

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

[2021] SC EDIN 45

PIC-PN530/20

JUDGMENT OF SHERIFF K J CAMPBELL QC

in the cause

DEBORAH COMER

Pursuer

against

SOUTH LANARKSHIRE LEISURE AND CULTURE LIMITED

Defender

Pursuer: Hovey, advocate; Thompsons, solicitors
Defender: Pollock, Clyde & Co, solicitors

Edinburgh 2 July 2021

Findings in Fact:

[1] The pursuer is 49 years of age. She has participated in triathlons since 2008 or 2009. She had competed in Scottish, British and European events, four or five times per annum.

[2] On 12 March 2017, the pursuer was taking part in a duathlon event organised by the defender. The race route comprised of a running stage in Hamilton Palace Sports Grounds, before competitors then mounted bicycles and cycled into Strathclyde Park by way of an underpass under the M74 and a bridge over the river Clyde. Competitors then had a cycle stage in Strathclyde Park before returning by same route for a further running stage in Hamilton Palace Sports Grounds.

[3] Hamilton Palace Sports Grounds are owned by South Lanarkshire Council.

Strathclyde Park is owned and managed by North Lanarkshire Council. The River Clyde is the boundary between the two Council areas at this point.

[4] The start and finish of the race was near the Hamilton Mausoleum, which is a grassed area with trees to the side. It is within the area of Hamilton Palace Sports Grounds. The transition area, where competitors move from the running to cycling phases of the race, and vice versa, was also located in this area. Competitors are not allowed to mount or dismount their cycles in this area, and there is instead mount/dismount line some distance away.

[5] The event had been run by the defender from about 2011 until 2017. It followed broadly the same route each year.

[6] The pursuer was riding a time trial cycle, which is set up similarly to a road bike with the addition of aerodynamic bars on the handlebars on which the rider's arms rest and the gears can be operated from there. These are sometimes called "tri-bars". The brakes are operated from conventional drop handles. She was wearing cycling shoes which clip into the pedals, and disconnect by twisting outwards.

[7] The defender provided a pre-race briefing to competitors. Competitors were expected to attend that briefing. During the pre-race briefing, specific instructions were given to competitors about the stretch of the route where the accident occurred.

Competitors were told it was a "no race" area, and further they were not allowed to go on their tri-bars in this area.

[8] The pursuer attended the pre-race briefing.

[9] The pursuer had completed the first run and the cycle and was cycling back over the bridge heading down towards the underpass when she had her accident.

[10] The pursuer had engaged lower gear when she came to cross the bridge. She was covering her brakes; her hands were not on the tri-bars. The pursuer's wheel made contact with an imperfection in the surface of the pathway at the point where the bridge meets the pathway on the Hamilton Park side. Her bike went up and her head hit the ground, and her face brushed the ground.

[11] The surface in the area of the accident was cracked and uneven. The defender was aware of its condition. The defender was not responsible for the state of the pathway.

[12] The pursuer knew the surface of the pathway in the area where it joined the bridge was uneven. Although she did not cycle there regularly, she did walk and run there.

Findings in Fact and Law:

[1] The pursuer's accident was not caused by the fault and negligence of the defender.

[2] The pursuer has not suffered loss injury and damage as a result of the fault and negligence of the defender.

Note

Introduction

[1] This action concerns an accident which befell Deborah Comer, the pursuer, during a duathlon competition on 12 March 2017. There no dispute that the accident occurred on a paved footpath leading from a bridge over the River Clyde connecting Strathclyde Park and Hamilton Palace Sports Grounds to a paved pedestrian and cycling underpass under the M74 motorway. There is no dispute the pursuer suffered unpleasant injuries, but apart from a small facial scar and a shoulder scar, they are not long-lasting. Quantum of damages was agreed between parties. The question for the court in this case is whether the accident was

caused by the defender's breach of duty. Depending on the answer to that question, a subsidiary question arises about contributory negligence.

[2] I heard proof in this action by video conference on 1-4 June 2021.

[3] The pursuer gave evidence, and led evidence from Scott Marriott and Mhairi Porteous. The defender led evidence from Shona Girdwood, William Robinson, Victoria Kennedy, and Mary Bancewicz.

[4] Parties had also helpfully agreed a number of matters, and a Joint Minute recording those was tendered. The provenance of the documents comprising the Joint Bundle (whose contents are hereafter referred to as "CB" followed by the page number) was agreed, as was the quantum of damages. Damages were valued at £8100 on a full liability basis. Finally, somewhat unusually for a Joint Minute, it is agreed the defender owed the pursuer a common law duty to take reasonable care for her safety as a competitor in the event on 12 March 2017; I was told the purpose of this was to rectify an omission in the defender's record,

Witnesses

Deborah Comer

[5] Deborah Comer, the pursuer, said that by the date of the accident on 12 March 2017, she had been cycling competitively for 8-9 years. She was riding a time trial bicycle. The surface of the footpath on approach to the footbridge over the Clyde was really poor, with cracks, and part which had risen up. The damaged surface was not marked. The surface of the bridge was OK. The accident had happened on the return leg from cycling 3 or 4 circuits of Strathclyde Park. By then the pursuer had run 5km and cycled approximately 20km. The

walkway of the bridge had been split to let pedestrians continue to walk across while the race was in progress. The pursuer thought this was done with a rope or cones.

[6] The first thing the pursuer recalled after the accident was being spoken to by a spectator, Mhairi Porteous, who was trying to talk her round to consciousness. She took off the pursuer's shoes and removed the bike. The pursuer was in the path of other cyclists. The pursuer was not aware if a marshal had been involved in helping her. The pursuer blacked out. The left side of her face was in contact with the ground as she slid along and she has a permanent scar on her chin. She has a scar on each shoulder. She found the whole experience traumatic. She thought she lost consciousness for a short time. She was aware of a man unclipping her from the pedals and trying to bring her round. The pursuer said she was travelling slowly because of the sharp turn and the rise on to the bridge. In any case, her feet had remained clipped to the pedals and the pursuer said these would have unclipped if she had hit something at speed. In her view, the accident was caused by the way the wheel hit the tarmac lip. The tarmac had risen up, and the pursuer's wheel had lodged in it; her bike went up and her head hit the ground, and her face brushed the ground.

[7] The pursuer said photographs CB10-12 showed the state of the surface of the path at the point where the accident happened. The tarmac was cracked, and part had risen up where the bridge meets the tarmac. The pursuer said she was pretty familiar with the route. She sometimes runs across the bridge. She would not cycle that route, but said that other people do. There were several routes into Strathclyde Park, including from the walkway beside the A723 road.

[8] In cross-examination, the pursuer said she had taken part in the same event a couple of years previously. On 12 March 2017, there had been a pre-race briefing, which the pursuer agreed was an important part of the event. She attended the briefing, which had

covered transition, safety generally, drafting rules (that is, competitors were not allowed within a certain distance of each other's cycles to avoid unfair slipstream advantage). The briefing had been given by Shona Girdwood. The pursuer was not aware of Mary Bancewicz participating in the briefing. The pursuer said the surface of the path could well have been mentioned but she was not completely sure.

[9] The pursuer accepted she knew the surface was uneven from previous competition, but she was not aware of every bump. The pursuer accepted any cyclist, whether leisure or competitive, required to keep a proper lookout. The pursuer could not recall the precise location of the accident or its condition because she had bumped her head when she came off her cycle. The pursuer said she had slid 6 or 7 metres, still attached to her pedals. The pursuer did not accept that the accident was caused by her failure to keep a lookout or to cycle at a reasonable speed. The pursuer said that for the rest of that day after her accident, people were stopped from cycling over the section at the bridge.

Scott Marriott

[10] Scott Marriott has been the president of the Lanark Triathlon Club for about 7 years. He has been competing in triathlons for about 12 years. While the club does not organise events, he has some personal experience of event organisation, having been responsible for a section of an "Ironman" event in Edinburgh.

[11] Mr Marriott was a competitor in the race on 12 March 2017. He said there was a distinct ridge where the bridge meets the footpath, which you had to negotiate to get on to the bridge surface. He said competitors had to slow down significantly to get over the bridge. Pedestrians were still using the bridge, which had been segregated with cones or something. Mr Marriott said he had to slow down appreciably. It was necessary to use the

brakes. Mr Marriott thought there was no marshalling between the bridge and the underpass. There was a section taped off for pedestrians and he had been confused and had gone in the wrong side, and had to stop. Mr Marriott believed the photos at CB10-12 showed the state of the surface of the path at the point where it met the bridge at the time of the race. He would have expected damaged road or footpath surface to be marked with yellow spray paint, and it was not.

[12] Mr Marriott was asked about possible alterations to the route of the race. He agreed it would be possible to move the transition area to the field next to the underpass and for competitors to walk over the bridge and mount on the other side. He agreed it would be possible to have the transition area in Strathclyde Park; that would avoid the need to use the underpass and cycle across the bridge. He agreed it would be possible to start and finish in Strathclyde Park, running to and from the Mausoleum.

[13] In cross-examination, Mr Marriott said the race was relatively well run. He knew the team organising it. He knew Shona Girdwood and Mary Bancewicz, and said Ms Bancewicz is a well-known and respected triathlon official. He was not aware that she had been officiating at the race in March 2017. The pursuer is known to him. She has been a member of the Lanark Triathlon Club for between 6-8 years. The pre-race briefing was mandatory. It identified hazards and advised taking appropriate precautions. The briefing mentioned the entrance to and exit from the bridge, and advised competitors to slow down on approach to the bridge. Mr Marriott did not recall if there had been mention that the surface was broken up. He thought that the stretch of the course at the bridge could well have been described as a "no race" section. It would have been impossible to overtake there.

Mhairi Porteous

[14] Mhairi Porteous attended the race on 12 March 2017 as a spectator to support her father, who was participating. Shortly before the accident, she was at the end of the tunnel/underpass nearest Hamilton Park/Palace. She saw a cyclist, whom she now knows to be the pursuer, come on to the slope at the bridge and then saw her to be on the floor. The cyclist was still clipped in to her pedals.

[15] Ms Porteous was one of the first people to reach the pursuer. She thought there were a couple of people there, but she was not certain. She was not certain whether they were members of staff. Ms Porteous tried to move the pursuer out of the path of cyclists. She took the pursuer's feet out of her shoes, which were still attached to the pedals of her bicycle, in order to move her.

Shona Girdwood

[16] Shona Girdwood has been employed as a sports development officer with the defender for 13 years. She is a triathlete and has competed at international level in the past. She was involved in development of the duathlon event from 2011-2017, in conjunction with staff at Hamilton Palace sports ground and at Strathclyde Park. They were involved in risk assessment, while she was involved in organisation of the event.

[17] CB21-29 is the defender's risk assessment for the event, and was prepared by Willie Robinson, the duty manager at Hamilton Palace Sports Grounds. Ms Girdwood believed a new risk assessment was prepared for the event each year. She understood it was sent to Triathlon Scotland too. Ms Girdwood met with Willie Robinson the weekend before the event, and again the day before the event, when banners and road cones had been delivered. There had also been earlier walk-rounds, including with Strathclyde Park staff. The event

had always followed the same pattern because, as a South Lanarkshire organised event, it had to start and finish in South Lanarkshire. The closed roads in Strathclyde Park were preferable for the cycling stage because it was not possible to close the busy main roads around Hamilton Park.

[18] Ms Girdwood had delivered the pre-race briefing to competitors at the transition area. It was made clear that all competitors must attend the briefing, and that was normal procedure at races. She said to the competitors that after the run, they would go to transition, mount their bikes, go slowly through the tunnel and bridge: not on tri-bars, and no racing until they reached the closed roads in Strathclyde Park. Ms Girdwood confirmed that “no race” zones of varying size are common in triathlons.

[19] Ms Girdwood was aware of a metal plate at the point where the bridge meets the path to the underpass. There was lumpy tarmac coming off where the plate met the pathway. It was worse at the sides than the centre, and cones were placed one on either side to identify that. This hazard had been there for the whole period the event was held, and there had been no problems till 2017. Cones and marshals had been used on each occasion.

[20] Ms Girdwood was cross-examined about four possible alternative routes for the race. First, moving the transition area to a part of the sports fields nearer the entrance to the tunnel. She said that would not work because there was a slight slope up from the field to the path, whereas the actual transition area was flat. It also would not work with the flow of the running portion and the cycle race. Second, moving the transition area to a grassy area on a bend in the river on the opposite bank from Hamilton Park and the Hamilton Palace Sports Grounds. Ms Girdwood agreed moving the transition area to the Strathclyde Park side of the river might be possible if the whole event was taking place in Strathclyde Park, where there were a number of possible places, for example the car park. She would not

have the transition area in the grassy area on the bend because it was too close to the river .
If the whole event was held in Strathclyde Park, there would be a cost to doing that since it was not in South Lanarkshire.

[21] The third and fourth alternative routes avoided the bridge altogether . The third went through the tunnel and took a path to the right on exiting the tunnel rather than carrying on straight across the bridge. The path, seen on CB15, runs roughly parallel to the M74 and a slip road from it to the A723, and then follows the A723. There is a path up to the A723 before that road crosses the Clyde, and then another path leads down into Strathclyde Park. Ms Girdwood said that it would not be possible to enter Strathclyde Park at that point because there were a number of wooden stairs on the path down from the walkway. It would be necessary to carry on to the main entrance. The paths were narrow at that point and she would not have a cycle race over them. Further Strathclyde Park would not allow the main entrance to be closed for the purpose of a cycle race; it was easier to have the closures on the existing route.

[22] The fourth left the Hamilton Palace Sports Grounds in a south-easterly direction on a path parallel to the A72, passing the Palace Grounds retail park, before joining a pedestrian path alongside the A723, and tracking that road towards Strathclyde Park, and again entering via a path after crossing the river Clyde. Ms Girdwood said that would involve crossing the entrance to a very busy retail park. The path alongside the A723 was not suitable for racing on road bikes. The route was unlikely to be attractive and people would not sign up for the race.

William Robinson

[23] Mr Robinson experienced technical problems while giving evidence such that he could see other participants but was not visible to the court or counsel; for the most part, there was no difficulty with the court and parties hearing his evidence.

[24] William Robinson has been employed by the defender for almost 20 years. His job title is Duty Officer, but he explained that he has a management responsibility for facilities management at the defender's parks and sports facilities. He worked with Shona Girdwood on the organisation of the duathlon since its inception in 2012. He dealt with on-site organisation and risk assessment, whilst she attended to all other matters. North Lanarkshire Council are responsible for Strathclyde Park, and had done the risk assessment of that part of the course.

[25] Mr Robinson confirmed that CB21-29 is a copy of the defender's risk assessment for the event current in 2017. It was originally created in 2012 and updated as required. Although it was dated 1 March 2017, Mr Robinson said he had authorised the report in February 2017, because that is when he had assessed the route, and any remedial work would be done in the month before the event. The fact he had authorised the assessment meant the course was deemed as available as possible and no remedial action was required. Mr Robinson said he carried out the risk assessment on foot and by cycle. He had also met with North Lanarkshire Council staff to discuss their risk assessment and, as he said, to see that it was OK.

[26] Mr Robinson confirmed he had looked at the stretch of pathway where the accident occurred prior to the race. He considered it was the only safe and proven route for the race. He considered that at the time of the race, the entry and exit from the bridge was 100% satisfactory. He accepted that there was some uneven-ness of surface at those points, which

he estimated at about 1-2mm. He said the surface was deemed perfect before the event. He had cycled the route carrying a torch between 05.00-06.00 on the day of the race. He had not felt any bumps under his wheels.

[27] Mr Robinson had not seen CB3 before, but confirmed that the photo on that page appeared to show the point at which the bridge meets the pathway leading to the underpass, where the concrete meets the tarmac. There was some cracking visible, but it was still footholding and was deemed suitable for the purpose.

[28] In cross-examination, Mr Robinson explained that the risk assessment form was generic but each event was assessed for risks. The bridge was not specifically identified on the risk assessment, but was part of the pathways. Mr Robinson accepted that surfaces of roads and paths deteriorate over time. He did not accept that the surface at the point where the bridge met the pathway was a hazard, because there had been no mediation between South Lanarkshire and North Lanarkshire about repairs. The photos CB11 and CB12 did not represent the state of the surface at the time of the event in March 2017, and he would not have authorised the event to take place if it had been. Resurfacing work had been done on the pathway at some point between September – November 2017, and that had been due to damage caused by work on the M74. It had been planned maintenance, and was not a result of the event in March 2017. Mr Robinson agreed that the description in CB3 of the surface as “rutted potholed and uneven” was a good description of the surface in the photo on that page; however the surface was still deemed safe for the race.

[29] Mr Robinson said it was not an option to move the transition area closer to the underpass because the cyclists would interrupt the runners. It would not have been possible to move the transition area to the river bend because that was too narrow and there was no turning area for cyclists. In addition Strathclyde Park were looking for a specific number of

riders and would possibly charge a fee of £1000 if the transition area were on their side.

Again, the green area next to the car park at the watersports area was in Strathclyde Park, and so not under the control of the defender.

Vicki Kennedy

[30] Vicki Kennedy is employed by the defender and manages two recreation centres.

She has also been a triathlete since 2012, and was a competitor in the event on 12 March 2017; she was led in evidence for that reason. She lives not far from the venue, and is familiar with the area where the accident occurred because she runs and walks in that area.

She described the area where the bridge over the Clyde meets the path to the underpass as comprising a metal plate, then the surface of the path itself. That area was shown in the photograph in the Triathlon Scotland report at CB3, and matched her recollection of the surface at this point, which she described as a mixed surface. The tarmac was not smooth, and never had been so far as she could recall.

[31] Ms Kennedy agreed it was universal practice to have a safety briefing at triathlon and duathlon events. On 12 March 2017, the briefing was given by Shona Girdwood. Ms Girdwood had highlighted three things: the tunnel and bridge were a “no race” zone; competitors were not to speed there; competitors were to be off their tri-bars to have solid control of the front of their bikes. A number of reasons had been mentioned: the tunnel and bridge were both narrow; the bridge was two-way, because some people were heading out as others were returning; there was a sharp right-hand turn to the cycling area; and the surface was not the best. Ms Kennedy was sure that the surface had been mentioned in this way, and that the area in the photo in CB3 was meant.

[32] On her return cycling leg, Ms Kennedy said she was taking care by travelling at a reasonable speed. There were marshals at the start of the bridge, and seeing a marshal reminds competitors they are there for a reason, and they should slow down and take care.

[33] In cross-examination, Ms Kennedy confirmed the event was not free. Her recollection was the entry fee was £30-40. The bridge was not split between competitors and pedestrians. She agreed that the bridge being a “no race” zone could be described as common sense, but said that needed to be highlighted for visitors. Asked about whether reducing speed would prevent a cyclist hitting a defect in the road, Ms Kennedy said that came down to luck, and where you are, whether you were on your brakes, and whether your tyres were hard. There were a lot of factors.

Mary Bancewicz

[34] Mary Bancewicz has been an event technical official for Triathlon Scotland since 2005, and was one of the first qualified in Scotland. In that capacity, she attends triathlon and duathlon events to make sure their operation is safe and fair. She attends both local and international events, some of which take place over several days. Triathlon Scotland now has more than 50 technical officials and aims to have one at all events which it has officially sanctioned.

[35] Ms Bancewicz spoke to her report CB2-7, which she said was produced primarily to assist the race organisers improve year on year; it would also be provided to event officials in future years. She had described overall safety at the event on 12 March 2017 as “excellent”, and that was based on a broad assessment. She took the photo on CB3, prior to the race on 12 March 2017. She had taken that because of the change in surface from the bridge to the pathway, and the metal strip. There was surface damage and some potholes,

as well as patch repairs. She agreed there was cracking on the pathway surface beyond the metal strip. The change of surface, particularly the metal strip was a concern, especially if it was wet. On the day, the route dried out as the day went on.

[36] Ms Bancewicz said she had delivered part of the pre-race briefing alongside the race organiser. Ms Bancewicz had addressed specific hazards and rules; the organiser, Ms Girdwood, had addressed general matters. She thought both had made reference to the bridge and it being a race neutral zone, meaning it was for access only and athletes should regard the race as starting in the park. She considered the briefing allowed competitors to negotiate the course safely. It was put to Ms Bancewicz in cross-examination that other witnesses did not recall her participating in the pre-race briefing; she did not think she was mistaken about that because the words in quotation marks in box 5 on CB4 of her report were her actual words at the briefing.

[37] The hazard area was shown in the photo; the whole surface was not great, though by the return leg athletes would already have gone over it once. The expectation was most athletes would be slowing down, even supposing the road surface was perfect. The footprint of race tyres was about the size of a thumb. Negotiating a rough surface at speed meant the bike would become unstable and might be difficult to salvage. It was easier to respond at lower speed.

[38] She explained that the arched shape of the bridge was important because a cyclist's speed would increase slightly coming off the crest, and standing on one side of the bridge, one could not see the surface of the ground on the other side and would only be visible once over the crest. Her concern about the surface at the end of the bridge was about the metal plate, particularly if that was wet. A cyclist would be looking "two shots ahead", not looking at their feet or front wheel. The aim is to identify hazards. In her view, an obstacle

would have to be sizeable to stop a cycle completely; tyre pressure also makes a difference. She explained that cycling shoes do not automatically unclip if one hits an object at speed. They are designed to allow pressure to be maintained on the up stroke as well as down. They are released by lateral movement from the heel, and require a torsion force. At low speed, it was more common for cyclists to fall over after failing to unclip on time, than for them to come out of the bindings.

[39] In cross-examination, Ms Bancewicz was referred to CB4 section 5, where in a note about the accident, she had noted the cause “appears to be athlete error”. That was an impression she had formed after speaking to eyewitnesses. The photo at CB3 was taken because it showed an area of concern. Her description “narrow, rutted and potholed” came from her inspection prior to the race. Ms Bancewicz had not seen the defender’s risk assessment CB21 before, but was familiar with this type of risk assessment. She agreed there was no specific discussion of the bridge or the approach to it. She pointed out there was reference to potholes and to ground conditions. She said while the risk assessment was not supposed to be a “tick box” exercise, it would be helpful to have more specific reference to the bridge area.

[40] In relation to altering the route of the race, Ms Bancewicz said there had been problems with cross-boundary cooperation in the past. As recently as the European Championships in 2018, where triathlon events took place in Strathclyde Park, requests to use the carparks on the Hamilton side had not been supported. In relation to altering the route, it might be possible to reconfigure the transition area nearer the pathway to the bridge. Requiring people to walk across the bridge would be unacceptable – some competitors would do so barefoot because their shoes were attached to their cycles. Moving

the transition area to the river bend was not practical because the ground sloped and is boggy, and its use would be contingent on North Lanarkshire giving permission.

Submissions

[41] Both parties tendered outline written submissions before the debate on evidence. I need not set these out at length – they are in process, and I have taken account of them in what follows. I focus on the key points developed in argument before me.

Pursuer's submissions

[42] Adopting his written submission, Mr Hovey's motion was for the court to grant decree in the sum of £8,100 together with interest at 8% until payment, and expenses. He also invited me to certify Dr Stephen Boyce, Consultant in Accident & Emergency Medicine as a skilled witness, who prepared a report 5/1 of process; and to grant sanction for the employment of junior counsel.

[43] Mr Hovey submitted there was no factual dispute as to shape of the duathlon event and where the accident occurred. Likewise, the existence of a duty of care was agreed. Counsel submitted further that the condition of the road was a foreseeable risk. He referred to the pre-race briefing. The ground was "uneven" (to use neutral word), and that was, he said, a matter of agreement between parties. So the dispute focussed on breach of duty, and he submitted the live issues were: (a) whether the defender took adequate precautions; and, (b) the extent, if any, to which the pursuer contributed to the accident.

[44] In approaching the evidence, Mr Hovey submitted I should find the pursuer's witnesses to be credible and reliable. The pursuer had been a competitive cyclist for 8-9 years at the time of the accident, and had competed in a number of British and European

events. Mr Marriott had been a cyclist for 40 years, and had a degree of experience in assessing risk and implementing solutions. So too Ms Girdwood and Ms Bancewicz were generally of assistance, and their evidence should be accepted if it coincided with the pursuer's witnesses. Mr Robinson's evidence should be treated with caution; for example his evidence regarding surface area being "100% satisfactory" and that the "surface was deemed perfect" was at odds with other witnesses and the photos. The only thing of assistance in his evidence was that he agreed that if surface looked as it did in the photos CB9-12 it would not be safe to proceed. It was accepted there was a question about when those photos were taken; the pursuer said they were post-accident, but not immediately post-accident. However she was certain they were taken in 2017.

[45] Mr Hovey submitted the mechanism of accident was no longer a live issue. The pursuer's evidence about that was unchallenged. Ms Girdwood and Ms Kennedy accepted defective surface could cause a bicycle wheel to stop suddenly or turn to the side. The pursuer was not in position to describe exactly what happened. She had been challenged about cause, not mechanism. She is experienced in competitive cycling, and said she was cautious. There had been two challenges to the pursuer's cycling: speed, and use of tri-bars. On the latter, her position was clear: she had not been using tri-bars, because she was using the brakes. She was not challenged in relation to tri-bars.

[46] In relation to speed, the pursuer denied she was cycling too fast. No witnesses were led by the defender to prove she was travelling too fast. Ms Bancewicz's report mentioned "athlete error"; counsel had put to her that was an assumption, she said it was an impression, formed after speaking to eye-witnesses. Counsel did not take issue with her impression, but submitted it was surprising the defender had not cited any of the race

marshals. The only contention from the defender was that the fact she had an accident meant the pursuer was going too fast to negotiate the obstacle. That was unsound.

Breach of duty

[47] Mr Hovey submitted that I should approach the matter by means of a calculus of risk of the kind articulated in *Phee v Gordon* 2013 SC 379. That would entitle the court to hold (1) the precautions taken by the defender fell below the standard of reasonable care; and (2) a person in the position of the defender acting with reasonable care would have altered the route to avoid competitors having to cycle over the bridge.

[48] Mr Hovey submitted that CB9-12 accurately show the condition of the pathway surface on 12 March 2017. The pursuer, Mr Marriott and Ms Girdwood gave evidence that it showed surface on day. Mr Robinson said it did not. Ms Bancewicz's description of surface, from her pre-event inspection, set out in box 4 on CB3 indicated the surface damage extended full width of bridge.

[49] Little weight could be placed on the absence of previous accidents. The pursuer was towards the front of the race; it was conceivable following the pursuer's accident, the marshals would be more aware of risk from surface. No accident report had been lodged, and there was no evidence in relation to the defender's practice in that respect. Having regard to all factors, it could not be said a reasonable person would not have foreseen the risk.

Precautions

[50] This is not a case where the defender has done nothing; rather, the pursuer took issue with whether the defender's precautions were sufficient. Three precautions had certainly

been identified: the no race area; the instruction to slow down; and the instruction to stay off tri-bars.

[51] Mr Hovey submitted the defender's precautions fall below standard of reasonable care, and that for a number of reasons. First, the duty was non-delegable. Secondly, the pursuer was on the return journey, and it was not reasonable to expect competitors to recall safety advice. There was no evidence competitors were reminded of the risk. Thirdly, speed is subjective. Fourthly, the mechanism of the accident, namely wheel jarring was foreseeable. Fifthly, although there was no case on record about failure to make a risk assessment, risk assessment was important for establishing if control measures are reasonable. The risk assessment CB21 was generic: it did not identify specific hazards. Ms Bancewicz said she would expect the arch of the bridge to be mentioned: it is not. The pursuer does not make a case about risk assessment, but did submit that precautions were not specific to 2017.

What the defender ought to have done

[52] Mr Hovey outlined four alterations to the route which he submitted would address the risk, namely:

1. Moving the transition area within Hamilton Palace grounds nearer to the underpass.
2. Moving the transition area to Strathclyde Park.
3. & 4. Alternative routes avoiding the footbridge.

[53] Mr Hovey explained the effect of moving the transition area closer to the underpass would be to move the mount line to the other side of the bridge into Strathclyde Park, which would adequately address risk of injury. The proposal put during the evidence of witnesses

to have the transition area by mausoleum, but the mount line on the other side of the bridge was not being pursued: Ms Girdwood had said there would be too many unhappy faces. His current proposal had come from Ms Bancewicz and would have fewer unhappy faces, but still not involving cycling over the bridge. It was difficult to see any cost: the land was the defender's and the barriers and bike racks could be relocated.

[54] In suggesting moving the transition area to Strathclyde Park, Mr Hovey was proposing either an area next to the watersports carpark, or an area in the river bend. That would have negated need to cycle or push over bridge, and the route could have taken place essentially as it was in 2017. Having the start and finish line in Hamilton Palace Sports Ground was important to Ms Girdwood, though Mr Hovey was not clear why and that could be maintained. There was no evidence that relocation impracticable.

[55] Scenarios 3 and 4 involved alternative routes to get to A723 road bridge. The pursuer accepted they were possible; Ms Girdwood accepted they were possible, though her sticking point was getting off A723 and going to main entrance (which would not be closed); path off to the left was narrow with steps down. Mr Hovey submitted it would still have been reasonable to choose having regard to risk or seriousness of injury. Ms Girdwood's points could be addressed by marshals and having a "no race" section.

Contributory negligence

[56] Mr Hovey submitted contributory negligence applied only if the pursuer failed to slow down or failed to stay off tri-bars. There was no evidence she had been on tri-bars. On excess speed, the slow down instruction was not adequate. There was no evidence about what an appropriate speed might be, and that would take the defender no further, in absence of witnesses of how the accident occurred. The furthest the defender might go was

the mere fact accident occurred indicated the pursuer had been travelling too fast. That depended on a single visible hazard that could be avoided. But here the damaged concrete was the full width of the path. There was no evidence any hazard was visibly highlighted and ought to have been seen by the pursuer.

Defender's submissions

[57] For the defender, Mr Pollock moved me to grant decree of absolvitor, with expenses against the pursuer. In the event the pursuer was successful, he did not oppose certification of Dr Boyce. He did oppose sanction for junior counsel. It was, he submitted, not reasonable to instruct junior counsel for case of this nature (which was not unusually complex) and relatively modest in value (damages being agreed at £8100).

[58] Before developing his submissions, Mr Pollock dealt with a preliminary point. There was a suggestion in pleadings that the event was jointly organised by the defender with Triathlon Scotland. It was accepted this was not a joint event; Triathlon Scotland were involved only in sanctioning event for competitive purposes.

[59] Turning to the issues at large for the court, Mr Pollock agreed there was a large measure of agreement between parties in respect of the facts. It was not disputed that the area leading to underpass was in poor condition and had to be guarded against in some way. The defender did not rely on Mr Robinson's evidence that the surface was perfect; rather the defender relied on the evidence of Ms Girdwood and Ms Bancewicz that it was poor. That was taken into account in the way the event was organised.

[60] The defender accepted the existence of a duty of care. On the basis of Ms Girdwood and Ms Bancewicz's evidence, the surface of the area was poor and a foreseeable hazard; in Mr Pollock's submission the real issue was the sufficiency of the precautions that were taken

or should have been taken. It was submitted there were two aspects, and the pursuer had to succeed on both: 1. sufficiency of precautions that were taken; and 2. If they were insufficient, were the additional precautions desiderated by the pursuer reasonable and practical. From the defender's perspective, if the precautions taken were sufficient, it was unnecessary to proceed to consider additional precautions.

[61] Mr Pollock submitted there were two relevant aspects to state of affairs and precautions: the characteristics of the locus, and the pre-race briefing.

Characteristics of locus

[62] There was no dispute about where the accident happened. However the photos CB9-12 do not show condition of location as at date of accident. Mr Marriott said they did, but there was evidence to contradict that from Mr Robinson. Ms Girdwood had not agreed the they showed the state on the day; rather she said the photos showed ground in worse condition than time of accident. The photo taken by Ms Bancewicz on CB3 showed evidence of cracking but no significant defect. It was correct to say there were surface defects across the width, but for much of the width, those were not presenting a significant defect. Ms Bancewicz mentioned most prominently the metal strip running across the path, and her concern that a change of surface was a hazard, particularly when wet. Ms Bancewicz had been monitoring safety generally and her evidence about the metal strip rather than general condition, reinforced other witness evidence. It was noteworthy that she had not been shown the photos CB9-12. In short, the precise condition was not entirely clear, beyond the defender's acceptance it was in substandard condition. Mr Pollock invited me to hold the surface was not in condition in the pursuer's photos

Pre-race briefing

[63] There was quite a lot of evidence about the briefing and the role of briefing. It was clear that pre-race briefing is mandatory part of event at all levels. All riders appreciate its importance, and the need to abide by any restrictions outlined there. “No race” zones are a common feature. The linking section including the underpass and bridge had always been a “no race” zone. A crucial new aspect to pre-race briefing was that the particular area was poor and needing attention.

[64] Mr Pollock submitted Ms Bancewicz was an impressive witness, and eminently qualified to talk about safety at events. When cross-examined about the pre-race brief – and number of events since – she was clear that she recalled this event and her comments, which were linked to phraseology in report, which she said in her brief. It was accepted that Ms Girdwood said she had not mentioned specific hazards, but spoke of the general nature of stretch. Ms Kennedy did recall reference to surface. The pursuer did not recall. Mr Marriott said there may have been mention. It is a matter of admission in the pursuer’s pleadings that briefing did mention surface uneven. The pursuer also avers she was aware the area was in poor condition (see Stat 4).

[65] If the court accepted that the competitors had the uneven state of the surface of the pathway brought to their attention, in Mr Pollock’s submission, that was a sufficient precaution; and if so, that is an end of the matter. The briefing had to be seen against the background of pursuer’s knowledge and experience: these were not Sunday cyclists; rather they will be capable cyclists; wearily familiar with risks in cyclists anywhere. A briefing bringing specific reference to this area was a reasonable and sufficient precaution.

Risk assessment

[66] No case was explicitly pled about risk assessment. CB21 had been produced by the defender in earlier organisation of event; Triathlon Scotland was not involved, rather it was produced in part as due diligence for Triathlon Scotland. Mr Pollock accepted it did not mention surface condition. There was no causal connection between risk assessment and the accident; nor with anything the defender did or did not do.

Alternative routes

[67] The alternative routes suggested by the pursuer all come with practical difficulties, and the defender could not be expected in exercise of reasonable care to implement any of them. The first notice Mr Pollock had of the particular alterations proposed was being sent copy google maps 2-3 weeks prior to proof; if there were inadequacies in the defender's evidence that was because the defender not have advance notice of specific propositions, and had no opportunity to investigate the cooperation with North Lanarkshire Council.

[68] Move the transition area within Hamilton Palace sports grounds - This would have practicability in that these are owned by South Lanarkshire Council. But moving to the corner of field gave rise to a number of practical points. Ms Girdwood mentioned there was a slope; Mr Robinson mentioned this was close to the running route and would cause congestion. It would also involve cyclists picking up bikes and crossing bridge: something uncomfortable in cycling shoes.

[69] Moving to Strathclyde Park - The court had heard problems with moving to the area in the river bend: size, slope, and boggiess. Mr Pollock submitted it was not viable. The other area was more suitable in terms of terrain, but raises other difficulties, not capable of being fully explored in the available evidence. Strathclyde Park is owned by a different

council; while there had been a degree of cooperation, Mr Robinson's evidence was this had been fairly restricted, involving closure of roads. After this event there had been discussion of transferring a larger part to Strathclyde Park, but there were real difficulties including possible additional charges, relocation of staff, and the question of who would operate the event. There were a variety of logistical, economic, political considerations and discussions led nowhere.

[70] Other footpaths - Counsel for the pursuer had fairly acknowledged Ms Girdwood's evidence about impracticability and lack of safety. The narrowness of path was a real problem: a no race zone of 350m is one thing, having one of 1km (to A723 and into park) was impracticable and unappealing. Then there was the difficulty of getting into the park if you take that route; there was no question of the main entrance to Strathclyde Park being closed for the duration of the event. Other way leaving A723 has difficulty of steps - Ms Girdwood was not happy from safety point of view; having regard to footwear that presents an obvious hazard, thus it involved more risk than route actually used. Ms Girdwood's view about that route was absolutely clear: it was not feasible.

[71] In short, all the alternative routes suggested by the pursuer all come with significant difficulties, weighed against the risk of the standard route, with risk controlled by pre-race briefing. Given those difficulties and questions about feasibility the defender could not be criticised for not adopting them.

Sole fault & contributory negligence

[72] Mr Pollock submitted the accident was caused by the pursuer's own fault, and esto it was not and the defender was to any extent liable, she had contributed to the accident. The factual basis was the same for both strands. The pursuer's knowledge of the existence of the

hazard is admitted on record, and there was also Ms Bancewicz's evidence about the briefing. The pursuer had cycled that stretch already earlier in the event.

[73] As to the pursuer's lack of care, care was required whenever one gets on a bike. The pursuer was aware of terrain, and plenty of others negotiated safely, including Ms Kennedy. There had only been one accident, and the obvious question was why she had accident; Mr Pollock submitted she not taken care the others had, after all the locus has not changed. He invited the court to draw an inference from the sequence of events.

[74] An absence of eye-witness is not uncommon where sole fault or contributory negligence is maintained. Surrounding circumstances of the hazard were relevant and can inform/be a basis for finding. The pursuer was aware of the defect, and whatever speed she was going, did not allow her to respond and react to ground conditions. The defender did not rely on her using tri-bars, but did rely on her speed.

[75] Another matter was failure to keep a proper lookout. The court heard evidence from Ms Kennedy and Ms Bancewicz about significance of speed in avoiding hazards which tied together speed and keeping lookout. An appropriate speed allows you to see ahead and to absorb info. Also it is easier to avoid a hazard at slower speed. It was accepted there was no evidence about a specific speed instruction. However the fact was that the pursuer suffered an accident, where the defect was in plain daylight, there to be seen, and she was already aware of it. That very much pointed to a need to cycle at a reasonable speed to see and avoid or negotiated obstacle. Surrounding circumstances would allow the court to make finding the accident was caused solely by the pursuer's fault, and if not to find contributory negligence at a high level (at least 50%).

Analysis and decision

Objection to lines of evidence in pursuer's case

[76] In the course of the pursuer's evidence, Mr Pollock took objection to a line of questioning. This related to the practice of cyclists dismounting, and I was told that Mr Pollock had given advance notice to Mr Hovey; in addition, it was anticipated the same argument might require to be addressed in relation two, or perhaps three, further lines. Accordingly, I heard argument at length from parties outwith the presence of the pursuer, before adjourning briefly and making a ruling on the objection both on the line about which it was raised and the anticipated subsequent lines.

[77] Counsel for the pursuer sought to examine the pursuer about a number of possible precautions which it was said the defender could have taken in the exercise of reasonable care. These were: (a) altering the route, about which there were four possible scenarios; (b) requiring competitors to dismount from their cycles before negotiating the bridge; (c) postponing the event until the road surface was repaired; (d) matters relating to signage and marking.

[78] Mr Pollock's point in essence was that, apart from a case about altering the route being a reasonable precaution, there was no foundation in the pursuer's pleadings for any of these matters. He referred me to statement 4 of the record, which is in the following terms:

"On or about 12th March 2017, the Pursuer was taking part in a duathlon event organised by the defenders to take part in the vicinity of Strathclyde park. The race route comprised of a run around Hamilton Palace Sports Ground before competitors required to pick up their bikes, then cycle into Strathclyde Park by way of and underpass and bridge over the river Clyde where a cycle route was planned. The competitors then returned by the same route and finished the race with a further run in Hamilton Palace Sports Ground. The pursuer had completed the cycle and was cycling back over the bridge heading down towards the underpass when her front wheel hit a piece of uneven concrete causing the wheel to jar and the pursuer to be thrown over her handlebars causing the right hand side of her head to impact with the concrete in front of the bike. The momentum carried the pursuer along the road

surface, scraping her face along the ground for approximately six or seven yards. The pursuer required to be unclipped from her bicycle by a spectator who provided first aid. The competitors had been given a briefing at the start of the race. The briefing had advised that the area where the pursuer's accident occurred was uneven and that should be considered a "no race area". Competitors were advised to reduce speed and stay off their Tri Bars. The pursuer followed this advice. The pursuer was aware that the area of the bridge where the accident occurred was in a poor state. The pursuer was exercising reasonable care. The defenders were aware of the poor condition of the area where the accident occurred. The defenders failed to take sufficient steps to ensure the safety of the competitors such as the Pursuer. The defenders should have altered the route to avoid the area of damaged concrete. The Defenders' averments in answer are denied except insofar as coinciding herewith."

[79] It was clear, Mr Pollock argued, there was no mention of specific precautions apart from altering the route. If the pursuer sought to rely on "failed to take sufficient steps to ensure the safety of competitors" there were many conceivable lines of criticism: signage, provision of marshals, instructions to participants, to name but three. The defender had prepared to meet the case pled, and it would be significantly prejudiced if further lines were now opened. If the pursuer sought to explore other lines of criticism of the defender, that ought to have been the subject of notice by averments, which the defender could have investigated in good time, and, if thought fit, led evidence.

[80] Although he was not the author of them, Mr Hovey properly accepted they were his record for the purposes of the proof. Mr Hovey reminded me that OCR 36.B1(1)(a) required the pursuer to plead only those facts necessary to establish her claim. He referred me to the discussion of that by Sheriff Mackie in *Lamb v Wray* 2014 SLT (Sh Ct) 2, particularly paragraphs 12, 13, and 16. If the pursuer had only averred she participated in a duathlon and suffered accident and injury, that would be insufficient. If the pursuer had merely said the defender had failed to take sufficient steps, that would be insufficient. However, Mr Hovey submitted, that statement 4 taken in its entirety provided sufficient notice of the

pursuer's case. The defender had notice of the locus and the defective state of the surface there. The defender could advise its legal representatives of reasonable precautions.

[81] It seems to me that the defender's objection is well taken.

[82] I was referred to OCR 36.B1(1)(a), but it seems to me that begs the question of what are the facts necessary to establish the pursuer's case. In relation to fair notice, each case turns on its own averments of course, but the passages to which I was referred in *Lamb v Wray* serve as a helpful reminder of the broader principles which apply, and it is convenient to set them out:

"[13] The function of written pleading is to give notice to the opponent of the case to be met and to give notice to the court of the issues on which parties require a judicial decision. A party is not entitled to establish a case of which the other party has not received fair notice upon record. To disregard such principles would lead to injustice. In my opinion the provisions of Ch.36 do not relieve the pursuer of the obligation to give fair notice of his or her case. In terms of r.36B.1 the pursuer requires to make averments relating only to those facts necessary to establish the claim (my emphasis). These are the bones referred to by Lady Smith. What the pursuer does not require to do in an action proceeding under Ch.36 is to fully clothe those bones. Accordingly the pleader has to have careful regard to what facts are necessary to establish the claim to be made...

[16] As Lord Emslie said in *Slessor*: 'I cannot believe that the framers of Chap 43 thought it appropriate for defenders to have to guddle about in other documents to ascertain the likely nature of the case against them' (p.86, para.20). Similarly I cannot believe that the framers of Ch.36, based as it is on Ch.43, thought it appropriate for defenders to 'guddle about' to find, or even have to guess at, the pursuer's case. Fair notice still requires to be given so that the defender knows the basis of the case to be met, even if only the bare bones of it. Further, the court requires to have notice of the issues in dispute in order to make a judicial determination on them. Unless the pursuer has averred, and by so doing offered to prove, the facts necessary to establish the claim the court will be unable to make the relevant findings in fact in any determination, assuming that the averments are proved. Even if evidence were to be led without objection unless the pursuer has, or is allowed to introduce by amendment, a basis in his or her pleadings the court would be unable to make relevant findings in fact."

[83] I respectfully agree with Lord Emslie and Sheriff Mackie.

[84] In my view, the key averments in statement 4 are:

“The defenders were aware of the poor condition of the area where the accident occurred. The defenders failed to take sufficient steps to ensure the safety of the competitors such as the Pursuer. The defenders should have altered the route to avoid the area of damaged concrete.”

[85] I consider that these averments specifically, and statement 4 generally, does not give any notice, let alone fair notice, of a case about requiring cyclists to dismount, or of postponing the event, or based on criticism of signage. The averment about altering the route is, just, adequate for the purposes of Ch 36, indeed it also points up the fact that notice need not always require extended written pleading, but it does need *some* pleading.

[86] Accordingly, I sustained the defender’s objection to the leading of evidence about: (a) requiring competitors to dismount from their cycles before negotiating the bridge; (b) postponing the event until the road surface was repaired; (c) matters relating to signage and marking.

Liability/Breach of duty

[87] To succeed in this action, the pursuer must establish fault on the part of the defender. Thus the initial question must be whether there exists a duty of reasonable care. While it is not uncommon for a defender to admit on record that it was subject to certain duties of reasonable care, usually under explanation that it fulfilled such duties, the form of admission in this case (in a Joint Minute) is unusual. It is necessarily divorced from the surrounding averments of the record. Be that as it may, standing parties’ agreement, I proceed on the footing that the defender was subject to a duty of reasonable care.

[88] The next question is the foreseeable likelihood of injury. That there was such a foreseeable possibility appeared to be taken as read by both parties. Parties framed this as a question about whether the defender took adequate precautions. At paragraph 84 I have set

out the averments on which the pursuer's case turns. I was not directed to authority vouching the formulation or scope of the defender's duty in this context, though the defender accepted the condition of the surface was a foreseeable hazard.

[89] It was submitted I should adopt the "calculus of risk" approach to this question. In *Phee v Gordon* 2013 SC 379, at 386 para 28, Lord Hodge (giving the opinion of the Extra Division) framed the issue this way:

"The court in assessing what reasonable man would do uses a calculus of risk. It weighs up (i) the likelihood of causing injury, (ii) the seriousness of that injury, (iii) the difficulty, inconvenience and cost of preventive measures and (iv) the value of the activity that gives rise to the risk. For an example of the court attaching weight to the social value of the activity that gives rise to the risk and the adverse effect which the preventive measures would have on that activity, see *Tomlinson v Congleton Borough Council* [2004] 1 AC 46, Lord Hoffmann at paras 34-37."

His Lordship went on to say that this was a "jury question" (*idem*, para 29).

[90] Before embarking on such an exercise, it is relevant to note a number of key background facts: (i) the defender was not responsible for the state of the pathway; (ii) the defender was aware the surface of the pathway at the point where the bridge ended and the pathway began was cracked and uneven; (iii) the defender provided a pre-race briefing, which addressed a number of matters, including the approach to be taken by competitors to travelling across the bridge and along the pathway with which we are concerned; (iv) the pursuer attended the pre-race briefing; (v) the pursuer was, in any event, familiar with the locus; although she did not cycle there regularly, she did walk and run there; (vi) the pursuer was aware the surface of the pathway was uneven.

[91] Although the precise mechanism of the accident was not, in my opinion, conclusively established, it appeared to be common ground that the accident occurred as a result of the front wheel of the pursuer's cycle encountering either an obstacle or a broken area of tarmac at about the point where the bridge deck meets the pathway on the Hamilton Park side of

the bridge. On the evidence, that is certainly the most plausible mechanism, and I hold that on the balance of probabilities that was what happened.

[92] Given the apparent limitations of the pursuer's record, parties' submissions about the sufficiency of precautions ranged more widely than might have been anticipated. It seems to me this was a consequence of the lack of a fully articulated analysis of the pursuer's case of fault, even within the more relaxed regime of OCR Ch36. However the real issues of contention are whether there was a breach of duty, and causation. As a consequence of my ruling above on the pursuer's proposed lines of evidence, her case is periled on her averments that that in order to meet its duty of care, the defender should have re-routed the race. She offered four possible alternative routings.

[93] I consider the pursuer has not proved the first alternative routing would have avoided the accident, and in any event, I am not satisfied the pursuer has established it was a reasonably practicable precaution. I consider that the second, third and fourth are plainly impractical for a number of reasons, and none of those is therefore a reasonable precaution. No breach of duty therefore arises in respect of those. It is convenient to consider each in turn.

[94] The first alternative routing proposed by the pursuer involved moving the transition area closer to the underpass, but still within the Hamilton Palace sports grounds. It was said this would result in the mount line moving to the other side of the bridge into Strathclyde Park, which would adequately address risk of injury. Leaving to one side the effect of the ruling excluding a case based on a different mount line, while it is possible the mount line might be moved as a result, it is not clear on the evidence that would be a necessary consequence. On the other hand, there was evidence from Ms Girdwood that while the sports pitches in the area of the sports grounds nearest the underpass were flat, there was a

slope leading from them to the pathway to the underpass. There was also evidence from Ms Girdwood and Mr Robinson that moving the transition area to an area within Hamilton Palace sports grounds closer to the underpass would likely bring cyclists into conflict with runners, because, I surmise, of their converging a more constrained area. The running area was immediately adjacent to the proposed alternative transition area. There was no evidence about the practicality or otherwise of reorganising the running route.

[95] Turning to the other proposed alternative routes. I consider the second proposal, moving the transition area to the Strathclyde Park side of the Clyde to be impractical. The first area proposed, in a grassy area on a river bend, was described as too small, boggy and sloping towards the river. That is unlikely to be a safe area. In the course of evidence, it was suggested by Ms Bancewicz that it might be possible to use an area in or adjacent to a carpark at the water sports centre. That had been used for other sports competitions. However there had been difficult negotiations on other occasions, and Strathclyde Park facilities had not been made available.

[96] However, in my opinion, this second option was dependent on agreement from North Lanarkshire Council, in whose area Strathclyde Park is located. The evidence was that such cooperation was not always readily forthcoming. There might also be an additional financial cost, as well as a possible requirement to guarantee minimum numbers of competitors. Whatever other problems there may have been with Mr Robinson's evidence, and he was certainly unreasonably dogmatic about some matters, it seemed to me he was speaking from direct previous experience in his account of difficulties in inter-council working. This was also something Ms Bancewicz spoke about in her evidence about other events in Strathclyde Park in which she had been involved on behalf of Triathlon Scotland, thus corroborating Mr Robinson's evidence on this topic. For those reasons, I

considered this alternative routing to be too speculative, and hence not reasonably practicable.

[97] I consider the third and fourth proposed routes are impractical for essentially the same reason, namely both envisaged the competitors being directed along or alongside busy roads for a distance, before entering Strathclyde Park adjacent to the road bridge over the river Clyde. I accept Ms Girdwood's evidence about the practical problems of these third and fourth scenarios. In my view, her professional experience and her experience as a competitor brought a real-world response to the ingenuity of counsel. Ms Girdwood was clear that the main roads around Hamilton Palace sports grounds, and those at the main entrance to Strathclyde Park would not be closed to other traffic for the duration of the event. The proposed routes into Strathclyde Park from the A723 road are also problematic, because they are either steep, with steps, or would involve entering by the main entrance of Strathclyde Park, where again other traffic would be circulating. I consider that neither of these is a practical option for a race involving around 200 adults and children in at least two separate waves. There was no evidence to support the pursuer's submission that such difficulties could realistically be addressed by marshals or having an extended "no race" area.

[98] Accordingly, the measures argued for by the pursuer all fail to cross the threshold of reasonable practicability. The pursuer has accordingly failed to establish a breach of duty on the part of the defender.

Damages

[99] As I have already noted, parties had agreed damages on a full liability basis in the amount of £8100.

Contributory negligence

[100] Because of the view I have reached on primary liability, the question of contributory negligence does not arise. In case I am wrong about the primary issue, I will briefly set out my views.

[101] The defender submitted the pursuer was going too fast, and that was the cause of the accident. *Esto* it was not the sole cause, it was a material cause. The defender also submitted the pursuer failed to keep a proper lookout. The pursuer's answer is that she was not, and that is evidenced by the fact that she was wearing cycling shoes which clip into the pedals, and which she said unclipped automatically if she hit an obstacle at speed. They did not unclip, therefore she was not travelling fast. That analysis was not supported by Ms Bancewicz, whose explanation that the purpose of cycling shoes clipping in was to ensure power was transferred on the upstroke as well as down stroke, and that a lateral movement was needed to remove the shoe, was compelling.

[102] In the end, however, there was no clear evidence about the pursuer's speed: she had no clear recollection, and evidence was not led from any other eyewitness. I am not satisfied that there is any evidence which would allow me to conclude the pursuer was not keeping a proper lookout. In this case, the fact of the accident is not of itself sufficient. Accordingly, I am not satisfied on the evidence before me it can be said the pursuer caused or materially contributed to the accident.

Conclusion

[103] For the all of the foregoing reasons, I will grant decree of absolvitor in favour of the defender. Parties were agreed expenses should follow success, and I therefore award the

expenses of the action to the defender. Because of the view I have reached on liability, it is not necessary for me to address the certification issues raised by the pursuer.