SHERIFF APPEAL COURT

[2026] SAC (Civ) 42
ALO-SG103-25

Sheriff Principal Gillian A Wade KC

OPINION OF THE COURT

delivered by SHERIFF PRINCIPAL GILLIAN A WADE KC

in the appeal in the cause

THE REGISTRAR OF COMPANIES FOR SCOTLAND

Claimant and Respondent

against

ROSS GROUP SCOTLAND LTD

Respondent and Appellant

Claimant and Respondent: Taylor; MacRoberts LLP
Respondent and Appellant: Ross; director and lay representative

01 July 2026

Introduction and procedural history

[1] This appeal arises from a simple procedure claim for the sum of £1386.90 in respect of late filing penalties for the late filing of the company accounts which the respondent claims fell due because the appellant had failed to lodge its accounts timeously in terms of sections 441 and 442 of the Companies Act 2006. The appellant is a limited company named the Ross Group Scotland Ltd whose address is 16 The Cedars, Tullibody, Alloa FK10 2PX. Its registration number is SC575000. The respondent is the Registrar of Companies for Scotland. The late filing of the accounts resulted in the imposition of a civil penalty in terms

of section 453 of the 2006 Act. The appellant failed to make payment to the respondent of the penalty due.

[2] The respondent wrote to the appellant on 22 April 2025 detailing the breakdown of the claim and intimating that non-payment would result in court proceedings. Despite this correspondence the appellant did not pay the penalty.

[3] On 20 May 2025 a simple procedure claim was registered and warranted for service upon the appellant. It was served by sheriff officers on 11 June 2025. A response form was lodged by the appellant, signed by a Mr Ian Ross in his capacity as a director of the company disputing the claim on the basis that:

> "the sum claimed is not correct as the maximum for late service that year stated was advised at £375. The sum claimed £1386.90 does not equate to the communication from the Registrar and is denied as due."

No other defence or legal proposition was advanced.

[4] A case management discussion was assigned for 26 August 2025 in advance of which the respondent lodged a list of evidence form and several documentary productions to vouch for the sum claimed which, it transpired, related to penalties from 2022, 2023 and 2024 rather than simply for the year 2022 as narrated in section E1 of the original claim form. The appellant also furnished the court with the pre-action correspondence from the respondent to the appellant dated 22 April 2025.

[5] On receipt of the documentary productions the appellant's director, Mr Ian Ross, sent an email dated 21 August 2025 to the solicitor acting for the respondent pointing out the discrepancy between what was claimed in the claim form and how it was vouched. The respondent suggested that the case management discussion be discharged and the case paused to allow the respondent to investigate matters further. The appellant indicated that

he had no objection to this course of action. On that basis the case was paused by order of the sheriff on 25 August 2025.

[6] Following the claim being paused, no further contact was received from the appellant. The respondent wrote to the appellant on 5 February 2026 and 2 March 2026 inviting settlement before the form 9A application to restart and award decree was lodged and intimated. On both occasions, the appellant was informed that if no response was received, the respondent would lodge an application to restart and seek decree in the sum sued for.

[7] On 5 March 2026 the respondent lodged an additional orders application (form 9A) and written submissions. The orders sought were in the following terms:

> "To restart the action and proceed to grant Decision. The court action was previously paused to allow for investigations to take place. The Claimant has now confirmed that the amount sought in the claim form is correct therefore requests Decision for Principal sum to be granted together with expenses."

The respondent added that: "The matter has not been resolved and the full balance remains outstanding. The Claimant has lodged written submissions in support of the claim." The written submissions lodged outlined the respondent's position in detail and have not been departed from for the purposes of these proceedings.

[8] In response to the additional orders application lodged by the respondent the appellant completed section C - The Reply, in the form 9A. It was completed by Mr Ross. In relation to question C2 – "Should the court make these orders?" the appellant simply responded "Yes" by ticking the relevant section. No further narrative was provided.

[9] The orders sought were clearly articulated. The respondent sought to restart the paused case and grant decree with expenses as claimed. The sheriff considered the application and the reply along with the other material available to him, namely the claim

form, response form, the evidence lodged by the claimant and the form 9A and the written submissions. He was of the view that the appellant was in agreement to the orders sought.

[10] In any event he considered that no apparent defence to the claim had been advanced or vouched. On the contrary the sums sought by the respondent had been clarified and evidenced. The only point on which there had been in issue was the period over which the sums due had accrued. The sheriff was satisfied that although the sums due related to three accounting years rather than a single year, as stated in the original claim form, that had been clarified in the written submissions and the amount claimed was correct and fell due to be paid. He granted decree as sought. In his view there was no reason to call a hearing as the appellant had not sought one and had *prima facie* agreed to the orders being made.

[11] The appellant now seeks to bring under review the sheriff's decision of 11 March 2025 to restart the case and award decree to the appellant as craved for £1386.90 with expenses of £325.94 and sheriff officer's fees of £61.70.

The grounds of appeal

[12] On 9 April 2026 the appellant lodged grounds of appeal which were accepted by the court although late, the sheriff having accepted Mr Ross's explanation that he had been unwell.

[13] There are five grounds of appeal:

1. The sheriff erred in law as he failed to note and establish that the claimant as specified did not have jurisdiction in Scotland at Alloa Sheriff Court.
2. The sheriff erred in law in accepting the case should restart when no form 9B was lodged or served or presented to the respondent or the court.

3. The sheriff erred in law as he did not firstly deal with the 6 month pause rule nor set down a hearing nor issue a SO8.

4. The sheriff also erred in law in not noting and insisting the claim should have shown the Scottish registration number of the respondent which is SC575000.

5. The sheriff erred in law in not allowing any hearing or debate and accepted the additional orders application without evidence and consideration of the respondent's defence.

[14] Arising from these five grounds the sheriff has prepared a helpful note providing the reasons for his decision and posed two questions for this court to answer:

1. Did I err in granting decree on 11 March 2026 without convening a hearing?

2. Did the court have jurisdiction to hear the claim as stated?

[15] Upon receipt of the Note of Appeal and the sheriff's report the respondent provided detailed written submissions in answer dated 23 April 2023. These replicate the submissions made before the sheriff and also deal with the grounds of appeal advanced by the appellant.

[16] On consideration of the papers I determined that the appeal should be considered on written submissions in terms of Rule 8.2(1)(b) of the Sheriff Appeal Court Rules 2021 and ordered the appellant to lodge written submissions and a list of any authorities to be relied upon by Friday 15 May 2026. I made clear that I did not require duplication of submissions and on that basis did not expect further submissions from the respondent as these were already in process.

[17] The appellant has failed to lodge any written submissions at all. He was contacted by clerical staff and provided a short email which did not advance his position. He has not provided any reasoning, argument or authority in support of his grounds of appeal. He is therefore in default and that would be sufficient to deal with the appeal. However as he is a

lay representative of the company, has indicated that he has suffered recent ill health and may be in some confusion about what he was required to do to obtemper the orders of court fully I have proceeded to deal with the merits of the appeal.

The statutory framework and basis of liability

[18] In terms of section 441 of the Companies Act 2006 limited companies are required to file accounts with the Registrar of Companies whether they are trading or not. There is no exemption for dormant companies or companies with no assets. Section 448A of the Act states that there is an exemption for dormant subsidiaries if the company a) is a subsidiary undertaking; b) has been dormant throughout the whole of the relevant financial year; and c) has a parent undertaking registered in any part of the United Kingdom (section 448A(1)). The company must also satisfy a range of conditions set down in section 448A(2). The appellant in this case does not fall into any of these categories and is therefore not exempt from the requirement to file its annual accounts with the registrar.

[19] Section 441(1) of the Act states that a company that fails to file accounts in accordance with section 441 is liable to a civil penalty, which is calculated in accordance with section 442(2). The appellant's accounts for 2021 were due to be filed no later than 31 May 2022 but were filed late on 1 August 2022. The penalty of £375 became due by the appellant in respect of that period. The appellant's accounts for 2022 were due to be filed on 31 May 2023. Again these were filed late on 14 June 2023. If accounts are lodged late 2 years in a row, the respondent is entitled to double the penalty issued, in terms of section 4(2) 2008 of The Companies (Late Filing Penalties) and Limited Liability Partnerships (Filing Periods and Late Filing Penalties) Regulations 2008. The penalty of £300 became due in that period. The appellant's accounts for 2023 were due to be filed on 31 May 2024. These were once

again filed late on 4 July 2024 and in terms of the 2008 regulations the penalty of £750.00 became due in respect of that period. In total the respondent issued a penalty of £375.00 on 2 August 2022 in respect of late filing of 2021 accounts, £300.00 on 15 June 2023 in respect of late filing of 2022 accounts and £750.00 on 5 July 2024 in respect of late filing of 2023 accounts. The appellant made one payment to account of £38.10 in relation to the £375.00 imposed in 2022 reducing the balance on that penalty to £336.00.

[20] Therefore by the time the respondent lodged its additional orders application the total principal sum sought was indeed £1386.00 albeit that sum referred to repeated failures over a number of years and was not confined to 2022.

[21] Where a company claims that the registrar has issued a penalty erroneously, or if they can provide evidence that the late-filing penalty should not have been issued due to circumstances beyond the company's control, the company may lodge an internal appeal by post or email. That appeal will then be investigated and if successful the penalty may be recalled. In this case no appeal was received.

[22] The respondents drew to the attention of the sheriff the case of *R (on the Application of POW Trust)* v *Chief Executive and Registrar of Companies and the Secretary of State for Trade and Industry* (2002) EWHC 2783 (Admin) which is authority for the proposition that the registrar has very little discretion not to levy a penalty when a company delivers late accounts. The applicable legislation at that time was section 241 of the Companies Acts 1985. The court commented at paragraph 14:

> "The principle implicit in the (legislation)….. is that the Registrar should in every ordinary case (so far as his resources allow) seek to recover the penalty, but (as very much an 4 exception to the general rule) he may decide not to do so in those exceptional cases where in his considered judgment he considers that such a decision is conducive to achieving (1) the broad object of the legislation of timely compliance with Section 242(1) or (2) the specific task entrusted by Section 242A(3) to the

> Registrar, namely the economic and efficient application and management of resources available for the recovery of penalties."

In the circumstances of this case the respondent chose not to exercise its discretion. This was in part due to the fact that the appellant had failed to respond to an offer which had been made to the appellant while the case was paused to allow an instalment payment plan to be set up. Thus the penalties calculated in accordance with the primary legislation and associated regulations fall due to be paid.

The respondent's submissions

[23] In a detailed submission to this court the respondent argues that the decision to grant decree was a discretionary one with which this court should not readily interfere. It is submitted that the sheriff was entitled to take into account all of the information before him, which included a detail analysis of how the sum sued for was calculated and the appellant's failure to respond to offers of settlement during the period when the case was paused, in the exercise of his discretion as to whether or not to grant decree against the appellant. He did not err in law in doing so and the appellant has not articulated any legal basis upon which the sheriff's decision can be challenged. The sheriff has applied the rules in even handed manner and no question of fairness arises despite what is now asserted by the appellant.

[24] In relation to the other issues now raised by the appellant the respondent observes that the question of jurisdiction was not raised in the claim form or at any point before the sheriff. In any event the appellant's registered address is within the jurisdiction of Alloa Sheriff Court. The appellant's ground of appeal related to the 6-month limitation on pauses and the requirement to fix a hearing before considering a motion for decree is misconceived. In any event in terms of Simple Procedure Rule 1.8 (10), the sheriff may decide a case

without the requirement for a hearing where appropriate. Notwithstanding the discretionary powers afforded to the sheriff to decide a case in terms of SPR 1.8 (10) the decision in this case was made more straightforward by the fact that Rules 1.8 (11A) and 1.8 (13), provide clear guidance and the appellant consented to the claimant's form 9A. The appellant's reference to form 9B is erroneous.

[25] Accordingly the sheriff was entitled to make the decision on the basis of the information before him and in particular having regard to the appellant's failure to advance settlement during the period in which the claim was paused.

Decision

[26] The appellant's grounds of appeal make various assertions of fact and law without any further explanation or authority. Most of the arguments were not advanced at first instance and cannot be considered on appeal. In any event they are without merit.

[27] I shall deal with the individual grounds which the appellant seeks to advance in the order in which they are raised:

1. Sheriff erred in law as he failed to note and establish that the claimant as specified did not have jurisdiction in Scotland at Alloa Sheriff Court

[28] The appellant did not challenge jurisdiction at any time and while it is a matter of which the court can take notice of its own accord it is not clear on what basis it is suggested that Alloa Sheriff Court did not have jurisdiction. The appellant lodged his response form without issue and the implication to be drawn form that is that he submitted to the court's jurisdiction. The appellant company is based in Alloa therefore Alloa Sheriff Court has jurisdiction. The sheriff, in his report has surmised that the appellant may have been

confused because the contact address of the respondent on the claim form is given as the Cardiff address dealing with late filing penalties and debt enforcement matters, rather than the Edinburgh its address. However it is not for the sheriff or this court to guess what the purported challenge to jurisdiction might be. This ground of appeal is without merit and falls to be refused.

[29] In his report the sheriff goes on to address questions of title to sue. That is not a ground of appeal and while the sheriff is correct to note that the respondent is correctly designed as the Registrar of Companies for Scotland in the claim form in my view it is unnecessary to explore further whether they should have used the Cardiff or the Edinburgh address for the purposes of bringing the claim.

2. The sheriff erred in law in accepting the case should restart when no form 9B was lodged or served or presented to the respondent or the court

[30] The second ground of appeal is simply wrong. The form 9B was revoked as of 31 May 2023. Act of Sederunt (Simple Procedure 7 Amendment)(Miscellaneous) 2022 (SSI 2022/211) Article 2(3)(i) Schedule 1. The respondent used the correct form to restart the claim and seek decree, namely form 9A. This ground falls to be refused.

3. The sheriff erred in law as he did not firstly deal with the 6 month pause rule nor set down a hearing nor issue a SO8

[31] Once again this ground of appeal demonstrates a failure on the part of the appellant to understand the rules and their effect when read as a whole. Simple Procedure Rule 9.7 is designed to ensure that cases are not paused and then forgotten about. It provides an administrative means whereby the sheriff clerk can bring to the attention of the sheriff a

claim which has been paused for 6 months so that the sheriff can decide whether to take further action where the parties are not doing so of their own accord. Although the rule provides that the sheriff clerk must present to the sheriff a case which has been paused for 6 months or more the section goes on to provide the sheriff with discretionary powers as to what to do next. He may then formally serve on the parties written orders which provide that unless a party does something or takes a step, then the sheriff may dismiss the claim. This case was paused on 25 August 2025. Six months elapsed on 25 February 2026. The case would have been considered in early course in terms of the rule, and the system which operates in the sheriff clerk's office. However the respondent lodged its additional orders application on 5 March 2026, 1 week after the expiry of the 6 month period. The case therefore came back before the sheriff for his consideration without him having to exercise his powers to achieve that outcome. This ground of appeal is misconceived and falls to be refused.

4. The sheriff also erred in law in not noting and insisting the claim should have shown the Scottish registration number of the respondent which is SC575000

[32] I do not understand this ground of appeal. The claim form does correctly include the company registration number at D3 which poses the question "What is the respondent's company name or organisation name?" That has been answered by the insertion of Ross Group Scotland Limited. There is then a box for the company registration number (if limited company or LLP) in which the company number SC575000 has been inserted.

5. The sheriff erred in law in not allowing any hearing or debate and accepted the additional orders application without evidence and consideration of the respondent's defence

[33] As the sheriff explains he considered the application and the reply and the material lodged by the parties which included the claim form, the response form, the evidence lodged by the respondent, the form 9A and the written submissions. Importantly he was of the view that the appellant was in agreement to the orders sought because that box had been ticked in the reply without further explanation or narrative.

[34] The appellant has not provided any response to the submissions lodged by the respondent anent the basis of liability and standing the statutory framework none would appear to exist. As the sheriff observes in his report this is essentially a matter of strict liability. The sums sought had been clarified and evidenced. He acknowledged that the only point which could legitimately have been made in relation to the claim form as it was originally raised was that the sums sought were over 1 year rather than 3 accounting years. Nevertheless the sum sued for was evidenced as due and the basis of liability was explained in detail in the submission s and supporting document. The appellant does not explain how a further hearing would have changed the inevitable outcome for him. The principles of simple procedure enable and encourage the sheriff to decide matters as quickly as possible with the least expense to parties. Rule 9.5 states how the court will deal with an additional orders application. One option stated at 9.5(2)(a) is to grant the additional orders application, or part of it, and give written orders to the parties. That is precisely what the sheriff did in this case.

[35] Furthermore where, as here , there is no apparent defence to the claim the sheriff's powers are extensive. Rule 1.8 (11A) provides that if a response, or part of a response,

obviously has no real prospect of success, the sheriff may decide the case, or that part of it, at any time. For all of these reasons this final ground of appeal must fail.

Disposal

[36] This appeal is entirely without merit. The appellant has not provided submissions in support of his position despite being ordained to do so. The result is that respondent has devoted considerable time and effort to preparing further submissions to respond to an appeal which is nothing short of spurious. Court time has been unnecessarily taken up considering an appeal which is ill conceived.

[37] The first question posed by the sheriff falls to be answered in the negative and the second in the affirmative. I shall refuse the appeal and adhere to the sheriff's decision, order and decree of 11 March 2026. I shall make an award of expenses in favour of the respondent in line with the usual rule that expenses should follow success.