

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 6/04/2018

Before :

MASTER COOK

Between :

MRS SUSAN MCINTOSH

Claimant

- and -

MR BARRY HARMAN

Defendant

Marcus Grant (instructed by **Penningtons**) for the **Claimant**
Michael Jones (instructed by **DWF LLP**) for the **Defendant**

Hearing date: 2 March 2018

Judgment Approved

MASTER COOK :

The Proceedings

1. The Claimant Mrs Susan McIntosh claims damages for personal injuries loss and damage sustained by her as a result of a road traffic accident which occurred in the early hours of 14 January 2014. At the time of the accident the Claimant, who was a serving police officer, was driving a marked BMW police car and had pulled up on the side of the B386 Longcross Road facing the oncoming traffic. A Citroen motor car driven by the Defendant travelling west bound then collided head on with the police car.
2. The Claimant alleges that she suffered a soft tissue injury to her cervical spine and a possible vestibular injury which have had a profound effect upon her causing her to take early retirement from the Police Force. The particulars of injury state:

“she suffers from chronic symptoms of varying intensity, depending upon her sleep patterns and activity levels. She has developed a cluster of impaired mood symptoms that are reactive to the enforced lifestyle changes brought about by the pervasive fatigue and chronic widespread joint pains.
3. Proceedings were issued against the Defendant on 10 January 2017 alleging that his negligent driving had caused the accident.

4. A Defence was filed on 5th June 2017 denying any negligence on the part of the Defendant and contending that the accident was caused or contributed to by the negligence of the Claimant.
5. At a case management conference on 9 October 2017 Master Davison ordered that the issues of liability should be tried as a preliminary issue before a Master. At the case management conference Master Davison refused the Defendant's application for expert evidence to be given by an accident reconstruction expert in the following terms:

"I am not going to give permission for accident reconstruction evidence, which is not reasonably required to resolve the case. I accept the Defendant's factual case that he thought the police vehicle was (1) oncoming and (2) on the correct side of the road rather than stationary. That is a matter for oral evidence.

As for the perception reaction time and impact of an unexpected scenario, that too is a matter for the trial judge who will not in any way be bound by the perception reaction time in the highway code which is not a statute. It is open to the judge to take into account all the evidence and will not be assisted by expert evidence.

Speed is not a massive issue and is relatively apparent from the CCTV.

Lastly, if I give permission for accident reconstruction evidence, that will increase the trial from one day to two or possibly three days, with an increase in expense and the length of time before the case can be tried, which is undesirable."

6. There has been no appeal of Master Davison's decision.

The issues

7. The Claimant's case is that she and PC Reynolds were searching for a missing 81-year-old woman. It was a cold night and they considered her health to be at risk. As they approached the driveway to Longcross House, which was on the opposite side of the road to their direction of travel, they noticed a group of 6-8 people standing in the mouth of the driveway. The claimant drove the police car across from the east to the west bound carriage in order to speak with the group of pedestrians and parked by the side of the road. She says that she did not intend to be there for any length of time, that the main headlights and blue lights of the police car were turned off to avoid dazzling the pedestrians and any oncoming vehicles and the take down lights on the roof of the car were also illuminated. It is her contention that the police car was obvious, and that the Defendant should have had ample time either to stop his vehicle or to drive around the police vehicle. The Defendant's case is that he saw what appeared to be headlights from an oncoming vehicle on the other side of the road, he dipped his headlights and reduced speed and it was only in the final seconds before the collision that he was able to identify that the police vehicle was stationary and in his path. On seeing the police vehicle, he applied emergency braking but skidded into

the front of the police car. It is his contention that the police car should not have stopped in the opposite carriageway when there was sufficient space in the drive way to Longcross House and that the blue lights or hazard lights should have been switched on, as it was, the use of the takedown lights gave a wholly misleading impression to the driver of an oncoming vehicle.

The site of the accident

8. Longcross Road was an unlit semi-rural road with a speed limit of 60 mph. There are white lines marking the centre of the carriageway and cat's eyes. The Claimant's vehicle was parked in the carriage way outside the entrance to Longcross House which was a large area (approximately 20 meters wide) on which she could have parked her vehicle.
9. The entrance to Longcross House is lit at night. There are two globe lights on the stone pillars either side of the entrance which can clearly be seen on the photographs at p363 and p364 of the trial bundle. And a series of lights illuminating the foliage behind the railings running from the stone pillars along the edge of the drive way to the iron gates.
10. Longcross Road undulated slightly on the Defendant's approach to the point of collision and there was a brow caused by an undulation the road between 120 and 130 meters from the point of collision. Beyond the point of collision and west of the entrance to Longcross House there is a left-hand bend.

The evidence

Agreed Expert evidence

11. The Police car had been fitted with an "incident data recorder" and a dash cam. The parties had instructed experts to review the data from the data recorder and there was an agreed statement of the relevant events recorded.
12. The experts agreed as follows;
 - a. The Police Vehicle came to a halt at about 00:09:56 (hours: minutes:seconds). This was about 1 minute 32/33 seconds prior to the collision. The vehicle had its LIGHTS (dipped beam) and SIDELIGHTS ON when it came to a halt.
 - b. The data indicates that the vehicle was then stationary for about 4.5 seconds with its LIGHTS (dipped) beam and SIDELIGHTS ON.
 - c. There is a gap in the data record (due to the way that the IDR stores data) Data recommenced about 60 seconds later (00:11:01), some 27.5 seconds prior to the impact at which time the vehicle no longer had its LIGHTS (dipped beam) ON although its SIDE LIGHTS and REAR REDs were ON. It is not possible to determine at what time these statuses had changed.

- d. The data indicates that the vehicle was then stationary (for about 27.5 seconds before the incident occurred (00:1:28).
- e. The REAR REDS were ON for a minimum of 27.5 seconds prior to the collision and were still on when the impact occurred.
- f. At about 00:11:06 (approximately 22.5 seconds prior to the impact) the BLUES came on but only remained on for about .04 seconds.
- g. At about 00:11.19 (approximately 9.4 seconds prior to the impact) the LIGHTS (Dipped beam) came ON. The lights remained ON until about 00.11.18 (approximately 10.3 seconds prior to the impact).
- h. At about 00:11:19 (approximately 9.4 seconds prior to the impact) the SIDELIGHTS went OFF.
- i. At about 00:11:25 (approximately 3.5 seconds prior to the impact) the MAIN BEAM came ON. The data suggests that, over the next 1.6 seconds there were 7 short flashes of the MAIN BEAM. The experts agree that these may not have been 7 distinct flashes and that the intermittent appearance of the data may be an effect of how the data was transmitted to and received by the IDR.
- j. The impact occurred at about 00:11.28. The principle direction of force was front to back, indicating that this was essentially a head on impact.”

13. It was agreed that the “take down” lights were on throughout.

Dash Cam evidence

- 14. Somewhat unusually for an accident of this kind there was a functioning dash cam which captured the collision from the point of view of the police car. The video was provided to me and was played in court prior to Mr Grant’s opening. The video shows events immediately leading to the collision. The following description is given by reference to the timer appearing on the video.
- 15. At 10.19 the video opens with the Claimant’s view eastwards towards the brow of the oncoming road. Her vehicle headlights are clearly illuminating the road ahead including centre road markings and cat’s eyes all the way to the brow.
- 16. At 10.26 the loom of the Defendant’s headlights can be seen and at 10.27 the police cars headlights switch off at about the same time as the Defendant’s headlights appear to be dipped and the Defendant’s lights are then obscured by the brow. The white centre lines in the road cease to be visible but the cat’s eyes are clearly illuminated to the brow.

17. At 10.28 the Defendant's headlights reappear. At 10.33 the police car's headlights are illuminated, and impact occurs at 10.36. The Defendant's vehicle maintains a straight course throughout and does not deviate from a straight-line.

The Witness evidence

18. I heard evidence from the Claimant, Mr Coetzee, Sergeant Reynolds. The Defendant also gave evidence together with Mr Gary Wright.
19. I read the witness statements of Deborah Brown, Colin Watkins and DS Green.
20. I was asked to read the witness statement of Mr David Watkins, the Claimant's husband, who had produced a series of photographs taken at night with a view to demonstrating what the Defendant would have seen when approaching the police car. I declined to have any regard to the statement or to the photographs as they were not taken at the location of the accident, they did not use the same vehicles and they had been manipulated in Adobe Photoshop in an unspecified manner. This was an attempt to introduce opinion evidence and circumvent the effect of Master Davison's previous order.
21. In summarising the witnesses' evidence, I have referred to the important parts of the evidence they gave and if I fail to mention other matters that does not mean I have not taken those matters into account.

The Claimant's evidence

22. The Claimant gave evidence in accordance with her witness statement. On the 14th January she was on duty together with PC Reynolds in a marked BMW police car. At approximately 11.30 pm she received a call requesting assistance to units who were looking for a missing 81-year-old female who had been reported missing by her husband. She started to search in the Lightwater area and was concerned that because of the age of the missing person and fact that it was cold there could be a serious risk to life. She described travelling on Longcross Road in an easterly direction when she noticed three or four vehicles parked on the drive outside the entrance to Longcross House she also noticed a group of 6 to 8 people with torches.
23. The Claimant said that she stopped the police car, reversed and drove across the road so that she could to speak to the group of people. She said that she did this because she did not consider it safe to beckon the people across the road. She said she did not pull into the driveway of Longcross House because she didn't intend to be there long. She recalled that the police car's headlights were on and the blue strobes were illuminated initially but were turned off by PC Reynolds so that the pedestrians were not dazzled.
24. The Claimant said that shortly after stopping she turned the headlight main beam off to avoid dazzling an oncoming vehicle. This vehicle pulled off the road onto the paved area in front of the police car. The Claimant then recalls turning the main beam back on and then after approximately 10 seconds the Defendant's car first appeared on the horizon. At this point the Claimant said that she turned the main beam off again but now accepts that she must have turned the light control fully so that the sidelights were extinguished as well. The Claimant said that the police car was the

only illuminated by the white “takedown lights” which would have illuminated the bonnet.

25. The Claimant recalls seeing the Defendant’s vehicle approaching and realising that it was going to collide with the police vehicle, at this point she put her foot on the brake to prevent the police car from being shunted back into the pedestrians and had time to think “brace yourself this is going to hurt”.
26. In cross-examination the Claimant accepted that her witness statement in these proceedings was made 4 years after the police statement she made on the day of the accident and that events would have been fresher in her mind immediately after the accident. She did not accept that it would have been better to leave the blue strobe lights on, she said that different circumstances warrant different responses, she considered that there was adequate visibility and used her discretion. She said that following the collision, police vehicles attended the scene and their blue strobes were illuminated but that circumstances were then very different. She said that following the accident she recalls being told by a sergeant that she did not have any lights on but could not recall any debrief conversation.
27. The Claimant said that she did not see any need to put her hazard lights on as she was not intending to be at the location for long, she was talking to the pedestrians and knew the car was illuminated by the “take down” lights. She accepted that the statement at paragraph 4 of the particulars of claim that the police car’s side lights were on at the time of the collision was incorrect. She said that the material from incident data recorder had caused her to realise this.
28. The Claimant said the drive way to Longcross House was illuminated by the globe lights on the gate pillars but that she did not mention this in her original police statement because it was not relevant. The Claimant accepted there had been a Police Vehicle Incident investigation into the incident but did not accept that she was found blameworthy. She said that she had not seen the incident report dated 30 January 2014 when made her witness statement but had received a decision notice dated 8 March 2014 which stated that no further action was being taken. She had spoken about the incident to her line sergeant, sergeant Lakeman and this is why she stated she had been found non-blameworthy for the incident in her witness statement.

Sergeant Reynolds evidence

29. Sergeant Reynolds gave evidence in accordance with his witness statement. He said that he been promoted to acting sergeant since the accident. He had crewed most shifts with the Claimant for approximately 6 months before the accident. He recalled putting on the “take down” lights when the police vehicle pulled over. He recalled seeing the defendant’s headlights and noticed that the defendant did not deviate in his course. He heard the sound of skidding before the collision and was very surprised that the defendant struck the police vehicle, this is what caused him to say to the Defendant “which bit of us did you not see”.
30. In cross examination Sergeant Reynolds accepted that events were fresher in his mind at the time he made his police statement. He said that he had not discussed matters in detail with the Claimant before he made his witness statement in these proceedings and that she had been taken away in an ambulance after the accident. He said that he

had turned the “take down” lights on because of the possibility of oncoming traffic and that it was dark ahead. He said that the driveway to Longcross House was illuminated and there was a spill of ambient light onto the roadway. He disagreed with the suggestion that the police car’s blue strobe lights should have been turned on when the vehicle pulled over. He disagreed with PS Green’s recommendation in the Police Vehicle Incident report that this was a blameworthy incident.

Mr Coetzee’s evidence

31. Mr Coetzee gave evidence in accordance with his witness statement. He was employed as a security guard at Longcross Estate. He described the lighting at the entrance of Longcross House and produced photographs taken of that lighting at night. He confirmed that these lights were on at the time of the accident. He said that he had been asked by a CCTV operator to check out the presence of a number of people and vehicles in the driveway entrance. He parked his vehicle in the driveway and was standing a few feet from the police car when he heard the sound of defendant’s vehicle approaching and then skidding just prior to the impact.
32. When cross-examined he accepted that events were fresher in his mind when he made his original police witness statement. He accepted that he may have been wrong about the blue lights of the police car being on at the time of the collision but was clear that the driveway lights were on.

The Defendant’s evidence

33. The Defendant gave evidence in accordance with his witness statement. He said that on the evening of 14 January 2014 he was driving his wife’s car to work and was travelling along Longcross Road at approximately 12.00pm. He said he was familiar with the road and because he worked a night shift had driven along it in the dark many times. He described driving along with his headlights on full beam. He then saw what looked like headlights from an oncoming vehicle. He said he dipped his headlights and eased off the accelerator. He estimated he was approximately 200 meters from the lights when he first saw them. He said that as he regularly passed vehicles on the road he assumed that the lights were a vehicle coming in the opposite direction on the correct side of the road. He said that he continued along the road and then what he thought were full beam headlights suddenly came on in front of him. He said, “I remembered being blinded momentarily and breaking heavily”.
34. The Defendant estimated he was about 40 to 50 yards from the point of collision when he braked. He said that his vehicle did not stop and the collided with the front of the police car.
35. The Defendant said that he provided the police with an account of the accident at the scene. He said that if he had seen blue flashing lights or hazard lights he would have slowed down significantly.
36. In cross-examination the Defendant accepted he was very familiar with the road, he said that he could go into work at any time and was not in any particular hurry that evening. He accepted the driveway to Longcross House was well lit and that you would notice it as you passed. He confirmed that he was first aware of lights ahead when he was approximately 200 meters away and estimated that he reduced his speed

to approximately 40 to 45 mph. He said he thought there was an oncoming vehicle a good way in the distance and that he did not realise it was stationary. He accepted that there were cat's eyes marking the centre of the road.

37. Mr Grant put to the Defendant that the police car's main headlight beams were illuminated 3.5 seconds before impact. The Defendant said that this was when he panicked and braked. Mr Grant then put a number of propositions to the Defendant. Firstly, if he had been travelling at 50 to 55 mph the equivalent of 24 meters per second he would have seen the headlights when he was 84 meters from the police car. Secondly, if he was travelling at 40 to 45 mph he would have been further back than 84 meters. Thirdly there were 28 meters of skid marks which would have placed him even further back. Mr Grant suggested that the Defendant should have been easily able to stop if he was paying attention to the road ahead. The Defendant maintained that he assumed that the lights were headlights on the other side of the road. He said that he could not steer round the police vehicle because he was suddenly blinded by the full beam and did not have power steering. He also said the car did not have an ABS braking system.
38. Mr Grant put to the Defendant that there were cat's eyes which would have clearly indicated the centre of the road. The Defendant stated that he couldn't really see the cat's eye's because he had dimmed his lights but that he was paying attention. He reiterated that he was sure there was nothing on his side of the road and that he had no reason to reduce his speed.

Gary Wright's evidence

39. Gary Wright gave evidence in accordance with his witness statement. He worked for Surrey Police at the relevant time and received a copy of DS Green's Police Vehicle Incident report in his role as Head of Police Vehicle Incident Investigation. As a result, he issued the decision notice dated 8 March 2014 to the Claimant. The decision notice recorded that words of advice had been given and no further action would be take.
40. Mr Wright stated that the issue in the Police Vehicle Investigation was the failure by the Claimant to use all available lights on the police vehicle. The lights he considered relevant were those which would enable a member of the public to properly identify a hazard in the road ahead. There were the rear flashing red lights, the blue flashing lights and the hazard lights. He did not deem the "take down" lights to be relevant because they could give a potentially misleading impression to an approaching vehicle's driver. He explained because the "take down" lights were smaller and closer together than headlights they could give the impression of being further away.
41. In cross examination Mr Wright accepted that he had relied upon DS Green's report and the incident data recorder results and had not spoken to either officer involved. He accepted that DS Green's report contained a number of errors but that these were not material as he had the results from the data recorder. He accepted that there was no protocol for the use of flashing blue lights or hazard lights. He considered the phrase "blameworthy accident" in this context to be a somewhat old-fashioned term. He said, "we now consider if we were responsible and what if any lessons could be learned from such an incident". He confirmed that there was no protocol for giving words of advice.

Submissions discussion and conclusions

42. In order to succeed the Claimant must establish that the Defendant's negligent driving caused the accident. In this respect the central issue is whether the Defendant ought reasonably to have seen and responded to the Claimant's vehicle earlier than he did. In the event that liability is established I must go on to consider whether any contributory negligence has been established on the part of the Claimant. This will involve consideration of whether it was negligent for the Claimant to stop her vehicle facing the oncoming carriageway and whether her vehicle was adequately lit. In considering these issues the standard of care is that exercised by a reasonable and competent motorist.
43. The particulars of negligence relied upon by the Claimant are that the Defendant;
 - i) Drove too fast in all the circumstances
 - ii) Failed to decelerate and/or brake earlier to give himself a better opportunity of appreciating the presence of the lit Police BMW on his side of the road and either stopping or going around it.
 - iii) Failed to steer around the lit Police BMW.
 - iv) Loosing control of his car.
 - v) Failing to brake earlier.
 - vi) Failing to heed that there was a vehicle on his side of the road with a double set of lights illuminated.
 - vii) Driving into a stationary illuminated vehicle.
44. There is very little if any dispute between the parties concerning the position of the police car and its illumination at the time of the accident. It is accepted that the distance from the brow of the hill over which the Defendant approached the Claimant's vehicle is between 120 and 130 meters. It also seems clear from the dashcam video that the Defendant dipped his headlights before coming over the brow. It is accepted that the police car flashed its headlights on at 3.5 seconds before impact and that the skid marks left by the Defendant's car started 28 meters from the point of collision.
45. Mr Jones submitted that this was a very challenging environment for the Claimant to discharge the evidential burden upon her as the Defendant was the only person to view the scene from his point of view. He submitted that the driver of the silver car had not been called and there was no reconstruction evidence which could contradict the Defendant's account.
46. Mr Jones referred to the evidence of Garry Wright and submitted that this bolstered the account given by the Defendant in that he had found the Claimant blameworthy for giving a potentially misleading impression to oncoming motorists. The "take down" lights being higher, smaller and closer together than headlights gave a false impression that the vehicle was further back than it in fact was. He submitted that this was actually a more dangerous situation than that of an unlit vehicle. He submitted

that the Defendant's opportunity to realise the lights were not moving after he came over the brow was extremely limited in time and there was no reference point. He submitted the Defendant had 2 to 3 seconds to fix his attention on the oncoming lights and realise something was amiss. Allowing for perception reaction time the Defendant had but a few seconds to react. Mr Jones submitted that it would set too high a standard for the Defendant to be required to expect the unforeseeable.

47. Mr Jones referred to the case of *Walker v Culina Logistics Limited* [unreported Lawtel 15 February 2017] and to the remarks of HHJ Charles Harris QC in a case where the Claimant pedestrian was struck by the Defendant's HGV during the hours of darkness on an unlit section of the A4146 dual carriageway.

“15. In motoring cases, it is often suggested on behalf of claims that drivers should never drive faster than the speed which enables them to stop within the limits of their visibility. As Mr. Parry pointed out, this would mean, if followed to its logical conclusion, that a typical vehicle should never travel at more than 27mph with dipped headlights on an unlit road in order to be able to stop within the forty metres or so of visibility likely to be available.

16. It would, in my judgment, be quite unrealistic to conclude that on an unlit two or three lane dual carriageways or indeed good open lane roads that no vehicle should drive at night on dipped beams at more than 27mph lest some unexpected pedestrian might sally into their path.

17. The standard of care expected of a driver is that exercised by a normally prudent competent and capable motorist. There was no evidence to suggest that HGV drivers or other motorists with these characteristics crawl about the dual carriageways of England at night at no more than 27mph. To suggest that they should would be to conflict dramatically both in common sense and common practice.”

48. Mr Jones submitted the court should find the Defendant to be a credible witness who was driving carefully at night within the applicable speed limit and that the Claimant had failed to establish any negligence on his part.
49. Mr Grant submitted that it was an extraordinary situation for a driver to collide head on with a lit object. He submitted that the Defendant made an initial assumption about the lights and then did nothing. He pointed out that the Defendant would have had the lights in view for approximately 8 seconds if travelling at 55 mph or 10 seconds if travelling at 45 mph and yet it was not until the last 3.5 seconds that he appreciated the lights were stationary and on his side of the road.
50. Mr Grant submitted that the Defendant should have realised the lights were not moving, the pool of ambient light from the entrance to Longcross House would have given a reference point from which the lights did not move. He submitted that the cat's eyes would have added to the sense of perspective which would have enabled the Defendant to drive round the Claimant's vehicle. To the extent that the Defendant

was relying upon the fact that his wife's car did not have ABS or power steering he should have modified his driving to take those facts into account. In the circumstances Mr Grant submitted that the Defendant's driving fell below the standard of the reasonable and competent motorist in failing to check his speed, failing to illuminate his main beams if not sure, in failing to brake in a controlled manner and failing to steer round the police car which he could have done if he had been driving at an appropriate speed for the road conditions and had been keeping a proper look out.

51. In support of these propositions Mr Grant made reference to Rules 125 and 126 of the Highway Code and the associated table of stopping distances;

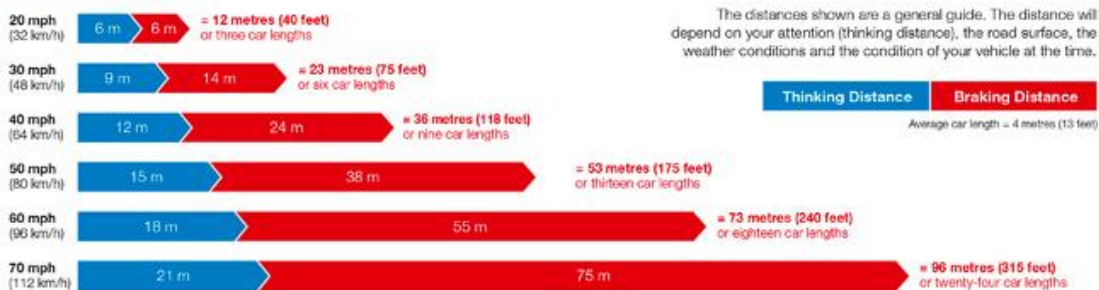
“ Rule 125

The speed limit is the absolute maximum and does not mean it is safe to drive at that speed irrespective of conditions. Driving at speeds too fast for the road and traffic conditions is dangerous. You should always reduce your speed when

- the road layout or condition presents hazards, such as bends”
- sharing the road with pedestrians, cyclists and horse riders, particularly children, and motorcyclists
- weather conditions make it safer to do so
- driving at night as it is more difficult to see other road users.

Rule 126

Typical Stopping Distances



Stopping Distances. Drive at a speed that will allow you to stop well within the distance you can see to be clear.”

52. I approach the Defendant's evidence with a degree of caution. Firstly, these events took place almost four years ago and I make due allowance for the passage of time.

Secondly, his answers under cross examination lacked compulsion. I do not think he was in any way trying to mislead the court, however I have concluded I cannot just uncritically accept his account.

53. I accept the Defendant's evidence that he first became aware of what he thought were oncoming head lights before he cleared the brow of the hill in Longcross Road by Holly Close and came over the brow of the hill. In fact, he must have done as the road is straight at this point. This finding is supported by the fact that his lights are seen to dip before his vehicle came over the brow of the hill from the point of view of the police car's dash cam. I am also prepared to accept that he simply assumed at the point he first became aware of the lights that they belonged to an oncoming vehicle. I cannot however accept that it was reasonable for the Claimant to continue to assume the lights were oncoming headlights right up to the point 3.5 seconds before impact when the police car main beam headlights were activated for the following reasons.
54. The Claimant was familiar with Longcross Road and would have known that there was a bend to his left beyond Longcross House, he would not have had direct vision of lights beyond this point. There was no visible indication that the lights were moving, for example moving shadows. I accept the evidence of Mr Coetzee and find there was a pool of illumination provided by the lighting to the driveway of Longcross House and the lights could not have moved by reference to this point. There were white centre lines and cat's eyes in the road which would give a good sense of perspective and which should have enabled the Claimant to form an accurate view of where the lights were relative to the centre of the road. I found the Defendant's evidence regarding the visibility of cat's eyes unconvincing. The Defendant does not assert that his vision was impaired by the "take down" lights until the police cars main beam was activated 3.5 seconds before the collision and so he should have had a good view of the centreline even with dipped headlights. In this regard I note that the cat's eyes from the police car's point of view were clearly visible with the "take down" lights illuminated. The evidence was that the takedown lights were designed to illuminate the bonnet of the police vehicle and enable the officers to undertake tasks such as paperwork at night, in other words they were angled more downwards rather than forwards. Although I accept the fluorescent markings on the side of the police vehicle would not have been visible to the Defendant, the bonnet of the vehicle was lit up and there was a reflective front number plate.
55. For all these reasons, in my judgment, the Defendant should have appreciated that there was a hazard in his path within seconds of clearing the brow of the hill. The fact that he did not do so leads me to conclude that he was not paying proper attention and/or was travelling too fast to react appropriately.
56. I am unable to come to any firm conclusion as to the speed at which the Claimant was travelling. In the absence of expert evidence, the length of the skid mark is no reliable guide. It seems to me that the following factors are relevant. Longcross Road was an unlit semi-rural road which undulated along its length, and the brow of the hill would have restricted the Defendant's vision of the road ahead until he had cleared it. There were also several driveways and turnings off Longcross Road on the Defendant's route. On this occasion the Defendant was driving his wife's car which he knew did not have ABS brakes or power steering. These are all relevant factors which the Defendant should have taken into account in adjusting his speed. I accept that it would have been unrealistic to expect the Defendant to drive at 27 or 30 mph so he

could stop within the distance of his dipped headlights. I do not accept that it would have been appropriate to have driven over the brow of the hill on Longcross Road at 60 mph or anything like it. The comments of HH Judge Harris in the case of *Walker* were made in the context of an accident on an unlit dual carriageway, Longcross Road was a very different type of road. In my judgement a safe speed at this point of Longcross Road would have been between 40 and 50 mph. The Defendant's evidence was that he had been travelling at 50 to 55 mph and that he eased off the accelerator when he dipped his headlights. If the Defendant had had any doubt about lay ahead of him he should have reduced his speed further or used his full beam.

57. There was a distance of 120 to 130 meters from the brow of the hill to the point of collision. It was agreed between counsel that a car travelling at 50 mph is travelling at 22.34 meters per second and that a car travelling at 40 mph is travelling at 17.8 meters per second. If the Claimant had been travelling between 40 and 50 mph he would have travelled between 44.6 and 35.6 meters before he should, on the basis of my earlier finding, have identified the hazard in front of him by which time he would have been between 75.4 and 84.4 meters from the police car. Even at 55 mph the Claimant should have seen the hazard by the time he was 71 meters from it.
58. In the circumstances and having due regard to the typical stopping distances set out in the Highway Code which include an element of perception reaction time, I conclude that the Defendant should have been able to bring his car to a halt in the space available or alternatively steer round the police vehicle if he had been driving at a reasonable speed for the road conditions. In my judgment the reason the Defendant was unable to steer round the police vehicle was that he applied emergency braking far too late which caused his vehicle to skid in a straight line and into collision with the police car.
59. In the circumstances I am satisfied that either a lack of attention or excess speed or a combination of both on the part of the Defendant are made out as a cause of this accident.
60. I now turn to consider the issue of contributory negligence. Eight specific allegations of contributory negligence were set out at paragraphs 9 (a) to (g) of the Defence;
 - i) Parking the police vehicle on Longcross Road.
 - ii) Failing to pull onto the driveway of Longcross House.
 - iii) Parking the vehicle on the wrong side of Longcross Road.
 - iv) Parking the vehicle straight on as opposed to at an angle.
 - v) Failing to illuminate the headlights, the sidelights and the blue emergency lights.
 - vi) Turning off the headlights side lights and blue emergency lights.
 - vii) Failing to turn on the hazard lights.
 - viii) Turning on the roof lights.

61. On behalf of the Claimant Mr Grant submitted that none of the particulars of negligence stood up to scrutiny with the exception of those relating to the side lights and possibly the hazard lights. He submitted that the court should not make a finding of contributory negligence as the use of side lights or hazard lights could have had no causative potency. Alternatively, he submitted only a small percentage of contributory negligence should be attributed to the Claimant.
62. In support of his submission Mr Grant referred to two cases. In *Tompkins v Royal Mail Group plc* [2005] EWHC 1902 the defendant unhitched his trailer from his vehicle and left it unlit and on double yellow lines. At 4am, the claimant drove his vehicle into the trailer. It was held that the risk of a driver colliding with the trailer was small, having regard to the fact that it was positioned close to a lit street light, however this small risk could have been avoided or reduced even further by the defendant. The defendant was held to be 35% contributory negligent on the basis that the defendant had deliberately and unnecessarily left the trailer in that location. However, Judge Eccles QC noted that if the defendant had left his unlit trailer in that location in an emergency, the defendant would only have been 25% contributorily negligent. In *Hannam v Man* [1984] RTR 252, the claimant was riding motorbike behind a moving car which indicated that it was moving right. The claimant decided to overtake on the nearside. However, the car had pulled out to avoid the defendant's car which was parked unlit on the nearside and the claimant collided with the defendant's car. The claimant was injured. The judge found that had the defendant's car been properly lit, the claimant, who ought to have been keeping a look out might have seen it. The Defendant was found to be 25% liable.
63. Mr Grant submitted that in both the case of *Hannam* and *Tompkins* the stationary unlit vehicle was unlit and that in the present case the Claimant's vehicle was lit by the "take down" lights and driveway lighting so that any contributory negligence on the part of the claimant should be less than 25%.
64. Mr Jones submitted that the percentage of contributory negligence should be high. He relied on three matters. Firstly, that but for the police exemption the Claimant would have committed an offence in parking on the opposite carriageway at night. Secondly, that if the Claimant had left the headlights and blue lights or hazard lights illuminated the collision would not have occurred. Thirdly, that the police investigation had found the Claimant blameworthy.
65. Mr Jones cautioned against relying on the facts of cases which were not similar to those in the present case. He submitted that the Claimant had created the danger which caused the accident and therefore the apportionment should be in the Defendant's favour.
66. I do not think that the Claimant's decision to stop her vehicle and pull over can be criticised. I was impressed by the Claimant's evidence. She struck me as an experienced and careful police driver who had given consideration to the safety of both oncoming traffic and the pedestrians she wished to talk to. I accept the use of blue lights was a matter of discretion and her decision to switch them off was justified in the circumstances. The Claimant switched off her vehicle's main beams to avoid dazzling the first oncoming vehicle which pulled in front of her. When the Defendant approached she attempted to do the same. I accept she made an error and turned off her side lights as well as headlights. I accept she only realised that she had done this

when she saw the information from the incident data recorder and that she did not intend to mislead the court in the pleading of her claim.

67. With the benefit of hindsight, it may well have been better for the Claimant to turn on her hazard lights, however I accept her evidence that she did not intend to be alongside the driveway for long and assumed the vehicle to be adequately lit. This assumption may have been re-enforced by the fact that the first vehicle to approach pulled in. I do not think it would have been appropriate for the Claimant to place her vehicle at an angle across the road for the same reason.
68. So, in my judgment, the Claimant must bear responsibility for accidentally turning off her side lights on the Defendant's approach.
69. I do not think that the Claimant's decision to use the "takedown" lights can be criticised. I accept the general point made by Gary Wright that there could be a potential for these lights to mislead an oncoming vehicle at night. But I must consider the actual circumstances and the reason for their use in all the circumstances of this case.
70. I am grateful to counsel for their citation of case law in relation to appropriate apportionment of contributory negligence. Ultimately such cases can only provide general assistance. Each case will turn on its own facts and the judge's assessment of the causal potency of the negligence found to exist. In my judgment the Claimant's failure to illuminate the side lights contributed to the Defendant's initial and wrong assumption that he was faced with oncoming headlights. Had the Claimant's side lights been illuminated the Defendant may well have been alerted at an earlier point to the presence of the police vehicle in front of him. Taking full account of the position of the Claimant's vehicle I would assess the level of contributory negligence at 30%.
71. I would be grateful if counsel could agree the consequential order and any further directions required in advance of the handing down of this judgment.