

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

[2020] EDIN 43

PN995-19

JUDGMENT OF SHERIFF ROBERT D M FIFE

in the cause

STUART CONWAY

Pursuer

against

FIONA PATON

First Defender

and

HDI GLOBAL FE

Second Defender

**Pursuer: Macpherson, Advocate; Motorcycle Law Scotland, Edinburgh  
Defenders: Swanney, Advocate; Kennedys, Glasgow**

Edinburgh, 30 March 2020

[1] A proof in this action proceeded on 25, 26 and 27 February 2020. The pursuer claims damages following a road traffic accident on 5 October 2017. Liability was admitted. The proof was restricted to quantum.

[2] The sheriff, having resumed consideration of the cause, finds the following facts to be admitted or proved.

**Findings in fact**

[3] In October 2017, the pursuer was working as a modern apprentice mechanic with West Coast Harley Davidson (“West Coast H-D”) in Hillington, Glasgow. The pursuer was passionate about motorbikes and, in particular, Harley Davidson bikes. He owned a Harley Davidson bike. His life revolved around motorbikes (“bikes”).

[4] On 5 October 2017, the pursuer was injured in a road traffic accident when he was test-driving a customer’s 750cc Harley Davidson bike.

[5] As he was proceeding in Kelvin Avenue, Hillington a car driven by the first defender emerged from a minor road into his path. The pursuer collided with the rear passenger door of the car. The pursuer’s head went through the rear passenger window. The pursuer was thrown to the ground and he ended up with the bike on top of him.

[6] The pursuer suffered physical injuries: a whiplash-type injury to the neck for about 4 months and a soft tissue injury to the shoulder with pain for around 12 months.

[7] The pursuer sustained psychiatric injury. The pursuer had an Adjustment Disorder for about 3 to 5 months. The pursuer had a Specific Phobia relating to riding his own bike for about 5 months. The pursuer had a Specific Phobia relating to riding other bikes and, in particular, Harley Davidson bikes, which persists.

[8] The pursuer was taken on as a modern apprentice to become a motorcycle technician (“mechanic”) with West Coast H-D in around 2015. This was a job the pursuer loved. The pursuer expected to complete the apprenticeship around 6 months after leaving West Coast H-D, at about the end of 2018. At the time of the accident, the pursuer intended to complete the apprenticeship and work as a mechanic for West Coast H-D in progressing his career.

[9] As a result of the injuries sustained in the accident, the pursuer was unable to return to work as an apprentice in the workshop. The pursuer was moved to a front counter position selling parts and customising bikes for customers.

[10] The pursuer remained in that role until he resigned at the end of July 2018.

[11] The pursuer left his employment with West Coast H-D as a consequence of the accident, because of the ongoing Specific Phobia from riding other people's bikes.

[12] The pursuer went travelling round the world with his fiancée Ashley McAfee from August to December 2018.

[13] On 21 January 2019, the pursuer referred himself for Cognitive Behavioural Therapy ("CBT") through his GP because of the ongoing Specific Phobia. The pursuer had CBT sessions from July to October 2019. He found the sessions helpful, but the Specific Phobia is ongoing indefinitely.

[14] In April 2019, he was offered and accepted a temporary contract with Ride On Motorcycles in Glasgow cleaning and servicing motorbikes. He continues to work for Ride On Motorcycles.

[15] The pursuer obtained an HNC in photography after leaving school and before joining West Coast H-D. The pursuer now intends to pursue a career in photography. He has applied for college and, if accepted, will start in August 2020. The pursuer will study for between 2 and 3 years. It will be a number of years before he earns what he could have earned had he qualified as a mechanic.

[16] A qualified mechanic with West Coast H-D would earn between £20,000 and £25,000 gross a year and a commission, based on team performance, of around £3,000. Average net earnings for a qualified mechanic were agreed at £20,538.

**Findings in fact and in law**

[17] The pursuer, having suffered loss injury and damage due to the fault of the defenders, is entitled to reparation therefor.

[18] Finds the pursuer entitled to payment by the defenders in the sum of £61,252.27 to the date of decree.

[19] Reserves all questions of expenses. The Sheriff Clerk will arrange a hearing on expenses in due course.

**Note****Introduction**

[1] The court heard evidence from 6 witnesses. In terms of a Joint Minute, the medical report from Mr Brooksbank FRCS dated 30 April 2018, production 5/4; the employment reports from Gordon Cameron dated 24 March 2019, production 5/7, and Douglas Govan dated 30 October 2019, production 6/8, were agreed; and the evidence pack and surveillance reports prepared by the private investigators, productions 6/10, 6/11 and 6/12, were agreed.

**Witness summary****Stuart Conway**

[1] Mr Conway was aged 25 at the date of proof.

**Employment history as at 5 October 2017**

[2] After leaving school, Mr Conway studied photography at college for two years obtaining an HNC. While at college, he secured a part-time position in the clothing department for West Coast H-D as a motor clothes assistant. After he finished college in

2013, he was offered and accepted a job in the parts department. He then accepted the opportunity to become an apprentice technician (“mechanic”) in the workshop. It was a 3-year apprenticeship. The apprenticeship started in around 2015. The pursuer was passionate about being in the workshop and very hands-on. He was on day release one day a week at North Lanarkshire College, and assessed at work for the practical side. It was a dream job. He expected to complete the apprenticeship by around the end of 2018.

[3] Mr Conway intended to spend a long career with West Coast H-D. They had plans in due course to put him through the Harley Davidson University training programme for technicians in order to qualify as a master technician. That could take about 5 years.

#### **Accident 5 October 2017**

[4] Mr Conway was road testing a customer’s Harley Davidson 750cc bike. He was proceeding southeast on Kelvin Avenue, Hillington when a car driven by the first defender emerged from Huntly Road at some speed into his path. Mr Conway was travelling at about 30mph. A collision could not be avoided. The bike collided with the rear passenger door of the car. Mr Conway’s head went through the rear passenger window and he was thrown to the ground with the bike landing on top of him.

#### **Injuries**

[5] Mr Conway had problems with his shoulder and neck. He was cut and bruised. He was taken to hospital where he was checked over. The medical advice was to rest and not do any strenuous work.

[6] Mr Conway had x-rays taken of the neck and shoulder in 2017. He was referred to physiotherapy with complaints of pain and restriction of movement in the shoulder.

[7] He was off work for 1-2 weeks then on restricted, light duties, clerical work with no lifting.

[8] Mr Conway had a whiplash type neck pain for about 4 months and shoulder pain for around 12 months. He was on light duties for about a month. He had physiotherapy, which was very helpful. After he was discharged from physiotherapy, Mr Conway continued with the recommended exercises.

### **Post-accident at West Coast H-D**

[9] After the accident, Mr Conway never returned to working as an apprentice in the workshop. He tried to return to work in a restricted role but that did not work out. Initially it was the pain from his shoulder. Soon after returning to work, it was how he felt about riding bikes that was preventing him from working. Initially he was terrified about riding any bike. He did not realise he had fear until it came about.

[10] Any time he was on a bike, he felt very nervous, very anxious and was shaking. He felt as if he had to get away from the situation. He could no longer perform a major function of his job, road-testing bikes. His employers were very accommodating, putting him into another role in the dealership, which did not involve bike road testing. He was a customs specialist, ordering accessories for bikes to customise them. Mr Conway thought he could work through the issues but over time, he became very unhappy about that role. He thought he was never going to be able to do the role he wanted to do, as an apprentice mechanic. He could not get past getting on and riding bikes again.

[11] After he left the workshop, he was told if he did come back to the workshop, he could pick up the apprenticeship from where he left off.

[12] He left West Coast H-D at the end of July 2018 (27 July 2018). At that time, he expected to complete the apprenticeship about 6 months later, around the end of 2018.

### **Reasons for leaving West Coast H-D**

[13] Mr Conway was unhappy in the role as customs specialist. Every day he went to work feeling unhappy. It came to a point he had to make a decision for his own sanity.

[14] Mr Conway told his employers he had to get a fresh start. He could not stop thinking about it. He just needed to be away from bikes. His employers were shocked. But for the accident, Mr Conway did not want to work anywhere else.

### **Post West Coast H-D: travelling**

[15] After leaving West Coast H-D Mr Conway went travelling round the world with his fiancée Ashley from August to December 2018.

[16] Ashley had wanted to go travelling after graduating from university in 2016, and was quite persistent, but he did not as he had a dream job with West Coast H-D and wanted to pursue his career.

[17] As a result of the accident, and having decided to leave West Coast H-D, Mr Conway changed his mind about going travelling with Ashley.

### **Post travelling**

[18] After returning home in December 2018, the physical injuries had resolved and Mr Conway was looking for part-time work. He was feeling "slightly better". He went out on his own bike a couple of times, a very short distance.

[19] Mr Conway contacted his GP to seek medical help for his anxiety. He was referred to the Glasgow Mental Health Services. A telephone assessment was carried out on 20 February 2019, see letter 10 March 2019, production 5/18/4-6. He was feeling the same, just anxious about bikes and generally had recurring thoughts: "what if I died...."

[20] Mr Conway had a number of face-to-face CBT consultations, starting in July 2019 and the last of which was in about October 2019. These CBT sessions were helpful. At the end of the sessions Mr Conway was still not confident going back to ride bikes on the highway.

Note: There was an entry in the medical records, 5/18/1, that on 26 August 2019 he had been feeling better, slightly less anxious and had been on his bike. Yes, he was trying to go short distances.

### **Ride On Motorcycles**

[21] Mr Conway started working for Ride On Motorcycles in April 2019 on a temporary contract. He continued to work for Ride On Motorcycles as at February 2020.

[22] Mr Conway's job was to prepare bikes from the training school and general trading bikes to clean them for the showroom and to sell. It was not necessary for him to road test any customer bikes. The only bike riding was from the garage to the showroom just across the street, with an occasional trip to the riding school area about 1 mile away.

### **Photography course/career in photography**

[23] Mr Conway had now set his sights on a degree in photography at City of Glasgow College. Interviews were to take place at the end of March 2020 and, if accepted, the course would start in August 2020. The course would last between 2 and 3 years depending on

whether it was an HND or degree course. Mr Conway's intention was to complete the course and pursue a career in photography.

[24] Mr Conway hoped to continue working at Ride On Motorcycles for the next couple of months, before going to college. He believed the store might be closing before summer 2020.

#### **Evidence pack and surveillance reports (6/10, 6/11 and 6/12)**

[25] Mr Conway commented on various online posts:

- 30 September 2017: The manager at West Coast H-D agreed to let him bring in his own bike and work on his bike so that he did not have as much pressure.
- 22 April 2018: he rode his own bike in a large group to Tighnabruaich. It was the first time he had tried to go anywhere at all. He felt safe in a large group. It was quite difficult for him. It was the last trip he had made. While he had posted positive aspects of his life that was not how he felt in reality. He was just trying to put on a brave face. He was trying to convey that he was well.
- 30 May 2018: Photo of trip to Loch Lomond.  
Mr Conway did not go to Loch Lomond in 2018. A lot of photographs on Instagram were from an earlier time. Most of the time (9/10 times) the post was made after the photo was taken.
- 24 August 2019: The footage showed Mr Conway riding training bikes, not customers' bikes, across the street from one building to another. He was riding bikes mostly across the street. There were a couple of instances when he travelled maybe a mile to the yard where the Training School took place.

The bikes at Ride On Motorcycles were a lot smaller than at West Coast H-D, usually about 125cc. Mr Conway felt confident enough to ride those bikes across the street. If he felt confident enough, he would take a bike down to the training area, to see how he got on. He did not feel confident riding a larger bike, such as a Harley Davidson. Mr Conway's own bike was one of the smallest Harley Davidson bikes, about 20 years old, and very slow.

[26] Apart from the trip to Tighnabruaich Mr Conway could count on one hand the number of trips he had made on his bike. These trips would just be local, 1-2 miles just in town. He did still feel anxious. He felt a lot safer on his own bike because he had had the bike for so long.

### **Cross-examination**

#### **Evidence pack and surveillance reports (6/10, 6/11 and 6/12)**

[27] Mr Conway commented on various images:

- 18 December 2017 (6/10/41): Mr Conway was riding his bike into the back of a van following a re-build of the engine.
- 11 December 2017 (6/10/38): Mr Conway just rode the bike into the back of a van and took it home. He did not need to ride the bike to test performance.
- 22 April 2018 (6/10/55): The photo was taken on the journey to Tighnabruaich while on the bike. There was continuous recording.
- 30 May 2018 (6/10/59): The photo was taken near Loch Lomond but not in 2018, probably the previous summer 2017, so pre-accident.
- 30 December 2018 (6/10/108): Shows mirror fitted to bike.
- 13 November 2017 (6/10/34): Shows no mirror fitted to bike.

- 30 May 2018 (6/10/59): Shows mirror on bike. Mr Conway did put mirrors on the bike occasionally for longer drives. He decided to put on a mirror permanently, as shown in the post of 30 December 2018 (6/10/108).
- 30 December 2018 (6/10/108): The photo was taken near Faslane. It was likely taken in 2018. Mr Conway went by bike there and back to Faslane.
- 25 June 2018 (6/10/61): The photo was taken at Erskine, which was a few miles from Mr Conway's house.

[28] Mr Conway accepted when he was interviewed by Dr Harper on 5 July 2018 he did not tell her he had ridden his bike to and from Tighnabruaich. Where it was recorded in her report (page 6, second paragraph) that he had only ridden his own bike just around the corner that was not true.

[29] Mr Conway accepted he had not told anyone about the trip to Tighnabruaich in April 2018 (the employment consultants Mr Cameron and Mr Govan and the consultant psychiatrist Dr Livingston). Mr Conway's explanation was that he "completely forgot".

Note: It was apparent from medical reports, etc, that Mr Conway had not always been accurate about being able to ride any bikes.

### **Re-examination**

[30] It was after Mr Conway met with Dr Harper that he first realised he was struggling on his own bike. The furthest trip he made after that was to Helensburgh.

[31] Mr Conway only made two trips on his bike following the accident. The trip to Erskine was the first time he went out by himself. From his house, the distance was about 5 miles. Overall, he travelled no further than 5-10 miles from his house on a few occasions post-accident. Prior to the accident, he would ride 200 + miles a day.

[32] While working with Ride On Motorcycles perhaps four-five times in all he had ridden about a mile. He was able to ride one of the Ride On Motorcycles bikes, but he could not ride a Harley Davidson. The Harley Davidson bikes were a lot larger in weight. Most of the time when he was riding bikes for Ride On Motorcycles he was not even in gear. He would coast down the pavement. Putting on a helmet made him feel uneasy as well.

[33] When he met with Mr Govan (report 6/8) he accepted he had told Mr Govan he had only ridden his bike a total of about 100 miles post-accident. It was probably slightly higher than that but it was just a round figure, an estimate (contrasted with riding 200+ miles a day before the accident).

### **John Weir**

[34] Mr Weir had been the after sales manager at West Coast H-D since 2015. When he took up that position, Mr Conway was already working at West Coast H-D as a parts advisor, selling parts and accessories. Mr Conway wanted to become a technician (mechanic). An opportunity came up when there was a change of location and expansion. Mr Conway was taken on as a modern apprentice. He already had a great knowledge of the brand. He had a licence. He had his own Harley Davidson bike. He had worked on his own Harley Davidson and was technically minded.

[35] Prior to the accident in October 2017, he was a great employee and progressing well with the apprenticeship.

[36] Post the accident on 5 October 2017 Mr Weir said:

“He was shattered” “It obviously gave him a fright”.

[37] To his knowledge, Mr Conway did not go back into the workshop after the accident. He did not want to ride a bike. That was the main reason. Part of his job was to road test

bikes so that they were safe for customers. He did not want to do that anymore. It was a total transformation from someone who loved bikes and who rode bikes. The apprenticeship just stopped. If he had been able to return to the workshop, Mr Weir would have expected Mr Conway to complete the apprenticeship and to become a Harley Davidson technician.

### **Carole Hutchison**

[38] Mrs Hutchison was a director of Ride On Motorcycles in Hillington, Glasgow.

[39] Ride On Motorcycles had been in business for 43 years. Her husband Alistair Hutchison was the other director. The company bought and sold bikes. They did have a training business all under the one name. For the last 5 years, they had only traded in second-hand bikes.

[40] Mrs Hutchison did not know Mr Conway before he started. They needed someone to maintain and service the training bikes. They were all now Yamahas, mostly 125s, but there are some bigger bikes as well, 600cc.

[41] Mr Conway was recommended by one of the mechanics who knew him. He started in April 2019 and continued to work for the company. He was still on a temporary contract. He was offered another 6 months contract just before Christmas 2019 when one of the older mechanics retired.

[42] Mr Conway had been working continuously for the company since April 2019. He had only had paid holidays since he started in April 2019.

[43] Mr Conway was not required to ride any bikes apart from taking bikes from one side of the road to the other, two buildings in an industrial estate. He would not get out of first gear travelling across the road.

[44] Mrs Hutchison said she wished she had known Mr Conway a long time ago as she would have employed him a long time ago.

### **Ashley McAfee**

[45] Miss McAfee was a sales assistant for Zara in Glasgow City Centre. She was the fiancée of Mr Conway. They were engaged in January 2018.

[46] Ms McAfee graduated in fashion marketing at Glasgow Caledonian University in 2016. At the time, Mr Conway was working for West Coast H-D but she was not sure what stage as he had a few different roles. She knew he was really happy progressing in the store. Ms McAfee had no interest in Harley Davidson bikes.

[47] At the time of the accident in October 2017, Mr Conway was really happy doing the apprenticeship and wanted to be qualified. He planned to continue working for West Coast H-D after completing the apprenticeship.

[48] After the accident, Mr Conway was increasingly unhappy at work. He was not as confident at work. He was not as confident riding other people's bikes.

[49] Mr Conway was quite a private person. He did not find it easy to speak about his feelings. He had not completed the apprenticeship when he left West Coast H-D. He was generally more down and unhappy. He was usually happy and confident especially for something he loved, being bikes.

[50] Miss McAfee had always wanted to go travelling. Throughout university, she wanted to go travelling before she settled down to work. The perfect time to do that was once she graduated in 2016. By then she and Mr Conway had been together for 6 years. She asked him but he said "no" as he was happy at West Coast H-D.

[51] A few months before he left West Coast H-D Mr Conway was unhappy and wanted to leave. At that time, she again suggested going travelling and they went travelling together from August to December 2018.

### **Dr Alison Harper**

[52] Dr Harper was a chartered clinical psychologist who adopted as part of her evidence her report dated 12 July 2018, production 5/5. Approximately 80% of her working time was clinical:

“Provision of psychological therapy takes up approximately 80% of my working time and includes treatment of conditions such as depression, anxiety, post-traumatic stress disorder, complex grief responses, somatisation disorders, physical disability and traumatic brain injury”.

[53] Cognitive Behavioural Therapy (CBT) was the best evidenced-based treatment following traumatic incidents. After a traumatic incident, a person can have “what if...” thoughts. CBT challenges thinking patterns which are catastrophic in nature:

“You have to push yourself through...”

“For example, unless one gets back on a bike one never gets back on a bike: ‘it’s tough’ ‘a lot of people drop out’.”

[54] Dr Harper met with Mr Conway on 5 July 2018. As an overview, he seemed to be an under-reporter. He wanted to present like everyone else. He did not want to get stuck. He was psychologically adaptive rather than stuck.

[55] Mr Conway had significant trauma symptoms, as a result of the accident. He had symptoms of hyper-arousal, including a high startle response and hyperawareness of safety when driving. He had sleep problems as well. There were a lot of people who were fine then one assault tips them over and they cannot go back to work. Mr Conway had face

validity, which was consistent with what Dr Harper saw on a day-to-day basis where there was no compensation claim.

[56] Mr Conway loved motorcycling. Motorcycling was too much part of his life that he could not give this up, but probably in retrospect, there was avoidance by him. If anything, Mr Conway was underplaying his symptoms. He genuinely loved motorbikes and did not want to give them up. He could not see himself getting on other people's motorbikes that were less familiar. At the time, his fiancée was wanting to go travelling. Mr Conway decided: "We may as well do that now".

[57] Mr Conway's view was that life was short and he should make the most of it. He could not finish the apprenticeship at that point.

[58] Mr Conway had an Adjustment Disorder, which met the diagnostic criteria as defined by DSM-5 for about 3 months following the accident, that is, he was adjusting to a traumatic event. He had a terror of going back to work with motorcycles. Why he got better was by avoidance, which was not an adjustment disorder but a specific phobia:

"What if..."

[59] Mr Conway had a specific anxiety of being injured on a motorbike when in a collision with a car.

[60] Dr Harper prepared a supplementary report dated 19 January 2020, production 5/17. Dr Harper considered new information: the evidence pack, the surveillance reports and 2 reports from Dr Livingston.

[61] Dr Harper met with Mr Conway again on 18 January 2020. Dr Harper adopted the supplementary report as part of her evidence.

[62] Mr Conway did not mention the trip to Tighnabruaich in April 2018 at the first interview in July 2018. That did not alter her opinion. Mr Conway had given a genuine

account. He was not scared of motorbikes. He loved motorbikes. He was scared of being killed or seriously injured when riding a motorbike.

[63] The information about Mr Conway's employment with Ride On Motorcycles did not change her opinion.

### **Cross-examination**

[64] The biggest problem in Mr Conway's life at the time Dr Harper saw him in July 2018 was avoidance. Avoidance was a Specific Phobia disorder but it could be both an Adjustment Disorder and Specific Phobia, both playing a part. It was avoidance which caused him to leave his employment.

[65] Going travelling around the world with his fiancée was a flexible solution and avoidance: "I will see when I get back".

[66] Mr Conway was trying to get back to biking, but that was causing him a very high level of anxiety. His fear was significant enough for him not to carry on. Dr Harper repeated that Mr Conway was not scared of being on bikes themselves. He was scared of being injured on a motorbike. The primary problem was the ongoing fear of injury, leading to avoidance.

[67] A Specific Phobia was either total avoidance or a high level of fear. All the indicators were that he had a real problem.

### **Dr Hilary Livingston**

[68] Dr Livingston was a consultant psychiatrist who had worked in hospitals for many years. Dr Livingston had worked in a medico-legal capacity for the last 5 years.

[69] Dr Livingston prepared a report dated 4 November 2019, production 6/5.

Dr Livingston had an interview with Mr Conway on 4 November 2019. Mr Conway's self-reporting was very important, but the interview, medical records and examination were all important. Mr Conway explained his major fear was that he would have another accident.

[70] Mr Conway told Dr Livingston:

- In 2019 while awaiting psychological intervention he managed to travel about two miles to the shops and back but felt very anxious and hesitant...
- ...too frightened to go longer distances;
- ...cannot face riding a motorbike that does not belong to him;
- ...he has not applied for other work (since leaving West Coast H-D in summer 2018) apart from two months in summer 2019 helping a friend to clean motorbikes.

[71] Mr Conway had developed a fear of motorbiking. He had attempted recently to ride a motor cycle but with undue distress; he had avoided motorbiking apart from that, so much so that was furthering the upset and isolating him from his peer group.

[72] Mr Conway had an Adjustment Disorder for about 9 months following the accident.

[73] Mr Conway fulfilled the DSM-5 criteria for a Specific Phobia (motorbiking) because of the accident and which was ongoing.

[74] A Specific Phobia was fairly common, particularly after motorbike and pedal cycle accidents. There was a fear or anxiety of a specific object, which was generally avoided.

When engaged with the object this caused extreme anxiety or distress. The fear or anxiety has to last more than 6 months and has to interfere with social/work functioning.

[75] In Mr Conway's case, there was evidence of sleep disturbance, ongoing nightmares, lowering of mood, anxiety, lowering of confidence and that life was precious and that life might be short.

[76] Subsequent to the interview in November 2019, Dr Livingston received an evidence pack and two surveillance reports and was made aware of the motorbike trip by Mr Conway to Tighnabruaich in April 2018 and other trips. Dr Livingston was surprised these were not disclosed during the interview. That information made her concerned. If Mr Conway was able to ride these distances, particularly to Tighnabruaich, it was unlikely he had a Specific Phobia or not a severe Specific Phobia.

[77] As a consequence of the additional information, Dr Livingston had significant concerns about the degree of functional loss based primarily on the interview and medical records.

[78] Dr Livingston prepared a supplementary opinion in a letter dated 22 November 2019, production 6/6. After reviewing the additional information, it was her opinion that any problems were fairly minor, short lived and did not meet the criteria for a psychiatric disorder. She made further, similar comments in a letter dated 16 December 2019, production 6/7.

[79] Unfortunately, Dr Livingston was contradictory in expressing her opinion in evidence, changing her mind on several occasions.

[80] Later in her evidence, Dr Livingston said Mr Conway did have a Specific Phobia until early 2018, then until April 2018, then until March 2018 to fit in with the trip to Tighnabruaich in April 2018. Later still, she said Mr Conway conceivably had a Specific Phobia for a few months. Then Dr Livingston said that, having regard to the additional information, any symptoms on the balance of probability were short lived and minor and

that she would have struggled to have made a diagnosis of a Specific Phobia with the social media surveillance. Her position changed again in cross-examination.

### **Cross examination**

[81] Dr Livingston did not accept one trip to Tighnabruaich would not negate her opinion. Mr Conway had told her he had ridden a motorbike 7-8 times for 1-2 miles, that he had not ridden a motorbike before July 2019, and that on each occasion it had been disastrous. She thought it was very unlikely Mr Conway would have forgotten about the trip to Tighnabruaich when seeing her in November 2019.

[82] Dr Livingston was questioning his veracity as a historian. Given Mr Conway was working with bikes and had gone away for the weekend to Tighnabruaich, in her opinion the symptoms of a specific phobia may have been experienced briefly, but unlikely for 6 months and so did not meet the criteria for a Specific Phobia. Dr Livingston said the symptoms were short lived, and did not continue until Mr Conway left West Coast H-D. Any phobia symptoms that were present had diminished significantly by the time Mr Conway went to Tighnabruaich.

[83] Dr Livingston then stated, after further consideration, she probably could say Mr Conway had a Specific Phobia for 6 months, as the symptoms were pretty classic.

[84] It was conceivable Mr Conway could have returned to using his own bike but struggled using other people's bikes. So, in relation to using his own bike, the symptoms had diminished by March 2018, but it was hard to know at what point the Specific Phobia of riding other people's bikes stopped being an issue.

Note: Dr Livingston did not express any opinion on when, if at all, there was no longer an issue with Mr Conway riding other people's bikes.

### **Submissions generally**

[85] Both parties lodged written submissions, which are referred to for their terms.

### **Submissions for pursuer**

[86] In summary, the pursuer was credible and reliable. Even if he was not reliable in everything he said to all the experts, he tried to give truthful evidence in court. He accepted there were some inconsistencies and offered explanations. The pursuer was not deliberately trying to mislead the court.

[87] The trip to Tighnabruaich in April 2018 was the most obvious inconsistency. It was an inconsistency of omission.

[88] Dr Harper should be accepted and preferred to Dr Livingston. The pursuer had an Adjustment Disorder for several months and he developed a Specific Phobia about riding other bikes, which was ongoing.

[89] After the interview with the pursuer on 4 November 2019, Dr Livingston agreed with Dr Harper the pursuer had an Adjustment Disorder for 9 months, a longer duration than Dr Harper and a Specific Phobia of motorbiking. On 22 November 2019, having reviewed the surveillance evidence, she qualified that opinion but, in evidence, Dr Livingston said the pursuer had an Adjustment Disorder until about March 2018, prior to the trip to Tighnabruaich. By about March 2018 the pursuer no longer had a Specific Phobia in respect of his own bike. The pursuer continued to have a specific phobia about riding other bikes, but Dr Livingston could not say when that stopped being an issue.

[90] Even if the pursuer underplayed the extent of riding his own motorbike post-accident, the pursuer had not fabricated his injury or the effect of that injury on his employment.

[91] The NHS Glasgow Mental Health Services records for the pursuer as at February 2019, 5/18/4) reported classic symptoms of phobia and anxiety, up to at least February 2019.

[92] The effect of the accident was to prevent the pursuer from completing his apprenticeship and furthering his career at West Coast H-D, which was his dream job.

[93] Decree should be granted in favour of the pursuer with expenses reserved.

### **Submissions for defenders**

[94] Liability was admitted. Causation of any psychiatric injury and quantum were in dispute.

[95] Any diagnosis of a psychiatric disorder or Specific Phobia relied on the pursuer's self-reporting.

[96] The pursuer was unreliable and lacking in credibility. The pursuer had misled medical experts as to the nature and extent of his symptoms. He had misled the medical and employment experts about his employment situation.

[97] The pursuer's case on record was inconsistent with the social media and surveillance evidence and by what the pursuer had said in court.

[98] The pursuer claimed he forgot about the trip to Tighnabruaich in April 2018 when he met with Dr Harper in July 2018. The pursuer could not possibly have forgotten. The pursuer deliberately omitted to tell Dr Harper. The pursuer was either exaggerating or inventing his symptoms.

[99] It was astounding the pursuer omitted to tell expert witnesses he had been working for Ride On Motorcycles from April 2019 to the date of proof. There had been deliberate attempts to mislead the court about the full extent of his employment.

[100] It was accepted there were difficulties with Dr Livingston's evidence as she changed her position in evidence, but the pursuer had failed to establish that he had suffered from an Adjustment Disorder or a Specific Phobia.

### **Discussion, decision and reasons**

#### **Evidence pack and surveillance reports (productions 6/10, 6/11 and 6/12)**

[101] The evidence pack and reports were agreed as equivalent to the oral evidence of Rochelle Fergus-Dormer of Netwatch Global Limited, Birmingham and Stephen Heaton of The Brownsword Group, Manchester.

[102] The evidence pack, 6/10, contained a large volume of social media information about the pursuer. I have reviewed the evidence pack in light of the evidence. Most of the content was of general interest, providing information about the pursuer and his fiancée Ashley.

[103] The trip to Tighnabruaich in April 2018 (6/10/155) was of significance. Any trips to Erskine, Loch Lomond, Helensburgh or Faslane from the pursuer's home in Renfrew all relatively short distances, are not of significance in the context of the pursuer riding his own bike, but could be relevant to matters of credibility and reliability. Images of the pursuer on a quad bike, a scooter and a golf cart were not of significance. The fitting of a mirror to the pursuer's bike is noted, but was not of significance.

[104] I have reviewed the surveillance reports, 6/11 and 6/12.

[105] It is not disputed the pursuer has been working for Ride On Motorcycles since April 2019. The report, 6/11, shows images of the pursuer riding their bikes around or near to their premises. I have accepted the evidence of the pursuer and Mrs Hutchison from Ride On Motorcycles that the pursuer would ride bikes a short distance across the road from one

building to another and that, on a few occasions, the pursuer rode a bike to the training area about 1 mile away.

**Medical experts: Dr Harper and Dr Livingston**

[106] The report 6/12 shows some further images of the pursuer riding bikes for Ride On Motorcycles. There was broad agreement between the two experts until the evidence pack and surveillance reports were produced.

[107] Dr Harper was an assured witness, who was able to associate the pursuer's presentation and symptoms with persons she saw in clinical practice on a daily basis. The pursuer was genuine. He was scared of being killed, or seriously injured, when riding a motorbike. I accepted the pursuer had a Specific Phobia of being killed, or seriously injured, in an accident with car when riding a motorbike and, in particular, not his own bike. The pursuer had managed this by avoidance.

[108] Dr Harper said she was not surprised the pursuer had omitted to tell her about the trip to Tighnabruaich, explaining a person could not always give all the information in an interview lasting about an hour, and that she did not ask enough questions.

[109] I was not convinced by that evidence. The trip to Tighnabruaich was a major event for the pursuer in riding a bike post-accident, and had taken place less than 3 months before the interview with Dr Harper. The pursuer had posted online about the trip. The pursuer's account that he completely forgot was not credible. Nevertheless, a distinction has to be made between the pursuer riding his own bike and riding other people's bikes or other people's Harley Davidson bikes.

[110] Unlike Dr Harper, Dr Livingston had not been in clinical practice for the past 5 years. Dr Livingston could not assist the court with current clinical experience, which was a

relevant factor for the court to take into consideration. The evidence pack and surveillance reports caused Dr Livingston concerns about the pursuer.

[111] Unfortunately, Dr Livingston struggled to express her opinion in light of that additional information. While it may not have been practical in the present case, it would have been helpful had Dr Livingston sat in court to hear at least the pursuer give evidence. She considered the additional information in a vacuum and out of context. She made various assumptions unfavourable to the pursuer, but where the evidence suggested otherwise. She changed her position, then changed her position again, and again so that it became unclear what she was saying to the court. The court was left in a position of uncertainty. Her final position appeared to be that the pursuer had an Adjustment Disorder until some time before the trip to Tighnabruaich in April 2018, and that the pursuer had a Specific Phobia of riding other people's bikes, which continued after April 2018, but that she could not say for how long.

[112] Subject to the comments I have expressed about the Tighnabruaich trip, I have preferred the evidence of Dr Harper to Dr Livingston, and where that is inconsistent with Dr Harper.

**John Weir, Carole Hutchison and Ashley McAfee**

[113] These witnesses were credible and reliable. The pursuer was passionate about Harley Davidson bikes. The pursuer had worked with Ride On Motorcycles since April 2019 and there was no requirement to ride bikes for his job. Any riding of bikes was generally over a minimal distance.

[114] Ashley McAfee described the pursuer as being a private person who did not find it easy to express his feelings. She seemed to have little knowledge of the pursuer's work. Overall, her evidence added little to the pursuer's case.

### **Stuart Conway**

[115] The pursuer is the critical witness. The pursuer's self-reporting was the foundation for the reports from Dr Harper and Dr Livingston. The evidence pack with social media information was useful to take into account when assessing the pursuer as a witness.

[116] There was clear evidence from various sources, including Mr Weir, Ashley, social media postings/chat, and New College Lanarkshire "More Apprentice Stories" that the pursuer was passionate about motorbikes and the Harley Davidson brand.

### **Employment**

[117] The employment history with the pursuer starting in the parts department of West Coast H-D, later proving himself and being taken on as a modern apprentice, was not challenged. Mr Weir was enthusiastic about the pursuer's future prospects as a mechanic. The social media postings are frequently about motorbikes. The pursuer declined to go travelling with Ashley in 2016 as he was happy working at West Coast H-D. Being in the workshop at West Coast H-D was a dream job for him.

[118] The pursuer left West Coast H-D at the end of July 2018. After travelling around the world from August to December 2018, the pursuer was taken on by Ride On Motorcycles in April 2019 where he continued to work as at the date of proof.

[119] The pursuer did not tell a number of medical and employment experts that he was working at Ride On Motorcycles. In evidence, the pursuer accepted he had not told the

truth about his employment. He was very matter of fact in saying that. As he was interviewed by employment consultants, Mr Govan and Mr Cameron, for the purpose of his claim, it would have been obvious to the pursuer that he had to give accurate information about his employment. Other evidence indicates the pursuer was open about that employment. The earnings records were readily available. It was also curious the pursuer said he had a break from work in autumn 2019 but Mrs Hutchison told the court the only time he had off was for paid holidays. It is of note that Mrs Hutchison had a high regard for the pursuer as an employee and would have employed him earlier had she known him then.

[120] In the present case, the failure to tell experts about his employment was unexplained but, in my view, there was no deliberate misleading of the experts on his part.

### **Post-accident motorbike riding**

#### **Adjustment Disorder**

[121] It was accepted by both Dr Harper and Dr Livingston the pursuer met the diagnostic criteria as defined by DSM-5 for an Adjustment Disorder as a result of the accident.

[122] Dr Harper expressed the opinion the Adjustment Disorder lasted for approximately 3 months.

[123] Initially Dr Livingston expressed the opinion the Adjustment Disorder persisted for about 9 months, but qualified her opinion having seen the evidence pack, reading about the trip to Tighnabruaich, and the surveillance reports. In evidence, Dr Livingston's final position was that the Adjustment Disorder persisted until about March 2018, about 5 months. Accordingly, the Adjustment Disorder persisted for a number of months. There is little difference between the two experts.

### **Specific Phobia**

[124] Dr Harper expressed the opinion the pursuer had an ongoing Specific Phobia of motorbiking as defined by DSM-5. The pursuer was scared of being injured on a motorbike when in a collision with a car. Anxiety was related to unfamiliarity, so that the pursuer would feel safer on his own bike.

[125] He developed a Specific Phobia both going on his own bike and test driving other people's motorbikes to the extent he had to give up his apprenticeship with West Coast H-D and could not continue his career as a motorbike mechanic. The pursuer's failure to tell her about the trip to Tighnabruaich did not negate her opinion.

[126] Initially Dr Livingston expressed the opinion the pursuer met the DSM-5 criteria for a Specific Phobia of motorbiking which was as a result of the accident and was ongoing, but qualified her opinion having seen the evidence pack, reading about the trip to Tighnabruaich, and the surveillance reports. In evidence, Dr Livingston's final position appeared to be that the pursuer's Specific Phobia of riding his own bike had diminished by March 2018, but she could not say at what point riding other people's bikes stopped being an issue.

### **Generally**

[127] The pursuer provided no satisfactory explanation for not telling any of the experts about the trip to Tighnabruaich in April 2018 and, in particular, when he met with Dr Harper in July 2018. The explanation that he "completely forgot" was a poor excuse. Given his achievement in making the trip I would have expected the pursuer to have been keen to tell Dr Harper about that trip. I do not accept Dr Harper should have been more probing in her questions.

[128] The pursuer should have been more open about where and when he was riding his own bike. The pursuer downplayed the extent of riding his own motorbike post-accident. However, I am not persuaded the pursuer was deliberately misleading the experts or fabricating his symptoms.

[129] The limited riding of bikes for short distances at Ride On Motorcycles indicates the pursuer had re-gained some confidence in getting on other bikes again, albeit not a Harley Davidson. That may well have been due to the CBT sessions.

[130] The images of the pursuer riding bikes in the surveillance report 6/11 were recorded on 24 August 2019 and in the surveillance report 6/12 on 27 November 2019. The pursuer started CBT sessions on 15 July 2019 and had the last session in about October 2019.

[131] The letter of 10 March 2019 from Scott Little at the Doing Well Service, Renfrewshire Primary Care Mental Health Service, production 5/18/4-6, narrates the presenting problem of the pursuer during the telephone assessment on 20 February 2019. The following is noted:

“He worries that if he has to ride a motorbike again, particularly other people’s bikes, that he will damage it.”

[132] On the evidence and on a balance of probability, while the pursuer may have continued to be anxious in riding his own bike, I have concluded the pursuer’s Specific Phobia of riding his own bike no longer fulfilled the criteria for DSM-5 by the date of the trip to Tighnabruaich in April 2018.

[133] The pursuer had and continues to have a Specific Phobia in riding other people’s bikes, including Harley Davidson bikes. That Specific Phobia is ongoing. There is no evidence of any end date. That Specific Phobia will continue indefinitely.

[134] The pursuer was unable to complete the apprenticeship as a result of the accident on 5 October 2017.

[135] In all the circumstances and on the balance of probability, had the pursuer not been involved in the accident on 5 October 2017 he would have completed the apprenticeship in 2018 to become a Harley Davidson mechanic for West Coast H-D and would have continued in that career as a mechanic for the foreseeable future.

### **Damages**

[136] There was a considerable measure of agreement between parties in the event the court determined the pursuer was unable to continue to work as an apprentice because of psychiatric conditions as a consequence of the accident. I have applied any interest to the date of proof as the date of decree, as a consequence of the coronavirus.

### **Solatium**

[137] Both parties relied on the Judicial College Guidelines (JCG). The pursuer referred to the case of *Stark v Lothian and Borders Fire Board 1993 SLT (Notes) 652* and stated that any award of solatium should take into account the loss of congenial employment. The pursuer assessed solatium at £12,500. The defenders relied on authorities, which were for physical injuries only, assessing solatium at £5,000. Taking all these factors into account, I consider an appropriate and reasonable award for solatium in the present case is £9,000. Interest on past solatium will apply at 75% to the past at 4%, giving interest of £627.77 to the date of proof (27 February 2020) and producing an overall figure for solatium, inclusive of interest, of £9,627.77.

**Past loss of earnings (to date of proof, 27 February 2020)**

[138] It was agreed by parties there was no loss of earnings prior to 1 August 2018. The pursuer left West Coast H-D at the end of July 2018.

[139] On the evidence, it is probable the pursuer would have gone travelling round the world with his fiancée Ashley at some time before the proof, regardless of the accident. The pursuer would probably have taken unpaid leave, which is not uncommon. The obvious time to do that would have been when the pursuer completed the apprenticeship, but it could have been at any time after that. The pursuer went travelling from August to December 2018, a period of around 5 months. I have excluded from any claim for past loss of earnings the period August to December 2018.

[140] There was evidence of various dates when the pursuer would have completed the apprenticeship. The pursuer said he expected to finish around 6 months after he left West Coast H-D. For the purpose of past wage loss only, I am proceeding on the basis that but for the accident the pursuer would have completed the apprenticeship by the end of 2018 and that he would have been paid as a qualified mechanic from January 2019.

[141] The average net earnings for a qualified mechanic were agreed at £20,538. The pursuer's net earnings with Ride On Motorcycles were agreed. These average earnings are to apply for past loss and future loss claims, with no increases to be applied in assessing any loss of earnings claims.

[142] From January 2019 to February 2020, the pursuer would have earned £23,961 as a qualified mechanic. The pursuer earned £13,399.85, giving a net wage loss to the date of proof of £10,561.15. Interest at 4% is £488.90. The net wage loss to the date of proof, inclusive of interest, is £11,050.05.

## **Future Wage Loss**

### **Period 1: March 2020 to August 2020**

[143] The pursuer would have earned £10,269 as a qualified mechanic from March to August 2020. The pursuer said that if it was possible he would continue working at Ride On Motorcycles for the next couple of months. That was on the basis of his belief the store at Ride On Motorcycles might close before summer 2020. That was not followed up with Mrs Hutchison of Ride On Motorcycles and she gave no indication of any impending closure. There was no intention on the pursuer's part to stop working for Ride On Motorcycles just because he would be going to college starting August 2020. On a balance of probability, the pursuer would have continued to work for Ride On Motorcycles until he started at college. The pursuer would have earned £7,309.02 (based on average earnings of £1,281.17 a month). The net loss of earnings for period 1 is £2,960 (£2,959.98).

### **Period 2: post August 2020**

[144] It was agreed by parties there should be a multiplier of 3 years, applied to the average net earnings of £20,538, to cover the period when the pursuer was in full time education.

[145] There was no agreement about any part-time earnings while the pursuer was at college. The pursuer submitted there was no evidence the pursuer would be earning any income while a student. The defender submitted there was no reason why the pursuer could not work part time. The report from the employment consultant Mr Govan, production 6/8 at 5.8 states:

“It is reasonable to expect a full-time student to undertake some employment while at university.”

[146] The pursuer has a strong work ethic. Most full-time students work part-time while studying at university or college. The pursuer will be a mature student. It is reasonable to assume the pursuer will work part-time while studying at college. The defenders suggested £10,000 a year. That figure is too high. A reasonable figure for part-time earnings would be £8,000 a year.

[147] Applying a multiplier of 3 years to the average net earnings of £20,538 and deducting part-time earnings of £8,000 a year produces a figure for future loss of £37,614.

[148] The total figure for damages, inclusive of interest to the date of proof is £61,252.27.

### **Final comments**

[149] While the pursuer may not have deliberately misled expert witnesses in downplaying his motorbike riding post-accident and not being open about his employment after leaving West Coast H-D this was not satisfactory, not only for the experts as the factual basis for their reports but the additional court time in dealing with these matters. The pursuer accepted in evidence he had not always been truthful in relation to this, as a matter of fact.

[150] If I had concluded the pursuer had misled the expert witnesses damages awarded, if any, would have been very substantially restricted.

### **Decision**

[151] I will grant decree against the defenders for payment to the pursuer in the sum of £61,252.27. The Sheriff Clerk will arrange a hearing on expenses in due course.