SHERIFFDOM OF TAYSIDE CENTRAL AND FIFE AT PERTH

[2020] PER 46

PD26/19

JUDGMENT OF SHERIFF GILLIAN A WADE QC

in the cause

ER

Pursuer

against

CD

Defender

Pursuer: C Russell, Advocate
Defender: J Thomson, Advocate

Perth, 2 September 2020

The Sheriff having resumed consideration of the cause finds the following facts admitted or proved:-

Findings in fact

1. The pursuer is ER. At the time of the accident the pursuer was employed as a Senior Social Care Officer.

2. The defender is CD.

3. The harmful event in consequence of which the pursuer was said to have sustained loss, injury and damage occurred on the back road from Blackford to Braco. This court accordingly has jurisdiction to hear this claim against the defender in terms of the Civil Jurisdiction and Judgements Act 1982.

4. On or about 8 February 2019, the pursuer was driving an Audi A1 motor vehicle with registration E5MMS. The defender was driving a Ford Mondeo with registration ST55URY.

5. The pursuer was travelling home from work on the back road from Blackford to Braco. This is a single track road. It is a windy road. She had used this route several times previously and was familiar with the road.

6. The road was wet. It had been raining and although it was still daylight it was gloomy because of the weather conditions. The pursuer had her head lights on.

7. The road is a narrow, single track road with passing places. It is wide enough to accommodate two vehicles proceeding with reasonable care.

8. The pursuer was the sole occupant of her vehicle.

9. The pursuer was travelling at a slow speed due to the road and weather conditions. She estimated that she was travelling at about 15 miles per hour.

10. The defender's vehicle was travelling in the opposite direction on the same road.

11. The defender's partner was in the passenger seat of his vehicle and his step son was in the rear of his vehicle.

12. A collision between the two vehicles occurred.

13. The pursuer was negotiating a bend in the road. The defender was approaching the same bend from the opposite direction.

14. The defender had been travelling at about 25 miles per hour. On approaching the bend he slowed to 20 miles per hour.

15. On seeing the pursuer's vehicle approaching in the centre of the road the defender slowed down opposite a passing place just before he entered the corner.

16. The defender pulled his vehicle as close to the left verge as possible.

17. The defender brought his vehicle to a halt.

18. The pursuer came around the corner, in the opposite direction to the defender, without utilising the passing place. The passing place was to the pursuer's left. The pursuer failed to utilise the passing place and collided with the defender's vehicle.

19. The defender's vehicle was stationary at the point of impact.

20. The relative positions of the vehicles after the impact is as shown in photographs in 6/2/1 of process. In particular one photograph shows the pursuer standing a very short distance from her vehicle and a few feet away from the defender's vehicle. In this photograph the defender's vehicle is tight up against the verge.

21. This collage of photographs was taken by the defender's partner in the immediate aftermath of the incident.

22. The resultant positioning of the two vehicles is not consistent with the version of events advanced by the pursuer who maintained that after dragging her vehicle about 50 yards backwards from the point of impact, the defender then drove a further 50 yards on before stopping and alighting from his vehicle.

23. In the photograph the pursuer's vehicle can clearly be seen in the centre of the road and not far over to the left as she asserted.

24. The photographic evidence casts doubt on the credibility and reliability of the pursuer's account of the accident.

25. The photographic evidence is entirely consistent with the version of events given by the defender.

26. Immediately after the accident the defender's partner alighted the Mondeo and said to the pursuer that she had been on the wrong side of the road.

27. There was nothing more the defender could have done to avoid the collision. He was not at fault.

28. On the balance of probabilities the accident was caused by the pursuer's failure to keep far enough to the left or to use the passing place on the bend when passing the defender's stationary vehicle.

Finds in fact and law

1. The Pursuer not having suffered loss, injury and damage through the fault and negligence of the defender, decree of absolvitor should be pronounced.

2. The accident being caused by the sole fault of the Pursuer, decree of absolvitor ought to be granted.

Interlocutor

Therefore: -

Grants decree of absolvitor in favour of the defender together with expenses of the cause. On the defender's opposed motion, sanctions the employment of Junior Counsel for the entire proceedings in accordance with Rule 4.3 of the Act of Sederunt (Taxation & Judicial Expenses Rules) 2009. Allows an account thereof to be given in remits same to the Auditor of Court to tax and to report

NOTE

Preliminary matters and Minute of Amendment

[1] This matter called before me for proof on 1 September 2020.

[2] A previous proof diet had been discharged due to the Coronavirus pandemic. Accordingly the pre-trial meeting had taken place sometime previously in January 2020. Prior to the proof there had been a pre proof hearing on 5 August 2020 which was held by way of telephone conference. At that pre proof hearing I discussed with parties whether any other aspects of the case could be agreed in order to focus the issues for proof. I also asked whether certain heads of damage, such as the claim for hire charges, were going to form the subject of proof as it seemed to me there was scope for agreement.

[3] I was advised that as there were issues of credibility and reliability at stake this was not a case where affidavit evidence would be appropriate and that I would require to hear and see the witnesses in order to make an informed assessment of their evidence. I was advised that a joint minute would be produced narrowing the scope of the proof in relation to issues of *quantum.*

[4] I urged parties to liaise with the court between the pre proof hearing and the proof itself to ensure that the proceedings could be conducted with appropriate social distancing and Covid-19 compliant measures. Considerable steps were taken in this regard for which I am most grateful to court staff and parties.

[5] I reminded the pursuer's agent that there would require to be an up to date record lodged which would reflect the correct designation of the defender. This matter apart I believed the pleadings to be in their final format.

[6] It therefore came as something of a surprise to me in preparing for the proof to discover that a fairly substantial minute of amendment had been lodged on behalf of the

pursuer on 27 August 2020 which deleted the somewhat perfunctory averments of fact anent the collision in article 4 of condescendence and sought to substitute the following,

> "The pursuer was driving at a slow speed exiting a bend in the road. The defender was travelling in the opposite direction to the pursuer. The defender was driving at excessive speed. The defender was unable to stop or slow down due to the speed he was travelling. The defender struck the driver's side of the pursuer's vehicle. The defender failed to stop or slow down. The pursuer was unable to avoid the collision."

[7] It is clear that this introduced an allegation a) that the defender was travelling at speed b) that as a result of the speed at which he was travelling he was unable to stop or slow down c) that the pursuer seems to attribute the accident to the defender's failure to stop or slow down.

[8] In addition the minute of amendment sought to significantly amplify the averments anent the duty of care which was said to be owed to the pursuer. Article 6 of condescendence stated only that the claim was based on fault at common law. The defender, in answer, had called upon the pursuer to specify which duties of care it was alleged were breached. The call had not been answered.

[9] The Minute of Amendment sought to add the following specific averments of duties of care:-

> "The defender failed to drive with reasonable care. The defender failed to drive with due care and attention. The defender failed to take evasive action."

[10] On 31 August 2020 I received a note setting out the defender's opposition to the Minute of Amendment. This was helpful as it allowed me to consider matters in some detail in advance of the proof and saved court time which had been allocated and time tabled specifically for the safe attendance of witnesses.

[11] It was submitted that while the amendment to the defender's designation, which had been flagged as necessary at the pre proof hearing was not opposed the remainder of the minute was objected to.

[12] By way of background Mr Thomson, Advocate submitted that the action was served on the defender on 20 August 2019. Since 17 October 2019, the defence as presently pled, is that when faced with an oncoming vehicle on a single track road, the defender pulled over as far to the left as he could and halted; the pursuer failed to utilise a passing place, continued driving and collided with the defender's stationary vehicle.

[13] The pursuer did not respond to that defence in any way. There was no mention of speed, excessive or otherwise, on record and the defender therefore took no steps to address any such case against him.

[14] On 6 January 2020 there was a Pre-Trial Meeting at 13 Bath Street, Glasgow. The pursuer was represented by an experienced solicitor. As is appropriate, all issues were fully ventilated. On behalf of the defender it was pointed out (a) it was not clear in what way the pursuer was taking issue with the defences and, (b) independent of the defences it was not accepted that a legally relevant case had been pled by the pursuer. The pursuer's agent advised (a) the legal duties owed by the defender were "obvious", (b) that no further clarification would be offered and, (c) a Sheriff "would not have trouble with the pleadings". Despite this the pursuer's solicitor stated that instructions would be obtained from the pursuer on the terms of the pleadings. In oral submissions it was confirmed by the pursuer's counsel that a discussion of this nature had taken place.

[15] I was further advised that between 6 January 2020 and the pre proof hearing on 5 August 2020, the pursuer did not adjust the pleadings or lodge any explanatory production. In these circumstances, the defender's agents proceeded on the reasonable

assumption (a) that the only factual issue between the parties was whether the defender's vehicle was moving or stationary, (b) if the court reached a finding in fact that the defender's vehicle was stationary then no liability attached and, (c) if the court reached a finding in fact that the defender's vehicle was moving it then became a matter of legal submission as to whether this was in of itself enough to establish negligence (there being nothing else beyond the unquestioned fact there was a collision that the pursuer was offering to prove).

[16] On 24 August 2020, a consultation was held with the insured driver. There was no contradictory version of events to put to him. A minute of amendment was received late on the afternoon of 27 August 2020. Between 24 August and 27 August, a Joint Minute was being adjusted between the parties. During that time, no mention was made of any proposed amendment.

[17] It was submitted that the minute of amendment was not necessary, came too late, is prejudicial and should not be allowed. The issues had already been identified, the chronology was self-explanatory and with regard to the issue of prejudice it was submitted that, under normal circumstances, faced with an averment that the insured had been driving at excessive speed, the insurer would ask an expert to consider the layout of the road and comment on what might be considered an excessive speed but that given the time considerations such a course would not be available if the proof were to proceed on 1 September.

[18] The defender, it was submitted was an anxious individual with a young child and was keen to have matters resolved. Additionally considerable time and cost had been involved in making the necessary arrangements to accommodate the case and put in place social distancing measures. It was therefore not in the interests of justice that the proof be discharged.

[19] On the morning of the proof I was provided with a helpful joint minute of agreement dealing with *quantum.* This stated that *quantum* was agreed at £7,259.91 of which £1521.11 was attributed to repair costs and £2488.80 to hire charges. The joint minute of agreement included a proviso that any decree to follow thereon would not be enforced if the costs and hire charges fell due to be paid under any memorandum of understanding. Accordingly the proof was to be restricted to the question of liability.

[20] Counsel for the pursuer began by moving the minute of amendment. Although she acknowledged it did come late in the day her position was that it was in the interests of justice for me to exercise my discretion to allow the minute of amendment as the pursuer had mentioned the issue of excessive speed in her initial precognition. She could not explain why, this being the case, the averments about speed had not found their way into the pleadings sooner despite the discussions about the deficiencies in the pursuer's pleadings which had taken place at the pre proof hearing and despite the fact that the defender had placed specific calls on the pursuer in this regard from the outset.

[21] Her position was that in refusing the minute there would be injustice to the pursuer through what was in essence an error on the part of her representatives.

[22] In the course of her submissions there was also some mention of the defender having been at fault due to his road position. That line was not foreshadowed either in the existing pleadings or the minute of amendment and it caused me further concern that this might be a line pursued in evidence without there being any notice of the same.

[23] The defender in response adopted his written submissions and verbalised his concerns about the seemingly new ground of fault based on road positioning. His principal position was that the test for allowing the minute of amendment was not made out and it should be refused.

[24] I saw considerable merit in the defender's submissions. Never before had there been any allegation of excessive speed. There was no specification in the proposed amendment of the speed at which the defender was said to be travelling and no averment about what would constitute a safe speed. The defender would therefore be left at some considerable disadvantage. He had not had the opportunity to have an expert look at either the road layout or the vehicle to determine whether the damage was consistent with the collision having occurred at speed.

[25] I also saw some strength in the argument that the case as pled to date seemed to be based on the allegation that the very fact that there had been a collision on the bend inferred negligence on the defender's behalf if his vehicle had been moving. The defender had met that case on record and until now had been offered no contrary version of events.

[26] In coming to my decision I appreciated that I required to ensure that justice was done to both parties. I placed some weight on the fact that counsel for the defender had made strenuous efforts from the outset in both the pleadings and orally at the pre-trial meeting to try to establish exactly what the pursuer's position was in relation to the defence. His calls and his requests for further specification were met with what seemed to have been a steadfast refusal to provide further specification either in relation to the factual position or in relation to the alleged breaches of duty. I considered this a significant factor in relation to both the equities of allowing the minute of amendment and the overall conduct of the case by the pursuer when contrasted with the more candid approach of the defender and counsel representing him.

[27] While I did have considerable sympathy for counsel for the pursuer, who had come late to the action, and her valiant attempts to resolve what she correctly identified as a deficiency in the pleadings, I am required to look at the whole history of the case. It seemed

to me that counsel for the defender had from the outset done all he could to resolve what he saw as a difficulty in the pursuer's position but his criticisms had fallen on deaf ears until the morning of the proof. This is an aspect to which I will return when considering sanction for counsel.

[28] Accordingly I refused the minute of amendment as coming too late and being prejudicial to the defender.

[29] That being said, it will be obvious from the way in which matters developed and the way in which the evidence unfolded in the course of the proof that the refusal of the minute of the amendment and any deficiencies in the pleadings would have made no practical difference to the outcome of the case. In preferring the defender's evidence to that of the pursuer I would in any event have rejected any evidence that the defender was travelling at speed or that he was in the middle of the road. This is reflected in the findings in fact and further developed at paragraph [72] below. Accordingly even if there was some deficiency in the pleadings or agent error it had absolutely no effect on the outcome of the case.

[30] The case then proceeded to proof on the basis of the existing averments.

The evidence

[31] As a result of the Covid -19 pandemic prevalent at the time, the proof was conducted using a combination of social distancing and video links to the defender.

[32] As outlined above the case concerned the circumstances of a collision which took place on the back road between Blackford and Braco. The factual issues at stake were in short compass. In short all that the pursuer had averred on record was that there had been a collision between the two vehicles and that was a breach of the defender's unspecified common law duty of care.

[33] The defender in submissions identified the factual issues as

1. Whether the road would have been wide enough to accommodate two vehicles proceeding with due care and attention and utilising the available passing places.
2. The positioning of the vehicles at the point of impact.
3. Whether the defender had been stationary at the time of the collision.

The pursuer

[34] The pursuer gave evidence on her own behalf. She confirmed that she was a social care officer with Perth and Kinross Council and on the day of the accident had been travelling home from work on the Blackford to Braco road, at about 4.50pm. The road was wet as it had been raining and it was still daylight although the conditions were gloomy. She had her headlights on.

[35] She described the road as a single track road with passing places at the corners and said that she had taken that route 4 or 5 times previously.

[36] Under reference to a series of photographs 6/1 of process she was able to identify that the she had been travelling round a bend in the road which had a passing place to her left. It was her position that she had successfully negotiated the bend before the collision took place and was already beyond the passing place. She identified the precise locus of the accident by reference to a bush which was on the left hand side after the passing place.

[37] She maintained that she saw the Mondeo driven by the defender coming from about 50 yards away. She stated that she had proceeded on the left hand side of the road. She said she had applied her brakes to the extent that at the point of impact she was at a standstill but that the defender had not slowed down as he came towards her. The vehicles collided. She

said that she and the defender were alongside one another and she saw him mouth what she took to be an apology.

[38] On her account the defender's vehicle connected with hers and inflicted damage from the driver's door extending towards the rear of her vehicle and the alloy wheel. Her car was dragged backwards and she estimated that this was again about a distance of about 50 yards from the point of impact.

[39] Looking at photograph 5/4/3 and 5/4/4 of process she confirmed that they showed the view from the defender's perspective. At this point in her evidence she maintained that the defender's vehicle was right in the middle of the road.

[40] She described the defender's vehicle as having driven off for a distance of about 50 yards down the road to the position seen in photograph 6/2. She said that the defender parked and got out of his vehicle as did the passenger. She thought they were coming to see if she was alright but instead the passenger told her that she had been on the wrong side of the road.

[41] Insurance details were exchanged. She spoke to the damage to her vehicle and to having been shaken by the incident.

[42] She refuted the version of events provided by the defender and attributed the accident to the fact that the defender was travelling too fast despite the fact that this was not the case on record, the minute of amendment having been refused.

[43] In cross examination Mr Thomson focussed on the positioning of the vehicles after the incident as depicted in the collage of photographs taken by the defender's partner immediately after the incident.

[44] Under reference to the photograph showing her standing between the two vehicles she had to concede that her estimate that the defender had driven about 50 yards away from

the point at which the cars parted must have been wrong as that photograph clearly shows the two vehicles a few feet apart.

[45] She conceded that two medium to small cars could pass safely on the road if care was taken.

[46] On her account the defender's vehicle had dragged her car back about 50 yards or so and then the defender had driven off about another 50 yards. Faced with the photographic evidences she conceded she could not be sure of the distances. She did not concede that on the basis of that image she could have been further to the left.

The defender

[47] The defender gave his evidence by video link. He was a student who had recently gone back to his studies after a career as a chef and a classically trained violinist.

[48] He described how he was familiar with the road as he used it several times a week when visiting his children who resided with their mother in Kirkcaldy.

[49] On the day in question he had been travelling with his partner and his step son.

[50] He described the road as a single track road with high verges and passing places. He also said that there were bends in the road.

[51] In his account of the incident he said he had been travelling at about 25 miles an hour and slowed to about 20 miles per hour when he saw the pursuer's oncoming vehicle. Noting that the pursuer had passed the passing place and was not deviating from her course in the middle of the road he pulled in to the left and tried to mount the verge which he could not do because it was too high. He brought his vehicle to a stop. He described how the pursuer had continued on her course and her vehicle had dragged down the side of his vehicle causing damage to the driver side.

[52] The defender described how the pursuer put both hands in the air and gestured to him as if to say "what is going on" as the vehicles were passing.

[53] He was very clear that the pursuer was in the centre of the road and explained that if there had been a white line down the middle of the road she would have been across it.

[54] Under reference to the photographs he explained that these had been taken by his partner at the time because they were inexperienced in insurance claims and that they wanted to show the relative positions of the vehicles. He was adamant that the position of the vehicles in the photograph 6/2 was the position at the point of impact and that he had not moved his car thereafter.

[55] The defender was cross examined but was not undermined in his account. He was questioned at length about the damage to the passenger side of his vehicle and was unable to say for certain whether that had been as a result of the accident, explaining that the significant damage had been to the front of his vehicle. He explained that he had taken the photographs of the passenger side to show that the vehicle was dirty from trying to mount the verge and he was not particularly concerned about the damage to it. It was in any event a second hand car.

[56] He denied having apologised to the pursuer at the time and said he had been puzzled by the gesture which the pursuer made to him.

Submissions

[57] The submissions were in short compass and focussed on the facts. The pursuer's counsel invited me to prefer the evidence of the pursuer herself which she said was clear, credible and reliable. She conceded that her assessment of the distances involved was unclear and that she was not reliable in that regard.

[58] Otherwise she pointed to the joint minute agreeing quantum and sought interest and expenses as craved.

[59] The defender had provided written submissions which underlined that the burden of proof lay with the pursuer but submitted that overall the evidence did not support the pursuer's contention which was that she had been faced with a car which was travelling too fast for the road conditions and circumstances. Notwithstanding that was not the case on record the defender submitted that the evidence proved that the road was narrow but wide enough for two small or medium cars to pass safely.

[60] Under reference to photograph 6/2/4, which shows the Mondeo hard up against the bank and the close proximity of the cars to one another it was stated that a material change in the point of the vehicles post-accident was not likely.

[61] On the contrary the photograph supported the assertion of the defender that his vehicle had ben stationary at the point of impact.

[62] Mr Thomson submitted that it was not a question of credibility but rather one of reliability and that the pursuer had simply misremembered the events. He submitted that her failure to accurately assess distances supported this position although conceded that witnesses' ability to recall distance was notoriously bad.

Discussion and decision.

[63] I had little difficulty in preferring the account of the defender to that of the pursuer.

[64] In the first place the account provided by the pursuer would have involved her having seen the defender approaching from 50 yards away as she negotiated the bend but despite her alleged concerns about his speed and road position (neither of which were

complained about on record) she did not pull into the passing place or reverse back into it if, as she maintained, she had already travelled beyond it.

[65] According to her version she would then have collided with the pursuer's vehicle at relative speed and would have been dragged back some 50 yards before the cars disconnected. After that point her evidence was to the effect that the defender travelled a further 50 yards down the road before stopping and alighting his vehicle. On that hypothesis the defender would have had to travel some 100 yards from the point of impact.

[66] The photographs are not consistent with that version of events. The photograph in 6/2/ of process shows the rear of the pursuer's vehicle with the pursuer herself standing very close to it, to the point that she could have touched it. The defender's vehicle, far from being 50 yards away, is clearly only a few feet away from the rear of the Audi. As the defender said, you could not have driven a vehicle between the two cars.

[67] Accordingly I reject the account of the pursuer which suggests that the defender drove a significant distance after the accident as that is not supported by the photographs.

[68] Furthermore as was explored in evidence the position of the Audi on the road in the same photograph would suggest that the pursuer was positioned significantly further to the right than she remembered. The passing place is clearly visible to the right of that photograph and even if the pursuer is correct and her vehicle was dragged backwards for some distance after the collision I do not accept that it could have been for anything like 50 yards. Thus the passing place could and indeed should have been utilised by her in the face of an oncoming vehicle.

[69] I have also factored in the pursuer's evidence of the *de recenti* statement of the defender's partner which was made immediately after the collision and in which she accused the pursuer of being "on the wrong side of the road".

[70] Finally despite attempts to get him to do so the defender did not attribute any damage to the passenger side of the vehicle to the accident apart from the fact that his car may have sustained damage as he tried to mount the grass verge and he explained that he took the photographs to the bottom left of the collage on 6/2 to show that. This is consistent with the photographs which show vehicle indentation to the high verge, up against which the Mondeo is stopped.

[71] For these reasons I conclude that the pursuer's account is not reliable. I would accept the submission of the defender that she was not deliberately trying to mislead the court by lying but her account of being dragged back a considerable distance before the defender drove further down the road is simply not credible when faced with the photographic evidence. It may well be that, as the defender's counsel has submitted, there has been an element of post facto rationalisation but looking at the evidence objectively her version of events cannot possibly be accurate and the burden of proof is not discharged.

[72] For the avoidance of doubt I do accept that the defender's evidence was credible and reliable. Even if the pursuer had been successful in having the record amended to include a case of driving at excessive speed I would have rejected that case as a matter of fact. I have made a specific findings in fact that the defender was, as he stated, stationary at the point of impact. I have also found in fact that the defender had pulled his vehicle as far as possible into the left hand verge and had done all he could to avoid the collision. Accordingly the allowance or otherwise of the minute of amendment would have made no difference to the outcome of the case anent liability.

Sanction for the employment of junior counsel

[73] Perhaps the most difficult and more finely balanced issue for my determination in this case was the question of sanction for the employment of counsel.

[74] In moving his motion the defender's counsel conceded that the case was neither complex nor novel and there was no difficult point of law at issue. He did not submit that there was anything in the value of the cause which would take it out with the norm for the sheriff court.

[75] The test for granting such sanction is to be found in section 108 of the Courts Reform (Scotland) Act 2014. It provides:

> "108 Sanction for counsel in the sheriff court and Sheriff Appeal Court
>
> (1) This section applies in civil proceedings in the sheriff court or the Sheriff Appeal Court where the court is deciding, for the purposes of any relevant expenses rule, whether to sanction the employment of counsel by a party for the purposes of the proceedings.
>
> (2) The court must sanction the employment of counsel if the court considers, in all the circumstances of the case, that it is reasonable to do so.
>
> (3) In considering that matter, the court must have regard to—
>
> (a) whether the proceedings are such as to merit the employment of counsel, having particular regard to—
>
> (i) the difficulty or complexity, or likely difficulty or complexity, of the proceedings,
>
> (ii) the importance or value of any claim in the proceedings, and
>
> (b) the desirability of ensuring that no party gains an unfair advantage by virtue of the employment of counsel.
>
> (4) The court may have regard to such other matters as it considers appropriate.

[76] Accordingly sanction must be granted if in all the circumstances the court considers it reasonable having regard to the mandatory matters in subsection 3(a) and (b) and the

permissive or discretionary provisions of subsection (4). The issues of complexity, value and importance are therefore matters to which I must have regard but this is not exhaustive.

[77] In this case I have had regard to the fact that the defender instructed counsel from an early stage because, put bluntly, the defender himself was an anxious individual who had complained to his insurers and their lawyers about the lack of transparency of the pursuer. It appears that he simply could not understand the approach which was being taken. He had found himself as the defender in litigation but the pursuer was not prepared to engage with the defence which he had advanced or to specify what it is said he did wrongly. He was simply told that the very fact that there had been an accident was enough. In addition the child who had been a passenger in the car at the time of the accident was exhibiting signs of travel anxiety which was further heightening the tension between the defender and those involved in the handling of the case. It was against that background that counsel was involved.

[78] While it was argued, and is indeed accepted, that all cases are of importance to the individual litigants it did seem to me that the defender in this case was requiring additional support and management which can often best be achieved by the independence of counsel. It seemed to me on the basis of submissions that there were peculiarities related to the client's anxiety which brought the case into the category where, for management reasons, the employment of counsel could be deemed reasonable.

[79] Furthermore it seemed to me that the particular issue which was causing the anxiety was the lack of transparency on the part of the pursuer. Counsel for the defender had sought, both in the context of the pleadings and in oral discussions, as far back as January, to point out that the case on record was not relevant and it was unclear what issue was being taken with the defences.

[80] His pleas were met with a stone wall refusal to expand thus, one must assume contributing to the ongoing concerns of the defender. Accordingly, in my view despite the best efforts of counsel to manage the situation effectively, the conduct of the pursuer's agents contributed to the difficulties the defender was experiencing and gave further good reason for counsel to remain involved.

[81] It should further be borne in mind that at the proof diet both sides were represented by counsel experienced in personal injury litigation.

[82] Accordingly in the whole circumstances I am of the view that the instruction of junior counsel was reasonable having regard to the importance of the matter to Mr D, the anxiety induced by the proceedings and the exacerbation of this anxiety caused by the lack of candour on the part of the pursuer in failing to answer legitimate calls for further specification of his alleged wrongdoing.

[83] I shall therefore grant the defender's motion, sanction the cause as suitable for the employment of junior counsel and remit to the auditor of court for taxation of the account of expenses.