

SHERIFFDOM OF TAYSIDE, CENTRAL FIFE AT DUNFERMINLE

[2026] SC DUNF 85

DNF-SG542-25

JUDGMENT OF SHERIFF S G COLLINS

in the cause

ANTHONY McLELLAN

Claimant

against

PAUL ANDERSON

Respondent

Dunfermline, 28 May 2026

Decision

The Court orders the respondent to pay to the claimant the sum of £1,000 with interest at the rate of 8% from 9 December 2025 until payment, together with the sum of £123 being the fee for making the application.

The Sheriff's reasons

[1] The claimant and respondent both run small businesses in the Fife area. In connection with their businesses they both require to make use of vans to transport labour and equipment to different locations around Scotland. Prior to the matters giving rise to this dispute they were good friends, and had sometimes lent each other their vans for such purposes. Around the end of October 2024 the respondent texted the claimant and asked him if he could hire one of the claimant's vans for 5 weeks ("the van"). He offered to pay

the claimant £1,000 for this (C1). The parties spoke by telephone a couple of days later and confirmed this arrangement.

[2] The respondent sought to argue that the agreement to hire the van was between the claimant and his company, and not him as an individual. He produced documentation to show that the £1,000 payment for the hire was paid from his business account (R3). He therefore submitted that the claimant had sued the wrong person. I do not accept this. The respondent is the sole director of his company. It is effectively a one person company. The claimant, in agreeing to hire his van to the respondent, told the respondent that “if you break it, you bought it”. The respondent denied that this was said, but accepted in evidence that it was in any event implicit in the agreement, and accepted by him, that he would be responsible for the reasonable cost of repairing any damage to the van in the course of the hire for which he was responsible through fault or negligence. In short, even if the hire contract was with the respondent’s company, there are good grounds to pierce the corporate veil in relation to this claim, and in any event, to find that the respondent gave a personal guarantee in the above terms.

[3] The van was a Luton, registered in 2013. It had more than 150,000 miles on the clock. It was MOT tested on 8 November 2024 (C2), but this test did not involve checking the engine. The claimant said that the van had been serviced regularly, including in the year prior to the hire to the respondent, but he produced no documentation to vouch this. There is therefore no independent evidence from a qualified mechanic as to the condition of the engine at the time when the respondent took possession of it. This was around 10 November 2024.

[4] When he handed over the van, the claimant told the respondent to “keep an eye on the oil and coolant”. That the claimant thought it necessary to mention this, in what was to

be a short hire period, indicates an awareness on his part that the van's engine was using more oil and coolant than might normally be expected. This is unsurprising, given that the van was of an age and mileage at which wear and tear of the engine was liable to give rise to an increased consumption of oil and coolant, and an increased risk of the engine overheating and failing. It also indicates an awareness on the respondent's part that a failure to regularly check and top up the oil and coolant systems might lead to these systems failing and damaging the engine. In other words the claimant knew or ought to have known this before the start of the hire, and the respondent was put on notice in relation to it.

[5] The respondent had possession of the van until around 14 January 2025. He said that he used it for fifteen jobs involving around 739 miles (around 1189 kilometres) of driving (R5), having back calculated this distance from google maps in relation to the locations of the jobs. The claimant disputed this estimate, and produced readouts from a tracking device attached to the van during the hire period (C18, C19, C20). The figures on these readouts total 2189 and I take this to be kilometres not miles (standing the terms of the penultimate paragraph of the claimant's written submissions lodged 23 January 2026). There is therefore a discrepancy of around 1000 kilometres (or about 620 miles) between the parties' evidence as to how far the van was driven whilst in the respondent's possession.

[6] I prefer the claimant's evidence about this. Accordingly either the respondent has significantly under estimated the distances, or the van was also used by him other than for business purposes, or it was also used by someone else. This does bear on the overall credibility and reliability of the respondent as a witness. But other than that it is beside the point, as the claimant had placed no limits on how far the van could be driven, nor by whom. The question is whether the respondent damaged the van not by the distance he

drove it, but by failing to take reasonable care not to drive it in a manner which caused damage to it.

[7] The respondent said that he checked the oil and coolant in the van on a weekly basis and topped it up on occasion. I think it likely that he did do this, but not necessarily with the regularity or frequency which he suggested. The claimant produced a statement from a Scott Ayres (C33), who worked with the respondent at the time and sometimes drove the van. Mr Ayres states that he never saw the respondent check the oil or coolant levels. Of course that does not mean that he did not do so, but Mr Ayres paints a picture which is inconsistent with the respondent having the meticulous and regular attention to these matters which he claimed.

[8] On the other hand, as noted above, the van was driven for a significant distance during the hire period. Had the oil and coolant dropped below safe levels, and the respondent had wholly failed to top them up, then it seems likely that the engine would have earlier developed the defect which later arose. It is also likely that this would have been obvious, whether by way of a dashboard warning light, a fluid leak, a smell, or just by the engine ceasing to function. It is also likely that the respondent would have contacted the claimant to tell him if such a problem had arisen. This is what he later did, and is reflective of the fact that they were still on friendly terms. The most likely position is therefore that the respondent did check and top up the oil and coolant sufficiently to keep the van running, and without any obvious indications of a problem, at least until almost the end of the hire period.

[9] The respondent did not use the van at all for the first two weeks of January 2025. However on 13 January 2025 the respondent drove the van to Dollar on business. He claimed to have checked the oil and coolant before doing so but I think this unlikely. On

this occasion he noticed that the engine did not seem to be running properly, that there was oil or other fluid leaking from the underside of the engine, and that there was a smell of burning. The respondent phoned the claimant and told him about this. The following day, 14 January 2025, he drove the van back to Fife and met with the claimant. The claimant checked the coolant reservoir and it was empty (C12). He also noticed a leak from the engine. He then phoned the AA, who attended and inspected the van. In a report later submitted (C15) the AA operative noted: “engine running smoothly... [the claimant] states been topping up coolant level. Run and test ok... Engine oil level Ok. Coolant level ok.” This last comment reflected the fact that the claimant had added a litre of coolant to the reservoir prior to the arrival of the AA (C12). The claimant had to go to a meeting in Edinburgh, so he asked the respondent to drive the van to a garage in Dalgety Bay for a full inspection.

[10] There was then a significant delay in inspecting the van’s engine. The reasons for this are unclear, but are not the fault of the respondent. The AA were called again in June 2025, and reported this time (C14) that the coolant tank was full of oil and overheating. The claimant was also informed by the garage mechanics that the van’s engine was ‘knackered’ and that it needed to be replaced. He was eventually advised that this was not a job that could be done in Scotland and that he should take the van to East Yorkshire Commercial Engines, a company based in Drifffield, Yorkshire. The claimant did this in around July 2025.

[11] The claimant produced a letter dated 14 April 2026 from a Mr Connor Witts, the director of East Yorkshire Commercial Engines (C17). Mr Witts states that on inspection of the van he had found it to be severely damaged. There was a hairline crack around the cylinder head gasket, which required the engine’s removal. In Mr Witt’s professional opinion, this type of damage was consistent with severe overheating caused by insufficient

coolant. Mr Witts also observed oil contamination in the coolant system, a strong indicator that the engine had failed beyond repair. Accordingly he supplied and fitted a refurbished engine at a cost to the claimant of £2,650, which included a 12 month guarantee (C3).

[12] Mr Witts also recommended replacement of the van's turbocharger and intercooler (C17), but the claimant declined to instruct this work. The claimant then drove the van for several months until the turbocharger and intercooler failed, leading to his instructing their replacement by a garage in Scotland in around October 2025 (C9). Mr Witts suggested that the subsequent failure of these components was consistent with the earlier coolant related damage. But he did not himself re-inspect the van at that stage and is therefore not in a position to provide reliable evidence as to the actual cause of their failure.

[13] Mr Witts also observed that the van had been stationary for several months (C17), resulting in other issues: the brakes, callipers, discs, and pads all showed deterioration and needed replacement. The claimant had these and multiple other items replaced in around September 2025 (C4, C5, C7). However it is unclear how or why any of these defects could have arisen from a mere lack of use of the van in the period January to July 2025, let alone from the damage to the van's engine which necessitated its replacement.

[14] In the light of all this the claimant submitted that the respondent, by failing to keep the van's coolant topped up during the hire period, damaged the engine beyond repair, and so is responsible for the whole cost of the reconditioned engine and the whole cost of later replacing the turbocharger and intercooler. He also argues that because the van was off the road for six months before he obtained the reconditioned engine, that this inactivity in itself caused damage to the multiple other items including the van's brake pads and discs, fan belt etc. He therefore claims that the respondent should be liable for the cost of replacing these items as well. The total loss due to the respondent's negligence is said to be £6,933 (C11)

(the sum of the invoices C3, C4, C5, C7, and C9), but in these proceedings the claim is limited to £4,450 (I am unclear why this figure was selected, and the claimant was unable to explain how it was broken down).

[15] In considering the claim, it should be remembered that it is for the claimant to lead evidence sufficient to establish liability on the respondent's part. For the reasons noted above, this means establishing that the respondent caused damage to the van's engine through his fault or negligence. Even assuming that this is established, there is still an onus on the claimant to lead evidence sufficient to prove that the losses for which he seeks reparation result from it, that is, are directly attributable to the respondent's fault or negligence and not too remote from it. If the claimant has been caused loss by the respondent's fault or negligence the basic principle is that he is entitled to be put in the same position in money terms as he would have been had the fault or negligence not occurred. But he is not entitled to be put in a better position, for example, by awarding him a payment of damages which in effect gives him new for old. And the claimant must show that he has taken reasonable steps to minimise or mitigate any loss, and so is not entitled to recover damages for losses which could reasonably have been avoided.

[16] Having heard evidence from both parties and considered the documentary productions I consider it likely that the van's engine, given the vehicle's high mileage and age, was suffering the effects of wear and tear at the outset of the hire period. As a result of this wear and tear the engine likely needed significantly more coolant than normal in order to not overheat. As noted, I consider it likely that the claimant was aware of this and that he made the respondent aware of it too. I also consider that the respondent likely checked and kept the coolant topped up during the hire, at least sufficiently to keep the van on the road without incident between November 2024 and the end of December 2024. However it seems

to me that the most likely scenario is that, by the time that the respondent drove the van to Melrose and back on 13 and 14 January 2025, there was insufficient coolant in the reservoir. Having left the van unused for the previous two weeks, I think it likely that on this occasion the respondent failed to check the coolant level and top it up beforehand. The engine therefore overheated in the course of the journey, cracking the cylinder head gasket, and damaging the engine beyond repair.

[17] On this scenario, I accept that the respondent's actions in failing to check and top up the coolant before driving the van to Melrose, in the circumstances, constituted fault and negligence on his part. He must therefore pay reparation to the claimant for the losses arising directly from this, while avoiding betterment. In considering this, as noted, I do not accept the claimant's evidence that there was no problem with the van's engine at the outset of the hire. It was an engine which was thirteen years old and had been driven more than 150,000 miles . It was suffering from wear and tear such that it required topping up with coolant and oil at a significantly greater frequency than would be expected of a new (or reconditioned) engine. The loss to the claimant was therefore of the value of an engine that was already failing and likely had a limited lifespan, not the cost of a reconditioned engine with a 12 month guarantee, as was later fitted by East Yorkshire Commercial Engines. It is impossible to precisely quantify this loss, but taking a broad brush approach I would assess it at £1,000

[18] Beyond that, the losses for which the claimant seeks reparation appear to me to be either not properly vouched by the evidence or in any event too remote from the identified fault and negligence on the respondent's part. As regards the cost of repairing the turbocharger and intercooler, the fact is that the claimant chose to not have them replaced by East Yorkshire Commercial Engines at the time when the refurbished engine was fitted in

July 2025. Instead the claimant continued to drive the van, with these old components fitted, until they failed in around October 2025. It is possible, as Mr Witts indicated, that this was consistent with the earlier coolant related damage to the engine. But evidence of consistency does not establish proof of causation, and I am not satisfied that it has been proved by the claimant that the failure of these two components can be properly attributed to the respondent, rather than being due to long term wear and tear for which he was not responsible.

[19] Similar considerations apply to the claim for the cost of the multiple items replaced by the claimant in September 2025 (C4, C5, C7). Again, I note Mr Witts' comments about this, but am unable to accept on the basis of his statement that any let alone all of these components became defective and in need of replacement just because the van was not driven for six months between January and July 2025. I am unable to accept, for example, that the van's brake pads and fan belt would have become worn out merely by not being used. It is as least as likely that these components too were simply suffering the result of age, wear and tear. Beyond that, and in any event, I remain unclear why the van's engine remained unrepaired for more than six months after 14 January 2025. The claimant was under a duty to mitigate his loss, and even if it were established that a loss was attributable simply to the van being off the road for this period, a more cogent explanation for the lengthy delay in replacing the engine would have been required before I could have been satisfied that the claimed losses could not reasonably have been avoided.

[20] In the circumstances, and for all these reasons, the claimant is therefore entitled to payment from the respondent in the sum of £1,000. To this must be added interest at the rate of 8% per annum from the last date for service, that is, 9 December 2025, until payment.

Expenses

[21] The claimant sought expenses. In addition to the principal sum awarded and interest he is entitled to payment from the respondent of £123, being a sum equal to the fee payable for lodging this claim.