SHERIFF APPEAL COURT

[2025] SAC (Civ) 13
EDI-SG1462-24

Sheriff Principal A Y Anwar KC
Sheriff Principal S F Murphy KC
Sheriff Principal N A Ross

OPINION OF THE COURT

delivered by SHERIFF PRINCIPAL AISHA Y ANWAR KC

in appeal in the cause

CABOT FINANCIAL (UK) LIMITED

Claimant and Appellant

against

JORDAN WALLS

Respondent

Claimant and Appellant: L.C. Kennedy; Nolans Law Limited
Respondent: No appearance
***Amicus Curiae* Shaw; Faculty Services Limited**

9 May 2025

Introduction

[1] Appeals on the subject of expenses only are to be severely discouraged, and should not be entertained except where there has been an obvious miscarriage of justice, or where the expenses have come to be a great deal more valuable than the merits of the dispute (*Miller* v *Chivas Brothers Ltd* 2015 SC 85 per Lady Dorrian at paragraph [23]; and *Lord Advocate* v *Mackie* 2016 SLT 118 per Lord Justice Clerk (Carloway) at paragraph [11]).

[2] The dispute in this appeal relates to a difference in an award of expenses of £87.75. In normal circumstances, such an appeal would not be entertained. This appeal, however, raises a number of important questions in relation to the proper approach to expenses in undefended simple procedure claims. In 2023/24, over 25,000 simple procedure claims were registered in Scotland. We have therefore heard the appeal. The central question before this court is whether the provisions for percentage reductions in rule 3.7 of the Act of Sederunt (Taxation of Judicial Expenses Rules) 2019 ("the 2019 Rules") apply to undefended simple procedure claims. We have determined that they do.

Legislation

[3] The following provisions of the 2019 Rules are relevant to this appeal:

> **"1.2 Application**
>
> (1) . . . . these Rules apply to the taxation of accounts of expenses, and for related purposes, where—
>
> (a) the expenses were incurred in—
>
> (i) proceedings in the Court of Session;
>
> (ii) proceedings in the Sheriff Appeal Court; or
>
> (iii) proceedings, other than a summary cause, in the sheriff court;
>
> (b) the proceedings were commenced on or after the coming into force of these Rules; and
>
> (c) the taxation is pursuant to a finding that a party ("the paying party") is liable in expenses to another party ("the entitled party").
>
> **1.3. Interpretation**
>
> …
>
> (2) In relation to simple procedure cases—
>
> (a) references to the taxation of an account of expenses include the assessment of an account of expenses, and
>
> (b) references to the Auditor include the sheriff clerk.
>
> **2.1. Form of account**
>
> An account of expenses must—
>
> (a) set out in chronological order all items in respect of which payment is claimed;
>
> (b) list in separate columns—

(i) the charges claimed for work carried out by the entitled party's solicitor; and
(ii) the outlays claimed; and
(c) include a statement as to whether or not the entitled party will bear the burden of the value added tax referred to in rule 6.1.

3.1. Application
(1) Subject to rule 3.10 (party litigants), this Chapter, and the tables of charges set out in schedules 1 to 5A, apply for the purpose of determining the charges to be allowed on taxation in respect of work carried out by the entitled party's solicitor.

3.2 The unit
. . . references to a "unit" are to a measure of monetary charge with a value of £18.00.

3.3. Table of charges
…
(4) Subject to rule 3.7 (simple procedure), the charges to be allowed in respect of a simple procedure case in the sheriff court are those specified in the applicable table of inclusive charges in schedule 5.
…
(5) This rule applies unless the court otherwise directs.

3.7. Simple procedure
(1) This rule applies where an account of expenses falls to be taxed by reference to a table of charges in schedule 5.
(2) All charges allowed by the Auditor are to be reduced by 10%.
(3) Unless the court otherwise directs, where the total value of the claim is £2500 or less, all charges allowed by the Auditor, as reduced in accordance with paragraph (2), are to be further reduced—
(a) where the total value of the claim is less than £1000, by 50%;
(b) otherwise by 25%."

[4] Schedule 5 to the 2019 Rules contains two tables of inclusive charges for simple procedure claims. Table 1 deals with admitted claims and is in the following terms:

	Units
All work including taking instructions, preparing Claim Form, first formal service and applying for a decision	15
Further charge for instructing formal service of a party, after first formal service of a party—	
(a) within the United Kingdom, Isle of Man, Channel Islands or Republic of Ireland	1.25
(b) elsewhere	2.5

Table 2 deals with disputed claims. It provides a list of the number of units which may be claimed in respect of work carried out at each stage of proceedings.

Background

[5] The appellant, Cabot Financial (UK) Limited ("Cabot") is a debt purchase company. It raised a simple procedure claim against Mr Walls for payment of the sum of £1,052.58, arising from a credit card debt. The debt had been assigned to Cabot by the lender. Mr Walls did not defend the proceedings. Cabot lodged an application for a decision in which it sought decree for the sum sued for together with expenses. The expenses it sought included: (i) a charge of 15 units for all work undertaken; (ii) the postal outlay of £4.60; and (iii) the court fee of £112.00. The total expenses sought by Cabot was £386.60.

[6] Upon receipt of that application, the summary sheriff fixed a hearing. At that hearing, Cabot relied upon the opinion issued in *Cabot Financial (UK) Limited* v *Johnstone* PER-SG365-23, an opinion of this court issued by a single appeal sheriff.

[7] The summary sheriff refused to award expenses in the sum of £386.60. He considered that he was bound by the decision of the appeal sheriff in *Johnstone* but that, by applying rule 3.3(5) of the 2019 Rules, *Johnstone* fell to be distinguished. He suspended the application of rules 3.3 and 3.7 to Cabot's account. He directed the sheriff clerk to calculate Cabot's expenses on the basis of Table 1 of Schedule 5 to the 2019 Rules but with the deductions of 10% and 25% (of the net 90%) to be made to Cabot's account of expenses. He awarded Cabot the sum of £298.85.

[8] Cabot appeals against that decision. Having regard to the importance of the question before the court, namely the correct approach to expenses in undefended simple

procedure claims in Scotland, and in the absence of a contradictor, the court appointed an *amicus curiae* to advise it on the points of law arising from this appeal.

Questions for the Sheriff Appeal Court

[9] The summary sheriff stated the following questions for this court:

i. Does rule 3.7 of the Act of Sederunt (Taxation of Judicial Expenses Rules) 2019 apply to undefended Simple Procedure claims?

ii. Was the case of *Cabot Financial UK Limited v Pamela Johnstone* PER-SG365-23 correctly decided by the Appeal Sheriff?

iii. Are claimants seeking expenses in undefended Simple Procedure claims obliged to submit to the court an account of expenses which complies with rule 2.1 of the 2019 Act of Sederunt?

iv. Did I err in exercising my discretion under rule 3.3(5) of the 2019 Act of Sederunt to direct that rule 3.3 would not apply in the present case?

v. Did I err in failing to apply the decision of the appeal sheriff in the above-mentioned *Cabot Financial UK Limited v Pamela Johnstone* case?

vi. Did I err in law by holding that the decision of the appeal sheriff in *Cabot Financial UK Limited v Pamela Johnstone* was wrongly decided?

vii. Did I err in only awarding the claimant expenses of £298.85 instead of the sum of £386.60 sought by the claimant?

Submissions for the appellant

[10] Counsel submitted that the summary sheriff was bound by *Johnstone*. The rule of law requires that binding decisions be followed without exception. If a sheriff were to be

permitted not to follow a binding decision, because they do not agree with it and wished it to be reconsidered by a larger court, that would undermine the principle of *stare decisis*.

[11] The summary sheriff was clear that he disagreed with *Johnstone*. In order to circumvent it, he applied rule 3.3(5). The exercise of rule 3.3(5) was a matter of discretion for a sheriff; however, the summary sheriff had erred in taking account of an irrelevant consideration in exercising his discretion, namely that he considered *Johnstone* to be wrong. That was not a legitimate basis upon which to exercise his discretion under rule 3.3(5). Rule 3.3(5) was clearly intended to allow a sheriff to exercise their discretion on expenses by disapplying the usual table of fees and to award expenses on a different basis. Instead, the summary sheriff's use of discretion did nothing more than create the same outcome as if *Johnstone* had not been issued.

[12] On that basis, counsel submitted that this court should: (i) find that the summary sheriff had erred in failing to follow *Johnstone*; (ii) find that the basis upon which he exercised his discretion to disapply rule 3.3 was an error; and (iii) allow the appeal and award expenses in line with *Johnstone*.

[13] It was not necessary, nor was it appropriate, for this process to be used to allow this court to reconsider *Johnstone*. In the event the court considered that it did require to reconsider *Johnstone*, it was submitted that it was correctly decided. Rule 3.7 was only engaged where "an account of expenses fell to be taxed (or assessed) by reference to a table of charges in schedule 5". An "assessment" is only carried out in defended actions; as a consequence, rule 3.7 could not apply to undefended actions. An analogy can be drawn from rule 7.4 of the Act of Sederunt (Sheriff Court Ordinary Cause Rules) 1993. That rule allows a sheriff to grant decree for payment of expenses without the necessity of taxation. There was no basis for making an inconsistent finding in relation to the Act of Sederunt

(Simple Procedure) 2016. Where an action is undefended, whether in ordinary or simple procedure, there is no need for a taxation or for an account of expenses to be lodged.

[14] Moreover, the references to the role of the auditor in rule 3.7(2) and rule 3.7(3) were further indicative that any deductions to simple procedure expenses could only occur where an account of expenses was taxed. Expenses in an admitted claim are not "assessed" by the sheriff clerk, in the same way that undefended expenses are not "taxed" by the auditor in ordinary actions.

Submissions of the *amicus curiae*

[15] The *amicus curiae* submitted that the summary sheriff erred in the exercise of his discretion under rule 3.3(5). It was evident that one of the main reasons given for the exercise of discretion was that the summary sheriff did not agree with *Johnstone*. Cabot was well-founded in its submission that what the summary sheriff did was: (i) state that he was using his discretion under rule 3.3(5) to depart from rule 3.3(1); but then (ii) proceed to apply Schedule 5 of the 2019 Rules, rather than set out a different method of calculation of expenses. There had been no real exercise of discretion. As such, the summary sheriff had erred in law. He was bound by the precedent set in *Johnstone*: section 48(1) of the Courts Reform (Scotland) Act 2014.

[16] However, the *amicus curiae* submitted that, even if this court accepted the summary sheriff had erred, this court would need to consider what expenses were in fact due to Cabot under the 2019 Rules. That, in turn, would require this court to consider whether *Johnstone* had, in fact, correctly interpreted the 2019 Rules, specifically rule 3.7.

[17] The court could adopt a literal approach to rule 3.7, as Cabot proposed. Given the task of the sheriff clerk in undefended simple procedure claims is not to tax or assess the

account, it could be contended that the drafters of rule 3.7 had not intended it to apply to undefended simple procedure claims.

[18] Alternatively, the court could determine that the intention behind rule 3.7 was simply for there to be a rule that deductions to expenses would apply in all simple procedure cases. Such an interpretation was supported by the fact that rule 3.7 states that it applies to "a" table in Schedule 5 without further specification, instead of referring only to Table 2 (which relates specifically to defended cases). If the intention had been to exclude Table 1 (i.e. undefended actions) this would require express words to that effect.

[19] There was a strong argument that a sheriff clerk is required to carry out an assessment of expenses, even if that assessment is limited to calculating the relevant inclusive costs at Table 1 of Schedule 5 of the 2019 Rules.

[20] Cabot's submission that an assessment of expenses does not apply to undefended claims was contradicted by the passage in the Explanatory Note to the 2019 Rules concerning rule 3.3. It refers to "which of the tables" and "the tables", instead of specifying that there is only one table under Schedule 5 – namely Table 2 – capable of being taxed. That indicated that the intention of the drafters was that rule 3.7 would apply to all simple procedure claims.

[21] Between 28 November 2016 and 29 April 2019, expenses in simple procedure claims were regulated by rule 3A of Schedule 1 of the Act of Sederunt (Fees of Solicitors in the Sheriff Court) (Amendment and Further Provisions) 1993. That rule did not use the word "taxation". Instead, the rule used neutral language by simply referring to the table of fees under Chapter V being allowed in a simple procedure case (albeit Chapter V deals with admitted and disputed claims) subject to the deductions at rule 3A(b) and (c).

[22] In *Johnstone*, the appeal sheriff determined that section 81 of the Courts Reform (Scotland) Act 2014 applied to the 2019 Rules. The *amicus curiae* submitted that the appeal sheriff erred in so doing. The 2019 Rules are not an order made by the Scottish Ministers; they are an Act of Sederunt issued by the Court of Session under the powers conferred upon it. Accordingly, there was no basis to hold rule 3.7 was only triggered if a respondent stated a defence and the sheriff later makes an award of expenses. If the court accepted that, then *Johnstone* was wrongly decided.

[23] As to whether an account of expenses required to be lodged in every simple procedure claim, the Simple Procedure Rules do not draw any distinction between defended and undefended cases. It was open to this court to reach the view that, if rule 2.1 of the 2019 Rules had only been intended to apply to defended actions, that would have been clearly expressed within the rules. Moreover, there was no good reason why a claimant in an undefended simple procedure action should not submit an account in accordance with rule 2.1.

Decision

[24] Section 48(1)(a) of the Courts Reform (Scotland) Act 2014 provides that a decision of the Sheriff Appeal Court on the interpretation and application of the law is binding in proceedings before a sheriff anywhere in Scotland. The summary sheriff accepted that *Johnstone*, being a decision of this court, issued by a single Appeal Sheriff, was binding upon him. He expressed the view that *Johnstone* had been incorrectly decided, that certainty would be obtained by a decision of a larger bench of the Sheriff Appeal Court and that a respondent was unlikely in practice to seek an appeal before a larger bench in view of the modest sums and disproportionate expense involved. He explained that these

considerations provided "strong pragmatic grounds" upon which he should exercise his discretion under rule 3.3(5) to disapply rule 3.3 of the 2019 Rules.

[25] Rule 3.3(5) was intended to confer upon a sheriff a broad discretion to disapply the method of calculating expenses set out in rule 3.3 and to award expenses on a different basis. Having purportedly exercised his discretion in terms of rule 3.3(5), the summary sheriff then calculated the recoverable expenses, not on a different scale, but by reference to Table 1 of Schedule 5 of the 2019 Rules and applied the percentage deductions in rule 3.7, directly contrary to the approach set out in *Johnstone*. We agree with parties' submissions that the summary sheriff took account of an irrelevant consideration for the purposes of rule 3.3(5), namely, that *Johnstone* was incorrectly decided. That was the sole basis upon which he purported to exercise his discretion to disapply rule 3.7. He accordingly erred in the exercise of his discretion. It follows that there was no available argument to distinguish *Johnstone*. The summary sheriff's decision also fell foul of the principle of *stare decisis*. Accordingly, this appeal must be allowed.

[26] In that event, Cabot's counsel invited the court to recall the award of expenses made by the summary sheriff and sought expenses in the sum of £386.60, reflecting the decision in *Johnstone*; namely, the recoverable expenses for admitted claims specified in Table 1 of Schedule 5 to the 2019 Rules, without any percentage deduction in terms of rule 3.7. Counsel submitted that it was neither necessary nor appropriate for this court to consider whether *Johnstone* was correctly decided; he submitted that any opinion expressed by this court on *Johnstone* would be strictly *obiter* and not capable of providing a new binding precedent.

[27] We do not agree. Rule 16.4(7) of the Simple Procedure Rules (Act of Sederunt (Simple Procedure) 2016, Schedule 1) provides that upon appeal, the Sheriff Appeal Court

may alter the decision which the sheriff made by either amending the decision form or issuing a new decision form. To give effect to the disposal sought by Cabot, this court requires to amend the sheriff's decision form insofar as it related to the issue of expenses, or to issue a new decision form. It is not simply the case that one sum falls to be substituted for another without thought or analysis; to award the expenses claimed, this court must consider and determine whether Cabot has correctly calculated those expenses having regard to the 2019 Rules. In doing so, we do not simply express an opinion which might otherwise be *obiter dictum*; rather, we require to explain the reasons for our decision. Inevitably, that involves a consideration of whether *Johnstone* was correctly decided.

[28] What is the correct approach to the calculation of expenses in undefended simple procedure cases in terms of the 2019 Rules? Cabot invited the court to answer that question having regard to the practice which has been adopted in the sheriff courts since the introduction of simple procedure. It was submitted that in undefended simple procedure cases, there is no formal assessment by the sheriff clerk involving any evaluative process, or any decision to allow or disallow any particular fee claimed. There is instead a simple calculation exercise by reference to Table 1 of Schedule 5 to the 2019 Rules. As there is no process of assessment of expenses in undefended simple procedure cases, no deduction falls to be applied to those expenses under rule 3.7. In our judgement, Cabot's approach involves the wrong end of the telescope. The question of the correct interpretation of the 2019 Rules is not be addressed having regard to current practice, nor whether the exercise performed by the sheriff clerk may properly be described as an "assessment". The answer to the question involves a relatively straightforward exercise of interpretation.

[29] The 2019 Rules were made under delegated powers and the normal principles of statutory interpretation apply. Those principles were recently summarised by the Inner House (*Glasgow City Council* v *MM* 2025 SLT 178 at para [31]*)*:

> "In any exercise of statutory interpretation the general rule is that the language should bear its ordinary meaning in the general context of the statute (*Crozier v Scottish Power* 2024 SC 373, per Lord President (Carloway) at paragraph 27). As Lord Burrows emphasised in the 2022 article (Statutory Interpretation in the Courts Today, the Christopher Staughton Memorial Lecture, 24 March 2022), referred to by the appellant, the modern approach is to regard the object of the exercise as 'contextual and purposive'. The courts are seeking to ascertain the meaning of the words used in a statute in the light of their context and the purpose of the statutory provision (JR 222 [2024] 1 WLR 4877, per Lord Stephens at paragraph 73). The context will include the group of statutory provisions within which the words to be interpreted are included and the statute as a whole."

[30] The 2019 Rules were made by the Court of Session under powers conferred upon it by section 1(2) of the Litigants in Person (Costs and Expenses) Act 1975 and sections 103(1), 104(1), 105(1) and 106(1) of the Courts Reform (Scotland) Act 2014. The 2019 Rules were prepared in draft by the Scottish Civil Justice Council following a consultation exercise in 2017. They were intended to consolidate and regulate the taxation of accounts for all courts and all forms of procedure in relation to proceedings commenced on or after 29 April 2019. The 2019 Rules made a number of changes to the scheme for the recovery of judicial expenses, including the introduction of the concept of a "unit", being a measure of monetary charge. The present value of the "unit" is £18.00 (Act of Sederunt (Fees of Solicitors in the Court of Session, Sheriff Appeal Court and Sheriff Court) (Taxation of Judicial Expenses Rules) (Amendment) 2023, paragraph 5). As the title of the Act of Sederunt suggests, taxation (or assessment) is central to the scheme for the recovery of judicial expenses, whether or not the proceedings are defended.

[31] Rule 1.2(1) of the 2019 Rules provides that "these Rules apply to the taxation of accounts of expenses, and for related purposes" to proceedings in the Court of Session,

Sheriff Appeal Court and Sheriff Court. In relation to simple procedure cases, references in the 2019 Rules to the taxation of an account of expenses include the assessment of an account of expenses and references to the Auditor include the sheriff clerk (rule 1.3(2)(a)).

[32] Chapter 3 of the 2019 Rules sets out the basis upon which charges for work carried out by solicitors can be recovered by an entitled party. Rule 3.1(1) provides that Chapter 3 and the table of charges set out in Schedules 1 to 5A, shall "apply for the purpose of determining the charges to be allowed on taxation [assessment] in respect of work carried out by the entitled party's solicitor". The 2019 Rules expressly provide that the purpose of the information set out in the table of charges is to determine the level of expenses to be allowed on taxation or upon assessment in simple procedure cases. That is the plain, natural and ordinary meaning of the words used.

[33] In simple procedure cases, the recoverable charges are those specified in one of two tables in Schedule 5 (rule 3.3(4)). Table 1 applies to admitted or undefended claims and Table 2 applies to disputed or defended claims. Rule 3.7 applies where an account of expenses **falls to be taxed by reference to a** table of charges in Schedule 5 (emphasis added). The 2019 Rules clearly envisage a process of taxation or assessment before expenses claimed under either Table 1 or Table 2 will be allowed. Rule 3.7 provides that: all charges allowed by the auditor (sheriff clerk) are to be reduced by 10% (rule 3.7(2)); and applies further percentage reductions according to the value of the claim (rule 3.7(3)). In our judgement, it is clear from the language used in rule 3.7 that these deductions apply to all simple procedure cases, including those which are undefended. Had it been intended that the deductions would apply to defended cases only, rule 3.7(1) would have applied only to Table 2. It does not; it is applicable to both tables. The language used in rule 3.7(1) is clear and unambiguous.

[34] Rule 3.7 requires to be read having regard to the purpose of the 2019 Rules and in the context of the other relevant provisions. The purpose of the 2019 Rules is clear; they provide a framework, or a scheme, for the recovery of expenses by way of taxation or assessment. While rule 1.2(1) refers to "related purposes", those related purposes are not further defined or referred to. Rule 3.3(4) sets out the basis upon which expenses may be sought in all simple procedure cases. It provides that "the charges to be allowed in respect of a simple procedure case in the sheriff court are those specified in the applicable table of inclusive charges in schedule 5". It is noteworthy that rule 3.3(4) refers to expenses being "allowed"; that term is used throughout the rules in reference to taxation or assessment. Rule 3.3(4) refers to "the applicable table" of charges in Schedule 5. Rule 3.3(4) accordingly also envisages a process of taxation or assessment prior to charges being allowed in respect of either table.

[35] We are fortified in our view by the terms of the Explanatory Note to the 2019 Rules. As the *amicus curiae* pointed out, the Explanatory Note does not differentiate between defended and undefended simple procedure cases, and refers to a process of taxation (or assessment) in respect of both tables of inclusive charges in Schedule 5:

> "Chapter 3, and the tables of charges in schedules 1 to 5, apply for the purpose of calculating the charges to be allowed at taxation in respect of the work carried out by the entitled party's solicitor in the conduct of the proceedings… Subject to direction by the court, the provisions of rule 3.3 determine which of the tables of charges is to be applied at taxation… Accounts of expenses relating to simple procedure cases in the sheriff court must be taxed on the basis of the tables of inclusive charges in schedule 5."

[36] We also note that, when the 2019 Rules came into force on 29 April 2019, amendments were made to the Ordinary Cause Rules in Schedule 1 of the Sheriff Courts (Scotland) Act 1907. Rule 7.4 of the OCR was amended to provide that where the pursuer elects, in the minute for decree in relation to an undefended ordinary action, to claim

expenses comprising *inter alia* the inclusive charges set out in Part 1 of Table 1 in Schedule 4 of the 2019 Rules, the sheriff may grant decree for payment of such expenses without the necessity of taxation. In our judgement, that such an amendment was considered necessary is consistent with our interpretation of the 2019 Rules. Without such an amendment, the drafters of both the 2019 Rules and the amendment to the OCR understood that the 2019 Rules would require a process of taxation in all undefended ordinary actions. No equivalent provision appears in the Simple Procedure Rules.

[37] On behalf of Cabot, it was submitted that the Simple Procedure Rules did not envisage an assessment of expenses in undefended cases. Rule 7.4 applies to admitted claims and makes no reference to an assessment, or to an account, of expenses. Such references are only found in rules 14.4 and 14.5 of the Simple Procedure Rules which apply to defended cases. The absence of references to an assessment or an account of expenses in part 7 which deals with admitted claims, is not, in our judgement, a persuasive basis upon which to disregard the clear language of the 2019 Rules. Rule 7.4 of the Simple Procedure Rules states what is to happen if no response form or time to pay application has been received by the court. In the event that a claimant sends an application for a decision to the court, the sheriff may make a decision awarding the claimant some, or all, of what was asked for in the claim form. The claim form simply states "If my claim is successful, I would like the respondent to be ordered to pay expenses." The entitlement to claim the particular charges set out in Table 1 of Schedule 5 derives from the 2019 Rules. Those rules clearly specify the requirement for an assessment of an account of expenses by the sheriff clerk. Unlike the amendment to Rule 7.4 of the OCR, the SPR do not dispense with the need for an assessment.

[38] We are mindful that simple procedure was intended to be just that: simple. It was designed to provide a speedy, simple and informal way to resolve disputes up to a certain value, currently, £5,000. That being the case, a practice has developed, as we understand it, whereby the claimant makes an application for a decision in undefended cases and the clerk calculates the sums which may be allowed by reference to other items of process such as confirmations of service. While informal in nature, this process nevertheless requires a form of assessment by the clerk. In our judgement, the 2019 Rules require an account of expenses to be lodged. That requirement might be considered to be onerous and formal. In its application to simple procedure, it is not. The information required to comply with the requirements of Table 1 of Schedule 5 to the 2019 Rules is limited. The claimant would require to confirm whether service by post was successful; how many attempts were necessary; whether service by sheriff officer was required; whether service was required further of the United Kingdom; whether any fee exemptions apply; and whether the respondent is to be responsible for VAT. To provide that information in the form of a simple account of expenses when lodging an application for a decision in an undefended simple procedure case is a relatively straightforward exercise, and likely to be as simple as filling in the blanks in a pro forma account of expenses. The sheriff clerk can then assess the level of expenses, as envisaged by the 2019 Rules. As the action is undefended and the recoverable charges are clearly specified in Table 1, there should be no need for any hearings to determine the level of expenses which ought to be allowed.

[39] Cabot's counsel submitted that there was a legitimate policy aim in not applying the deductions in rule 3.7 to undefended actions. In defended actions, it can be assumed that the parties have a genuine dispute over whether payment is due; in an undefended action, it can be assumed that the respondent failed to pay and had no legitimate reason for failing to

do so. In these circumstances, a claimant should be entitled to recover a higher level of expenses without deduction in an undefended action. While we do not regard it necessary to speculate as to the intention of the drafters of the rules, it is at least equally likely that the drafters sought to ensure that those who admit claims early benefit from a deduction in the allowable expenses and that there was no perverse incentive for respondents to lodge response forms which lacked merit.

[40] It follows that we consider *Johnstone* to have been wrongly decided.

Disposal

[41] For the foregoing reasons, although we require to allow the appeal, we consider *Johnstone* was wrongly decided and falls to be overruled. We find that the total figure for expenses and outlays to be awarded to Cabot is £298.85. We answer questions (i), (iii), (iv), (v) and (vi) in the affirmative and questions (ii) and (vii) in the negative. As the appeal was unopposed, we find no expenses due to or by either party in relation to the appeal.

Postscript

[42] The appeal in *Johnstone* requires comment. In that case, the sheriff granted decree with expenses, applying a 10% reduction in accordance with rule 3.7(2) of the 2019 Rules on 25 October 2023. Thereafter, the claimant sought and was granted a hearing on the question of expenses. The procedure that followed was incompetent. The sheriff, having granted decree, was *functus officio;* no hearing ought to have been assigned. The claimant was not seeking to correct a typographical or other error in the sheriff's order, but rather a review of a prior decision on expenses. The claimant's solicitor's correspondence on this matter ought not to have been entertained. When drafting the appeal report, the sheriff belatedly

recognised that a question of competency arose. The appeal sheriff failed to turn his mind to that question. Had he done so, he would have been bound to conclude that the order appealed was incompetent and fell to be treated as *pro non scripto.*