

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

[2025] SC EDIN 40

PIC-PN2592-21

JUDGMENT OF SHERIFF ROBERT D M FIFE

in the cause

DENISE PARKS

Pursuer

against

LG ELECTRONICS UK LTD

Defender

**Pursuer: Swanney, advocate; Thompsons, Solicitors, Glasgow
Defender: McGregor KC; Kennedys Scotland, Glasgow**

Edinburgh, 18 July 2025

Introduction

[1] The pursuer claims damages for injuries and property damage sustained in a fire which occurred at her home in the early hours of the morning of 31 October 2018. The pursuer alleges the cause of the fire was an incendiary fault within a mobile phone produced by the defender. The pursuer's claim is based on the defender's alleged statutory breach of section 2 of the Consumer Protection Act 1987 (1987 Act). Most heads of claim for damages were agreed by parties during the proof. The primary focus of the proof was on liability which was disputed.

Findings in fact

[2] At or about 03:00 hours on the morning of 31 October 2018, a fire occurred within the living room of the pursuer's home at 10 Forge Drive, Coatbridge. The pursuer and her husband, Robert Parks, had retired to bed on the upper floor of the property at around 23:00 hours on 30 October 2018. The pursuer and her husband are non-smokers.

[3] When they retired to bed, two mobile phones and a laptop computer were left sitting on the arm of their living room two-seater sofa (sofa) which was placed up against the south wall. The laptop was lying flat.

[4] The mobile phones were a Samsung Galaxy S7 (Samsung) and an LG K8 (2017) (LG). The Samsung was at least two and a half years old. The pursuer was given the LG by her employer North Lanarkshire Council about six months earlier. The laptop was an Acer Aspire ES 13 laptop (laptop). The laptop was approximately twelve months old. There was no evidence any of the devices were damaged prior to the fire. The LG was not damaged prior to the fire. The LG was a device manufactured by the defender.

[5] The two phones were connected to chargers, which, in turn, were plugged into an extension socket. The laptop was also connected to a charger which was plugged into the same extension socket. The extension socket was plugged into a socket on the wall behind the sofa.

[6] As a result of the fire, the Samsung and its battery were not significantly fire damaged. The screen and front of the Samsung were relatively undamaged.

[7] The fire damage to the laptop was largely to one corner. Most of the screen, the keyboard and the internal components were not fire damaged. The laptop had a lithium-ion battery, which consisted of three pouch cells (pouch). The pouches were adjacent to each other. Two of the pouches were separated from the other pouch by a plastic spacer. The

other pouch and the plastic spacer were in the centre of the battery. Following the fire, that pouch and the adjacent spacer were missing. There was no damage to the adjacent two pouches about one inch away. Their identification marks could be read. There was no indication of any incendiary material having been ejected from the laptop.

[8] The LG was severely fire damaged. The inside of the battery of the LG was damaged by fire. The battery was distended. There was a hole in the battery. The plastic outer casing of the battery remained and was less damaged by fire than the inside of the battery. Most of the plastic and combustible materials of the body of the LG were consumed by the fire.

[9] The pursuer was charging the LG with an HTC charger, which was a TC B250 model. The HTC charger had an output voltage of 5 Volts and an output current of 1 Amp. The HTC charger sustained only minor heat damage. The HTC charger was not faulty. The LG required to be charged by a charger with an output voltage of 5 volts and an output current of 0.85 amps to 1.2 amps, in terms of the manufacturer's guidance. The HTC charger was a suitable charger for charging the LG.

[10] The pursuer was treated for smoke inhalation because of the fire. The pursuer had a history of anxiety and panic attacks, which was exacerbated because of the fire. As a result of the fire, the pursuer was absent from work between 2 November 2018 and 7 February 2019. The pursuer incurred a loss of earnings of £389.16. Interest at 8% per annum from 31 October 2018 to 18 July 2025 is £278.20.

[11] Number 5/2/9 of process is a condition of service for employees of North Lanarkshire Council, including the pursuer. It forms part of her contract of employment. The pursuer was contractually obliged to repay sick pay to her employer as the pursuer sustained injury in the fire, causing her to be absent from work. The repayable sick pay is £2,261.48. Interest at 8% per annum only applies from the date of any decree in favour of the pursuer.

Findings in fact and in law

[12] Finds that the fire did not originate within the Samsung.

[13] Finds that the fire did not originate within the laptop.

[14] Finds that the LG was the source of the ignition of the fire on 31 October 2018 on the balance of probabilities.

[15] Finds that there was a defect in the LG in terms of section 3(1) of the Consumer Protection Act 1987 (1987 Act), and that the pursuer has established liability against the defender for a breach of section 2 of the 1987 Act on the balance of probabilities.

[16] Finds that the pursuer has proved she sustained injury as a result of the fire on 31 October 2018, and that she was absent from work because of that injury.

Findings in law

[17] Grants the pursuer's unopposed motion to increase the sum sued for to £160,000.

[18] Grants decree against the defender in favour of the pursuer in the sum of £149,496.26 with interest thereon at the rate of 8% per annum from 18 July 2025.

[19] Certifies (a) Darren Green, Associate Forensic Investigator, Burgoyne's, Consulting Scientists and Engineers, Glasgow; (b) Dr Ravdip Bumrah, General Practitioner; and (c) Dr Fraser Morrison, Consultant Clinical Psychologist, as skilled persons.

[20] Sanctions the proceedings as suitable for the employment of junior counsel.

[21] Reserves all questions of expenses. The sheriff clerk will fix a hearing on expenses.

Witnesses

Pursuer

[22] The pursuer was a Home Support Carer with North Lanarkshire Council. On the evening of 30 October 2018, the pursuer and her husband retired to bed at around 23:00. At around 03:00 on 31 October 2018, they woke up to a fire that had started in the living room. The seat of the fire was at the west corner of a two-seater sofa (sofa) nearest to an inlet in the living room. Mr Parks called 999 and emergency services: fire services, ambulance and police attended.

[23] When the pursuer retired to bed, there were two mobile phones sitting on the arm of the sofa. In evidence, the pursuer was uncertain where the laptop was charging, either between the arm and seat of the sofa or on the floor. When the pursuer met with the forensic investigator Mr Green on 2 November 2018, she told him the two phones, and the laptop were sitting on the arm of the sofa. The mobile phones were a Samsung Galaxy S7 (Samsung) and an LG K8 (2017) (LG). The Samsung was her own phone. The LG was a work phone. The laptop was an Acer Aspire ES 13 laptop (laptop). The two phones and the laptop were being charged overnight. They were connected to chargers, which were plugged into an extension socket. The extension socket was plugged into a socket on the wall behind the sofa. The laptop was either leaning against the side of the arm of the settee or on the floor at the side of the sofa.

[24] The pursuer sustained injury as a result of the fire. The value of her personal injury claim was agreed. The pursuer was absent from work because of the fire and sustained a loss of earnings.

Robert Parks

[25] Mr Parks confirmed what the pursuer said about the timing and circumstances of the fire on 31 October 2018 and the attendance of the emergency services.

[26] Mr Parks thought the two phones and the laptop were on the arm of the sofa for charging, as that was what the pursuer usually did every night, but he could not be certain of that.

Dr Fraser Morrison

[27] Dr Morrison was a Clinical Psychologist. Dr Morrison adopted his report, dated 8 June 2022, as his evidence. In his opinion, the pursuer had a history of symptoms of anxiety and panic that were consistent with the presence of a Panic Disorder (300.01 F41.0 (DSM-5)). As a result of the fire the symptoms of anxiety and panic were exacerbated.

[28] Dr Morrison supplemented his opinion in oral evidence, but as damages have been agreed no further summary of his evidence is required.

Ian Lawson

[29] Mr Lawson, a Major Loss Adjuster for Sedgwick International UK, was assigned to deal with the claim for insured losses arising out of the fire. He produced a written statement dated 20 March 2025 covering his involvement with the claim and which concluded with his final report dated 4 February 2020. It was agreed that his statement was equivalent to his oral evidence.

Darren Green

[30] Mr Green was an Associate Forensic Investigator with Burgoynes, Consulting Scientists and Engineers, Glasgow. Mr Green was a Chartered Chemical Engineer. He had extensive experience specialising in the investigation of fires and explosions. As at March 2025, he had investigated about 650 fires. The proportion of house fires was around 75%.

[31] Mr Green visited the property on the afternoon of 2 November 2018. He carried out an inspection and spoke to the occupants, the pursuer and Mr Parks. The pursuer told him the two phones, and the laptop were sitting on the arm of the sofa, all charging, when she and Mr Parks went to bed on the evening of 30 October 2018. The fire was localised in the lounge where there was a sofa which was up against the south wall. The fire had spread up the wall from a relatively low level. Mr Green saw the burnt sofa.

[32] Mr Green subsequently carried out a joint examination to destruction of the devices on 17 September 2019 with Mr Mark Phillips of Phillips Forensic Science and Engineering, who was acting on behalf of the defender.

Acer Aspire ES13 Laptop

[33] There was a label on the inside of the laptop that indicated it was an Acer Aspire ES13 device. The direct fire damage that was sustained was largely confined to one corner (top left of the screen and bottom left of the keyboard). The majority of the screen, the keyboard and the internal components were not fire damaged. The overall fire damage was more severe to the top cover than to the base, which was consistent with the base of the laptop sitting on the sofa at the time of the fire.

[34] During the examination, the outer plastics casing was removed from the base of the laptop. Mr Green observed the fire damage inside that part was confined to the corner area described above. The battery was mounted across the bottom of one side of the laptop.

[35] The battery comprised three rectangular shaped pouches which were contained within one plastics outer casing. Only two pouches remained. One could still read the labels on these pouches, which had sustained virtually no damage. One pouch was absent. The absent pouch would have been at the corner of the laptop that was most severely damaged. The 13 Amp plus fuse for the laptop was continuous and had not blown.

[36] Whilst part of the battery was absent, the limited damage to the laptop was not indicative of a fire originating at the battery and continuing to burn inside the laptop. The lack of damage to the adjacent pouches was not consistent with the fire starting and continuing to burn where the pouch had been and was absent. Further, it was unlikely that any incensive material was ejected from the laptop as this would have to penetrate two layers of solid plastic casing. There was no evidence of that. Overall, the physical evidence, including the pattern of damage, was more consistent with the laptop being attacked by the fire and not the source of the fire.

[37] If the fire had originated at the absent pouch of the battery, the fire would need to have developed and spread within the laptop before spreading to involve the sofa. As the absent cell was towards the centre of the battery, it was improbable a fire that started at that cell would only spread to involve the plastics spacer and one corner of the laptop casing and not spread to other components nearby or to the adjoining part of the battery. In addition, once the sofa became involved in the fire, one would expect flames to spread evenly in all directions across the sofa. Given that a large part of the sofa was consumed by the fire, one would expect the laptop to have sustained more significant fire damage if the fire had

started at the laptop. The damage sustained was consistent with what one would expect to occur if the laptop was at the periphery of a fire that started elsewhere on the sofa and that corner was the first part of the device that was attacked by the flames.

Samsung

[38] The screen and the front of the Samsung mobile phone were relatively undamaged, but the plastics panel at the rear had been consumed by the fire. The battery which remained in the rear panel was slightly swollen. Inside the battery there were thin layers of material, which comprised the positive and negative electrodes. The layers of material within the battery were not fire damaged. The damage was more consistent with the Samsung being attacked by the fire and not the source of the fire.

LG

[39] Most of the plastics from the body of the LG, the combustible parts, had been consumed by the fire. The end of the charger cable remained in place, but the cable had been severed. The battery was detached from the phone and the plastics casing of the battery remained, although it was significantly swollen. Further, there was a hole at one corner of the battery and all the layers of electrode material inside the battery were burnt. The extent of the damage to the body of the phone and the damage to the internal parts was more consistent with burning inside the battery and the LG being the source of the fire.

Charger and extension lead

[40] The charger used to charge the LG was manufactured by HTC. There was no evidence the charger was faulty. The charger was suitable to charge the LG. The use of

extension leads to charge various devices was not uncommon. The extension lead was not overloaded.

Summary of findings following examination

[41] The patterns of fire damage to the laptop were more consistent with the effect of fire attack than with the fire starting at the laptop. The damage sustained by the LG battery was consistent with a fault occurring within the battery. Accordingly, it was more likely than not the fire originated due to an incendiary electrical fault within the battery of the LG which caused a short circuit. In Mr Green's opinion, there was a manufacturing fault or defect in the LG battery.

[42] If the fire had originated at the absent pouch of the battery in the laptop, the fire would need to have developed and spread within the laptop before spreading to involve the sofa. As the absent pouch was towards the centre of the battery, it was improbable a fire that started at that pouch would only spread to involve the plastics spacer and one corner of the laptop casing and not spread to other components nearby or to the adjoining part of the battery which was less than one inch away and undamaged. In addition, once the sofa became involved in the fire, one would expect flames to spread evenly in all directions across the sofa. Given that a large part of the sofa was consumed by the fire, one would expect the laptop to have sustained more significant fire damage if the fire had started at the laptop. The damage sustained was consistent with what one would expect to occur if the laptop was at the periphery of a fire that started elsewhere on the sofa and that corner was the first part of the device that was attacked by the flames.

[43] The LG was the most severely fire damaged device. The plastics casing of the battery remained and was swollen. There was a hole at one corner of the battery and all of the

layers of electrode material that were inside the battery were burnt. If a fire had spread to involve the LG, it was difficult to see how such significant fire damage could have occurred inside the battery when the outer casing was not destroyed.

[44] Most of the combustible parts were burnt. The extent of damage to the body would fit with that being the centre of the fire on the sofa. The damage to the internal parts was more consistent with burning inside of the battery. The damage to the battery fitted with that being the source of the fire.

What caused the ignition?

[45] There are layers of electrodes within the battery. Some are positive and some negative. The electrodes are not designed to touch each other. There is a thin layer of material between them which transfers from one electrode to another. If they touch, there is a short circuit. The current flows between the two electrodes which is not meant to happen. The electrodes are effectively in short circuit. That creates heat. If there is sufficient heat that can ignite the combustible part of the battery. On the balance of probabilities, there was a short circuit within the LG battery causing spontaneous ignition and which was the source of the fire.

Conclusion

[46] Considering all the evidence and the overall pattern of damage, in the opinion of Mr Green it was more likely than not that the fire originated due to an incendiary electrical fault within the battery of the LG that was being charged at the time of the fire. The LG was around six months old at the time of the fire and, according to the pursuer, was not

damaged. Any such fault in the LG appeared to have been a design or manufacturing defect.

Submissions

Submissions for pursuer

Motion

[47] The motion for the pursuer was as follows:

- i. In terms of Rule 18.2(a), to amend the sum sued for from
“ONE HUNDRED THOUSAND POUNDS (£100,000) STERLING” to
“ONE HUNDRED AND SIXTY THOUSAND POUNDS (£160,000)
STERLING”;
- ii. To grant decree against the defender for payment to the pursuer
of the sum of £150,413.74 with interest thereon at the rate of 8%
per annum from the date hereof until payment;
- iii. To find the defender liable to the pursuer in respect of the expenses
of the action; and to remit the account thereof, when lodged, to the
auditor to tax and report;
- iv. To certify: Mr Darren Green, Dr J H Burgoyne & Partners LLP,
Glasgow; Dr Ravdip Bumrah, General Practitioner; and
iii) Dr Fraser Morrison, Consultant Clinical Psychologist, as skilled
persons;
- v. To sanction the cause as suitable for the employment of junior
counsel.

General submissions

[48] The court required to answer the following questions:

- i. Did the defender breach their statutory duty under section 2 of the 1987 Act?
- ii. If so, what losses or damage were caused by said breach and what sum should be awarded to the pursuer by way of damages for that loss and damage

Question 1

Did the defender breach their statutory duty under section 2 of the 1987 Act?

[49] *During the proof, three subsidiary questions arose in respect of any breach of statutory duty:*

- i. Was the mobile phone which the pursuer alleges was the source of the ignition of the fire the LG?
- ii. If so, was that LG the source of the ignition of the fire? and
- iii. If so, was there a defect in the LG within the meaning contained within section 3 of the 1987 Act?

i. *Was the mobile phone which the pursuer alleges was the source of the ignition of the fire an LG?*

Counsel submitted the evidence at proof was more than sufficient for the question to be answered in the affirmative. The LG was the pursuer's work phone and had been provided to her by her employer, North Lanarkshire Council, in early 2018.

ii. *Was the LG the source of the ignition of the fire?*

The focus of the evidence centred mainly around one, and possibly two, alternative potential sources of the ignition of the fire: the laptop

and the Samsung, both of which were charging on the arm of the sofa along with the LG.

[50] The pursuer referred to the following authorities:

1. *Ide v ATB Sales Ltd, and Lexus Financial Services t/a Toyota Financial Services (UK) PLC* [2008] EWCA Civ 424.
2. *The Popi M* [1985] 1 WLR 948 (*Rhesa Shipping Co SA v Edmund*).

[51] When considering the question of competing explanations as to the source of the ignition, the court should bear in mind the following:

- i. The key consideration is whether the suggested explanation, the LG, is more likely than not to be correct;
- ii. A systemic analysis of the other possible causes, which eliminates those other possible causes as unlikely may assist in arriving at that conclusion;
- iii. It is permissible and consistent with common sense where there are two competing theories, neither of which is improbable, that having rejected one to find the other as being the probable cause;
- iv. Where the competing causes are all improbable, it may be impermissible to find the least improbable or least unlikely cause was nonetheless the cause of the event due to a process of elimination.

[52] The pursuer submitted the LG was the source of the ignition for the following reasons:

- i. The physical evidence of fire damage was consistent with the fire having originated at the arm of the sofa, where the electrical devices had been charging.
- ii. The pursuer and her husband saw flames in the living room through the glass in the living room door. They spoke to those flames being in the area of the living room which corresponded to the arm of the sofa where the electrical devices were charging;
- iii. The fire damage to the LG was more consistent with a fire originating within it than with external fire attack;
- iv. The LG was the most severely fire damaged of the electric devices on the sofa. Most of the plastics and combustible parts of the LG had been consumed by the fire, which was consistent with i) the fire originating at its battery and spreading out to consume the other parts of the phone; and ii) it being at the centre of the fire and spreading out to other parts of the LG;
- v. The internal electrodes of the battery of the LG were fire damaged and completely burnt, but the external plastic cover of the battery remained. The cover was swollen and damaged, but Mr Green's evidence was that if fire had spread to the battery from elsewhere it was difficult to see how such significant fire damage could have

occurred inside the battery, to the electrodes, without greater damage having been caused to the external casing;

- vi. There was a hole in the external plastic cover of the LG battery, which provided an explanation as to how the fire escaped from the internal part of the LG battery;
- vii. The damage to the laptop was more consistent with external fire attack than with a fire originating at the laptop. Had the laptop been the source of the fire, it would have been at the centre of it, and so flames would have been expected to spread evenly in all directions across the laptop and the sofa. One would expect to see greater, more even damage to the laptop. Instead, the fire damage to the laptop was largely confined to one corner and the majority of the screen. The keyboard and the components within the base of the laptop were not as significantly fire damaged as would be expected if the fire had originated at the laptop;
- viii. The fire damage being largely confined to one corner was consistent with the laptop being at the periphery of a fire that started elsewhere and that corner being the first part of the laptop which was attacked by the fire;
- ix. One of the three battery pouches of the laptop, and an adjacent plastics spacer, were missing from the laptop. Whilst Mr Green accepted this introduced the possibility of the fire having originated within the missing pouch, the fire damage to the combustible parts

of the laptop adjacent to the missing pouch was not consistent with that pouch being the source of the fire. That is because:

- x. The missing pouch was adjacent to two other pouches which remained. If the fire had originated at the missing pouch, the fire would be expected to spread evenly out from that pouch, rather than only to the plastics spacer and the damaged corner of the laptop. Instead, the fire damage to those adjacent pouches was so little that the markings on the two pouches could still be read. Mr Green's evidence was it was improbable that such little fire damage would have been sustained by those pouches if the missing pouch was the source of the fire;
- xi. That was especially so if the contention was that the pouch was missing because it had disintegrated due to fire attack, given the duration of time for which it would have to have been burning.
- xii. It is unlikely that any incendiary material was ejected from the battery of the laptop and so started a fire away from the laptop. Given the absence of vents and grilles in the laptop, the level of force required to shoot such material through the various layers of the laptop and away from it was unlikely to have been achieved, and so the ejection of incendiary material was not a plausible explanation for the ignition of the fire;
- xiii. The front screen of the Samsung was largely undamaged by the fire, but most of the rear cover had been consumed. In contrast to

the LG, the outer casing of the Samsung battery, which was swollen slightly, had also been consumed by the fire, but the layers of electrode material within the inside of the battery were not burnt.

The damage to the Samsung was more consistent with external fire attack than a fire which originated in the battery of the Samsung;

- xiv. The most likely explanation as to the mechanism by which the LG battery ignited, was that the battery has multiple layers of electrodes, some positive and some negative. They were not designed to touch and there are thin layers separating them, through which electrons pass. If the two electrodes come into contact, then a short circuit develops, which ignites heat and which in turn ignites the combustible parts of the battery;
- xv. Mr Green's evidence was that his view as to the LG being the likely or probable source of the fire was unchanged by whether the laptop was i) lying flat on the arm of the sofa; ii) sitting on the seat of the sofa but resting against the arm of the sofa at an angle; or iii) vertical. His evidence was that if the laptop was resting against the arm of the sofa at an angle it may help to support his view that the laptop was at the periphery of the fire, as it would place the laptop at the periphery. In respect of the laptop being vertical, Mr Green's evidence was that the physical evidence indicated the laptop was lying flat, or close to flat, on a surface because the damage to the top cover was more severe than to its

base. While no evidence was led from the defender's expert, Mr Phillips, Mr Green spoke to the defender's expert agreeing that the physical evidence indicated the laptop was lying flat on a surface because the damage to the top cover was more severe than to its base. Further, Mr Green spoke to the defender's expert finding parts of the foam insulation of the sofa adhered to the base of the laptop, which was also consistent with it sitting flat on a surface of the sofa.

- xvi. There was uncontradicted evidence that there was no damage to the four-way extension lead into which the electrical devices were plugged, or to the two-way extension splitter into which the LG charger was plugged;
- xvii. There was uncontradicted evidence from Mr Green that the four-way extension lead was not overloaded, in that the overall electrical current going through the extension lead was nowhere near its 13-amp limit;
- xviii. There was uncontradicted evidence from Mr Green that the physical evidence did not indicate that either the four-way extension lead or the two-way extension splitter were the cause of the fire;
- xix. Neither the pursuer nor her husband smoked cigarettes. Mr Green found no evidence of human agency, such as a burning cigarette, as being a likely cause of the fire.

[53] The pursuer submitted that, on the balance of probabilities, the source of the ignition of the fire was the battery of the LG.

Question 2

Was there a defect in the LG within the meaning contained within section 3 of the 1987 Act?

[54] Sections 2 and 3 of the 1987 Act are in the following terms:

“Section 2(1) - Subject to the following provisions of this Part, where any damage is caused wholly or partly by a defect in a product, every person to whom subsection (2) below applies shall be liable for the damage.

This subsection applies to—

- (a) the producer of the product;
- (b) any person who, by putting his name on the product or using a trade mark or other distinguishing mark in relation to the product, has held himself out to be the producer of the product
- (c) any person who has imported the product into the United Kingdom in order, in the course of any business of his, to supply it to another.

Section 3(1) Subject to the following provisions of this section, there is a defect in a product for the purposes of this Part if the safety of the product is not such as persons generally are entitled to expect; and for those purposes ‘safety’, in relation to a product, shall include safety with respect to products comprised in that product and safety in the context of risks of damage to property, as well as in the context of risks of death or personal injury.”

[55] The decision in *Gee & Others v Deputy International Limited* [2018] EWHC 1208 (QB) provided helpful guidance as to what is required to be established by the pursuer in a case, such as the present one, where an electrical appliance bursts into flames or ignites.

[56] The pursuer submitted that all she must prove to establish there was a defect in the LG was that the phone ignited whilst being used normally and no more than that. That was because an electrical appliance, such as a mobile telephone which ignites whilst plugged in for charging and being used in a normal fashion, fell below the objective standard of safety that persons generally were entitled to expect. It was not necessary to establish the cause of

the defect. That is consistent with the approach outlined not just in *Gee*, but in the cases of *Ide, Lexus, Hufford v Samsung Electronics (UK) Ltd* [2014] EWHC 2956 and *Al Iqra v DSG Retail Ltd* [2019] EWHC 429 (QB).

[57] The pursuer submitted the LG was defective for the following reasons:

- i. The LG was the source of the ignition of the fire;
- ii. The LG was a 2017 model and was at most 22 months old, and likely much less than that. The pursuer had only had the LG since the early part of 2018;
- iii. The most likely cause of the LG igniting was an incendiary fault with the battery. Whilst it was not necessary for the pursuer to establish what the cause of the fault was, or the precise mechanism, Mr Green's opinion was that there was probably a short circuit from the positive and negative electrode touching, which ignited heat, and which in turn ignited the combustible parts of the battery;
- iv. The LG was not damaged prior to the fire occurring;
- v. The charging of the LG, and other devices, by way of a four-way extension lead was not an uncommon or abnormal way of charging the LG. It was consistent with how many people charge their phones, particularly in older homes in which there were fewer wall sockets for electrical devices. That was the unchallenged evidence of Mr Green, who had experience of investigating hundreds of fires in many different homes. It was likely also within judicial knowledge;

- vi. The uncontradicted evidence of Mr Green was the HTC charger being used to charge the LG had an output voltage of 5V and an output current of 1 amp. The chargers recommended for use by LG with the make and model of LG in question were those with an output voltage of 5V, the same as the HTC charger, and an output current of between 0.8 amps and 1.2 amps. The output current of the HTC charger was in the middle of that range;
- vii. It was not uncommon to use a make or model of charger which was different to that which was provided with a mobile telephone. That was the unchallenged evidence of Mr Green;
- viii. The LG was being used normally at the time its battery ignited.

[58] For all these reasons the pursuer submitted there was a defect in the LG in terms of section 3 of the 1987 Act and that the defender was in breach of section 2 of the 1987 Act.

Submissions for defender

Motion

[59] The motion was to grant decree of absolvitor.

General

[60] The onus was on the pursuer to aver and prove the presence of a defect and damage caused by that defect. In order to prove the defect, the pursuer must establish what it was about the state or behaviour of the product or the risks that it posed that led it to fall below the level of safety that persons generally were entitled to expect at the time when the

product entered the market: *McGlinchey v General Motors UK Ltd* [2012] CSIH 91 at [37]; and *Gee supra*.

[61] The onus of establishing how the fire occurred rested upon the pursuer. It was not sufficient for the pursuer to establish the “least improbable” cause of the fire and to contend that the “least improbable” must be confirmed as the actual cause established on the balance of probabilities. While the court may elect to consider different possibilities in terms of their relative probability to each other, the ultimate decision for the court is always whether the cause put forward by the pursuer has been established on the balance of probabilities. It was open to the court to conclude that no cause has been established on the balance of probabilities even if the pursuer’s contention remains more likely than some alternative causes: *Rhesa Shipping Co SA v Edmunds (The Popi M)* [1985] 1 WLR 948.

[62] In *Milton Keynes BC v Nulty* [2013] 1 WLR 1183, the judge at first instance found that a fire at a Council recycling centre had been caused by a discarded cigarette. The trial judge had concluded that this cause was more likely than arcing from electrical wiring. On appeal, Toulson LJ in the Court of Appeal analysed the correct approach to identifying the likely cause of a fire from competing causes as follows:

“34. A case based on circumstantial evidence depends for its cogency on the combination of relevant circumstances and the likelihood or unlikelihood of coincidence. A party advancing it argues that the circumstances can only or most probably be accounted for by the explanation which it suggests. Consideration of such a case necessarily involves looking at the whole picture, including what gaps there are in the evidence, whether the individual factors relied upon are in themselves properly established, what factors may point away from the suggested explanation and what other explanation might fit the circumstances. As Lord Mance observed in *Datec Electronic Holdings Ltd v United Parcels Service Ltd* [2007] 1 WLR 1325, paras 48 and 50, there is an inherent risk that a systematic consideration of the possibilities could become a process of elimination ‘leading to no more than a conclusion regarding the least unlikely cause of loss’, which was the fault identified in *The Popi M*. So at the end of any such systematic analysis, the court has to stand back and ask itself the ultimate question whether it is satisfied that the suggested explanation is more likely than not to be true. The elimination of other possibilities

as more implausible may well lead to that conclusion, but that will be a conclusion of fact: there is no rule of law that it must do so. I do not read any of the statements in any of the other authorities to which we were referred as intending to suggest otherwise.”

[63] That line of authority had been followed in many recent Scottish cases including *Watters v The Master Golf Co Ltd* [2013] CSOH 126 per Lord Tyre at paragraphs 14 and 17; *Tayside Contracts v D Geddes (Contractors) Ltd* [2017] CSOH 108 per Lord Doherty at paragraph 67; and *MG Construction Ltd v AGD Equipment Ltd* [2020] CSOH 72 per Lord Ericht at paragraphs 132-133.

The evidence

[64] The pursuer’s averments are quite clear that the three devices, namely the two mobile phones and laptop, were “sitting on the arm” of the sofa. The evidence established that there were two sofas within the living room, one a two-seater sofa where the electrical devices were placed and which was significantly fire damaged. The evidence of the pursuer and her husband was not as unequivocal. Indeed, there was a significant difference. The pursuer confirmed that the two mobile phones were left charging on the arm of the sofa. When asked in chief where the laptop was charging, she qualified that she could “not remember 100%” but continued that it was “always one of two places” either sitting at the side of the sofa where the mobile phones were on the arm, or on the floor. The pursuer continued that “the laptop would be against the side of the chair at the side of the seat” or sometimes on the floor at the side of the sofa. On further questioning as to the position of the laptop, counsel for the pursuer queried whether one of the places that the laptop would be left charging was the arm of the sofa.

[65] The pursuer's husband confirmed in chief that the mobile phones were "on the arm of the couch" albeit he was only 90% certain. He said the laptop would "probably be beside" the mobile phones. It was not clear whether this was beside the mobile phones on the arm of the sofa or beside them on the seat of the sofa.

[66] The pursuer has not proved her factual case on Record. In short, the 3 items were not positioned on the arm of the sofa. This inevitably raises the question 'why should different positioning of one of those items matter?' It was submitted that this subtle difference was nevertheless critical in determining whether the pursuer had discharged the onus upon her to prove that the fire was caused by a defect within the LG manufactured by the defender.

[67] Mr Green provided opinion, based on an analysis of fire damage and experience of fire patterns, that the LG was the likely source of the fire. Mr Green reached that conclusion by an assessment of each device and querying whether and how it might be the source of the fire. He opined that the cause was a defect within the battery of the LG somehow giving rise to ignition within the battery. That view was very much influenced by an assessment of the damage to the three devices and analysis of how the fire would have spread, all upon the assumption that the devices were lying flat on the arm of the sofa. Mr Green's evidence was that this was how the items were positioned because of the very nature of the fire damage. No analysis on any alternative positioning of the three items was carried out by Mr Green.

[68] The pursuer had failed to do is explain how and why the LG would be the likely source when analysing fire damage, fire patterns and how fire spreads when the laptop was positioned on the seat of the sofa. In his evidence Mr Green said that his opinion would not be "hugely altered" when he was asked a general question about the difference the position of the laptop on the seat of the sofa might make. Little or no weight to this view should be

afforded. There was no discussion as to the different ways that the laptop might be positioned or orientated on the sofa. There was no analysis or explanation as to how the fire might and would spread and how that might impact the damage sustained by these devices and the sofa and why, in those circumstances, it is more likely than not that the source of the fire was a defect in the LG.

Defect and causation

[69] The LG was manufactured by the defender. The pursuer averred that “the fire was caused by an incendiary electrical fault within the battery of the LG” and that the LG was defective in terms of section 3 of the 1987 Act.

[70] Section 2 of the 1987 Act imposes liability upon, inter alia, the “producer of the product” where any damage is caused wholly or partly by a defect in a product. There was no dispute that the defender was the relevant producer of the LG.

[71] The pursuer set out to establish that there was a defect in the LG which initiated the fire, and which consequently led to the loss, injury and damage suffered by the pursuer. The pursuer led expert evidence from Mr Green. His analysis of the fire damage, how fire spreads and his conclusion that the LG was the likely cause of the fire, with that cause deriving from a defect within the LG phone focused solely on the factual scenario of the three electrical devices sitting beside one another on the arm of the sofa. The pursuer did not require to specify or identify with accuracy or precision the defect, but she must identify the existence of a defect in at least broad or general terms: *Ide*. No other factual scenario was analysed by Mr Green.

[72] What was not before the Court was any explanation as to fire patterns which would develop, as to how and what amount of damage might be sustained by each of these three

devices, all in the context of the positioning of the devices as established by the evidence. There was no discussion or opinion as to the role of the sofa and the damage it sustained, how that may have impacted the damage sustained by the three devices and how it may have influenced the spread of the fire. The sofa impliedly played little or no significant role on the hypothesis that the mobile phones and laptop were sitting flat on the arm of the sofa and beside one another. Whether or not that may be significant, depending on the positioning and orientation of the laptop on the seat of the sofa, has not been explored in evidence before the Court. That was understandable, as no such case was pled by the pursuer.

[73] What the pursuer purported to have proved as a likely source of the fire was based on a factual scenario that was not established by the evidence. The pursuer's case that there was a defect in the LG in terms of the 1987 Act was dependent upon expert analysis of how fire spreads and the damage it causes in very specific factual circumstances. The pursuer's expert has provided his opinion in line with the factual case pled on Record. Without that analysis applicable to the facts the evidence had established, there is no such crucial expert evidence available to assist the Court.

[74] The Court's ability to determine whether there was a defect in any of the three devices was consequently impossible. To that end, the Court does even reach the stage of being able to classify the potential sources, namely the two mobile phones and the laptop, into any of the categories of "impossible", "improbable" or "likely", unlike the court in *The Popi M* or in *Milton Keynes DC*. Accordingly, the Court cannot even identify the "least unlikely cause of loss" (*Datec Electronic* referred to in *Milton Keynes DC* above). It has not been presented with sufficient or indeed any evidence to allow it to embark upon an analysis of how the fire may have developed in the factual circumstances established in

evidence and which might lead the Court to the conclusion that there was in fact a likely cause.

[75] As the Court could not establish and differentiate between a cause for the fire for which the defender was responsible, namely a defect under the 1987 Act and mechanisms or causes for which they were not responsible, the pursuer's claim must necessarily fail.

The cases of *Watters* and *MG Construction* were examples of this. For all these reasons, the defender submitted that the pursuer's action must necessarily fail and that decree of absolvitor should be granted.

Note

[76] It is not in dispute that about 03:00 hours on 31 October 2018, a fire occurred within the living room of the pursuer's home. At the time, the pursuer was charging three devices: the LG, the Samsung and the laptop. The pursuer makes the following averments at condescendence 4 of the Record:

"The fire was caused by an incendiary electrical fault within the battery of the LG. The LG was being used normally, and as generally to be expected. The LG was a product produced, or in any event supplied by the defender. The pursuer's loss, injury and damage hereinafter condescended upon was caused, or materially contributed to, by the defender's breach of their statutory duties under Part 1 of the Consumer Protection Act 1987, sections 1, 2, and 3. The LG phone was defective. It was unfit and unsafe for its intended and reasonably foreseeable uses. It did not meet or perform to the expectations of persons generally, including the pursuer. It was not as safe as persons generally, including the pursuer were entitled to expect. Accordingly, the LG was defective in terms of section 3 of the 1987 Act."

[77] The pursuer offers to prove that the LG was the cause of the fire and that there was a defect in the LG in terms of section 3 of the Consumer Protection Act 1987.

[78] It is of note the defender chose to lead no evidence. In particular, the defender did not lead their expert witness, Mark Phillips, who carried out a joint examination of the

devices to destruction with Mr Green of the LG, the Samsung, and the laptop in September 2019. Counsel for the defender put forward various propositions to the pursuer's expert witness Mr Green, expanded upon in the written submissions. Mr Green addressed these propositions, which did not alter his opinion. No evidence was led by the defender in support of any of these propositions, some of which appeared to be speculative. In the absence of any evidence on behalf of the defender, the court had to be cautious as to what weight, if any, could be given to the defender's position. Nevertheless, the onus is on the pursuer to prove the fire was caused by an incendiary electrical fault within the battery of the LG; that there was a defect in the LG; and as a consequence, the defender was in breach of section 2 of the 1987 Act.

Evidence

[79] Mr Green was the only expert witness in this case. It was understandable the pursuer and her husband might not have a clear recollection where devices were being charged on or around the arm of the two-seater sofa on the night of 30/31 October 2018. As it happens, Mr Green attended the property a couple of days later, on 2 November 2018. Mr Green was able to carry out a visible inspection and examination of what had happened in the fire. Mr Green also spoke with the pursuer and her husband for their account of where the devices were in the living room when they retired to bed at around 23:00 hours on 30 October 2018.

[80] In his report dated 30 September 2019, referring to a preliminary report dated 9 November 2018 which was not lodged as a production, Mr Green records what he was told by the pursuer on 2 November 2018, two days after the fire occurred;

“At the time of the fire an Acer laptop, a Samsung Galaxy S7 mobile telephone and an LG K8 2017 mobile telephone were sitting on the western arm of the sofa and all of those items were being charged.”

[81] In evidence, the pursuer and her husband were doing their best to tell the truth, but their recollection of where the devices were located was unreliable. Their account given to Mr Green two days following the fire was, in my view, reliable. The LG, the Samsung and the laptop were sitting on the arm of the sofa, and all three devices were being charged at the time when the fire started.

Was the LG the cause of the fire?

[82] Mr Green carried out a physical examination of the devices on 2 November 2018. Subsequently, in September 2019, Mr Green and Mr Phillips carried out a joint examination and destructive testing of the devices.

[83] It was not suggested by the defender that the Samsung was the cause of the fire. The defender's position was that there were competing causes of the fire and that the pursuer had failed to prove the source of the fire was from the LG and not the laptop, when there had been no analysis of fire patterns and how fire spreads depending on the position and orientation of the laptop at the time of the fire.

Laptop

[84] In the opinion of Mr Green, the damage to the base of the laptop as compared with the top cover was consistent with the laptop sitting flat on the arm of the sofa at the time of the fire. Mr Green considered the position of the laptop in a flat and vertical position and resting on the inside arm of the sofa in reaching that conclusion. There is no contradictory evidence. The LG was significantly more damaged than either the Samsung or the laptop.

[85] As recorded in Mr Green's report of 30 September 2019:

"The direct fire damage that was sustained by the laptop was largely confined to one corner. The majority of the screen, the keyboard and the internal components were not fire damaged. It is of note that the overall fire damage was more severe to the top cover than to the base, which is consistent with the base of the laptop sitting on the sofa at the time of the fire.

...

Whilst part of the laptop battery was absent, the limited damage to the laptop is not suggestive of a fire originating at the battery and continuing to burn inside the laptop. In such circumstances, any fault at the battery that initiated a fire would need to have resulted from incandescence materials being ejected away from the laptop.

...

This would have had to penetrate two layers of solid plastic casing. There was no evidence of that."

[86] Mr Green concluded the physical evidence, including the pattern of damage, was more consistent with an external fire attack and not the source of the fire. I have accepted Mr Green's opinion. There was no contrary opinion.

Samsung

[87] On examination, the screen and the front of the Samsung were relatively undamaged, but the plastics panel at the rear had been consumed by the fire. The battery was slightly swollen. Inside of the battery there were thin layers of material, which comprised the positive and negative electrodes. These electrodes were not fire damaged. The damage was more consistent with the Samsung being attacked by the fire. On the balance of probabilities, the Samsung was not the source of the fire.

LG

[88] The LG was severely damaged by the fire. Most of the plastics from the body of the LG, the combustible parts, had been consumed by the fire. The battery was detached from

the LG and the battery was significantly swollen. There was a hole at one corner of the battery and all the layers of the positive and negative electrodes were burnt.

[89] The extent of the damage to the body of the LG and the damage to the internal parts was more consistent with burning inside the battery and the LG being the source of the fire. In the opinion of Mr Green, the fire was caused by an incendiary electrical fault within the battery of the LG.

[90] In the present case, the proper course is for the court to determine whether probable cause has been established and not a process of elimination of the improbable causes, leaving standing the least improbable cause.

[91] Mr Green's opinion was based on all the physical evidence he examined at the property shortly following the fire; the joint examination of the devices in 2019; and his very extensive experience in the investigation of house fires, including looking at patterns of damage in fires and the interpretation of how fires spread.

[92] On the evidence I have accepted, and in the absence of any contrary evidence, I find the opinion of Mr Green to be persuasive in respect of the nature and extent of the damage to all three devices and the source of the fire. I have rejected the various propositions put forward by the defender in respect of fire patterns and how fire spreads as not supported by any expert opinion or evidence. On the balance of probabilities, the source of the fire was the LG due to an incendiary electrical fault within the battery.

Defect

[93] The onus is on the pursuer to establish there was a defect in the LG in terms of section 3 of the 1987 Act. Both parties relied on the case of *Gee, supra*. As stated by Mrs Justice Andrews at paragraphs 99 and 100:

“99. In order to prove the defect, a claimant must establish what it is about the state or behaviour of the product or the risks that it posed that led it to fall below the level of safety that persons generally were entitled to expect at the time the product entered the market, although he need not prove the precise mechanism by which it came to fall below that yardstick. The fact that a product fails following normal use and in circumstances in which a standard product would not have failed may suffice for the Court to draw the inference that it is defective, see e.g. *Ide v ATB Sales Ltd and Another* [2008] EWCA 1208 (QB) Civ 424. Thus, for example, if an electrical appliance bursts into flames if it is left plugged in, or a fridge explodes, it plainly does not meet the standard of safety that persons generally are entitled to expect, and it is unnecessary for the claimant to establish what caused it to catch fire or explode.

100. However, there may be circumstances in which a greater degree of specificity about a feature or characteristic that is said to make the product unsafe is required in order to prove the requisite lack of safety. That may be the case if the injury or damage complained of could have arisen even if the product met the objective standard of safety set out in Section 3 of the Act, for example, in consequence of the manifestation of a known risk that could arise in normal use...”

[94] The defender manufactured the LG. The pursuer offered to prove there was a defect in the LG which caused the fire and that the fire was caused by an incendiary electrical fault within the battery. There is no requirement to specify or identify with accuracy or precision the defect in the product.

[95] In Mr Green’s opinion, there was probably a short circuit from the positive and negative electrode touching, which ignited heat and in turn ignited the combustible parts of the battery causing the fire. I have accepted that opinion.

[96] At the time the fire started, the LG was in normal use, being charged by a suitable charger, and in circumstances in which a standard product would not have failed. The court was entitled to draw an inference that the LG was defective. The LG did not meet the standard of safety that persons generally are entitled to expect.

[97] Accordingly, I have concluded there was a defect in the LG in terms of section 3(1) of the 1987 Act and the pursuer has established a breach of section 2 of the 1987 Act by the defender, on the balance of probabilities.

Quantum

[98] Parties agreed solatium at £3,500 inclusive of interest to the date of proof and the pursuer's subrogated loss claim at £95,385.77. Interest on the subrogated loss claim is not agreed. There is also a claim for loss of earnings and recoverable sick pay which is disputed.

[99] The pursuer sustained injury as a result of the fire and was absent from work. She incurred a loss of earnings, see finding in fact [10].

[100] The pursuer was contractually obliged to repay sick pay to her employer, North Lanarkshire Council, see finding in fact [11].

Interest on the subrogated loss claim

[101] There was a series of graduated payments made by the insurers, but it is unclear from the productions precisely what payments were made and when. The final report from Ian Lawson, the Major Loss Adjuster for Sedgwick International UK, assigned to deal with the claim was dated 4 February 2020.

[102] The court has a discretion in respect of interest. In the circumstances of this case, I have decided it is reasonable to address interest in the following way:

- 25% of the claim (£23,846.44) at 8% from 31 October 2018 to 4 February 2020 is £2,404.57.
- 75% of the claim (71,539.33) at 4% from 31 October 2018 to 4 February 2020 is £3,606.38.
- 100% of the claim (£95,385.75) at 8% from 5 February 2020 to 18 July 2025 is £41,587.54.

Accordingly, the total interest to the date of decree, 18 July 2025, is £47,598.49.

Summary of Damages claims

a. Solatium

[103] £3,500 inclusive of interest to 31 March 2025 (conclusion of proof). Interest from 1 April 2025 to 18 July 2025 is £83.16, a total of £3,583.16.

b. Loss of earnings

[104] The pursuer incurred a loss of earnings of £389.16. Interest at 8% per annum from 31 October 2018 to 18 July 2025 is £278.20, a total of £667.36.

c. Recoverable sick pay

[105] The repayable sick pay is £2,261.48.

d. Subrogated loss claim

[106] £95,385.77 and interest to 18 July 2025 £47,598.49, total £142, 984.26.

Decision

[107] I grant the pursuer's unopposed motion to increase the sum sued for to £160,000.

[108] On the balance of probabilities, the pursuer has proved that the fire at 10 Forge Drive, Coatbridge on 31 October 2018 was caused by the LG K8 (2017) mobile phone supplied by the defender, that there was a defect in LG mobile phone in terms of section 3(1) of the Consumer Protection Act 1987 ("1987 Act"), and that the pursuer has established liability against the defender for a breach of section 2 of the 1987 Act.

[109] On the balance of probabilities, the pursuer has proved she sustained injury as a result of the fire on 31 October 2018, and that she was absent from work because of that injury.

[110] I grant decree against the defender in favour of the pursuer in the sum of £149,496.26 with interest thereon at the rate of 8% per annum from 18 July 2025.

[111] I certify: (a) Darren Green, Associate Forensic Investigator, Burgoynes, Consulting Scientists and Engineers, Glasgow; (b) Dr Ravdip Bumrah, General Practitioner; and (c) Dr Fraser Morrison, Consultant Clinical Psychologist, as skilled persons.

[112] I sanction the proceedings as suitable for the employment of junior counsel.

[113] I reserve all questions of expenses. The sheriff clerk will fix a hearing on expenses.