



Neutral Citation Number: [2020] EWHC 669 (QB)

Case No: QB-2018-000255

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 20/03/2020

Before:

PETER MARQUAND
(Sitting as a Deputy High Court Judge)

Between:

CAMILLA BONSOR **Claimant**
- and -
BIO COLLECTORS LIMITED **Defendant**

David Sanderson (instructed by **Penningtons Manches Cooper LLP**) for the **Claimant**
Simon Browne QC (instructed by **DWF LLP**) for the **Defendant**

Hearing dates: 3 and 4 March 2020

Approved Judgment

I direct that pursuant to CPR PD 39A para 6.1 no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

.....
PETER MARQUAND

Peter Marquand:

Introduction

1. This is a personal injury claim brought by the Claimant, Ms Camilla Bonsor, following a road traffic accident on 10 August 2015. The Defendant is the employer of Mr Augusto Rodrigues, the driver of the Defendant's Renault Premium 240 lorry ('the Renault Premium'), which collided with Ms Bonsor causing significant injuries to her. This Judgment only deals with issues of primary liability and contributory negligence following the order of Master Davison sealed on 12 June 2019. The Claimant was represented by David Sanderson and the Defendant by Simon Browne QC. I am grateful to Counsel for their helpful written and oral submissions, which I have carefully considered but not set out in detail in this Judgment.
2. In summary, Ms Bonsor was walking west on Kensington High Street and Mr Rodrigues was driving the Renault Premium in the same direction, but was initially behind her. Ms Bonsor crossed the mouth of Young Street and Mr Rodrigues turned left into Young Street and collided with her. There was an investigation by the police into the circumstances of this accident and a number of the documents produced as a result of that investigation were available. The Claimant alleges that the Defendant is vicariously liable for their employee, Mr Rodrigues, who should have seen the Claimant walking along Kensington High Street and paused before turning left into Young Street, which would have made her visible to him. In addition, the Claimant says that the Defendant has a primary liability for failing to fit a Fresnel lens to the passenger side window, which they say would have shown Ms Bonsor and avoided the accident. The Claimant did not pursue two other allegations relating to the fitting of sensors and a speaker warning that the Renault Premium was turning left. The Claimant accepted that causation could not be made out in relation to those allegations, although she maintained it was still a breach of duty not to have that equipment. The Defendant alleged that Ms Bonsor had herself been negligent by failing to cross Young Street taking the appropriate care, in particular not looking to her right and over her shoulder to see the Renault Premium turning left and for failing to hear the lorry. The Defendant rejected the claim that a Fresnel lens should have been fitted and would have opposed the other two allegations if they had been pursued.

The relevant legal principles to be applied

3. The Defendant accepts vicarious liability for Mr Rodrigues. The standard of proof is on a balance of probabilities. For the liability relating to Mr Rodrigues, the burden of proof is on the Claimant to prove negligence. A road user owes a duty to take reasonable care to avoid doing or omitting to do anything that they can reasonably foresee would cause injury to others. The duty requires a road user to drive with ordinary care and skill. When it comes to the contributory negligence alleged against the Claimant the burden of proof is on the Defendant to show that Ms Bonsor did not take reasonable care for herself. Failing to follow the Highway Code tends to establish liability and applies both to Ms Bonsor and Mr Rodrigues (section 38(7) Road Traffic Act 1988). As to the application of this section, I was referred to and have considered *Powell v Phillips* [1973] RTR 19 at page 22 paragraph K in particular. Mr Browne also referred to me *Qamili v Holt* [2009] EWCA Civ 1625

and, in particular, paragraphs 20 and 21 where Rix LJ referring to other authorities concluded with:

“It was in that case that this court accepted the submission that it would be a counsel of perfection to say that a driver should concentrate on every aspect of a busy road all the time.”

4. To establish liability against the Defendant for the failure to have a Fresnel lens fitted, the burden is on the Claimant to demonstrate that this was a breach of the duty by the Defendant to take reasonable care towards other road users. In the event of any breach of duty being identified, causation of injury must be established.

Relevant parts of the Highway Code and Guidance

5. The relevant provisions of the Highway Code at the time are Rules 7 and 8 which apply to pedestrians and Rule 170 to drivers:

“Rule 7

...

B Stop just before you get to the kerb, where you can see if anything is coming, ...

C Look all around for traffic and listen. Traffic could come from any direction. Listen as well, because you can sometimes hear traffic before you see it.

D If traffic is coming, let it pass. Look all around again and listen. Do not cross until there is a safe gap in the traffic and you are certain that there is plenty of time. Remember, even if traffic is a long way off, it may be approaching very quickly.

E When it is safe, go straight across the road – do not run. Keep looking and listening for traffic while you cross, in case there is any traffic you did not see, or in case other traffic appears suddenly. ...

Rule 8

At a junction. When crossing the road, look out for traffic turning into the road, especially from behind you. If you have already started crossing and traffic wants to turn into the road, you have priority and they should give way (see Rule 170).”

and

“Rule 170

Take extra care at junctions. You should

- watch out for cyclists, motorcyclists, powered wheelchairs/mobility scooters and pedestrians as they are not always easy to see. Be aware that they may not have seen or heard you if you are approaching from behind.
- watch out for pedestrians crossing a road into which you are turning. If they have started to cross they have priority, so give way.”

6. Although not part of the Highway Code, the experts agreed that the publication by the Driving Standards Agency (DSA): ‘The Official DSA Guide to Driving Goods Vehicles 2009’ (‘the DSA Guidance’) applied to Mr Rodrigues and that the following extracts were applicable to him and the circumstances of this accident:

“Awareness;

You need to know what is happening around you so that you are always conscious of any potential hazards that might develop.

Effective observations;

You should ensure that you are constantly aware of what is happening around you... You should check for pedestrians, cyclists and motorcyclists who may be directly in front of the vehicle but out of your normal field of vision.

Observations at junctions;

Pedestrians can often act unpredictably at junctions, just stepping or even running out, oblivious to your presence. Take in the whole scene before you commit yourself to moving a large (and frequently long) vehicle out across the path of oncoming traffic. Near junctions, especially built-up areas slow down and be ready to stop.

Zones of vision;

As a large goods vehicle licence-holder your eyesight must be of a high standard. A skilful driver should be constantly scanning the road ahead and interpreting what is happening or likely to happen.

Always be aware of what is behind and alongside you. Use your peripheral vision to see changes ‘out of the corner of your eye’ before reacting to them. Look out for the possibility of... other pedestrians stepping out.

Skills you should show; pedestrians;

Give way to pedestrians when turning from one road into another... Look out for pedestrians at all times but especially in

shopping areas, where there might be a number of people waiting to cross the road, often at junctions...”

The location of the accident

7. The accident occurred at the junction of Kensington High Street and Young Street in London W8. Kensington High Street is a single carriageway two-way road running east to west with pavements on the north and south side. There are a number of shops and businesses on either side of the road. Young Street is a single carriageway two-way road that meets Kensington High Street at right angles from the South, with give way markings across its mouth.
8. Immediately beyond the give way markings in the westbound carriageway of Kensington High Street is an area on the road marked ‘keep clear.’ This area is bounded on its west and east sides by solid white lines across the carriageway at 90° to the give way markings at the entrance to Young Street. The solid white line on the east side is important in this case and I shall refer to it as EWL (east-side white line).
9. The various measurements of the carriageways and pavements were disputed in the Defence. However, Mr Ward, the Claimant’s expert, has visited the site and taken electronic measurements. Mr Hawthorn the Defendant’s expert has not visited the site but derived his measurements from a plan prepared by the police. The experts have agreed a plan of the scene of the accident which is derived from Mr Ward’s measurements and I accept his measurements as he has been to the site and measured the various distances. The southern pavement of Kensington High Street is about 3.5 metres (m) wide. Young Street is 8m wide divided into two 4m lanes by broken white lines in the middle of the road. Where the southern pavement of High Street Kensington meets Young Street on the east and west sides there are dropped kerbs and tactile paving.
10. Just over 8m south of the give way markings on the east-side pavement of Young Street is a lamp post. Looking at that lamp post and towards the buildings on the east side of Young Street there are two NatWest cashpoints in the wall, which appear to be on either side of the lamp post. At the east corner of Young Street and Kensington High Street is a NatWest bank. On the west corner is the old Barkers’ department store building (‘the Barkers’ Building’) occupied by ‘Whole Foods.’ Immediately opposite the mouth of Young Street on the north side of Kensington High Street is a ‘Zara’ and the shop adjacent to and to the east of Zara was a ‘Topshop.’
11. I was invited by Mr Browne to carry out a site visit. Mr Sanderson was neutral on the point. They both agreed I did not need to be accompanied. I did visit the site, which was helpful as it confirmed the accuracy of the road layout on the agreed plan. The Topshop is no longer present and its double shop front is now replaced by two different businesses.

The lorry

12. The Renault Premium was examined as part of the police investigation and no mechanical faults were detected. There was a defective windscreen washer and a blown rear registration plate lamp, but no defects were identified that might have contributed to the accident.

13. The Renault Premium was fitted with nearside and offside indicator lights (front and rear) and there was a 'repeater' indicator light on the front wheel arch on either side. There were three other pairs of repeater lights spaced along the lower edge of the Renault Premium's main bodywork.
14. The Renault Premium was also fitted with a number of mirrors. First, what is known as a class VI mirror, which was fitted on the outside of the cab in the middle of the windscreen at the top. This affords a view of the road immediately in front of the cab and as it was slightly angled to the left it just picked up the nearside footpath. Secondly, a class II mirror which was affixed to the outside of the vehicle showing a view to the side and behind (this might be thought of conveniently as the traditional 'wing mirror') and affixed immediately above the class II mirror was a class IV mirror. These two mirrors would have captured most, if not all, of the nearside footpath, but not that immediately adjacent to the cab.
15. A further mirror was present fitted over the passenger door, again on the outside of the vehicle. This is known as a class V mirror and it is to give a view of the area of approximately 2m adjacent to the passenger door. The experts agreed that on the photographic evidence from the police, this particular mirror was not adjusted as it should have been. I will return to this below. It was a legal requirement to have the class VI, V, IV and II mirrors fitted to this vehicle.
16. The structure of the Renault Premium that forms the boundary between the passenger window and the left hand (when seen from within the cab) side of the front windscreen is known as the 'A Pillar.' The experts agreed that this produced a 'blind spot' in other words an area that was not visible to the driver either through direct vision, in the absence of other manoeuvres, or by use of the mirrors that were fitted to this vehicle. That blind spot extends from the full length and width of the A Pillar at a forward angle from the cab and the area that is covered by the blind spot gradually widens the greater the distance from that structure. There are other blind spots, but this is the relevant one for the purposes of this case and I will return to it below.
17. The photographs of the passenger side window from inside the cab demonstrate that it is approximately square in outline, although the rear lower corner of that square is 'cut off' at an angle. Internally, to the front of the passenger window and attached to the A Pillar, is a grab rail to help a passenger enter the cab when the passenger door is open.
18. The Renault Premium was fitted with a tachograph. The information that it contained was downloaded at the collision scene by the police.

The criminal proceedings

19. As I have stated, as result of the accident the police commenced an investigation and Mr Rodrigues was charged with driving without due care and attention. As part of that investigation the prosecution relied upon the evidence of PC Peter Traylor of the Serious Collision Investigation Unit. Mr Hawthorn, the Defendant's expert in this case was also the expert instructed by Mr Rodrigues' solicitors and his report in these proceedings is the same one that was used in the criminal proceedings. I had available to me PC Traylor's report as well as a joint report prepared by PC Traylor and Mr Hawthorn.

The CCTV

20. The recordings of three CCTV cameras were available in this case and were reviewed in court and I have had those images available to me. The first camera was located in Topshop ('the Topshop Camera') pointing southwards and has a view of the southern pavement on Kensington High Street and the mouth of the junction with Young Street. A pillar within Topshop obstructs part of the view, but nevertheless it is still possible to see the kerb on the eastern side of Young Street, the opposite kerb and the corner of the Barkers' Building, the EWL, traffic and pedestrians.
21. The two other cameras were attached to different parts of the side of the Barkers' Building that is on Young Street and are labelled as camera 3 ('Camera 3') and camera 7 ('Camera 7'). Both of those cameras are pointing northwards towards the junction with Kensington High Street. Camera 7 is closer to the junction than Camera 3. Camera 7 shows the western pavement of Young Street and its junction with High Street Kensington. The view of Young Street at the junction is only of the northbound carriageway with a very small part of the southbound carriageway and the collision is not seen in the footage. Camera 3 shows the full width of the junction of Young Street and Kensington High Street, but only just, as it is located right at the top of the frame. It is possible to identify the feet and legs of people crossing the junction and as discussed below it clearly shows the immediate aftermath of the collision as well as other useful images prior to it.
22. Technically, the Topshop Camera cannot be stepped through frame by frame. Camera 3 and Camera 7 can be and have three frames per second. The time recorded on Camera 3 and 7 is identical but it is different from the time of the Topshop Camera. The timings are also different to the times recorded by the tachograph from the Renault Premium, but the experts produced an agreed table correlating those times as well as the speed of the vehicle (in kilometres per hour, miles per hour and metres per second) and the distance in metres travelled by the Renault Premium. To avoid confusion throughout the Judgment I shall use the time on the Topshop Camera.

The evidence of Mr Rodrigues

23. I shall deal with the findings of fact below but is necessary to deal with a preliminary point concerning the evidence of Mr Rodrigues. Mr Rodrigues did not give oral evidence in these proceedings. The Defendant served a document entitled 'proof of evidence' in English from Mr Rodrigues which was unsigned and undated. It was accompanied by a certificate of translation dated 12 August 2016 and a further copy of the statement in Portuguese, which was again unsigned and undated. In response to my enquiry, Mr Browne informed me that the statement had been taken by a solicitor from DWF LLP with the assistance of a translator on 4 September 2015 and the purpose for which it was obtained was for use in the criminal proceedings.
24. The Defendant served a notice under the Civil Evidence Act 1995 in relation to Mr Rodrigues' 'proof of evidence.' I have considered the application of section 4 of that Act in estimating the weight (if any) to be given to this evidence (and other hearsay evidence). Section 4 requires me to have regard to any circumstances from which any inference can reasonably be drawn as to the reliability or otherwise of the evidence. Subsection 2 identifies a number of factors which may be considered, but it is not an exclusive list.

The experts

25. Mr Ward gave expert evidence for the Claimant. Mr Ward is a former police officer having served for 16 years, 10 as a traffic officer and three as an instructor in collision investigation. He left the police service and started his own accident investigation company and now trains police forces in accident reconstruction. Mr Ward had visited the scene and conducted measurements to produce a number of plans. He also projected the known blind spot from the A Pillar onto his plans, having interpreted the position of the Renault Premium from CCTV analysis.
26. Mr Hawthorn gave expert evidence for the Defendant. He was a serving police officer with the Metropolitan Police for 30 years. For 20 of those years he was a traffic patrol officer. He was engaged in accident investigation from 1982 until he retired when became a self-employed consultant. In 2009 he provided training to the Metropolitan Police in accident investigation, which he did for 10 years. Until his retirement two years ago, his training organisation was in competition with that of Mr Ward. Since 1980 Mr Hawthorn has held a class I HGV licence, which entitles him to drive all classes of HGV and public service vehicles. He has driven a class I HGV through central London.
27. The experts had prepared a joint statement dated 29 January 2020 and there was a large measure of agreement between them. As I have stated, they agreed times, speeds and distances and produced a table and an agreed plan¹ was produced showing the junction and the position of the Renault Premium before the collision at three different times and the corresponding likely positions of Ms Bonsor together with the positioning of the blind spot from the A Pillar. It was also agreed, and I accept, that the data used to position the Renault Premium, its trajectory and the position of Ms Bonsor are subject to some tolerances. This arises because of limitations in the way the data was recorded from both the CCTV and tachograph. I found both experts honest, straightforward and helpful.

Findings of fact

Events up to and including Ms Bonsor reaching the east kerb of Young Street

28. The experts agree that Ms Bonsor first came into view on the Topshop Camera at 14:26:06. They further agree that the Renault Premium came into view on the same camera at around 14:26:14. The Topshop Camera confirms that while she was on the pavement, she was always ahead of the Renault Premium. In the joint statement the experts agreed that Mr Rodrigues would have had a clear view of Ms Bonsor through the windscreen of his vehicle for at least six seconds and quite likely for longer. In oral evidence, Mr Hawthorn agreed Ms Bonsor was capable of being seen by Mr Rodrigues for 9 seconds as he as he approached from behind her. Mr Rodrigues at paragraph 47 of his statement states:

“I am aware that Kensington High Street is a busy shopping area. There are always lots of pedestrians walking along the

¹ Referred to as ‘Table C’ and ‘Plan C’ in Court. It was agreed that Plan C slightly misrepresented the position of the lorry throughout its turn such that it should be moved back by 30cm. It was agreed that this was not significant.

side streets and over the main road itself. Although I did see the pedestrians I did not see them as hazards whilst driving along the high street. Pedestrians are always walking in and out of shops. Therefore, it was not necessary for me to take particular notice of any individual pedestrian, until I slowed and began my left turn.”

29. I find as a fact, that Ms Bonsor was capable of being seen by Mr Rodrigues for 9 seconds, but he had not taken particular notice of her.
30. On the carriageway ahead of the Renault Premium was a black London taxi and at 14:26:14 that taxi stopped just behind the EWL because of traffic ahead of it. It is agreed and the tachograph reading confirms, that the Renault Premium slows at this point, which would have been because of the stationary taxi. Mr Rodrigues at paragraph 47 states:

“Just passed (sic) the junction with Young Street, as you head west, are a set of traffic lights. On my approach to the junction with Young Street the traffic lights were red. The vehicle in front of me was held up at these lights. It was a black London taxi. However, the lights then turned green and the traffic moved forward. Although I slowed down I do not think I came to a complete stop.”
31. I find that as a result of the stationary taxi Mr Rodrigues slowed down and the experts agree, based on the information from the tachograph and the Topshop Camera that at 14:26:17 he slowed to a speed of 0.8m/s: he did not stop. This is an important moment in the reconstruction of the events and for the purposes of measuring the distance travelled by the Renault Premium this point is taken as the start and measured as ‘0m’ (‘the Zero Metre Mark’).
32. The agreed plan shows that at this time Ms Bonsor would have been in the blind spot created by the A Pillar. In the experts’ oral evidence, both accepted that if Ms Bonsor was closer to the buildings or if the Renault Premium was further towards the centre line of Kensington High Street that would increase the disadvantage to the driver of the blind spot.
33. From the Zero Metre Mark the Renault Premium, if it had travelled in a straight line, had to travel 6 metres to reach a line projected north of the east kerb of Young Street, measured from the agreed plan. Ms Bonsor was ahead of the Renault Premium and she was 2.3m from the east kerb line of Young Street according to the joint statement. The nearside of the Renault Premium was at least 2m from the nearside kerb, the experts also agreed. The Topshop Camera shows there were four other pedestrians in the process of crossing the mouth of Young Street, two westbound and Mrs Hazini Famili and her son eastbound. Mrs Hazini Famili gave oral evidence and I will come to that below.
34. At 14:26:20 Mr Rodrigues had started to turn towards the left and had reached the point of the EWL. Based on the agreed evidence and the agreed plan, I find that Ms Bonsor remained in the blind spot created by the A Pillar at this time and she was on the point of crossing the eastern kerb of Young Street.

35. In his statement at paragraphs 48 – 49 Mr Rodrigues states:

“On my approach to Young Street I had conducted mirror checks, established that there were no vehicles or pedestrians either overtaking me or approaching down my nearside. In busy areas such as this, I am always looking into my left wing mirrors for cyclists.

I put my indicators on before the junction. You have to put your indicators on a long time before so no one comes between you and the pavement. I conducted my mirror checks looking in my class V, class II and class IV mirrors. I established that there were no vehicles or pedestrians either overtaking me or approaching down my nearside.”

36. In his interview under caution on 15 September 2015 Mr Rodrigues was asked to describe how he checks the mirrors in the Renault Premium. He described checking the mirrors before he turned and also looking in front of him. The detective constable summarised the manoeuvre as follows:

“Again I am just going to summarise the manoeuvre that you made. If you bear with me. That you were driving along Kensington High Street going to turn left into Young Street? A route that you are familiar with you have done many times before, and it was busy in the usual way with people and traffic. You checked your mirrors, you said you checked your right hand mirror and you checked your left hand mirror. Your left hand mirror was the last mirror you checked before you made the turn, is that right?”

Mr Rodrigues replied:

“Yes, because I stopped before I did the manoeuvre. At the crossing I stopped to do the manoeuvre. I looked, there was no one there so that is when I went.”

37. The Topshop Camera shows that at the point Ms Bonsor reached the eastern kerb of Young Street, Mrs Hazini Famili and her son had approached from the other direction and reached the same kerb. From Camera 3, although it is not possible to see anything other than the lower part of the pedestrians’ legs it is possible to deduce that Mrs Hazini Famili at this point is closer to the camera (further south) than Ms Bonsor. On the Topshop Camera Mrs Hazini Famili can be seen crossing the mouth of Young Street and as she reaches the centre line the black London taxi can be seen obscuring the camera’s field of view of her as the taxi proceeds west on Kensington High Street. The drop-down kerb is a lighter colour on the CCTV and Mrs Hazini Famili can be seen with her son crossing on the drop-down kerb on the east side of Young Street. Ms Bonsor cannot be seen immediately afterwards as the Renault Premium just obscures the view. Mr Hawthorn agreed that Ms Bonsor was closer to the give way line than Mrs Hazini Famili because you saw more of Mrs Hazini Famili on Camera 3 than you did of Ms Bonsor. I find that it follows from the images on Camera 3 that

Ms Bonsor was also crossing at the drop-down part of the kerb, as she is to the north of Mrs Hazini Famili.

38. Mr Drew was one of the witnesses who gave oral evidence. The police had prepared a statement from Mr Drew for the purposes of the criminal investigation. This is dated 17 September 2015. By order dated 1 October 2019 the Defendant had permission to rely upon this as a Witness Summary. Mr Drew explained that he had given this statement approximately five minutes after the accident. He wished to correct part of that statement indicating that rather than being 6m away from the road he was 12m away. He clarified that this distance was from his position to the kerb on the west side of Young Street. In his police witness statement, he stated:

“Ahead of me on the other side of Young Street outside the cashpoint of the bank I saw the lady involved in the accident she was walking and went straight into the road without looking. I did not see her stop prior to stepping into the road. A second later I saw the lorry enter Young Street, my impression was that it was quite fast and hit the lady.”

39. Mr Drew explained that he was walking east on the southern pavement of Kensington High Street returning to his place of work, which was about two minutes further on from Young Street on the right. He was walking quite quickly on his way back to work (he thought faster than the average walking speed of 1.6 metres per second (m/s)) and what first drew his attention was the Renault Premium turning very quickly – although he would not describe it as ‘violently.’ He has no recollection of any other pedestrians. He saw Ms Bonsor at the moment of impact and not earlier. His recollection was the Renault Premium speeding up – his impression was for two seconds and that it seemed like it travelled ‘a distance’. He confirmed that the position of the Renault Premium on agreed plan was exactly where it was finally positioned.
40. On reviewing his police witness statement, he could not recall saying to the police that he saw Ms Bonsor walking straight into the road and he could not recall saying that she had done so without looking. He thought now this did not seem right as it sounded like he was tracking her movements, which he was not. He was watching the Renault Premium and saw the impact; he was not watching Ms Bonsor beforehand. He remembers Ms Bonsor standing and looking straight ahead at the split second of impact. His recollection was that she was located in front of the NatWest cashpoint to the left of the lamp post on Young Street. Mr Drew was unable to confirm whether or not the police witness statement reflected his recollection at the time.
41. Mrs Hazini Famili gave oral evidence and had also prepared a statement dated 10 September 2019 for the purpose of these proceedings. Mrs Hazini Famili is a solicitor and on the day in question was walking with her 3-year-old son on Kensington High Street travelling east (the opposite direction from Ms Bonsor) and she crossed Young Street with her son. She recalls seeing the Claimant walking towards her. She recalled seeing the Renault Premium travelling west along Kensington High Street ‘he appeared to be travelling west and past the junction. I assumed he was continuing to travel west and did not anticipate his turn into Young Street.’ She did not notice the Renault Premium indicating that it was going to turn. Mrs Hazini Famili said at this point she was across Young Street and agreed, when viewing the CCTV from Camera

7 at 14:26:15² that she had just stepped on to the carriage way of Young Street and from the Topshop Camera this was before or as the taxi appeared at the EWL. She did not accept that as the Renault Premium was behind the taxi that she could not tell which way the lorry was travelling along the road. Mrs Hazini Famili explained that she was particularly aware of her surroundings because she was with her young son and was on 'heightened alert' and looking at all the vehicles.

42. Ms Bonsor had prepared a witness statement for these proceedings dated 7 August 2019 but was also interviewed by the police as part of their investigation. A witness statement dated 22 January 2016 was prepared by a police officer who interviewed her at her flat once she had come out of hospital.
43. Ms Bonsor was walking home having been to Hyde Park intending to go to Whole Foods to do some shopping. She was very familiar with the route as she had taken it on numerous occasions. In particular, she knew the junction of Young Street with Kensington High Street.
44. She said she had a very clear recollection of the accident. She explained that she crossed the road where the kerb dropped-down, the place where everyone else crossed the mouth of Young Street and she did not move further to her left – she did not veer off her trajectory. In her oral evidence Ms Bonsor said that as she was about to step off the kerb she definitely looked right and left. In her witness statement dated 7 August 2019 she records 'I recall looking to my right as I was about to step off the kerb...' In the witness statement dated 22 January 2016 she states 'I cannot remember exactly where I stepped into Young Street or whether I looked before crossing the road. All I can say is that I would normally look and check for traffic.'
45. When asked about the difference between the two written statements, Ms Bonsor said that she definitely looked right and left, as she always did so. When the police statement was taken, she was on morphine and 'not making much sense'. She has never crossed a road without looking left and right, especially one as busy as Young Street. She would look to the right first and automatically look to the left as well. She was aware of the statement of truth on the police statement and the seriousness of it and believed the statement she gave was true at the time. She said she was trying to assist the police officer. However, she could not say that she was a hundred percent sure of anything at that time. Ms Bonsor said that she knew her usual behaviour and that she doubted anyone could specifically remember whether they looked right when crossing a road and that it was 'just something you do'. Ms Bonsor's evidence was that as she was about to step off the kerb, she noted there was no obvious sign of danger or vehicles about to turn. If there had been, she would have stopped.
46. Ms Bonsor did not hear the Renault Premium at any stage. She regularly walked in Hyde Park and used her headphones (white in ear headphones with a white cable) in the park, but she never wore them in the street. She rolled them up and put them in her bag. She never used her headphones to send or receive telephone calls.
47. I consider Mr Drew to be an honest witness doing the best that he can to assist the court. Although he gave his statement to the police very shortly after the incident, I do not accept it as reliable. As Mr Drew stated, his attention was drawn to the lorry

² Topshop Camera time – see paragraph 22 above.

turning very quickly. At the point Ms Bonsor had reached the kerb the Renault Premium had only just started to turn according to the expert evidence. Mr Drew says he saw Ms Bonsor at the moment of impact and not earlier, so he cannot have seen her as she crossed the kerb and he cannot have seen whether or not she had looked before leaving the kerb. As he said in his oral evidence, his police witness statement made it sound as he was tracking Ms Bonsor's movements and therefore was aware of her before the moment of impact. There was no reason for him to do. I find as a fact that Mr Drew saw the moment of impact, but did not see Ms Bonsor before then.

48. Mrs Hazini Famili was an impressive witness and the explanation for her clear recollection of events was credible, in that she was paying particular attention because she had her son with her at the time. I reject Mr Browne's suggestion that she could not tell what the Renault Premium appeared to be doing because of the taxi. From the Topshop Camera it is clear Mrs Hazini Famili had a longer opportunity to view the lorry before she reached the opposite kerb and as the lorry approached the EWL. I accept that although the Renault Premium had started to turn at the EWL according to the experts, I find to her eye, as a pedestrian, it appeared still to be travelling straight on.
49. Ms Bonsor was also an honest and credible witness. However, in one respect I find am not able to rely on her current recollection. Although Ms Bonsor now believes that she remembers looking to her right and to her left before crossing Young Street I do not accept her evidence that she can recollect it. She herself said at the end of her evidence that she doubted anyone could recollect specifically whether they looked in that way. The statement on this point that she originally gave to the police some five months after the incident has the ring of truth and is consistent with her view now that she must have looked because that is what she would always do. Despite this conclusion, I will deal with my finding on whether it is likely Ms Bonsor looked behind her and to her right below, in the context of all the evidence.
50. I have already found that Ms Bonsor was on the drop-down part of the east kerb of Young Street and to the north of Mrs Hazini Famili. I accept Ms Bonsor's evidence that she did not alter her trajectory whilst walking along Kensington High Street and crossing Young Street. I find that she remained parallel to Kensington High Street and did not move further to the left. I do not accept the evidence of Mr Drew that as, or shortly before, Ms Bonsor left the kerb that he saw her in front of the left-hand NatWest cashpoint machine and find that he was mistaken, no doubt because of the shocking event that he had just witnessed. It is not consistent with the other more reliable evidence. Accordingly, I am satisfied the agreed plan identifies Ms Bonsor's likely position throughout the events in question.
51. The Topshop Camera shows that the nearside rear indicator light of the Renault Premium was illuminated when it comes into view around the time of the collision, as the lorry turns into Young Street. There is no evidence from the CCTV cameras before that point which shows the indicator lights. Mrs Hazini Famili's evidence was that the indicator lights of the Renault Premium were not illuminated at the time she saw it. I do not accept the evidence of Mr Rodrigues that he put his indicators on before the junction. I put no weight on what he says he did in preparation for this turn in the 'proof of evidence.' This reads as a self-serving statement produced for the purposes of the criminal proceedings. It is unsigned and undated by him and I have no evidence of whether he confirmed its accuracy. Even if he had given such a

confirmation, I would still reject it and I accept the evidence of Mrs Hazini Famili and find as a fact that the nearside indicator lights of the Renault Premium were not illuminated. Given the indicator lights and repeaters on the Renault Premium this would have been obvious to Mrs Hazini Famili. Mr Ward said that when crossing the kerb, if Ms Bonsor had looked back over her right shoulder, she would have seen the Renault Premium at a slight angle. The turn of the lorry was there to be seen and the engine noise was there to be heard, he said. I do not accept Mr Ward's evidence on the turn being there to be seen by a pedestrian, as I have stated. The experts in reconstructing the accident have shown that the Renault Premium started its turn towards Young Street, but I accept Mrs Hazini Famili's evidence that to a pedestrian, including Ms Bonsor had she looked back over her right shoulder, the Renault Premium would have not appeared to be turning and did not have its indicator lights illuminated. From the point of view of a pedestrian on the drop-down kerb in the position of Ms Bonsor and Mrs Hazini Famili, there was no indication that the Renault Premium was going to turn left into Young Street when it was at the EWL.

From the EWL to collision

52. The experts have agreed, and I accept, that from the Zero Metre Mark the Renault Premium started to make the left-hand turn into Young Street. It was necessary for the Renault Premium to move deeper across the mouth of the junction before completing the left turn because the length of the wheelbase means this was necessary in order to prevent the nearside rear wheel from mounting the kerb. The experts have also agreed, and I accept, that the Renault Premium remained behind Ms Bonsor until they both reached the centre line of Young Street, in other words halfway across the carriageway.
53. In making the turn from the Zero Metre Mark the Renault Premium at:
 - i) 14:26:18 had travelled 1.7m at a speed of 1.1m/s;
 - ii) 14:26:20 had travelled 4.5m at 2.2m/s;
 - iii) 14:26:22 had travelled 9.9m at 2.8m/s;
 - iv) 14:26:24 had travelled 15.6m at 2.5m/s; and
 - v) 14:26:27 had travelled 18m and come to a stop.
54. There was a continuous acceleration from the Zero Metre Mark until after the collision. The continuous nature of the turn is visible on the Topshop Camera. The time between leaving the EWL and reaching the give way line was two seconds. I find the nearside indicator lights were probably put on by Mr Rodrigues during that time period.
55. Having stopped following the collision with Ms Bonsor, Mr Rodrigues reversed the Renault Premium because of shouting and gesticulating from pedestrians. As referred to at paragraph 36 in his interview under caution Mr Rodrigues said that he stopped the Renault Premium before making 'the manoeuvre'. I find as a fact he did not do so. I find his reference to 'at the crossing' to be the give way line at the mouth of Young Street and he did not stop there, but rather was accelerating.

56. Only shortly before the trial the experts had access to the original CCTV from the Barkers' Building. Having viewed the images, Mr Ward changed his opinion about the difference in time recorded on those cameras and the Topshop Camera. He now believed that the time difference was 1 minute and 12 seconds and this meant that the timing for the front nearside of the Renault Premium to have reached the give way line of Young Street was 14:26:22 from the Topshop Camera. Mr Hawthorn agreed with this amendment. This is one second earlier than they had agreed in the joint statement.
57. In the joint statement the experts had also agreed that the timing of the collision between Ms Bonsor and the Renault Premium was 14:26:24. This was based on the Renault travelling at 2.8m/s (approximately 6 miles per hour) from crossing the give way line to the collision. In light of the change in the time difference between the CCTV cameras, Mr Ward said he would now say this was 14:26:23. Mr Hawthorn was reluctant to accept that change and said, as had been agreed in the joint statement, that the collision occurred one second after the crossing the give way line. Mr Hawthorn said it was clear on Camera 3 at 14:26:25³ that Ms Bonsor was fully on the ground. Therefore, the collision must have been earlier and he put that at 14:26:24 or a fraction before that time. I do not accept Mr Hawthorn's evidence on this point. The agreed plan shows Ms Bonsor approximately 2m from the give way line at the time when the nearside front of the Renault Premium is at the give way line. I have already accepted as a fact her positioning on that plan. Both experts agree that the collision was one second after the Renault Premium crossed the give way line which at 2.8m/s means the collision must have occurred at around 2.8m from the give way line (allowing for tolerances in the measurements and timings). Moving the position of the Renault Premium back by 0.3m⁴ from its position on the agreed plan makes no significant difference to this conclusion. It has been agreed that the Renault Premium was at the give way line at 14:26:22 and it therefore follows that the collision would have occurred at 14:26:23. It is agreed the Renault Premium slowed to 2.5m/s at 14:26:24, which is consistent with the impact having occurred just before then and Mr Rodrigues starting to brake.
58. Having reviewed the Camera 3 images myself, they are consistent with the timing of the collision at 14:26:23 and I find as a fact that the impact occurred at this time. Ms Bonsor's evidence and the conclusion of the police investigation was that she was hit by the front nearside wheel of the Renault Premium and not by any other structure on the vehicle.
59. In Mr Rodrigues witness statement at paragraphs 50 – 56 he states:
- “I did not have to wait long as the pedestrians could clearly see that I was intending to turn left into Young Street and therefore stopped on the respective sides of the junction.
- Once the junction was clear, I checked all of my mirrors once again and I could see there were no pedestrians in the road. I commenced my left turn into Young Street. I was certain that it

³ Topshop Camera time.

⁴ See footnote 1 above.

was clear and would not have commenced my turn if it was not safe to do so.

It was necessary to drive wide over the mouth of the junction. If I did not drive wide over the mouth the lorry would not fit around the bend into Young Street. I endeavoured to ensure that I did not drive too close to the pavement.

I did not manoeuvre myself in my seat or turn my head more than I would do normally. This was because I did not see any hazards whilst I was making my left turn. As I said, the junction was clear.

I did not hear any noise, but all of a sudden there were pedestrians on the side of the street screaming at me and telling me to stop.

I stopped my vehicle immediately and reversed the vehicle approximately half a metre as requested by the pedestrians.

I was checking my mirrors but could not see what they were shouting about, I believe that it would have been impossible to see her.”

60. After the accident, a police officer who spoke Portuguese was asked to attend the scene as Mr Rodrigues did not speak English. PC Celso Abreu’s witness statement obtained for the police investigation records Mr Rodrigues’ initial comment to him as: ‘I was turning left and saw everyone else but did not know where she came from.’ In his interview under caution on 15 September 2015, Mr Rodrigues made it clear, in response to a number of questions, that he did not see Ms Bonsor, even with the use of his mirrors.
61. A witness statement was also served by the Claimant from Jeanette Cope, the Defendant did not require her to give oral evidence. Ms Cope was on the north pavement of Kensington High Street walking west heading to Zara and at the time of the collision approaching Topshop and opposite NatWest. She was not aware of the Claimant before the collision, but saw the Renault Premium turning left into Young Street. Her evidence is consistent with what I have already described, but adds no significant features. A witness statement was served on behalf of the Claimant from Isabella Goodall, again the Defendant did not require her to give oral evidence. Ms Goodall was on her phone outside Whole Foods on the Young Street entrance. She heard ‘horrifying screams’ and shouts of ‘stop’ and saw the Renault Premium turning into Young Street, past the opening of the junction as I have already found it did. She describes the nearside wheel of the Renault Premium located around the white line separating the two lanes with the majority of the vehicle on Kensington High Street. As she looked up, she saw Ms Bonsor in the road having been struck by the lorry, which was continuing to drive over her. Pedestrians continued shouting and trying to attract the driver’s attention to make him stop. She describes the driver taking a while to stop, by which time Ms Bonsor was completely under the nearside front wheel.

62. I find as a fact that Mr Rodrigues did not see Ms Bonsor because she remained in the A Pillar blind spot from the time that I have identified at paragraphs 31 and 32 until shortly before the impact. The experts have agreed and I accept that Ms Bonsor would not have been visible in any the mirrors fitted to the Renault Premium apart from the class V mirror as it appeared in the photographs. Mr Ward in his report included diagrams from other incidents he had investigated where he had identified that the class V mirror gave a greater field of vision than the 2m from the side of the cab. As he describes, different vehicles with differently adjusted mirrors produce different patterns of view. I do not find this speculation helpful and conclude that it is likely that the class V mirror, even if adjusted properly would have allowed vision 2m from the side of the cab. Mr Ward accepted in cross examination that the class V mirror, even if properly adjusted, would have identified Ms Bonsor, but only for about one second before the collision, which would have been insufficient time for the driver to respond.
63. In this circumstance, I accept the expert evidence that there would not have been time for Mr Rodrigues to react and then take evasive action within the time that was available to him, had he seen Ms Bonsor in the class V mirror, whether adjusted as it was in the photograph or as it should have been. As the Renault Premium was travelling at 2.8m/s at the give way line and the coverage of the Class V mirror is 2m, the time available was probably less than one second.
64. I find that having been struck by the front nearside wheel of the Renault Premium, Ms Bonsor was pushed from where she was hit down the road until the position where the lorry first came to a stop, some 18m after the Zero Metre Mark, in the way described by Ms Goodall.
65. The witness statements of PC Christopher McCulloch dated 12 August 2015 describes the scene and Ms Bonsor's significant injuries. He described cutting away her bag. The pictures of the scene taken by the police as part of the investigation show on the ground next to the front nearside wheel of the Renault Premium Ms Bonsor's white headphones as well as other materials. On that photograph there is what Mr Sanderson described as a 'perfume bottle' which he said had come from Ms Bonsor's handbag. Ms Bonsor was not asked about that object in her evidence. There are other items on the ground that appear to be items remaining from her medical treatment at the scene. Obviously, the presence of the headphones on the road could indicate that Ms Bonsor had been wearing them, but I accept her evidence that she was not wearing headphones before or at the time of the collision and that they were in her bag. This finding is corroborated by the evidence that her bag was cut away after the accident, making it likely that some of the contents of her bag fell out of it and were found on the road. No other witness gave evidence that she was wearing them.
66. In light of the all the evidence above, I now deal with the findings concerning whether Ms Bonsor looked to her right and behind her when she crossed the east kerb of Young Street and whether she continued to look and listen as she crossed the road. Although I have rejected evidence that she can remember whether or not she looked to her right I find that it is likely that she did so and continued to pay attention as she crossed the road. I accept her evidence that she would have done so based on her usual practice, although of course I am aware of the risk that this is what she would be likely to say in this circumstance. However, first, it is consistent with the other findings that I have made namely, that the Renault Premium was not indicating and

would have appeared to have been going straight on and it was therefore safe for her to cross. Secondly, the evidence of Mr Drew would have been very significant if he had maintained what he had recorded in the police witness statement about Ms Bonsor walking out without looking, but I have rejected that. Thirdly, the fact that Ms Bonsor did not hear the Renault Premium is significant in my judgement. There would have been noise in the road in any event and it is more likely that if Ms Bonsor had not looked, she would have heard the Renault Premium, because the sound of it would have been unexpected as it approached from behind her. As it was, she did not expect a vehicle to be turning and therefore there was nothing unusual or unexpected to attract her 'hearing attention.'

Further expert evidence

67. Mr Ward was asked whether a danger would have been created by the Renault Premium pausing or stopping before turning left into Young Street because of the risk of pedestrians taking the opportunity to walk in front of it and other vehicles taking the opportunity to go behind it. Mr Ward stated that this was not a question that was within his expertise. He confirmed he did not hold a heavy goods vehicle licence. He said a driver however needed to look around him to make sure the junction was clear and that there was nothing on his nearside. Mr Hawthorn felt pausing or stopping part way through the manoeuvre might have helped but others could 'nip through'. Mr Hawthorn said the Renault Premium stopping at the give way line would lead to other pedestrians crossing in front of it. The driver would see those in front of him but he would have had difficulty seeing people to the rear and side of him. The only obstruction to his vision was the A Pillar, although if the Renault Premium was at an angle to the road there would still be some blind spot to the side or rear of the lorry, although he accepted any pedestrians would be seen at some point as they crossed in front of the lorry.

68. Mr Ward did not disagree with a quotation from the reports prepared by PC Traylor as follows:

"I recognise that the lorry has an area of restricted vision to its nearside front due to the width of the cabs 'A' post [pillar]. The degree of restriction is personal to the driver. These restrictions to vision are often referred to as a 'blind spot.'

It is not acceptable for a driver to drive into an area into which he cannot see. A 'blind spot' is a recognised characteristic of some vehicles but a condition for which the driver must adjust his position and vision to compensate for."

69. In response to my questioning Mr Ward said the only thing the driver could do himself to have overcome the blind spot caused by the A Pillar was to have leaned forward so that he could change his angle of vision and see into the blind spot. However, he was not certain how much it would help and he was not clear that if Mr Rodrigues had leaned forward, he would have seen Ms Bonsor. Mr Hawthorn accepted that if Mr Rodrigues had paused or stopped then Ms Bonsor would have been visible to him. Looking at the view out of the passenger side window Mr Hawthorn said that the blind spot from the A Pillar was not large. Movement of the driver's head would materially improve the view of the blind spot. However, the

majority of Ms Bonsor's body would have been below the window line. If she had walked by, the most that the driver would have seen would have been the top of her head and only at the very end of the turn. The driver rocking backwards and forwards would assist and if he had reason to believe the person was in the blind spot then he should rock in order to see that person. However, Mr Hawthorn said Mr Rodrigues believed that there was no one there.

70. I asked if Mr Ward was able to help with the reaction time of a pedestrian. Mr Ward said he was not an expert in this, but the pedestrian might take time to respond to impending danger. However, Mr Ward stated that for drivers, the Highway Code used a reaction time of 0.7 seconds, but this was generally thought to be too short and a range of 1 to 1.5 seconds in normal circumstances (as opposed to heightened awareness where it can be less than a second) was used based on the research of Krauss. Mr Ward said that the type of risk affected the reaction time and that it took longer to react to unexpected events, multiple risks and to events at night. The reaction time for drivers included the time it took the driver to apply the brake and there would be no such requirement for a pedestrian.
71. As part of the criminal proceedings there was a meeting between the prosecution expert, PC Traylor and Mr Hawthorn and the note of that meeting is dated 24 July 2016. Mr Hawthorn confirmed his opinion, as recorded in that joint note, that there was a requirement for a lorry driver to watch out for pedestrians at junctions, especially when approaching from behind the pedestrian. He agreed that Rule 170 of the Highway code stated that pedestrians that had started to cross had priority. He was of the opinion that the time between the taxi moving forwards and the time of the collision was at least 4 to 4.5 seconds and that during that time Mr Rodrigues had to consider the movement of other vehicles and pedestrians. Mr Hawthorn's opinion was that it was understandable that Mr Rodrigues failed to take into account the movement of Ms Bonsor. The last time that he might have had an opportunity to see her was when she was on the footway several metres from the edge of the kerb. Mr Hawthorn still held the opinion expressed in the following paragraph:
- “PC Traylor says that a driver of a lorry such as this can overcome some of the difficulties with his available vision by simply moving their head or their seated position therefore reducing the effects of any blind spot.”
72. Mr Hawthorn's response was that PC Traylor's comment was correct. However, a driver is only likely to take such action if he has reason to believe that a person or an object might be in the 'blind spot'. When Mr Rodrigues last had a view of the eastern side of the mouth of Young Street, just 4 seconds or so before the collision, that part of the road was clear.
73. In response to PC Traylor's comment in the joint statement that it was not acceptable for a driver to drive into an area into which he cannot see, Mr Hawthorn's opinion was that the driver of a vehicle cannot look at all mirrors at the same time. When Mr Rodrigues last had a view of the relevant section of the road 4 seconds or so before the collision, it was clear.
74. Mr Hawthorn agreed that the collision with Ms Bonsor was inevitable from the moment that the Renault Premium drew level with Ms Bonsor and he remained of the

view expressed in the joint statement that the last opportunity Mr Rodrigues had to see Ms Bonsor and to react in order to avoid hitting her was when she was on the pavement and still some distance from the kerb of Young Street. As he had said, this was some 4 to 4.5 seconds before the moment of the collision. Mr Hawthorn accepted that from the point where the Renault Premium slowed down to the Zero Metre Mark the driver then accelerated continuously. Mr Hawthorn agreed that Mr Rodrigues did not pause to check the blind spot. He agreed that it was feasible for Mr Rodrigues to draw up at or beyond the EWL. Mr Hawthorn said Ms Bonsor was in the blind spot at the moment Mr Rodrigues started to accelerate and remained within it until the collision. It was busy and the driver is not able to identify all the pedestrians on the road: this is too much information. He agreed that Ms Bonsor was walking in a straight line with three pedestrians ahead of her and he agreed that Mr Rodrigues was 3m behind her at the Zero Metre Mark and he was moving more slowly than she was at 0.8m/s and then he accelerated. Mr Hawthorn said having seen the CCTV other things were happening and it was not so simple as just observing her as one pedestrian. It was not just the taxi in front of the Renault Premium but other pedestrians crossing Young Street.

75. Mr Hawthorn agreed that the Renault Premium entered Young Street whilst other pedestrians were still crossing. Mr Hawthorn's opinion was that Mr Rodrigues may not have seen Ms Bonsor in the first place. It transpired that it was not safe for him to turn left into Young Street and he should have given way to her as the pedestrian crossing, if he was aware of her, following Rule 170 of the Highway code, but he was not aware of her. Mr Hawthorn said as she was in the blind spot formed by the A Pillar and if Mr Rodrigues had looked, he would not have seen her. Mr Hawthorn did not think there was anything more he could do apart from looking in his mirrors. Mr Hawthorn accepted that Mr Rodrigues should take all reasonable steps to see that someone was not in the blind spot. Mr Hawthorn accepted that the DSA Guidance applied to Mr Rodrigues and that the following extracts were applicable to him:

“Effective observations;

You should ensure that you are constantly aware of what is happening around you... You should check for pedestrians, cyclists and motorcyclists who may be directly in front of the vehicle but out of your normal field of vision.

...

Zones of vision;

as a large goods vehicle licence-holder your eyesight must be of a high standard. A skilful driver should be constantly scanning the road ahead and interpreting what is happening or likely to happen.

Always be aware of what is behind and alongside you. Use your peripheral vision to see changes ‘out of the corner of your eye’ before reacting to them. Look out for the possibility of... other pedestrians stepping out.”

76. Mr Hawthorn agreed that the driver could anticipate what was about to happen with Ms Bonsor if he was aware of her on the footpath and watched her. Following the advice in the DSA Guidance in those circumstances would have avoided the accident. He agreed that the driver should 'always' be aware of what is happening behind and alongside him or her. However, the reference to 'normal field of vision' would be what the driver would see from his or her seat without moving about. Moving the driver's head from side to side and using the mirrors are to enhance the driver's field of vision.
77. I find Mr Rodrigues did not significantly lean forward in his seat to seek to overcome the blind spot created by the A Pillar after he left the Zero Metre Mark, based on what he says in his 'proof of evidence,' notwithstanding my reservations about this document. However, I also find, that had he leaned forward, it is unlikely that he would have seen Ms Bonsor as Mr Ward was not sure that he would have done so and Mr Hawthorn said he would not have seen her, even though it would have made a material improvement. Nevertheless, if Mr Rodrigues had paused at or beyond the EWL, before completing the left-hand turn into Young Street, Ms Bonsor would have been visible to him, either as she would have walked out of the blind spot or because he leaned forward or by a combination of the two. This is consistent with Mr Hawthorn's evidence and I accept the evidence of Mr Ward that had Mr Rodrigues paused, Ms Bonsor would have remained concealed within the blind spot for less than a second.

Liability of the driver, Mr Rodrigues

78. I am conscious of the need to avoid the benefit of hindsight in my conclusions. I find that the reasonably careful driver, such as Mr Rodrigues driving the particular vehicle that he was, should have been aware generally of the pedestrians on Kensington High Street. As he says he was, he should have been aware that pedestrians were likely to enter and exit the various businesses along the street. I do not find that it was necessary for him to be particularly aware of Ms Bonsor, any more than he should be aware of any other pedestrian as he approached Young Street.
79. I also accept, as Mr Hawthorn said in evidence, that the reasonably careful driver has to be aware of their surroundings, the traffic in front of them and other road users. However, as the experts agreed, it was also necessary to be aware of the blind spot in the Renault Premium. The reasonably careful driver should, again as Mr Hawthorn accepted, take all reasonable steps to see that someone was not in the blind spot and I agree with that statement.
80. Mr Rodrigues could not know as he approached the mouth of Young Street and in particular as he reached the Zero Metre Mark, whether or not someone had entered the blind spot created by the A Pillar. A person might emerge from a shop in to the blind spot or, as it happened in the particular circumstances of this case, someone ahead of him remained in the blind spot because of the relative speeds of the pedestrian and his vehicle.
81. What Mr Rodrigues did was to accelerate from the Zero Metre Mark over a distance of 9.9m to the give way line on Young Street and then beyond until his impact with Ms Bonsor. Mr Hawthorn's evidence was that because Mr Rodrigues could not see Ms Bonsor it was an acceptable way for him to undertake the manoeuvre. I do not

accept that opinion, not least because it is inconsistent with Mr Hawthorn's acceptance that all reasonable steps should be taken to overcome the blind spot. Mr Rodrigues allowed himself no time to check whether there was something in the blind spot as he turned across the mouth of Young Street, in particular knowing that there were pedestrians generally in the vicinity and specifically some had crossed the mouth of Young Street. I accept that a reasonably careful driver has to pay attention to a number of features and that he cannot concentrate on all of them at the same time, along the lines of Mr Hawthorn's evidence and as per Mr Browne's submission on not applying a counsel of perfection and *Qamili*. However, it is that very set of circumstances in this case that means the reasonably careful driver, with knowledge of the blind spot, would pause before making the turn.

82. I reject the suggestion made by Mr Hawthorn that such a pause would have increased the risk of danger to other pedestrians or other road users such that it would not have been safe for Mr Rodrigues to take that action. Mr Rodrigues would have had to have been careful if he paused to make sure that any further pedestrians who attempted to cross were not put in harm's way. It is after all quite common for vehicles to stop or pause before turning left at a junction and other road users have to accommodate that. When I visited the site, I observed vehicles doing exactly this to allow pedestrians to cross safely.
83. Failing to pause in these circumstances was a breach of Rule 170 of the Highway Code and a failure to comply with the DSA Guidance. In particular the sections on 'awareness,' 'effective observation' and 'observation at junctions'. I do not accept Mr Hawthorn's interpretation of the phrase 'normal vision' in the section headed 'effective observation.' Read as a whole, the DSA Guidance is to 'check' as there may be pedestrians out of the driver's normal vision. In other words, additional measures should be taken, such as leaning forward or allowing sufficient time to carry out reasonable checks. With the knowledge of the blind spot, the reasonably careful driver would have paused and leaned forward in order to be satisfied that a pedestrian was not at the kerb or crossing Young Street. Had Mr Rodrigues done so, as I have already found, Ms Bonsor would have been visible to him and the accident avoided. I find that it was a breach of duty to fail to pause at a point between the arrival at the EWL or crossing the give way line into Young Street. The Claimant has proved causation as a result of the breach of duty, as the accident would have been avoided had that breach not occurred.
84. As I have found, the nearside indicator lights were not illuminated until after the EWL. The reasonably careful driver would have illuminated those indicator lights a reasonable distance from the junction in order to warn pedestrians of the impending left turn and it was a breach of duty not to do so. Had they been illuminated Ms Bonsor would have been able to see them, although nothing further turns on this, given the findings I have made above. For the same reason I am not going to deal with the other 9 allegations of breach of duty in the Particulars of Claim, which do not add anything to the findings that I have already made.

Contributory negligence by Ms Bonsor

85. I have found as a fact that it is likely Ms Bonsor did look to her right and towards the traffic behind her as she reached the east kerb of Young Street, which is consistent with Rules 7 and 8 of the Highway Code. At this point again, as I have already found,

the Renault Premium would have appeared to have been continuing straight on down Kensington High Street and would not have had its indicator lights illuminated. I have concluded it is likely that she continued to look as she crossed Young Street, but she would not have been aware of the Renault Premium as it remained behind her until, as she described, she sees it out of the corner of her eye. She did not hear the Renault Premium above the background noise, probably, because it was not unexpected to her as I have stated above. As Mr Hawthorn said, in his opinion the accident was inevitable from the moment the Renault Premium drew level with Ms Bonsor. It was not until that point the reasonably careful pedestrian should have observed the Renault Premium and bearing in mind the evidence on reaction times, albeit for drivers, and the evidence of Mr Hawthorn, I conclude that Ms Bonsor could not have taken any steps to safeguard herself in time. As to any freestanding allegation that Ms Bonsor was negligent in not hearing the Renault Premium, Mr Browne accepted this was not his best point and he was not able to give me any examples, absent the wearing of headphones, that could amount to negligence in failing to hear the lorry. I have found as a fact that Ms Bonsor was not wearing headphones and I reject any allegation that she was negligent in failing to hear the Renault Premium. Accordingly, I reject all the allegations of contributory negligence set out in the Defence.

The Fresnel lens

86. No such lens was fitted to the Renault Premium. A Fresnel lens is a piece of plastic that has concentric grooves in the shape of ellipses or circles etched into it to divert the path of light. It was described as being ‘frosted’ and so not entirely transparent.

Mr Ward

87. In his report, Mr Ward referred to research published as: ‘Follow Up Study to the Heavy Goods Vehicle Blind Spot Modelling and Reconstruction Trial’ authored by Dodd, M. and published by the Transport Research Laboratory in 2009 (‘the Dodd Report’). He states the following:

“The research by Dodd (tables appendix 1) shows that the mirror that would have the best prospect of rendering Ms Bonsor visible was a Fresnel lens. Whilst there is no legislation requiring the fitting of such a lens, it is recommended by TRL, TFL, HSE, FORS and CLOCS and required by Crossrail.”

88. Appendix 1 of his report reproduced for three different types of heavy goods vehicle three tables identifying how different mirrors and a Fresnel lens aided the driver’s vision⁵ in areas that would otherwise be blind spots. The three tables identify the visibility of a pedestrian 1.8m tall at three lateral distances from the driver’s nearside window of 0.5m, 2.4m and 4.2m. For each of those distances, the visibility is assessed as against a longitudinal position in the range of -5m to +5m, with 0 being equivalent to looking out of the nearside window in the driver’s eye line (in other words at 90° through the window to a line passing through the centre of the lorry from

⁵ The tables Mr Ward reproduced had the measurements for a ‘95th percentile driver’. This is a reference to the height of the driver and therefore the height of their eye line as measured from the driver’s seat (the ocular point). Different ocular points will have an impact on the field of vision – paragraph 3.2 page 12 of the Dodd Report.

front to back).⁶ In opening, Mr Sanderson said that it was appropriate to look at the third of the examples, namely the tables relating to the ‘Renault Magnum’ as it was a Renault lorry that was involved in this accident. Taking the results from a lateral position of 2.4m the Fresnel lens shows the pedestrian as clearly visible at -2m, -1m, 0m and +1m, and at +2m the pedestrian is visible but could be missed with a quick glance. Within that range the class V mirror shows the pedestrian is visible but could be missed with a quick glance at -1m and 0m and the direct view from the side window at 0m and +1 m. In other words, the Fresnel lens is more likely to allow the identification of the pedestrian between -1m and +1m. At a lateral distance of 4.2m the Fresnel lens shows the pedestrian as clearly visible between -3m and +3m. The class II, IV and V mirrors do not cover this range at all and the direct view from the side window shows the pedestrian as clearly visible at 0m and +1m and at -1m and +2m the pedestrian is visible but could be missed with a quick glance. Therefore, the Fresnel lens significantly improves the coverage of blind spots over and above direct vision, especially at 4.2m and the mirrors that are required to be fitted as a matter of law⁷.

89. In response to Mr Browne’s cross examination, Mr Ward accepted that the Renault Magnum was a different type and size of vehicle to the Renault Premium. The Renault Magnum is a very large heavy goods vehicle. He accepted that the Renault Magnum passenger window was 2.3m from the ground, which was much higher than the Renault Premium’s. He also accepted the quotation from the Dodd Report⁸ that the Renault Magnum ‘was chosen because it has a tall cab which was considered to represent one of the worst cases for blind spots.’ Mr Ward agreed that the Fresnel lens measured 21 x 12cm and that the optimal position for the lens was in ‘landscape’ at the lower edge of the passenger window to the rear, as this was more in line with the driver’s eye line.⁹ He agreed that moving the Fresnel lens forward could obscure the class IV mirror. He agreed that the Renault Premium passenger window had a distinctive shape (it is roughly square but with the lower rear corner ‘cut-off’ at an angle) which would make placement of the Fresnel lens difficult such that it might obscure the class IV mirror. Mr Ward said that he had never placed a Fresnel lens but it would be best to place it at eye level, but on the Renault Premium it would have to be placed higher because of the shape of the rear lower corner of the passenger window. He said there were different sizes of Fresnel lenses available but after some hesitation he said it was difficult to see where the Fresnel lens could be placed because it might obscure the class II and class IV mirror although it could be put at the bottom front of the window, which was adjacent to the hand grab in the Renault cabin. He thought if it was put there it would give a better forward vision. He agreed with the reference at page 15 of the Dodd Report, which identifies that three positions for the placement of the Fresnel lens were considered. First, the rearmost position at the bottom the window, secondly, the foremost position at the bottom window and thirdly, the midpoint of the top of the window. He said there are no disadvantages to the Fresnel lens and it can improve the driver’s view.

⁶ Page 20 paragraph 3.5.2 of the Dodd Report

⁷ I have ignored for these purposes the lateral distance of 0.5m. This distance is not relevant to this case and from the table it does not make a significant difference as its coverage overlaps that of the class V mirror.

⁸ paragraph 3.1.2 page 11

⁹ page 4 of the Dodd Report penultimate paragraph 1st bullet point

90. Mr Browne sought to undermine Mr Ward's evidence by asking him why he had not identified that the Renault Magnum was so different to the Renault Premium, to which Mr Ward responded that he had included three different types of vehicles of different designs and it could be seen that they were not direct comparators to the Renault Premium. He accepted he did not correct the misapprehension that was created by Mr Sanderson referring to the Renault Magnum in appendix 1.¹⁰ He stated that the Fresnel lens could still be put on the Renault Premium passenger window albeit higher. Mr Ward also accepted that he had not mentioned that on page 4 of the Dodd Report a limitation of the Fresnel lens is referred to as it being obstructed by glare from the sun. Mr Browne confirmed he was not seeking to claim that sunlight was likely to have obstructed the view from the Fresnel lens if fitted in this case, but was making the forensic point that Mr Ward had not identified such a limitation in his report. Mr Ward confirmed that he did not comment that the effectiveness of a class VI mirror was not commented upon in the Dodd Report, which was relevant as the Renault Premium had a class VI mirror. When asked why he had not dealt with the Fresnel lens and the other measures that might be taken to detect pedestrians in detail, Mr Ward responded that he thought there was sufficient within his report and the appendix, together with looking at the full Dodd Report. He accepted that the Fresnel lens was optional and there was no legislation requiring it to be used and that each case will turn on its facts.

Mr Hawthorn

91. Mr Hawthorn agreed that there was no regulatory requirement to have a Fresnel lens. Looking at the data in the Dodd Report his opinion was the three vehicles used were much larger than the Renault Premium. The results cannot be applied to the Renault Premium. The reality was that the Fresnel lens should be in line with the driver, if it was at an angle (for example put at the bottom right-hand corner of the window) he was not sure how the view would be affected. It was not safe to say that it would provide a view forward of the vehicle – he did not know whether it would or not. If it was placed in front of the Class II mirror it would obstruct the view of that mirror. It could not be placed to the rear of the window because of the diagonal shape. It would not be possible to place it on the passenger window in a position which would obscure the view through that window of the road to the left. The Fresnel lens is 'frosted' in that it is not entirely transparent and it enables the viewer to see what is in the vicinity of the lens and what is seen is slightly blurred. Glancing at it may show something but not quickly identify what is in vision. He noted that the optimum position referred to in the Dodd Report was at the lower edge of the window and towards the rear of the window.
92. In relation to the Fresnel lens, Mr Hawthorn agreed that you always get a better view in front of the vehicle rather than behind and he accepted that it can improve forward vision by 2m. However, he said was not familiar with the Fresnel lens coming in different sizes, but he did agree that it would give a materially better view. He accepted that Crossrail required Fresnel lenses and that it was recommended by safety organisations for all vehicles.

¹⁰ Mr Sanderson accepted that it was his mistake and that he had not taken instructions from Mr Ward before making that submission.

Conclusion on liability concerning the Fresnel lens

93. I found the state of the evidence on the Fresnel lens very unsatisfactory. Mr Ward dealt with this relatively briefly within his expert report. I had no evidence on the recommendations that had apparently been made by organisations that Fresnel lenses should be fitted to vehicles. I had no evidence about whether those recommendations applied to all vehicles or only to certain types of vehicles. I had no evidence about when those recommendations had been made and whether those recommendations were contemporaneous with the date of the accident in this case. It was agreed by the experts that Crossrail required as a matter of contract Fresnel lenses to be fitted to their vehicles. However, I was shown no evidence about what those contractual terms were, when they were put in place and whether they applied to all vehicles to only certain vehicles.
94. I had no good evidence about the cost of Fresnel lenses, although I accept that they are relatively cheap. I had no good evidence about the different sizes of Fresnel lenses and both experts seemed to know little detail of how or where to fit them. During the evidence of both experts somewhat desperate attempts were made to try and identify a suitable place within the passenger window of the Renault Premium that might accommodate a Fresnel lens.
95. The Dodd Report does demonstrate that Fresnel lenses improve the field of vision for the driver of the lorries that were tested. Those lorries are completely different to the one in this case and I am not satisfied that this report alone, which was only produced by the Defendant and not the Claimant, is enough to establish a breach of duty for failing to have a Fresnel lens on the Renault Premium. On the evidence, the Claimant has failed to discharge the burden of proof. I am unable to conclude that at the time of this accident based on the activity performed by the Defendant that not fitting a Fresnel lens was something which a reasonable person in the Defendant's position would not fail to do in taking reasonable care towards other road users.
96. Even if I am wrong on that, I am not satisfied that the Claimant has proved that, if a Fresnel lens was fitted, it would have identified Ms Bonsor to Mr Rodrigues at all, or in time, to avoid the accident. I have already described how the evidence was given in rather haphazard way. It seems the lens could have been fitted in the middle of the top edge of the window or in the front lower part of the window. However, I had no satisfactory evidence about how that would have affected Mr Rodrigues' field of vision. In Mr Ward's report careful diagrams were made showing the field of vision assisted by the various mirrors and blind spots identified. No attempt was made to do the same thing with the Fresnel lens, probably because until giving evidence no thought been given to where the lens would be fitted. I was asked effectively to take it on trust that it would have identified Ms Bonsor. I accept it might have identified her on the basis that the Dodd Report shows that a Fresnel lens improves the driver's vision in large lorries, but I cannot say that it is likely to have done so in this case. Accordingly, I reject the allegations of negligence against the Defendant relating to the absence of a Fresnel lens on the Renault Premium.

Conclusion

97. Ms Bonsor, the Claimant, was in a collision with the Defendant's vehicle, driven by Mr Rodrigues. This collision occurred at the mouth of Young Street at its junction

with Kensington High Street. I have found that Mr Rodrigues was negligent for failing to pause the Renault Premium he was driving before he turned into Young Street. Had he taken that step the collision would have been avoided and Ms Bonsor spared her significant injuries. I have also found that there was no negligence on Ms Bonsor's part that contributed to the collision and her injuries. On the evidence presented to me, I have rejected the allegation that it was negligent not to have fitted the Renault Premium with a Fresnel lens. In addition, the Claimant has not established that if it had been fitted the collision would have been avoided.

98. Accordingly, Ms Bonsor's claim against the Defendant succeeds on this trial of liability. Directions will be given to enable the matter to proceed to quantification.

ORDER

UPON the trial of liability as a preliminary issue

AND UPON HEARING David Sanderson counsel for the Claimant and Simon Browne QC counsel for the Defendant

IT IS ORDERED THAT

1. There be judgment for the Claimant for damages to be assessed.
2. Subject to paragraph 3, the Defendant shall pay the Claimant's reasonable costs of the claim on the issue of liability on the standard basis up to the date of this order, to be assessed at the conclusion of the case if not agreed.
3. Upon the Defendant indicating an intention to seek an issue-based cost order limiting its liability to 80% of the Claimant's costs, to reflect the Claimant's failure to prove the allegations pleaded at paragraph 20 (l) (i) – (iii) of the Particulars of Claim:
 - (a) the parties shall by 4pm on 20 March 2020 file written submissions; and
 - (b) the Court reserves its decision on the proportion of the Claimant's costs to be paid by the Defendant.
4. The Defendant shall pay to the Claimant an interim payment of damages in the sum of £200,000 by 4 pm on 1 April 2020.

5. The Defendant shall pay to the Claimant's solicitors the sum of £150,000 on account of costs ordered to be assessed under paragraph 2 above, by 4pm on 1 April 2020 (subject to be reduced pro-rata to any issue-based reduction of the Defendant's liability for costs ordered under paragraph 3).
6. The sums ordered to be paid under paragraphs 2 and 5 shall be paid into the Claimant's solicitors' client account by bank transfer:

Bank Account Number	
Sort Code	
Bank Address Details	
Swift Number	
IBAN Number	

7. The Claimant has liberty to apply for a further payment on account of costs.
8. By 4 pm on 20 April 2020:
 - (a) The parties shall file, (by emailing to Jonathan.Eves@justice.gov.uk) a single set of agreed directions in Word for approval with the dates for each step in the action and the proposed trial window (including length of trial) populated and the Category for listing purposes (A, B or C).
 - (b) The parties shall exchange costs budgets covering the period up to and including trial and attempt to agree them.
9. In default of agreement in regard to directions and/or budgeting, the parties shall, by 4pm on 20 April 2020, apply to QBMastersListing for a costs management hearing, or costs and case management hearing, giving a time estimate, which should not exceed 1 hour and mutual dates of availability and shall file cost budgets in accordance with CPR 3.13(2).
10. Liberty to apply, in particular in relation to any payment on account of costs in addition to paragraph 5.

Dated this 19 March 2020