Neutral Citation No: [2019] NIQB 94 *Judgment: approved by the Court for handing down (subject to editorial corrections)**	*Ref:* **MAG10968** *Delivered:* **18/09/2019**

IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND

QUEEN'S BENCH DIVISION

Serial No. 16/047591/02

BETWEEN:

CLAIRE ELIZABETH CRAIG

Plaintiff;

-and-

TULLYMURRY EQUESTRIAN CENTRE

Defendant.

MAGUIRE J

Introduction

[1] The plaintiff in this case is Claire Elizabeth Craig. She is now 38 years of age. On 14 October 2014, when aged 33, she was involved in a riding accident while she was in the course of taking a lesson at Tullymurry Equestrian Centre. At the time she was riding a horse known as "Olly" and, as a result of the accident, she sustained serious injuries, principally to her right ankle.

[2] In the course of the proceedings the court has heard evidence on behalf of the plaintiff from: the plaintiff herself; Sandra Rafferty, who was a pupil rider at the lesson during which the plaintiff was injured; and an equestrian expert, Mr Smylie.

[3] On behalf of the defendant the court heard from the proprietor of the defendant's business, Marion Turley; the instructor who had conducted the lesson in question, Sarah Turley; and two of the other pupils who attended the lesson, Brian Denvir and Susan Fegan. A report was provided to the court by an equestrian expert on behalf of the defendant. This expert did not give evidence at the hearing but her report was placed before the court by agreement. In these proceedings, the plaintiff was represented by Mr Colm Keenan QC and Mr Chris Ringland BL and the defendant was represented by Mr Jonathan Park BL. The court is grateful to counsel for the way in which the case was conducted and for their helpful and well researched submissions.

Review of the evidence

The plaintiff's own evidence

[4] The plaintiff told the court that when she was young she gained experience as a rider at a riding school in Ballynahinch which she attended for in the region of five years. However, she had only very intermittently taken lessons or engaged in riding in the period thereafter. In August 2014 she enrolled with the defendant and at the date of the accident she had already engaged in five sessions of approximately one hour each involving a small group of pupils. She indicated that at these classes she rode different horses and had been instructed by two different instructors, one of whom was Sarah Turley.

[5] On the day of the accident, her instructor was Sarah Turley. The lesson was conducted indoors in an international standard arena. When she arrived she was, she said, allocated a horse. On the day of the accident she was allocated "Olly". The horse had been tethered at the entrance to the arena and the protocol was that the rider would untie the horse; place reins over its head; tighten the girth strap; and pull down the stirrups and mount the horse.

[6] In the plaintiff's evidence, when she collected Olly he appeared to her to be reluctant and resisted going into the arena. As she put it: "he pulled back against me". Notwithstanding this, the plaintiff was able to get Olly into the arena where she mounted from ground level. Notably, she did not use a mounting block, though she had done so on earlier occasions with other horses.

[7] Once she had mounted Olly, it was the plaintiff's evidence that he was obstreperous and took off into the corridor leading in and out of the arena. He reared up on his back legs, she said. Then when the horse lowered his front feet back to the ground they splayed on the concrete surface. Olly appeared to her to be out of control and turned as if to make his way to the tack room. At this stage Sarah Turley came to the plaintiff's assistance and led Olly back into the arena.

[8] At this stage, according to the plaintiff, she asked Sarah Turley whether she could have a change to another horse but Sarah allegedly replied that there were no other horses available. Sarah, according to the plaintiff, complained to her about her failing to close a gate so as to prevent Olly running off and about the plaintiff mounting Olly from the ground, instead of by using a mounting block.

[9] At all events, the plaintiff said she joined the other pupils in the arena. The others were Brian Denvir, Susan Fegan and Sandra Rafferty. Prior to attending the riding school, the plaintiff said she did not know any of these people, though she did say that some of them had been in attendance at earlier sessions she had been at.

[10] Despite the lesson beginning, the plaintiff's evidence was that Olly remained unsettled and jumpy with his tail swishing and ears back. Getting the horse going was, she said, difficult and it bucked and would not co-operate. In these circumstances the plaintiff said the horse needed persuasion to do anything. This left her concerned about her safety. The plaintiff said that she made her unhappiness known to the instructor but her reaction was only to say that things would be fine and Olly would settle down. He did not, however, do so, which led to the plaintiff to complaining still further.

[11] A particular allegation made by the plaintiff was that Sarah Turley during the lesson appeared to be distracted as if she had something on her mind. While conducting the lesson, she was holding a mobile phone which the plaintiff thought she looked at from time to time. She also mentioned that Sarah looked as if she was texting on her phone.

[12] The plaintiff said her state of mind was one of embarrassment but she nonetheless continued on.

[13] After about 50 minutes the plaintiff described a phase of the lesson during which Olly was to jump over two jumps. Each of the jumps was about 2 feet high. The plaintiff said that during previous lessons she had jumped outside over similar sized jumps, not with Olly but another horse.

[14] Olly jumped the first jump without difficulty. He also jumped the second jump successfully. However, after he had got over the second jump and his feet reached the ground, he "suddenly took a massive leap to the left and bucked his back end". This had, the plaintiff said, the effect of throwing her into the air. She said she recalled a heavy tug on her right ankle. She felt as if she was engaged in a somersault in the air but, ultimately, she came to the ground. At this point she knew she had been injured, though initially she thought the injury was not a serious one. She was not able to get up, however.

[15] After the accident the plaintiff said there ensued a discussion about getting an ambulance. Sarah Turley suggested this but the plaintiff felt she could manage without it. For a time she rested in a chair before being taken to a viewing gallery. Eventually Sandra Rafferty offered to take the plaintiff in her car to the hospital in Downpatrick and this, in the end, occurred.

[16] The plaintiff was vigorously cross-examined by Mr Park BL who appeared for the defendant. This cross-examination was wide-ranging. While the court has considered its totality, it is unnecessary to the purposes of this judgment to do more than set out the key points to emerge from it.

[17] These were:

(a) It was put to the plaintiff that she had been told to use a mounting block and that the school had a policy requiring such blocks to be used by pupils. Indeed, the court was referred to the existence of a sign at the arena which said as much. The plaintiff denied that she had been told this or had been made aware of the policy or had seen the sign prior to the accident.

(b) The plaintiff accepted that she had signed a document which had her signature on it and which is dated 28 August 2014. This form emanated from the Centre and was officially described as a Registration and Acceptance Form. *Inter alia*, it explained that riding was a risk sport which holds potential danger and it pointed out that horses are sometimes unpredictable. The plaintiff accepted that she did not read it as closely as she should have.

(c) It was put to the witness that her account of the accident was wrong. In particular, she was asked to explain why her letter of claim did not contain reference to her asking for a change of mount. To this she offered no definite answer. She was also pressed about the details of how she came to fall and it was suggested that her description of the accident was false. On this point, she held her ground, especially in relation to her claim that the horse had completed its jump before it reared up.

(d) When the accounts of Brian Denvir and Susan Fegan were put to her, the plaintiff said they were being untruthful.

(e) Mr Park asked her whether after the accident while at the hospital she had been cross about the way she had been treated and suggested that the text messages she sent did not suggest this. On this, she said that at that stage she hadn't thought matters through and was on gas and air.

(f) When it was put to the plaintiff that what had happened was that she had lost balance and had fallen off the horse, she strongly denied this.

Sandra Rafferty

[18] Ms Rafferty was one of the pupils who took part in the lesson during which the plaintiff's accident occurred. She had that day, as previously, been allocated a horse. Like the plaintiff, she said she mounted it from ground level and did not use a mounting block. Indeed, she pointed out that a member of staff helped her to mount the horse from the ground.

[19] In her evidence, she said there had been a delay in starting the lesson, as the plaintiff's horse "was temperamental and agitated" and was "shifting and moving about". This horse was Olly and the witness made it clear that, even based on her

limited experience of horses, she could see that the horse was annoyed by something.

[20] She witnessed the horse running down the corridor out of the arena as described above. She said she could hear words being spoken between Sarah Turley and the plaintiff. In particular, she said she heard the plaintiff ask Sarah Turley for another horse and heard Sarah's reply that there were not any other horses available to replace Olly. Later, after the lesson was underway, she said that Olly was "skittish" and "het up". His ears were flat. She had the impression of the horse being upset pretty much throughout the lesson, though she accepted that Olly did calm down a little as the lesson continued.

[21] When it came to the horse jumping the two small jumps erected, her evidence was that the plaintiff and Olly's first jump was fine, as was the second. However, after Olly had landed she described Olly bucking so that the plaintiff went up in the air ("like a tennis ball"). When the horse bucked it was like a bucking bronco with the back legs kicking out. The plaintiff, having gone up in the air, the witness said she was yanked back down. On this occurring, she heard a "snap like" sound, like a dried twig snapping. The plaintiff ended up on the ground.

[22] This witness said she initially thought that the plaintiff was dead but when she got off her horse and went to the place of the fall she could see that the plaintiff had sustained injuries only. The plaintiff, however, could not get up.

[23] She recounted a discussion which then occurred about the calling of an ambulance to assist the plaintiff but this was resolved eventually by the witness offering to take the plaintiff to hospital in Downpatrick, which was on the witness's way home.

[24] As a result of what the witness saw she said she did not return to the riding school as she had lost confidence in the place. As she put it she "knew the risks but there was a neglect issue" and she could not afford being involved in an accident.

[25] She said she had become involved in the case as a result of being contacted some time later by the plaintiff's solicitor who sought a description of the accident. She agreed to, and did, provide to the solicitor her personally typed written account. The witness said she was not contacted by anyone on behalf of the riding school. Had she been so contacted, she said, she would have supplied the school with a statement.

[26] In the course of being cross-examined, this witness accepted that at her first lesson with Sarah Turley she had said that she should use a mounting block to mount a horse. She said, initially, that she had not seen a sign requiring this but later she amended this to her possibly having seen such a sign. She could not recall the name of the horse she had been on on the day of the accident. She accepted that she had not heard what was said between the plaintiff and Sarah Turley when outside

the arena. In terms of the conversation she did hear between the plaintiff and Sarah Turley, she remembered the plaintiff saying that she was a bit nervous and did not want to ride Olly before asking for another horse. When asked about her written statement, she accepted she had not mentioned the plaintiff asking to change horse. The improvement in the horse's behaviour she said, in answer to a question, occurred at about the three quarters point of the lesson. She thought the plaintiff had fallen to the left side of Olly. As regards Sarah Turley, the instructor for the lesson, she remembered her having a phone in her hand but did not see her use it. When she was asked about what was said after the accident, she indicated that Sarah Turley had said to the plaintiff that the horse must have spooked.

Mr Smylie

[27] In this case each side commissioned equestrian experts to assist the court. The plaintiff called a Mr Smylie whereas the defendant relied on the written report of a Ms Carlisle.

[28] Of course, neither of these experts were present on the day of the accident. The extent of their assistance in a case like the present where the real issue relates to the credibility of diametrically opposed accounts of what occurred, in the court's view, is therefore limited. However, contextual material is of assistance.

[29] While the court has considered the totality of the experts' evidence (some of which was not tested) it will do no more than to offer a brief description of it in this judgment by the use of bullet points. There was a substantial level of agreement between the experts.

[30] The main points which emerged from their joint evidence were as follows:

- Often riding schools do wish their clients to mount from a mounting block because of concern about possible injury to the horse. However, it is perfectly acceptable ordinarily for a rider to mount from the ground.
- If a horse runs off out of the arena, this should be a concern for the instructor.
- If a pupil sought a change of horse, the instructor should take note of this and should, if the request is denied, give a reason or reasons for this, and explain the position to the rider. If, in fact, no other horse was available and the rider wants to continue with the lesson, the instructor should be anxious to ensure no lack of safety.
- Safety of the pupil is a paramount consideration. If a request for a change of horse is made and is ignored, the welfare of the rider may be put at risk. An instructor should seek to deal with a rider's worries.
- Nodding by the horse of its head and swishing of its tail are characteristics of a horse which is agitated and an instructor should notice this. It may be necessary to intervene if a safety issue has arisen and the instructor must weigh up the situation.

- There is an on-going relationship between pupil and instructor and the instructor may feel that it is beneficial for a rider to have to cope with a particular problem as part of acquiring riding experience and learning how to ride.
- Instructors should have a phone with them in case an emergency arises but it should not be in their hand or used as this may demonstrate a lack of attention to the class.
- The riding school has highly commended status and its instructor in this case had the requisite qualifications. The school presented with an appropriate level of paperwork, both in respect of horse and rider and complied with British Horse Society standards.
- Horses are unpredictable.
- The fracture in this case, if as a result of bucking, would be relatively unusual as against a rider becoming unseated in the course of a jump.
- Horse riding is a dangerous sport and the possibility of falling off or being injured is always there.
- The standard of the lesson appeared commensurate with the plaintiff's experience

Marion Turley

[31] Marion Turley was the proprietor and owner of the defendant's business. It had been in existence she told the court for 28 years. In her capacity as owner she informed the court about the horse assessment form which was found in the trial bundle. This indicated that Olly had come to the centre in November 2012 as a nine year gelding. The horse was viewed as being able to participate in all round equestrian activities and had been assessed for this purpose. The horse, it had been assessed, was not suitable for beginners but was suitable for novices, intermediate and advanced riders. Olly was also suitable for children and for activities such as flat work, jumping, lunge lessons, off-road activity, hacking, cross-country and lessons. Under the heading in the form "Special Precautions or Procedures" Olly required no special precautions or procedures.

[32] According to this witness's evidence, a beginner was a person at their first lesson with the next level being a novice.

[33] Marion told the court that she had not received any complaints about Olly, even though he had been regularly used when giving lessons. The horse, she believed, had a stable temperament. Prior to Olly being involved in the lesson on the day of the accident, the witness said no report had been received of him playing up.

[34] The witness also explained that the policy of the defendant was to ask the customer to use a mounting block, for the protection of the horse. Signage was strategically placed to call the attention of riders to this. Where a horse is mounted

from ground level she was concerned that it may sustain damage in the course of the mount.

[35] The school, on assessment, had the status of being "highly recommended". In her view, mobile phones should not be produced by an instructor, save in an emergency.

[36] In cross-examination, this witness stated that she was aware of the accident itself later that afternoon. An accident report form, she said, had been filled in by Sarah Turley. She said she had asked potential witnesses to provide statements after she had been made aware of the letter of claim. The school insurers had asked her to speak to witnesses. Her role was to obtain statements and pass them on to the insurers. She accepted she was involved in obtaining statements from Mr Denvir and Ms Fegan. She knew both from their attendance at the school for lessons. They were "fairly longstanding clients". When asked why she had not approached Sandra Rafferty for a statement she said there was an approach by Sarah Turley but there had been no response to it. She personally had rung a Southern telephone number for her without response.

Sarah Turley

[37] Sarah Turley conducted the lesson during which the plaintiff's accident occurred. She appears to have been an experienced rider and to have been working, *inter alia*, as a riding instructor, for some time. She is and was at the time a suitably qualified instructor and appears to have worked both in the British Isles and abroad.

[38] She was and is the daughter-in-law of Marion, the owner of the riding school.

[39] At the time of the accident she was coaching/instructing part-time.

[40] She placed emphasis in her evidence on the practice and policy of the riding school in respect of ensuring that gates should be closed and that horses should be mounted from a mounting block. She said that these messages were made plain to clients when they first arrived at the school.

[41] As regards the plaintiff, she confirmed that she had coached her at her first lesson at the school as well as subsequently with one exception prior to the lesson now under discussion.

[42] On the day of the accident she had been dealing with other clients when she heard something going on. This drew her attention and when she turned round she said she saw Olly going back out the gate of the arena. Her reaction to this was to shout and then to go to the horse. She described that when she got to Olly he was happy, ears forward and standing still. However, she said that she was angry at the time at the plaintiff because she had left the gate open and also had mounted the

horse from the ground without using a mounting block. When she arrived she said she spoke nicely to the plaintiff as she was a paying client.

[43] In this witness's evidence, Olly was fine as the lesson progressed. Everyone was happy, as she watched the riders and the lesson progressed as it should. She denied all of the plaintiff's allegations in respect of the behaviour of the horse. The jumping took place towards the end of the lesson. As the plaintiff was a novice, in her case, the lesson was adjusted to suit her needs.

[44] At the point when the accident occurred, she said she was standing about 15 metres to the side of the riders and had a direct view of the horses and riders jumping. She thought the plaintiff had successfully jumped 3 or 4 fences prior to the accident.

[45] As regards the accident itself, she described Olly proceeding with a good rhythm and balance and in a good line. The horse jumped but as it came down the plaintiff lost her balance and fell. She was clear that the horse's behaviour had been fine and he landed as he normally would. There was no sideways movement and no violent buck.

[46] Immediately after the accident had occurred, she went to the plaintiff's aid as she thought she may be injured. She realised quickly that the plaintiff may have sustained an ankle injury and offered to get an ambulance. The plaintiff said to her that she had had an old injury. With the help of the other pupils, the plaintiff was helped off the ground into a chair and later removed from the arena to the viewing gallery. After discussion, Sandra Rafferty offered to take the plaintiff to hospital so that, in the end, an ambulance was not necessary.

[47] She said that after the accident and on that day she filled in an accident report. Before the plaintiff left, Sarah asked her to let her know how she got on at the hospital. This, the plaintiff did, by sending texts, copies of which were provided to the court.

[48] The texts may be summarised as follows: At 1638 hours on 17 October 2014, after the accident, the plaintiff texted to Sarah Turley as follows:

> "Broken ankle in cast … (not sure how getting my car but will work it out and let you know x)

Sarah Turley replied to the plaintiff on the same day:

> "Sorry to hear that Claire …. How long is your recovery? Your car key is in my house and the gates are locked at night with a barrier and gate so car will be safe and secure if it stays here for a while! x"

The plaintiff then replied:

> "Not sure yet have to go to Ulster to see orthopaedics to see if needs pinned once swelling goes down, will keep you posted and let you know when getting back for car. Thanks for minding car for me! x
>
> PS Can you text that girl Sandra and thank her so much for bringing me here x"

Sarah Turley replied:

> "Wishing you a speedy recovery, yes I'll contact Sandra and pass on thanks no problem take care S x."

[49] Sarah Turley was cross-examined by Mr Keenan QC, on behalf of the plaintiff. She was challenged about her evidence that the accident report had been compiled by her after the accident but, in response, she was adamant that her evidence on this point was correct, notwithstanding the fact that, as Mr Keenan pointed out, the accident report was dated 17 October 2015, that is at a date after the plaintiff's letter of claim had been sent on 14 August 2015. The witness was unable to explain why the report bore this date and denied the suggestion that the report had only been completed after the letter of claim had been sent and after statements had been obtained by her mother-in-law from Mr Denvir and Ms Fegan in August 2015.

[50] Mr Keenan also raised with her the evidence she had given about a form that she had referred to in her evidence in chief. This form dealt with "safety awareness of the rider" and she had initially told the court that she had filled it in in the absence of the plaintiff. However, in later evidence, she said the direct opposite, maintaining that it had been filled in after a lesson in the presence of the plaintiff. In respect of this apparent contradiction, she said that the latter version was correct.

[51] Mr Keenan suggested she was making things up as she went along and that in respect of several of the matters she had raised in her examination in chief, in particular, about what she had said to the plaintiff about closing the gate and not using a mounting block, and about the plaintiff saying that she had had an old injury, none of these matters had been put to the plaintiff when she was being cross-examined. While none of these matters had been put by her counsel, she maintained she was not making them up.

[52] There was then an important exchange about the accident itself. She was asked whether she would accept that if the plaintiff's account was correct, she would have intervened. To this she made the immediate reply: "yes 100%". It was suggested to her that the jump being performed was straightforward, a point she agreed with. She was then asked whether the plaintiff had been assessed as reasonably competent. To this her reply was that the jump was a simple one and the

plaintiff would not have been stretched by this beyond her limitations. When asked if the horse had done anything wrong, she said that the horse had acted perfectly and that this was a classic type of fall case where the rider can come down if her leg is not in the right position.

[53] In response to direct questions, this witness said that both the plaintiff's account of the accident and Sandra Rafferty's account were untruthful.

[54] In response to questions from the court, the witness indicated that she had only learnt of the allegation that the plaintiff had asked for a change of horse and had said that she had been told that no horses were available to meet this request after proceedings had begun. Specifically she said:

> "If a client asked for a change, the client would be accommodated. I could easily have given her another horse to ride. I would stop the ride if asked to change the horse. They are easily accessed. A change of horse would be set up in 3 to 4 minutes …. There was always a surplus of horses."

[55] She also said that a client, if dissatisfied, could leave and come back at a later date.

Mr Brian Denvir

[56] Mr Denvir, who is a man who aged 52 at the time he made his statement relevant to this case, was called on behalf of the defendant. He was one of the pupils at the lesson on the date of the accident. He had been going to the riding school over an extended period of 5 to 6 years. On the day of the accident he was riding a horse called "George". He did not see the plaintiff mount Olly but was aware of a commotion in what he described as an alleyway involving the plaintiff, Sarah Turley and Olly. As a result of this, he said Olly was brought back to the arena. He said he was not aware of any agitation on the part of Olly and was not aware of any concerns of the plaintiff in respect of him. At the time of the accident, he had been waiting to jump and watched as Olly jumped and landed. He did not see the plaintiff being in the air or the horse landing and travelling a distance before the accident occurred. His view was that the plaintiff had simply fallen off the horse and he recalled no bucking by the horse before or after the fall.

[57] In cross-examination, the witness indicated that he had continued to go riding until relatively recently and had been a regular attender at the defendant's premises. He made friends with the staff. He told the court that he made a statement about the accident on 19 August 2015. He accepted it was possible that he did not hear the conversation between the plaintiff and Sarah Turley about the former's request to have her horse changed.

[58] In answer to questions from the court, the witness told the court that he was approached by Marion Turley, the owner of the school, to provide a statement about the accident and he agreed to do so. The statement, he told the court, had been signed by him but had been written and prepared by Marion Turley which explained why it was written in another person's hand. The method of its compilation was that Marion Turley asked questions to which he responded. In particular, this method was the origin of a sentence in the statement which read:

> "The horse did nothing wrong and I certainly did not hear her ask to change the horse at any time."

Susan Fegan

[59] Susan Fegan was another pupil at the lesson during which the plaintiff was injured. She also made a statement about the matter which was dated 20 August 2015. She said she had been riding horses at the centre for 7 to 8 years. On the day, her horse was called "Finbar". She said she remembered Olly leaving the arena and remembered Sarah Turley telling the plaintiff off for mounting the horse without using the mounting block.

[60] As far as this witness was concerned, she noticed nothing out of the ordinary in respect of the horse, Olly. Nor did she see Sarah Turley use her phone. As regards the accident, the approach of Olly to the fence in question was, she thought, fine and the cause of the accident was the plaintiff losing her balance and being deseated. She noticed no dramatic movement on the part of the horse and, in particular, she did not see the horse buck at any point.

[61] She indicated that her daughter had written her statement for her and that the handwriting on it was her daughter's. There was no one else there when it was being compiled.

[62] In cross-examination, she was asked whether after the accident she had discussed her statement with anyone. Her reply was only her husband and, in particular, she had not discussed it with anyone from the school. However, she later admitted that Marion Turley had asked her to make a statement and wanted her to say what she saw and heard and to describe whether there was any problem with the horse, in particular, whether the horse was playing up. When pressed she revealed that she in fact had a conversation with Marion Turley a week after the accident, contrary to what she had said earlier to the court. She was asked on that occasion similar questions. She accepted that she was friendly with the Turleys and accepted there could have been conversations on the day of the accident between the plaintiff and Sarah Turley which she did not hear.

The plaintiff's injuries

[63] The main injury received by the plaintiff in the accident was a shear fracture with comminution of the medial corner of the right ankle joint. While initially the plaintiff attended Downpatrick Hospital she was referred to the Ulster Hospital where five days after the accident she underwent surgery which involved a plate and screws being inserted. Thereafter, the ankle was immobilised in a plaster for six weeks. Following this, she wore a removable boot for 4 to 6 weeks and attended physiotherapy for several months. She was off work for several months.

[64] She has been left with some scarring of the area around the ankle. The metal work which had been inserted remains in place.

[65] There was agreement among the orthopaedic surgeons that it was unlikely that the plaintiff would make a full recovery and that she would experience on-going activity related discomfort in or around the inner aspect of her ankle. There had been no signs of early degenerative change but there remained a risk of arthritis in the long term.

[66] Mr Adair, who last examined the plaintiff on 9 April 2018 (3½ years from the date of the accident), concluded his report as follows:

> "At this time I would be unable to account for a high level of disability. Ms Craig has a full range of ankle movement. There is no pain when moving the ankle. Her functional tests are unremarkable. She would be capable of returning to walking. This would include walking in the hills. I would accept she would be unable to return to running. She would be capable of returning to cycling, swimming and horse riding if desired. Ms Craig reports her symptoms have remained unchanged for over two years. Her lack of symptoms reflect the physical findings. She would not be at risk of suffering a rapid deterioration in her symptoms."

[67] Having considered all of the medical evidence in this case, and having seen the scarring to the plaintiff as a result of the accident, and having heard the submissions of the parties in respect of quantum, the court values the plaintiff's claim at £50,000.

[68] In addition to this figure, there was an agreed figure in respect of special damage to the date of trial of £3,250.

[69] The value of the claim therefore is £53,250 if liability is established.

The amended statement of claim

[70] As formulated and amended the statement of claim in this case (originally served in July 2017 but amended subsequently) is based on the tort of negligence.

[71] The particulars of negligence were as follows:

> "(i) Selecting a horse for the plaintiff (Olly) that was unsuitable due to its agitated and unpredictable demeanour/nature.
>
> (ii) Failing to carry out any or adequate assessment of the demeanour/nature of the horse in question and its suitability for -
>
> (a) The plaintiff, and
>
> (b) The activities that were planned for the subject lesson.
>
> (iii) Failing to notice and/or acknowledge the agitated and unpredictable behaviour of the horse in question during the course of the subject lesson and consequently failing to provide the plaintiff with an alternative mount in order to reduce the chances of her sustaining injury.
>
> (iv) Failing to act on the plaintiff's repeatedly expressed concerns about the agitated and unpredictable behaviour of the horse in question during the course of the subject lesson.
>
> (v) Causing or permitting the plaintiff to continue riding the horse in question despite both -
>
> (a) The obvious warning signs that it was a danger to the plaintiff, and
>
> (b) Concerns expressed by the plaintiff.
>
> (vi) Causing or permitting the instructor to use a mobile telephone during the course of the lesson which resulted in her attention being diverted from

the plaintiff and the difficulties that she was encountering with her horse."

Findings of Fact

[72] The court listened carefully to the all of the witnesses called to give evidence in this case and has weighed up their accounts, on occasions one against the other, and sought to arrive at a conclusion as to what occurred. In doing so, it has paid attention to the way in which the witnesses gave their evidence; how they responded to cross-examination; and has made a judgment as to what weight to give to what each has said. In doing so, it has applied its common sense and has kept in view what each witness may have to gain or lose in the context of the evidence he or she has given. The court makes its findings on the balance of probability, as the law requires. It finds as follows:

(i) The plaintiff was at the date of the accident a relatively inexperienced rider but she was not a pure beginner or a first time rider.

(ii) The plaintiff mounted Olly from ground level notwithstanding that it is likely that she knew that the policy of the school was that she should have used a mounting block. This, however, is unlikely to have affected events thereafter.

(iii) There was an incident which involved Olly, of his own volition, trying to leave the arena. This caused Sarah Turley to intervene and she led Olly back to the arena.

(v) The plaintiff was anxious about Olly's behaviour but the court is of the opinion that the plaintiff's evidence in this regard, and the evidence of Sandra Rafferty, involved a degree of exaggeration in relation to the extent of Olly's misbehaviour. In particular, the court doubts the description of Olly rearing up on his back legs while outside the arena.

(vi) The court is not satisfied that in fact the plaintiff did ask for another horse, as claimed in oral evidence by her and Sandra Rafferty, or that by way of response she was told that there were not any other horses available. On this point the court is influenced by the following factors:

(a) This alleged conversation notably is not found anywhere in Sandra Rafferty's written statement of evidence which had been specifically prepared for the plaintiff's solicitors. If the allegation was true, the court would have expected it not only to have been mentioned but for it to have been given a prominent position.

(b) The conversation is wholly denied by Sarah Turley, whose evidence was that had she been asked by the plaintiff to provide a change of

mount, she would have facilitated this, as there was always a surplus of horses. This seemed to the court to be a plausible response.

(c) If, in fact, Sarah Turley had refused the plaintiff's request for a new horse as alleged it is odd that this did not feature prominently in the plaintiff's letter of claim some months later (which makes no mention of it).

(d) Similarly, if the request had been made and refused, the court believes this would have had the effect, especially when later the accident occurred, of significantly creating bad feeling between the plaintiff and Sarah Turley. Yet the texts messages, which passed between them, after the accident, suggest a degree of cordiality between them which is out of place on the premise above.

(vii) It is likely that as the lesson continued Olly, if unsettled, will have settled, at least to a degree. This is borne out by the fact that it is not disputed that the plaintiff took part in the jumping aspect of the lesson which occurred in the latter stages of it. If the plaintiff had had doubts about the horse, she could have sat out this element in the lesson. Moreover, the court notes that Sandra Rafferty's evidence included the opinion that as the lesson went on Olly settled at least a little. The other witnesses who participated in the lesson do not describe any problem with Olly at this time.

(viii) There plainly was an accident which involved the plaintiff. By this time Olly had successfully jumped the first fence and this jump had passed uneventfully.

(ix) The accident occurred in the context of the second jump. The explanation for it is in dispute and the court must therefore reach a conclusion about what probably occurred. On this issue, the court has not been satisfied that the accident occurred in the way described by the plaintiff and her witness, Sandra Rafferty, and it prefers the evidence of Sarah Turley, Brian Denvir and Susan Fegan. In other words, the court accepts that the probabilities suggest that it is more likely than not that the cause of the accident was not the horse's behaviour but was an error on the part of the rider – a loss of balance or a moment's loss of attention or focus. In particular, the court finds it difficult to accept that the accident occurred after the horse had landed safely and that he suddenly took a massive leap to the left and bucked his back end (as alleged by the plaintiff) or had 'bucked like a bucking bronco' so that the plaintiff went into the air like a tennis ball (as Sandra Rafferty put it). These accounts, the court considers, are probably over-dramatised and exaggerated and so are less likely to be true when tested against the evidence of the other witnesses which essentially described the accident in the simpler terms of the rider becoming unseated. None of the other witnesses was of the view that Olly had bucked after he had landed and the court inclines to the view that

this is right. Of some significance, the court notes that after the accident – later on the same day – Olly was used for lessons again which is not a step which the court considers would have been taken had there been any concern that it was his behaviour which caused the accident.

(v) The court rejects the contention that Sarah Turley was using her mobile phone in the course of the lesson or that this diverted her attention from the lesson. This was denied by Sarah Turley and the allegation is not supported in the evidence of Brian Denvir or Susan Fegan. It seems unlikely that the instructor would behave in this way as while instructors are advised to carry a mobile phone in order to deal with emergencies, the experts and Marion Turley, were all agreed it should not be used otherwise during a lesson. In any event, the idea that Sarah Turley was actually using the phone in the course of the lesson, as opposed to having it in her hand, does not find favour with the court, given the evidence which Sarah Turley gave and her description of her experience as an instructor. This witness's description of the accident was clear and precise and does not suggest that her attention had been diverted in the way suggested.

Assessment

[73] The only cause of action pursued by the plaintiff in this case is that of common law negligence. In the course of argument, the court expressly asked the plaintiff's representatives to confirm that they did not wish to amend their case to include a cause of action based on the terms of the Animals (Northern Ireland) Order 1976. In response, it was confirmed to the court that no amendment of the pleadings was sought.

[74] There is no doubt that there is a duty to take reasonable care to prevent damage from animals but what constitutes reasonable care, as put in Charlesworth and Percy on Negligence (14th Edition), "depends essentially on the nature and habits of the kind of animal concerned, the circumstances of the case and the usual practice of mankind in dealing with that kind of animal" (see, para 15-97).

[75] In the present case, there is no evidence that prior to the date of the accident Olly was a horse which had demonstrated a propensity to behave in a manner which would create a danger to a novice rider. The court is satisfied that the defendant school had assessed Olly carefully and in this regard had reached the conclusion that Olly was suitable for novices, intermediate and advanced riders and that there was no need for special precautions or procedures. Moreover, by the date of the accident, the school was able to say in evidence that it had received no complaints about Olly despite the fact that he had been regularly involved in the provision of lessons over a number of years. Additionally, the court was told, without contradiction, that Olly was believed to have a stable temperament and that there had been no report of him playing up.

[76] In the above circumstances, the court has no hesitation in dismissing any case made by the plaintiff that the selection of Olly as the horse to be ridden by the plaintiff for the lesson on the day of the accident was negligent or that the school had failed to adequately assess Olly's demeanour or nature in the context of his suitability to be the plaintiff's mount at the subject lesson.

[77] In this case there has been extensive discovery of the defendant's records in respect of Olly and these, as well as the assessments provided orally to the court by Marion and Sarah Turley, form no basis to support a case of the nature of that found at paragraphs (i) and (ii) of the particulars of negligence claimed by the plaintiff. This is against the background that this riding school was accepted by both of the experts who gave evidence as having demonstrated an appropriate level of paperwork.

[78] If there is to be a finding of negligence in this case it would have to be based on particulars (iii) to (vi) of the particulars of negligence which are concerned with events which occurred at the lesson in question and, in particular, with the behaviour of Olly.

[79] On the facts the court has found there is no, or no adequate, foundation for the contentions set out at paragraphs (iii), (iv), (v) or (vi) of the particulars of negligence with the consequence that this aspect of the case cannot, in the court's judgment, succeed.

Conclusion

[80] As is well known, there is an element of risk involved in sport. In the context of horse riding, there is always the possibility that a rider may become unseated and suffer injury as a result. While riding schools and equestrian centres must approach the provision of their services professionally and with due care and attention, it is a reality that they cannot legislate for every eventuality and that, despite the taking of reasonable care, accidents can and do happen. The plaintiff has the sympathy of the court in that unluckily for her she sustained an unpleasant injury as a result of a fall which occurred in her case but not every injury which a rider receives is compensatable. As lawyers put it, outside the sphere of the Animals Order, there is no strict liability.

[81] In this case the court is not persuaded that the defendant was guilty of any negligence or that it has been proved to the civil standard of proof that this is so. In these circumstances the court's obligation is to dismiss the plaintiff's claim and this is the course it takes.

[82] While the court heard submissions in this case about the potential application of the defence, referred to by the Latin tag *volenti non fit injuria,* because of its findings of fact *supra*, it is unnecessary to reach a conclusion about this. The court will therefore leave any adjudication on this aspect to another day and another case.