



## SHERIFF APPEAL COURT

[2026] SAC (Civ) 11  
DNF-SQ4-22

Sheriff Principal G A Wade KC

### OPINION OF THE COURT

delivered by SHERIFF PRINCIPAL GILLIAN WADE KC

in appeal in the cause

C & M WEALTH GLOBAL LIMITED

Petitioner and Respondent

against

GWEN GALL

Debtor and Appellant

**Petitioner and Respondent: Hunter, solicitor; Harper MacLeod LLP**

**Debtor and Appellant: Party**

**Accountant in Bankruptcy: Rennie, solicitor; Anderson Strathern LLP**

6 February 2026

### Introduction

[1] This matter called on 19 January 2026 in relation to the question of competency of an appeal against a sheriff's decision to refuse a petition for recall of sequestration.

[2] The appellant was sequestered at Dunfermline Sheriff Court on 4 October 2022 from which date her whole estate vested in the Trustee in Sequestration. Orders for first deliverance were granted on 4 October 2022. In terms of section 27(9) and (10) of the

Bankruptcy (Scotland) Act 2016 an award of sequestration is not subject to review other than by recall under:

- “(a) section 18(4), (which makes provisions for recall by the Accountant in Bankruptcy ('AiB') in relation to concurrent proceedings)
- (b) sections 29 and 30, (which provides for the presentation of a petition for recall of sequestration to the sheriff and is applicable in the instant case)
- (c) section 34, or (which provides for recall of sequestration where the AiB is not a trustee)
- (d) section 35, (where the AiB is a trustee and receives an application for recall under section 31 or considers that recall is merited for the reasons set out in section 35(1)(b)(ii))”

[3] On 29 July 2025 the appellant lodged a petition for recall of the sequestration in terms of sections 29 and 30 of the Bankruptcy (Scotland) Act 2016. This came before the sheriff in Dunfermline and was refused on the 29 October 2025. On 26 November 2025 the appellant sought to lodge an appeal against that interlocutor.

[4] On receipt of the note of appeal the clerk referred to the procedural appeal sheriff on the matter of competency on the basis that the appeal did not fall within any of the categories specified in Rule 10.1 of the Act of Sederunt (Sheriff Court Bankruptcy Rules) 2016 which provides:

**“Appeals to the Sheriff Appeal Court**

10.1.

(1) This Rule applies to an appeal to the Sheriff Appeal Court under the following provisions of the 2016 Act—

- (a) section 27(3) (appeal against transfer of sequestration);
- (b) section 27(4) (appeal against refusal to award sequestration);
- (c) section 77(11) (appeal against removal of commissioner);
- (d) section 161(2) (appeal against refusal to revoke bankruptcy restrictions order).”

[5] On the face of it the rules do not provide for an appeal against a decision to refuse to recall the original award of sequestration. However, the wording of the Rule itself is ambiguous. It does not expressly preclude appeals other than those listed in paragraphs (a)-(d). It simply limits the application of Rule 10.1 to the types of appeal listed there. The question is whether other types of appeal are competent notwithstanding the terms of Rule 10.1.

[6] By virtue of interlocutor dated 18 December 2025 and pursuant to SAC Rules 6.9(1) (b) and 6.9(6) the procedural appeal sheriff referred the following question to all parties and sought written submissions in advance of a hearing on competency in terms of SAC Rule 6.9(7):

“Can the sheriff's interlocutor of 19 (sic) October 2025 be competently appealed to the Sheriff Appeal court standing the terms of:

- i. section 27(9) of the Bankruptcy (Scotland) Act 2016; and
- ii. rule 10.1(1) of the Act of Sederunt (Sheriff Court Bankruptcy Rules) 2016?”

[7] The first point which arises is that the date of the sheriff's interlocutor was in fact 29 rather than 19 October 2025. However, this error in the framing of the question has not caused any prejudice to the parties who have been able to identify the interlocutor to which the question refers.

### **Submissions for the appellant**

[8] The appellant is a party litigant and is representing herself in both the appeal and the petition to which it relates. The appellant submits the appeal is competent because it disposes of the petition for recall and is thus a final decision at first instance, appealable to the Sheriff Appeal Court under the 2016 Act and Rule 10.1(1). She acknowledges that the

framework governing appeals in relation to sequestrations is to be found in the Bankruptcy (Scotland) Act 2016 and, in particular, section 27(9). A decision which finally disposes of an application (here, recall) is a final determination for appeal purposes. She submits that nothing in the associated rules excludes an appeal against a final refusal of recall. She notes that the Accountant in Bankruptcy (“AiB”) does not challenge the competency of the appeal which she maintains turns on the finality of the interlocutor of 29 October 2025 and the statutory route in section 27(9) read with Rule 10.1(1).

### **Submissions for the respondent**

[9] The respondent submitted that the question of competence was a matter for the court *paris judicis* and that the question whether a decision of the sheriff under section 30 can be appealed has no clear-cut answer when one considers the 2016 Act and associated rules.

[10] In relation to point (i) of the question the respondent submitted that section 27(9) provides that an award of sequestration is not subject to a review otherwise than by recall under certain provisions. One of those provisions is section 30 (per section 27(9)(b)). This purported appeal concerns a refusal of an application to the sheriff to recall the original sequestration which was made under section 30 of the 2016 Act. As such, the respondent does not consider that point (i) of itself is a barrier to this appeal. They go on to submit that in terms of section 30(1), the sheriff may recall the award of sequestration if satisfied in all the circumstances of the case it is appropriate to do so.

[11] In relation to point (ii), Rule 10.1(1) of the Act of Sederunt (Sheriff Court Bankruptcy Rules) 2016 sets out specific provisions for appeals to the Sheriff Appeal Court. None of these provisions concerns a purported appeal under section 30 of the 2016 Act. The respondent accepted that Rule 10.1 does not attempt to prescribe “other appeals” (if any).

It simply seeks to regulate appeals under four specific provisions of the Act which are not relevant to this appeal. The respondent submits that the position is not clear. They acknowledge that the 2016 Act contains examples of decisions of the sheriff which are appealable (eg section 27, 77 and 161 - which are the appeals referred to in Rule 10.1) and those where the decision of the sheriff is stated to be final (such as under section 37 and 57). However, section 30 falls into neither category and the rules are silent as to whether the decision of the sheriff can be appealed.

[12] Anecdotally, the respondent could not identify any other case where a decision of the sheriff under section 30 has been subject to appeal, but the respondent drew the court's attention to other sections of the Act which are also silent on the question of an appeal, but where appeals to the Sheriff Appeal Court have been taken and have been considered on their merits. For example, section 113 of the 2016 Act (concerning the power of the trustee to sell the debtor's family home) does not contain any specific provision in relation to appeal. Subject to certain material considerations, the sheriff has a discretion to grant consent or not. However, in *Accountant in Bankruptcy v Brooks* [2020] SAC (Civ) 15, the Sheriff Appeal Court considered an appeal against a decision of the sheriff to grant section 113 consent. That appeal was refused on its merits, rather than on any matter of competency.

### **Submissions for the AiB**

[13] The submissions of the AiB were neutral on the question of competency and were of no assistance to the court.

## Decision

[14] The Courts Reform (Scotland) Act 2014 section 110 makes provision for appeals from a sheriff to the Sheriff Appeal Court. It provides:

### **“110 Appeal from a sheriff to the Sheriff Appeal Court**

- (1) An appeal may be taken to the Sheriff Appeal Court, without the need for permission, against—
  - (a) a decision of a sheriff constituting final judgment in civil proceedings, or
  - (b) any decision of a sheriff in civil proceedings—
    - (i) granting, refusing or recalling an interdict, whether interim or final,
    - (ii) granting interim decree for payment of money other than a decree for expenses,
    - (iii) making an order ad factum praestandum,
    - (iv) sisting an action,
    - (v) allowing, refusing or limiting the mode of proof, or
    - (vi) refusing a reponing note.
- (2) An appeal may be taken to the Sheriff Appeal Court against any other decision of a sheriff in civil proceedings if the sheriff, on the sheriff's own initiative or on the application of any party to the proceedings, grants permission for the appeal.
- ...
- (4) This section does not affect any other right of appeal to the Sheriff Appeal Court under any other enactment.
- ...
- (6) This section is subject to any provision of this or any other enactment that restricts or excludes a right of appeal from a sheriff to the Sheriff Appeal Court.”

[15] The Bankruptcy (Scotland) Act 2016 consolidated previous legislation and provided a comprehensive framework for the administration of sequestrations. The sheriff court has jurisdiction to determine petitions for sequestration, subject to certain provisions in relation to concurrent proceedings. An award of sequestration itself is not subject to review, otherwise than by recall under the specific sections of the 2016 Act referred to above.

[16] Certain sections of the 2016 Act contain special rights of appeal to the Sheriff Appeal Court. Some of these specifically require leave of the sheriff (eg an appeal under section 27(3) against an order to transfer the sequestration to another sheriff). There are four categories of appeal specifically provided for and if such appeals are taken, they proceed in terms of Rule 10.1(1) of the Act of Sederunt (Sheriff Court Bankruptcy Rules) 2016 which provides that appeals under these sections should proceed under Chapter 6 of the Sheriff Appeal Court Rules 2021 ("SAC Rules") and make provision for intimation and service. There is no provision for review or appeal in relation to a sheriff's decision to grant or refuse recall of sequestration.

[17] Interestingly, where recall of sequestration is made following an application to the AiB there is specific provision for review and appeal. Such an application must be made within 14 days from the date of the AiB's decision and can be appealed by the debtor, the creditor, the trustee in bankruptcy or any other person having an interest. Once the application has been made and determined by the AiB there is provision to appeal the determination of the AiB in relation to the grant or refusal of recall to the sheriff (section 37(5)) and the sheriff's decision on such an appeal is expressly stated to be final (section 37(6)). This reflected and endorsed the pre 2016 position as stated by the First Division in *Japan Leasing (Europe) plc v Weir's Trustee* 1998 SLT 224.

[18] There is no corresponding provision that a decision of a sheriff is final if the application for recall proceeds by way of petition to the sheriff directly under section 30. Accordingly, the question of whether there is a right of appeal from such a decision must necessarily fall to be determined by reference to section 110 of the 2014 Act, the provisions of which do not affect any other right of appeal to the Sheriff Appeal Court under any other enactment (section 110(4)).

[19] Section 110(1)(a) and (b) deals with the decisions of the sheriff which can be appealed without leave of the sheriff. This applies to decisions which constitute final judgments in civil proceedings and those listed in section 110(1)(b)(i) - (vi). The decision to refuse to recall an award of sequestration clearly does not fall within the list at section 110(1)(b).

[20] The question of finality of such a decision is discussed at Macphail, *Sheriff Court Practice*, 4<sup>th</sup> edition, paragraph 26.199 of which states:

“Subject to any provision for finality of the sheriff’s decision, the general principle is that decisions of the sheriff in bankruptcy applications to the first instance jurisdiction of the sheriff are not final judgments which dispose of the subject matter of the cause as the sequestration continues after disposal of the application; accordingly, the sheriff’s decision on these applications may only be appealed with leave of the sheriff (citing *Ingle’s Trustee v Ingle* 1996 SLT 26; 1995 SCLR 934).”

The decision in *Ingle’s Trustees* was confirmed in the subsequent decision of the First Division in *Japan Leasing (Europe) plc* (above) pages [226-227] where a distinction was drawn between appeals against the decision of a sheriff following an appeal against the decision of the AiB where the sheriff’s decision is final and decisions of the sheriff at first instance which are not. These authorities and the passage in MacPhail directly address the appellant’s argument regarding finality. In this case, following refusal of the application for recall the original sequestration continued. Accordingly, following *Ingle’s Trustee*, the current appeal is incompetent, irrespective of the interpretation placed on Rule 10.1. This appeal could only proceed under section 110(2) which provides that an appeal can be taken to the Sheriff Appeal Court against any other decisions of the sheriff if the sheriff grants permission for the appeal. No such permission was sought or granted *ex propria motu*. Therefore, this appeal is incompetent and that is sufficient to answer the question of competency.

[21] However, the question posed raises wider issues which it is appropriate to address. In particular, the second part of the question sought submissions on whether appeals in

bankruptcy proceedings, other than those mentioned in Rule 10.1 could competently be taken. In addition to answering the appellant's point regarding finality, the passage of Macphail referred to above suggests that, as a generality, an appeal against the decision of a sheriff in a bankruptcy application is competent. There is nothing expressly restricting appeals to those statutory appeals referred to in Rule 10.1. As has been observed this matter would then fall within the category of "any other decision of a sheriff in civil proceedings".

[22] The respondent submitted that there were other provisions of the 2016 Act in respect of which an appeal which could be brought before the Sheriff Appeal Court albeit not specifically referred to in Rule 10.1. In particular, reference was made to applications to dispose of a family home where consent cannot be obtained in terms of section 113(1)(b). It is observed that the case of *AiB v Brooks*, to which the respondent referred in support of the its proposition that appeals other than those listed in Rule 10.1 may be competent, in fact proceeded as an ordinary action for division and sale which might explain why no question of competency of that appeal arose given it proceeded as a separate process with a discrete process number and the sheriff's decision following debate was final.

[23] Such appeals are specifically referred to by the authors of Macphail, who observe that, although the 2016 Act sets out a framework for submission of applications in the course of bankruptcy proceedings, practices continue to vary and summary applications and ordinary actions for division and sale continue to be used.

[24] Macphail states, again at paragraph 26.199:

"This limitation (i.e. the requirement for leave to appeal) does not apply to separate actions raised by the trustee in connection with obtaining vacant possession of the family home: the rights of appeal appropriate to those actions will continue to apply."

Importantly, Macphail goes on in the following terms in the same paragraph:

“However, some special rights of appeal apply to particular bankruptcy applications to the sheriff made during the sequestration process. Thus: (1) while an award of sequestration by the sheriff may not be appealed, the petitioner may appeal to the Sheriff Appeal Court against the sheriff’s refusal to award sequestration within 14 days after the date on which the sheriff’s order refusing sequestration was made; (2) the debtor may appeal with leave of the sheriff to the Sheriff Appeal Court against the sheriff’s decision to transfer the sequestration to another sheriff within 28 days after the date of the sheriff’s decision; (3) the trustee, AiB, any commissioner or any creditor may appeal to the Sheriff Appeal Court against the sheriff’s decision to remove a commissioner from office within 14 days after the sheriff’s decision; and (4) the debtor may appeal to the Sheriff Appeal Court against the sheriff’s decision to refuse to revoke a bankruptcy restrictions order on recalling an award of sequestration within 28 days after the date on which the award of sequestration is recalled. The decision of the Sheriff Appeal Court on this appeal is final. All of the foregoing appeals must be made in accordance with Ch.6 of the Sheriff Appeal Court Rules.”

[25] Although the passage does not say so in terms it describes the four categories of appeal listed in Rule 10.1 as “special rights of appeal” applicable to particular applications in bankruptcy proceedings. The authors do not suggest these are the only types of appeal which may be available and the fact that there exist special cases does not preclude rights of appeal which would otherwise be permissible. That being so it appears that an appeal from a decision of the sheriff in such an application may be competent, but subject to the limitation that permission to appeal is required.

[26] This interpretation of Rule 10.1, when taken in conjunction with section 110(2) of the 2014 Act and section 27(9) of the 2016 Act, creates something of an anomaly. The appellant would have been unable to appeal the interlocutor of 14 December 2022 granting the original award of sequestration. As we have seen, that is expressly precluded by section 27(9) of the Bankruptcy (Scotland) Act 2016 which enumerates the limited sections of the 2016 Act in terms of which recall can be applied for or granted.

[27] The Scottish Parliament appears to have expressly prohibited an appeal against the granting of an order for sequestration, but to have tacitly permitted an appeal in relation to an attempt to recall such an order. That being so a sequestered individual could immediately seek recall of the grant of sequestration and then appeal thus circumventing the express provisions of the legislation.

[28] However, that perceived anomaly is unlikely to arise in practice because of the requirement to obtain leave to appeal. The principles upon which a sheriff should determine whether to grant or refuse leave are dealt with in Macphail at paragraphs 18.44 to 18.48. Where the decision sought to be appealed is one which involves the exercise of the discretion of the sheriff it is not appropriate for them to grant leave to appeal unless it is demonstrated to them that they: have misdirected themselves in law; have taken into account or have failed to take account of a relevant factor; have not given weight to a relevant factor; or have reached a result which is manifestly inequitable. In the context of a decision to refuse recall of sequestration the sheriff's decision is governed by section 30 of the 2016 Act which gives them discretion to recall the award of sequestration if satisfied that, in all the circumstances of the case (including those arising after the date of the award), it is appropriate to do so. Section 30(2) goes on to explain that the sheriff may recall the award if satisfied:

- “(a) that the debtor has paid the debtor's debts in full (including the payment of any interest payable on the debtor's debts and the payment of the outlays and remuneration of the interim trustee and of the trustee),
- “(b) that a majority in value of the creditors reside in a country other than Scotland and that it is more appropriate for the debtor's estate to be administered in that other country, or
- “(c) that another award of sequestration of the estate, or of an analogous remedy, as defined in section 17(8), has (or other such awards have) been granted.

(3) Where another award of sequestration of the debtor's estate has been granted, the sheriff may, after such intimation as the sheriff considers necessary, recall an award (whether or not the award in respect of which the petition for recall was presented)."

[29] Therefore, the decision to grant or to refuse recall is very much a fact-based decision upon which the sheriff at first instance will exercise their discretion in accordance with well-established principles designed to ensure that appeals which are devoid of merit do not proceed. Thus, the grant of leave should be very rare. This is borne out by the fact that parties were unable to identify any case in which a refusal of recall of sequestration had been appealed to the Sheriff Appeal Court. However, in *Byrne, Petitioner* [2015] CSIH 23 an appeal did proceed from the Sheriff Court to the Inner House seeking recall of an award of sequestration granted in Glasgow Sheriff Court. This was refused on the basis that the decision whether to recall an award of sequestration is one for the discretion of the sheriff and an appeal court will only interfere with an exercise of discretion where it is clear that the judge at first instance has taken account of some irrelevant matter, left out of account some relevant matter, or otherwise has clearly gone wrong: *Byrne* [18].

[30] It also worth noting that a decision to grant or refuse leave to appeal cannot itself be appealed: *Magistrates of Leith v Lennon* (1875) 3 R 152; *Re Housing of the Working Classes Act 1890, Ex p. Stevenson* [1892] 1 QB 609 at 610 - 611; *Bland v Chief Supplementary Benefit Officer* [1983] 1 WLR 262 at 266 - 267. The granting or refusal of permission to appeal is a matter for the sole discretion of the sheriff, and an appeal against their decision is incompetent: *Ure v Ure* 1947 SC 305; and Macphail, paragraph 18.42.

## Conclusion

[31] The terms of section 27(9) of the 2016 Act preclude an appeal from a sheriff's decision to grant sequestration. The only avenue for review is by way of petition for recall under one of the sections listed. That section does not bear upon the question of competency of an appeal where an application to recall proceeds under section 30 of the Act.

[32] Rule 10.1 does not, of itself, preclude an appeal against the decision of a sheriff to refuse recall of sequestration in terms of section 30 of the 2016 Act. That Rule simply regulates the procedure for appeals proceeding under sections 27(3) and (4), 77(11) and 161(2) of the same Act.

[33] An appeal from the sheriff to the Sheriff Appeal Court following an application in a bankruptcy falls within the category of cases referred to in section 110(2) of the 2014 Act, and permission of the sheriff is required before the decision can be competently appealed. No permission was sought in this case and accordingly the appeal falls to be dismissed as incompetent.

[34] In any event, the nature of the decision to refuse or grant sequestration being one in the discretion of the sheriff at first instance the circumstances in which leave should be granted are likely to be exceptional.

[35] I shall therefore answer the question of competency posed in the negative, although this decision follows from the fact that leave to appeal is required, rather than because of the operation of section 27(9) and Rule 10.1. I shall dismiss the appeal as incompetent.

[36] Parties will have 14 days from today's date to lodge written submissions in relation to the expenses of the appeal procedure including the hearing on competency.