

SHERRIFDOM OF NORTH STRATHCLYDE AT KILMARNOCK

Court reference KIL-SF54-24

IN CAUSA

Mariann Reid, residing at 11 Blacklands Road, Kilwinning, KA13 6HS

PURSUER

AGAINST

Royal & Sun Alliance Insurance Limited, St Marks Court, Chart Way, Horsham,  
West Sussex, RH12 1XL.

DEFENDERS

JUDGMENT BY SUMMARY SHERIFF MORAG FRASER

Kilmarnock 27 April 2026

The Sheriff having heard evidence and submissions and having resumed consideration of the cause, makes the following findings in fact and law:

Findings in Fact and Law

1. On 7<sup>th</sup> October 2022 at approximately 3pm the Pursuer was driving motor vehicle SJ14 EEU on Almswall Road, Kilwinning. She was driving at low speed.
2. On that date and at that time the Defender's insured was the driver of motor vehicle registration number SJ19 LUM on Almswall Road, Kilwinning. She was driving in the opposite direction to the Pursuer.
3. The Defenders' insured commenced a manoeuvre to overtake a row of parked cars. In doing so she collided with the Pursuer's vehicle driving within her lane on the opposite side of the road. The front and side of the offside of the Defender's insured's vehicle collided with the offside of the Pursuer's vehicle.

4. The accident occurred as a result of fault and negligence on the part of the Defenders' insured. But for her actions in moving forward and out to pass the parked cars the accident would not have occurred. The Defenders' insured failed to keep a proper lookout for and other vehicles travelling on the opposing carriageway, and in particular the Pursuer's vehicle progressing forwards within the lane of that opposing carriageway. If the Defender's insured had been keeping a proper lookout for other motor vehicles she ought reasonably to have been able to see the Pursuer's motor vehicle progressing at low speed. A careful and competent driver either would not have undertaken the overtaking manoeuvre or would have started to execute the manoeuvre in such a way that she would have been able to pull back in to avoid oncoming traffic.
5. There was no fault or negligence on the part of the Pursuer, and her actions did not contribute to the accident.
6. The impact of the collision caused the Pursuer's body to move forwards and backwards. The Pursuer got out of her vehicle. She felt some pain at the bottom of her back. She was upset and anxious.
7. The Pursuer was 37 weeks pregnant at the time of the collision.
8. The pain felt by the Pursuer worsened that evening.
9. The Pursuer continued to feel pain in her lower back for around 2 weeks after the collision.
10. Although the Pursuer did not require to attend her GP, she spoke with her midwife on the day of the collision. She was advised to check that she noted movement of her unborn baby and to take paracetamol. She took paracetamol for a period of approximately 2 weeks to alleviate the pain from her lower back.
11. The Pursuer felt pain from her back when moving. She found it difficult to do housework but managed to do so and to provide care for her 7-year-old son with whom she lived alone.

12. The Pursuer made a full recovery around two weeks following the accident.
13. The Pursuer did not require any assistance from family members which would have given rise to a claim for services.
14. The Pursuer did not incur any miscellaneous expenses as a result of the accident.
15. The Pursuer experienced some inconvenience as a result of the accident. This was minimal.

#### THEREFORE THE SHERIFF

- (i) Finds the Defender liable to the Pursuer in the sum of £1000 with interest thereon at the rate of 8% per annum from 7<sup>th</sup> October 2022 until payment.
- (ii) Assigns a hearing on expenses for 5 June 2026 at 9.30am by way of Webex. Directs parties no later than 48 hours prior to the aforementioned hearing to provide a note of their contact details to the sheriff clerk at Kilmarnock by emailing the court at [kilmarnockcivil@scotcourts.gov.uk](mailto:kilmarnockcivil@scotcourts.gov.uk).

#### Background and Note of Evidence

##### Background

1. This is a claim for payment of £5000 with interest at 8% from 7<sup>th</sup> October 2022 until payment in respect of alleged injuries sustained by the Pursuer in a road traffic accident.
2. The evidence of the Pursuer was that she was driving at low speed. The Defender's Insured was travelling in the opposite direction and moved out onto the Pursuer's side of the road to overtake parked cars. There was insufficient room for the Defender's insured's car to pass the Pursuer and her car collided with the Pursuer's car.

3. Liability in terms of the accident was admitted but it was not accepted that the collision had caused injury to the Pursuer. *Esto* it was established that the Pursuer had incurred injury as a result of the actings of the Pursuer, the sums claimed were said to be excessive.
4. In terms of quantum the Pursuer's claim was solely for *solatium* and interest.
5. Accordingly, the issues to be determined at proof were whether the collision resulted in injury to the Pursuer and, if so, quantum.

### **Evidence**

6. I heard evidence on 17<sup>th</sup> October 2025 and 26<sup>th</sup> January 2026. The Pursuer gave evidence and led 2 witnesses in support of her case being her mother Barbara Reid and Mr Daniel Cohen, Consultant Trauma and orthopaedic Surgeon.
7. The Defenders led one witness being Dominic Harris, MD Assessors. It was explained to the court that the Defender's insured was now deceased and her son, who had also been in the car was dealing with the passing of his mother.
8. In addition, the court viewed dashcam footage of the collision obtained from the Defender's insured's vehicle.

### The Pursuer

9. The Pursuer's evidence was that she was 30 years of age and unemployed. She was formerly a chef in a care home and stopped work in October 2024. She has two children aged 10 years and 2 years.
10. She was driving her motor vehicle SJ14 EEU on Almswall Road, Kilwinning at approximately 3 pm. She was driving to her mother's home. At the time she was 37 weeks pregnant with her younger child, now aged 2.
11. She was wearing her seatbelt.

12. The Defenders' insured's motor vehicle was in the opposing carriageway moving towards her. The pursuer saw the car coming and expected it to stop as there were parked cars on the side of the road on which the Defenders' insured was driving. The pursuer continued to drive and estimated she was driving at around 1 to 4 miles per hour.
13. The Defenders' insured's motor vehicle moved out into the Pursuer's carriageway to pass the parked cars. It collided with the Pursuer's motor vehicle. It collided with the side of her motor vehicle. It was the driver's door and side of the motor vehicle being driven by the Defenders' insured that hit her car.
14. At the point of impact, the Pursuer's body moved forward and backwards. Her movement was restricted by the seatbelt restraining her.
15. The Pursuer's vehicle had been moving very slowly at the time of the impact.
16. The Pursuer opened her car door to come out to exchange details with the Defender's insured. She was able to get out of the car without difficulty but felt a bit of pain in the bottom of her back. She was in pain immediately.
17. The Pursuer was also quite upset and anxious because the other car had hit her car.
18. Having exchanged details the Pursuer got back into her car and drove to her mother's home which was 5 minutes away. She felt a bit "shaky and worried".
19. At her mother's home she calmed herself down and telephoned her midwife at Crosshouse Hospital. The Pursuer told her mother what had happened and told the midwife she had been in a minor car accident and had hurt the bottom of her back.
20. The midwife said to make sure that the baby was moving and to take paracetamol. The Pursuer was referred to Page 14 of the joint bundle of productions which is a note of the telephone call from the Pursuer to the midwife recorded as having taken place at 16.44 on 7<sup>th</sup> October 2022. The reason for the call is stated to be "minor RTA". The details are shown as:

*"Calling for advice. In minor RTA earlier. Feels a bit shaken. No concerns with movements at present. Nil Pv. Has mild back ache only. RH.POS. Reassured for now. Advised to call back over next few hours if wants to come in for A/n check."*

She confirmed that to be an accurate note of the call.

21. Later that day the bottom of her back felt sore. She was feeling a little nauseous and described the pain as being 8 on a scale of 8 – 10. She took paracetamol.
22. The Pursuer suffered pain in her lower back for around 2 weeks. Her back was a lot more sore than normal. She said that she lived alone with her children. She managed to take her older child who was then aged 7 to school and to his activity clubs. She was able to drive.
23. The Pursuer struggled with housework but as she put it "*pushed through*" to get it done. Her sleep was not affected. It was "really sore" to move and to undertake activities, but she had to do it as there was no one else to assist her and her son.
24. She did not attend her GP as she took paracetamol and thought it would be sufficient to help.
25. She spoke to her insurers on the same day as the accident. She told them she had been in a car accident and what had happened. She does not think she spoke about the injury to her back. She was more concerned about her baby. She was suffering with anxiety. She said that she found making telephone calls difficult. She becomes anxious about speaking to other people.
26. The Pursuer said that she also found forms difficult. She has dyslexia, so her mother or aunts assist her with paperwork. She found it difficult to understand paperwork sometimes. She did not understand everything she was being asked when she spoke to the insurers. They asked if anyone was injured. She said no because she understood them to mean passengers, not herself.

27. After the accident there were lots of telephone calls from different people asking questions. She did not know from whom. This was happening every day. She found this stressful.
28. Telephone calls continued at that time in relation to the accident. She did not remember dealing with solicitors and the claims company. She said she was fine because she was focused on her new baby coming and getting ready for that. The accident was not her priority in these circumstances.
29. The Pursuer's baby was born on 4<sup>th</sup> November 2022. The Pursuer was then unwell and required a blood transfusion.
30. There was a concern that the baby may have certain allergies. At 6/7 months old he was diagnosed with Kawasaki disease which caused him to take a stroke. The Pursuer described herself as "struggling".
31. She put the claim to the back of her mind as she was focusing on getting better and ensuring that her baby was thriving. She thought she had told the insurers everything.
32. The Pursuer met with Mr Cohen in August 2024. She was put in touch with him through solicitors for the purpose of a medical report. She told him everything, just as she has told the court.
33. Under cross examination the Pursuer accepted that contact between the 2 cars had been minimal and could be described as "scuffing" or "glancing".
34. She accepted also that she had been driving for around 8 years and was aware of roundabouts and speed bumps. What she experienced in this collision was similar to going over a speed bump and to what she might experience in normal daily driving.
35. She did not stop driving following the incident. Her socialising was not impacted.
36. She did not remember her phone call with Friends Legal. She was directed to the letter of claim sent by Friends Legal to Royal & Sun Alliance dated 12<sup>th</sup>

October 2022 at pages 40 to 44 of the joint bundle of productions. This letter refers to the Pursuer receiving treatment at Crosshouse Hospital and to her suffering from chest pain and shoulder pain. The letter states that she was checked over by a midwife as she was 8 months pregnant. The Pursuer confirmed that she did not receive treatment from Crosshouse hospital. She was not checked over by a midwife other than by way of the telephone call already referred to. She did not require to call back for any ante-natal checks.

37. She was referred to her statement to her insurers at page 35 of the joint bundle. She accepted the incident description therein was fair being:

*"The incident occurred at Fri, Oct 7, 2022 2.45 pm. The policy holder was moving forwards, they have suffered an impact to the driver side of their vehicle. The third party was over, they have suffered an impact to the driver side of their vehicle."*

38. Page 38 and Page 39 of the joint bundle continue her statement and contain a diagram of the two cars and their road positions as well as stating "No" to the question, "Was anyone within the vehicle injured?".

39. This statement was signed by her electronically on 12<sup>th</sup> October 2022 and above her signature is a declaration that the information is accurate to the best of her knowledge.

40. In an e-mail from 5<sup>th</sup> January 2023 at Page 45 of the joint bundle, Friends Legal indicate they are no longer acting and are closing their file. The Pursuer did not accept the proposition that they closed their file because she had not been injured.

41. A new letter of claim was sent on 7<sup>th</sup> September 2023 by Belmont Solicitors, being pages 48 – 52 in the joint bundle. The injury details referred to were "soft tissue injuries to neck, both shoulders and lower back." The Pursuer felt she must have said that to them, but it was mainly her lower back which had been painful.

42. She did have lower back pain not caused by pregnancy. She had not lied in relation to this pain and, when speaking to her insurers, had thought they were talking about passengers when they asked if anyone was injured. She

has dyslexia and she struggled to understand forms and telephone calls. There may have been confusion in her communications.

43. In re-examination the Pursuer confirmed that the movement caused by this incident was not the same as everyday driving such as going over drains or mini roundabouts. She was not expecting this collision to happen and was not prepared for it. She moved forwards and backwards and she got a fright.
44. The Co-op were her insurers. She completed the paperwork. They e-mailed the form to her, and she looked at it and signed it. She had spoken to them. She did not check it because she is not good at that. She had dealt with the paperwork on her own.

#### Barbara Reid

45. Mrs Reid is the mother of the Pursuer. She is aged 60.
46. The Pursuer called her on the day of the accident. She told her that a car had bumped into her. She came to Mrs Reid's house. The Pursuer was upset. She was complaining of being sore all over at the time and pinpointed her back area.
47. Mrs Reid told her to phone the midwife. The midwife told her to keep an eye on the movement of the baby and to take paracetamol. She was present when the Pursuer telephoned the midwife.
48. Over the next couple of weeks, the Pursuer struggled. She had pain in her lower back area. She was the mother of a then 7-year-old child who had lots of energy. She was struggling to do housework, and she couldn't walk for long periods or sit for long periods. That had not been the position prior to the collision.
49. In cross examination Mrs Reid confirmed she had discussed matters previously with the Pursuer and was simply telling the court what she had seen with her own eyes or been told by the Pursuer. She did not witness the collision.

50. She does not live with her daughter, but the Pursuer lives close to her mother's home, and they see each other most days. On some days after the collision the Pursuer had not been fit to walk her son to school and Mrs Reid's husband took him.

#### Daniel Cohen

51. Mr Cohen is a Consultant Trauma & Orthopaedic Surgeon. He works in that field in Greater Manchester where he also has a private clinic specialising in hip and knee surgery.

52. Mr Cohen has undertaken medico-legal reports for 13 years and has completed approximately 5000 reports. He has given evidence on several occasions. His elective practice is in relation to hips and knees while his general practice is in general trauma. Although some orthopaedic surgeons do not do so, he operates on trauma patients. They can present in fracture clinics from lower-level injury. He regularly examines patients in road traffic collisions either on wards or through his clinic.

53. Mr Cohen confirmed that his report dated 6<sup>th</sup> August 2024 was lodged in process (Pages 3 – 10 in the joint bundle) and he adopted the terms of his report as his evidence. There was nothing to supplement or redact.

54. He confirmed he understood that his primary duty was to the court.

55. He was instructed by the Pursuer's solicitors and was asked to comment on her injuries and provide a prognosis.

56. He had been provided with the Pursuer's medical records and examined her at Glasgow on 5<sup>th</sup> August 2024.

57. His report is based on 2 aspects. He undertook a physical examination of the Pursuer, and he also had a discussion with her in relation to the events which had occurred through completion of a questionnaire before the physical examination. He also reviewed her GP Notes.

58. The collision here caused a side impact. The Pursuer had been wearing her seat belt and recalled being jolted at the time of the accident which is what one would expect with that kind of impact.
59. This would be compatible with physical injury.
60. It is difficult to find literature relevant to side impact as most relates to rear impact. He has extrapolated from the available literature and assumed similar forces from the side rather than the rear.
61. In a rear impact momentum takes the body forward and the seatbelt can cause the body to go back causing extension to the lumbar (lower) spine.
62. There can be a number of injuries from side impact, soft tissue injury to the lumbar spine being a common one.
63. It can be difficult to know the mechanism of movement at the time but if the seat belt restrained the body, then one would expect injury.
64. The female gender and the Pursuer not being aware of the collision going to happen is relevant here.
65. In terms of the Pursuer being female, physiologically that can be related to ligament laxity and proportion of weight versus muscle. There are a lot of factors to consider. There is a co-relation between the female gender and whiplash injury from rear collisions. Women are more likely to be injured in this type of injury.
66. The Pursuer described pain in her lower back. She reported a score of 9 out of 10 and associated weakness and stiffness. It would be expected that this would be on a reducing basis and the Pursuer reported that this had resolved after 2 weeks.
67. The Pursuer self-medicated with paracetamol. Being pregnant, she would have been limited regarding appropriate pain relief.

68. A conservative approach to management of the Pursuer's condition was appropriate where she was able to get around and do most things. It was not necessary for her to seek medical treatment, and it was not uncommon for patients to self-medicate and self-manage. It was very sensible for her to speak to her midwife, and she followed the advice given.
69. In terms of prognosis there was no degenerative change.
70. There are multiple different structures in the lumbar spine region. Some are contracted and some are relaxed. If the force a car can cause is applied, potentially that causes strain or increases existing strain on these structures or can cause tears.
71. Potential low velocity collision can cause physical injury. The female gender and not expecting a collision are predictive factors.
72. During pregnancy the body goes through a number of changes including hormonal/ligament/musculoskeletal changes. That can increase the risk of injury as can additional weight in that this can affect the biometrics.
73. Mr Cohen is not an obstetrician but there is an increased risk of injury in the circumstances here because of the Pursuer being pregnant. This is due to 2 factors:
- (i) Ligament laxity. That is a physiological change in the body as it prepares for birth.
  - (ii) Additional weight caused by pregnancy.
74. Being unaware of an impending impact is also an important factor. If the occupant of a car is aware of an impending collision, they will prepare themselves for impact and so will tense their muscles.
75. The symptoms settling after 2 weeks would be reasonable having regard to the mechanism of injury.

76. In cross-examination, Mr Cohen confirmed that his examination of the Pursuer had been 1 year and 10 months after the collision. It had revealed a full range of movement with no tenderness. She had not seen her GP or gone to hospital. There had been no impact on her social activities, driving or sleep. There were no alarm bells or inconsistencies in the Pursuer's account to him.
77. If someone were to be involved in a collision where there was a side impact, there is often an element of movement front and back as they are sitting against a seat. It depends on the state of the body and if the body was twisted around.
78. If the scuffing collision between the two cars caused damage to a vehicle, then the injury complained of was not an unusual injury.
79. The Pursuer had no injury at the time of examination and had recovered. She told him the memory of how she had felt. He accepted that some people do exaggerate and he had no way of assessing whether the Pursuer was now exaggerating.
80. Mr Cohen was shown the Dashcam footage of the collision. He could not comment on the nature of the contact as he could not see it from the footage. He could not disagree with the Pursuer or any engineering expert as to the level of impact.
81. He was not able to comment on the Dashcam footage in terms of the force applied as he did not see the impact. He could not disagree with the Pursuer if she said the impact was the equivalent of going over a speedbump. A seatbelt can restrain in those circumstances but may not do.
82. It is possible the Pursuer could be misremembering aches and pains from her pregnancy.
83. He is not a psychologist or psychiatrist, and he was simply reporting that the Pursuer said she felt stressed. He was not providing a diagnosis of that as it is outside his area of expertise.

84. In re-examination, Mr Cohen confirmed that he had not seen the note from the midwife at Page 14 of the joint bundle at the time he conducted the examination of the Pursuer. This supports the fact that the Pursuer was experiencing back ache at the time she spoke with the midwife after the collision.

#### Mr Dominic Harris MD Assessors

85. Mr Harris is a collision investigator and automotive engineer assessor. He spoke to his qualifications which are contained within his report.

86. He described this matter as a low velocity impact case. He has experience of that and has reported on such cases for the last 25 years. He has undertaken the crash testing of vehicles into each other for the comparison of damage. He has done so since 2000. He carries out these tests annually for the Institute of Road Traffic Investigators and these involve both high speed and low speed collisions.

87. Mr Harris adopted his report dated 29<sup>th</sup> May 2025 as his evidence.

88. Mr Harris has not undertaken an inspection of the vehicle but was content with his report in terms of the investigations he had undertaken.

89. The initial point of contact was the centre of the offside front door. There were 2 markings there which extended to the rear door. The abrasion extends onto the rear quarter, and it is light in nature and glancing. The abrasion markings are consistent with a light glancing contact.

90. The door panels are a single sheet with rigid steel panels. There was no evidence the door strengtheners have been contracted. It would be easy to dent the doors by pressure of hand or a foot.

91. Mr Harris spoke to having viewed higher quality dashcam footage than the footage viewed by the court and his opinion was that there was a glancing type impact between the 2 cars. A glancing contact is a collision between two

vehicles where they make contact at a shallow or oblique angle so there is no or brief contact. There would have been light glancing contact with light force to each vehicle. This would have been minimal in terms of the Pursuer's vehicle which was travelling at less than 1 mile per hour.

92. A frontal or rear collision is very different to a side impact in that if there was an impact at 90 degrees all the forces of the defender's car would have gone into the pursuer's car. However, in the current case, the angle of the collision was very shallow and therefore the forces would have been reduced significantly.
93. There was no evidence from his investigations of abrupt longitudinal movement. The car rocks on its suspension literally in a minor way.
94. His conclusion was that the impact here was like mounting a low kerb or speed bump or mini roundabout. The movement of the vehicle was similar to low-speed driving and everyday driving.
95. In cross examination, Mr Harris confirmed that he considered himself to be a forensic engineer. He is not medically qualified. He does not diagnose injury or pain.
96. His evidence is based on the dashcam footage viewed by him, photographs and on the engineering evidence. He is not aware of any medical evidence. He viewed one picture of the Pursuer's vehicle and 8 pictures of the Defender's vehicle.
97. On the footage voices can be heard in the Defender's vehicle and the voices can be heard exclaiming.
98. He felt confident in saying that he has not made any assumptions. He has not made any comments regarding the seating position of the Pursuer or the movement of the Pursuer. He cannot say how the person moved and does not try to do so in his report.
99. He accepted that when he used the word "glancing" when referring to the collision, that this still involves transfer of a light force at a shallow angle.

100. He could not comment upon whether that collision caused injury. He would defer to a medical expert when it came to commenting upon injury.

101. He accepted that the movement of the vehicle was not initiated by the Pursuer. It came as a result of the contact between the two cars.

102. In re-examination, Mr Harris indicated that this was a scuffing type contact between two vehicles. It resulted in a rocking displacement of the vehicles rather than a "jolt". Cars are sitting on suspension as are the seats within the vehicles. There is a degree of flex and give because of this suspension and that will absorb some of the initial movement. He reiterated, this would be similar to going over a speed bump.

#### Submissions for Pursuer

1. These covered two matters. It was accepted that the burden of proof lay with the Pursuer. The two areas of dispute were (1) has the Pursuer sustained injury as a result of the collision, and (2) if so, the nature, duration and value to be attributed to those injuries.
2. With regard to whether the Pursuer sustained injury as a result of the collision, it was submitted that the Pursuer was a straightforward and candid person. She was quite nervous and not familiar with giving evidence. She readily accepted in cross-examination that she had continued to drive and that she did not attend her GP. She gave a clear and credible explanation as to why the injury was not at the forefront of her mind in that she was 37 weeks pregnant. She was shaken by the collision, and her predominant concern was the well-being of her unborn child.
3. Her evidence was that she was jolted when sitting in the car. From the dashcam footage shown from the Defenders' insured's vehicle the contact between the two vehicles was audible as was the exclamation from the Defender's insured.
4. The Pursuer said she almost immediately felt back pain and there is a contemporaneous note of her call to the midwife. In addition, she called her

mother. She did not fabricate or embellish her position in her evidence. She had back pain for 2 weeks and no more than that. She consulted with her midwife and took paracetamol as directed; that is what most people would do.

5. Mr Cohen was the only medical professional giving evidence. His evidence was clear and proportionate. There was no contrary evidence.
6. On balance of probabilities, the pursuer has established that she suffered a soft tissue lumbar spine injury which resolved in two weeks.
7. That injury was caused by the collision and her account of self-management of her symptoms is entirely reasonable particularly in the context of the late stage of her pregnancy.
8. The evidence of Mr Harris establishes only one thing, being that there was contact between the two cars, a matter which was never in dispute.
9. He cannot speak to injury or whether the Pursuer was moved inside her vehicle.
10. Causation does not need technical modelling. The position here is straightforward in that there was a collision, it was unexpected, the Pursuer was jolted, she suffered immediate back pain, she took the appropriate medical advice and managed her symptoms conservatively. Her symptoms settled in two weeks.
11. The consultant trauma and orthopaedic surgeon, Mr Cohen, stated that the jolt caused her pain.
12. If satisfied on that question, then in terms of quantum, a schedule of damages has been lodged. This was a short-term injury. It was a soft tissue lumbar injury which caused severe pain being 8 out of 10 and 9 out of 10 at points. There was some functional restriction. She was shaken at a point where she was 37 weeks pregnant. The solatium sought relates entirely to the past and is valued at £1500 with interest at 8 % from the date of the accident to the date of the proof in the sum of £396.49 making a total value of £1896.49 and interest should run on that amount at the rate of 8 % per annum from the date

of decree until payment. The pursuer seeks an award of expenses against the defender, the sanction of Mr Cohen as an expert witness and sanction of the case as suitable for counsel.

### Submissions for Defender

1. The Defender sought decree of absolvitor on the basis that the Pursuer had failed to prove the case on causation on balance of probabilities.
2. The evidence of the Defenders' insured's witness should be preferred. He was credible and reliable and there was no rationale for the witness to fabricate or exaggerate. He gave evidence in a matter of fact, straightforward way and that evidence was that there was a glancing collision between the two cars which would have been equivalent to the ordinary course of driving such as going over a speed bump. This evidence should not be taken lightly. His evidence is useful and instrumental in understanding the mechanics of movement in a collision and understanding dashcam footage.
3. Given that the movement of the cars on collision was slight and not out of the normal course of driving, the logical interpretation is that the Pursuer was not injured by the collision. Drivers and passengers do not suffer whiplash injuries going over roundabouts or speed bumps.
4. The evidence of the Pursuer is not reliable. The letter of claim dated 12<sup>th</sup> October 2022 says she was injured but the letter to the Co-op dated 12<sup>th</sup> October 2022 says she was not injured. While there can be an allowance for dyslexia or a misunderstanding, ultimately, she said she was not injured.
5. The Pursuer's evidence was that the movement was minimal and her speed less than 4 miles per hour. She accepted that the cars scuffed and the movement was like a speed bump. She accepted the movement was not outwith ordinary driving. There is a clear disparity between that and the significant pain reported to Mr Cohen.
6. Friends Legal stopped acting for the Pursuer and the claim was pursued some months later with alternative representation.

7. By the time matters were pursued the symptoms were long settled and the evidence of injuries were dependent upon her memory. There was no attendance at her GP or hospital. There was no effect on her domestic or social life.
8. Mr Cohen's report is a rehearsal of what the Pursuer said and is therefore a subjective report. It is of limited assistance. He accepted that it is always possible what is reported to him could be exaggerated, fabricated, or confused.
9. The Pursuer's mother can only speak to what she was told which is of limited assistance to the court. She is not medically qualified. She said that the Pursuer could barely walk, and her evidence is not reliable.
10. The Pursuer has failed to establish her case, and the Defender should not be liable.
11. If the court were to find that causation has been established, the injuries were minimal and improving over the 2-week period referred to and so had fully settled by the end of that 2 weeks. There was no impact on her domestic life, on her sleeping, driving or socialising.
12. There was no psychological injury. Overall, any injuries were *de minimis* and no award should be made.
13. If the court were minded to make an award, this is a minor injury in category A and should attract an award of £400, all attributable to the past with interest at 4% to the past and 8% from the date of decree onwards.

### Decision

1. The Pursuer gave her evidence in a straightforward manner. That evidence was reliable, credible and consistent in the essential elements of the case. I accepted her evidence that when she was asked if anyone had been injured, she did not understand that to be a reference to herself. The Pursuer's position is entirely reasonable that she did not consider that she had received

an injury, as such, on the day of the collision. It is however clear from her communications with her mother and the call to her midwife that she indicated immediately following the accident that she was suffering from back pain.

2. The Pursuer gave birth some weeks after this accident. She had a difficult birth requiring a blood transfusion. Her child also then had some significant health difficulties. In these circumstances it is again entirely reasonable that the pain she suffered and the pursuing of any claim would not have been a priority for her.
3. In terms of the evidence of Mr Cohen, he was speaking to an examination which took place one year and ten months after the incident and the report was based upon the information given to him by the Pursuer in terms of how the accident occurred and her symptoms thereafter. Mr Cohen opined that the injuries described were consistent with the accident particularly considering the stage of the Pursuer's pregnancy and the fact that the collision was unexpected.
4. In terms of the nature and level of pain spoken to by the Pursuer, this was consistent with the mechanism of the accident as described by her and Mr Cohen supported her injury management regime as being appropriate.
5. In terms of the evidence for the Defender, I found Mr Harris to be credible and reliable. However, his evidence was restricted to the engineering aspects of the collision and, as he readily accepted, he could not comment on how the impact would have affected the pursuer, particularly given the stage of her pregnancy and the fact she was not anticipating or expecting the collision to take place. An unexpected collision, even if it is a minor collision, is entirely different to movement of a car in the normal course of driving or in circumstances such as going over a speed bump, bumping up onto a kerb or going over a mini roundabout. In each of those situations a driver is expecting the movement of the car
6. In terms of causation, therefore, I accepted the evidence of the Pursuer in relation to her immediate symptoms and subsequent symptoms following the accident. On the basis that Mr Cohen indicated these were consistent with the

mechanics of the accident, the link in causation between the accident occurring and the injuries sustained has been established on a balance of probabilities.

7. In terms of quantum, this is a fairly minimal injury, and parties seemed to be fairly close in their valuations of the appropriate sum to be awarded. The Pursuer's submission valued solatium at £1500 plus interest at 8% per annum from the date of the accident.
8. The Defender's submission contended for an award of £400 plus interest at 4% with interest at 8% from the date of decree, in the event that the court held that causation was established.
9. Having considered the authorities put forward, the injury to the Pursuer justified an award of £1000 in terms of solatium. Interest would fall to be added at the rate of 8 % from the date of the accident.

IN RESPECT WHEREOF



Morag Fraser

SUMMARY SHERIFF

SHERIFFDOM OF NORTH STRATHCLYDE AT KILMARNOCK