



Neutral Citation Number: [2021] EWHC 536 (QB)

Case No: QB-2019-004172

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 8 March 2021

Before :

DAVID PITTAWAY QC

Between :

Gary Vincent
- and -
(1) Gary Walker
(2) Vidionics Security Systems Limited

Claimant

Defendants

Lionel Stride (instructed by **Slater & Gordon LLP Ltd.**) for the **Claimant**
Charles Woodhouse (instructed by **DAC Beachcroft Claims Ltd.**) for the **Defendants**

Hearing dates: 2, 3 March 2021

Approved Judgment

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

Covid-19 Protocol: This judgment was handed down remotely by circulation to the parties' representatives by email and release to Bailii. The date for hand-down is deemed to be on 8 March 2021.

David Pittaway QC:

Introduction

1. On the afternoon of Sunday, 26 November 2016 Mr Gary Vincent was walking from his parents' house to his brother's house in Bicester. At the time of the accident, about 4.37 pm, he was walking from a staggered, toucan crossing on the A4095 Southwold Lane, Bicester into the eastern carriageway. The crossing is controlled by automated traffic lights. Mr Vincent had crossed the western carriageway to the central refuge for the pedestrian crossing. He negotiated the crossing central refuge before stepping off into the eastern carriageway. Approximately two-thirds of the way across, he was struck by a BMW motorcar being driven by Mr Kevin Walker and owned by his employer, Vidionics Security Systems Ltd. He was thrown into the air, striking the lower part of the passenger side windscreen before landing, probably on the verge. He sustained multiple injuries. Mr Walker was not prosecuted as a result of the accident.
2. The A4095 is a single carriageway road in an urban area of Bicester bordered on one side by housing estates and on the other side by fields. The speed limit is 50 mph. The police report described the weather conditions as "fine and dry without high winds" and the road surface as "damp, in good repair". The accident occurred when it was dark, sunset was at 4.02pm. Headlights were therefore required at the time of the collision.

Issues

3. The main issues which I have to decide are (1) whether Mr Walker was driving at an excessive speed and (2) whether he was paying insufficient attention to the road and surrounding area as he approached the pedestrian crossing. It is accepted on behalf of Mr Vincent that he was not paying attention as he stepped out onto the western carriageway and that he was contributorily negligent. I am also asked to determine the level of his blameworthiness in the event that I find that Mr Walker was driving negligently. I am informed that Mr Walker was not driving in the course of his employment on the day in question and the action is not proceeded with against his employers, Vidionics Security Systems Ltd.

Factual evidence

4. The factual oral evidence which I heard remotely was short. As a medium the use of MS Teams worked efficiently and well.
5. Mr Vincent has no memory of the accident, which is not surprising as he suffered a head injury in the collision. He was wearing a black wax jacket with a hood and dark jeans. He was carrying a rucksack. The journey time from his parents' house to his brother's house was about 50 minutes. At the time of the accident, he had completed about two-thirds of the journey. He does not believe he was in a hurry. He recalled the weather as cold, a little bit damp but mild for the time of year.
6. Mr Walker gave evidence that he was travelling from his home locally to a Wickes store to collect cement for his garden. It was a late Sunday afternoon. He was not in a hurry to get there. Traffic was light. As he approached the pedestrian crossing controlled by traffic lights, the lights on the western carriageway in his direction were green. He told the police immediately after the accident that he accelerated away from the roundabout, which it is agreed was 115 metres from the pedestrian crossing, travelling at a speed of 45 to 50 mph. It would have been his usual practice to ease off the accelerator as he approached a pedestrian crossing. He is unable to remember whether he did so on this occasion. He first saw the pedestrian, Mr Vincent with his head down, as he was stepping from the pedestrian island into the road. He appeared to be walking quite quickly and was looking towards the nearside kerb the whole time, not towards him. In his witness statement he was not sure how close he was when he first saw him. In oral evidence he said he thought that he was about 30 metres away. He applied emergency brakes, but Mr Vincent kept on walking straight ahead without even looking towards him, looking straight towards the kerb. He believed after the

accident that Mr Vincent was dead. He gave his initial comments and, then a statement, sitting in a police car at the scene of the accident within one hour of it taking place. Unsurprisingly, he was badly shaken by what had occurred.

7. Mrs Wilson was travelling in the opposite direction when she saw Mr Vincent cross the eastern carriageway looking down. He crossed at a comfortable distance in front of her. As he was walking in front of her motorcar, she noticed that he was not paying much attention to his surroundings. His head was looking at the ground and she did not see him look up once. He did not slow down at all and it appeared as if he had not looked up to see if the carriageway ahead was clear. She could see the headlights of Mr Walker's car travelling in the opposite direction in the lane. The traffic lights were green for him to proceed. She tried to attract Mr Vincent's attention and both she and her foster daughter screamed out. Mr Vincent kept his head down and continued walking. She describes the accident as: "he just walked out in front of Mr Walker's car."

Expert evidence

8. The parties instructed accident reconstruction experts, Mr Elliott and Ms Evers, who visited the scene of the accident, prepared reports and a joint statement. Mr Elliott had also visited at night to assess the visibility of Mr Vincent to Mr Walker utilising the services of his assistant as a pedestrian. In my view, their evidence is not conclusive in this case and should be seen in the context of all the evidence available to me, however, the calculations which they have made are of assistance to me in determining the two main issues as to whether Mr Walker was driving negligently.
9. For the purposes of this judgment, I have not summarised the two reports but have set out the relevant parts of the comprehensive and detailed joint statement which was

prepared by the two experts. Both experts gave oral evidence, which to a large extent was agreed except as to the interpretation to be placed on a range of agreed calculations.

10. It is agreed that upon entering Southwold Lane from the preceding roundabout at the junction with the B4100 Banbury Road and continuing eastbound, it is a distance of about 115 metres to the Stop line at the pedestrian crossing. A driver has an unobstructed direct line of sight of the crossing over this distance. The traffic signals at the crossing are clearly visible to drivers approaching in both directions, particularly at night, and there is an illuminated warning sign for the traffic signals about 60 metres prior to the crossing when travelling east, the direction of travel for Mr Walker.
11. It is agreed that at the crossing point, the eastbound lane is 3.3 metres wide and the westbound lane is 4.3 metres, incorporating a 1 metre wide cycle lane. It is agreed that it is not possible to determine the exact route taken by Mr Vincent once he entered the central pedestrian refuge. The shortest route across the central refuge between the westbound entry point and eastbound exit point is about 5.1 metres. This distance increases to about 6.5 metres had he entered and exited the refuge centrally at the crossing points.
12. The distance Mr Vincent was 'thrown' having been struck, is consistent with an impact speed of about 25mph to 34mph of Mr Walker's motorcar. By way of comparison, the position of the head impact mark on the lower nearside corner of the motorcar's windscreen is consistent with an impact speed in the region of about 30mph. The experts consider that it could be marginally more or marginally less.
13. Calculations based on the distance covered by Mr Walker's motor car between impact and its rest are consistent with an impact speed of 28 to 31mph. The experts considered that this was consistent with the impact speeds derived by the other methodologies and

suggested that Mr Walker's motorcar was undergoing emergency braking for the full distance between impact and its rest position.

14. The physical evidence is consistent with Mr Vincent walking for a distance of about 2.2 metres into the eastbound lane between crossing points, where he was struck by the nearside front of the motorcar. It is agreed that it would have taken Mr Walker, at an initial constant speed of 40mph to 50mph, about 5.1 to 6.4 seconds to travel 115 metres from the roundabout to pedestrian crossing. This time range does not account for any preimpact deceleration, as it is not known how much faster the motorcar may have been travelling prior to brakes being applied. Had either party been travelling at a slower speed, the time to cover the distance would correspondingly increase.
15. The average walking pace for a male pedestrian of Mr Vincent's age group is about 1.5m/s to 1.65m/s. It would have taken Mr Vincent about 1.3 to 1.5 seconds to walk across the road to the likely point of impact having stepped into the eastbound lane from the crossing point at the central refuge.
16. It is agreed that the minimum expected Perception Reaction Time ("PRT") from the research is 0.9 seconds. Mr Elliott has referred to current research and data specific to the circumstances of this incident and the IDRR program by Dr Muttart, which suggests an expected average Perception Response Time (PRT) of 1.3 seconds and an expected range of 0.9 second to 1.9 seconds. Ms Eyers has used published research by Dr Muttart, which provides what the author describes as 'Rule of Thumb' data and suggests an expected average PRT of 1.6 seconds and an expected range of 0.9 to 2.3 seconds. They agree that Mr Walker is therefore likely to have begun braking following a PRT of 0.9 - 1.5 seconds, in the lower half of the expected range. For a damp level road surface in good condition they would expect the level of friction to be between about 0.7 to 0.8.

17. Allowing for up to 0.6 seconds of emergency braking prior to impact, it is agreed that the maximum speed at which the motorcar could have been travelling, prior to Mr Walker's point of recognition, would have been between about 39mph to 41mph for an impact speed of 30mph, and between about 43mph to 45mph for an impact speed of 34mph. It is agreed that the vehicle damage suggests an impact speed was close to 30mph. The more precise (compared to the damage assessment) braking distance calculation suggests the range of 28 to 31mph.
18. It is agreed that, if Mr Walker's motor car had been travelling at an initial speed of between 39 to 45mph (for an impact speed of 34mph), it was approximately 23 metres to 30 metres away from Mr Vincent when he first saw him, if he had been travelling at a speed of between 32mph to 36mph (for an impact speed of 30mph), it was 19 to 24 metres away.
19. It is agreed that with a walking speed of 1.5 to 1.65m/s, depending on the path taken, Mr Vincent took about 3.1 to 4.3 seconds to travel through the central refuge. This would have positioned the BMW about 54 to 86 metres further away when Mr Vincent entered the central refuge, about 77 to 116 metres in total. With a walking speed of between 1.5m/s to 1.65m/s, it would have taken Mr Vincent a further 2.6 seconds to 2.9 seconds to traverse the westbound lane. This would have positioned the BMW about 45 metres to 58 metres further away (a total distance of 122 to 174 metres from impact when Mr Vincent began to cross the westbound lane).
20. Ms Evers considers that Mr Walker's earliest opportunity to see Mr Vincent was likely to have been when he was already on the central refuge, partially obscured by street furniture, on the offside, and when, approaching a red pedestrian signal.

21. Mr Elliott believes that for a driver travelling eastbound towards the crossing, a pedestrian dressed in dark clothing contrasted well with their surroundings. It was possible to observe and track the test pedestrian's path readily crossing the westbound lane and whilst walking through the central pedestrian refuge up to the eastbound lane entry point, consistent with the account of Mrs Wilson. When he undertook his night-time conspicuity test, he found that his assistant was obscured momentarily as she walked behind the traffic signal poles whilst within the central refuge.
22. Ms Evers does not disagree that a pedestrian in these conditions may be identifiable. However, she notes that in testing of this kind, the observer is aware of the pedestrian's presence and actively looking for them. It is therefore to be expected that the 'test' driver will identify the pedestrian much earlier than in a 'real world' scenario'.
23. In Mr Elliott's experience and opinion, the average reasonable and careful driver would be expected to be looking into the junction for the presence of other road users pulling out. They should also be scanning both sides of the road ahead and the central pedestrian refuge for the presence of any pedestrians, who may or may have not pressed the demand buttons and have a raised sense of awareness in anticipation of the traffic signals changing. Mr Vincent's constant dynamic movement would have increased the likelihood of catching Mr Walker's attention and focussing his vision to the pedestrian's presence, although it would be less likely to do so when momentarily partially obscured behind street furniture.
24. With a 1.5 second PRT (the known maximum based on the time Mr Vincent was in the road), Mr Walker's motorcar would require a total distance of about 46 - 52 metres to brake to a stop from an approach speed of 39 to 41mph. The reaction and braking would take about 3.7 - 3.8 seconds. Therefore, in order to react and brake to a stop before

impact, Mr Walker would need to begin to react to Mr Vincent's presence when the motorcar was close to the west side of the junction of Fringford Road, about 2.3 - 2.4 seconds before Mr Vincent entered the carriageway. In this time Mr Vincent could have covered about 3.5 -4.0 metres. Dependent on the path he followed while on the central refuge, this places him probably within the first half of his travel across the central refuge, at the point when Mr Walker would need to respond to him. If the approach speed was higher, around 43 - 45mph, for the same PRT the stopping distance would be 52 - 60 metres, taking 4 - 4.4 seconds. In this scenario Mr Walker would need to react to Mr Vincent 2.7 - 2.9 seconds before he entered the road, when he was 4.1 - 4.8 metres from the crossing and, it follows, further back on the central refuge.

25. There was lengthy cross-examination of the two experts, particularly, Mr Elliott, which did not lead to any significant changes in their respective opinions. In additional evidence-in-chief, Mr Stride put to Mr Elliott that, allowing for a PRT of 0.9 seconds, at 30mph the overall stopping distance was 23.6 metres, at 35mph 29.7 metres and at 40mph 36.5 metres.

Excessive speed

26. Having set out in summary the factual evidence and calculations prepared by the experts, I turn my attention to the first issue, namely, the speed at which Mr Walker was travelling.
27. Mr Stride maintains that Mr Walker was travelling at a speed of up to 45mph. He relies primarily on Mr Walker's observations to the police that he was accelerating away from the roundabout and that he was travelling at 45 to 50 mph. He submits that it is at the upper range of the experts' calculations. Mr Stride submits that the impact mark is not definitive in calculating the speed. Mr Woodhouse relies upon the calculations

contained in the joint statement as well as the damage to the lower part of the nearside of the windscreen as being consistent with an impact speed of close to 30 mph.

28. The view that I have come to is that Mr Walker was probably travelling at a speed of 39 to 41 mph when he first saw Mr Vincent. I accept his evidence that he accelerated as he came off the roundabout, which would have been an instinctive reaction after he had slowed to negotiate the roundabout. In my view, he also probably eased his foot off the accelerator as he approached the automated pedestrian crossing. He said that would have been his usual practice and I have no reason to doubt him. Mr Walker impressed me as a careful and thoughtful witness who was not prepared to overstate his case or, as he said, have words put in his mouth. Mr Stride placed great reliance upon what Mr Walker said immediately after the accident, namely that he was travelling at 45 to 50 mph. I do not regard that as necessarily inconsistent with what I have found. It may well be the case that was the speed after he accelerated away from the roundabout, reducing as he eased off approaching the pedestrian crossing. In my view, caution should be applied to what he said or did not say immediately after the accident in brief conversations when he was being questioned by police officers who had attended the scene. He was understandably very shocked, believing that Mr Vincent was dead.
29. In reaching this conclusion, I accept that the scuff mark, shown with a yellow arrow on the photographs, close to the edge of the crossing, marked the point of the collision, and was probably caused by the sole of one of Mr Vincent's shoes. I prefer the calculation contained in the experts' joint statement that at the time of impact Mr Walker was travelling at 28 to 31 mph, which extrapolated back indicates a probable speed when he braked of 39 to 41 mph. I accept Mr Woodhouse's submission that the impact speed was probably closer to 30 mph, which is supported by the position of the damage

to Mr Walker's car. The throw distance would support the higher end of the bracket but may be a less reliable methodology.

30. I do not consider that a speed of 39 to 41 mph as Mr Walker approached the pedestrian crossing was excessive, given the particular circumstances of the road. The speed limit of 50mph reflects the nature of the road. It is, in effect, a ring road around Bicester. It is not in the middle of a residential area, surrounded by houses, shops or schools. There are housing estates on one side and fields on the other side. As I have found, Mr Walker probably eased off his foot on the accelerator as he approached the pedestrian crossing past the junction with Fringford Road.

Scanning the road

31. The more difficult question to answer is whether Mr Walker failed to scan the road ahead sufficiently for pedestrians as he approached the pedestrian crossing.
32. Mr Stride has drawn my attention to Rule 125 of the Highway Code which states that the speed limit is the absolute maximum; and that speed should always be reduced when driving at night as it is more difficult to see road users and/or when the road layout or condition presents hazards; and Rule 146 of the Highway Code, which states that drivers should not treat the speed limit as a target and should take the road and traffic conditions into account; be prepared for unexpected or difficult situations and to adjust their speed as a precaution; be prepared for road users emerging; be prepared to stop at traffic control systems, pedestrian crossings or traffic lights as necessary; and try to anticipate what pedestrians might do.
33. As has been pointed out by both counsel, there is an abundance of case law arising from 'pedestrian v car' road traffic collisions. Whilst each case turns on its own facts, Mr Stride draws my particular attention to Sabir v Osei-Kwabena [2015] EWCA Civ 1213;

[2016] P.I.Q.R. Q4, (CA). I should add at this point that this is a case concerned with contribution and not breach of duty. Nevertheless, Mr Stride draws my particular attention to what Tomlinson LJ said at paragraph 13:

"[...] there are two aspects to apportioning liability between the claimant and defendant, namely the respective causative potency of what they have done, and their respective blameworthiness. So far as concerns the former, because a car can usually do much more damage to a person than a person can do to a car, the court imposes upon drivers what Latham LJ in Lunt described as a "high burden." [...]

For my part, bearing in mind that the 1945 Act speaks of responsibility for the damage rather than responsibility for the accident, I am inclined to think that it is because of the destructive potential of the car driven even at moderate speed that it is "rare indeed for a pedestrian to be found more responsible than a driver unless the pedestrian has suddenly moved into the path of an oncoming vehicle" - see per Hale LJ in *Eagle v Chambers* at paragraph 16. The proper approach, I would suggest, is that the destructive capacity of a driven car comes into both aspects of the evaluation. Driving a car at even a moderate speed without keeping a proper lookout in a situation in which pedestrians can reasonably be expected to be present in the carriageway, as in *Jackson* because of the presence of the stationary minibus and here because of the nature of the suburban shop-lined road - points to a considerable degree of blameworthiness."

34. Mr Stride relies upon the night-time photographs in Mr Elliott's report to show that a pedestrian was visible in the western carriageway approaching the central refuge before stepping onto the eastern carriageway. He submits that the fact that Mr Walker accepts that he did not observe Mr Vincent before he stepped into the road was an indication that he was not looking properly. He relies on the street furniture - signs, bollards, traffic signals, railings all as indicators that Mr Walker should have been paying more attention to the possibility that there would be a pedestrian in the vicinity.
35. Mr Stride submits that a reasonable and careful driver should, on approach to a pedestrian crossing, be scanning both sides of the road ahead and the central pedestrian

refuge for the presence of any pedestrians and cyclists, who may cross or have pressed the demand button. He submits that Mr Vincent would have been visible for between 5.7 and 7.2 seconds (median 6.45 seconds) depending on route and walking speed; and observable to Mr Walker for at least 5.75-6.4 seconds if he were travelling at around 40-45mph, and even longer if travelling at much lower speeds. He submits that this ought to have been ample time for Mr Walker to see him and react. He relies upon the conspicuity test undertaken by Mr Elliot at night to show that a pedestrian in dark clothing at night would be easily visible, and that Mr Vincent would have formed a dark silhouette that contrasted well with the lighter surroundings for the benefit of eastbound drivers. He also relies on what Mrs Wilson saw, particularly that Mr Vincent was constantly in motion as he crossed the westbound lane, central refuge and eastbound lane. This constant dynamic motion, he submits, should have caught Mr Walker's attention. He relies upon Mr Elliott's evidence that the railings would not have masked the dynamic movement of Mr Vincent crossing the central refuge.

36. Mr Woodhouse submits that Mr Stride is advocating a counsel of perfection. He has referred me to Laws LJ's short judgment in *Ahanonu v South East London & Kent Bus Company Limited* [2008] EWCA Civ 274, where he said:

"There is sometimes a danger in cases of negligence that the court may evaluate the standard of care owed by the defendant by reference to fine considerations elicited in the leisure of the court room, perhaps with the liberal use of hindsight. The obligation thus constructed can look more like a guarantee of the claimant's safety than a duty to take reasonable care."

He has also referred me to Coulson J's judgment in *Stewart v Glaze* [2009] EWHC 704 (QB):

"5. I have to apply to Mr Glaze's actions the standard of the reasonable driver. It is important to ensure that the court does not unwittingly replace that test with the standard of the ideal driver. It is also important to ensure, particularly in a case with accident

reconstruction experts, that the court is not guided by what is sometimes referred to as '20-20 hindsight.'

...

"7. By the same token, it is also important to have in mind that a car is "potentially a dangerous weapon" (Latham LJ in *Lunt v Khelifa* [2002] EWCA Civ 801) and that those driving cars owe clear duties of care to those around them. Compliance with speed limits and proper awareness of potential hazards can often be critical in such situations."

37. Similar views as to the counsel of perfection were expressed in *Turner v Arriva North East Ltd* [2006] EWCA Civ 410 and *Sam v Atkins* [2005] EWCA Civ 1452. In *Birch v Paulson* [2012] EWCA Civ 487, the Court of Appeal stated that the trial judge asked himself the question (which was not criticised):

"15. ... The question in this case, therefore, is whether or not a reasonably careful driver in the position of the defendant, observing what I have held could have been there to be observed by such a driver in these circumstances, would have considered there to be a sufficient risk that the claimant might suddenly step into the road in front of her as to make it necessary for her - as a precautionary measure - to reduce his speed to below 40 mph and / or to steer to the centre, so as to give herself more time and space to react should the claimant act in such away."

They concluded that:

"32. ... the legal test is not a question of the counsel of perfection using hindsight. Of course, it is not, and drivers are not required to give absolute guarantees of safety towards pedestrians. The yardstick is by reference to reasonable care. As the judge found, there was nothing here to require the defendant as a reasonably careful driver to act in any way other than a way in which she did act given the situation in which she found herself at the time."

38. Mr Woodhouse maintains that Mr Walker was keeping observation on all aspects of the road and had no reason to think that there was a pedestrian about to cross the road. He relies upon Mr Vincent's dark clothing as obscuring his presence. He submits that Mr

Vincent would probably have been on the central refuge before he could have been visible to Mr walker. He submits that he would not have been visible to Mr Walker until he after he stepped off the central refuge. By that time, it would have been too late to take avoiding action. He submits that Mr Walker's reaction time was very fast. He applied emergency brakes. He does not consider that there would have been time to take avoiding action. He relies upon Mr Walker's evidence that he would not have deviated to the right as Mr Vincent was approaching from the right and, if anything, he would have deviated to the left, still colliding with Mr Vincent.

39. In my view, in an urban environment, in accordance with Rules 125 and 146 of the Highway Code, motorists are required to pay particular attention to the presence of pedestrian crossings. A factor, as I have found, that Mr Walker did appreciate when he eased his foot off the accelerator as he approached the crossing. I also accept that attention should be sharper in circumstances where he was driving on a late November afternoon after it had become dark. What Mr Walker would be able to see would not have been as good as it would have been in daylight.
40. The first question is whether he would have seen Mr Vincent before he stepped into the eastern carriageway. Mrs Wilson states that she saw the lights of Mr Walker's car approaching after Mr Vincent crossed the western carriageway. I am not satisfied that Mr Vincent would have been visible to Mr Walker before he reached the central refuge. In my view if Mr Walker scanned the central refuge as he approached the junction, I doubt that he would have registered the presence of Mr Vincent in that position. In my view, the photographs taken by Mr Elliott are of limited value. They are stills taken from a video whilst Mr Elliott was driving at a slow speed of less than 20 mph. Although they are indicators of what could have been seen, they do not represent the reality of

what was seen. I prefer Ms Eyers evidence to that of Mr Elliott on this issue. I accept Ms Eyers evidence that there is a difference between a situation where the driver knows that there is a pedestrian crossing the western carriageway on to the central refuge and where he does not know. I accept Mr Woodhouse's submission that Mr Vincent walking laterally across the central refuge was unlikely to have been observed by Mr Walker if he scanned the pedestrian crossing. Mr Vincent was wearing dark clothing, and, in my view, his silhouette was unlikely to have been picked up by a driver travelling on the eastern carriageway towards the pedestrian crossing. It was a very different situation from Mr Vincent having passed in front of Mrs Wilson on the western carriageway.

41. If I am wrong about that issue, I do not see that it would have altered the outcome of the accident. If Mr Walker had observed Mr Vincent on the central refuge, I do not consider that Mr Walker should have reasonably anticipated that Mr Vincent was going to ignore the pedestrian crossing traffic lights and step into the eastern carriageway without looking. In my view, a reasonably prudent driver, driving at a speed of 39 to 41mph in a 50mph limit, was permitted to rely upon an adult pedestrian using the traffic lights and pressing the button before he crossed, or at the very least checked that the carriageway to his left was clear. He could not reasonably have been expected to see Mr Vincent on the western carriageway, head down, purposefully walking ahead without looking. It is only, if Mr Walker had been travelling at a significantly slower speed, suggested by Mr Stride in cross-examination of Mr Walker of about 30mph, that Mr Vincent would have safely reached the other side of the eastern carriageway. In any event, I accept Mr Woodhouse's submission that even if Mr Walker had seen Mr Vincent on the central refuge the accident could not reasonably have been avoided.

42. In these circumstances, I find that Mr Walker did not drive at an excessive speed or fail to scan the road adequately as he approached the pedestrian crossing. If I am wrong on either of these issues, the question arises as to the extent to which Mr Vincent was responsible for the accident. Mr Stride accepts that Mr Vincent does bear responsibility for his accident, which he submits is in the range of one-third to two-thirds. In my view, even regarding the causative potency of Mr Walker's car, I am satisfied that the primary responsibility for the accident is that of Mr Vincent. He did not utilise the automated traffic lights. He stepped off into the eastern carriageway without looking, head down, looking straight ahead. The reason why he was self-absorbed is and will remain unknown because he has no memory of the accident. Mrs Wilson describes him as head down continuing across the western carriageway, the central refuge and then into the eastern carriageway. In my view, Mr Vincent bears two-thirds responsibility for the accident that occurred. I am satisfied that this case falls into the category of cases where Mr Vincent chose to take the risk to walk into the road without looking to see if there were any vehicles approaching.
43. Accordingly, the claim is dismissed.

44.