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**IN THE HIGH COURT OF JUSTICE IN NORTHERN IRELAND**

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**KING'S BENCH DIVISION**

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**LLOYD**

**v**

**RSA INSURANCE**

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**Mr Colm Keenan KC with Mr Rory Fee (instructed by R P Crawford Solicitors) for the Plaintiff**
**Mr Christopher Ringland (instructed by Clyde & Co Solicitors) for the Defendant**

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**McLAUGHLIN J**

*Introduction*

[1] This claim arises out of a damage only road traffic collision which occurred on 21 December 2023 between a bus owned and operated by the Education Authority and a parked vehicle owned by the plaintiff.

[2] The plaintiff is Colm Lloyd who resides at 125 Limewood, Banbridge, Co Down. The defendant is the insurance company for the bus owned by the Education Authority and is named as defendant pursuant to Regulation 3 European Communities (Rights against Insurers) Regulations 2002.

[3] The plaintiff was represented by Mr Colm Keenan KC and Rory Fee BL. The defendant was represented by Mr Christopher Ringland BL. I am grateful to counsel for their assistance. I heard evidence on behalf of the plaintiff from Mr Lloyd and Mr Carvill, a motor assessor and engineer. On behalf of the defendant, I heard evidence from Mr Douglas, who is also a motor engineer. I have set out below a summary of the evidence given. There was little if any dispute about the underlying facts, with the majority of the dispute focused upon the nature and extent of the damage to the vehicle and the consequences for the plaintiff's claim for vehicle hire.

[4] There are three elements to the claim:

(i) £12,100.00 representing the pre-accident value of the car. The plaintiff claims that the car was damaged beyond economic repair.

(ii) £43,122.00 in charges incurred for hiring an alternative vehicle on credit terms. Hire charges were £288 per day (£240 + VAT) with a hire period of 149 days between 02.01.24 and 30.05.24. The claim also includes additional minor costs for vehicle delivery and valet.

(iii) £8,010.00 for vehicle storage charges at a rate of £30 per day (£25 + VAT) with a storage period of 253 days between 21.12.23 and 30.08.24 and a collection fee of £420 (£350 + VAT)

***Evidence on behalf of the plaintiff***

[5] The plaintiff is the owner of a Mercedes C250 which was parked outside his home on the morning of 21 December 2023. Following a trip to the gym that morning, he noticed damage to the rear near side of the vehicle. Initially, he believed that the damage had occurred in the car park of the gym. Following enquiries with the gym owner and examination of CCTV by PSNI, this possibility was excluded. Later that day the plaintiff was informed by a neighbour that his car may have been struck by an Education Authority bus which collects a child from his street each morning. CCTV footage of the street revealed that a collision occurred between the rear of the bus and the rear nearside of Mr Lloyd's vehicle while the bus was reversing. Mr Lloyd passed the CCTV footage to PSNI who advised him that it was a civil matter which he should pursue himself.

[6] Photographs of the vehicle taken in the aftermath of the collision show the existence of damage to the rear nearside bumper panel. The bumper panel appears to have broken free from its fixings and to protrude by a small distance from the adjacent panel. Mr Lloyd was able to drive the car but stated that he noticed a whistling noise once the vehicle achieved 30/40 mph and that he felt unsafe driving. He was unaware of the extent of the damage but wanted the vehicle to be fully repaired. Following an internet search, he made contact with AH Assist, which is an accident management company. He found the company via a link attached to a friend's Facebook page. He provided the company with the CCTV footage of the collision they agreed to "*take the case on*." Representatives of AH Assist collected his vehicle on 23 December 2023 and provided him with a BMW 420D replacement vehicle, on the same day. There was no dispute that this was a suitable replacement and of an equivalent standard to his own vehicle. The vehicle was stored by AH Assist in its yard in Lisburn. Mr Lloyd confirmed that he knew this was not a free vehicle but that nobody explained to him at the time of its delivery he may be charged for it. He was advised to secure his own insurance for the vehicle, which he

did via his insurance broker, without charge. Little further activity appears to have occurred during the Christmas holiday period.

[7] On 2 January 2024, Mr Lloyd had a pre-booked appointment for a MOT vehicle inspection. He had already experienced substantial delay in securing the appointment and was reluctant to miss the inspection. He was unaware if the accident might affect the outcome of the inspection but decided to present the vehicle in any event. He collected the vehicle from the AH assist yard and secured the rear nearside bumper panel to the chassis using duct tape, which he applied beneath the rear nearside wheel arch. The tape was not visible and he was content it was sufficient to hold the bumper panel in place for the purposes of the inspection. He carried out no further repairs. He stated that he noticed the rear near side tyre to be partially deflated and he used a portable pumping device to reflate it for the purposes of the test. He presented the car at Balmoral inspection centre in Belfast and did not mention the fact of the accident to the inspector. The car passed the inspection and an unconditional certificate was issued. After the inspection, Mr Lloyd returned the vehicle to AH Assist's yard. Nobody was present and he left the keys inside the vehicle. When driving to and from the test centre, he described again hearing a "whistling noise" when the car was driven 30/40 mph, which was not present prior to the accident. Mr Lloyd does not recall informing any of the AH Assist representatives at that time that the vehicle had passed the inspection but believes that he informed his solicitor. He stated that he informed AH Assist when the defendant's motor engineer later inspected the vehicle.

[8] Also on 2 January 2024, Mr Lloyd received and signed a credit hire agreement in relation to the replacement vehicle. The documents were sent, signed and returned electronically by Mr Lloyd and are dated 2 January 2024. There was no dispute about the circumstances in which he executed the agreement. The agreed hire rate was £288.00 (£240.00 + VAT) per day, commencing 2 January 2024 and vehicle storage charges of £30.00 (£25.00 + VAT) per day, commencing 23 December 2023. It was clear from the evidence of Mr Lloyd that the hire car was delivered to him on 23 December 2023 and that he used it from that date. However, as set out below, hire charges did not commence until the date the hire agreement was executed on 2 January 2024. Mr Lloyd's use of the replacement vehicle between 23 December 2023 and 2 January 2024 therefore appears to have been voluntary and no claim is now made for hire charges during this period.

[9] Aside from the daily hire charge, neither of the parties drew my attention to any particular clause in the hire agreement and invited me to consider the terms for myself. I confirm that I have done so. Two clauses appear to me to be of relevance. The text on p2 of 2, includes the following confirmation by Mr Lloyd:

> "I have had the credit hire/repair process explained to me and, prior to entering into this agreement, I have been informed of my duty to keep my losses to a minimum. I

> need to hire a vehicle as I need a replacement vehicle whilst mine is unroadworthy/being repaired. I do not have access to another suitable vehicle can use."

[10] Clause 7 provides for a cancellation period of 14 days. Clause 8 then provides as follows:

> "If you agree that work/services can start before the cancellation period ends, please sign. If you decide to cancel within the 14 day cancellation period, reasonable payment may be due for the work/services carried out prior to cancellation, by signing you are confirming your understanding. I authorise AH Assist Ltd to commence services immediately and in advance of the cancellation period. I understand but I choose to cancel within the period (14 days) I may be asked to pay for any work/services carried out prior to cancellation."
> [emphasis added]

[11] Mr Lloyd's signature appears immediately after Clause 8, thereby signifying his authority for "work/services" to be commenced within the cancellation period. The significance of these two clauses, when read together, is that Mr Lloyed has agreed with AH Assist for it to provide both car hire and car repair services on credit. As set out below, no repairs were ever undertaken by AH Assist, for reasons which were unexplained.

[12] On 4 January 2024 the vehicle was inspected on the instructions of AH Assist by Mr Hugh Carvill, consulting engineer and motor assessor. He noted "light" damage to the rear nearside of the vehicle. His report records the following parts to be required:

(i) rear bumper;

(ii) rear bumper bar;

(iii) rear bumper brackets;

(iv) near side tail lamp;

(v) rear parking sensor;

(vi) boot lid;

(vii) boot lock badges;

(viii) Near side rear alloy and tyres

The report also records that the following items may be required, subject to confirmation:

(ix) rear bumper lower tailpipe exhaust;

(x) rear panel;

(xi) near side suspension.

[13] Mr Carvill estimated the cost of total repairs (including those items to be confirmed) to be £8112.76 + VAT, comprised of £1520.00 (Labour), £5247.85 (parts) and £1344.91 (paint and sundries), totalling £9735.31. He did not provide a breakdown of the cost for each item. He estimated the pre-accident value of the car to be £12,100. The total estimated cost of repairs (including all of those items for which confirmation was required) therefore just exceeded 80% of the pre-accident value, namely £9680. On this basis he concluded that the vehicle was beyond economic repair. Mr Carvill's assessment of pre-accident value was not disputed nor was his use of a guideline figure of 80% of pre-accident value to determine whether it was economically viable to repair the vehicle.

[14] In his evidence, Mr Carvill confirmed that he did not remove any part of the vehicle to determine whether any concealed parts of the car, such as the bumper bar, had in fact been damaged. He therefore confirmed in evidence that his conclusion that the bumper bar had been damaged was an assumption, rather than an observation or finding. He was not instructed by AH Assist to inspect the vehicle again and he provided no further advice on the need for replacement of those items for which confirmation was required. In addition to advising that the car was beyond economic repair, Mr Carvill also concluded that the car was not roadworthy on the date of his inspection. His opinion was based upon the combined effect of three aspects of observed damage:

(i) He found that the rear nearside bumper panel had "popped out" of its fixing at this location. Since the bumper was made of plastic, he said that it was susceptible to deform and to flex when driven. He was therefore of the opinion that the bumper panel was not secure and could fall off.

(ii) In light of the damage to the external plastic bumper panel, he made an assumption that the bumper bar (which was not visible from an external inspection) was also likely to be damaged. Since the bumper bar was a safety feature of the car, he did not consider it to be safe to drive.

(iii) He observed the boot lid to be sitting high and not closing easily. He considered it required a "slam" to close and was liable to "spring open."

[15] Mr Carvill stated that, at the time of his inspection, the rear nearside tyre also looked deflated but that it was not flat. He agreed that if the tyre had suffered a slow puncture, it would have been completely deflated by the end of that month when the car was inspected by the defendant's engineer. Mr Carvill also accepted that it had later been established that the car did not require a replacement rear alloy wheel, tyre or suspension. Nor did it require a lower tailpipe exhaust. Accordingly, on his own figures, the value of the repairs reduced to £6,950.00, inclusive of VAT. The significance of this reduction is that the true value of the repairs was approximately 57% of the pre-accident value, which in turn would mean that it was at all times economically viable to repair the vehicle, applying his own methodology.

[16] When asked by me how his conclusion that the car was not roadworthy could be reconciled with the fact that it passed the MOT test two days previously, Mr Carvill stated candidly that he could not explain the inconsistent findings. No expert or other evidence was called on behalf of the plaintiff to explain the nature, intensity or scope of the MOT testing procedure which might have reconciled the test result with Mr Carvill's opinion on roadworthiness.

[17] On behalf of the plaintiff, no evidence was called from a representative of AH Assist to explain the actions which it took (or did not take) following receipt of Mr Carvill's report. Since the economic viability of conducting repairs was entirely dependent upon confirmation of whether some of the repair items identified by Mr Carvill were in fact necessary, this omission is of considerable significance to the claim. Mr Carvill's evidence was that he was not instructed to carry out a further inspection. It is not therefore clear whether any consideration was given to this issue at all by AH Assist. I have no evidence as to whether AH Assist undertook any efforts to arrange for the car to be repaired, notwithstanding the authorisation which the plaintiff appears to have provided when he signed Clause 8 of the Hire Agreement. The only evidence was that the hire arrangements continued until terminated unilaterally by Mr Lloyd. One obvious inference is that AH Assist simply proceeded on the erroneous assumption that the car was beyond repair and therefore continued the hire arrangements while awaiting compensation proposals from the defendant insurer, with charges mounting in the interim period. Whatever the explanation for events following receipt of Mr Carvill's report, it is clear that the car was <u>not</u> repaired by AH Assist or anyone instructed by them.

[18] Similarly, the defendant chose not to lead any evidence about any compensation proposals which it may have made during this period.

[19] The only evidence available to the court was that of Mr Lloyd. His evidence was that he had simply wanted his car to be repaired and returned to him in its pre-accident condition, at the expense of the other party. He stated that he was conscious of the mounting hire charges and did not wish to be "stuck" in a prolonged credit hire arrangement. He stated that he contacted his solicitor on a regular basis, seeking an update but was informed that the defendant had not

accepted responsibility and had not made a proposal for compensation. The result was that the hire arrangement simply continued and the charges mounted.

[20] By May 2024, Mr Lloyd had lost all patience and decided to take matters into his own hands. He stated that after an internet search, he identified a car body repair business in Newry run by Mr C Gribben which was able to carry out the repairs. On 30 May 2024 he returned the hire car and recovered his own vehicle from the AH Assist yard. For the next number of months, he used his partner's vehicle as she was unable to drive on account of a medical condition. Mr Lloyd then spent some time raising the funds to pay for the repairs. He did so by selling a Land Rover vehicle and by borrowing the balance from family. Mr Gribben then repaired the car using second hand parts, which he advised would be cheaper than purchasing new parts. Mr Lloyd advised that he used the report of Mr Carvill as the basis of his instruction to Mr Gribben. A single hand written invoice was supplied by Mr Gribben, dated 14 September 2024. It contains no breakdown of the work actually carried out to the car or the price for each item. It simply contains a global price of £6,720 comprising lump sum costs for Parts (£4,200), Paint & Materials (£1,220) and Labour (£1,300). It records that payment was received in cash. Mr Lloyd was unable to explain precisely what work was carried out by Mr Gribben, for example he did not know whether the bumper bar had actually been damaged or required replacement. After repairs were completed, Mr Lloyd sold the car to a friend for £8,700.

***Evidence on behalf of defendant***

[21] On 31 January 2024, Mr Douglas, a motor assessor and engineer instructed by the defendant carried out a desktop study of the materials and evidence submitted by the plaintiff in support of the claim, including the report of Mr Carvill. In the course of this exercise, he carried out an online search against the vehicle using a publicly available website and was able to ascertain that the car had passed its MOT inspection on 2 January 2024. He followed this up with a physical inspection on 13 February 2024. The car had remained in the AH Assist storage yard throughout this period.

[22] Mr Douglas also identified the damage to the rear nearside bumper panel, including the nearside parking sensor. He also stated that the rear nearside bumper panel had "popped out" of its fixings at this location and was sitting proud of the undamaged rear panel by a small amount. Photographs taken by him reveal damage of a similar magnitude to that observed by Mr Carvill. My own estimate is that the panel probably protrudes by a maximum distance of approximately one inch. Mr Douglas explained that the plastic bumper panel is secured to the bumper bar by four fixings spread across its length. The remaining three fixings were intact and the bumper was undamaged in any other location. While the bumper panel had undoubtedly suffered "light to moderate" damage to the rear nearside, he was clear that the bumper panel was not "hanging off." It remained securely attached to the

bumper bar at the other three fixing points and he was of the clear opinion that the car could be driven safely on the road, pending repairs. This accorded with my own observations from the photographs of both experts. Like Mr Carvill, Mr Douglas did not carry out an inspection of the rear bumper bar. It was concealed and inspection would have required complete removal of the bumper panel. Mr Douglas agreed that it was reasonable to assume that the bumper bar might have been damaged and that this could only properly be assessed once the bumper panel had been removed. However, he considered that any damage to the bumper bar was likely to be light and confined to the rear nearside, rather than across its length. In his opinion, even if the bumper bar had in fact been damaged, there was only likely to be a very slight reduced safety benefit, that this was limited and it did not affect the roadworthiness of the vehicle.

[23] Mr Douglas did not find the rear nearside tyre to be deflated or otherwise damaged and found that the boot lid closed effectively and safely without requiring to be "slammed" shut. Mr Douglas' estimate of the costs of repair was £3,941.03 (ie £3,284 + VAT). This does not appear to have included any allowance for the costs of replacement of the rear bumper bar in the event it was found to have been damaged. He was also of the clear view that the car was not beyond economic repair and had been roadworthy at all times.

[24] Mr Douglas also accepted that, irrespective of his view of the vehicle's roadworthiness, it would be reasonable for it to be off the road for a period of time to allow repairs to be carried out. He estimated that a reasonable period for the repairs would be 6–10 days.

[25] In the course of his evidence, Mr Douglas began to explain the different stages of the MOT vehicle testing procedure and the purposes of each stage. Counsel for the plaintiff objected and challenged Mr Douglas' expertise on the matter. Mr Douglas candidly accepted that he did not have expertise in Northern Ireland vehicle testing procedures by reason of any training, qualification, or experience. His knowledge was based upon his own personal experiences of presenting vehicles for inspection. Accordingly, I ruled that he was not entitled to give opinion evidence on the issue but that he could give evidence of his own personal experiences of testing procedures. In the event, no further evidence on the issue was adduced and I have excluded from my mind any consideration of the opinion which he began to provide. Instead, as set out below, I have considered this issue by reference to the governing statutory provisions.

[26] The defendant also asked me to view the CCTV footage captured outside Mr Lloyd's house. It showed a medium sized Education Authority bus reversing in what appears to be a cul-de-sac. While reversing as part of a turning manoeuvre, the rear nearside of the bus appears to make contact with the rear nearside of Mr Lloyd's vehicle. It is difficult to define the point of contact between the vehicles with any degree of precision. I was invited by the defendant to conclude that the impact was

minor in nature. While it was certainly a low velocity impact, it is also clear that the bus is a significantly sized vehicle and no doubt could deliver substantial momentum upon collision with a stationery vehicle, even if travelling at low velocity. It is therefore difficult for me to make any detailed assessment of the amount of damage which the impact may or may not have caused from a single viewing of the CCTV footage. What is clear is that a collision appears to have occurred, which was not disputed by the defendant.

*Claim for vehicle damage*

[27] There is no dispute that the plaintiff's vehicle was damaged as a result of this collision and liability was not disputed by the defendant. Similarly, it was not disputed that the plaintiff incurred expenditure from his own funds in order to repair the vehicle. The plaintiff is, therefore, clearly entitled to compensation for that loss. As set out above, it was not ultimately in dispute that the actual value of the repairs was below the guideline of 80% pre-accident value and that the vehicle was, therefore, not beyond economic repair. The appropriate measure of damages is therefore not the pre-accident value of the vehicle, as claimed, but the value of the repairs.

[28] There is a dispute between the experts as to the likely cost of repairs. Mr Carvill estimated it to be £6,950 including VAT, whereas Mr Douglas estimated it to be £3,901.43, excluding the cost of repairing the bumper bar. As matters transpired, the plaintiff arranged for the repairs to be carried out by Mr Gribben at a cost of £6,720. That was a global repair cost and the invoice does not contain any detail about the items of work which Mr Gribben actually carried out, the parts installed or the cost attributable to each item. In addition, the parts used were second hand parts, whereas the plaintiff would have been entitled to have the car repaired in an approved repair workshop, using new parts supplied by the manufacturer. To this extent, the sum charged by Mr Gribben for using second hand parts is somewhat difficult to reconcile with the estimate from Mr Carvill which was only £230 more expensive and was based upon new parts. Despite the slight uncertainty in the precise works done to the car, I have no proper basis upon which to find that the repair costs were not properly incurred or to make an alternative assessment of the value of the losses suffered by Mr Lloyd. Doing the best I can on the evidence, I consider that the appropriate measure of damage is the outlay which Mr Lloyd actually incurred, namely £6,720.

*Claim for vehicle hire and storage costs*

[29] At the conclusion of the hearing, the defendant submitted that the key issue for the court was whether or not the car was unroadworthy on the date the hire charges commenced, ie. 2 January 2024. It was submitted that the plaintiff's vehicle could not have been unroadworthy, since the car passed its MOT inspection on that date. I was invited to take judicial notice of the roadworthiness of the vehicle, based

upon the existence of a vehicle test certificate. Hence, it was argued that it was not reasonable for the plaintiff to hire a replacement vehicle at all and that the entire hire claim should be dismissed.

[30] For the plaintiff it was argued that I should not rely upon the MOT certificate alone to assess the roadworthiness of the vehicle. Mr Keenan pointed to the report of Mr Carvill, which concluded that the car was not roadworthy. He contended that the plaintiff was not an expert and that it was reasonable for him to rely upon the advice received from Mr Carvill. He also pointed to the absence of any offer of repair from the defendant and hence that it was reasonable for the plaintiff to proceed on the basis of Mr Carvill's advice and to continue the hire arrangements.

[31] I do not consider that the determination of the claim for hire charges is limited to a binary assessment of whether the plaintiff's vehicle was roadworthy on the date those charges commenced. The twin guiding principles for determining the claim are (i) that the plaintiff is entitled to recover the reasonable costs and expenses which have been reasonably incurred as a result of the accident and (ii) that the plaintiff must make reasonable efforts to mitigate those costs and expenses. The application of these principles will depend upon the particular facts of the case. It is well established in this jurisdiction that it will frequently be reasonable for a plaintiff whose vehicle is damaged in a road traffic accident to enter into commercial arrangements for the hire of an alternative equivalent vehicle, including an arrangement under which the vehicle charges are deferred on credit terms. Invariably, that will be the case while the damaged vehicle is being repaired or is unroadworthy. Similarly, it may also be reasonable for the plaintiff to enter into credit repair arrangements with the same or a different commercial entity. Credit arrangements involving rental or repair rates which are higher than non-credit arrangements may also be reasonable on the facts of the case, particularly if the plaintiff can demonstrate impecuniosity or that it is otherwise unreasonable to expect that he/she should fund the costs of hire/repair from personal resources or make a claim under their own comprehensive insurance policy. The jurisprudence of these courts is replete with examples of cases in which the reasonableness of the fact, rate or duration of post-accident credit hire/repair arrangements has been challenged by defendants. What is also clear from the authorities is that the overriding principle against which these issues should be assessed is *restitutio in integrum* – ie. that compensation should be measured, as best as possible, to match the reasonably foreseeable damage which actually flowed from the accident, together with consequential losses reasonably incurred. Where a plaintiff has entered into a credit hire or credit repair arrangement, the assessment should be made by considering the matter from the perspective of the plaintiff and the reasonableness of the steps which were (or were not taken) by the plaintiff in the aftermath of the accident. Where the plaintiff has engaged the services of an accident management company (as occurred in this case) and the litigation is conducted pursuant to contractual subrogation rights, the company stands in the shoes of the plaintiff and can have no greater or different rights than those of the

plaintiff. One of the many decisions in this jurisdiction in which all of these basic principles were explained and applied is *Matchett v Hamilton* [2011] NIQB 131, at [4]-[8], per McCloskey J.

[32] Applying these principles in this case, it is clear that the plaintiff's vehicle was damaged as a result of the negligence of the driver of the bus. Irrespective of whether the vehicle was unroadworthy on that date or not, it was entirely reasonable for the plaintiff to take prompt action in the aftermath of the accident to arrange for the assessment of damage and the repair of his vehicle, together with the supply of a replacement vehicle while the car was off the road for this purpose. The defendant did not contend that the plaintiff was not entitled to arrange for repairs or that he should have funded the costs of repairs from his own resources immediately after the accident. Nor was it argued that it was unreasonable for the plaintiff to have arranged for a replacement vehicle, pending inspection of his own vehicle. As set out above, the replacement vehicle was delivered to the plaintiff on 23 December 2023 and his own vehicle was inspected by Mr Carvill on 4 January 2024. In light of the intervening Christmas holiday, I do not consider this period of time to be unreasonable. However, for reasons which were not explained in evidence, AH Assist supplied the vehicle to the plaintiff prior to executing the hire agreement and did not begin charging for vehicle hire until 2 January 2024. If hire charges had accumulated during this period, I would have considered them to have been reasonably incurred. However, that did not happen and the plaintiff did not therefore sustain any loss until 2 January 2024.

[33] The next issue is whether it was reasonable for the plaintiff to continue the hire arrangements after this period in light of the successful MOT inspection. I was invited by the defendant to take judicial notice of the fact that the vehicle was roadworthy, by reason of the MOT certificate and hence to conclude that it was not reasonable to continue hire beyond that date. Since the regime for vehicle testing and certification is regulated by statute, I consider that it is more appropriate to assess the purpose and significance of a vehicle test certificate by reference to the governing statutory framework, rather than judicial notice.

[34] In post hearing written submissions, both parties agreed that the statutory framework governing the requirements for vehicle inspection and certification is contained in a combination of Part 3 Road Traffic (Northern Ireland) Order 2003 and Motor Vehicle Testing Regulations (Northern Ireland) 2003 [S.R.2003/303]. Article 61 of the 2003 Order provides in relevant part, as follows:

> "61.—(1) This Article applies to motor vehicles other than goods vehicles which are required by regulations under Article 65 to be submitted for a vehicle test under that Article and has effect for the purpose of ascertaining whether the following requirements are complied with namely—

(a) the prescribed statutory requirements relating to the construction and condition of motor vehicles or their accessories or equipment; and

(b) the requirement that the condition of motor vehicles should not be such that their use on a road would involve a danger of injury to any person."

[emphasis added].

[35] Article 61(2) empowers the Department to make Regulations prescribing the requirements for inspection and certification of vehicles. The current Regulations are the Motor Vehicle Testing Regulations (Northern Ireland) 2003 [S.R.2003/303]. Regulation 4 provides that, for the purposes of Article 61(1)(b) of the 2003 Order, the condition of the vehicle "should not be such that its use on a road would involve a danger of injury to any person, having regard, in particular to the items described in Schedule 3." Collectively, these are known as the "condition requirements." Schedule 3 contains a list of vehicle components which must be considered during an inspection. For present purposes the list includes the following relevant car parts: "wheels and hubs"; "suspension system"; "bumpers"; "wings"; "body"; and "doors, locks and hinges", all of which feature in the list of items damaged or potentially damaged in this case. Regulation 3 and Schedule 2 provide for a list of "statutory requirements" relating to the construction of vehicles of different classes and do not appear to be relevant in this case. Regulation 12 provides for the examination by the Department of vehicles and for the issue of a test certificate, if it is found that the condition requirements and the statutory requirements are met. If they are not met, a Notice of Refusal must be issued.

[36] The result of all of the above is that, in the opinion of the Department's inspectors, on 2 January 2024, the condition of the plaintiff's vehicle was such that its use on a road did not "involve a danger of injury to any person." That conclusion was reached following an examination of those parts of the car specified in Schedule 3. While the court does not have any specific evidence about the thoroughness of the check which the inspectors actually carried out on that day, it would seem highly likely that they would have been able to see the tape used by the plaintiff to hold the near bumper panel in place and any other damage to the car. While the inspectors might not have been able to examine the concealed bumper bar, they would have been able to ascertain whether the bumper panel was held securely in position. As a result, the fact that the car had been certified by independent departmental inspectors as capable of being used without risk of injury to "any person", the certificate points clearly to the conclusion that the car was roadworthy on that date.

[37] However, as I have set out above, the issue is not simply whether the car was roadworthy on that date, but whether it was reasonable in the circumstances of the case for the plaintiff to hire an alternative vehicle. Since the plaintiff was entitled to

repair the vehicle, I consider that it was still reasonable on that date, for him to execute the credit hire/credit repair agreement and to continue those arrangements for at least a reasonable period to allow the damage to be assessed and, if appropriate, for repairs to be carried out.

[38] I consider that it was reasonable to await the inspection on 4 January which was only two days later. The report of Mr Carvill recorded his view that the car was beyond economic repair and also that it was not roadworthy. Plaintiff's counsel submitted that since there was effectively conflicting evidence about the roadworthiness of the car, it was reasonable to take a precautionary view and to rely upon Mr Carvill. In my view, this was not the decisive issue. As set out above, the plaintiff had expressly added his signature after Clause 8 of the agreement, authorising AH Assist to carry out the repairs. The clear inference from the evidence is that the reason for not acting upon this authorisation was Mr Carvill's opinion that the car was beyond economic repair and hence it would not have been reasonable to incur that expense. However, it should have been patently clear to anyone reading Mr Carvill's report that his opinion was conditional. His assessment of the cost of repairs was based upon an assumption about whether or not certain items had actually been damaged and whether they would need to be replaced. Since his conclusion about the economic viability of the repairs was based upon the repair costs for *all* potential items, any change in that conditional opinion could have been decisive in deciding whether or not to proceed with the repairs. A concluded opinion on those repair items was therefore necessary in order to justify a decision not to carry out the repairs and continuing hire charges in the meantime.

[39] As the undisputed evidence before me made clear, if that had been done, it would have established that not all of the potential repairs were necessary and that it <u>was</u> economically viable to repair the car. In my view, a reasonable person in the position of the plaintiff would have taken this step, would have followed up with AH Assist and would have inquired into the reasons why his authority to complete the repairs was not being acted upon. Mr Lloyd had instructed AH Assist as a professional accident management company and might well have been dependent upon it either to undertake these steps of their own motion or to seek his updated instructions. The plaintiff did not adduce any evidence about the steps which AH Assist took to seek the further views of Mr Carvill or otherwise to resolve the question of the viability of carrying out repairs and I cannot therefore comment further upon the allocation of responsibility as between those parties to take the initiative. However, whichever party was responsible for doing so, I do not consider it was reasonable to ignore the conditional findings of Mr Carvill and simply to continue accumulating hire charges on the assumption that the vehicle was beyond economic repair. The overwhelming inference which arises from the evidence is that either a positive decision was taken not to do so, or that the need to do so was simply overlooked, with hire charges continuing by default. Whatever may have happened, I consider that, following a successful vehicle inspection and following receipt of a conditional vehicle engineer's report with estimated repair costs just

above the 80% threshold, it was not reasonable for no steps to be taken to resolve whether the vehicle was in fact beyond economic repair. Resolution could have been achieved by a further inspection or perhaps even by making specific inquiries with a repair garage to obtain a precise quotation carrying out all of the work. Either way, it was not reasonable simply to continue to assume that the car should not be repaired and to accrue very significant daily hire and storage charges without making any effort to resolve the issue.

[40] Accordingly, I consider that it was reasonable for the plaintiff to enter into the credit hire/credit repair arrangement in the first instance and I also consider that it was reasonable to continue that arrangement until Mr Carvill had carried out his inspection and supplied his report.

[41] If the report had been acted upon in the manner I have described above, I consider that it would have been reasonable to continue the arrangements for a period thereafter to facilitate a further assessment. If that had been done, it would have been quickly established that the car was not in fact beyond economic repair and the repairs should thereafter have been carried out promptly. Had any of this happened, I would have been prepared to allow continued hire for a further period to facilitate the repairs. However, neither the assessment nor the repairs were completed. I consider that the failure to take those steps was unreasonable and was a failure on the part of the plaintiff to mitigate loss. Since those steps were not taken, it is not appropriate to allow a notional period for hire charges equivalent to a period for further inspection or for completing repairs. However, I do consider it to be appropriate to allow some time for AH Assist and the plaintiff to discuss and consider the content of Mr Carvill's report. I do not know the date on which Mr Carvill actually submitted his report to AH Assist. The report is dated Thursday 4 January 2024. Assuming that the report was submitted by Friday 5 January at the latest, I will allow hire charges until Tuesday 9 January 2024, which is a total of seven days, commencing Tuesday 2 January 2024, at a daily rate of £240 + VAT, giving a total award for hire charges of £2,016.00.

[42] Since the plaintiff's vehicle was in storage from 23 December 2023, I will allow storage charges of £25 + VAT per day for 17 days until 9 January 2024, namely £510.00

[43] It was submitted on behalf of the plaintiff that he should be entitled to continue the hire arrangements on account of the failure of the defendant to make arrangements for or to offer to repair the plaintiff's vehicle. I do not accept that submission. There is a clear difference between, on the one hand, a plaintiff whose damaged vehicle cannot be driven on a road or cannot be driven safely on a road on account of that damage and who is therefore obliged to continue hire arrangements while awaiting repair and on the other hand, a plaintiff whose vehicle is damaged, but which is roadworthy and who fails (for unjustifiable reasons) to carry out the repairs promptly but instead to continue hire arrangements. In the former case, the

plaintiff will invariably have acted reasonably, whereas in the latter he is unlikely to have done so, since the vehicle was roadworthy and a replacement hire car was unnecessary, save for a reasonable period of time to carry out any necessary repairs.

[44] In this case, I have found that it was not reasonable to continue credit hire arrangements by reason of a failure to take reasonable steps to mitigate the continuing loss and to ascertain whether the vehicle was capable of economic repair. In those circumstances, the defendant's obligation is to compensate the plaintiff, in the amount of the costs of the repairs. While the liability to do so will arise at the time of the accident, the quantum of the claim will not normally crystallise until the repairs are actually carried out. The defendant does not have a free-standing common law obligation to arrange for or to offer to carry out the repairs. The defendant's obligation is to pay the compensation. In many cases, the defendant or its insurer will arrange repairs or will offer to do so, because it is in its own commercial interests, whether to secure the repairs more cost effectively or to bring to an end any accumulating hire charges. Clearly, a defendant is much more likely to do so where there is no dispute about liability or the non-roadworthiness of the vehicle, but it may also decide to do so on a without prejudice basis, if the timescale for resolving liability issues are such that accumulating hire charges are likely to become particularly high. If a defendant does offer or does actually make arrangements for repair and the plaintiff unreasonably refuses such an offer, it may amount to a failure to mitigate losses and hence render unrecoverable accruing hire charges which had been reasonably incurred up until that point. However, simply because a defendant is responsible for causing the damage to a vehicle, does not mean that it has an obligation to carry out or to arrange repairs.

[45] Finally, as appears clear from the above, I have found that, on the facts of this case, the roadworthiness of the plaintiff's vehicle from 2 January 2024 was not the single or decisive issue on the reasonableness of continuing hire charges. In some cases, it may be the decisive issue. If I had been required to decide the case on that issue alone, I would have found that the plaintiff had not discharged the burden of proof to establish that the car was unroadworthy. The evidence before the court was conflicting on this issue. It included the opinion of Mr Carville, which was based upon the view that the bumper panel was not secure and could become dislodged; the boot lid being difficult to close; and an assumption that the safety benefit of the bumper bar may have been reduced. The court also had the evidence of Mr Douglas that the bumper panel was perfectly secure, with three of four fixings still in place and his finding that the boot lid opened and closed normally. Finally, there was the outcome of the independent vehicle inspection that the car could be driven on a road, without a risk of injury, which included examination of the bumpers, wings, body, doors, locks and hinges. Viewed cumulatively, I do not consider that the evidence was sufficient to support a conclusion that the car was more likely than not to be unroadworthy. If required to do so, I would have found that the burden of proof on this issue had not been discharged.

[46] The plaintiff is therefore entitled to judgment against the defendant for £9,246.00, comprised of:

(i) £6,720.00 vehicle repair costs;
(ii) £2,016.00 vehicle hire charges;
(iii) £510.00 vehicle storage charges.

[47] As regards costs, the total sum awarded to the plaintiff falls within the jurisdiction of the County Court. The plaintiff is entitled to recover some costs from the defendant. Section 59(2) of the Judicature (NI) Act 1978 provides as follows:

> "(2) Save as otherwise provided by any statutory provision passed after this Act or by rules of court, if damages or other relief awarded could have been obtained in proceedings commenced in the county court, the plaintiff shall not, except for special cause shown and mentioned in the judgment making the award, recover more costs than would have been recoverable had the same relief been awarded by the county court."

[48] The relevant Rules of Court are contained in Order 62, Rule 17(4) Rules of Supreme Court of Judicature (NI) 1982 and are in materially identical terms and also require the existence of "special cause" in order to justify the award of High Court costs. The centrepiece of the plaintiff's claim was for hire charges. Since I have concluded that it was not reasonable for the plaintiff to continue to accumulate hire charges after 9 January 2024 and since this was due to the failure by the plaintiff to take reasonable steps to mitigate his loss, no "special cause" arises on the facts of the case which would justify the award of High Court costs. Accordingly, the plaintiff is entitled to costs in accordance with the relevant County Court scale.