

SHERIFFDOM OF LOTHIAN AND BORDERS AT EDINBURGH

[2026] SC EDIN 6

EDI-A937-24

JUDGMENT OF SHERIFF F C M THOMSON

in the cause

DUNCAN WELSH

Pursuer

against

SCOTTISH COURTS AND TRIBUNALS SERVICE

Defender

Pursuer: Swanney, advocate; Digby Brown LLP

Defender: Callender; Morton Fraser MacRoberts LLP

EDINBURGH, 5 January 2026

The sheriff, having resumed consideration of the cause, finds the following facts admitted or proved:

1. On or about 6 December 2023, the pursuer appeared from custody in private at Glasgow Sheriff Court in connection with a petition matter. He made no plea. The Crown moved to have him committed for further examination.
2. An application for bail was submitted and opposed. The sheriff admitted the pursuer to bail. However, the decision was wrongly minuted as bail having been refused, and that was communicated to cell officers at Glasgow Sheriff Court.
3. The pursuer was taken to HM Prison, Barlinnie where he was detained until the error was discovered, a bail order was issued and the pursuer was released on 13 December 2023.

4. The pursuer has a lengthy record of periods of detention, both before and after the events of December 2023.

Finds in fact and law

1. In detaining the pursuer, the defender acted unlawfully in a manner incompatible with a Convention right.
2. The pursuer having suffered loss and damage, it is just and appropriate to award him damages and necessary to do so to afford just satisfaction.
3. Having taken into account the principles applied by the European Court of Human Rights in relation to an award of compensation, an award of £3,325 is appropriate, with interest thereon.

THEREFORE sustains the pursuer's remaining pleas in law, repels the defender's remaining pleas in law, finds the defender liable to the pursuer in the sum of £3,325 with interest thereon at the rate of 8% per year from 6 December 2023 until payment and appoints parties to be heard on a date to be advised on the question of expenses.

NOTE

Introduction

[1] This matter concerns loss and damage suffered by the pursuer following his wrongful detention by the defender, in breach of Article 5 of the European Convention on Human Rights and section 6 of the Human Rights Act 1998.

[2] The circumstances are that the pursuer appeared from custody at Glasgow Sheriff Court and was granted bail. However, the decision was wrongly recorded, and he spent 7 nights in custody.

[3] The matter called on 24 November 2025 for proof on quantum only, liability having been admitted.

[4] No evidence was led and the hearing proceeded by way of submissions on quantum.

Submissions

[5] For the pursuer, it was argued that the remedy of damages was just and appropriate and necessary to afford just satisfaction in terms of section 8 of the 1998 Act. The court should assess damages by reference to domestic authorities, using European Court of Human Rights authorities as a cross check. Domestic authorities established that damages should be assessed in the round and not mechanistically by way of a fixed daily tariff, with initial shock to be recognised in appropriate cases and the rate at which damages increased falling with the length of detention. The court could reduce an award to reflect the pursuer's conduct: *R (Kessie-Adjei) v Secretary of State for Justice* [2022] EWHC 722 (Admin) at paragraph 113.

[6] Applying those principles, an award of £10,000 was appropriate. The starting point was the guidance in *Thompson v Commissioner of Police of the Metropolis* [1998] QB 498. That had been followed in *Rees v Commissioner of Police of the Metropolis* 2019 EWHC 2120 (Admin) (awards of £60,000 and £9,000 for loss of liberty for periods of 682 days and 9 days respectively), *Mohidin v Commissioner of Police of the Metropolis* [2015] EWHC 2740 (QB) (£4,500 for c. 20 hours) and *Mohammed v Home Office* [2017] EWHC 2809 (QB) (£8,500 for an initial period of 41 days). Scottish authorities included *NS v Secretary of State for the Home*

Department [2014] CSIH 91, 2015 SC 295 (£30,000 for 1 year) and *Grier v Chief Constable of the Police Service of Scotland* [2022] CSOH 2, 2022 SLT 199 (£7,500 would have been attributed to 3 nights); *Downie v Chief Constable, Strathclyde Police* 1998 SLT 8 (£2,000 for 4 nights' detention); *Woodward v Chief Constable, Fife Constabulary* 1998 SLT 1342 (£750 would have been awarded for 4 hours); *Louden v Chief Constable, Police Service of Scotland* 2014 SLYT (Sh Ct) 97 (£2,500 for around 1 hour).

[7] European Court cases included *Beet v UK* (2005) 41 EHRR 23 (€5,000 for 2 days) and *Lloyd & Ors v UK* (App No 29798/96, Judgment of 1 March 2005) (€7,000 for 7 days) and were consistent with the domestic authorities. Taking account of inflation, an award of £10,000 was appropriate.

[8] For the defender, there was no dispute that damages fell to be awarded. An award of £1,500 would be appropriate. Damages should be assessed primarily by reference to comparable case law from the European Court. Common law decisions relating to unlawful detention were not of assistance, the pursuer's separate delictual claim having been dismissed at debate. *Esto* common law awards for unlawful detention were relevant, £1,500 remained reasonable.

[9] Reed and Murdoch: *Human Rights Law in Scotland* 5th Edition (2025) noted that awards for breach of Article 5 by the European Court tended to be low. One of the decisions referenced was *Clift v United Kingdom* [2010] 7205/07 in which €10,000 was awarded for a 2-year period of unlawful custody, following (as in the current case) a lawful period of custody.

[10] *R (on the application of) Jason Kessie-Adjei v Secretary of State for Justice* [2022] EWHC 722 (Admin), a decision under the 1998 Act, was comparable. As in the present case, the claimant had a history of offending and significant previous experience of custody,

damages for 52 days' unlawful detention would have been assessed at £11,000 (albeit then reduced given the claimant's conduct).

[11] As regards common law awards, the present case involved neither unlawful arrest nor initial shock. The pursuer's period of unlawful detention had been preceded by a period of lawful custody. It was comparable to *NS v Secretary of State for the Home Department* [2014] CSIH 91, in which the Inner House had approved damages of £30,000 for 1 year's detention, equating to a daily rate of £82.

[12] The European cases relied upon by the pursuer were not on point and could be distinguished. Similarly, the domestic cases relied upon by the pursuer did not involve the 1998 Act and involved matters not present here, eg unlawful arrest.

[13] Adjusted for inflation, an award of £1,500 would be appropriate, and consistent with both European and domestic authority.

Decision

[14] There was no dispute between the parties that damages were the appropriate remedy, or that an award was necessary to afford just satisfaction to the pursuer in terms of section 8 of the 1998 Act.

[15] As regards quantification, I prefer the pursuer's approach. Specifically, I have adopted the four-stage approach taken in *Alseran v Ministry of Defence* [2017] EWHC 3289 (QB), that is identifying the injuries suffered by the pursuer as a result of the relevant breach of his Convention rights, assessing the amount of compensation that would be awarded in accordance with the principles of Scots law applicable to delictual claims, considering whether to depart from or adjust that sum having regard to wider considerations of what is just and equitable in all the circumstances and, thereafter, considering whether there is any

reason to think that the sum of money arrived at is significantly more or less generous than the amount which the European Court could be expected to award. Applying that approach to the relative significance of European and domestic authorities is appropriate in view of the latter having developed over time as part of the naturalisation process anticipated in *R (Sturnham) v Parole Board* [2013] UKSC 47; [2013] 2 AC 254 at paragraph 29, and separately the limitations more generally, summarised in *Alseran* at paragraphs 919-923, in taking guidance from awards made by the European Court given the differences in the approach of that court.

[16] I do not agree with the defender's submission that dismissal of the pursuer's claim renders delictual awards, more generally, irrelevant as an aid to assessing what may be an appropriate award. If a breach of the 1998 Act has occurred, then domestic awards are relevant and not least for the reason identified in *Alseran* that where the basic right to bodily integrity or liberty is protected both by the 1998 Act and the law of delict the courts should strive for consistency of response. In any event, the dismissal proceeded unopposed and was not made after argument. Similarly, I do not agree that the authorities cited by the pursuer are to be distinguished only on the basis that they involve considerations, not present here, such as wrongful arrest or malicious prosecution, where they also speak to compensation for deprivation of liberty.

[17] The pursuer was wrongly detained for a period of 7 days. It is accepted that he suffered no element of initial shock. He had not been wrongly arrested. His initial, short period of custody had not been unlawful. His circumstances were such that he was wholly familiar with the custodial setting.

[18] In considering the domestic authorities cited, it is necessary to try to discern what element of these can be seen as relating to simple deprivation of liberty, as opposed to any

other factor (eg initial shock, wrongful arrest, malicious prosecution) not present here. Care also needs be taken in cross applying the apparent daily rate in awards made for longer periods of wrongful detention, as these will generally include a tapering down of the amount recoverable over time. The daily rate for a short period of detention will be higher than that for a longer period: *Mohammed v Home Office* at paragraph 32; *NS v Secretary of State for the Home Department* at para [42]. However, the amount attributable to these various factors is not always evident.

[19] An appropriate starting point is *Thompson v Commissioner of Police of the Metropolis* where it was said:

“(5) In a straightforward case of wrongful arrest and imprisonment the starting point is likely to be about £500 for the first hour during which the plaintiff has been deprived of his or her liberty. After the first hour an additional sum is to be awarded, but that sum should be on a reducing scale so as to keep the damages proportionate with those payable in personal injury cases and because the plaintiff is entitled to have a higher rate of compensation for the initial shock of being arrested. As a guideline we consider, for example, that a plaintiff who has been wrongly kept in custody for 24 hours should for this alone normally be regarded as entitled to an award of about £3,000. For subsequent days the daily rate will be on a progressively reducing scale.”

[20] The guidance in *Thompson* requires to be seen as having been given in the context of both wrongful arrest and initial shock. However, it has been since been followed in several cases:

- a. In *Mohidin v Commissioner of Police of the Metropolis*, an award of £4,500 was made for c. 20 hours' wrongful detention. However, the claimant had been wrongfully strip searched and that was reflected in the award.
- b. In *Rees v Commissioner of Police of the Metropolis* awards of £60,000 and £9,000 were made for loss of liberty for periods of 682 days and 9 days respectively, equating to apparent daily rates of £88 and £1,000 (and as such demonstrating a

significant element of tapering in the former award). There was no element of initial shock, but the awards reflected the nature of the claimants' incarceration for a period as Category A prisoners.

- c. In *NS v Secretary of State for the Home Department* an award of £30,000 was made for loss of liberty relating to a period of 1 year. It is apparent that this involved an element of tapering (confirmed at first instance: *Shehadeh v Secretary of State for the Home Department* [2013] CSOH 139, 2014 SLT 199 at para [33]) but not by how much over time.
- d. In *Mohammed v Home Office* an award of £8,500 was made in respect of an initial period of 41 days' unlawful detention. There was no element of initial shock. Again, the impact of tapering on the award is unclear.
- e. In *Grier v Chief Constable of the Police Service of Scotland*, damages were sought for wrongful, unlawful and malicious prosecution. While no award was made, damages of £7,500 would have been attributed to 3 nights' imprisonment. It is not said expressly whether the award included any element of initial shock but that is to be inferred.
- f. In *R (on the application of) Jason Kessie-Adjei v Secretary of State for Justice* again no award was made but damages of £11,000 would have been payable in respect of a 52-day period of detention (tapered down from £11,400 given the length of the period) equating to a daily rate of £219. In the circumstances of the conduct of the claimant that would have been reduced further to £5,000.

[21] Other cases not referencing *Thompson v Commissioner of Police of the Metropolis* include:

- a. *Woodward v Chief Constable, Fife Constabulary*: damages of £750 would have been awarded for 4 hours' detention. The case clearly involved some element of distress/initial shock on the facts;
- b. *Downie v Chief Constable, Strathclyde Police*: an award of £2,000 was made in respect 4 nights' detention. This involved wrongful arrest and an assault on the pursuer by the police so, again, some element of initial shock can be inferred; and
- c. *Louden v Chief Constable of Police Scotland*: an award of £2,500 was made in respect of wrongful arrest and c. 1 hour of detention. However, this was an unusual case involving the arrest and detention of a serving police officer, and the award expressly noted the greater effect on her in the circumstances.

[22] The most helpful domestic comparator cases are those involving similar periods of detention.

[23] In *Downie v Chief Constable, Strathclyde Police* the award equated to £500 per day (around £1,000, inflation adjusted). However, as noted this also included wrongful arrest and, impliedly, initial shock.

[24] In *Rees v Commissioner of Police of the Metropolis* the shorter period attracted an award of £1,000 per day (around £1,250, inflation adjusted). Implicitly there was no tapering (cf. paragraph 54 of the judgment relating to the longer period) so the daily rate is a suitable comparator. However, again, the award involved more than simple detention in that it reflected the claimant having been held as a Category A prisoner.

[25] Reference can also be made to decisions involving longer periods where the influence of tapering on the award is apparent.

[26] Specifically, in *R (on the application of) Jason Kessie-Adjei v Secretary of State for Justice* by reference to *Mohammed v Home Office* as noted an award of £219 per day (around £250 per day, inflation adjusted) was made. It appears this included some element of initial shock but presumably limited as the claimant had significant experience of custody.

[27] Being mindful that damages are to be assessed in the round and not mechanistically, and adjusting for factors not present here, these decisions would suggest a daily rate, allowing for inflation, in a range of c. £200 - £750. Applying a broad axe, for the period under consideration, I consider that a daily rate of £475 per day is appropriate, equating to an award of £3,325.

[28] There is no reason to depart from that sum in the circumstances of the present case or because of the pursuer's conduct.

[29] That leaves the question of cross-checking with the European authorities cited. In *Beet v United Kingdom* the award of €5,000 (for 2 days' detention) equates to around £6,100, inflation adjusted. In *Lloyd & Ors v United Kingdom* the award of €7,000 (for 7 days' detention, so identical to the pursuer's position) equates to around £8,500, inflation adjusted.

[30] These are to be contrasted with *Clift v United Kingdom* [2010] 7205/0 in which €10,000 (around £13,000, inflation adjusted) was awarded for a 2-year period of unlawful custody, following (as in the current case) a lawful period of custody.

[31] *Clift* can be distinguished both as regards the length of the period and in that the award was said to have been given in respect of "feelings of frustration, uncertainty and anxiety", so something akin to initial shock. *Beet* and, in particular, *Lloyd* are much closer in terms of the periods of detention but, in both, there was no prior period of lawful detention from which one can, again, infer that some element of initial shock may have been reflected in the awards. In all the circumstances, and given the range evident in these European

awards, I conclude that the sum of money arrived at is not significantly more or less generous than the amount which the European Court might be expected to award.

[32] That being so, I am satisfied that an award of damages is an appropriate remedy and necessary to afford just satisfaction to the pursuer in terms of section 8 of the 1998 Act. I will grant decree in favour of the pursuer for the sum of £3,325, with interest thereon as craved.

[33] The court was not addressed on the matter of expenses. A hearing will be arranged.