

BETWEEN**PETER DUFFY****PLAINTIFF****AND****PATRICK LYONS****DEFENDANT****JUDGMENT of Mr. Justice Barr delivered on the 31st day of May, 2017****Introduction**

1. This action arises out of road traffic accident which occurred on 8th September, 2014 at the junction of Crumlin Road and Rafters Road, Dublin 12. The accident occurred at approximately 21.15 hours. Although it was dark at the time, weather conditions were otherwise good.

2. It is the plaintiff's case that as he was in the process of making a right-hand turn on his bicycle, going from Crumlin Road into the mouth of Rafters Road, he was collided into by the defendant's car, which was proceeding along Crumlin Road coming in the opposite direction. It is the plaintiff's case that, had the defendant been driving with reasonable care, he ought to have seen the plaintiff's bicycle on the junction and should have avoided the collision.

3. In essence, the defendant's case is that the plaintiff emerged suddenly onto his side of the road, from between a line of traffic that was backed up on the opposite side of the road and that he had no chance to avoid the collision.

4. The dimensions of the road were not in dispute between the parties. The overall width of Crumlin Road was 9 metres. On the pavement side of each of the carriageways, there were cycle lines, each of which measured 1.5 metres. The two lanes on either side of the centre white line, which were for vehicular traffic, measured 3m each. It was also accepted that there was street lighting in the area as shown in photographs 11, 12 and 13 taken by the plaintiff's engineer, Mr. Searson.

5. As a result of the collision, the plaintiff suffered injuries in the form of lacerations and abrasions to his skull and face, a soft tissue injury to his left shoulder and two fractures to his left ankle. The ankle fractures required operative treatment. They have gone on to heal reasonably well, but the plaintiff has been left with scars on his ankle. There are also scars to his skull. The parties agreed that the only medical evidence to be considered by the court was that set out in the medical report furnished by Dr. Una Kennedy, consultant in emergency medicine, in her report following an examination on 23rd March, 2015.

6. Special damages were agreed in the sum of €2,200.

The Evidence

7. The plaintiff is 59 years of age, having been born on 9th July, 1957. He is a qualified schoolteacher, but works as a yoga teacher and works in the arts as an actor. The plaintiff stated that on the evening of the accident, he had been attending a talk in the Royal Irish Academy on Scottish Independence. At the end of that talk, he had spent some time talking to some people. He then proceeded to cycle home on his electric bicycle. He stated that he lived in Drimnagh, Dublin 12, and the accident occurred relatively close to his home.

8. The plaintiff explained that the electric bicycle on which he was travelling, operated in such a way that when one activated the pedals and activated the electric motor, there would be assistance in relation to the actual cycling. The speed would depend upon the gear in which one was travelling at the relevant time.

9. The plaintiff stated that he was cycling up Crumlin Road going in the direction of the Children's Hospital. His intention was to make a right-hand turn into Rafters Road. The plaintiff confirmed that in the aerial photograph, which had been handed into court, he had been proceeding along Crumlin Road from right to left as one looked at the photograph. His intention was to turn into the road to the right, the junction of which was shown opposite approximately marker no. 4 on the photograph. The plaintiff's approach to the junction was also set out in the photographs taken by Mr. Searson, and in particular, in photographs 1- 4 thereof.

10. The plaintiff stated that he had been cycling in the left-hand cycle lane. As he approached the junction, he looked ahead down Crumlin Road and saw the defendant's car "quite a bit back" on the far side of the road. He stated that it was close to the green area as shown in the aerial photograph. The plaintiff stated that he then looked behind him and saw that there was no traffic approaching along his side of the carriageway. He turned his bicycle to the right and crossed over his carriageway. He felt that he had plenty of time to make the turn. As he proceeded onto the far carriageway on Crumlin Road, he heard a screech of brakes. In his peripheral vision, he saw the wheels of the defendant's car coming towards him. He recalled wondering how the car would get around him. This was the last memory that he had of the accident.

11. The plaintiff stated that he had no recollection of the impact between the defendant's car and his bicycle or where he was on the roadway, at the time of the impact. After the impact, his first memory was of lying on a trolley in the Accident & Emergency Department of St. James's Hospital. He had no recollection of being at the scene, or of being transported in the ambulance.

12. The plaintiff stated that the car shown in photograph 3 was the approximate place where he had seen the defendant's car, when he looked down Crumlin Road. He stated that at that hour of the evening, visibility was quite good. The street lighting was on, but it was not very dark. The weather conditions were good.

13. The plaintiff thought that by reference to photograph 8, which showed the junction from the defendant's viewpoint, he thought that he was in the first full diamond, as shown in the foreground of that photograph at the time of the impact.

14. The plaintiff stated that the person shown in photographs 9 and 10 of Mr. Searson's first booklet of photographs, showed him at the junction, but on a different bicycle. Those photographs had been taken at approximately 06.00 hours on 20th October, 2015. The plaintiff stated that he was again photographed at the junction as shown in photographs 11, 12 and 13 of Mr. Searson's second

booklet of photographs. These show his actual bicycle, which was involved in the accident. Those photographs were taken approximately 15m back from the junction at 04.00 hours on 16th May, 2017. The plaintiff stated that his bicycle was totally written off as a result of the accident. He had brought it to the manufacturers, but they had stated that it was beyond repair.

15. In cross-examination, the plaintiff accepted that he did not have any lights on his bicycle at the time of the accident, nor was he wearing a helmet. He stated that he did have small reflectors on his wheels, which could be seen in photograph 12. He stated that he had also been wearing a high visibility vest at the time of the accident. He produced a second identical vest to the court. It was green in colour and had two reflective bands on it. It covered the torso but not the arms. He was wearing the vest in photograph 12.

16. In relation to traffic on his side of the road, the plaintiff accepted that there was some traffic on his side of the road, but that it was not backed up as suggested by the defendant. He stated that there was no traffic to his right when he commenced his turn.

17. The plaintiff stated that he had a good view down Crumlin Road ahead of him. He saw the defendant's car which was approximately 200 yards away from him at the hospital. He accepted that that was what he had said in his Garda statement, but he did not mean that the defendant's car was actually at the hospital. It was put to him that in his statement he had said "I looked ahead, there was nothing coming towards me other than a car approximately 200 yards near the hospital". The plaintiff stated that that was incorrect and was only an estimate of where the defendant's car was when he first saw it. He accepted that he had signed that statement and it had been taken at his home on 4th November, 2014. It was further put to him that in Replies to a Notice for Particulars, he had stated that the defendant's car was approximately 150m away. He stated that that was just an estimate.

18. The plaintiff stated that when he saw the defendant's car ahead of him, he stayed in the cycle lane and looked behind him to make sure that there was no traffic approaching on his side of the road. He stated that he did not stop when he made the right turn going towards Rafters Road, but he was almost stationary when he first turned the bicycle. He estimated that he had travelled 1.5/2.0m onto the far carriageway, when the impact occurred. He accepted that it would have taken a very short period of time to actually cross over the far carriageway. He stated that the accident occurred very shortly after he had started turning. He just heard a screech of brakes and in his peripheral vision he saw the defendant's wheels approaching.

19. The plaintiff stated that he did not know how far away the defendant's car was when he crossed the white centre line. He stated that he had looked down Crumlin Road, had seen the defendant's car in the distance, then looked behind him and saw that there was no traffic and then crossed. He had made the decision to make the turn. He had an awareness of traffic in his peripheral vision. The plaintiff accepted that he did not look for oncoming traffic, when he crossed the white line in the centre of Crumlin Road. He accepted that he did not specifically look to his left. After he had crossed the centre line, the impact occurred approximately 1.5/2.0m further on. He accepted that when he crossed the centre line, the defendant's car had to have been very close to him.

20. It was put to the plaintiff that the traffic on his side of Crumlin Road was backed up from the traffic lights further down on the Crumlin side. The plaintiff did not accept that the traffic was backed up. He denied that he had cycled out between or behind a high-sided van. He said that that would have been suicide. He accepted that when he crossed over to the far side of Crumlin Road, he did not look to his left. Having seen the defendant approximately 200m back down Crumlin Road, he did not think that it was dangerous to cross the road. The plaintiff accepted that the defendant might have been closer than 200m when he saw him, as that was only an estimate. He accepted that the impact occurred a very brief period after he had crossed the centre line. He accepted that it was folly on his part not to look to his left. He accepted that he cycled out in front of the car when it was extremely close to the junction with Rafters Road.

21. Evidence was given on behalf of the plaintiff by Mr. Carl Searson, consulting engineer. He had taken the two booklets of photographs, which had been handed in to the court. He stated that the plaintiff had told him that he had first seen the defendant "a good way back" from the junction with Rafters Road.

22. He stated that he was aware that there was a skid mark noted by the garda on his sketch, measuring some 3.5 metres. If there was symmetric braking and the wheels were still turning, a skid mark of that length would indicate that the car was travelling at approximately 16mph. He stated that once a skid occurred, the driver would have little control over the direction of the vehicle.

23. In relation to visibility at the locus, Mr. Searson stated that the photographs taken on 16th May, 2017 showed the lighting at the junction at 04.00 hours. It was still dark at that time. In photograph 11, one could see the illumination from the streetlight opposite the opening to Rafters Road, and also the illumination given by the headlights of the car, which was parked on the footpath, 15m back from the junction. Photograph 12 was also taken 15m back from the junction, but from head height. Photograph 13 was taken on a tripod out on the road, also 15m back from the junction. Based on these photographs, he was of opinion that the car driver would have seen the plaintiff's reflective jacket and the bicycle. At 15m from the junction, he had a good view of the cyclist. Due to the street lighting and the headlights of the car, the cyclist should have been visible to the defendant.

24. Mr. Searson confirmed that under the Rules of the Road, if a cyclist was turning right from Crumlin Road into Rafters Road, he would have to yield right of way to traffic proceeding down Crumlin Road in the opposite direction. He accepted that the plaintiff had not done that on this occasion. He also accepted that the plaintiff should have looked to his left when he proceeded to cross over the far carriageway on Crumlin Road.

25. It was put to the witness that the plaintiff appeared to have gone in one continuous movement from the cycle lane on his side of the road and proceeded across onto the far carriageway approximately 1.5/2.0m when the collision occurred. Mr. Searson accepted that that appeared to be the position.

26. Mr. Searson accepted that the plaintiff should have had lights on his bicycle and should have been wearing a helmet. However, it was a fact that some cyclists would not do these things and it was something that the defendant should anticipate.

27. The engineer accepted that the defendant could not have been 200/150m from the junction when the plaintiff crossed Crumlin Road. The defendant must have been considerably closer to the junction. He estimated that it would have taken the cyclist approximately one second to travel 1.5/2.0 metres. If the defendant was travelling at 45kph, he would travel approximately 15m in one second. If the defendant had been travelling at that speed, or at the speed limit on Crumlin Road which was 50kph (30mph), the defendant would have been approximately 15m away when the plaintiff crossed onto his side of the carriageway. He accepted that it was unsafe for the plaintiff to cross onto the far side of the carriageway if the defendant's car was only 15m from the junction.

28. It was put to the witness that allowing for a reaction time and braking period, it would take the car 25m to come to a halt. Mr. Searson stated that normally it would take a driver 0.8 seconds to react to an emergency. However, he thought that a shorter time would be appropriate having regard to the conditions at the locus. A car driver must be aware of his surroundings and must expect

the unexpected. He thought that it would take less than 25m to bring the vehicle to a stop. If the reaction time was quicker, then the brakes would be applied earlier. It was put to the witness that when the plaintiff crossed the centre line, the defendant was approximately 15m from the junction and it would have taken him 25m to stop the car. Mr. Searson agreed that that was correct. However, once the driver slammed on the brakes and went into a skid, he had lost directional control of the vehicle.

The Defendant's Evidence

29. The defendant is 42 years of age having been born on 8th June, 1974. He was unemployed at the time of the accident. He stated that on the evening in question, he had visited his mother and was proceeding down Crumlin Road going to his home in Dolphin's Barn. He stated that he was very familiar with the locus. He had been stopped at traffic lights which were adjacent to the hospital entrance. He was the first car at the lights and there was traffic behind him.

30. The defendant stated that as he travelled down Crumlin Road, there was traffic coming against him, which was either stationary or travelling very slowly. The road ahead of him was clear. He was travelling at approximately 50kph.

31. The defendant stated that as he approached the junction with Rafters Road, he estimated that he was between markers 6 and 7, as shown on the aerial photograph, when the plaintiff cycled out in front of him from between two cars. His first wheel was just across the white line when he first saw the bicycle. He braked hard and the car went into a skid and hit the plaintiff in the rear wheel area of the bicycle. The defendant stated that when the plaintiff emerged in front of him, there was no time to react; he just hit the brakes and the collision occurred.

32. After the impact, the defendant stated that his car came to a halt between the sign for the commencement of the cycle lane and the sign showing children crossing, as shown on the left of photograph 8. He stated that the plaintiff landed on the ground in the vicinity of the footpath on the far side of Rafters Road as shown on photograph 8. The defendant stated that he did not think that the plaintiff was wearing a high visibility vest at the time of the accident.

33. In cross-examination, the defendant stated that he had been driving a 1999 Ford Focus. He had been driving for approximately 15 years prior to the accident. It was put to him that the NCT Certificate on his car had expired prior to the date of the accident. He stated that that was correct. He had missed the correct date due to the fact that the relevant authorities no longer wrote out to people telling them to make an appointment. He had arranged an NCT test for a date three weeks after the accident.

34. He was asked about a reference made in his garda statement to a high box van on the plaintiff's side of the road. He stated that he had a memory of such a van being at the junction. He thought that it was at position No. 4 in the aerial photograph. There was a car in front of the van and the plaintiff came out from between them. He was sure that the plaintiff came out from between two vehicles, either from between two cars or from between a car and the van. He stated that the traffic was definitely backed up on the plaintiff's side. He did see the plaintiff when he came across onto his side of the carriageway.

35. The defendant stated that he had been the first vehicle at the traffic lights further down Crumlin Road. There had been a juggernaut behind him. When he took off at the lights, he had been travelling at approximately 50kph. The lorry was some distance behind him. He accepted that he hit the back one third of the bicycle, but he did not think that he had hit the plaintiff directly.

36. Evidence was given by Garda Graham Weekes of Sundrive Road garda station. He stated that Crumlin Road was a main artery from the city and was a very busy road. He stated that upon receipt of a call, he attended at the scene. At that time, the plaintiff was being treated in the ambulance. He spoke to the defendant. He breathalysed the defendant at the scene and obtained a reading of 0% alcohol. He stated that there was no damage visible to the defendant's car. He seized both the car and the bicycle for PSV inspection. However, in light of the severity of the injuries received, the PSV Inspector declined to carry out such inspection.

37. Garda Weekes stated that he had drawn up the sketch of the scene of the accident. This showed the width of Rafters Road to be approximately 4 metres. He stated that the positioning of the vehicles as shown on the sketch was purely an estimate, made from what he had been told by the parties, as both the bicycle and the car had been moved by the time that he arrived on the scene.

38. Garda Weekes stated that he had measured a skid mark of 3.5m in length. He had marked this on the sketch. However, he stated that his sketch map was only prepared as an aid. It was not a forensically accurate depiction of the locus. He estimated that the front of the car in the area of the front wheels would mark the end of the skid as shown on the sketch. He stated that the point of impact, as shown on the sketch, was his estimation of the point of impact as taken from the statements provided by each of the parties. He accepted that the point of impact would appear to be 1.5/2.0m on the defendant's side of Crumlin Road.

39. Garda Weekes confirmed that there were no independent witnesses to the accident. He had taken a statement from the defendant on the day following the accident and had taken a statement from the plaintiff on 4th November, 2014.

40. Finally, evidence was given on behalf of the defendant by Mr. Sean Walsh, consulting engineer. He stated that under the Rules of the Road, a cyclist was required to have front and back lights on his bicycle when cycling during hours of darkness. The Rules also provided in Regulation 8.7 that if a person operating a vehicle, which includes a bicycle, is turning right at a junction, such person must yield right of way to traffic going straight through the junction in the opposite direction. In this case, it was clear that the plaintiff had not yielded right of way to the defendant's car.

41. Mr. Walsh stated that it was accepted by the plaintiff that he had not looked to his left when he was crossing the far carriageway on Crumlin Road. He stated that that was a major lapse in care, which resulted in a situation of extreme danger. If the plaintiff had looked to his left, he would have seen the defendant and could have stopped crossing the road.

42. Mr. Walsh stated that it appeared that the collision occurred approximately 1.5/2.0m on the defendant's side of the road. If that was the case, it would have taken a fraction of a second for the plaintiff to have travelled that distance. In relation to a driver's reaction time, if the car was going at approximately 45/50kph, the reaction time would be circa 0.75/0.8 seconds. He stated that this was a very short reaction time. It was the time from when a person would first see something and the time at which they would start applying the brakes. He stated that this was a very busy road and that drivers would have to be vigilant. He did not think that there could have been a shorter reaction time than 0.8 seconds. In relation to a total stopping distance, if the car was going at 50kph, it would travel 10m during the reaction time and 15m while braking, giving an overall stopping distance of 25m. If he was travelling at 40kph, there would be 8m reaction distance and 10m braking distance, giving an overall stopping distance of 18m.

43. Mr. Walsh thought that the plaintiff's estimate of when he first saw the defendant's car, being 150/200m further down Crumlin Road, could not have been correct. He stated that the car in photograph 3 appeared to be approximately 75m from the junction with Rafters Road. At the speed limit in that area, it would take 5.5 seconds to reach the junction. This would have allowed the plaintiff

plenty of time to cross the inbound side of the carriageway on Crumlin Road.

44. Mr. Walsh thought that the distance of the skid mark, as shown on the garda sketch, established a speed of circa 15mph/24kph. This suggested that the defendant's actual speed was less than his own estimate of his speed. If he had been going at 50kph, there would have been a substantially longer skid mark. Mr. Walsh stated that he could not see how the defendant could have avoided the accident in the circumstances presented to him.

45. In cross-examination, Mr. Walsh stated that if the defendant had had a vision of the plaintiff of 18/25m, he should have been able to stop without skidding. The fact that a skid had occurred showed that there was emergency braking on the part of the driver. He was of opinion that the car had been brought to a halt in a very short distance. Where there was a straight skid mark measuring 3.5m, this suggested that the defendant's speed was considerably slower than the speed limit. He was satisfied that the defendant had reacted to an emergency which was presented on the roadway in front of him. He applied his brakes which caused the skid marks. He accepted that the plaintiff had said that when he saw the defendant on Crumlin Road, his vehicle was a considerable distance away. The plaintiff stated that having seen the defendant, he checked to his right and then proceeded across the road without looking again for traffic on the far carriageway. He stated that the defendant would not have seen the plaintiff before he crossed onto his side of the road due to traffic on the far side of the road.

Conclusions

46. It is common case between the parties that on 8th September, 2014 at approximately 21.15 hours, as the plaintiff was proceeding on his electric bicycle down Crumlin Road going in the direction of Crumlin, he attempted to make a right-hand turn into Rafter's Road, but was struck as he crossed over the far carriageway by the defendant's vehicle, which was travelling in the opposite direction.

47. There are a number of matters which are not in dispute between the parties. Firstly, it was dark at the time of the accident, but the weather conditions were good. There was street lighting at the locus, as shown in photographs 11, 12 and 13 of the booklet of photographs prepared by Mr. Searson. It was agreed that the dimensions of Crumlin Road were as follows: there was a cycle lane on each side of the road, measuring 1.5m in width. The two lanes for vehicular traffic each measured 3m. The width of Rafter's Road was 4m. It was accepted by the plaintiff that he did not have any lights on his bicycle, nor was he wearing a helmet. There is a dispute as to whether he was wearing a high visibility vest at the relevant time. Having observed the plaintiff in the witness box, I am satisfied that it is appropriate to accept his evidence that he was wearing a high visibility vest and I so find.

48. While the failure to wear a helmet had no causative effect in relation to causation of the accident, it is nevertheless indicative of a somewhat cavalier attitude on the part of the plaintiff as to his own safety. Cycle helmets are relatively cheap to buy. They are lightweight and are not uncomfortable to wear. While there was no expert evidence as to the extent to which they can reduce the level of head injuries suffered by a cyclist, I am prepared to take judicial notice of the fact that by wearing a cycle helmet, a cyclist can greatly reduce the risk of suffering a serious head injury. The plaintiff was clearly negligent in relation to his own safety in failing to wear a helmet.

49. The plaintiff's admitted failure to have any lighting on his bicycle on the night in question is relevant to causation of the accident. When cycling in the city, or in the country during the hours of darkness, a cyclist is obliged under the law to have front and rear lights on his bicycle. Failure to have such lighting is highly negligent behaviour on the part of a cyclist. Nowadays, there is a huge range of lights available to the cyclist. Some of these lights, such as LED lights, can produce a very powerful beam of light. Even less expensive types of lights, can still give off significant light, which is likely to bring to the attention of other vehicle drivers, the presence of the cyclist on the highway. The plaintiff in this case, as a grown man, was highly negligent to cycle from the city centre to his home in Drimnagh without any lights on his bicycle.

50. The plaintiff's account is that as he cycled on his electric bicycle down Crumlin Road, coming to the junction with Rafter's Road, he looked down Crumlin Road ahead of him and saw the defendant's car in the distance. In his garda statement, he put this at approximately 200 yards. In replies to a notice for particulars, he stated that the defendant's car was 150m back from the junction. In his evidence, he shortened this somewhat, saying that the defendant's car had been in the vicinity of the green area shown in the aerial photograph on the right of Crumlin Road. However, in cross-examination, he accepted that, as he had only proceeded a very short distance across the far carriageway on Crumlin Road before the impact occurred, the defendant's vehicle had to be considerably closer to the junction when he crossed onto that side of the road. While I accept that the plaintiff has done his best to give a truthful and accurate account of the accident, I am satisfied that he is incorrect in relation to the distance between the defendant's car and the junction with Rafter's Road, when he first looked down Crumlin Road, prior to commencing the right turn manoeuvre.

51. The plaintiff's account is that having seen the defendant's car in the distance, he then looked behind him to his right to ensure that there was no traffic approaching on his side of Crumlin Road, and having seen that it was safe to do so, he then turned to his right and proceeded straight across Crumlin Road, going in the direction of Rafter's Road. The plaintiff accepts that he did not look again to his left as he crossed onto the far side of Crumlin Road. It is noteworthy that the plaintiff does not state that he gave any hand signal of his intention to turn right. This is a requirement of the Rules of the Road and is there for a good reason; it gives motorists, both those behind the cyclist and those coming in the opposite direction, notice of his intention to make a right-hand turn.

52. While the defendant could not give evidence as to the speed at which the plaintiff was travelling prior to the impact, as he did not see him until just prior to the impact, I note that the plaintiff was cycling an electric bike at the time of the accident. He accepted that he did not come to a halt at any stage while making the right turn manoeuvre, but stated that he was practically stationary when he commenced the turn. In view of the fact that on the plaintiff's own account there was no traffic coming behind him, and as he accepted that he proceeded from the left-hand cycle lane across his side of Crumlin Road and onto the far carriageway in one continuous movement, I find that on the balance of probabilities, he was not almost stationary as he commenced to make the turn, but did so in one sweeping movement which, having regard to the fact that he was cycling an electric bike, may have been at some considerable speed.

53. It seems to me that the key evidence in this case is the fact, which was accepted by the plaintiff, that he had travelled approximately 1.5/2.0m onto the far carriageway when the collision occurred. It was accepted that it would have taken the plaintiff approximately one second to travel that distance. It was accepted by the parties that within a very short period of the plaintiff crossing onto the far carriageway, he was struck by the defendant's vehicle. This means that the defendant's vehicle must have been very close to the junction at the time that the plaintiff entered onto it.

54. I accept the evidence given by the engineers that given the normal reaction time and the normal braking distance, if the defendant had been travelling at 50kph, which was the permitted speed limit in the area, it would have taken him some 25m to bring his vehicle to a halt. If he was travelling at 40kph, it would have taken him 18m. Having regard to the point of impact on the road and

the time during which the plaintiff would have taken to cross from the centre line to that point, it seems to me that the defendant's car was probably in or about 15m from the junction when the plaintiff crossed the centre white line. In those circumstances, he had almost no chance to avoid the collision.

55. I am satisfied, having regard to the defendant's demeanour and the way in which he gave his evidence, that he has given a truthful and accurate account of the accident. I think that, if anything, he has probably overestimated his speed at the time of the impact. Having regard to the skid mark at the scene, as recorded by Garda Weekes in his sketch map, it would appear that the defendant may have been travelling somewhat slower prior to the impact. I should add that I am satisfied that the plaintiff has also done his best to tell the truth. However, where there has been conflict between their accounts, I think that the defendant's account is the more reliable one.

56. I am entirely satisfied that this accident was predominantly caused by the negligence on the part of the plaintiff in failing to yield right of way to the defendant's vehicle and in failing to keep a proper lookout to his left before crossing onto the far carriageway on Crumlin Road. The real question for determination is whether there was any negligence on the part of the defendant which may have contributed to this accident.

57. I note that there was a yellow box marked on the surface of Crumlin Road at its junction with Rafters Road. If it were the case that traffic was backed up on the plaintiff's side of Crumlin Road, but that vehicles were observing the yellow box itself, there may have been some opportunity for the defendant to have seen the plaintiff prior to the impact. However, this case is not made by the plaintiff. He states that there was very little traffic ahead of him and no traffic behind him on Crumlin Road at the relevant time. The defendant's account is that the traffic was either stationery and backed up on the far side of Crumlin Road, or, at most, was travelling extremely slowly. In either event, he maintains that the plaintiff cycled out from between two vehicles and straight into his path. In this regard, the defendant was careful in his evidence and did not try to "gild the lily", so to speak. While he had stated in his garda statement that he had a recollection of there being a high-sided van at, or near the junction, he accepted in evidence, that the plaintiff had not cycled out from behind the van, but may have cycled in front of the van and behind a car. I think that that was a very honest concession for the defendant to make.

58. In all the circumstances, I prefer the evidence of the defendant that there was traffic either backed up, or moving extremely slowly on the plaintiff's side of Crumlin Road at the time of the accident. I accept his evidence that the plaintiff emerged out onto his side of the road from between the traffic on the far side of the road. I am satisfied that he did so when the defendant was extremely close to the junction, probably in or about 15m from the junction. In these circumstances, I do not think that the defendant can be blamed for failing to see the plaintiff, prior to his emergence onto the carriageway in front of him, particularly as he had no lights on his bicycle. I am satisfied that the defendant had no chance to avoid hitting the plaintiff. Accordingly, I decline to make any finding of negligence against him. In such circumstances, I must dismiss the plaintiff's action against the defendant.