

**IN THE HIGH COURT OF JUSTICE  
MANCHESTER DISTRICT REGISTRY  
QUEENS BENCH DIVISION**

Manchester Civil Justice Centre,  
1 Bridge Street West, Manchester M60 9DJ

Date: 18 November 2020

**Before:**

**HIS HONOUR JUDGE STEPHEN DAVIES  
SITTING AS A JUDGE OF THE HIGH COURT**

**Between:**

**ALLAN JOHN ROBINSON**

**Claimant**

**- and -**

**(1) DEAN JASON BARKER  
(2) MARKERSTUDY INSURANCE  
SERVICES LIMITED**

**Defendants**

**Michael Smith** (instructed by **Potter Rees Dolan Solicitors, Manchester**) for the **Claimant**

**Christian Taylor** (instructed by **Winn Solicitors, Newcastle upon Tyne**) for the **First Defendant**

**James Sullivan** (instructed by **Ellisons Solicitors, Colchester**, for the **Second Defendant**

Hearing dates: 23, 24 October 2020

Written closing submissions: 29 October and 4 November 2020

Draft judgment circulated: 6 November 2020

**APPROVED JUDGMENT**

This judgment was handed down remotely by circulation to the parties' representatives by email. It will also be released for publication on BAILII and other websites. The date and time for hand-down is deemed to be 10 a.m. on Wednesday 18 November 2020.

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

**His Honour Judge Stephen Davies**

**His Honour Judge Stephen Davies:**

1. This is my judgment on the issues of liability arising out of a road traffic collision which occurred on 15th December 2017 on Lancashire Hill, Stockport. The claimant was a self-employed taxi driver driving a VW Passat which came into collision with a VW Polo being driven by the first defendant. The claimant suffered an extradural haematoma which led to seizures two days after the accident and which has left him with physical and cognitive impairments and a risk of post-traumatic epilepsy. The first defendant counterclaims for damages for soft tissue injuries and hire charges. The second defendant is the first defendant's insurer who is joined as a party solely on that basis. No issue arises as between the defendants and in this judgment I shall refer to the first defendant simply as the defendant.
2. The case was tried over two days as a hybrid hearing during which I heard evidence from the following witnesses: (a) PC Blakey, the attending police officer; (b) the claimant; (c) Alan Barnett, the owner of the taxi firm for which the claimant worked at the time; (d) Amy Wallworth, put forward by the claimant as an independent witness; (e) the defendant; (f) Mark Hargreaves, the claimant's accident reconstruction expert; and (g) Dr Gary Coley, the defendants' accident reconstruction expert.
3. Having concluded the evidence but, due principally to technical difficulties, having run out of time for closing submissions I adjourned for written closing submissions. I am grateful to all counsel for their clear and persuasive written submissions.
4. There is a stark conflict as to the circumstances of the collision. The claimant's case is that he was travelling south on Lancashire Hill when the Polo came out of Gordon Street, failed to give way at the junction, and drove into heavy collision with the offside front corner of his Passat, causing the two cars to spin in the road together and causing the Passat's front offside wheel to shear off before the two cars separated. The defendant's case, in contrast, is that he was driving south on Lancashire Hill and saw the Passat parked up on the side of the road ahead of him and to his nearside. The Passat was showing its hazard warning lights. As the defendant approached the Passat he moved to the centre of the road to overtake it but, as he did so and when he was 2 or 3 car lengths away, the claimant began to execute what looked like a U-turn in the road, cutting into the defendant's path and leading to the collision.
5. It is apparent that if the claimant's version of events is correct then the defendant is responsible for the collision whereas if the defendant's version is accepted then the claimant is responsible. Whilst contributory negligence has been pleaded the accident reconstruction experts agree that on the competing versions of events there is little or nothing which the other party could have done to avoid

the collision and, hence, that issue did not feature in the oral evidence or in submissions and I am satisfied that it does not arise.

6. In summary, for reasons which I shall explain I find that neither the claimant nor the defendant was a particularly reliable witness. Whilst I accept that Ms Wallworth was an honest and genuine witness, her evidence is inconsistent in a number of respects with the agreed accident reconstruction expert evidence and inconsistent in a number of further respects with the expert evidence of Dr Coley. Thus, the most significant issue which I shall have to resolve in this judgment is whether or not I can treat Ms Wallworth's evidence as reliable in its essential respects, bearing in mind that I am not bound to prefer the expert evidence, agreed or otherwise, over the factual evidence if I regard it as honest and reliable: see for example *Armstrong & O'Connor v First York* [2005] EWCA Civ 277.

*The site of the collision*

7. Lancashire Hill is a well-used road leading south from a large roundabout in Reddish to the centre of Stockport. At the approximate point of the collision the road is 13 m wide and has one lane for traffic travelling south into Stockport and two lanes for traffic travelling north (one of which is a bus lane). The road has a steady downhill gradient southwards into Stockport. On the east side of the road there are large blocks of residential flats, in which Ms Wallworth then lived. Opposite the flats, Gordon Street joins Lancashire Hill at an acute angle. There are give way lines at the junction of Gordon Street with traffic on Lancashire Hill having priority. If a car were to turn out of Gordon Street onto Lancashire Hill with the intention of travelling south into Stockport it would need to turn through an angle of 135°. The view northwards of cars coming out of Gordon Street and the view available to cars travelling south on Lancashire Hill of cars on Gordon Street is limited to an extent by buildings on the north side of Gordon Street. South of the junction with Gordon Street are two bus stops, with road markings indicating the bus stopping zones, one on each side of the road almost opposite each other.
8. The collision occurred at around 8.00 pm. The roads were dry and well-illuminated by lighting.

*The evidence*

9. The evidence of the claimant, corroborated to an extent by Mr Barnett from his business records and witness evidence, is that he was driving back to Stockport town centre, having dropped off a fare in Reddish and picked up a takeaway burger. He had no further fare booked and was hoping to be given another fare in Stockport town centre where at that time he believed that the fares were to be found. It is common ground that this account would involve his driving straight down Lancashire Hill. However, it is not impossible that he might have decided to pull up on the side of the road for some

reason, perhaps to eat his burger, or to have changed his mind and decided that he stood a better chance of obtaining a fare if he made a U turn to drive back up towards Reddish.

10. The evidence of the defendant, uncorroborated other than by a hearsay witness statement from a Ms Parkinson to which I refer later, is that he had been with friends at a pub in Reddish, to which he had driven, when he agreed to pick up a friend from Stockport town centre, and was driving down Lancashire Hill to do so when the collision happened. It is common ground that on that basis his route would have led down Lancashire Hill, whereas his driving down Gordon Street to turn right onto Lancashire Hill would have involved a longer and pointless detour from the pub. There is however a curiosity which is that there is evidence from a number of sources which records a man exiting from the Polo's front passenger seat after the collision and running off, whereas the defendant insists that he was alone in the car. Mr Smith submits that, whatever the precise circumstances behind this, it provides at least some basis as to why the defendant might have been taking what, on his account, would have been a very unlikely route to take.
11. There is no CCTV evidence which assists. Moreover, although PC Blakey did attend very shortly after the collision, it is evident that he was unaware that there were two very different versions of the collision and also unaware that anyone had suffered a serious injury. Accordingly, he did not see any need at the time to undertake a detailed collision investigation, whether by inspecting and recording the physical evidence from the site or by interviewing the parties or any available witnesses, including Ms Wallworth. He did not produce a collision report until some months afterwards, once he had been formally notified of the claimant's serious injuries. He took some photographs of the damaged vehicles and made some entries in his notebook but that is the only contemporaneous evidence which he can produce.
12. Fortunately, Ms Wallworth did take some photographs from her 9<sup>th</sup> floor flat which have provided the accident reconstruction experts with valuable material from which to work. However, as Dr Coley agreed in cross-examination by Mr Smith, nonetheless the experts do not have such a full picture as they would have had if there had been a collision investigation at the time by a qualified police accident investigator. The consequence, as Mr Smith put it and as he agreed, was that in such circumstances they could not be sure that the absence of evidence (particularly of any material on the road to the north of the material shown on Ms Wallworth's photographs) meant that there was positive evidence of the absence of what might be important relevant material.
13. The physical evidence from the photographs is summarised by the accident reconstruction experts in their helpful joint statement as follows:

“4.6 There was a patch of oil or other fluid from the vehicles, deposited within the northbound lane and close [to] the centre white line. There was a visible trail of fluid from the roadside deposit leading to the front offside of the VW Passat at its post collision resting position.

4.7 The front offside wheel and suspension assembly of the VW Passat had become detached during the collision and had been deposited within the southbound lane.

4.8 The VW Passat came to rest facing northwards within the northbound bus stop, approximately 18.5 metres south of the fluid deposit.

4.9 The VW Polo came to rest facing eastwards across the southbound lane, approximately 16 metres south of the fluid deposit.

4.10 There was a further trail of fluid, initially going in a similar direction to that from the VW Passat, but which then curved across the road towards the rest position of the VW Polo.

4.11 There was no physical evidence of either vehicle having braked prior to impact, although since both were equipped with ABS, we would not expect there to have been any tyre marks from heavy or emergency braking.

...

VW Passat:

7.1 The main area of impact was located around the front offside wing and wheel area.

7.2 The offside front wing was forced inwards and forwards. The front offside bumper was pushed forwards, the front offside wheel assembly broken away and the offside curtain airbag deployed.

VW Polo:

7.3 The main area of impact was located around the nearside front area.

7.4 The nearside front wing was forced inwards and rearwards. The nearside front corner of the bonnet was displaced and both front airbags had deployed.”

14. Furthermore, since the police force has been able to produce the records of various 999 calls made in connection with the collision, there is some valuable material as to what the defendant, Ms Parkinson and others said to the emergency operator in the immediate aftermath of the collision.

15. It is by reference to the totality of the evidence that I must make my decision and that is what I have attempted to do to the civil standard of the balance of probabilities.

16. I have already (see paragraph 6 above) observed that I find neither the claimant nor the defendant very reliable witnesses. My reasons can be summarised as follows.

*The claimant*

17. So far as the claimant is concerned the key part of his witness statement, made within weeks of the collision, was that “whilst travelling at approximately 20 - 25 mph, I was approaching the junction with Gordon Street on my right side, when I saw a white car pull out of the junction at speed and drive into the offside front of my vehicle. I had no time to react”.
18. I am satisfied that it is inherently unlikely that the claimant could have been travelling as slowly as 20 mph. On his case he was driving down a long, straight, wide, well-illuminated road with light traffic at that time. I am satisfied that there was no slow moving traffic in front of him to slow him down. Although when pressed in cross-examination about his speed the claimant volunteered that there might have been a vehicle in front of him, I am satisfied this was pure conjecture rather than any genuine recollection, and that he had no other particular reason to dawdle along. It would have been perfectly reasonable and normal for drivers to have been travelling at around the maximum speed limit of 30 mph in such circumstances. I am prepared to accept that he might have been travelling at 25 mph but there is no obvious reason which I can discern why he should have been travelling at any lesser speed.
19. Nor was I convinced that he had a clear recollection either of seeing the Polo actually emerge from Gordon Street or of seeing it for any appreciable time before the moment of impact. It seemed to me that his recollection was of seeing it for only a split second coming from his offside before the moment of collision. Such a recollection is consistent with the collision happening as suggested by the defendant or, I accept, with the collision happening as alleged by the claimant, assuming that the defendant was travelling at significant speed and either coming straight out of the junction or trying but failing to make any effective right turn into Lancashire Hill to travel south.
20. It is however inconsistent in my view either with the defendant travelling at a reasonable speed out of the junction or making an effective right turn into Lancashire Hill. On the claimant’s version of events he would, I accept, principally have been looking directly down Lancashire Hill, with no particular reason to look into Gordon Street. Nonetheless, whilst his view into Gordon Street was obstructed to some extent by the buildings on its north side he would still have had some useful vision down Gordon Street. If – which I appreciate is not his case or his evidence - the Polo had been travelling at anything like a normal speed along Gordon Street and had slowed down at the junction before turning right in a controlled manner into the path of his Passat, he would have been able to see its approach for some time and been able to react as it emerged onto Lancashire Hill and taken at least some evasive action. On his evidence he had no time to react or to take any evasive action.
21. For reasons which I shall explain the experts are agreed that if the accident happened as alleged by the claimant the Polo must have been travelling faster than the Passat. It follows that since I am satisfied that the Passat was driving at no less than 25 mph then the Polo must have been travelling faster than

25 mph. Whilst that finding causes the claimant's case another difficulty, to which I shall refer later, it might at least explain why on his version of events the claimant did not see the Polo much if at all before the impact.

22. The accident reconstruction experts also agree that due to the respective damage to the vehicles the Polo could not have travelled straight out of the junction and into full side on collision with the Passat. It follows that the Polo must have been travelling diagonally south east along Lancashire Hill at the time of impact. Yet if that were so it would have been in the claimant's peripheral line of vision for a significant time in which the claimant would have been able to see him and take at least some evasive action.
23. Although the claimant said, and I accept, that he was dazed and confused after the accident, it is apparent from the lack of any entry in PC Blakey's notebook that he did not give his version of events to the police officer at the scene. That is intrinsically surprising if the collision had occurred as he described it, especially when he had said in his witness statement that he had seen a man run away from the Polo and he had remained at the site long enough to be breathalysed and see the defendant also breathalysed and taken off to the police station to have a further test<sup>1</sup>. He agreed that he did not call 999 himself and nor did he contact his taxi office to explain what had happened. He was unable to give any explanation which I found convincing for his inaction in these respects after the collision. Indeed, in his witness statement he said he told the police what had happened whereas in cross-examination he had said that he had not done so.
24. Contrary to the defendant's further submission I accept that it is not necessarily surprising that he did not take any steps in the days or weeks after the collision to contact the police to give his account, especially since it appears that there was some contact between his wife and the police at this time, and I also accept that when he was later asked to complete a questionnaire he gave an account which was consistent with the account in his witness statement which he had already made.
25. He did say in cross-examination that he had difficulty in remembering things after the accident, which was consistent with the medical records of his post-accident treatment. Whilst there is no medical evidence of his having suffered from post-traumatic amnesia it seems to me that for whatever reason his recollection of events now is far from clear. I appreciate that his witness statement was made within a few weeks of the collision, when his recollection might have been expected to be clearer, but nonetheless the flaws and inconsistencies in his evidence, taken overall and weighed against the other evidence, including the expert evidence, are such as to prevent me from viewing his evidence as

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<sup>1</sup> The defendant passed the further test and the toxicology evidence demonstrates on the balance of probabilities that the defendant had not consumed excess alcohol before the collision,

reliable. It is a case where the claimant, having suffered serious injuries and having instructed solicitors soon after the accident, having come across their details whilst in hospital, may have come to convince himself within a short period that the collision happened without fault on his part and reconstructed his recollection accordingly.

*The defendant*

26. In my view the defendant's version of events, conduct post-collision and overall account did not suffer from the same deficiencies as did the claimant but there is one significant respect in which I am unable to accept his evidence and some other matters which also cause me to conclude that he is not a reliable witness.
27. The significant issue concerns his denial that anyone else was present in the Polo. This is contradicted not only by the claimant, but by Ms Wallworth and by the 999 call records which show that even Ms Parkinson, as the witness on whose evidence he had relied, also referred to this, as did the calls from a Mr Hardy and a Ms Lana. Although it would have been open to the defendant to call evidence from one or more of the friends who were with him in the pub to confirm that he left on his own to collect the friend from Stockport town centre he did not do so, even though the claimant's solicitors had declined to admit this fact after his solicitors had served a notice to admit directed solely to this point. He appeared nervous and evasive when he was being cross-examined on this point. I am satisfied he was lying. Whilst a lie on a collateral matter should not be treated as determinative of truth on other directly relevant matters, if – as I find – there was a passenger who ran off after the accident, that does tend to make it at least a little more likely that the defendant might have been driving down Gordon Street at that time. It may also – although this is even more speculative - provide some explanation as to why the defendant was, on the claimant's case, engaged in some really quite dangerous driving.
28. Nonetheless, it is true that the defendant did give a consistent version of events both to the 999 operator and to PC Blakey at the scene. As the defendants' counsel submit, if the defendant knew that this was untrue from start to finish, for him to concoct such an account at short notice (and at a time when he would not have known whether anyone else had witnessed the collision) would make him an extremely quick-witted, shameless and skilful liar. Whilst that may be what he is, it was not my impression of him.
29. It is also the case that there was one obvious factual error in his account. He did say in his witness statement that the Passat was pulled over to the side of the road at the bus stop, when it is clear from the accident reconstruction expert evidence that this cannot have been the case, as on any view the

collision occurred further to the north and closer to the junction with Gordon Street. It was also PC Blakey's recollection that the defendant had told him that he had seen the Passat pull into the bus stop area. However, since that appeared for the first time in PC Blakey's much later witness statement and does not appear in the contemporaneous evidence I am inclined to dismiss that as unreliable recollection on PC Blakey's part.

30. It is also relevant that the fluid deposit is on the northern side of the road. If that does represent the collision point, as Dr Coley believes, then it follows that for the defendant to have been unable to take any effective evasive action the Passat must have started a U-turn type manoeuvre without looking or indicating at a point when the Polo was plainly there to be seen and it was obviously unsafe to do so. Whilst of course collisions can and do happen in this way, it does involve a relatively high degree of culpability from an experienced taxi driver with a good driving record who had no obvious reason to do a U-turn at that place at that time.
31. Furthermore, as Mr Hargreaves said, whilst not inconceivable it is perhaps more likely that the point of impact would have been more front on along the offside side of the Passat than to its front offside had the accident occurred as described by the defendant with the claimant performing a definite U turn manoeuvre rather than simply pulling out to carry on driving south along Lancashire Hill.
32. Although in opening submissions Mr Sullivan submitted that the defendant's account was supported by Ms Parkinson, her account of events in her completed questionnaire, to the effect that she saw the collision happen as described by the defendant whilst she was at the bus stop, is fundamentally inconsistent with her 999 call where she said in clear terms that she was in her flat and did not actually see the collision only the immediate aftermath. It also appears from the defendant's own evidence in cross-examination that he has been in contact with her, so that the statement in the defendant's Civil Evidence Act notice that she is unable to be contacted is incorrect. It follows that I place no reliance on her questionnaire. I am not persuaded however that I could properly find that the defendant already knew her and dishonestly procured her to provide a statement which both he and she knew was untrue; there is an insufficient factual basis for drawing such a serious conclusion.
33. Whilst I was less impressed by the other criticisms made by Mr Smith, for example I did not find it particularly surprising that the defendant should drive to the pub and see how the evening developed before deciding whether to drive on or leave it there, nonetheless overall I do not consider that the defendant's evidence is so significantly more reliable than that of the claimant that I can confidently prefer his evidence to that of the claimant.
34. It follows that the other evidence assumes considerable importance and it is that to which I now turn.

*Ms Wallworth*

35. The most contemporaneous statement from Ms Wallworth is her witness statement which she made on 19 January 2018. She did not call 999 and nor did she give an account of the collision to PC Blakey at the scene, although she had said in her witness statement that she had. She was cross-examined as to why she did not do either. I am prepared to accept that she would not necessarily have thought she needed to call 999 from her flat since, as she said, she would not have known at that point if there were injuries and since it is apparent from her photographs and the other evidence that there were others already on the scene and that the police also attended quickly. It is however curious that she did not at least tell PC Blakey the gist of what she had seen, especially when she did tell him that she had seen – as his pocket book records - “two lads out white car”. Whilst the force of this point is ameliorated to some extent because she did give her details to PC Blakey at the scene, it is still odd that she did report that she had seen someone leave the Polo but not what – on her evidence – that she had also seen some extremely bad driving which had caused a serious collision. This provides some support for a conclusion that she did not witness the collision itself and that her subsequent evidence to the contrary is reconstruction. Alternatively, it is possible, as she suggested, that she did not want to interrupt PC Blakey’s investigations at the scene, especially at a time when he was speaking to the defendant, by going into the detail of events.
36. The essential gist of her evidence appears from paragraphs 6, 7 and 8 of her witness statement and is as follows.
- “6. On 15 December 2017, I was in my flat, walking around whilst speaking to someone on my mobile telephone. As I was talking, I was leaning on the windowsill and looking outside onto Lancashire Hill. I then saw a black taxi car approaching from my right, travelling down Lancashire Hill, in an Easterly direction, in the lane closest to my flat. I then saw a white car travelling at speed, along Gordon Street, towards the junction where it meets Lancashire Hill. The white vehicle looked to be travelling at around 40mph. I can see this junction clearly from my flat window. The white car didn't stop or slow down as it approached the junction of Lancashire Hill and just drove straight across the road and into the black car. I then shouted "Oh my god!" and told my friend that I had to go and ended the call.
7. As I continued to look out of the window, as the white car hit the black taxi, the two vehicles became side by side, nose to nose, spinning around in an anti-clockwise direction. The vehicles then separated and the black taxi ended up on the opposite side of the road, facing the opposite direction they had come from (North), stopping next to the bus stop opposite from my flat. The taxi wasn't exactly parallel to the bus stop; the front driver side was sticking out into the road a

little. The white car came to a halt across both lanes of traffic, with its nose pointing towards my flat and another bus stop on the opposite side of the road.

8. As the taxi spun, one of its wheels blew off. The sound of the collision was very loud.”
37. Her evidence remained essentially unchanged in cross-examination. I was satisfied that she would have had a good view of the scene from her flat, including a good view along Gordon Street which faced her as she stood at her window, and that she would have been able to see the Polo approach Lancashire Hill through the line of (bare of leaves) trees which ran along the southerly side of Gordon Street. She confirmed that the Polo did not stop or slow down and drove straight into Lancashire Hill and into the Passat at a speed which she said was more like 40 – 45 mph than 35 – 40 mph. She did not see any attempt by the driver to turn one way or the other into Lancashire Hill. Although in re-examination she said that it was her impression that the Polo was going straight and that she could not remember him turning, rather than being definite about either of these things, I have no doubt that until Mr Smith skilfully introduced this element of doubt into her recollection – for reasons which will become apparent – she had expressed no real doubt in her account. The same is true of his equally adept success in persuading her to retreat somewhat so that she stated that her evidence that the Polo’s speed was around 40mph was “her perspective as a driver” and that all that she could really say was that she was “100% sure he was speeding over 30mph”.
38. Right at the end of her cross-examination it was suggested to her that the first awareness of the collision was of hearing a bang. She seemed to agree, saying “Yes, I saw it from the window – when the noise occurred” When it was then put to her that she didn’t actually see the collision she said that she did. I will have to determine on the totality of the evidence whether in fact she did see the collision and has essentially reconstructed it in her own mind, possibly out of sympathy for the claimant, or whether that was merely a slip of the tongue or a misunderstanding of the question.
39. An unexplained feature of the case was how she had been traced so as to be able to make a witness statement to the claimant’s solicitors in January 2018. She had given her details to PC Blakey but she did not on her account also give them to the claimant, although she said that she did recognise him as a local taxi driver who lived and worked in the same area as she had lived all her life and that she did speak to him at the scene. Both the claimant and Ms Wallworth said that they had not seen or spoken to each other after the collision until much later, when she happened to see him at a bus stop and stopped to ask him whether he was alright. If that is right it begs the question how she was put in contact with the claimant’s solicitors.
40. Although there was a faint suggestion in cross-examination and in closing submissions that the claimant and Ms Wallworth knew each other before the collision and that he had contacted her shortly

after the accident to persuade her to give dishonest evidence for him, I do not find that suggestion at all credible. It seems more likely to me either that she did give him or the taxi firm her contact details in case he needed them and he passed them to his solicitors or, possibly, that after his wife had made contact with PC Blakey his solicitors were able to speak to him and obtain them. Both the claimant and Ms Wallworth were palpably honest in explaining the accidental meeting at the bus stop. Neither suggested that it had happened before she had given a statement so as to provide an explanation as to how Ms Wallworth had come to give her statement to the claimant's solicitors so soon after the collision. There is nowhere near sufficient evidence for me to make any finding of collusion. It is, however, possible to conclude from the evidence albeit – I accept – it is surmise, that if Ms Wallworth had heard the impact and saw the immediate aftermath of the collision and concluded, wrongly, that the Polo must have come at speed out of Gordon Street and caused the collision, she might have mentioned this to the claimant at the scene and that this sowed the germ of this version of events in his own mind, dazed and confused as he was at the time.

41. It was suggested that her explanations in cross-examination of various inconsistencies in her evidence were indicative of partiality. In my judgment they indicated no more than the difficulty which most normal witnesses to a road traffic collision have when being probed in cross-examination some years after the event at a time when they have already convinced themselves as to the essentials of what they have seen.
42. In the circumstances, I have no doubt that she is a genuine witness and not a hired gun witness. However, the key question I must determine is whether she is a reliable witness, which is where the accident reconstruction expert evidence is of considerable importance.

*The importance of the accident reconstruction expert evidence*

43. As I have already intimated, the agreed accident reconstruction expert evidence demonstrates that Ms Wallworth's account cannot be accepted as wholly accurate in some important details. Specifically, the accident reconstruction experts agree that the Polo could not have travelled straight out of the junction and continued laterally into full side on collision with the Passat. They agree [9.6] that "when the two vehicles collided, there were both travelling predominantly along the line of Lancashire Hill (to the south)". This is due to the clear evidence of both vehicles moving post-impact for some distance down Lancashire Hill beyond the fluid patch (which the experts agree is either the point of impact (Dr Coley) or a point to the south of the point of impact (Mr Hargreaves)). Both the direction and extent of this movement is plainly inconsistent, as Mr Hargreaves accepted in cross-examination, with the Polo being driven straight out of Gordon Street into full sideways on collision with the Passat.

44. Moreover, Dr Coley having undertaken a detailed consideration in his report as to the maximum speed which the Polo could have been travelling if it was to take the 135° angle turn south from Gordon Street into Lancashire Hill, the experts agreed at [8.2] that “the speed of the VW Polo estimated by Amy Wallworth is high when considering the angle through which the vehicle would need to turn to enter Lancashire Hill and travel south. Based on circular turning paths from the junction, it is unlikely the VW Polo could have turned at a speed of much more than 20 mph, and still have been able to successfully turn to travel south along Lancashire Hill”.
45. It follows that the experts are agreed that if Ms Wallworth’s evidence was and remained, as it did in my view despite the retreat in re-examination, that the Polo drove straight into the Passat without turning, at a speed of around 40mph, that account is inconsistent with the physical evidence of the post collision location of the vehicles and the turning path of the Polo at such a high speed.
46. It follows in my judgment that Ms Wallworth cannot be accepted as a reliable witness in the sense that she has ever had an accurate recollection as to the precise circumstances of the collision. It is true that in a case such as this where, if Ms Wallworth saw anything, she can only have seen either the collision happening essentially as alleged by the claimant or as alleged by the defendant, inaccuracies in recollection as to the precise circumstances are of less significance than the question as to whether or not her evidence as a whole is reliable.
47. Nonetheless, the fact that her recollection was of the Polo being driven at high speed out of the minor road direct into collision with the Passat without any turning manoeuvre to travel north or south along the major road is an inherently unlikely account which has been shown to be unreliable and that must feed into my overall assessment of her credibility.
48. On this essential point it is important that Mr Hargreaves qualified what he agreed at [8.2] at [10.2] where he said that he was “of the opinion that the VW Polo emerged from Gordon Street at a speed less than that identified by Amy Wallworth but at a higher speed than that of 20 to 25 mph described by Mr Robinson. He is of the opinion that vehicles do not follow a constant radius when emerging from junctions with a tendency to understeer and follow a parabolic curve or ellipse. He believes that it would have been possible for the VW Polo to negotiate the junction at a higher speed than that identified by Dr Coley and Mr Barker not be in full control of the vehicle, which resulted in the collision with the southbound VW Passat”.
49. This is a very important qualification, because of the experts’ agreement at [8.4] that “the speed of the VW Polo along the road at the time of impact was likely to be greater than the speed of the VW Passat. This is because we agree that structures on the VW Passat were forced forwards during the collision, which is the result of the VW Polo travelling faster”.

50. It will readily be appreciated that the experts' agreement as to the respective pre-impact speeds of the vehicles creates a real difficulty for the claimant's case. If the Passat was travelling at a speed of 20 to 25 mph as the claimant had said (and even more so if, as I have found, that it was travelling at a speed of at least 25 mph) then if it is also unlikely that the Polo could have turned at a speed significantly in excess of 20 mph and still have been able successfully to turn to travel south along Lancashire Hill. It thus becomes very difficult to see how the accident could have happened in the way postulated by the claimant and still be consistent with the post-impact damage to both vehicles. It is therefore apparent that Mr Hargreaves' "qualification" is of key importance for the credibility of the claimant's case. It is also not surprising, therefore, that both experts were subject to close cross-examination on this aspect of the evidence.
51. I should begin by making clear that in my judgment both experts were fully qualified to give accident reconstruction expert evidence and were endeavouring to comply with their duty to the court as independent experts. Mr Hargreaves' qualifications and approach are more based on practical experience whereas Dr Coley's qualifications and approach are more based on his research as an engineer into the science of road traffic collisions. In this case, for reasons which I shall give, I found Dr Coley's evidence more persuasive on the issues where they disagreed.

*Mr Hargreaves*

52. An initial criticism made by Mr Sullivan of Mr Hargreaves in cross-examination was that he had taken it in his report that the claimant's case was that the Polo had attempted to turn right into Lancashire Hill, whereas that was not either the claimant's pleaded case or evidence or his supporting evidence from Ms Wallworth (as explained above). It was clearly the case that Mr Hargreaves had assumed, for the reasons given above, that the accident as postulated by the claimant was only compatible with the defendant attempting to turn right into Lancashire Hill. By failing to identify in his report this discrepancy between the claimant's case and evidence and this conclusion based on the physical evidence and his expert opinion Mr Hargreaves had failed in his duty as an expert.
53. Mr Hargreaves to his credit readily acknowledged and apologised when this point was put to him, but it did in my view indicate that his approach was to attempt to reconcile the physical evidence and expert conclusions flowing from that evidence with the claimant's case and evidence, rather than fully to acknowledge and explore the conflicts between the two. This point was exemplified in the next area of cross-examination, where Mr Hargreaves explained that the fluid deposit would not represent the collision point if the fluids (which, it was common ground, must have come in whole or at least in part from the Passat, given the fluid trail leading from the fluid deposit to the Passat) were initially prevented from being ejected from the Passat due to the two vehicles being joined and compressed

together as they span counter-clockwise immediately after the collision. However: (a) this is essentially no more than speculation on his part, with no actual physical evidence to support it; (b) it is likely that the cars continued to move together for a time even after the fluid deposit, so that his opinion depended upon the continued movement being not due to their being joined and compressed after that point, which is also essentially no more than speculation.

54. The significance of the point is that since the fluid line leading from the fluid deposit to the Passat ran directly south within the northerly carriageway, that direction of travel was inconsistent with the likely effect of the Polo striking the Passat at speed to its front offside at the point of the fluid deposit, which would be for the initial movement of the Passat to be to its nearside. Although Mr Hargreaves made the point, which Dr Coley acknowledged, that the precise direction and extent of such movement would depend on the particular circumstances of the impact, which could never be precisely identified after the event even by the most painstaking of investigations, nonetheless one would expect such a movement to occur had the collision happened as postulated by the claimant. Thus, it suited the claimant's case to postulate a more northerly collision because that allowed for the possibility of the Passat moving to its nearside before coming back to the point of the fluid deposit before travelling to its final resting point. It seemed to me that Mr Hargreaves was willing to promote this as a theory without acknowledging the absence of any actual physical evidence to support it.
55. Indeed it was not until cross-examination that he also acknowledged that this hypothesis was only likely if the Passat had come into contact with something whilst in the southerly carriageway which would have caused it to move back into the northerly carriageway. The obvious contender would be the kerb at the side of the southerly carriageway but there was no evidence to support this hypothesis, whether physical evidence or recollection from any witness.
56. Although Mr Smith cross-examined Dr Coley on the basis that it was entirely feasible that a full investigation would have revealed relevant physical evidence north of the fluid deposit, and whilst Dr Coley properly acknowledged this as a possibility, it nonetheless remain the case that: (a) the photographs do not show any line of fluid leading north from the fluid deposit; (b) there is no other evidence that there was any physical evidence from a collision point north of the fluid deposit; (c) it is difficult to see how a collision point significantly to the north of the fluid deposit would be consistent with the Polo emerging at speed from Gordon Street whilst making a right turning manoeuvre to travel south along Lancashire Hill at the same time; and (d) Mr Hargreaves had not been able to advance any particular reason for thinking that there would have been such evidence - for example whilst reference was made to the plastic light fittings there was no hard evidence to show that these had been detached but were not shown on the photographs. Thus, I regard this possibility as essentially theoretical and

unsupported by hard evidence. Whilst I accept that I must approach the expert evidence with caution based on the absence of a full contemporaneous investigation, this is not a case where in my view the evidence is simply insufficient to allow the experts to reach any clear conclusions.

57. Returning to Mr Hargreaves' "qualification" in relation to the Polo's speed and turning circle, this was not something which he had addressed in his report. He did not disagree with the calculations undertaken or views expressed by Dr Coley in his report as to the correlation between speed and turning circle. Nor, in response to Dr Coley, had he produced his own calculations to demonstrate the effect, according to him, of the Polo travelling at an understeer or in an elliptical manner. He was unable, therefore, to put forward a positive opinion as to the maximum realistic speed which, on this analysis, the Polo could have been travelling out of Gordon Street and still manage to turn south onto Lancashire Hill. He also had to acknowledge that there was no physical evidence (or indeed any evidence, as opposed to assumption) either that the Polo had travelled elliptically or at an understeer. I accept that there is no photographic or other evidence of the area to the north of the fluid deposit in the mouth of the junction with Gordon Street. I also accept that there was no formal collision investigation. However, if one stands back, and assumes that the collision happened at the mouth of the junction of Gordon Street, with the Polo exiting at speed and the defendant trying too late and failing to make a right turn, losing control of the Polo in the process so that it skidded into heavy collision with the Passat at that point, then the likelihood is that the Polo's tyres would have left marks on the road and that there would have been some debris at that point, as well as the noise of skidding tyres before the impact. It would have been a dramatic event.
58. If that is really what happened it is surprising in my view that no-one at all noticed this and informed 999 or PC Blakey or that Ms Wallworth did not take photographs showing this collision point or that PC Blakey did not notice any of this himself. Again, in my view, this tends to indicate that it is no more than a theory put forward on behalf of the claimant to seek to overcome a real difficulty for the claimant's case based upon the hard physical evidence.

*Dr Coley*

59. I have already referred to a number of the concessions which Dr Coley made and repeated in cross-examination as to the limitations of the investigation such that it was not possible to conclude that the available physical evidence represented the entirety of the physical evidence which may have been present immediately after the collision.
60. Dr Coley also accepted that it was not possible to undertake calculations which would establish how much faster the Polo must have been travelling than the Passat at the point of impact. His view in cross-examination, which he had not previously expressed, was that it must have been at least 5 mph

higher to be consistent with the physical evidence and in particular the extent of the movement of the Polo post collision. It is true that this was very much only an estimate. However, it does not seem to me to be unrealistic. After all, if the damage to the two cars could reasonably be consistent with the Polo only travelling 1 or 2 mph faster than the Passat one might have expected the experts to have mentioned this, or least Mr Hargreaves to have noted it, in their joint statement. Thus I accept Dr Coley's view that the differential must have been at least in the region of 5 mph.

61. More generally Dr Coley adopted what I regard as a careful and realistic approach in relation to the likelihood of the competing cases based on the physical evidence and the conclusions which he was able to draw from that evidence. He accepted that the claimant's case was not physically impossible but, in his opinion, the physical evidence was more consistent with the defendant's version of events. His opinion was far more consistent in my view with the physical evidence and did not suffer from the same criticisms as does that of Mr Hargreaves. I thus prefer and adopt his opinions where they differ.

#### *Conclusions*

62. I am unable to place any great weight on the uncorroborated evidence of the claimant or of the defendant.
63. I am satisfied that Ms Wallworth is an honest witness. However, even leaving aside the impact of the expert evidence, her evidence taken in the round is not in my judgment compellingly reliable in its recollection of the details of and surrounding the collision. Again, leaving aside the impact of the expert evidence, I do not consider it implausible on the totality of the evidence that she did not in fact witness the collision and has reconstructed how it happened in a way which – albeit unconsciously – may reflect her general sympathy towards the claimant as a local taxi-driver already known to her and her general suspicion that the defendant and his passenger behaved in a way indicative of potential criminality (the passenger running off and the driver failing a roadside breathalyser test). Nor do I consider it implausible on the totality of the evidence that there was sufficient innocent contact at an early stage between the claimant and Ms Wallworth for the reconstructed explanation of one to cause or to confirm the reconstructed explanation of the other.
64. Whilst the views expressed by the experts in their joint statement and the views expressed by Dr Coley in his evidence as to the factors militating against the claimant's version of events cannot be put forward as definitive, and must be subject to proper judicial caution, nonetheless taken as a whole they provide in my judgment powerful support for the proposition that it is unlikely to a significant degree that the collision can have happened as postulated by the claimant.
65. In all of the circumstances I am satisfied on the balance of probabilities that the collision occurred as alleged by the defendant and not as alleged by the claimant.

**High Court Approved Judgment:**

66. Accordingly, whilst as any judge would I have very considerable sympathy for the claimant, who appears hitherto to have had an unblemished driving record and who has suffered significant injuries in this collision with very unfortunate consequences, I am unable to do anything other than dismiss the claim and enter judgment on the counterclaim for an amount to be decided by the court.