

SHERIFFDOM OF GRAMPIAN, HIGHLAND AND ISLANDS AT INVERNESS

[2025] SC INV 41

INV-SM3-24

NOTE OF REASONS AND DECISION OF SHERIFF IAN HAY CRUICKSHANK

in the cause

RICHARD TOWN

Claimant

against

STUART WILSON

Respondent

Claimant: Party present

Respondent: Party present and Mr Bryce (lay representative)

INVERNESS, 29 July 2025

The Sheriff having heard evidence and submissions at a Hearing on 14 July 2025, and having resumed consideration of the cause, dismisses the claim and awards no expenses due to or by either party.

Introduction

[1] In this simple procedure action, the claimant ("Mr Town") seeks an order for payment against the respondent ("Mr Wilson"). The sum sued for is £3,489.76 (following amendment of the original claim from £3,158.01). The claim arises out of the purchase of a motor vehicle, being a Jaguar XJ8, registration X8 XJX. This was the sale of a second-hand motor car via an internet auction site between private individuals. The sum sued for is said

to represent the loss occasioned to Mr Town as a result of the vehicle not having been properly described at the point of sale.

[2] The parties were unable to resolve this matter by negotiation. This proceeded to an evidential hearing which took place by Webex on 14 July 2025. Mr Town represented himself in these proceedings. Mr Wilson was represented by his lay representative, Mr Bryce. Having heard evidence, I reserved judgement in order to issue a written note to explain my decision.

[3] As this is a simple procedure action, I will outline (a) the factual basis of this decision, (b) the relevant law to be applied and (c) my reasons for the decision.

Factual basis of decision

[4] I considered the evidence presented by both parties. This included the written statement of claim and response to summons which were adopted respectively by each party. I considered the various items of evidence lodged by Mr Town and referred to in his evidence. I also heard from Mr Bonome, a witness called by Mr Town who spoke to the report he had prepared in his professional capacity as a motor mechanic, trader and vehicle inspector.

[5] I made the following findings-in-fact:

1. Mr Wilson was the owner of a Jaguar XJ8 ("the Jaguar"). The Jaguar was first registered in 2002, and its registration plate is X8 XJX. Mr Wilson owned the vehicle between 2018 and 2023. In early 2023 Mr Wilson advertised the Jaguar for sale on the "Car and Classic" auction website. At that point, the Jaguar had a recorded mileage of over 67,000 miles.

2. Mr Town placed a successful bid for the Jaguar. His bid was in the sum of £6,100. He made payment in full on 29 March 2023. Mr Town travelled to Inverness and collected the Jaguar on 9 April 2023. It was his intention to drive the vehicle back to his home in London.
3. The Jaguar had been advertised on the Auction website including internal and external photographs of the vehicle. The advertisement referred to the history of ownership and confirmed it had been serviced in February 2023 and held an MOT until February 2024. The advertisement stated that there was some evidence of body work having been done due to wheel arch corrosion. The body work in this respect was stated as being “done to a very nice standard keeping the car looking its best”. It also stated that there was “some corrosion showing under the paint on the driver’s side rear wheel arch, a repair that had been done prior to the current ownership”. Under the heading “Mechanics” it was stated that “the car drives wonderfully with a smooth ride with no undue noises other than very slight wheel bearing rumble which was the only MOT advisory”.
4. In summary the advertisement declared that the Jaguar was a fine example of a modern classic and that the vehicle had been well cared for “and needs little in the way of maintenance with just a couple of minor cosmetic and mechanical issues”. The advertisement concluded with the following:

“Notice to bidders

This item is sold on an ‘As is Where is’ basis. The condition of this item is the opinion of the seller and may differ from your own opinion. Photos and listing description are for guidance purposes only. Car and Classic do not warrant listing accuracy. Full inspection is recommended.

Viewings are at the seller’s discretion...

...All bidding, buying and offers are subject to our Terms and Conditions.

Please see our FAQ's [here](#) and our Terms and Conditions [here](#)."

5. Mr Town purchased the Jaguar but advised DVLA that the registered keeper was to be Automotive Circulation Limited, a Company in relation to which Mr Town was a director.
6. Mr Town transferred ownership of the Jaguar to Automotive Circulation Limited on 9 September 2023.
7. When driving the vehicle back from Inverness to London Mr Town found that the Jaguar's steering occasionally tram-lined the road surface or caused a slight snatch to the left when turning to the left and at the same time breaking.
8. On returning home Mr Town booked the vehicle into a specialist Jaguar workshop to have the wheel bearing work, as disclosed as an MOT advisory, carried out. The workshop advised that the bearing set had been tightened so much that it could have caused damage.
9. On 17 May 2023 Mr Town purchased a lower front wishbone arm at a cost of £380.93. On 23 May 2023, the item was fitted with a labour cost of £180.00. This led to Mr Town paying out £560.93 above the work he believed was necessary based on the information contained in the auction advertisement.
10. On the initial trip back to London, between Glasgow and Barnsley, the engine stopped with an "Engine Fail Safe" message displayed. After a delay of an hour the vehicle started correctly.
11. A further repair was undertaken when a cylinder ignition coil was diagnosed as being faulty. Mr Town changed a plug-in inlet manifold control valve relay. The workshop did not charge labour but these parts cost £49.30. Mr Town incurred fuel costs to have the repair carried out in the sum of £81.45.

12. In April 2023 Mr Town wrote to Mr Wilson seeking to reject the Jaguar as the faults had been identified within a 30-day time period which Mr Town believed gave him the right to return the vehicle. In May 2023 Mr Wilson refused to have the vehicle returned to him.
13. On 29 May 2023, due to the "Engine Fail Safe" notification fault occurring on a further occasion, Mr Town had to park up the vehicle in Caterham, Surrey. This necessitated him getting home by cab at a cost of £65.00. The Jaguar had to be transported at a cost of £70.00. Diagnostic tests were carried out by a Jaguar approved garage at a cost of £66.00. The garage refused to carry out works as it no longer worked on gear boxes. Mr Town found a recommended specialist in Thame and the Jaguar was transported there at a cost of £290.00. In July 2023, the faulty gear box component was changed at a cost of £173.53.
14. During the above procedure, a mechanic reported that the hands-free telephone unit (known as "Parrot") had been installed following the vehicle's creation. The speaker of Parrot had been installed over a ventilation hole to the engine control unit ("ECU"). A fan that should direct cool air onto the ECU was missing. Mr Town paid £550.98 for replacement of the ECU fan. He paid £17.70 for a rail fare to retrieve his vehicle from Thame and spent £50.06 on fuel to test and drive the Jaguar home after this work was completed.
15. By 2 September 2023 Mr Town had spent the sum of £1,942.95 on the Jaguar above the costs he had anticipated in relation to the matter referred to as the MOT advisory.
16. On several occasions, as costs mounted, Mr Town asked Mr Wilson for a contribution towards the costs he was incurring. Mr Wilson refused to make

any financial contribution. On 6 September 2023 Mr Wilson responded by email and stated he considered the Jaguar remained “totally safe to drive”.

17. Following transfer of ownership of the Jaguar to Automotive Circulation

Limited further repairs were carried out to the vehicle. Mr Town continued to pay for these repairs. These included the following:

- a. On 10 October 2023 replacement of a coolant temperature sensor at a cost of £11.28.
- b. On 31 October 2023 purchase of a second-hand folding function mirror following failure of the folding function mirror on the driver’s side at a cost of £34.95.
- c. On 13 December 2023, the cost to diagnose and change a crank sensor due to intermittent difficulties in starting the engine was incurred in the sum of £170.00.
- d. Fuel costs and train costs were incurred to have works carried out in the sums of £50 and £17.70 respectively.

18. In February 2024 in preparation for the MOT, more rust corrosion was discovered. This was sufficient to have led to an MOT failure. To rectify this Mr Town obtained replacement parts in the sum of £303.66 and £109.20. He spent £51 on fuel to deliver to the garage together with labour costs of £350.00 and rust repairs and welding at £240.00. A rail fare of £18.80 was also incurred.

19. In addition to the above replacements and repairs, a Jaguar components dealer was able to supply a working second hand compressor at a cost of £73.20. This was fitted with a labour cost of £108 being incurred. Coolant and sealant were purchased at a cost of £92.98.

20. In 2025 Mr Town instructed Automotive Consulting Engineers Limited to prepare an inspection report in relation to the Jaguar. The report was prepared by Benjamin Bonome, an independent vehicle inspector. The Jaguar was inspected on 3 April 2025. In addition to inspecting the vehicle Mr Bonome was provided with various documents, invoices, and the version of events from Mr Town regarding the purchase and subsequent use of the vehicle.
21. In the conclusion of his report Mr Bonome noted that the Jaguar had been driven 788 miles in 22 days since purchase to reported failure date. It was noted that the vehicle had since covered a further 6,704 miles between purchase and the date of the inspection. In particular the report concluded that Mr Bonome had been presented with a diagnostic scan which confirmed no fault codes were stored in the vehicle. The conclusion at section 12 also stated as follows:

“12.5 The corrosion would have been present or in development at the point of purchase, but we are unable to confirm if the other issues with the vehicle would have been present or in development at the point of purchase, as a vehicle had now covered 6,700 miles which can be considered to be substantial.”

22. In evidence Mr Bonome conceded that electrical or mechanical faults to a vehicle, including a 23-year-old Jaguar, could occur at any time.

[6] The above findings-in-fact are arrived at based on the evidence which I found to be both credible and reliable. It is to these facts that I apply the relevant law.

The relevant law

[7] On lodging his application Mr Town initially sought to found his claim under the Consumer Rights Act 2015 and what he believed to be the Sale of Goods Act 2005. Mr Town

accepted that he had erroneously relied on the first statute and further accepted that there was no such Act of 2005. He clarified that he sought to base his claim on the Sale of Goods Act 1979 (“the 1979 Act”). Mr Town submitted that the Jaguar did not conform to the description which had been given and upon which he had relied. On that basis his claim was justified and should be upheld. Beyond that I heard no detailed submissions from the parties as to the legal basis which supported either the claim or the defence thereto. I will summarise the relevant law as I understand it.

[8] This was a private sale. Mr Wilson was not a car dealer and did not operate in business. As such, the 1979 Act does not offer the same remedies against Mr Wilson as it would if the vehicle was sold in the course of a business.

[9] Where there is a contract for the sale of goods by description, there is an implied term that the goods will correspond with that description (section 13(1) of the 1979 Act). That holds in circumstances where a sale is either between private individuals or the sale is on a commercial basis.

[10] In law, if a party orders goods of a particular description, and gets either different goods or a consignment, in part of the goods ordered, and in part of goods of a different description then the seller is in breach of contract (see generally *Gloag and Henderson, The Law of Scotland* 15th Edition, paragraph 12.31). In such cases, failure to answer the description may make no difference to the value of the goods. If the seller is in breach of the implied term that the goods correspond with the description, the buyer can claim damages and, if the breach is material, he may reject the goods and treat the contract as repudiated (being the remedies for breach of contract in Scotland in terms of section 15B of the 1979 Act).

[11] An implied term has been described as something which, in the circumstances of a particular case, the law may read into the contract if the parties are silent on the matter and it would be reasonable to do so (per Lord Reid in *Sterling Engineering Co v Pratchett* [1955] AC 534 at 547). Implied terms can be created in a number of ways, one being by statute as in the present case. Some implied terms cannot be altered by express terms or can only be so altered in certain circumstances as a matter of general law. This is the case with the implied term created by section 13 of the 1979 Act. Any term of a contract which purports to exclude or restrict liability for breach of an obligation arising out of section 13 shall have effect only if it is fair and reasonable to do so (section 20 of the Unfair Contract Terms Act 1977 as amended).

[12] To what extent in law can “description” as an implied term be relied upon to found a claim for damages? It must be borne in mind that except as provided for in section 14 and section 15 of the 1979 Act there is no implied term about the quality or fitness for any particular purpose of goods supplied under a contract of sale (section 14(1) of the 1979 Act). The exception provided for by section 14(2) allows for such an implied term if the seller sells goods in the course of a business which is not relevant to this case. Section 15 is of no relevance either as that relates to sale by sample.

[13] For the purposes of section 13 the word “description” is not defined in the 1979 Act. Definition of that word may be synonymous with “kind” (*Gloag and Henderson*, paragraph 12.31; see also *Rutherford & Son v Milne & Co* 1941 SC 125). Quite often claims based on the implied term of description are alternatively founded on the implied term of quality or fitness for any particular purpose where the contractual status of the parties allows for that. There is a clear distinction to be drawn between these implied terms. Accordingly, in one case, whereas an animal feed mix containing contaminated herring meal

breached the implied term as to quality and fitness, there was no misdescription of the feed mix since the fact that the herring meal was contaminated did not render it erroneous to describe it as herring meal (per *Ashington Piggeries Ltd. and Another v Christopher Hill Ltd* [1972] AC 441).

[14] You may ask what contaminated herring meal has to do with a case involving the purchase of a second-hand Jaguar. Put simply, I conclude that there are constraints on the meaning of “description” in contracts of sale when reliance is placed on that as an implied term. Although the above authority is of some vintage, I can find no judicial authority since the passing of the 1979 Act which widens the implied term of “description” in a contract for the sale of goods. Accordingly, unless in this case the implied term provided for by section 13 of the 1979 Act is sufficient to support Mr Town’s claim in law there would require to be an alternative legal basis to justify it.

[15] If the implied term as to description does not resolve Mr Town’s claim two alternatives come to mind. Reliance could be placed on an express term of contract as to quality or fitness. Alternatively, reliance on a misrepresentation which induced Mr Town to enter the contract would allow him to argue there had been a breach of contract.

[16] Mr Town does not seek to rely on an express term of contract. Whereas misrepresentation was not advanced by Mr Town *per se*, given that neither party is legally qualified, I feel it is incumbent on me to explore whether, based on the evidence, misrepresentation causing an inducement to purchase would be a material consideration in law in order to resolve this claim. In this respect, and in fairness to Mr Town, I did note in his closing submissions that he referred to false description, particularly relating to the issue of air conditioning, to have induced him to purchase the vehicle.

[17] If the seller of goods is deceptive and provides information which he knows to be false, that is not a claim which should properly be founded upon under section 13 of the 1979 Act. That is a claim based on contractual fraud. In contract, fraud may involve misrepresentation or concealment. If fraud is established, then the contract upon which it is founded is voidable and not void. The primary remedies for such are rescission of a voidable contract and damages.

Reasons for decision

[18] In this case most of the facts were not in dispute. Mr Wilson's representative did not argue that the various costs incurred by Mr Town had not been so incurred. The matter at dispute was simply that, in all the relevant circumstances, no liability flowed for these costs.

[19] Having considered the evidence and reflected on what I have found to be proved, I have little difficulty in dismissing Mr Town's claim. I do so for a number of reasons.

[20] First, the issue of ownership is one relevant consideration which affects part of this claim. Mr Town accepted that he had transferred ownership of the Jaguar to his Company on 9 September 2023. Mr Town's claim includes costs for repairs or replacement parts incurred after that date. No explanation was provided as to why, following transfer of ownership, Mr Town remained personally liable for costs incurred on the Jaguar. If there was a contractual basis for that as between him and his Company, that is a matter between those separate legal individuals. There is no legal basis which would allow Mr Town to claim these costs from Mr Wilson. Mr Town has no legal right, title or interest to seek to recover any cost incurred on the Jaguar following the transfer of ownership to his Company. That is the primary basis upon which I dismiss the part of the claim for costs incurred after 9 September 2023.

[21] Secondly, per Mr Town's claim for costs incurred prior to 9 September 2023, I dismiss this claim as, in the factual circumstances of this case, Mr Town cannot in law rely upon the implied term that he seeks to rely on in terms of section 13 of the 1979 Act. I refer to my analyses of the law as above. Mr Wilson advertised for sale a Jaguar XJ8 first registered in 2002 with registration number X8 XJX. That is precisely what Mr Town purchased. For the purposes of section 13 of the 1979 Act description of the goods satisfied the implied term as the Jaguar corresponded with its description. Given what I regard as the legal strictures placed on the meaning to be applied to "description" there was no breach of the implied statutory term. The implied term of description of the vehicle cannot be relied upon to utilise the description as having been breached because certain parts of the overall description could be founded upon to somehow create an implied term as to quality or fitness. That would be inconsistent with the general statutory provisions of the 1979 Act.

[22] Thirdly, if I am wrong as to my interpretation of the implied term created by section 13 of the 1979 Act, the description as provided by the car auction website must be read in its entirety. In so doing there are two matters of relevance which have to be balanced and considered. The "Notice to bidders" section provides a clear warning to a prospective purchaser. It states that the "condition of this item is the opinion of the seller and may differ from (the bidder's) opinion" and that "photos and listing description are for guidance purposes only". It recommends to bidders that "full inspection is recommended". This puts a bidder on notice. It reinforces the statutory position created by the 1979 Act that there is no implied term about the quality or fitness for any particular purpose of goods supplied under a contract of sale. Read as a whole the advertisement ensures that the implied term of description is limited to kind.

[23] Further, on the matter of reading the advertisement as a whole, this ends with the statement “All bidding, buying and offers are subject to our Terms and Conditions. **Please see our FAQ’s here and our Terms and Conditions here**” (the words I have highlighted in bold appear as such in the copy of the listing that I have seen. The words “here” seem to me to be internet links to the relevant parts of the auction website which provide that information). In this case, neither party referred me to what the terms and conditions were. In fairness, it looks as if the respondent may have lodged a copy of what he believed the Terms and Conditions to be, but these were not spoken to in evidence and did not appear to be lodged as a formal item of evidence per the simple procedure rules therefore, I ignored these as they did not form part of either party’s case as presented. It would however have been necessary, in order to fully consider Mr Town’s claim, to have had sight of these. It is not for me to speculate but I would have been surprised if these Terms and Conditions did not provide the position on express terms of the contract as opposed to the implied term relied upon.

[24] When it came to evidence, in cross-examination Mr Town denied that he had ever seen or been sent a copy of these Terms and Conditions. I did not find Mr Town’s response to this to be entirely credible. From viewing the very detailed basis of his claim as presented, and from both observing and listening to Mr Town, I assessed him as being a very fastidious and careful individual. I concluded it was more probable than not that Mr Town had either considered the Terms and Conditions prior to purchase, or he had done so since. Be that as it may that did not help me to establish what these were. I simply do not know what the Terms and Conditions of sale and purchase provided for.

[25] Finally, having rejected Mr Town's claim based on section 13 of the 1979 Act I considered whether the claim could succeed based on misrepresentation. I concluded that the claim could not be upheld on that basis.

[26] I was not convinced that Mr Wilson had knowingly provided misleading statements. Mr Wilson had flagged up an issue with a wheel bearing. The issue of corrosion had been highlighted in the advertisement. I did not consider there was an evidential basis which allowed me to infer that Mr Wilson must have known about other potential issues with the vehicle. Mr Wilson had been but one in a series of owners. I could not infer that Mr Wilson had any knowledge about the various faults which had become apparent during Mr Town's ownership of the vehicle. This was reinforced by the evidence of Mr Bonome. I accepted that Mr Bonome had skilled knowledge and based on his inspection of the vehicle his opinion was that whereas the corrosion would have been present or in development at the point of purchase, he was unable to confirm if the other issues with the vehicle would have been present at that time. Any further evidence given by Mr Town did not persuade me that I could conclude otherwise.

Expenses

[27] I sought the parties' position on the matter of expenses. Mr Town understood that there were caps and restrictions on expenses for simple procedure cases. He understood in certain circumstances these could be removed. If successful he asked me to do so and grant expenses on a full basis as incurred by him. Mr Wilson's representative submitted that if the claim was unsuccessful then the respondent would not seek any expenses. As a result, in dismissing this claim, I make no award of expenses due to or by either party.