

**SHERIFFDOM OF LoTHIAN & BORDERS**  
**IN THE ALL-SCOTLAND SHERIFF PERSONAL INJURY COURT**

[2023] SC EDIN 5

PIC-PN2931-19

JUDGMENT OF SHERIFF DOUGLAS KEIR

in the cause

KARLA HODGSON

Pursuer

against

CASTLEHILL HOUSING ASSOCIATION LTD

Defenders

**Pursuer: Middleton KC; Slater and Gordon Scotland Ltd**  
**Defenders: Laing, Advocate; Plexus Law**

Edinburgh, 22 December 2022

The sheriff, having resumed consideration of the proof, finds the following facts admitted or proved:

**Finds in fact**

- (1) The pursuer is Karla Hodgson. She is 52 years old.
- (2) The defenders are Castlehill Housing Association Limited. They own and have responsibility for the residential housing complex at Shaw's Court, Banchory AB31 5SW.
- (3) On 17 December 2016 at around 2000 hours the pursuer was walking home to her house. Her route home that night took her via a footpath at the side of Shaw's Court.
- (4) She reached a flight of stairs ("the stairs") on the footpath. She required to descend the stairs to continue her journey home.

- (5) The stairs consisted of six concrete steps. There was a tubular steel handrail attached to the wall on the right-hand side of the stairs as the pursuer descended.
- (6) There was a street lamp situated around four metres diagonally across from the top of the stairs. The street lamp was the responsibility of the local council.
- (7) The street lamp was working at the time of the pursuer's accident.
- (8) The illumination provided by the street lamp only reached the top step and part of the second top step of the stairs.
- (9) There was a bulkhead light fitted to the wall immediately adjacent to the entrance door of flat No.11 at Shaw's Court. This light was situated two floors above the base of the stairs and was operated by the occupier of the flat at No.11. The defenders had no control over this light.
- (10) The bulkhead light was not illuminated at the time of the pursuer's accident.
- (11) Other than the illumination provided by the street lamp, the stairs were in darkness at the time of the pursuer's accident. There was no dedicated lighting for the stairs.
- (12) The pursuer was holding on to the handrail with her right hand as she descended the stairs.
- (13) She descended the stairs carefully, taking one step at a time. She put both of her feet onto the same step before stepping onto the next step, one foot at a time.
- (14) The handrail ended at the second bottom step. It did not extend to the bottom of the stairs.
- (15) When the handrail came to an end, the pursuer assumed that she had reached the bottom of the stairs. Due to the darkness, she did not see that there was one further step to negotiate after the handrail had ended.

(16) The pursuer stepped down but lost her footing and fell down the remaining step onto the landing at the bottom of the stairs.

(17) The pursuer was found at the bottom of the stairs by David Thomson. Along with two other persons, Mr Thomson was able to assist the pursuer back to her house where he waited with her until an ambulance arrived.

(18) The pursuer attended the Accident & Emergency Department at Aberdeen Royal Infirmary at 0230 hours on 18 December 2016.

(19) The defenders installed dedicated lighting for the stairs, in the form of a solar light immediately above the bottom of the stairs, following the pursuer's accident. The cost of doing so was approximately £300.

(20) The pursuer had used the stairs on other occasions prior to 17 December 2016. On those occasions, she had successfully negotiated the stairs.

(21) The stairs were built at the same time as the Shaw's Court development in around 1993.

(22) The defenders carried out all general maintenance work at Shaw's Court and also organised two formal visits per year where residents were invited to attend and raise any issues. Other than the pursuer's accident, the defenders were unaware of any complaints concerning the stairs since their construction.

(23) Prior to the accident, one of the defenders' property services officers, Norman Beedie, regularly visited Shaw's Court as part of his role. When on site, he carried out a general walk-around to look out for any obvious problems. He had used the stairs during the hours of darkness. He did not consider the lighting of the stairs to be a danger.

(24) As a result of her fall, the pursuer sustained a traumatic anterior dislocation of her right shoulder with an associated fracture of the greater tuberosity and neuropraxia of the

axillary nerve. She also sustained soft tissue injuries to her right knee and leg. Surgery was required to reduce the dislocation. She had made a reasonable recovery but continued to suffer from pain and stiffness in her shoulder. She is at increased risk of developing osteoarthritis in her right shoulder.

### **Finds in fact and law**

- (1) The defenders were the occupiers of premises, namely Shaw's Court, Banchory, for the purposes of section 2 of the Occupier's Liability (Scotland) Act 1960 ("the 1960 Act").
- (2) The defenders knew or ought to have known that the lighting for the stairs was inadequate. In that state, the inadequate lighting was a danger due to the state of the premises for the purposes of section 2 of the 1960 Act.
- (3) That it would have been apparent to an ordinary reasonable occupier in the position of the defenders that a reasonable and probable consequence of their failure to adequately illuminate the steps would be harm to the pursuer.
- (4) The defenders omitted to install adequate lighting at the location of the stairs. Their failure to do so resulted in the defenders not taking care that was reasonable in all the circumstances.
- (5) Accordingly, the defenders have acted contrary to section 2 of the 1960 Act.
- (6) But for the defenders' breach of section 2 of the 1960 Act, the harm to the pursuer would not have occurred.
- (7) The pursuer is entitled to damages of £17,000 (inclusive of interest to 22 November 2022).
- (8) All questions of expenses are reserved. The sheriff clerk will fix a hearing on expenses.

## NOTE

### **Introduction**

[1] In this action, the pursuer seeks damages for the loss, injury and damage she suffered as a result of a fall on a flight of stairs in a residential complex in Banchory for which the defenders had certain responsibilities.

[2] A proof proceeded on 22, 23, 24 and 25 November 2022. Parties had helpfully agreed quantum on a full liability basis at £17,000 (inclusive of interest to 22 November 2022) as well as agreeing a number of other matters more fully detailed in the Joint Minute lodged in process.

[3] The pursuer called the following witnesses to give evidence:

- (i) The pursuer
- (ii) Norman Beedie
- (iii) Suzanne Reid
- (iv) David Thomson
- (v) Kevin McMahon
- (vi) Euan Clayton

[4] The defenders did not lead any evidence.

[5] During the course of the proof, the pursuer withdrew her case of fault based on an alleged failure to extend the handrail positioned on the wall beside the stairs to the bottom of the stairs. I have therefore restricted my summary of the evidence to the remaining aspects of the pursuer's case.

## **The evidence**

### *The pursuer*

[6] The pursuer was 52 years old. She had previously carried out voluntary work but was not currently in employment. On the evening of the accident, she had been shopping. Her route home included descending a flight of stairs in Shaw's Court, a residential complex owned by the defenders. The stairs were used by both residents of the complex and members of the public. As she descended the stairs, she held on to the handrail on the right hand side of the stairs with her right hand. She was holding a couple of shopping bags in her left hand. She descended the stairs slowly, taking one step at a time. She put both of her feet onto the same step before stepping onto the next step, one foot at a time.

[7] There was no lighting on the stairs. She described the lighting conditions on the stairs as fairly dark but not completely dark. There was not enough light for her to see the steps ahead of her.

[8] Her right hand reached the end of the handrail. She assumed that she had reached the bottom of the stairs. She stepped down onto what she thought was the path at the bottom of the stairs. However, she had only reached the second bottom step of the stairs and as she stepped down, she lost her footing and fell down the remaining step, landing at the bottom of the stairs.

[9] Due to the lack of lighting, she had been unable to see that there was a further step to negotiate. The handrail ended at the second bottom step. It did not extend to the bottom of the stairs.

[10] She had been unable to get up following her fall and lay at the foot of the stairs for some time before a passer-by (the witness David Thomson) came to her aid. With the assistance of two neighbours, Mr Thomson was able to assist her back to her house (the

pursuer lived in close proximity to the locus albeit not at Shaw's Court). She was taken to hospital by ambulance later that night.

[11] Other than the street lamp located diagonally opposite the top of the stairs, there was no lighting that provided illumination on the stairs. There was no dedicated lighting for the stairs. The street lamp did not provide any illumination on the stairs. The front door to the flat at Number 11 was situated on the floor above the top of the stairs. While there was a light outside the front door of Number 11, it was switched off at the time of her fall.

[12] The defender installed a dedicated light for the stairs at some point after her fall.

[13] The pursuer had taken video footage of descending the stairs at night (number 5/9 of process). The footage was played to the court. The pursuer could not recall exactly when she had taken the footage. She thought it was after the defenders had installed the security light. She described the footage as showing similar lighting conditions to when she fell.

[14] During cross-examination, the pursuer accepted that she had used the stairs on a semi-regular basis prior to the accident, having lived at her current address since 2015. She had been paying attention as she descended the stairs. She was clear that the light outside Number 11 was off at the time of her fall. She stated that if that light had been on, she would not have fallen.

### ***Norman Beedie***

[15] Mr Beedie was employed by the defenders as a Property Services Officer. He had held that role for 20 years. He confirmed that the defenders had responsibility for the stairs in question. The defenders carried out all general maintenance work at Shaw's Court and also organised two formal visits per year where residents were invited to attend and raise any issues. He was at Shaw's Court around two to three times per month. When on site, he

would carry out a general walk-around to look out for any obvious problems. For example, the paths would be checked for trip hazards and the communal outside lights would also be checked.

[16] He confirmed that following the pursuer's accident a dedicated light was installed above the foot of the stairs. The tenant at Number 11 had contacted him following the accident to express concern about the illumination of the stairs in the event that the adjacent street lamp failed. He subsequently assessed the situation and had taken steps to install a dedicated light. The cost of purchasing and installing the light had been around £300.

[17] Mr Beedie confirmed that the handrail beside the stairs stopped in-between the second last and last step. He accepted that it would be hazardous to descend a set of stairs in the dark. He considered that the street lamp provided sufficient illumination for anyone using the stairs. He agreed that the light outside Number 11 was operated by the tenant of that property.

[18] He was not aware of any problems with the lighting of the stairs during his employment with the defenders. If any complaints had been received, he would have installed additional lighting in the manner that had been done after the accident.

[19] He had used the stairs during the hours of darkness when he had been on site. He considered that the stairs were dark but "not dark dark". If he had considered the lighting for the stairs to be a hazard, he would have done something about it and installed a dedicated light.

[20] He was shown the video footage taken by the pursuer (5/9 of process). He considered that the footage was not an accurate representation of the illumination of the stairs. While he accepted that it was darker on the stairs, he considered that they were still



safe enough based on his own experience of using the stairs in the hours of darkness and that there had been no complaints from residents.

*Suzanne Reid*

[21] Ms Reid was employed by the defenders as a Housing Officer. She had worked for the defenders for around 23 years. Her responsibilities centred primarily on housing management issues such as letting properties, chasing rent arrears and anti-social behaviour. She attended the complex twice a year with a property services officer, such as Mr Beedie, to meet with residents. She did not recall attending Shaw's Court during the hours of darkness. She was unable to comment on the level of lighting for the stairs or whether there had been any previous complaints in that regard.

*David Thomson*

[22] Mr Thomson was a self-employed property developer who lived in Banchory. He had been walking home on the evening of 17 December 2016. His route included walking along the footpath that ran directly behind Shaw's Court. As he walked past the top of the stairs, he heard someone shouting for help. He walked down the stairs and found the pursuer lying at the bottom of the stairs. She told him that she could not get up. With the assistance of two others, he had been able to get the pursuer to her feet and back to her house. He had called an ambulance and waited with the pursuer until it arrived. He did not know the pursuer.

[23] He described the lighting conditions on the stairs as dark. The bottom step was in darkness and it was very dark on the landing. There was no lighting on the stairs. The only source of light was the moon.

[24] He was shown the video taken by the pursuer (5/9 of process). He agreed that the footage showed that the top two steps were illuminated but the bottom steps were in darkness. He considered that the footage was representative of the lighting conditions at the time he found the pursuer.

*Kevin McMahon*

[25] Mr McMahon was called as an expert for the pursuer. He was a chartered civil engineer with experience of health and safety issues arising from the design of roads and footpaths. He had prepared a report (number 5/10 of process), the focus of which had been the suitability of the handrail positioned on the right hand side of the stairs. He confirmed that the handrail did not extend beyond the final step. He confirmed that when Shaw's Court had been built, the stairs and handrail complied with the relevant Building Standards Regulations at the time. He agreed that any subsequent changes to these Regulations did not have retrospective effect. He had no issue with there being only one handrail on the stairs.

*Euan Clayton*

[26] Mr Clayton was also called as an expert for the pursuer. He was a consulting engineer with expertise in lighting engineering. He was a member of the Institute of Lighting Professionals and a Fellow of the Institute of Highway Engineers. He had prepared a report (number 5/11 of process). His investigations included a visit to the accident locus during daylight hours on 24 November 2020.

[27] He considered that the lighting provided for the stairs was inadequate. According to the relevant British Standard in place at the time of the construction of Shaw's Court, the

recommended level of lighting for an open stairway, such as the stairs in question, at night was an average of 30 lux and a minimum of 15 lux. In terms of the British Standard in place at time of accident, the recommended level of lighting had reduced to an average of 20 lux. By way of comparison, Mr Clayton estimated that the level of illumination of the court where the proof was being heard was an average of 300 lux while the level of illumination on Princes Street, Edinburgh during the hours of darkness would be around 30 lux.

[28] He considered that the street lamp did not provide adequate illumination onto the stairs due to the brick wall located to the right of the stairs. The illumination from the street lamp would not penetrate through the wall and the stairs behind the wall would be in darkness. During the hours of darkness, only the top step and part of the second step would be illuminated by the street lamp. Otherwise the stairs would be in darkness. In the event that the moon was visible, the maximum amount of illumination from that source would be 0.1 lux, the equivalent of what might be commonly referred to as pitch black.

[29] When shown the video footage taken by the pursuer (5/9 of process), Mr Clayton considered that it was in line with his expectations, namely that the top step and part of the second step were illuminated by the street lamp but the wall prevented any light from illuminating the lower steps which were in darkness.

[30] Under cross-examination, Mr Clayton accepted that the footage had limitations. The video camera settings were not known, a video camera did not replicate the human eye and would adapt faster than the human eye to changes in lighting conditions. However, he did not rely on the footage to arrive at his opinion. He was clear that the wall situated to the right hand side of the stairs prevented the street lamp from illuminating the lower steps on the stairs.

**Submissions**

[31] Both parties helpfully lodged written submissions which were adopted and supplemented by oral submissions. During the course of the evidence led by the pursuer, the defender objected to the witness evidence that related to the defenders' knowledge of the alleged inadequate lighting. This objection was renewed during closing submissions and I have dealt with that at paragraphs [47] to [50]. I would summarise parties' submissions as follows.

**Pursuer's submissions**

[32] The pursuer sought decree for the sum of £17,000 together with expenses.

[33] It was not disputed that the defenders were the occupiers of the premises at Shaw's Court and owed a duty of care to the pursuer in terms of the 1960 Act. The issues for consideration by the court were therefore whether the premises were dangerous due to their state or to any activity carried on there and, if so, did the defenders take reasonable care in all the circumstances for persons entering thereon.

[34] The evidence was clear that the stairs were dangerous at the time of the accident. They were unlit, they were dark and the handrail available did not extend to the bottom of the stairs. As the pursuer descended the stairs, her hand reached the end of the handrail and she assumed that she had reached the bottom step. Due to the lack of lighting, she could not see that she was two steps from the bottom so when she stepped down, she lost her balance and fell.

[35] As had been conceded during the proof, the pursuer no longer insisted on her case of fault based on the alleged failure to extend the handrail to the bottom of the stairs.

However, the fact that the handrail did not so extend remained an important piece of the factual matrix.

[36] The pursuer's primary position was that standing the absence of adequate lighting, it was the defenders' duty to take reasonable care to see to it that persons entering on the premises did not suffer injury or damage by reason of that danger. The defenders knew that there was no dedicated lighting for the stairs. They knew that it was dark at night. It should have been obvious to them that the stairs would be dark and used by pedestrians outside daylight hours. They ought to have been aware of the danger and addressed it, even in the absence of prior accidents or complaints.

[37] The pursuer's secondary position was that the defenders had actual knowledge of the state of illumination on the stairs prior to the accident. This knowledge came from Mr Beedie's visits to Shaw's Court outwith daylight hours. He had used the stairs in darkness and knew that there was no dedicated lighting in place.

[38] Armed with that knowledge, the obvious step for the defenders to take was the installation of adequate lighting such as the light installed after the accident at a cost of around £300.

[39] In terms of contributory negligence, there was nothing to suggest fault on the part of the pursuer. She had been descending the steps carefully, holding onto the handrail and taking one step at a time.

### **Defenders' submissions**

[40] The defenders sought decree of absolvitor. The objection to the evidence regarding the defenders' knowledge of the alleged danger was renewed.

[41] The pursuer was an unreliable witness. Her evidence was unsatisfactory and inconsistent. While it was accepted that her injuries were consistent with a fall, the pursuer had failed to prove that such a fall had been caused by the lighting conditions on the stairs and her assumption that she had reached the bottom step.

[42] There was no evidence of previous accidents or complaints regarding the stairs. There was therefore no reason why the defenders should have been aware of the alleged danger. Fundamentally, the stairs could not be classified as an obvious danger.

[43] It was accepted that Mr Beedie's evidence about his use of the stairs during the hours of darkness posed a potential problem for the defenders. However while Mr Beedie referred to the stairs as dark, he had added that they were "not dark dark". He had used the stairs without incident in the hours of darkness and did not consider them to be dangerous. He regularly attended Shaw's Court and would be on the lookout for any potential problems on site. The stairs had been in existence for more than 20 years at the time of the accident. They were in daily use by residents of Shaw's Court, some of whom were elderly, and members of the public yet there had been no complaints about, or accidents involving, the stairs.

[44] The evidence given by David Thomson regarding the extent of the darkness on the night of the accident was unreliable and should be rejected.

[45] Standing the withdrawal of the pursuer's case of fault based on the handrail, the evidence of Mr McMahon added little. With regard to Mr Clayton's reliance on the applicable British Standard, this was no more than a factor to be taken into account by the court. Any failure to comply with the British Standard did not equate to negligence.

[46] In the event that liability was established, the court should find that contributory negligence was significant. The pursuer had used the stairs before. She had failed to take

reasonable care as she descended the stairs. In the circumstances, contributory negligence should be assessed in the range 40-50%.

## **Decision**

### **Defenders' objection**

[47] The defenders criticised the pursuer's pleadings, highlighting that the specific averments made about any alleged danger were restricted to complaints made by two residents about the handrail not extending to the bottom of the stairs. It was submitted that there should have been additional averments regarding how the defenders ought to have become aware of the alleged danger caused by darkness at the bottom of the stairs. The fact that an area was dark did not make it hazardous. On that basis, the pursuer's case should be restricted to evidence regarding the complaints made about the handrail alone.

[48] I agree with the pursuer's submissions on this issue. While the pursuer correctly conceded that her pleadings were not as full as they might have been, these are Chapter 36 proceedings. As Rule 36.B1.(1) states, the initial writ should consist of a brief statement containing averments relating only to those facts necessary to establish the claim. The pursuer's averments regarding the alleged danger are clear, namely that there was an absence of adequate lighting, that the stairs were in darkness, that the handrail did not extend to the bottom of the stairs and that the pursuer did not notice that there was an additional step to negotiate because of the darkness. While the words "obvious" and "danger" are absent, nevertheless I consider that there is sufficient identification of the danger and fair notice of the pursuer's case.

[49] It is also relevant to highlight the evidence from Mr Beedie that he had used the stairs in the hours of darkness. This evidence had not been known prior to the

commencement of the proof and was given voluntarily. As such, that evidence was available for the court to consider.

[50] Against that background, I do not consider that the defenders' objection is well-founded and is therefore repelled.

### **Assessment of the evidence**

[51] I found all of the witnesses led on behalf of the pursuer to be generally credible and reliable. I reject the defenders' criticism of the pursuer and Mr Thomson. Both gave their evidence in a straightforward and honest manner.

[52] The pursuer maintained a consistent position regarding the mechanism of, and reason for, her accident. Contrary to the suggestion made by the defenders, I did not consider that there was any material discrepancy between her evidence and what had been recorded by medical staff in the A&E records. Those records detailed a fall down some outside stairs where the pursuer had thought she was at the bottom of the stairs. This was consistent with the pursuer's account of the accident in court.

[53] Mr Thomson's evidence was short and to the point. He had not known the pursuer at the time of the accident and came across as independent and objective.

[54] While both Mr Beedie and Ms Reid gave evidence on behalf of the pursuer, they were employees of the defenders. Ms Reid gave her evidence in a straightforward manner but added little to the overall factual matrix. Mr Beedie turned out to be a key witness standing his unexpected evidence about his use of the stairs during the hours of darkness. While most of his evidence was given in a straightforward manner, he was dogmatic in his assertion that the stairs were not dangerous because he had been able to use them without incident and became evasive when pressed about the need for dedicated lighting at the



stairs notwithstanding his acceptance that stairs in darkness could be hazardous. His attempt to categorise the stairs as not hazardous because they were simply dark as opposed to “dark dark” was odd and unconvincing. For these reasons, where there was conflict between the evidence of Mr Beedie and the evidence of the pursuer and Mr Thomson, I have preferred the evidence of the pursuer and Mr Thomson.

[55] I considered that both Mr McMahon and Mr Clayton were helpful witnesses. Both were suitably qualified to give their expert evidence, although the former’s evidence became of limited value once the pursuer withdrew her case of fault based on the handrail.

Mr Clayton had visited the locus and gave clear evidence about the practical effect of the architecture surrounding the stairs on the illumination provided by the nearby street lamp. He had relevant knowledge and expertise in relation to the design and assessment of lighting for roads and footpaths and I accept his opinion regarding the lighting of the stairs.

[56] I have not attached any weight to the video footage taken by the pursuer. While it was not disputed that the footage related to the stairs in question and was taken during the hours of darkness, there was an absence of information regarding the camera settings used to enable appropriate consideration to be given regarding the accuracy of its depiction of the illumination on the stairs and how that would compare to the human eye. It would have been of more assistance to the court if Mr Clayton had taken readings with a light meter. In any event, I have accepted the evidence of the pursuer and David Thomson in relation to the lighting conditions at the time of the accident.

### **The applicable law**

[57] Section 2 of the 1960 Act provides as follows:

## **“2. Extent of occupier's duty to show care**

(1) The care which an occupier of premises is required, by reason of his occupation or control of the premises, to show towards a person entering thereon in respect of dangers which are due to the state of the premises or to anything done or omitted to be done on them and for which the occupier is in law responsible shall, except in so far as he is entitled to and does extend, restrict, modify or exclude by agreement his obligations towards that person, be such care as in all the circumstances of the case is reasonable to see that that person will not suffer injury or damage by reason of any such danger.”

[58] It was not disputed that the defenders were the occupiers of the premises at Shaw’s Court and that they owed the pursuer a duty of care. The key issues for determination by the court were:

- (i) whether the pursuer had proved her case in relation to the cause of her accident;
- (ii) whether the defenders were in breach of their duty of care to the pursuer; and
- (iii) if so, whether the pursuer was contributorily negligent.

### **The cause of the accident**

[59] For the reasons detailed in paragraphs [51] and [52], I accept the evidence of the pursuer in relation to the mechanism and cause of her accident. She was clear that the stairs were in darkness on the night of her accident. The nearby street lamp did not provide any illumination of the stairs beyond the second top step. As she approached the bottom of the stairs, she was unable to see where she was placing her feet. The light located outside the upstairs flat at Number 111 was switched off. There was no dedicated light for the stairs. She was holding onto the handrail adjacent to the stairs with her right hand. When her hand reached the end of the handrail, she incorrectly assumed that she had reached the bottom of the stairs and walked forward on that basis and fell.

[60] The pursuer's evidence about the lighting conditions on the stairs was supported by Mr Thomson. He was unequivocal that the lower part of the stairs was in darkness. There was no dedicated lighting for the stairs and it was very dark at the bottom of the stairs. The only illumination that he could recall was the light of the moon.

[61] The pursuer's position was also supported by Mr Beedie's evidence that the stairs were dark when he had used them during the hours of darkness. I also accept the evidence of Mr Clayton that due to the positioning of the street lamp and the wall immediately adjacent to the stairs, the illumination provided by the street lamp would not extend beyond the top step and part of the second step of the stairs. In the absence of any additional source of light, the lower part of the stairs would have been in darkness.

[62] On that basis, I am satisfied that the pursuer has established on the balance of probabilities that the accident occurred in the manner contended.

### **Breach of duty – was there a danger?**

[63] It is well understood that cases brought under section 2 of the 1960 Act tend to turn on their own facts and circumstances. In the present case, the adequacy of the lighting was the critical factor. The evidence I have accepted was that the stairs were in darkness, that there was no dedicated lighting for the stairs, that the illumination provided by the street lamp located diagonally opposite the top of the stairs did not extend beyond part of the second top step and the pursuer could not see the bottom steps due to the darkness.

[64] On the basis of the relevant British Standard, the appropriate level of illumination for the stairs was at least 20 lux. While a light meter reading had not been taken at the time of the accident, the evidence was clear – the stairs were so dark that the bottom steps were not visible to someone using them. Mr Thomson considered that the only light available came

from the moon. Mr Clayton estimated the illumination of the moon, if it had been visible that night, at 0.1 lux – in other words, pitch black. On any reasonable analysis of the evidence, the level of illumination fell far below the level recommended by the British Standard. The sheriff's dicta in *Bye v Fife Council* 2007 Rep LR 40 at paragraph 48 are applicable:

“In my opinion, failure to comply with the British Standard does not, in itself, equate to negligence... In this case, the Foreword to BS 5696 says it is a code of practice prepared for reasons of safety. It is up to a court to conclude whether there has been negligence on the part of the defender. The application and content of a British Standard may be a relevant consideration to take into account when determining that question.”

[65] Having heard the evidence, I have concluded that the lighting on the stairs was inadequate and constituted a danger. The fact that the level of illumination fell significantly below the level contained within the British Standard only strengthens that conclusion.

### **Breach of duty – knowledge**

[66] In *Kirkham v Link Housing Group Limited* [2012] CSIH 58, the Inner House stated at paragraph [34]:

“The Occupiers’ Liability (Scotland) Act 1960 does not impose a duty of insurance upon defenders. The defenders must have knowledge, actual or deemed, of any danger before they can be found liable in terms of the Act. There may be many ways in which the necessary knowledge is communicated or attributed to a landlord, not necessarily involving a report by the tenant.”

[67] The pursuer’s primary position was that irrespective of any previous reports of accidents or complaints involving the stairs, the danger posed by them was so obvious that the defenders ought to have been aware of it and addressed it. In response, the defenders highlighted the fact that they were not aware of any such complaints or accidents in over 20 years. Such a factor was found to be significant in *Brown v Lakeland Ltd* 2012 CSOH 105.

The pursuer pointed to the decisions in *Delaney v Beechwood Nurseries Ltd*, an unreported decision by Lord Kingarth dated 20 February 2004, and *Forrest v Iceland Foods Ltd* [2021] SC EDI 27 where the courts stated that while such a factor was relevant, it was not determinative in itself and required to be considered along with the other relevant factors in the case.

[68] In *Delaney* and *Forrest*, the consideration of the lack of accidents/complaints was part of a wider exercise conducted by the court against a background where the defenders had actual or deemed knowledge of the alleged danger. In this case, the pursuer sought to rely on those decisions to support the contention that the stairs were an obvious danger and no actual or deemed knowledge required to be shown. I consider that such an approach is mistaken and when looked at in isolation, without knowledge on the part of the defenders, I do not agree that the danger posed by such unlit steps should have been obvious to the defenders.

[69] However, I consider that the pursuer is on a more solid footing with her secondary position, namely that the defenders had actual knowledge of the danger through their employee Mr Beedie. He was a regular visitor to Shaw's Court and had used the stairs on several occasions during the hours of darkness. He knew or ought to have known that other pedestrians would use the stairs during the hours of darkness. He knew or ought to have known that there was no dedicated lighting for the stairs. He categorised the lighting conditions on the stairs as "dark" but "not dark dark". His reliance on the absence of previous complaints was marked. He did not consider the stairs to be dangerous.

[70] Parties referred to *Delaney* and *Wheat v Lacon & Co Ltd* 1966 AC 552, both of which involved falls on stairs in dark conditions. In *Delaney*, the pursuer was descending an internal staircase at her place of work. She had taken her hand off the handrail but

misjudged her footing due to poor lighting at the bottom of the stairs. The Lord Ordinary found that the accident was caused by the defenders' fault at common law through their failure to take reasonable care to provide adequate lighting and stated at paragraph [13]:

“...with the lighting as it was, there was a real risk of a person being injured in the way the pursuer was - a real risk which, it seems, could readily have been eliminated by the provision of brighter lighting, in particular at the foot of the stairs.”

[71] In *Wheat*, the plaintiff relied primarily upon the Occupiers' Liability Act 1957. The plaintiff's husband had fallen and died while descending an internal staircase. The staircase was unlit and the handrail ended at the third step from the bottom. The House of Lords held that there was no breach of duty on the part of the defendants.

[72] I agree with the pursuer that the decision in *Wheat* can be distinguished from the present case. There was insufficient evidence to establish the cause of the fall in *Wheat* unlike in the present case. There was dedicated lighting on the stairs in *Wheat* but the light bulb had been removed by persons unknown and the court held that the defendants could not have reasonably foreseen that the stairs would not be lit at the time of the accident. In the present case, the lack of lighting was an ongoing state of affairs known by the defenders through Mr Beedie. In *Wheat*, the court did not consider it negligent not to anticipate the possibility that someone might use the stairs in the dark. The stairs in question were in a private part of the premises to which members of the public had no access. In the present case, there was no such restriction and it was not argued that the defenders did not know that the stairs were used by residents of Shaw's Court and members of the public during the hours of darkness.

[73] Against that background, I consider that the decision in *Delaney* is a more appropriate comparator for the present case than *Wheat* and agree with the approach adopted by the Lord Ordinary in that case.

[74] Returning to the issue of the lack of reported accidents/complaints, I would echo the views expressed by the presiding sheriff in *Forrest* at paragraph [48]. Such an absence does not mean that no one has fallen on the stairs due to the inadequate lighting conditions. People may have done so but been able to catch themselves or avoid injury. The pursuer was not so fortunate. The absence of accidents/complaints is not determinative in itself and requires to be considered along with the other relevant factors in the case.

[75] The other factors in this case were that the lighting conditions for the stairs were inadequate for the reasons I have detailed above, making it difficult for persons using the stairs to see clearly where they were placing their feet, and the fact that the handrail stopped short of the bottom of the stairs, thereby giving a false impression that the bottom step had been reached. This constituted a danger of which the defenders had actual knowledge. While there was an absence of reported accidents/complaints, I consider that there was still a material risk of injury arising from this danger.

[76] Armed with that knowledge, I consider that the obvious precaution for the defenders to take was the installation of a dedicated light, as they had done at some point following the accident.

[77] Against this background, I conclude that a reasonable occupier in the position of the defenders would have installed a dedicated light for the stairs. I therefore conclude that the defenders have not taken care as in all the circumstances was reasonable to see that the pursuer did not suffer injury or damage as a result of the danger caused by the inadequate lighting and, as such, have breached section 2 of the 1960 Act. I also conclude that had there been adequate lighting on the stairs in the manner of the dedicated light subsequently installed, the accident would not have occurred.

**Common law case**

[78] Given that I have found that the defenders have breached section 2 of the 1960 Act, it is not necessary to consider the alternative common law case. Parties were in agreement that nothing additional arose from the common law case. Had it been necessary for me to do so, I would have found the defenders liable to make reparation to the pursuer at common law for the same reasons given above.

**Contributory Negligence**

[79] The onus lies on the defenders to prove that the pursuer's actions fell below the standard of a reasonable person in the position of the pursuer.

[80] I accept the pursuer's evidence that she was descending the stairs carefully, one step at a time, while holding onto the handrail. She was unable to see where to place her feet due to the poor lighting conditions.

[81] I therefore do not consider that any reduction for contributory negligence would be appropriate.

**Quantum**

[82] As detailed above, parties had helpfully agreed quantum in the sum of £17,000 inclusive of interest to 22 November 2022.

**Conclusion**

[83] For the reasons given above, the defenders have breached section 2 of the 1960 Act and are therefore liable to make reparation to the pursuer. Decree for £17,000 is granted in favour of the pursuer.



[84] At the request of parties, expenses are reserved. The sheriff clerk will fix a hearing on expenses.