

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

[2022] SC EDIN 32

PIC-PN2284/21

JUDGMENT OF SHERIFF K J CAMPBELL KC

in the cause

BEVERLY GILCHRIST

Pursuer

against

CHIEF CONSTABLE POLICE SERVICE OF SCOTLAND

Defender

**Pursuer: A Crawford, advocate; Thompsons, Edinburgh**  
**Defender: Hastie, advocate; solicitor to the Scottish Police Authority**

Edinburgh 12 October 2022

Findings in fact

1. The pursuer is a clinical support worker, employed at the Edinburgh Royal Infirmary. On 3 August 2019, the pursuer was working as a clinical support worker in the Emergency Department at that hospital.
2. At around 18.30 on 3 August 2019, a patient known as JH was brought to the Royal Infirmary by ambulance. JH was accompanied by PC Downie and PC Grant of the Police Service of Scotland. Because of his presentation, JH was in handcuffs throughout the journey to the hospital. He was handcuffed behind his back.
3. JH was under the influence of substances, believed to be alcohol and cocaine. His behaviour was unpredictable and aggressive. He was abusive to police and to ambulance

staff before and during the journey. On arrival at the Edinburgh Royal Infirmary, JH was taken to Resus room 2. He continued to be abusive and aggressive.

4. After arrival in Resus room 2, JH was placed on a hospital trolley, partly reclining. He was handcuffed to the front.

5. The pursuer was part of the clinical team observing and attempting to treat JH. JH was resistant to observation and treatment. He was abusive to the pursuer and to the police officers. The abuse and aggression varied in its intensity. At a point during the pursuer's attempts to observe and treat JH, he grabbed her left thumb and bent it back.

6. At around 19.00, after about 30 minutes in Resus room 2, JH began flailing around and attempted to get off the trolley. The police officers required to intervene and restrain him. PC Downie took his upper body and PC Grant his lower body. The pursuer called for assistance from other hospital staff.

7. PC Downie had one arm on JH's shoulder, while he was attempting to control JH's hands and arms with his other hand and arm. PC Downie would have had to use one of his hands to use his police radio to call for assistance from other police officers.

8. PC Grant had his left arm around JH's legs and was attempting to restrain them. PC Grant decided to use 'fast-strap' leg restraints. These are long pieces of Velcro material issued to police officers for this purpose and carried on their belt. PC Grant was unable to remove these from his belt pouch and asked for assistance from those in the room. The pursuer or another member of NHS staff removed the 'fast straps' from PC Grant's belt and placed them on the trolley beside him.

9. PC Grant applied the 'fast straps' to JH's legs. In the course of PC Grant restraining his legs, JH kicked out. He struck the pursuer on the left hand and abdomen.

10. The pursuer suffered a soft tissue injury to her left hand. The pursuer's hand injury resolved by late October 2019.
11. The pursuer developed symptoms of low mood and anxiety in autumn 2019. She attended her GP in October and November 2019. The pursuer underwent a course of cognitive behavioural therapy organised through her GP practice. The pursuer was able to return to work in January 2020.
12. The pursuer developed symptoms of post-traumatic stress disorder. In particular, she reports avoidance, hypervigilance, and intrusive thoughts. The pursuer is anxious about leaving home without her husband or her daughter.
13. The pursuer was able to return to work for a time in the Emergency Department at the Edinburgh Royal Infirmary. On an occasion between 21 April 2021 and 21 April 2022, the pursuer witnessed an episode involving a disruptive and aggressive patient and was unable to continue doing so. She now works in the Minor Injuries Clinic at the Edinburgh Royal Infirmary. She is able to carry out a full range of duties there.
14. The pursuer continues to be employed by NHS Lothian. She is on essentially the same grade doing a similar job in a different department. There is no material difference between her earnings prior to and after 3 August 2019.
15. Prior to the incident on 3 August 2019, the pursuer provided childcare for her daughter, Stacey Gilchrist, by looking after Stacey's son, the pursuer's grandson. Since that date, the pursuer has felt unable to do so.

### Findings in fact and law

1. The injuries suffered by the pursuer following the incident on 3 August 2019 were not caused by the fault and negligence of the defender's officers for which the defender is in law responsible.

### **Introduction**

[1] This action concerns an incident which occurred on 3 August 2019 while the pursuer was working in the course of her employment as a clinical support worker in the Emergency Department at the Edinburgh Royal Infirmary. The pursuer was attempting to treat a patient, referred to on record as JH, who had been brought to hospital by police constables of Police Scotland. JH was under the influence of alcohol and other substances, and his behaviour was aggressive and unpredictable. Police officers required to restrain him. It is common ground that the pursuer was injured, but there is a dispute about the nature of her injuries and the causal mechanism. The defender disputes his officers are in law responsible for those injuries. The questions for the court in this case are whether the pursuer's injuries were caused by the fault of the police constables for whom the defender is vicariously liable, and, if so, what is the proper measure of damages. I have concluded the pursuer's action must fail, and my reasons for that are contained in this judgment.

[2] I heard proof in this case by webex video-conference on 9-12 August 2022. The pursuer gave evidence, and led evidence from Dr Marshall Garrett, Dr Steven Birrell, her husband Iain Gilchrist, and her daughter Stacey Gilchrist. The defender led evidence from PC Stuart Downie, Simon Grant, and Dr Krishna Murthy.

[3] Parties helpfully agreed a number of evidential matters in a Joint Minute, number 22, tendered at the outset of the proof. Those relate to the provenance of the documents

contained in 5/4, 5/5, 5/6, 5/7, 6/2, and 6/3 of process. In the Joint Minute, the pursuer also confirmed she no longer insists in a claim for past and future wage loss. Documents in this case are produced in the form of a joint bundle, and I refer to them by "JB" plus the page number.

[4] At the outset of the proof, Mr Crawford sought to amend the pursuer's record as follows:

(a) in statement 4, on page 3 of the Record, by deleting the words:

"Admitted that one of the officers asked the pursuer to remove the leg restraints from his belt while he was using his arms to restrain JH."

and substituting therefor the words:

"Admitted the pursuer was trained in the handling of patients who are aggressive and/or known or believed to be under the influence of alcohol or controlled substances, under explanation such training did not include the use of leg restraints.";

(b) in statement 6, on page 11 of the Record, in the second sentence, by deleting

"its employees,";

(c) in statement 6, on page 12 of the Record, in the penultimate sentence, by deleting

the word "employees' ", and substituting therefor: "officers' ".

That amendment was unopposed, and I allowed it to be made.

[5] In the course of his submissions at the close of proof, Mr Crawford sought to amend the sum sued for to £91,006. That motion was also unopposed, and I allowed the amendment.

**Pursuer's evidence***Beverly Gilchrist*

[6] The pursuer is 57 and is employed as a clinical support worker at the Edinburgh Royal Infirmary. She has been employed in that capacity for 21 years. The pursuer said that at around 17.00 on 3 August 2019 two police officers accompanied a 36 year old male, JH, into the emergency department. He was very vocal, shouting and swearing. There was a champagne glass sticking out of his chest. He was put in Resus room 2, which is a secure room, for his safety and that of others. At that stage the pursuer was accompanied by Dr Krishna Murthy and a senior nurse. JH was on a trolley, with his back elevated but not quite sitting up. JH would not let anyone near him. There were other resus cases which took Dr Murthy away from the room. The pursuer tried to take some swabs from the area where JH was bleeding. He grabbed her left thumb and pulled it back; the pursuer tried to use her violence-reduction training to de-escalate the situation, as did the police officers. JH was having none of it. The pursuer tried to take blood pressure, respiration and heart-rate observations, but JH would not let her near him. At one point, he put his hand into blood and threw it at the pursuer and the police officers, all the while being verbally abusive. The pursuer described JH as a body-builder type, and a big lad. He had admitted to being high on cocaine and alcohol. The pursuer is 1.57m (5' 2") tall. The pursuer said she had been with JH for two hours, during which time his behaviour got worse. He had a go at her, and each of the police officers in turn. He was waving his arms and trying to leave the room; that was when the officers intervened.

[7] JH was handcuffed when he came in, but the police removed the cuffs when she was trying to take observations. Around 18.50, JH tried to climb off the trolley. The police officers were at his shoulders on either side, one holding each arm. The officer on the left

asked the pursuer to go into the pouch on his belt and get out leg restraints, and strap JH above the knee and below the knee. The pursuer had no training in applying leg restraints to patients. She had no prior experience of applying leg restraints. The pursuer managed to get the top belt on. When the pursuer put the lower belt on, the police officer said it was too high. The pursuer lifted the Velcro and her left hand got caught in the belt. The patient kicked out and her hand was caught in the belt at the thumb, which was hyper-extended. The patient kicked out and the pursuer put her hands up because she thought the patient would kick her in the face - he did knock her hands. While the pursuer was putting on the lower strap, JH kicked out with both feet, hitting her left hand and knocking her back. At that point, she pulled the alarm. The police officers were not in control. She knew that at 19.10 there was a change of shift, and more staff would be around. Other Emergency Department staff came to her aid, and the pursuer was taken to an office. One of the police officers came to ask if she was alright.

[8] The next day, the pursuer's left hand was sore and swollen, and she had pain in her arm. She went to the Minor Injuries Unit to have it looked and was sent home from work. They thought she had a scaphoid fracture, and she was in a wrist splint, and then a cast for four weeks, though subsequently it was found to be soft-tissue injury to tendons and nerves. Once the cast was removed, the pursuer received physiotherapy via her employer. Her hand felt tight, and she was given exercises to loosen the muscles. By late September or early October, she felt movement was better. The pursuer first attended her GP with concerns about mental health consequences of the incident on 3 October 2019. Her family had encouraged her, as they noticed a significant change in her. She received cognitive behavioural therapy via the GP. She experienced insomnia. She experienced flashbacks: seeing the whole situation, JH coming towards her, with nobody there to help; her

breathing would change and she would become sweaty. The pursuer described panic attacks where she feels her heart in her throat, and the pulse in her temples. She said she uses CBT techniques to control this. She does not like to leave the house on her own; her husband and daughter drive her everywhere. She no longer feels able to cycle and has sold her bike. She is no longer able to take the train with her grandson. Her concentration has been affected, and the pursuer feels she is no longer able to read a book.

[9] When the pursuer returned to work, she was not able to work in the Emergency Department. Her return to work coincided with the early stages of the covid-19 pandemic. The pursuer is trained as an FFP3 mask-fitter, and she was given that task, working from an office. She thereafter returned to work in the Emergency Department at a time when pubs were not open and there were fewer patients under the influence. She managed to work for a few weeks. She has been moved to the Minor Injuries Unit. She does similar work, but there are no patients under the influence. In the period immediately after the incident, the pursuer's husband assisted her to shower and wash her hair. He assisted with fastening zips and buttons, and tying shoe-laces. That lasted while she had a plaster cast and 2-3 weeks after. He had to do all the housework. He had to do the cooking, and continues to do that. The pursuer said she used to do the majority of the housework, now her husband cleans the windows and changes the beds. The division was nearer 50-50.

[10] The pursuer had previously helped with the care of her grandson. She looked after him while her daughter was working. At the time, her daughter was working 22.5 hours per week, so including her daughter's travel time, the pursuer estimated she was providing about 28-30 hours of care per week. After the incident, the pursuer had been unable to provide this amount of care. Her daughter had changed jobs to work at her son's nursery because the pursuer was unable to look after her grandson. Her grandson was about to start



primary school, and her daughter had changed jobs again to work as a catering assistant in another school so that her hours matched the time her son was in school. The pursuer was now able to visit her grandchildren if she was there along with another adult to help manage the children.

[11] In cross-examination, the pursuer accepted that the events all occurred while she was working in the course of her employment with the NHS as a clinical support worker. The pursuer could not say exactly when JH arrived with police officers. She felt he had been there for two hours at the point she was kicked, but accepted she might be mistaken. She was however adamant that he had arrived earlier than 18.30. The pursuer said JH was not handcuffed throughout the time he was in the resus room, and the police officers must be mistaken about that.

[12] The pursuer said she was at the bottom left side of the bed JH was on when he kicked out. The pursuer had been kicked in the hand, which threw her back. She was probably hit in the stomach too, but it was her hand being caught in the strap which was the cause of injury. After he kicked her, she used the alarm, and half a dozen staff came in and she was scooped out. She recognised the staff, but could not name them all. The pursuer said the notebook entry made by PC Grant (as he then was) (JB339-340) was absolutely incorrect. The police officers did ask her to get the straps and did ask her to apply them to JH's legs. She had been asked to do this by a police constable and therefore deemed she would be safe doing so. She was frightened that JH would take the glass from his chest and hit one of the constables in the neck. The pursuer agreed that the account of events in the NHS Datix form (JB320) had been inputted by her. It was a mistake on her part not to have written that the handcuffs were taken off for the patient to be examined. She was sure the handcuffs were taken off. The pursuer agreed colleagues arrived pretty quickly when she

sounded the alarm. She was clear she had only done so because there was a change of shift and she would not be taking staff away from critically ill patients. She trusted that the two police constables had JH under control.

[13] The pursuer agreed that by December 2019 her thumb and wrist were fine, though she said she had ongoing mental health problems. She accepted her GP had recorded on 16 January 2020 that she was returning to work (JB33). She did not think she had been able to take a bus by that point, but accepted that if the GP had recorded that on 16 January 2020 it was likely to be correct. She said that she had not taken up further CBT because she did not want to be seen by anyone other than Gillian McDonald who left the practice in March 2020. She did not accept treatment ceased because she did not want it to continue. The pursuer accepted she had not returned to her GP till autumn 2021. She felt she was on the mend. The pursuer accepted she was working in the Emergency Department, but was mask fitting rather than working on the 'shop floor'. The pursuer was asked about the history noted by Dr Rodger (JB17), which she said was an accurate account. The pursuer accepted he had not recorded the pursuer referring to use of leg straps and that would be because she had not said that. She was unable to account for that.

*Dr Marshall Garrett*

[14] After graduating in 1984, Dr Garrett trained at the Glasgow Royal Infirmary, before serving in the Royal Army Medical Corps 1986-1990. He has clinical experience of a wide variety of soft-tissue injuries, and has undertaken medico-legal work since 1990. After leaving the RAMC, he worked as an Associate Specialist in A&E medicine in the NHS. Since 2000 he has practised as a full-time medico-legal consultant, as well as an honorary

clinical lecturer in forensic medicine in the University of Glasgow. He adopted his report dated 28 July 2021, 5/1/1 of process (JB3).

[15] Dr Garrett had a meeting with the pursuer by video-conference in March 2021, and thought she had a good recollection of the incident in August 2019. There were two components to the pursuer's injury: the first where the patient had pulled the pursuer's left thumb and wrist, and the second where the patient had kicked out at the pursuer. The second was caused by the pursuer's thumb being caught against a restraint strap and hyper-extended. The effect was cumulative, but Dr Garrett considered the second was the more important component. The history of 3-4 weeks significant discomfort and inconvenience followed by a gradual recovery over about 12 weeks was reasonable, and the pursuer was fully recovered after four months.

[16] In cross-examination, Dr Garrett confirmed the pursuer had described a longitudinal pull of her left thumb as the first component, rather than a bending back. He agreed that a bending back when the patient grabbed the pursuer's thumb would be a hyperextension, which the longitudinal pull would not. It would not be possible to differentiate between their contributions to the overall effect of injury.

***Dr Steven Birrell***

[17] Dr Steven Birrell is a consultant psychiatrist at Wightman's Brae Hospital, Kirkcaldy. He has been a consultant in general adult psychiatry since 2015, and is an honorary senior clinical lecturer in the University of Edinburgh. His work involves the assessment and management of a variety of mental disorders in working age adults. Dr Birrell examined the pursuer by video call on 21 April 2022, and produced a report 5/2 (JB23). Somewhat unusually, Dr Birrell's report dated 16 May 2022 was described as a supplementary report

although he examined the pursuer only once. He explained in evidence that his report was to be read as supplementary to that of Dr Colin Rodger dated 12 July 2021.

[18] In Dr Birrell's opinion, the pursuer meets the diagnostic criteria for post-traumatic stress disorder ("PTSD") in terms of the ICD10 classification system. He accepted that was a different diagnostic formulation from Dr Rodger, and he explained that by reference to symptoms not mentioned in Dr Rodger's report. The pursuer experiences intrusive thoughts, which are a common form of traumatic reliving of events. Flashbacks are a specific instance of such thoughts. The pursuer also manifests avoidance behaviour, which Dr Birrell characterised as part of an anxiety cycle - where one fears something, the instinct is to avoid that thing. The pursuer feels unable to leave the house without her husband because she feels unsafe. That has expanded to cover her employment situation. Although she had been able to return to the Emergency Department, her avoidance behaviour became more significant after another incident there. This is an ongoing problem for the pursuer, who has made a lot of adaptations to cope. The pursuer experiences panic attacks: acute and overwhelming anxiety, triggered by flashbacks. She is hypervigilant, which is a feeling of being on edge, and underpins her panic attacks. In Dr Birrell's opinion, this is a manifestation of PTSD. Reactions of these kinds are common. Avoidance is often the most disabling symptom of PTSD, as a reminder of the stressor. Social withdrawal is also common. The pursuer was receiving anti-depressant medication and had received cognitive behaviour therapy.

[19] In Dr Birrell's opinion, the pursuer's manifestation of PTSD was caused by being kicked during the ordeal she described. Dr Birrell referred the account in paragraphs 6.2 and 6.3 of Dr Rodger's report that the pursuer was an experienced member of staff who had experienced numerous difficult patients without requiring psychiatric care. Dr Birrell said

the history which the pursuer gave was abbreviated. She had confirmed she was content that the history noted by Dr Rodger was accurate. Dr Birrell confirmed that in his opinion, the history in paragraphs 6.2 and 6.3 was consistent with his diagnostic formulation.

Dr Birrell recommended a change in the pursuer's medication from paroxetine to sertraline. He recommended 8-16 sessions of trauma-focussed CBT, and further behavioural therapy specifically focussed on the workplace for 4-8 sessions. Therapy with a clinical psychologist would cost £120 per session. If the pursuer received such treatment, in Dr Birrell's opinion her condition would improve over a 6-12 month period, such that any residual symptoms would be sub-clinical. That might allow for a return to her previous work, and would certainly allow her to continue in her current job.

[20] Dr Birrell acknowledged that Professor Taylor, the defender's expert witness, offered a different diagnosis in the form of a specific phobia, namely agoraphobia. He understood some of Professor Taylor's reasoning, because the pursuer has difficulties leaving home. In Dr Birrell's view, agoraphobia did not involve response to a threat but a general avoidance of leaving the home, and in his view the pursuer's symptoms were avoidance of a specific threat. Professor Taylor referred to flashbacks but had excluded PTSD, though Dr Birrell was not clear why. Some of their recommendations for treatment were similar, but in Dr Birrell's view, Professor Taylor's treatment plan would not address PTSD specifically. In response to a question from the court, Dr Birrell said that there was no contradiction in the pursuer having greater anxiety about leaving the house than being in her workplace, because she was accompanied to work by people she trusts and has a supportive employer.

[21] In cross-examination, Dr Birrell explained that his report was supplementary to that of Dr Rodger in that he looked at developments and treatment since that report, and then formulated his opinion. Dr Birrell had gone over Dr Rodger's report with the pursuer. He

confirmed that paragraphs 7.1, 7.2 and 7.3 contained all the information he had noted from the pursuer about the history. If she had provided more information, he would have noted that. Dr Rodger had noted that the pursuer suffered an injury to her thumb then the patient kicked out. Dr Birrell understood that the pursuer was assaulted before the kick from the patient. There was abuse from the patient and the pursuer was kicked, knocking her back towards a bin. Dr Birrell explained that he had omitted to say in his report that he understood the pursuer's physical injury was a problem with her wrist and thumb, and that the kick had knocked her back, but that she had not suffered injury from that so far as he knew and so far as appeared from Dr Rodger's report.

[22] In Dr Birrell's view, the pursuer's PTSD could be attributed to her being kicked by JH because that was the terminal event of her involvement in the care of JH. The previous events set the scene. The sudden and unprovoked assault caused the PTSD. Dr Birrell was unable to recall whether the pursuer had said anything to him about being involved in restraining JH. He accepted that as it was not in his report, she was unlikely to have told him. He accepted there was nothing in the history noted by Dr Rodger about that either. Dr Birrell agreed that as Dr Rodger had not referred to the pursuer reporting flashbacks and intrusive thoughts, that the pursuer must not have mentioned that. He was slightly surprised she reported such problems to him. She said it had not been covered with Dr Rodger, and that was all Dr Birrell got from the pursuer about that. Dr Birrell agreed that at paragraph 12.1 of his report he had noted the pursuer's anxiety symptoms, hypervigilance and avoidance behaviour appeared to have been triggered by a further incident in the emergency department. Dr Birrell was unsure about the timing of that incident, but accepted its timing might be relevant.

*Iain Gilchrist*

[23] Iain Gilchrist is the pursuer's husband. He is 57. He and the pursuer have been married for 38 years. He works as a ward clerk at the Edinburgh Royal Infirmary. Prior to the incident, the pursuer did about 75% of the housework; he did things like gardening and washing windows, while she did household chores. He thought that he now does about 75% of the chores. In the immediate aftermath, he helped the pursuer wash and dress, and also to do her hair. That had lasted for the 4-5 weeks she was in a cast on her wrist and a couple of weeks after. Mr Gilchrist estimated this had taken about an hour or an hour and a half per day. Wednesday is his day off work, and he spends time vacuuming, and washing clothes that day. Mr Gilchrist estimated the pursuer spent about 30 hours per week providing childcare before the incident.

[24] When she had the cast on her hand and wrist, the pursuer would sit not wanting to do anything; she was not usually one for doing nothing. Instead of this becoming better, the pursuer became more depressed. Mr Gilchrist felt his wife's personality has changed significantly. She is no longer someone who would light up the room. Even in her relations with him, she was moody and down. In late September or early October 2019, Mr Gilchrist had encouraged the pursuer to see her GP, although she was reluctant to do so. The pursuer is now reluctant to leave the house on her own. She will go into the garden on her own, but Mr Gilchrist or work colleagues drive the pursuer to work. Stacey, the couple's daughter, takes the pursuer to the shops. The pursuer will not even walk to the local shop, which is about 500m away from the house. The pursuer used to walk regularly with her grandson, but does not go for walks now. The pursuer now has a very limited social life because she is apprehensive about being in spaces with others. The pursuer used to read, but now does

not do so. She has given up cycling and sold her bike. She no longer goes for walks with her husband.

[25] The pursuer has always enjoyed her job, because she has always worked with people. A busy A&E department is somewhere you either like or not. She has to pass A&E on her way to the minor injuries department, and there are always several police vehicles there. When she walks in with Mr Gilchrist, she takes his hand when passing A&E. The pursuer still enjoys her job but needs more reassurance and contact from Mr Gilchrist during the day, which she previously did not. Mr Gilchrist said he had managed to talk the pursuer round to a short break in York in March 2022. He felt that was an improvement. They went out to get something to eat, and the venue was not too busy to begin with. A group of men came in - a party on a day out. They were lively but not too noisy, but the pursuer looked at them and said "I need to go". They got back to their hotel room and the pursuer was more settled. Mr Gilchrist said he would order food to the room, but the pursuer did not want to. The pursuer was still sitting awake at 3am.

[26] In cross-examination, Mr Gilchrist thought the pursuer had recovered from the worst of pain from her injury in 4-5 weeks. She had only told him so much about the incident because of patient confidentiality, however he understood her thumb had been grabbed by the patient. Then later, when the patient was kicking off, she said she was instructed by one of the police officers to put straps on the patient. The patient had kicked her in the wrist or stomach or chest. The pursuer had returned to work in early 2020. She had been to GP practice a number of times and had liked the psychologist. Mr Gilchrist thought the pursuer was making progress by the time the psychologist left the practice; she was very determined. The pursuer was strong willed and he had anticipated she would manage things for herself. There had been an incident in the Emergency Department after the



pursuer returned to work there, where a patient had been verbally abusive to one of her colleagues; the pursuer witnessed this and was so upset she was sent home. The incident had brought things back for her.

*Stacey Gilchrist*

[27] Stacey Gilchrist is the pursuer's daughter. She is 34 and is a school catering assistant. In the period immediately after 3 August 2019, Ms Gilchrist helped her mother with washing and drying her hair. When her father was at work, she did odd bits of work at the house, though he did the majority of the housework. She thought the pursuer's physical injuries had lasted over Christmas 2019. After the pursuer's hand had recovered, Ms Gilchrist took the pursuer to the shops and to medical appointments, as well as collecting prescriptions. She continues to help in that way. She felt she helped 2-3 hours on her days off.

[28] Prior to the incident in August 2019, the pursuer had provided childcare while Ms Gilchrist was at work. At that time, Ms Gilchrist worked 21.5 hours per week. She had coordinated her shifts with her mother. After the incident, the pursuer became very anxious, and Ms Gilchrist got a job at the nursery her son attended, which meant the pursuer did not have to collect or look after him. The pursuer no longer spends time alone with her grandchildren, there is always someone else there with her, and when Ms Gilchrist takes her son to visit the pursuer, she remains with them.

**Defender's evidence***Stuart Downie*

[29] PC Stuart Downie had 5 years and 8 months police service at the time of the proof.

At around 17.45 on 3 August 2019, he attended an incident reported as a potential suicide.

On arrival at the locus in the north of Edinburgh, along with other police officers, he

encountered a male, JH, who had visible lacerations in the chest area and puncture wounds.

JH was intoxicated. Paramedics were also present, and the police officers had to step in

because JH was erratic and aggressive. It was decided that JH required to be taken to

Edinburgh Royal Infirmary for assessment, and PC Downie accompanied him in an

ambulance along with PC Simon Grant. JH was handcuffed at the locus and remained

handcuffed in the ambulance. The ambulance left for the hospital at 18.15.

[30] On arrival, JH was taken to a resus room, and the police officers accompanied him.

At some point, JH was handcuffed with his hands to the front, but PC Downie could not

recall exactly when the handcuffs were transferred from the back to the front. There were

two nurses and a doctor in the resus room. There was also a radiographer at one point.

JH was not initially under arrest, at that point the police role was one of safeguarding all

involved. JH was verbally abusive, and at times lashed out, in an ongoing cycle. There

came a point when JH's behaviour deteriorated and he became extremely aggressive both

physically and verbally. He was lashing out and trying to get out of bed. PC Downie

attempted to control JH's upper body, while PC Grant was at the lower end, and attempted

to take control of JH's legs. PC Downie had one arm on JH's shoulder whilst attempting to

control JH's arms with his other arm. JH was handcuffed at this point. PC Grant was trying

to control JH's lower body, but PC Downie was focussed on the upper body and was not

able to watch PC Grant. PC Downie explained it would only be possible to call for back-up

on his police radio, which would have necessitated him taking at least one arm off JH to operate the radio. A number of nursing staff arrived very quickly a short time later, and helped restrain JH. PC Downie believed someone had called for help, but he was uncertain how. PC Downie said the reference in PC Grant's police notebook (JB339) to JH being restrained with straps to the knee and ankle with the assistance of NHS staff referred to him being restrained after further nursing staff came into the resus room. PC Downie could not recall the pursuer. He had no knowledge of JH kicking a clinical support worker at the time, though he had come to learn this later.

[31] In cross-examination, PC Downie was certain PC Grant was restraining JH's legs, rather than each of them taking one of JH's arms. It was possible at an earlier point, when the officers first had to restrain JH that each had one of his arms. PC Downie did not recall PC Grant asking the pursuer to assist with leg restraints. He did not see a difficulty with asking for assistance, but the police could not instruct or force someone to assist in those circumstances. He agreed that if the court accepted the pursuer had been asked to participate in putting on fast-strap leg restraints on JH there was a risk of injury.

### *Simon Grant*

[32] Simon Grant was formerly a constable with Police Scotland, and attended the incident involving JH on 3 August 2019 with his colleague PC Donaldson. He thought they arrived at the locus at the same time as PC Downie and his colleague, because all four had left the police station at about the same time. He estimated the time of arrival at the locus as between 17.45-18.00. He described JH as very agitated. He and PC Downie restrained JH in handcuffs, initially behind his back to allow the paramedics to treat the wound to JH's chest. Mr Grant and PC Downie thereafter accompanied JH to the Royal Infirmary in an

ambulance. JH was handcuffed in the ambulance, and continued to be abusive and unpredictable, lashing out and shouting and swearing.

[33] When they arrived at the hospital, JH was taken straight to a resus room. Mr Grant estimated they arrived around 19.00. He and PC Downie had accompanied JH as it was not safe to leave him. JH was handcuffed. At this point there was a doctor and one or two other staff present. JH was on a bed, lying on his back, and was handcuffed with his hands in front. Mr Grant could not recall at what point the handcuffs were moved from back to front. The doctor started to assess JH and his behaviour escalated to another level compared with the ambulance. He was refusing observations and medication, becoming more and more annoyed. JH was under the influence of alcohol and drugs. He was abusive to police and NHS staff. After about 30 minutes, JH started to fling his body about trying to get off the bed. Mr Grant and PC Downie tried to keep him on the bed. A member of NHS staff hit the panic button and a number of people came in; Mr Grant could not recall how many. Mr Grant could not recall whether the member of staff who sounded the alarm was male or female.

[34] Mr Grant was at the lower end of JH's body putting his upper body weight on JH's legs to try to stop him throwing himself about. He had his upper body over JH's legs to bring his arms around JH's legs. PC Downie was to Mr Grant's left and was attempting to restrain JH's upper body. Mr Grant said that leg restraints are a tactical option for police to stop a person from kicking out and harming others. They comprise two long velcro straps to go around the legs and contain the person. Police officers carry these in a small pouch on the rear of their waist belts; Mr Grant would have his on his right hip as he is right handed. It was a matter of seconds from the escalation of behaviour by JH to the panic alarm being sounded and other NHS staff coming into the room. He had not used leg restraints on JH

prior to that. Mr Grant was clear that he applied the leg restraints after the additional NHS staff came in as they were helping keep JH contained. It was at that point that JH kicked out and connected with the pursuer's stomach.

[35] Mr Grant had his left arm over JH legs, he was reaching for the leg restraints in his pouch and struggling to get it open. He was not certain, but thought he might have asked a member of NHS staff to get the straps out of the pouch so that he could apply them round JH's legs. He could not recall if someone had in fact done that, but he recalled the straps being on the bed and struggling to get them round JH's legs. He was able to get the straps round JH's legs, and had to adjust them, after which JH was not able to kick out. JH was thereafter sedated by a doctor, and the handcuffs and leg restraints were removed.

Mr Grant was clear that he would not and did not ask the pursuer to take out and put on the leg restraints. Police officers are trained to apply the restraints. Mr Grant accepted he had asked for help to get the leg restraints out of his pouch, but he was clear that he applied the leg restraints to JH. He was not sure whether it was the pursuer who took the leg restraints out.

[36] After JH was sedated, Mr Grant spoke to the pursuer and asked if she was willing to give a witness statement so that he might report the assault. The pursuer said her shift was ending, and she would give a statement later. Mr Grant was aware she had given a statement to another officer because it was sent to him as reporting officer. He had prepared a report of an assault under the Emergency Workers (Scotland) Act 2005 of a kick to the pursuer's stomach. Mr Grant had not been called to give evidence in relation to JH prior to his leaving the police service in 2022. Mr Grant confirmed that JB339-340 is a copy of an entry from his digital police notebook. It was made as soon as JH was sedated and the handcuffs and restraints were removed. He could not recall if he had spoken to the pursuer

at the point the note was made. The start time of 19.45 was when his notebook was opened to make the entry. The end time of 20.01 was when the entry was completed and the note closed. The note was therefore made between 19.45 and 20.01 on 3 August 2019. After noting events prior to JH being transferred to hospital, Mr Grant had recorded

“In ERI [JH’s] behaviour was up and down being violent towards Police and NHS staff he was under the influence of alcohol and cocaine. [JH] was strapped to the ankles and above the knee with the help of 6 NHS staff. [JH] had threatened NHS staff at various times. He also kicked a clinical support worker in the stomach before being sedated by the doctor.”

[37] In cross-examination, Mr Grant confirmed he had asked for help removing the restraints from his pouch, but could not recall who was behind him and who took them out. It could have been the pursuer. Mr Grant was clear that he did not ask the pursuer to apply the straps. He agreed that if the court found that the pursuer was asked to apply the straps, she had not been trained to do so and that it carried a foreseeable risk of injury. Mr Grant agreed that JH kicked the pursuer. He did not recall seeing her thumb get caught in the leg restraints.

*Dr Krishna Murthy*

[38] Dr Murthy is 41 and has been a consultant in emergency medicine for 10 years, and is a consultant in the emergency department at Edinburgh Royal Infirmary. Dr Murthy accepted from the medical notes that he was involved in the events of 3 August 2019, but he had no recollection of these events. He was unsure whether he had prepared the record JB415, or whether it had been prepared by the registrar on duty; however as he had been the primary care provider for JH, he was reasonably confident he had prepared the record. Such a record might be prepared contemporaneously, sometimes in retrospect. His practice was to prepare such records as soon as possible. The time stamp of 21.26 referred to the last

time the record was amended, and that corresponded with the time entry of 21.25 in the body of the note. It was not possible to say from the record when the patient arrived. The reference to “30 min after” was 30 minutes after initial assessment.

[39] In an emergency, there was a tannoy across the emergency department which would allow staff to call Dr Murthy to a particular area. There was a buzzer alarm in the mental health cubicle, and again that sounded across the department. The microphone for the tannoy was in a grey box in the resus room. In other areas, it was wall-mounted.

Dr Murthy confirmed that it was sometimes necessary to involve both police and hospital staff in restraining patients.

[40] Dr Murthy was not cross-examined.

### **Submissions**

[41] Counsel produced written submissions, which are in process and which I therefore need not reproduce at length. I have taken full account of these in considering this case.

Counsel adopted their respective written submissions, and developed them in relation to the points in dispute.

### ***Pursuer's submissions - liability***

[42] For the pursuer, the core of Mr Crawford submission was that the applicable law is found in the decision of the UK Supreme Court of *Robinson v Chief Constable W Yorkshire* [2018] AC 736. From Lord Reed's judgment, several principles could be discerned:

- (a) Police officers are subject to liability for causing personal injury. They owe an ordinary common law duty of care to avoid causing reasonably foreseeable injury to persons (paras 44 - 48).

(b) The police may be held liable for positive acts that give rise to a reasonably foreseeable risk of injury (paras 73 - 74).

[43] Mr Crawford submitted the present case concerned a positive act by police officers: namely the decision to ask the pursuer to participate in the restraint of a violent patient, JH. It was reasonably foreseeable that asking a 54-year-old, 5-foot 2-inch female clinical support worker with no training in the application of leg restraints to apply leg restraints to a large male patient whose behaviour had been increasingly aggressive, threatening, and violent over an extended period might result in injury. The conduct of the officer who asked her to apply the leg restraints was consequently negligent, which negligence resulted in injury.

[44] The pursuer's physical injuries were caused, or materially contributed to by the officers' negligence. In the event that the first injury to the pursuer's thumb (which occurred before the duty of care was engaged) was not a hyperextension, Dr Garrett considered that the second 'component' (when her thumb was caught in the restraints after the duty of care arose) was the more significant. The assault she suffered after the officers involved her in the restraint of JH caused, or materially contributed, to the pursuer's development of post-traumatic stress disorder. On the authority of *Williams v Bermuda Hospitals Board* [2016] AC 888, which applied authority dating back to *Wardlaw v Bonnington Castings*, a material contribution to the development of PTSD was sufficient to bring home liability.

#### *Pursuer's submissions - damages*

[45] On the question of damages, Mr Crawford submitted the pursuer had suffered a recognised psychiatric injury, PTSD. That falls within Chapter 4B(c) of the Judicial College Guidelines attracting awards between £8,180 - £23,150. Awards in this category typically apply to pursuers who have largely recovered. Whilst this is not presently true of



Mrs Gilchrist, if Dr Birrell is correct her prognosis is positive. Any award within this category ought therefore to be at the upper end. On any view the pursuer's psychiatric injury has been extremely debilitating. By way of example, he referred to the relatively recent decision of this court in *Weddle v Glasgow City Council* 2019 SLT (Sh Ct) 206. There, the pursuer developed PTSD which was seriously debilitating for periods, sufficient to disrupt her lifestyle and university education for a number of years. She has had to undergo treatment which had been of limited effect, although she had improved and the prognosis was for further improvement. The *solatium* award that would have been made had the pursuer been successful was £35,000. The pursuer's physical injuries resolved within 4 months at most. Counsel submitted the pursuer's injury falls within Chapter 7I(w) of the Judicial College Guidelines attracting awards of up to £4,750. It was submitted the court could aggregate awards for the physical and psychiatric components, and a *solatium* award of £20,000, particularly in view of *Weddle*, was reasonable.

[46] The pursuer's services claim involves substantial elements under both section 8 and section 9. In respect of section 8 there was a period of personal care (particularly with washing and dressing) which lasted until a couple of weeks after the pursuer's cast was removed at around 1 to 1.5 hours per day. From the accident to date the pursuer's husband estimated that, because of the way in which household chores had altered, he was supplying an additional 1.5 to 2 hours a day and much of his Wednesdays off. Stacey, the pursuer's daughter, was also supplying more additional assistance, which she described as 2 to 3 hours on days off, and seeing her mother most evenings. It was submitted that (i) an hour a day for six weeks be allowed for personal care such as washing and dressings and that (ii) 2 hours a day between Ian and Stacey Gilchrist be allowed for all other assistance (including household chores and accompanying the pursuer outside) from the date of

incident onwards. In respect of section 9, counsel submitted that before the incident the pursuer rendered considerable amounts of gratuitous childcare to her grandson, and that she is now no longer able to do so. The pursuer's daughter Stacey had changed jobs twice as a consequence. The pursuer estimated 28 to 30 hours per week of pre-incident childcare, with additional time on the weekends when he would stay over. Her husband estimated 30 hours per week with additional time at the weekends. A net hourly figure of £7 for all services was, counsel submitted, modest given the cost of professional childcare. In respect of treatment costs counsel suggested the court take the mid-point of Dr Birrell's estimates for the number of each therapy required. This would comprise 12 sessions of combined CBT and eye movement desensitisation and reprocessing and 6 sessions of systematic desensitisation.

*Defender's submissions - liability*

[47] For the defender, Mr Hastie submitted there was clear dispute of fact between the pursuer's account and that of Mr Grant, formerly PC Grant. Mr Grant should be preferred. He candidly said he asked someone to help remove the straps from his pouch and could not recall if it was the pursuer; however he was adamant it was he who applied the straps. His evidence about the sequence of events was consistent with his notebook entry (JB339-340). It was also consistent with the Datix entry made by the pursuer, and with Dr Murthy's clinical notes. The pursuer's account also depended on JH being unhandcuffed, but that was not supported by her own Datix entry. Further counsel emphasised that the pursuer did not tell Dr Rodger or Dr Birrell about being involved in applying the restraint straps.

[48] Counsel accepted *Robinson v Chief Constable* was potentially relevant. In that case, the Supreme Court held that there was no general duty of care when the police are

discharging functions of preventing and investigating crime. A duty of care was generally owed by the police on the application of the ordinary principles of negligence. The key question was whether the police themselves created the danger (see Lord Reed at para 70). The question in this case is whether, if the court found either officer asked the pursuer to apply the restraint straps, that created a danger against which the police were under a duty to protect the pursuer against. The pursuer's averments acknowledge the situation was already dangerous because she pleads by inviting her to participate made the 'hazardous situation more dangerous'. Counsel submitted that on the pursuer's analysis, it was not the invitation which made the situation dangerous or more dangerous but rather the pursuer's decision how to react to that invitation. In those circumstances, the defender submitted the request did not give rise to a duty of care. In contrast to *Robinson*, where the claimant had no knowledge of the action the police were about to take, in this case the pursuer knew that JH was volatile. On her own evidence he had already assaulted her by grabbing and bending back her thumb. She knew that he was larger than her, yet in response to the 'invitation' from the police to assist she made the choice to do so. So on this analysis, the defender submitted, by asking her to assist the officers did not create a danger. The danger existed and was obvious and the pursuer chose to accept.

[49] If, contrary to the defender's primary position, the court found a duty existed, the defender submitted there was a factual question of causation. In relation to her physical injury, the pursuer pleads such an injury was as a result of 'the assault'. The exact nature of the assault is not averred. It is averred her hand and wrist were caught in restraint straps and were jerked and twisted. Mr Garrett's evidence was that there were two mechanisms of the thumb injury. The first was the longitudinal pull the pursuer told him about when she was trying to treat JH and he grabbed her hand which would be an assault. In fact, in

evidence she did not speak of a longitudinal pull rather a bending back (hyperflexion) of the thumb. If that was 'the assault' it is not in consequence of the breach of duty averred by the pursuer namely that the officers ought not have asked her to apply the restraints. On the pursuer's evidence this assault came before the police asked her to assist. The second mechanism for Dr Garrett was the hyperflexion injury asserted to have been sustained when the pursuer's hand was caught in the straps (although, the narration from Dr Garret as to how this injury occurred, is inconsistent with the pursuer's own evidence). On any reading that did not amount to 'an assault' as averred.

[50] In relation to the psychological injury, the same question arose. Dr Birrell's position in response to a question 'what caused the PTSD' was that 'it was caused by the assault... by the pursuer being kicked during the ordeal.' There is no reference to the involvement of police officers. In cross when he was referring to the assault he referred to 'the kick'. He later described it as the 'violent kick to her stomach'. 'The kick' was the terminal event which caused the pursuer to press the panic button. 'That kick' was in his view the cause of the PTSD. The defender submitted for there to be a causal link that 'kick' had to flow from the duty the defender's officer is said to have breached - which involved the pursuer using the restraining straps because she was asked. As a matter of evidence, the pursuer's position was there was not a kick to her stomach related to or part of her using the retraining straps. There was a kick which may have touched her hands but she did not describe that as violent. In the Datix form, in the order of events as inserted by the pursuer, the kick to the stomach came as she treated the patient and before the restraining straps episode. And in the Notebook entry form the kick was not also part of the restraining strap episode. Counsel submitted the court cannot be satisfied that there was a violent kick to the stomach, and if there was, that it was part of the pursuer applying the restraining straps having been asked

by the officers. If the court agreed, there was no factual causation between the 'assault' as averred and the breach of duty, and thus there was no causal connection with any loss flowing from the breach of duty averred.

*Defender's submissions - damages*

[51] Mr Hastie submitted that if the court accepted the evidence of the pursuer and Dr Garrett, then the physical consequence of the incident is a soft tissue thumb injury with full recovery in 4 months. An appropriate measure for that on its own that injury would be around £2,500 to include interest (Judicial College Guidelines, 15th Ed 7(I)(v)).

[52] In relation to the question of psychological injury, counsel submitted Dr Birrell's evidence was unsatisfactory on many aspects. Dr Birrell treated his report (which he adopted as his evidence) as supplementary to that of Dr Rodger and relied on Dr Rodger's narrative of symptoms since the incident. He accepted Dr Rodger noted no PTSD symptoms were reported by the pursuer up to his examination in April 2021. In his own report the PTSD symptoms he noted were under the 'current situation' section, presumably current at the date of examination (April 2022). It is worthy of note that the panic attacks had only come on in the previous 6 months and that other symptoms he referred to in support of his diagnosis (anxiety, hypervigilance and associated avoidance behaviour) had been *triggered* by a further incident, the date of which he could not recall. That incident had not been mentioned to Dr Rodger and was included in Dr Birrell's 'Developments since last (Dr Rodger's) report' section. In the circumstances it seemed likely it was later in 2021. The pursuer herself could not remember when that incident took place but 'it must have been after Dr Rodger's report'. Prior to that Dr Birrell accepted that after returning to work the pursuer had not between March 2020 and autumn 2021 reported psychological

symptoms to her GP. She had 'stopped' CBT in March 2020 and did not want further referral at that time. It was submitted there is a gap in the presentation between the accident and April 2022 when Dr Birrell notes symptoms allowing a PTSD diagnosis. Averments anent that injury were added by amendment in June/July 2022 - replacing depression. In addition, in the circumstances and on the evidence, it was submitted the court cannot be satisfied that the symptoms of PTSD which the pursuer described to Dr Birrell in April 2022 have in fact existed since the accident and were not in fact caused by the further incident referred to by him. None were reported to Dr Rodger who, as an experienced Consultant Psychiatrist, presumably used the same open questions Dr Birrell said he used to elicit the PTSD symptomology. That suggests that whatever the pursuer's position (namely they weren't covered by Dr Rodger) she did not report any such symptoms to Dr Rodger. In consequence, counsel submitted, there was no evidence to support a recognised psychiatric injury and no award should be made.

[53] If the court were persuaded of a psychological injury was established and causally connected, the defender submitted a sum of £12,500 in total would be reasonable for both injuries to include interest. In relation to the psychological injury that took account of the somewhat inconsistent presentation of the pursuer not being able to go out generally in company of people she knows but being able to go to work to the place where the incident took place such that since her return in January 2020, she has not been off work for incident-related issues.

[54] The defender accepted that for the 4 months initial period, the pursuer would have needed help. Both the husband and daughter seemed to suggest they did housework and personal care (both saying they did her hair) but it is submitted that between them an average of an hour a day at say £7 an hour for up to 4 months is not unreasonable. While

help initially would have been no doubt greater, towards the end of the 4 months period it would be much less. The hour average is submitted as being reasonable. To include interest the defender suggested £750. Given the defender's position on the psychological injury, counsel submitted there should be no further award under this head.

[55] Mr Hastie submitted that if the court was minded to consider the period after the pursuer's physical injuries had healed, there were anomalies in the evidence. It was suggested that the pursuer took her grandson to nursery. However, while he was there she would not be providing care to him, yet the hours sought and referred to by the family in evidence were the whole time the daughter worked. In relation to domestic chores it is unclear why the pursuer's husband still has to do so much - the pursuer has no physical limitations. Again, her inability to do domestic chores around the house is inconsistent with the ability to do her work at the Edinburgh Royal Infirmary. There was mention of her concentration being affected but that is perhaps inconsistent with the initial unprompted speech at the start of examination in chief. There are also other health issues unrelated to the events of 3 August 2019: chronic back problem and the episode of pyelonephritis, which would limit her and have necessitated time off work. Finally, there is the change in the grandson's life - increased hours at nursery and now at school which would have meant less care by her in any event. In the circumstances, it was submitted the court should simply adopt a broad-brush approach rather than the itemised approach suggested by the pursuer. On that broad brush basis £5,000, including interest to the past, was appropriate. As to treatment costs: at the low-end Dr Birrell suggests 12 sessions. While his report mentions £120 an hour in evidence he volunteered £40 an hour. In March 2020 the pursuer did not take up further treatment offered then. Taking that in the round, a sum of say £500 would be reasonable.

**Analysis and decision**

[56] The first issue which the court must resolve in this action, and from which all others follow, is what happened. It is common ground that the pursuer suffered an injury, but the circumstances as narrated in evidence by the pursuer on the one hand and the police officers on the other, differed in a number of important ways. Having considered the evidence and submissions, I have come to the conclusion that the defender's version of events, as contained in the evidence of PC Downie and Mr Grant (PC Grant as he then was), is to be preferred. There are a number of reasons for my conclusion.

[57] While the accounts of events given by PC Downie and Mr Grant were not identical, they were largely consistent, and the gaps are explained by the fact that at the critical point, namely when JH was being restrained in the resus room, PC Downie and Mr Grant were restraining the upper and lower parts of JH's body respectively, and were giving more attention to JH than to the other officer. Secondly, Mr Grant was clear both in examination in chief and cross examination, that while he did ask for assistance in getting the fast-strap restraints out of his belt pouch, he would not, and did not, ask one of the NHS staff to put them on to JH. Thirdly, both PC Downie and Mr Grant's oral evidence was consistent with the record of events in PC Grant's (as he then was) police notebook entry (JB339-340), which was made within an hour of the events taking place.

[58] On the other hand, the pursuer's account of events in the history given to the various medical expert witnesses has varied in some important respects from her oral evidence in court. Perhaps most significantly, she said nothing to Dr Birrell, nor, it would appear, to Dr Rodger, about being involved in restraining JH, as opposed to being kicked by him, or about how her left hand injury was associated with the kick from JH. The pursuer had no



satisfactory explanation for that in her oral evidence. Further, I consider the pursuer's account of other elements of events unreliable. The pursuer described a glass protruding from JH's chest. It is striking that neither police officer described that, while Dr Murthy's clinical note (JB415) says "the only significant wound seems to be a small puncture over the sternum which has an arterial spurt and underlying haematoma." Next, the discrepancy between her and the police officers about the arrival time of JH and the officers at Edinburgh Royal Infirmary is relevant but is less significant than the difference between them about the amount of time that passed before JH required to be restrained: two hours on the pursuer's account, as against half an hour on both police officers' account. It is clear from the contemporaneous documents that the latter reflects what actually happened. Further, I do not accept the pursuer's evidence that JH was unhandcuffed for any extended period whilst being examined; given the consistent evidence from the pursuer and the police officers that JH was erratic in his behaviour and abusive throughout, I consider that is improbable and that the pursuer is wrong about that. I consider the police officers are correct that he was handcuffed.

[59] Accordingly, while I accept that the pursuer was struck by JH when he kicked out while being restrained, I do not accept that injury happened because she was applying the restraint straps to JH's legs. I do not accept the pursuer's evidence that she was doing so. Nor do I accept that she was instructed, or even merely invited, to apply the straps to JH by the defender's officers. In terms of legal duty, therefore, I hold that the pursuer was injured in the course of her employment by the acts of JH. The defender's officers, PC Downie and, as he then was, PC Grant, did not act so as to create a danger giving rise to a duty of care on the part of the defender towards her. On that basis, the pursuer's action must fail.

*Contributory negligence*

[60] On the analysis of events I have set out, this issue does not arise. Had I been minded to accept the pursuer's version of events, I would not have made a finding of contributory negligence. While the pursuer was aware there were risks of injury because of the behaviour and presentation of JH, on her account of events, she believed those risks were controlled by PCs Downie and Grant. Further, on the pursuer's account of events, she was acting on the police officers' direction and in light of their control of risk. There was, on that view, effectively an assumption of risk by the police officers, and contributory negligence would in my view not then arise so long as the pursuer was acting within the direction given.

*Causation and damages*

[61] It was not disputed that the pursuer's hand injury was in the nature of a soft tissue injury which resolved in 8-12 weeks. The evidence about her psychological difficulties presents more complex challenges. In my view, the medical evidence is sub-optimal. There are reports before the court from three consultant psychiatrists: two for the pursuer, one for the defender, and all with different diagnostic formulations. That is perhaps not uncommon; however, the court heard evidence only from Dr Birrell, whose report is said to be supplementary to that of Dr Rodger. It is difficult to see how, as a matter of logic or professional analysis that could be so. Dr Birrell, quite properly, arrived at his own diagnostic formulation. He has recorded symptoms consistent with PTSD which were not noted in Dr Rodger's report, something which Dr Birrell said in evidence surprised him. The extent to which Dr Birrell's conclusion was informed by the history elicited by him from

the pursuer and the extent to which it depended on the history obtained by Dr Rodger was not entirely clear.

[62] Further, neither Dr Rodger nor Dr Birrell was provided with the account of events which the pursuer gave in her oral evidence, namely being directly involved in restraining JH, and being injured as a direct consequence. Accordingly, I am unable to form a view about the causal potency of that version of events in relation to the pursuer's psychological history, if, contrary to the view I have reached, I were to have accepted it. It is also evident that the timing of an event involving a patient abusing one of her colleagues witnessed by the pursuer was not recorded in Dr Birrell's report (it is not mentioned in Dr Rodger's report). Dr Birrell accepted this event might be relevant to the pursuer's condition. There was no satisfactory discussion of the causal potency of this event.

[63] Therefore, while Dr Birrell's diagnostic formulation was not directly challenged by the leading of alternative medical evidence, I have reservations about holding causation established. The pursuer may well experience symptoms of PTSD, however on the evidence before me, I am unable to hold, on the balance of probabilities, that these are caused by the events of 3 August 2019.

[64] Turning to the heads of damage claimed. By the Joint Minute, number 22, the pursuer confirmed that she no longer insists in a claim for past or future loss of earnings. That leaves claims for damages for (a) solatium; (b) services; and (c) costs of treatment.

#### *Solatium*

[65] Both parties approached solatium by reference to the Judicial College Guidelines. Given that was common ground, I do likewise. In relation to the pursuer's hand injury, I am satisfied the appropriate bracket is that set out in chapter 7I(w), which indicates a range

up to £4750. Given the time to recovery and the absence of bony injury, I would have awarded £3500, inclusive of interest to date.

[66] Had I been satisfied that the symptoms of PTSD reported by the pursuer were causally linked, I consider that the appropriate bracket for damages is chapter 4B(c), which indicates a range of £8,180-23,150. Given the prognosis is good with treatment recommended by all of the psychiatrist witnesses, I consider that a figure of £13,500 inclusive of interest would have been appropriate.

[67] I consider that if I were awarding damages to cover both the wrist injury and PTSD, it would be appropriate to make an adjustment for overlap. I would therefore have awarded £15,000 inclusive of interest to date.

#### *Services*

[68] The pursuer clearly required assistance with the activities of daily living in the period immediately after the incident on 3 August 2019 while her hand was healing. Her husband and daughter provided assistance. 1 hour per day seems reasonable, and is consistent with their estimates of 1-1.5 hours. Taking £7 per hour for 16 weeks and including interest brings out a figure of £850.

[69] Given the view I have reached about the mental health evidence, it is not strictly necessary to go much further. However, lest I should be wrong about that, I should deal briefly with the evidence about childcare. It is clear that the pursuer provided childcare to her daughter in relation to one grandchild in particular. However, given that the child was in nursery care for at least part of the time his mother was working, and thus a time when it is argued the pursuer was providing care, I am unable to accept that the correct approach is to this is by reference to Stacey Gilchrist's working hours. I consider that the defender's

broad-brush approach to this head of claim is the more appropriate one in the circumstances. Doing so, I would have adopted the defender's figure of £5000 including interest to date.

#### *Costs of treatment*

[70] Given the view I have reached that the pursuer has failed to establish causation, even if I found liability established, I would not have awarded damages under this head. Lest I should be wrong about that, I can briefly summarise what my approach would have been. I accept Dr Birrell's evidence, which had support in the other psychiatric reports, that 12 sessions of CBT would be appropriate. Dr Birrell suggested a cost of £120 per hour in his report, though he accepted in oral evidence that it could be as low as £40. I would have taken the midpoint of £80 per hour, making a total of £960. Since this is a prospective cost, interest does not fall to be added.

#### **Conclusion**

[71] For all of those reasons, I will assoilzie the defender. I will fix a hearing on expenses.