

Compass Chambers



# Low Velocity Impact Claims

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Compass Chambers, Scotland

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# Limitations of Scientific Evidence

- What needs to be proved to establish whiplash injury?
- Medical Definition:
  - ‘Whiplash happens when your head is suddenly jolted backwards and forwards in a whip like movement. This can irritate some of the muscles and ligaments in your neck. There is often a delay of 24-48 hours before you feel any pain or stiffness from whiplash. These symptoms normally settle on their own in 2-3 months’  
(NHS Inform Scotland)
- Essential Facts to Prove:
  - Collision Occurred
  - Collision caused Occupant Displacement (Involuntary Movement)
  - Occupant Displacement caused Injury

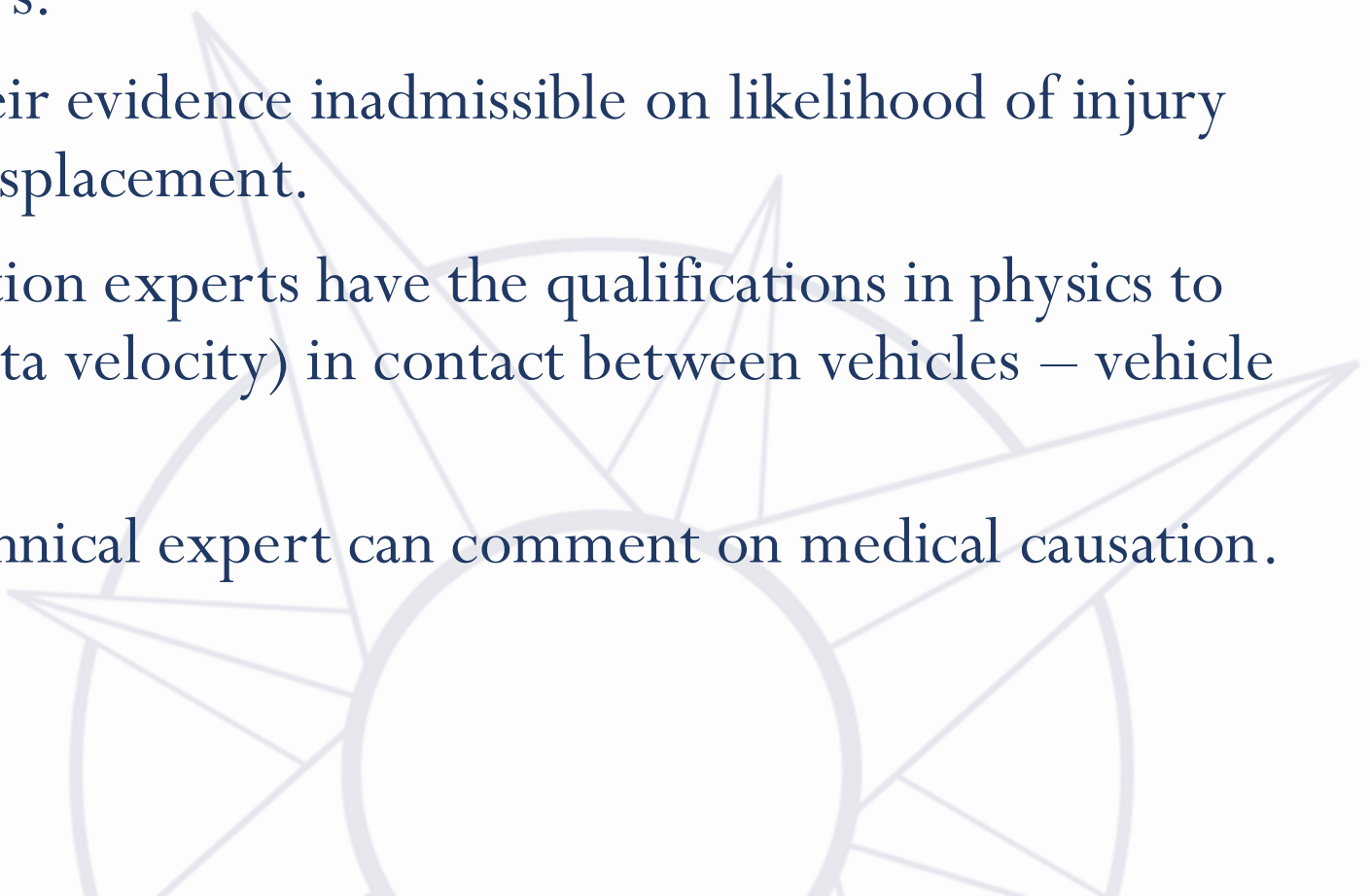


# Role of Expert Evidence

- 1. Has there been a collision at all?
- 2. Has there been vehicle damage caused by the collision?
- 3. Has the claimant been involuntarily displaced in their seat by the collision?
- 4. Has the claimant been injured by the involuntary displacement?
  
- Types of expert evidence:
  - Vehicle Damage Assessor (can assist with point 1 and 2, not 3)
  - Accident Reconstruction Expert (can assist with points 1 to 3)
  - Medical Expert, such as an Orthopaedic Surgeon (can assist with point 4)



# Experts Overstepping

- Systemic problems in Scotland of vehicle damage assessors overstepping their expertise on behalf of insurers.
  - Series of cases have found their evidence inadmissible on likelihood of injury and likelihood of occupant displacement.
  - Modern accident reconstruction experts have the qualifications in physics to comment on likely force (delta velocity) in contact between vehicles – vehicle damage assessors do not.
  - However, neither type of technical expert can comment on medical causation.
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# Likelihood of Displacement

- *Fraser v Munro* [2024] SC EDIN 36
  - Defender admitted collision but denied any vehicle damage was caused, and denied injury could have occurred.
  - Pursuer's accident reconstruction expert was accepted – court accepted pursuers were injured.
  - He referred to a study (para. 88) that recognised damage could occur at as low as 2.5mph, cosmetic damage was likely at around 5mph, and structural damage was likely at around 8mph change of speed.
  - What worked for pursuer was that pursuer had an accident reconstruction expert whose evidence on likelihood of displacement was based on scientific analysis, against a defender vehicle damage assessor whose evidence was pure assertion.



# Likelihood of Injury

- *Fraser v Munro* at para. 101
  - Pursuer's medical expert said he was  
'not aware of a lower limit below which injuries are not sustained but there is no point asking what speed was needed to cause symptoms. The severity of the impact is unique to a particular person in any given situation.'  
'He accepted that whether the pursuers were moved as a result of the impact is a question of fact for the court to decide.'
- Henderson Paper 'Putting the 5mph injury threshold to the test' (September 2006) *Personal Injury Law Journal* 12
  - Speed below 3mph indicate minimal risk of injury, Speed above 5mph indicate high risk of injury, speed between 3-5mph are a grey area where injury cannot be ruled out.



# Limitations of Expert Evidence

- Essential facts are whether involuntary displacement occurred to a pursuer in a collision and whether that caused them injury.
- Expert evidence can assist on both, but it does not replace the court's ability to determine if the pursuer's case is credible and reliable.
- *Armstrong v First York Ltd* [2005] 1 WLR 2751 at paras. 26-27
  - Court can ultimately choose to accept claimant's evidence even if it generally thinks defendant's technical evidence casts doubt on it.
- Essential therefore to assess at an early stage whether there are inconsistencies in claimant's evidence that undermines their credibility.



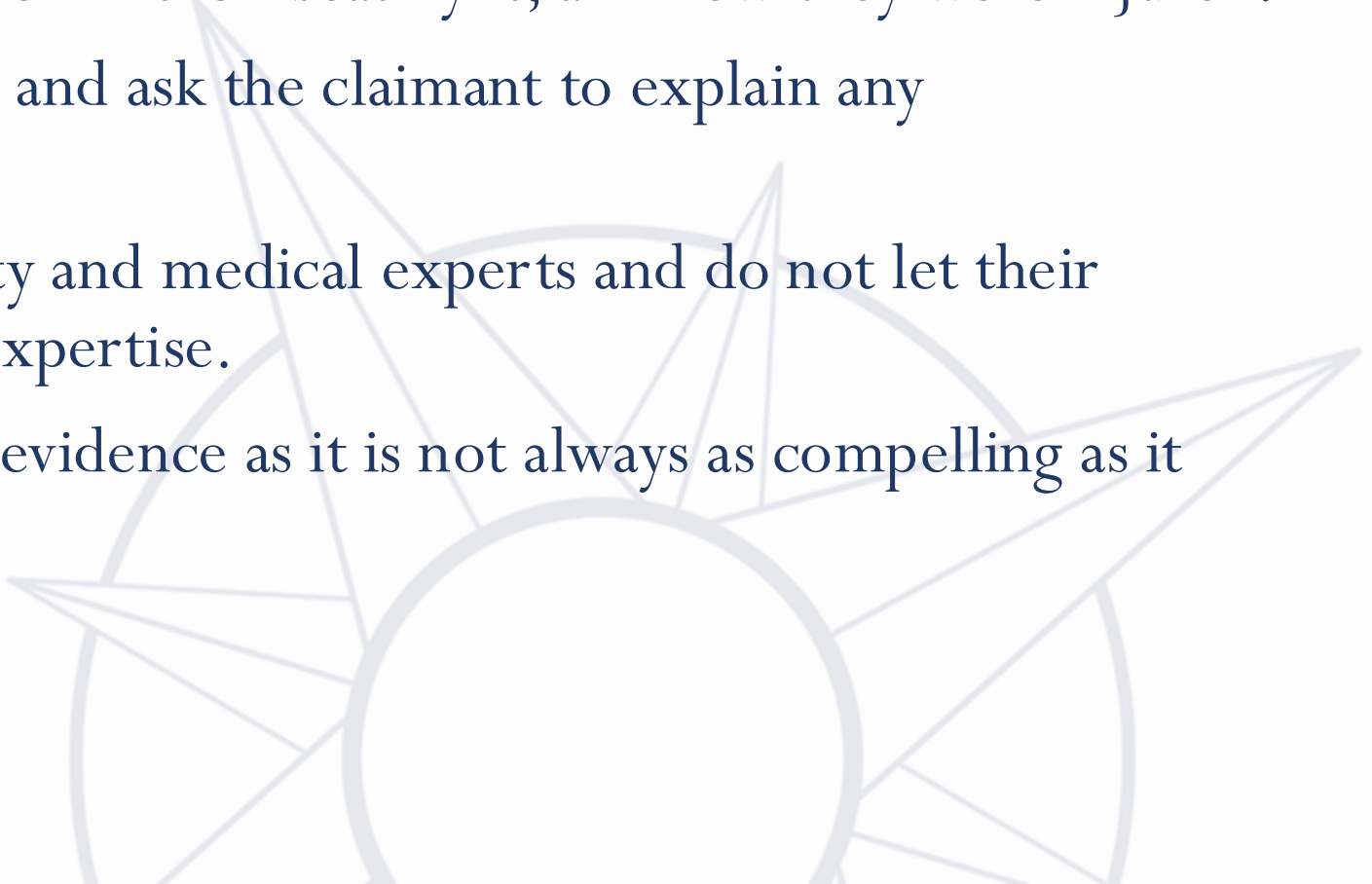
# Examples of Pursuer Losses in LVI Cases

- *Brierley v McCool* (Glasgow Sheriff Court, September 2024)
  - Inconsistencies between pursuer's account of injuries in medical records and to medical expert and to court.
  - Glancing blow between pursuer and defender vehicles.
- *Heneghan v UK Insurance Ltd* (National Personal Injury Court, October 2024)
  - Court accepted the defender's vehicle damage assessor evidence, which
  - Supported the fact the judge found the defender a better witness than the pursuer.
- *McHendry v Tesco Stores* (National Personal Injury Court, December 2024)
  - Defender denied the collision entirely.
  - Pursuer's account was not reliable enough to overcome lack of evidence of vehicle damage and defender driver's account that no collision had occurred.





# Practice Points for Claimant Lawyers

- Take detailed accounts of the accident including claimant's account of the collision, how they were moved in their seat by it, and how they were injured.
  - Obtain medical records early and ask the claimant to explain any inconsistencies.
  - Use properly qualified liability and medical experts and do not let their evidence stray outside their expertise.
  - Properly scrutinise scientific evidence as it is not always as compelling as it appears.
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