

Judgments

Mitrasinovic v Stroud

[2020] EWHC 914 (QB)

Queen's Bench Division

Margaret Obi (sitting as a deputy judge of the High Court)

17 April 2020

Judgment

Giles Mooney QC (instructed by Fieldfisher LLP) for the Claimant

Andrew Davis (instructed by DWF LLP) for the Defendant

Hearing dates: 12-14 February 2020

APPROVED JUDGMENT

Covid-19 Protocol: This judgment was handed down by the judge remotely by circulation to the parties' representatives by email and release to Bailii. The date and time for hand-down is deemed to be 10.30am on 17 April 2020.

Margaret Obi:

This judgment is divided into eight sections as follows:

- I. Introduction: [§ 1-2]
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I. **Introduction**

1. On 29 April 2017, at approximately 1.50pm, the Claimant, Mr Vladimir Mitrasinovic was riding a motorcycle when he collided with a car being driven by the Defendant, Miss Evelyn Stroud. Mr Mitrasinovic sustained significant injuries including multiple fractures to his right leg and a spinal cord injury. He required hospitalisation and operative treatment. He was discharged from hospital 10 months after the accident. Mr Mitrasinovic is an experienced driver and motorcyclist. He is 55 years old. At the time of the accident he was 52 years old. Miss Stroud is 21 years old. At the time of the accident she was 18 years old and an inexperienced driver.
2. Mr Mitrasinovic alleged that the accident was caused by the negligence of Miss Stroud. On 8 July 2019, Master Davison ordered that liability should be determined as a preliminary issue. Therefore, the issues to be determined are as follows:-
 - a) Primary liability; and
 - b) Contributory negligence, if appropriate.

II. **Background**

3. The background circumstances, as set out below, were not in dispute.
4. The only witnesses able to give direct evidence, with regard to the events which led to the collision, were Mr Mitrasinovic and Miss Stroud. Although Mr Mitrasinovic had been riding with other motorcyclists, they did not witness the accident as they were either ahead of him or were in the process of negotiating the preceding bend and therefore, he was not in their line of sight.
5. At the time of the accident Mr Mitrasinovic had been a member of the Spyder Motorcycle Club for approximately two years. The club is owned by Mr Mark Smith-Young and is based at Silverstone racetrack. The club supplies members with club owned motorcycles for short fixed term rental and organises tours for experienced motorcycle riders. The club also holds open days, which take place a couple of times a year. The open days provide members with the opportunity to ride different motorcycles on pre-set routes and manufacturers and garage owners with the opportunity to showcase motorcycles which may result in a purchase. The accident occurred on an open day. Mr Young-Smith split the riders that attended the open day into two groups. There were 7-8 members in each group. Mr Mitrasinovic was in the first group ('the group'). The group went out on a ride ('the first ride') at approximately 10am. The group went out again ('the second ride') at approximately 1pm. Mr Young-Smith led the group. During the second ride Mr Mitrasinovic was either the third or fourth rider behind Mr Young-Smith. The group travelled in a northbound direction along Lillingstone Road (the A413) and as Mr Mitrasinovic approached a left-hand bend in the road, he was positioned at the far right-hand side of the carriageway. Shortly thereafter the collision occurred.
6. Miss Stroud started to learn to drive at the end of January 2016 and passed her driving test in the middle of August that year. On 29 April 2017 she was driving her Ford Ka along the A413. Her car was not fitted with a dashboard camera, but it was fitted with a 'black box' which was mounted in the dashboard. The 'black box' recorded GPS position/speed and accelerometer data. Miss Stroud had made plans to pick up a friend from Great Horwood and then attend a rugby match but at the start of her journey she was alone in her car. Miss Stroud travelled in a southbound direction along the A413 and needed to turn right to navigate the bend. It was as she negotiated the corner that the collision occurred.
7. PC Adrian White, a collision investigator, attended the site of the accident between 3.15pm and 4.50pm. He took photographs at the scene and provided a witness statement for the purpose of these

proceedings, dated 7 October 2019. The contents of his witness statement were agreed. He described the layout of the A413, and general visibility as follows:

'[it] is a single carriageway road with one lane in each direction and it is subject to the national speed limit which means 60mph for both vehicles involved in this incident. The general layout can be seen in the photographs and it is similar when approaching from either direction with kerbs, grass verges and hedges bordering farmland.

The opposing lanes are separated by double solid white lines. ... There are chevron boards on the outside of the bend indicating the direction but not the severity of the bend.

When heading north, as the motorcyclist did in this case, the road initially follows a gentle right-hand curve and then ascends to a crest. From the crest the road descends slightly into a sharp left-hand bend. Vision towards this bend and around it is limited firstly by the crest and then by the hedge line.

When heading south, as the car did, the road ascends gradually towards what is for the driver a right-hand bend. There is a more open view on the approach to the bend as there is no crest at this point. Drivers travelling in this direction have better views around the bend as vehicles are on the outside of the curve.'

8. When PC White attended the scene Miss Stroud's car was within the southbound lane of the A413 facing south. He described the damage to the vehicles and the marks on the road surface as follows:

'[the car] had sustained shallow, longitudinal damage. There was no frontal impact damage.

There was scuffing to the offside front wheel and damage that extended from the offside front wheel. It continued back along the offside as far as the rear wing. There was an obvious impact to the windscreen, the 'A' and 'B' pillars.

All of the damage was consistent with having been caused by the motorcycle and its rider, in an upright position.

The...motorcycle had scuffing and impact related damage that was confined to its offside. There was scuffing and damage to the front tyre and the alloy wheel rim had shattered on the offside. There was further scuffing and damage to the fork, fairing, fuel tank, radiator cover, pedal controls and the exhaust. The offside (right) handlebar with an integrated indicator and the brake lever had been damaged. The height of this...handlebar would be consistent with the damage to the 'A' and 'B' pillar of the [car].

On examining the road I found a fresh tyre scuff mark on the solid white line alongside the southbound lane (that being the line closer to the [car].

Beyond the initial tyre scuff mark was a thinner tyre mark alongside which was a scuff mark.

Beyond this point, along the white line adjacent to the northbound lane was another tyre mark and within the southbound lane was a series of scratches and gouges.

All led in a straight line heading generally north and leading to an area of fluid from the motorcycle.

Adjacent to this fluid spill and closer to the southbound kerb was an area of body fluid.

There was shattered glass from the [car] scattered along the southbound lane, beyond the initial tyre marks.'

9. The police collision report ('the police report'), dated 29 April 2017, stated that the weather conditions were 'fine' and 'dry'. The road surface was 'good', visibility was 'clear' and the chevrons indicating that there was a sharp bend ahead are described as 'Clearly Visible – Excellent.'

10. In the police report under the heading 'Drivers Initial Comments' is the following entry which was signed by Miss Stroud on 29 April 2017 and timed at 3.24pm:

'I was driving towards Buckingham. I was going around that bend as the motorcyclist was coming the other way. It looked like they came over to my side of the road and crashed into me.'

11. The initial comments of Mr Mitrasinovic were not obtained until 3 May 2017, when the police attended the intensive care unit at the John Radcliffe Hospital. The officer that attended the hospital reported that Mr Mitrasinovic:

'Stated he was riding towards Towcester and approached left hand bend. A car came round the bend and he recalls its wheel being over the white line (centre). He lifted the m/c up and collided with it.'

12. The other agreed witness statements were from Dr Colin Smithers, dated 9 October 2019 and 11 February 2020. His company is the designer, manufacturer and supplier of 'black box' vehicle tracking equipment used by a number of insurance companies, including Ingenie, which was Miss Stroud's insurer. In his first witness statement Dr Smithers stated:

'...the average accuracy of the GPS receiver in the black box is typically 2.5m (as taken from GPS chipset manufacturers specifications) under good signal conditions and once it has had time to settle and is not accelerating.'

13. In his second statement, Dr Smithers stated that the GPS specification refers to GPS chipset having a horizontal outdoor accuracy of 2.5m CEP. He explained that:

'CEP is a standard term which stands for Circular Error Probability. 2.5m CEP means that when the GPS receiver has a good antenna installation and an unobstructed view of the sky, you can draw a circle of radius 2.5m (i.e. a diameter of 5m) around the GPS receiver and there is a 50% chance that the reported GPS position will be in that circle.'

14. The trial bundle also included witness statements from Miss Stroud's mother and Mr Mitrasinovic's wife and son.

III. The Factual Dispute

15. Mr Mitrasinovic stated in his witness statement, dated 30 July 2019, that as he approached the left-hand bend he was *'...properly positioned at the far right hand side of [the] carriageway.'* He stated that this positioning *'...is advised in all advanced rider training as it allows a rider to see traffic approaching from the other side of the bend and the driver of oncoming traffic to see a motor cyclist.'* Mr Mitrasinovic estimated that he was travelling at around 40mph. He went on to state that *'[a]ll of a sudden'* he noticed a vehicle coming towards him with its offside front wheel *'on or over'* the solid white line which ran along the centre of the carriageway. In his witness statement, he explained that in an attempt avoid a collision he applied the brakes, then released the brakes so that he could turn the motorcycle to the left. However, as he was applying pressure on the left side with his left leg and turning left, he collided with the vehicle.

16. Mr Mitrasinovic's account was disputed. It was suggested, on behalf of Miss Stroud, that he misjudged the corner and was forced to brake, prior to seeing her, and as a consequence found himself on the wrong side of the road as she approached in her vehicle.

17. Miss Stroud stated in her witness statement, dated 15 June 2017, that as she approached the right-hand bend, she saw a number of motorcycles pass her on the opposite carriageway. She was driving at 40mph and slowed to approximately 35mph as she approached the bend. She stated that although she was probably closer to the solid white lines in the centre than she was to the left-hand edge of the carriageway, she remained on the correct side of the road at all times. In her witness statement she explained that she saw the motorcycle but did not think that it was going to hit her. She stated that she negotiated the right bend and *'...was just starting to straighten up'* when *'all of a sudden'* she saw the motorcycle *'...come across the centre while lines and hit...'* her vehicle.

18. Miss Stroud's account was disputed. It was suggested, on behalf of Mr Mitrasinovic, that she cut the corner as she drove round the bend and crossed onto the wrong side of the road, causing him to brake and a collision to ensue.

IV. Collision Investigation Expert Reports

19. Mr David Hague was instructed on behalf of Mitrasinovic and produced a collision investigation report, dated 21 January 2020. Dr John Searle was instructed on behalf of Miss Stroud and produced a collision investigation report, also dated 21 January 2020. A joint expert report ('the joint report') was provided to the court, dated 10 February 2020.

20. The areas of agreement, as set out in the joint report, can be summarised as follows:

i. In both directions the carriageway '*...initially ran slightly uphill on the approach to the collision, near to the crest of a slight rise*' and '*...the bend has an assisting crossfall which reaches its maximum close to the apex of the bend.*'

ii. In both directions there are bends along the carriageway, before the bend where the collision occurred, and vehicles generally approach that particular bend at speeds significantly less than the permitted speed limit of 60mph;

iii. The hedge on the inside of the bend obscures the view between vehicles approaching one another;

iv. The separation distance on first view of vehicles approaching from the opposite direction is somewhere between 55-60m. The times in view depends on the average closing speeds for the vehicles whilst they were in view but is likely to be between 1.5-1.8 seconds.

v. The initial impact was probably between the offside of Mr Mitrasinovic's front wheel, which was damaged in the impact, and the offside of Ms Stroud's front wheel. '*As the vehicles went past one another, the offside handlebar struck the offside 'A' pillar and Mr Mitrasinovic's leg was crushed between the vehicles. The car's rear offside wheel arch was torn off.*'

21. On a variety of matters there was no agreement. These included:

i. The road dimensions and the layout. Mr Hague used electronic equipment to survey the road layout and prepared a scale plan. Dr Searle's plan was based on a print of the Ordnance Survey data. The chevron marker boards are not shown on the Ordnance Survey data. Mr Hague stated in the joint report that '*...Dr Searle's plan is drawn as a series of straight lines and is around 1 metre too narrow in the vicinity of where the collision occurred. At the apex, the hedge on the inside of the bend is closer to the verge than elsewhere, which is not correctly placed on Dr Searle's plan and all the chevron marker boards are facing in incorrect directions, as it is the boards on the far side of the bend which face the traffic.*'

ii. Response times. Mr Hague stated that '*[p]ublished research shows that the brake response time of a 'surprised' car driver to a hazard which appears in their field of view is typically around 1 second but the brake response time of an alert driver is around 0.75 seconds. The brake response time of a motorcyclist could be around 0.25 seconds faster than a car driver due to the time saved in moving the foot from the accelerator to the brake pedal. Mr Mitrasinovic could therefore have been braking for around 0.75 seconds before the collision.*' Dr Searle expressed the opinion that the time actually available for response would be less than the time in view. In the joint report he stated '*...a longer time than three quarters of a second seems appropriate to take account of the reaction time and then the response time.*' In Dr Searle's first report, dated 21 January 2020, he stated that '*there would appear to be no time after the car came into view, nor indeed any reason, for the action Mr Mitrasinovic says he took.*'

iii. The location and point of initial impact. Mr Hague stated in the joint report that that the '*...dark marks and scratches/gouges on the centre of line adjacent to the southbound lane and 10 metres south of the centre of the track (Mark 5 on Mr Hague's plan) were probably created by the front tyre and damaged wheel of the motorcycle during or immediately after the impact. It is common for a tyre mark to be created by the front tyre of a motorcycle when it stops rotating as a result of an impact with another vehicle. ...The motorcycle's front tyre, at the moment of impact, was therefore probably above or immediately adjacent to the line marking and the [car] was travelling close to the centre line markings at the moment of impact.*' However, Dr Searle was of the opinion that '*[t]he marks on the centreline at the edge of the car's lane do not appear to represent the point of impact between the vehicles, but were created shortly after impact. The exact distance is difficult to quantify, but the collision probably occurred about where the motorcycle debris starts.*'

iv. The significance of the data from the 'black box'. Mr Hague stated that the data indicates that Miss Stroud was travelling at a speed of approximately 36mph around the apex of the bend, was gradually slowing on her approach and the car slowed to around 34mph at the time of impact. In the joint report Mr Hague acknowledged that the lateral positions recorded by the GPS are not accurate but stated that the '*...GPS and accelerator data can be used to assess the approximate point of impact for the car along the length of the road. When allowing for GPS lag, the data is compatible with the impact position [he assessed] and suggests that the point of impact was most likely no further south than the southern chevron marker boards (the point of impact suggested by Dr Searle in his report).*' Dr Searle stated that because of the '*...GPS error the speed of [Miss Stroud's vehicle] cannot be determined with accuracy... . The reduction of speed appears to be that produced by engine braking combined with the slight gradient. ...Positional accuracy makes all the GPS fixes unreliable, to the extent that the fix might be in the field alongside. For the longitudinal fix the positional inaccuracy is compounded by the time delay, making that doubly unreliable.*'

v. The approach path of the motorcycle. Mr Hague stated in the joint report that '*[i]f Mr Mitrasinovic brought the motorcycle to a more upright position, or if he delayed turning into the bend, or if he applied light or moderate braking, the motorcycle would have followed a straighter path than otherwise and would have moved towards the outside of the bend. If the motorcycle was approaching close to the right-hand edge of its lane, it could therefore have crossed the centre of the road as a result of Mr Mitrasinovic responding to the car.*' In the joint report Dr Searle stated, '*[it] appears possible that the motorcyclist, coming into the bend towards the outside of his traffic lane, has felt that he had not braked sufficiently and he lifted his motorcycle in order to apply further braking. The result would be to cause the motorcycle to run wide, across the double white lines. If whilst this was taking place, a car happened to come the other way, then a collision would occur.*'

vi. The approach path of the car. Mr Hague noted that the accelerometer data recorded that Miss Stroud vehicle responded around 0.4 seconds before the collision, indicating that she started to turn the wheel rapidly towards the left. He stated that he '*...conducted a computer simulation to recreate the left-right accelerations in order to assess how far the car moved towards the outside of the bend before impact. This indicated that the car moved around 0.7 to 0.8 metres across the road before the collision. Using...[his] point of impact (and even if the point of impact had been 3 metres further to the south) the car was therefore probably encroaching into the northbound half of the road before the collision.*' Dr Searle described Mr Hague's opinion (that Miss Stroud steered to the left) as an exaggeration. He stated that '*[f]rom a tiny time before impact (about 0.12 seconds) the trace does reverse, but even at impact has only reached the low level of 0.1g. ...If there was any reversal at all, it was trivial.*'

V. The Oral Evidence

Mr Mitrasinovic

22. Mr Mitrasinovic was a reasonable and thoughtful witness. He was cross examined at length and overall, his oral evidence was consistent with his witness statement. The slight differences were in relation to the position of the wheels of Miss Stroud's car when '*[a]ll of a sudden*' he saw the vehicle coming towards him and the action he took to move out of the way.

23. In his witness statement, Mr Mitrasinovic stated that '*the front off side wheel was on or over the solid white lines on [his] side of the road.*' However, during cross examination, he stated that the wheels of the car were *on*, rather than *over*, the solid white line. He disputed the unsigned comment, attributed to him in the collision report, that the wheel of the car was '*over the white line*'. In relation to his reaction to the oncoming vehicle he stated, in his witness statement, that he reduced his speed to avoid a collision and immediately applied the brakes. He stated, '*After applying the brakes, one has to continue to control the motorcycle. After the initial application of the brakes, I released them and focused on turning the motorcycle away from the oncoming vehicle...I was applying pressure on the left side with my leg and turning towards the left.*' He did not mention in his witness statement that he '*lifted*' the motorcycle, although it is mentioned in the unsigned comment in the collision report. During his oral evidence, he stated that the sequence was as follows: (i) he braked; (ii) he released the brakes; (iii) he turned the motorcycle to the left; (iv) started turning left. He stated that the motorcycle lifted by itself as result of applying the brakes.

24. Mr Mitrasinovic stated that he has passed driving tests in the UK, Croatia and the USA. He acknowledged that he had not undertaken an advance rider course or an advance test, but he stated that in 2015 and 2016 he participated in advance safety classes with the police. He stated that he was

advised by the police when approaching a left-hand bend to move to the far right in order *'to see and be seen'*. He did not accept that he would *'always'* ride on the far right hand side. However, he did accept that he should have followed the Driver and Vehicle Standards Agency (DVSA) Guidance. The DVSA Guidance advises riders to keep to their normal riding position in the centre of the lane when negotiating bends.

25. Mr Mitrasinovic stated that he was riding at approximately 45mph. He estimated that as he approached the bend, he had slowed down to about 40mph. He denied that the cause of the accident could be attributed to his speed.

Miss Stroud

26. Miss Stroud's evidence was clear and measured. At times she became very distressed. Overall her oral evidence was consistent with the account she provided to the police on 29 April 2017 and the witness statement that she provided on 13 September 2017. During her oral evidence, she described herself as a *'cautious driver'*. She accepted that she was driving *'closer to the centre of the road than the verge'*. However, she stated that she was *'not on the centre line,'* and later went on to state, *'...I knew my position in the road, I didn't need to think about it, I knew I stayed on the right side of the road'*.

27. During cross examination, she stated that she *'assumed'* she was in the correct position but later stated, *'I don't think I did edge onto the wrong side of the road.'* She admitted that there *'... might have been occasions when [she] cut corners but not on this day.'* Miss Stroud accepted that she had not driven at a speed at which she could stop in the distance she could see to be clear. However, she also stated that she felt that she had control of the car. She said that when she first saw the motorcycle it was on the correct side of the road. She stated that she was correctly positioned on her side of the road and *'...then all of a sudden somebody hit [her].'* In re-examination, she stated that she was not surprised by the motorcycle as she thought that it would carry on around the corner. It was when it came across the white lines that she was surprised.

The Spyder Club Members

28. Mr Smith-Young, Mr Harvey Bowden, Mr Derek Wales and Mr Neil Sleightholm ('the Spyder Club Members') gave oral evidence on behalf of Mr Mitrasinovic. Mr Gillate was also a Spyder Club Member but did not give oral evidence. As mentioned above the Spyder Club Members did not witness the accident itself; their contribution was limited to the aftermath and their knowledge of Mr Mitrasinovic as a rider.

29. Mr Smith-Young's witness statement is dated 27 February 2018. He vetted the club members by checking their past driving history and presence on social media. He gave a short briefing before the first ride regarding general conduct on the day. He stated that he had ridden with Mr Mitrasinovic 3 or 4 times before the accident and considered him to be a very good rider. He was not impressed by the fact that there was no police investigation and was surprised that Miss Stroud's mobile phone was not interrogated to ascertain whether she was using her phone shortly before the accident. During cross examination, he accepted that he has no evidence that she had been on her phone. He stated in terms that Miss Stroud was at fault and that he had reached this conclusion *'from seeing the bike.'*

30. Mr Bowden's witness statement is dated 28 September 2019. He had not known Mr Mitrasinovic long and the day of the accident was their first time riding together. He was not sure if he was riding directly behind Mr Mitrasinovic or Mr Sleightholm. He saw *'a startled looking driver'* drive past at approximately 30/40mph. During cross examination he stated that the driver was *'going at a fair speed'* and described *'a terrified girl at the wheel'*. He noticed that the car was damaged. Shortly afterwards he came across the scene of the accident. He described Miss Stroud's car as being *'back on her side of the road'*. When challenged by Mr Davis he conceded that at no point had he seen her car on the wrong side of the road. Mr Bowden is a trained videographer. He returned to the scene some months later and captured a number of drivers travelling in the same direction Miss Stroud had travelled. He produced the video footage which showed a number of vehicles driving on the centre white line or encroaching onto the opposite carriageway.

31. Mr Wales's witness statement is dated 9 February 2018. He had only recently met Mr Mitrasinovic. During his oral evidence, he described himself as the *'tail end charlie'* as he was at the back of the group. He was unable to say in what order the other Spyder Club Members were riding.

He believed that he saw Miss Stroud's car travelling on the wrong side of the road and stated during his oral evidence that '*...a third of the car was in the northbound carriageway*'. The car was still moving when he saw it and he noticed that the side of the vehicle was damaged. He recalled that when he subsequently spoke to Miss Stroud, she asked '*was it my fault?*'.

32. Mr Sleightholm's witness statement is dated 29 December 2017. He did not know Mr Mitrasinovic before the day of the accident. He rode past Miss Stroud's car which was stationary and when he arrived at the scene there was no-one else there.

The Experts

33. Mr Hague's evidence primarily rested on his opinion that Mark 5 on his plan (*'dark marks and scratches/gouges on the centre of line adjacent to the southbound lane and 10 metres south of the centre of the track'*) indicates the point of impact. He stated that motorcycles '*usually*' leave such a mark at the point of impact. However, he conceded that it was not the only possible point of impact. He stated that allowing for GPS lag the point of impact was most likely to be no further south than the southern chevron marker boards. As stated in paragraph 24(iv) above, Mr Hague acknowledged that the lateral positions reported by the GPS are unreliable. However, he relied on the longitudinal data to support his opinion that Mark 5 was probably the point of impact. The difficulty with Dr Hague's analysis is that, according to the accepted evidence of Dr Smithers, there is a 50% chance of the GPS reporting a position within a 5m diameter circle in all directions; not just laterally. The 50% chance applies to circumstances where there is: (i) a good signal, (ii) time to settle, and (iii) the vehicle is not accelerating or decelerating. Importantly, acceleration includes acceleration on any axis including turning. During his oral evidence, Mr Hague stated that he had not seen the GPS specification even though it had been disclosed before his report was available. Mr Hague made no mention of CEP in his report, and as a consequence there was no explanation as to how it affected his analysis. In his first report he stated, '*it appears typical for the speeds calculated by GPS to lag the true speeds by around 1 second*'. This appeared to contradict the evidence of Dr Smithers, who stated that the time delays vary '*...inversely according to the strength and quality of the GPS signal and this can show up as variable positional errors in moving situations, particularly during cornering*.' Furthermore, although Mr Hague stated during cross examination that he had accounted for the variables it was not clear in what way he had taken them into account.

34. The GPS data is inaccurate. There was no evidence before the court that the GPS data although unreliable in one respect was reliable in another. Therefore, I accept the submission made by Mr Davis that the degree of inaccuracy is incalculable. As a consequence, although I accepted Mr Hague's evidence that Mark 5 *could* be the point of impact, I discounted his opinion that despite the inaccuracy of the GPS data it is an appropriate '*cross-check*'.

35. Mr Hague cited the standard work on response times – a book written by David Krauss entitled, '*Forensic Aspects of Driver Perception and Response*' ('Krauss'). He stated in his first report that, at 40mph for both vehicles, Mr Mitrasinovic would have had Miss Stroud's car in view for around 1.5 seconds. He stated a typical brake response time for car drivers is '*around 1 second*' but Mr Mitrasinovic, as a motorcyclist, could have been braking for 0.25 seconds faster. Mr Hague was critical of Dr Searle for suggesting a response time of 1-1.5 seconds. However, Krauss states that 1 second is a fast time as the subjects in the study are likely to be '*more alert than usual*'. Krauss states that the confidence interval is up to 1.5 seconds if the hazard occurs straight ahead and the driver is looking in that direction.

36. The response time relied upon by Mr Hague is towards the faster end of the spectrum. Mr Hague stated in his first report, '*...it appears that Mr Mitrasinovic responded promptly to the car by braking and that this resulted in him crossing just over the centre of the road to reach the point of impact*.' However, it was Mr Mitrasinovic's evidence that he was able to brake, release the brakes and start to turn the motorcycle left just before the collision occurred. If his response time was slower than the very short period allowed by Mr Hague there would have been even less time for Mr Mitrasinovic to have reacted in the way he described.

37. The response time also impacts on the approach path of the car. Dr Smithers in his witness statement referred to a graph based on the data obtained 6 seconds prior to the impact and 4 seconds after the impact. Although Dr Smithers described the green line as the '*swerving axis*', Mr Hague described the upturn of the green line before the accident as a '*steer to the left*'. He accepted in oral evidence that the first part of the movement is consistent with Miss Stroud's evidence that she had '*just started to straighten up*'. Therefore, it would not be a left turn but a reduction of right turn as she came around the bend. The graph provides corroboration of this as her car was still turning right as

the green line is below zero. It would also indicate that Miss Stroud's vehicle was further along the carriageway than indicated by Mr Hague's analysis. Furthermore, the 0.7-0.8m '*move across the road*' includes the period of time consistent with Miss Stroud '*straightening up*'. The green line is above zero (i.e. the car is turning left) for 0.15 seconds and the movement across is significantly less than 0.7-0.8m. Mr Hague, in the joint report, accepts it is only a '*slight left hand turn*' and during cross examination he confirmed that he had not calculated how much of the 0.7-0.8m movement was represented by the 0.15 second left turn. The concessions made by Mr Hague during his oral evidence undermined his conclusion, that Miss Stroud's car '*...was most likely travelling with its offside encroaching into the northbound half of the road.*'

38. A working copy of Mr Hague's computer simulation was not adduced in evidence. During cross examination Mr Hague confirmed that the simulation is tied to his point of impact - Mark 5 and that he chose to start the simulation of Miss Stroud's car at a point very close to the white centre lines. He accepted that he could have chosen any path and any angle. However, he stated that he did not test his hypothesis by using Miss Stroud's evidence because he did not know precisely what her position would have been on the road. He stated that the purpose of the simulation was not to establish the point of impact but the effect of the rapid '*change of steering*' and for that he needed to use a fixed point of impact. Although I accept the explanation provided by Mr Hague there is an obvious circularity to this aspect of his evidence which undermines its probative value.

39. Mr Hague appeared to accept that the location of the glass and debris is consistent with Dr Searle's analysis. In the joint statement he stated that the glass and debris '*can be used to assess the very approximate areas where the collision occurred*' but described it during cross examination as the '*lowest form of evidence*'. Mr Hague also accepted Dr Searle's evidence that the motorbike would have travelled in a straight line after the collision which is corroborated by the evidence of PC White who noted that the marks were all in a straight line. However, during his oral evidence Mr Hague stated that after following a straight path the motorcycle then followed a curved path due to the crossfall.

40. Dr Searle's evidence was that Mark 5 did not appear to represent the point of impact. In his opinion, the marks on the double white lines were left by the motorcycle as it travelled in a straight line across the road after the impact had taken place in the southbound carriageway. He stated in his first report that the point of impact occurred before the car reached the plastic particles and concentration of white particles as depicted in the police photographs (Photographs 11 and 12). As the chevrons can be seen in these photographs Mr Hague, not unreasonably, took this relatively imprecise location to be a reference to the point approximately level with the southern most chevron. During cross examination Dr Searle appeared reluctant to accept that that chevron provided a useful point of reference. Mr Mooney QC invited me to conclude that this was because he was aware that Mr Hague's diagram demonstrated that a collision point level with the southern most chevron was only 20cm into the southbound lane and Dr Searle was keen to maintain that the point of impact was at least 1 metre into that lane. I do not accept that submission. Dr Searle's consistently stated in his first report, in the joint report and during his oral evidence that he could not be precise about the point of impact.

41. Dr Searle stated that in the absence of a tyre mark or gouge in the road it was impossible to identify a definitive collision point. Mr Mooney QC submitted that this indicates that Dr Searle would expect to see a mark and therefore he should have accepted Mr Hague's evidence that a gouge or tyre mark is usually left when a motorcycle front wheel hits a car and the rotation of the wheel stops. I disagree. It was Dr Searle's evidence, when taken as a whole, that he would not expect to find a mark in this type of accident. He further stated during his oral evidence that if he '*found a mark [he] would be very surprised.*'

42. Mr Mooney QC highlighted a number of other concerns about Dr Searle's evidence which I do accept. Dr Searle, in his first report, stated, '*[i]t would seem that Mr Mitrasinovic has not just gone straight on, but has turned to the right.*' During cross examination, he acknowledged that the reference to a right turn is incorrect. His explanation was that '*at that time [he] had not taken on board that Mr Mitrasinovic was not in the normal position in the middle and was right up to the centre line*'. He stated that he had written a draft report before he read the witness statements and pleadings and before he visited the site. He accepted that it was an error but did not accept that it '*changed anything*', in other words, it did not undermine his conclusion that the point of impact occurred approximately 1 metre into the southbound carriageway. Although I accept that the error, did not in itself, undermine Dr Searle's entire analysis it did indicate a degree of carelessness. Furthermore, whereas Mr Hague was willing to make appropriate concessions during the course of his evidence, Dr Searle seemed far more reluctant to do so. For example, there appeared to be no good reason why he would not accept, in the joint

report and during his evidence, that the plan produced by Mr Hague was accurate. He also expressed an unwillingness to accept that the layout was accurate.

43. The most significant concern with regard to Dr Searle's evidence was his repeated response that *'Paris is the capital of France'* in answer to questions as to why he had not explained his rationale on certain points and why he appeared to have found additional reasons to support his theory. Dr Searle stated in the joint statement that, *'[t]he front wheel of the motorcycle appears to have been lifted off the ground at the moment of impact, and it was sustained out of contact for a brief period of time.* He made no mention of this theory in his first report. During cross examination, his explanation for this omission, was that he did not know that his opinion was going to be challenged. He also stated that it appeared obvious to him that the glass and debris indicated that that was the approximate location of the point of impact and that when this was not accepted by Mr Hague, he identified additional reasons. I make no criticism of Dr Searle for attempting to provide further clarification in the joint statement, but he provided no good reason for not including his rationale in his first report. I do not accept, as submitted by Mr Mooney QC, that Dr Searle's evidence strongly indicated that he had lost all independence and was acting as an advocate. However, Dr Searle appeared to have forgotten that his primary duty as an expert witness is to assist the court. No matter how obvious the answer may appear to him it is his responsibility, to provide thorough reasoning and ensure that the report and his oral evidence are complete in its coverage of relevant matters.

44. Although I did not reject Dr Searle's evidence in its entirety, I proceeded with caution in considering his evidence particularly when it conflicted with the evidence of Mr Hague.

VI. Discussion

45. There was no dispute as to the cause of the accident. It was accepted by both parties that Mr Mitrasinovic was riding his motorcycle around the left-hand bend on the correct side of the road. It is also agreed that he then braked causing the motorcycle to lift and straighten rather than continue to follow the curve of the carriageway. The central issue is why?

46. The Spyder Club Members were honest witnesses, in that there was no intention to deceive. They were clearly decent, sensible and careful motorcycle riders. Mr Mooney QC, no doubt in recognition of the limitations of their evidence, made it clear that he solely relied on the evidence of Mr Mitrasinovic and Mr Hague with regards to the cause of the accident. Although the Spyder Club Members were of no assistance in relation to the key issue to be determined in this case it was clear from their evidence that Mr Mitrasinovic was considered to be a very competent and responsible rider. However, it was equally clear that most of the Spyder Club Members had concluded that Miss Stroud was at fault and this inevitably tainted their perspective. For example, Mr Smith-Young's evidence demonstrated that he was prepared to speculate about the cause of the accident even though he had not witnessed the collision. Mr Bowden could not have seen Miss Stroud's car driving past as Mr Sleightholm was first on the scene and by then the accident had happened and Miss Stroud had stopped her car. Furthermore, Mr Bowden's video evidence was of limited probative value. He acknowledged during his evidence that he had edited the video to show the cars that had cut the corner. Mr Wales could not have seen a third of Miss Stroud's car on the opposite carriageway as the accident took place before he arrived at the site.

47. Mr James Gillatte did not attend the trial. He had a good reason for not doing so. However, as his evidence was not subject to cross examination the concerns raised by the content of his witness statement could not be addressed. The concerns included his assertion that, *'I know exactly what happened'* when he could not possibly have known as he did not witness the accident. Therefore, his evidence was of limited assistance.

48. As observed by Mr Justice Coulson (as he then was) in *Stewart v Glaze* [2009] EWHC 704 (QB): *'...it is the primary factual evidence which is of the greatest importance in a case of this kind. The expert evidence comprises a useful way in which that factual evidence, and the inferences to be drawn from it, can be tested. It is, however, very important to ensure that the expert evidence is not elevated into a fixed framework, against which the defendant's actions are then to be rigidly judged with a mathematical formula.'*

49. The primary factual evidence in this case was finely balanced. In my judgment, the more persuasive elements of the factual evidence assist me in forming my views of the expert testimony and vice versa.

50. Mr Mitrasinovic's statement is dated more than two years after the accident. I had no reason to doubt that Mr Mitrasinovic genuinely believed that Miss Stroud was at fault and that this was because the front wheel of her car was on one or both of the white lines. I also had no reason to doubt that he is generally a safe and competent rider. However, no matter how competent a rider may be, mistakes can happen particularly when riding an unfamiliar motorcycle. Mr Mitrasinovic acknowledged during his oral evidence that the incident occurred within a '*split second*'. Based on his own account there is a possibility that the wheel of Miss Stroud's car was only on one of the white centre lines. This would mean that Miss Stroud had not cut the corner and had not crossed onto the wrong side of the road as pleaded in the Particulars of Claim.

51. During his closing submissions, Mr Mooney QC submitted that the fact that Mr Mitrasinovic gave positive evidence that he braked upon seeing Miss Stroud and she accepts that she swerved on seeing him coming towards her renders the arguments over reaction times moot. I disagree. According to Mr Mitrasinovic he did more than brake; he braked, released the brakes, turned the motorcycle and started turning left. In a case such as this where the events unfolded within a very short period of time the more actions that took place within the narrow timeframe the less likely it is that it occurred. Mr Hague acknowledged during cross examination that there would not be sufficient time for Mr Mitrasinovic to brake and steer in 0.75 seconds. In these circumstances, I concluded that it is likely that Mr Mitrasinovic unintentionally reconstructed his evidence.

52. Ultimately, I preferred the evidence of Miss Stroud. She gave a formal witness statement, within five months of the accident, when the events were relatively fresh in her mind and when there was less opportunity for her to reconstruct her evidence in the light of other evidence. Although, at the time of the accident, Miss Stroud had only recently passed her driving test and had driven less than 4,500 miles, I accept her evidence that she was a '*cautious*' driver. She was aware that her driving was being monitored by her insurer via the 'black box', she was not in a hurry and there was no evidence that she exceeded the speed limit. She was not a defensive witness; she answered the questions that were asked of her openly and honestly. Her evidence that she did not think the motorcyclist was going to hit her and was surprised when he came across the road was compelling.

53. Mr Mooney QC invited me to conclude that Miss Stroud's concession, that she '*assumed*' she was driving on the correct side of the road, was critical. I disagree. The concession was made after she had become highly emotional. However, before and after this concession she maintained that she had remained on her side of the road at all times. The other concession Miss Stroud made was that she did not drive at a speed at which she could stop in the distance she could see to be clear. However, the Highway Code stopping distance for 40mph is 36m. Miss Stroud was driving no more than 40mph and the agreed separation distance is 55-60m. Therefore, although the cross examination of Miss Stroud was handled with sensitivity her response indicated that she was suggestible. Another example of this is Miss Stroud's acceptance that if she was straightening up when she saw Mr Mitrasinovic, that must have meant that she had cut the corner as otherwise she would still be steering around the corner. This part of her evidence was in stark contrast to her evidence as a whole - that she did not cross the white line. There was no dispute that Miss Stroud asked Mr Bowden '*was it my fault*', or words to that effect, after the accident. I am satisfied that this question simply reflects the fact that immediately after the accident Miss Stroud was confused and uncertain as to why the accident had occurred. I do not accept that it indicates that she believed that she had cut the corner and therefore was at fault.

54. The expert evidence was helpful in providing the scientific context within which the factual evidence could be evaluated. However, just as the Spyder Club Members could shed no light on the reason why Mr Mitrasinovic lifted and straightened the motorcycle, neither could Mr Hague or Dr Searle. To the extent that the experts theorised that Mr Mitrasinovic reacted to the sight of Miss Stroud's car coming across the white lines or misjudged the bend their opinions were irrelevant and therefore inadmissible.

55. Although Mr Hague was of the view that Mark 5 was likely to be the point of impact he accepted that it could have been anywhere from Mark 5 to the southern most chevron.

VII. **Factual Findings**

56. The key factual findings are as follows:

- i. Miss Stroud did not cut the corner and did not cross the white line onto the wrong side of the road;

- ii. Miss Stroud exercised the degree of care reasonably to be expected of a motorist negotiating a sharp right hand bend and the accident was not the result of any lack of care on her part.
 - iii. Mr Mitrasinovic, for whatever reason, braked as he approached the sharp left hand bend causing the motorcycle to go straight forward rather than turning to the left;
 - iv. Mark 5 is not the point of impact;
 - v. The point of impact is somewhere between Mark 5 and the southern most chevron.
57. It follows from these findings that Mr Mitrasinovic's claim must be dismissed.

VIII. **Conclusion**

58. Mr Mitrasinovic will be disappointed with my conclusion, and anything I add is unlikely to be of any comfort to him. However, it seems appropriate to conclude this judgment by commending him for his candour and resilience. No one who heard his oral evidence could have anything but the greatest sympathy for him, as he deals with the consequences of a momentary error.

59. Parties should seek to agree terms of an order that reflects my conclusions and deals with any other consequential matters including costs. In the absence of agreement, the parties are at liberty to make an application in writing within 14 days following the formal hand-down of this judgment (for which the parties need not be present). If such an application is made, the opposing party will have another 7 days to respond in writing. If there are any consequential matters, they will be determined either in writing or via a telephone hearing.