

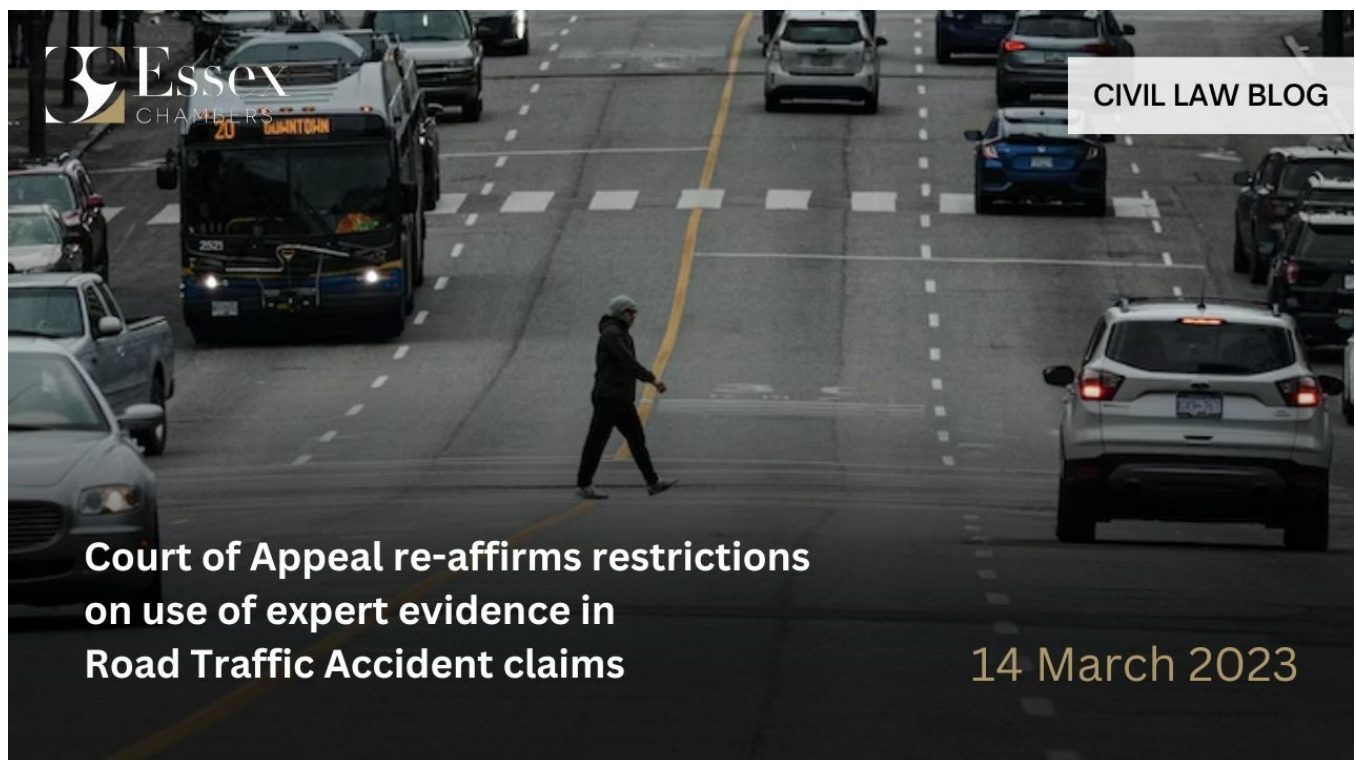
# Court of Appeal re-affirms restrictions on use of expert evidence in Road Traffic Accident claims

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## INTRODUCTION

1. In *Raspin v Taylor* [2022] EWCA Civ 1613 the Court of Appeal re-affirmed the need for the limited use of expert reconstruction evidence in road traffic claims. The Court had originally advised upon restriction of such evidence in the case of *Liddell v Middleton* [1996] P.I.Q.R P36. Needless to say, over the next 25 years adherence to such guidance was not followed by the parties nor enforced by the lower courts on case management.

## THE ACCIDENT

2. On the afternoon of 11 August 2019 the claimant was riding his motorcycle along Ackworth Road in Pontefract. He approached the junction with Hardwick Court, a minor road on his right. As he did so, a Ford Ka being driven by the defendant pulled out from Hardwick Court and turned right onto the main road. The claimant's motorcycle collided with the defendant's car on Ackworth Road. At the time of the collision the car was fully in the carriageway along which the motorcycle was travelling but at an angle as it was completing its turn.

## THE JUDGMENT

3. The Trial Judge found that the collision was caused by the negligence of the defendant. He concluded that the defendant had looked right, left and right again before she pulled out from the minor road. In his judgment she should have looked left again as she continued to pull onto the major road. Her failure to do so was causative of the collision. The judge also determined that the claimant was negligent in that he approached the point of the collision at an excessive speed. He found that the claimant's degree of responsibility for the collision was substantial thereby leading to the reduction of any damages by 45%.

### THE STANCE OF THE DEFENDANT

4. From the outset the Defendant insurers maintained that the claimant motorcyclist was solely responsible for the accident due to the speed he was travelling, that the defendant did all that was required in looking right, left and right again, that by the time the motorcyclist appeared she had already committed to her turn and could not have reasonably seen the motorcycle nor avoid the collision.

5. This was a bold approach in light of the lay evidence for the following reasons:

- The defendant driver was the only lay witness on behalf of the defence. From her police interview through to trial she stated that there were no vehicles on the road when she looked and pulled out. This could not be correct on the accepted evidence as they were two cars approaching from her right not to mention the motor cycle from her left (see below).
- Three lay witnesses were called by the claimant: (i) Mrs Ward (a passenger in a car approaching the scene) who "just could not comprehend how the car driver was pulling out and just kept coming" into the path of the motorcycle. (ii) Mr Barker who saw the car pull out "straight into the path of the motorcyclist" and having noted the motorcycle swerve to the left stated "the car just kept on coming". (iii) Mr Ward, another driver approaching the scene became aware of the motorcycle approaching. Indeed, he stated in his police witness statement made after the accident (on the same day) "It was almost like she was oblivious to him and had just not seen him." On the Defendant driver's own evidence this was clearly correct.
- The lay evidence all described the motor cycle as travelling at or near the 30mph speed limit. It was the defendant's case that the claimant motor cycle was travelling much faster, relying upon RTA expert reconstruction evidence of a Dr Walsh.

### THE CLAIMANT'S STANCE

6. The claimant was content to rely upon all of the lay evidence to prove primary liability. He was also content to rely upon the expert evidence to give a range of the speed. Indeed, it was expected that the Court would try the case on the lay eye witness evidence and then compare and balance that evidence with any expert evidence on speed. This approach was the correct legal approach (see below).

### THE JUDGE'S APPROACH

7. The defence lay witnesses were all cross examined by counsel for the defendant. They were all challenged as to what they saw (not least as their evidence undermined the Defence case). On analysis, the Judge found them all to be honest and credible witnesses.

8. It was clear from their evidence that the defendant car driver pulled out from the side road and continued to pull out into the path of the motor cyclist. She simply had not seen the motor cyclist to her left when he was there to be seen. Indeed, she had not even seen the vehicles to her right (of the independent lay witnesses) when they were also there to be seen by her.

9. Nevertheless, having examined the lay evidence and the failings of the defendant driver in not seeing vehicles to her right, having looked, and therefore not seeing the motor cycle to her left if she had looked, the Learned judge stated: "As will be seen below, though, my conclusion does not rest on this line of reasoning".

10. The Judge's reasoning went on to concentrate upon the analysis of road traffic accident reconstruction evidence, in particular of Dr Walsh, the defendant's expert. His evidence was wide ranging,

going into areas other than speed and relying upon academic research as to the behaviour of drivers.

## THE DEFENDANT'S APPEAL

11. The defendant had elevated its primary case in the Court below (and now on appeal) based on the expert evidence to escape liability and override any lay evidence. It appealed on this basis seeking total absolution for the defendant on the issue of liability.

12. In responding to the appeal the claimant cross appealed, in accordance with legal principles, that the scientific evidence was but one part of the case. If proper account of the lay evidence is taken – namely being at the forefront of the analysis rather than the scientific evidence then the judgment is wholly sustainable .

## LEGAL PRINCIPLES ON ACCIDENT RECONSTRUCTION EVIDENCE

13. It is well established in case law that RTA cases are to be tried upon lay witness evidence when available. Expert evidence may assist the Judge upon technical matters. Nevertheless, such expert evidence is to assist in the assessment and interpretation of the lay evidence and not replace it.

14. The principles were well summarised by Mr Justice Coulson (as he then was) in the case *Stewart v Glaze* [209] EWHC 704 (QB), with reference to Court of Appeal guidance. At Section 2.2 of his judgment, he reviewed the role of accident reconstruction experts in cases as follows:

### “2.2. Accident Reconstruction Evidence

8. Cases such as the present action often feature accident reconstruction experts. There is no doubt that their expertise can sometimes be of considerable assistance to the court.....

9. In *Liddell v Middleton* [1996] P.I.Q.R P36, Stuart Smith LJ said:

“In such cases the function of the expert is to furnish the judge with the necessary scientific criteria and assistance based upon his special skill and experience not possessed by ordinary laymen to enable the judge to interpret the factual evidence of the marks on the road, the damage or whatever it may be. What he is not entitled to do is to say in effect ‘I have considered the statements and/or evidence of the eye-witnesses in this case and I conclude from there evidence that the defendant was going at a certain speed, or that he could have seen the plaintiff at a certain point’. These are facts for the trial judge to find based on the evidence that he accepts and such inferences that he draws from the primary facts found. Still less is the expert entitled to say that in his opinion the defendant should have sounded his horn, seen the plaintiff before he did or taken avoiding action and that in taking some action or failing to take some other action, a party was guilty of negligence. These are matters for the court, on which the expert’s opinion is wholly irrelevant and therefore inadmissible.... We do not have trial by expert in this country; we have trial by Judge. In my judgment, the expert witnesses contributed nothing to the trial in this case except expense. For the reasons that I have indicated, their evidence was largely if not wholly irrelevant and inadmissible. Counsel on each side at the trial succumbed to the temptation of cross-examining them on their opinions, thereby lengthening and complicating a simple case.... In road traffic accidents it is the exception rather than the rule that expert witnesses are required.”

.....

10. In my judgment, 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 or formula, against which the defendant’s actions are then to be rigidly judged with a mathematical precision.”

## JUDGMENT OF THE COURT OF APPEAL

15. The Court of Appeal not only rejected the defendant’s appeal but also re-affirmed the position of the claimant in his cross appeal that the lay evidence must be taken as the primary evidence with expert evidence then being applied on relevant matters (in this case only the issue of speed).

16. The Court of Appeal was critical of the length and breadth of Dr Walsh's report and theoretical matters raised, for example driver behaviour at paragraph 26 Davis LJ stated:

26. The gap acceptance theory expounded by Dr Walsh could not be determinative of whether the defendant was in breach of duty. I doubt whether this evidence was relevant. Dr Walsh's expertise in relation to estimating speed by reference to the marks left on the road by the motorcycle was unquestioned. The speed of the motorcycle was relevant and important. What Dr Walsh had to say about the behaviour of motorists in general could not assist on the issue of how a reasonable motorist should have coped with the junction from which the defendant emerged. If his evidence was intended to say what did or did not amount to a breach of duty, it was inadmissible. In any event, what kind of gap a group of motorists thinks is reasonable to allow entry from a minor road onto a major road tells us nothing about whether the emerging motorist should check to their left for a second time as they move out onto the major road.

17. Further, at paragraph 34 with Davis LJ continued:

34. Although unnecessary for my decision on this appeal, I consider that, if there were anything arguably open to criticism in the judge's approach, it would be in the emphasis he placed on the expert evidence. This was a collision which was witnessed by three lay witnesses who had a clear view of what happened. Their evidence was consistent. The defendant's car continued to pull out onto the major road when the motorcycle was there to be seen. The car could have stopped in time for the collision to be avoided. That evidence should have been the central focus of the judge's consideration of the case. To that he needed to add the fact that the defendant did not see any traffic on the main road. In her evidence she was categoric in her assertion that there was no vehicle on the main road in either direction. The judge said that this factor "might go" to the issue of the effectiveness of the defendant's observation. It quite plainly did go to that issue. More to the point it demonstrated that the defendant was not keeping a proper lookout when the claimant was there to be seen, whatever his speed.

18. He then referred to the cases of *Stewart v Glaze and Liddell v Middleton* (both above) and continued (at paragraph 35) about the legal principle they established:

35. I agree with that proposition. In this case the expert evidence was of significance in providing evidence of the speed of the motorcycle though it seems to me that the judge did fall into the trap of engaging in an exercise of mathematical precision. The expert evidence was not central to the case. The lay evidence which established that the defendant pulled out of a minor road and continued to pull out even when the motorcycle was in view and when she could have stopped was paramount. This only reinforces my conclusion that this court should not interfere with the judge's conclusion.

## CONCLUSION

19. The Court of Appeal in *Raspin* took the opportunity to draw attention to the approach and use of expert evidence in road traffic cases. It recognised that expert evidence can be useful but (a) it does not take precedence over the primary lay evidence to an accident and (b) there must be focus on the relevant issues which may assist the court.

20. It is expected that this case will be brought to the attention of the case management courts by parties in restricting the issue(s) upon which the experts are to report.

21. Given that *Liddell* is still good law after 25 years this re-alignment is timely.

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