Neutral Citation Number: [2021] EWHC 2004 (QB)

Case No: QB-2019-004235

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/07/2021

Before :

MR JUSTICE CAVANAGH

- -

Between :

MR TOBY OLIVER CHAN	**Claimant**
- and -	
(1) MS PAULA PETERS	**Defendant**
(2) ADVANTAGE INSURANCE COMPANY LIMITED	

- -
- -

Benjamin Bradley (instructed by **Stewarts Law LLP**) for the **Claimant**
Christopher Kennedy QC (instructed by **Keoghs**) for the **Defendants**

Hearing dates: **28 and 29 June 2021**

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Approved Judgment

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email, release to BAILII and publication on the Courts and Tribunals Judiciary website.
The date and time for hand-down is deemed to be 10:30 am 16 July 2021.

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Mr Justice Cavanagh:

1. On Wednesday 29 November 2017, the Claimant was severely injured in a road traffic accident involving a collision with a Renault Captur car driven by the First Defendant (whom I will call "the Defendant" in this judgment), whilst he was crossing the road outside his school, Notre Dame High School, in Fulwood Road, Sheffield. The Claimant was 17 years old at the time of the accident and was in the Lower Sixth Form of the School. As a result of the accident, the Claimant sustained a traumatic brain injury, a fractured skull, left traumatic optic neuropathy, muscle damage to his left knee, and lacerations to the face, left elbow, and right and left knee.

2. The trial before me was a trial on liability. The questions for me are (1) whether the accident was caused by the Defendant's negligence, (2) if so, whether damages should be reduced on account of contributory negligence on the part of the Claimant, and (3), again if so, by how much. The Second Defendant is the Defendant's insurance company.

3. The Claimant was represented by Mr Benjamin Bradley of counsel, and the Defendants by Mr Christopher Kennedy QC. I am grateful to both counsel for their very helpful submissions, both oral and in writing.

4. The Claimant did not give evidence as he has no memory of the accident. Oral evidence was given on his behalf by Mr Elijah Clayton, a friend of the Claimant who was on the opposite pavement at the time of the accident. I was also provided with witness statements from Mr Nathaniel Montgomery, another friend who was with Mr Clayton, and from Mr Stephen Davies, the Head Teacher of the School.

5. On behalf of the Defendants, I heard oral evidence from the Defendant, and from Mr Nicholas Wilkinson, a driver who was following the Defendant down the road at the time of the accident. I also heard oral evidence from Mr Paul Haigh, who is a motor engineer who is qualified to examine photographs of damaged vehicles and to assess repair requirements. Mr Haigh examined the damage to the Defendant's vehicle after the accident. In addition, I was provided with a witness statement from PC Daniel Lumley who attended the scene after the accident.

6. In my judgment, all of the witnesses who gave evidence, both orally and in writing were honest witnesses who were genuinely doing their best to convey a truthful recollection of the events. Of course, the accident happened in an instant, and the witnesses were not expecting anything particularly significant to happen and so it is not surprising, perhaps, that the witnesses' recollections do not exactly coincide. So, for example, Mr Clayton and Mr Montgomery do not agree whether the Claimant looked in the direction from which the Defendant's car was coming before he went out into the road. Also, and perhaps most significantly, Mr Wilkinson's recollection of the point at which the Claimant would have been visible to the Defendant differs from the Defendant's recollection and is at odds with the Defendant's expert evidence.

7. I find the Defendant to be an honest witness who had a clear recollection of the incident. She was adamant that, in her view, she was driving in a reasonable manner, and I have no doubt that this opinion is genuinely held, though this does not, of course, compel the court to come to the same conclusion.

8. I was shown CCTV evidence of the accident, and I was shown stills from CCTV footage filmed in the minute or so before the accident took place. The CCTV footage of the collision itself came from a camera mounted on the offside of a bus which was parked in a parking bay (or layby) next to the scene of the accident. The camera looked backwards and so captured the collision. Though the footage was enhanced, the film of the accident is grainy and somewhat indistinct. Unfortunately, the lens of another camera at the back of the bus was covered by dirt at the time of the accident, and no footage from it is usable. This camera would have had the best view of the Claimant's movements in the few seconds before the collision. As a result, the Claimant's movements in the 20 or so seconds before he moved into the road are not visible on CCTV.

9. I was also provided with expert reports from collision reconstruction experts who were instructed by the parties, Mr Craig Dawson for the Claimant and Mr David Hague for the Defendants. The experts also provided the court with a Joint Statement dated 21 December 2020. Each of the experts gave oral evidence and was cross-examined.

10. The Claimant's case on negligence was helpfully summarised to me by Mr Bradley in his closing submissions. He made four main points:

    (1) The Defendant's level of observation had been insufficient and this was the root cause of the accident and the "central limb" of her failings. For some distance (since she passed the entrance to Thornbury Hospital which is some 250 metres down the road from the locus of the accident), she had failed to look at and take account of her surroundings in the manner that was expected of a reasonably competent driver. She failed to appreciate the road in front of her and the developing hazards, including the presence of the School, and of some students coming out of School during the lunch break, and of the presence of a bus and a parked car in a parking bay (with a person, the Claimant, visible, or partially visible, between the bus and the parked car);

    (2) The Defendant had failed to see the Claimant when he was there to be seen. He came out of the school gate and stood at the kerb ready to cross the road. Mr Bradley said that the Defendant should also have seen that the Claimant was distracted and was about to cross the road;

    (3) Had the Defendant's level of observation and actions been those of a reasonably competent driver, she would have seen the Claimant, lifted her foot off the accelerator pedal, covered the brake pedal and been prepared and ready to stop, and, in all likelihood, have been ready to sound her horn;

    (4) If the Defendant had acted in the manner to be expected of a reasonably competent driver, she would have stopped in time and avoided the collision entirely.

11. On behalf of the Claimant, Mr Bradley accepted that there was some contributory negligence on the part of his client. However, he submitted that the reduction for contributory negligence should be in the region of no more than 30-40%, leaving the Defendants with liability for 60-70% of the Claimant's damages.

12. Towards the end of the trial, Mr Bradley also raised, somewhat faintly, the issue of medical causation, i.e. whether, if the Defendant had acted as a reasonably competent driver, the accident would still have taken place but the Claimant's injuries would have been much less severe. As Mr Kennedy QC pointed out in his closing submissions, this had not been pleaded. It was clear from Mr Bradley's closing submissions, however, the Claimant's case is really that if the Defendant had acted as a reasonably competent driver the accident would not have happened at all. This is his pleaded case.

13. The Defendants submitted that there was no negligence on the part of the Defendant. She had been driving within the speed limit on a stretch of road that she knew well. It was the Defendants' case that the Defendant did not see the Claimant until he leapt into the road in front of her, and that her level of observation and driving style had been in accordance with those to be expected of a reasonably competent driver. The Defendants submitted that a reasonably competent driver could not have been expected to see the Claimant until the very moment that he emerged into the road in front of the Defendant's car. The suggestion on the Claimant's behalf that the Defendant should, by then, have slowed down and been covering the brake was a counsel of perfection. The Defendant braked immediately when the Claimant came into contact with her car.

14. I will first set out the legal principles which are to be applied to a case such as this. I will then review the evidence, make findings of fact and set out my conclusions on the issues that I have to decide.

The law

15. There was no dispute between the parties about the applicable law.

16. The Defendant will be liable in negligence if she failed to attain the standard of a reasonable careful driver and if the accident was caused as a result. The burden of proof, on the balance of probabilities, rests with the Claimant.

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

> "6. First, and stating the obvious, it is for the claimant to establish on the balance of probabilities that the defendant was negligent. The standard of care is that of the reasonably careful driver, armed with common sense and experience of the way pedestrians, particularly (in this case) children, are likely to behave: **Moore v Pointer** [1975] RTR, per Buckley LJ. If a real risk of a danger emerging would have been reasonably apparent to such a driver, then reasonable precautions must be taken; if the danger was no more than a mere possibility, which would not have occurred to such a driver, then there is no obligation to take extraordinary precautions: **Foskett v Mistry** [1984] 1 RTR 1, per May LJ. The defendant is not to be judged by the standards of an ideal driver, nor with the benefit of

"20/20 hindsight": **Stewart v Glaze** [2009] EWHC 704, per Coulson J at [5].

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

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

….

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

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

12. Sixth, trial judges should also exercise caution in relation to the evidence of accident reconstruction experts. **Lambert** itself was a case in which the trial judge had relied heavily on the evidence of accident reconstruction experts and the calculations which they had produced. In **Stewart v Glaze** (ante) Coulson J, in §2.2 of his judgment at [8-10], warned of the danger of: (i) such experts giving opinions on matters beyond their expertise and acting as advocates seeking to usurp the role of the judge; (ii) elevating their admissible evidence about reaction times, stopping distances and the like into a "fixed framework or formula, against which the defendant's actions are then to be rigidly judged with a mathematical precision". These are dangers of which I should remind myself in this case, where both parties have relied upon such evidence.

….

14. Eighth, a further danger of which Mr Kennedy reminded me is that of approaching the question of whether or not the defendant's driving fell below the requisite standard in a vacuum, without reference to the actual circumstances of the actual collision against which the standard is to be judged: per May LJ in **Sam v Atkins** [2005] EWCA Civ 1452."

18. In the **Main** case, the Claimant was 8 years old at the time of the accident. In the present case, the Claimant was 17 years old, and Mr Bradley accepted that the Claimant's age is not therefore a significant factor, and, in particular, is not a relevant factor for the determination of the extent of contributory negligence.

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

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

20. In **Sam v Atkins**, the Court of Appeal emphasised that the Court must take care, when considering whether negligence has been proved, to consider whether the lack of reasonable care on the part of the defendant, if established, had been causative of the accident. In that case, the judge found that the defendant had been negligent but that her negligence had not been causative of the accident. At paragraph 14, Hale LJ said:

> "In my judgment, the judge was technically wrong to express the obvious findings that he made in the way in which he did. It is commonplace to analyse a cause of action in negligence compartmentally, examining a duty of care, breach of the duty, causation and damage. That is convenient, but technically wrong. Negligence is a composite concept necessarily combining all the elements I have mentioned."

21. **Sam v Atkins** made clear that if a defendant acts without reasonable care but that failure does not cause the accident, the defendant is not negligent (see paragraph 24).

22. As for the Highway Code, Mr Bradley drew my attention, in particular, to Rules 205, 206 and 208.

23. Rule 205 states that:

> "There is a risk of pedestrians, especially children, stepping unexpectedly into the road. You should drive with the safety of children in mind at a speed suitable for the conditions."

24. Rule 206 states, in relevant part:

> "Drive carefully and slowly when
>
> ….
>
> - Driving past bus…stops….
>
> - Passing parked vehicles…."

25. Rule 208 states:

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

26. As for contributory fault, in **Jackson v Murray** [2015] UKSC 5, when giving the judgment of the majority of the Supreme Court, Lord Reed JSC said, at paragraph 28, that "the apportionment of responsibility is inevitably a somewhat rough and ready exercise."

The facts

The background facts

27. As I have said, the accident occurred on the road outside Notre Dame High School. It occurred at about 12.45 pm on a Wednesday lunchtime. Visibility was good and it was not raining. There was a steady stream of traffic at the time of the accident, but the road was not congested. The traffic was flowing freely.

28. Fulwood Road is a fairly busy road. It is a single carriageway arterial road. The Headteacher, Mr Davies, said that the traffic on the road is fairly steady during the day, and is (as one would expect) very busy in the morning and very busy at the end of the school day. Mr Davies said that there is often a cluster of students outside the school at lunchtime, but not as many as at the start and the end of the day. Only sixth formers are allowed out of the school during the day. A few years before this accident, another student was knocked down by a car and a pedestrian crossing was installed on Fulwood Road, some one and a half minutes' walk away from where the accident between the Claimant and the Defendant happened. Elijah Clayton said that students had been told to use the pedestrian crossing.

29. The stretch of Fulwood Road which is outside Notre Dame School runs in a broadly east-west direction. It is subject to a 30 mph speed restriction. There are pavements on both sides of the road. The section of the road which is outside the school is straight and wide. Notre Dame School is on the South side of the road.

30. Just outside the school pedestrian entrance is a parking bay which is used by school buses at the start and end of the day. This parking bay is on the south side of the road, the same side as the school. It is not set off from the road. Rather, on this stretch of the road, the westbound lane is about twice the width of the eastbound lane so as to accommodate the parking bay.

31. The Defendant approached the school from the East, so, from her perspective, the school and the parking bay were on her left-hand side, the nearside. She was travelling in a west-bound direction.

32. At the time of the accident, there were two vehicles in the parking bay. One was a double-decker bus and the other was a Vauxhall Zafira car belonging to Mr Wayne Alleway. Mr Alleway was either dropping off or picking up (or delivering something

to) his daughter who was a student at the school. Mr Alleway did not give evidence in court but he gave a very brief statement to PC Lumley shortly after the accident, which PC Lumley recorded in the accident booklet.

33. A short time before the accident, the bus was parked in front of Mr Alleway's car, if one looks at the scene or locus from the Defendant's perspective as she approached the scene. However, before the accident took place the bus moved past the Zafira car and parked a little further along the parking bay, so that the Zafira was in front of the bus in the parking bay at the time of the accident (again from the Defendant's point of view). This manoeuvre had finished by the time that the Defendant came into sight of the locus and so played no part in the accident.

34. The bus camera shows that at one stage the Zafira's tailgate was up, so that Mr Alleway's daughter could retrieve something from, or place something in, the boot of the car. Unfortunately, the dirt on the lens of the bus rear camera means that there is no CCTV evidence as to whether the tailgate was up at the time of accident. This is potentially relevant because it would have an impact upon the Defendant's sight-line and, in particular, the extent to which she could see the Claimant in the seconds before the accident, when he was standing between the Zafira and the bus. Doing the best I can on the balance of probabilities, I find that the tailgate was down at the time of the accident. None of the eyewitnesses mentioned that the tailgate was up, and Mr Alleway did not mention this when he spoke to PC Lumley immediately after the accident. I do not think that there is any obvious reason why the tailgate would be in the up position for more than a few seconds: it was opened so that Mr Alleway's daughter could take something out of it, or put something in it. The Defendant had not noticed the tailgate being up.

35. The Defendant is an experienced driver. She had no alcohol in her system at the time of the accident. She sometimes wears driving glasses but she was not wearing them on the day of the accident. She was very familiar with this stretch of Fulwood Road. The Defendant was on the way to a work meeting at the time of the accident but she was not late for it, and she was in no particular hurry.

The accident

The CCTV evidence

36. The events that can be seen in the CCTV footage are helpfully described in Mr Hague's expert's report.

37. The relevant footage starts 32.9 seconds before the accident. The Claimant can be seen emerging from the school gates onto the pavement. He is waving to someone on the other side of the road, and approaches the kerb. He can be seen on the pavement for some seconds, walking towards the parking bay. The last CCTV picture of the Claimant until 0.6 seconds before the accident is some 20.1 seconds before, when he can be seen close to the kerb by the parking bay. It is likely that he is stepping into the parking bay. Two pedestrians can be seen on the other side of the road (these are Mr Clayton and Mr Montgomery).

38. As I have said, the lens of the camera on the back of the bus was obscured by dirt and so did not produce any usable footage. This is unhelpful because it means that there

is no CCTV evidence of what the Claimant was doing, or where he was located, in the last 20 seconds or so before the accident.

39. 5.6 seconds before the accident, one of the two people on the pavement on the other side of the road can be seen lifting their arm. I find that this was either Mr Clayton or Mr Montgomery waving towards the Claimant.

40. At 7.1 seconds before the accident, the Defendant's Renault can be seen for the first time, driving in a westbound direction

41. At 0.6 seconds before the accident, the Claimant can be seen coming into view of the camera on the offside of the bus. This camera is facing backwards and so is facing in the direction from which the Renault is arriving. He is emerging from the parking bay, in between the bus and Mr Alleway's Zafira. The experts are in agreement that the Claimant was between the two vehicles, slightly closer to the Zafira, about 1 metre away from it. The experts are also in agreement that the Claimant was moving at faster than walking pace when he came out into the road. He was described as "jogging" by the eyewitnesses and by the experts and I find that this is what he was doing. As Mr Hague said in his evidence, the angle of the Claimant's body as he started across the road, as seen from the still made from the CCTV footage 0.6 seconds before impact, is consistent with jogging or running, rather than with a walking motion. It is clear that the Claimant was hurrying across the road to meet his friends.

42. It is also clear from the CCTV evidence that the Defendant was using the width of the road. She was driving with her offside wheels near to the white line in the middle of the road. As the road was fairly wide, this meant that she was giving the parking bay as wide a berth as it was possible safely to give it.

43. The bus camera catches the moment at which the impact took place. This happened very suddenly. On the basis of my examination of the CCTV footage, it appears that the impact was with the side of the Renault, rather than the front, but very close to the front of the vehicle. There was some disagreement about whether the impact was with the side or the front of the vehicle (and so whether the Claimant hit the car or the car hit the Claimant) and I will return to this.

44. It is clear from the CCTV that the Defendant performed an emergency stop as soon as the impact took place and the experts both agree that this is what happened. There is no suggestion that the Defendant was braking before the impact took place.

45. The force of the impact knocked the claimant down the road towards the rear offside corner of the bus. As I have said, unfortunately he suffered serious injuries, including brain injuries.

The eyewitness evidence

46. Mr Davies, the Headteacher, did not witness the accident.

Elijah Clayton and Nathaniel Montgomery

47. Elijah Clayton and Nathaniel Montgomery were friends of the Claimant. They were walking along the pavement together on the opposite side of the road. They said that the Claimant caught sight of them and waved and shouted at them.

48. Nathaniel Montgomery said that the Claimant then stepped into the parking bay. He looked left and then walked to the edge of the bus. He then started to jog out into the road and it was at this point that the car hit him. Understandably, Mr Montgomery said that he accident itself was a bit of a blur but that the Claimant looked left, he did not look right.

49. In his written statement, Elijah Clayton said that the Claimant had been standing in the parking bay in the middle of the car and the bus, and that he stood there for a while talking to Mr Clayton and Mr Montgomery because there were a lot of cars parking. Mr Clayton said that "He looked to his left, started walking out and then looked to his right. As he stepped out in the road he was hit from a passing car from his right." Mr Clayton said that the Claimant was around one metre into the road from the edge of the parking bay before he was hit by the car. In cross-examination, Mr Clayton said that he could not now remember whether the Claimant was jogging, running, or walking. He said that he had a clear memory of the Claimant looking at the car as it hit him but nothing else.

50. This is the only evidence about whether the Claimant looked in the direction of the Defendant's car before he went out in the road. The Claimant cannot remember anything, and the Defendant said that she did not see the Claimant until the impact. It is not possible to tell from the CCTV footage whether the Claimant looked for oncoming traffic before he moved into the road.

51. I find that the Claimant did not look right, i.e. in the direction of the Defendant's car, before he jogged out into the road. Mr Montgomery's evidence is that he did not do so. Mr Clayton's evidence does not contradict this. He also said that the Claimant only looked to his left before moving into the road. He only looked to his right when the impact took place. The Claimant was distracted because he was keen to speak to his friends.

The Defendant

52. In her witness statement, the Defendant said:

> "As I approached the area, I noticed a bus stationary on the left side of the road outside the school. At this time I saw two children on the offside pavement standing close to a street lamp. I noticed the two boys as they appeared to wave towards the opposite side of the road.
>
> I was driving in a straight line close to the centre white line, in order to pass the stationary bus.
>
> I first saw the Claimant, who I now know to be called Toby Chan, when he was situated close to the rear offside of the bus. My attention was immediately drawn to him when he broke out into a run, heading towards the offside of the road. His

> movement was very quick and unexpected. The only way I can describe it is that he appeared to leap towards my car.
>
> My immediate reaction was to perform an' emergency stop; I cannot recall whether I had time to steer. I brought my vehicle to a stop very quickly. Unfortunately a collision occurred since the Claimant ran towards my car at a point when I had insufficient time to react. He collided with the nearside of my vehicle, just above the front nearside wheel arch."

53. The Defendant maintained this evidence in cross-examination. She had said that though she had seen the Claimant's friends waving, she did not see him until the point of impact. The first time that she saw him was when, in her words, he leapt on the bonnet of the car. She said that on the approach to the scene she had seen that there was a car and a bus in the parking bay. She said that there had been a few cars parked on the side of the road. She had seen Mr Alleway's car but had not seen anyone fiddling about in the boot. She said that she had left enough space to ensure that there would not be a collision if someone opened a car door in the parking bay.

54. It was put to the Defendant that she had seen the boys waving on the other side of the road, and that this should have warned her to keep a look out for the person to whom they were waving. She said that it had happened too quickly: she saw the boys waving and then someone hit her car.

55. Shortly after the accident, PC Lumley made a brief note in his pocketbook of what the Defendant had said to him about the accident.

> "I was driving to a meeting along Fulwood Road in Sheffield. I was travelling out of city. As I got to the Notre Damn (sic) School, a boy walked out in front of me. He stepped out from in front of a car. I think he had been speaking to a group of friends who were across the road from him. I just saw him step out."

56. On behalf, of the Claimant, it was suggested that this was different from the evidence that the Defendant gave in her witness statement, and in her oral evidence, in two respects. First, it suggests that the Defendant had spotted the Claimant before he moved into the road. Second, it suggests that the Claimant had only been stepping, not leaping, into the road. In my judgment, however, the evidence in the Defendant's witness statement is to be preferred. The note made by PC Lumley was a very brief note made in difficult circumstances in the immediate aftermath of an accident. It did not purport to be a verbatim note of the Defendant's words: it was just a brief and broad summary of what she said. The Defendant clarified that the reason why she said she thought that the Claimant had been speaking to his friends was not because she had seen him do so, but because she had drawn the inference after the accident that this must have been what had happened.

57. Though the Defendant says that the Claimant was running out into the road, I have found, as I have already said, that the best description is that he was jogging out into the road.

58. The Defendant said that, in her view, she had been driving with due care at a reasonable speed. She reiterated that she had not seen the Claimant until the moment of impact and, and said that if she had seen him moving into the road she would have slammed her brakes on and stopped.

Nicholas Wilkinson

59. Mr Wilkinson is a consultant clinical psychologist. He was driving his car immediately behind the Defendant's car at the time of the accident. He provided his witness statement on 20 July 2018, some eight months after the accident and it is clear that his recollection is not accurate in all respects. In particular, he said the accident took place at about 3pm, when it is common ground that the accident took place at about 12.45 pm, and he referred to the Defendant's car as a Nissan Juke, when it was, in fact, a Renault Captur. In other respects, Mr Wilkinson's evidence, was, entirely understandably, somewhat vague. He said that he was not sure how many buses were parked in the parking bay, and that he was not sure whether there was a car parked there.

60. I have no doubt that Mr Wilkinson was an entirely honest witness and did his best to assist the court. However, the minor inaccuracies and vagueness of recollection set out above lead me to the conclusion that I should be cautious about placing reliance upon Mr Wilkinson's evidence, unless it is corroborated by evidence from elsewhere.

61. Mr Wilkinson said that he was travelling at 30 mph and that the Defendant's car was travelling within the speed limit. I find, later in this judgment, that the Defendant was travelling at about 25 mph and I do not think that Mr Wilkinson's evidence provides grounds for me to revise this view.

62. In his witness statement, Mr Wilkinson gave the following description of the period immediately before the accident, and the accident itself:

> "I first saw the pedestrian involved in the accident when he walked down the pathway to my left. He walked behind the bus and then stopped. He stopped right on the corner at the rear of the bus as if he was going to look and check the road. He only stopped for a brief second and the Nissan Juke must have been level with the bus at that point.
>
> I was around 30-40 metres away from the boy.
>
> I think that he might have been checking his phone or looking over to the group of boys on the opposite side of the road.
>
> The pedestrian did not look to his right at any time and walked out into the road.
>
> The nearside wing of the Nissan Juke made contact with the pedestrian and he must have hit the windscreen and then he tumbled to the right hand side of the Nissan and he landed on the road.

> ….
>
> I think the pedestrian is responsible for the accident as he did not check the road and look to his right and the car was right on him when he stepped out."

63. In his oral evidence to the court, Mr Wilkinson said that he first saw the Claimant on the pathway that led from the School to the pavement. He said that he saw the Claimant walk onto the pavement, along the pavement towards the bus, then he saw him walk behind the bus, look to check the road and then step out in front of the Defendant's car. He said that he was able to see that the Claimant was distracted. In re-examination he said that there was only a "very very brief amount of time" between the Claimant stopping behind the bus and moving out into the road.

64. Mr Wilkinson was the Defendant's witness. On behalf of the Claimant, Mr Bradley understandably relied upon Mr Wilkinson's evidence that he had seen the Claimant before the accident, and had seen him walking down the pathway, then stopping at the rear of the bus, checking his phone and looking at the boys across the road, before walking into the road. Mr Bradley submitted that this supported his case that a reasonable driver in the Defendant's position should have spotted the Claimant before he moved into the road and should have taken appropriate precautionary measures. His point is that if Mr Wilkinson, the driver of the car behind the Defendant's, saw the Claimant before he moved into the road, and was aware that the Claimant appeared distracted, then this would have been all the clearer to the Defendant, if she was taking reasonable care.

65. I do not accept this submission. I accept the Defendant's evidence that she did not see the Claimant until the instant that the impact took place. It does not necessarily follow, of course, that the Claimant was not there to be seen, if the Defendant had been exercising reasonable powers of observation. However, the expert witnesses provided evidence based on measurements as regards the extent to which the Claimant would have been visible to the Defendant and in my judgment this evidence is more reliable than Mr Wilkinson's evidence, provided many months after the event. I will deal with this expert evidence in a later part of this judgment.

66. There are four particular reasons why I do not place reliance upon Mr Wilkinson's evidence that he had seen the Claimant before the accident took place as indicating that the Defendant had not taken reasonable care in observing potential hazards. First, as I have already said, I do not regard Mr Wilkinson's evidence as reliable. Second, Mr Wilkinson's evidence is not reconcilable with what is known from the CCTV evidence. Mr Wilkinson's evidence was that he could see the Claimant from the point at which he walked up the pathway from the School. This is not possible to reconcile with the analysis of the CCTV evidence. The CCTV analysis shows that the Claimant left the path from the school and arrived at the pavement at the side of the road at least 32.9 seconds before the accident. It is not possible that he was in sight of Mr Wilkinson at that point, as the curve of Fulwood Road would have blocked his view at that stage. This means that Mr Wilkinson must be mistaken about his recollection of seeing the Claimant moving up the pathway towards the pavement. Also, Mr Wilkinson said that the Claimant walked behind the bus and only stopped for a brief second before walking into the road. However, it can be established from the CCTV evidence that the Claimant was in the vicinity of the back of the bus and

the front of Mr Alleway's Zafira for at least 20 seconds (the period in which he was out of sight of the bus cameras, apart from the rear camera whose lens was obscured by dirt). Third, Mr Wilkinson said that the Claimant walked into the road when the other eyewitness evidence and the expert evidence shows that he jogged into the road. Fourth, and in any event, as Mr Wilkinson's car was further back on the road than the Defendant's car, even if Mr Wilkinson's recollection is correct that he saw the Claimant for a brief period before the accident, it does not follow that the Defendant would have done so. The Defendant's view might have been blocked by the Zafira in a way that Mr Wilkinson's might not have been. It is noteworthy that Mr Wilkinson did not think that the Defendant could have avoided the accident.

67. There were other sixth form students in the vicinity at the time of the accident, and it may be that Mr Wilkinson confused the Claimant with another student in the period leading up to the accident.

Mr Wayne Alleway

68. As I have said, Mr Alleway did not give evidence at the trial. PC Lumley noted in the accident report that Mr Alleway had said to him that the driver "did not have a chance to see or stop for him." In PC Lumley's witness statement he said that Mr Alleway told him shortly after the accident that he was sat in his parked vehicle when the boy just walked out in front of the Renault and the driver would not have seen the boy until the very last second. He told PC Lumley that the boy looked left and right very quickly without taking any thought.

The expert evidence

69. In light of the experts' Joint Statement and their evidence to the Court, it is clear that a number of matters are not in dispute. I accept this evidence. These matters are:

(1) There is no CCTV footage from a point about 20 seconds before the collision, when the Claimant can be seen walking to a position ahead of the parked Zafira, until less than 1 second before the collision (when the experts said that the Claimant was "ahead" of the parked Zafira, they meant that he was between the Zafira and the bus. In her direction of travel, westbound, the Defendant first passed the Zafira and then the bus). It appears likely that the Claimant stopped for a period before he attempted to cross, but it is not possible to assess from the footage where he stopped;

(2) The Claimant started to cross the road when he was no more than 1 metre ahead of the Zafira;

(3) The Claimant was either jogging or running across the road. He was probably jogging, rather than sprinting. The Claimant would have needed to cross at faster than walking pace in order to cross between the flow of eastbound vehicles;

(4) The Claimant was jogging directly across the road, rather than diagonally (Mr Dawson considered that it was possible that the Claimant was moving diagonally across the road but he agreed with Mr Hague that it was on balance more likely that the Claimant was travelling directly across the road);

(5) The collision occurred at the front nearside corner of the Defendant's Renault, when the car was travelling close to the centre lines of Fulwood Road;

(6) The Claimant was projected along the road by the collision, beyond the Renault's final stopping position. This indicates that it was not a glancing collision, and that the Defendant was braking at an emergency rate at the time of impact. The Renault stopped around 8 metres after the impact position, and the Claimant was projected around 9 to 10 metres to his final rest position at the rear of the bus;

(7) The Claimant could have avoided or reduced the likelihood of a collision if he had:

(a) Properly checked for vehicles before entering the live carriageway, so that he could have waited for the Renault to pass (the Joint Statement refers to the Vauxhall, but I think that this is a typo);

(b) Chosen to cross from a position that was not directly ahead of a parked vehicle. If he had crossed to the rear of the Vauxhall, he would have been visible to approaching westbound drivers and could have seen westbound vehicles approaching from a distance of around 160 metres;

(c) Chosen to cross from the west end of the layby, where the footway abuts the live carriageway, so that he would have had a clearer view of approaching vehicles and would not have been obscured from the view of approaching drivers by the vehicles parked in the layby;

(d) Used a zebra crossing around 130 metres west of the locus, or used a controlled pedestrian crossing around 160 metres to the east, i.e. the direction in which the two other pedestrians were travelling (pedestrians typically take 1 minute to walk 100 metres).

The Defendant's speed at the time of the accident

70. The Defendant does not claim to recall her precise speed at the time of the accident. However, she remembers checking her speed as she went past bollards in Fulwood Road, just before the entrance to Thornbury Hospital, which is on the opposite side of the road, several hundred metres before the entrance to the school, and at that time she was within the 30 mph speed limit. She believes that she was still below the speed limit at the moment of the accident.

71. It was not suggested on behalf of the Claimant that the Defendant was in excess of the 30 mph speed limit at the time of the accident. The driver who followed immediately behind her, Mr Wilkinson recalls that the line of traffic of which they were both part was driving at or below the speed limit. The two accident reconstruction experts have provided an estimate of the Defendant's likely speed at the time of the accident. They each used a different method for doing so. Mr Dawson, the Claimant's expert,

assessed the Defendant's speed by looking at the CCTV footage, the pedestrian throw distance (the distance that the Claimant was thrown by the impact), and by taking account of vehicle braking rates. Using this methodology, he assesses the Claimant's speed as being between 23-27 mph. He expressed the view that an approach speed of 27 mph was compatible with the Defendant's and Mr Wilkinson's evidence regarding their speed. Mr Hague, the Defendant's witness, focused on the CCTV evidence, the Defendant's approach and the time taken to brake. The bus camera took one frame per second. Using this knowledge, Mr Hague estimated the Defendant's speed as being about 25 mph.

72. It will be seen, therefore, that the two experts are not far apart in their estimates of the Defendant's speed at impact. The reality is that the material before the two experts was not such as to admit of a very confident or accurate estimate. Both of them took account of the CCTV footage which, as I have said, was of poor quality. I accept Mr Hague's evidence that there are limitations to estimates based on the pedestrian throw distance.

73. I take account of the warning by Smith LJ in **Clayton v Lambert** against making overly precise findings. However, having assessed the expert evidence on this subject, I find that the Defendant was driving at about 25 mph at the time of her accident. In my view, Mr Hague's evaluation is the most persuasive. Even though the CCTV footage was poor, I think that it helps that his assessment took account of the measurement (using the knowledge of one frame per second) of the distance travelled by the Defendant's car on the footage before the moment of impact. Mr Dawson took account only of the frames that span the impact. The evidence of the witnesses of fact does not help resolve any disagreement about the precise speed. Both the Defendant and Mr Wilkinson say that she was travelling within the speed limit, but they are no more specific than that. Moreover, as Mr Hague pointed out, most speedometers are calibrated so as slightly to exaggerate a car's speed.

74. In fact, however, in my judgment, nothing rests on the differences between the parties as regards the exact speed at which the Defendant was travelling at the time of impact. It is common ground that she was definitely travelling at below the speed limit. Whether she was travelling at 27 mph, 25 mph, or indeed at 23 mph, at the point of impact, the Claimant would still contend that she was travelling too fast in all of the circumstances. The modelling work on avoidability that was conducted by both experts and which is set out in their Joint Statement shows that if the Claimant is right that the Defendant had failed to take adequate account of her surroundings and should have been slowing down with her foot covering the brake pedal, she was going too fast whether she was going at 23, 25 or 27 mph. On the other hand, if the Defendants' submissions are correct, then the Defendant was travelling at an appropriate speed whether she was travelling at 23, 25 or 27 mph. Nevertheless, to avoid unnecessary complication, when I come to deal with the issue of avoidability, below, I will set out the position on the basis that the Defendant was travelling at about 25 mph at the time of the accident.

The damage to the Defendant's car

75. Evidence was given on this subject by Mr Haigh. The court was provided with photographs of the damage. There was damage to the front nearside wing and to the

front bumper, and also a "spider's web" crack in the windscreen, in front of the passenger seat.

76. The Claimant contends that the damage on the vehicle is consistent with the Claimant being hit by the car, rather than the other way round. On his behalf it was submitted that the damage shows that the Claimant was hit by the front of the car, close to the corner with the nearside. The Defendant's submission was that the impact was on the nearside corner of the car. Mr Hague said it can be seen from the CCTV that the Claimant's leading leg struck the nearside corner of the car, and that the initial damage was to the side and corner of the car. He said that the damage to the front bonnet of the car and to the windscreen came from contact from the Claimant's body and head after the initial impact, and that the impact to the corner of the car had caused the bonnet to crease.

77. I accept Mr Hague's evidence. It is consistent with the video evidence of the accident. It is also consistent with the Defendant's own evidence that the Claimant collided with her nearside wheel arch. To put it colloquially, the Claimant jogged into the Defendant's car. The impact was with the corner of the car. However, in my judgment nothing rests on whether the impact was slightly towards the front of the car, or slightly towards the side of the car. This does not shed any light on the question whether the Defendant was negligent, or on the extent of any contributory fault on the part of the Claimant. Nothing rests on whether the collision is described as the Claimant hitting the car or the car hitting the Claimant. In this case, that is a distinction without a difference.

Sight lines and visibility

78. I accept Mr Hague's evidence that drivers approaching the scene in a westbound direction obtain the first view of the locus whilst negotiating a left-hand bend and from a distance of around 180 metres. Fulwood Road is essentially straight for the final 130 metres to the locus but there is a line of trees along the nearside verge which obstructs the view of the nearside pavement until a driver is around 100 metres from the locus. There is a "School" hazard warning sign on the nearside verge around 100 metres from the locus. I also accept Mr Hague's evidence that, if (as I have found) the Defendant was driving at a speed of 25 mph, her car would have been around 220 metres from impact when the Claimant arrived close to the kerb some 20 seconds before the collision. Because of the curve of the road, this means that they would have been out of view of each other at that point.

79. It is common ground between the experts, and, indeed, is self-evident, that whilst the Defendant was standing waiting to move into the road, the view of the Defendant of him would have been obscured, at least to a substantial extent by the Zafira. From the Defendant's perspective, the Claimant was standing behind the Zafira. Although there is no CCTV of the Claimant's movements in the 20 seconds or so before the accident, I find, on the balance of probabilities that he was standing next to the Zafira for all or most of this time. He can be seen, 20.1 seconds before the collision, standing close to the kerb, possibly stepping into the parking bay in front of the Zafira. In my judgment, there would be no reason for him to move backwards at this point and so I find that he spent the intervening period between then and the accident in the bay next to the Zafira. He only became visible from the bus camera 0.6

seconds before the collision and so this must have been first point at which he emerged beyond the parking bay.

80. I have found as a fact that the Zafira's tailgate was not open. The next question, therefore, is how much of the Claimant would have been visible above the roof of the Zafira, whilst he was standing behind the Zafira. The Claimant was 1.73 metres tall. The experts referred to published data which shows that a Vauxhall Zafira, with the tailgate closed, is around 1.64 metres tall. Account must be taken of the Defendant's eye level. This was not taken into account by Mr Dawson when he wrote his report, but after discussing the matter with Mr Hague he agreed that this was something that has to be taken into account. The Defendant was sitting in her car, and this affected her eye-level. I accept Mr Hague's estimate that her eye level was 1.2 metres. The closer the Defendant's car came to the Zafira, the smaller the amount of the Claimant's head that would have been visible over the roof of the Zafira.

81. In my judgment, considering the expert evidence, it is clear that Mr Hague is right that the height of the roof of the Zafira was such that it would have fully obscured or almost fully obscured the amount of the Claimant's head that would have been visible above the roof of the Zafira. The figures provided in the experts' Joint Statement say that at 100 metres away from the Claimant, and taking account of the Defendant's eye level, 7 cm of the Claimant's head would have been visible above the Zafira. 75 metres away, this would have reduced to 6-7 cm; 50 metres away, this would have reduced further to 4-5 cm; and at 25 metres, between nothing and 1 cm would be visible.

82. The experts do not agree whether any part of the Claimant that was visible above the roof of the Zafira would have been conspicuous. Mr Dawson's report contains a photograph of a person standing in this location. However, this person was wearing high-visibility clothing. I accept Mr Hague's evidence that, particularly as he was not wearing high-visibility clothing, the Claimant would not have been conspicuous.

83. The experts state, and I find, that the Claimant would have become fully visible to the Defendant once he was outside the line of the parked Zafira. It is possible that the top of his head might visible to the Defendant, over the bonnet of the Zafira, just before he reached a position alongside the offside edge of the Zafira. However, in my judgment, in light of the eyewitness evidence, the expert evidence, and the CCTV evidence, the Claimant would have been visible to the Defendant at most only a small fraction of a second before he emerged beyond the offside edge of the Zafira.

What was the Defendant's response time, if she did not see the Claimant until he emerged from behind the Zafira?

84. Mr Hague estimated that, if the Defendant only saw the Claimant when he started to move out from behind the Zafira, the Defendant's reaction time would have been in the region of 1.0 to 1.5 seconds. In his expert's Report he said that, based on an approach speed for the Renault of 25 mph, the Claimant's upper body would have entered the Defendant's view, if she was looking in his general direction, around 1.0 second before the collision, but that the top of his head may have been visible above the roof of the Zafira slightly earlier than 1.0 seconds before the impact. On this basis, Mr Hague estimated that the Defendant's response time was 1.0 second.

85. I accept this evidence, and so I find that if the Defendant did not see the Claimant until he emerged from behind the Zafira, her response time was 1.0 second or marginally longer.

Avoidability

86. The experts were also agreed on the potential for the Defendant to avoid the collision, depending on which factual scenario was accepted by the Court. They were agreed that, in order to stop and avoid the collision, the Defendant would have needed to stop her Renault 9 metres earlier than in the collision.

87. The experts provided agreed figures for three scenarios. These were:

(1) Scenario 1. Scenario 1 applies if the Claimant would not have become apparent to a reasonable driver as a hazard requiring a response until he either emerged into view or set off from a position already in view. Using published data for drivers who had not been pre-warned of a hazard, the experts agreed that a reasonable response time in these circumstances would be 1.0 to 1.5 seconds. Using these response times, and on the basis that Renault was travelling at a speed of 25 mph at the point of impact, then in order to have stopped at the point of impact the Defendant would have had to be travelling at a speed of around 16-18 mph.

(2) Scenario 2. This is based on a response time of 0.75 seconds. This would be the expected response time for a driver who was looking towards the position from which the Claimant emerged or set off (rather than towards the other pedestrians or the front of the stationary bus) and immediately saw the need to apply emergency braking. This calculation is based on the premise that the Claimant was apparent as a hazard requiring an emergency response for between 1.0 to 1.5 seconds before the collision. On this Scenario, if the Renault was travelling at a speed of 25 mph on the approach to the collision, then in order to have stopped at the point of impact, the Defendant would have needed to be travelling at a speed of around 18 mph, if the Claimant was apparent as a hazard for 1.0 second, and at a speed of around 25 mph, if the Claimant was apparent as a hazard for 1.5 seconds.

(3) Scenario 3. This is based on a response time of 0.50 seconds. This would be the expected response time for a driver who was looking towards the position from where the Claimant emerged or set off (rather than towards the other pedestrians or the front of the stationary bus), was already covering the brake pedal and immediately saw the need to apply emergency braking. This calculation is also based on the supposition that the Claimant was apparent as a hazard requiring an emergency response for between 1.0 and 1.5 seconds before the collision. On this Scenario, if the Renault was travelling at a speed of 25 mph on approach to the collision, the in order to have stopped at the point of impact, she would have needed to be travelling at a speed of around 20 or 21 mph (if the Claimant was apparent as a hazard for around 1.0 second) and could have stopped from her speed of around 25 mph (if the Claimant was apparent as a hazard for around 1.5 seconds).

88. Scenario 1 describes the position on the basis of the Defendant's case that a reasonable driver would not have been taking precautionary measures until the

Claimant moved out into the road. It is accepted by Mr Bradley, on behalf of the Claimant, that if Scenario 1 applies, the accident was not avoidable, and the Claimant's claim must fail. On the other hand, if a reasonable driver would have behaved in the way described in Scenario 3, and the Defendant had behaved as a reasonable driver, the accident would have been avoided. On that Scenario, if the Claimant was visible for 1.5 seconds, the Defendant could have stopped even if she had been driving at 25 mph. If the Claimant was visible for 1.0 seconds, she would have been able to stop if she was driving at 20 or 21 mph, and, on the Defendant's case, this would have been a reasonable speed to have been travelling at (as she should have slowed down in light of the potential hazard).

89. Scenario 2 comes part-way between Scenario 1 and Scenario 3. Once again, however, if a reasonable driver would have behaved in the way described in Scenario 2, and the Defendant had behaved in that way, then the accident would have been avoided. If the emergency response time was 1.5 seconds, then the Defendant could have stopped even if she was driving at 25 mph. If the emergency response time was 1.0 second, she could have stopped in time if she was driving at 18 mph, and the Claimant says that it would have been reasonable for her to slow down to this speed in light of the hazards up ahead. If the emergency response time was 1.5 seconds, she could have stopped in time even if she was driving at 25 mph.

90. The conclusion to be drawn from the detailed information provided in the experts Joint Statement about avoidability is, in my view, relatively straightforward. If the Claimant's case on the facts and on what can be expected from a reasonable driver is correct, then the Defendant's failure to meet the standards of a reasonable driver caused the collision, and so the case on negligence will be made out.

Conclusions

91. As stated above, the criticism of the Defendant is that she failed to meet the standards of a reasonably competent driver in relation to her observation of potential hazards coming up, and/or in relation to the precautionary steps that she should have taken to deal with the potential hazards.

92. My key findings (some of which have already been referred to above) are as follows:

(1) After coming up the pathway from the School, the Claimant saw his friends, Mr Clayton and Mr Montgomery. They waved to each other and the Claimant decided that he would cross the road to see them;

(2) Around 20 seconds before the collision, the Claimant moved off the pavement into the parking bay, between the bus and the Zafira. He remained in the parking bay, behind the Zafira from the Defendant's point of view, for the next 20 seconds or so, until about 0.6 seconds before the collision, when he started to jog into the road;

(3) The Claimant did not look right in the direction of the Defendant's car before he set off into the road. He did not see the Defendant's car;

(4) At the time of the collision, the Defendant was driving at about 25 mph, well within the 30 mph speed limit. She was not covering the brake pedal in the moments leading up to the accident, and she was not slowing down;

(5) The Defendant was keeping close to the white lines in the middle of the carriageway to give the parked car and bus as wide a berth as possible;

(6) From the point at which the Defendant rounded the curve in Fulwood Road and the locus came into view until the moment of the collision, the Claimant was obscured because he was standing in the parking bay between the Zafira and the bus. He was not so far forward in the parking bay that he could be seen in front of the Zafira. Given the sitting position of the Defendant in the driving seat (1.2m from the ground), the Claimant's height (1.73m) and the height of the roof of the Zafira (1.64m), only a very few centimetres, at most, of the Claimant would have been visible above the Zafira, and this would have reduced to nothing or virtually nothing, by the point at which the Defendant was 50m from the locus. The Claimant was not conspicuous;

(7) The Defendant did not see the Claimant until he moved out into the road beyond the offside of the Zafira. This was 0.6 seconds before the collision;

(8) The collision consisted of the Claimant's leading leg hitting the front nearside of the Defendant's car, next to the front wheel arch and the front corner of the Renault. The force of the contact and the momentum resulted in the Claimant colliding with the bonnet and the front windscreen of the car before being propelled along the road, coming to rest by the back of the bus;

(9) The Defendant slammed on the brakes as soon as she saw the Claimant and came to a halt. The Defendant's response time was 1.0 second.

93. Coming on to the question of negligence, I find that the Defendant was not negligent.

94. Taking this in stages: first, leaving aside any clues there might have been to the presence of the Claimant, the Defendant did not fail to look at and take account of her surroundings in the manner that should be expected of a reasonably competent driver. She was aware of the presence of the School, and of the presence of the Zafira and the bus in the parking bay, but she was travelling at a speed, about 25 mph, which was appropriate for the circumstances and the nature of the potential hazards. It was daylight and it was not raining. The traffic was not heavy. It was not the start or the end of the School day. No passengers were getting on, or coming off, the bus. It is true that there were some older students around, but they were not there in such numbers, or behaving in such a way, that should have required a reasonably competent driver to slow down below 25 mph or to have covered the brake, let alone to sound the horn. The Defendant had, sensibly and carefully, steered a line close to the white line in the middle of the road so as to give the car and bus a wide berth.

95. Second, I reject the contention that the Defendant was negligent in failing to spot the Claimant, and to take precautionary measures, until he emerged from behind the Zafira 0.6 seconds before the accident. The Defendant did not fail to see the Claimant when he was there to be seen. As I have found, the Claimant was entirely, or virtually entirely, obscured by the Zafira from the point at which the locus came into sight until

0.6 seconds before the accident. In those circumstances, a reasonably competent driver could not be expected to see the Claimant until 0.6 seconds before the collision, and, therefore, could not be expected to take any precautionary steps. I do not accept that a reasonable driver in the position of the Defendant should have worked out, from the fact that Mr Clayton and Mr Montgomery were waving from the other side of the road, that there was a real possibility that someone would emerge unexpectedly from the parking bay into her path, and should have slowed down, covered the brake pedal, or taken other steps to deal with such a risk.

96. Third, the Defendant acted in the manner of a reasonably competent driver in the way that she reacted once she perceived that the Claimant was jogging into the road. She responded in about 1.0 second, and brought her car to a halt as quickly as possible. However, it was not possible for her to avoid the collision. I am satisfied that Scenario 1 applies in this case: the Claimant would not have become apparent to a reasonable driver as a hazard requiring a response until he emerged into view, 0.6 seconds before the collision, and as soon as that happened the Defendant reacted quickly and well within the 1.0 to 1.5 second response time that can be expected of a reasonably competent driver.

97. A reasonably competent driver, in these circumstances, would not have stopped in time and avoided the accident entirely.

98. For these reasons, whilst I have great sympathy for the Claimant, who has suffered serious injuries as a result of a moment's inattention, I must dismiss his claim in negligence against the Defendants.

99. In light of this finding, the question of contributory fault does not arise. Suffice it to say that, if I had found the Defendant to be negligent, I would have reduced the Claimant's damages by 75% to take account of his contributory fault.