



OUTER HOUSE, COURT OF SESSION

2022] CSOH 7

PD92/20

OPINION OF LORD TYRE

In the cause

(FIRST) SANDRA CAMERON; (SECOND) STUART FYFE

Pursuers

against

(FIRST) IFEANYI NWANKWO; (SECOND) TRADEX INSURANCE COMPANY LIMITED

Defenders

**Pursuers: C Smith QC, McCaffery; Digby Brown LLP
Defenders: A Smith QC, Waugh; Ledingham Chalmers LLP**

21 January 2022

[1] On Saturday 8 April 2017 at approximately 11.50pm, the first pursuer was crossing North Hanover Street, Glasgow, when she was struck by a car driven by the first defender. She sustained serious injuries with permanent consequences. In this action she sues the first defender and his insurers for damages. The second pursuer, who is the first pursuer's fiancée and long term partner and who witnessed the accident, sues for damages for emotional distress. The defenders deny liability and contend that the accident was caused or at least materially contributed to by the fault of the first pursuer. The action came before me for a proof before answer restricted to liability. For the sake of clarity I shall refer to the parties by name.

Description of the locus

[2] The accident occurred just north of the junction of North Hanover Street, which runs in a generally north/south direction, with the street running in a generally east/west direction that is called Cathedral Street to the east of the junction and Bath Street to the west of it. The junction is controlled by traffic lights, including a traffic light controlled pedestrian crossing.

[3] North of the junction, North Hanover Street is divided into four lanes. Three of the four lanes are for southbound traffic: the eastmost lane (lane 1) for traffic turning left into Cathedral Street, the middle lane (lane 2) for traffic continuing straight ahead, and the westmost lane (lane 3) for traffic turning right into Bath Street. The eastmost lane has a filter allowing traffic to turn left while the lights are at green for traffic travelling west from Cathedral Street. The northbound lane has a small layby just north of the junction. Cathedral Street has two eastbound and two westbound lanes.

[4] Some way north of the junction, the configuration of North Hanover Street changes to two northbound and two southbound lanes. At that point there is a small area of chevrons in the middle of the road to warn drivers of the change. Continuing along North Hanover Street in a northbound direction one reaches a junction at which Killermont Street branches off to the left (west).

[5] The speed limit for all of the roads in the vicinity of the junction is 20mph, having been reduced from 30mph in March 2016.

Summary of the circumstances of the accident

[6] On the evening in question, Ms Cameron and Mr Fyfe had been dining with friends at a restaurant in the city centre. Ms Cameron had been drinking wine but it is not contended that this contributed to the occurrence of the accident. They were on their way to the bus station in Killermont Street to catch a bus home. They had sufficient time to catch the bus and were not in a hurry. Ms Cameron was wearing black trousers and a black top. They crossed Cathedral Street and walked along the pavement on the north side to the traffic lights at the junction, where they turned right on to the pavement on the east side of North Hanover Street. After about 25-30 metres, Ms Cameron began to cross North Hanover Street. There were southbound vehicles stopped at the traffic lights. Ms Cameron was moving quickly at a fast walk or jog.

[7] At the time of the accident Mr Nwankwo worked part time as a private hire taxi driver to earn money for himself and his family while he was studying for a masters degree. That night he was driving a silver Toyota Avensis. He approached the junction along Cathedral Street, taking two passengers to the bus station in Killermont Street. While the lights were at green he turned right (north) into North Hanover Street. He did not see Ms Cameron crossing the road. The first thing he was aware of was an object hitting the passenger side of his windscreen. He immediately braked and stopped. Ms Cameron was thrown into the air and landed close to the kerb in the northbound lane. Mr Nwankwo's car came to a halt in southbound lane 3 with its nearside wheels on the line separating that lane from the northbound lane. A black cab which had turned into North Hanover Street from Cathedral Street behind Mr Nwankwo braked and stopped in front of Ms Cameron, protecting her from further injury while she lay on the road.

Sources of evidence

[8] As a consequence of the head injuries that she sustained, Ms Cameron has no recollection of the accident and did not give evidence. Eye witness evidence was given by:

- PC Michael Dunlop and PC Rachael Gallagher who, in the course of their duties, were walking south along the west side of North Hanover Street when the accident happened;
- Mr Ian Hornby who was walking south with his family along the west side of North Hanover Street, some distance behind the two police officers;
- Mr Fyfe;
- Mr Nwankwo.

There are significant inconsistencies in the eye witness evidence. I accept that all of the witnesses were doing their best to provide an accurate account but in view of the inconsistencies some of their evidence must be rejected as unreliable.

[9] Evidence of the resultant police investigation was given by PC Angus Patterson, who took the lead role, and by PC Robert Kelly. In the course of his investigation PC Patterson took a statement from Mr Bernard Wilson, the driver of the black cab, who has since died.

[10] PC Patterson made a scale plan of the locus of the accident, noting inter alia the locations of where Ms Cameron had landed on the road, spectacles and other objects belonging to Ms Cameron on the road surface, a blood stain, and Mr Nwankwo's car.

[11] The incident was captured by a CCTV camera mounted on a wall on the west side of North Hanover Street looking south towards the junction. Unfortunately the quality of the footage is poor. Recordings were made at the rate of four frames per second which is not sufficiently fast to produce a fluid motion. The images themselves are not sharp. The

moment of impact cannot be seen due to glare from headlights. Nevertheless the footage is sufficiently clear to enable me to make certain important findings in fact.

[12] Expert evidence was given on behalf of the pursuers by Mr Richard Ward, a former police officer with ten years' experience of collision investigation, a member of the Institute of Traffic Accident Investigators and managing director of Ai Training Services Ltd. Expert evidence was given on behalf of the defenders by Mr John Holland, a chartered engineer with experience in, inter alia, investigation of road traffic accidents. Both produced written reports although Mr Holland's report was referred to on one specific matter only. I found Mr Ward to be an impressive witness who amply fulfilled his duty of impartiality. I accept that he was qualified to provide expert opinion on the matters covered in his report and oral evidence to the court, and that Mr Holland was qualified to give evidence on the particular matter to which reference was made.

The issues

[13] The critical factual issues that fall to be determined are, firstly, whether the collision happened in southbound lane 3 or in the northbound lane and, secondly, the speed at which Mr Nwankwo was driving at the moment of impact.

Summary of eye witness evidence

PC Dunlop

[14] At the time of the accident PC Dunlop was on foot patrol duty and was walking with PC Gallagher from a police station towards the city centre. On the morning after the accident he prepared a handwritten statement, in which he stated that he first became aware of Ms Cameron and Mr Fyfe when they were walking northwards on the opposite side of

North Hanover Street. He saw Ms Cameron begin to cross the road at a brisk walk/slow jog. He then observed Mr Nwankwo's car turning right into North Hanover Street. His statement recorded:

"The Toyota Avensis was in lane 2 and it is my opinion that it was being driven appropriately and not at excessive speed with headlights in operation".

Ms Cameron continued to cross the road while Mr Fyfe remained on the pavement. PC Dunlop heard Mr Fyfe shouting to Ms Cameron to stop. He saw Ms Cameron being struck by the car windscreen and being thrown in the air, landing in "lane 1". The car immediately stopped in "lane 2". He went to attend to Ms Cameron while PC Gallagher called for an ambulance.

[15] In his oral evidence to the court, PC Dunlop stated that after noticing Ms Cameron and Mr Fyfe walking on the opposite pavement he paid them no further attention until he heard Mr Fyfe shout "Sandra" in a tone of alarm. He looked round and saw Ms Cameron running at a jog across the road and being struck by the car. The Toyota had entered the northbound lane in a normal fashion and at a reasonable speed which he estimated at about 30mph. At the time he had thought the speed limit was 30mph but was now aware that it was 20mph. The impact occurred to the north of the layby, about half way to the area of chevrons in the middle of the road. As far as he could recall, it happened within the northbound lane, which was quite broad at this point. He did not see the car move between lanes before stopping. PC Dunlop was then referred to his statement and asked to explain his reference to "lane 2". He stated that he had been confused at the time about the make up of the carriageways and thought that the car had been in lane 2 northbound which he now knew did not exist. It was possible that the car had been in southbound lane 3 and that what he had thought was a second northbound lane was in fact southbound. His statement was

more likely to be accurate than his recollection now. In cross-examination he thought he would have noticed if the car was in the wrong lane but stood by his statement that it had not been in the lane nearest the pavement. He did not think that he had been counting the layby as lane 1. There were vehicles stopped at the junction but he did not think that Ms Cameron had run between them. He did not remember the black cab stopping.

PC Gallagher

[16] PC Gallagher also prepared a handwritten statement on the morning after the accident. She stated that she observed Ms Cameron and Mr Fyfe walking northwards before Ms Cameron turned to cross the road at a fast-paced walk. Mr Fyfe remained on the pavement. She saw the Toyota, which she noted to be a private hire taxi, turning right into North Hanover Street. It was travelling in "lane 2" and did not appear to be speeding. Ms Cameron had entered lane 2 and gave the Toyota no chance of stopping. She heard Mr Fyfe shouting. The car struck Ms Cameron, causing her to land in lane 1. The Toyota stopped "and remained in lane 2".

[17] In her oral evidence, she stated that after she saw Ms Cameron begin to cross the road in a diagonal direction, the next thing she was aware of was the noise of the impact. At this point she and PC Dunlop had passed the place of impact. She turned round and saw the car stationary and Ms Cameron on the ground. She could not recall whether there were vehicles stopped at the lights. Having been referred to her statement, she did not know whether at the time of the accident there had been two northbound lanes, but "lane 2" must have referred to the lane to the right of the lane where Ms Cameron landed. She must have made an error about the lane markings. In cross-examination, however, she thought it was highly likely that if the car had been in the wrong lane she would have noticed. It had been

her impression at the time that the car was in the correct lane. It was possible that she had counted the layby as lane 1. It was possible that she had adopted PC Dunlop's terminology when describing the lanes. She recalled hearing a shout but could not remember if it was before or immediately after the impact. She did not recall whether there had been any southbound traffic in the third southbound lane. In re-examination she adhered to her statement that Ms Cameron was struck in lane 2 and landed in lane 1.

Ian Hornby

[18] Mr Hornby was approximately 50 yards from the point of impact. He did not see the accident itself; the first thing he was aware of was the sound of the impact. He had given a statement to the police two weeks after the accident in response to an appeal for witnesses. In his statement he described seeing a shadowy form in the air and then two vehicles coming to a stop very quickly, the second (the black cab) directly behind the first (the silver Toyota). In his oral evidence he agreed that his recollection would have been better when he gave his statement. He could not recall which lane the vehicles had stopped in. He had no impression of their speed other than that they were not racing.

Stuart Fyfe

[19] Mr Fyfe had not been asked to provide a statement to the police. In his evidence to the court he stated that he and Ms Cameron had walked about 25-30 metres along North Hanover Street when she started to cross the road after some vehicles, including a bus, had passed and stopped at the lights. He could not explain why they had not used the pedestrian crossing at the lights. He followed her about two steps behind. He noticed a car turning right into North Hanover Street. He saw Ms Cameron look to her left and stop in

the middle of southbound lane 3. He thought she was in no danger there. The car, which had been in the correct lane after turning, then accelerated hard out of the corner and moved to the right so that it was now travelling towards where Ms Cameron was standing.

Ms Cameron started running to get to the far side of the road. The car struck her after she had taken a few steps. At that point Mr Fyfe was a few paces behind her at about the line between southbound lanes 2 and 3. Ms Cameron probably landed in the northbound lane. The black cab stopped in front of her. In cross-examination, Mr Fyfe was sure he had begun to cross the road; from the pavement he could not have seen the Toyota approaching.

Ms Cameron was moving at a purposeful walk, not jogging. He did not recall shouting a warning but it was possible that he had.

Ifeanyi Nwankwo

[20] Mr Nwankwo had not been asked to provide a statement to the police. In his evidence to the court he stated that he had stopped at the traffic lights in Cathedral Street. When the lights turned green, he turned right into the single northbound lane. He intended to remain in the left lane when the road configuration changed because he would be turning left into Killermont Street. The first thing he was aware of was an image of something falling down on the left side of his windscreen, which seemed to have come from his right. There were cars in the southbound lanes but he could not say which lanes. When asked how it came to be that his car was stopped in southbound lane 3, he thought he might have moved the car to the right to avoid whatever it was he saw landing on the left side of his windscreen. It was not possible that he had been driving in the wrong lane because he had been preparing to turn left. He had been aware that the speed limit was 20mph and had been driving below the limit despite complaints from one of his passengers that he was

driving too slowly. He was always mindful of his speed and had been watching his satnav as he turned the corner. It showed a speed of 18mph and would have emitted a warning sound if he had exceeded the speed limit.

Bernard Wilson

[21] In the statement taken by PC Patterson shortly after the accident happened, Mr Wilson, the black cab driver, stated that when he approached the traffic lights in Cathedral Street they were at green. The Toyota was in front of him. It turned right into North Hanover Street travelling at normal speed. He did not see Ms Cameron crossing the road. He heard a thump and a man shouting to get an ambulance. According to PC Patterson's oral evidence, Mr Wilson also told him that the Toyota had been driven appropriately on the right part of the road and in the way that he would have done.

Other evidence

Police accident investigation

[22] PC Patterson was one of only two road traffic patrol officers on duty in Glasgow that night. As it happened, he had received training in and had significant experience of road traffic accident investigation. On arrival, he confirmed with the officers at the scene that the Toyota had not been moved from where it had come to a halt. He stated initially that his interpretation of the CCTV footage was that the car had been proceeding in the northbound lane and then swerved into southbound lane 3, possibly because of the driver's reaction to the impact on the left of his windscreen. That was a common reaction. At a later stage in his evidence, however, he attributed his conclusion that the car had been driving in the northbound lane to the evidence of Mr Wilson and the position of the objects on the road

surface, and expressed the view that the CCTV footage was inconclusive. PC Patterson quickly concluded that no fault attached to the driver, who had been on the correct side of the road and had had no time to react when Ms Cameron ran out from behind cars stopped at the lights. The damage to the car was consistent with striking a pedestrian moving quickly from the driver's right to left. Mr Nwankwo was not charged with any offence in connection with the accident and the inquiry was scaled back.

[23] In cross-examination, PC Patterson accepted that if the car had moved from the northbound lane into southbound lane 3, then in order for it to have reached its resting position facing directly forward (as it was), the driver must have changed direction twice. The only explanation was that after the initial swerve in reaction to the object striking the windscreen, the driver had straightened up as he stopped. Although he had not come across such a scenario before, there was no set way for a driver to stop after an accident. As regards speed, the level of damage to the car was consistent with a low speed impact, ie a speed of around 25mph. If the car had been travelling at more than 30mph, PC Patterson would have expected Ms Cameron to be thrown over the roof of the car. At the time of his investigation, PC Patterson had mistakenly believed that the speed limit at the location was 30mph.

[24] PC Kelly was an officer with the traffic police but was not a trained accident investigator at the time. He agreed with PC Patterson's conclusion that the Toyota had been travelling in the northbound lane. He had attempted to obtain a statement from one of the passengers in Mr Nwankwo's taxi but the passenger had been elusive and uncooperative.

CCTV footage

[25] The CCTV footage was played during the hearing and has been available to me while writing this opinion. I have had the benefit of analyses of the footage by PC Patterson and Mr Ward respectively. Mr Ward's report includes frame-by-frame screen captures as well as a frame-by-frame analysis of the movements of Ms Cameron and of the Toyota and other vehicles during the critical period. It was however agreed that interpretation of the footage is a matter for the court. On the basis of my viewing of the footage and with the assistance of the foregoing analyses, I find that the following sequence of events can be identified.

[26] The footage begins before the first appearance of Ms Cameron and Mr Fyfe on camera. At this time the traffic lights are at red for vehicles travelling south in North Hanover Street. A car is stationary at the lights but it is not yet possible to discern whether it is in southbound lane 2 or 3. A bus travelling south in lane 1 stops at the lights. There are also vehicles travelling north stopped at the lights. The lights change to green for traffic travelling west in Cathedral Street and a vehicle crosses the junction travelling west. With the benefit of the filter the bus turns left into Cathedral Street. A second southbound car stops behind the one that is still stationary. Ms Cameron and Mr Fyfe are now visible on the pavement of North Hanover Street. Two cars turn right from Cathedral Street into North Hanover Street and pass out of camera shot. They are followed, after a gap of about five seconds, by the Toyota. Ms Cameron can be seen moving quickly across the road behind the second of the two southbound cars waiting at the lights. Mr Fyfe is not visible. The Toyota completes its turn into North Hanover Street. What happens next is impossible to see due to the glare of the Toyota's headlights. As the glare subsides the Toyota appears to make a small movement to the right, although the glare makes this very uncertain, and stops about

three seconds later. The black cab, which has made its turn into North Hanover Street, also stops, although not directly behind the Toyota. Ms Cameron can be seen lying on the road in front of the black cab. About 30 seconds later the lights change and the cars which were waiting in North Hanover Street set off in a southerly direction. From this I infer that they had been stopped in southbound lane 2 and that lane 3 was clear of traffic.

Expert evidence

Mr Ward

[27] Mr Ward agreed with the police analysis, under reference to the damage to the car, that Ms Cameron was struck while crossing from the driver's right to left. It was not possible to calculate the speed of the car from emergency braking marks or from the distance Ms Cameron was thrown. However a reasonable estimate could be made.

Mr Ward agreed that the head strike on the windscreen indicated a speed of less than 40mph. Based on the minimum distance that Ms Cameron must have been thrown, Mr Ward considered that the car's speed exceeded 25mph and was probably in the range 30-35mph. If Mr Nwankwo had been travelling at 20mph it was likely in all but one circumstance (which assumed that Mr Nwankwo had begun to react before the impact) that the collision would still have occurred albeit at a lower speed.

[28] There was no evidence from the CCTV footage that the car made a sudden large swerve movement prior to impact. However, even moderate changes in lateral position were unlikely to be noticed given the distance from the camera, the number of screen pixels that the car occupied, the glare from the headlights and the time between frames. The Toyota had come to a halt in southbound lane 3. Mr Ward could see no evidence of a double swerve while the car was braking after the driver's reaction time. If there was no

swerve then it would appear that the car had been travelling in the southbound lane.

Mr Ward found further evidence for this conclusion by overlaying an image of the Toyota shortly (about two seconds) after the collision on a frame showing the stopped position of the black cab in the northbound lane after the collision. This exercise showed the Toyota positioned to the right of the stationary car, suggesting that at the moment of this image it may have been in the southbound lane but did not conclusively demonstrate it, bearing in mind that the northbound lane was wider than the others.

[29] In the course of his oral evidence Mr Ward rejected as improbable the suggestion that the Toyota had moved after impact from the northbound lane to southbound lane 3.

Assuming a lateral movement of 3 metres from one lane to the other, requiring a turn to the right followed by a correction to the left, he calculated the minimum time for such a manoeuvre to be 1.4 seconds if carried out harshly. Such a movement would probably have been detectable on the CCTV footage. A less harsh manoeuvre would have taken longer but might not be detectable on the footage. A lateral movement of less than 3 metres would have required less time. Any such movement could only begin after the period allowed for the driver's reaction time. The average reaction time was 1.5 seconds.

[30] Mr Ward also considered the avoidability of the accident from the point of view of Ms Cameron. It was not possible to calculate the speed of her travel from the CCTV footage because her longitudinal position (ie how far up North Hanover Street she had come) could not be ascertained. Mr Ward's report included a diagram (Diagram 8) indicating the likely area of the last pre-impact view of Ms Cameron, depending upon whether the impact had occurred at 30mph or at 35mph. In one respect I differ from Mr Ward's conclusion in this regard. The diagram assumes that the car whose offside light cluster is used as a point of reference was the only stationary car in southbound lane 2, whereas my interpretation of the

footage is that there were two. The light cluster would therefore have been further to the right in Mr Ward's diagram, and it seems to me that it is more likely that at this point Ms Cameron was in the area of Mr Ward's green line than his orange line. That would be consistent with the fact that she was still moving quickly forward at the moment of impact.

[31] Mr Ward noted that the Highway Code included the following rules:

"Rule 3

Help other road users to see you. Wear or carry something light-coloured, bright or fluorescent in poor daylight conditions. When it is dark, use reflective materials (e.g. armbands, sashes, waistcoats, jackets, footwear), which can be seen by drivers using headlights up to three times as far away as non-reflective materials.

Rule 8

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

Rule 17

At night. Wear something reflective to make it easier for others to see you (see Rule 3). If there is no pedestrian crossing nearby, cross the road near a street light so that traffic can see you more easily."

[32] Mr Ward accepted that the CCTV footage provided no assistance as to:

- whether Mr Nwankwo had been stopped at a red light before turning into North Hanover Street;
- whether Ms Cameron stopped in southbound lane 3 before resuming her attempt to reach the other side of the road;
- the whereabouts of Mr Fyfe at the time of impact.

Mr Holland

[33] Although Mr Holland had prepared a detailed written report, the evidence elicited from him concerned only one matter. His report included a series of screen captures from the CCTV footage during the period immediately after the accident. He had overlaid two yellow dotted lines on the screen captures. One line followed the edge of the kerb at the northbound carriageway. The other was said to be a continuation southwards of the centre line of the two northbound carriageways after the split some way north of the accident location. As such it ran parallel to the dividing line between the northbound carriageway and southbound carriageway 3 but was slightly to the west of it. The purpose was to demonstrate that when the Toyota emerged from headlight glare immediately after the collision, it appeared to be in the northbound lane, whereas a few frames later it was wholly in southbound lane 3, where it came to rest. Mr Holland also produced an aerial photograph showing the location of the two yellow lines from above, including their relationship to the road markings.

[34] Mr Ward's view was that it was not possible to be confident that the yellow lines were correctly positioned with regard to the lanes at the accident location. An offset of only 2 degrees would produce an error of 2 metres towards the junction, and the dotted lines would cross the lane markings. There might also be lens distortion in the CCTV images that would cause a straight line to present as slightly curved and so a straight line would not accurately represent what it was attempting to demonstrate.

Assessment of evidence

[35] It was submitted on behalf of the pursuers, and not disputed by the defenders, that the duty of care incumbent upon Mr Nwankwo was to keep a good lookout; not to drive at

excessive speed; and to adhere to the lane markings regulating the flow of traffic. Breaches of duty could include driving in the wrong lane or partly in the wrong lane, and/or driving at a speed too fast for the prevailing circumstances, and/or failing properly to observe his surroundings.

In which lane did the collision occur?

[36] I take as a starting point the fact, clearly established, that the car came to a stop in southbound lane 3, facing directly forward with both of its nearside wheels on the line separating that lane from the northbound lane. In order to arrive at that position, the car must, after turning into North Hanover Street, either have been driven along the southbound lane or have been driven initially wholly or partially within the northbound lane before moving, either before or after the impact, into the southbound lane. Of these alternatives, I reject the possibility that the car moved from the northbound to the southbound lane before the collision. There is no indication of it on the CCTV footage. Neither of the two police officers, who were fairly close to the car as it turned the corner, observed such a manoeuvre, which would have to have been completed very quickly in order to put the car into the southbound lane in time to strike Ms Cameron. It would have made no sense in relation to the car's intended destination in Killermont Street. The only evidence supporting this scenario is that of Mr Fyfe.

[37] I have difficulty accepting a number of features of Mr Fyfe's narrative as accurate. In many respects it stands alone and conflicts with other evidence. The CCTV footage does not show the car accelerating hard out of the corner and I consider that if it had done so this would have been noticed by the police officers. Mr Wilson's statement, so far as it goes, is also to contrary effect. Nor am I satisfied that Mr Fyfe was crossing the road only a few

paces behind Ms Cameron. Although the CCTV images are opaque, Ms Cameron can clearly be identified moving quickly in front of the lights of stationary cars, and there is no sign of another figure. PC Dunlop saw only Ms Cameron. I accept that it is possible that Mr Fyfe had begun to cross the road but if so he was some distance behind Ms Cameron. From that perspective he would not have been in a position to observe the changes in direction that he described. I cannot exclude the possibility that Ms Cameron stopped while crossing the road and then began to move forward again, but if she did so after passing the cars in lane 2 then it was a very brief pause indeed, without time to look to the left and react to what she saw, as described by Mr Fyfe. I have to conclude that although he was doing his best to describe the accident as he recalled it, his memory is not accurate. I make no criticism whatever of Mr Fyfe for that: it was an extremely traumatic incident which happened very quickly.

[38] One is therefore left with the two remaining possibilities that the car came round the corner wholly or partly in the southbound lane or that it moved to that lane after the collision had occurred in the northbound lane. In support of the latter alternative, senior counsel for the defenders founded upon the following:

- inherent improbability: there was available a wide northbound lane which would allow the car to proceed normally in preparation for a left turn into Killermont Street;
- the presence of southbound vehicles which, even if they were in lane 2, would render a right turn into the wrong lane tricky;
- the evidence of Mr Nwankwo who knew the road well and was anxious to drive correctly to avoid jeopardising his livelihood;

- Mr Wilson's statements that the car proceeded "normally" and, orally to PC Patterson, that the car was in the correct lane;
- PC Gallagher's impression that the car was in the correct lane;
- PC Dunlop's initial evidence to similar effect;
- the CCTV footage which did show a swerve to the right (as supported by PC Patterson) at about the time of impact; and
- the indication afforded by the yellow lines on Mr Holland's screen captures showing a lateral movement of the car after impact from the northbound lane into the southbound lane.

[39] On behalf of the pursuers, senior counsel submitted that the following evidence should be accepted as demonstrating that the accident had happened in the southbound lane:

- the contemporaneous statements of PC Dunlop and PC Gallagher, in which the expression "lane 2" was clearly used as a description of the southbound lane, albeit that they both mistakenly thought that it was a second northbound lane;
- Mr Fyfe's evidence that Ms Cameron had been in the southbound lane;
- the absence of reliable CCTV evidence of a swerve;
- the position where the car came to a stop;
- the improbability of a "double" swerve within the time and distance available;
- the evidence of the police officers that the accident happened in a different lane from where Ms Cameron landed and the debris was found after the accident;

- the unlikelihood of Ms Cameron having crossed an empty southbound lane into the northbound lane while the car approached.

[40] Having considered all of the evidence and the parties' submissions, I find that the collision happened in the southbound lane. In making that finding I rely upon the following.

[41] Firstly, I find the references in the police officers' statements to "lane 2" to be compelling evidence that the car was being driven in the second lane from the pavement where they were walking. I found PC Dunlop, who witnessed the impact, to be a credible and reliable witness. Although in his oral evidence he initially described the car as having been in the northbound lane, his final position was clear. He accepted that he had been mistaken about the road configuration when he wrote his statement and that his recollection at that time was likely to have been accurate. I reject the possibility that he had the layby in mind as lane 1; the car had passed the layby before the collision occurred and PC Dunlop was not observing events across the layby. His evidence was also clear that Ms Cameron had been thrown to the left and landed in a different lane from where she was struck.

[42] PC Gallagher was a rather less impressive witness because of her readiness to accept conflicting propositions put to her in examination in chief and in cross-examination. Nevertheless she too accepted that she had believed at the time that there were two northbound lanes and that her statement that the collision happened in "lane 2" was likely to be accurate. Her evidence carries less weight than that of PC Dunlop because she did not see the accident happen, having been alerted to it by the sound of the impact. Her assertion that she would have noticed if the car was in the wrong lane carries little weight because of her erroneous understanding of the road configuration.

[43] In this regard Mr Fyfe's evidence is consistent with that of the police officers, although given that he was observing events laterally from several metres' distance, I am once again unable to place significant weight upon it.

[44] I find that on balance the CCTV evidence is supportive of the pursuers' analysis. I am unable to conclude with certainty whether the footage shows the car swerving at or immediately after the moment of impact. Mr Ward's view was that it was not possible to be sure. Although PC Patterson initially stated that a swerve could be seen, he subsequently described the footage as inconclusive. If there was any swerve at all to the right it was a very slight one, consistent with an instinctive reaction by Mr Nwankwo to the "image" striking his passenger windscreen but not sufficient to move the vehicle from one lane to another. I agree with Mr Ward's view that such a manoeuvre would have lasted a sufficiently long time to be likely to be visible in successive CCTV frames. No correcting turn to the left can be detected. I find therefore that what the footage demonstrates is that at the time of the collision Mr Nwankwo was driving either wholly or almost wholly in the southbound lane, and that after the impact he continued more or less straight ahead to the point where he stopped.

[45] Although the pursuers did not place emphasis on it, I find support for this assessment in the exercise carried out by Mr Ward in which he overlaid the image of the Toyota immediately after the impact on the CCTV frame showing the stopped position of the black cab. It is apparent that at this moment, too soon for Mr Nwankwo to have reacted to the impact and carried out a swerving manoeuvre, the Toyota had been to the right of the position of the black cab in the northbound lane after the accident. Even allowing for the extra width of the northbound lane, that seems, in my judgement, to place the Toyota wholly or mainly in the southbound lane. That conclusion is not consistent with the

inference drawn from Mr Holland's exercise using the yellow dotted lines that the car moved from one lane to the other. When one compares the same frames used in the two exercises, for example the second of the four frames timed at 23.44.27, it is apparent that both representations cannot be correct because the black cab in Mr Ward's image is occupying largely the same space as the Toyota in Mr Holland's image. I conclude that the methodology adopted by Mr Ward is the more reliable, depending as it does only on the overlaying of two images from the footage, and that for whatever reason, be it lens distortion or an offset in the direction of the lines on the road, Mr Holland's yellow lines are not drawn in precisely the correct place.

[46] Three further factors support my conclusion that the car was in the southbound lane at the time of impact. Firstly, it is a matter of agreement that the effect of the car striking Ms Cameron as she was moving across the road in front of it would be to project her forwards in the direction of travel of the car and to the side in her own direction of travel. The fact that she, and the objects that she was carrying, came to rest in the southbound lane is more consistent with the impact having occurred in the adjacent lane than in the lane where she landed. Secondly, I agree with the pursuers' submission that it is inherently improbable that Ms Cameron would have crossed an empty southbound lane into the path of a car approaching in the northbound lane. It is more likely that she would have moved into the path of a car that was obscured from her view by the stationary cars in lane 2. Thirdly, if she had had to cross an empty lane it is more likely that Mr Nwankwo would have seen her crossing the lane before the impact, even though it might still have been too late for him to react and brake in time to avoid the collision.

[47] It follows from what I have said that I must reject the evidence of Mr Nwankwo that he turned into the northbound lane. The fact that that lane was the appropriate one for a

subsequent left turn into Killermont Street does not preclude the possibility that he cut the corner in the absence of any traffic in lane 3. There would have been plenty of time for him to move into the left hand lane to make his next turn. Although he claimed to be familiar with the road configuration it may have slipped his mind that there were, for a short stretch of North Hanover Street, three southbound lanes. As the CCTV footage showed, he was not following directly behind a vehicle in front. I also have to reject the view of Mr Wilson, as reported by PC Patterson, that Mr Nwankwo was in the correct lane: there was of course no opportunity for that view to be challenged.

[48] For these reasons I hold that Mr Nwankwo was driving in the wrong lane at the time of the accident and was in breach of his duty to take reasonable care for the safety of other road users, including Ms Cameron.

What was the car's speed?

[49] The issue of the speed of the car assumes less importance than it would have had if I had found that the accident happened in the northbound lane. Questions of causation do not arise because the evidence is insufficient to enable a calculation to be made as to whether the collision would have been avoided if the car had been travelling at a lower speed.

Nevertheless I require to express a view, as the pursuers submitted that Mr Nwankwo had been driving at an excessive speed which was itself a breach of his duty of care.

[50] It is a curious feature of the case that the only witnesses who gave evidence that they knew that the speed limit at the locus of the accident was 20mph were Mr Nwankwo and PC Gallagher. The other police officers, including the road patrol officers Patterson and Kelly (who prepared the road crash report), erroneously thought that it was 30mph although the lower limit had come into effect more than a year previously and was indicated

by roundels along the adjacent roads. Mr Wilson's understanding is not known.

Contemporaneous observations regarding the reasonableness of Mr Nwankwo's speed must be assessed accordingly.

[51] In summary the evidence regarding Mr Nwankwo's speed was as follows:

- PC Dunlop estimated that Mr Nwankwo was driving at about 30mph; he was of the view that the speed was not excessive.
- PC Gallagher's impression was that the car was not speeding, but she did not give an estimate of its speed.
- PC Patterson's estimate, based on the pattern of damage to the car, was 20-30mph.
- Mr Nwankwo stated that he was driving at 18-20mph, being aware of the speed limit and having seen the digits "18" on his satnav before the accident happened.
- Mr Wilson is recorded as having stated that the Toyota was being driven "at normal speed".
- Mr Ward's estimate, based on the damage to the car and the distance Ms Cameron was thrown, was 30-35mph.

[52] I find no reason to reject the consensus view, based partly on eye witness observation and partly on experience and expert calculation, that the car was travelling at about 30mph at the time of the impact. I reject Mr Nwankwo's evidence that he was travelling at 18-20mph because it is inconsistent with the expert and other evidence which I have accepted. I have no reason to doubt that his satnav displayed a speed of 18mph at some point as he drove from the traffic lights in Cathedral Street round the corner into North Hanover Street, but it would be somewhat odd if he executed the turn while watching the satnav rather than

focusing his attention on the road ahead. I therefore do not regard his evidence as affording a reliable indication of his speed at the point of impact.

[53] The question therefore arises of whether by driving in excess of the speed limit he was in breach of his duty of care. Senior counsel for the pursuers did not submit that exceeding the speed limit was necessarily indicative of negligence, but did submit that exceeding the speed limit was negligent in the circumstances which subsisted here. It was dark, a Saturday night, and a time when bars were emptying. The locus was close to a bus station and a railway station and it was to be anticipated that there might be pedestrians attempting to cross the road. In such circumstances it was the duty of drivers including Mr Nwankwo not to exceed the speed limit.

[54] On behalf of the defenders it was submitted that no general danger arose from the fact that the locus was in a city centre late at night. There had to be evidence of a particular danger other than the fact that the accident happened. There was no absolute duty to drive within the speed limit. The eye witness evidence of PCs Dunlop and Gallagher and Mr Wilson was all to the effect that Mr Nwankwo was driving at a reasonable speed.

[55] I accept the proposition that from the point of view of duty of care (as opposed to traffic regulation) there is no absolute duty to drive within the speed limit, and that exceeding the limit is not of itself evidence of negligence. On balance I am not persuaded that if Mr Nwankwo had been in the correct lane, driving along North Hanover Street at about 30mph would have been a breach of his duty of care. It can be seen from the CCTV footage that vehicle and pedestrian traffic along the street was sparse. There are no bars spilling customers on to the street. Although there is a bus station and a railway station in the area they are both some distance away. Respect ought in my view to be accorded to the impressions of the eye witnesses, even though (or perhaps especially because) at least some

of them had an erroneous understanding of the speed limit in force. In all the circumstances I do not consider that driving at about 30mph constitutes an additional ground of negligence on the part of Mr Nwankwo. Nor, as I have already noted, does the evidence establish that the accident would not have occurred if he had been driving 10mph more slowly.

Contributory negligence

[56] Ms Cameron chose to cross a four lane carriageway at a place where there was no traffic light control or central pedestrian refuge. There was a nearby pedestrian crossing at the junction of North Hanover Street and Cathedral Street. A little further north, the chevrons in the centre of the road diverted traffic to one side or the other and could have provided a degree of pedestrian protection. It was dark and Ms Cameron was wearing black clothing. She moved at a fast walk or slow jog behind vehicles that were stationary at the traffic lights. It was common ground that in these circumstances some degree of blame for the accident attached to her.

[57] In *Jackson v Murray* 2015 SC (UKSC) 105, Lord Reed explained that when assessing contributory negligence it was necessary to take account both of the blameworthiness of the parties and the causative potency of their acts. He regarded the potentially dangerous nature of a car being driven at speed as an element of blameworthiness rather than causative potency; the same would apply to a car being driven in the wrong lane. As regards causative potency, Lord Reed contrasted the case of a pedestrian who steps directly into the path of a car being driven at a reasonable speed (as in *Ehrari v Curry* [2007] EWCA Civ 120), where the more direct and immediate cause is the conduct of the pedestrian, with a case such as *Eagle v Chambers* [2004] RTR 115 in which a driver strikes a pedestrian who has been

careless of her own safety but has been in his line of vision for long enough for him easily to have avoided her.

[58] The facts of *Snow v Giddins* (1969) 113 SJ 229 (CA) bear some resemblance to the present case. The report narrates that the plaintiff decided to cross a busy road near a pedestrian crossing with a central refuge and not far from a road junction. He chose a time when northbound traffic was stationary at a red light and, having safely weaved his way through two lanes of traffic, was standing in the centre of the road looking to his left for traffic moving south when he was struck by the defendant on a motor scooter travelling north on the wrong side of the white lines in the centre of the road. The plaintiff was found to have been 25% to blame for the accident. Delivering a judgment with which the others concurred, Widgery LJ considered that it was dangerous to say that a pedestrian was negligent in not using a pedestrian crossing: it was preferable to say that a pedestrian who elected not to use a crossing took on himself a higher standard of care. The plaintiff was not negligent in weaving between stationary traffic instead of using a crossing which was itself clogged with cars, but he was negligent in taking on himself the hazard of being marooned in the centre of the road instead of crossing where there was a central refuge, thereby placing himself in an unnecessarily hazardous position.

[59] In the present case the actions of both parties were of causative significance. Mr Nwankwo was driving in the wrong lane. Ms Cameron placed herself in a hazardous position by choosing to cross the road at a point where there was no protection from oncoming traffic, in circumstances where she should reasonably have been aware that she would be difficult to see by approaching drivers. She ought, as senior counsel for the pursuers observed, to have been safe in an empty southbound lane 3, but that point has been addressed in the finding of liability against Mr Nwankwo. In my opinion the degree of her

blameworthiness is greater than that of the plaintiff in *Snow v Giddins* but less than that of the pursuer in *Jackson v Murray* who ran out from behind a stationary bus into the path of a car that was being driven in the correct carriageway but at an excessive speed. In the whole circumstances I hold that Mr Nwankwo was more blameworthy than Ms Cameron and I assess contributory negligence at one-third.

Disposal

[60] As this is a personal injuries action there are no pleas in law to be sustained or repelled. The case will now require to proceed to a proof on quantum but before pronouncing an interlocutor I shall put it out by order to be addressed on any matters arising at this stage.