s 1 has been litigated as far as the Supreme Court, which has now confirmed that section 1:

‘... not only raises the threshold of seriousness above that envisaged in *Jameel (Yousef)* and *Thornton*, but requires its application to be determined by reference to the actual facts about its impact and not just to the meaning of the words’: *Lachaux v Independent Print Ltd* [2020] AC 612, [12] (Lord Sumption, with whom the other Justices agreed).

The burden of proof lies, of course, on the claimant.”

355. The effect of the Supreme Court's decision in *Lachaux*, supra, can be summarised by reference to the following propositions drawn from Lord Sumption's judgment:
- a. A statement which would previously have been regarded as defamatory, because of its inherent tendency to cause some harm to reputation, is not to be so regarded unless it 'has caused or is likely to cause' harm which is 'serious' ([14]).
 - b. The reference 'has caused' is to 'the consequences of publication'; some historic harm 'which is shown to have actually occurred' ([14]).

- c. Harm ‘can be established only by reference to the impact which the statement is shown actually to have had ... It depends on a combination of the inherent tendency of the words and their actual impact on those to whom they were communicated’ ([14]).
- d. The ‘same must be true’ of the reference to ‘likely’ harm – it must ‘be established as a fact’ and is not (as the Court of Appeal had accepted) ‘a synonym for the inherent tendency which gives rise to the presumption of damage at common law’ [14].
- e. He said at [16]:

“Suppose that the words amount to a grave allegation against the claimant, but they are published to a small number of people, or to people none of whom believe it, or possibly to people among whom the claimant had no reputation to be harmed. The law's traditional answer is that these matters may mitigate damages but do not affect the defamatory character of the words. Yet it is plain that section 1 was intended to make them part of the test of the defamatory character of the statement.”

- f. The ‘defamatory character of the statement no longer depends only on the meaning of the words and their inherent tendency to damage the claimant's reputation ... But I do not accept that the result is a revolution in the law of defamation’ [17].
- g. Subsequent events can ‘be evidence of the likelihood of [serious harm] occurring’ ([18]).
- h. Warby J's findings on the facts of the case, which the Supreme Court upheld, were ‘based on (a) the scale of the publications; (b) the fact that the statements complained of had come to the attention of at least one identifiable person in the United Kingdom who knew Mr Lachaux and (c) that they were likely to have come to the attention of others who either knew him or would come to know him in future; and (d) the gravity of the statements themselves, according to the meaning attributed to them by Sir David Eady.’ [21]. Also:

“Mr Lachaux would have been entitled to produce evidence from those who had read the statements about its impact on them. But I do not accept, any more than the judge did, that his case must necessarily fail for want of such evidence. The judge's finding was based on a combination of the meaning of the words, the situation of Mr Lachaux, the circumstances of publication and the inherent probabilities. There is no reason why inferences of fact as to the seriousness of the harm done to Mr Lachaux's reputation should not be drawn from considerations of this kind. Warby J's task was to evaluate

the material before him, and arrive at a conclusion on an issue on which precision will rarely be possible.”

356. In *Parris v Ajayi and others* [2021] EWHC 285 (QB) HHJ Spearman QC (sitting as a judge of the Queen’s Bench Division) summarised recent case law on the effect of *Lachaux*:

“167. As Lord Sumption explained in *Lachaux v Independent Print Ltd* [2020] AC 612 at [14], whether a statement has caused serious harm falls to be established ‘by reference to the impact which the statement is shown actually to have had’, and that, in turn, ‘depends on a combination of the inherent tendency of the words and their actual impact on those to whom they were communicated’. Further, as appears from [16], in light of wording of section 1(1) of the Defamation Act 2013 (‘A statement is not defamatory unless its publication has caused or is likely to cause serious harm to the reputation of the claimant’), a statement may not be defamatory even if it amounts to ‘a grave allegation against the claimant’ if (for example) it is ‘published to a small number of people, or to people none of whom believe it, or possibly to people among whom the claimant had no reputation to be harmed’. At the same time, the assessment of harm of a defamatory statement is not simply “a numbers game” (see *Mardas v New York Times Co* [2009] EMLR 8, Eady J at [15]). Indeed: “Reported cases have shown that very ‘serious harm’ to a reputation can be caused by the publication of a defamatory statement to one person” (*Sobrinho v Impresa Publishing SA* [2016] EMLR 12, Dingemans J at [47]).

168. Other points which arise from the *Sobrinho* case include the following:

‘46 [F]irst ... ‘Serious’ is an ordinary word in common usage. Section 1 requires the claimant to prove as a fact, on the balance of probabilities, that the statement complained of has caused or will probably cause serious harm to the claimant’s reputation ...

47. Secondly, it is open to the claimant to call evidence in support of his case on serious harm and it is open to the defendant to call evidence to demonstrate that no serious harm has occurred or is likely to do so. However, a Court determining the issue of serious harm is, as in all cases, entitled to draw inferences based on the admitted evidence ...

48. Thirdly, there are obvious difficulties in getting witnesses to say that they read the words and thought badly of the claimant, compare *Ames v The Spamhouse Project* [2015] EWHC 127 (QB) at [55]. This is because the claimant will have an understandable desire not to spread the contents of the article complained of by asking persons if they have read it and what they think of the claimant, and because persons who think badly of the claimant are not likely to co-operate in providing evidence.’

169. In *Doyle v Smith* [2019] EMLR 15, Warby J cited these passages with approval at [116]. Warby J went on to emphasise the importance of the point about inference, and (among other things) approved at [117] the following words of HHJ Moloney QC in *Theedom v Nourish Training (trading as CSP Recruitment)* [2016] EMLR 10:

‘Depending on the circumstances of the case, the claimant may be able to satisfy section 1 without calling any evidence, by relying on the inferences of serious harm to reputation properly to be drawn from the level of the defamatory meaning of the words and the nature and extent of their publication.’

170. Although the Supreme Court stated the law differently from the Court of Appeal in *Lachaux v Independent Print Ltd* [2018] QB 594, the following passages from the judgment of Davis LJ appear to me to be consonant with the correct legal analysis of section 1 as set out in the judgment of Lord Sumption:

“72. ... serious reputational harm is capable of being proved by a process of inference from the seriousness of the defamatory meaning ... there is no reason in libel cases for precluding or restricting the drawing of an inference of serious reputational harm derived from an (objective) appraisal of the seriousness of the imputation to be gathered from the words used.

73. ... The seriousness of the reputational harm is ... evaluated having regard to the seriousness of the imputation conveyed by the words used: coupled, where necessary or

appropriate, with the context in which the words are used (for example, in a newspaper article or widely accessed blog).

...

79. There may, for instance, be cases where the evidence shows that no serious reputational harm has been caused or is likely for reasons unrelated to the meaning conveyed by the defamatory statement complained of. *One example could, for instance, perhaps be where the defendant considers that he has irrefutable evidence that the number of publishees was very limited, that there has been no grapevine percolation and that there is firm evidence that no one thought any the less of the claimant by reason of the publication ...*” (emphasis added).

171. In *Dhir v Saddler* [2017] EWHC 3155 (QB), [2018] 4 WLR 1, Nicklin J said at [55]:

‘In my judgment, the authorities demonstrate that it is the *quality* of the publishees not their *quantity* that is likely to determine the issue of serious harm in cases involving relatively small-scale publication. What matters is not the extent of publication, but to whom the words are published. A significant factor is likely to be whether the claimant is identified in the minds of the publishee(s) so that the allegation ‘sticks’ ...

(ii) A feature of the ‘sticking power’ of a defamatory allegation that has potential relevance to the assessment of serious harm is the likelihood of percolation/repetition of the allegation beyond the original publishees (‘the grapevine effect’) (*Slipper v BBC* [1991] 1 QB 283, 300 *per* Bingham LJ). In *Sloutsker v Romanova* [2015] EWHC 545 (QB); [2015] 2 Costs LR 321, Warby J said at [69]:

‘... It has to be borne in mind that the assessment of whether there is a real and substantial tort is not a mere numbers game, and also that the reach of a defamatory imputation is not limited to the immediate readership. The gravity of

the imputations complained of... is a relevant consideration when assessing whether the tort, if that is what it is, is real and substantial enough to justify the invocation of the English court's jurisdiction. *The graver the imputation the more likely it is to spread, and to cause serious harm.* It is beyond dispute that the imputations complained of are all extremely serious.' ...” (emphasis added)

357. Turning to the present case, the Claimant's case on serious harm was set out at [8] of his APOC as follows:

“8. By reason of the publication of the words complained of the Claimant's reputation has been seriously harmed and he has suffered considerable hurt, distress and embarrassment.”

358. He then pleaded five particulars, including that ‘no less than’ 38 individuals, including those who ‘re-tweeted’ the Article, believed that it was true and that the Claimant had caused Ms Shamim's death; ‘no less than’ 50 individuals (25 of whom are named in his witness statement) have shunned the Claimant; the Article would stick in the minds of readers; and that the words complained of were self-evidently harmful.

359. In her Defence at [8], the Defendant responded as follows (*inter alia*): serious harm under s 1(1) of the DA 2003 is distinct from injury to the Claimant's feelings; the Claimant was required to prove facts which give rise to an inference as to the seriousness of the harm done to his reputation by the Article; the Claimant was also required to prove that he suffered hurt, distress and embarrassment as a result of publication of the Article; to the extent that the Claimant contended that the 38 individuals believed that the article was true in the meaning that he had caused the death of Ms Shamim by his dangerous driving, this case on meaning had been rejected by Warby J and should be withdrawn; the Claimant was required to prove that each of these 38 individuals, including those responsible for re-tweeting the Tweet, believed that the Article was true in the meaning found by the Court and/or in the meaning that the Claimant had caused the death of Ms Shamim by his dangerous driving; the Claimant was required to prove that each of the said 50 individuals had shunned him as a result of publication of the Article; the Defendant denied that the impact of the Article seriously harmed his reputation in the eyes of his friends, family and acquaintances from work, who were ‘in his camp’; and the Claimant was required to prove any impact on the publishees upon which he relied in relation to serious harm.

360. I set out the Claimant's evidence on harm earlier. I turn to my conclusions on this issue.

361. It is important to emphasise the causation requirement imposed by s 1 ('A statement is not defamatory *unless its publication has caused ...*') (emphasis added). In some cases, causation may not be difficult to prove, and the only issue may be the extent of the harm. During the hearing I posed the example of a trade journal alleging that a businessman with an unblemished reputation is dishonest. If the businessman could show serious harm through being accused of dishonesty, it probably would not be difficult for him to prove that it was the trade journal which caused it. The present case is different. The Claimant must prove that it was *the publication of the Article* which caused serious harm to his reputation. He must prove that causative element in the context of a case which generated a lot of media coverage.
362. In his witness statement at [86] et seq the Claimant attempts to show that some of the media coverage must have been derived from the Article, by pointing to similarities between this coverage and the Article. In the absence of specific evidence, I am unable to draw this conclusion. I have been provided with many articles about the case published after the verdict, on 26 January 2017 or shortly afterwards. Nearly all of them contained material very similar to the Article (and similar to the material relied on by the Claimant), including allegations of racing, showing off, etc. Some of these articles were published *before* the DMC first published the Article at 17:22 on 26 January, and so could have had nothing to do with it. A few examples will suffice.
363. *The Sun's* online article of 26 January 2017 (timed at 3:15pm and updated at 4:12pm) stated:

“Prosecutor Deanna Heer told the court that Reza was behind the wheel of a white BMW which was racing ahead of a dark grey BMW driven by Spicer with three university friends.

...

In court the pair were accused of ‘encouraging one another to drive in a dangerous manner’ before the crash at 9pm on Penrhyn Road in Kingston.

Following the verdict, Ms Shamim's father spoke of the family's grief and devastation. He criticised both drivers' ‘arrogance and said: ‘I ask them, what gives you the right to put lives in danger through your driving. Such unbelievable arrogance.’

Deanna Heer, prosecuting, told the Old Bailey: ‘The prosecution case is that effectively these two defendants were showing off to one another, and thereby encouraging one another to drive in a dangerous manner.’

Spicer, also a Kingston University student, drove past the crash but later stopped and walked back to the scene.”

364. *ITV News*' online article, published on 26 January 2017 at 3:35pm, included the following:

“A speeding BMW driver has been found guilty of killing a young student who was knocked down as she crossed the road outside her university campus.

Farid Reza, 36, and William Spicer, 28, were accused of racing and showing off at more than twice the 30mph speed limit before the crash which killed 21-year-old student Hina Shamim two years ago. They denied causing the death of the Kingston University sports science undergraduate by their dangerous driving.

Reza was found guilty of the charge, but Spicer was acquitted, and convicted instead of the lesser offence of careless driving following an Old Bailey trial.

...

Following the verdict, Ms Shamim's father spoke of the family's grief and devastation.

He criticised both drivers' arrogance and said:

‘I ask them, what gives you the right to put lives in danger through your driving. Such unbelievable arrogance.’

365. As I have said, the Claimant settled a libel claim against *MailOnline* for wrongly accusing him of causing Ms Shamim's death. The offending article was published on that widely read news website at 14:55 on 26 January 2017. It stated:

“Shocking CCTV shows the moment student, 21, was mowed down and killed by show-off BMW driver going TWICE the speed limit as he gets five years for causing her death

- Farid Reza and William Spicer were racing at twice the 30mph speed limit
- They mowed down student Hina Shamim outside Kingston University
- Both denied causing her death by dangerous driving, but Reza was convicted

- Spicer was cleared of that charge but found guilty of careless driving

Farid Reza, 36, and William Spicer, 28, were showing off at more than twice the 30mph speed limit before the crash that killed 21-year-old student Hina Shamim on March 31, 2015 ...”

366. Although the Claimant would not accept it, I agree with the Defendant that this Article contained an allegation much more serious than anything contained in the Article, and that it would have been much more widely read.

367. *The Mirror*'s online article of 27 January 2017 said:

“Two men who raced their cars at high speeds down a busy road before the death have been found guilty of causing death by dangerous driving and careless driving, respectively.

...

The court heard that both men had been racing their cars at speeds of nearly 70mph in a 30mph zone.”

368. This material would have been widely read. At the start of the trial when the prosecution was outlining its case there was, no doubt, further widespread reporting. It is quite possible that a proportion of the people who read that material would have accepted the prosecution's case as true. It is an unfortunate fact that people who do not understand the presumption of innocence often believe that people who are arrested and brought to trial must for that reason be guilty.

369. Other than the Claimant's bare assertion, there is no evidence to show that it was the Article and not this other widespread reporting which harmed him. That presents considerable difficulties for the Claimant's case.

370. The distinctive feature of the Article, as compared with this other material, is its headline. But Warby J held that its impact was blunted by the rest of the Article for the reasons he gave, and that no reasonable reader could have read the Article as meaning the Claimant was responsible for Ms Shamim's death. In my judgment, the meaning of the Article was not meaningfully different from the other reporting about the case.

371. There is a second feature of this case which further complicates the Claimant's case on causation. Ms Shamim was a student at the University and was killed in front of it. It is possible that there were people at the scene who were connected with the University. I have no doubt that such a shocking event would have been widely spoken about in the University community in the days and months afterwards. I equally have no doubt that the Claimant's involvement in it would also have been talked about and would have been the subject of rumour,

speculation and gossip, all the more so after May 2016 when he and Reza were charged. By January 2017, it is likely that some people within the University would have formed the view that the Claimant was guilty of causing death by dangerous driving. I do not say all would have done by any means, but some people might have done, and especially once they read the media reporting to which I have referred.

372. It seems to me that these two factors taken together pose insuperable obstacles for the Claimant's case on serious harm. There is no evidence relied on in relation to serious harm from anyone other than the Claimant himself, and his evidence is at quite a high level of generality. The Defendant described the evidence on serious harm as vague and speculative, and I agree.
373. I am unable to infer that all of those who re-tweeted the police's Tweet did so because they believed that the Claimant was guilty of causing Ms Shamim's death and were endorsing the Article. I accept some may have done, and the Claimant referred to hostile comments which two re-tweeters made. But the evidence is vague and there is no firm evidence about who re-tweeted it. If they were journalists, they may have done so for professional reasons. Some may have done so in order to point out that the Claimant had been acquitted, whereas Reza had been convicted. Some may have done so for no particular reason.
374. In [88] of his witness statement the Claimant said that he estimated that there were 50 people he knew from around the University that he no longer had contact with and had been shunned by, and he went on in the following paragraph to dismiss the impact of his prosecution and the criminal trial on his reputation in their eyes, attributing their response 'directly to the article because before its publication I was being supported by them.'
375. I am unable to accept without more the Claimant's very general and unparticularised assertions. Although some individuals are named, the Claimant did not adduce any evidence to corroborate his assertion. In the absence of specific and direct evidence about what these people read, when they read it, and what their reaction was, and why, I am unable to accept that it was the Article, as opposed to other similar reporting or the University rumour mill, which caused any reaction by them. That seems to me inherently improbable. No reason is given why any of these people should have had any particular interest in the Metropolitan Police's website as opposed to *The Sun*, *The Mirror*, *MailOnline*, and other mainstream media which carried the story. Another, more general, point is that friendships wax and wane and friends and acquaintances drop out of contact for good reason, or no reason. In particular, after university has ended, people go their separate ways and contact with former friends is often lost. The fact that, in 2020 when the Claimant signed his witness statement, he was no longer in contact with some people from his time at University is to be expected.
376. I have reached the same conclusion about the Claimant's assertion that *as a result of the Article* he was denied access to alumni groups; that lecturers ignored his request for references; and that there was a campaign to have his

degree removed. In the absence of specific evidence, I am unable to conclude that it was the Article which produced these consequences. So far as the attempt to remove the Claimant's degree is concerned, there is no evidence when this was supposed to have happened, although he refers to being 'stripped' of his degree, which suggests it took place after he was awarded it. At [8] of his witness statement he says that in March 2015 he was in the second year of a four-year course. That means the earliest he would have graduated was the summer of 2017, some months after the Article was published. If the campaign began after he had received his degree that makes it even harder to attribute any campaign specifically to the Article.

377. To the extent that the Claimant maintains his case in relation to his family, etc, I accept the Defendant's point that publication to such people - whom she describes as being in the Claimant's camp - does not readily support a case on serious harm.
378. For these reasons, therefore, the Claimant has failed to prove on a balance of probabilities that the publication of the Article caused serious harm to his reputation as required by s 1 of the DA 2013.

Conclusion

379. There will, accordingly, be judgment for the Defendant.