



OUTER HOUSE, COURT OF SESSION

[2021] CSOH 96

PD245/18

OPINION OF LADY CARMICHAEL

In the cause

MILLY MORRISON

Pursuer

against

JAMES OAKDEN

Defender

Pursuer: Ennis; DAC Beachcroft LLP
Defender: Shand QC, Thomson (sol adv); BTO

29 September 2021

Introduction

[1] The pursuer seeks reparation for injuries she sustained in an accident on 21 July 2015, when she was working in the course of her employment with the defender.

[2] The following matters are admitted in the pleadings. In July 2015, when she was 17 years of age, the pursuer was employed by the defender as a stable hand at Dunbog Farm in Newburgh, Fife. On 21 July 2015, at around 4pm, the defender instructed her to exercise a horse called Macamore. Macamore was a large horse, standing at about 17 hands high. He was an active and able horse who had competed at a high level with his previous owner. He was recovering from an injury at the time. On the morning of 21 July his owner, a strong

and experienced rider aged 18 years (Katherine Lindsay), had taken him around the indoor school, and had ridden him on a short ride along an outdoor track. The defender specifically instructed the pursuer not to take Macamore along the track that he had been on earlier that day with his owner.

[3] Liability is in dispute, as is, in part, the quantification of damages.

[4] There is no dispute that the pursuer suffered serious maxillofacial injuries, that she had a head injury and that she had a spinal fracture at S1, which was treated conservatively. In the course of the proof parties agreed that in the event that the pursuer succeeded in relation to liability, I should award solatium of £50,000 with three quarters allocated to the past, and with interest on the past element at four per cent per year from the date of the accident to the date of decree.

[5] In the event that I were satisfied that there was a sufficient causal connection between the pursuer's discontinuing her nursing degree and the back pain caused by the accident, I should award past wage loss of £61,290, with interest of £7,355, and future wage loss of £1,877. There was no agreement as to the quantification of the claim for necessary services rendered by the pursuer's mother, or in relation to the pursuer's claim for loss of employability.

[6] A considerable amount of the pursuer's evidence related to quantum, but in the light of the agreement between parties, I require to mention in detail only that evidence relating to her decision to discontinue her nursing studies. I discuss that in more detail below. I otherwise found the evidence that she gave in relation to the injuries she sustained and her experience of the effect that they had on her to be generally credible and reliable. I mention this because the defender suggested in submission that she had exaggerated the position in some respects, and that that should cause me to mistrust her evidence more generally. My

impression was that the pursuer did not seek to overstate the difficulties she experienced following the accident. I did not consider that she attempted to mislead me as to the extent to which she had been able to return to her leisure activities, including riding, after the accident.

[7] Some time was spent in evidence in asking the pursuer about photographs taken from social media of equestrian and social events after the accident, and in which she featured. The purpose was to show that the pursuer was overstating her injuries and was generally not a credible witness. She was asked about the way in which her hair was styled in some photographs with a view to discrediting her evidence that she was embarrassed by visible scar tissue on her scalp. I did not derive any assistance from that exercise. I regarded nothing in the social media posts as inconsistent with the pursuer's own account of a gradual and supported return to social activity, with some difficulties along the way. She was frank about her return to equestrian activities, and about her positive desire to resume them as soon as practicable.

Allegations of fault and defender's response

[8] The pursuer avers that the farm had only three tracks: the one already used earlier in the day, one that required the rider to cross a road, and one with a steep drop down to an adjacent field. She choose the latter. She rode Macamore at a walk along that track. After she turned to return, Macamore began to swish his tail, tilt his head and hump his back. He began jogging. The pursuer attempted to regain control of him. He reared. The pursuer attempted to make a controlled dismount. She was unable to do so. She slid off Macamore and down the steep ditch into the field below. He reared again, lost his footing and fell landing on top of the pursuer.

[9] The pursuer's case of fault is based on the following. Mac had been on box rest since 3 June and had been prescribed a period of graduated return to physical activity. The pursuer pleads that it is known in the industry that horses are more challenging in their behaviour and difficult to manage, following "box rest". The vet had prescribed 6 weeks of 5 minute leg stretches, which had come to an end on 16 July. According to the pursuer, he should then have begun a period involving increasing periods of walking. He had not been beyond the stable yard by 21 July. He had been misbehaving and excitable when being hand-led. The first time he was ridden was by his owner on 21 July. His owner reported to the defender and others in the yard that Macamore had jogged and reared when she rode him. It was, the pursuer says, implicit in the defender's instruction that he was alive to the fact that Mac was misbehaving, and alive to the risk that he was more likely to do so if taken along the same track as he had been ridden on earlier in the day. It was known in the industry that recuperating horses were more likely to misbehave on a second outing.

[10] Macamore should not have been ridden a second time that day. Separately, he should not have been ridden beyond the stable yard. He should not have been ridden by an inexperienced rider, or alone. Horses situated as Mac was that afternoon, were less likely to misbehave if ridden with other horses. The pursuer pleads that the defender knew or ought to have known that she was, although a competent rider, young, and inexperienced in the equestrian industry. Mac could have been exercised on a long line in the indoor arena.

[11] The defender pleads that there had been no issues with Mac's temperament during his rehabilitation. There was nothing untoward in his behaviour when ridden by his owner earlier in the day. The pursuer rode him around the indoor arena several times. Mac was responsive, and the pursuer was in control, and happy to take him out for a ride. The pursuer was competent and experienced and had a lot of experience of unaffiliated and

pony club level competitions. She had performed well at a British Eventing competition. Mac was a well-trained and obedient horse. If Mac had been fresh and excitable, the pursuer had sufficient experience to recognise whether he might become beyond her control. She ought, as an experienced rider, to have been able to retain control of a fresh and excitable horse. It was not reasonably foreseeable to the defender, or to an average competent horseman, in all the circumstances that an accident would occur.

[12] A central question in relation to liability is what was reasonably to be foreseen by the defender in relation to the pursuer's ride on Macamore in the afternoon of 21 July 2015.

Relevant, or potentially relevant, to that question is

- (a) what the defender knew about how Macamore had behaved when ridden earlier in the day;
- (b) the regime to which Macamore was subject when recovering from injury in the period immediately before 21 July 2015;
- (c) Macamore's characteristics and experience; and
- (d) the pursuer's competence as a rider, and the state of the defender's knowledge about that.

[13] Both the pursuer and the defender led evidence from expert witnesses, who expressed conflicting views as to what the defender ought to have foreseen in the light of these matters.

The evidence

[14] There are a number of areas which were not really the subject of much, if any, dispute in evidence. Despite that, a number of different witnesses gave evidence about

them. I express my conclusions about those first, and relatively briefly, before turning to the more contentious matters, in respect of which I have narrated the evidence more fully.

Eventing

[15] There was a good deal of evidence about what is involved in the sport of eventing, as parties regarded it as potentially relevant to some issues in the case, including the pursuer's level of competence as a rider. The potentially relevant matters can be summarised as follows.

[16] Eventing is a competition involving three different activities: dressage, show jumping and cross country. The last of these involves jumping over obstacles, although the obstacles are of a different nature from those involved in show jumping. British Eventing is the governing body for the sport of eventing in Great Britain. The Fédération Equestre Internationale ("FEI") is the international governing body. The various activities involved in the sport test the abilities of the horse and rider in various respects. These include the ability of the rider to communicate signals to the horse, and the ability of the horse to respond with accuracy, whether in relation to performing to a set floor plan in dressage, or clearing jumps in show jumping and cross country. Both horse and rider require a certain degree of courage (if it is appropriate to use an abstract quality of that sort to describe a non-human animal).

[17] BE 90 and BE 100 are both British Eventing classes at a lower level than novice. In BE 90, the jumps are not more than 90cm high, and in BE 100 not more than 100cm high. The levels proceed (broadly) through novice, intermediate and advanced. Classes or levels of competition may be open or subject to particular entry requirements (for example, the rider may require to be less than 21 years of age, as in one of the records relating to

Ms Lindsay's riding Macamore). There are eligibility requirements based on previous competition experience for some classes of competition, to ensure that the rider is sufficiently experienced to participate in them, but it is not necessary to elaborate on that for the purposes of this case.

Macamore's regime in the weeks before 21 July 2015

[18] There was a good deal of discussion in the evidence as to what different individuals meant when they used the expression "box rest". To the defender and Charles Lane it meant complete, or near-complete, confinement to a stable. To Hugh Somerville, the veterinary surgeon who cared for Macamore, it comprehended periods of reduced exercise, when a horse was not turned out in the field, with "strict box rest" being his preferred expression for a horse confined to a stable. Dr Debbie Marsden did not understand box rest to involve complete confinement; she described the regime described in the veterinary records as "typical box rest". What is potentially relevant in this case is what activity Macamore had actually been undertaking in the days and weeks before the accident, and not whether it should or should not be called "box rest".

[19] The pursuer and the defender differed as to the length of time during which Macamore had been walked in hand before the accident. On the pursuer's account he had been walked in hand for two or three weeks before the accident for about ten minutes each day, and on the defender's he had been walked in hand for six weeks before the day of the accident. I am satisfied that Macamore had not been confined to his stable or nearly confined to it (ie being removed only for mucking out). The evidence of both the pursuer and the defender was that Macamore had not been ridden between early June and 21 July. The only witness to suggest that he had been was Rachel Gordon, who said that Macamore

had been ridden before 21 July. I reject her evidence on this matter as unreliable. She was unable to provide details of when that had happened, or who the rider had been. Her evidence is inconsistent with the evidence of both the pursuer and defender, and I accept their evidence on this point.

[20] Although nothing turns on the difference between the pursuer and the defender on this matter, I accept the defender's account that Macamore had been walked in hand during the whole period between 5 June and 21 July, because it is consistent with the veterinary advice which was provided to the defender by Mr Somerville, whose evidence I set out in a little more detail below.

[21] Mr Somerville was called to see Macamore in June 2015. The horse had a low grade ligamentous injury, comparable to a sprained or twisted ankle in a human patient.

Mr Somerville examined Macamore on 3 June, and carried out an ultrasound scan 2 days later. The records for 5 June record "advise 6 weeks of gentle 5 mins leg stretch, followed by 6 weeks slow increase in walking program". A programme involving walking in hand for increasing periods over about a six week period, and then being ridden, would be consistent with the advice summarised in the records. The expression "leg stretch" meant gentle walking in hand. The horse could not be turned out into the field at liberty, because he might aggravate the injury. The injury was a mild one and did not require Mr Somerville's visiting during the period of rehabilitation.

[22] Macamore had been on a regime of restricted exercise between 5 June and 21 July which involved his being walked in hand throughout that period. I am unable on the evidence to make a finding about the precise duration of the daily or twice daily periods for which he was walked in hand during this time, but I do not require to do so in order to determine liability in this case.

Macamore's characteristics and experience

[23] Macamore was 17 hands in height. The height of a horse is measured at his withers, that is (roughly translated) the top of his shoulders, or the bottom of his neck. A hand is four inches. He was a gelding. Geldings are generally likely to have calmer personalities than male horses who have not been castrated.

[24] There is no dispute that Macamore was a well-trained horse who was, outwith the context of a period of restricted exercise, easy to handle. The pursuer described him as "generally a really nice horse". He was well-schooled before Ms Lindsay acquired him, and had competed at a high level. Mr Somerville described Macamore as a very kind and easy horse. He was experienced, well-trained and well-handled. He did not need sedation for procedures such as ultrasound, and Mr Somerville, an equine specialist, had many patients that did.

[25] Macamore's British Eventing records were produced, and were not the subject of dispute. He was ridden by a number of different riders in competitions from 2008 onwards. From April 2010 all of the competitions were at novice level or above. He was ridden on a number of occasions in competitions which were internationally recognised. Those are denoted in the records by the initials CCI or CIC and varying numbers of stars. Ms Lindsay had ridden him in novice and intermediate level competitions and a one star event earlier in 2015. His previous owner, Mrs Caroline Powell, rode him in a number of intermediate and advanced competitions, and a number of two and three star CCI/CIC competitions.

The pursuer's experience and ability as a rider

[26] The pursuer joined the Pony Club when she was 12. That is a body which encourages children to join the equestrian world. They may join until they are aged 18, and

if they have joined by that age, can remain members until they are 25. Before that she had had some lessons on ponies, and weekly riding lessons. Her mother then bought a pony, and the pursuer joined the Pony Club. She engaged in competitions in the Pony Club, including show jumping, dressage, and unaffiliated eventing. She engaged in Pony Club eventing, which she described as easier and less technical than British Eventing.

[27] The pursuer's British Eventing results for 2015 and 2016 were not the subject of dispute. Before the accident she competed on one occasion only, at Aske, in Class BE 90. She came fourteenth in a class that contained probably about 35 competitors. In March 2016 she competed at Burgham International, again in the BE 90 class, and in May 2016 at Floors Castle in the BE100 class. There was no dispute that her scores on all occasions were respectable, and there is no need to examine the detail of what each entry on the score sheet represents. On all three occasions she rode her own horse, David's Delilah Dances ("Dilly"). Dilly was 15 hands. She returned to riding three months after the accident, which was the earliest possible date consistent with medical advice. Although what the pursuer did after the accident is of limited relevance in this context, it supports the proposition that she was and continued to be a keen and engaged equestrian, who consistently performed respectably in competition.

[28] The pursuer was at the time a rider of some experience and competence, and who had engaged in competitions which test the skills of both rider and horse to a significant degree, albeit at the lower end of the range of BE competitions. They test the ability of the rider to direct and control the horse in relation to a variety of different tasks. She had competed in non-affiliated eventing before that, and continued to do so after the accident. I am satisfied that in normal circumstances it would be entirely reasonable for the defender to conclude that the pursuer was competent to ride Macamore, although he was a large horse,

and she had not ridden him before. The narrower question in this case is whether she was competent to ride him in the particular circumstances that obtained on 21 July 2015.

British Horse Society qualifications

[29] Another matter which was traversed on a number of occasions in evidence, but which can be dealt with briefly, is the qualifications offered by the British Horse Society ("BHS"). Parties made something of this in seeking to compare the qualifications of the defender, Dr Marsden and Mr Lane.

[30] According to the evidence of those witnesses the BHS offers qualifications to equestrian instructors at various levels. These are assistant, intermediate, instructor, and fellow. One of the certifications necessary to become an assistant is the preliminary teaching qualification.

Medical evidence regarding the pursuer's back

[31] There was no material difference between the opinion of Mr Calan Mathieson, instructed by the pursuer's agents, and Mr Sadaquate Khan, consultant neurosurgeon and spinal surgeon, instructed by the defender, so far as quantification of the claim is concerned. Both gave evidence to the same effect. Each had obtained a history that the pursuer had found her back pain increased when she had practical assignments in her nursing course.

[32] Mr Mathieson expected the pursuer's back injury to cause her pain for between two and three years after the accident. It had settled to near normal two years after the accident. He did not think that her nursing course caused any long term damage to her back. It had made it sore for a period. The lifting would not damage her back, but would cause it to be more painful for a period. The time frame for the pain to settle would have been the same

even if the pursuer had not discontinued her nursing studies. The nursing work would have temporarily increased the pain, but it would have returned to a “baseline” had she continued her studies. He thought it “reasonable” to pursue other avenues at a time when work was making the pain temporarily worse. The pain had improved both because she had stopped nursing, and because of the passage of time, but he did not see nursing work as likely to have extended the duration of the pain particularly.

[33] Mr Khan proposed a slightly shorter timescale for resolution of symptoms, but that is not material. If her symptoms had persisted after 12 months, he would have proposed physiotherapy and expected resolution by 18 months after the accident. He differed from Mr Mathieson to the extent that he thought the pain she experienced when on nursing placements was caused by the combination of the work involved in those placements and pressure on her spine from horse riding. Seventy per cent of nursing students experienced back pain. She had not required to give up her studies because of any residual instability from her back injury. If the pursuer had come to him a year after the accident complaining of back pain, he would have told her that the accident would not result in a long-term predisposition to back pain. Her pain was normal for nurses and riders. He was concerned that she had been badly advised that she should stop her nursing studies.

[34] It is clear that neither Mr Mathieson nor Mr Khan considered that the accident resulted in any long-term predisposition to back pain that required the pursuer to stop pursuing a career in nursing.

Pursuer's case

[35] The pursuer gave evidence. She led evidence from Mr Calan Mathieson; Mrs Fiona Morrison; the defender; Mrs Angela Hamilton, and Dr Deborah Marsden.

The pursuer

[36] The pursuer started her summer job at Dunbog when she left school in 2015. She had previously worked there part-time cleaning tack and mucking out “a couple of times a week”. She met the Oakdens through Pony Club, where they were teachers. She started having some lessons with them privately in about 2012. After the pursuer acquired her horse David’s Delilah Dances (“Dilly”), the horse came to be stabled with the Oakdens. Dilly was smaller than Macamore. An arrangement was made whereby the pursuer would work for ten hours a week to cover Dilly’s livery at the yard. The pursuer paid separately for lessons. The arrangement for summer 2015 was that she would be a working pupil.

[37] The pursuer said that she had found that Macamore had been difficult to handle when being led out in hand on earlier occasions. He was very excited to get out. He was a big horse, but made himself look bigger, and stood tall, with his head up, trying to look at everything. He was not focused on the person leading him. She said that Rachel Gordon had also had problems leading him.

[38] When Ms Lindsay returned from her ride, the pursuer asked her how she had got on. The pursuer’s evidence was that Ms Lindsay told her that Macamore had not been particularly well-behaved; that he was very fresh and pleased to be out, and that he had been jogging, bouncing about and rearing. To the pursuer the expression “fresh” denoted “excitable, alert and spooky; jumpy at things, and prancing around; beginning to buck and rearing”.

[39] In evidence in chief, the pursuer merely said that there was not “just us” (ie herself and Ms Lindsay) in the yard at the time. She was not asked to elaborate as to who else was there. In cross-examination, however, she was asked who else was there, and she said the defender was there. It had been he who had asked Ms Lindsay how she had got on. She

was unsure who else was there at the time, and it may just have been the three of them. The pursuer said that Ms Lindsay had said that Macamore had been strong and fresh and excitable, and had reared. The pursuer was not able to quote exactly what Ms Lindsay had said, but her evidence was that Ms Lindsay definitely said “reared” and “jogging and bouncing about”.

[40] The defender told the pursuer to take Macamore on one of the hack routes out of the yard. He told her not to go where Macamore had been in the morning, and not to take Macamore down to the road, which left one route open to her. The defender did not tell her anything about how Macamore had been in the morning. She did not think she would have been in a position to decline to carry out an instruction from the defender. As she put it, “You did what you were told”. The pursuer’s recollection was that she mounted at the mounting block just outside the main entrance to the yard and rode off. She thought that Rachel Gordon might have helped her mount. She did not accept that she was keen to take Macamore out, and said she was nervous, but trusted the defender’s judgment. She said she was told to do it, so she did it.

[41] The pursuer’s account is that Macamore walked out fine as they were leaving the yard and walking along the track. She took a track which led past a church towards a point where the track met another track at a T-junction. She went along almost to the T junction.

[42] She was not asked by either counsel to specify by reference to the map in process (6/9) precisely where she turned, or where the accident happened. Macamore started to misbehave after the turn. She said that as they were walking back he “realised we were coming home”. She “thought he wanted to do something other than walking”, so he started jogging and swishing his tail and throwing his head up. The horses in the adjacent field started to do the same thing. When she tried to get him to walk he reared. He reared

again, and the pursuer thought that the safest thing to do was to dismount. She took her feet out of the stirrups. She tried to get off when her feet were on the ground, but he reared up and the pursuer fell down the ditch. She remembered seeing Macamore coming towards her. She inferred that he must have reared again, and tipped over so that he also fell down the ditch. His shoulder hit her, and she remembered watching it falling towards her, and that she could not get out of the way. She could not think of any other way he could have come to fall that would have caused his shoulder to come down before his back end. She then saw Macamore making for the yard at speed, and lay down because she realised she was bleeding and thought she might pass out.

[43] The pursuer described the assistance she received from her mother when she was in hospital. She was in hospital for two weeks, and her mother was there every day. The pursuer was scared, and was faced with the prospect of major surgery. There was a great deal she could not do for herself. Her mother helped by syringing juice and energy shakes into her mouth when she could not move her jaw. She helped the pursuer sit up in bed. The hospital staff had been very accommodating in letting her mother stay outside of normal visiting times. Her mother had helped her deal with the impact of her injuries. She found her first year at university difficult, and her mother supported her. She had not previously been so reliant on her mother. The pursuer had surgery on her face on three occasions, and on each occasion her mother took her to hospital, picked her up, and visited every day. Most of her hospital appointments were in Dundee, about 45 minutes' drive away from her home.

[44] When the pursuer came home from hospital initially, her mother and sister moved furniture around so she could sleep downstairs. For the first three weeks thereafter she needed assistance.

[45] The pursuer started her nursing degree at Dundee University. It was a three year course. She had a bursary for the course. She found the first year difficult. It was difficult academically because she was not learning as easily as she had done at school. She nonetheless passed her examinations that year. She experienced pain in her back when she was doing placements on her course. They were in blocks of four and six weeks. She did not complete them all. She wore a back brace with which she had been provided. The pursuer's evidence was that she consulted her general practitioner. He told her that "it had been long enough" so far as the back pain was concerned, and that it would not get better, but worse. He said that not many nurses in later life would say that they had "a good back", and she was starting with a "bad" one.

[46] The pursuer then consulted her course tutor. The tutor said that if the doctor's advice was as I have just described, then the pursuer would not cope with nursing. She advised the pursuer to sit her exams for the year, as that would give her credits if she wanted to do a different degree, or if she later wanted to come back to nursing. If she did so she could start as a second year and make up time on practical work.

[47] The pursuer started a different degree in 2016. She studied geography and environmental science at Dundee University. She graduated in 2020 with a 2:1 honours degree. She had a loan from the Student Awards Agency Scotland ("SAAS"). At the point when she graduated she was on furlough from a part-time job at Lindores Abbey Distillery. On average she worked about 12 hours a week there from 2017 in a variety of roles in the shop, kitchen and reception areas. Her employer was a family friend and was flexible in allowing her to rest if she was in physical pain, and did not allocate her bar work when the bar was busy, which she would have found difficult to cope with socially. Shortly before the proof she had obtained a graduate post with BEAR, which would finish in August 2022. She

wanted to pursue a master's degree in environmental science. If she was accepted and could afford to do so, she wanted to start the degree in September 2021, but thought it more likely she would do so in September 2022.

Fiona Morrison

[48] Mrs Morrison is the mother of the pursuer. The Scottish Ambulance Service contacted Mrs Morrison and told her that the pursuer had been involved in an accident. She went straight to Dunbog farm. When the pursuer was airlifted to Ninewells Hospital she followed by car. On the first night, when the pursuer was in the intensive care unit, Mrs Morrison could not stay at the hospital, because the family room there was being decorated. She stayed with the pursuer most of the following day.

[49] The pursuer spent two days in intensive care, and then was moved to a ward. Mrs Morrison was then with her for about twelve hours each day. The pursuer was frightened, and her face was very swollen. She needed help to take nutrition. Mrs Morrison bought the sorts of spoons that are used for feeding infants, and which change colour when in contact with hot food or liquid, so that she could ensure that tea she was feeding the pursuer was not too hot. She complemented the assistance from nursing staff by assisting the pursuer with walking, and with taking nutrition via a syringe. She moistened the pursuer's mouth with a sponge on a stick when the pursuer's mouth was dry and when she had been sick. She chatted to the pursuer and sought clarification from staff in relation to proposed treatment with a view to helping the pursuer understand what was planned. Initially the pursuer was not very aware of what was going on because of the pain relief she was taking, but she became much more aware as time went on.

[50] When the pursuer came home Mrs Morrison made a makeshift bed for her downstairs, and arranged the downstairs shower with a chair in it. She assisted with personal care for six to eight weeks. The pursuer's walking improved, but she had great difficulty in washing her hair, and Mrs Morrison washed her hair for her every day. She had stitches in her head. The pursuer was very tired, and it was when she got home that she realised the "enormity" of what had happened. The pursuer could not have coped on her own when she came home. Mrs Morrison took the pursuer to various later medical, psychology and occupational therapy appointments. She drove her to university for a period, as the pursuer had been warned to avoid public transport for eight weeks after her facial operation, which took place at the start of August. There were occasions after the accident when the pursuer had found herself unable to cope at social events, and Mrs Morrison had driven to fetch her.

[51] The defender came to the hospital on the day of the accident, and said to Mrs Morrison, "I should have ridden that horse myself." He was still "covered" in the pursuers' blood. Mrs Morrison understood from what he said and his demeanour that he "knew he had done wrong". About a week later he provided her with a telephone number for an organisation that assisted equestrians, "for solicitors and things".

[52] Mrs Morrison said that the pursuer had spoken to the family's general practitioner, Dr Booth. He had told the pursuer that if she was having pain in her back she should consider changing career. The pursuer had then investigated further with the university. I understood Mrs Morrison to be relating what the pursuer had told her, and that she had not personally been party to any of those discussions.

The defender

[53] The defender is a very experienced equestrian. He is a farmer and equestrian sports trainer. He has ridden since he was a child and has spent most of his adult life in the equestrian industry. He has competed in eventing at Badminton and Burleigh on a total of five occasions. Those are the two five star (elite) FEI events hosted in the United Kingdom. He has run his own livery at Dunbog since 2003. He holds an instructor qualification from the BHS.

[54] The pursuer was in his view a capable rider. She had been helpful in assisting his wife to break in a difficult pony and making it rideable.

[55] In the 6 weeks before the accident Macamore was getting walked in hand exercise twice every day. The defender had walked him in hand without difficulty, and no difficulty had been reported to him by anyone else. The day of the accident was the first day he was ridden. The defender said that he told Ms Lindsay where to go, and how long to go for. He could not recall exactly what he said to her. He watched her leave, and was there when she returned. He spoke to her on her return. She said Macamore had been good, and that when she turned for home he was a little excitable. The defender "queried it". Nothing he heard in response caused him alarm. He could not recall whether Ms Lindsay had said fresh, or excitable; there were various terms, and he could not say which one she used. He was not asked whether the pursuer had been present during this conversation.

[56] The defender explained that a horse that was a little bit excited would be "fresh". There was a continuum of horse behaviour, so he "would have asked the follow up question", and Ms Lindsay said that Macamore turned and walked home fine. The defender did not recall whether she had used the expression "jogging". When asked if she had used the expression "rearing" he said that he did not have "the exact specifics" of the

conversation with Ms Lindsay. He did not know whether Macamore had spooked, or been spooked. He explained that when a horse spooked, that meant that it had been surprised by something. He had watched Ms Lindsay leave because that was the sensible thing to do when “you put a person on the horse on its first day of ridden exercise”.

[57] So far as the pursuer was concerned, he had done the following things to assess the risk associated with the ride that afternoon. He observed her ride around the farm buildings on the outer track that circled the buildings, and the horse was behaving “absolutely fine”. He did not recall watching her leave the yard. He did not know whether he had related to the pursuer what Ms Lindsay had told him about her ride on Macamore that morning. He said that his risk assessment “would be” based on his knowledge of the pursuer’s riding ability, Macamore’s own characteristics, and “the specifics of the day”, such as, what might be happening on the farm. He described the assessment as “completely dynamic”, based on his knowledge of the horse and the rider.

[58] He said that he had told the pursuer not to take the route that Ms Lindsay had taken because when riding one tried not to ride along linear routes where the horse and rider went out then turned and came back along the same way. When starting ridden walk work after a period of reduced exercise there were however time constraints which meant that it was necessary to take a linear route. With a more difficult horse one would just ride around the buildings. He considered that his instruction to take a different route would minimise the risk as the pursuer would not be turning for home at the same place as Ms Lindsay had done.

[59] There were three potential routes: that taken by Ms Lindsay; one which came to the edge of the A913 road; and the one the pursuer took. The defender thought, so far as the second of these was concerned, that he had told the pursuer not to go down to the road. The

ride would not have involved crossing the road, because of the time constraints. He accepted that that left one route open to the pursuer, and he said that he thought it was a suitable route. He gave evidence that he had, at the time of proof, recently ridden a just-broken 4 year old along the same track; it was the first time that the horse had been ridden out at the farm. Macamore was at the time of the accident 12 years old and well-trained.

[60] The defender did not accept that a horse which had been having controlled exercise walking in hand would generally display the same behaviour on the second occasion when he was ridden out as he had on the first such occasion. He said that often the second ride of the day would be easier than the first. He would have expected there to be a possibility that Macamore would behave in the afternoon as he had in the morning if the pursuer had taken the same route as Ms Lindsay. By changing the route he was minimising the risk of that happening.

[61] One tool for managing equine behaviour was to ride out with one other horse. That could be employed with a horse that was being difficult, or overexcited. An experienced, quiet horse could be a calming influence. The defender had considered whether Macamore should be accompanied by another horse but rejected that possibility because he did not consider that Macamore had been excitable enough to need it.

[62] He thought that he had left it to the pursuer and Ms Gordon between them to choose which one of them should ride Macamore.

[63] The defender's evidence was that coming off "box rest", which he understood to be near complete confinement, a horse may be less easy to ride than a horse in full work. When asked about whether there were any recognised behavioural traits so far as horses who had been subject to controlled exercise was concerned, he said that normally the next progressive step would be to put a rider on. Normally the horse would behave when being ridden. He

did not give a direct answer to the question put to him. He did not accept that the horse would be more unpredictable than when in full exercise.

[64] In relation to such horses he said that often the second ride of the day would be easier than the first. He would have expected that there would be a possibility that Macamore would repeat the behaviour he displayed in the morning if the same route had been taken. By changing the route he was minimising the risk of that happening. He considered whether Macamore should be exercised in the yard rather than being ridden out. He rejected that because in his opinion the pursuer was more than capable of riding Macamore for the walking exercise in question, and the horse was safe.

[65] When asked if the use of a saddle and bridle after a period of reduced exercise would affect the horse's behaviour, the defender said that Macamore was very experienced at coming off periods of restricted exercise. He said that he had ridden the horse himself "many times in those situations". When directed to the veterinary records, he accepted that Macamore had arrived at Dunbog at some point in winter into the spring of 2015. The first reference to Macamore's exercise being restricted while at Dunbog in the records was the one in June 2015. He did not know whether the pursuer was experienced in riding a horse that had just come off six weeks of controlled exercise walking in hand. In cross examination he said that if a horse were going to react after a period of recuperation to having a saddle on its back, that would happen as soon as the saddle was put on, and would be apparent from the horse tensing its back.

[66] If a horse were difficult or overexcited, one would walk alongside it with an experienced quiet horse as a calming influence. The defender said he had considered that possibility and rejected it, because he did not consider that Macamore had been excitable

enough to need it. He did not accept that the use of a saddle for the first time after many weeks would impact on the horse's behaviour.

[67] The defender had learned of the accident when travelling by car along with Mrs Angela Hamilton, and went straight to the scene. The defender did not remember speaking at the hospital in the terms described by Mrs Morrison. He accepted that he might have spoken in those terms. If he had his reaction was a human reaction, and not expressive of guilt on his part. There had been a very bad accident and he was naturally concerned and regretful. He had given Mrs Morrison information about the Mark Davis Injured Riders' Fund, a charity that provided assistance and rehabilitation for injured equestrian sports people.

[68] In cross examination the defender said that his impression was that the pursuer was keen to ride Macamore. He would not have asked her to do anything about which she had expressed concern. He did not recall her riding the indoor arena, and did not think it would have made sense for her to do so. If he had thought that another horse should accompany Macamore that afternoon, he would not necessarily have decided that the pursuer should not ride Macamore, as she was a capable rider. He would not have sent her out alone had he not thought her competent to ride Macamore alone. Horses were as individual as human beings, and there was no rule as to how "all horses" would behave after restricted exercise or after confinement to the stable. The height of a horse was not determinative as to who should ride it, although it would be odd to put a small child on a large horse rather than a pony (a horse up to 14 hands and 3 inches). All the qualities of the horse needed to be taken into account including its type, training, obedience, as did the ability of the rider.

[69] My impression of the defender was that he was defensive. At times he was notably adept in identifying any looseness of language in a question which might permit him to

provide the answer he wished to give rather than addressing what was reasonably clearly the subject or intention of the question. He was impatient in his tone with the pursuer's counsel in a way that at times came close to discourtesy. While it is reasonable to infer that a horse with Macamore's history would have had prior periods of rest and recuperation from injury during his lifetime, the defender was plainly willing to provide inaccurate and misleading evidence about a matter of potential importance when he claimed to have ridden Macamore after many such occasions. If he had ridden him in those circumstances, that would have been relevant to his assessment of how safe Macamore would be to ride on such an occasion. That causes me to approach with caution his evidence insofar as it bears on liability.

[70] I accept that the defender spoke to Mrs Morrison in the hospital as she described. I attach no weight to that in determining liability. I infer that what he said reflected his genuine opinion, after the event, that he would have been able to manage the horse more successfully than the pursuer had been able to. He was speaking at the time with genuine concern and regret, and probably also a feeling of remorse or guilt, whether or not justified, in an emotionally charged situation. That is not a reliable indication as to whether he had acted negligently in instructing the pursuer to ride Macamore. I attach no significance to the circumstance that the defender provided Mrs Morrison with details of an organisation that might be able to assist the pursuer in various ways.

Angela Hamilton

[71] Mrs Hamilton had horses stabled at Dunbog between 2014 and 2019. She is a keen and experienced equestrian. She has owned a number of competitive eventing horses. She first got to know the defender in September 2014. She had relied on his experience and

expertise, which was greater than her own, in relation to the purchase of two horses. He trained her daughter for a period. In 2019 the defender had one of Mrs Hamilton's horses at the stable, and was riding it, but said that the relationship was not working. It was then mutually agreed that the horse would no longer be liveried at Dunbog.

[72] She was at the yard on the day of the accident. She was interested in Macamore because he belonged to the family that she had bought her daughter's horse from, and he had formerly been "quite a top class event horse". Her understanding was that he was, or had been on "box rest", which could encompass being confined and not exercised, or walked out in a confined space. She said that some horses coped better than others with that; some become frustrated. As she was getting ready to leave the yard, the defender was getting ready to leave to collect a combine harvester from storage. She offered him a lift so he could drive the combine harvester back without leaving a car behind when he did so. She was waiting for the defender either at the stable or the car parking area. Staff had mentioned that the pursuer was going to be exercising Macamore. She did not see the pursuer riding Macamore around the farm building. She thought it was likely she would have seen her. Most people mounted at the mounting block, and she could see the mounting block.

[73] She was in the car with the defender when the defender received a call telling him about the accident. She thought that Macamore could have been excitable because he had been on "box rest", and that he would have been less reactive in company with another horse. She thought the pursuer was a very capable rider, but someone who was obliging and would tend to do what she was told. Her impression was that it was often perceived as difficult to say "no" to the defender, as he and his wife were "quite authoritative" (which I

took from context to mean authoritarian), and she did not think that the staff at Dunbog had much of a say.

[74] Mrs Hamilton's evidence was led with a view to discrediting the defender's evidence that he watched the pursuer riding Macamore. There is a degree of uncertainty as to what route the pursuer took to leave the stables, and it is entirely possible that she left without Mrs Hamilton seeing her. As I explain below, I accept that the defender did watch the pursuer ride Macamore before she took the track on which the accident ultimately occurred. Had he failed to do so, I would not have regarded that as having caused the accident, as there is no suggestion that Macamore behaved, at that stage, in any way that would have caused concern. I accept Mrs Hamilton as a credible and reliable witness, so far as her evidence went, but it does not assist in resolving any of the issues I need to determine.

Dr Debbie Marsden

[75] Dr Marsden is a consultant in equine behaviour. She has ridden since childhood. Since 1999 she has provided services through a limited company, the MDM Equestrian Consultancy Company. She is the chair of the Society of Equine Behaviour Consultants. That is an organisation she set up, along with others, with a view to setting standards in the practice of equine consultancy.

[76] Her undergraduate degree was a BSc (1984). Her doctoral thesis (1989) had concerned the design of housing for farm animals (sheep) that was cost efficient, practical and consistent with the welfare of animals. Her post-doctoral work (1990-1994) concerned behavioural problems in horses. One of her PhD examiners worked at the veterinary school in Edinburgh, and invited her, as a specialist in animal behaviour, to join in their research. They were aware she already had an interest in equestrian matters. She kept a horse at the

vet school and taught there, both academically, and teaching riding. It was then that she undertook her preliminary teaching qualification, as the vet school had a riding school. At that time all veterinary students had to learn to ride. She taught them, working pupils, and also members of the public who came to the riding school for lessons. In order to obtain the BHS assistant qualification, she would have had to take examinations in horse knowledge and care and riding, but she did not need the qualification at the time. The examination in horse knowledge and care was basic by comparison to what she already knew by reason of her experience and academic education.

[77] She had a role at the large animal hospital looking at the behaviour of horses brought in for neurological tests, with a view to determining whether their difficulties were neurological in origin, or behavioural, and representing learned misbehaviour and rider error. Between 1994 and 2002 she was a fellow of the University of Edinburgh, lecturing and consulting in equine behaviour and management. She decided to embark on a private practice in consultancy regarding equine behaviour.

[78] She holds the preliminary teaching qualification from the BHS. She is registered with the BHS as a coach, and that registration requires her to hold other qualifications in matters such as child protection and first aid, and to undertake continuous professional development each year. In order to obtain the preliminary teaching qualification she had to have passed the BHS riding road safety test. She provides training for veterinary inspectors of riding establishments, and has written scientific articles and contributed articles to books both for veterinary surgeons and lay readers.

[79] She did not ride Macamore before preparing her report, as he had died by the time she prepared her report. She thought it unlikely that riding Macamore at some distance of time after the accident would have assisted her.

[80] In her opinion horses tended to be fresh or excitable after a period of restricted exercise. They were social animals who naturally lived in herds which were hierarchical. Humans trained them, but when the learning was not reinforced the horse would test the boundaries again and require to be reminded that the rider was in charge. One of the most common inquiries she received from owners of horses was as to how to reduce the risk of a horse being difficult after a period of restricted exercise, or because a horse was being difficult after such a period. It was a common history. That was her experience over a period of thirty years. That horses were expected to be difficult after such a period was a view generally held and understood in the equestrian industry. Although all horses were individuals, there were generalisations about their behaviour that could legitimately be made. There could be no expectation that a well-trained horse was less likely to misbehave after restricted exercise. All horses were “designed” to challenge the authority of the rider. There was a risk that a horse would misbehave, after even a few days without being ridden, in such a way as to increase the risk that the rider would fall off.

[81] Difficulty in handling and riding increased with the duration of restricted exercise because the horse had less experience of being told what to do, and was less fit and so would find it harder to do what the rider was asking of it.

[82] On the first ride after a period of reduced exercise the horse was more likely to misbehave. The misbehaviour was likely to be more serious on the second ride. If controlled well on the first two rides out, she would expect its behaviour to improve. A horse would be more likely to challenge the authority of someone who had not ridden it before. Misbehaving included any behaviour the rider did not want the horse to display, and included jogging, rearing, and bucking. When a saddle was fitted for the first time after

reduced exercise, it might not fit so well as before, because of changes in muscle tone. The horse might or might not show a reaction when the saddle was fitted.

[83] Dr Marsden would expect the manager of a yard with horses competing in affiliated BE to be very experienced in the management of horses during and after periods of box rest and to be very familiar with the behaviour to be expected after any period of box rest. She was familiar with the levels of knowledge of her own clients in the industry. She referred to *The Horse Rider's Hacking Handbook*, Bush and Jenkinson, Crowood Press, 2011 which she described as the official manual of the Association of British Riding Schools, quoting the following passage:

“If your horse’s exercise is limited ... turn him out as much as possible as this will help ... as well as reducing ... and the likelihood of over-freshness due to over-confinement in his stable.”

[84] Riding along a track which required a rider to turn back and return the same way increased the risk of misbehaviour at the point immediately after turning for home. A route involving a “round trip” would be preferable, and a route with a simple stop and turning point would not be ideal for a horse expected to be difficult for other reasons, such as a period of reduced exercise. This risk was well known in the equestrian industry.

Behavioural scientists were unsure why it occurred, and there were various hypotheses.

The company of another well-behaved horse would encourage the horse to behave. It would be likely to be inclined to follow the well-behaved horse, and to be less nervous and less likely to spook. Alternatively a person could accompany the horse and rider on a farm buggy.

[85] To mitigate risk the first question was whether the horse required to be ridden at all. Could it be exercised without being ridden? If it needed to be ridden, then consideration should be given to who was riding it, and their level of experience with difficult horses.

Had they been trained to deal with difficult horses? The route should be considered. Was it possible to exercise in an indoor school rather than on a track outdoors? If a person were going to be riding a horse after a period of restricted exercise, it was important that they understood what behaviour to expect and how to cope. They could be taught techniques to encourage the horse to behave again, or have already learned them through experience.

[86] Given a report from Ms Lindsay that Macamore had been a little excitable (which was an imprecise term), she would have expected Macamore to behave more badly on a similar ride later the same day. He had shown some excitable behaviour with his usual rider who knew him well. If taken to the same place she would expect a similar manoeuvre to result in similar misbehaviour, so it was sensible to choose a different track. When Ms Lindsay made her report, she would have expected the defender to inquire further, for example as to whether any rear had been large or small.

[87] It would take a rider time to become accustomed to riding a horse larger than their usual horse because of the way the rider's legs and seat would be organised. The behaviour of the horse was important too, and a badly behaved small horse would be harder to ride than a well-behaved larger horse. It would have been important for the pursuer to know that Macamore had misbehaved on the earlier ride.

[88] Dr Marsden would not have assessed it as safe for the pursuer to ride Macamore on the afternoon in question. He had not been ridden for 6 weeks. There had been a report of his being a bit excitable in the morning. So far as anyone knew the pursuer had no training or experience in managing difficult horses, and she was going out alone. There was specific reason why Macamore had to be ridden along a track that afternoon. There was a risk of injury from falling off, or from being injured in trying to make an emergency dismount. There were a number of opportunities for being injured around a misbehaving horse.

[89] The way a horse behaved varied with the competence of the person handling or riding it. A competent person would have the skills to encourage the horse to behave.

[90] Jogging is a gait pattern which a horse does of its own volition when it is “misbehaving”. It is not a gait pattern which it is taught to do (unlike walking, trotting and cantering). Horses use bucking (kicking out with their rear legs) and rearing (raising their front legs from the ground) to resist riders. Horses sometimes rear so high that they then fall over. A horse that spooks, or is startled, may try to run away from whatever has startled it.

[91] In cross examination she was asked about the basis for her assertion that the behaviour of a horse manifested its natural urge to show “who was boss”. She said that one element of the social relations of horses, and other social animals, was hierarchical.

Although it was not possible to understand exactly what a horse was thinking, legitimate inferences could be drawn from observed behaviour. She was asked about passages she had quoted in her report from the BHS *Complete Training Manual for Stage 1* on horse care:

“Q: What is a fresh horse? A: A fresh horse is one who is feeling very full of himself. ... He may have been shut in the stable and not turned out/worked hard for a day or two ...”

She explained that this was a basic level manual for students training for the first and most basic test in horse knowledge and care. Another passage in it described such a horse reacting when a first attempt was made to mount it. She said that that described a situation in which the horse might react, but was merely one example.

[92] In relation to the proposition that the horse was more likely to misbehave on a second ride out, she said that there were reasons connected with learning theory. She referred to the “first repeat”. If a rider managed the horse’s misbehaviour successfully on the first ride out, and the horse therefore had a “learning experience”, he would try more

significant misbehaviour on the second ride out, to see whether the rider could handle it. If the behaviour were handled successfully on both occasions, he would be unlikely to repeat it thereafter. There was only so much effort that the horse would put into learned misbehaviour.

[93] Competition horses were ridden six days a week to maintain their responsiveness, and if trained behaviour was not rewarded, the animal would stop doing it.

Defender's case

[94] The defender led evidence from Mr Sadaquate Khan, Hugh Somerville, Rachel Gordon, and Charles Lane. I deal with the medical evidence regarding the pursuer's back separately, and with Mr Somerville's evidence so far as it was material. I have already dealt with Mr Khan's evidence.

Rachel Gordon

[95] Rachel Gordon is a yard manager at a livery yard. She formerly worked at Dunbog as a groom and a working pupil. I have already mentioned her account that Macamore had been ridden before 21 July and my reasons for rejecting it. She said that the pursuer was not present when Ms Lindsay rode Macamore out, and that she was not at the yard that morning at all. She said that she and the pursuer had a discussion as to who was to ride Macamore. She did not hear the pursuer having any discussion with the defender about riding Macamore. She said she got the pursuer onto the horse in the indoor school. The pursuer walked Macamore around the indoor arena once and she rode outside through the doors of the indoor arena. She did not see which way the pursuer went. She saw Macamore return to the yard. She sent a boy called Scott Coyle to look for the pursuer, but initially sent

him along the wrong track. She then went to look for her herself in a farm buggy, but Mrs Oakden had already found the pursuer.

[96] I derived very little assistance from Rachel Gordon's evidence. Although she was trying to give an honest account, I formed the view that her evidence was unreliable in the respect I have already mentioned. She was simply wrong, albeit in response to a leading question, in agreeing that when looking at the church in the photographs, the junction towards which the pursuer had initially ridden out lay behind the church.

Charles Lane

[97] Mr Lane is an equine consultant and has ridden since childhood. He studied agriculture at university, sponsored by the Army. On leaving university he undertook the advanced military equitation course. The advanced course just mentioned was a course for instructors. He required to take a horse from being completely unriden to being trained for ceremonial military duties. He served in the King's Troop, Royal Horse Artillery. He trained soldiers to ride in displays as second in command in the King's Troop. He was the commanding officer between 1991 and 1993.

[98] When he left the Army, he became head of equine business management at the Royal Agricultural College in Cirencester. The course was aimed at producing managers. In that role he had been involved in standardising the training and qualifications to be expected of those in horse management. He is a BHS intermediate level instructor. He rides every day and undertakes one to one coaching on an ad hoc basis. He has delivered presentations on health and safety and risk assessment at training events. He is the chair of the panel which deals with stewards' inquiries at racing events. For a period he had his own livery yard. In

that capacity he trained young horses to be ridden and compete, and younger horses which were difficult to handle. He continues to compete in eventing.

[99] In Mr Lane's opinion, riders in BE events wished to ride at the "higher risk" end of the spectrum. Horses ridden in BE competitions almost all had an "excitable" element to their behaviours to make them "brave" enough to tackle the jumps involved in that. Such a horse was "not foreseeably dangerous to ride" but might be more demanding, and require a competent and experienced rider. He had formed the view from the pursuer's record in BE competitions that she was competent and reasonably experienced.

[100] His evidence was that horses would vary as to how they would behave when they were led out after restricted exercise (or, indeed a regime of near-confinement to the stable). He did accept that it was understood that a horse might be more excitable in that situation. He did not consider that the difficulty increased with the length of the period of restriction. Horses would settle into a restricted regime, and that was more likely in mature and well-trained horses such as Macamore.

[101] Mr Lane said that "horsemen" would not agree that a horse who has not been in full exercise for a period would misbehave because he had grown in confidence, having had no one telling him what to do. They would not consider that such a horse would then challenge the rider or try to assert its authority over the rider, or that the horse would be "testing" the rider. A horse would try to pull away if it was frightened or startled and perceived a threat. A well-trained horse would, at any time, be more likely to be obedient to his rider or handler than a horse that was not well-trained. Mr Lane had ridden Macamore, and thought that that gave him a better feel for how the horse would behave in other situations.

[102] According to Mr Lane, the expression “fresh” would normally be associated with a lack of exercise, or bringing the horse back into work. It meant that the horse was more excitable than one would normally expect him to be. On the premise that Macamore had been on light exercise, he would expect him to be more unpredictable than when in full exercise. If Macamore had been jogging, or showing signs of being fresh or excited, he would have expected riding him to be within the pursuer’s abilities. Had the defender been aware of a “small rear” by Macamore, that should not have caused the defender to foresee a risk of injury to the pursuer. Had there been a very high rear, he would have expected Ms Lindsay to report that and for the defender to give significant consideration as to whether the pursuer should ride Macamore.

[103] Mr Lane would expect the horse to show the same behaviour as when ridden in the morning, or better behaviour. He did not accept that a horse would behave more badly on a second ride after a period of restricted exercise than on the first. He had never encountered that phenomenon, and did not recognise the theory to which Dr Marsden had referred in her evidence.

[104] In cross examination he said that if a horse was very volatile and bucked and reared when walked in hand, he would expect the horse to be ridden in an indoor arena before being ridden out, to protect both the horse and the rider. If a particular individual had difficulty leading the horse in hand, that might be a reason to consider whether that person should ride him, rather than a person who did not experience that difficulty. It would be a matter of judgment. I did not understand him to differ from Dr Marsden as to most of the matters that might be capable of mitigating risk (apart from the provision of a person on a farm buggy). The difference between them was as to whether any of these measures was called for in the circumstances with which the defender was faced on the day of the accident.

[105] Mr Lane considered that it would be important for the defender to have a report from Ms Lindsay as to how her ride on Macamore had gone. He was her horse. The more information he had, the better he would be placed to decide whether it was alright for someone to ride him later in the day. He agreed with Dr Marsden that it was better to avoid a linear route. He did not agree that that was because the turn could be a flashpoint for misbehaviour by the horse. He said that if one always turned at the same place, the horse would start to anticipate a turn at that point and might not easily accept direction to do other than turn there if that were then required by the rider. He accepted that Ms Lindsay had competed in more demanding competitions than had the pursuer. He would expect her to be of a higher standard, as a rider, than the pursuer. The more familiar a person was with a horse, the better they would be able to anticipate the behaviour of the horse in a particular situation. Without knowing more about how he had behaved with her, it was impossible to say whether it was something that any reasonably competent rider would be able to manage. He would expect the defender to tell the pursuer about Ms Lindsay's report of her ride.

Conclusions

Liability

[106] It is unnecessary to rehearse the competing submissions of parties.

[107] I am satisfied that the accident occurred in the manner the pursuer avers and which she described in evidence. The accident occurred just after she had turned back towards the yard. She had turned back at a point shortly before she would have reached the T-junction.

[108] Although the pursuer did not see Macamore rear just before he fell onto her, I accept her evidence that he had already reared as she described before she dismounted. No-one

has offered any plausible alternative hypothesis for how he came to fall and land on her. The inference she drew was a reasonable one. It fits with her account of what happened to her, and what she was able to see, which I accept. It is common ground that horses can fall if they rear to a significant angle from the ground, although the defender's position is that that was unusual. The pursuer acted in an appropriate way by attempting to dismount when she got into difficulties. Nobody suggested otherwise.

[109] There is a clear and sufficient causal connection between Macamore's behaviour, the pursuer's attempting to dismount and as a result falling, and between Macamore's behaviour and his landing on her after she had fallen. Her injuries were caused by the accident.

[110] The defender instructed the pursuer to ride Macamore and where to ride him. That is a matter of admission on record. Although there was some reference in the evidence to a discussion between the pursuer and Rachel Gordon about who should ride Macamore, there was no attempt to depart from that admission. I am unable to make a finding on the evidence about which exit the pursuer used when she left the yard. She may have left via the exit from the indoor school, or she may have ridden out from the front of the main yard. I am similarly unable to make a finding as to whether or not she rode around the indoor arena before leaving. Nothing turns on that matter. I accept the pursuer's evidence that if she did ride around the arena, it was not in the context of being attached to a lunge rein by Rachel Gordon.

[111] The question of liability turns on what was reasonably foreseeable so far as Macamore's behaviour on the afternoon of 21 July 2015 is concerned, in the context of the regime of limited exercise which applied to him in the preceding weeks. Absent that context, there was nothing about requiring the pursuer to ride Macamore that would

involve any breach of the defender's duty of reasonable care for her as an employee. The facts that he was larger than the pursuer's own horse and that he had competed at a high level would not, given the pursuer's experience as a rider, have given rise to a foreseeable risk of injury absent that context. Had other things been equal there is nothing to indicate that it would have been negligent to require the pursuer to ride Macamore or that she was not competent to ride him.

[112] There is a recognised risk that a horse will be more difficult to handle after a period of restricted exercise. That risk may or may not eventuate in particular horses, but it is a risk that is recognised in the equestrian community and industry. I accept Dr Marsden's evidence that there is such a recognised risk. It is supported by the passage in the 2011 publication to which she referred. The reference in the Stage 1 manual to a horse being fresh after even a relatively short period in the stable supports this proposition as well. It is to some extent supported by the evidence of Mrs Hamilton, an equestrian of long standing. Mr Lane accepted that there was a recognised risk of fresh or unpredictable behaviour after a period of restricted exercise. Although the defender at times seemed to be at pains to avoid conceding that there was such a risk, it is significant that he recognised that there was a risk of misbehaviour to the extent that he sought to mitigate it by directing the pursuer to take a different route from the one taken by Ms Lindsay.

[113] It was reasonably foreseeable that Macamore would behave with the pursuer in a way similar to that in which he had behaved with Ms Lindsay. Mr Lane did not dispute this, although in his opinion Macamore might also behave better on the second ride.

[114] I am not satisfied that there is a risk generally recognised in the industry that a horse who has had a period of restricted exercised will behave more badly the second time he is ridden than the first time he is ridden. Dr Marsden explained that her evidence was based

on academic study and understanding of how animals learn. The theory that she advanced regarding first and second repeats of experiences was not vouched by any publication produced. I am unable to determine whether it is part of a recognised body of knowledge within her area of scientific knowledge, so far as equine behaviour is concerned. The proposition that there is such a risk was a matter in dispute in the case. It is a matter on which the pursuer relies in the pleadings. In those circumstances I should have expected the basis for Dr Marsden's opinion, and the extent to which it was based on established knowledge in her discipline, to be vouched by the production of articles or textbooks. Even if it is established academic knowledge, there has been nothing produced to show that it has been received in the equestrian industry. By contrast with the evidence about the recognised risk of misbehaviour after restricted exercise, it was not vouched by any reference in work of practical reference for equestrians.

[115] Although at first sight it appeared that Dr Marsden and Mr Lane differed about a great deal, the most pronounced difference between their opinions was in respect of the point I just mentioned. I place no weight on the circumstance that Dr Marsden did not ride Macamore, but Mr Lane did. There was no dispute relating to his general disposition that could have been illuminated by her having done so. This case is concerned with what is said to be the influence on Macamore's behaviour of his regime in the weeks immediately preceding the accident. Had Dr Marsden ridden him, he would not have been subject to that influence when she did. I did not consider that Dr Marsden's level of BHS qualification detracted from her qualification to give expert evidence in the context of this case. She was qualified by her other professional experience. She has studied and written about equine behaviour, and provided advice as a consultant over many years.

[116] I accept the pursuer's evidence that she experienced some difficulty when she was leading Macamore in hand. There was, however, no evidence that she told the defender about this, or that he knew or should have known about it for any other reason.

[117] What was or should have been foreseeable to the defender turns on what he learned from Ms Lindsay about Macamore's behaviour. I accept as credible and reliable the pursuer's account of what Katherine Lindsay said to her about how Macamore had behaved when Ms Lindsay rode him. I am satisfied that the conversation to which the pursuer referred in her evidence was the same one to which the defender was party. That is what the pursuer said when she was cross-examined. Accordingly I am satisfied that the defender was told that Macamore had been fresh and excitable, and had reared. I am satisfied that Ms Lindsay said that he had reared, and that he had been jogging and bouncing about. I have no doubt that if she had described a very significant rear, that is something that the pursuer would have recalled and spoken to in evidence.

[118] There is very little evidence as to what the defender's response to this was. The pursuer was not asked whether the defender asked any follow-up questions. The defender's own recollection in evidence of the conversation was of poor quality. Neither party led Ms Lindsay in evidence. Although the defender said he would have "queried" what Ms Lindsay said, there is no evidence as to what he actually asked her, or what she may have replied, either from the pursuer or the defender. The defender's position was that nothing he heard caused him concern. While I did not regard him as a particularly impressive witness, and he may have a motive, as Ms Ennis submitted, to understate the position, the position is that the evidence about what actually was said goes no further than what the pursuer was able to recall.

[119] A person well-placed to assist on this matter would probably have been Ms Lindsay herself. She was not led as a witness. In the event that it had been established that there had been any failure on the part of the defender to make an inquiry of Ms Lindsay as to the nature and extent of Macamore's behaviour, it would also have been necessary to have evidence as to what, if anything, she would have said in response. There is no evidence about that.

[120] Nothing turns on any failure by the defender to tell the pursuer that Macamore had misbehaved. She had heard Ms Lindsay's report and was aware of the matter. I am satisfied that the pursuer and defender were present at and parties to a single conversation with Ms Lindsay. It is irrelevant whether the defender did actually watch the pursuer ride away from or around the farm buildings. There is no suggestion that Macamore showed any sign during the initial stages of the ride that he would cause the difficulty that he did. If the defender watched the pursuer ride away from or around the farm, he would have seen nothing to cause him to ask her to discontinue the ride.

[121] This case is brought at common law, and under reference to the defender's duty to make an assessment of the risk to the pursuer associated with the ride. There was some debate in the course of submissions as to the relevance or otherwise of the Management of Health and Safety at Work Regulations 1999. That debate was sterile. The need to assess risk (whether or not there is a statutory duty to carry out a risk assessment) is logically anterior to the compliance of an employer with the common law duties of care incumbent on him. He needs to make the assessment to find out what precautions, reasonably, to take. That is clearly explained in *Kennedy v Cordia (Services) LLP* 2016 SC (UKSC) 59 at paragraphs 110 and 111. The defender required to consider whether the pursuer's ride on

Macamore that afternoon gave rise to a risk to safety, what the extent of that risk was, and what could and should be done to minimise that risk.

[122] By his own admission the defender did not know what experience the pursuer had specifically in riding horses after a period of reduced exercise. He had no personal experience of Macamore's reaction following periods of reduced exercise, contrary to what he initially said in evidence. He did, however, have a reasonably extensive period of working with the pursuer and training her before the accident, and to observe and assess her general level of competence as a rider. He knew that she had been involved in breaking in a difficult pony.

[123] He ought to have been aware that there was a recognised risk that horses would misbehave following periods of reduced exercise. He knew that Macamore had misbehaved that morning, with his own rider, who was a more experienced rider than the pursuer. As I have already said, I do not accept that he knew or ought to have known that Macamore would behave more badly on a second outing than on a first, or that he was more likely to misbehave on a second outing than on a first. What he did have was information from Ms Lindsay that Macamore had misbehaved to some extent on his first outing. It was reasonably foreseeable that Macamore would behave with the pursuer in a way similar to the way in which he had behaved with Ms Lindsay. While I do not know precisely what Macamore did when Ms Lindsay rode him, I infer that it was behaviour she was able to cope with. She rode him back to the yard.

[124] He perceived that there was a risk worthy of mitigation, to the extent that he directed the pursuer to take a different route, with a view to trying to avoid a repeat of the behaviour described by Ms Lindsay. While I accept that was a reasonable step for him to take, it does not follow that he should have been satisfied that it would prevent a repeat of the behaviour.

There is nothing in the evidence to indicate that it would. There is no evidence that anything other than a linear route involving a turn was available or practicable on the day, given that the exercise required to be of limited duration.

[125] Essentially the defender required to consider with reasonable care whether the pursuer was equipped by virtue of her competence as a rider to deal with Macamore's behaviour while riding him unaccompanied that day. If she was not, he should have considered whether she should ride Macamore at all; whether she should ride him outside the confines of the yard; and whether if she were to ride him outside the yard, risk would be sufficiently mitigated by the presence of another horse and rider.

[126] In submissions, the defender referred to *McGregor v LMRS Farm Ltd* [2007] CSOH 153. While that is a case relating to the selection of a horse for a pupil at a riding school, and not to the liability of an employer to an employee, I derive assistance from the approach of the Lord Ordinary. The assessment of risk in this case involved consideration by the defender of whether the pursuer could, by virtue of her competence as a rider, ride Macamore in reasonable safety notwithstanding the foreseeable risk that he would behave as he had done with his owner, earlier in the day. Like the decision criticised in *McGregor*, it is a decision about whether a horse and rider are in all the circumstances appropriately matched. The Lord Ordinary in *McGregor* took the view that this was a question of judgment, and an art rather than a science: paragraph 49.

[127] I consider that the judgment that the defender made was a reasonable one. I accept Mr Lane's opinion that a rider of the pursuer's experience could be expected to cope with a horse who was excitable, and who had reared, unless that had been a high rear. There is no evidence that the defender should reasonably have anticipated misbehaviour by Macamore of a nature that would have made it unsafe for the pursuer to ride him.

[128] I accordingly assoilzie the defender.

[129] If I had been satisfied that there was a reasonably foreseeable risk that the horse would misbehave to such an extent that the rider would decide reasonably that she required to dismount, I would have concluded that there was a reasonably foreseeable risk of injury to the rider. I would not have taken the view that it was necessary that the precise means by which the accident occurred (the horse rearing then falling on to the pursuer) be reasonably foreseeable.

Quantum and causation

[130] Had I found the defender liable, I would have taken the following approach to the disputed elements of the claim. As I have already indicated, I am not satisfied that it was medically necessary for the pursuer to give up her nursing studies. Mr Mathieson and Mr Khan both gave evidence to that effect. I reject the defender's contention, advanced in oral submissions, that, in essence, the pursuer had been told that bad backs were common among nurses, decided that "she didn't fancy that", and that was why she ceased nursing. This is not a fair representation of the pursuer. She presented as someone who had returned to her studies and to her leisure activities promptly after the accident. I do not consider that she wanted to stop her nursing studies and sought to use the accident as an excuse to do so, or that she gave up her course cynically with a view to trying to exact financial compensation from the defender for her decision. The onus is, however, on the pursuer to establish a causal connection between the accident and each of the elements of her claim.

[131] Parties were agreed that the pursuer lost wages of £400 which she would have received in her employment with the defender during August 2015. The pursuer sought interest on this sum from August 2015 to date.

[132] Parties agreed that in the event I found that the pursuer required to discontinue her nursing degree as a consequence of back pain from injuries arising from the accident, then her past wage loss amounted to £61,290 with interest of £7,355. Her future wage loss would be £1,877.

[133] The pursuer's position was that she had taken advice from those best placed to provide it, and that it was reasonable for her to discontinue her nursing studies. In the course of oral submissions Ms Shand accepted that an award in the agreed sum for past wage loss if I were satisfied that there was a sufficient causal connection between the injuries sustained in the accident and the pursuer's change of course at university, and did not maintain that I should interpret the use of the word "required" in the joint minute in any particular manner.

[134] The starting point of the process leading to the pursuer's change of course was, she said, advice she had from her general practitioner. There is no record of this advice in the general practice notes. There are relatively few references to back pain in the notes during the pursuer's first year at university. There are records of attendance during this period, and a number in relation to complications from the pursuer's facial injuries. The references that do appear are: on 11 September 2015 - "sore back still"; on 8 June 2016 - "gets some low back pain". Both of those notes refer to other matters as well. The note from 8 June 2016, of a consultation with Dr David Booth, relates mainly to complaints of fatigue and difficulties with concentration. The note of 8 June 2016 is the first record of a consultation with Dr Booth after the accident. The next consultation with him is recorded on 17 October 2016, after the pursuer had changed courses at university.

[135] Following the October consultation Dr Booth referred the pursuer to Dr Lance Sloan, a consultant in rehabilitative medicine, in relation to difficulties with tiredness and poor

concentration. In the referral letter, dated 18 October 2016, Dr Booth described the pursuer as an "18 year old student nurse". He went on to say, "She has made a good physical recovery and went on to start studying general nursing at Dundee. She is now in second year."

[136] These entries appear to indicate that Dr Booth did not know at that point that the pursuer had changed courses. I accept that the pursuer was trying her best to give truthful and accurate evidence about what she said her general practitioner told her. Her evidence about the terms of the conversation was, understandably, imprecise. The pursuer took from whatever Dr Booth said that she should consider whether, in the light of her back pain, she should continue with nursing. She made reference to her back being "weak" and "the injury getting worse". She said that her general practitioner had told her that she was starting with a "bad" back. Although the note from 8 June 2016 is not extensive, it does record a complaint of low back pain. I accept that Dr Booth told the pursuer, in the context of a consultation about the ongoing effects of her injuries, that her back pain would not improve. He gave her to understand that nursing would exacerbate the problem. That is not the advice that the two expert neurosurgeons would have offered the pursuer, but I accept on the balance of probabilities that it is the substance of the advice that Dr Booth offered. It is very unlikely she would have undertaken the inquiries that she did with university staff if she had not received advice to that effect from Dr Booth. The account given in evidence by the pursuer was consistent with Mrs Morrison's recollection of what the pursuer had told her, and of the course of events that followed from it. My impression of the pursuer was that she had been keen to study nursing, and tried to the best of her ability to follow through the plans that she had made before the accident.

[137] I am satisfied that it was reasonable for the pursuer to take from the exchange with Dr Booth that she was being told that nursing would make the effects of the injuries sustained in the accident worse, and that the back pain she was experiencing when carrying out practical nursing tasks was worse because of the accident than it otherwise would have been. I accept that university staff provided further advice on the basis of what the pursuer told them Dr Booth had said. It was reasonable for the pursuer to act on the advice of her general practitioner and university staff, and to change courses. Had the pursuer succeeded on liability, I would have awarded the sums agreed in the joint minute as the past wage loss, interest thereon and future wage loss resulting from her change of course.

[138] The pursuer also sought £19,000 in respect of the student loans she had had to take out to meet her expenses during her four year environmental science degree. She had had a bursary when studying nursing, which she would not have needed to repay. The defenders said that there was no evidence that the pursuer would have received a bursary after the first year of her nursing course. My understanding of the pursuer's unchallenged evidence was that the bursary was attached to her degree course, and not simply to the first year of it. I would have found the pursuer entitled to this sum. It is a liability she would not have accrued if she had continued her nursing course, rather than switching to environmental science.

[139] I am not satisfied that the pursuer has suffered a loss of employability. Her contention that I should make an award was based on her having a head injury, and continuing cognitive deficits. The pursuer has obtained a 2:1 degree, and a graduate position in her chosen field. She plans to study for a master's degree. I do not doubt in any way the pursuer's evidence that she experienced difficulties at points during her studies, particularly in the period closer to the accident. She sought and was given appropriate

support by Dundee University. She has entered employment, albeit later than she would have done had she completed her nursing degree as planned. Her later start in employment would be compensated by the agreed figure for past wage loss and the very limited, agreed, figure for future wage loss. There is no evidence that her earning capacity or her ability to work is limited by continuing effects of her head injury. Mr Mathieson's view at the time that he examined the pursuer in 2018 was that she might find absorbing new information more difficult for up to four years from the accident. He believed she would be able to undertake a career of her own choosing. When giving evidence he said he was not at all surprised to learn that she had achieved an upper second degree.

[140] The pursuer's services claim on record was in the following terms: "The pursuer required assistance from her mother with personal care and with household chores following the accident." The defender submitted that that formulation of the claim excluded the services provided by Mrs Morrison by way of giving the pursuer lifts to university for a period and to medical appointments at various times. The defender submitted that general support to the pursuer and assisting in describing what was happening were not properly described as personal care. Personal care meant only help with essential everyday activities such as washing, dressing, and meals.

[141] I accept that Mrs Morrison provided personal care to the pursuer when the pursuer was in hospital and in the weeks after her discharge. I reject the contention that personal care requires to be construed as narrowly as the defender suggests. In a situation in which the pursuer found herself in hospital, injured as she was, what Mrs Morrison did by way of providing emotional support to the pursuer and helping her to understand what was going on is properly described as personal care, just as is the assistance she rendered in helping the pursuer take nutrition and making her comfortable. While I accept that not every moment

of Mrs Morrison's time at the hospital will have been engaged in undertaking personal care of the pursuer, I have no difficulty in accepting that a great deal of it was. I would allow, on a broad basis, 10 hours per day for a 2 week period: a total of 140 hours. Thereafter the time spent on providing care is more difficult to quantify. I accept that the pursuer needed assistance for about eight further weeks after her discharge from hospital. Accepting that the needs were more extensive at first, and diminished over the period, I consider that an average figure of 5 hours per day throughout the period would be reasonable. That produces a further figure of 280 hours.

[142] I allow 80 hours in respect of the provision of lifts to and from university, on the basis that they took about 2 hours each weekday over an 8 week period. I accept that they were necessary services in a context in which the pursuer had been told to avoid public transport for a period while her facial injury was healing. In that context I consider that they can properly be described as an aspect of personal care provided by Mrs Morrison. The pursuer needed to travel to get to university, and needed to travel to get to her medical appointments. Travel for those purposes is an essential every day activity. I do not have a clear picture of the time taken in providing further assistance with attending medical appointments, and consider 20 hours a reasonable estimate.

[143] Section 8 allows for "such sum as represents reasonable remuneration for ... services". Conventionally awards have been made on the basis that a full commercial rate should be discounted when care has been provided by a relative. As a matter of law the minimum wage for someone of Mrs Morrison's age was £6.70 in 2015. With that in mind I would have made an award for services in the sum of £3,000 before calculation of interest.