

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

[2019] SC EDIN 65

PD26/18

JUDGMENT OF SHERIFF R B WEIR QC

in the cause

HARRY BECKHAM

Pursuer

against

VALERIE McCABE

Defender

**Pursuer: Mutapi; Digby Brown LLP**  
**Defender: Peden; Plexus, Edinburgh**

EDINBURGH, 19 July 2019

The Sheriff, having resumed consideration of the cause:

**Finds in fact:**

1. That at about 1800 hours on 10 January 2017 the pursuer was driving his Volkswagen Polo, registration number SJ51 BNN, on Great Junction Street, Edinburgh, and heading in the direction of Leith Walk.
2. As the pursuer approached the junction between Great Junction Street and Bonnington Road the traffic lights, controlling that junction, were showing red.
3. In compliance with the red lights a short queue of traffic had formed at the junction. The first car in that queue of traffic was a Honda Jazz, registration number SL02 WCK, driven by Nathan Raman.

4. Immediately behind the Honda Jazz was a Toyota Yaris, registration number SL10 VPF, driven by Jane Stafford.
5. The pursuer brought his car to a halt behind the Toyota Yaris, meaning that, at that point, the Honda Jazz, Toyota Yaris and Volkswagen Polo were all stationary at the traffic lights. They were all adjacent to the Tesco Express Supermarket on Great Junction Street.
6. As the pursuer was approaching the traffic lights at the junction with Bonnington Road the defender was also driving along Great Junction Street, in the direction of Leith Walk, immediately behind the pursuer. She was driving a Ford Focus, registration number SM58 HHD.
7. After the pursuer had stopped at the traffic lights the defender approached the back of the queue which had formed. She failed to stop in time and allowed her Ford Focus to come into collision with the rear of the pursuer's Volkswagen Polo.
8. As a result of the collision impact, the Volkswagen Polo was shunted into the rear of the Toyota Yaris which was, in turn, shunted into the rear of the Honda Jazz, resulting in the Toyota Yaris suffering damage to both front and rear, and the Honda Jazz suffering damage to its rear.
9. The gap left between the Ford Focus and the Volkswagen Polo immediately after the accident was of the order of 15-20 cm.
10. Immediately following the accident both the pursuer and the defender left their vehicles, as did the drivers of the Toyota Yaris and the Honda Jazz.
11. When he got out of his car Nathan Raman observed the pursuer checking the rear of his Volkswagen Polo.
12. The pursuer told Jane Stafford, at the scene, that someone had run into the back of him.

13. The defender provided to the pursuer details of her name, mobile telephone number, and car registration number at the scene of the accident.

14. The police were not involved by any party in the aftermath of the accident.

Accordingly no collision investigation was undertaken by the police into the circumstances which gave rise to the accident.

15. Following the collision the pursuer drove his car to a friend's house nearby and then drove it to his home address. He did not drive it again.

16. At some point during the evening of 10 January 2017 the pursuer reported the circumstances of the accident in which he had been involved to his motor insurer, Direct Line. The terms of that discussion are accurately recorded in the transcript, no 5/9 of process. During the course of that telephone call the pursuer reported that his car had been struck from behind by another car, and provided details of the defender's telephone number and the registration plate of the Ford Focus. He also expressed his wish to recover losses arising as a consequence of the accident.

17. During the call the pursuer told the call handler that he thought that the car which had struck him had been travelling "about at least 25 mph" but that it had suffered "pretty much no damage".

18. As a result of the collision the Volkswagen Polo suffered damage to its rear tailgate and front bumper. The nature and extent of the damage thus sustained is set out in the Audatex Report, no 6/2 of process, and resulted in the car being written off for insurance purposes.

19. On 16 January 2017 the defender's Ford Focus was examined by Mr Gordon Taggart, an assessor instructed on behalf of the defender's motor insurers. The results of that assessment are contained in the Audatex Report, no 6/1 of process. Mr Taggart reported

*inter alia* (i) that the Ford Focus showed visible damage; (ii) that it had come into contact with another car, and (iii) that the damage was consistent with the claim circumstances reported.

20. The claim circumstances referred to by Mr Taggart related to the pursuer's claim which he had initially intimated to Direct Line on the evening of 10 January 2017.

21. As a result of the accident the pursuer suffered a whiplash type injury as set out in the medical report by Mr Matthew Moran, consultant orthopaedic surgeon, dated 31 March 2017, no 5/1 of process. That injury was consistent with the occurrence of a collision involving the defender's Ford Focus colliding with the pursuer's Volkswagen Polo from behind.

**Finds in fact and law:**

1. That the pursuer has suffered loss, injury and damage as a result of the fault of the defender in causing her Ford Focus, registration number SM58 HHD, to collide with the rear of his Volkswagen Polo, registration number SJ51 BNN, at the junction between Great Junction Street and Bonnington Road, both Edinburgh, shortly after 1800 hours on 10 January 2017.

**THEREFORE:**

- (i) Finds the defender liable to the pursuer in the agreed sum of £5,510 with interest at the rate of eight per cent a year from 15 May 2019 until payment;
- (ii) Reserves meantime the question of expenses, and appoints parties to be heard thereon at Edinburgh Sheriff Court on a date to be afterwards fixed.

**Note**

[1] Shortly after 1800 hours on 10 January 2017 a road traffic accident occurred on Great Junction Street. The accident occurred at the traffic lights which manage the junction between Great Junction Street and Bonnington Road. It is not disputed that the accident resulted in damage to three cars, a Volkswagen Polo (SJ51 BNN) being driven by the pursuer; a Toyota Yaris (SL10 VPF) being driven by Jane Stafford, and a Honda Jazz (SL02 WCK) being driven by Nathan Raman.

[2] At the time of the accident the Honda Jazz was at the front of a queue of traffic at the traffic lights just mentioned. The Toyota Yaris was immediately behind it. The pursuer's car was immediately behind the Toyota Yaris. The present action arises from the pursuer's claim that his vehicle was struck from behind by the Ford Focus (SM58 HHD), driven by the defender, while he was stationary in the traffic. It is the pursuer's position that the impact caused him to shunt into the back of the Toyota Yaris, causing it likewise to hit the Honda Jazz.

[3] The pursuer seeks damages (which are agreed between the parties in the sum of £5,510 inclusive of interest to the conclusion of the proof), for loss, injury and damage sustained as a result of the accident. The extent of his injuries, treatment and prognosis, are narrated in the medical report by Mr Matthew Moran, consultant orthopaedic surgeon, dated 31 March 2017 (no 5/1 of process), the terms of which were agreed by parties, in advance of the proof, to be the equivalent of Mr Moran's oral evidence.

[4] The defender denies that she collided with the pursuer's car. Accordingly, she disputes liability to pay any damages to the pursuer.

[5] The police were not involved in the immediate aftermath of the accident and there was no subsequent police investigation. Although each party called an expert witness to

give evidence, it was (as I understood them) acknowledged by both witnesses that the quality of the material available to them for analysis and comment was poor. The issue which the court has required to resolve is a narrow one which focusses on the question: did the defender drive into the rear of the pursuer's car? It was not disputed that liability would attach if the answer to that question was in the affirmative.

[6] During the pursuer's proof I heard evidence from (i) the pursuer himself, (ii) Gary Bateman, a vehicle damage assessor with L & I Eaton, (iii) Jane Stafford, (iv) Nathan Raman, and (v) Mr Peter Stott, an Automotive Consulting Engineer of Viewpoint Investigative Services. During the defender's proof I heard evidence from (i) the defender herself, and (ii) Mr Alan Bathgate, a Consulting Engineer of T & T Technical Services.

## **The evidence**

### *The pursuer*

[7] At about 1800 hours on 10 January 2017 the pursuer, 21, was driving his Volkswagen Polo in Great Junction Street, Leith. He had only passed his driving test in December 2016 and had acquired his car during that month.

[8] There were two cars in front of the pursuer. They were stopped at a red traffic light. The pursuer thought that this was the pedestrian crossing near to the Bed Store in Great Junction Street. The pursuer brought his car to a stop and engaged the handbrake. He was wearing a seatbelt at the time, and had been stopped for under a minute when his car was hit from behind by another car. The impact caused the pursuer's car to hit a Toyota Yaris which was positioned immediately in front of him.

[9] The pursuer described how everyone got out of their respective cars, whereupon someone suggested that they should move into the side of the road out of the way of other traffic. All of the cars moved to the side immediately outside the Tesco Express supermarket. The car behind the pursuer was a Ford Focus. The pursuer explained in evidence that the driver of that car (the defender) had tried to deny that she had hit the pursuer's car. The police were not involved and the parties involved exchanged names and phone numbers (although not insurance details). Thereafter, everyone went their separate ways.

[10] The pursuer's car remained driveable following the accident but it had suffered rear end damage. In particular, the pursuer was no longer able to shut the tailgate. Having visited a friend that evening the pursuer drove his car home. He did not drive it again. At some point during the evening, however, he made a telephone call to his insurers, Direct Line, in order to report the circumstances of the accident. An agreed transcript of that telephone call was made available to the court, as no 5/9 of process. It records that the pursuer reported to his insurers that "...I was stopped at a red light on Great Junction Street maybe three cars in front of me. And what happened was there was a car behind me and it crashed into me pretty fast and the impact went up three cars..." The pursuer identified the car behind as a Ford Focus and named the defender as the person who was driving. He also made it known that he thought the Ford Focus had been travelling "pretty fast because I got a big...sort of jerk thing...I would say it was at least 25 mph", but that it had "pretty much no damage".

[11] During the call to his insurers the pursuer also provided details about the other vehicles involved, namely the Honda Jazz being driven by Nathan Raman, and the Toyota Yaris being driven by Jane Stafford. He also referred to the damage to the rear of his car. In

an illuminating exchange, towards the end of the conversation, the claims handler asked the pursuer if he would be looking to make a claim for “these damages”. The pursuer’s response that he would was prefaced with a query as to whether he “would have no claims”. I formed the impression, listening to the recording of the conversation, that the pursuer did not really have any a clear understanding of what making a claim involved.

[12] At the end of the telephone call the pursuer confirmed to his insurers that he had only had a driving licence for about one month. Asked whether he was working, the pursuer initially stated that he was unemployed, but then mentioned being a carer for his sister.

[13] The pursuer confirmed in evidence that his car had sustained the damage summarised in the Audatex Report (no 6/2 of process).

[14] In cross-examination the pursuer denied that the defender’s car had come to a stop a few feet short of the rear of his car. He said that he had applied the handbrake of his car and that the gap between it and the defender’s car after the impact was really close - about 20 cm away. He did not think it would be possible for someone to walk between the two cars, nor did he recall people standing between them and talking after the incident.

### ***Gary Bateman***

[15] Mr Bateman is a vehicle damage assessor with the firm of vehicle repairers, L & I Eaton. Although he described his qualifications and experience in the field of vehicle damage assessment, Mr Bateman was called, as a factual witness, to speak to a video, no 5/6 of process, which illustrated the damage exhibited by the pursuer’s car after it was brought to the premises of L & I Eaton following the accident on Great Junction Street.

[16] It was apparent from Mr Bateman's evidence that the pursuer's car was in generally poor condition and that there were pre-existing scratches and dents (or "dings") which could not be attributable to the circumstances of the accident. Of note, however, was his identification of damage to the rear panel and bumper such that the tailgate would not shut. Mr Bateman considered that such damage was consistent with a rear end shunt. He considered it unlikely to be pre-existing damage simply on the basis that the tailgate was now incapable of closing.

[17] Salient points which arose in the cross-examination of this witness included (i) his offering the view (in answer to a direct question) that the rear damage was consistent with an impact speed of 25 mph; (ii) that, from an impact of about 12-15 mph, the rear and forward ends of a vehicle would begin crumpling; (iii) that the extent of damage was dependent on the type of impact, and (iv) that he was unable to offer a view as to whether the photographs of limited damage to the defender's Ford Focus (in the Audatex Report, no 6/1 of process) supported the notion of a 25 mph impact since the witness had not himself inspected the vehicle, or been present, at the material time.

*Jane Stafford*

[18] Ms Stafford, 61, was the driver of the Toyota Yaris. She confirmed that she was second in the line of cars which were stopped at the lights on the junction of Bonnington Road and Great Junction Street. It was about 1815 hours and, although dark, the road conditions were good and street lights were illuminated.

[19] Suddenly, and without warning, Ms Stafford felt and heard an impact from behind. Her car had been struck and it was immediately shunted into the car in front. She turned and looked over her shoulder. She observed the pursuer, who looked "rather startled". She

was also conscious of the driver in front looking back at her. She gesticulated in such a way as to communicate that she had been hit from behind too.

[20] Ms Stafford emerged from her vehicle and observed that she had been shunted into the car in front. She spoke to the pursuer who told her that someone had run into the back of him. A decision was taken to move all four cars apparently involved in the incident to the side of the road. Only then did Ms Stafford actually become aware of the defender's Ford Focus. Ms Stafford explained that there was no debris on the road and that her car had suffered only minor damage to the front and rear bumpers. She thought that she had taken the number plates for each of the cars in front of, and behind, her. She did not take any such details in respect of the defender's car.

[21] Ms Stafford confirmed that the incident occurred at the traffic lights managing the Bonnington Road junction, outside the Tesco Express, rather than the pedestrian crossing situated immediately to the north of that junction.

### *Nathan Raman*

[22] Mr Raman, 28, was the driver of the Honda Jazz. He was at the front of a line of traffic at the Bonnington Road/Great Junction Street junction, and was stationary at the material time. He said that he had been waiting for no more than 30 seconds when he heard a bang from behind. Mr Raman got out of his car and confronted a woman from the car behind. She had stated very quickly that someone had hit her from behind but that the driver of that car (the pursuer) had said that he had in turn been hit by the woman driving the car behind him.

[23] Mr Raman saw that the pursuer was walking towards the driver of the rearmost car (the defender) and assumed that he must have exited his car while he (the witness) and the

driver of the Yaris were speaking. He thought that he could remember the pursuer checking the back of his car. Mr Raman and the driver of the Yaris both headed towards the pursuer and the defender. The pursuer was at the back of his car talking to the defender. They all congregated between the Polo and the Focus, although they were standing to the side. The gap between the last two cars was perhaps 15-20 cm. Mr Raman was clear that the gap between the Polo and the Focus was not of the order of 6 feet (as had been suggested in evidence by the defender). Mr Raman stated that he, the driver of the Yaris, and the pursuer were all trying to explain to the defender that she had been the one who was at fault. However, "she seemed to be in denial about it".

[24] Mr Raman confirmed that his car had sustained the damage summarised in the Audatex Report (no 6/3 of process). The affected area was to be found around the boot, rear bumper and lights. Even although the repair costs were expected to be of the order of £1,518.50, the Honda Jazz was deemed beyond economical repair.

***Peter Stott***

[25] Mr Stott, an automotive consulting engineer, gave evidence under reference to his principal report, no 5/8 of process.

[26] Mr Stott's instructions required him to consider whether the damage sustained by the pursuer's car "could be attributed to, and is consistent with having occurred during the course of a collision with" the defender's car. He was then asked to provide an opinion "as to whether the collision circumstances as described by the pursuer appear to be correct or whether the defender's version of events is the more likely scenario". To that end he considered the two Audatex Reports pertaining to the Ford Focus and the Volkswagen Polo (nos 6/1 and 6/2 of process respectively), the total loss report pertaining to the Honda Jazz

(no 6/3 of process), and the photographs of the Toyota Yaris (no 6/4 of process). He also had sight of, and commented on, the reports by Mr Alan Bathgate dated 6 July and 7 November 2018 (nos 6/5 and 6/7 of process respectively).

[27] Mr Stott's report placed much emphasis on the opinion of Mr Gordon Taggart, who recorded, in the Audatex Report, no 6/1 of process, that the damage to the front of the defender's Ford Focus was consistent with the collision under review. Mr Stott made the fair point that the poor quality of the photographs in that report made it impossible to determine the extent of the damage. On the other hand, he was satisfied from observing the nature of the damage to the pursuer's car, as contained in the Audatex Report, no 6/2 of process, that the impact marks which were visible to the front of the Ford Focus indicated that there had indeed been a full force impact. He reached that conclusion after allowance was made for the relative weights of the two vehicles, the age disparity between them, the greater construction strength generally associated with the forward sections of vehicles, and the difference in expected energy absorption between the front of the Focus and the rear of the Polo. The fact that there had been damage to the rear of the Toyota Yaris demonstrated that the pursuer's car had moved forward during the incident. (In that respect, it is interesting to note Mr Stott's observation, at paragraph 4.24 of his report, that no consideration appeared to have been given by Mr Bathgate to the braked status of the pursuer's car - the pursuer's position was that it had been engaged).

[28] In all the circumstances, so far as the limited evidence was able to reveal, Mr Stott's opinion was that the Ford Focus probably had been involved in the collision on Great Junction Street. It was not appropriate to discount the involvement of the Ford Focus simply because it had suffered noticeably less damage than the Polo. Besides, the evidence

disclosed only light damage to the front of the Toyota Yaris yet it still appeared to have been able to cause damage to the rear of the Honda Jazz.

[29] In evidence, Mr Stott disagreed, at times colourfully, with the terms of Mr Bathgate's reports, and, in particular, his conclusion that the pattern and location of the damage to the two vehicles was inconsistent with a single impact from behind. Mr Bathgate's view appeared, in any event, to be in conflict with what the insurance assessor who examined the Ford Focus reported after a physical inspection of that vehicle. The view of the assessor that the damage to the front of the Ford Focus was consistent with "the collision under review" was a material factor in Mr Stott's own assessment that the damage to the parties' respective vehicles was consistent with a collision in which both were involved.

*Mr Matthew Moran, FRCS*

[30] Given the parties' agreement on the matter of quantum of damages it is unnecessary to dwell at length on the medical evidence as set out in Mr Moran's report dated 31 March 2017. It is, however, necessary to recall that parties agreed by joint minute that the terms of that report were to be treated as the equivalent of Mr Moran's oral evidence as to the nature and extent of the injuries sustained by the pursuer, together with his treatment and prognosis. That agreement requires me to proceed on the basis that it is accepted by the defender that the pursuer sustained a typical flexion/extension or whiplash type of injury on the occasion of the accident consistent with the mechanism of accident described by him (no 5/1 of process, pp 2 and 7).

*The defender*

[31] At about 1750 hours on 10 January 2017 the defender, 69, was travelling alone in her car, a Ford Focus, on Great Junction Street, bound for Leith Academy. She approached the junction with Bonnington Road which was controlled by traffic lights. There were vehicles in front of her and she slowed down. The defender then heard what she described as a bang from in front of her. She stopped and got out of her car. Her car was between 6 and 7 feet behind the car in front which she identified, by reference to the Audatex Report, no 6/2 of process, as the pursuer's car.

[32] The defender said that the driver in front, the pursuer, also got out of his car. She said that she asked him what had happened whereupon everyone got out of their cars and "all told me it was my fault". The defender said that she felt a bit intimidated. There were, she said, five people between her car and the pursuer's car.

[33] The defender denied that her car had suffered any damage and explained the marks and scratches shown in the Audatex Report, no 6/1 of process, as pre-existing wear and tear. Asked why she had then got out of her car, the defender explained that she had just wanted to see what had happened. She was asked by all of the drivers involved for details and gave over her telephone number. At one point all of the cars were pulled over to the side of the road to allow the traffic behind to clear.

[34] She heard about a claim by the pursuer through her insurers to whom she had not hitherto made any report.

[35] In cross-examination the defender maintained her denial that she had been involved in any collision with another vehicle. She was asked to comment on the averment in answer 4 that the pursuer had apologised to her. She replied that the pursuer had apologised; for what she did not know and she had wondered why. There had been

enough space between her car and the Polo for five people to stand in between. The insurance assessor, Mr Taggart, who subsequently examined her car, had told the defender that he did not think it had been the cause of any damage. She was unable, in these circumstances, to explain the annotation in the Audatex Report, no 6/1 of process, which recorded: "Is the damage consistent with claim circumstances reported, Yes".

[36] It requires to be mentioned that Mr Taggart was not led by either party in evidence. However, in order to explain what follows in this judgment, I must record that the Audatex Report, no 6/1 of process, was agreed by joint minute to be the equivalent of Mr Taggart's oral evidence as to the nature and extent of his assessment of the defender's car.

Accordingly, the evidence of Mr Taggart's opinion on a matter of central importance to the outcome of this case has been available to me in my assessment of the totality of the evidence led.

### *Alan Bathgate*

[37] Mr Bathgate, a consulting engineer instructed on behalf of the defender, gave evidence under reference to his principal report, no 6/5 of process, and a supplementary report, no 6/7 of process, in which he responded to the contents of the report prepared by Mr Peter Stott.

[38] Mr Bathgate's instructions required him to comment on whether the damage to the rear of the pursuer's car was consistent with having been struck by the front of the Ford Focus. Mr Bathgate also considered the two Audatex Reports pertaining to the Ford Focus and the Volkswagen Polo, the total loss report pertaining to the Honda Jazz, and the photographs of the Toyota Yaris. In preparing his supplementary report Mr Bathgate also

had sight of the disc recording Mr Bateman's examination of the Volkswagen Polo as well as Mr Stott's report.

[39] Having considered all of this material, Mr Bathgate reached completely the opposite conclusion to that of Mr Stott. His opinion was substantially based on the differing extent of visible damage as between the Ford Focus and the Volkswagen Polo. Describing a collision scenario, Mr Bathgate explained that the outer covers of the bumpers of both vehicles would absorb an initial impact at speeds of up to 5 mph. Above 5 mph the impact beams of both vehicles would progressively collapse up to 12 mph but nonetheless contain the force of the impact. Only above 12 mph would the force of the impact extend through to the bumper components and into the bodywork of the Volkswagen Polo. Such, however, was the lack of damage at the front of the Ford Focus that it could not possibly have been responsible for the extent of damage shown in the photographs of the Volkswagen Polo. The damage to the Ford Focus appeared to be cosmetic only. It was too light to have been caused by the kind of collision which could have resulted in the Volkswagen Polo being shunted into the rear of the Toyota Yaris. In any event, the damage to the Volkswagen Polo appeared to show an impact into the tailgate which was too high to have been caused by the Ford Focus. That damage was, therefore, inconsistent with the collision scenario described by the pursuer.

## **Submissions**

### *Pursuer*

[40] Miss Mutapi moved me to find liability established and to grant decree in the agreed sum of £5,510 with interest at the rate of 8 per cent a year from the final day of the proof until payment. Although she sought certification of both Mr Moran and Mr Stott as skilled

persons, Miss Mutapi also invited me to fix a hearing on expenses. I have adopted that course of action.

[41] Miss Mutapi submitted that the issue was a short one in which the central consideration was the credibility and reliability of the parties' respective witnesses. The question was whether the pursuer had proved that, on a balance of probabilities, the defender had collided with the rear of the pursuer's car. Her position was that I should prefer the evidence of the pursuer's witnesses and answer that question in the affirmative, and she invited me to make findings in fact consistent with that position. I was also asked to accept the evidence of Mr Stott over that of Mr Bathgate as providing a sound technical basis for the pursuer's case that such a collision had occurred, and have in mind (as he did) that the insurance assessor, Mr Taggart, had recorded in the Audatex Report, no 6/1 of process, that the damage to the front of the Ford Focus was consistent with the collision then under review.

[42] Miss Mutapi also challenged the credibility and reliability of the defender's evidence. She pointed to inconsistencies between her evidence and that of other factual witnesses, which included (i) the location of the alleged collision; (ii) her narrative of who was blaming whom at the scene; (iii) the distance between the Ford Focus and the Volkswagen Polo before they were moved to the side of Great Junction Street, and (iv) the agreed evidence contained in the Audatex Report by Mr Taggart just mentioned. In short, I should reject the defender's account of events and find liability established.

### *The defender*

[43] Conversely, Mr Peden invited me to reject the evidence of the pursuer as being, in part, incredible, and otherwise unreliable, and to hold that the defender's car had been

involved in no collision, or, at least, that the pursuer had not proved that it had been so involved.

[44] Mr Peden's criticisms of the pursuer's evidence included (i) his questionable recollection of the location of the incident; (ii) his extravagant suggestion that the collision speed of the Ford Focus had been of the order of 25 mph; (iii) his evidence that he had not even looked at the front of the Ford Focus after the collision; (iv) his faulty recollection, in chief, that the damage sustained by his car had been a dent in way of the registration plate, coupled with (v) his evidence that there had been no previous damage to the rear of the Volkswagen Polo, although there was ample evidence as to the poor pre-accident condition of that vehicle, and (vi) the inconsistency in the pursuer's account of whether or not he was employed at the time of the accident.

[45] Instead, Mr Peden invited me to prefer generally what he characterised as the clear and considered evidence of the defender. In doing so, he pointed out her unchallenged evidence that she had not reported the circumstances of the incident to her insurers for the simple reason that there had been nothing to report. Her actions, in tendering her mobile telephone number to the other parties involved, but seeking no insurance details from anyone, were not the sort of actions of someone who had been involved in a road traffic accident. Her car required no repairs and it was instructive that she did not involve the police at any time.

[46] Mr Peden also invited me to prefer the expert evidence of Mr Bathgate over that of Mr Stott. He was critical of the tone of Mr Stott's evidence relative to Mr Bathgate's reports, which he submitted was neither considered nor thoughtful. His opinion placed too much emphasis on the views of Mr Taggart, who had not been called to give evidence, and should be contrasted with the measured and technical approach of Mr Bathgate, who had clearly

given thought to the aspects of impact speed and relative damage, as between the two vehicles, which were missing from Mr Stott's more simplistic approach.

[47] In these circumstances, the other witness evidence taking matters no further one way or another, I should reject the pursuer's claim and grant decree of absolvitor.

### **Discussion**

[48] It follows from what I have already narrated that a considerable amount of evidence was led on the short point whether or not the defender caused her car to collide with the rear of the pursuer's car. It seemed to me to be otherwise clear on the evidence that the impact of the Volkswagen Polo into the rear of Ms Stafford's car was what caused her to collide with the rear of the Honda Jazz. Indeed that much was not disputed.

[49] Both parties led expert evidence in support of their respective positions. It was a striking feature of the evidence of the two expert witnesses that they felt able to come to conclusions, which were diametrically opposed, in circumstances where neither witness had been involved, at any level, in physically examining the vehicles most nearly concerned with the collision. As I understood the position, Mr Stott and Mr Bathgate both acknowledged that the material available to them was limited, and that the quality of the photographs evidencing damage to the Ford Focus in particular was poor. That much was quite obvious from my own examination of those photographs. During his evidence to the court Mr Stott criticised Mr Bathgate's conclusions in a manner which could hardly be described as measured. By way of example, he described as "blinker" the view he ascribed to Mr Bathgate to the effect that the relative degree of damage as between the Toyota Yaris and the Honda Jazz was not instructive in assessing whether the relatively limited damage in the photographs of the Ford Focus could account for the damage to the rear of the Volkswagen

Polo. I also noted Mr Stott as criticising Mr Bathgate for ignoring those parts of the Audatex Reports in process which were “not suited to his purposes”. What those purposes were, Mr Stott did not explain. The inference was, however, clear that Mr Stott considered that the court should reject Mr Bathgate’s evidence as being partial. It was not the kind of language I would normally associate with an expert giving objective evidence for the assistance of the court.

[50] That said, Mr Bathgate also reached conclusions which seemed to me to be elevated to a level of certainty which I found impossible to reconcile with the absence of any physical examination by him of the vehicles involved in this collision, never mind the absence of any collision investigation by the police at the time when the accident happened. By way of illustration it is necessary to look no further than the terms of paragraph 9.9 of his report, no 6/5 of process, and paragraph 4.22 of his supplementary report, no 6/7 of process. I commented at the time of submissions that Mr Bathgate appeared to have gone beyond his remit by expressing the view “on the balance of probabilities that the front of the Ford Focus has not collided with the rear of the Volkswagen Polo”.

[51] In these circumstances I had, frankly, considerable reservations about placing reliance on the evidence of either expert witness. The quality of the source material upon which they each commented was, in my view, too limited to enable me safely to prefer the evidence of one to the other. It was never formally put to Mr Bathgate in cross-examination that he could not rule out a collision scenario in which there was impact between the Ford Focus and the Volkswagen Polo. That was unfortunate because his answer may have been instructive. However, I did not read either of his reports as excluding such a possibility entirely (not least because of the way in which the passage just quoted was expressed), and - if I am wrong about that - I would have been reluctant to accept the position otherwise given

that Mr Bathgate - along with everyone else - was working off such poor quality photographs taken after the event. More importantly, neither expert heard the factual evidence of the witnesses. The exercise they performed was entirely theoretical. I have, ultimately, come to a view on the disposal of this case advised principally by that factual evidence.

[52] Leaving aside, for the moment, the parties themselves, I had no reservations about the credibility or reliability of the other factual witnesses who gave evidence. Each of them seemed to me to be doing their best to recollect accurately the events of 10 January 2017 and had no interest in doing otherwise. Mr Bateman's evidence was in a category of its own to the extent that he was asked to express certain views about impact damage which might be thought to have gone beyond his involvement in examining the pursuer's car at the premises of L & I Eaton and describing the damage thereby disclosed. Ultimately, however, those views (which I have already summarised above) were expressed, quite properly I may say, with sufficient caution that I was not prepared to ascribe to them any weight, one way or the other.

[53] I did not consider that Mr Peden's criticisms of the pursuer's evidence were such as to undermine his essential position that his car had been struck from behind. It did not seem to me to be material that the pursuer thought that the collision occurred at the nearby pedestrian crossing on Great Junction Street rather than the Bonnington Road junction. Nor did I regard it as significant that he happened to be unclear about his employment status at the time of the accident. His estimate of an impact speed of about 25 mph may well have been inaccurate - perhaps significantly so - but I did not think it appropriate to be too critical of what came across as little more than an inexperienced guesstimate about something that had happened unexpectedly, and over the witness's shoulder. If Mr Peden's criticism was

intended to show that the pursuer had grossly exaggerated the speed of the impact to make out that the defender was at fault I would only observe that, while the 25 mph estimate had been mentioned as early as the call to Direct Line on the evening of the accident, the pursuer had, in the same call, said that there had been “pretty much no damage” to the car which had hit him. I acknowledge that the pursuer gave evidence that there was no previous damage to the rear of his car when the evidence of Mr Bateman was clearly to the effect that there were scratches and “dings” visible on inspection. However, the pursuer’s response has to be viewed in the context of a discussion about the condition of his car following the accident on 10 January 2017. I have no note of it being put to the pursuer specifically that, prior to the accident, he had been driving a car with a tailgate which had been incapable of being closed. However, that would seem to be the logical consequence of Mr Bathgate’s conclusion that the Ford Focus could not have been the agent of the damage to the tailgate structures at the Volkswagen Polo’s rear (unless, of course, it was to be suggested that the damage to the tailgate occurred after the accident - but that was not put to the pursuer either, and his unchallenged evidence was that he had only driven the car immediately after the accident to complete his journey to see a friend, then return home, but not subsequently). That the pursuer was driving around that evening with an insecure tailgate before the accident I did not regard as a credible scenario. I certainly did not feel able to countenance such a possibility without the matter having been put directly to the pursuer for comment.

[54] Moreover, I considered it to be a significant point in favour of the essential credibility of the pursuer’s account that, at some point during the evening of 10 January 2017, he telephoned his insurers and gave an account of the incident broadly consistent with the account he gave in court. It was no less clear from his evidence, and also that of Ms Stafford and Mr Raman, that the pursuer was ascribing to the defender responsibility for the initial

collision in its immediate aftermath. Indeed, on getting out of the Honda Jazz, Mr Raman had a recollection of observing the pursuer talking to the defender and checking the rear of his car. Having observed the pursuer carefully, I did not have the impression of a witness who was being untruthful, and believed him when he said that his car had been struck from behind.

[55] Conversely, I considered it a matter of significance that the defender gave evidence that she came to a halt some 6 or 7 feet away from the rear of the Volkswagen Polo. Indeed, I noted her as offering the view that there had been enough space for five people to stand in between the two cars. That evidence was not only at odds with the evidence of the pursuer. It could not be reconciled with the evidence of both the pursuer and Mr Raman (which was given in an honest and straightforward manner) that the gap between the Ford Focus and the Volkswagen Polo was perhaps 15-20 cm, and that parties had congregated not behind but to the side of the Ford Focus and the Volkswagen Polo. Nor did I find convincing her explanation, given in chief, for getting out of her car at all. That explanation was that the defender had simply wanted to see what had happened. I have already recognised that the pursuer's estimate of the impact speed of the Ford Focus may have been unreliable. That opens up the scenario of a collision involving the Ford Focus which may not have seemed especially dramatic at the time. But, in the final analysis, I have not found it possible to reconcile the defender's evidence with the credible evidence of other witnesses in the case. For that reason I have preferred the pursuer's account of what took place.

[56] That leaves for consideration the evidence of the vehicle assessor, Mr Taggart, and Mr Moran, in so far as it is available for my consideration by reason of the terms of the two joint minutes between the parties. As I have already indicated, the parties agreed that the contents of the Audatex Report, no 6/1 of process, and the medical report, no 5/1 of process,

should be treated as the equivalent of the author's oral evidence relative to, respectively, (i) the nature and extent of Mr Taggart's assessment of the Ford Focus on 26 January 2017 (ie 16 days after the accident), and (ii) the nature and extent of the injuries sustained by the pursuer in the accident on 10 January 2017, and his treatment and prognosis.

[57] According to the defender, Mr Taggart had told her that he did not think her car had been the cause of any damage. Again, that evidence was at odds with the assessment apparently made by Mr Taggart in the Audatex Report (i) that the Ford Focus showed visible damage; (ii) that the Ford Focus had come into contact with another car, and (iii) that the damage was consistent with the claim circumstances reported. Since the defender had not herself made a claim on her insurance it is legitimate to infer that the "claim circumstances reported" related to a claim intimated on behalf of the pursuer. By that time, of course, he had already reported the circumstances of the accident to his insurers and indicated (in response to an inquiry by the call handler) that he would wish to recover losses arising from it. The fact that this assessment was not the subject of further exploration or challenge in the evidence is simply a product of the decision by parties to treat the report as the equivalent of Mr Taggart's oral evidence. Consistent with that approach, I have proceeded on the basis that the results of Mr Taggart's examination of the vehicle a little over 2 weeks after the accident were consistent with a narrative in which the Ford Focus did indeed collide with the pursuer's car from behind.

[58] The effect of the parties' agreement relative to medical report, no 5/1 of process, means that there is also unchallenged evidence before me that the pursuer sustained a typical whiplash type injury consistent with the circumstances of the accident as disclosed by him to, and narrated by, Mr Moran in that report (see p 2, paragraph 1; p 7 paragraphs 1 and 3). While that may not be determinative of what happened at the time of the accident it

lends, from a medical perspective, comfort for the view I have, in any event, reached that a collision occurred which involved the pursuer's car being struck from behind.

[59] For completeness, I should mention two further issues, if only to discount them. In the first place, and although touched on during the proof, the evidence left me unable to make any finding as to whether one or other of the parties tendered an apology in the immediate aftermath of the accident, and I have not done so. In the second place, the pursuer gave evidence that he had applied the handbrake when stopping at the Bonnington Road junction. That was his position in both chief and cross-examination. Taking a step back for the moment, the level of damage to the front of the Ford Focus (so far as discernible in the photographs), relative to the rear of the Volkswagen Polo, might be thought to give rise to questions as to whether the pursuer's evidence about engaging the handbrake can or should be accepted. However, although the defences contain averments about contributory negligence they are not focussed on that issue. No issue was joined between the parties in their pleadings about the use of a handbrake in the context of a collision of this kind. So, although touched on in the evidence of Mr Stott, I have not considered it appropriate to make any findings relative to the use of the handbrake in the circumstances of this case.

[60] For all of these reasons, however, I have reached the conclusion, on the balance of probabilities, that the Ford Focus, driven by the defender, did collide with the Volkswagen Polo which was stationary at traffic lights at the time, with the result that the pursuer suffered the loss, injury and damage for which he claims compensation. Moreover, in the circumstances as I have narrated them, I have not seen any justification for making a deduction from recoverable damages for contributory negligence.

**Decision**

[61] In the view have reached I have pronounced decree in the agreed sum of £5,510, together with judicial interest which Miss Mutapi invited me to apply from 15 May 2019 to the date of payment. I have also fixed a hearing on expenses, on a date to be afterwards fixed, lest there be any issue of controversy between the parties in that respect. If agreement can be reached on how expenses should be disposed of that hearing can simply be cancelled in consultation with the sheriff clerk.