

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

[2020] SC EDIN 3

PN/2200/18

JUDGMENT OF SHERIFF KENNETH J McGOWAN

in the cause

NORMA CUTHBERTSON

Pursuer

against

MURRAY BAIN t/a HARELAW EQUESTRIAN CENTRE

Defender

**Pursuer: Ross QC; Thompsons
Defender: Langlands;**

Edinburgh, 22 October 2019

NOTE

Introduction

[1] In this case, the pursuer seeks damages for serious injuries she sustained following a fall from a horse owned by the defender, occurring during a 'hack' along Longniddry beach in East Lothian.

[2] I heard evidence from the pursuer; her friend, Elizabeth Sinclair; Dr Debbie Marsden, an expert in equine matters; and Brenda Findlay, the 'head girl' employed by the defender.

[3] Having heard the evidence and submissions, I found the following facts to be admitted or proved.

Findings in fact

[4] The pursuer was born on 24 May 1957. She is employed as the Executive Assistant to the Lord Provost by City of Edinburgh Council. The defender operates stables and a riding school facility.

[5] As at August 2015, Brenda Findlay was employed as the defender's head girl. Her role was to supervise activities at the stables, including hacks. Ms Findlay has been riding horses since she was 4 years of age. The defender also employed Heather Hughes as a stable girl.

[6] The pursuer is an experienced and competent horsewoman, having ridden all of her adult life. Ms Sinclair is also an experienced rider.

[7] On 28 August 2015, the pursuer and Ms Sinclair visited the defender's premises to take part in a hack. The route of the hack was a 7 mile ride from the defender's stables, through the neighbouring Gosford Estate, along Longniddry beach and then returning to the stables *via* Longniddry village.

[8] There were to be five participants on the hack, namely Ms Findlay who was leading it, on a horse called Scout; Ms Hughes on Puzzle; the pursuer on Blaze; Ms Sinclair on Jester; and another visitor, Ms Hartington, on Wizard.

[9] The planned route of the hack was from the defender's premises through the Gosford Estate, along a section of road then along the beach at Longniddry before returning to the stables *via* Longniddry village: 5/1/24 of process.

[10] The pursuer was planning to take part in the Riding of the Marches event. She had asked for a horse which was steady and reliable and, when the first horse she was given was sold on, was given Blaze. She had ridden Blaze on two or three previous occasions and had found him to be fine.

[11] Ms Hughes and Ms Hartington had left the stables by the time the pursuer, Ms Sinclair and Ms Findlay were ready to go. All five riders and horses were together by the time they reached the exit from the Gosford Estate.

[12] At about the point where the planned route comes to the beach at Longniddry, the beach is crossed by a small stream or rivulet ("the first stream").

[13] Thereafter there is a stretch of beach ("the first beach") which ends near a bend or "dogleg". Around this point is another stream ("the second stream"). After the dogleg, there is a long, straight stretch of beach ("the second beach") approximately 600 metres in length.

[14] On arrival at the beach area, Scout was reluctant to cross the first stream. The other four members of the party did so without difficulty. Ms Findlay continued to encourage Scout to cross, while he remained reluctant to do so. During this time, Blaze became agitated, restless, excitable and difficult to control.

[15] Eventually, with the assistance of Ms Hughes, Ms Findlay got Scout to cross the first stream.

[16] By this time Blaze was tense, wound-up and raring to go.

[17] The group then set off along the beach in single file in a canter.

[18] After crossing the second stream, the group was to move to a fast canter.

[19] Ms Hughes was in the lead position. Ms Sinclair was either second or third in line. The pursuer was either third or fourth in line. Ms Hartington was either second or fourth in line. Ms Findlay was fifth in line.

[20] If one horse in a line gets too close to the horse in front, there is a high risk of an adverse reaction from the horse in front, including sudden deviation from course.

[21] Good practice is to remain at least one horse's length behind the horse in front. A horse's length is approximately 8 – 10 feet. A distance of five feet from the horse in front is too close. Any riding instructor should be aware of this and act accordingly.

[22] The pursuer became aware that Scout, ridden by Ms Findlay, was behind her on her left flank. At one point she looked around. She thought that the distance from Scout's nose to Blaze's tail was about five feet at an angle of about 30 degrees. In fact, Scout was at least a horse length away from the tail of Blaze throughout the second canter.

[23] As the horses began to move into a fast canter, the pursuer was very frightened. Prior to the pursuer falling, Blaze did not deviate from a straight course. The pursuer became unseated and fell to her left onto the hard sand.

[24] It is unusual for a horse to deviate suddenly from its course for no reason. A horse may deviate suddenly from course in response, for example, to silver foil in a bush, traffic, other animals or people on or near its path.

[25] It is unusual for an experienced rider to simply lose her balance and fall while cantering on level ground, though it is possible for this to happen. When a rider is unseated from a horse, her feet will usually come out of the stirrups in the course of falling.

[26] The precise reason why the pursuer became unbalanced and fell off Blaze is not known.

[27] The pursuer sustained a fractured pelvis; a ruptured bladder; a fractured clavicle and multiple rib fractures and pulmonary contusion; and a minor head injury. She was treated in the Intensive Care Unit for several days. The pursuer was disorientated and fearful while in Intensive Care. During that time she underwent closed reduction and percutaneous fixation of pubic ramus fractures. She required insertion of a catheter. Her clavicle fracture was treated non-operatively. She remained as an inpatient for two weeks. After discharge, she

required initially to use a crutch and wheelchair for several weeks and thereafter a stick. She required to attend physiotherapy. She wore a sling on her clavicle for several weeks.

[28] After the accident she developed anxiety and loss of confidence.

[29] The pursuer was absent from work from the date of the accident until 7 December 2015. She returned on a phased basis, resuming full duties in or about February 2017. In February 2017 she required secondary surgery to her pubic ramus and was off work for three weeks.

[30] She has substantially recovered from the effects of her accident but still has residual aching in her lower back and buttocks. It is unlikely that this will resolve.

[31] As a consequence of the accident, the pursuer's outlook in relation to her exposure to potential risk of physical harm has changed. She has been able to return to horse riding but only in a closely monitored and supported environment. She is anxious about the possibility of further falls and injuries. She is wary and vigilant about crossing roads; the proximity of traffic; and walking in icy and snowy weather conditions where she feels she might slip and fall. She is more generally vigilant and risk aware of danger to her physical integrity. These difficulties reflect an overall drop in her levels of self-confidence when compared to her pre-index accident circumstances. She is anxious when flying and when travelling by car both as a passenger and driver. The pursuer's anxiety related symptoms have been troublesome and have had an adverse influence on her functioning but do not lead to a psychiatric diagnosis.

[32] The pursuer was paid during her absence but, in the event of this action succeeding, is obliged to repay sick pay in the amount of £9,465.65.

[33] The pursuer required substantial assistance in the period after her accident. This was provided by her partner, Christopher Harris.

[34] Following the pursuer's discharge from hospital, Mr Harris took two weeks off work. During this time, he provided almost constant care. A gradually reducing amount of care was provided until about the time of the pursuer's initial return to work in early December 2015.

[35] As a result of the configuration of the pursuer's house, two ramps were required to allow access and egress by wheelchair at a cost of £33.95 and £68.88 respectively. On her discharge from hospital, the pursuer could not sleep in her own bed as a result of pain and discomfort. The pursuer purchased a reclining chair at a cost of £944.00 which she slept on until she was able to start using her bed again. The chair also had a mechanism to assist the user to stand up.

[36] Prior to her accident the pursuer had purchased tickets for herself, friends and family for shows at the Edinburgh Festival at a total cost of £297.00. The pursuer was unable to utilise her own ticket as she was still in hospital and her prospective guests did not feel like attending the events. On her return to horse riding, the pursuer purchased a lambskin cover for her saddle at a cost of £44.95 which minimised the discomfort which she otherwise felt.

[37] Once the pursuer had recovered sufficiently to move back into her own bed, she found that her old mattress was too soft. Accordingly she purchased a new bed and mattress at a cost of £2745.00. She paid £70.00 for collection and disposal of her old bed.

[38] As a result of her bladder injury, the pursuer was advised to purchase a mattress protector which she did at a cost of £19.79.

Grounds of decision

[39] Both counsel provided me with helpful written submissions which I have taken account of and summarised as part of the discussion below.

Introduction

[40] On behalf of the pursuer, it was submitted that she had proved on the balance of probabilities that the accident on 28 August 2015 was caused by the fault and negligence of Ms Findlay for whose acts and omissions in the course of her employment with him the defender is vicariously liable.

[41] As a result, the pursuer sustained loss, injury and damage and should be awarded damages.

[42] On behalf of the defender, it was noted that the pursuer sought to prove *inter alia* the following material facts:

- i. “Ms Findlay drew alongside the rear left-hand side of the pursuer...(and) this caused Blaze to move suddenly away from Ms Findlay. This caused the pursuer to become unbalanced and to fall to her left”;
- ii. “Ms Findlay ought to have remained at least one-horse length behind the pursuer when in a fast canter”;
- iii. “Ms Findlay knew, or ought to have known, that drawing alongside the rear left-hand side of Blaze was likely to lead to Blaze reacting with a sudden movement away from her.”;
- iv. “Had Ms Findlay not drawn alongside the rear left-hand side of Blaze the pursuer’s accident would not have occurred”.

[43] Points ii. and iii were conceded, subject to the qualification that (a) Ms Findlay had remained at least one-horse length behind the pursuer at all times when in a fast canter and (b) in any event that if it was found as a fact that Ms Findlay encroached within one horse length of the pursuer, her doing so was not the cause of the pursuer’s fall.

The evidence

Credibility and reliability – generally

[44] On behalf of the pursuer, I was invited to accept the evidence of the pursuer, Mr Harris and Ms Sinclair as credible and reliable on the essential matters to which they spoke. Mr Harris's evidence had not been challenged. It was accepted that Ms Sinclair's recollection was less clear on some matters. Dr Marsden was well-qualified to give expert opinion and ultimately her evidence was not challenged in any material way. Ms Findlay's evidence was not impressive and her evidence should not be accepted.

[45] On behalf of the defender, it was submitted that the pursuer could not remember the circumstances of her fall. Ms Sinclair was also unable to assist with the cause of the fall. She was in front of the pursuer and did not turn around until after she heard the pursuer shout, by which time the accident had already happened. The only direct eye witness to the fall was Ms Findlay. She was a reliable and credible witness. She had provided a contemporaneous report of the cause of the fall, both orally at the beach immediately after the fall, and in writing upon return to the defender's premises (5/4/22 of Process). Despite an apparent inconsistency regarding the side of the fall, she had been consistent as to the cause of the fall since day one. Her evidence as to the cause of the fall should be accepted.

[46] My view is that all of the witnesses were credible, in the sense that they were all doing their best to tell the truth as they recalled it. Mr Ross criticised Ms Findlay's credibility but in my opinion her slightly defensive stance can be explained by the fact that she is personally being blamed for causing the pursuer's accident and injuries and having done so by committing an egregious error. I think most people would be somewhat defensive in such a situation.

[47] On the other hand, my opinion is that there are questions as to the reliability of all the lay witnesses. This is not surprising given the passage of time since the events giving rise to the case.

[48] I found Dr Marsden to be generally an impressive and knowledgeable witness, whose testimony as an expert is entitled to appropriate consideration. However, Dr Marsden's opinion is periled on the pursuer proving certain facts and there was one passage concerning behaviour of horses which I found difficult to follow. This is dealt with below. However, the pursuer and Ms Sinclair were also experienced riders and Ms Findlay plainly has considerable professional experience with horses – and in particular has direct knowledge of the horses involved in this case and the locus. I deal with specific aspects of the evidence as they are discussed below.

The commencement of the hack

[49] There was some dispute between the witnesses about whether the five riders all left the stables at the same time and whether the pursuer and Ms Sinclair were late in arriving. In my view, nothing turns on these points either from the point of view of the case itself or the credibility of any of the witnesses. It simply serves to highlight that there may be questions as to reliability given the passage of time. It was common ground that by the time the group arrived at the path leading to the beach, they were all together.

Crossing the first stream

[50] There was no real dispute between the witnesses about what happened at the first stream. It is clear that while the other four horses were able to cross the stream with ease,

Ms Findlay's horse, Scout, was reluctant to do so and it took considerable persuasion and assistance from the stable girl, Ms Hughes to get the horse across.

[51] In connection with subsequent events nothing much turns on the fact of Scout being reluctant to cross in itself. However, in my view what is relevant to later events is the impact which the delay had on Blaze's demeanour. The pursuer volunteered in evidence in chief that Blaze was beginning to get agitated. She described him as pulling in one direction and her having to control his movement by pulling the reins in the other direction. Later in her evidence and under cross-examination, she attributed Blaze's agitation to his keen sense of anticipation. She described Blaze as being "agitated and excitable" and said that she told Ms Sinclair that he was being "very agitated". The pursuer also accepted under cross-examination that Blaze was becoming "a bit difficult to control"; that the unpredictability of a horse increases if it is agitated or restless; and that if a horse is difficult to control its unpredictability will increase and in that mind set things which might not otherwise upset a horse might do so. Under re-examination she said that once she had got beyond the (first) stream she was finding Blaze difficult to control on the beach. He was "tense, wound up and raring to go".

[52] Ms Sinclair also described the pursuer's horse as agitated.

[53] By contrast, Dr Marsden did not agree that unpredictability was increased if a horse was agitated. She said a horse in that state becomes more predictable but less well behaved and more excitable. I am not sure that I understood the distinctions Dr Marsden sought to draw. She accepted that the phrases used by the pursuer (restless, agitated, excitable, tense, wound up, raring to go) would not be used to describe a well behaved horse. She accepted that a horse which is like that is showing that it has a mind of its own; and that a horse

which is difficult to control indicates that it is less well behaved. Usually misbehaviour means that a rider is less well able to control the horse.

[54] In my view, this evidence about Blaze's demeanour is relevant to the questions to what happened later on.

Layout of beach

[55] The pursuer and Ms Sinclair both described the first stream; then an area of beach where there was a canter; and then the dog leg leading on to the area where the second canter was to take place. Neither of them mentioned the existence of a second stream which Ms Findlay did. In my opinion, Ms Findlay's evidence on this point should be accepted (it is to some extent supported by the plan lodged by the pursuer though regrettably both it and the photographs were of very poor quality). Ms Findlay knows the locality well and it seems to me to be unlikely that she would be mistaken about the existence of a second stream. While not a particularly significant point in itself, this tends to suggest that the evidence of the pursuer and Ms Sinclair as to the events of the day may not be wholly reliable.

The order of the horses and riders

[56] It was submitted on behalf of the pursuer that this was a matter of considerable importance. In spite of being called to specify his position as to the order of the riders at the time of the accident, the defender had made no positive averments on this subject on Record. Only when pressed on the matter at the Pre-Trial Meeting, was it confirmed that his position was that the order was as set out in the accident report form.

[57] The pursuer was adamant that she was fourth in line with Ms Findlay behind her.

Ms Sinclair was equally clear on this point. Of the other two riders on the hack, neither Ms Harrington nor Ms Hughes was called.

[58] The evidence of the pursuer, supported by Ms Sinclair should be preferred to that of Ms Findlay.

[59] On behalf of the defender, it was submitted that I should accept the evidence of Ms Findlay; and that even if I did not do so, that did not mean that the pursuer's case succeeded.

[60] It was clear from the evidence that Ms Sinclair and the pursuer put Ms Findlay and her horse as fifth in the line and immediately behind the pursuer's horse which was in fourth place. By contrast, Ms Findlay said that Ms Harrington was not in front of the pursuer but was in fact between her horse Scout and that of the pursuer, Blaze.

[61] This is a matter which I was unable to resolve definitively. The accounts of the pursuer and Ms Sinclair on the one hand and Ms Findlay on the other were both plausible. I did not have the impression that any of these witnesses were trying to mislead me. They may have been accurate in their recollections or they may have been mistaken. Thus, I cannot hold that this averment has been proved on the balance of probabilities.

[62] Nevertheless, my opinion is that the resolution of this issue one way or the other is not crucial. If the pursuer and Ms Sinclair are correct, that might make it marginally more likely that Scout was (able to be) closer to the rear of the pursuer's horse.

[63] But Ms Findlay was quite clear in her evidence; was in a good position to see who was ahead of her; and gave a description of Ms Harrington's horse being offset to one side to the right. Thus, my view is that she did not suggest that Ms Harrington's horse (if she is

right that it was between her and Blaze) was in such a position as to act as a 'barrier' preventing Scout from getting close to Blaze.

[64] Accordingly on the issue as to the order, I think that the evidence is inconclusive and in any event I am not convinced that it is a crucial matter. Ultimately it is the proximity (or otherwise) of Scout to Blaze which is significant, rather than the order in which the horses were travelling. This latter issue is dealt with below.

The Scottish Ambulance Service ("SAS") Patient Report Form

[65] This report describes the history as follows:

"Fall from horse @ gallope ... Pt thrown when horse skittish. Landed face first. LOC 5 mins ...".

[66] On behalf of the pursuer, it was submitted that a person being "thrown when horse skittish" is not the same as simply losing her balance and falling off. The ambulance crew, who were on the scene within a very short time of the accident, must have got this history from someone. That was almost certainly not the pursuer, given her condition at the time. In addition to the evidence of the pursuer, Ms Sinclair and Ms Findlay, it was noted that the latter wrote on the accident report form:

"Norma was a bit confused as she had bumped her head and kept asking what had happened."

[67] The natural inference to be drawn was that the source of this information was Ms Findlay. Her position in cross examination was that she did not remember speaking with the ambulance crew. It was possible, but she was not sure. It would seem strange that she would not speak with the ambulance crew who were at the scene for some time. She had called the ambulance and was the member of staff supervising the hack. She was also the only person who had actually seen what happened. Even if the information was passed to

the crew by Ms Sinclair, the ultimate source was probably Ms Findlay, since Ms Sinclair did not see the pursuer coming off the horse.

[68] On behalf of the defender, it was submitted that both Ms Sinclair and Ms Findlay denied being the source of the information in the record. There was insufficient evidence to show who the source of the information was and about the accuracy of the record. The paramedic may have incorrectly completed the report. No conclusion could be drawn from it.

[69] In my view, it is not possible to exclude completely the possibility that the pursuer was the source of this information – in the sense of having said something. Ms Sinclair's evidence was that she (the pursuer) was conscious by the time she got back to the location of the fall immediately after it. She had been able to speak and was 'already conscious' by the time the paramedics arrived. Nevertheless, Ms Sinclair said that the pursuer had no memory of what happened and the pursuer was "confused and repeating herself". Accordingly, even if the pursuer said something, it seems unlikely that can have been said by her from a position of actual knowledge.

[70] Ms Findlay denied being the source of this information. In examination in chief, Ms Sinclair said that she had provided that information. She remembered that one of the ambulance crew had experience of horses and she said "I told him that the horse had thrown her." Then she immediately went on to say that she could not remember what she had said although she remembered speaking to the crew and then somewhat retreated from the evidence she had given by saying that anything she had said to the crew would have been speculation and she did not think she had said "thrown horse when skittish." She confirmed that the pursuer was able to speak and she was unable to say whether or not the pursuer had said that she had been thrown when the horse was skittish. Accordingly on

this evidence there was a firm denial from Ms Findlay; and confirmation followed by denial by Ms Sinclair on the possibility that the information came from the pursuer herself.

[71] I decline to find that the original source of the information was Ms Findlay. The evidential picture is confused and without evidence from the author of the entry, I am not prepared to make a finding as to who was the source of the information or indeed what the author understood by what he was told and what he wrote down.

[72] Mr Ross also submitted that this report was supportive of the pursuer's case in the sense that it was evidence of some action (or reaction) by the horse involving a movement by it. I agree that it is indicative of the horse doing something, but in my view it is very different from a sudden deviation. So even if something of that sort was said (and both Ms Sinclair and Ms Findlay said skittish was not a word they have used), it appears to me to be different from and therefore not supportive of either party's case. That being so, it is evidentially neutral.

The accident report

[73] On behalf of the pursuer, it was submitted that Ms Findlay's approach to the reporting of an incident in which a customer sustained very serious injuries was lamentably casual. The description in the accident report form ran to six lines. The narrative stated that the pursuer fell off the left side of the horse while the sketch on the following page shows her fall as being on the right. In spite of it being made clear on the form that it was essential to obtain and list names, addresses and telephone numbers of witness(es) on the ride or at the scene, Ms Findlay failed to obtain any such details for Ms Harrington.

[74] On behalf of the defender, it was submitted that Ms Findlay's evidence was unwavering. Her contemporaneous written report on the day of the accident was that the pursuer lost her left stirrup causing her to fall to the left.

[75] I agree that the report was not extensive, though it is not uncommon for such reports in many contexts (industrial accidents, road accidents) to be cryptic and contain a minimal amount of information. From the defender's perspective this is a report made soon after the accident and appears to be largely consistent with the evidence given by Ms Findlay. From the pursuer's perspective, it appears not to be consistent with other sources.

[76] For reasons which I seek to explain elsewhere, I think that in reality Ms Findlay did not know for sure what had happened and was inferring that the loss of a stirrup was the cause of the pursuer's fall.

The report to the HSE

[77] On behalf of the pursuer it was noted that the report made to the Health and Safety Executive was even briefer, yet the only piece of information provided as to what happened was inconsistent with the accident report form. The pursuer was said to have lost her right stirrup.

[78] On behalf of the defender, it was submitted that the tenor of Ms Findlay's evidence was that there was an error in the report as to which stirrup had been lost and that was likely to have arisen from the Health and Safety Executive call handler to whom Ms Findlay narrated the content of the report. In any event, the defender submitted the matter was moot. The pursuer seeks to prove she fell to her left – a point which the defender admits on Record. The pursuer has no pleadings upon which to seek a finding in fact that the pursuer did anything other than fall to her left.

[79] I agree that this is puzzling. It would seem odd that Ms Findlay having recorded that the pursuer had lost her left stirrup in the accident report (see above) would have very shortly thereafter reported something different to the HSE. In my view, absent evidence from the person who recorded the information as to what was said, the likely explanation is more likely to be a misunderstanding or miscommunication.

The discussion with Mr Harris

[80] Mr Ross submitted that the HSE report was not the only occasion on which Ms Findlay said that the pursuer lost her right stirrup. Mr Harris gave evidence of a telephone conversation with Ms Findlay on 3 September 2015 in which she said that the pursuer lost her right stirrup, adding somewhat cryptically "It's the only logical conclusion I can reach." While Ms Findlay admitted that this call took place, her recollection of what was said was not clear. In contrast, Mr Harris's account of the conversation was clear and emphatic and was not challenged in cross examination. Unbeknownst to Mr Harris, the pursuer referred to the right stirrup again when reporting the accident to the HSE the following day.

[81] Mr Harris also said that Ms Findlay had said that she was "5 or 10 feet behind (the pursuer) on the left hand side".

[82] Mr Harris's version of the telephone call should be preferred.

[83] As Ms Findlay accepted in cross examination, she had a clear recollection of the accident at the time she made these reports and spoke with Mr Harris. If the accident happened as she said it did, it is difficult to explain this discrepancy. It does not relate to a point of incidental detail but to the one point of substantive information provided as to the cause of the accident. Ms Findlay was unable to explain it beyond merely asserting in her

evidence that it was the left stirrup. However, the discrepancy is not so hard to explain if losing a stirrup was not the cause of the accident.

[84] On behalf of the defender, it was noted that Mr Harris had spoken of being confident in his recollection of Ms Findlay discussing a fall to the right, because he took contemporaneous notes of the conversation. Those notes were not produced. As such, Mr Harris' evidence was no more than his recollection of the content of his notes, given without the Court having sight of the notes. He conceded that as he did not witness the accident, the best source of evidence as to what happened on the day would come from those that were there. As such, Mr Harris was not a reliable witness.

[85] I agree that the weight to be attached to Mr Harris's evidence is lessened by the absence of the contemporaneous notes. In addition, while it was not directly put to him that he was mistaken in his recollection, I note that he said that that it was not a long conversation – but he also said that it had lasted about 10 minutes. If the latter is correct, his account of it was very brief and in my view cannot account for everything that was said.

[86] In relation to the question of distance, while I accept that Ms Findlay may have said that she was "about 5 – 10 feet" away, the reported content is cryptic and lacking context. In my view, it is not sufficient in itself to justify the conclusion that Scout was as close as 5 feet to Blaze, standing the other evidence and in particular that of Ms Findlay.

[87] I note that Mr Harris reported that Ms Findlay said that the pursuer had lost her right stirrup and "It's the only logical explanation" or "It's the only logical conclusion I can reach." That appears to me to be evidence as to a lack of certainty on the part of Ms Findlay as to what had actually happened. It is consistent with the evidence in chief of Ms Sinclair to the effect that that Ms Findlay had "...mentioned something about hoofprints in the sand. She didn't know why the pursuer had come off. Something about losing a stirrup."

(Emphasis added). Later in her evidence, she was asked whether she had formed a view about what had happened and she said: “Ms Findlay mentioned about the pursuer losing her stirrup. She couldn’t understand why the pursuer came off.” (Emphasis added.)

[88] Thus, my conclusion is that in the immediate aftermath and afterwards, Ms Findlay was not sure about why the pursuer had fallen off and rather than having seen the loss of a stirrup has inferred or assumed that that was the explanation.

The hospital records

[89] On behalf of the pursuer, reliance was placed on a letter from Dr Ailsa Hamilton which sets out a clinical note made on the pursuer’s arrival at Edinburgh Royal Infirmary which states:

“History from friend who was with her. Patient out horseriding this afternoon with friend. Horse changed direction and she fell off ...”.

[90] The only friend who was with her was Ms Sinclair. She remembered speaking to a female but was not sure whether she was a doctor or a nurse. It should be accepted that Ms Sinclair was the source of this information and that must have been her understanding at the time.

[91] On behalf of the defender, it was submitted that the pursuer’s medical records could not be relied upon in support of Blaze deviating from his course. The only possible sources of the content of those records were Ms Sinclair and Mr Harris, neither of whom saw the accident.

[92] There are number of difficulties with this piece of evidence. First, I did not hear from the author of the letter, so there is no direct evidence as to the source of the information in it. Second, it is – unsurprisingly – cryptic in its terms. Third, Ms Sinclair’s evidence (as I have it

noted) is that it must have been reported to her by the pursuer, yet elsewhere I am being asked to find that the pursuer had no recollection of what happened.

[93] Ms Sinclair's evidence on this was inconsistent and unreliable. It also did not sit well with what the account she initially accepted she gave to the ambulance crew. In these circumstances, I have come to the conclusion that I cannot with confidence say who was the original source of that information and indeed what the author thought was being conveyed to them when they recorded it.

Conclusion on post-accident reports

[94] It will be apparent from the foregoing that there are a number of inconsistencies in the body of evidence concerning what I refer to collectively as the post-accident reports.

[95] In summary, my conclusions are as follows:

- i. The ultimate source of the information in the Scottish Ambulance Service Patient Report Form is uncertain; even if it is accurate as to what was said, it is not clear what it means (for example, does it exclude a throw followed by the loss of a stirrup?); and insofar as it can be understood, it is different from and therefore not supportive of either party's case;
- ii. the accident report is rendered less reliable because of the contradictory terms of the HSE report, but that is potentially explicable and in any event, rejection of Ms Findlay's account does not advance the pursuer's case, for reasons I set out below;
- iii. the weight to be attached to Mr Harris's evidence is lessened by the absence of the contemporaneous notes; is (when taken with the evidence of Ms Sinclair) indicative of uncertainty on Ms Findlay's part; and even if accurate,

serves to undermine the defender's substantive defence as to the mechanism of the fall, rather than bolster the pursuer's version;

iv. the source of the information contained in the hospital records is uncertain.

[96] In short, this body of evidence, looked at collectively, contains too many uncertainties (as to source and meaning) and contradictions for me to be able to attach any material weight to it.

The key questions

Existence and nature of duty

[97] On behalf of the pursuer, it was submitted that if the pursuer's version of events – particularly her account of Ms Findlay's horse being only about five feet behind hers – was accepted, then breach of duty or negligence is established.

[98] In view of the concession noted above, I did not understand that proposition to be controversial and in any event, I agree with it.

[99] Ms Findlay accepted that to allow a horse to come within 8 - 10 feet of a horse in front would be a dangerous thing to do. That was consistent with the evidence of Dr Marsden, though her position was based on the average length of a horse being 9 - 10 feet.

[100] Accordingly, I accept that such a duty existed and that *if* Ms Findlay allowed Scout to come as close as that to Blaze, that would have been negligence.

Has the defender's case been proved?

[101] On behalf of the pursuer, it was noted that the defender's position on Record as to the cause of the accident was succinct:

“Horse-riding is by its nature an inherently dangerous activity. The Pursuer has voluntarily assumed the risks associated with that. She simply lost her balance and fell off.”

[102] There was nothing in the defender’s pleadings about the accident being caused by the pursuer losing a stirrup. For that, one has to look at the accident reports. The defender’s position on that was not clarified until the Pre Trial Meeting.

[103] The source for the defender’s averment about the circumstances of the accident had to be Ms Findlay.

[104] Dr Marsden drew a distinction between a rider losing a stirrup in the course of coming off a horse and losing a stirrup as a cause of coming off. Even to the non-horsey, it is fairly obvious that in the course of coming off a horse, a rider will usually come out of the stirrups.

[105] The pursuer had no recollection of losing a stirrup. While she acknowledged that a foot could come out of a stirrup when a rider becomes unbalanced, she did not think this was likely when she was cantering and almost standing in the stirrup. When asked about this in cross examination, Ms Findlay repeatedly asserted that it can happen. That it can happen is not in dispute, but the point being put to her was the evidence given by the expert witness, Dr Marsden, that it would be unusual for an experienced rider to lose a stirrup for no apparent reason while cantering. While Ms Findlay appeared to deny this, she was bound to do so given her account of how the accident happened. Dr Marsden’s evidence on this matter should be preferred.

[106] It was inherently unlikely that, as the defender avers on Record, the pursuer “simply lost her balance and fell.” While the pursuer’s feet plainly did come out of her stirrups in the course of coming off the horse, it is also inherently unlikely that losing a stirrup was the

cause of her becoming unbalanced and falling off. The defender's account of the accident should be rejected.

[107] On behalf of the defender, it was submitted that Ms Findlay was very clear in her evidence about the cause of the fall. She was positioned at the rear of the group of five riders. She was facing forward. She had a clear view of what was going on ahead of her. She saw the pursuer lose her left stirrup, become unbalanced and fall. She was far enough back from the pursuer that she was able to pull up alongside the pursuer. Had she been as close as the pursuer contends, the defender submits that Ms Findlay would either have struck the pursuer or would require to have turned her horse around and returned to the pursuer. There is no evidence in support of either proposition nor does the pursuer appear to suggest either proposition.

[108] Both Ms Findlay and Ms Sinclair gave evidence of a discussion that took place between them and Heather Hughes on the beach near to where the pursuer fell in the immediate aftermath of the fall. Both Ms Findlay and Ms Sinclair gave evidence that Ms Findlay confirmed the cause of the fall was the pursuer losing her stirrup. This constitutes a contemporaneous oral report of the pursuer losing her stirrup and that being the cause of the fall. Ms Findlay has never deviated from that position.

[109] Despite having no memory of the accident or its cause, the pursuer refused to concede the possibility she may have lost a stirrup. Dr Marsden said it was extremely unlikely someone of the pursuer's riding experience would lose a stirrup. By implication, it is not impossible the pursuer did. Ms Findlay, a clearly experienced rider, gave evidence that it has happened to her in such scenarios.

[110] When asked why an inexperienced rider may lose their stirrup, Dr Marsden said *inter alia* because they may tighten up and be nervous. The pursuer gave evidence that her

horse was “agitated; restless; excitable; difficult to control; tense; wound-up; and raring to go”. Furthermore, the pursuer also gave evidence to the effect that “By this stage of the ride I was very anxious and frightened”. This was at the point she claims to have been aware of Ms Findlay behind her. The totality of this strand of evidence strongly suggests the pursuer was tense and nervous and had thus increased the likelihood of her losing her stirrup for the same reasons an inexperienced rider would.

[111] There was no evidence from or on behalf of the pursuer, nor any pleadings, that the cause of her loss of stirrup was Ms Findlay riding too close behind her. Accordingly, the defender submits there should be no such finding in fact.

[112] In my view, the defender’s substantive case as spoken to by Ms Findlay in evidence – to the effect that the pursuer lost her left stirrup – has not been proved. I have noted above my reasons for rejecting her evidence on this point. In my view, it is more probable that she was not sure, though I accept that she may have concluded that loss of a stirrup was the likely reason.

How close was Scout to Blaze?

[113] On behalf of the pursuer, I was invited to accept the evidence of the pursuer. On behalf of the defender, it was submitted that I should accept the evidence of Ms Findlay and reject that of the pursuer who was not reliable as to distances.

The pursuer’s averments

[114] The pursuer offers to prove that:

“The procession was moving along the beach at a fast canter. As they were doing so Ms Findlay drew alongside the rear left hand side of the pursuer. In drawing alongside the rear left hand side of the pursuer, Ms Findlay would have appeared to

Blaze to be overtaking. Scout would have been within Blaze's peripheral vision. *Esto* Scout was not within Blaze's peripheral vision, Blaze would have been aware of Scout's presence on her left flank. This caused Blaze to suddenly move away from Ms Findlay."

[115] Thus, the pursuer's case is that Ms Findlay (not Scout, or Scout's head or nose) drew *alongside* the rear left hand side of the pursuer (not Blaze or Blaze's tail) and that in doing so, Blaze would have been aware of Scout's presence on her left flank, causing Blaze to move away.

The evidence

[116] As against that averment, it is necessary to look at the pursuer's evidence in some detail. According to my notes it was as follows:

"After the dog leg the horses take off. The person in front can see it is clear. We moved into a faster section of the ride. We picked up pace – into a faster and faster canter. Beyond that point, I have no memory of what happened in the lead up to my fall.

Do you recollect reaching a fast canter? Yes.

What was your speed? 15 to 20 mph.

What about the horse behind? I had an awareness of Ms Findlay's horse being much closer to me than 15 feet. I estimate that it was about 5 feet away. That was the distance between her horse's nose and the back of the horse I was riding.

How do you know that? I had a sensory event. I could hear the sound of its breath and footsteps. As I moved into the forward position I made a simple turn of my head. I could see. I wanted to see what was happening. By this stage of the ride I was very anxious.

You turned your head? Yes I saw Ms Findlay's horse on my rear side, my left hand side. At that point we were revving up. About 10 mph.

Did you turn your head more than once? I only turned my head once.

I remember taking off on a dog leg. I felt the pace picking up. I felt very frightened.

Do you know where you did come off? I only know what I have been told. Between the two numbered carparks.

That would be between 7 and 8 on production 5/4/24. How close was that to the end of the ride? Somewhere in the middle.

Can you estimate the distance between your last memory and the point of which you came off? My last memory is just after the dog leg at 5. I fell off close to 7 on the map. About 200 metres".

[117] The pursuer accepted that she did not remember coming off her horse or know what caused it. She did not recall being unseated or losing a stirrup and had no memory of her fall. She proposed that the likely reason was her horse suddenly changing direction at speed.

[118] It appears to me that there is something of an internal contradiction in the pursuer's own account. On the one hand she says that her last memory was just beyond the dog leg at the point when the pace was picking up and that she saw Ms Findlay's horse when they were doing about 10 mph (which suggests that this was nearer the beginning of the canter rather than the end of it). Yet on the other hand, she says that she recollects reaching a fast canter by which time they were doing between 15 and 20 mph. In my view, both of those cannot be right.

[119] Turning to the question of distance, the pursuer's position was that she became aware of Ms Findlay's horse being close to hers and with a turn of the head looked once forming the view that it was about 5 feet away, to her left at an angle about 30 degrees. The pursuer conceded that 5ft was an estimate, with a margin of error of about 10 per cent. I think it is clear that this must have been a momentary glance by the pursuer.

[120] It also seems to me likely that the pursuer's ability to estimate the distance between the nose and the tail of her horse and the nose of Ms Findlay's horse must have been further

compromised by the agitation of Blaze and her own state of mind. She said she was "very frightened".

[121] In addition, on her account, her last memory was at point 5 on the map. Accordingly, that is the latest point at which she can have seen Ms Findlay's horse 5 feet away. Yet she did not fall off until about 200m further on. As the pursuer's case is that it was the presence of Scout in close proximity to Blaze which caused the latter to deviate, that is problematic. If Scout was too close to Blaze at the beginning of the canter, why did Blaze not react immediately? As that did not happen, the logic of the pursuer's case is that Scout must have kept pace with Blaze for some time with no deviation by the latter, followed by a deviation after about 200m. That appears to me to be unlikely, given what I understood to be Dr Marsden's evidence about the sensitivity of horses to other horses getting into their 'personal space' i.e. closer than 1 horse length.

[122] Accordingly it appears to me that there are difficulties with the pursuer's account of what happened in the lead up to her fall.

[123] In addition, a comparison of the pursuer's evidence with the relevant averment is revealing. Contrast:

"The procession was moving along the beach at a fast canter. As they were doing so Ms Findlay drew alongside the rear left hand side of the pursuer. In drawing alongside the rear left hand side of the pursuer, Ms Findlay would have appeared to Blaze to be overtaking..."

with

"What about the horse behind? I had an awareness of Ms Findlay's horse being much closer to me than 15 feet. I estimate that it was about 5 feet away. That was the distance between her horse's nose and the back of the horse I was riding."

[124] The pursuer later clarified that Scout was at an angle of 30 degrees i.e. behind and to the left.

[125] Two observations flow from this difference. First, the pursuer's evidence is different from her averment – the latter presumably having been based on an earlier statement.

[126] Second, the evidence was that an average horse length is 8 (or 9) - 10 feet. If the averment is read as meaning that Scout's nose was alongside (i.e. level with) Blaze's tail, then evidence that in fact his nose was 5 feet from Blaze's tail is a discrepancy of between 3 and 5 feet. In the context of a case with fine margins, this difference is material. (Naturally, if the averment means that Ms Findlay herself was level with Blaze's tail, there is an even greater discrepancy).

[127] This appears to me to highlight that it would have been very difficult for the pursuer to estimate the distance between Blaze and Scout with any accuracy and I think that the likely reliability of her evidence on this point is low.

[128] By contrast, if Ms Findlay caused or allowed Scout to come as close as 5 feet to the pursuer's horse, that would have been a gross error and a breach of a rule (namely keeping about one horse length away from another horse) with which she seemed very familiar. In my view it would be surprising that a rider with as much experience as she had (decades – and 25 years as head of the defender's stable) would make such an error.

[129] Ms Findlay was in a good position to see how far she was from any horse which was in front of her. All the descriptions given by the witnesses were of an open beach with plenty of space. Ms Findlay said that one of the disadvantages of riding close behind another horse – quite apart from the dangers which that would create – would be that one would get a "face full of sand". Accordingly, I conclude that Ms Findlay's evidence as to the distance between the horses is more likely to be reliable.

[130] I do not necessarily accept that she was as far back as 20 or 30 feet, but I conclude that she did not encroach into the 'average horse length' zone.

[131] That is sufficient to dispose of the case, but it is appropriate that I give my view on other issues arising.

Deviation

[132] The proposition for the pursuer was that (i) very shortly before she came off, Scout was within about five feet of Blaze's tail (see above); and (ii) this caused Blaze to make a sudden movement, which in turn caused the pursuer to become unbalanced and fall.

[133] Point (ii) was a matter of inference in light of the pursuer's admission that she did not remember coming off the horse.

[134] Evidence in support of such an inference included:

- i. the fact that it is unlikely that an experienced rider such as the pursuer simply lost her balance and fell while cantering on the flat;
- ii. the fact that, very shortly before she fell, Scout was dangerously close to the rear Blaze;
- iii. the SAS Patient Report Form which indicates that the account given to the ambulance crew very soon after the accident was of the pursuer being "thrown when horse skittish", and
- iv. the hospital records which indicate that Betty told medical staff that the pursuer fell off when the horse changed direction.

[135] Mr Langlands submitted that even if the pursuer's case on the distance between Scout and Blaze was accepted, she had not proved that Blaze deviated from his course.

[136] The pursuer could not speak to such. Ms Sinclair did not see the accident. Ms Sinclair volunteered evidence about a post-accident discussion with Ms Findlay regarding

hoofprints on the beach. Her evidence that there was a discussion was reliable but she was vague as to the content of the discussion and the location of the hoofprints.

[137] This could be contrasted with the clear evidence of Ms Findlay that from the position the pursuer was lying, she could identify the track of Blaze's hoofprints which were straight and showed no signs of deviation prior to the pursuer's fall. That evidence should be accepted.

[138] The pursuer's medical records could not be relied upon in support of Blaze deviating from his course. The only possible sources of the content of those records were Ms Sinclair and Mr Harris, neither of whom saw the accident.

[139] Both Ms Sinclair and Ms Findlay denied being the source of the information in the Scottish Ambulance Service record. There was insufficient evidence to show the source of the information and about the accuracy of the record. The paramedic may have incorrectly completed the report. No conclusion could be drawn from it.

[140] The pursuer accepted that this theory was an inference which she was drawing from the other information available to her. She had no recollection of that actually happening.

[141] My view is that Ms Findlay's evidence to the opposite effect was clear and is to be accepted. She said that the horse did not deviate from the path it was on and had continued straight on. Ms Sinclair could not give any direct evidence about what had happened because she was in front but had recalled Ms Findlay mentioning something about hoofprints in the sand. In terms of location, I took the tenor of Ms Sinclair's evidence to be that when she came back to where the pursuer was, as she stood facing east, there was a line of hoofprints to her left (i.e. nearer the sea) extending back east and the pursuer was lying on the sand to her right (i.e. further up the beach). She gave no distances.

[142] So Ms Sinclair saw the hoofprints but either did not observe (or did not remember observing) any sign of Blaze deviating. Her evidence appears to me to chime to some extent with the evidence of Ms Findlay who said that while the pursuer was lying on the sand, there was a discussion in front of where she had fallen – about 4 horse lengths further forward. Her evidence was that the hoof prints of the pursuer’s horse could be seen in the sand. She was asked who had brought that up and was told that Ms Sinclair had asked her what had happened because she was at the back and had seen it. Ms Findlay said she told Ms Sinclair that the pursuer had lost her stirrup and fallen off. Ms Sinclair had asked her whether the horse (Blaze) had done anything. Ms Findlay’s evidence was that she had said “No, look at the hoof prints – these are going in a straight line”.

[143] Turning to the other factors relied on by Mr Ross, I have already given my views on (i) the distance between Scout and Blaze; (ii) the SAS Report Form; and (iii) the hospital records.

[144] The pursuer’s case about (i) is not proved. The sources of and meaning of (ii) and (iii) are not proved and are not persuasive in relation to the question of deviation.

[145] I accept that there was evidence that it is unlikely that an experienced rider such as the pursuer simply lost her balance and fell while cantering on the flat, though Dr Marsden accepted that it was possible.

[146] My view is that this factor on its own is not sufficient to lead to the conclusion that the horse deviated.

[147] In any event, my view is that on the evidence, it is to over simplify to describe what was happening in the lead up to the fall as being simply “...an experienced rider...cantering on the flat”.

[148] As Mr Langlands noted, the pursuer gave evidence that as a result of what happened at the first stream, Blaze was “agitated; restless; excitable; and difficult to control”; and that by the time they reached the beach, Blaze was “tense; wound-up; and raring to go”. Dr Marsden confirmed those were not words used to describe a well-behaved horse and that they could be used to describe a horse with a mind of its own.

[149] In addition, the pursuer’s evidence was that by this stage of the canter, she was “very frightened”. She did not elaborate on what made her frightened, but it seems reasonable to infer that all was not going well.

[150] Thus, a fall by an experienced rider while cantering on the flat is possible; and there existed here factors which may have affected the behaviour of the horse or rider or both.

[151] Against that background, it appears to me that it is not possible to extrapolate backwards in time and say that because the pursuer fell off, one can conclude that the horse deviated. Thus, I am unable to hold it proved that that is what happened.

Causation

[152] Mr Ross anticipated the defender’s *esto* position that even if the pursuer’s version of events was proved, causation had not been established, thus:

- i. Scout was within five feet or so of the pursuer’s horse;
- ii. the pursuer was unseated by a sudden movement or change of direction by Blaze; but
- iii. it has not been established that (i) was the cause of (ii).

[153] He accepted that there were difficulties in establishing conclusively what caused a horse to act in a particular way. The Court should approach the issue of causation in a practical, common sense manner.

[154] Dr Marsden's qualifications and experience were impressive. Her clear evidence was that sudden deviation from course was not normal behaviour in horses. Ms Findlay said that a horse with a propensity for sudden changes of direction or for throwing its rider would not be a suitable horse to be given to customers of a riding school. She agreed that Blaze was not a horse with such propensities. This was consistent with the pursuer's evidence that she had had no trouble with Blaze on the previous occasions on which she had ridden him.

[155] It was common ground that external stimuli may cause a horse suddenly to deviate from course, such as traffic; silver foil in a bush; litter blowing in the wind; children or other animals, and water. There was no evidence that any of these factors had, or even might have, caused Blaze to deviate from course or throw his rider.

[156] It was common ground that a horse coming too close to the horse in front may cause the horse in front to react with a sudden change of direction. In her report, Dr Marsden described adverse reactions by the horse in front as "highly likely". If the pursuer's version of events was accepted, then one potential cause of Blaze's deviating from course is established in evidence.

[157] Given the undisputed evidence that sudden deviation from course is not normal behaviour, and the absence of evidence suggesting that any other potential causes were actually present on the occasion of the accident, the natural inference was that Scout being too close to the pursuer's horse was, on the balance of probabilities, the cause of Blaze suddenly changing direction leading to the pursuer becoming unseated.

[158] Mr Langlands submitted that *if* there was deviation by Blaze prior to the pursuer's fall, the cause of that deviation was not Ms Findlay riding too close.

[159] First, the pursuer had not proved that Scout was too close to Blaze.

[160] Second, the pursuer had given evidence that as a result of what happened at the stream, Blaze was “agitated; restless; excitable; and difficult to control”. Ms Sinclair confirmed that at the stream Blaze was agitated. The pursuer’s evidence was that by the time they reached the beach, Blaze was “tense; wound-up; and raring to go”. Dr Marsden confirmed those were not words used to describe a well-behaved horse and that they were words that could be used to describe a horse with a mind of its own. The mindset of Blaze by the time he reached the beach was on the balance of probabilities the cause of any deviation from course.

[161] Alternatively, there was evidence that relatively innocuous things may cause a horse to deviate from its course, ranging from road traffic, to a person, a dog, a ball, a piece of litter or even water. This hack took place on a beach. The beach is close to water. There may have been water on the beach. There may have been items of litter on the beach. The defender accepted that this was not specifically canvassed in evidence, but submits it is not out with the realms of judicial knowledge that a beach in Scotland may be wet and may have some litter on it. Any such trivial matters may have caused Blaze to deviate from his course. The defender submitted the pursuer has failed to prove on the balance of probabilities that if there was a deviation, that it was due to Ms Findlay riding too close.

[162] On this matter, I have concluded that if I am incorrect in holding (i) that Ms Findlay was in breach of duty by allowing Scout to get too close to Blaze and (ii) that there was no deviation i.e. had I held that (i) that Ms Findlay was in breach of duty by allowing Scout to get too close to Blaze and (ii) that there was a deviation by Blaze, I would have resolved the issue of causation in favour of the pursuer.

*Quantum**Solatium*

[163] On behalf of the pursuer, it was submitted that she had sustained serious injuries and sequelae, all as detailed in the agreed reports of Professor McQueen and Dr Rodger.

[164] Her recovery, although good, had not been complete. She feels somewhat lop-sided, has a lack of mobility in her back; and pain in her back and buttocks. She is more risk averse and anxious in situations where she perceives a risk of danger.

[165] The following were relevant sections of the Judicial College Guidelines:

- i. Fracture of the pelvis: midpoint of JC-37(b)(i) – £26,210;
- ii. Ruptured bladder: bottom end of JC-31(d), modified to £10,000;
- iii. Fractured clavicle: lower end of JC-36(e) – £5,000;
- iv. Multiple rib fractures and pulmonary contusion: JC-22(g) – £3,150;
- v. Other injuries (minor head injury and psychological injury in the form of anxiety and loss of confidence): £5,000.

[166] The total of the suggested figures is £49,360. Some downward adjustment of that total might be appropriate. Solatium was assessed at £42,000, two thirds of which should be allocated to the past. Interest would be payable at 4% from the date of the accident on that portion.

[167] On behalf of the defender, it was submitted that there was minimal evidence from the pursuer in relation to the extent of her current symptoms. On her evidence, she had made a very good recovery. She returned to work within three months and on was on a phased return for only two months. She was in a wheelchair for only four to six weeks and then relied on a stick until she returned to work or possibly only until early 2016. She returned to driving within eight weeks. She required twelve sessions of physiotherapy. She

has returned to horse riding. Any restriction with horse riding is related to confidence issues rather than her physical abilities. There was minimal evidence given by the pursuer about the ongoing day to day impact her symptoms have. The defender submitted that the logical conclusion was that her ongoing symptoms are neither significant nor serious.

[168] Reference was made to:

- i. JSC Guidelines: 7 Orthopaedic Injuries (D) Injuries to the Pelvis and Hips (b) Moderate (i) Significant Injury to the pelvis or hip but any permanent disability is not major and any future risk not great – £21,200 to £31,220. The lower end of bracket for her pelvis injury given the pursuer's speedy recovery with minimal ongoing symptoms. £23,000 would be appropriate;
- ii. JSC Guidelines: 7 Orthopaedic Injuries (C) Shoulder Injuries: (E) Fracture of Clavicle: The level of the award will depend on extent of fracture, level of disability, residual symptoms, and whether temporary or permanent, and whether union is anatomically displaced. Unusually serious cases may exceed this bracket – £4,110 to £9,760. The lower end of bracket was appropriate for the pursuer's clavicle injury. She was treated non-operatively and was in a sling for only four to six weeks. She has no ongoing problems. £4,000 would be appropriate.

[169] The total of the above is £27,000. £30,000 would be appropriate for solatium. The £3,000 increase made no deduction for overlap of injuries and also accounted for the sub-clinical mental impact of the accident and other general injuries sustained.

[170] Allowing interest at two thirds to the past at 4% to the date of Decree = £3,156, creating a total for solatium of £33,156.

[171] In my view, it is clear that the pursuer suffered serious injuries. She had a disorientating and unpleasant stay in hospital and after that took some months to recover her health. In broad terms, there was not a huge difference between the parties as to the general approach to be taken to assessing solatium. The pursuer's injuries included a fracture of the pelvis; a rupture of the bladder; a fractured clavicle; multiple rib fractures and pulmonary contusion and other minor injuries. It was common ground that selecting a figure for each of these elements and totting it up was not the correct approach but in my view the nature of these injuries; the treatment and discomfort and the pursuer's period of convalescence all point towards a substantial award. Inevitably a fairly broad approach is required when multiple injuries are sustained. In my view, an appropriate award for solatium would have been £35,000. I would have allowed interest on two thirds of that at the rate of 4% per year to the date of decree.

Recoverable sick pay

[172] It was agreed that in the event of the defender being found liable to make reparation to the pursuer in respect of the accident, the sum due was £9,465.65.

Services

[173] On behalf of the pursuer, it was noted that Mr Harris had taken two weeks off work when the pursuer was discharged from hospital. She was completely incapacitated during this initial period and required full-time care. He had estimated he spent about 70 hours per week looking after her for that first couple of weeks. The amount of assistance tapered off over time so that by late November the pursuer did not need much help.

[174] A broad approach was appropriate, giving a figure of £3,000 with interest at 4% from the date of the accident until 31 December 2015 and thereafter at 8%.

[175] On behalf of the defender, it was suggested that allowance be given for services at the rate of seventy hours per week for two weeks and thereafter thirty-five hours per week from mid-September until late November, then a further ten weeks at this reduced rate.

[176] The calculation would be 70 hours p/w at £6p/h for two weeks = £840; 35 hours p/w at £6p/h for ten weeks = £2,100; interest at 4% to date of decree (all to past) = £473: total = £3,413.

[177] I accepted as accurate – if not understated – the evidence of both the pursuer and Mr Harris as to the level of services. There was not much between the parties on this. I would award the sum of £3,000 as suggested by the pursuer with interest from 4% per year from the date of the accident until 31 December 2015 and thereafter at 8% per year to the date of decree.

Outlays and expenses

[178] On behalf of the pursuer, reference was made to the vouching spoken to by her, thus:

- i. threshold ramp – £33.95;
- ii. telescopic ramp – £68.88;
- iii. chair – £944;
- iv. recliner hire – £540;
- v. bed – £2,745;
- vi. seat for horse – £44.95;
- vii. events unable to attend – £297; and
- viii. mattress protector – £19.79.

[179] The pursuer had provided satisfactory explanations for this expenditure and costs.

[180] These figures totalled about £4,693. In order to avoid a series of interest calculations on small sums, the pursuer would be content for a broad view to be taken and for an award of £5,500 inclusive of interest.

[181] On behalf of the defender, no issue was taken with the cost of the purchases to allow wheelchair access to the pursuer's home at a total of £102.83.

[182] The defender took limited issue with the chair hire of £540. No medical evidence was provided as to necessity for a chair.

[183] Again, no medical evidence was provided as to the necessity for the purchase of a chair. The chair was purchased in January 2016. By this point the pursuer was no longer sleeping on the chair. She had returned to work. She had either stopped using or was about to stop using a stick to aid walking. She had returned to driving. The chair purchase at £944 was excessive and unnecessary.

[184] In relation to the bed purchase, the defender submitted that £250 should be allowed. No medical evidence was provided as to the necessity for a new bed. The pursuer said she purchased it because she wanted a softer mattress. Even accepting that may be correct for the duration of her initial recovery, £2745 is an excessive amount if the necessity was only for a softer mattress. There was no evidence given as to the need to replace an entire bed if all that was necessary was a softer mattress. No evidence was given as to any ongoing need for the bed.

[185] The defender took no issue with the Lambskin Seat from Horse Health at £44.95.

[186] In relation to the wasted show tickets, the defender proposed allowing £150. There was no attempt made to obtain refunds or re-sell the tickets. No adequate explanation was provided as to why other family members could not have still used their tickets. Their being

upset about the pursuer's accident was not an adequate reason for them not to have utilised their tickets.

[187] Regarding the old bed uplift, the defender observed there was no price on the invoice. As there was no requirement to purchase a new bed, it follows that there was no requirement for the uplift of the old bed.

[188] The defender took no issue with the mattress protector at £19.79.

[189] The pursuer should be awarded £1,107.57. Interest at 4% per year to date of decree (all to past) = £175, giving a total of £1,282.57.

[190] In my view, the real question here is whether these outlays and other costs were incurred reasonably. I had no impression that the pursuer was overstating her ongoing symptoms or the reasons why the expenses incurred were incurred. So, for example, I accepted that it was reasonable for her to purchase a new bed and mattress to help her deal with her ongoing discomfort. The bed was expensive, but not unreasonably so.

[191] The total figure claimed was £4,693 and the defender suggested a figure of £5,500 inclusive of interest to avoid detailed calculations. That appears to me to be a reasonable approach and I would have so dealt with the matter had the pursuer been successful.

Disposal

[192] I have concluded that the pursuer has not proved that her accident was caused to any extent by the fault and negligence of Ms Findlay. In these circumstances, I shall grant decree of absolvitor. Expenses are reserved.