

SHERIFFDOM OF GLASGOW AND STRATHKELVIN AT GLASGOW

[2026] SC GLA 80

GLW-A551-22

JUDGMENT OF SHERIFF A F DEUTSCH

in the cause

FERGUS SMITH

Pursuer

against

UK INSURANCE COMPANY LIMITED

Defender

Act: Hovey

Alt: Laing

Glasgow 25 March 2026

The sheriff having resumed consideration of the cause finds the following facts to be admitted or proved:

1. On 15 November 2019 the pursuer's BMW 335D motor vehicle registration SG66 XMT was parked on Main Street, Rutherglen.
2. Ms Denise McBride the defender's insured driving a Renault Kadjar motor vehicle registration HY18 ZFH attempted to park on Main Street, Rutherglen.
3. There was contact between the two vehicles.
4. The contact was a light glancing blow to the offside corner of the BMW by the nearside towards the rear of the Renault.

5. In consequence of the accident, the BMW sustained superficial damage to the front bumper and light scratching to one of the headlights.
6. The damage to the BMW could have been satisfactorily repaired without replacement of the bumper or the headlight.
7. The accident caused no damage to the front tyres of the BMW.
8. A reasonable period for repairs on the BMW to have been carried out would have been two days.
9. The cost of repairs to the BMW ought to have been in the region £650-£750 plus VAT.
10. The pursuer did not require to hire a replacement vehicle.
11. The pursuer was not inconvenienced by reason of the need to have his vehicle repaired.
12. On 11 December 2019 Irvine Martin Ltd prepared a desktop report concerning the repairs proposed to be carried out on the BMW by Foz Sports Ltd and at the same time issued an invoice to the pursuer's solicitors in the sum of £120.
13. On 21 December 2019 Foz sports Ltd issued an invoice to the pursuer's solicitors for work carried out to the BMW in the sum of £4366.28.
14. From 18 November to 21 December 2019 the pursuer was provided with the hire of a Mercedes vehicle by FW Vehicle Solutions Ltd. On 16 January 2020 FW Vehicle Solutions Ltd issued an invoice to the pursuer care of his solicitors in the sum of £7099.20.
15. Following upon the issue of the three invoices no demand for payment has ever been made to the pursuer and nor has he paid them.

Finds in fact and in law that the pursuer has suffered no loss or damage in consequence of the accident;

Accordingly sustains the defender's pleas in law and repels the pleas in law for the pursuer;

Therefore grants decree of absolvitor in favour of the defender and appoints the parties to be heard upon the matter of expenses at a diet to be hereinafter assigned.

Note

Procedural History

[1] This action was warranted on 9 June 2022. Notice of intention defender was lodged on 13 July 2022. An options hearing was originally assigned for 14 October 2022, however, that was discharged and a fresh options hearing assigned for 30 November 2022. On that later date the Court assigned 6 January 2023 as a continued options hearing. At the continued options hearing the parties were allowed a proof of their averments and 6 April 2023 was assigned as a proof diet. On 27 March 2023 on the motion of the pursuer the proof was discharged and the action sisted. This was to allow the pursuer to make further investigations and instruct an independent engineer, the engineer originally instructed having become ill. On 24 October 2024 on joint motion the sist was recalled and a fresh options hearing was assigned for 9 January 2025, at which hearing a proof was assigned to take place on 7 April 2025. On 4 April 2025, on the unopposed motion of the pursuer, the proof was discharged and a new diet assigned for 2 June 2025. On 21 May 2025, this time on the defender's unopposed motion the June proof was discharged and a further proof diet was assigned for 18 August 2025.

[2] On 1 July 2025 the court issued an interlocutor certifying Mr Alan Bathgate, Engineer, 19 Granite Walk, Penicuik, EH26 0GX as a skilled person; directing that such certification should have effect for the purposes of work done and expenses incurred from the date of citation; and sanctioning the cause as suitable for the employment of junior

counsel in terms of Section 108 of the Courts Reform (Scotland) Act 2014 and Rule 5.4(2)(d) of the Act of Sederunt (Taxation of Judicial Expenses Rules) 2019.

[3] On 18 August 2025, a mere 3 years and 2 months after the action was warranted, the case called before me for proof. Having heard evidence in part and not concluded, the court assigned 22 September 2025 as a continued diet. At the outset of the continued proof, I refused the pursuer's motions to lodge further productions and to lead an additional witness. The proof proceeded, however, evidence could not be concluded because of technical difficulties in relation to hearing the evidence of the pursuer's expert engineer remotely.

[4] I heard evidence in person from Mr Winton the pursuer's engineer on 9 February 2026, whereupon the pursuer's proof was closed. The parties' counsel made submissions upon the evidence after which I made avizandum.

The evidence

[5] Although at the outset of the proof the parties presented the court with a joint bundle of productions, the court was not provided with a joint minute agreeing matters in relation to the contents of that joint bundle. The key document in the bundle is a report upon the post-accident condition of the pursuer's vehicle which bears to have been prepared by Gary Martin of Irvine Martin Ltd, the notepaper of which company describes them to be automotive assessors. Neither Gary Martin nor any other person from within that organisation was called to give evidence. Be that as it may it was implicit in the evidence which the parties did lead from their witnesses that the Irvine Martin report is to be regarded as evidence in the cause at least to the extent that the photographs which it contains are photographs of the pursuer's vehicle taken in the period between the accident

and 9 December 2019. The parties' respective experts largely based their findings upon an examination of the photographs which the report contains. The report expressly states that it has been compiled from a desktop review of the information available relating to the claim. I have inferred from that statement that Mr Martin was not responsible for taking the photographs. Most probably the photographs were taken by a person connected with Foz Sports Ltd.

[6] The photographs as they appear in the joint bundle are very small scale, however, it was possible to view enlargements in court which the witnesses were able to speak to. Even in enlarged form the images are not particularly clear. The lack of clarity is most probably attributable to the photographs not having been taken by a motor engineer who, as Mr Bathgate explained, would have taken a different approach.

[7] Included in the joint bundle commencing at page 24 is a report by Simon Cartwright upon car hire rates in the period around the time of the accident. At the outset of the proof, I was told that the terms of the report were agreed.

[8] During the course of the proof, I heard evidence from the pursuer, Denise McBride the defender's insured, David Foster the managing director of Foz Sports Ltd the repairers of the pursuer's vehicle, Mr Winton, the motor engineer instructed on behalf of the pursuer and Mr Bathgate the defender's motor engineer. As I understood it, each of the experts in preparing their reports was able to view the photographs in an enlarged form.

The pursuer

[9] Mr Smith was a truly remarkable witness. Over the course of examination in chief, about matters where ordinarily he might have been expected to be able to assist the court, upon in excess of 10 occasions his response was to say that he did not remember or that he

could not recall. Asked whether after the collision he had looked around his car, he could not remember if he had done so. He could not recall the date of the accident. He could not remember when he instructed his solicitors. While he did remember having been provided with a replacement vehicle, he could not remember how that vehicle had come into his possession. He could not remember if, after the accident, he had taken his car home. His car had been returned to him after it had been repaired but he could not recall how that happened. When it came to cross-examination, Mr Smith's ability to remember did not improve. He could not remember if he had got out of his vehicle after the collision. He could not remember if he had spoken to Denise McBride.

[10] At one stage in his evidence the witness volunteered that prior to the proof he had not had any contact with his solicitors for a number of years and that his attendance had been procured by way of a witness citation. A matter which prompted the speculation that Mr Smith was not the true *dominus litis*. Asked whether following the accident he had contacted his insurers his response was that he had not, because he had not felt confident about contacting them. While that seemed to beg the question of whether he had actually been insured, appropriately, since he ought not to have been asked to incriminate himself, that was not followed up in cross.

[11] When in cross-examination it was put to the witness that the collision had been a glancing blow to the offside front bumper of his vehicle, his response was to say he did not know if that was the case, the car moved more and he felt it had been a heavy impact. That evidence was contradicted by Ms McBride's unchallenged account and nor does it sit well with the photographic evidence. As will be seen, I considered Ms McBride to be entirely credible and reliable. I also note that in the Irvine Martin report relied upon by the pursuer it is stated that his vehicle had suffered "light collision/impact damage."

[12] The pursuer's credibility and reliability were further undermined by the fact that, notwithstanding the terms of the letter from his solicitors addressed to Direct Line 6/5/1 of process (page 207 of the joint bundle) he could not recall instructing his solicitors to intimate a personal injury claim or a claim for physiotherapy costs.

David Foster

[13] This witness is the managing director of Foz Sports Ltd the company which carried out repairs to the pursuer's vehicle. In the course of his evidence, it emerged that Mr Foster owns 50% of the shareholding of FW Vehicle Solutions Ltd, the company which hired a replacement vehicle to the pursuer. When it was put to him that Scott Whyte, a solicitor with the pursuer's agents, was also a director of the hire company and a 50% shareholder, the witness accepted that this was the case. A consequence of the close relationship between the repairer and the hire company is that Mr Foster's evidence in relation to the length of any hire period cannot be considered as independent.

[14] During this witness' evidence it became clear that he had no direct knowledge or involvement in the assessment of the vehicle damage or in its repair. His efforts to justify the extent of the repairs and the length of time it took for the repairs to be completed after Foz had taken possession of the vehicle appeared entirely self-interested. His assertion that Irvine Mitchell had made a visual inspection of the vehicle was wholly unconvincing.

Denise McBride

[15] The defender's insured presented her testimony in a calm straightforward fashion. She gave evidence without evasion or any lack of recall. At such a distance in time from the accident she had no obvious skin in the game. Significantly the pursuer's counsel chose not

to cross-examine her. I considered her to be an entirely credible and reliable witness. Her evidence completely supported the defender's averment that the contact between the vehicles was a light, glancing blow. It was Ms McBride's evidence that having inspected the other vehicle she had not seen any damage to it although fairly she qualified that evidence with a recognition that it was evening and it had been dark.

Gary Winton

[16] As will be seen, I preferred the evidence of Mr Bathgate. In his report Mr Winton effectively accuses Mr Bathgate of bias, saying that "[his] report seems to aim at discrediting the initial findings, potentially to justify a reduction in repair costs." Ironically my impression of Mr Winton was that he was overly keen to support the conclusions contained in the Irvine Martin report. This was at its most obvious in his evidence about the need for replacement front tyres in consequence of the accident. While accepting that the prevalence of potholes in roads might account for bulges in the tyres he persisted with a highly speculative argument based on the photographs that the damage to the tyres was likely to have been caused by the accident, which was wholly unconvincing.

[17] Also serving to undermine Mr Winton's standing as a witness was a lack of consistency in his evidence about labour rates applying in 2019. At first, in examination in chief he said that the rates applying for a prestige vehicle would be in the range £60-£99 per hour, adding that at a BMW garage the charge would have been £120 per hour. Only a few questions later, he said that the range in 2019 would be £70-£80 per hour creating an impression that he was simply plucking figures out of the air.

[18] The central core of Mr Winton's evidence in relation to the replacement of the front bumper of the BMW was that the photographs showed it to have been split. That was not

apparent to the court even when the photographs were enlarged. Part of the rationale for the replacement was that sensors may have been concealed beneath the bumper. The witness sought to support this by vague reference to technical specifications which were not before the court. A further justification related to increasing the density of the bumper if a repair had been effected. Aside from this explanation being somewhat unconvincing, it was never put to Mr Bathgate and nor does it appear in Mr Winton's report.

Alan Bathgate

[19] This witness spoke to his report which commences at page 190 in the joint bundle. His evidence forms the basis of my findings in fact numbers 5) to 9) inclusive. I preferred the evidence of Mr Bathgate to that of Mr Winton, not merely because he is vastly more experienced, although that was an important consideration. This witness' interpretation of the photographs appeared to be in line with what the photographs, (unsatisfactory as they are) reveal. Moreover, his interpretation is far more consistent with the limited damage to be expected from the light contact between the vehicles described by Mrs McBride.

[20] I agreed with Mr Bathgate's observation that what Mr Foster and Mr Winton had pointed to in the photographs as damage was more likely to be the result of light reflections. I rejected the submission that Mr Bathgate's evidence in regard to labour rates should be discounted because the witness had not been actively involved in the repair of vehicles since 1987. It was clear to the court that Mr Bathgate was speaking from his knowledge of what labour rates repairers were charging in 2019.

Submissions on behalf of the pursuer

[21] Council opened his submissions by moving the court to grant decree in sum of £7351.73. He reminded the court that the action was concerned with a road traffic accident which had occurred on 15 November 2019. Liability had been admitted. The pursuer had four heads of claim: the cost of repairs to the pursuer's vehicle, hire charges in respect of a replacement vehicle, the cost of obtaining an engineer's report and general inconvenience. The question for the court was assessment of the reasonable amount of damages for each head of claim.

[22] There was no dispute that in consequence of the accident the pursuer's vehicle had sustained damage or that Irvine Martin had prepared an engineer's report in respect of that damage. The report is 5/1 of process. The pursuer's vehicle had been repaired by Foz Sports Ltd and their invoice formed 5/3 of process.

[23] The pursuer's primary position was that Foz Sports Ltd had repaired the pursuer's vehicle in line with the terms of the independent report: no more and no less. There might be justified criticism if Foz had gone beyond the work, which had been authorised by the independent engineer, but they had not and therefore the court should award the whole sum claimed by them.

[24] Counsel noted that the defender placed reliance on a desktop assessment conducted by Mr Bathgate who had concluded that the repair carried out was excessive and that damages should be assessed in a lower sum. It was important to recognise that the debt was owed to Foz and not to Irvine Martin. If criticism was due, then that should be directed at Irvine Martin and not to Foz who had done no more nor less than they had been authorised to do. Counsel sought to discourage the court from looking behind the invoice from Foz.

[25] Having regard to the invoice, counsel observed that the repair fell into three parts: bumper, headlight and tyres. With regard to the bumper there was no dispute that this was as shown in the photographs of the vehicle contained in the parties' joint bundle. Those photographs showed scuffing or fractures or splits: terms used by Mr Foster of Foz and by Mr Winton. Interpretation of the photographs was ultimately a task for the court, however, counsel submitted that if one zoomed in on the photographs 003 and 004 one could see lines indicating fractures or splits and not merely scuff marks. When Mr Foster interpreted the photographs, he did so upon the basis of his trade experience; that experience was live, it was current.

[26] Mr Foster had agreed that the bumper could have been repaired and repainted. While he accepted this was possible, he observed that at the time of the accident, the vehicle in question was a 3-year-old BMW with a reasonably high value attaching to it. In that context replacement was more appropriate. Moreover, if the vehicle had been taken to a BMW garage for repair, then they would have replaced the bumper. That view was corroborated by Mr Winton with reference to guidance issued by Thatcham Research. Replacing the bumper would have addressed concerns regarding damage to concealed sensors on the vehicle.

[27] Counsel noted that it had only been Mr Bathgate who had expressed the view that it would have been appropriate only to repair the bumper. He went on to observe that this witness had ceased to be directly involved in the repair of vehicles as long ago as 1987. That might serve to explain why the hourly rates advanced by Mr Bathgate appeared (to counsel at least) to be "excessively low." Had the option of repairing been adopted then the evidence of Mr Foster and Mr Winton in regard to the appropriate cost was to be preferred.

Mr Winton indicated a cost of between £2000-£2500.

[28] Turning to the matter of the headlight repair, it had been the pursuer's evidence that the headlight had not been scuffed prior to the accident. Referring to page 9 of the joint bundle part of 5/3 of process which bears to be an authorisation for the repair and which includes the commentary "I note the scuff to the headlight", counsel suggested that upon the matter of scuffing Mr Bathgate contradicted himself between cross-examination and re-examination. In the former he had accepted that what could be seen in the photographs was consistent with a contact mark on the headlight but in re-examination he stated he could not see anything. Any scuffing could be buffed out. Counsel submitted that it was not a question of how cheaply the repairs could be carried out; rather, the issue was whether the repairs were unreasonable or unnecessary. Mr Winton in his evidence and indicated why not replacing the headlight and bumper would be unreasonable.

[29] Moving on to discuss the replacement of the tyres, Counsel submitted that the photographs clearly showed a bulge in one of the front tyres. This was a premium vehicle which was only 3 years old. Why should the pursuer be left with an inferior repair which might risk the manufacturer's warranty. If there was to be any criticism it should be directed at Irvine Martin. In replacing the tires Foz had done no more and no less than they had been authorised to do.

[30] Addressing the cost of hire, counsel noted that the pursuer had entered into a contract on 18 November 2019 and that the hired vehicle had been returned on 21 December 2020. The pursuer incurred hire charges for 34 days to FW Vehicle Solutions Ltd, as per the invoice 5/5 of process, in the sum of £7099.20. This was a sum which the pursuer would require to settle. There had been no suggestion of fraud or misrepresentation or that the pursuer had hired a better car than the damaged vehicle. What featured was that the pursuer was pecunious and therefore he was not entitled to recover damages representing

full credit hire rates but only basic hire rates. The defender's production 6/1 of process, a report of Simon Cartwright in relation to hire rates had been agreed at the outset of the proof. For a hire of 34 days that report indicated that the lowest price which could be obtained was £2565.45. Counsel submitted that there was nothing on record concerning any failure to mitigate; nothing to the effect that the pursuer had stayed on hire longer than he should. The hire had ended on the day that the repair was completed.

[31] The defender's argument was that there had been a delay in the period 18 November 2019 until 9 December 2019. That later date was the date upon which Irvine Martin had received instructions to report on the proposed repairs. In his evidence Mr Foster had explained that Foz could not undertake a repair until they were authorised by Irvine Martin. Counsel submitted that if criticism was to be levelled then that begged the question – against whom. The pursuer had done nothing wrong. If the court was minded to hold that there had been a delay then that amounted to 21 days, which would still entitle the pursuer to recover 13 days of hire calculated at base hire rates, a sum of £1173.86.

[32] Concerning the next head of claim, the cost of the engineer's report, counsel had little to say beyond noting that an independent engineer's report would always have been necessary.

[33] In support of the claim for inconvenience counsel referred to Mr Foster's evidence in regard to the practice of his company. The pursuer must have gone to Alloa to collect the car and also to return it. The return journey between Glasgow and Alloa by road would take around 1 ½ hours. The organisation of having his vehicle repaired and obtaining a vehicle on hire would have required the pursuer to engage in conversations with solicitors, with Foz and with the hire company. (There was no evidence before the court in support of any of

this.) He had also experienced the inconvenience of attending court. Counsel assessed inconvenience at £300.

[34] Finally, counsel addressed what he described as the intervention letter from Direct Line Motor Claims addressed to the pursuer dated 19 November 2019. There was no evidence before the court that the letter had been sent or received. Had there been such evidence it would not be reasonable to consider any failure on the part the pursuer to accept the proposal as amounting to a failure to mitigate. In these observations counsel is correct.

[35] At the conclusion of his submissions counsel placed before the court a schedule setting out different calculations of damages which might be payable to the pursuer in different factual scenarios. I reproduce the schedule below:

	Sum sought	Defence
Repair cost	£4,366.28	Repairs undertaken were excessive
Hire cost	£2,565.45	Restricted to Basic Hire Rates
Engineer fee	£120.00	Admitted that engineer was instructed to examine the vehicle.
Inconvenience	£300.00	No reference to in defences
Total	£7,351.73	

	Pursuer seeks damages	If allowing bumper repair only	If allowing bumper repair only and reducing hire from 34 days to 13 days
Repair	£4,366.28	£840 - £2,500	£840 - £2,500
Hire	£2,565.45	£2,565.45	£1,173.86

Engineer	£120.00	£120.00	£120
Inconvenience	£300.00	£300.00	£300.00
Total	£7,351.73	£3,825.45 - £5,489.45	£2,433.86 - £4,093.86

Submissions on behalf of the defender

[36] In advance of the final day of proof at which evidence was taken from Mr Winton counsel for the defender had prepared outline written submissions. The submissions which counsel came to make at the end of the proof were broadly in line with that outline which I now reproduce in an appendix hereto. Counsel completed his submissions with observations about the credibility and reliability of Mr Winton, at the conclusion of which he invited the court to prefer Mr Bathgate's testimony over that of Mr Winton. I have followed that invitation broadly for the same reasons as advanced by counsel.

Discussion

Prescription

[37] In his submissions counsel for the defender argued that the pursuer has failed to prove loss because of the operation of the five-year prescriptive period. More than 5 years have elapsed since the date of each of the invoices founded upon by the pursuer in support of the various heads of loss: repair, vehicle inspection and cost of hire. If a defender wishes to rely upon prescription, a plea to that effect must be stated, which the court will normally either sustain or repel before proof is allowed (MacPhail paragraph 9.137). However, the defender is not arguing that the pursuer's case against it has prescribed. What is contended is that absent any evidence of the pursuer having paid the invoices or of any relevant

demand or admission of the debt having interrupted the running of the 5-year period, then on the face of it, whatever debts may have existed as represented by those invoices have now prescribed. That being so the pursuer has failed to prove any loss arising from the accident in respect of repair, vehicle inspection and cost of hire. I hold that argument to be correct.

Repair of the pursuer's vehicle

[38] There is no dispute that the accident involved some contact between the BMW and the Renault. Based upon the evidence of Ms McBride I have found that the contact was a light, glancing blow to the offside corner of the BMW by the nearside towards the rear of the Renault. Relying upon Mr Bathgate's evidence and the photographs which were before the court I concluded that the BMW sustained superficial damage to the front bumper and light scratching to one of the headlights. Again, preferring Mr Bathgate's evidence, I found that the damage to the BMW could have been satisfactorily repaired without replacement of the bumper or the headlight. There was no evidence before the court, which I could accept, that the front tyres of the BMW required to be replaced in consequence of the accident. I accepted Mr Bathgate's evidence in regard to how long it would take to repair the vehicle and the appropriate repair cost.

Vehicle hire costs

[39] The pursuer provided no evidence to the court about why it was that he had needed to hire a car. His evidence was that the BMW was capable of being driven following the accident and that the vehicle was used for social and domestic purposes. Admittedly the

period of hire was a lengthy one, however, given that I found that the vehicle could have been repaired within 2 days, responsibility for that cannot be laid at the defender's door.

[40] It was the pursuer's evidence that the BMW was collected from him and, although he could not remember how it was returned to him. Since he gave no evidence of having had to travel to Alloa, I infer that it was re-delivered to him. Against that background, if the vehicle had been repaired over a 2 day period, hire of a vehicle simply for social and domestic purposes for a person resident in Glasgow would not have been reasonable.

Cost of vehicle inspection

[41] While generally the cost of an independent report would be an allowable head of claim, absent any evidence from Gary Martin the author of the Irvine Martin report, I could not be satisfied as to the independence of the report, which, given its desktop nature, relying on photographs taken by the proposed repairer, might be thought to have been a rubberstamping exercise.

Inconvenience

[42] The pursuer gave no evidence which supported a claim for inconvenience.

Decision

[43] In light of my conclusion that the operation of prescription has expunged any liability the pursuer may have had for the invoices supporting his claim and in the absence of any evidence supporting his claim for inconvenience, I have found the pursuer to have suffered no loss in consequence of the accident. Had the position regarding prescription been otherwise, then I would have found the defenders to be liable only for those costs

which I have found would have been reasonably incurred in a repair of the BMW without removal of the bumper and headlight. Whether prescription had applied or not to the cost of hire I would not have made any award in that respect.

[44] In the circumstances I have sustained the defender's pleas in law, repelled those of the pursuer and granted decree of absolvitor. I have appointed the parties to be heard upon the matter of expenses at a future diet.

Appendix

Introduction

1. The Pursuer's case on Record is that, on 15 November 2019 he was sitting in his parked BMW motor vehicle when the Defender's insured driving a Renault Kadjar motor vehicle tried to park her own vehicle and collided with the front offside of his vehicle.

2. The Defender admits that the contact between the vehicles was caused by the fault and negligence of their insured, and that the Defenders are liable to the Pursuer to the same extent as their insured in terms of the European Communities (Rights Against Insurers) Regulations 2002.

3. Therefore, the issue before the court is the extent to which the Pursuer has established that he has suffered loss and damage as a result of the accident.

The witnesses at proof

4. The Defenders submit that the court should not accept the Pursuer as a reliable and credible witness in respect that he was an unimpressive witness both in relation to the manner in which he gave his evidence and the content of his evidence. Even with the passage of time, his recollection was remarkably dim to the extent that his position was lacking in credibility in relation to several aspects of his evidence.

5. For example, he stated that he could not remember if he had instructed his agents to pursue a personal injury claim nor one for physiotherapy notwithstanding the terms of the letter from Watermans No 6/5 of process and despite the Pursuer confirming that the personal details contained within the letter were accurate.

6. The Defenders submit that the evidence of David Forster did not advance the Pursuer's case. There was no evidence that he was involved in the inspection or repair of the Pursuer's vehicle and he could only speak in general terms regarding the documentation relied upon by the Pursuer.
7. The Defenders led their insured, Denise McBride. She was a credible and reliable witness, whose evidence was not challenged in cross-examination by the Pursuer.
8. The Defenders also led an independent skilled witness, Alan Bathgate. He should be accepted by the court as a reliable and credible expert witness.

The Pursuer's heads of claim

9. The Pursuer seeks damages for:-
 - (a) repair of the Pursuer's vehicle by Foz Sports Bodyshop at a cost of £4,366.28 inclusive of VAT
 - (b) inspection of the vehicle by Irvine Martin Automotive Assessors at a cost of £120 inclusive of VAT
 - (c) cost of a hire vehicle provided by FW Vehicle Solutions Ltd for a period of 34 days at a cost of £7099.20
 - (d) inconvenience suffered by him "contacting his insurers, completing and returning forms and arranging for his vehicle to be inspected and repaired" in the sum of £100.

Repair of vehicle

10. The Defender submits that the Pursuer has failed to prove that his vehicle was damaged as a result of the accident.

11. The Pursuer's evidence in relation to the extent of the impact caused by the collision was not credible nor reliable. In cross-examination the Pursuer was evasive when it was put to him that it was only a light glancing blow to the offside front bumper. He stated that the car moved more than a light blow but it felt like "quite a heavy impact". However, that is inconsistent with the content of his own report by Irvine Martin (No 5/1 of process) that the vehicle had suffered "light collision/impact damage".

12. In any event, the Pursuer could not speak to any damage having been caused to his vehicle as a result of the collision. The Pursuer's evidence was that he couldn't remember if he looked at his car after the accident. The height of the Pursuer's evidence regarding damage to his vehicle was in re-examination when (i) the photos at No 5/3/3 of process were put to him that there was a crack on the bumper to which he responded that he wouldn't see it if not pointed out to him, and (ii) when asked if he could recall any previous accidents, he stated that he could not.

13. The unchallenged evidence of Mrs McBride that her vehicle "touched" the Pursuer's vehicle should be accepted by the court. Furthermore, Mrs McBride spoke to looking at both vehicles at the time of the accident and not seeing any damage on either vehicle. In relation to her own vehicle, she gave evidence that the photograph at No 6/3/2 showed a "wee scrape" on her vehicle but, in answer to a question from the court she stated that she didn't know if she got it repaired because it was "so small".

14. The Pursuer did not lead the evidence of Gary Martin of Irvine Martin Ltd in respect of the nature and extent of his inspection of the vehicle; nor did he lead the evidence of any mechanic responsible for photographing and/or repairing the Pursuer's vehicle whilst in the custody of Foz Sports Ltd. In addition, the report of Irvine Martin clearly detailed repairs which could not be attributed to the accident, such as bulging damage to the nearside tyre.

15. The evidence of David Forster did not advance the Pursuer's case, as Mr Forster did not give evidence that he had been involved in the repair of the vehicle and could only speak in hindsight in relation to his interpretation of the documents produced from Foz Sports Ltd , FW Vehicle Solutions Ltd and Irvine Martin Ltd.

16. To the extent that the evidence of Mr Forster is said to have supported the Pursuer's claim, it should be discounted by the court. For example, the claim for the repair by Foz Sports Ltd to the vehicle No 5/3 of process is excessive at £4,366.28 in light of the evidence of Mr Bathgate.

17. In addition, the relationship between Foz Sports Ltd, FW Vehicle Solutions Ltd (of which Scott Whyte, a solicitor at the Pursuer's agents, Watermans, is a director and 50% shareholder) and the Pursuer's agents is one which the court should mark its disapproval, given (i) the excessive nature of the claims for repairs to the Pursuer's vehicle; (ii) the rental agreement for a hire vehicle at credit hire rates when the Pursuer is not pleading impecuniosity; and (iii) the lack of evidence as to reasons for the delay by Watermans in instructing Irvine Martin (who were not instructed until 9 December 2019).

18. In addition, no evidence was led, nor explanation provided, as to why FW Vehicle Solutions provided a hire vehicle to the Pursuer before his vehicle was inspected by Foz Sports Ltd.

19. Similarly, no explanation was provided as to why Mr Forster's employees at Foz Sports/ FW Vehicle Solutions made use of a document which was on Watermans headed notepaper (No 5/7 of process) to record the relevant dates of repairs, etc.

20. In addition, no evidence was led as to the extent to which the repair invoice from Foz Sports to the Pursuer had been paid or pursued, which is relevant given that it is dated 21 December 2019, a period of more than the five year prescriptive period.

21. In all the circumstances, the Pursuer has failed to lead sufficient evidence to establish that his vehicle was damaged as a result of the accident, and that he has suffered a loss in respect of the costs of repairs as a result. He has failed to lead sufficient evidence that the damage noted by Mr Bathgate to the offside front bumper was caused by the accident with the Defender's insured as opposed to at any other time (particularly bearing in mind the unrelated damage that had caused bulging to the tyres and rendered the vehicle unroadworthy).

22. Esto the court holds that the damage noted to the offside front bumper of the Pursuer's vehicle by Mr Bathgate from the photographs of the vehicle was caused by the accident, then any award of damages should be restricted to Mr Bathgate's estimate that the cost of the repair should have been in the region of £650-700 + VAT with the repair being undertaken over a 2 day period.

Inspection of vehicle

23. The Defenders submit that no award should be made for the Irvine Martin invoice dated 11/12/19 (No 5/2 of process) for inspection of the Pursuer's car by an engineer.

24. No evidence was led from Gary Martin of Irvine Martin regarding the nature and extent of his inspection, nor the reasonableness of their charges. This is particularly important when the report from Gary Martin records that it is a "desktop review of the information available relating to this claim" (No 5/1/2 of process) but the evidence from John Forster was that some of the photographs he thought had been taken by Mr Martin attending at his premises.

25. No evidence was led from Watermans regarding the instruction of the report, nor why the report had not been instructed until 9 December 2019. Furthermore, there is an

absence of evidence regarding the independence or need for the report, given that it appears on the face of it to be approving an estimate produced by the repairers Foz Sports Ltd.

26. Furthermore, no evidence was led from the Pursuer (or his agents) regarding the invoice nor his requirement to pay it (nor even whether it had already been paid), which is relevant given that the invoice is dated 11 December 2019, a period of more than the five year prescriptive period.

27. In all the circumstances, no award should be made for the cost of the inspection of the vehicle.

Cost of hire vehicle

28. The Defenders submit that no award should be made regarding the costs of a hire vehicle .

29. Firstly, the Pursuer has not established that it was reasonable for him to obtain a hire car. In examination-in-chief, the Pursuer's evidence was unsatisfactory regarding the hire vehicle. He could not remember agreeing to hire the vehicle, what the vehicle was, how he got the vehicle nor could he remember what he did with his own car after the accident nor whether he had driven it home. He remembered that his own car was collected but could not remember how it was returned to him.

30. The Pursuer spoke only to using his own vehicle for social and domestic purposes. In answer to a question from the court, he stated that his vehicle was driveable after the accident. He provided no evidence regarding the extent to which he needed a hire car whilst his vehicle was being repaired, nor did he provide any evidence regarding the nature and extent of the use to which he put the hire vehicle.

31. Secondly, the Pursuer has failed to take reasonable steps to mitigate his loss. He could not recollect who his insurers were, but gave evidence that he made no attempt to contact them after the accident and stated that he did not know if he was entitled to a courtesy car in terms of his own insurance policy.

32. Similarly, he stated that he had no recollection of receiving the letter from Direct Line dated 19 November 2019 (No 6/6/ of process) in which an offer of a supply of a free car was made. He accepted in examination in chief that he resided at the address in the letter at the time it was sent. He also stated that he had no recollection whether there was any discussion with Watermans as to whether to take up Direct Line's offer of a courtesy car.

33. Thirdly, the most significant damage to the Pursuer's vehicle that was noted in the inspection report by Irvine Martin, and the reason it was not roadworthy, was "due to bulge in tyre walls". The Pursuer's vehicle would have therefore required to have been repaired in any event as being unroadworthy.

34. Fourthly, the court requires to be satisfied that the Pursuer will require to make payment of sums due by him to FW Vehicle Solutions Ltd in respect of the use of the hire vehicle. The Pursuer gave evidence in cross-examination that he had received no demands for payment for the hire vehicle in terms of the rental agreement dated 18 November 2019 (No 5/4 of process). In addition, the invoice from FW Vehicle Solutions Ltd (No 5/5 of process) is dated 16 January 2020. A period of over 5 years has elapsed since the date of the invoice. Any claim by FW Vehicle Solutions Ltd against the Pursuer will therefore have prescribed.

35. Esto any award is made by the court in respect of hire charges, then it should be restricted to basic hire charges in respect that the Pursuer does not plead impecuniosity.

Accordingly, any awards made by the court should be based upon the 1 day rates and weekly rates provided by Mr Cartwright in his report No 6/1 of process at para 9.1.

36. Furthermore, the Defenders submit that any hire period should be restricted to the 2 days allowed by Mr Bathgate for the repairs to the bumper. On the basis of Enterprise Rent A Car rates of £99 per day, any award should therefore be restricted to £198. If the court considers that an extra day should be allowed for recovery of the vehicle from the repairing garage, then the award should be £297.

Inconvenience

37. The Pursuer's evidence was contrary to that on Record. He stated that he did not contact his insurers, contrary to his position on Record that he suffered inconvenience in doing so. His evidence was that he didn't feel confident dealing with insurers and instead had simply Googled "non-fault accident" and had thereafter contacted Watermans. He also did not give any evidence that he had been involved in "completing and returning forms and arranging for his vehicle to be inspected and repaired". With the exception of signing the Rental Agreement, he left the question of a hire vehicle and repair of his own vehicle to Watermans.,

38. In all the circumstances, no award should be made for "inconvenience" to the Pursuer..

Accordingly, in all the circumstances, the Defenders submit that the Pursuer has failed to establish his case that he suffered damage and loss as a result of the accident, and decree of absolvitor should be granted. Unless an ex tempore opinion is issued by the court, a hearing on expenses should be fixed.