



**IN THE COUNTY COURT AT SHEFFIELD**

**Claim No: F18YM480**

Sheffield Combined  
Court Centre, 50 West  
Bar, Sheffield. S3 8PH

Date: 10/03/2023

**Before:**

**HIS HONOUR JUDGE SADIQ**

**Between:**

**MS SANDRA ANN EVANS**

**Claimant**

**-and-**

**A1 MOTORCYCLE TRAINING AND SALES LIMITED**

**Defendant**

**Simon Mallett** (Instructed by **Injury Law Chambers**) appeared on behalf of the  
**Claimant**

**Darryl Allen KC** (Instructed by **DWF Law LLP**) appeared on behalf of the **Defendant**

Hearing dates: 6-7 February 2023

**APPROVED JUDGMENT**

This judgment was handed down remotely at 10.00am on 10 March 2023 by circulation to the parties or their representatives by email and by release to the National Archives.

## **His Honour Judge Sadiq:**

### Introduction

1. This claim arises out of a road traffic accident at approximately 11:15am on the 17 October 2016 on the B6089, Packham Road, Wath upon Deane. The Claimant was having a riding lesson with Mr John Greaves who was employed by the Defendant as a riding instructor. She was riding a 650cc CF Moto motorcycle when she collided with a Volvo motor lorry on a bend which was travelling in the opposite direction. The Claimant unfortunately sustained very serious injuries.
2. On the 20 May 2020, District Judge Josling ordered a trial of liability. Accordingly, this trial was limited to the issue of liability and contributory negligence. I heard oral evidence from the Claimant, the Claimant's daughter, Miss Melissa Morley, Mr Shaun Green an independent witness who provided a witness statement for both parties, Mr Greaves the motorcycle instructor and Mr Paul Shaw, a Director of the Defendant. The Claimant was unable to give an account of the accident. The Claimant's witness, Mr Frederick Sneddon, did not attend the hearing. Mr Mallett, Counsel for the Claimant, did not seek an adjournment and the hearing proceeded without Mr Sneddon. Mr Mallett confirmed that he was not seeking to rely upon Mr Sneddon's witness statement and that the court should disregard it. Therefore, I did not take his witness statement into account.
3. I heard oral evidence from the following expert witnesses who are both Road Accident Consultants: for the Claimant, Mr Douglas Boulton, and for the Defendant, Mr Paul Dickinson. The experts provided written reports and a joint statement. Mr Dickinson in his supplemental report describes that he rode the route followed by the Claimant, Mr Green and Mr Greaves on 17 October 2016, taking footage using a "GoPro" camera. The footage was accessed via a secure web link, which I have seen.
4. The Claimant was represented by Mr Simon Mallett of Counsel and Mr Darryl Allen KC represented the Defendant. I repeat my thanks to them both for their assistance.

### The Background

5. The following background is uncontroversial, save where I indicate to the contrary.
6. The Claimant was born on 3 July 1960 and was 57 years of age at the time of the accident. At the time, she was employed as a cook/kitchen assistant at a care home in Armthorpe, Doncaster. The Claimant was divorced but was in a relationship with Mr Sneddon, whom she met in February 2015. Whilst in the Army, Mr Sneddon was a qualified instructor in motor vehicles, HGVs and motorcycles. He left the Army in 1989 and had been riding motorcycles for many years. Prior to their relationship, the Claimant did not have a driving licence and had not driven a car or ridden a motorcycle at all. Mr Sneddon suggested to the Claimant that she should get a motorcycle licence in order that she could commute to work and spend days out riding with him, and the Claimant agreed. In around July 2016, Mr Sneddon part-exchanged one of his motorcycles for a Kawasaki Ninja 250cc motorcycle for the Claimant, which was kept at her home. She would ride the motorcycle on a section of private

land in Marsh Lane, Doncaster owned by the National Grid, with Mr Sneddon instructing the Claimant in the use of the motorcycle.

7. On 5 July 2016, the Claimant secured a provisional driving licence and subsequently passed her theory test. In order to ride a motorcycle, an individual must have a provisional driving licence and have passed the Compulsory Basic Training course (“CBT”). Passing the CBT enables a person who is over 17 years of age to ride scooters and motorcycles with “L” plates on roads other than a motorway with an engine size of up to 125cc for up to 2 years. If a person wishes to ride a motorcycle on a motorway, carry pillion passengers and ride without “L” plates, a motorcycle licence is required. There are three categories of licence: an “A1” licence allows a person aged 17 and over to ride a 125cc motorcycle; the “A2” licence allows someone aged 19 and over to ride a motorbike of at least 395cc and up to 47bph or 35kw, and an “A” licence allows a person aged 24 and over to ride any motorcycle of any size engine. In each case, a theory and practical test must be completed. There is no difference in the tests other than the size of motorcycle a student is assessed on. It is not necessary for a rider to hold an A1 or A2 licence before taking a test. Under the Direct Access Scheme (“DAS”), a student can progress straight from the CBT to an “A” test.
8. In August 2016, Mr Sneddon booked the Claimant on a five day course with the Defendant. Lessons were booked for mid August 2016 and mid to late October 2016. The Defendant is a limited company and Mr Paul Shaw is one of the Directors. The Defendant sells motorcycles and scooters and provides rider training. Mr Shaw is a joiner by trade. The Claimant was allocated Mr Greaves, who was a motorcycle instructor employed by the Defendant. He had been employed as an instructor by the Defendant since 2013. The Defendant employed four or five instructors at the time, including Mr Greaves and Mr Shaw.
9. On 15 August 2016, the Claimant's first day of formal training, the Claimant was required to pass the Compulsory Basic Training test (“CBT”). The CBT course is basic training and takes approximately six hours to complete. Mr Greaves was the Claimant's instructor and she was given a 125cc motorcycle. The Claimant was informed that she had passed the CBT course on 15 August 2016. The course consisted of riding the 125cc motorcycle in the yard and then on the road. On 15 August 2016, the Claimant had no issues with riding the 125cc motorcycle and no issues with Mr Greaves’ instruction or approach to training.
10. On 16 August 2016, the Claimant attended the Defendant for day two of her course. In order to ride her Kawasaki Ninja 250cc motorcycle, she needed to obtain at the very least an A2 licence. There is an issue whether Mr Greaves offered the Claimant the option to go for the A2 licence, but she decided to go for the A licence. The A licence would have allowed the Claimant to ride any motorcycle without engine capacity restriction. Initially, in the morning the Claimant started her lesson on a 125cc motorcycle but in the afternoon she was moved onto a 500cc motorcycle. There is an issue about the extent of the introduction and familiarisation provided by Mr Greaves for the 500cc motorcycle. There is also an issue whether the Claimant struggled with the 500cc motorcycle and dropped it, causing damage to the brake lever. The Claimant and Mr Greaves went onto the public roads, riding to Scunthorpe. There is an issue whether the Claimant lacked confidence on the larger motorcycle especially when it

came to bends and whether she rode onto a grass verge narrowly missing going through a hedge and whether Mr Greaves was aware of this.

11. On 17 August 2016, the Claimant attended the Defendant for day three of her training. She was provided with a 650cc motorcycle by Mr Greaves. There is an issue whether the Claimant confirmed that she wanted to go for the A licence in the morning and the extent of the introduction and familiarisation provided by Mr Greaves to the Claimant for the 650cc motorcycle. The Claimant and Mr Greaves went on the public roads to Scunthorpe.
12. Mr Greaves then went on his holidays and the Claimant booked further lessons with Mr Greaves on 17 October 2016 and 24 October 2016. The Claimant returned for further training with the Defendant on 17 October 2016. Whereas previously, the Claimant had individual lessons with Mr Greaves, on this date the lesson was with another motorcycle rider, Mr Shaun Green. He had passed his CBT test sometime before October 2016. Mr Green had booked a Direct Access Scheme course with the Defendant for three days from 17 to 19 October 2016, which was to be followed by a test which had been booked and was set to take place on Thursday 20 October 2016 at the Rotherham Test Centre. He wanted to obtain an A licence. The Claimant and Mr Green were both given a 650cc motorcycle to ride. The Claimant has no recollection of events on the 17 October 2016 from arriving at the Defendant's premises and up to and including the accident itself. Mr Green gave evidence regarding the extent to which Mr Greaves provided training regarding familiarisation with the 650cc motorcycle in the Defendant's yard. The group then set off on road with Mr Green in front, the Claimant in the middle and Mr Greaves at the rear. Mr Sneddon had alleged in his witness statement that he parked opposite the entrance to the Defendant's premises, watched the group set off and then followed them for the early part of the ride. He had said in his witness statement that the Claimant had a "wobble" on her motorcycle, she hit a curb on a mini roundabout and became startled when an HGV lorry entered a roundabout causing the Claimant to brake heavily and lose her balance and control of her motorcycle.
13. The group stopped for a break at the Rotherham test centre. During that break, the Claimant said to Mr Green that she wished she had stayed on a 125cc motorcycle. The group then continued their ride travelling on the B6089 at Wath upon Dearne where the accident occurred. As before, Mr Green was riding at the front, the Claimant in the middle and Mr Greaves was at the rear. As the Claimant was negotiating a left hand bend, she accelerated and lost control of her motorcycle and continued straight on into collision with a refuse wagon which was travelling in the opposite direction on the other side of the road. As stated above, the Claimant has no recollection of the event on 17 October 2016 and the accident itself. Mr Greaves and Mr Lee Hopewell, the driver of the refuse wagon, did witness what happened. Mr Greaves was riding directly behind the Claimant before the accident.
14. The Claimant suffered very serious injuries consisting of a right clavicle fracture and a four-quarter amputation of her right arm, a T7 thoracic fracture, spinal fractures, a left knee intra-articular fracture, an left wrist radius fracture, a head injury, an intra-cranial haemorrhage and multiple soft issue injuries.

15. The police collision report prepared by PS Bradey under the heading “How collision occurred” states the following:

*“Vehicle travelling into LHB, accelerates into band and loses control, crossing white line and collides front end into v2. V1 rider force from bike and travels O/S vehicle 2.*

*Sustained serious injuries.  
Error of Rider.”*

16. There was a police investigation after the accident. The Claimant’s police statement was taken on 20 December 2016 at hospital and her daughter, Miss Morley, was present at the interview. The interview was conducted by PC Hope, a South Yorkshire traffic police officer. The Defendant served a Hearsay Notice regarding the witness statement of PC Hope who has left the police and cannot be traced. The Claimant’s police statement states that she had decided to continue to have further lessons “*to be able to ride a larger bike*”. She also said that she had about two or three lessons with Mr Greaves and that “*the last lesson I feel went well apart from not hitting the speed limit, would say I needed to get up to speed limit otherwise he said he would fail me.*” The Claimant’s police statement was signed by both the Claimant and Miss Morley to confirm its accuracy. Miss Morley also took handwritten notes of the police interview, which have been disclosed.
17. A police witness statement was also taken from Mr Greaves on 27 October 2016. He confirmed that on 17 October 2016 during the rest break at the Rotherham test centre, “*Sandra was saying to other rider she wished she had stayed to a 125cc and not pushed herself. Sandra was not a confident rider and needed more lessons than others to try and get to a decent standard. We left the test centre and headed over to Wath upon Deane along the B6089.*” Regarding the accident, he said that “*Sandra got the correct position and checked her shoulder before entering the apex at the bend. All of a sudden for an unknown reason, Sandra increased in speed suddenly. Sandra then suddenly sat up from the [??] position and her left leg came off the foot pedals and she then went straight ahead across the white line and into the other side of the road. At the same time a refuse lorry was coming in the opposite direction, from Packman Road. The lorry tried to swerve to the left to avoid Sandra but it was too late.*”
18. The police also took a witness statement from Mr Hopewell, the driver of the refuse wagon with which the Claimant collided on 17 October 2016. He stated, “*I was coming along pretty steady, as I was entering the bend a bike was coming in the opposite direction. She started to lose control, I knew that because her leg splayed out, and it appeared as though she'd accelerated into the side of the lorry as she was trying to avoid it. Obviously by that point I jumped on the brakes.*” It is common ground that no criminal proceedings were brought against the Claimant, Mr Greaves or Mr Hopewell arising from the accident.
19. The Defendant also carried out its own internal investigation into the accident. Mr Shaw undertook the investigation and completed his investigation on 18 October 2016. It appears he interviewed Mr Greaves, but no signed witness statement was taken from him. Mr Shaw did not interview anyone else for the purposes of his investigation. Mr Greaves said “*...she started to set her bike up for the left hand bend in the correct position, but partway round the bend Sandra appeared to sit up and go straight*

*towards the centre white line, as she did her left hand leg came out and she was in what appeared to be panic. As she lost control she accelerated which made the situation a lot worse.”*

### The issues

20. The parties provided me with an agreed list of issues relevant to liability and contributory negligence as follows:

#### Facts

1. What familiarisation/introduction did Mr Greaves provide to the Claimant using a particular bike in August 2016?
2. How did the Claimant cope with riding the 500cc bike on the afternoon of 16<sup>th</sup> August 2016?
3. How did the Claimant cope with riding the 650cc bike on 17<sup>th</sup> August 2016?
4. What concerns/complaints about instruction and/or choice of bikes, if any at all, did the Claimant express to Mr Greaves on 15<sup>th</sup>, 16<sup>th</sup> and/or 17<sup>th</sup> August 2016?
5. What category of motorcycle licence did the Claimant want to obtain?
6. What familiarisation/introduction did Mr Greaves provide to the Claimant on 17<sup>th</sup> October 2016?
7. How did the Claimant cope with manoeuvring the 650cc bike in the Defendant's yard prior to going out on the roads on the morning of 17<sup>th</sup> October 2016?
8. Did Mr Sneddon observe the early phase of the ride on the morning of 17<sup>th</sup> October 2016?
9. What incidents, if any, occurred during the early phase of the ride on the morning of 17<sup>th</sup> October 2016? Which, if any, of the incidents described by Mr Sneddon occurred?
10. If any or all of the incidents described by Mr Sneddon did occur, why did he leave the group and go home?
11. How did the Claimant cope with riding the 650cc bike on the morning of 17<sup>th</sup> October 2016?
12. Was Mr Greaves aware of the comments made by the Claimant to Mr Green that she wished she had stayed on a 125cc motorcycle?
13. What caused the Claimant's loss of control of the bike on the left hand bend immediately before the happening of the accident?

#### Breach of duty

14. Did the Defendant/Mr Greaves owe the “*duties to ensure*” alleged at §20(a), (b) and (j) of the Particulars of Claim?
15. Did Mr Greaves fail to exercise the reasonable skill and care to be expected of a qualified motorcycle riding instructor? If so, specifically, what act(s) or omission(s) represents a breach of the duty of care owed to the Claimant?

#### Causation

16. If and insofar as the Claimant establishes breach of duty, did that breach of duty cause the accident? “*But for*” that breach of duty, on the balance of probabilities would the accident have occurred?

#### Contributory negligence

17. Did the Claimant fail to exercise reasonable skill and care for her own safety?
  18. If so, was such failure causative of the accident?
  19. What reduction is appropriate to reflect a finding of contributory negligence?
21. There are 22 pleaded allegations of negligence in the Particulars of Claim. There is a significant degree of duplication of allegations and they fall into five main parts:
- (i) The first is a specific allegation, pleaded at paragraphs 20(a) and (b) of the Particulars of Claim of “*Failing to ensure that the Claimant was safe and remain safe during the course of her lesson*” and “*Failing to ensure that the lesson was conducted in such a manner that she was safe at all times.*” No dates are pleaded regarding which lessons are relied upon regarding this alleged breach of duty.
  - (ii) The second relates to specific allegations about allowing the Claimant to ride on the road “*when she was not safe to do so*” and/or “*without adequately assessing her ability to do so*” – paragraphs 20(c) and (e). Again, no specific dates are pleaded in support.
  - (iii) The third group of specific allegations relate to the higher-powered 500cc and 650cc motorcycles:

“*Progressing the Claimant to a more powerful motorcycle when it was unnecessary to do so and the Claimant was not capable of riding it safely and/or lacked confidence in doing so. The Claimant was moved from a 125cc motorcycle to a 500cc and then to a 650cc motorcycle after just two lessons*” - paragraph 20(f);

Failing to observe or heed the Claimant struggling with the 500cc motorcycle and then the 650cc motorcycle – paragraphs 20(g) and (o); or was at risk of injury by riding the 650cc motorcycle – paragraph 20(p);

Failing to ensure that the Claimant was competent and/or safe to use the 650cc motorcycle on the road, or to ascertain this – paragraph 29(i) and (j);

Providing the Claimant with a 650cc motorcycle to ride after a two month break from riding motorcycles – paragraph 20(l);

Failing to keep any record of the Claimant's ability to ride the motorcycle properly plan her progression and/or training – paragraph 20(m);

*“Failing to instruct or train the Claimant either adequately or at all in how to ride the 650cc motorcycle and how to safely navigate corners/bends on the motorcycle or ensure that she had acquired the necessary skills. She should have been trained so that she was capable of safely negotiating the corner”* – paragraph 20(s).

- (iv) The fourth group of specific allegations relates to speed and failing to control the speed of Mr Green, putting pressure on the Claimant to ride at his speed and putting him as the lead rider – see paragraphs 20(q) and 20(r).
- (v) The fifth specific allegation is failing to supervise the Claimant properly at the time of the accident – paragraph 20(u).
- (vi) There is an overarching allegation of failing to exercise reasonable care for the safety of the Claimant – paragraph 20(v).

### The factual evidence

22. In her oral evidence, the Claimant said that before meeting Mr Sneddon she had never ridden a motorcycle before, had not ridden pillion, no one had shown her how to ride a motorcycle or what the parts of a motorcycle did. Mr Sneddon had shown the Claimant how to steer a motorcycle, where the brakes, gears, lights and other controls were on her Kawasaki Ninja. She was aware that she needed to use the pedals to change gears. By August 2016, Mr Sneddon had taught the Claimant all these things. They had spent time on the private land on the Kawasaki Ninja. The land was approximately 100 metres long and cones had been laid out on it. By the time the Claimant had met Mr Greaves, her instructor, on 15 August 2016 she had all this experience under her belt. The Claimant confirmed that she was not someone who was to be rushed. She said that she took things at her own pace. This applied to using and how to use a motorcycle.
23. The Claimant said that Mr Sneddon had booked the lessons with the Defendant for her and she believed that she had gone into the Defendant’s office with him. She could not recall what was said when booking the lessons and it was Mr Sneddon who had booked the course with Mr Shaw. The Claimant said she did not know the difference between a car licence and a motorcycle licence. She said she believed that there was only one type of licence. She had never spoken to Mr Greaves regarding what type of licence she had wanted and there was no conversation that she wanted to go for an A licence. Even now she was not aware that to ride a Kawasaki Ninja motorcycle she needed at least an A2 licence. She did not know whether it would have made any difference to the Defendant if she did an A2 licence test or an A licence test. The Claimant again confirmed that she was not someone who would be pushed into doing something that she did not want to do.
24. The 15 August 2016 was the Claimant's first day of riding with Mr Greaves. She rode a 125cc motorcycle and passed the CBT test. She knew what a CBT test was and she had made no complaints to Mr Sneddon regarding that day. On 16 August 2016 in the morning the Claimant was put on a 125cc motorcycle and in the afternoon on a 500cc motorcycle. In the morning, she rode within her limits on the 125cc and did the same in the afternoon on the 500cc. Before she went out on the road on the 500cc



motorcycle, Mr Greaves had given her familiarisation in the yard on the 500cc. She had done some cone work and a figure of eight manoeuvre in the yard. The Claimant had not said to Mr Greaves that she did not want to go out on the 500cc motorcycle onto the road. However, when she had done the cone work in the yard, her leg had come out and the motorcycle fell heavily. Mr Greaves had told her to keep her leg in. She said that she was struggling doing the cones and the figure of eight manoeuvre.

25. They then went out onto the road, around the block and then to Scunthorpe. She did not know if she had ridden approximately 90 to 100 miles on the 500cc motorcycle on the road. Mr Greaves would speak to the Claimant via a one-way radio but she could not speak to him. When she slowed down, Mr Greaves said “keep up your speed or I will fail you”. However, the motorcycle would not pick up speed and then stopped. Mr Greaves had inspected the motorcycle and said there was no fuel in it. He said that there was a fuel reserve and there was enough fuel to get to a nearby petrol station. Later during the ride, the Claimant had misjudged a bend. They stopped and had a chat. Mr Greaves said that she had done well to keep her bike up. She had not said to Mr Greaves that she did not want to carry on or that she had got problems with the motorcycle or that she was sticking out her leg to balance the bike or that it was unsafe on the 500cc motorcycle. At the cafe, the Claimant mentioned the bends to Mr Greaves and he said that on the way back to the Defendant's premises they would go back the way they had come so she could do the bends again. When they arrived back at the Defendant's premises, she waited for Mr Sneddon to arrive. Mr Greaves was present but there was no discussion regarding how the ride had went and/or how the Claimant had done. There might have been a discussion between Mr Sneddon and Mr Greaves regarding this, but not with her. She did not mention to Mr Greaves that she was unhappy regarding the ride and did not like riding the 500cc motorcycle.
26. The 17 August 2016 lesson was the third lesson and she was given a 650cc motorcycle to ride by Mr Greaves. Mr Sneddon had again dropped her off in the morning and there was no conversation between Mr Sneddon and Mr Greaves. The Claimant said there was no familiarisation with the 650cc in the yard and that this motorcycle was sat there for her to go out on. It was pointing towards the exit ready for the Claimant to go. Mr Greaves said that they were going out on a 650cc and was putting his earpiece in. The Claimant said that she was shocked when she saw the 650cc motorcycle but that since Mr Greaves was the instructor, he must know what he was doing and that he must have his reasons. She did not say to Mr Greaves that she did not want to go out on the 650cc motorcycle or that she was not ready to go out on this bike. She had not asked Mr Greaves why she was going out on these heavier bikes and denied that this was because she wanted an A licence to ride any motorcycle. She could not recall saying to Mr Greaves she wanted an A licence. That evening, the Claimant spoke to Mr Sneddon and told him that she had gone out on a 650cc motorcycle. He said “why so early have you gone out on a big bike so quickly” and she replied that she did not know. The next morning on 17 August 2016, the Claimant said that Mr Sneddon did not speak to Mr Greaves regarding the type of motorcycle the Claimant should be using.
27. On 17 August 2016, the Claimant had gone out on the 650cc motorcycle on the road and had ridden to Scunthorpe, which is approximately over 100 miles. They had stopped at a petrol station and a café. She denied that Mr Greaves had said that if there was any problems pull over at the side of the road. If she had been struggling, she

could have pulled over to the side of the road but had not done this. When they had stopped at the cafe, she could not recall saying to Mr Grieves that she was struggling with the 650cc motorcycle. On 17 August 2016 when they got back to the yard, there was no conversation regarding how the Claimant had got on with the 650cc motorcycle. Mr Sneddon was present when she had arrived and she told him on the way home that she had been struggling on the 650cc motorcycle, and he was shocked.

28. There was then a two month gap when Mr Greaves was away on holiday and the Claimant never saw any other instructors. She did not know why if she was concerned about going out on the bigger motorbikes and they were unsafe. She had not contacted the Defendant. With hindsight, she accepted that this was the obvious thing to do. Mr Sneddon had not done this either. The Claimant went back to the Defendant in October 2017 and to Mr Greaves the same instructor to carry on with him.
29. The Claimant was unable to recall any of the events on 17 October 2016 and had said this in her police statement. The Claimant was interviewed by the police on 20 December 2016 and had signed her police statement. She accepted that the signature at the bottom of the statement was hers and that she had confirmed the accuracy of the statement. She was unable to recall whether the police officer had read the statement to her and could not recall speaking to a police officer at all. When she had referred in her police statement to *“the last lesson I feel went well apart from not hitting the speed limit...”* this was a reference to the lesson on 17 August 2016, which is the last lesson she could recall. She had made no complaint and/or raised any concerns in the police statement that she was being pushed or that the speed of training was going too quickly or she had been given a motorcycle that she was uncomfortable with or about Mr Greaves as her instructor. The Claimant had said in the police statement that she felt the last lesson had gone well, apart from not hitting the speed limit. On the road there had been other cyclists, motor cyclists, pedestrians, children, drivers etc. If she was so lacking in confidence and unable to control the bigger bikes, the Claimant said she did not know if she would have been a risk to all these other users. If she had felt unsafe, the Claimant accepted it was her responsibility not to ride. She said that she had no time to get familiar with the 650cc motorcycle. She should have said something, but did not know why she had not. She had trusted the instructor Mr Greaves.
30. In re-examination, the Claimant confirmed she had purchased her motorcycle in July 2016 and that Mr Sneddon had purchased it for her. She had got a 250cc motorcycle because it was nice and small and easy to manoeuvre. It was a “ladies bike”. She could have bought a larger bike if she wanted one. She had received no other familiarisation on motorcycle save for that with Mr Sneddon before the lessons started with the Defendant. On 15 August 2016, the 125cc motorcycle she had ridden was good and she had enjoyed it. On 16 August 2016, she was put on the 125cc in the morning and then the 500cc motorcycle in the afternoon. She had not been asked whether she wanted to ride the 500cc motorcycle and this had been Mr Greaves’ decision. She had struggled on the 500cc because it was heavy and big. In the yard, she could not do the manoeuvres, and in the bay she could not turn it round. Then she had problems with the cones and the figure of eight manoeuvre and had stuck her left leg out because she thought the motorcycle would go over. She had dropped the motorcycle on the floor and had come across a piece of metal that had fallen off the motorcycle sometime later, which she had thrown away. On the road, the Claimant had stopped on

roundabouts and bends and her left leg came out all the time. She never reached the speed limit in all the lessons. Mr Greaves would say “keep the left leg in or you could do some damage”. He also said that if she did not reach the speed limit he would fail her. On 16 August 2016 or at any stage, Mr Greaves had not asked the Claimant to ride a smaller motorcycle. She had not asked for a smaller motorcycle because Mr Greaves was the instructor and he must know what he was doing. On 17 August 2016, the Claimant had been shocked to be put on the 650cc motorcycle. She had thought “why can’t I stay on one bike and get familiar with it?” but she had not said this to Mr Greaves. She had caused tail backs and cars were overtaking her. Mr Greaves had never asked her how she felt she was doing back at the yard, and there were no discussions regarding how she had got on. After 17 August 2016 there was a two month break. The Claimant said that she did not know why she had stayed with Mr Greaves as her instructor. She believed that he had tried to find an alternative instructor for her. The Claimant confirmed that her police statement which said “*the last lesson I feel went well apart from not hitting the speed limit, would say I needed to get up to speed limit otherwise he said he would fail me*” was accurate.

31. Miss Morley, the Claimant's daughter, gave evidence and said she was present when a police statement was taken from the Claimant. Miss Morley confirmed that it was her signature at the bottom of the statement and that the police officer had read out the statement and that she and the Claimant were asked to confirm it was accurate. She said that if she believed the statement was inaccurate or incorrect she would have raised it with the police officer. At the time she believed the Claimant’s statement was accurate. She accepted that it was part of a police officer's job to prepare a witness statement and that the police officer’s statement was more accurate than her own handwritten notes of the interview.
32. Since Mr Green had given a witness statement for both parties, it was agreed that the parties would have the opportunity of cross-examining him with Mr Allen KC, Counsel for the Defendant, going first. Mr Green said that on 17 October 2016 he had arrived in good time at the Defendant's premises and the Claimant arrived after him. He was given familiarisation with the 650cc motorcycle in the yard and completed an eight-point manoeuvre. The familiarisation had lasted for approximately 10 to 15 minutes. He had been nervous. This was the first time he had ridden a big bike and he had put his leg down. It was easier in the yard to do this. He had regularly put his foot down whilst the motorcycle was stationary and/or at low speeds. He has seen the Claimant putting her foot down in the yard, but this was normal and did not indicate that she was unfamiliar with the 650cc motorcycle. Mr Green had confirmed in his witness statement that Mr Greaves had explained to them both that he would not put them under pressure, and that in the yard and over the radio on the road had said if there were any problems they should pull over and stop. On the morning of the 17 October 2016, he thought that Mr Greaves’ approach as an instructor was great. He was very polite, not pushy and was very genuine. He did not feel that Mr Greaves was putting the Claimant under pressure and he could hear what was said by Mr Greaves to the Claimant on the one-way radio. They had stopped at the Rotherham test centre for two reasons: for a toilet stop and, given that this was going to be the test centre for aspects of the A licence that they would both have to do, it meant that both riders would get a feel for the set up there. At the test centre, the Claimant had raised with him that she wished she had stayed on a 125cc motorcycle, but she had given no reasons. His impression at the time was this was an ice-breaking comment. She had

not given the impression that she was unsafe to be on the road riding a 650cc motorcycle. Mr Greaves had not been present when the comment was made. He had gone to the toilet. Regarding the accident, the bend in question was not unusual and it was an average bend. They had covered a similar bend during the course of the route for over approximately one hour. After the accident, Mr Green completed his lessons with Mr Greaves later in the week. After the accident, Mr Green had a brief conversation with Mr Greaves over a cup of tea and had told him what the Claimant had said to him during the break at the test centre. There had been another person during the rest of the lessons who was upgrading to an A licence. Mr Greaves' approach to the later lessons was the same as before and nothing had changed.

33. Mr Green was then questioned by Mr Mallett, Counsel for the Claimant. Mr Green said that previously he had been riding a 125cc motorcycle for some time. On 17 October 2016, he had been provided with a 650cc motorcycle for the first time. His start time was 9:00am and he had arrived between 8:30am to 8:45am. He had received approximately 10 to 15 minutes familiarisation on the 650cc motorcycle around the yard. After he had finished, the Claimant had arrived. He said that Mr Greaves did a similar familiarisation with the Claimant which lasted approximately 15 minutes in the yard. Both he and the Claimant were nervous. Mr Green had said in his witness statement that the Claimant was not as confident as he was on the 650cc motorcycle and she had put out her leg when completing the figure eight manoeuvre. On the road Mr Green was always the lead rider and he could see the Claimant and Mr Greaves in his rear view mirror. He did not know how far ahead he was. On a few occasions, he had to stop and wait for them to catch up. He always rode at the speed limit and the Claimant was slower than he was. With him being some distance ahead and the Claimant in between, Mr Greaves would ask them to pull over and occasionally they did. He did not put this down to the Claimant's lack of confidence. Mr Green was concentrating on his own riding. He had said in his witness statement that the Claimant was not as confident as he was taking bends. Mr Greaves had reminded the Claimant of the speed limit and the need to pick up speed. He was encouraging the Claimant to go faster and keep up with the speed limit. At the break at the test centre, the Claimant said that she wished she had stayed on a 125cc motorcycle, but he did not recall the "push" comment. He said that it was not his responsibility to inform Mr Greaves about the Claimant's comment. If the Claimant had been uncomfortable, she should have raised it herself directly with Mr Greaves.
34. Mr Allen KC for the Defendant was allowed to ask Mr Green further questions. Mr Green said he was uncomfortable about some of the wording in his first statement given to the Claimant, namely about her lack of confidence. He was not comfortable with this description. He could not describe how confident the Claimant was since this was a matter for the Claimant. What he could say was that the Claimant was not going as fast as him around the bends and she was not as confident on the bends as he was. Regarding the bends, he had seen very little of the Claimant negotiating the bends save for speed and he could not say how well the Claimant was riding the bends and whether it was with confidence. Mr Green said he had no basis for saying that the Claimant was struggling on the 650cc motorcycle save for the speed. He had not actually seen the Claimant struggling.
35. In reply to questions from me, Mr Green said that the 17 October 2016 was the first time he had ridden a motorcycle on the road in excess of 500cc. For approximately

two years he had ridden off-road on a 250cc motocross bike. Mr Mallett, Counsel for the Claimant, was given the opportunity to ask Mr Green further questions but declined the opportunity. At the close of the Claimant's case, Mr Mallett invited me to ignore Mr Sneddon's witness statement.

36. The Claimant's instructor, Mr Greaves gave evidence. In cross-examination, he was taken through the DAS guidance and the National standard for driving and rider training produced by the Driver & Vehicle Standards Agency ("DVSA"). He said that he had identified the Claimant's learning needs in August 2016, but they had not been put in writing. There could be three or two or one rider on a particular day taking the CBT course. A maximum of four riders was allowed by the DVSA, but the Defendant's training yard only allowed a maximum of three. On the road, only two riders were allowed. Mr Greaves said that during the rest of the week he could be training other riders and he could be training up to 20 riders per month. He did not pass on riders to other riding instructors unless the student asked. This happened only occasionally. The CBT course had a power-point presentation. He had no written down plans for the Claimant or any other student. No lesson plans had been created in writing for the 16 or 17 August 2016 or for the 17 October 2016. Regarding the two month gap, he could clearly remember what the Claimant had done and how well she did in August 2016. He said it was important that a student felt they could talk to him regarding their goals and that the student and instructor must have a discussion about such matters. He said that all of the requirements under the DVSA guidance had taken place verbally. At the end of 15 August 2016 the Claimant had passed the CBT course and she had done well. In his witness statement, Mr Greaves had said that he had suggested to the Claimant to get a scooter after she had completed the CBT course to build up her confidence. On 16 August 2016, Mr Greaves had explained to the Claimant that an A2 licence was adequate to ride a 250cc motorcycle and that she did not need an A licence. The Claimant said that she would go away and think about it. She came back the following day on 17 August 2016 and confirmed she wanted an A licence.
37. On 15 August 2016 at some point Mr Greaves became aware that the Claimant had a 250cc Kawasaki Ninja motorcycle. He had heard that this was a suitable bike for ladies. It was fairly small in stature and in general terms he agreed that a 250cc motorcycle would have suited the Claimant's physique better than a larger bike. He was aware that the Claimant wanted a motorcycle to ride to and from work and for camping trips with Mr Sneddon and that Mr Sneddon had a larger motorcycle. On 16 August 2016, Mr Greaves had explained to the Claimant that she only needed an A2 licence to ride a 250cc motorcycle and that she did not need a 650cc motorcycle. The Claimant was talking about camping and that she needed an A licence. Mr Greaves was aware that the Claimant was very inexperienced and that in early July 2016 she had obtained a provisional licence and purchased a motorcycle in July 2016. He was also aware that the Claimant was not experienced driving on the road and had never driven a car before. She had however received some familiarisation with Mr Sneddon. He had said in his police statement that the Claimant was underconfident riding a motorcycle. However, the Claimant was a better rider than she thought she was and being nervous was normal for new riders.
38. Mr Greaves said that on 15 August 2016, the Claimant had ridden well on the 125cc motorcycle which was a small bike and lightweight. She had easily passed the CBT

course. On 16 August 2016, the Claimant had been given a 125cc motorcycle in the morning and was confident on it. In the afternoon, she was put on a 500cc motorcycle. Mr Greaves could not recall what was said at the time but he would not have just put the Claimant on a 500cc motorcycle. The Claimant had a 250cc motorcycle and needed an A2 licence to ride it. There was nothing in between a 125cc and a 500cc motorcycle at the Defendant's premises and the Claimant could not be put on a 250cc motorcycle. Although the Claimant was struggling a bit in the yard on the 500cc motorcycle, this was totally normal for new riders. She was not struggling to the point where she could not carry on. She had ridden the 500cc into the parking bay and then got off the motorcycle. She had not done a three-point turn. Mr Greaves could not recall whether the Claimant had dropped the bike in the yard, but he did not dispute that she did and this was not necessarily a concern for him. They then left the yard to go onto the road. He could not recall whether the Claimant's 500cc motorcycle had ran out of fuel. There was a reserve tank on this bike which could be switched on. He accepted that this could have added to the Claimant's nervousness. Mr Greaves had no recollection of the Claimant riding onto a glass grass verge and said he had no knowledge of this at all. If it had happened, he would have remembered this and would have said something about it. Although the Claimant was struggling a bit on the 500cc motorcycle and was nervous, she actually got better and better. Bends were not the Claimant's favourite thing but she was negotiating lots of bends on the road. Bends were an issue for 90% of new learners. The Claimant improved dramatically each day when negotiating bends. Regarding the Claimant's speed, there was a need to change speed when the speed limits increased. Mr Greaves would advise riders to accelerate if it was safe to do so in order to build up their confidence. The Claimant was riding steadily, not slow. Although speed was an issue, it was not a big issue. At the end of the lesson on 16 August 2016, Mr Greaves suggested to the Claimant that she consider sticking with a 500cc motorcycle in training and obtain an A2 licence which would enable her to ride the 250cc motorcycle. Mr Sneddon had said to him "how has she done?" He replied that the Claimant had done really well. Mr Sneddon then said "she can ride any bike, they're all the same". Although he had some reservations about the Claimant riding the 500cc motorcycle and her lack of experience, Mr Greaves believed that she was capable of riding the 500cc quite well.

39. On 17 August 2016, the Claimant was put on the 650cc motorcycle. Mr Greaves had asked the Claimant whether she wanted to stay on a A2 licence or go for the A licence. The Claimant said that she wanted to progress to the A licence and a 650cc motorcycle. Mr Greaves believed the Claimant was capable of riding a 650cc and that it was worth a try. The reason why he did not leave the Claimant on a 500cc motorcycle to see how she got on was that the Claimant had ridden the 500cc well on 16 August 2016 and the Claimant said she wanted an A licence. Mr Greaves told the Claimant that if at any stage she was uncomfortable on the 650cc motorcycle they would stop and go back to the yard. He denied the Claimant had challenged him regarding the decision to proceed onto the 650cc motorcycle. On the road the Claimant was riding slowly at first. Mr Greaves encouraged the Claimant to go faster and said "you'll be all right at that speed". The Claimant did put out her left leg once or twice but that was very common for approximately 90% of new learners, and even with experienced riders. The Claimant would slow down at sharp bends and he would say to the Claimant, "Sandra get your leg in or you will cause yourself some damage". He could not recall the Claimant going slowly and causing tailbacks. Even if she did, that

was not a problem. They were not going to hurry up for others. Mr Greaves said that the Claimant was not overly struggling.

40. There was then a two month gap between 17 August 2016 to 17 October 2016. On 17 August 2016, Mr Greaves had suggested to the Claimant that she get a 125cc motorcycle for experience and the Claimant had replied that this would be a waste of money since she had already purchased a 250cc. When the Claimant came back in October 2016, it was Mr Greaves' impression that she had no further experience on a motorcycle. He had put the Claimant back on the 650cc motorcycle because she wanted to obtain an A licence. With hindsight, it was not the right thing to do. Initially, the Claimant had booked five days of training, namely the CBT course and four days lessons. At some stage the decision was taken that she needed extra days. A four day course had been paid for with lessons in August 2016 and October 2016. Then extra days had been added for 17 October 2016 and 24 October 2016. Mr Greaves did not know who had decided this, but it wasn't him. On 20 August 2016 someone had booked the Claimant's test for the 25 October 2016. On 14 October 2018 the tested been cancelled, but Mr Greaves did not know who had cancelled the test. The only person who could have done this would have been Mr Shaw.
41. On 17 October 2016, the Claimant was put back on the 650cc motorcycle. Mr Green's A licence test was on the Thursday that week and he had started his lessons on the Monday. The familiarisation period was about 15 minutes on the 650cc motorcycle. Mr Greaves could not recall the Claimant putting out her left leg out on the figure of eight manoeuvre, but he would not be surprised if she did. They then went out on the roads from 9:00am to 11:00am. He said that the Claimant was steadily increasing in confidence. He doubted that he would have said over the radio "if you don't get to the speed limit, I will fail you". However, if the Claimant's speed was not sufficient, she would fail her test. He would have said this whilst the Claimant was stationary, but not whilst she was riding over the radio. Mr Greaves said he was encouraging the Claimant to build up her speed. Mr Greaves did not see the Claimant wobbling or hitting a curb. Although he could not recall the Claimant putting out her left leg, this probably did happen since it had happened in August 2016. There had been an incident on the roundabout involving a car which had come in between Mr Green and the Claimant. The Claimant had backed off and was slightly out of position. On the radio, Mr Greaves had said to the Claimant "well done Sandra". They had stopped at the test centre and had discussed this incident. He told the Claimant that what she had done was exemplary namely she had backed off and dealt with it really well. Mr Greaves could not recall an incident involving a lorry where the Claimant had lost balance.
42. Mr Greaves said that Mr Green had done a lot of motocross and ridden a 125cc motorcycle. He also had no experience on bigger bikes. The Claimant had had one and half days experience on a bigger bike before the accident. Mr Green had set off and was riding within the speed limits. By the time they got to Rotherham, they were all riding at the same speed. Regarding the break at the test centre, Mr Greaves did not know that the Claimant had told Mr Green that she wished she had stayed on a 125cc bike. If he had known then, he would have asked the Claimant whether she was sure that she wanted to continue riding a 650cc motorcycle or whether she wanted to ride a 125cc. At the test centre, Mr Greaves had informed the Claimant about how well she had ridden and they had spoken about the incident regarding the car at the roundabout.

He had asked both riders whether they were okay to continue just before they went back out on the road. Both the riders had said they were fine. The bend where the accident occurred was a moderate and not a sharp bend. If the Claimant had told Mr Greaves that she wanted to stay on a 125cc motorcycle, an option would have been to come off the 650cc bike but the Claimant had not said this to him. Mr Greaves confirmed that his police statement was accurate. The police officer had asked him to read it and she had read it to him. In the police statement he had said the Claimant had 2 to 3 days previous lessons on a 650cc motorcycle, but this was not accurate. The Claimant only had one day. It was also not accurate that the Claimant had ridden with Mr Greaves for about four weeks. In the police statement, Mr Greaves described the Claimant taking bends “fabulously”. He stood by this description. On the road to Maltby, there were six or seven sweeping bends and the Claimant had managed these bends extremely well. In the police statement, he had said that the Claimant wasn’t comfortable and needed more lessons than others to try to get to the test standard. This was based upon his impression of the Claimant at the time. It is not what the Claimant had told him.

43. In re-examination, Mr Greaves said that describing the Claimant as not confident and needing more lessons in his police statement was not unusual at all for new students. He had no recollection of the HGV lorry incident. He did recall a lorry approaching the roundabout but could not recall whether there was an incident. Regarding the cancellation of the Claimant's test, he said that he had not approached Mr Shaw to cancel the test because the Claimant was not ready. He did not know who had dealt with the Defendant or who had booked the test. He described the Claimant as not overly struggling. He said that most students found it challenging to ride a bigger bike. He said that if at any point he had thought that the Claimant was unsafe on the 650cc motorcycle, he would have stopped the training. At no time at all did he think that she was unsafe to be on any of the motorcycles he had put her on. Mr Greaves had suggested an A2 licence for the Claimant partly because of practicality namely she had no other bike apart from a 250cc and partly because of her physique. He said he had no concerns that the Claimant was unsafe to ride the 650cc motorcycle because she had ridden that bike well enough on 17 August 2016. Regarding the bends, the Claimant had successfully negotiated the bends on 17 August 2016 on the return from Scunthorpe and there were lots of bends on the day of the accident. On 17 October 2016, if he had believed that the Claimant was struggling he would have stopped the lesson and discussed matters with the Claimant. The option would have been to ring Mr Shaw and ask him to collect the 650cc motorcycle. Occasionally the Defendant had had to do this. In the majority of times, the students themselves would say “I'm done” and stop the lesson. Regarding the two-month gap, Mr Greaves was on a pre-booked holiday for two months and was not available. Regarding suggesting to the Claimant that she needed to gain more experience, he had suggested this to other students as well. Sometimes this was to do with the student’s confidence and sometimes their ability, and it was a bit of both. Regarding the A licence decision, the Claimant wanted to do it and he was prepared to facilitate it. The different types of licence available were discussed during the CBT course. If the Claimant did not know beforehand, she would have known about this before the end of the first day of the course. Regarding the type of licence, he had raised it at the end of the day on 16 August 2016 and the Claimant had come back with her reply on the morning of the 17 August 2016. Regarding his police statement, on 17 August 2016 before the accident



Mr Greaves confirmed that he was not aware that the Claimant had said to Mr Green that she wanted to stay on a 125cc motorcycle.

44. Mr Shaw, a Director of the Defendant, gave evidence. He confirmed that the DVSA guidance helped to inform the relevant standards applied at the Defendant's driving school. The structure of the lessons were provided by the Defendant. The CBT course stuck to a set format. Regarding the training thereafter, this stuck to a certain sequence. Mostly there were verbal lesson plans. There was no written record of the lesson plans or learner progress. This was done verbally between the student and the instructor. Mr Shaw was not concerned that there was nothing in writing. It was very rare for students to change instructors. If this happened, there was a verbal discussion between the instructors regarding the student and there was nothing in writing. It had never happened that an instructor went ill and was unable to give a verbal discussion. If an instructor had given his or her notice, there was usually sufficient time to reschedule another instructor. If an instructor was ill and was unable to have a verbal discussion, the student would have to be put back. Mr Shaw believed that there was no problem relying upon oral communication. Regarding the two-month gap, the instructor would rely upon their knowledge and progress of the student and the instructor should remember this. If there had been a need for written records, he would have introduced them. Instructors would get to know students and would build up a rapport with them. Mr Shaw could not comment whether the Claimant had not been asked how she felt things were progressing since he wasn't there. Regarding a student's lack of communication with the instructor, Mr Shaw said that a student should be able to say at least something to the instructor. If there was no communication at all from the student, then an instructor should pack it in and stop the training. If the trainee did the exercise and did it well, the instructor should press on.
45. Mr Shaw confirmed that he was responsible for booking lessons. He had booked the Claimant's lessons via Mr Sneddon initially. The lessons had been booked as an A licence, Direct Access. There was no written record of whether the lessons had been book as an A or A2 licence. Initially, the lessons were on the 15 to 17 August 2016 and then on 18 October and 25 October 2016. Later, extra lessons had been added for 17 October and 24 October 2016. He would book extra lessons and it was probably Mr Sneddon who had booked these. Some people booked extra lessons because they enjoyed them. Mr Shaw could not recall the reason given for extra lessons being booked for the Claimant. He said they had clearly been booked before 17 October 2016. Mr Greaves had not told him that the Claimant needed more lessons and Mr Greaves had not reported to him that the Claimant lacked confidence and needed more lessons. Mr Shaw booked the tests for the candidates. In the DVSA reply dated 8 December 2022 to the Claimant's subject access request, the Claimant's test had been provisionally booked on 20 August 2016 for the 25 October 2016, but was then cancelled on 14 October 2016. Mr Shaw could not recall why the test had been cancelled. He did randomly cancel tests but did not know whether he had randomly cancelled the Claimant's test. It was not obvious that the test had been cancelled because the Claimant was unable to pass the test. Usually the instructor would tell him to cancel a test because the student needed more training.
46. In re-examination, Mr Shaw confirmed that the Claimant's test had been cancelled on 14 October 2016. It had been previously been booked on 20 August 2016 for the 25 October 2016. Mr Shaw confirmed that the Claimant did not go back to the Defendant

between 17 August to 17 October 2016. He said that Mr Greaves the instructor had booked a holiday in this period. That might be a reason to cancel the test. He did not know the reason for cancelling the test on 14 October 2016, the Friday before the test on 25 October 2016. The Claimant's invoice confirmed that the course cost was £800 in 2016. An £800 course paid for a five-day course including the CBT, the lessons and the test. The Claimant's extra days must have been booked before 17 October 2016. On the invoice there was a mobile number for "Fred" which was Mr Sneddon. £500 had been paid when the Claimant had come for the first lesson on 15 August 2016 and £300 represented the outstanding balance. The balance of £300 was to be paid during the five-day lesson, not at the end of the course. Sometime between 17 August and 17 October 2016, extra days had been added for the Claimant. If Mr Greaves was on holiday between these dates, Mr Shaw did not know if this suggested that the extra days had been bought because Mr Greaves was on holiday. He confirmed at the time there were three DAS instructors and one CBT instructor including himself. The DVSA guidelines did not state that there must be written records of every lesson. The Defendant's trainers would be assessed every three months by the Defendant and externally by the DVSA every four years. The Defendant had never been failed by the DVSA for lack of written records. They had never told the Defendant to improve their documentation. In his experience, Mr Shaw said that it had never happened that a trainee had not communicated to an instructor at all about their concerns.

#### The expert evidence

47. Both parties instructed accident reconstruction experts who gave evidence at the trial. Although the experts produced a joint statement, it was not helpful and was essentially a note of the areas of disagreement between the experts. Accordingly, it is necessary to highlight the conclusions reached in the original expert reports.
48. Mr Boulton for the Claimant in his report dated 3 August 2021, reached the following conclusions in summary:
  - (i) A learner driver can progress from a 125cc to a 500cc and then a 650cc to take a full motorcycle test in a short time, however it is for the instructor to satisfy himself that they are competent enough to do it. The incidents reported by Mr Sneddon showed the Claimant was not competent – paragraph xii.
  - (ii) If the court accepted the evidence of Mr Sneddon and that of the Claimant who says she only rode slowly and was told to go faster, this showed how inexperienced and even frightened of such a heavy and fast machine she was, and therefore she required more hours of instruction before attaining the required standard – paragraph xiii.
  - (iii) Whilst the ultimate decision is a matter for the court, Mr Boulton's view was that it appeared the instructor did not satisfy the basic rule that the student was under his care and should be advised accordingly, terminating any lesson if required – paragraph xiv.
49. In his report dated 11 November 2020, Mr Dickinson for the Defendant reached the following conclusions:

- (i) The upgrade to the larger machine was carried out in two stages, the first with a 500cc machine and then a 650cc machine, which is good practice – paragraph 3.90.
  - (ii) Confidence and ability was established in the rider with approximately 100 miles being ridden first of all on the 500cc motorcycle and an additional 100 miles on a 650cc motorcycle. This strongly suggested that the Claimant was competent as these kinds of distances would only usually be covered by competent learners in those timescales. Learner riders who found that riding was more difficult for them would spend considerably less time covering these distances and much more on machine handling – paragraph 3.91.
  - (iii) On being encouraged to ride more quickly, although a rider may be encouraged to ride a little more quickly than they would like, this was not to make them ‘go fast’ but to develop the confidence that riding a little more quickly is both safer for them and other road users – paragraph 3.93.
  - (iv) The police report identified the Claimant as describing her last lesson as having gone well – paragraph 3.96.
50. The experts agreed in the joint statement dated 25 October 2021, the following in summary:
- (i) Both experts were in full agreement as to the circumstances of the collision, although they failed to provide the details of that agreement in the joint statement referring instead to their respective reports outlining their findings - paragraph 4.
  - (ii) The experts were in full agreement that particularly for a novice rider, the best approach to a left bend was in the normal riding position, i.e. the centre of the lane, and not close to the centre white line. The bend question was one that should have presented no problems at the speed of 40 mph – paragraph 8.
  - (iii) The experts agreed that if the Claimant was in the process of negotiating the bend and sat up as Mr Greaves says, this would have caused the bike to go straight and not continue in its curved path around the bend - paragraph 10.
  - (iv) The experts cannot say why the Claimant's left leg came out as she rounded the bend - paragraph 11.
51. The areas of disagreement in the joint statement, in summary are as follows:
- (i) Mr Boulton's view was that if the Claimant was told to ride faster, it points to not being happy on the bike and not wanting to go quick, as well as a lack of confidence and that she should have been given more time on a smaller capacity bike to get confident - paragraphs 17. On the witness evidence, Mr Boulton's opinion was that the Claimant was not competent on the 650cc motorcycle and the last thing would have been to encourage her to go faster. It would have been better to allow her more time on a smaller machine to get more confidence - paragraph 19. Mr Dickinson's opinion was that there are many reasons that riders

are required to go faster and encouraging appropriate use of speed is part of the learning process in building skills and confidence in all riders - paragraph 18. He said that it was very subjective to assume that the instructor asked the rider to go faster when she wasn't capable – paragraph 20.

- (ii) Mr Boulton's opinion was that if the court accepted Mr Sneddon's witness evidence that on the 17 October 2016 he saw the Claimant wobble on her motorcycle, hit a kerb and brake heavily causing her motorcycle to dip and lose balance and control and given she was only travelling at a between 20 to 25 mph in a national speed limit zone of 60 mph, it was obvious the Claimant had no confidence and that her actions point to the 650cc motorcycle being too big for her. If the Claimant wanted to ride a bigger bike she should have been given more time to get used to it and ridden the 500cc motorcycle for a few more days – paragraphs 22 to 23. Mr Dickinson noted that Mr Sneddon's evidence was not in line with Mr Greaves' and he would have expected a rider to have fallen off the bike had the Claimant collided with a kerb - paragraphs 24 to 25.
  - (iii) Mr Boulton's opinion was that if a student was having trouble in controlling a bike in any way, the instructor should have given them more time to get used to riding a smaller bike before moving onto a more powerful and heavy bike. He observed that there is no time limit for a student to pass the various tests - paragraph 27. Mr Dickinson's opinion is that the Claimant advised the Defendant that she wanted an unrestricted licence and if she was so fearful of riding a larger machine it was hard to understand why she chose to do so - paragraph 28.
  - (iv) Both experts noted the significant conflict in the evidence between the Claimant's evidence and that of Mr Greaves regarding what licence the Claimant was seeking and what powered motorcycle she wanted to ride. Mr Boulton agreed with Mr Dickinson's comments in his initial report at paragraph 3.2 to 3.3 and was of the opinion that the instructor must decide if the student was performing well or if the training was too hard for them in that they are finding things difficult in particular when riding different machines. If they were in difficulty, extra time on a smaller machine should be allowed in order to gain more experience. There was no time limit for learning – paragraph 34.
52. In his oral evidence, Mr Boulton said that the standard of care he had applied in his report and the joint statement was that the safety of a student was paramount. Regarding his assessment of Mr Greaves' actions, this was based on what he believed was good practice and also the applicable guidance. He said it was a judgment call for an instructor whether a student was competent on a motorcycle. Regarding documentation, Mr Boulton accepted that it was not mandatory to make a record of lessons or a written plan for the lessons. He was not critical about the Defendant's lack of documentation in this case. Mr Boulton's criticisms in his report and in the joint statement were based mainly upon what Mr Sneddon had said as well as others including the Claimant. The allegation that on 17 October 2016 on the road the Claimant had wobbled, hit a kerb and nearly fallen off at a roundabout showed that she was inexperienced and/or afraid, was based upon the written statement from Mr Sneddon which, Mr Boulton accepted, was no longer part of the evidence. He said that the mere fact that the Claimant was riding slowly did not mean that the lesson should

have been stopped. Even without Mr Sneddon's evidence, the Claimant had said that she was putting her left leg out more than once which meant that she felt the bike was falling over. Mr Boulton accepted that he had not said in his report that regardless of what Mr Sneddon said, a rider putting their leg out shows that they were not a competent rider. In the joint statement, he had said that if the court accepts Mr Sneddon's evidence, the lesson should have stopped. However, Mr Sneddon's evidence was now to be disregarded. Mr Boulton said that if the ride was going well and the rider was coping, for example a car cutting in on a roundabout, this would have been reassuring to an instructor.

53. Mr Boulton had not ridden the route the trio had on the day of the accident, but he had seen Mr Dickinson's video. He accepted that the video showed a spread of various challenges covering urban areas, commercial areas, residential areas, bends and roundabouts. He was not critical of the route taken by Mr Greaves on the day of the accident. The break at the test centre was also good practice to do a dry run. Mr Boulton accepted that Mr Greaves had a good lesson plan in place. He hoped that Mr Greaves was monitoring how well the riders were doing during the ride. The DVSA guidance recommended regular breaks for fatigue and feedback. The test centre was a sensible point for the break. A good trainer would give feedback and highlight training areas. It was good practice for the trainer to say to a trainee if there was any problems they should pull over. When preparing his own report, Mr Boulton had only read Mr Green's first statement prepared for the Claimant. His second statement referred to Mr Greaves explaining to the Claimant and Mr Green that he would not put them under any pressure and that if they had any problems they should pull over, which was good practice. If the court accepted Mr Green's account of what Mr Greaves told the riders on the day of the accident, Mr Boulton had no criticism of Mr Greaves' communication. However, Mr Boulton suggested that Mr Greaves had said in his oral evidence that the Claimant's leg had come out two or three times on the road on 17 October 2016 which showed that this had happened a lot and therefore the lesson should have been stopped. Upon checking my notes of Mr Greaves' evidence I confirmed that Mr Greaves had not said that this had happened two or three times on 17 October 2016. Mr Boulton accepted that this was only one aspect of the evidence, which also included the Claimant taking the bends and the roundabouts etc without any significant problems.
54. Mr Boulton's view was that if the Claimant's leg had come out two or three times and the Claimant was riding slowly, the only option was to stop the lesson. If Mr Greaves' account was accurate, Mr Boulton accepted that there was no reason for him to stop the lesson. If the Claimant was not riding to the speed limit and her leg was coming out, Mr Boulton said that this pointed to her inexperience and that she was afraid of riding the motorcycle. He said that if the rider had not expressed any concerns about riding the bike to the instructor, it would have been acceptable for the instructor to progress with the ride. Mr Boulton said he would be critical if an instructor said "if you don't get up to speed, you will be failed". Mr Greaves had said in his oral evidence that he would not have said this because it would undermine a rider's confidence and he agreed that it would do so. Mr Boulton had never had a trainee who had given no feedback at all. Mr Boulton said that it would be very surprising if Mr Greaves had carried out three days of lessons without giving any feedback to the Claimant. For an A2 licence, a rider needed to progress from a 125cc motorbike to a 400cc plus. This was a judgment call for the instructor. Progressing to a 500cc motorcycle was not

unreasonable in itself. This was a judgment call for the instructor based on their assessment of the student, what they had seen, and a discussion with the student whether they felt they were ready. Mr Boulton said he was not critical of the decision to take the Claimant out on day two on a 500cc motorcycle. The Claimant had coped well on a 500cc in the afternoon on 16 August 2016. It would have been good practice to go around the block a few times and complete a few turns before going out on the road, which is what Mr Greaves said he had done. There was no evidence on the road of the Claimant saying she was not happy on the 500cc motorcycle.

55. Mr Boulton said that progressing from a 500cc to a 650cc motorcycle was another judgment call for the instructor, in dialogue with the student. Mr Boulton accepted that it made no difference to a driving school what licence the trainee wanted i.e. whether an A2 or an A licence. It was common ground that with a 250cc motorcycle the Claimant did not need an A licence, she needed an A2 licence. It was good practice to ask a rider to think about the option of an A2 or an A licence overnight. If the Claimant had come back the next morning and confirmed that she wanted to go for an A licence, then the decision to go up to a 650cc motorcycle would have been good practice. Going up to 650cc was not in itself inappropriate so long as the Claimant was not uncomfortable. If Mr Greaves believed that the Claimant was competent on a 500cc motorcycle and the Claimant had not said anything to the contrary, it was not unreasonable to move to a 650cc. If on 17 August 2016 the Claimant had ridden the 650cc motorcycle well, this would have been positive evidence for the trainer that the training should be on this bike. If the student herself had said that the lesson had gone well, this was even more reassuring that the decision to transition to a 650cc motorcycle was reasonable. The Claimant had said in her police statement that the last lesson she felt had gone well, apart from not hitting the speed limit. There was a two-month gap when the Claimant had not ridden a 650cc and she had not ridden a motorcycle at all. In these circumstances, it was appropriate to have a discussion with the trainee regarding how she felt about going out on a 650cc motorcycle and to receive familiarisation on the 650cc in the yard and if the instructor was happy with the manoeuvres it was reasonable to go out on the road. If the trainee was riding reasonably well and dealt with a challenging situation well, it was reasonable to carry on with the 650cc motorcycle. The “learning journey” in the national DVSA standards was a shared joint responsibility between the learner and the student. A written lesson plan was not required if an instructor knew how the student were doing and they responded they were happy to proceed. That was the feedback required and it was reasonable to proceed on this basis.
56. Regarding the cause of the accident, the cause of the loss of control in Mr Boulton's opinion was the Claimant putting her leg out and leaning over coming into the bend. The Claimant had lifted the bike, causing the bike to go straight. This was not so much driver's error, it was to do with the Claimant's capability. In the joint statement, both experts were in full agreement that the bend should have presented no problems for a rider at a speed of 40 mph. Mr Boulton accepted that a reasonable rider should have been able to negotiate the bend safely. Applying the standard of a reasonable rider, he accepted the Claimant had lost control of the motorbike.
57. In re-examination, Mr Boulton said that if the Claimant's evidence was accepted that there was no discussion regarding how the lessons had gone and how she had felt about the lessons, this was not acceptable communication. Previous experience of a

rider was important regarding a rider's progression to larger bikes. If the Claimant's evidence was accepted that on the 16 August 2016 in the afternoon she was struggling with the manoeuvres in the yard, dropped her bike and then on the road had ridden the bike on a grass verge etc, she should not have been progressed to a 650cc motorcycle the next day because she was not competent on a 500cc. On 17 October 2016, the Claimant was put on a 650cc motorcycle again with one day's previous experience in August 2016 and she had not ridden any bike in a two month period. In these circumstances, Mr Boulton said it was not appropriate to place the Claimant on the 650cc motorcycle on 17 October and she should have been put on a 500cc motorcycle for a couple of days. On 17 October 2016 there was evidence of the Claimant riding slowly with her left leg coming out. This demonstrated in Mr Boulton's opinion that the Claimant was not competent on the 650cc motorcycle and the lesson should have been stopped. He was unable to say when. Regarding the collision itself, the size of the bike would have had an effect on the collision. However, Mr Boulton accepted that he had not said this in his report or in the joint statement.

58. In his oral evidence, Mr Dickinson for the Defendant said that he had 20 years experience of running a motorcycle company and teaching training courses, which was similar to Mr Boulton's experience. On 16 August 2016 the Claimant was put on a 500cc motorcycle in the afternoon. If the Claimant's evidence was accepted that she had no choice, then this would have been inappropriate. Against the background of inexperience, it would have been important to monitor the situation. If the Claimant had struck a grass verge and been struggling with bends, then this would have been a concern. On 17 August 2016, the Claimant had been put on a larger 650cc motorcycle and this would have been a matter for the instructor after discussion with the student. It would have been very unreasonable to impose a bigger bike without discussion. Riding slow on roundabouts was not necessarily a sign that the person was struggling. It depended on the hazards and it was good to slow on the approach to a roundabout. If no debrief had been given after the lesson, this would have been inappropriate. A two month gap was not necessarily detrimental so long as there was familiarisation when the Claimant got back. On 17 October 2016, the Claimant had received familiarisation on the 650cc motorbike. The familiarisation had gone well. If there were no familiarisation at all, it would have been inappropriate to proceed to a 650cc motorcycle. Following familiarisation, there should have been a close assessment of the Claimant's riding. A rider putting their leg out was not uncommon even for experienced riders who often put the leg out on the road, particularly at mini roundabouts. If there was a minor loss of balance and this was corrected, this was not a significant concern. Mr Green had said in his witness statement that the Claimant had stalled a couple of times and was riding slowly. In Mr Dickinson's opinion, riding a 500cc and 650cc motorcycle at 40 mph was no different to riding a 125cc motorcycle at 40 mph. It was not an indication that the Claimant was struggling on the 650cc motorcycle. Regarding her speed, the Claimant needed to ride at an appropriate speed or she could fail the test but this depended on the circumstances. For example, if this was a persistent riding fault or it caused inconvenience to other road users. In Mr Dickinson's experience, the second rider was always more keen to ride at the speed at of the student in front. If there were signs that the rider was really struggling, it was appropriate to stop the lesson there and then. It would have been appropriate for Mr Greaves to speak to the Claimant to find out if she was having real difficulties. Regarding the morning break and the Claimant saying to Mr Green that she wished she had stayed on a 125cc motorcycle, this would have been a clear indication that she

was unhappy. If Mr Greaves had known this and there had been a conversation with the Claimant, Mr Dickinson was sure that the lesson would have been changed.

59. In re-examination, regarding the Claimant stalling a few times Mr Dickinson said this was something everyone did and occasional stalling was not unusual at all. Regarding the Claimant having more lessons, the fact a student needed more lessons than others did not mean that they were not a competent rider. Regarding the Claimant's lack of experience, the CBT course would teach a student the controls. Also, the Claimant had experienced off-road motorbike riding with Mr Sneddon. She was ahead of a lot of riders at this point before the CBT who have no experience whatsoever. Mr Dickinson agreed with Mr Boulton's oral evidence that if on 17 August 2016 riding on the 650cc motorcycle had gone well, it was not inappropriate for the Claimant to go out on the 650cc on 17 October 2016 provided that she had received familiarisation on that day.

### The Law

60. It is common ground that Mr Greaves owed the Claimant a duty of care. That duty of care was the common law duty to exercise reasonable skill and care.
61. The Claimant's pleaded claim in the Particulars of Claim suggests that Mr Greaves was under a duty to ensure the Claimant's safety: "*Failing to ensure that the claim was safe and remain safe during the course of her lesson*" - paragraph 20(a); "*Failing to ensure that the lesson was conducted in such a manner that she was safe at all times*" - Paragraph 20(b), and "*Alternatively failing to ensure that the Claimant was competent and/or safe to use the 650cc motorcycle on the road*" - paragraph 20(j). At the outset of the hearing Mr Mallett, Counsel for the Claimant, confirmed that the duty owed was to exercise reasonable skill and care, and was no higher than that.
62. As to the burden of proof Mr Mallett, Counsel for the Claimant, had submitted in the Claimant's Case Summary/Skeleton Argument at paragraph 25 that: "*The court will be invited to draw an inference that if an accident occurs, the burden shifts to the instructor to prove that there's not been any breach of the duty of care.*" At the outset of the hearing, Mr Mallett confirmed that he was no longer pursuing that submission. For the avoidance of doubt, in my view the burden of proof lies on the Claimant to prove (a) the issue of fact which she alleges and which she relies upon; (b) breach of duty, and (c) that the breach of duty caused the accident.

### General observations

63. I start with a number of general observations regarding the Claimant's case and her credibility.
64. First, the Claimant's oral evidence was that she was not someone to be pushed and/or rushed into doing something she was unhappy doing. This applied to using and how to use a motorcycle.
65. Second, the Claimant's case was that Mr Greaves without engaging in any meaningful discussion with the Claimant, pushed her into riding motorcycle of a certain size and power and at speed when it was unsafe to do so.



66. Third, I find that neither the Claimant nor Mr Sneddon complained to Mr Greaves and/or Mr Shaw, the owner of the Defendant, about the type of motorcycle used by the Claimant or the rate of progression or about Mr Greaves' approach, communication or instruction.
67. Fourth, notwithstanding the alleged problems experienced by the Claimant on the 500cc and 650cc motorcycles and Mr Greaves' alleged lack of communication with the Claimant, she went back to the Defendant two months later in October 2016 to continue her training with Mr Greaves. Neither the Claimant nor Mr Sneddon raised any concerns with Mr Shaw and/or Mr Greaves. If the Claimant was experiencing significant problems using these motorcycles it is inconceivable that Mr Sneddon in particular would have sat back and allowed his partner to be put at risk, particularly given he himself was an experienced motorcycle rider and he had booked the lessons for the Claimant with the Defendant.
68. Fifth, in the Claimant's police statement dated 20 December 2016 the Claimant had said that she had decided to continue to have further lessons with the Defendant "*to be able to ride a larger bike*" and that "*the last lesson I felt went well apart from not hitting the speed limit...*". There was no complaint in the police statement about any significant problems riding the motorcycles she had been given, Mr Greaves' lack of communication and/or being pushed onto a larger motorcycle.
69. Sixth, the Claimant had three lessons with Mr Greaves between 15 to 17 August 2016. It is inconceivable in my view that Mr Greaves would not have had any meaningful discussions with the Claimant over the three days of training about her performance and how she was doing. Both the accident reconstruction experts agreed with this point.
70. Seven, regarding the day of the accident on 17 October 2016 the Claimant has no recollection of events up to and including the accident itself. In Mr Sneddon's witness statement he had alleged that he had parked opposite the entrance to the Defendant's premises, watched the group set off and then followed them on the early part of the ride. He described witnessing a series of incidents involving near misses and the Claimant was clearly struggling on the 650cc motorcycle. However, Mr Sneddon failed to attend the hearing to give oral evidence and no hearsay notice was served regarding his evidence. Mr Mallett confirmed that he was not seeking to rely upon Mr Sneddon's witness statement and that the court should disregard it. Therefore, I have not taken his witness statement into account. That leaves the evidence of Mr Greaves the instructor who did witness what happened on the day of the accident, and Mr Green the other rider.
71. As regards Mr Greaves, on the whole I found him to be a fair, reliable and credible witness. He made appropriate concessions and I accept Mr Greaves' evidence regarding what happened at the three lessons between 15 to 17 August 2016. At the time, the Claimant and/or Mr Sneddon made no complaint about Mr Greaves' communication, the rate of progression and placing the Claimant on the 500cc and 650cc motorcycles. I also accept Mr Greaves' evidence regarding what happened on 17 October 2016 the day of the accident. His evidence regarding how the lesson was managed that day including familiarisation with the 650cc motorcycle, the lack of pressure, praising the Claimant on the road and encouraging her to increase her speed,

and the lack of any significant problems with the Claimant's riding on the road was all supported by Mr Green's evidence. I also find that given the evidence of good practice demonstrated by Mr Greaves on 17 October 2016, it is more likely than not that he demonstrated good practice regarding the earlier lessons with the Claimant in August 2016.

72. Regarding Mr Green, I found him to be a reliable, impartial and credible witness. I found him to be an independent witness and reject Mr Mallett's closing submission that he was not. Mr Green had provided a witness statement on behalf of both parties. He had no motive to lie and/or embellish his evidence and made appropriate concessions. I find that Mr Green was doing his best to assist the court regarding what happened rather than assisting a particular party.
73. As regards the experts, I found Mr Boulton's evidence unsatisfactory in a number of respects. In his report and the joint statement he applied a standard of best practice instead of the proper approach of reasonable skill and care. Mr Boulton's main criticisms regarding what happened on 17 October 2016 were based on the evidence of Mr Sneddon, which is to be disregarded. Mr Boulton also conceded numerous examples of good practice demonstrated by Mr Greaves in his instruction and training of the Claimant, which undermined his criticisms of Mr Greaves in his report and in the joint statement. Further, Mr Boulton raised a number of matters in his oral evidence which he had not raised in the conclusions to his report and in the joint statement. They included (i) the point that regardless of what Mr Sneddon had said, a rider putting out their leg shows they are not a competent rider; (ii) the cause of the Claimant losing control of her motorcycle on 17 October 2016 was putting her leg out, and (iii) the size of the motorcycle would have had an effect on the collision. I found Mr Dickinson to be a fair, balanced and straightforward witness who made appropriate concessions.

#### Findings of fact

74. Having made these general observations regarding the witnesses and their credibility, I now turn to my findings of fact regarding the disputed factual issues. Where there is a significant dispute regarding the facts, I prefer the evidence of the Defendant on the balance of probabilities save where I indicate to the contrary.

#### The 16 August 2016

75. On the balance of probabilities I find that on 16 August 2016 Mr Greaves did have a conversation with the Claimant regarding what type of licence she wanted. He explained that an A2 licence was adequate to ride the 250cc motorcycle she had purchased, and that she did not need an A licence. The Claimant said that she would go away and think about it. The next day, in the morning on 17 August 2016 she Claimant confirmed that she wanted an A licence. She had told Mr Greaves that she needed an A licence to go on camping trips with Mr Sneddon. I accept the evidence of Mr Greaves. It is inconceivable that there would not have been any discussion with the Claimant regarding the type of licence she wanted. The different types of licence had also been discussed on the CBT course on 15 August 2016. Further, it would have made no difference to the Defendant if the Claimant did an A2 licence test or an A licence test.

76. Further, I find on the balance of probabilities that on 16 August 2016 in the afternoon the Claimant received familiarisation on the 500cc motorcycle consisting of some cone work and a figure-of-eight manoeuvre. She also rode the 500cc motorcycle into the parking bay and then got off the bike. Although the Claimant dropped the 500cc motorcycle in the yard, I accept Mr Greaves evidence that this was not a significant concern since it was not uncommon for new riders to drop bikes in the yard. Further, the Claimant did not say that she felt unsafe riding the 500cc motorcycle on the road. Indeed, on the road the Claimant rode the 500c for approximately 100 miles without any significant problems. She did not ride onto a grass verge. I accept Mr Greaves' evidence that he would have remembered this incident had it happened and would have discussed it with the Claimant. He did not. Further, the Claimant did not raise any concerns that she was unable or unsafe riding the 500cc motorcycle when they stopped at the café in the afternoon or after the return to the Defendant's premises.

#### The 17 August 2016

77. This was the third day of the Claimant's training and she was provided with a 650cc motorcycle by Mr Greaves. As stated above, on the morning of 17 August 2016 the Claimant confirmed to Mr Greaves that she wanted an A licence.

78. On the balance of probabilities I find that on 17 August 2016 the Claimant did receive familiarisation on the 650cc motorcycle in the Defendant's yard for approximately 15 minutes. I accept the evidence of Mr Greaves. The Claimant did not say to Mr Greaves that she was unhappy about going out on the road on the 650cc motorcycle. On the road the Claimant rode the 650cc motorcycle to Scunthorpe, again covering approximately 100 miles without any significant problems. Although the Claimant put out her leg once or twice, I accept the evidence of Mr Greaves that this was not a concern because this was common for new learners and even experienced riders. I also accept Mr Greaves' evidence that there were lots of bends on this journey that the Claimant successfully negotiated without any significant problems. When they stopped at the cafe, the Claimant did not say to Mr Greaves that she was struggling on the 650cc motorcycle and in her police statement she confirmed that the last lesson (namely the 17 August 2016 lesson) had gone well apart from not hitting the speed limit.

#### The 17 October 2016

79. The Claimant returned for her fourth lesson on 17 October 2016 following a gap of two months during which she received no further training and had no further experience riding a motorcycle. As stated above, the Claimant has no recollection of the events on 17 October 2016 up to and including the accident itself. The Claimant again was given a 650cc motorcycle to ride. She did not object to riding this bike and did not complain that she was unable or unsafe to riding it.

80. I find on the balance of probabilities that on 17 October 2016 the Claimant did receive familiarisation on the 650cc motorcycle for approximately 15 minutes in the yard. I accept the evidence of Mr Greaves which was supported by the independent witness, Mr Green. Mr Greaves also explained to the Claimant and Mr Green before they went out onto the road that he would not put them under pressure and that if they had any

problems, they should pull over and stop. On the road before the accident, the Claimant did not have a “wobble” on her motorcycle, or hit a kerb on a mini-roundabout or brake heavily and lose her balance and control when a HGV lorry entered a roundabout. These alleged incidents are all based on the written witness statement of Mr Sneddon whose evidence has been disregarded. Further, I accept the evidence of Mr Greaves and Mr Green that there were no significant incidents involving the Claimant on 17 October 2010 before her accident. The only incident involved a car on the roundabout that had come out between the Claimant and Mr Green, and the Claimant had backed off and was slightly out of position. At the test centre, Mr Greaves complimented the Claimant about how well she had handled this incident. I have no doubt that had the other significant incidents occurred they would have been discussed at the test centre. The fact that they were not, suggests that they did not happen. Regarding the Claimant’s speed, I accept Mr Greaves’ evidence that he encouraged the Claimant to ride faster and ride within the speed limit. He did not say *“If you don’t get to the speed limit, I will fail you.”* Mr Greaves had no reason to stop the lesson on 17 October 2016 before the Claimant’s accident and she did not complain that she was unsafe or unable to write the 650cc motorcycle on that day.

81. It is common ground that Mr Greaves was not aware before the Claimant’s accident of her comment to Mr Green that she wished she had stayed on a 125cc motorcycle. He became aware of this after the Claimant’s accident from Mr Green.

#### The cause of the Claimant losing control

82. As stated above, the Claimant has no recollection of events on 17 October 2016 including the accident itself. Mr Greaves did witness what happened, as did the driver of the refuse wagon, Mr Lee Hopewell. Based on their evidence and the evidence of the reconstruction experts, I find that it is more likely than not that the Claimant’s accident occurred as follows. As she was negotiating a left-hand bend, the Claimant sat up causing the bike to accelerate and to lose control, her left leg came out and she rode straight into collision with a refuse wagon travelling in the opposite direction on the other side of the road. The Claimant’s left leg came out after she had lost control of the motorcycle. Both experts agree that they cannot say why her left leg came out – see paragraph 11 of the joint statement. I am unable to say why on the balance of probabilities the Claimant lost control of the motorcycle. However, for the reasons which follow the Claimant did not lose control because of any breach of duty on the Defendant’s part.

#### Breach of duty

83. In his closing submissions Mr Mallett, Counsel for the Claimant, relied upon only three breaches in this case:
  - (i) The central breach he relied upon was that the Claimant should not have been put on the 650cc motorcycle on 17 October 2016 after the gap of two months.
  - (ii) Mr Greaves the instructor should have noticed that the Claimant was struggling on the 650cc motorcycle on 17 October 2016 and stopped the lesson.

- (iii) There should have been proper and effective communication by Mr Greaves with the Claimant and he should have been aware of the Claimant's concerns prior to 17 October 2016.

Proper and effective communication

84. I deal with breach (iii) first. Having regard to my findings of fact above, Mr Greaves did communicate properly and effectively with the Claimant and the Claimant did not communicate any significant concerns riding the motorcycles she had been given prior to 17 October 2016. My reasons are as follows.
85. First, it is inconceivable in my view that Mr Greaves would not have had any meaningful discussions with the Claimant over the three days of training between 15 to 17 August 2016 about her performance and how she was doing. Both the accident reconstruction experts agreed with this point.
86. Second, I have found that neither the Claimant nor Mr Sneddon raised any concerns with Mr Greaves and/or Mr Shaw about Mr Greaves' poor communication, rate of progression and placing the Claimant on the 500cc and 650cc motorcycles. The Claimant made no such complaints in her police statement about Mr Greaves.
87. Third, I accept the evidence of Mr Greaves regarding what happened at the three lessons between 15 to 17 August 2016. On 16 August 2016, he discussed with the Claimant what type of licence she wanted, explained that an A2 licence was adequate to ride her 250cc motorcycle, and that she did not need A licence. The next morning on 17 August 2016, the Claimant confirmed she wanted an A licence. On 16 August 2016, the Claimant received appropriate familiarisation on the 500cc motorcycle in the yard before going out onto the road. On 17 August 2016, the Claimant received appropriate familiarisation on the 650cc motorcycle in the yard before going out on the road. Mr Greaves informed the riders including the Claimant that if at any stage she felt uncomfortable on the 650cc motorcycle, they should stop. On 17 October 2016, the Claimant received appropriate familiarisation on the 650cc motorcycle in the yard before going out on the road. Before going out onto the road, Mr Greaves also explained to the Claimant and Mr Green that he would not put them under pressure and that if they had any problems, they should pull over and stop. He kept in contact with the Claimant and Mr Green via the one-way intercom system. When they stopped at the test centre, he complemented the Claimant regarding her handling of the incident involving the car at the roundabout. The Claimant did not complain to Mr Greaves that she was unsafe or unable to ride the 650cc motorcycle.
88. Fourth, I accept the evidence of Mr Greaves that the Claimant's speed was not a significant issue and he encouraged her to go faster and ride within the speed limit.
89. Fifth, regarding the lack of any written records regarding the lessons it is common ground that the DVSA guidance did not require anything in writing and none of the experts said that the Defendant's lack of written records amounted to a breach of duty. Mr Boulton the Claimant's expert conceded in cross-examination it was not mandatory to make a record of lessons or a written plan for the lessons, and he said he was not critical about the Defendant's lack of documentation in this case.

#### Being put on the 650cc motorcycle on 17 October 2016

90. Having regard to my findings of fact above, it was reasonable for Mr Greaves to put the Claimant on the 650cc motorcycle after the break of two months. My reasons are as follows.
91. First, I have found that the Claimant wanted an A licence and she did not object to riding the 650cc motorcycle again after the two month break. Nor did she raise any concerns that she was unable or unsafe to ride this bike. The Claimant had ridden the 650cc motorcycle reasonably well for approximately 100 miles on 17 August 2016. On 17 October 2016, she received appropriate familiarisation on the 650cc motorcycle for approximately 15 minutes in the yard.
92. Second, Mr Boulton the Claimant's expert conceded that if on 17 August 2016 the Claimant was riding the 650cc motorcycle well it was not inappropriate for the Claimant to go out on the 650cc on 17 October 2016, provided that she received familiarisation on that day. He also admitted that if the instructor was happy with the manoeuvres in the yard it was reasonable to go out on the road. I also accept the evidence of Mr Dickinson, the Defendant's expert, that a two-month gap was not necessarily detrimental so long as there was familiarisation when the Claimant got back. As stated above, on 17 October 2016 the Claimant received appropriate familiarisation on the 650cc motorcycle in the yard.
93. Third, the Claimant's test was provisionally booked for the 25 October 2016 and was then cancelled on 14 October 2016. It is not known why the test was cancelled. It was not suggested by the Claimant that her test had been cancelled because she was not ready. Even if the test had been cancelled because the Claimant was not test ready, this does not mean that she was unsafe to go out on the road on a 650cc motorcycle on 17 October 2016.

#### Stopping the lesson on 17 October 2016

94. Having regard to my findings of fact above, I find that Mr Greaves should not have stopped the lesson on 17 October 2016. My reasons are as follows.
95. First, I must disregard Mr Sneddon's written evidence that on 17 October 2016 the Claimant wobbled on her motorbike, hit a kerb, braked heavily and nearly fell off the motorcycle at a roundabout. Mr Bolton's criticisms in his report and in the joint statement were largely based on Mr Sneddon's evidence being accepted by the court.
96. Second, although the Claimant probably put her left leg out when riding the motorcycle on 17 October 2016 I accept Mr Greaves' evidence that this was not a cause for concern since it was not uncommon for new riders to do this and even experienced riders. Further, I accept the expert evidence of Mr Dickinson for the Defendant that this would not be a cause for concern it itself and may have been a way of correcting a minor balancing issue. In any event, this has to be balanced against Mr Greaves and Mr Green's evidence, which I accept, that the Claimant did not have any significant problems negotiating the many bends and roundabouts on the road on the 17 October 2016. The Claimant dealt with the incident involving the car at the roundabout very well.

97. Third, at no stage on 17 October 2016 did the Claimant raise any concerns with Mr Greaves that she was having any problems riding the 650cc motorcycle. Mr Greaves was not aware before the Claimant's accident of her comment to Mr Green at the break at the test centre that she wished she had stayed on a 125cc motorcycle. Further, I accept the evidence of Mr Greaves that had he had any concerns that the Claimant was struggling he would have stopped the lesson.
98. For the sake of completeness, I deal with the overarching allegation of breach of duty as set out in paragraph 20(v) of the Particulars of Claim of failing to exercise reasonable care for the safety of the Claimant. Having regard to my findings of fact set out above and my findings regarding breach of duty, Mr Greaves did not fail to exercise reasonable care for the safety of the Claimant.

### Conclusion

99. For all these reasons, I find that Mr Greaves was not negligent and exercised reasonable skill and care regarding the Claimant. My key findings of fact in summary are as follows:
- (i) On 16 August 2016 Mr Greaves did have a conversation with the Claimant regarding what type of licence she wanted. He explained that an A2 licence was adequate to ride the 250cc motorcycle she had purchased, and that she did not need an A licence. The next day, in the morning on 17 August 2016 the Claimant confirmed that she wanted an A licence.
  - (ii) On 16 August 2016, the Claimant received appropriate familiarisation on the 500cc motorcycle and again on the 650cc motorcycle on 17 August 2016 and then on 17 October 2016.
  - (iii) On the road, on 16 August 2016 the Claimant rode the 500cc motorcycle for approximately 100 miles without any significant problems, she did the same on the 650cc motorcycle on 17 August 2016 and on 17 October 2016 she rode the 650cc motorcycle a significant distance without any significant problems before her accident.
  - (iv) At no stage, did the Claimant or Mr Sneddon complain to Mr Greaves and/or Mr Shaw about Mr Greaves' poor communication, the rate of progression and placing the Claimant on the 500cc and 650cc motorcycles.
  - (v) It was reasonable for Mr Greaves to put the Claimant on the 650cc motorcycle on 17 October 2016 after the break of two months.
  - (vi) Mr Greaves should not have stopped the lesson on 17 October 2016.
  - (vii) The accident happened as the Claimant was negotiating a left-hand bend, the Claimant sat up causing the motorcycle to accelerate and to lose control, her left leg came out and she rode straight into collision with a refuse wagon travelling in the opposite direction on the other side of the road. I am unable to

say why the Claimant lost control of the motorcycle, but it was not because of any breach of duty on the part of the Defendant.

100. In light of my findings, the issues of causation and apportionment do not arise. I proceed to deal with both these issues in any event.

### Causation

101. Even if the Claimant had established a breach of duty to exercise reasonable care and skill, any breach was not causative of her accident. It was not suggested in Mr Boulton's report or in the joint statement that the Claimant riding the 650cc motorcycle was the cause of her accident. The high point of Mr Boulton's opinion in the joint statement at paragraph 23 was that the Claimant should have been given more time on the 500cc motorcycle. However, there is no evidence that the accident would not have happened on a 500cc motorcycle and/or the Claimant's injuries would have been less severe.

102. For these reasons, had the Claimant established a breach of duty the breach did not cause the accident.

### Contributory negligence

103. Had primary liability and causation been established by the Claimant, the question arises whether the Claimant had been contributorily negligent and whether it would have been just and equitable to reduce her damages.

104. As regards contributory negligence, the starting point is the relevant statutory provision. This is found in s1(1) of the Law Reform (Contributory Negligence) Act 1945 ('the 1945 Act'), which provides as follows:

“Where any person suffers damage as the result partly of his own fault and partly of the fault of any other person or persons, a claim in respect of that damage should not be defeated by reason of the fault of the person suffering the damage, but the damages recoverable in respect thereof shall be reduced to such extent as the court thinks just and equitable having regard to the claimant's share in the responsibility for that damage.”

105. There are three questions to consider whether reduction should be made to a claimant's damages. They are as follows:

- (1) Was the claimant at fault?
- (2) If so, did the claimant suffer damage (partly) as a result of her fault? Or in other words, was the claimant's fault a cause of her damage?
- (3) If so, to what extent is it just and equitable to reduce her damages?

106. The first two questions are in principle hard-edged or yes/no questions. Either the Claimant was at fault, or she was not; either her fault was a cause of the damage she



suffered, or it was not. The third question is equally clearly not a yes/no question but question of degree.

107. A learner or novice rider owes the same objective reasonable motorcyclist standard of care as an experienced rider – see *Nettleship v Weston* [1971] 2 QB 691. The Claimant lost control of her motorcycle negotiating a routine bend which a reasonable rider should have negotiated safely – see paragraph 8 of the joint statement of the experts.

108. The Claimant was also blameworthy for the accident. She was under a duty of care to take care of her own safety and that of other road users. If the Claimant was struggling and not safe on the 650cc motorcycle, she should have informed Mr Greaves and stopped the lesson herself. It was the Claimant who lost control of the motorcycle on the bend. In the circumstances, it would have been just and equitable to have reduced the Claimant's damages by 60%.

### Conclusion

109. In summary, for the reasons given above I find that the Defendant was not in breach of duty for the Claimant's accident and any breach of duty was not causative of her accident. Had I found negligence and causation for the Claimant, I would have found that the Claimant was also blameworthy and would have reduced her damages by 60% for contributory negligence.