Neutral Citation Number: [2024] EWHC 322 (KB)

Case No: QB-2021-002306 & QB-2021-002322

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 16/02/2024

Before :

CLARE PADLEY (SITTING AS A DEPUTY HIGH COURT JUDGE)

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Between :

VERONICA MARIE SMITH (widow and administrator of the estate of ALVIS SMITH deceased)	**Claimant**
- and –	
ALAN CLARKE	**Defendant**
DALE ROGER PARSON	**Claimant**
- and –	
ALAN CLARKE	**Defendant**

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David Cunnington (instructed by **Ashtons Legal LLP**) for the **Claimants**
Darrel Crilley (instructed by **DWF Law LLP**) for the **Defendant**

Hearing dates: 16-18 January 2024

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Approved Judgment

This judgment was handed down remotely at 10.45am on 16 February 2024 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

Clare Padley (sitting as a Deputy High Court Judge) :

1. This judgment follows a hearing of a preliminary issue of liability arising in two linked claims for damages. I have been assisted in this case by oral and written submissions from both Counsel.

Background

2. The two claims arise out of an accident which took place on 19 June 2018 at approximately 2.15 pm on a rural road called Main Drove in Little Downham in Cambridgeshire. At that time Mr Alvis Smith and Mr Dale Parson were working on the forecourt of Laurel Farm, which was adjacent to Main Drove, doing maintenance work on a tractor and cultivator.

3. At the same time, a large Iveco Ford horsebox lorry ('the horsebox') was being driven up Main Drove towing a metal stable-boxing trailer ('the trailer'). Shortly before it reached Laurel Farm, the trailer became detached from the horsebox. The trailer veered off the road towards the Laurel Farm forecourt, trapping Mr Smith and Mr Parson between the trailer and the tractor and cultivator and causing them both very severe injuries. Mr Smith died at the scene as a result of his injuries.

Parties

4. The first claim is brought by Mr Smith's widow, Mrs Veronica Smith, as his widow and the administrator of his estate. She is claiming damages under the Fatal Accidents Act 1976, the Law Reform (Miscellaneous Provisions) Act 1934 and for her own personal injuries as a secondary victim. Mr Smith is referred to as "the deceased" in the claim, but I will refer to Mr Smith by his name in this judgment as I am only concerned with events which happened whilst he was still alive.

5. The second claim is brought by Mr Parson for damages for his personal injuries and resulting losses.

6. The Defendant to both claims is Mr Alan Clarke, who was the owner of the horsebox and trailer involved in the accident and was driving the horsebox which was towing the trailer at the time of the accident.

Claims

7. The first claim was issued on 15 May 2021 and the second claim was issued on 16 May 2021. Both claims were served in September 2021. A Defence to each claim was served on 29 September 2021 and a Reply to each Defence was served on 7 December 2021. In June 2022, an order was made for the claims to be heard together and for a preliminary hearing on liability.

8. Both claims are brought solely in negligence. In summary it is alleged that, as a result of negligence on the part of the Defendant, the conjoined horsebox and trailer were not in a safe condition to be used on a public highway due to:

    i. the two bolts connecting the universal coupling to the Shocklink device being fatigued and insufficient to keep the trailer safely attached to the horsebox and

ii. the breakaway cable which was intended to serve as a brake in the event of the trailer becoming detached, not being attached in such a way as to automatically operate the brakes on the trailer when it separated from the horsebox

9. Nineteen separate particulars of negligence were pleaded in the first claim and eighteen identical particulars in the second claim. The original particulars included allegations relating to the speed of the horsebox and the Defendant's actions following the detachment of the trailer. Following exchange of evidence, Mr Cunnington has confirmed that the allegations of negligence relating to the Defendant's actions once his journey along Main Drove had commenced are no longer pursued.

10. Reliance was also placed on the Defendant's conviction on 29 January 2019 of three offences under s.40A of the Road Traffic Act 1998. I will return to the details of this conviction in due course.

Defence

11. The Defendant denies liability in each claim. The circumstances of the accident are broadly agreed and the Defendant admits that the immediate cause of the trailer becoming detached from the horsebox was metal fatigue. In summary, in response to the remaining allegations of negligence, the Defendant denies negligence in relation to the unsafe condition of the tow bar on the grounds that the defects could not have been identified by a visual inspection and the horsebox had passed an MOT about 5 weeks before the accident. He also denies that the attachment of the breakaway cable to the tow ball was unacceptable and asserts that any defects in the cable would not have prevented the accident in any event.

Replies

12. In their replies in each case, the Claimants place reliance on the past use of horsebox by Defendant as being relevant to the occurrence of metal fatigue. The Claimants expressly deny that reliance on an MOT is a sufficient defence to an allegation of failing to ascertain that the coupling or bolts being used by a vehicle owner are suitable or safe for use with a particular trailer or trailers. The Claimants also assert that the Defendant had previously used the coupling and bolts to pull a heavier trailer.

Agreed list of issues

13. In light of the development of the evidence since the initial pleadings, I asked Counsel to prepare an agreed list of issues prior to the start of the hearing. The agreed list of issues at that stage was follows:

> 1. "What features of the Defendant's vehicle and trailer (including the coupling device and breakaway cable) were causes of the accident on 19 June 2018?
> 2. To what extent is this an inference of negligence case and are the conditions for the application of such a doctrine made out ?
> 3. What is the legal effect of an inference of negligence if applicable? In particular, is any reversal of the burden of proof a reversal of the legal burden or is the impact of the doctrine merely evidential, entailing that the Defendant must only raise evidence to rebut a prima facie case of negligence?

4. Were any of the defects found to be causative of the accident attributable to the negligence of the Defendant?
5. In respect of the capability and use of the towing ball/shock plate assembly:

a. Was the apparatus inherently deficient and sub-standard for the applications which the Defendant had within contemplation when it was fitted approximately 10 years pre-accident? If so, was it careless to use and continue using the apparatus?
b. What use was made of the apparatus in the years pre-accident and to what extent can the court find that there was negligent overloading of the apparatus on the available evidence?
c. Did any such overloading contribute to the failure of the bolts?
6. In respect of the tightness of the bolts and the maintenance of the apparatus:
a. What standard of care is to be applied to the maintenance and inspection of the apparatus, in particular the bolts fixing the tow ball to the shock plate, once it is installed?
b. Did the Defendant operate any or any adequate maintenance system for the coupling device he used prior to the accident?
c. To what extent, as a matter of law and fact, can the owner of an HGV vehicle rely upon valid MOT testing/inspection by a commercial vehicle garage to discharge the duty of care to see that the vehicle is subject to a reasonable regime of maintenance?
d. To the extent the court accepts there can be reliance are the circumstances herein such that reliance upon the MOT is reasonable and if there can be reliance is that, in the circumstances, a sufficient discharge of the duty of care?
e. If an MOT is insufficient what other steps ought the Defendant to have taken to discover any lack of tightness in the blots and any signs of fatigue/failure and when ought such steps to have been taken?
7. In respect of the failure of the automatic braking system upon the trailer being towed by the Defendant's horse box, was it negligent of the Defendant not to fit a breakaway system capable of working in the event the trailer became detached?
8. To what extent can the Defendant defend the causative consequences of any such breach because there was no designated attachment point for the cable on the apparatus supplied or upon the horse box itself?"

14. The key issues have evolved slightly during the hearing, and I will set out the issues which I consider need to be determined and my findings and conclusions in relation to those issues in due course.

Documentary evidence

15. There was a large bundle of papers prepared for his hearing and I have had careful regard to all the relevant documentary evidence. In particular, I have considered the following:

Police evidence

16. The police evidence included a police forensic collision investigation report, dated 3 December 2018, prepared by PC 0674 Gale which contained some helpful photos of the scene and the vehicles involved and some still shots from the CCTV. This report

was not criticised by the expert witnesses or the parties and I accept it as a reliable report of the police investigation into this accident.

17. Other police evidence included notes of a police interview with the Defendant dated 19 October 2018 and copies of MG11 witness statements from Mr Parson, the Defendant and his wife Mrs Clarke, and other lay witnesses. These included Mr Rikki Turner who was on Laurel Farm forecourt talking to Mr Parsons and Mr Smith at the time of accident; Mr Neil Phillips who was the driver of the vehicle travelling behind the Defendant at the time of the accident; and Mr Andrew Masters, the previous owner of trailer. None of the other lay witnesses have been called and no hearsay notices have been served in relation to their evidence.

18. The police photographs show gouge marks in the road on the approach to Laurel Farm which the police believe indicate the point where the trailer had become disconnected and the towbar was then dragging along the ground. The first such gouge mark was about 49 metres north of the Laurel Farm forecourt.

Tachograph

19. It was agreed that the tachograph on the Defendant's Iveco horsebox recorded a speed of 27 mph as the horsebox travelled south along Main Drove towards Laurel Farm shortly before the accident.

MOT documentation and invoices

20. There is a copy of an MOT certificate for the IVECO Ford horsebox vehicle dated 14 May 2018. This shows that the horsebox passed its MOT on that occasion with two advisory notes about the condition of the chassis and oil leaks. It is agreed that neither of these issues related to the cause of this accident.

21. There is also a print-out of the recent MOT history for the horsebox for the period from 2014-2018 and a collection of Manchetts invoices which all appear to relate to the MOTs or urgent repairs. There are no invoices from Manchetts for any separate services on the horsebox. There is also no documentation relating to any past service history on the trailer or the Defendant's previous trailer.

Conviction details

22. I have seen copies of the memorandum of conviction from Cambridgeshire Magistrates Court on 29 January 2019 which shows that the Defendant was convicted of two separate offences under s 40(A)(a) of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988. Both offences related to his use of the horsebox on Main Drove on the date of the accident when its condition was such that its use involved a danger of injury to any person, by reason of (1) the towball being insecure and (2) the insecure and deficient safety cable. He was also convicted of a third offence under regulation 18(1) of the Road Vehicles (Construction and Use) Regulations 1986, section 41A of the Road Traffic Act 1988 and Schedule 2 to the Road Traffic Offenders Act 1988 in relation to his use of the trailer drawn by the horsebox on Main Drove on the date of the accident when a part of its braking system, namely the near side brake, was not maintained in good and efficient working order. The Defendant pleaded guilty to all three offences.

23. It is agreed by the parties that these were strict liability offences and that the convictions can be relied on by the Claimant as evidence of the unsafe and dangerous state of horsebox and the trailer on the date of the accident but not as evidence of negligence on the part of the Defendant.

CCTV

24. I have seen a compilation of CCTV footage from Laurel Farm lasting 3.41 minutes which includes footage from a number of separate cameras at different vantage points on the farm buildings. These clearly show Mr Smith and Mr Parson standing next to the tractor and cultivator on the Laurel Farm forecourt, the approach of the horsebox and trailer, the detachment of the trailer, Mr Smith's final movements prior to the accident, and the moment of impact. It is plain from this footage, as noted by the Claimant's expert Mr Mottram, that the trailer becoming detached from the towing vehicle at the precise moment it was passing the tractor and cultivator, and the men working on it, was a tragic coincidence.

Witness evidence

25. The hearing bundle contained witness statements from six people, including the two Claimants, but I am pleased to record that Counsel agreed at the hearing that it was only necessary for the court to hear oral evidence from the Defendant and his wife. The statements of the two Claimants were not challenged and the evidence of another lay witness, Mr Packman, was not relied on by the Claimants and the evidence of Ms Davies, an intelligence analyst, was not relied on by the Defendant.

26. The Defendant had given a full police interview (which I have already referred to) and prepared a witness statement for these proceedings in May 2022. He was cross-examined at some length. Although his recollection in relation to much earlier events, such as the original fitting of the Shocklink coupling device, was very limited, he gave extremely frank responses to the questions put to him about his maintenance of his vehicles. Overall, I found him to be a straightforward witness who did not seek to deny the various failings put to him. It was also apparent that he displayed little or no understanding of the safety features on the vehicles he owned or of his responsibilities and duties as a vehicle owner. I will summarise the key points of his evidence later in this judgment where it is relevant to my factual findings.

27. The Defendant's wife, Mrs Clarke, also gave evidence and I also found her to be an honest and frank witness who I consider was doing her best to assist the court on the limited issues on which she could provide any direct evidence.

Expert evidence

28. I heard oral evidence from Mr Phillip Mottram, the Claimant's Accident reconstruction expert and Mr James Wade, the Defendant's Accident reconstruction expert. They had each prepared a full report and had also prepared a joint statement. Aside from a few minor points, the experts were broadly agreed in their evidence about the likely causes of this accident.

29. During the course of the hearing, after the conclusion of the Defendant's evidence, Mr Mottram prepared a supplementary handwritten statement dated 17 January 2024 in

which he sought to retract his agreement to a line in the joint statement relating to the Defendant's previous Ifor Williams trailer which stated "*whilst it might have been larger in dimensions, it was probably not heavier than the incident trailer*" on the basis of the Defendant's oral evidence. Following a short adjournment and a discussion between the experts, Mr Wade produced a supplementary handwritten statement in response dated 17 January 2024 in which he maintained his original position but noted that it was for the court to assess the Defendant's evidence.

30. I was satisfied that both experts had the relevant qualifications and experience to provide expert evidence on the key issues in this case and understood their CPR Part 35 duties to the court. However, I was concerned about Mr Mottram's additional statement and his explanation for it. It is plain from the records that he had in fact had sight of all the relevant evidence about the aluminium boxing on the Ifor Williams trailer and the Defendant's account about the trailer's relative sizes and weights before he met Mr Wade to prepare the joint statement. For these reasons, I treat Mr Mottram's additional statement and his expert evidence about the weights of the unladen trailers with caution.

31. I found Mr Wade to be an impressive, reliable and very objective expert witness. In line with his Part 35 duty to assist the court irrespective of the source of his instructions, I note that in both his written report and his oral evidence, he did not shy away from making appropriate criticisms of the Defendant's actions and omissions. The only concern which was raised in relation to his evidence in cross-examination was in relation to his failure to highlight in his report the importance placed in all the guidance documents for HGV owners on compliance with manufacturer's instructions. He did however readily accept these points when they were put to him in cross-examination.

32. I will refer to the relevant expert evidence on each issue in due course, but it is also right to record that there were some issues on which both experts advised the court that they were simply doing their best to assist the court in a situation where there was little or no concrete factual evidence available. I have taken this limitation into account in deciding how much weight can be placed on their expert opinion evidence on such issues.

Factual findings

33. I have already set out a brief summary of the basic circumstances of the accident which are agreed by the parties. I will now set out my more detailed factual findings relating to the vehicles involved in the accident and the coupling between them, before turning to the relevant legal principles and my conclusions on the allegations of negligence which have been made against the Defendant.

History and condition of horsebox

34. The Iveco Ford horsebox was registered in 1993 so it was about 25 years old. It had been bought by the Defendant as a second-hand vehicle. The Defendant says that he had owned it for about 10 years at the time of the accident in 2018. The Defendant's unchallenged evidence is that he only used it about 10-12 times a year between May and September each year to compete in horse-driving events. He stated that he would drive long distances with it to such events, for example around various counties in England and to Wales, Scotland, Holland and Germany. He estimated that he would

travel about 10-12,000 miles in it each year. During those trips the Defendant would transport three or four ponies and two carriages and other necessary equipment which would vary depending on the destination and duration of the event. The Defendant stated that during the time he was competing in horse-driving events prior to September 2017, and was using his previous Ifor Williams trailer, on about five of his trips each year he would transport 4 ponies and two carriages and would sometimes stay away for up to a week.

35. The police documents show the horsebox odometer reading as 788,546 km (or 489,979 miles) after the accident. I note that at the date of the MOT on 14 May 2018 the reading was 786,746 km, so the horsebox had travelled about 1,800 km (or 1,118 miles) in the five weeks since the MOT. This was consistent with the Defendant's evidence that between 14 May and 19 June 2018 he had already attended three horse events in Devon, Wales, and Malvern. There was no evidence from the Defendant as to the mileage on the horsebox at the time of his purchase and he was unable to confirm it when asked in the witness box.

36. The Defendant told the police in his interview that the Iveco horsebox had been maintained at Manchetts of Burwell for the previous 7-8 years. He said he only dealt personally with replacing oil, water and bulbs and had no mechanical knowledge. He said he had the MOT done every year "*But I don't have it regularly serviced because it doesn't do the mileage*". In his witness statement, he said he only had it serviced 'every 2-3 years.' He said that it had passed its MOT in May 2018 and received a straight pass. As I have already noted, copies of the MOT documents and invoices have been provided for works needed to pass the MOT and some emergency repairs, but there is no documentary evidence of any separate services being undertaken on the horsebox or of any routine maintenance or servicing being done to universal coupling. In his oral evidence, the Defendant frankly admitted that he had never given Manchetts such instructions. He accepted that he only instructed work to be done on the horsebox which was required to pass the MOT. I will return to the condition of the universal coupling and towbar in due course.

37. As far as the horsebox itself is concerned, although the police identified a number of other defects in its condition after the accident, it is not suggested that any of those defects were relevant to the circumstances of this accident.

History and condition of the trailer

38. The Defendant's unchallenged evidence was that he had only been using the trailer involved in the accident since April 2018. His evidence to the police and in his witness statement to this court was that he had exchanged his previous Ifor Williams trailer for this new trailer following his decision at the end of the 2017 season to swap to a new horse-driving discipline called 'scurrying'. This account was supported by the police statement taken from Mr Andrew Masters, from whom he had received the new trailer and I accept the Defendant's evidence in this regard. I note that in his police interview in October 2019 the Defendant stated that the new trailer was *"smaller"* than his previous Ifor Williams trailer and in his witness statement the Defendant stated that the new trailer was "*smaller and lighter"* than his previous one. He explained in his police interview that he had previously needed a bigger trailer because of the need to travel to competitions with two carriages on board.

39. During his oral evidence, the Defendant initially sought to slightly distance himself from these previous statements, stating in answer to the suggestion from Mr Cunnington that the new trailer was "*larger and heavier*" than the previous one: "*It was longer but I'm not sure if it was any heavier*". When he was then shown his previous statement and asked why he had stated that his new trailer was smaller and lighter than the previous one he replied "*Because it was shorter but it was only a little bit lighter.*"

40. It was plain from the Defendant's evidence that he had never in fact separately weighed either his previous Ifor Williams trailer or his new trailer, although the horsebox and previous trailer had been previously subject to VOSA weighing together. I will return to the evidence in relation to the laden and unladen weights of all the vehicles when I address the allegation of overloading in due course.

41. The trailer involved in the accident, which can be seen in all the police photographs and the CCTV, was about 30 years old and had been adapted at some time prior to its acquisition by the Defendant. At the time of the accident, it comprised a flat-bed trailer with customised aluminium boxing on top which had been added about 3 or 4 years earlier. The police inspection revealed that the trailer had two axles of different types. The Defendant's unchallenged evidence was that gas struts were added to the boxing on the trailer by Mr Masters at the Defendant's request before he took it away.

42. The trailer was fitted with its own brakes which were intended to work independently of the vehicle towing it, but the Defendant told the police he did not know this and had never checked the condition of the brakes. The Defendant also confirmed in his oral evidence that he didn't know the age of the trailer, nor that it had two different axles and he knew nothing about its maintenance history. He accepted in cross-examination that he had taken it onto a public highway without undertaking or arranging any maintenance or safety checks on it and said that he had bought it in good faith from a friend. However, he also gave evidence that in the first few weeks after acquiring it, the trailer had two flat tyres and that he had then been advised that the wrong tyres had been fitted to the trailer. He also gave evidence to this court, which he had not given in his police interview, that he had changed four bolts on the A frame part of the trailer coupling attachment himself because they appeared to be slightly raised. He accepted that he had not sought any advice about these bolts and that although he had thought the bolts he had used were suitable, they were regarded by the experts as being unsuitable.

43. As far as the trailer is concerned, I note that the police identified a significant number of defects in its condition after the accident, but the only matters potentially relevant to the cause of this accident are the dangerous brakes and defective breakaway cable which was held together with three cable ties. I also consider that the overall condition of the trailer, and the Defendant's evidence in relation to it, are relevant to the issues of maintenance which arise in this case.

Nature of coupling device

44. On the day of the accident, the horsebox was towing the trailer. The coupling arrangement connecting these two vehicles was comprised of the following components:

    i. a steel draw bar attached to the underside of the horsebox

ii. a Dixon-Bate 'Shocklink Commercial' device which was connected to the steel draw bar and was intended to dampen the vertical forces applied through the coupling as the trailer was being towed. It was adjustable vertically and its vertical position was fixed using two horizontal fixing pins which had welded looped ends.

iii. a Dixon-Bate universal coupling device, which comprised a towball and holes for a steel pin and a fixing plate with two holes in it. This had a part number 202014. It was attached to the Shocklink device using two metal M16 bolts which were screwed through the fixing plate into two threaded holes in the front-plate of the Shocklink device. These are the two bolts which sheared off on the day of the accident. The two bolts were 16 mm in diameter.

iv. a Knott-type KF27-B coupling attachment connected by an A frame to the front of the trailer which could be placed and secured over tow ball to connect the trailer to the horsebox.

v. a secondary 'breakaway or braking cable' which was attached to the underside of the trailer and was then intended to be attached to a secure point on the towing vehicle. On the day of the accident, it was tied round the towball on the universal coupling device. I will address the specific issues relating to this cable later in this judgment.

45. The Defendant's unchallenged evidence was that he had bought the Shocklink device and universal coupling at the same time, shortly after he bought the horsebox about 10 years before the accident, and that this equipment was new at the time of its purchase. In his police interview, he also described an incident in which his previous trailer had come uncoupled going over a railway bridge. He could not recall who he had instructed to attach the Shocklink and universal coupling to the horsebox but he was adamant that he had not attached it himself.

46. During his cross-examination the Defendant initially accepted in evidence that he had received the manufacturer's instructions for the Shocklink device and the coupling and said that he must have read them as he knew that he needed to grease the coupling device. When he was then shown the manufacturer's 'Fitting, Usage and Maintenance instructions' for the coupling device (set out in paragraph 81 below) he initially said he had never read it and never seen the document before. On further questioning, he clarified that he must have quickly it looked over and given it to person who was going to put the device on. When he was asked if he knew it was critical to tighten the bolts, he replied that he didn't, but he accepted that he would have learned that if he had read the instructions, but that he probably didn't bother to read them.

Cause of accident

47. The agreed expert evidence, based on the police findings and photographs and the experts' own examinations of the vehicle and coupling equipment, was that the tow bolts attaching the universal coupling had sheared at a point very close to the mounting face of the Shocklink system. The exposed sheared face of the right-hand bolt revealed the presence of surface rust across 80% of its surface which indicated that it had been partly severed for some time prior to the accident. The remaining 20% of the surface of the right-hand bolt was clean and shiny indicating a recent fracture. The full exposed

surface of the left-hand bolt was clean and shiny indicating a recent fracture of that entire bolt.

48. The two bolt heads were not found by the police at the scene or anywhere in the vicinity, but it is agreed that they must have been in place when the vehicles commenced their journey from Willow Farm, or the trailer would have become detached from the horsebox straightaway. The police examiner also recorded the presence of polishing and wear around the nearside (left) bolt aperture which suggested "*historic freedom of movement*".

49. The examinations by both parties' experts revealed that the shearing of the bolts was due to metal fatigue. I do not need to record the full details of their analysis, but having read their reports and seen the close-up photographs showing the 'beach markings' and fatigue cracks on the surface of both bolts, I fully accept and adopt their agreed conclusion that there was metal fatigue present in both bolts which would have been progressively worsening over a long period. The experts agreed in their joint statement that "*the bolts failed by fatigue because the forces that were applied externally to the bolts while the tow ball was being used to tow a trailer or trailers over a long period exceeded the tensile force or "pre-tension" in the bolts that resulted from tightening the bolts. This would have resulted in fluctuation of the loading on the bolts, which then resulted in fatigue cracks forming in the bolts*"

50. I have also reached the conclusion that, on the balance of probabilities, the immediate cause of the accident was that during the short journey from Willow Farm towards Laurel Farm, as a result of the uneven surface of the road, the right-hand bolt which was already 80% fractured, fully sheared off. As a result, the left-hand bolt which was already subject to significant metal fatigue and was then subject to the entire load of both vehicles, then also sheared off, resulting in the universal coupling and the trailer attached to it becoming completely detached from the Shocklink device.

51. I also accept and adopt the agreed expert evidence, as recorded in the joint statement, that there were only two possible contributory causes of the metal fatigue found in these two bolts, namely:

    i. That the bolts were insufficiently tight, as evidenced by "*the relative movement between the mounting faces of the tow ball and the Shocklink device, and beneath the bolt heads, as indicated by polishing marks on the tow ball*".

    ii. That the coupling device had been over-loaded by the Defendant in the past as a result of the combined weights of the loaded horsebox and the loaded Ifor Williams trailer leading to maximum D value of 17.2 kN for this universal coupling being exceeded.

52. The D value is described in the experts' joint statement in the following terms: "*a rating, measured in kiloNewtons (kN), which represents the permissible dynamic horizontal loading limits on a component or assembly when it is used between a towing vehicle and a trailer*". Its calculation is well-illustrated in the diagram below taken from the Claimant's expert report:

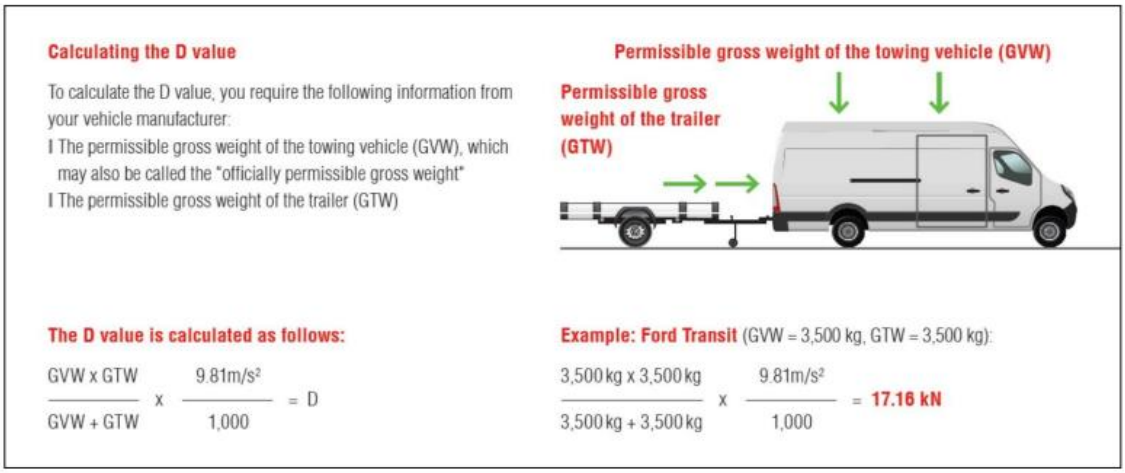

Figure 13 *– Information about how to calculate D values for a towing vehicle and trailer combination and suitable towing equipment, using the Gross Vehicle Weight (GVW) and the Gross Trailer Weight (GTW).*

53. The experts agreed that the respective weights of the horsebox and the trailer recorded by the police on the day of the accident, namely 9,110kg (without the horses or passengers) and 1860 kg (including its contents) would have resulted in a D value of 15.2 kN, so the D-value was not being exceeded on that date. It was also agreed, as confirmed in the police evidence, that on the day of the accident the trailer was carrying one small carriage weighing 70 kg and some bales of hay or straw and other equipment.

54. However, the gross vehicle weight (GVW) of the horsebox was 13,000 kg and the gross trailer weight (GTW) was 2,700 kg, so if the vehicles had been loaded up to their maximum permitted weights, the D value would have been 21.93, so both experts agreed that this coupling device would not have been suitable for such maximum permitted loads. I will address the evidence in relation to the Defendant's previous use of the coupling device later in this judgment.

55. The experts were unable to determine whether the bolts were not fully tightened when the tow ball was fitted or if they had loosened over time, or if they had been previously overloaded, causing them to stretch and loosen.

Legal principles

Duty of care

56. In any claim for damages based on negligence, the claimant must prove four elements: duty, breach, causation and damages. At this stage, on the trial on a preliminary issue of liability, the court is only concerned with duty and breach. In this case, a duty of care to others on the part of a road user and vehicle owner is admitted. It is also common ground that the duty owed is one to take reasonable care to ensure that a vehicle being used on the public road is roadworthy and not likely to cause damage or injury to others.

57. The key issue to be determined in this case is whether there was a breach of that duty and the burden of proof rests on the Claimants to prove such a breach of duty. Whether a duty of care is breached is decided with reference to the extent of that duty. The

parties were broadly in agreement as to the proper approach to be taken in such cases, which can be summarised briefly follows:

i. The standard of care is generally that of the prudent and reasonable individual in the position of the Defendant, so that negligence is the omission to do something which such a prudent and reasonable person would do, or doing something which such a prudent and reasonable person would not do. Such actions or omissions can be unintentional.

ii. The relevant factors to be taken into account by a reasonable person in determining the standard of care required include the nature and degree of risk presented by the activity being undertaken, the seriousness of any injury that could result, the purpose behind the act or omission and the practicability of taking further precautions.

58. In a case of this type involving a vehicle which is admitted to have been in an unsafe condition at the time of the accident, this means that the Claimants must prove that the unsafe condition was either caused by the negligence of the Defendant or that it could have been prevented by the Defendant taking all reasonable care.

Inference of negligence

59. However, in some road traffic cases, although the burden of proof does not shift, the circumstances are such that the evidential burden can shift to Defendant. This situation can arise in different types of cases. The principle has sometimes been described by the Latin maxim 'res ipsa loquitur' which simply means 'the thing speaks for itself. This is not a separate legal basis for a claim, it is merely an example of a situation where negligence can be inferred, such that there is then an evidential burden on the Defendant to rebut it. Such an inference of negligence can sometimes arise in a road traffic case where;

i. An accident is caused by the unsafe condition of, or defect in, a vehicle used on a public highway

ii. The defendant is in sole control of the vehicle and responsible for its maintenance

iii. The evidence indicates that the defect or unsafe condition would not ordinarily have occurred without negligence on the part of the defendant.

60. This situation gives rise to a prima facie case of negligence and the onus then shifts onto the defendant to rebut it. However, the burden on the defendant is still only an evidential one. Having considered all the evidence, the judge must still determine whether, on the balance of probabilities, there has been a breach of the standard of care required of the defendant. The case law indicates that there is a commonsense purpose behind this principle in road traffic cases of this type in that the evidence needed to establish the train of events which resulted in the unsafe condition of the defendant's vehicle and any actions taken which may have prevented it, will almost always lie in the hands of the defendant.

61. This case was initially put by the Claimants in part on the basis of an inference of negligence, but for the reasons outlined below, in light of the lay and expert evidence now before the court, the Claimant no longer relies on any such inference of negligence. However, it is important to understand this principle, and its potential application to a case of this nature involving an undetected defect in a vehicle, when considering the case law relied on by the parties in this case, to which I will now turn.

Relevant case law

62. The first of those cases is *Barkway v South Wales Transport* [1950] A.C. 185, [1950] 1 All ER 392. The case concerned a bus which veered across the carriageway and fell over an embankment due to its offside front tyre bursting, The claimant's husband, who was a passenger on the bus, was killed in the resulting crash. The claimant won the case at first instance in the High Court but the decision was overturned by a majority in the Court of Appeal. The Claimant then appealed to the House of Lords. The Claimant sought to rely on the doctrine of *res ipsa loquitur* on the grounds that "*Omnibuses ..which are properly serviced, do not burst their tyres without cause, nor do they leave the road along which they are being driven*.'

63. In that case, Lord Porter, giving one of the two leading judgments in the House of Lords, referred to the doctrine of 'res ipsa loquitur' and stated:

> " the doctrine is dependent on the absence of explanation, and, although it is the duty of the defendants, if they desire to protect themselves, to give an adequate explanation of the cause of the accident, yet, if the facts are sufficiently known, the question ceases to be one where the facts speak for themselves, and the solution is to be found by determining whether, on the facts as established, negligence is to be inferred or not'.

The House of Lords held that if there had been no explanation given to the court about the cause of the burst tyre, then the mere happening of the accident would have been fatal to the defence. However, in fact two experts had inspected the tyre and given evidence to the trial judge, which he accepted, that the cause of the burst tyre was an impact fracture. This condition was recognised in the trade as being due to one or possibly more heavy blows to the outside of the tyre, which might result in undetectable damage to the inside of the tyre which could remain undetectable to visual inspection. The House of Lords allowed the appeal and held that the defendant bus company had been negligent in not taking all the steps they should have taken to protect passengers from this known risk of an impact fracture because they had not instructed their drivers to report any heavy blows to their vehicles' tyres likely to cause such impact fractures. The court accepted that the defendant's system of twice-weekly tyre inspections was otherwise sufficient in the circumstances but stated:

> "It is quite true that an accident of this kind is rare and the burst of a tyre owing to an impact fracture is a rare event…. The duty, however, as I see it, of a transport company is to take all reasonable precautions for the safety of its passengers and not to leave them in danger of a risk against which some precautions, at any rate, can be taken."

64. A similar approach to the relevant legal principles was adopted in *Henderson v Henry E Jenkins & Sons* [1970] AC 282 although the evidential factual position was very different. In that case, a lorry owned by the first defendant and being driven by the second defendant was descending a hill when its brakes failed without warning causing the lorry to strike and kill the claimant's husband who had just alighted from his own vehicle. The agreed evidence was that the brake failure was due to a sudden escape of brake fluid through a hole in a hidden part of a pipe under the vehicle, resulting from corrosion in that pipe. The claimant alleged that the defendants had failed to properly maintain the braking system. The defendants asserted that the leak was due to a latent defect which had occurred without any fault on their part and the existence of which was not discoverable by the exercise of reasonable care. The defendants relied on evidence about its weekly maintenance regime of visual inspections but did not adduce any evidence about the past use of the lorry or the loads it had carried. The expert evidence at trial was that the cause of the corrosion could not be determined but that it could have resulted from leakage of a corrosive load on the lorry, or from salt due to the lorry travelling near the sea or driving over snow treated with salt.

65. The House of Lords, by a majority of 3:2 reversed the majority decision of the Court of Appeal, which had dismissed the Claimant's appeal. Lord Reid stated in respect of the defence of 'reasonable inspection'

> "the extent of the inspection which is necessary must in every case depend on whether the owner of the vehicle is or ought to be aware of any facts which should indicate to him that some unusual defect may have developed which would not be disclosed by the normal kind of inspection."

He went on to conclude:

> "If there were nothing in the evidence to indicate a probability that something unusual must have happened to this lorry to cause the very unusual type of brake failure which the learned trial judge has held in fact occurred here, then undoubtedly the respondents would have proved that they had exercised all proper care in this case. But if the evidence indicates a likelihood that something unusual has occurred to cause a breakdown, then I do not see how the owner can say that he has exercised all proper care unless he can prove that he neither knew nor ought to have known of any such occurrence. For if he did know of it he would have been bound to take adequate steps to prevent any resulting breakdown. It may well be that it would be sufficient for him to prove that he had a proper system for drivers reporting all unusual occurrences and that none had been reported to him.
>
> But in this case the respondents led no evidence as to the history of this lorry other than the evidence of the fitter to which I have referred. ….....They had to prove that in all the circumstances which they knew or ought to have known they took all proper steps to avoid danger. In my opinion they have failed to do that."

66. The majority concluded that on the particular facts of this case, the respondents had failed to show that they had exercised all reasonable care. I note that it is plain from all the judgments in *Henderson*, including the dissenting judgments, that the system of weekly visual inspections of the pipe undertaken by the owners were in line with Ministry of Transport and the manufacturer's advice.

67. I was also referred to *Rowley v Chatham* [1970] RTR 462, in which a claim brought by a widow against an MOT examiner who had issued an MOT certificate in respect of her late husband's car three weeks before he died in a collision caused by an undetected steering defect. The claim was dismissed by the trial judge and the court stated that the purpose of the regulations around MOT certificates "*is not to benefit motorists in general by providing them with an inexpensive means of satisfying themselves that their ageing vehicles remain roadworthy.*"

68. The Defendant relied heavily on the case of *Rees v Saville [1983]* 3 WLUK 237, *[1983] WL 216145* so I have reviewed this authority with particular care. In that case, the defendant driver lost control of the steering on the second-hand car he had recently purchased and collided with the claimant's parked vehicle. The agreed expert evidence was that the sudden loss of steering loss was due to deterioration of a knuckle joint over several thousand miles of driving and that this defect was one which could be checked without dismantling the vehicle and that this defect would be tested for during an MOT examination and any garage service.

69. The case proceeded at the trial in the county court and on the appeal to the Court of Appeal on the agreed basis that although there was a legal onus on the claimant to prove negligence, in a case where the defendant relies on a latent defect, as in this case, the evidential onus shifted to the defendant to show that the latent defect had occurred in spite of the defendant having taken all reasonable care to prevent it.

70. The trial judge accepted the defendant's evidence that he had no personal knowledge of the servicing history of the car, that he had been given the log-book and MOT certificate dated three or four months earlier, that he assumed the car had been properly looked after and did not need a service, and that nothing had happened during the short period of 3-4 weeks after his purchase before the collision to give him any reason to suspect the car had not been properly looked after. The trial judge concluded that the defendant had exercised reasonable care and that the average purchaser of a second-hand car would not be expected to subject it to a detailed expert examination before using it and that it was reasonable for him to rely on his own visual examination, a road test taken by his brother who owned a similar vehicle, and the MOT certificate.

71. On the appeal, the Court of Appeal stated it was not useful or desirable to

> "lay down any general or hypothetical statement as to the obligations of a vehicle owner, whether an owner who has owned a car for some time or an owner who has just acquired a vehicle, in relation to the reliance which he may in any given circumstances place upon the fact that an MOT examination has taken place and a test certificate issued under the regulation.*"*

Instead, the court went on to consider the facts as they had emerged in evidence in order to determine whether the defendant had discharged the evidential burden that lay

upon him. The court confirmed that the MOT testing framework "*does not relieve the owner of any personal obligation previously imposed upon him by the common law to use reasonable are in relation to the maintenance of his vehicle."* However, the court decided that, on the particular facts of the case, it was open to the trial judge to reach the conclusion that the defendant had exercised a reasonable standard of care and that to require him to subject this vehicle to a full expert examination and service at the date of acquisition was to impose too high a duty on him. In reaching that conclusion, the Court of Appeal expressly considered and distinguished the cases of *Bankway* and *Henderson* to which it was referred, on the grounds that in *Bankway* the defect was caused by negligence on the part of the defendant as there was a known risk of danger which the defendant had no system of reporting to address, and in *Henderson* , the cause of the defect was unknown and no evidence was called by the defendant at all in relation to the causes of the corroded pipe.

72. The reliance which can be placed by a defendant on an MOT certificate was also considered in the case of *Worsley v Hollins* [1991] 2 WLUK 365, [1991] RTR 252. In that case, the defendant was the driver of a van which failed to stop and ran into the rear of the claimant's car causing injury and damage. The brake failure was found to be due to a missing split pin. The claimant succeeded in the County Court and the defendant appealed. Giving the leading judgment on the appeal, Staughton LJ said:

> "Mr Recorder Kershaw, as I have said, held that the maxim res ipsa loquitor applied and therefore he ruled that if there was shown to be a defective breaking system, it was for the owner to show that he had nevertheless exercised reasonable care to have the vehicle properly maintained.
>
> For my part, I would doubt whether the production of a Ministry of Transport certificate is itself enough to discharge that burden. The owner of a vehicle must have it maintained; if he fails completely to do so, it does not seem to me that it is an answer for him to say: 'despite my complete lack of care to have the vehicle properly maintained, I managed to obtain a Ministry of Transport (MOT) certificate.' Therefore I would not hold that the certificate was by itself enough"

73. In that case, the Court of Appeal went on to conclude that there was unchallenged evidence before the Recorder from the defendant owner of the vehicle that he had instructed the garage to undertake a full service of the vehicle six weeks before the accident which had not revealed the brake defect. That evidence had been wrongly rejected by the Recorder, so the appeal was allowed on that basis.

Discussion and conclusions

74. Having considered the relevant legal principles, I now turn to the key issues in this case and the evidence available in relation to each issue.

Causes of the accident

75. This is not a case in which the cause of the defect which led to this accident is entirely unknown. The agreed expert evidence, which was based upon the findings of the police forensic report and the examinations of the bolts by the parties' experts and which I

have already summarised and accept in full, was that there are only two possible explanations for the bolts failing on the day of the accident due to metal fatigue namely:

i. That the bolts were insufficiently tightened over a period of time, or

ii. There had been overloading of the coupling in the past.

76. Both possible explanations are prima facie attributable to actions or omissions on the part of the Defendant or those acting on his behalf, rather than some other unrelated or unexpected cause. I must therefore consider whether the Defendant, as the owner of the horsebox to which the Shocklink device and towbar coupling were attached, exercised reasonable care in his use and maintenance of the vehicle and in relation to his previous loading of the horsebox and trailers.

Statutory and other guidance on standard of care

77. I was referred by both parties to the Bradley Towing Equipment Catalogue in which details of the Dixon-Bate products are set out, and to Section 11 of the DVSA Heavy Goods Vehicle (HGV) inspection manual which sets out the scope of an MOT examination of a vehicle to trailer coupling. I was also referred to some non-statutory guidance documents relating to towing including the following:

- DVSA guidance: Tow a trailer or caravan with a car: safety checks and the embedded You Tube video about the use of a breakaway cable

- VOSA guidance: "Transporting horses in horseboxes and trailers"

- The National Trailer and Towing Association (NTTA) – "Guide to Safe and Legal Towing"

  Society of Motor Manufacturers and Traders (SMMT) "Trailer Towing Guidance and the Law", Tenth Edition 2021

78. It was noted by the experts, and highlighted by the Claimants, that these guidance documents included many references to the importance of vehicles and towing equipment being maintained in accordance with the manufacturers' requirements or instructions. I have had regard to all this material in reaching my conclusions and will refer to the relevant sections of any applicable guidance as I address each issue.

Tightening/torque setting of bolts

79. I am satisfied that the bolts connecting the universal coupling to the Shocklink device were intended to be kept tightened in line with the specified torque for those bolts of 240 Newton metres (Nm) which was stated clearly in the Manufacturer's fitting, usage and maintenance instructions, a copy of which was in the bundle. Torque is a measure of the rotating force which is applied when a bolt is tightened. If a bolt is tightened to the correct torque measurement it means that the resulting tensile force or 'pre-tension' in the bolt will be able to withstand any forces that are applied externally to the bolt while the universal coupling is being used, provided those external forces do not exceed the maximum level permitted by that coupling device.

80. The Manufacturers' Fitting, Usage and Maintenance Instructions for the universal coupling (part no. 202014) ('the Maintenance Instructions') include the following warning:

> "**RESPONSIBILITY ⚠ !! Accessories which are not properly fitted can be dangerous, with the potential for serious injury or damage. It is recommended that all accessories are fitted and maintained by professionally competent persons."**

81. The Maintenance Instructions also include the following Fitting Instructions and other usage and maintenance information:

> "**Torque Settings**
>
> | Bolt Size | Bolt length mm (inches) | Torque setting Nm |
> |---|---|---|
> | M8 ( ) | | |
> | M10 ( ) | Fasteners not | |
> | M12 ( ) | supplied with | |
> | M16 (X) | this product | 240Nm Recommended |
>
> **A Calibrated Torque wrench must be used**
>
> **Warning ⚠ !!**
>
> **Before fitting ensure that all bolt/nut/washer contact surfaces are free from excess paint, dirt, underseal, weld splatters etc.**
>
> **Warning ⚠ !!**
> **When fully tightened, ensure that the equivalent of half the bolt diameter protrudes through the nut. It is imperative to use fasteners with vibration proof washers under the nut.**
>
> **Towing Capacity**
> "D" Value 17kN
>
> **USAGE, MAINTENANCE, SAFETY**
> - Using a calibrated torque wrench check tightness of all bolts/nuts initially after the first 500 miles (800 kms) of towing and then at 1000 miles (1600 kms) intervals.
> - Check regularly all moving/contact parts for signs of wear and replace if necessary. Use only genuine parts.
>
> **IF IN DOUBT CONTACT DIXON-BATE**

USER RESPONSIBILITY

It is your responsibility to ensure that you have been instructed in the safe usage, operation, and maintenance, of this product. Please ensure that these instructions are passed to subsequent owners/users of this product."

82. Mr Mottram relied in his expert report on a statement dated 3 December 2018, from Mr James Mills, a vehicle examiner with Cambridgeshire Police, who said this about the wear around the bolt holes: "*Examination of the now detached tow ball revealed polishing and wear around the nearside fixing aperture. This suggests historic freedom of movement. Movement would only be possible if the bolt was not correctly torqued. Incorrectly torqued bolts would be an aggravating factor for breakage and subsequent detachment*".

83. The parties' experts Mr Mottram and Mr Wade agreed in their joint report that "*the bolts failed by fatigue because the forces that were applied externally to the bolts while the tow ball was being used to tow a trailer or trailers over a long period, exceeded the tensile force or 'pre-tension' in the bolts that resulted from tightening the bolts. That would have resulted in fluctuation of the loading on the bolts, which then resulted in fatigue cracks forming in the bolts."*

Standard of care

84. In order to determine whether there has been a breach on the part of the Defendant in relation to the tightening of the bolts, it is necessary to determine the applicable standard of care. Whilst the extent of the basic duty of a vehicle owner is agreed, in cases of negligence the standard of care which is considered "reasonable" depends on the nature and extent of the risk. In this case, the risk resulting from a failure to ensure that the bolts were kept tightened to the correct torque setting throughout their period of use was that the bolts would eventually fail as a result of metal fatigue, as happened in this case. It is plain from the warnings in the manufacturer's instructions that the risk of the bolts failing was a risk which should have been known to any user of such a coupling. As I have already noted, the Defendant accepted in his oral evidence that he would have received a copy of these manufacturing instructions and he also accepted that the consequences of the bolts breaking "was likely to be catastrophic". I also find that the DVSA and other guidance available to owners of towing vehicles included similar instructions to follow manufacturers' instructions.

85. The coupling in this case was being used to connect two very large and heavy vehicles, each of which was intended to carry a significant load over a long distance and over roads of very variable surface quality. The evidence available to the court shows that in order for the bolts to remain effective in connecting the universal coupling to the Shocklink device, and thus keeping the trailer attached to the horsebox, they needed to kept tightened in line with the specified torque for those bolts of 240 Newton metres (Nm) which was stated clearly in the Manufacturer's 'Fitting, Usage and Maintenance instructions'.

86. I am satisfied that the standard of care required of the owner of a vehicle to which a Shocklink device and universal coupling was attached was to take reasonable steps to ensure that the manufacturer's instructions were followed at the time of its installation

and during its ongoing use, including regular torque testing of the bolts, so as to reduce the risk of the bolts becoming insufficiently tightened and therefore being vulnerable to metal fatigue over time.

87. Both experts accepted that such maintenance would only have involved the use of a torque wrench on the bolts by the Defendant or someone instructed to undertake such routine maintenance on his behalf. It would not have required the dismantling or stripping down of the coupling device. It was not suggested on behalf of the Defendant that such a requirement would have involved an unreasonable or overly onerous level of expertise or expense. The frequency of such torque testing would depend on the amount of use, as set out in the maintenance instructions.

Breach of duty

88. The Defendant frankly accepted that he had never tested the torque setting on the bolts to see if it matched the manufacturer's prescribed torque setting or specifically instructed anyone else to do so. The Defendant relied on the fact that neither the polishing on the surfaces, nor the relative movement between the towball and the Shocklink, would have been apparent on a visual inspection of the bolts and asserted that the Defendant was not obliged to carry out more than such a visual inspection. The Defendant also asserted in the Defence that the cracks or signs of fatigue in the bolts would only be apparent if the tow assembly was stripped down and the bolts were fully revealed and that he was not under an obligation to undertake such dismantling work. Finally, the Defendant also relied on the recent MOT inspection.

89. I accept that the polishing marks would not have been visible during a visual inspection when the washers beneath the bolt head were in place, as was agreed by the experts in their joint statement, but I do not consider that this provides the Defendant with any form of defence to this allegation of negligence. If, as I have found, the standard of care required was to ensure that the torque setting on the bolts was checked from time to time, in line with the manufacturer's instructions, then a visual inspection of the vehicle was never going to be sufficient. The fact that an incorrect torque setting could not be identified by such a visual inspection, so that the very serious known risk presented by the bolts being insufficiently tightened could not be detected in that way, simply supports the conclusion I have reached that other preventative measures on the part of a reasonable owner were needed in these circumstances. This was the approach adopted by the House of Lords in *Barkway* and *Henderson*, in cases where the defendants were carrying out very frequent visual inspections, but further preventative measures were needed to address specific and known risks identified in those cases. I consider the same principles would apply in this case.

90. Furthermore, having regard to the approach adopted by Lord Reid in the *Henderson* case, set out at para 67 above, I am also satisfied that the Defendant, as the owner and user of this coupling, ought to have been aware of the risks associated with these bolts and the possibility that some unusual defect could develop in the bolts as a result of his failure to follow the manufacturer's instructions, which would not be disclosed by the normal kind of visual inspection. This approach leads to the same conclusion as to the extent of his duty as that set out above, namely that a maintenance system involving regular torque testing was required.

Relevance of MOT

91. It is agreed by the parties that an MOT was conducted on the horsebox, to which the Shocklink device and the universal coupling were attached on 18 May 2018, some 5 weeks prior to the accident. It was contended in the defence and in Mr Crilley's skeleton argument that the towball assembly would have been inspected as part of that MOT testing and reliance was placed on section 11 of the DVSA guidance on MOT inspections of HGVs, which includes a visual inspection of a 'drawing hitch' for excessive movement or excessive wear.

92. However, the evidence given by both experts in the witness box was that such an MOT would not in fact have included using a torque wrench to check the torque settings on the bolts and that in any event, unless this information was provided by the Defendant, a mechanic would not know what torque setting was required for its safe use. Instead, both experts agreed that the MOT testing would have been limited to a visual inspection which they both agreed would have been unlikely to reveal any evidence of the metal fatigue developing in the bolts. Furthermore, the Defendant himself stated in his police interview and his oral evidence that he understood that the MOT would not have involved any specific check on the tightness of the bolts, and he had never given Manchetts any instructions to undertake any such checks.

93. In this case, it was apparent from the skeleton arguments and submissions that it was common ground between the parties that the MOT testing framework "*does not relieve the owner of any personal obligation imposed upon him by the common law*", as confirmed in the case of *Rees v Saville*, and discussed above. Having considered the cases of *Worsley*, *Rees* and *Rowley* and the expert and lay evidence in this case, I have reached the conclusion that the MOT carried out in May 2018 is irrelevant in this case. Whilst I accept that there may be cases, and *Rees* is such an example, where a recent MOT may be relevant if it involved an inspection of the very part which subsequently proved to be defective, this case does not fall into that category. The standard of care on the Defendant in relation to the universal coupling he had attached to his horsebox was outside the scope of the annual MOT that was undertaken. It follows that the happening of such an MOT cannot be sufficient to discharge the duty of care I have found to lie on the Defendant in this case in relation to the need for periodic checks on the tightness of the bolts.

94. For the reasons set out above I have reached the conclusion that the Defendant did not operate any or any adequate maintenance system for the proper maintenance of the coupling device, including periodic torque testing in line with the manufacturer's instructions prior to the accident. As a result, I find that he was in breach of his duty of take reasonable steps to ensure that the bolts were kept correctly tightened so as to be in a safe condition for their use in this universal coupling. I also find, on the basis of the agreed expert evidence, that on the balance of probabilities, this incorrect tightening caused or contributed to the metal fatigue which led to this fatal accident.

Overloading

95. The alternative cause of the metal fatigue which led or contributed to the two bolts shearing off on the day of the accident was that the external loads applied to the bolts over a period of time prior to the accident exceeded the maximum level they were

intended to be able to support. The D value of the universal coupling is a measure of such loading, which I have explained in detail in paragraph 53 above.

96. The experts agreed that the universal towball coupling attached to the Shocklink device by the bolts which failed was unsuitable for use with the horsebox and trailer if they were loaded up to their maximum permissible (gross plated) weights and that an alternative four-bolt tow ball coupling with a D value of 30.95kN would have been more suitable, as that D value is higher than the maximum D value of 21.9 required for the weights of the horsebox and trailer at their 'full load'. The Defendant was unable to explain how or why he selected the universal coupling with the lower D value and accepted the experts' evidence about its lack of suitability at full load. However, as the experts agreed that the D value was not being exceeded on the date of the accident and the Defendant's evidence was that the horsebox and trailer had been similarly loaded since he moved over to 'scurrying' in 2018, the key issue to be determined was whether his previous use of the coupling with the Ifor Williams (IW) trailer, on the balance of probabilities, would have involved overloading.

97. The Claimants sought to rely on evidence about the weights of the vehicles from the police report and on evidence which emerged during the trial, to show that the D value for the universal coupling would probably have been exceeded on the five occasions each year when the Defendant was using his previous Ifor Williams trailer to transport 4 ponies and two carriages. Mr Cunnington prepared a written summary of "Trailer Weights and D values" after the conclusion of the evidence setting out the basis of his calculations.

98. In short, the Claimants contended that the minimum laden weight of the horsebox with four ponies on board was 10,310 kg. This was based on the recorded unladen weight of the horsebox after the accident in the police evidence of 9,110 kg and the agreed average weight of approximately 300 kg per pony. This figure was accepted by Mr Crilley on behalf of the Defendant. This figure does not include the weight of the two passengers or the other equipment outlined by the Defendant in his evidence as being normally stored in the horsebox such as calor gas bottles, harnesses and personal belongings. The Claimants contended that it would be reasonable to allow an additional 100kg for this equipment. This figure was not agreed by the Defendant but no evidence was provided by the Defendant in relation to the weights of himself or his wife or these other additional items. It is also right to note that although the police recorded the horsebox as being weighed without the horses or passengers on board, it is not completely clear whether all the other equipment had been removed prior to it being weighed.

99. On the basis of all the evidence I have read and heard, I find that a conservative estimate of the minimum laden weight of the loaded horsebox when it was being used by the Defendant and his wife to travel to horse-driving events involving four ponies was 10,410 kg, including the weight of the horsebox, the ponies, two passengers and any additional equipment.

100. Turning to the probable weight of the loaded Ifor Williams (IW) trailer, there was some conflicting evidence from the expert witnesses on this issue. The first key point to note is that neither expert has examined that IW trailer and it was not examined by the police. The only available evidence comes from the Defendant. In his witness statement he describes it as "*an 18 ft Ifor Williams tri-axle flatbed trailer with an aluminium body*".

In his oral evidence, he clarified that the trailer had aluminium boxing on top of a similar nature to the boxing on the smaller trailer involved in the accident. He also said that he had bought it second-hand from another carriage driver and that it had already been adapted when he bought it. As with the new trailer, the Defendant's evidence was that he had bought it as it was and had given no thought to its history or whether it had been previously altered.

101. In their Replies, the Claimants specifically pleaded that the Defendant had previously used the coupling and bolts to pull a heavier trailer for which they were unsuitable, but the Defendant has chosen not to adduce any evidence about the weight or construction of his previous trailer, so in those circumstances the court must make the most accurate assessment that it can on the basis of the evidence that is available.

102. The expert evidence from Mr Mottram and Mr Wade about the probable weight of the IW trailer was based on three key points: (1) the bare weight of an 18ft flat-bed Ifor Williams trailer as shown in a current catalogue, which was agreed by both experts to be in the region of 785-965 kg, (2) the probable weight of the aluminium boxing on top of the flat-bed and (3) the evidence of the Defendant that his new trailer was smaller and slightly lighter than the IW trailer.

103. The police evidence about the weight of the new trailer was that it weighed 1860 kg on the date of the accident. The evidence from the Defendant and his wife was that the trailer was carrying one small carriage weighing 70 kg, some bales of hay or straw and other equipment of unknown weight, such as brooms, forks and buckets. The Claimants suggested the other equipment might weigh up to 100 kg but this figure was not accepted by the Defendant. In the absence of any more specific evidence from the Defendant about the weight of that additional equipment, the only finding I can properly make is that the weight of the new trailer without the carriage but including the bales and other equipment it usually carried to such scurrying events was 1790 kg.

104. In their joint statement the experts had reached the shared conclusion that despite its larger dimensions, the IW trailer was probably not heavier than the trailer involved in the accident. I understand from the context that the experts were intending to refer to the unladen weight of the IW trailer. If this conclusion was accepted, it would mean that the IW trailer, when carrying no carriages but carrying the same number of bales and the same additional equipment would also have weighed no more than1790 kg.

105. Mr Wade, in his supplementary statement and oral evidence explained that the primary basis for this opinion that the IW trailer would probably not be heavier than the new trailer was that "*adding of an alloy superstructure would not double its weight*". Mr Mottram, as I have already recorded, sought to depart from this agreed position having heard the Defendant's evidence and expressed the revised opinion that it would be appropriate to use a figure of 1800 kg for the net (unladen) weight of the IW trailer in calculations relating to D values. For the reasons I have already set out, I do not place any reliance on Mr Mottram's supplementary handwritten statement as I do not accept the premise on which his revised opinion is based.

106. Nor, however, do I feel able to place much weight on the previously agreed joint position or the confirmed evidence of Mr Wade which is based upon a starting point of the weight of a new bare flat-bed IW trailer. Whilst I accept Mr Wade's evidence that the basic weight of such a trailer would be unlikely to have changed significantly in the

last 20 years or so, given that the IW trailer was bought second-hand and had already been adapted prior to its purchase by the Defendant, I cannot be sure that it had not also been customised, like the new trailer, during that period, in which case the bare weight of a new trailer would not be comparable.

107. Overall, having carefully considered all the available evidence, I am satisfied that a reasonable degree of reliance on this issue can be placed on the Defendant's own evidence. He was the person who was regularly using the two trailers and would have had to manoeuvre them. His consistent evidence has been that the trailer involved in the accident was smaller and shorter than the IW trailer. In his witness statement he also said it was 'lighter' and in his oral evidence, he told this court that it was 'a little bit lighter' than the IW one. As he is the only person with any direct knowledge of the IW trailer, and as it is not in his interests to make any concessions in relation to the weight of the IW trailer, I consider that his evidence is a better basis for a finding of fact on this issue than a hypothetical calculation by one or other of the experts who have never seen or examined the IW trailer. I find that on the balance of probabilities, the unladen weight of the IW trailer was slightly heavier than the unladen weight of the trailer involved in the accident, and in the absence of any other evidence I have estimated that slight difference in weight described by the Defendant as being no more than 100kg. This means that when it was loaded with the same amount of additional equipment as the new trailer on the day of the accident, but without any carriages the IW trailer would have weighed slightly more, namely no less than 1890 kg.

108. The Defendant's unchallenged evidence was that the weight of the carriages carried on the IW trailer were 90kg for the single carriage and 225 kg for the pair and that he knew those weights as they were checked at the horse events. He also gave evidence that when he was transporting 4 ponies he would normally take about 5 bales of compressed hay, whereas when he was transporting 3 ponies he would only take 3 or 4 bales. His wife's evidence was that on the day of the accident when they were travelling to a scurrying event with two ponies, they were taking 2 bales.

109. Taking into account the Defendant's evidence that the number of bales taken would also depend on the length of their trips, I find that when the Defendant was previously travelling to an event with the horsebox, the IW trailer and 4 ponies, at least two more bales would have been taken than on the day of the accident. I also accept that the unchallenged weight of 35kg per bale put forward by the Claimants is reasonable to use for the purpose of calculating the D values. I also find on the evidence before me that it is reasonable to assume that there was no significant difference in the weight of the other ancillary equipment, such as buckets and brooms, which would ordinarily be carried in the trailers to horse-driving or scurrying events.

110. In order to calculate the loaded weight of the IW trailer on the four-pony trips the weight of the two carriages (90kg and 225 kg) and the weight of two additional bales of hay (totalling 70 kg) need to be added to the assumed weight of the IW trailer and the ancillary equipment. On the basis of this calculation, I find that the overall loaded weight of the IW trailer on these four-pony trips would have been no less than 2275 kg (being 1890 kg + 385 kg).

111. Taking these probable minimum loaded weights for the horsebox and the IW trailer and applying the agreed formula set out in both experts reports and the Bradley/Dixon-Bate manufacturer's catalogue) as set out in paragraph 53 above gives the following D value:

$$\frac{10410 \times 2275}{10410 + 2275} \times \frac{9.81}{1000} = \mathbf{18.31}$$

112. It follows, that on the basis of the Defendant's own evidence, I find that on the balance of probabilities, on about five of his trips each year over a period of up to ten years when he transported four ponies he would have been driving with a combination of loads on his horsebox and previous IW trailer which significantly exceeded the maximum safe D value of 17.2 kN for the universal coupling connecting those vehicles.

113. In light of the joint statement from the experts, I have also considered the calculation of the D value that would be arrived at if the IW trailer was to be treated as 'probably not being heavier' than the new trailer, rather than relying on the evidence of the Defendant. In that instance, based on my finding in paragraph 107 above, the loaded weight of the IW trailer with the two carriages and two extra bales and the same ancillary equipment would be 1790kg + 385 kg = 2175 kg.

114. Applying the same formula set out in paragraph 53 above gives the following D value:

$$\frac{10410 \times 2175}{10410 + 2175} \times \frac{9.81}{1000} = \mathbf{17.66}$$

115. It follows that even if I had accepted the evidence of the Defendant's expert Mr Wade, as recorded in the joint statement which he confirmed during the trial, and based my calculation on that evidence, I would still have arrived at a finding that on the balance of probabilities the Defendant had exceeded the maximum safe D value of 17.2 kN for the universal coupling connecting those vehicles on his four-pony trips.

116. The Defendant's evidence was that he had never taken any steps to check the weight of his loads or ensure that he did not exceed the D value for the coupling, and it was accepted by Mr Crilley for the Defendant that driving with such a load which exceeded the D value would be negligent. On the basis of all the available evidence, I find that the Defendant was negligent in not having any regard to the need to ensure that the loads he carried did not exceed the maximum D value of 17.2 kN for the universal coupling connecting his vehicles. I also find, on the basis of the agreed expert evidence, that on the balance of probabilities, this repeated overloading over a long period of time caused or contributed to the metal fatigue which led to this fatal accident.

Other allegations

117. In addition to the two key allegations of negligence addressed above, the experts also addressed some other issues which had been raised by one or other party in the pleadings. In particular, they addressed the issue relating to breakaway cable set out at paragraph 8 above.

118. In the light of the conclusions I have already reached, it is not strictly necessary for me to make findings on these other issues. but for the sake of completeness, I will briefly address the issue of the breakaway cable. In short, the Claimants alleges that it was negligent of the Defendant to attach the breakaway cable around the tow ball which formed part of the universal coupling rather than to the side of the Shocklink device or to a fixed point on the rear of the horsebox itself. It is common ground that there was no such designated fixing point on the rear of the horsebox so the latter allegation would require a finding that the Defendant was under a positive obligation to procure such a fixing point at some time after his purchase of the horse box and before the accident.

119. It is also agreed that that there were other serious defects associated with the safe working of the breakaway cable, in that the cable itself was held together with cable ties and the brake lining on one of the trailer brakes was missing. However, the experts agreed that none of these defects was causative of the accident because the breakaway cable was tied around the towball and therefore became detached from the horsebox at the same time as the universal coupling, so it could not have activated the trailer's brakes as it was intended to do in the event of the detachment of the trailer.

120. Regulation 86A of the Road Vehicles (Construction and Use) Regulations, 1986 set down the legal requirements for a braking trailer of this type to be fitted with a device designed to stop the trailer automatically in the event of the main coupling detaching whilst in motion. I have considered carefully the guidance relating to the use of breakaway cables to which I was referred and the expert evidence on this issue. I note that Mr Wade, who was otherwise very critical of the Defendant's actions, did not support the Claimants' allegation in relation to the attachment of the breakaway cable. Similarly, in his initial report Mr Mottram did not raise this issue and it was only in his oral evidence that he first raised the possibility that the cable should either have been tied to one of the looped pins on the side of Shocklink device (referred to above) instead of the towball or that the Defendant should have procured a designated fixing point on the back of the horsebox itself.

121. It is apparent from the regulations and the guidance that the primary purpose of a cable which is attached to the trailer's braking system is to stop the trailer automatically "*in the event of the main coupling detaching*". I consider that it is plain from the context that the detachment being envisaged is the trailer coupling attachment detaching from the towball fixed to the towing vehicle. It is simply not envisaged in the guidance (or the DVSA video which shows a cable being tied round a towball on a car) that the towball itself might detach, as happened in this case. This appears to the reason why the attachment of such cables to fixed towbars, whilst not recommended, is widely accepted, and indeed I note this was the attitude of the police officer in his interview with the Defendant.

122. I am satisfied that the Defendant had failed to maintain the trailer, and the braking system on it, and the breakaway cable itself, but I do not find that it was negligent for him to attach that cable around the towball. Whilst I accept that to do so was not best practice, I do not consider a failure to attach it to another place such as the welded loops on the Shocklink device, or to add a separate designated fixing point to the back of the horsebox, fell below a reasonable standard of care, having regard to the guidance for vehicle owners available.

Conclusion

123. This tragic accident happened as a consequence of the failure of an unsafe coupling device between two heavy vehicles being driven on a public road. It follows from the findings I have set out above, that I am satisfied that this accident was caused by the Defendant's negligent failure to keep his horsebox and trailer in a safe and roadworthy condition for the type of use to which he put them. The Defendant was negligent in (a) failing to take reasonable steps to ensure that that bolts securing the universal coupling to the Shocklink device on his horsebox were kept correctly tightened and (b) overloading a previous Ifor Williams trailer towed by the horsebox over many years. One or both of these breaches of duty caused or contributed to the metal fatigue in the bolts of the coupling between his horsebox and trailer which led to this accident. The Defendant is therefore liable for the full consequences of this accident.

124. The extent and value of the Claimants' injuries, loss and damage will be determined at a separate hearing or hearings, if not agreed by the parties