THE HIGH COURT

[2023] IEHC 10

Record No. 2015 8610 P

BETWEEN

CLARE ALLEN

PLAINTIFF

AND

CLONSHIRE EQUESTRIAN CENTRE AND UNIVERSITY OF LIMERICK

DEFENDANTS

JUDGMENT of Mr Justice Cian Ferriter delivered this 11th day of January 2023

Introduction

1. In these proceedings, the plaintiff claims damages for personal injuries which she suffered on 28 November 2013 when thrown from a horse at Clonshire equestrian centre in Limerick. The centre is owned and operated by the first defendant ("Clonshire"). The incident happened during the course of a practical horsemanship class exercise supervised by instructors of the second defendant ("UL"). The plaintiff was participating in the horsemanship class as part of her second-year course in the four-year equine science degree which she was doing in UL. The horse from which she was thrown was called Mocha.

The plaintiff's injuries

2. The plaintiff was in severe pain following the accident. She suffered a two-part fracture to one of her lumbar vertebrae. There was a retropulsion into the spinal-cord which reduced the diameter of the spinal canal by 50% but luckily she did not suffer any neurological damage. She was taken by ambulance to Limerick University Hospital where she spent some 10 to 12 days. She was then transferred to the Mater Hospital in Dublin where she had a cast fitted on her back. She had to wear this cast for 3 months. She nonetheless sought to get on with her life and continued to attend college. Once the cast was off, she underwent intensive physio and was on medication for pain relief. While in general terms

she made a good recovery, at the time of the trial, some 9 years after the accident, she still experienced regular lower back pain. This was a persistent ache which was exacerbated by standing or sitting for a long time.

3. While the plaintiff had hoped to build a career in the horse sector, that did not come to pass as a result of the accident. Instead, after a year in Australia, she got a job in marketing and has worked in that area until very recently when she accepted a role as a fund manager.

The plaintiff's horse-riding experience

4. At the time of the accident, the plaintiff was an experienced horsewoman. She attended riding school for some 5 or 6 years when younger and participated in show competitions at a young age. She then progressed onto a separate riding school where she learnt more advanced skills. She attended at that school for some 5 years. She did part-time work in stables and helped out with horse riding lessons while in school. She has participated in a number of hunts with the Duhallow hunt. While she briefly co-owned a horse with a friend, she typically used whatever horses were available in the schools or stables she was attending and accepted that she had probably ridden some 25 to 30 horses over her life. She accepted that horses were unpredictable and that each horse had a different temperament. She fairly accepted that horse-riding was a risky pastime. She herself had experienced some 10 falls prior to the accident.

5. The plaintiff, perhaps somewhat modestly, described herself as a middling horsewoman. There is little doubt but that she had extensive experience of riding and handling horses and it appeared that she fared well with the practical horsemanship modules in her degree course. She accepted that she would have, for example, jumped ditches of various heights and hunted across rough country terrain. While at UL classes in Clonshire, the plaintiff had previously been assigned another horse (Macchiato) which she accepted was a very lively horse and which she had not had any trouble with.

6. It is common case that the plaintiff had sufficient experience for the exercise being done on the day of the accident.

The plaintiff's claims and defendants' defences

7. It is the plaintiff's case that the accident was caused by the negligence of Clonshire and/or UL in providing her with a horse with a known propensity for bucking riders, without warning her of this propensity in advance; causing the surface of the arena onto which she was thrown to be inappropriately hard and failing to provide her with a body protector for the lesson.

8. Clonshire's case is that Mocha was an entirely suitable horse. Mocha had been used on an extensive number of occasions with UL classes previously and, indeed, had been used for younger and less experienced riders. While there had been one unseating incident involving Mocha shortly (some 8 days) before the incident, which involved a 10 year old riding over higher jumps being unseated (but not as a result of bucking), Mocha had no known propensity to buck at all. Clonshire said the arena surface was state of the art and properly maintained and that it provided back protectors for use at its classes. If the Court were to take the view that Mocha did have a propensity to buck and this is what caused the accident, Clonshire says that liability should rest with UL on the basis that the plaintiff's case was that UL instructors had been aware of such a propensity but nonetheless continued to use Mocha in their classes.

9. UL's case is that it was not aware of any previous bucking incident in relation to Mocha, or of any propensity of Mocha to buck; if it had been so aware, it would not have used Mocha for its classes but rather would have raised the issue with Clonshire and sought a replacement horse from the Clonshire pool instead. UL contended that the accident was due to the plaintiff's rider error and not due to any issue with the horse. As a fallback position, in the event the Court were to hold that Mocha did have a known propensity to buck, it says that liability should rest with Clonshire and not UL. UL also said that the question of provision and maintenance of a fit for purpose surface was a matter for Clonshire. As regards body protectors, UL said that it had made body protectors available for its classes in Clonshire which the plaintiff chose not to wear.

UL – Clonshire contract

10. UL had a contract with Clonshire pursuant to which Clonshire agreed to provide 20 suitable horses for use in UL's practical horsemanship classes at the centre; as the contract put it, Clonshire agreed to provide "*access to a minimum of 20 fit, healthy, sound, well mannered and trained horses managed and maintained to the highest standards of health and welfare*." Under the terms of the contract, Clonshire agreed to

provide 10 approved body protectors to UL. In relation to the indoor arena, Clonshire agreed to provide "*safe and secure surface free of stones or soft areas and regularly maintained*". Clonshire also provided a form of indemnity to UL in respect of *inter alia* personal injuries occurring in connection with work executed by Clonshire under the contract.

11. In practical terms, Clonshire provided a "pool" of horses to UL pursuant to the contract. Yvonne O'Connor of Clonshire gave evidence that Alistair Sutherland and the other instructors from UL would come to Clonshire before the start of a semester to assess any new horses which had come in to Clonshire and which were proposed to be assigned to the UL pool. On the day of any UL classes, the relevant UL instructors would assign the horses made available by Clonshire that day from the pool, to the students doing the classes. This is what happened on the day of the plaintiff's accident when she was assigned Mocha by the UL instructor, Amy Fitzgerald.

The accident: evidence and conclusions

12. UL had two staff present in Clonshire on the day on the day of the accident, being Amy Fitzgerald and Alistair Sutherland. Amy Fitzgerald took the class, and supervised the exercises in the arena while Alistair Sutherland (the senior instructor) was occupied with accompanying an inspector over from England from the British Horse Society (BHS), Dr Joanne Winfield, as she did an inspection of the centre (Clonshire was a BHS approved training centre). Alistair Sutherland sadly passed away since the event the subject of these proceedings. However, there was evidence from those who dealt with him both in UL and Clonshire that he was a "stickler for detail".

13. The plaintiff gave evidence that, following a warm-up, she and fellow classmates (some 6 of them in all) began a routine which involved riding a horse at a canter over two cantering poles set apart in the middle of the arena (the arena was a large indoor one measuring 60 m x 24 m) and then turning alternatively left or right after negotiating the second pole and looping back around to negotiate the poles again before turning back in the other direction. It appears that the objective of the exercise was to learn how to get the horse to lead with its right front leg or left front leg (i.e. to "alternate reins") and to "open up the canter" i.e. increase stride length between the poles. After a number of rounds of this, the poles were raised to a low height of some 40 cm or so.

14. The plaintiff's evidence was that, while doing one of these loops, after she had taken Mocha over the second slightly raised pole, Mocha started to buck; she rated the severity

of the buck, on a scale of 1 to 5, as being between 3.5 and 4. She sought to take the steps she had been trained to take when a horse started to buck namely to pull back, to "sit heavy" in the saddle and pull up the reins. However, she said that Mocha refused to co-operate and instead, sped up, veered off towards the left (when he should have been going right) and threw her violently onto the surface. The plaintiff said that the surface area onto which she was thrown was hard and raised about two feet above its normal level.

15. Francis Downes was one of the students in the horsemanship class with the plaintiff on the day of her accident. He gave evidence that he was next in line behind the plaintiff when her accident occurred. He was just before the first pole looking in her direction when the accident occurred. Mr. Downes said that he saw Mocha start to buck as soon as he went over the second low jump. He said Mocha bucked and put his head down. He witnessed the plaintiff sit back and attempt to pull up the horse's head but said that the horse then turned left at which point he believed the plaintiff lost control. He rejected the suggestion that the plaintiff had "frozen"; he was clear that he saw her sit right back and try to pull Mocha's head up i.e. to follow the appropriate protocol in that situation.

16. Mr. Downes said that he pulled up his horse as soon as he saw the plaintiff's horse bucking. He refuted the suggestion that Mocha had not fully bucked but rather had lifted its legs in a "bit of a hoist". From his perspective, it looked like a multiple or continuous buck. He did not see the plaintiff with a foot out of the stirrup; from his perspective, from behind the plaintiff, he could see that she was gripping her legs into the horse to stay on.

17. Amy Fitzgerald was the UL instructor in the arena conducting the exercise at the time of the plaintiff's accident. She had extensive experience in the equine sector and was qualified to Masters level and was also a BHS qualified instructor. She started working as an instructor with UL in the winter semester of 2013. She came into that position in circumstances where a previous UL instructor, Briony Percival, was due to retire (and had in fact retired by the date of the accident).

18. Ms. Fitzgerald said she had a very clear and detailed recollection of the events of the day of the incident. She said that she was very aware that Joanne Winfield was going to be present and for that reason she chose an exercise she had done with the students before. As Ms. Fitzgerald put it, Dr. Winfield was "the top person in what I do". There was a class of 12. As Mr Sutherland was away with Dr. Winfield, she had 6 riders out in the arena and the other 6 of the class watching from the gallery. She described what she and the UL team routinely did with such groups in terms of briefing the students and then the routine

that was gone through from tacking up the horses to warming them up to commencing the exercise the subject of class. The focus of the lesson that day was to work on rhythm and relaxation with the horses through walking, trotting and cantering states. The lesson began with canter poles flat on the ground which were gradually raised but only to a very low height of some 30 or 40 cm. This was a standard exercise recognised by Horse Sport Ireland as a level I exercise.

19. The exercise involved alternating reins and seeking to have four strides taken by the horse between the two canter poles. She said that she had noticed that in the plaintiff's previous attempt with the exercise, the horse had taken five strides between the poles where the objective was to take four. Accordingly, she said to the plaintiff that on her next go she needed to up "open up the canter" to achieve four strides. She said that the plaintiff would have understood what she meant by this. She said that she thought a lot of the plaintiff as a rider and assessed her as "very good". Ms. Fitzgerald gave evidence that from her experience she was able to tell straight away when she walked into a ring how useful a rider was.

20. Ms. Fitzgerald gave evidence that she was little more than halfway up the arena with the gallery to her back at the time of the accident. Consequently, she had a very good view of the horses and riders during the exercise. She gave evidence that the plaintiff went over the first small jump fine, that Mocha then took two strides and because she reckoned that the plaintiff didn't think she would make the distance, the plaintiff gave the horse a kick and he accelerated. He took an extra big stride over the second jump as a result. She did not perceive the horse to buck as violently as the plaintiff at all. She put it in terms of the horse "expressing himself" twice, with his rear end raised a little bit and his head down a little bit. Mocha kept going towards the end of the arena. Her perception was that the plaintiff panicked and went stiff and tense. Ms. Fitzgerald said that the plaintiff did not do anything such as pulling up the horse's head with the reins.

21. Ms. Fitzgerald gave evidence that in her experience it sometimes happened that a rider thinks they are doing something when they are not. As she put it "in our heads we are all Eddie Macken but in reality we are not". Because the plaintiff did not take any step to restrain Mocha and the horse was moving apace towards the end wall of the arena, the horse went left and the plaintiff was unseated at that point. On a scale of 1 to 5, she believed the buck was "at best a 2". She said that the plaintiff did not come off in the buck; that happened after Mocha turned.

22. Ms. Fitzgerald said that Macchiato, whom the plaintiff had also ridden earlier that semester on the course, was smaller to Mocha in height but more sensitive: "a little bit more 'goey'" as she put it. Ms. Fitzgerald said that she could have given Mocha to anybody.

23. An accident report form was completed by Ms. Fitzgerald for UL on the day of the accident. On the form, in the box marked "Particulars of accident", she stated as follows:

> *"While riding in Clonshire Equestrian Centre as part of Equine Science programme, Clare's horse Mocha, spontaneously took off while riding a simple jumping exercise (canter pole to canter pole). The horse took off and bucked to the bottom of the arena which unbalanced the rider and the sudden turn at the bottom of the arena unseated her causing the fall."*

24. Under cross-examination, Ms. Fitzgerald stood over the contents of the accident report form although she accepted with the benefit of hindsight that it could have been worded more clearly. She said she used the word "spontaneously" in the report because it came completely out of the blue. The phrase "took off" meant the horse got faster. The reference to the horse having "bucked" did not mean a rodeo buck. The horse had to turn because the plaintiff had lost control and that is what unseated her; she believed that her accident report is consistent with this.

25. Ms. Fitzgerald maintained the position that her account was completed in haste on the day of the accident and did not fully record the details of the accident and, in particular, her view that the plaintiff was to blame for the accident. She insisted that her account in evidence at the trial was not inconsistent with the statement. The major point of difference between her perception of events and that of the plaintiff and Mr. Downes was that she did not believe that the bucking was as vigorous or severe as the plaintiff and Mr. Downes sought to assert. She also maintained that the plaintiff had not responded correctly when the horse sped up following the plaintiff kicking the horse between the two poles and that she effectively froze and lost control.

26. The plaintiff sought to contend that Ms. Fitzgerald's account in her accident report form was consistent with an account provided in a statement given to her by Mr. Downes and her counsel cross-examined Ms. Fitzgerald on that basis. In my view, the point is well made by counsel for UL that Mr. Downes' statement to UL was never adopted in evidence by him and did not become evidence of the truth of its contents by virtue of it being put

to Ms. Fitzgerald (under objection it has to be said) in cross examination. In any event, I had the benefit of hearing Mr. Downes' evidence in the witness box as to the accident.

27. I accept as credible Ms. Fitzgerald's explanation for why her account at trial was more detailed than that in her accident report form. It is not surprising that she gave the matter more reflection and thought once she had an opportunity to do so. I accept as credible her evidence that the details of the accident stayed with her as it was a very upsetting experience given that she was in charge of the class.

28. In my view, the accident report form filled out by Amy Fitzgerald should have been clearer as to her view, which she said she communicated to Clonshire's manager Dan Foley, that the actual cause of the accident was rider error. In my view, the explanation for the content of the form lies in loose use of language at the time and not in the contention that Ms. Fitzgerald had changed her story to generate a defence by the time the hearing came on.

Conclusion on this issue

29. My conclusions on the accident and its cause are as follows. I accept that Mocha bucked after jumping the low jump at the second pole of the exercise. Notwithstanding the degree of conflict of evidence as to the severity of the buck, in my view the buck was sufficiently severe to cause the plaintiff to lose control of Mocha as they were coming towards the end wall with the result that Mocha was not directed to go right, and instead went left, turning sharply to avoid the wall and thereby unseating the plaintiff. Leaving aside any question of contributory negligence for the moment, in my view a material factor in the plaintiff's fall was the fact that Mocha bucked when he did. That being so, it is necessary to consider the various heads of claim advanced by the plaintiff to assess whether the defendants, or either of them, can be said to be responsible in whole or in part for the accident and/or the resulting injuries to the plaintiff.

Body Protectors

30. The plaintiff contends that the defendants were negligent in not ensuring that she wore a body protector during the exercise on the day of her accident. In fairness, this issue was not pushed in closing submissions in light of the evidence on this issue.

31. In relation to body protectors, Soraya Morscher, a UL instructor, gave evidence that UL's equine science degree students were instructed during their initial orientation session in Clonshire, at the time the plaintiff was in UL, that body protectors were available for them if they wanted to use them. Body protectors were made available both by UL and Clonshire in the equestrian centre for UL classes. They were not compulsory at that time and were the subject of recommended use if a horse was being used for cross country riding or for jumping. The type of activity being done on the day of the accident did not come within these categories.

32. Mr. Dan Foley confirmed that 10 back protectors were provided by Clonshire at the centre for use in UL classes in accordance with the terms of their contract with UL.

33. The experts called by the defendants, Mrs. Suzanne Macken and Mr. John Watson, both confirmed that body protectors were not required for the exercise being done by UL on the day of the accident.

34. The plaintiff fairly accepted under cross examination that in her experience a body protector was only required for cross country or jumping events and that the routine that she was engaged in on the day of the accident was a straightforward one which did not fall into these categories. It appears that she had her own body protector which she used herself for cross-country riding.

35. Mr. Downes said that he was not aware of body protectors being available at the time but accepted that at that time he had only worn them for cross country use or for jumps. He did say that things had changed in relation to the use of body protectors in the last number of years and they are now more frequently used than they used to be. He believed that UL had changed its practice as regards the use of body protectors subsequent to the plaintiff's accident.

36. I do not believe the plaintiff has made out a case in negligence arising from the fact that she was not directed to wear a body protector on the day of the accident.

37. I accept the evidence of Ms. Morscher that UL instructors informed students, at their orientation in Clonshire, that body protectors were available if they wished to use them. Body protectors were not mandatory for the type of session which the plaintiff was doing

on the date of the accident. I am satisfied that body protectors were available on site and could have been provided from either UL or Clonshire supplies on site if the plaintiff wished to avail of one. The plaintiff herself fairly accepted under cross examination that she only used body protectors for cross-country riding or for jumping and did not bring her own body protector or seek one on the day.

38. In all those circumstances, in my view neither of the defendants was negligent arising from the fact that the plaintiff did not wear a body protector on the day of her accident.

Surface

39. Two issues arose during the course of the hearing in relation to the surface of the arena at the time of the plaintiff's fall. It was maintained on behalf of the plaintiff, firstly, that the surface of the arena area onto which the plaintiff fell was inappropriately hard and ridged which the plaintiff attributed to a failure by Clonshire to properly maintain the surface. Secondly, the plaintiff led evidence through her expert witnesses that they had observed stones on the surface of the arena on the dates of their inspections, thereby supporting the case that the surface was inadequately maintained.

40. The surface material was composed from sand and chopped up rubber with peat layers as a base. It was described as being state of the art material and optimal for the use to which it was put. In summary, Clonshire's witnesses said that the surface was levelled regularly and that any ridge or mound at the point at which the plaintiff fell was simply resulting in the normal course from surface material being disturbed by horses turning at that point near the end of the arena.

41. Michael Morgan, a consulting engineer, gave evidence for the plaintiff. He attended a joint inspection of the equestrian centre with experts on behalf of the defendants. This inspection took place in December 2020, some 7 years after the accident. He took a series of photographs which were in evidence at the hearing. He observed (as captured in his photographs) that the surface of the arena appeared to be at a higher level in the corner of the arena in which the accident happened although he accepted under cross-examination that he did not check if the surface material in that area was compacted. He also pointed out that the levelling equipment which he was shown by the centre's owners at that inspection was missing some 5 of its 10 tines. He was told that the surface was levelled once a day, every morning and was then harrowed once a week. He was told it was occasionally watered to dampen the dust.

42. Mr. Morgan offered the view that the plaintiff's account of there being a hard ridge of surface material in the area which she fell could be explained by the failure to properly level and harrow that area and, potentially, by excess water in the sand component of the surface. He fairly accepted that he was not an expert in the surfaces of equestrian centres (his visit to Clonshire was the first time he had examined an equestrian centre arena). He did not carry out any tests on the extent to which the surface material could consolidate or compact.

43. Dr. Joanne Winfield of BHS was called as a witness as to fact. She is a person of very high standing in the equestrian community. As Clonshire provides BHS-approved training, she has conducted approval inspections of the quality of the training facilities at Clonshire on behalf of BHS, including the indoor arena. The last time that she conducted such an assessment before the accident was on 25 April 2013, some seven months earlier. She had no issue with the quality of the facilities, including the quality of the surface of the arena on that occasion. She explained that any BHS approval inspection was the subject of a report sent by the inspector to BHS and then BHS would raise any concerns which arose directly with the centre. She was not aware of any concerns being raised as to the quality of the surface. She was present in Clonshire on the day of the accident although she did not witness the full circumstances of the accident. She expressed the view that the surface was suitable for the purposes for which it was used at Clonshire, as was the maintenance programme in place for maintenance of the surface.

44. Dan Foley, manager of Clonshire, gave evidence as to how the surface was maintained. He said that he levelled the arena every morning and harrowed it once a week. This involved three or four runs over the surface in different directions to ensure the entire of the arena was levelled out. I accept Mr. Foley's evidence that because Clonshire knew that Dr. Winfield was going to be in attendance that day, an extra effort was made to ensure that the arena was turned out well that day. Mr Foley was categoric in his evidence that there was no hard ridge present on the surface on the day of the accident as alleged.

45. In my view, the nature of the surface material used in Clonshire was state-of-the-art and appropriate for the UL class use, as borne out by its regular approval by BHS. I am also satisfied that the entire of the surface arena was properly maintained and that an appropriate system of maintenance was both in place and applied.

46. Turning to the question of stones, the plaintiff's equestrian expert, Mr. Edward Harty, said that there were quite a number of fairly big stones on the arena's surface on the day he inspected it (a number of years after the accident). He gathered these stones (some 16 of them) which were in evidence before the Court. The plaintiff's engineering expert Mr Morgan also identified a handful of small stones in the surface material on the day of his inspection.

47. As regards stones, Clonshire's livery yard and riding school manager, Yvonne O'Connor, said that a total of 16 stones on a large arena was not a big number. There were stones in the passageway for horses on the way into the arena and stones often got stuck in the horses' feet. She refuted suggestions that the arena's surface was dangerous as a result of such stones. If stones were spotted, they were picked up and removed. Mr. Foley gave evidence that stones were regularly removed from the surface prior to a lesson. He said that stones could be brought in on the wheels of the tractor or on the shoes of horses. Clonshire's expert, Mrs. Macken, accepted that the stones in question were bigger than pebbles but believed they would likely have come in on tractor wheels. UL's expert, Mr. Watson gave evidence that in his experience stones would regularly be carried into arenas and it is therefore important to regularly check the arena to remove them.

48. In my view, Clonshire's witnesses and the expert witnesses for the defendants convincingly explained that it is commonplace for stones to be brought into arena for example on the hooves of horses or on tractor wheels. The appropriate practice was for staff members or instructors to pick up and remove any such stones as they came across them. The Clonshire witnesses gave evidence, which I accept, that this was their practice. There was no evidence that there were any stones on the surface area onto which the plaintiff fell on the date of her accident. Accordingly, in my view, the presence of a very small number of stones on a surface arena of this size (some 1500m^2) at the date of the expert inspections does not demonstrate any negligence on the part of Clonshire in the provision or maintenance of an appropriate surface for the arena.

49. It is also important to note that the plaintiff's case was not that an inadequate surface had caused her accident. Rather, she gave evidence that the surface of the arena at the point at which she fell was ridged and hard. I accept on the balance of probabilities that there was likely to have been some ridging in the area in which she fell. This would have occurred naturally from surface material being displaced by horses regularly turning at that point during the course of the exercises. While the plaintiff's engineer posited the view that the material could become hard when wet because of its sand component, he had not conducted any tests on the material under wet conditions. I have accepted Clonshire's evidence that the surface material was state-of-the-art and was levelled on a daily basis and harrowed on a weekly basis. There was no contemporaneous video or

photographic record of the state of the surface. No complaint about the state of the surface appears to have been made at the time. Samples of the surface material were available in Court and demonstrated that the rubber component made the surface malleable. The arena was inspected and certified as fit for purpose on an annual basis by the BHS.

50. Quite apart from the lack of any convincing evidence that the surface was inappropriately hard or that there were failures in its maintenance on the date of the accident, there was no evidence before the Court that the plaintiff's injuries were in fact caused by the condition of the surface or that she would have suffered a lower level of injury if the surface had been other than it was.

51. Accordingly, I do not believe the plaintiff has made out a case in negligence arising from the condition of the surface in the area onto which she was thrown on the day of the accident.

Did Mocha have a propensity to buck?

52. The issue to which most attention was devoted in evidence and submissions was the issue of whether or not Mocha had a propensity to buck. It is to that issue that I now turn. Before addressing the question of whether Mocha had a tendency to buck, it is necessary to consider the evidence as to what constituted a propensity to buck in a horse. I will first address the expert evidence on that issue and the conclusions I take from that evidence, before addressing the factual evidence as to Mocha.

The expert evidence

53. Edward Harty was called to give expert evidence on behalf of the plaintiff. Mr. Harty had very extensive experience in the equestrian sector, having been a professional rider and having worked in the sector all his life. He was responsible for the introduction of safety measures in the sector in Ireland such as the crash helmet for flat riders.

54. In answer to some follow up cross examination questions, after questions from the Court, Mr. Harty initially said that after a first buck, you would warn subsequent riders that the horse had a known buck and emphasise the importance of keeping an eye on him in light of that. He said that if that was repeated over the following week or 10 days, he would pull the horse from the school. In response to a further question as to whether he would still advocate pulling the horse where there was no evidence of bucking in a 12 month period, he said that such a horse was not suitable for a riding school after a single bucking incident; it may have been suitable in other contexts but not in a riding school context. This was referred to thereafter during the hearing as the "one buck and you're out" view.

55. Mr. Harty expressed the view that if the Court accepted the (contested) evidence that Mocha had a known propensity to buck, the horse was not suitable for use in a riding school and should have been pulled. His expert view was that the plaintiff should not have been put on the horse. It was not a "well mannered and well trained" horse in accordance with the requirements of the Clonshire - UL contract. He pointed out that the UL course involved a general education for people who wanted to go into the horse industry and it was not a professional riding course as such.

56. Uniquely amongst the experts who gave evidence at the hearing, Mr. Harty appeared to contend that horses were not unpredictable animals at least if properly trained. Mr Harty said that horses were creatures of habit and if they buck once they are likely to do it again.

57. In answer to a question from the Court, Mr. Harty accepted that if Mocha had not demonstrated any tendency to buck prior to the plaintiff's accident, no fault could be laid at the door of the defendants.

58. Suzanne Macken was called as Clonshire's expert witness. Her very extensive expertise in the equestrian world was not in dispute. In her experience, if a horse was a known bucker it would be a horse that did not want to ride but would instead put its head right down and try to unseat its rider. Mrs. Macken then elaborated on her view on bucking as follows:

"A horse can buck as soon as you ride him out onto a field for pleasure and often after a jump. If you watch any show jumping competitions the horse will put its head down for pleasure and give a buck. It is quite normal... Yes, if you call a rodeo, you are

looking for rodeo bucking, then a horse will stop dead on all four legs, twist and turn, with the intent of getting someone off. That is different. Unfortunately, in English we only have one word which is "buck", whereas in other languages, like French, we have three words which differentiate between different types of bucks."

59. Mrs. Macken said that would not expect a 13-month gap between bucking incidents; rather a known bucker would be expected to buck every time it was brought out.

60. Mrs. Macken disagreed with Mr. Harty's view, even in a riding school context, of "one buck and you are out." She offered the view that if that a buck was reported, those responsible for the horse should seek to identify why the horse might have bucked; it was normally the fault of the rider in her experience. There might be a variety of reasons why a horse would buck such as the weather, the fact that the horse had just been clipped etc.

61. Mrs. Macken explained that when a horse sought to buck, it was appropriate to seek to pull its head up using the reins. Whether it was appropriate for the rider to sit back and press her weight into the saddle or rather to act more lightly would depend on the circumstances. Based on what she had been told about Mocha, she believed it was a horse entirely suitable for use in riding school and in the UL course.

62. John Watson gave expert evidence on behalf of UL. He is also a very experienced equestrian expert whose expertise was not in dispute.

63. Mr. Watson explained that bucking can encompass a spectrum of behaviour using the analogy of a cough ranging from a simple clearing of the throat to coughing up blood as a result of a serious lung problem. He said that care needed to be exercised when speaking of the propensity of a horse to buck. In his view, a significant number of repetitions of the bucking behaviour would be required before using such a label. Mr. Watson made a distinction between a natural buck (due to exuberance) and a situation where the buck was malicious in the sense of the horse deliberately trying to unseat its rider.

64. Mr. Watson fairly accepted that it would be appropriate to advise a rider of unusual aspects of a horse's known behaviour or temperament and accepted that this would include telling a rider if a horse was known to be inclined to buck. He also offered the

view that a horse with such known characteristics should not be used in a riding school/university class context.

65. Mr. Watson did not agree with Mr. Harty's view that in a riding school context it was a case of "one buck and you are out." Mr. Watson's view was that the appropriate response in the event of a horse having a bucking episode was to assess the circumstances in which the bucking was said to have taken place, to investigate its likely cause, and then for those responsible for the horse to make a judgement as to whether the horse was fit to continue for use in a riding school or university course context. Mr. Watson explained that assessment of a horse subsequent to a bucking incident would involve the assessor riding the horse with a view to getting to the bottom of what had caused the behaviour and what the appropriate remedy might be.

66. As with Mr. Harty, the defendants' expert witnesses sought to give an opinion, in their oral evidence, as to the likely cause of the accident. However, all of the experts ultimately quite properly accepted that their views as the likely cause of the accident were based on contested factual evidence and that it was ultimately a matter for the Court to resolve such conflicting evidence.

67. The expert witnesses called by the defendants were *ad idem* that if a horse proved troublesome, it would be appropriate to keep that horse away from riding school and novice use until satisfied that the horse was fit for such use. So for example, Mr. Watson did fairly accept that if the Court were to accept Mr. Downes' claims as to what had been said to him about Mocha's propensity to buck, and Mr. Downes' account of his own experience of bucking with the horse, that it would not have been appropriate to use Mocha in the UL course.

68. In my view, the following matters were established by the preponderance of the expert evidence which I heard:

(i) horses, even well-trained ones, are inherently unpredictable animals

(ii) if a horse has a bucking episode beyond the mere trivial or unrelated to expression of good humour, it is appropriate to investigate the potential cause of the bucking episode with a view to ironing out that issue

(iii) until any such issue is ironed out, it would not be appropriate to risk using such a horse with novice riders

(iv) in the event that a horse has a natural tendency to buck, more experienced riders should be warned of that before being given the horse

(v) in the event that a horse has a more pronounced tendency to buck, including any malicious tendency to do so, he should not be used in a riding school or university equine course context.

The factual evidence

69. The plaintiff's case is that Mocha was known to have a tendency to buck such that either he should not have been used on her UL course or, at a minimum, she should have been warned of that tendency when assigned him and before riding him. In this context, the plaintiff pointed to the fact that "Falls due to horses bucking" is listed as a "significant risk and hazard" in UL's Risk Assessment Sheet for its Equine Science course in relation to "polework and jumping". "Provision of suitable and safe horses" is listed as an existing control for this risk and "Student awareness of horse behaviour and instinct" is listed as a further control required "to reduce the risk level to as low a level as possible". (This was a document which emerged at the end of trial, and which UL had failed to discover).

70. Resolution of the issue of whether or not Mocha had a known propensity to buck comes down to an assessment of the evidence given on the plaintiff's behalf by Francis Downes, on the one hand, and the evidence given by four witnesses with extensive experience of Mocha (Dan Foley and Yvonne Connor of Clonshire and Soraya Morscher and Amy Fitzgerald of UL), on the other hand.

71. Yvonne O'Connor gave evidence for Clonshire. She managed the livery yard and Clonshire's own riding school for many years. She was familiar with all the horses in Clonshire. She dealt with inspections of the equestrian centre by BHS and a representative organisation AIRE. Ms. O'Connor said that she would not have used Mocha for 10-year-olds if he had any known propensity to buck and that she had never observed him bucking or received any complaints in relation to same. If there was such an issue, she would expect to have received a communication from UL; she did not. Mocha was used in both Clonshire's own riding school and by UL for students at all levels novice, intermediate and advanced.

72. Yvonne O'Connor gave evidence that the accident involving Mocha on 20 November 2013 related to a 10-year-old who got ahead of his horse while jumping a fence and had been unseated as a result. The accident did not result from Mocha bucking. This evidence was supported by details on the accident report form for that incident which she had prepared and which was before the Court

73. Ms. O'Connor said that if a buck had been brought to her attention, she would have sought to address it by working on the horse with the centre's staff.

74. Ms. O'Connor accepted that if a horse was known to have a significant buck, it would be appropriate to tell both her staff about that and any student who might be given that horse.

75. Dan Foley gave evidence that he had used Mocha himself and he regarded him as having a good temperament suitable for all levels of riders. No staff or customers had ever raised an issue with him in relation to Mocha. Mr. Foley accepted that if a horse had a known history of bucking that such a horse should not have been put into the pool of horses for use by UL.

76. Francis Downes gave evidence on behalf of the plaintiff. He was also a student on the equine science degree course in UL. He said that he rode Mocha on three occasions in his first semester in first year, in the period October to November 2012. He said that he was told by a UL instructor, Soraya Morscher, when he was first assigned Mocha, that Mocha had a known buck in him and to "watch him going by gateways as he is inclined to nap". Napping is a reference to a horse refusing to follow instruction but rather going its own way. When Mr. Downes then rode Mocha, following this warning, he said that the horse began plunging and bucking and that he struggled to get Mocha's head up and he was nearly unseated. He said that he raised the matter with Ms. Morscher after this experience and said to her "*that the next time I'm told a horse has a "little buck" tell me what its really like because that wasn't little*" and that when he said that he managed to stay on him her answer was "*that's good, someone is able to sit on him* [i.e. Mocha]".

77. Mr. Downes accepted that he had not made any complaint to Clonshire or UL about Mocha given that he had not in fact been thrown off the horse.

78. On his second time riding Mocha, Mr. Downes said he had a slight incident with bucking with Mocha. This incident was seen by his lecturer Briony Percival. He said that he was more prepared for him on the second occasion and that on the third and final time that he rode Mocha, he thinks he got on better with the horse as he was prepared for him.

79. Mr. Downes said that he enquired about Mocha the following semester (i.e. Spring 2013) with Briony Percival. Mr Downes said that he was told by Briony Percival that Mocha was not being used anymore as he had an injury which is why he was probably bucking so much. He said Ms. Percival said that Mocha had seen the vet and that there was an issue with him that he had to get his legs checked which was probably why he bucked because it was a pain response. He did not recall Mocha being used again subsequent to the accident. Under cross-examination he said he was "pretty sure" that Briony Percival had told him in the spring semester 2013 that Mocha had had a leg injury which might have explained his tendency to buck. UL objected to the plaintiff seeking to rely on the evidence of this alleged conversation on the basis that it was hearsay, although Clonshire did cross-examine in relation to this alleged conversation. Ms. O'Connor gave evidence that the only entry in their books for Mocha for 2012/13 was that he had received a subcutaneous worming injection. No injury was recorded.

80. Amy Fitzgerald gave evidence that Mocha was a really sweet horse – a "little dote" as she put it. She used him regularly because of this. She used him some 15 times in the semester in which the plaintiff's accident occurred. She used Mocha with a whole range and standard of students including novices and beginner students. She never had any issue with Mocha or his behaviour and never received any complaint from anybody in relation to him.

81. Amy Fitzgerald confirmed that there was regular communication between Clonshire and UL and as between the UL instructors in relation to the horses. If anything untoward occurred, she would talk at first instance with her UL colleagues and thereafter any issue that needed to be raised with Clonshire would be raised with Clonshire. She gave an example of an incident which happened in 2014 where a horse was behaving unacceptably - as she put it, "got fast with the girls"- and this was communicated to Clonshire and the horse was not used by UL again.

82. Soraya Morscher gave evidence on behalf of UL. Ms. Morscher had a clear memory of Mocha; he was a black gelding, with 2 white socks on his back legs, and a blaze on his forehead. He was 15 hands 3 which made him an ideal size for all levels of rider. She recalled him as being a "good all-rounder".

83. Ms. Morscher described the approach she took to the suitability of the horses used for the classes she taught for UL in the equestrian centre. She did not recollect any conversation with Mr. Downes as alleged. She was very much of the view that no such conversation took place as she said there was "no way" that she would have permitted her students to use Mocha if she had been aware of any propensity to buck. She would not have given a warning to a student about a propensity to buck for the simple reason that, if she was on notice of any propensity to buck, she would not have let a student on the horse in the first place. She gave evidence that she spoke regularly with the students in her UL practical classes in Clonshire and believes she would have undoubtedly have been made aware if any issue had been raised by students about his behaviour. If such an issue had been raised, she would have stood the horse down and raised the matter immediately with Clonshire.

84. Ms. Morscher was adamant in her evidence that if she had any reservations about the suitability of a horse for UL classes she would not have used the horse. If, as Mr. Downes alleged, he had almost been unseated as result of Mocha bucking, she would not have permitted the horse to be used the following week when Mr. Downes claimed he also rode Mocha.

85. Ms. Morscher said that she maintained her own notes on an Excel spreadsheet of the classes she gave in Clonshire. From these records she was able to tell that Mocha was used 18 times in the October/November 2012 semester, over the course of 12 weeks. She said from the information in these records that Mr. Downes use Mocha twice not three times as he had recalled and that, importantly, it was at the end of the semester and not in the period after the first 3 weeks as he had recalled. While she was not teaching second years in November 2013 when the plaintiff's accident happened, she said that her notes showed that she had also used Mocha regularly with first years during that semester. It does not appear that these notes were discovered; in any event, she was not challenged to produce these notes during her evidence.

Conclusion on this issue

86. I found Ms. Morscher to be a clear, candid and reliable witness. I accept Ms. Morscher's evidence that she kept a good record of when Mocha was used and that Mocha was not used in UL first year first semester class for the number of occasions that Mr. Downes thought he recalled using him and importantly may not have been the horse in respect of which he described his near-bucking experience at all given that Ms. Morscher's records

showed that Mocha was not being used on the dates when Mr. Downes described his experiences as having occurred.

87. In contrast, I did not find Mr Downes' evidence to be as reliable. Mr. Downes understandably could not point to contemporary records to support his recollections. He did caveat his answers on a number of occasions with words to the effect of "as far as I can recall". There were a number of infirmities with Mr Downes' recollection. Mr. Downes said he remembered Alistair Sutherland being in the arena on the day of the accident. The evidence from the other witnesses in the arena, being Amy Fitzgerald and the plaintiff, was that Mr. Sutherland was not in the arena that day. Mr. Downes said he was "pretty sure" that Briony Percival told him that Mocha had been injured and was not being used and that such injury was responsible for the bucking when the Clonshire witnesses said there had been no such injury and, significantly, where the evidence was that Mocha continued to be regularly used. Mr. Downes appeared critical of many aspects of his experience with the UL classes in Clonshire in a way that did not sit easily with all of the other evidence as to the quality of those classes. He identified problems with three horses other than Mocha. He believed the equitation module of the course was limited. He said the students were not trained to stop a bucking horse which appeared to be inconsistent with the plaintiff's evidence of how she used her training to handle Mocha's bucking. In the circumstances, I believe his memory of events at such a distance in time may have become conflated with rumours and hearsay that may have been circulating about Mocha subsequent to the accident or that he was otherwise mistaken in relation to his alleged conversation with Soraya Morscher.

88. In all the circumstances, I prefer the evidence of the Clonshire and UL witnesses over that of Mr. Downes on the issue of whether Mocha had a known propensity to buck. I take the view that the evidence of the defence witnesses was in the round more persuasive. In particular, I cannot see that there was anything to be gained by UL continuing to use a horse with a known propensity to buck, for potentially inexperienced riders in their classes, in circumstances where UL could readily find a replacement horse from amongst the pool of horses supplied by Clonshire. Furthermore, I do not see that Clonshire had anything to gain by providing UL with a horse which it knew to be troublesome. That would have been a particular act of folly on the day when a leading BHS inspector was known to be due to visit the centre to conduct an inspection.

89. In the circumstances, in my view, Mocha did not have a known propensity to buck and there was no basis for Clonshire to believe he was not a suitable horse for supply to UL as part of the pool of horses made available to UL on the date of the accident, and there was no basis for UL not to assign Mocha to the plaintiff on the day of the accident.

90. It follows, in my view, that the plaintiff's very unfortunate accident was just that – an accident – and cannot be attributed in law to any wrongdoing on the part of the defendants.

Other issues

91. I wish to turn now to address a number of issues advanced on behalf of the plaintiff in cross examination of the defendants' witnesses at the hearing and in closing submissions. As shall become clear, these issues largely arose owing to a dearth of documentation (particularly on the part of Clonshire) on key issues and, more troublingly, from the failure to discover relevant documentation.

Sale of Mocha supports view he was a bucker?

92. Mocha was sold, on its own, on 23 February 2014 for €3,848 through Goresbridge stable sales. Particular store was laid by the plaintiffs on the short period of time between the accident (at the end of November 2013) and the sale of Mocha in February 2014; the failure by Clonshire to discover material in relation to the sale of Mocha and in particular the sales catalogue entry for Mocha's sale; the fact that Micha was sold under the name "Prince"; and the description given to Mocha in the sales catalogue (which was belatedly handed over just prior to the trial), which was said to be at odds with the description of Mocha given in evidence as being highly versatile and suitable for all types of riders from novice upwards. These matters were said to lead to an inevitable inference that Mocha was offloaded by Clonshire shortly after the accident precisely because he was a known bucker and that the failure to discover the sales catalogue entry and the sale of Mocha under the name Prince were steps designed to frustrate the plaintiff in proving her case.

93. The relevant entry in the sales catalogue provided as follows:

"Property of Clonshire Eq. Centre. *Stable 63*

PRINCE reg. black geld, 6 yrs. About 15.3h. Broken and riding. Hunter trialled. Quiet to shoe, box, clip and ride. Hunted with the Co. Limerick Hunt for two seasons."

94. The plaintiff's expert, Mr. Harty, expressed the view that it was surprising that no reference was made in the sales catalogue entry to the fact that Mocha had been used at novice and intermediate levels in a riding school for 2 years. He said that such information would have added to the value of Mocha. Its absence suggested that the Clonshire, as the vendor, was aware of problems with Mocha. This contrasted with the use of the term "guaranteed an easy ride" in respect of other horses whose details were set out in the same sales catalogue. Mr Harty gave the view that an ideal riding school pony could get up to €10,000 at auction.

95. Dan Foley was the manager of Clonshire and has been there for some 30 years. He has been responsible for running all aspects of the business over that period. Mr. Foley described Clonshire's horses as "live, movable assets". He rejected the suggestion put to him in cross-examination that he sold Mocha because Mocha had been involved in two incidents involving unseating riders within the space of a couple of weeks. He explained in his evidence the Clonshire business model whereby horses are sourced, improved while at Clonshire and then sold on at a profit. On sale they typically seek to realise one and a half to two times the price paid.

96. Mr. Foley gave evidence that he acquired Mocha on 13 August 2012 along with a second horse, Trapattoni, for a combined price of €6,000 and that he allocated some €4,000 of that price to Trapattoni as it was a "blood horse" with more potential for competition, leaving €2,000 as the price attributable to Mocha. His evidence was that Mocha was accordingly sold for almost double his purchase price, at some €1,850 profit.

97. Mr. Foley was adamant that the description for Mocha used in the sales catalogue was both appropriate and in accordance with the descriptions which he typically used for the sale of horses from the riding school. In the form filled out for entries in the catalogue there was not a box for riding school horses *per se*. Mr Foley said that he never included the description "riding very well" or "guaranteed an easy ride" as he was careful not to be setting up a guarantee that might cause him problems subsequently.

98. Mr. Foley gave evidence that "Prince" was the name on Mocha's passport and that is why he was described as "Prince" in the sales catalogue. Mr. Foley explained that the reason the name Mocha was included in the purchase invoice when he was acquired, as opposed to the name "Prince" used on the horse's passport, is that the practice he had developed with the vendor in Galway from whom he purchased the horse (and with whom he had done business for many years) was that he would take down a horse and try it out and if

happy with it would complete the purchase at that point and include on the invoice the name assigned by Clonshire to the horse as opposed to the name on its passport.

99. Yvonne O'Connor of Clonshire also addressed the sale of Mocha in her evidence. She refuted suggestions that the particulars for Mocha in the sales catalogue were understated because of known problems with Mocha bucking. She said that the particulars used were fair and consistent with Mocha being an all-rounder. She believed there was no need to use "flowery" descriptions such as "riding very well" or "guaranteed an easy ride". The description in the catalogue was she believed an accurate one and nothing was being hidden in relation to his past at the time of sale.

100. Ms. O'Connor gave evidence that Clonshire turned over horses quite regularly with a normal period between acquisition and sale being two years. Mocha was therefore not unusual in being sold after 17 months. Ms. O'Connor rubbished the idea that Mocha could have obtained €10,000 on sale as a good riding school horse.

101. Amy Fitzgerald of UL also confirmed that she had seen a lot of turnover of the horses in Clonshire. A number of horses had been retained by Clonshire and used by UL over quite a number of years but she said that most of those horses had issues which rendered them unsaleable (such as a shiver, or an unwillingness to be bridled).

102. In my view, Mr. Foley and Ms. O'Connor were telling the truth in their evidence in relation to the sale of Mocha and the compilation of the entry for Mocha in the relevant sales catalogue. I also believe Mr Foley was telling the truth in relation to how Mocha came to be named and why he was sold under his passport name of Prince as opposed to the name Mocha. In the circumstances, I do not draw the inference which counsel for the plaintiff invited me to draw, namely that Mocha was sold shortly after the accident as Clonshire wished to get rid of a horse known to be troublesome as a bucker.

103. However, it would be remiss of me to move on from this issue without some comments on the failure to make timely discovery and to provide necessary information on this issue.

104. After protracted cross-examination on the issue, Mr. Foley eventually accepted that it would not have been possible to work out that the horse called Prince in the sales catalogue was in fact Mocha without being told that information by Clonshire.

105. Ms. O'Connor ultimately accepted in cross examination that if Clonshire had furnished the sales catalogue entry for Mocha (as it should have done in compliance with the discovery order against it) it would have been possible for the plaintiff to trace to whom the horse was sold.

106. In my view, it would have been far preferable if Clonshire had made proper discovery in relation to the sale of Mocha and if it had provided the important information that Mocha's passport name was Prince, to enable the plaintiff's advisers to seek to trace Mocha to its new owner (or owners) to establish whether there had been any issues with bucking subsequent to its sale by Clonshire. I shall return to this issue below.

Clonshire's investigation of the incident

107. Clonshire's witnesses were cross-examined in relation to Clonshire's investigation of the plaintiff's accident. Mr. Foley gave evidence that he met with Alistair Sutherland and Amy Fitzgerald the day after the accident. He recalls discussing Ms. Fitzergald's accident report form. He took away from the meeting that the accident had been caused by rider error on the part of the plaintiff. In those circumstances, he said there was no reason not to use Mocha again both at the UL pool and more generally in the equestrian centre. He did not believe that the circumstances of the accident as disclosed by Ms. Fitzgerald were such that it was not appropriate to use Mocha further. He believed he had responsibly investigated the matter and used his judgment appropriately as a result of that investigation. He strongly refuted the suggestion put in cross-examination that he ignored what he had become aware of in relation to Mocha and acted in breach of his duty of care as a result.

108. Yvonne O'Connor disputed that it was inappropriate to put Mocha back out riding after this incident when Clonshire were on clear notice of the fact that there had been a significant bucking incident. She was vague on the detail of what investigations were carried out or what in fact was done with Mocha to determine his deemed ongoing suitability for use by students of UL riding classes. She believed that she spoke to Dan Foley who advised that the plaintiff's accident was attributable to rider error and not any issue with the horse. She had no documents to back this up.

109. Ms. O'Connor believes she spoke to Amy Fitzgerald on the day of the accident but could not recall any detail. Ms. O'Connor said that she never saw Amy Fitzgerald's UL accident report form until it was put to her in cross examination in this case.

110. Surprisingly, although there was an accident report form completed by Ms. O'Connor in respect of the incident involving the 10-year-old being unseated from Mocha 8 days previously, there was no accident report form completed by Clonshire respect of the incident involving the plaintiff. It is hard to see how this is compliant with good practice. The plaintiff's injury was a serious one which should have led Clonshire to fully investigate the accident and properly document its understanding of the accident, its cause and any other relevant findings. Given the seriousness of the accident, one would have thought that witnesses to the accident would have been interviewed including Mr. Downes and the plaintiff herself.

111. Clonshire did not discover any records or documents relating to their investigation of the plaintiff's accident. Based on the evidence given by their witnesses, there were no such documents to discover. The absence of such documents ultimately hampered any attempt prior to trial to objectively assess Clonshire's contemporary view of the cause of the accident and anything it may have learned from the accident in terms of refinement of any of its procedures or systems, as appropriate. As I shall come to, it is to be hoped that lessons are learned from this.

Absence of records for Mocha supports view he was a bucker?

112. There was a real dearth of records in relation to Mocha's health and his use during the period he was with Clonshire. I agree with the evidence of UL's expert, Mr. Watson, that keeping good records of a horse's history, including its veterinary records and records of any problematic issues, would allow its equestrian centre owner to better defend any subsequent allegations of wrongdoing.

113. It was submitted on behalf of the plaintiff that I should infer from an absence of comprehensive and reliable records in relation to Mocha, that Clonshire had either deliberately not discovered such documents or not maintained such documents in light of Mocha's known propensity to be a troublesome horse.

114. I found Clonshire's evidence in relation to record-keeping at the centre to be vague. Ms. O'Connor referred to records of use of horses being made on a computer system which she thought was set up in 2012 and also to a diary kept for UL's horses but it appears that no records of either such system in relation to Mocha were discovered. Mr. Foley gave evidence in very general terms that Clonshire's computer system for records was not working properly at the relevant times.

115. As already mentioned, there was a reference in evidence to Mocha receiving a subcutaneous worming injection but the relevant record did not appear to be produced nor were any wider veterinary records. It is surprising that there appeared to have been no written veterinary records to discover in relation to Mocha. This is particularly so when the contract between Clonshire and UL entitled UL to access complete horse records held by Clonshire. Equally surprisingly, there appeared to be no proper records kept by Clonshire as to when Mocha was used by UL in the centre subsequent to the accident.

116. Information as to Mocha's history of use was furnished by Clonshire to Clonshire's expert Mrs Macken and relied on by her in her written report. The relevant records only appeared to record the use of Mocha between 10 September 2013 and 27 November 2013 when the relevant records on their face suggested that the system in the equestrian centre had been searched from 1 January 2013 to 12 November 2016. For example, the fact that Mocha was ridden on 28 November 2013 (the date of the plaintiff's accident) was not in this report. Mr. Foley accepted that the records which had been furnished to the plaintiff's expert Mrs. Macken which appeared in her expert report were not reliable and Mrs. Macken withdrew her reliance on the records during her oral evidence. Mr. Foley explained that they had had to change the system being used at the time as it was not recording information correctly.

117. This case exemplifies the difficulties that can be caused in the absence of comprehensive and reliable records as to a horse's use and health in an equestrian centre or for a college course in the event that horse ends up being involved in an accident. While I can quite understand why the plaintiff's team were suspicious as to the absence of reliable records for Mocha and why they invited me to draw the inferences which they did, ultimately I am satisfied on the basis of an assessment of the Clonshire witnesses who gave evidence that they were telling the truth on these matters and that the absence of records was explained by poor administration rather than any deliberate inappropriate conduct on Clonshire's part.

Concluding observations

118. While I have concluded that the plaintiff's injuries were caused by an unfortunate accident for which the defendants have no legal liability, I wish to emphasise that I found the plaintiff to be an impressive young woman who commendably got on with her life without complaint following the accident. I believe she was entitled to bring her case given the absence of full, and properly documented, investigations into the accident and in the absence of proper records as to Mocha's past use, health and form which may have enabled her, in conjunction with her advisers, to take a different view on the need to bring these proceedings to trial. Needless to say, discovery should have been made at the proper time of relevant records in fact held, such as the sales catalogue entry for the sale of Mocha. Ultimately, the case turned into the type of "swearing match" that could have been avoided in the event that proper records had been kept, proper investigation into the accident had been conducted, and proper discovery made.

119. The Court hopes that lessons may be learned on the part of those managing riding schools and university equine courses as regards the importance of comprehensive and properly documented investigations into accidents of this type and of the importance of maintaining proper records as to the horses in their care, particularly records of use, incidents and health. Such an approach would ensure that interested parties (which would include insurers, parties' legal teams in the event that proceedings issue and ultimately, the Court) would have a reliable and informative record of what in fact happened and what was believed to be the cause of what happened. I do not believe it can be said that Clonshire passed that test here.

120. On the issue of proper investigation, it is surprising that UL did not seek to follow-up with Mr. Downes after he had supplied the statement requested from him to seek to get to the bottom of the allegations made by him at that point to the effect that UL's instructors were aware of a propensity of Mocha to buck. Such a course of action may have resulted in a clarification of important factual matters well before these proceedings came to trial, with the potential consequent saving in Court time and parties' costs. The plaintiff's case was ultimately reliant in material part on what Mr. Downes had communicated in that statement; the availability of material demonstrating a refutation of Mr. Downes' allegations as to Mocha's propensity to buck could have avoided these proceedings having to come to trial.

Conclusion

121. In the circumstances, I will dismiss the plaintiff's claim against both defendants.

122. In light of the findings I have made as to the failings in record keeping, thorough investigation and compliance with discovery obligations, my provisional view is that this is a case which would warrant departure from the ordinary rule (reflected in s.169(1) Legal Services Regulation Act, 2015) that costs should follow the event; subject to hearing the submissions of the parties, I believe it may be appropriate that the plaintiff is awarded a portion of her costs.

123. In the absence of any agreement as to costs, I will list the matter of costs for hearing at a time suitable to all parties.