OUTER HOUSE, COURT OF SESSION

[2026] CSOH 111

PD213/25

OPINION OF LADY DRUMMOND

In the cause

MARK LAMPLOUGH

Pursuer

against

EDINBURGH AND DISTRICT MOTOR CLUB, LIMITED

Defenders

Pursuer: Brodie KC, Markie, advocate; Thompsons LLP
Defenders: Smith KC, Black, advocate; Clyde & Co LLP

12 November 2026

Introduction

[1] On 2 May 2022 the pursuer was injured in a motorcycle collision during a motor cycle trial organised and run by the defenders. The pursuer collided with a race marshal riding his motorcycle in the opposite direction to the pursuer and suffered serious injuries. The pursuer claims that the accident was caused as a result of the defenders' negligence and seeks damages for his injuries and losses. The defenders dispute they were negligent and are liable to pay damages to the pursuer. The defenders say that they took appropriate precautions and the accident was caused by the pursuer who was traveling at speed and not keeping a proper lookout for where he was going. On the assumption that the defenders

were negligent, the defenders say that the pursuer was partly responsible and any sum awarded in damages should be restricted accordingly.

[2] In the event that the defenders were found liable, the parties agreed quantification of damages at £500,000 inclusive of interest but disputed whether the pursuer should be awarded compensation for loss of his business as a result of the accident.

[3] The issues before me are: (1) whether the defenders were negligent; (2) whether their negligence caused the accident; (3) whether the pursuer was partly responsible for the accident; and (4) whether any sum should be awarded for loss of the pursuer's business.

Summary of decision

[4] I decided that the defenders were negligent and that their negligence caused the pursuer's accident. I also decided that the pursuer was partly responsible for the accident to the extent of one third. I decided that the pursuer should be awarded £70,000 for loss of his business as a result of the accident. I awarded the pursuer £380,000 as damages, after reduction to reflect his one third share of the responsibility.

The 2022 Scottish Six Days Trial

[5] The pursuer was a registered competitor in the 2022 Scottish Six Days Trial, one of the largest organised off-road motorcycle events in the world. The Trial has been run by the defenders' team of volunteers for over 100 years. The Trial took place from 1 to 7 May 2022 near Fort William with approximately 280 participants. The event involves competitors riding a pre-marked route of around 90 miles over 8 hours each day. Motorcyclists ride lightweight trials bikes with no lights, number plate, speedometer or seat, though the rider

can sit by perching on the mudguard. The bikes are capable of a maximum speed of 45 mph.

[6] The route is divided into sections, each connected by tracks or roads. Every section technically challenges the riders for example, requiring them to ride over rocky river beds or challenging terrain. The goal is to negotiate highly technical obstacles with balance. Participants set off at 1 minute intervals. The participants are observed handling each section, and penalised if they put their foot down or fall off or lift their bike in the sections. Once the section is complete, the riders ride to the next section on the connecting route which include forestry tracks. The public have access to the forestry track during the Trial. There was a 15 mph speed limit in place with signs erected along the connecting tracks on the route.

[7] The Trial was licenced by the Scottish Auto Cycle Union, a regional division of the national authority, the Auto-Cycle Union. It was run under the Sporting Code of the FIM (Federation Internationale de Motorcyclisme - the global governing body for motorcycle sport), the regulations of the ACU and the supplementary regulations of the defenders. The defenders' Event Safety and Emergency Plan sets out the key responsibilities of committee members who oversee the daily running, route marking, scoring uploads of all competitors and incident response. Volunteers support the committee by acting as observers at the 30 daily sections and as marshals as required.

[8] The defenders provided the following written material to participants before the event:

(a) "Newcomers Guide to riding the Scottish". This was posted on the event website and issued through the "Sportity" mobile application which competitors

downloaded to receive event updates prior to and during the event. It included the following:

> "Don't ride too fast on the rough or tracks, the times are set so you don't have to ride fast just keep going steadily and you will be ok."
>
> "On forest tracks there is a mandatory 15mph speed limit. This may seem slow but it is there for a reason and is enforced. One of the conditions of getting permission to use forestry land is that we control speed through forests. There will be travelling officials in the forest and anyone caught speeding will be dealt with by the Clerk of the Course and can lead to exclusion."
>
> "Consider other land users, including walkers, and especially locals going about their day to day life."

(b) "Supplementary Regulations for SSDT 2022". These were supplied before the event to competitors by email, requiring a signature to confirm it had been read. It included the following regulations:

> "3.2.3 The penalty for travelling in the reverse direction of the route is disqualification. For missing the section or sub-section the penalty is 50 marks. Competitors who miss more than two sub-sections or one complete hill in a single day will be liable for disqualification.
>
> …..
>
> 3.8.1 This event is routed along and across public rights of way. Competitors must exercise caution and reduce their speed accordingly near other path users. Be especially careful near horses. Slow down, stop and switch your engine off if necessary.
>
> ……
>
> 3.8.4 The Clerk of the Course deprecates excessive speed by competitors at any time during the trial. Due time allowance has been made for speed limits through built up areas. Speed limits may exist off road in keeping with landowner's management of vehicle access. 15MPH speed restrictions apply within Forestry ground and must be adhered to at all times. Roving marshals will be in place to monitor speed in these areas and anyone reported to the Clerk of the Course will be dealt with according to the circumstances. Disqualification from the trial may result from the investigations."

(c) A one-page 'Riders Briefing Note', issued through the Sportity app provided:

> "On forest tracks there is a mandatory 15mph speed limit. There will be travelling officials in the forest and anyone caught speeding will be dealt with by the Clerk of the Course and can lead to exclusion."

[9] Participants were required to sign a declaration that they had understood and read the relevant regulations issued for the event and agreed to be bound by them; were physically and mentally fit to take part and competent to do so; that they understood the nature and type of event and its inherent risk and agreed to accept the same notwithstanding that such risks may involve negligence on the part of the organisers or officials. The pursuer signed the declaration which is dated 23 December 2021.

The evidence

[10] The pursuer is aged 62 and was 58 at the date of the accident. He has extensive experience as a motorcyclist and as motorcycle instructor. After joining the army at 16, he was a dispatch rider and competed extensively in motorcycle events. He served as chief motorcycle instructor before leaving the army at 23. He continued competing in motorcycle trials, typically taking part in around 40 competitions a year and practising during the week. By 2022 he had competed in the Scottish Six Days Trial on 24 previous occasions. The last time he had taken part in that Trial before the accident was 2007.

[11] The accident happened on day 2 of the Trial on 2 May 2022. The pursuer had completed the first six observed sections at Groups A and B, within Leanachan Forest, before leaving for the next section on the Forestry Commission track. He had been experiencing difficulties with his motorcycle in the observed sections. It had a low-rev carburation problem, although it ran normally on the connecting tracks. He rejected any suggestion that he was agitated and exceeding the speed limit. He explained there was

no need to ride fast on the connecting tracks, as there was still plenty of time to complete the route within the allocated timeframe. He was within about 4 riders out from the order they had started, with the general rule being that if a competitor keeps within 10 riders they will finish within time. He was doing the event for charity and all that mattered to him was completing the course. He considered himself fit enough to do the course and at the time weighed between 100-110 kgs.

[12] The accident happened not very far timewise from leaving the sections. The track consisted of loose gravel mixed with clay, with a hard compacted line worn into the surface on the right hand side by approximately 200 riders who had ridden that line ahead of him. The pursuer followed that right hand line because it offered the safest route and avoided loose gravel. He was positioned approximately 30 to 40 centimetres out from an embankment to his right hand side and approaching a right hand bend which was on a slight incline. He was seated on the motorcycle, travelling at about 15 mph and in fourth gear. He had not come across any third party users of the track that morning.

[13] As he approached, he could not see fully round the bend, because of the embankment. He suddenly saw a marshal on a motorcycle coming towards him. He could not give a distance but estimated he had only a couple of seconds to react. His immediate thought was damage limitation as he knew something was going to happen and tried to avoid it. He applied the front brake and steered to his left because there was nowhere to go on the right. The approaching marshal then moved to the marshal's right, with both motorcycles therefore still on the same course. The pursuer chose to abandon ship, flinging himself away from his motorcycle in an attempt to avoid the impact. He recalled the front offside wheel and fork of his motorcycle striking the other bike before he went over the handlebars and landed on the ground. He insisted that as he approached

the bend he was seated, but may have risen from the motorcycle during his last-second evasive manoeuvre. He insisted that he was not speeding, being well aware of the 15 mph speed limit.

[14] Throughout his 24 previous Trials he had never encountered marshals travelling in the opposite direction to competitors on a connecting route. He had read and signed the written material provided to participants before the event. He understood from the regulations that travelling marshals would be present to monitor speed but assumed they would be travelling in the same direction as competitors. He did not expect a marshal to be riding head-on towards riders which he described as an accident waiting to happen. He could not tell what speed the marshal, Mr Bruce Johnston, was doing when he first saw him but he formed the impression it was over 15 mph.

[15] Mr Bruce Johnston is an experienced motorcyclist who has competed and organised many motorcycling events. By 2022 he had been marshalling at the Trial since 2008 and had acted as a travelling marshal every year since 2010. As a travelling marshal he travelled along the tracks to monitor competitors' speeds and ensure compliance with the 15 mph speed restriction. Marshals were there to increase visibility, remind riders of their obligations, and protect other legitimate users of the forest, including mountain bikers, walkers and dog walkers. He described the Leanachan Forest area as popular with mountain bikers. The track where the accident happened was not on the mountain bike route but it was an access road for the route. Roving marshals had been travelling in both directions on this section of the course since about 2010. In all the years that system had operated, he was unaware of any previous accident or near miss involving a competitor and a marshal travelling in the opposite direction.

[16] He was riding his motorcycle with marshal Mr Craig Walker riding behind him. Both were wearing high-visibility clothing and had their bike headlights on. They were approaching a long, sweeping left-hand bend on a slight decline. He was positioned approximately 3½ to 4 feet from the left-hand verge of the track. He knew that competitors had worn a riding line close to the inside of the bend and he wanted to stay off that line and improve his visibility around the corner. He was travelling at approximately 15 mph in second gear. He had come off the throttle completely as he entered the bend, causing his motorcycle to slow significantly through engine braking. He was very aware that the participants had started at minute intervals and that he had not seen a bike for 3 or 4 minutes which told him there was going to be some bikes approaching shortly.

[17] He first became aware of the pursuer when he was about 10 feet away from him. The pursuer emerged from around the bend travelling towards him at well in excess of the 15 mph limit, possibly over 30 mph, standing fully upright on the foot pegs of the bike with his head down not looking where he was going. By the time the pursuer saw him, Mr Johnston had already slowed considerably, he thought to about 5 or 6 mph. Mr Johnston applied both brakes, pulled in the clutch, and put his left foot on the ground. His motorcycle was virtually stationary, at a standstill, when the collision occurred. He described the pursuer having overshot the bend, drifting away from the worn riding line and into the middle of the track before the front wheel of the pursuer's motorcycle struck the nearside engine casing, fork leg and handlebars of his motorcycle. Mr Johnston leant backwards while holding onto his motorcycle as the pursuer and his motorcycle went over the front of his bike. The pursuer landed about 2½ car lengths, maybe more, away from Mr Johnston's front wheel. The force of the impact twisted his forks and handlebars, damaged various components of the motorcycle and bent the ignition key. Mr Walker's bike

had just kissed Mr Johnston's back wheel. Mr Johnston ended up under his bike which fell on top of him.

[18] Mr Craig Walker had been a marshal at the Trial for between 5 and 10 years. He agreed with Mr Johnston that roving marshals routinely travelled in both directions to monitor competitors' speed, discourage unsafe riding, and alert other users of the forest that the event was taking place. The area around Leanachan Forest and the Nevis Range ski centre was regularly used by members of the public.

[19] He was riding directly behind Mr Johnston, following his wheel tracks. He estimated that they were both travelling at between 15 and 20 mph and were positioned towards the left-hand side of the forestry road as they approached a left-hand bend, maybe a foot from the left hand side. He estimated he was a few bike lengths behind Mr Johnston. He described the corner as a medium bend, with visibility neither entirely blind nor completely open.

[20] The pursuer appeared suddenly ahead of them, he estimated at a distance of about 10 yards or 2 or 3 bike lengths from when he first saw the pursuer, although he was behind Mr Johnston and accepted that Mr Johnston partially obscured his view. He braked hard, steered further left into the verge and brought his motorcycle to a stop. He may have skiffed the back of Mr Johnston's bike. The entire sequence occurred in a split second. The pursuer was standing on the foot pegs from the moment he came into view until he became separated from his motorcycle. The pursuer was travelling faster than the speed limit and faster than any other rider he had seen that day. His impression was reinforced by the distance the pursuer travelled through the air after impact. He said the pursuer flew past and landed up to 10 bike lengths beyond the point of collision.

[21] After the collision, he helped free Mr Johnston from his motorcycle and moved the pursuer's motorcycle off the track. Both Mr Walker and Mr Johnston described the pursuer being in pain and angry, blaming the marshals for being on the track travelling in the opposite direction. Mr Walker said he had either placed the pursuer's gear in neutral or pulled in the clutch. He also acknowledged that he may have changed the gear selection while moving the bike.

[22] Mr Johnston and Mr Walker provided written accounts of the accident on 9 May 2022 and 2 August 2022 respectively in which they both explained that they had been making the same journey back and forward along that track around six times that day.

[23] Mr Alexander Mack MBE is a serving major in the British Army and chairman of the Scottish Motorcycle Union. He has competed in the Trial on approximately 15 or 16 occasions and has been involved in its organisation since 2003. On the morning of the accident he was a spectator and saw the pursuer riding in sections A and B. The pursuer was struggling, not able to clear the sections, appeared flustered and complaining that his motorcycle was not running properly. Mr Mack listened to the bike but did not identify any mechanical problem. He described the pursuer leaving section B and driving off on to the forestry track like a bat out of hell.

[24] Mr Mack said that travelling marshals had been operating for many years at the request of the Forestry Commission in order to enforce the 15 mph speed restriction and to protect other forest users. Leanachan Forest was open to the public and regularly used by walkers, dog walkers and mountain bikers. In his view, travelling marshals necessarily travelled both with and against the flow of competitors because otherwise they would be unable to monitor the route effectively or would be joining in with the competitors. He considered that competitors were expected to be aware of this, both from the regulations

and from the very concept of travelling marshals. He described the bend as a sweeping right-hand bend with a significant line of sight. When he moved the pursuer's motorcycle after the accident, it was in top gear and had to be placed into neutral before it could be moved.

[25] He explained that warning signs had been placed throughout the forestry track area to alert members of the public to the event. These warned that motorcycling is dangerous and that there was an event on. He was unaware of any previous collision involving a travelling marshal during the years that the system had operated.

[26] Mr Jeffrey Horne, the clerk of the course, has been involved with the Trial for decades, having competed in it, served on the organising committee since 1994 and acted as clerk of the course since 2012. The role involved overall responsibility for the planning and running of the event which required year-round preparation. The introduction of travelling marshals resulted from discussions with Forestry and Land Scotland. Since around 2014, marshals had been instructed to travel both with and against the flow of competitors on forestry tracks. Their purpose was to enforce the 15 mph speed limit required by Forestry and Land Scotland, to increase rider awareness of potential hazards, and to replicate the presence of members of the public such as walkers, cyclists or families using the forest. He described Leanachan as a particularly busy area because of its mountain biking and recreational use. Warning signs were erected 2-3 weeks in advance of the event to alert the public to its presence.

[27] On the morning of the accident Mr Horne attended the Leanachan sections to monitor the running of the event. He watched the pursuer riding and thought he appeared to be struggling and looked stressed. He later saw him speaking with Mr Mack about concerns regarding his motorcycle and thought the pursuer appeared out of breath and

agitated before leaving the area. He maintained that the marshals were carrying out the duties they had been instructed to perform and regarded the suggestion that travelling marshals should not ride in both directions as inconsistent with the purpose of the role.

[28] Mr Brian Higgins gave evidence on behalf of the defenders and adopted his report dated 9 December 2025. He has had a long career in motorcycle sport as a competitor, organiser and administrator. He represented Great Britain twice in the International Six Days Enduro (a timed off road motorcycling event against the clock), served as chairman of the ACU Motocross Committee and organised or officiated at numerous events.

[29] He undertook a site visit on 16 July 2025, when Mr Johnston guided him through the exact locus of the incident. He took measurements and carried out tests using a similar motorcycle to the one used by the pursuer. He measured a usable width of the track at the point of impact to be 5.2 metres. He measured the point when Mr Johnston was stationary on the track at the point of impact as having a sightline of approximately 26 metres down the track where the pursuer would have been visible. He considered that riders commonly followed the worn line on the inside of the bend, although he regarded this as a bad habit rather than proper riding practice. He accepted that it was foreseeable that competitors would follow that line and that organisers could have anticipated this behaviour.

[30] He noted that the bike was found in fifth gear after the accident which was alarming to him as he considered it impossible to go as slow as 15 mph in fifth gear on the incline at the bend. He had also been informed that the pursuer was 150 kg in weight which made it more unlikely that he could do so. Testing that with a speedometer he concluded that neither he nor another rider of substantially lower weight than the pursuer could comfortably ascend the relevant section of track at 15 mph in fifth gear. In his opinion, if the pursuer's motorcycle had genuinely been in fifth gear immediately before the collision,

he must have been travelling considerably faster than 15 mph, likely in excess of 22 mph and possibly around 30 mph. He did not consider that the motorcycle could readily have changed into fifth gear as a result of striking rocks or by falling onto its side. However he acknowledged that it was theoretically possible for a gear lever to move without the clutch being engaged.

[31] Mr Jason Colclough, forensic collision investigator and vehicle examiner, gave evidence on behalf of the defenders. He adopted his report in which he was instructed to consider the speed of the motorcycles driven by the pursuer and Mr Johnston. He accepted that, unlike many road traffic investigations, there was limited physical evidence available and that much of his analysis depended on witness evidence, particularly Mr Johnston's account of his position and actions before the collision as well as the video clip from Mr Higgins.

[32] Mr Johnston attended the site inspection with him on 7 May 2026 and pointed out where the collision occurred as well as the point where the pursuer landed post impact (a distance of 11.7 metres). Mr Colclough measured the track at 5.2 metres wide, a mixture of gravel and stone and described it as a gentle bend to the left and incline of 2 degrees. He relied on Mr Higgins' findings that the pursuer and Mr Johnston would have had a view of each other when they were 26 metres apart. He also relied on Mr Johnston's report that he had stopped his motorcycle by the point of impact.

[33] Mr Colclough considered that there was no rule requiring competitors to ride on a particular side of the forestry track, although riding the outside of the bend would have provided a substantially greater line of sight than the inside line taken by the pursuer. He accepted that many riders had followed the worn line around the inside of the bend and that this may have been perceived as the easier route, although it reduced forward visibility.

[34] Applying published perception-reaction research and practical braking tests carried out with a similar motorcycle, he calculated that a rider travelling at 15 mph would require approximately 11.5 metres to perceive a hazard, react and bring the motorcycle to a stop.

[35] On the assumption that Mr Johnston had already stopped when first visible to the pursuer, Mr Colclough concluded that 26 metres would have provided ample distance for the pursuer either to stop or simply steer around the stationary motorcycle. If Mr Johnston was stationary and the pursuer was travelling at 15 mph, a collision ought to have been avoidable. He accepted, however, that if Mr Johnston had still been moving when the riders became visible to one another, the available stopping distance would be significantly reduced and a collision could have occurred even at lower speeds.

[36] Mr Colclough also calculated that a rider projected approximately 11.7 metres beyond the point of collision would likely have been travelling between 23 and 28 mph at impact, whereas a rider travelling at 15 mph would be expected to travel only around 3.5 to 4.9 metres. For that reason, he concluded that the collision was inconsistent with an impact speed of only 15 mph. He also considered that the type of injury sustained by the pursuer is inconsistent with a collision of 15 mph and is consistent with speeds in excess of 30 mph.

[37] He was of the view that whilst the motorcycle being found in fifth gear would be inconsistent with travelling at 15 mph on the incline, the post-accident gear position could not be relied upon. In his opinion, the gear selection could have changed during the collision sequence or when the motorcycle struck the ground and therefore had to be treated with caution.

[38] The defenders also led evidence from Mr Jeff Mason, chartered mechanical engineer, who prepared a report which he adopted as his evidence. He took videos reconstructing the circumstances of the accident showing a rider travelling at 15 mph standing on the pegs of

a motorcycle and approaching the bend on the inside line. It was intended to replicate the circumstances of the accident on the basis of Mr Johnston's stationary position at the time of the accident. His investigations indicated a sightline of around 30 metres when approaching the bend as the pursuer had done from the right side of the track travelling on the inside line. When Mr Johnston became visible to the pursuer, it should have been entirely possible for the pursuer to have stopped the motorcycle well within the 30 metres distance if he was travelling with due care and attention and within the speed limit. He could not explain the discrepancy between that distance and the distance of 10 feet suggested by Mr Johnston.

[39] Dr Laurence Ball, expert in risk management, was instructed by the pursuer to review the defenders' risk assessment and to consider the risks associated with travelling marshals travelling in the opposite direction to competitors. Dr Ball criticised the information and instructions given out before the event. Although competitors were told of the presence of travelling marshals, none of the event documents expressly warned that marshals might be travelling towards competitors on the track. The marshal briefing instructed marshals to travel "back and forward" along the route but contained no guidance as to how that should be done safely, such as keeping to a particular side of the track, taking wider lines through bends, exercising particular caution on blind corners, or otherwise managing the risks associated with bidirectional travel.

[40] He noted that the pre-event briefing to marshals explained that the main purpose of travelling marshals was to manage speed through key areas particularly Forestry, to ensure that 15 mph signage is in place and supplement it as necessary; to travel back and forward along the route to ensure competitors are behaving and riding at slow speed (15 mph Forestry); to wear a HV vest; to agree locations with the clerk of the course on the evening

prior to the day, and to stop and warn riders who are speeding or riding without due care and report to the clerk of the course.

[41] His main criticism was that there was a failure to identify a significant and foreseeable hazard, namely the risk of collision between competitors and travelling marshals using the same forestry tracks in opposing directions. The defenders' risk assessment for the part of the route that included Leanachan Forest, signed by Mr Horne and dated March 2022, identified as a hazard "collision involving competitors" on forest roads. It assessed that hazard as affecting road vehicles/spectators and Forestry Commission employees and contractors and as a high level of risk. The control measures and implementation/monitoring of those are set out in the following table:

Hazard	Location	Who affected	Level of risk	Control measures	Implementation and monitoring	Residual level of risk
Collision involving competitors	Forest roads including North Face carpark and path Including tarmac track to FC houses	Road vehicles / Spectators / FC employees/Contractors	High	Close liaison and co-operation with FC District offices to ensure they are aware of routes and times.	If though necessary FC will restrict extraction operations during the event as agreed with the District Office.	
				Restriction of event spectators from forest roads during event	FC land is primarily used for competitor access during the event; there is no reason for spectators to use FC land.	
				Advice to road users at key locations	Provision of warning signs – Club to liase with District offices and provide appropriate signage.	
				Control by event officials.	Event officials briefed on need to ensure unauthorised vehicles are excluded from event route.	
				Control of speed of competitors – 15mph limit on FC roads, instructions to Riders supplemented by 15MPH signage along route.	Competitors are not timed over stages of the event; the daily running time averages <15mph so there is no incentive to speed. Competitors briefed on need to restrict speed during event.	
				The use of speed checks, timed section and travelling marshals,	Where possible these speed checks will be recorded and records made available to FC.	Low
		Members of the Public / 3rd party forest users	High	Advice to road users at key locations	Provision of warning signs – Club to liase with District offices and provide appropriate signage at key access points.	
				Control of speed of competitors – 15mph limit on FC roads, instructions to Riders supplemented by 15MPH signage along route.	Competitors are not timed over stages of the event; the daily running time averages <15mph so there is no incentive to speed. Competitors briefed on need to restrict speed during event. And 15mph speed warning signs erected.	
				Provision of marshals	Marshals at key positions to warn 3rd parties and also to monitor and control competitors speed.	
				Provision of travelling marshals	Travelling marshals to monitor and control speed of competitors.	
				The use of speed checks, and timed section	Where possible these speed checks will be recorded and records made available to FC.	Low
	Vicinity of observed section	Spectators / 3rd party land users	Low	Low speed of competitors	Competitors travel at very reduced speeds while in observed section. Safe areas for spectators to be clearly marked with barrier tape. Officials to ensure spectator safety is not compromised. Closure of section if required	Low

[42] Dr Ball considered the risk assessment was inadequate as it treated travelling marshals solely as a control measure for speeding competitors and failed to recognise that

their presence on motorcycles created a hazard in its own right. He referred to guidance published by the Auto Cycle Union and the Health and Safety Executive. These materials emphasised competitor safety as a central aspect of risk assessment and recognised the potential dangers of head-on encounters and riders or marshals travelling in opposing directions. In his opinion, the defenders' risk assessment diverged from that guidance because it failed to identify the collision risk created by bidirectional marshal travel and therefore failed to consider what control measures might be required to reduce it.

[43] The ACU publication "Managing Health and Safety at ACU Trials Events" (June 2021) is designed to assist organisers of trials events in planning and organising, including the management of safety. Dr Ball notes that it contains a brief example risk assessment which shows that it is concerned with competitor welfare and includes risk controls that refer directly to the risk of riders travelling in opposing or "head on directions". It identifies as a hazard a rider colliding with other riders, marshals or emergency response vehicles. The risk controls include that the course is designed to prevent riders from approaching junctions from different (head on) directions and that marshals, first aid and others are instructed to respond to incidents, if practicable, in the same direction as competitors are travelling. Later in the document, p 21, there is further recognition that competitors are one of the parties at risk.

[44] The ACU publication "Managing Health and Safety at ACU Permitted Events" (June 2021) provides more detailed guidance and an overview of what is required at larger motorcycle events in terms of health and safety. It refers to the same example risk assessment as the earlier ACU guidance identifying the risk of head-on collisions. It also includes a section listing "unsafe acts", including: "Riders/marshals riding reverse direction of the course without controls in place." (p 33). This makes clear that reverse travel by

marshals without control measures is explicitly recognised by the ACU itself as an unsafe practice.

[45] Dr Ball also referred to the Health and Safety Executive's publication "HSG112: Managing health and safety at motorsport events", which stresses the need for marshals to be properly briefed on potential risks, for organisers to develop and communicate a coherent safety plan, and for marshals to be competent in their supervision and able to recognise and manage emerging hazards during the event.

[46] Dr Ball was of the opinion that control measures which were reasonably practicable to implement were available. These included: unidirectional flow; restricting all motorcycle traffic, including marshals, to move in a single direction; Pre-event briefing and written instruction: where reverse travel was unavoidable, riders should have been briefed explicitly to expect bidirectional travel, and both riders and marshals briefed on lane discipline (for example a strict "keep left" rule); solo marshal travel and disciplined riding: marshals undertaking patrol duties should have been instructed to travel individually, maintaining full attention to the track ahead and exercising heightened caution (such as riding below the competitor speed limit), particularly when travelling in reverse to competitor flow. Marshals should also have been directed to take bends on the outer line to maximise visibility, predictability, and reduce the likelihood of conflict with oncoming riders. Temporary signage such as "Keep left", "Marshals travelling in opposite direction", and "Slow down" could have been deployed at key points along the route such as bends.

[47] Dr Ball's conclusion was that the organisers had identified travelling marshals as a solution to one problem, namely speed control, without adequately considering the new risks introduced by that solution. He accepted in cross-examination that travelling marshals were a sensible precaution to maintain the speed limit for the safety of others. He also

accepted that risk assessment involves matters of judgement and that the Trial was a unique event, but maintained that the hazard of motorcycles travelling towards each other on narrow winding tracks was sufficiently obvious that it should have been specifically identified and managed within the risk assessment process.

How did the accident happen?

[48] I found the pursuer to generally be a straightforward witness. He became emotional at times when giving evidence, but that did not detract overall from his account which I found to be generally credible and reliable, subject to some specific issues which I address below. Of the defenders' witnesses to fact, I generally found them all to give their evidence in a direct and straightforward manner and to be trying their best to assist the court. However, at times I formed the impression that the witnesses involved in the running of the Trial were keen to emphasise particular aspects of the evidence which they perceived to support the defence. There were inconsistencies between the various witnesses for the pursuer and defence which I address below.

[49] I find the accident happened on day 2 of the Trial shortly after the pursuer left sections A and B in the Leanachan Forest as he was approaching a right hand bend. I find that he was travelling on the worn riding line close to the right hand side of the track which can be clearly seen in the photos shown to the court. At that point the track is about 5 metres wide. There was an embankment to his right restricting his visibility and a slight incline in the track.

[50] I accept the evidence of the pursuer and both marshals which were all to the effect that the collision happened within 1 or 2 seconds of them having sight of each other. I accept Mr Johnston's account that the pursuer was only 10 feet away when he first caught

sight of him. That was consistent with the evidence of Mr Walker, which I also accept, and who said the pursuer was 10 yards away when he first saw him, Mr Walker himself having been a few bike lengths behind Mr Johnston. Although the pursuer could not put a distance on it, he stated he had only had seconds to react.

[51] So far as their respective positions on the track were concerned, I accept the pursuer's account that he was on the worn riding line. There clearly was a riding line that many other riders had worn into the track on the right hand side as the pursuer approached the bend. It was natural for the pursuer and other riders to follow that rather than loose gravel. It was also supported by Mr Johnston who described the pursuer coming out from that side round the bend.

[52] I accept that when Mr Johnston and Mr Walker first saw the pursuer he was on the pegs of his bike since both marshals were firm and consistent about that. Although the pursuer said he was seated approaching the bend, he did accept he may have stood up at the latter stage as a reaction to the situation and to reach the back brake which could not be used in the sitting position.

[53] The position of the marshals on the track is less clear because they gave quite different accounts of that. Mr Walker said they were positioned about one foot from the left hand side, whereas Mr Johnston said he was positioned 3½ to 4 feet from the left hand side to get better visibility and to be away from the riding line. I prefer the evidence of Mr Walker on this point for a number of reasons. I had the impression that Mr Johnston reacted defensively and was combative at times when questioned. For example when asked whether being on the right side of the track would give him better vision, he questioned whether it was being suggested he did not know how to do his job. By his own account he had very limited visibility of the pursuer, first seeing him only 10 feet away and did not

have anything like the sightlines of 26 to 30 metres that the experts suggested were available from further out on the track. His limited visibility is inconsistent with him being positioned to the middle of the path as he described. His description is also inconsistent with the pursuer's description of them both being on the same path when they first saw each other. I prefer the evidence of Mr Walker that they were positioned about a foot out from the side of the track which fits with the pursuer's account. I also accept the pursuer's evidence that on seeing Mr Johnston the pursuer moved out to the left to avoid him at the same time as Mr Johnston moved to his right, before colliding with each other. That was consistent with Mr Johnston's description of the pursuer veering off the riding line. It made sense that the pursuer would move to his left when there was an embankment and limited space to move to the right. I do not accept Mr Johnston's evidence that the pursuer was looking down and not where he was going, as that was inconsistent with the pursuer's account and not supported by Mr Walker.

[54] Nor do I accept Mr Johnston's evidence that he had come off the throttle and slowed to 5 or 6 mph on rounding the bend and had stopped by the point of impact. Again that was not supported by Mr Walker nor the pursuer. Mr Walker said both he and Mr Johnston were travelling at 15 mph to 20 mph approaching the bend. He did not say that Mr Johnston slowed down or was stationary on impact. He was immediately behind Mr Johnston and would have had to react to what Mr Johnston was doing if he was to avoid colliding with him. All three of these witnesses stated that they had to act quickly, within seconds, with limited visibility of each other, all suggesting they were all moving at speed. Mr Johnston had them both travelling at 15 mph before he reduced his speed. In the circumstances, I find the marshals were travelling at least 15 mph.

[55] I found it difficult on the evidence to determine what speed the pursuer was doing as he approached the bend. The pursuer denied speeding above 15 mph at any point. He insisted he was very conscious of the speed limit on the forestry track and did not feel under any time pressure. Against that, both marshals were of the firm view that, whilst it is hard to assess speed within the short period of time they saw the pursuer, the pursuer was travelling at over 15 mph. Mr Walker described the pursuer's speed as faster than any other rider he had seen that day. Mr Johnston said it could be as high a speed as 30 mph. Mr Colclough explained that a rider travelling at 15 mph would need 11.5 metres to perceive a hazard, react and stop. It does not appear from the pursuer's evidence that he had anything like that sort of distance to react. The fact that the pursuer and the marshals describe having very little time to react supports an inference that the pursuer was travelling at speed. In addition Mr Mack and Mr Horne described seeing the pursuer flustered and out of breath at the sections, agitated and stressed, with Mr Mack saying the pursuer took off from the sections like a bat out of hell, where it was only a short distance between the sections and the collision site.

[56] In considering the pursuer's speed, I do not place any weight on the fact the pursuer's bike was found in fifth gear nor on any calculation of speed based on the assumption he was riding in fifth gear. Mr Walker accepted he may have moved the pursuer's bike out of gear after the collision. The pursuer and Mr Colclough recognised the bike can readily be moved out of gear, Mr Colclough concluding that finding it in fifth gear after the accident was an unreliable indication that it was in fifth gear at the time of impact.

[57] I note that the pursuer challenged the evidence that was given by Mr Higgins about the pursuer's speed on the basis that he was not qualified to give such expertise. I reject that submission since Mr Higgins was someone who has both considerable experience and

knowledge about riding and organising motorcycle events. He also carried out tests on the same track and on a similar bike to the pursuer's in order to assist the court with the question. He does in my view meet the tests set out in *Kennedy* v *Cordia (Services) LLP* [2016] UKSC 6 at paragraph 44. However, I do not place any weight on Mr Higgins' findings relating to the speed the pursuer was travelling at since that was dependent on the assumption the pursuer was riding in fifth gear because his bike was found after the accident in fifth gear, which I have already explained cannot be relied upon.

[58] I place weight on the distance that the pursuer is said to have travelled after impact in reaching a conclusion about the speed he was going. Mr Colclough, based on Mr Johnston's account of the point of impact and where the pursuer landed, measured the distance to be 11.7 metres. He calculated that a person riding at 15 mph would have been thrown less than 5 metres, albeit on the assumption that they collided with a stationary object (which I have rejected). However, the 11.7 metres distance was broadly consistent with Mr Walker's assessment that the pursuer landed 10 bike lengths away from the point of impact and his description that the pursuer had flown past him. The pursuer on his own evidence weighed about 100-110 kgs at the time of the accident. Even accepting the pursuer's description of diving away from his bike to avoid collision, by all accounts he travelled some considerable distance after impact. It is obvious someone will travel further on impact the higher the speed they are travelling on impact.

[59] On the basis of the evidence of Mr Johnston, Mr Walker, Mr Mack and Mr Horne and the distance the pursuer was thrown, I find on balance of probabilities that the pursuer was speeding above 15 mph when he approached the bend. How much in excess of 15 mph he was riding, I am unable to conclude on the evidence.

Negligence

[60] The pursuer brings this claim against the defenders as organisers of the Trial, and as vicariously liable for the acts of Mr Johnston. In considering the duty of care owed by the defenders to the pursuer, I accept that it is a duty to take care to take precautions against risks that are reasonably likely to happen: *Bolton* v *Stone* [1951] AC 850.

[61] I also accept from *Wells* v *Full Moon Events Ltd* [2020] EWHC 1265, which concerned an "enduro day" off-road motorcycling event (timed motorcycle speed competition), that an organiser of such an event is not obliged to undertake detailed risk assessments in relation to the terrain, identify and guard against all hazards, instruct experienced riders how to negotiate all sections of the course, or avoid parts of the course that would ordinarily be regarded as part of the off-road experience. In that case, the court held that the cause of the accident was more probably due to rider error rather than any fault of the organiser. There could be no criticism of the organiser for the way the event had been run since it had carried out detailed risk assessments and could not protect against the cause of the accident (an item concealed in a muddy puddle), that being an inherent hazard of the race.

[62] In *Hetherington* v *Fell* [2025] EWHC 1487 the court set out the scope of the duty of care upon a voluntary organisation holding a cycling event. The amateur cycling club was found not to be liable for serious injuries suffered by a cyclist who had been hit by a car whilst riding a bicycle in a time trial on a dual carriageway. The scope of the duty of care imposed on the club in relation to their risk assessment to protect riders and organisers, both generically and on the day, was a duty to take reasonable care: (1) to identify the relevant, material hazards; (2) to assess the level of risk posed by those; (3) to identify the reasonable mitigation measures within their power to reduce the risk; and (4) to inform members of the

assessment in a simple and clear manner. The court held that the club had discharged its duty of care by bringing the event to the attention of road users by signs and marshals.

[63] The present case also involves volunteers organising a riding event. Although the accident took place at a bend on the track, the collision was between a participant and a travelling marshal. Traveling marshals were introduced by the defenders onto the course and were not something inherent in the course. I find that in organising the Trial, the defenders had a duty to take reasonable care to avoid acts or omissions that were reasonably foreseeable to cause injury. That included a duty: (1) to identify the relevant material hazards; (2) to assess the level of risk posed by those; (3) to identify the reasonable mitigation measures within their power to reduce the risk; and (4) to inform the participants of the assessment in a simple and clear manner.

[64] I agree with the defenders' submission that the court should be careful about adopting hindsight as a factor in assessing what might have been prevented. An ordinary careful person does not take precautions against every foreseeable risk but rather against risks which are reasonably likely to happen. It may well be that after an accident the ordinary prudent committee member would take some further precaution, but that is not to say they would have taken a similar precaution before the accident (*Bolton* v *Stone* [1951] AC 850 at p 861 and p 863).

[65] The defenders relied on the fact that there had been marshals traveling in both directions on the route for 9 years, but no accident had previously occurred. They submitted that while Dr Ball had criticised the risk assessment, his evidence should be rejected. He had no experience of events such as the Trial and accepted that those on the ground were best placed to assess risk. He accepted that traveling marshals were a sensible precaution as was the speed limit. He suggested at one point that a solution might be to have marshals

stationed on radio contact to let traveling marshals know when safe to proceed. But that had not featured in his report or been put to other witnesses.

[66] The defenders submitted that they had put measures in place to minimise the risk from marshals. These included that competitors were expected to drive reasonably and keep a proper lookout; marshals wore high viz jackets and used full beam headlights; the marshals were experienced motorcyclists who knew to approach bends with caution; the competitors were notified of traveling marshals.

[67] I accept the evidence of Dr Ball who I found to be experienced in risk assessment and a careful and thoughtful witness. While the defenders' risk assessment identified risks to the public and other third parties, it failed properly to consider the safety of competitors or the risk of collision between competitors and travelling marshals riding in the opposite direction. Although competitors were informed that travelling marshals would be present, there was no indication in the material provided before the event that marshals might be travelling towards them on the route. This was a significant omission given that competitors were themselves required to travel in one direction only and faced disqualification for travelling in reverse. A general warning about travelling marshals is materially different from an explicit warning that riders might encounter marshals approaching from the opposite direction around bends.

[68] The introduction of travelling marshals riding against the flow of approximately 280 competitors created an obvious and reasonably foreseeable risk of collision. The fact that no accident had occurred during the previous 9 years of operation does not demonstrate that the risk was unforeseeable, merely that it had not previously materialised. I agree with Dr Ball that it is striking that competitor safety featured only minimally within the risk assessment and that neither competitors nor marshals were expressly identified

amongst those at risk from collisions. In that respect the defenders' assessment diverged from the ACU guidance which recognises the risk of head-on collisions involving riders and marshals and identifies reverse travel by marshals without appropriate controls as an unsafe practice.

[69] I also accept Dr Ball's evidence that reasonably practicable control measures were available. These included requiring marshals travelling against the flow of competitors to approach bends with particular caution, at speeds well below the applicable limit, adopting a wider road position to maximise visibility, introducing a keep-left system for all users of the track, and expressly warning competitors that marshals might be encountered travelling in the opposite direction. None of those measures was identified or implemented.

[70] Separately I have considered whether Mr Johnston was negligent. There was no instruction to participants to keep left on the tracks. It was natural and foreseeable that riders would use the riding line avoiding loose gravel. Mr Johnston and Mr Walker had ridden that section of the route six times already that day and knew that part of the route. Mr Johnston was aware that riders would be riding towards him on the worn track. He had not seen riders for a few minutes and was expecting one to appear at the point when he approached the bend. In those circumstances he ought to have been exercising caution when approaching the bend and adopting a position that maximised his visibility and opportunity to react to oncoming traffic.

[71] I have explained why I rejected Mr Johnston's evidence that he had slowed to 5 or 6 mph and was at a stop at the point of impact. I find that immediately prior to the impact he was travelling along with Mr Walker about a foot from the left hand side of the track at approximately 15 mph and had not reduced his speed or stopped as he described. Had he been exercising due care and keeping a proper look out, he would have positioned himself

further to the right hand side of the track, approaching the bend more slowly, knowing that participants were due from the opposite direction. Had he done so he would have had better visibility, increasing the sightline and time to react and would not have been riding head on towards the pursuer.

Causation

[72] I am satisfied that the breach of duty by the defenders and by Mr Johnston caused the accident. The cause of the accident was the decision to operate travelling marshals against the competitors' direction of travel in circumstances where opposing motorcycle traffic on forestry tracks posed an obvious risk of collision. The defenders failed to identify and assess that risk properly and failed to implement appropriate control measures to reduce it. Such measures could reasonably have included expressly warning competitors that marshals might be travelling towards them, introducing a keep-left system, or instructing marshals travelling against the flow of competitors to approach bends with particular caution, at reduced speed and from positions that maximised visibility.

[73] High-visibility clothing, headlights and reliance on the experience or common sense of marshals were not sufficient to reduce the risk as far as was reasonably practicable. If the marshals ride close into a bend in an oppositional direction, the oncoming riders may not have any view of their high viz jackets or headlights because of the terrain. Nor was it sufficient to rely on marshals as experienced motorcyclists exercising common sense, given that both experienced marshals in this case considered themselves to have adopted an appropriate position on the track.

[74] Had the defenders carried out an adequate risk assessment and introduced appropriate control measures, the accident would have been avoided. Had Mr Johnston

approached the bend with greater caution and adopted a position on the track that afforded better visibility and more opportunity to react to oncoming riders, the accident would have been avoided. The risk of collision was reasonably foreseeable both to the defenders and to Mr Johnston.

Contributory negligence

[75] Section 1(1) of the Law Reform (Contributory Negligence) Act 1945 provides that where a claimant's loss has been caused partly by their own fault and partly by the fault of another person, the claim is not defeated altogether. Instead, the court must apportion responsibility and reduce the damages to such extent as it considers just and equitable having regard to the claimant's share in the responsibility for the damage. When apportioning blame, the question is what is just and equitable in the circumstances. The key issues are the respective causative potency of what either party has done and their respective blameworthiness (*Jackson* v *Murray* 2015 SC (UKSC) 105 per Lord Reed at paragraph 40; *Eagle* v *Chambers* [2003] EWCA Civ 1107 per LJ Hale at paragraph 10). It is for the defenders to prove contributory negligence.

[76] While the pursuer accepts a duty to take reasonable care for his own safety, he contends that the collision was not caused by any failure on his part to keep a proper lookout or by excessive speed. It was submitted that if the court was against him, his share of responsibility should be limited to between 25% and 33%, with the greater share resting on the defenders and/or Mr Johnston.

[77] The defenders submitted that the pursuer was travelling too fast and failed to keep a proper lookout and should be found substantially responsible for the accident. The

defenders referred to *Kyriacou* v *Finch* [2021] EWHC 3791, where the claimant was found 80% responsible, and invited me to find parallels with the present case.

[78] I accept that the pursuer could not have reasonably foreseen that marshals on motorcycles would be riding in the opposite direction to competitors round the track. However, the pursuer had a duty of care to all users of the track and his speed should have been appropriate to avoid a collision with anyone legitimately using the track. Whilst it is accepted that members of the public had been warned by signage about the event, which may have affected their behaviour, the pursuer knew the tracks were open to the public and ought to have reasonably anticipated other track users might still be present.

[79] I have already found that the pursuer was travelling at a speed greater than 15 mph and have rejected the evidence that he was not looking where he was going. By exceeding the speed limit in approaching the bend where there was limited visibility on the inside track, the pursuer is partly to blame. Had he approached the bend at under 15 mph, it is unlikely the accident would have been entirely avoided given the position of the marshals and the very limited sight lines they had of each other, though its impact may have been reduced. Mr Colclough was clear if Mr Johnston was moving (as I have found) before the impact, the stopping distance would be greatly reduced and the collision would have occurred even at lower speeds. Thus whilst compliance with the speed limit might have reduced the severity of the collision, I am not satisfied it would have prevented it.

[80] I do not consider there are many parallels on the facts with *Kyriacou:* the claimant in that case was riding a scooter at twice the speed limit at 55 mph and had been executing an inherently dangerous manoeuvre at the time of the accident overtaking a van at an intersection. Whilst I have found it probable that the pursuer was speeding in this case,

there was insufficient evidence for me to specify how much over the speed limit that was. He was not executing an inherently dangerous manoeuvre at the time.

[81] The defenders' blameworthiness is more substantial than the pursuer's: the defenders introduced a hazard to the event without taking appropriate precautions and without carrying out an appropriate risk assessment. Had the defenders taken appropriate measures the accident could have been avoided. Unlike the pursuer, Mr Johnston was aware of the likelihood of oncoming motorcycle riders at 15 mph. It was reasonably foreseeable they would be riding on the inside riding line. He failed to position himself appropriately when approaching the bend to provide greater visibility. Had Mr Johnston done so the accident could have been avoided.

[82] If the pursuer had been riding at a reduced speed under 15 mph and the marshals driving on the inside line in the opposite direction at 15 mph, the likelihood is the accident would still have occurred, although its impact would likely have been reduced. Accordingly I consider the greater cause for the accident to be the defenders. In these circumstances I find the pursuer one third contributorily negligent.

Assessment of damages for Your Adventure Life

[83] The parties agreed by joint minute, that in the event of the defenders being found liable to the pursuer to make reparation to the pursuer, damages should be assessed at £500,000 inclusive of interest to 21 July 2026. The nature of the injuries suffered by the pursuer were also agreed by joint minute. However, the parties were in dispute whether the court should make any award of damages to the pursuer in respect of the pursuer's past loss of income (upon which interest is payable) and future loss of income arising from his involvement in a company, Your Adventure Life Ltd.

[84] In the period from 2013 to 2020, the pursuer was employed by BC Motorcycle Tours, working as a motorcycle tour guide, on a full time basis. That company was run by someone who the pursuer had served with in the army. The pursuer was also appointed director of Bike Tours for the Wounded CIC (a community interest company), which was run by the same army colleague, from 2014 to 2016. That company served as a fund raising engine to take wounded, injured and sick veterans on tours in the USA as pillions. The pursuer supported over 350 veterans on these tours. He resigned as director of Bike Tours for the Wounded in 2016 and ceased employment with BC Motorcycles Tours in 2020, due to a disagreement about how the organisations were run.

[85] At the time of the accident, the pursuer, was working on a self-employed basis as a contractor and consultant for 2 days a week whilst also undertaking joinery work. He had recently set up his own limited company, Your Adventure Life Ltd, with the intention of working as a motorcycle tour guide, similar to the work he had undertaken with BC Motorcycle Tours. He had been encouraged by previous clients to start his own company with two others who had also been involved in BC Motorcycle Tours.

[86] At the time of the accident, the pursuer and the two others were named directors and 33% shareholders of Your Adventure Life Ltd, incorporated on 12 April 2019. The pursuer was to be the main tour guide with one of the other directors handling administration and finance and the other with knowledge of off road tours. The pursuer printed brochures and had a website built. In 2019/2020 he took bookings for a European tour which was nearly full. However, the pandemic hit in 2020 and the tour had to be cancelled. During the pandemic, they managed to run a tour in Scotland though it was not for any charge and another in Wales on the same basis. The plan thereafter was to start tours from summer 2022 onwards. The pursuer had intended to pursue Your Adventure

Life for 3 days of the week plus weekends. When out on tour, he would have put his self-employment work to one side and make up the hours. As a result of the accident, and since the pursuer's skill set was required to operate the company, the company never actively traded.

[87] The pursuer relied on the evidence and report by Mr Anthony Flint, forensic accountant, to calculate the loss of net income from Your Adventure Life, dated 29 August 2025. At section 5 of his report Mr Flint notes that the company had annual gross income of £5,200 for year ended 30 April 2021 as a result of deposits taken for tours that did not take place due to covid. He confirms that the tour that was run during the pandemic was run at cost with regular clients and is vouched for in the bookings. Given that there was no pre-accident trading, Mr Flint reviewed the pursuer's business plans to assess its potential projected net profit. The business plans were based on the pursuer's experience of running similar tours with BC Motorcycle Tours and Bike Tours for the Wounded. Mr Flint considered, based on comparisons with other companies, the tour prices and the fundamental elements of the pursuer's business plan were not unreasonable. His assessment does not include any element for growth. He assessed potential past loss of net income to 31 March 2026 at £66,947 and potential future loss of annual net income at £25,919 per annum.

[88] Although Mr Flint was provided with information about how the pursuer intended to trade, he did not have the expertise to say whether the pursuer would have been successful in trading, the number and type of tours the company would have been able to operate and the gross income, expenses and profit it would have generated (paragraph 2.5 of his report).

[89] The defenders argued that this element of the pursuer's claim was entirely speculative. The company had no trading history, had generated no profits and had not progressed beyond preparatory stages. The projected profits relied overwhelmingly on the pursuer's own optimistic assumptions. The court was invited to reject the business as having any value past or future. The pursuer's expert had been unable to pass any comment on the viability of the business and the foundation of the claim was based on the pursuer's own say so. The business plan was described as no more than a budget with figures that are not easy to follow inserted into a spreadsheet. The defenders criticised some of the arithmetic contained in Mr Flint's report including some of the costings. The pursuer had not presented any market comparisons to other businesses or evidence from an expert opining on the viability of the business in the prevailing market. Given the absence of evidence from the co-directors and the lack of any established business record, the court should either reject the claim entirely or place little weight upon it.

[90] The pursuer's submissions set out the calculations for loss of business based on the figures in Mr Flint's report: £71,220 for loss of net income to 21 July 2026. Thereafter, using a multiplier of 4.17 to the annual loss of £25,919, the pursuer calculated future loss from 21 July 2026 at £108,082, making a total loss of £179,302. The pursuer however recognised that there are uncertainties associated with this approach and the court may consider that the imponderables render the use of the multiplier and multiplicand approach as inappropriate. If so the pursuer suggested a lump sum approach and submitted that an award of £100,000 would be fair compensation for this head of claim.

[91] I find that there are considerable uncertainties with this part of the pursuer's claim. The company never traded and Mr Flint could not offer any opinion on the viability of the company. That said the pursuer had made some progress in setting up and establishing

the business, in marketing it and in achieving bookings for a tour albeit one that had to be cancelled. The bookings demonstrate that there was genuine market interest in the tours the company proposed to offer. The pursuer and the other directors had the expertise and experience in motorcycle touring and running similar tours before setting up this company to make the business profitable. Although there were criticisms of the arithmetic in Mr Flint's report there were no contrary costings produced. Based on comparisons with other companies, Mr Flint considered that the tour prices and the fundamental elements of the pursuer's business plan were not unreasonable.

[92] I am satisfied on the basis of this evidence, that had the accident not occurred, the pursuer would have continued to take bookings and would have run the tours as planned. On balance of probabilities, I am satisfied that the tour business would have made some profit though for how long and by what margins is uncertain. In the circumstances, I consider some award should be made to reflect this loss to the pursuer. Given the uncertainties a multiplicand approach is not appropriate. Instead I take a broad approach and award the pursuer £70,000 (inclusive of interest to 21 July 2026).

[93] Therefore the amount of overall damages is £570,000, which is reduced by one third to reflect the finding of contributory negligence. I therefore find the defenders liable to pay to the pursuer the sum of £380,000 with interest thereon at the rate of 8% per annum from 22 July 2026 until payment.

[94] I reserve expenses meantime.