

SHERIFFDOM OF LoTHIAN AND BORDERS AT EDINBURGH
IN THE ALL-SCOTLAND SHERIFF PERSONAL INJURY COURT

[2020] SC EDIN 44

PN3057-19

JUDGMENT OF SHERIFF ROBERT D M FIFE

in the cause

GORDON WALLACE

Pursuer

against

(FIRST) DAVID ROACHE

(SECOND) LIVERPOOL VICTORIA INSURANCE COMPANY LIMITED

Defenders

Pursuer: Crawford, Advocate; Cycle Law Scotland, Edinburgh
Defenders: Murray, Advocate; Keoghs GHS Scotland LLP, Glasgow

Edinburgh, 28 October 2020

- (1) A proof in this action proceeded on 6 and 7 October 2020. The pursuer claims damages following a road traffic accident on 25 July 2018. Damages were agreed in the sum of £26,000, inclusive of interest to 15 September 2020. The proof was restricted to liability.

Authorities

- (2) The court was referred to the following authorities:
1. *Worsfold v Howe* 1980 W.L.R. 1175;
 2. *Browne v The Central S.M.T. Company Ltd* 1949 SC 9;
 3. *Ahanonu v South East London Bus Company Ltd* [2008] EWCA Civ 274;

4. *Birch v Paulson* [2012] EWCA Civ 487;
 5. *Till v Tayside Public Transport Company Ltd* [2017] CSOH 6.
- (3) The sheriff, having resumed consideration of the cause, finds the following facts to be admitted or proved.

Findings in fact

- (4) On 25 July 2018, at about 16.45 hours, the pursuer who was an experienced cyclist, was riding his S-Works Tarmac Bicycle (“bike”) on the National Cycle Network Cycle Route 1, which runs adjacent to the A91 at St Andrews (“the cycle path”). The cycle path runs in a generally east to west direction from St Andrews to Guardbridge.
- (5) The pursuer was cycling in a westerly direction towards Guardbridge, passed the Old Course at St Andrews (“the Old Course”), and with the golf course to the north and to his right. Around 25 July 2018, the Senior Open Championship was taking place on the Old Course.
- (6) There is an access road from the A91 to the Balgove Golf Course (“the Balgove Course”), which provided a temporary car park for visitors to the Senior Open Championship. The Balgove Course and the temporary car park were located to the north of the cycle path.
- (7) The access road runs in a generally south to north direction from the A91. Access from the A91 is by a wide entrance mouth, through a set of metal gates. There is a second set of steel mesh gates at the entrance to the Balgove Course. These two sets of gates are generally closed.

- (8) The access road has a metalled road surface, of older construction than the cycle path, which has a smooth tarmacadam surface. The access road has existed for many years before there was any cycle path.
- (9) The cycle path runs to the east and to the west of the access road. For cyclists approaching the access road from either direction there is a prominent Give Way sign. The width of the cycle path is 2.75 metres where it meets the access road.
- (10) On 25 July 2018, both sets of gates were open for visitors to the Senior Open Championship to park their vehicles in the temporary car park.
- (11) The access road has priority over the cycle path. While there are no road markings, cyclists must give way to traffic proceeding on the access road, being the main road.
- (12) The pursuer had a view of the Give Way sign, the access road and the entrance/exit gates to the Balgove Course from a distance of at least 30 metres from the access road. That view is shown in photograph 11 in the report by Ms Holland, production 6/1, at page 80 of the joint bundle of productions: see the appendix to this judgment.
- (13) The pursuer had a cycling companion, but he was some distance ahead, and the pursuer was cycling on his own at around 16.45 hours.
- (14) The pursuer was very familiar with the cycle path. He had used the cycle path at least 20-30 times. His route always took the pursuer past the access road, if he was cycling from St Andrews towards Dundee.
- (15) The pursuer was very familiar with the access road. He was aware of the two sets of gates at the access road and, in particular, the entrance/exit gates to the Balgove Course. The pursuer was aware of the Give Way signs from each direction of the cycle path at the access road. The pursuer had only ever seen the gates open when

grass machinery had been cutting grass. In summer, the pursuer had seen grass machinery on about one in four occasions.

- (16) The pursuer was unaware of the Senior Open Championship taking place on the Old Course. As the pursuer approached the access road, he was cycling at a speed of about 20 mph. The pursuer was cycling around the centre of the cycle path. He did not reduce his speed at any time as he approached the access road. He ignored the Give Way sign.
- (17) The pursuer did not look to his right, in the direction of the entrance/exit gates to the Balgove Course. Had the pursuer looked, he would have seen the gates were open. The pursuer did not notice both sets of gates were open, to his right and to his left. That would have alerted the pursuer to the probability of vehicles using the access road for entrance/exit to/from the gates.
- (18) The pursuer maintained a constant cycling speed of about 20 mph, until the bike collided with the front nearside of a Peugeot 2008, car registration number AJ64 LWU ("the car"). The first defender was driving the car as he exited the temporary car park heading for the A91, and emerged through the exit gates to the right of the pursuer. The pursuer did not brake prior to the collision.
- (19) Following the collision, the pursuer went over the bonnet of the car and ended up on the ground some distance away. The pursuer sustained multiple injuries.
- (20) The first defender had spent the day on 25 July 2018 at the Senior Open Championship with his wife. He had parked his car in the temporary car park at the Balgove Course. At around 16.45 hours, he left the car park by the access road.
- (21) The first defender was driving at a speed of no more than 15 mph on leaving the car park. He was either in first or second gear. He drove on the left hand side of the

access road, heading towards the exit gates and the A91. That view is shown in photograph 4 in the report by Ms Holland, production 6/1, at page 76 of the joint bundle of productions: see the appendix to this judgment.

- (22) The first defender was aware of a cycle path warning sign on his nearside, close to a large hedge at the east gatepost of the exit gates.
- (23) As the first defender approached the exit gates, he was driving slowly, at a speed of less than 15 mph. He was looking out for cyclists. The first defender had a view of the cycle path to his right (west). He wanted to clear the end of the hedge, so that he had a line of sight of the cycle path to his left (east).
- (24) The first defender continued moving forwards to the exit gates and the A91. As the first defender drew level with the hedge, suddenly and without warning, he heard a very loud bang. A bike travelled across the front nearside and bonnet of his car, and the pursuer ended up on the ground in front of the car.
- (25) As soon as the first defender heard the bang, he stopped the car. The first defender was looking ahead when he heard the bang. The hedge obscured his line of sight to the left. He did not have a line of sight to the left when he heard the bang.
- (26) The first defender stopped at the point of impact. The car moved a very short distance from him hearing the bang until the car was stationary. The first defender did not see the cyclist prior to the collision. The speed of the car at the point of impact was not established, but it was less than 15 mph.
- (27) Police officers attended the locus. The police took no measurements. The point of impact on the access road was not established, but the car had not reached the midpoint of the cycle path when the collision occurred.

Findings in fact and in law

- (28) The pursuer not having established fault and negligence of the first defender at common law on a balance of probability, grants decree of absolvitor in favour of the first defender.
- (29) Finds the second defenders entitled to decree of absolvitor.
- (30) Reserves all questions of expenses. The Sheriff Clerk will fix a hearing on expenses.

NOTE**Witnesses**

[1] The following witnesses gave evidence:

1. Gordon Wallace;
2. PC Neil Murray;
3. Stuart Blackwood;
4. David Roache;
5. Christina Holland;

Accident 25 July 2018**Generally**

[2] There were no independent witnesses to the accident. PC Murray attended the locus, but his priority was for the wellbeing of Mr Wallace and Mr Roache. The circumstances of the accident were not sufficiently serious for PC Murray to call out police crash investigators to carry out an investigation.

Gordon Wallace

[3] Mr Wallace was an experienced cyclist, who had used the cycle path from St Andrews to Guardbridge on at least 20-30 occasions prior to the accident. He was very familiar with the locus where the cycle path meets the access road from the A91 to the Balgove Golf Course.

[4] While Mr Wallace said in evidence, he was travelling at around 18 mph and cycling to the left of the centre of the cycle path that was inconsistent with the instructions to the expert, Mr Blackwood for the purpose of his report, production 5/14. The instructing agents

informed Mr Blackwood that Mr Wallace was cycling at a speed of about 20mph, and travelling around the centre of the cycle path at the time of the accident. I have accepted the information provided to Mr Blackwood as more reliable.

[5] Mr Wallace gave evidence where on the access road the collision took place, but he had less than one second to be aware of where he was. He had less than the minimum reaction time before the collision. He also sustained multiple injuries.

[6] Mr Wallace was aware of the Give Way signs on the cycle path, on approaching the access road from either direction. He was able to see the Give Way sign, and the access gates to the Balgove Course, from a distance of at least 30 metres from the access road. He ignored the Give Way sign as he approached the access road. He maintained a cycling speed of about 20 mph. He did not reduce his speed as he came to the access road. He did not apply his brakes prior to the collision.

[7] Mr Wallace accepted the access road had priority over the cycle path. He did not see Mr Roache's car until he was about 6 metres from the collision. He did not slow down, or prepare for any traffic on the access road as he approached the access road.

[8] Mr Wallace was doing his best to tell the truth. Given the circumstances of the accident, it was understandable his reliability might be in doubt. I concluded Mr Wallace was not a reliable witness as to the speed he was cycling prior to and at the point of collision, his position on the cycle path prior to and at the point of collision, the point of impact on the access road and the point of collision on Mr Roache's car.

PC Neil Murray

[9] PC Murray received a radio message to attend the accident. He was familiar with the locus. His primary concern was those involved in the accident. He saw Mr Wallace “was not terribly badly injured”. An ambulance was called.

[10] PC Murray looked at the scene, but he did not carry out any accident investigation and he took no measurements. He noted a brief statement from Mr Roache.

[11] PC Murray said the car had not reached the midpoint of the cycle path when the collision occurred, but the point of impact on the access road was not established.

David Roache

[12] Mr Roache attended the Senior Open Championship at St Andrews on 25 July 2018 with his wife. He parked his Peugeot car in a temporary car park at the Balgove Course.

[13] On leaving the car park, Mr Roache headed towards the exit gates and the A91. As he approached the exit gates, he saw a cycle path warning sign on his nearside near a large hedge, which was on the left-hand side at the east gatepost.

[14] As he left the car park, Mr Roache was travelling at about 15 mph. He was in first gear, although later in his evidence he accepted he might have been in second gear. He was looking out for cyclists. He slowed right down because of the large hedge, as he wanted to clear the end of the hedge to have a line of sight of the cycle path to his left. He had a view of the cycle path to his right. He was looking straight ahead when he heard a very loud bang.

[15] As soon as he heard the bang, he stopped at the point of impact as he was going so slowly. At most, he would have moved forward “a matter of inches” before coming to a stop.

[16] Mr Roache was driving to the left-hand side of the access road as he approached the exit gates. He did not know the point of impact on the access road. He was not able to estimate his position on the access road in relation to the cycle path at the point of impact.

[17] Mr Roache gave his evidence in a straightforward manner. His recollection of detail had diminished through the passage of time, and he was amenable to suggestion. The accident would have been a sudden, unexpected shock.

[18] The speed Mr Roache was travelling at the point of impact was not established. On the evidence I have accepted, a reasonable inference can be made that Mr Roache was travelling at a speed of less than 15mph at the point of impact.

Expert witnesses

Stuart Blackwood

[19] Mr Blackwood was a specialist in collision reconstruction. He adopted his report dated 31 August 2020, and an addendum letter dated 29 September 2020 (productions 5/14 and 5/15).

[20] Mr Blackwood was critical of the layout of the locus. He was critical of the signage arrangements and, in particular, the positioning and height of the Give Way sign. At the time of the accident, both Mr Wallace and Mr Roache would have had difficulty in seeing each other, and of being seen as the hedge to the right of the cycle path and to the left of the left exit gatepost had grown substantially since the cycle path had been put in place.

[21] Maintenance of the hedgerow would have made a huge difference. If the foliage had been cut back significantly, both Mr Wallace and Mr Roache would have had a better view.

[22] The reaction time for both Mr Wallace and Mr Roache would be within a time of 0.75-1.5 seconds.

[23] Mr Blackwood made a number of assumptions about the speed of the bike and the speed of the car prior to and at the point of impact. The difficulty for Mr Blackwood was that the police took no measurements at the time of the accident, and the point of impact was not established. PC Murray said the car had not reached the midpoint of the cycle path when the collision occurred. Mr Blackwood had not examined the bike or the car and had to rely on photographs of the damage.

[24] Mr Blackwood said that it would have made no difference if Mr Roache were travelling at 15 mph or 5 mph. The collision would still have happened.

[25] In the opinion of Mr Blackwood, and given a reaction time of 0.75-1.5 seconds, the only way in which Mr Roache might have avoided a collision, would have been for Mr Roache to stop at the exit gates for a period, with his bumper protruding by 1 metre. That might have given Mr Wallace the opportunity to slow or stop on the cycle path.

[26] Alternatively, had Mr Wallace given precedence to Mr Roache at the locus a collision might also have been avoided.

[27] While Mr Blackwood could not be definitive, he did not think the point of impact could vary to any degree, using reasonable assumptions. The point of impact was a short distance from the front nearside of the car.

[28] The collision might have been avoided, had Mr Roache stopped at the exit gatepost and edged forward encroaching onto the cycle path by 0.3 metre or slightly more. That would have made a significant difference for Mr Wallace approaching the access road.

[29] If the car had stopped in line with the east gatepost or just beyond the gatepost, Mr Wallace could see the car, but Mr Roache would not be able to see Mr Wallace.

[30] In the addendum to his report, Mr Blackwood assumed the bike was travelling at 15 mph prior to the collision, reducing his speed to about 12 mph by very firm braking.

[31] The assumptions made by Mr Blackwood are not supported by the facts. I have made findings in fact that Mr Wallace was travelling at 20 mph, that there was no reduction in his speed prior to the collision, and there was no evidence of any braking by Mr Wallace prior to the collision. The opinion of Mr Blackwood must also be viewed against findings in fact that Mr Wallace ignored the Give Way sign, and did not look at or notice the open access gates as he approached the access road.

[32] At a speed of 20 mph, Mr Wallace would travel 8.33 metres per second ("m/s"). The Stopping Sight Distance (SSD) at a speed of 20 mph is 45 metres.

[33] When the car was positioned at 4 metres from the access gates, Mr Roache would have a view of only 1.6 metres of the cycle path to his left, at a point around 1 metre from the north side of the cycle path.

[34] If Mr Roache was travelling at 15 mph (6.7 m/s), it would have taken him about 0.5 of a second for the car to emerge from the exit gates with the front of the car and nearside wing directly across the cycle path. If the car was travelling at 10 mph (4.47 m/s), it would take 0.67 of a second. If the car was travelling at 5 mph (2.24 m/s), it would take about 1.3 seconds.

[35] Application of very firm braking by the pursuer would stop the bike from 20 mph in a range of 16.3 to 23 metres. The pursuer did not brake prior to the collision.

[36] The application of very firm braking by the first defender from a speed of 15 mph would stop the car in a range of 9.6 to 14.6 metres. There was no evidence the first defender applied very firm braking. If the first defender had been travelling at 5 mph he could have reacted and stopped his car in 2.2 to 3.9 metres.

Christina Holland

[37] Ms Holland was a road traffic accident, reconstruction expert. She adopted her report dated 18 August 2020, subject to minor corrections (production 6/1). Ms Holland was instructed to prepare a report on the layout and visibility at the scene of the collision. She was not instructed to carry out a reconstruction of the accident.

[38] The conclusion was set out at paragraph 3.13 of the report:

“Neither party is likely to have had a view of the other available to them until they reached the opening in the hedge. However, the front bumper of the car would have been visible to approaching cyclists as soon as it passed beyond the hedge. Whether Mr Wallace would have had sufficient time to react to the presence of the car and avoid it by braking or swerving would depend on the speed at which the car emerged from the gate, the speed at which the bicycle was travelling and the perception – response time (the time taken to perceive a hazard and to commence evasive action of Mr Wallace)”.

[39] Mr Wallace would only need a glimpse of the car bonnet to be alerted to the presence of a car, but he would have to be looking at the exit gates at the time.

Submissions generally

[40] Both parties lodged written submissions, which are referred to for their terms.

Submissions for pursuer**Motion**

[41] The motion was to grant decree in favour of the pursuer for £26,000, with interest, expenses, certification of Stuart Blackwood and Mr Tim White FRCS as skilled persons, and sanction for the employment of junior counsel.

Liability

[42] Expanding on the written submissions, both Mr Wallace and Mr Roache were faced with an obstruction.

[43] In the case of *Worsfold v Howe* [1980] C.A. 1175 the court was unsympathetic to a car driver emerging from a station yard onto a main road, whose view was obscured by two stationary tankers. One of the tanker drivers waved to the car driver, who understood the tanker driver would leave a gap through which the car driver could cross the road when it was safe to do so. The car driver moved slowly forward and edged passed the leading tanker into a motorcyclist's path. The car driver was found 50 per cent to blame.

[44] Mr Roache knew of the dangers ahead of him. He knew the cycle path was there. There was a high duty of care. If Mr Roache did not look and proceeded at speed across the cycle path, there would be no opportunity for Mr Wallace to react. Mr Roache should have hesitated at the junction to surmount the problem with the hedge obscuring his view. Mr Roache gambled by not looking to his left and right. He had agreed he had just been using his peripherals. He was really hoping nothing was there. He advanced forward. He looked forward.

[45] It was not a counsel of perfection to hesitate. Mr Roache had said that, with the benefit of hindsight, he would have hesitated, but Mr Roache had foresight. He knew the cycle path was there. As said by Mr Blackwood "What you have to do is pause." That was not too high a standard when faced with these difficulties, i.e. to pause.

[46] There was no dispute hesitating would have made a difference. Ms Holland generally agreed that, with hesitation, Mr Wallace would have passed by safely.

[47] Mr Roache said in his pleadings he was edging out, not driving at 15mph, which was his evidence.

[48] Mr Blackwood said that if Mr Roache had protruded past the exit gates by 1 metre that would have allowed Mr Wallace to pass by safely as there would have been very little encroachment into the cycle path, only about 0.3 metre. That was not the problem Mr Wallace faced. If Mr Roache had hesitated for only 0.5 second, the accident would not have occurred.

[49] There were two options available to Mr Roache. He could have hesitated for 0.5 second or moved forward, so that there was a small protrusion from the gate, sufficient to be seen by Mr Wallace.

[50] On the other side of the access road to the car park, the direction of the cycle path was towards the left. As Mr Wallace was looking ahead, he would be cycling away from any protruding vehicle. He would be looking to the left of the exit gates and not in the direction of the exit gates.

Contributory negligence

[51] While there was a Give Way sign, there was an absence of lines on the road.

Mr Wallace had had a sense of security that a cyclist enjoyed, in using a cycle path.

Mr Wallace was lulled into a sense of security. Mr Roache proceeded, knowing of the risks.

The speed at which Mr Wallace was cycling was not objectively dangerous. Taking a broad-brush approach, the speed of the bike went slightly against Mr Wallace, but the lion's share of responsibility for the accident fell upon Mr Roache. If there was contributory negligence on the part of Mr Wallace, this should be assessed at 25%.

Submissions for defenders

[52] The defenders adopted the written submissions. The motion was to grant decree of absolvitor, with expenses in favour of the defenders, certification of Ms Christina Holland as a skilled person, and sanction for the employment of junior counsel. The *esto* motion, were the court minded to grant decree in favour of the pursuer, was for the court to make a substantial finding of contributory negligence.

Evidence heard under reservation

[53] The defenders maintained the objection to a question put to Mr Wallace in re-examination, whether he thought Mr Roache would have been able to see him if his car was in the same position as the ambulance shown in the photograph of the locus after the accident (page 96 of the joint bundle), to the extent the ambulance had encroached onto the cycle path. Mr Wallace thought Mr Roache would have seen him, and that he could have easily passed Mr Roache, perhaps having to move slightly to his left.

[54] The defenders stated that evidence was speculative. In any event, the basis for the question had not been set up. No weight should be attached to that evidence.

Decision on objection

[55] In my view, the question was hypothetical. The pursuer was not in a position to answer the question. The answer was speculative. There was no attempt to set up the basis for the question. The objection is sustained. The question and answer are not admissible.

Authorities

[56] The defenders referred to the following cases (more fully summarised in the written submissions):

1. *Browne v Central SMT Company Ltd*;
2. *Ahanonu v South East London & Kent Bus Company Ltd*;
3. *Birch v Paulson*;
4. *Till v Tayside Public Transport Company Ltd*.

[57] In summary, these cases were to demonstrate that there was a duty to take reasonable care on the part of Mr Roache, not an elevated standard of care or “a counsel of perfection”.

General submissions

[58] The speed at which Mr Roache was driving was not more than 15mph. There was no evidence precisely what speed he was travelling at when the collision occurred. That was not a matter of evidence. The difficulty for Mr Wallace was that, even if Mr Roache was driving at 5 mph that would not have made any difference. The collision would still have happened.

[59] It was very difficult to say that Mr Roache, in his position, driving at 5 mph, and looking for a line of sight to his left, was in breach of his duty of care.

[60] The pursuer’s case on liability and causation seemed to amount to a requirement to stop or at least hesitate and, as Mr Blackwood accepted, the point at which Mr Wallace hit the car was in a position where Mr Roache could not see the cycle path to the left. A duty of care to draw to a stop when the driver could not see was a good example of elevating the duty on the driver to a counsel of perfection.

[61] The defenders did not agree there was no dispute that hesitation by Mr Roache would have made a difference. That depended on two factors:

1. Where the cyclist was on the cycle path;
2. Whether or not Mr Wallace would have seen Mr Roache's car.

[62] There was no evidence Mr Wallace looked at the exit gates at any time. He said in evidence, he did not look at the gates on approach, and that he did not look at the Give Way sign. There was no evidence Mr Wallace was looking for traffic on the access road.

[63] Mr Wallace proceeded on the assumption there was no traffic on the access road. Even if there was hesitation by Mr Roache where, for example, the front bumper might have been visible, it could not be necessarily concluded that Mr Wallace would have seen it.

[64] From the point where Mr Roache was level with the gatepost, the front of his bumper was 6 cm short of the mid-point of the cycle path. That was with the grass verge being 0.7 metre in width and the cycle path 2.75 metres in width. That supported the conclusion Mr Wallace was at the mid-point of the cycle path.

[65] The photograph taken at the locus after the accident and showing the ambulance was an unreliable depiction of how the locus might have appeared to Mr Wallace. The photographer was on the very nearside of the cycle path and the camera was orientated towards the gate. The ambulance was not in a position in any way representative of the position of the car moments before the collision.

[66] The evidence of Mr Roache supported the conclusion that he was aware of a cycle path warning sign. He was proceeding slowly, with caution, and he was looking for a line of sight. On his evidence, Mr Roache stopped within a very short distance of the collision. That supported two conclusions:

1. He was alert and responded promptly;

2. He was driving at a slow enough speed to bring his car to a halt within a very short distance.

[67] That was supported by the evidence of PC Murray. PC Murray said the car was brought to a halt within half the width of the cycle path, 1.375 metres.

Summary

[68] All these adminicles of evidence supported the position of Mr Roache exercising reasonable care.

[69] The one way Mr Roache's actions might have made much of a difference was, as put by Mr Blackwood, a counsel of perfection. That was an elevation of the duty to take reasonable care.

[70] Mr Wallace's approach to the junction was reckless. He approached the junction where he did not have priority and where there might be traffic. He took no steps to slow down. His speed was excessive. He did not keep a proper lookout.

[71] If Mr Roache was found to be in breach of a duty of care to Mr Wallace, contributory negligence should be assessed at around 80%.

Supplementary submissions for pursuer

[72] As a generality, it could not be said 5 mph was a safe speed.

[73] There were two simple questions:

1. Did Mr Roache emerge without caution? He did;
2. Did that cause injury? It did.

[74] The duty on Mr Roache was to do what was reasonable to prevent injury to others. Emerging in front of those on cycle paths was unsafe, an unsafe fact.

Decision and reasons

[75] The pursuer avers the accident was caused by the fault and negligence of the first defender at common law. The defenders deny liability, and plead contributory negligence in the event the accident was, to any extent, caused by the fault of the first defender.

[76] Each case turns on its own facts and circumstances. The onus is on the pursuer to prove, on a balance of probability, the first defender failed in his duty to take reasonable care for other road users such as the pursuer. In particular, the first defender had a duty to stop before exiting. He had a duty to proceed only when safe to do so and as slowly as possible. He failed to keep a proper lookout.

[77] PC Murray noted a brief statement from the first defender at the locus. There was little detail, as the police did not undertake any accident investigation.

[78] The criticisms of the locus made by the pursuer's expert, Mr Broadwood, see [51] and [52], were well founded.

[79] It was the opinion of Mr Broadwood, that it would not have mattered were the first defender travelling at 15 mph or 5 mph as the first defender passed through the exit gates from the temporary car park. There would still have been a collision with the pursuer's bike.

[80] In order that a collision might have been avoided, Mr Broadwood said the first defender would have had to completely stop at a position about 1 metre to the north of the left exit gatepost, and then move forward slowly at increments, until a view of the cycle path could be attained and checked to be clear.

[81] The distance from the front of the bonnet to the position of the first defender in the car was about 2 metres. The first defender would have had to stop his car at a point where he would not have a view of the cycle path to his left. If the pursuer was looking at the exit

gates as he approached the access road, the pursuer might have been able to see the presence of the car and avoid a collision.

[82] Mr Broadwood could not say that, on the balance of probability, if the pursuer had stopped and then moved forward in increments a collision would probably been avoided. It was only a possibility.

[83] Mr Broadwood did not explain what he meant by the term “increments”, but it would be reasonable to infer he meant very small distances, such as measured in inches.

[84] Mr Wallace was looking ahead, to the left of the exit gates and not in the direction of the exit gates, as he approached the access road.

[85] Mr Broadwood’s opinion depended upon other factors including the pursuer travelling at a speed of about 15 mph, the pursuer looking in the direction of the exit gates, and the pursuer applying very firm braking.

[86] The evidence did not support these assumptions. The pursuer was cycling at a constant speed of about 20 mph. He did not look in the direction of or at the exit gates as he approached the access road. He was not aware the access gates were open. He did not apply his brakes, very firmly or at all, prior to the collision.

[87] In their submissions, the defenders stated:

“A duty of care to draw to a stop when the driver could not see was a good example of elevating the duty on the driver to a counsel of perfection”.

[88] The first defender left the car park travelling at a speed of no more than 15 mph. He was aware of the cycle path warning sign. He was looking out for cyclists. He was aware of the large hedge at the left exit gatepost, which obstructed his view.

[89] When the collision occurred, the first defender was able to stop his car almost immediately, that is, within a very short distance. On a balance of probability, the first defender was travelling at less than 15 mph at the point of impact.

[90] The access road was the main road and had priority over the cycle path, all as demonstrated by the Give Way signs as a warning for cyclists, approaching the access road from either direction.

[91] In the particular circumstances of this case, it was not reasonable for the first defender to have brought his car to a complete stop, or hesitate briefly, at a point where he would not be able to see any of the cycle path to his left, and then edge forward so that the front of the car might be visible to the pursuer, if looking, and avoid a collision.

[92] The pursuer was looking ahead, to the left of the exit gates and not in the direction of the exit gates, as he approached the access road.

[93] Alternatively, the pursuer submitted the first defender could have edged forward to a point where he had a clear view of the cycle path to his left. That would not have avoided the collision in the present case, given the speed at which the pursuer was cycling; that the pursuer was not looking in the direction of the access gates; that the pursuer was not aware of the access gates being open; and that the car had not reached the midpoint of the cycle path when the collision occurred.

[94] On a balance of probability, a collision would have been avoided had the pursuer complied with the Give Way sign. The pursuer did not keep a proper lookout. He should have seen, and been alert to, the access gates being open. The pursuer should have been alert to the possibility of traffic on the access road. The access road was the major road. The pursuer should have significantly reduced his speed as he approached the access road, so that he was able to stop safely at the access road and avoid a collision.

[95] In my view, the first defender drove with reasonable care. The first defender did not breach any duty of care. The pursuer has failed to prove fault on the part of the first defender on the balance of probability.

Summary of decision

[96] The pursuer has failed to establish liability on the part of the first defender and thereby the second defenders. The first and second defenders are entitled to decree of absolvitor.

[97] At the request of parties, expenses were reserved. The sheriff clerk will fix a hearing on expenses. If parties agree expenses, the matter can be dealt with administratively.

Appendix

Photograph 11 in the report by Ms Holland, production 6/1, at page 80 of the joint bundle of productions (finding in fact 11)



Photograph 11: The approximate view available from the centre of the cycle track from a distance of about 30 metres.

Photograph 4 in the report by Ms Holland, production 6/1, at page 76 of the joint bundle of productions (finding in fact 18)



Photograph 4: The approximate view available to a car driver from the centre of the access road from a distance of about 20 metres.