SHERIFF APPEAL COURT

[2026] SAC (Civ) 76
AIR-A156-25

Appeal Sheriff I H Cruickshank

OPINION OF THE COURT

delivered by APPEAL SHERIFF I H CRUICKSHANK

in appeal

by

JOHN PEARSON

Pursuer and Appellant

against

ACCREDITED INSURANCE (EUROPE) LIMITED

Defender and Respondent

18 November 2026

Introduction

[1] This claim arose out of a road traffic accident in which the appellant's vehicle was damaged and ultimately assessed as being written off. Liability was not disputed. As is often the case, the appellant sought to recover the cost of credit hire charges incurred for a replacement vehicle. The level of damages sought to be recovered in this respect was relatively substantial. It is often the most contentious part of such claims. In this case the appellant's claim in respect of credit hire charges was in the sum of £13,320.00 with interest from the date of the accident.

[2] The matter proceeded to proof over 2 days. Neither the hire period (74 days) nor the sum for storage charges (£3,397.20) were disputed. The sheriff determined that the overall award to the appellant was £4,973.40 representing the undisputed storage costs and the restricted sum of £1,576.20 for daily hire charges over the hire period. Having factored in a payment to account made by the respondent in the sum of £4,500 the sheriff awarded decree to the appellant in the sum of £473.40 with interest.

[3] On the matter of expenses, the sheriff found the respondent liable to the appellant for the expenses of the cause as taxed but excluded therefrom the expenses occasioned by day 2 of proof. In relation to day 2 of proof the appellant was found liable in expenses to the respondent as taxed.

[4] The disputed matters which proceeded to proof did so as a result of what is known as an "intervention letter" communicated on behalf of the respondent to the appellant very soon after the accident. That letter offered the appellant a free replacement vehicle and purported to warn the appellant that should he proceed with obtaining his own hire vehicle then all of the costs might not be recoverable.

[5] At close of proof the sheriff issued an *ex-tempore* judgment. For the purposes of this appeal the sheriff has provided a written note to explain his reasoning. The note includes the facts agreed between the parties and the further facts found proved by the sheriff.

[6] This appeal, and cross-appeal, have proceeded by way of written submissions in terms of rule 8.2(1)(b) of the Sheriff Appeal Court Rules 2021.

Grounds of appeal and cross-appeal

[7] The focus of this appeal is whether the sheriff erred in finding the appellant had acted unreasonably by not accepting the respondent's offer to provide him with a

replacement vehicle at no cost. It is submitted that the sheriff failed to properly apply the ratio of *Copley* v *Lawn* [2009] EWCA Civ 580 (hereinafter "*Copley*"). In so doing, the sheriff failed to objectively assess whether the appellant had acted reasonably in failing to accept that offer. He erred in failing to consider, or failed to make a finding, whether the appellant knew that rejecting the offer would increase the cost of his claim.

[8] The respondent has cross-appealed on the issue of expenses. It is submitted that the sheriff erred in failing to place sufficient weight on the fact that the respondent had been substantially successful at proof. This level of success should have been recognised to a greater extent in the award of expenses.

The facts and the sheriff's reasoning

[9] At proof, a number of facts were agreed by joint minute. These facts included that the appellant was involved in an accident with the respondent's insured driver on 26 October 2023. On 27 October 2023, the appellant received a phone call regarding the accident. The caller claimed to be a representative of Trinity Claims acting for the driver. Later the same day an email was sent to the appellant's email address, signed off by an individual named Chris with no surname. Beyond the name "Chris", the body of the email contained no logos, no email signature, and no identifying information as to who the sender was. The email included an attached letter containing an offer for a free replacement car. The recorded telephone call, email and letter attached were all lodged as agreed productions.

[10] It was further agreed that the appellant's car, being a Vauxhall Astra, was unroadworthy and that he lost the use of this car as a result. The car required recovery after

the accident and was placed in storage. It was recovered by Call Robert Recovery Ltd who stored the appellant's car between 3 November 2023 and 15 January 2024.

[11] On 6 November 2023, the appellant's car was inspected. It was deemed a total loss as a result of damage sustained in the accident.

[12] On 3 November 2023, the appellant entered into a credit hire agreement with Call Robert Hire Drive Ltd for the hire of a replacement car, being a Renault Clio. Over a period of 74 days, the appellant incurred hire costs per the credit hire agreement. The total cost incurred was £13,320.00. Shortly prior to the end date of the hire period the appellant received payment of the pre-accident value of his car.

[13] In addition to the agreed facts the sheriff found that during the relevant period the appellant did not have an alternative vehicle available for his use. He required the use of a motor vehicle to allow him to commute to work and for other social and domestic purposes. He could not rely on public transport.

[14] The appellant's son was a solicitor who ran an accident claims company dealing with claims arising from road traffic accidents. His son had used "Call Robert" previously and the appellant agreed that his son would deal with the matter on his behalf. The appellant's partner was employed in his son's accident claim company.

[15] On the evidence presented, the sheriff found that the appellant received a text message from Chris at Trinity Claims. As a result of the earlier telephone call the appellant was aware that Trinity Claims represented the insurer of the driver of the vehicle with whom he had the accident. The appellant's partner had taken the telephone call on the appellant's behalf and on his authority. It was accepted by Chris that the insurer accepted liability and that the insurer wished to make an offer to assist and provide a hire car. The appellant's partner told Chris that the appellant intended to use his son's accident

management company. The cost of hire was discussed and Chris advised there were risks to the appellant using an accident management company and that the insurer of the at-fault driver may not meet the full costs of a hire vehicle if the appellant decided to proceed independently. Chris asked for the appellant's email address and advised that the email he would send should be passed on to his son if he was dealing with the matter.

[16] In conclusion the sheriff found that the appellant either failed to read the email, and the attached letter, or having done so, chose to ignore it. The appellant was aware or ought to have been aware of the content of the letter attached to the email and that he did not pass the email or the attached letter to his son or to "Call Robert". The letter stated that the insurer offered to provide a Vauxhall Astra, or equivalent vehicle, the cost to the insurer being stated as £17.75 per day plus VAT. The letter also included the following paragraph:

> "Should you elect not to accept the offer of our services but instead utilise credit repair and/or credit hire facilities from another source, then we will limit the payment of any such claim made on your behalf to the value it would cost us to supply a replacement vehicle as stated above. The hire company would have to seek the balance from yourself or your insurance company which may affect your insurance renewal."

[17] The sheriff found that the appellant had failed to consider any alternative to using "Call Robert" for the provision of a hire car. The appellant knew that there was a risk that the insurer may not meet the full costs of any hire should he fail to accept the offer of a hire vehicle made to him in the phone call and as set out in the letter emailed to him. The sheriff found in fact-and-law as follows:

1. During the hire period the appellant was impecunious.
2. The letter attached to the email was sent to the appellant and set out clearly the cost to the insurer in providing the hire car. The offer was to provide a

Vauxhall Astra or equivalent vehicle at a cost of £17.75 per day + VAT including insurance with a nil excess.

3. The appellant acted unreasonably in refusing, or ignoring, the offer from the defender's insurer to provide him with a hire car at no cost to himself resulting in him increasing his loss.

[18] In his note, the sheriff referred to the issues to be resolved in the case as being that of impecuniosity, being an issue frequently encountered, together with the issue of the appellant's need to mitigate his loss in light of the "intervention letter" sent to the appellant. For the purposes of proof, the matter of impecuniosity was ultimately conceded. Both parties focussed their submissions on the second issue and concentrated on the decision of *Copley*. Neither the parties, nor the sheriff through his own research, could identify any Scottish case authority on the point.

[19] The sheriff determined that the appellant was under a duty to mitigate his loss (referring to *McGowan* v *Springfield Properties Plc* [2025] CSOH 81). The sheriff considered it was appropriate to apply the ratio in *Copley*. He found against the appellant because he knew, or should have known, that the respondent could have supplied the car at a lesser cost than that under the credit hire agreement.

[20] On the matter of expenses, the sheriff acknowledged that although the appellant had been successful at proof it was not a complete success. Counsel for the respondent had sought the expenses of the action, which failing the expenses of the 2-day proof on the basis that a minute of tender had been lodged immediately prior to the start of proof. The appellant's counsel submitted that if the full expenses were not to be awarded in the appellant's favour, then splitting expense of the diet of proof might best reflect the matter of limited success. On the basis that the issue of impecuniosity was not conceded until all the

evidence had been led the sheriff favoured the approach to expenses as suggested by the appellant's counsel and made the award accordingly.

Appellant's submissions

[21] The appellant invites this court to sustain the appeal and refuse the cross-appeal. The appellant's motion is to recall the sheriff's interlocutor and grant decree for payment in the sum of £12,217.20 with interest from the date of the accident. There is a further motion to sanction the whole proceedings as suitable for the employment of junior counsel.

[22] It is submitted that by the time the respondent made the offer the appellant had already decided to use the accident management service, "Call Robert", and whilst he had not yet entered the hire contract he intended to do so on the advice of his son. On that basis the respondent's offer was declined. No Scottish authorities were to be found on the relevant law to be applied where an "intervention letter" had been sent. The ratio of *Copley* fell to be regarded as relevant authority. The judgment in that case had been considered in *Sayce* v *TNT (UK) Ltd* [2011] EWCA Civ 1583 and was approved. These judgments should be followed and applied.

[23] The appellant submitted that, in law, it was not unreasonable for a claimant to reject or ignore an offer of a replacement vehicle from an insurer if that offer did not make clear what the total cost of hire to the insurer would be, unless the claimant was made aware that by rejecting the offer of hire, he would increase the ultimate cost for the insurers. This was required to allow the claimant to make a realistic comparison with the cost which he was incurring or about to incur, and to make an informed choice.

[24] It was submitted that the sheriff erred and incorrectly applied the ratio of *Copley*. There was no evidence that the appellant knew what the ultimate cost would be to the

respondent by providing a replacement vehicle. The total cost was not spoken to in evidence. There was reference to daily charges but no reference to the total cost. Likewise, there was no evidence that the appellant knew, or ought to have known, that he was increasing the financial burden on the respondent by deciding to continue with his own credit hire arrangement. This proposition was neither put to the appellant in cross-examination nor put forward in submissions before the sheriff. The appellant was the victim of a no-fault accident and had followed the advice of both his son and partner to continue with the arrangements which had been made on his behalf.

[25] It was also submitted that the sheriff did not consider what the appellant's knowledge was at the relevant time, or what ought to have been known to him, in terms of the total cost of his decision to the respondent and whether or not he would be increasing the financial burden upon them. No finding of fact was made on this issue. The sheriff erred in focussing on whether the respondent's offer of hire was communicated to the appellant. Rather, the focus should have been upon the appellant's choice. From the evidence it was clear that the appellant was unaware that his decision would have an effect of increasing the respondent's costs. The appellant was unaware as to the likely cost of the vehicle offered by the respondent. He was unaware as to the likely total cost of the vehicle being provided by the accident management service. In conclusion, in a no-fault road traffic accident situation, an innocent victim such as the appellant could not be said to have acted unreasonably in not accepting the respondent's offer. Such a scenario was expressly envisaged in *Copley*.

[26] On the matter of the cross-appeal it was submitted that the court at first instance had a very wide discretion in relation to expenses which generally followed success. Appeals on

expenses were generally discouraged. The award made here was within the ambit of properly exercised judicial discretion. It could not be said to unreasonable.

Respondent's submissions

[27] The respondent submitted that the appeal should be refused, and the sheriff's interlocutor affirmed. The sheriff had correctly applied the ratio in *Copley*. On the facts in this case the sheriff was entitled to find that the appellant had acted unreasonably.

[28] The facts proved included that the appellant had been contacted by the respondent's representative shortly after the accident and received by email the letter offering him a free replacement vehicle. The letter specified the daily cost of the vehicle. A week later the appellant entered a credit hire contract. The sheriff was entitled to make the findings in fact which he did including the fact that the appellant failed to consider any alternative to using "Call Robert" for the provision of a hire car.

[29] The sheriff had correctly summarised the *Copley* judgment. This included that any offer had to provide a clear costing to the insurer of the proposed vehicle. Whether or not a pursuer had acted unreasonably in rejecting an offer contained in an "intervention letter" had to be assessed objectively. It would depend on the particular facts and circumstances in any particular case. It was submitted that the intervention letter in this case was "*Copley* compliant". The sheriff had found that the appellant's partner understood fully the purpose of the telephone call, this had been communicated by her to the appellant, and both were aware that an important email was to follow. The email had been received and, per the sheriff's conclusion, the appellant had either ignored the email or read the same and chose to ignore it. The sheriff found either of these courses to be unreasonable. In so holding the

sheriff had not made findings which were plainly wrong and did not reach a decision that no sheriff acting reasonably could have reached.

[30] In conclusion, the appellant should have read and considered the offer of a replacement vehicle made by the insurer. Had he done so he would have realised that the cost of the credit hire vehicle was hugely greater than the cost of the replacement vehicle offered. Not only could the sheriff's reasoning be clearly understood, it was also difficult to see how he could have reached any other conclusion. Per *Copley*, decisions on mitigation of loss were questions of evaluation and judgement, not findings of fact. It could not be said that the sheriff had gone "plainly and obviously wrong" in his application of the law to the facts (*Anderson* v *Imrie* 2018 SC 328).

[31] No written submissions were lodged by the respondent in relation to the matter of the cross-appeal.

Decision

[32] A practice has grown up whereby the driver who was not at fault in an accident may be offered a replacement vehicle whilst his vehicle is being repaired or assessed for future road worthiness. The vehicle may be offered on a credit hire basis meaning that the no-fault driver does not pay at the time, but this cost will seek to be recovered at a later date. To avoid meeting these costs some insurance companies will offer a replacement vehicle on terms contained in an "intervention letter".

[33] The *Copley* judgment is the relevant English case authority which addresses the approach to be adopted when faced with an "intervention letter" and how the existence of the same may affect the right to claim independently sourced credit hire charges. There appears to be no Scottish case authorities on this point. As *Copley* is a decision of the English

Court of Appeal, whilst not binding it is persuasive and there would be no good reason not to adopt the conclusions reached.

[34] The decision in *Copley* arises out of two combined appeals, that of Mrs Copley and of Captain Maden. The common issue was whether refusal of a negligent defendant's offer to provide a "free" car could lead to a finding that a claimant had failed to take reasonable steps to mitigate loss. Because each had declined this offer and proceeded with their own credit hire arrangements their claims were rejected in full at first instance.

[35] The *Copley* judgment recognised that defendants' insurers would wish to take steps to inhibit unreasonable car hire costs incurred by claimants. The court considered that it was well settled that although a claimant could recover the cost of hiring a replacement car that was only to the extent of a reasonable rate of hire (held in the earlier case of *Dimond* v *Lovell* [2002] 1 AC 384 as the market or "spot" rate).

[36] In *Copley*, the opinion of Lord Justice Longmore looked in detail at the facts of each case and the terms of the "intervention letters" which had been received. He stated:

> "If it is right to take into account the fact that insurers on both sides are involved… any offer made by the defendants' insurers must contain all such information as will be relevant for the claimants and their advisers or representatives to make a reasonable response. One piece of information missing from [each] letter was the cost to (the insurers) of hiring the cars. Whereas it may be of no interest to Mrs Copley and Captain Maden as individuals, it would undoubtedly be of great interest to their advisers or representatives, since, if [the insurer] could genuinely hire cars more cheaply than the claimants could, it might be unreasonable to use the services of [the credit hire company] and a mitigation argument might get off the ground." (paragraph 17)

[37] Lord Justice Longmore concluded:

> "(i) that, looking at the matter objectively, it is not unreasonable for a claimant to reject or ignore an offer from the defendant (or his insurers) which does not make clear the cost of hire to the defendant for the purposes of enabling the claimant to make a realistic comparison with the cost which he is incurring or about to incur; (ii) that… if a claimant does not unreasonably reject or ignore a defendant's offer of a replacement car, the claimant is entitled to recover at least the cost which the

> defendant can show he would reasonably have incurred: he does not forfeit his damages claim altogether. If this is correct, the general rule that the claimant can recover the 'spot' or market rate of hire for his loss of use claim is upheld, unless and to the extent that a defendant can show that, on the facts of a particular case, a car could have been provided even more cheaply than that 'spot' or market rate." (paragraph 32)

[38] Ultimately the Court of Appeal found in favour of both Mrs Copley and Captain Maden to the full extent of their claims as there was no evidence that the defendant's insurers could, in fact, have hired replacement cars more cheaply than the claimants did or that the claimants' hire rates were anything other than market rates. It was observed that a claimant could not be said to act unreasonably if he made, or continued, his own arrangements unless he was made aware that this commercial enterprise could be undertaken more cheaply by the insurer (paragraph 21).

[39] An "intervention letter" should outline the actual cost of the offered vehicle, being a vehicle similar to the one being replaced. Such letters should be in clear and simple terms and should be received either before the no-fault driver has entered a credit hire agreement or during the period of hire. The information it provides should be sufficient for an informed choice to be made as to the comparative costs.

[40] Service of a letter compliant with the requirements as outlined above does not oblige the driver to accept the arrangement offered. The driver is free to proceed with his own hire arrangements. However, what it does mean is that if a driver proceeds with his own hire in the knowledge that the rates are greater than those disclosed by the insurer then the right to recover hire charges can be capped at the lower rate. The letter provides a reminder, on an informed basis, of the driver's legal duty to mitigate loss. Whether the letter serves its intended purpose falls to be measured objectively against the particular facts and circumstances of each case.

[41] In the present case the sheriff's interpretation of *Copley* was that any offer must set our clearly the cost that would be incurred by the respondent in providing the vehicle. Absent that information the respondent could not argue that the appellant had unreasonably failed to accept the offer. Whether or not any pursuer acted unreasonably in rejecting, or ignoring, an offer would be fact specific and had to be assessed objectively. The sheriff's interpretation to that extent cannot be criticised. His summary adequately distils the basic ground an "intervention letter" must cover to be potentially successful in its effect. There is no criticism of the sheriff's interpretation in written submissions before this court.

[42] The point on appeal is therefore a narrow one. It is that the sheriff failed to objectively assess whether the appellant had acted reasonably in failing to accept the offer. It is whether the sheriff failed to consider, or failed to make a finding, that the appellant knew that rejecting the offer would increase the cost of his claim. Bearing in mind that the sheriff issued an *ex-tempore* judgment, as more fully explained by the note prepared for this court, reading the sheriff's note as a whole that is not a well-founded criticism.

[43] Put simply, the sheriff had reservations about the appellant's evidence. Of his partner's telephone call with "Chris" he stated in evidence he did not hear what was said. He further denied seeing the email that followed and did not recall ever having seen the "intervention letter" shown to him during the proof. In cross-examination he accepted that he had not read the credit hire agreement which he signed. He was non-committal about what his partner had told him and answered questions indirectly by stating "as far as we were concerned, it was getting dealt with". The sheriff also concluded that the appellant's partner was vague about what was communicated to her, but he also determined that she was, or should have been, well aware of the import of the communications. In relation to the evidence of both these witnesses the sheriff found their evidence to be less than reliable

about what they knew or what they took from the telephone call and email. It was clear that the communications, or information contained therein, had not been passed to the appellant's advisers.

[44] Against that background, there was evidence that the "intervention letter" confirmed the daily rate to the respondent of providing the vehicle was £17.75 plus VAT. It was an agreed fact that the appellant had entered into a credit hire agreement with Call Robert Hire Drive Ltd. The credit hire agreement was produced. It confirmed the daily charge of hire was £150 excluding VAT. The sheriff found that the appellant was aware or ought to have been aware of the content of the letter attached to the email and that he did not pass the email or the attached letter to his son, as his adviser, or to "Call Robert".

[45] Clearly, the sheriff did consider what the appellant's knowledge was at the relevant time, or what ought to have been known to him. On the evidence the sheriff found that the appellant had failed to consider any alternative to using "Call Robert" for the provision of a hire car. Whilst no finding of fact was made on the terms of the total cost of the appellant's decision to the respondent, and whether or not he would be increasing the financial burden upon them, the judgment of the sheriff was an *ex-tempore* one. It is clear from the note provided that the sheriff was entitled to find the "intervention letter", provided with what should have been known about the terms of the credit hire agreement, gave the appellant the necessary information to make an informed choice on how he should proceed. At the very least it was a potentially important communication which should have been brought to the attention of those instructed to advise him in terms of his claim. Looked at objectively, the respondent's submission that it was also difficult to see how the sheriff could have reached any other conclusion is hard to resist. In the facts of this case, it was not enough for the appellant simply to proceed on the advice being given to him. Such advice would

appear to have been given without knowledge of the communications received. No-one would know the ultimate length of the period over which a replacement car would be needed but that did not prevent the appellant or his advisers had they known, easily working out the daily differential between the two rates. The differential between the two was substantial. The warning flags to mitigate had been raised.

[46] Whilst it is submitted that in a no-fault road traffic accident situation, an innocent victim such as the appellant could not be said to have acted unreasonably in not accepting the respondent's offer it cannot be said that it was necessarily reasonable to proceed with the chosen hire arrangement based on what the appellant's knowledge was or should have been. On the facts, objectively assessed, the decision of the sheriff was one which a sheriff acting reasonably could have reached.

Disposal

[47] For the reasons above stated I refuse the appeal and adhere to the sheriff's decision.

[48] On the matter of the cross-appeal, absent any submission or reasoning, it is unclear whether this is insisted upon. In any event, for the reasons he gave, the sheriff's reasoning on expenses is justified in the circumstances and falls within the bounds of reasonably exercised discretion.

[49] Any expenses occasioned by the cross-appeal will be awarded on a no expenses due or by basis. On the matter of the principal appeal expenses follow success and are awarded to the respondent as taxed.