

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

Before HHJ Sephton KC, sitting as a Judge of the High Court

Between :

Claire Louise Rowbottom

Claimant

- and -

(1) The Estate of Peter Howard, deceased

Defendants

(2) David Teasdale

Mr Winston Hunter KC instructed by Irwin Mitchell LLP, Manchester for the Claimants

Mr Nigel Lewers instructed by DAC Beachcroft Claims Ltd, Manchester for the First Defendant

Ms Lucy Wyles KC instructed by Keoghs LLP, Bolton for the Second Defendant

JUDGMENT

1. At about 18.50 on 5 July 2018, the claimant sustained serious injuries when she was involved in a head-on collision between a Kawasaki motor cycle ridden by Peter Howard and a Vauxhall Vectra car driven by David Teasdale. Mr Howard was tragically killed in the accident. The claimant was the pillion passenger on Mr Howard's motorcycle. The claimant sues both Mr Teasdale and the estate of Peter Howard. This was the trial of the preliminary issue of liability pursuant to the order of DJ Colvin dated 8th July 2022.
2. The claimant is blameless; the issue I am required to decide is whether the collision was the fault of Mr Howard or Mr Teasdale or both.

The scene

3. The collision occurred on the A15 road at Leasingham in Lincolnshire. The A15 is a single carriageway road with one lane for each direction of travel. The national speed limit of 60 mph applied to the vehicles involved in the collision. As one approaches the scene of the accident from the north, there is a left hand turn into the village of Leasingham which is subject to a complex array of road markings. A double white line system directs southbound traffic into a single lane, whereas for northbound traffic, there is a lane for traffic travelling along the A15 and a right-hand filter lane for traffic intending to turn into Leasingham. As one travels north, the double white line system is supplemented by an area of hatched markings. On the west side of the road there is a direction sign, notifying northbound traffic about the Leasingham turnoff ("the Turnoff sign"). Close to the point in the road where the hatched markings cease, there is a notice on the east side of the road giving directions to the household waste recycling centre ("the Recycling Sign"). The road follows a gradual right hand bend for southbound traffic from the Leasingham turn; for northbound traffic the bend is correspondingly a gradual left hand bend. Near a property known as Greystones, the double white line system changes so that there is an unbroken white line for northbound traffic and a broken white line for southbound traffic. At this point, the southbound lane is 3.3m wide and the northbound lane is 3.4m wide.
4. It is common ground that at the relevant time, Peter Howard was riding a Kawasaki ZX 1000 southwards along the A15 and Claire Rowbottom was his pillion passenger. David Teasdale was driving a Vauxhall Vectra northwards along the A15 and Michelle Reed was his passenger. At a point near the driveway to Greystones, the Kawasaki and the Vauxhall collided. The parties do not agree where in the road the collision occurred; the first defendant contends

that Mr Teasdale drove onto his incorrect side of the road and collided with the motorcycle, which was properly remaining on his correct side of the road; the second defendant contends that he remained on his correct side of the road and the collision occurred because Mr Howard strayed onto his wrong side of the road.

The evidence

5. In order to decide this case, I read and heard the evidence of various witnesses of fact. I also heard from three accident reconstruction experts, Mr Roberts (instructed by the claimant), Mr Davey (instructed by the first defendant) and Mr Green (instructed by the second defendant). By the order of DJ Colvin, the police report was admitted as evidence in the case.
6. The Lincolnshire Police conducted an extremely prompt and thorough investigation of the accident. The plans, photographs and descriptions provided by PC Barlow and his team provide the physical evidence upon which the experts in this case have relied. The police also conducted interviews of witnesses which form the basis of the evidence of fact that was presented to me.
7. PC Barlow prepared a plan which shows a tyre mark that starts at a point on the southbound side of the road near the entrance to Greystones, moves slightly onto the centre white line system and then travels across the southbound lane, crossing into the verge close to the Recycling sign. It is common ground that the tyre mark was left by the front offside tyre of the Vauxhall. The verge is disturbed up to the place where the Vauxhall came to rest. There is in the verge a fence post which appears to have suffered very recent damage. There are two dark marks on the western post for the Recycling sign.
8. When it came to rest after the collision, the Vauxhall was almost completely in the eastern verge on the southbound side of the road. The Vauxhall had sustained an impact to the front offside. The offside headlight assembly was destroyed and the bonnet was deformed. The front wing was peeled back. The windscreen was damaged and the driver's door was deformed. The hub carrier of the front offside wheel was no longer attached to the lower track control arm, the steering arm at the track rod had fractured and the offside drive shaft had detached from the hub carrier. There is a striking image in the bundle which shows the front offside wheel perpendicular to the body of the car and sticking out so that the whole diameter of the wheel extends beyond the confines of the body.
9. The Kawasaki sustained catastrophic damage. The bike, its rider and the passenger came to rest in the eastern verge of the southbound carriageway close to the driveway to Greystones.

10. In their joint statement, the experts present a photograph which they have annotated to show the agreed position of a spray of oil and fluids which it is agreed emanated from the Kawasaki after the collision.

11. I read the agreed evidence of Carol Hendry. She was travelling south on the A15. She explained that there were 3 motorcyclists who overtook her. She described how the last of the three overtook her:

“15. I thought to myself that this rider was being a bit more cautious. I then went into the dip and the road ahead was totally clear. The motorbike then overtook me and had passed me prior to my getting to the bottom of the dip. The rider gave me a wave with his left hand, which again I took as a thank you for staying over to the nearside.

16. The bike had gone out into the north bound lane to pass me but had plenty of time and returned back into the south bound lane. The bike was then in the middle of the south bound lane as it began to accelerate away. It did not accelerate away at an excessive speed and remained in my view up until the point when I was at the second Leasingham junction.

17. The bike then went out of my view around a right hand bend. I cannot say with any certainty what position on the road the motorbike was in when it went out of my view.

18. I did not have any concerns about the way it was being ridden as it approached the bend. I think I would have been doing 60mph at this time. The bike would have been about $\frac{3}{4}$ the length of a football pitch away when it went out of my view. I cannot be certain of this distance.

19. About two seconds after the bike went out of my view I suddenly heard a massive bang, it was huge and I knew straight away that it was likely to have involved the motorbike. Within a second of hearing the bang I saw a silver coloured car on my side of the road coming towards me. It was travelling at speed and I had to take avoiding action by crossing the north bound lane and stopping in the first entrance to the large stone house on my right.”

12. I read the agreed evidence of Donna Coy. She was driving northwards behind the Vauxhall. She said this:

“12. ... [The motorbike] was close to the centre line of the road which was a double solid white line. The motorbike was still on the correct side of the road but more towards the centre line.

13. I am unable to say whether the motorbike had any lights on, I would estimate it was travelling at approximately 50mph, similar to my speed and the car in front of me.

14. I remember thinking that the motorbike was close and at the same time the vehicle in front of me seemed to just drift slowly over to the middle of the road. This was not a sudden movement, the vehicle gradually moved over so that the right side of it was getting very close to the centre line of the road. I am unsure whether the

vehicle was planning to take the right hand turn which was just past the point where the collision occurred. It was as if the motorbike and the car were drawn together.

15. I am unable to say whether either the car or the motorbike crossed the centre line of the road, it may have been that neither vehicle crossed it. The motorbike went past the front of the car and then collided with the driver's side of the car near the front wing or door mirror. This all happened in a split second.
16. I could see the black motorcycle helmet of the rider as this was happening. The motorbike did not make any attempt to steer away from the vehicle, there was room in its lane to move over, it was not overtaking another vehicle. I just could not understand why neither vehicle had moved away. There was no reason apparent to me why the car had not moved over to its left."
13. I heard from Mr Teasdale and read his witness statement and the record of taped interview made by the police. Before the hearing, I read the witness statement of Paul Baxter dated 19 December 2022 filed in support of application for special measures to ensure that Mr Teasdale had the opportunity to give his best evidence. HHJ Bird dismissed the application, but, before me, counsel and the court were fully alive to the difficulties Mr Teasdale might have in giving evidence. I sought to reassure Mr Teasdale when he went into the witness box that he should inform me if he had any difficulty in understanding any question or if he required a break. I intervened on a number of occasions to ensure that Mr Teasdale understood the question he was answering. I wish to acknowledge the assistance to the court of the experienced and courteous conduct of Mr Hunter KC who cross-examined him in allowing Mr Teasdale to provide his best evidence. I formed the impression that Mr Teasdale was very stressed by having to give evidence, but I am satisfied that he was given every opportunity to provide the best evidence he could.
14. Mr Teasdale explained to me that he found it very difficult to think about or remember what happened.
15. Mr Teasdale was cross-examined about his driving history. He told me that he had taken 12 driving tests and 7 theory test before he passed his driving test in October 2017. He accepted that he had failed his practical driving test on several occasions because he was "making silly errors" and he "forgot some things". He told me that he had 2 other accidents in 2018. In the accident he sustained in November 2018, he wrote off a Ford Fiesta car in an accident which involved no other vehicle and in which he was travelling at 30 mph. He told me that he could not remember whether he had had any accidents in 2019 or 2020. He could not say whether the accidents were caused by his losing concentration.

16. Mr Teasdale told me that he drove the Vauxhall in the middle of the northbound lane – as he expressed it, “in the box.” He rejected the suggestion made by his own expert, Mr Green, that he was close to the central line and rejected the evidence of Donna Coy that he had drifted over from the centre of his lane towards the southbound lane. I do not think that it was directly put to Mr Teasdale that he had driven his Vauxhall into the southbound lane.

17. Mr Teasdale was asked, both in his police interview and during cross-examination by Mr Hunter, when he first saw the motorbike coming towards him. At one stage in the interview, Mr Teasdale said that he had seen the bike “two or three seconds” prior to the collision. I refer to this passage in the record of his interview under caution:

“Q. Um, so are you saying that you just didn’t know there was a motorbike there?

A. He came up, he came from some such, at such speed... ..he came, he came up at, he came up at such, such speed.

Q. So it was all of a sudden in front of you?

R Yes (crying)”

When Mr Hunter KC asked Mr Teasdale in cross-examination whether he had not seen the motorcycle until the very last minute, Mr Teasdale said that he could not remember. Mr Hunter then put to Mr Teasdale that he was not aware that his car was drifting to the offside and he had not seen the oncoming bike and Mr Teasdale replied, “Correct”.

18. I read the statements, and heard the evidence, of Mr Robert Murfet and Mrs Carolyn Murfet. They were travelling in a northerly direction ahead of Mr Teasdale’s car.

19. Mr Murfet’s account to the police was that when he was close to the sign for Leasingham, he noticed a bike about 100 yards away travelling towards him at 60 to 70 mph with its wheel on the centre white line. He could not describe whether the line was solid or dotted. The bike took no avoiding action as it passed him even though it only narrowly missed him. He looked in his rear view mirror. He believed that the bike crossed the white line and collided with the car travelling behind him and which was on its correct side of the road. He gave a description of an explosion of body parts and smoke.

20. In cross-examination, he confirmed that when he first saw the bike, he was near the Turnoff sign. He explained that he had parked his car on some hardstanding that lies close to the Leasingham turnoff. Mr Murfet could not remember the existence of the road markings around the Leasingham turnoff and could not explain where the bike had passed him. He accepted that he had not seen where the car was on the road, and that the view he had

expressed to the police about the location of the accident was his opinion, rather than what he had witnessed.

21. Mrs Murfet told the police that she was a passenger in her husband's car. She saw the motor bike coming towards them. She said that the bike was on their side of the road from the point she first saw it. Her husband swerved to avoid a collision. She said, "As soon as it had passed our car I heard a loud bang which I assumed was the bike hitting something. I was aware that there was a vehicle behind ours and assumed that could have been involved."
22. In cross-examination, Mrs Murfet stated that the motor bike was at all times on their side of the double white lines. It travelled through the hatched lines and the filter lane at the Leasingham junction. She says that she saw the collision because she was looking in the nearside wing mirror. She said that she had been suffering from nightmares about the accident, and that her mental image of the circumstances of the accident had become more vivid.
23. Ms Wyles KC drew my attention to the witness statement of Andrew Cook. Mr Cook was a passing pedestrian. He saw a car which I take to be Mr Teasdale's Vauxhall on the road. He also witnessed the immediate aftermath of the collision.
24. Mr Teasdale was prosecuted for causing death by careless driving. For the purposes of the criminal trial, PC Barlow prepared an accident reconstruction report in which he expressed the opinion that the collision occurred in the southbound lane and that the tyre mark commenced at the point of, or immediately after, impact. He pointed out that if his opinion were correct then the Vauxhall must have crossed over the solid white line in the centre of road and the motorcycle must have been ridden close to or on the nearside white line for its direction of travel. Mr Green prepared a report on behalf of the defence, the premise of which was that during the collision, the front offside wheel of the Vauxhall was damaged and turned through 90°. The tyre mark was caused by the passage over the road of the turned-out wheel. This theory was consistent with the collision having occurred on the northbound carriageway. It is convenient to mention the prosecution at this stage, because it explains how the expert evidence in this case developed. I draw no conclusion from the fact that Mr Teasdale was prosecuted and indeed, he was acquitted following a trial by jury at the Crown Court sitting at Lincoln.
25. Mr Roberts prepared a report dated 21 September 2022. His opinion was that the commencement of the tyre mark was at or immediately after the point of impact so that, at impact, the offside front tyre of the Vauxhall was over the centre solid white line. He thought

that the tyre mark was caused by the deflated offside front tyre on the Vauxhall. The impact from the Kawasaki damaged the tyre, wheel and suspension on the Vauxhall. The wheel and tyre were forced rearwards into the wheel arch and the now deflated tyre started to slide along the road surface. He thought that at impact, the offside front corner of the Vauxhall was around 0.3m over the centre white lines. The front wheel of the Kawasaki was therefore less than 0.3m from its nearest white line, but certainly within its own lane. He identified an area of oil or spilled fluid on the southbound carriageway that he thought came from the Kawasaki. He explained that a line produced along the post-collision path of the Kawasaki (as shown by the fluid) would meet the tyre marks left by the Vauxhall at the start of the tyre marks, providing support for his theory that the collision occurred at the point identified by the start of the tyre marks.

26. Mr Roberts concluded that because the Recycling sign had not been damaged, the Vauxhall had not begun to rotate as it moved past the sign after the collision. He thought that the Vauxhall rotated around 90° clockwise into its final position due to subsequent contact with the bushes and an old fence post at the offside of the road. The resultant sideways forces acting on the damaged offside front wheel and suspension pulled the offside front wheel out of the wheel arch. The collection of soil and vegetation inside the offside front wheel of the Vauxhall confirms that it was dragged sideways into its final position.
27. Mr Roberts addressed the speed of the vehicles. He thought that the physical evidence reveals only that this was a high-speed collision. His opinion was that there would be little difference in the impact forces, damage and post-impact movement had the Kawasaki been travelling at 60 or 70mph.
28. Mr Roberts considered Mr Green's hypothesis that the front offside wheel of the Vauxhall had been turned 90° from its forward moving position at the moment of collision. It is clear from paragraph 5.1.44 of his report and from the following paragraphs that Mr Roberts thought that he was dealing with a theory that "the front wheel of the Kawasaki went between the offside front wheel of the Vauxhall and the inner structure." In his view, the damage to both the Vauxhall and the Kawasaki indicated strongly that the offside of the motor bike struck the offside of the Vauxhall's front offside wheel. He gave several reasons why he thought that the Kawasaki could not have struck the inside of the wheel of the Vauxhall. He preferred the explanation that after the impact, the wheel of the Vauxhall had been trapped in a position not quite parallel with the direction of travel of the car. This slight off-centring meant that the tyre mark on the road was slightly wider than the width of the tread of the tyre. He referred to a photograph that shows that the edge of the wheel had been ground down and stated that

the grinding was consistent with the slightly off-centre orientation of the wheel. He thought that the subsequent impact with the offside bushes and old wooden fence post caused the Vauxhall to rotate to its final position. The forces involved in that sudden rotation would have acted to some degree on the offside front wheel, pushing it out of the wheel arch to the splayed position visible in the scene photographs. He summarised his view thus: "I am therefore strongly of the opinion that the offside front wheel of the Vauxhall would not become splayed at impact but would jam beneath the offside front wheel arch and remain in that position until the Vauxhall crashed into the bushes and wooden fence after leaving the road."

29. Mr Davey prepared a report dated 7 April 2022 and two supplementary reports dated 19 April 2022 which responded to the reports of Mr Roberts and Mr Green.
30. Mr Davey thought that the tyre mark had sharply defined outer edges, which were indicative of a tyre travelling along the road surface whilst that tyre was deflated. He said that although the police did not measure the width of the tyre mark, a comparison between the width of the white line (which was 0.1m wide) and that of the tyre mark revealed that the tyre mark was slightly over 0.2m wide. The specification of the tyre on the Vauxhall indicated that it was 0.215m wide. This was consistent with the width of the tyre mark, and consistent with the tyre travelling forward as it was skidding across the surface whilst the Vauxhall was on the wrong side of the road. He said that had the tyre been scuffing sideways along the road surface, the mark would not have had the same defined edges. Instead, the edges would have been curved and less conspicuous. He said that he did not think that the wheel had been splayed out as the Vauxhall moved down the road; had it been splayed he would have expected to see gouges and scrape marks on the surface of the road as the components of the wheel were dragged over the surface and because the front offside corner of the car was no longer supported by the wheel and thus would scrape along the road. He thought that as the Vauxhall travelled to the grass verge, its front offside wheel was still housed within the wheel arch and orientated in its generally correct position. The tyre mark was consistent throughout its length, which supported his view that the orientation of the wheel did not change.
31. Mr Davey identified what he believed was a scuff mark on the southbound carriageway. He thought that this had been caused by the front tyre of the motorcycle on impact.
32. Mr Davey summarised his view about the position of the vehicles on impact in two drawings that are Figures 36 and 37 in his report. He agreed that the collision occurred in the southbound carriageway. He rejected the hypothesis advanced by Mr Green in the criminal

trial that the collision had occurred in the northbound carriageway for several reasons: had the Vauxhall tyre been wrenched sideways on impact, it would have left a conspicuous mark on the road at that point; the bike would have had to strike the inside of the wheel of the Vauxhall which would have launched the bike into the air; there was damage to the offside of the wheel of the Vauxhall, which must have been caused by the bike; there would have been gouges and scrapes as the wheel of the Vauxhall moved across the road with the wheel dragging at 90° to the direction of travel.

33. Mr Davey explained that there would have been insufficient time for Mr Howard to perceive and take any meaningful evasive manoeuvre in response to the movement of the Vauxhall into the southbound lane.
34. Mr Green prepared a report dated 29 September 2020.
35. Mr Green emphasised the damage that had been occasioned to the front offside suspension and wheel. As a result of the collision, he said, the MacPherson strut could move outwards, away from the vehicle and be turned to angles well beyond that intended in an undamaged vehicle and used to steer the vehicle in a normal way. The police photograph of the Vauxhall and its wheel when it came to rest referred to earlier in this judgment showed, he said, that the front suspension assembly had resulted in the whole diameter of the front wheel and tyre extending out at an approximate right angle from the vehicles side. The contact of the tyre with the road would occur about 32.5cm from the offside edge of the Vauxhall and about 42.5cm from the usual position of the wheel.
36. Mr Green's hypothesis was that the tyre mark from its commencement to termination had been created by the front offside tyre which was travelling in effect sideways whilst in a non-rotational state. This occurred because the wheel had been forced outwards to an angle at or near 90 degrees to its normal position as a consequence of, and at the moment of, the impact. He said that the tyre mark was wider than the width of the tyre, suggesting that it had been dragged across the road facing perpendicularly to the direction of travel. He thought that the tyre marks did not have the characteristic narrow defined dark edges of a deflated tyre travelling parallel to the direction of travel of the vehicle. He thought that the photographs showed metallic deposits that could only have been created by contact between the tyre rim and the surface of the road. He pointed out that the tyre had been pulled away from the rim. This avulsion would occur when the force on the tyre was at its greatest, which he said was at the moment of impact. He rejected the suggestion that the wheel turned at the moment at which the Vauxhall struck the verge. He drew attention to a mark on the post of the Recycling

sign and said that it was entirely possible that the mark was caused by the rubber from the splayed-out wheel as the Vauxhall passed the sign.

37. The consequence of this hypothesis was that the collision occurred when the Vauxhall was on its own side of the road, with its offside wheels positioned on the solid white line, and the motorcycle positioned fully across the centre line in the northbound lane. Mr Green produced a diagram that showed where he thought the Vauxhall was at the moment of collision. On the diagram, there are 2 representations of the motorcycle; one shows the bike striking the front offside of the Vauxhall perpendicularly to the front of the car; the other shows the bike angled so that the front wheel of the bike is engaging with the front of the offside front wheel arch of the Vauxhall.
38. Mr Green explained that the wheel was suspended only by the Macpherson strut once the other parts of the wheel mounting had been destroyed. He stated that the strut would have acted as a castor, much like the wheel of a supermarket trolley. The castor effect would have turned the wheel through 90°.
39. Mr Green thought that a motorcycle which negotiated the right-hand bend at the point of collision would require a significant and noticeable amount of lean to the right in order to negotiate the curve. However, the motorcycle was in fact almost vertical at the moment of impact. He offered the explanation that the rider needed to change the radius of curve being negotiated and therefore was in the process of 'straightening up' immediately prior to impact or having been on the wrong side of the road as the bend was negotiated was attempting to return to his own side of the road
40. The experts produced a joint statement. Mr Green maintained his hypothesis that the motor cycle had crossed onto its incorrect side of the road. Mr Roberts and Mr Davey stuck to their view that the Vauxhall was the vehicle on the incorrect side of the road.
41. The experts were cross-examined at length.
42. Mr Roberts was cross-examined about his estimate of the distance between the start of the tyre mark and the central white lines. He accepted that Mr Davey had undertaken a laser survey and that results derived from such a survey were likely to be more accurate than his own estimate.
43. Mr Roberts was asked about the location of debris and oil. He said that if the collision had occurred in the northbound carriageway he would have expected that the oil left by the Kawasaki would have been deposited in that carriageway as well as in the southbound

carriageway. In re-examination, he said that the oil emanated from the forks of the motorcycle; the oil in the forks would have been under extreme pressure as a result of the collision and, the forks having fractured on impact, would release a spray of oil.

44. Mr Roberts was asked about the photograph he relied on to show that the wheel was travelling slightly off-centre from the direction of travel of the car. He conceded that the photograph had been taken by a Mr Noblet and that he had not seen the actual wheel rim.
45. Mr Roberts was asked about the nature of the tyre mark. He rejected the suggestion that the mark was consistent with Mr Green's theory. The tyre mark was slightly wider than the tread of the tyre, which was to be expected since the tyre was deflated and because the wheel was travelling at a slight angle from the route of the car. If the wheel were travelling in the splayed position contended for by Mr Green, the marks would have been wider.
46. Mr Roberts was asked about the hypothesis that the wheel of the Vauxhall splayed at the moment of impact. He rejected the theory. He said that if such an event had occurred on or near the white lines there would undoubtedly be physical evidence – marks – to evidence it. The collapse of the structures that held the wheel would have taken time, even given the high closing speed of the vehicles involved, and even if the collapse of the assembly had taken 0.1 seconds, the positions of the tyre mark and the oil left by the Kawasaki would not have been as recorded by PC Barlow. The figure of 0.1s was illustrative only, but was consistent with experimental data suggesting deformation of structures in 0.16s. He said that if the wheel had been dragged along the road in the manner suggested by Mr Green, the tyre would have been pulled off the wheel. He thought that Mr Green's hypothesis was impossible. He conceded that the forces involved in the collision would have been great, but he thought that the force involved when the damaged wheel assembly struck the verge was sufficient to cause the already-damaged wheel to splay out.
47. He stated that the mark on the Recycling sign was certainly not caused by contact with the tyre of the Vauxhall.
48. Mr Davey explained in cross-examination that if the tyre of the Vauxhall had moved across the road perpendicular to the direction of travel, the tyre would have been pulled off the rim. He did not accept that the tyre mark was consistent with the tyre having travelled sideways along the road. If the tyre were travelling sideways, there would be a wide mark fading towards the edges, whereas in his opinion, the tyre mark had clearly defined edges. Mr Davey accepted that because the police had not measured the width of the tyre mark, it had been necessary

to estimate its width; he felt that his comparison of the width of the white line (which, because assessed using a laser survey, was very precise) provided an accurate figure.

49. Mr Davey agreed that the width of the tyre marks might have been slightly greater because the wheel was not exactly parallel to the direction of travel of the car. He did not disagree with Mr Roberts's view that the wheel had been ground down.
50. Mr Davey conceded that the forces exerted on the wheel on impact would have been maximal. However, he did not accept that the wheel was turned through 90° on impact. He thought that following the impact, the significant weight of the car and the fact that the wheel had been pushed back held the wheel in place until the car struck the verge.
51. Mr Davey pointed out that the scuff mark he claimed had been caused by the bike on impact was in line with the fluid trail left by the bike and highlighted on the photograph in the joint statement.
52. Mr Davey pointed out that there was more than one mark on the post of the Recycling sign. In his view, none of the marks could have been caused by the splayed-out wheel of the Vauxhall because the path of the wheel as shown by the disturbance of the verge was simply too far away from the post.
53. Under cross-examination, Mr Green agreed that he had not pointed out that Mr Teasdale's evidence that he was in the middle of his own lane was inconsistent with Mr Green's hypothesis. He said that it was not his job to comment on the witness evidence. When asked why, if that were the case, he had referred to factual witness evidence that supported his conclusion, Mr Green said that he pointed out the evidence to the court.
54. Mr Green told me that the deformation of the vehicles and the turning of the wheel happened in hundredths of a second, though he agreed that in the experts' discussion he had refused to tie himself down to a specific timeframe. He did not accept that there would necessarily be a mark on the carriageway or on the white lines at the point of collision. He suggested that the wheel of the motorcycle might have lifted the wheel of the Vauxhall off the surface of the road at the moment of impact, thus avoiding a mark as the wheel was turned through 90°. He said that the downward forces may not have been sufficient to make a mark.
55. Mr Green was asked about the suggestion that the wheel of the motorbike had struck the inside of the car wheel. He said that he had never intended to suggest that this had happened; on the contrary, he thought he had made it clear in the course of the experts' discussion that such was not his view. He could not explain why, if he had made his view clear, Mr Roberts

and Mr Davey had taken such pains in the joint statement to argue against it. In cross-examination by Mr Lewers, he told me that he did not realise that Mr Roberts and Mr Davey had misunderstood his theory. He agreed that the motorcycle must have struck the offside of the car wheel.

56. Mr Green was asked about paragraph 3.20 in the joint statement, in which he had stated that at the moment of collision the forward motion of each vehicle cancelled each other out. It was put to him that this was nonsense, because the Vauxhall continued forward only slightly decelerated by the collision. He agreed that "how it's written is not correct".
57. Mr Green was asked about the deposits of oil highlighted in the photograph on page 6 of the joint statement. He accepted that the oil probably came from the front forks of the motorcycle, but did not accept that the oil had been forced out under pressure. He claimed that "you can't put fluid under pressure, you can't compress it." He pointed out that it would take time for the oil to fall to the ground.
58. Mr Lewers asked Mr Green about the width of the tyre mark. Mr Green said that he only realised that Mr Davey was suggesting that the width of the tread was 215mm when Mr Davey was cross-examined the previous day. When it was pointed out to him that Mr Davey had mentioned the width of the tyre tread in his report at paragraph 3.16, Mr Green told me that he had forgotten this piece of evidence. Mr Green agreed that he had not measured the mark. He estimated that it was 23 – 24 cm wide. He had not mentioned this estimate in his written evidence because he could not be confident of the width. He continued to believe that the width of the tyre tread and its appearance were not consistent with the hypothesis advocated by Mr Roberts and Mr Davey.

Findings

59. The parties agree the evidence of Carol Hendry and Donna Coy, and I see no reason why I should not accept their evidence as accurate. I take from the evidence of Carol Hendry that she considered that Mr Howard was riding the motorcycle in a careful manner at slightly over the speed limit of 60 mph and that he had returned to his correct side of the road after he had overtaken her. He was just disappearing from view when Ms Hendry was at the Leasingham turn off. I take from the evidence of Donna Coy that very shortly before the accident, the motorbike was on its correct side of the road but close to the central white line. The Vauxhall was travelling at about 50mph. It started drifting to its offside. Neither of these witnesses is able to say on what side of the white line the collision occurred.

60. Ms Wyles KC submitted that it had not been put to Mr Teasdale that he was on his incorrect side of the road, and I was therefore bound to accept that he was on his correct side of the road. As I have mentioned earlier in this judgment, I do not think that the specific allegation that he was on the wrong side of the line was directly put to Mr Teasdale. However, I reject Ms Wyles's submission for two reasons. The first reason is that I think it was perfectly clear to Mr Teasdale that it was being suggested that he was wrong in his evidence that he was "in the box" (i.e. in the middle of the northbound lane) and that he had drifted to his offside. He gave evidence that he had not drifted as Ms Coy stated and he rejected the evidence of his own expert that the collision must have occurred very close to the white line. In my view, the fact that the allegation was not put in terms does Mr Teasdale no unfairness: he was given ample opportunity to address the substance of the case against him. The second reason I reject Ms Wyles's submission is that even if Mr Teasdale's evidence stood unchallenged, I could not accept it as accurate. On any view of the physical evidence, the collision must have occurred very close to the central white line, which could not have happened if, as Mr Teasdale insisted, he was "in the box." His account is inconsistent with the agreed evidence of Donna Coy. His account of when, or if, he saw the motorcycle prior to the collision was inconsistent and unsatisfactory. I cannot rely on Mr Teasdale's evidence as to where in the road he was at the time of the collision.
61. I have carefully considered what weight to give to Mr Teasdale's evidence that he was not aware that his car was drifting to the offside and he had not seen the oncoming bike. I have in mind that this answer was given in response to Mr Hunter's leading question; Ms Wyles submitted that because of his learning difficulties, Mr Teasdale might be suggestible so that his answers to a leading question might not be accurate. On the other hand, the evidence of Donna Coy shows that Mr Teasdale was drifting to his offside, and Mr Teasdale was adamant that he was "in the box". He was therefore plainly not aware that he was drifting. I also bear in mind that Mr Teasdale has never given an adequate account of when he saw the motorcycle coming towards him. I have concluded that I should accept this piece of evidence.
62. Mr Hunter and Mr Lewers submitted that I could draw the inference from Mr Teasdale's driving history that he had a propensity to lose concentration and thus suffer accidents. They submitted that this was probative of Mr Teasdale's fault in the present case. I do not think that it is necessary to my conclusions to express a view on this point.
63. The evidence of Mr and Mrs Murfet appeared to me to contradict the agreed evidence of Carol Hendry. Mr Murfet said that he had first seen the motor cycle when he was at the turnoff sign. This would have been at the time when the Kawasaki had just passed Ms

Hendry's car and when, according to her, it had moved back into the centre of the southbound lane. However, Mr Murfet had the motorcycle on the white line and Mrs Murfet had the motorcycle over the white line, on its incorrect side of the road. The impression given in Mr Murfet's police statement was that he had seen the collision and Mrs Murfet told me that she had used the passenger mirror and witnessed the collision. These accounts are inconsistent with Ms Hendry's evidence that when she was at the Leasingham turn, the motorcycle had moved out of her sight, so that it would presumably not have been visible to the Murfets.

64. Mr Murfet fairly conceded that he could not remember the system of white lines that is a feature of the Leasingham junction. He conceded in cross-examination that he could not say where in the road the collision had occurred; what appeared in the police statement was his opinion rather than what he had witnessed. I conclude, therefore, that he was not able to say on what side of the white line the collision occurred.
65. I conclude that Mrs Murfet's evidence could not be relied on. The account she gave to me was different from that contained in her police statement in a number of important respects. The most surprising new allegation was that she had witnessed the accident by looking in the passenger side wing mirror. I am sceptical that she could have witnessed the accident firstly because Ms Hendry's evidence persuades me that it would not have been visible at all if the Murfet's car was at the Turnoff sign and secondly because I doubt that the view a passenger would obtain from the wing mirror would have shown anything other than the side of the car in which she was travelling. If she saw the accident, it is difficult to understand why that fact was not mentioned in her police statement. I accept Mrs Murfet's evidence that she had suffered from nightmares and that her mental image of the circumstances of the accident had become more vivid. I do not accept that her mental image is accurate.
66. The evidence of Mr Cook did not significantly affect my view of what happened.
67. It follows that I conclude that none of the witnesses present at the time of the collision can help me about where the vehicles were at the moment of impact. I must therefore turn to the expert evidence.
68. I have, with some dismay, come to the conclusion that I cannot rely upon the evidence of Mr Green, for a number of reasons.
69. The most basic reason is that in his evidence, Mr Green advanced propositions of physics that were obviously incorrect. For example, he suggested that at the moment of collision, the forward motion of both vehicles cancelled each other out. Since the Vauxhall continued along

its path at a considerable speed until it hit the verge, the proposition that its forward motion was cancelled out is palpably false. In my judgment, Mr Green compounded the error when he was asked to account for his statement. Instead of agreeing with the suggestion of Mr Hunter that this was nonsense, he hedged by saying that “how it’s written is not correct” as if some typographical error was responsible for the blunder. A second example is his assertion that “you can’t put fluid under pressure, you can’t compress it.” Whereas I accept that liquids are not readily compressible, the suggestion that fluids cannot be put under pressure is absurd. I am left wondering what is the purpose of the oil pressure gauge in my motor car if the purpose is not to show the pressure in the oil system.

70. A second reason why I do not feel able to rely upon Mr Green is that he did not appear to me to understand the obligation of an expert fairly to deal with all the evidence and not simply to address the points that support his hypothesis. Mr Hunter’s criticism is fair that Mr Green was happy to emphasise the witness evidence that supported his theory whilst remaining silent about those witnesses whose evidence did not. I am critical of the fact that Mr Green relied upon the marks on the upright of the Recycling sign without drawing the court’s attention to the fact that there were several other marks on the upright that were not consistent with his theory.
71. One of the problems with Mr Green’s theory is that there was no mark on the road to evidence his postulated instantaneous turning of the car wheel through 90°, a point made in the reports of Mr Roberts and Mr Davey. When Mr Green was asked in cross-examination to account for the fact that there was no evidence on the road, he mentioned for the first time the theory that the wheel of the car may have been lifted off the road by the motorcycle tyre. It is very surprising that he had not raised this potential explanation during the experts’ discussion or in the joint statement. I formed the opinion that Mr Green made this explanation up as he was giving evidence.
72. A further issue I have about Mr Green’s conduct concerns the perception that his theory involved the motorcycle striking the nearside of the car wheel. It was, I believe, absolutely clear that Mr Roberts and Mr Davey understood Mr Green to be saying this, as appears both from the reports of both men and from their comments in the joint statement, which are directed to demolishing this theory. I reject Mr Green’s evidence that he had made clear in the experts’ discussion that this was not his view; if he had done so, Mr Roberts and Mr Davey would not have wasted ink seeking to discredit the theory in the joint statement. I also reject his (inconsistent) evidence that he did not realise that Mr Roberts and Mr Davey had not understood what he said was his true theory, which was that the motorcycle had struck the

offside of the car wheel. It must have been obvious to Mr Green from their reports and from their comments in the joint statement what Mr Roberts and Mr Davey believed him to be saying. I am thus forced to the conclusion that in failing to explain to his fellow experts that they had misunderstood him, Mr Green has not complied with his obligation to help the court understand the expert evidence and in explaining his conduct to me, he has given inaccurate and unreliable evidence.

73. I was mostly impressed by Mr Roberts's evidence. I formed the view that he had carefully weighed all the evidence and had presented a persuasive account. I was concerned with his evidence around the photograph that had been taken by Mr Noblet. It was a technical breach of the rules that he had not disclosed that Mr Noblet had taken the photograph. More troubling, in my view, is how Mr Roberts was able to reach a conclusion about the angle of the grinding on the wheel rim and what the implications were using only the photograph and without undertaking a careful examination of the wheel rim. I was not convinced by this part of his evidence.
74. In my judgment, the most convincing expert witness was Mr Davey. He undertook a laser scan of the scene which all of the experts recognised was likely to provide the most accurate representation of the locus. Mr Davey carefully analysed the evidence and presented a fair and, to me, convincing account of the collision in his written and oral evidence. In giving his evidence, he was firm but not inflexible. He was an impressive witness. My conclusions about what happened are largely informed by his opinion.
75. I find that the collision occurred at the southern end of the tyre mark. The vehicles were in the position illustrated in figures 36 and 37 in Mr Davey's report dated 7 April 2022.
76. As the experts all agree, at the moment of impact, the front offside tyre of the Vauxhall deflated, the wheel of the car was forced backwards and the suspension assembly of the Vauxhall was largely destroyed.
77. I am persuaded by the evidence of Mr Davey and Mr Roberts that the front offside wheel was then held in an orientation broadly parallel to the direction of travel of the Vauxhall. I accept their evidence that a tyre held in this orientation would leave a mark on the road that was slightly wider than the width of the tread with the edges of the mark more distinct than the centre of the mark. I accept their evidence that the pattern to be expected if the wheel had been dragged across the road perpendicularly to the direction of travel would be dark in the middle with scalloped edges. In my judgment, the photographs show a picture that is much nearer the "parallel" pattern than the "perpendicular" pattern. I reject Mr Green's evidence

that the width of the tyre mark was too wide to be explained by the “parallel” orientation theory.

78. I accept the evidence of Mr Roberts and Mr Davey that if the wheel had been moved across the road in the “perpendicular” orientation, the tyre would have been pulled off the wheel. It was not.
79. I accept the evidence of Mr Roberts and Mr Davey that it is highly improbable that there would have been no mark on the road if the wheel of the Vauxhall had been moved through 90° at the moment of impact. There was no such mark.
80. I am satisfied that the force of the Vauxhall striking the verge was sufficient to wrench the front offside through about 90°. To be absolutely clear, I find that the splaying of the wheel did not occur at the moment of impact but when the car struck and was dragged along the verge.
81. The conclusion I reach about the position of the collision is supported by the oil mark on the road left by the motorcycle. I find that on impact, immense loads were placed on the front forks of the motorcycle, causing the forks to fail and the oil from the forks to be sprayed out under pressure onto the road along the path of the motorcycle. I accept the evidence of Mr Roberts and Mr Davey that producing a line through the path of the oil in the direction from which the motorcycle came leads to the start of the tyre mark, thus supporting the conclusion that this is where the collision occurred.
82. I accept Mr Davey’s view that there would have been insufficient time for Mr Howard to perceive and take any meaningful evasive manoeuvre in response to the movement of the Vauxhall into the southbound lane.
83. I accept the evidence of Mr Roberts that there would be little difference in the impact forces, damage and post-impact movement had the Kawasaki been travelling at 60 rather than 70mph.
84. The experts agree that the motorcycle was close to vertical at the time of the collision. I reject Mr Green’s opinion that this means that Mr Howard realised he was on his incorrect side of the road and was seeking to move onto his correct side of the road. I accept the evidence of Mr Roberts and Mr Davey that since the corner was not a sharp one, the motorbike would not be significantly canted over. In any event, if the motorbike was unusually vertical, that is consistent with Mr Howard realising that he had to try to avoid the Vauxhall on its incorrect side of the road. It does not strengthen the case advanced by Mr Green.

Conclusions

85. In this terrible accident, the claimant was blameless.
86. I have found that the collision occurred when Mr Howard's motorcycle was on its correct side of the road. I have found that, at the moment of impact, Mr Howard was riding his motorcycle close to the broken white line that marked the edge of his carriageway. I accept the evidence of Donna Coy that there was room in the carriageway for Mr Howard to have moved to his nearside and thus to have avoided the accident. There is no allegation against Mr Howard that he drove too close to the centre line or that he should have moved to his nearside. In any event, I am not persuaded that Mr Howard was negligent in failing to do so. He probably realised that the Vauxhall was drifting across the road but he had no reason to suspect that the Vauxhall would continue to drift onto its incorrect side of the road. Once it was clear that the Vauxhall was likely to pose a danger, there was insufficient perception and reaction time for him to avoid the collision.
87. I have found that Mr Howard was riding slightly in excess of the speed limit. The mere fact that he was exceeding the speed limit by a modest amount did not, in my view, carry with it a foreseeable risk of harm to his passenger. I have accepted Mr Roberts's evidence that this accident and its consequences would have been no different had Mr Howard been riding at a slightly lower speed. Thus, so far as the allegation of excessive speed is concerned, neither breach of duty nor causation has been proved.
88. For the reasons I have stated, I reject the allegations made against Mr Howard in paragraph 7 of the Particulars of Claim.
89. My findings show that Mr Teasdale drifted onto his incorrect side of the road. The most probable explanation, in my view, is that Mr Teasdale lost concentration. He did not realise he was drifting onto the wrong side of the road. He did not see the motorcycle coming towards him until the last moment. He made no attempt to avoid the collision. In my judgment, this relatively prolonged lapse in concentration bespeaks a serious failure to exercise reasonable care for other road users. Mr Teasdale's negligent driving caused the serious injuries of which the claimant complains.
90. The Particulars of Claim allege that Mr Teasdale was driving too fast. I reject that allegation: he was travelling at about 50 mph, which was in my view a safe speed at which to negotiate this road.

91. In the circumstances, the claimant's claim against the second defendant succeeds and there must be judgment for the claimant against the second defendant for damages to be assessed. The claim against the first defendant must be dismissed.