SHERIFF APPEAL COURT

[2026] SAC (Civ) 32
ABE-SF51-24

Sheriff Principal Andrew Miller

OPINION OF THE COURT

delivered by SHERIFF PRINCIPAL ANDREW MILLER

in appeal in the cause

MARTIN RICHARD OWEN JONES

Pursuer and Appellant

against

CHIEF CONSTABLE, POLICE SERVICE OF SCOTLAND

Defender and Respondent

Pursuer and Appellant: Party
Defender and Respondent: Cartney, solicitor

20 May 2026

Summary

[1] On 18 May 2026 I heard this appeal by Dr Jones against the sheriff's order, at the conclusion of an unsuccessful summary cause personal injuries action brought by him against the Chief Constable, to remove "qualified one-way cost shifting" (QOCS) protection in terms of section 8(1) of the Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 ("the 2018 Act") and to find Dr Jones liable to the Chief Constable in the expenses of the action.

[2] In the event that Dr Jones's appeal was refused, the court also required to determine the Chief Constable's application for a corresponding order finding Dr Jones liable in the expenses of the appeal.

Background

[3] Dr Jones, a retired engineer of mature years, raised summary cause proceedings in Aberdeen Sheriff Court against the Chief Constable claiming damages of £5000 in relation to personal injuries which he alleged were caused by the unlawful actings of police officers who arrested and handcuffed him following interaction between the officers and Dr Jones on the evening of 16 May 2022. The injuries complained of apparently comprised minor bruising to Dr Jones's wrists, which he alleged was due to an officer "overtightening" the handcuffs which were applied when he was arrested. The claim was defended and the matter proceeded to a proof before answer. By judgment dated 6 November 2025, the sheriff refused Dr Jones's claim and granted decree of absolvitor. Although the sheriff's judgment included some analysis of a motion made on behalf of the Chief Constable during closing submissions at the end of the proof seeking an order removing QOCS protection and finding Dr Jones liable to the Chief Constable in the expenses of the action, the question of expenses was not finally dealt with by the sheriff until a separate hearing on 19 December 2025.

[4] In terms of section 8(1) and (2) of the 2018 Act, where a person brings a claim for personal injuries, the court must not make an award of expenses against him in respect of any expenses which relate to the claim, or any appeal in respect of the claim, so long as he conducts the proceedings in an appropriate manner. This is known as "qualified one-way cost shifting" (QOCS) protection. It is intended to facilitate access to justice by removing a perceived disincentive to the bringing of personal injuries actions, namely the risk that, if the

action is unsuccessful, the pursuer will be found liable for the defender's expenses (*Lennox* v *Iceland Foods Ltd* [2022] SC EDIN 42). However, as the name suggests, this protection is qualified, not absolute. Section 8(4) of the 2018 Act identifies grounds upon which the court has the power to make an order removing QOCS protection.

[5] So far as relevant to this appeal, section 8 of the 2018 Act provides as follows:

> **"8 Restriction on pursuer's liability for expenses in personal injury claims**
>
> (1) This section applies in civil proceedings where—
> (a) the person bringing the proceedings makes a claim for damages for—
> (i) personal injuries, or
> (ii) the death of a person from personal injuries, and
>
> (b) the person conducts the proceedings in an appropriate manner.
>
> (2) The court must not make an award of expenses against the person in respect of any expenses which relate to—
> (a) the claim, or
> (b) any appeal in respect of the claim.
>
> (3) Subsection (2) does not prevent the court from making an award in respect of expenses which relate to any other type of claim in the proceedings.
>
> (4) For the purposes of subsection (1)(b), a person conducts civil proceedings in an appropriate manner unless the person or the person's legal representative—
> (a) makes a fraudulent representation or otherwise acts fraudulently in connection with the claim or proceedings,
> (b) behaves in a manner which is manifestly unreasonable in connection with the claim or proceedings, or
> (c) otherwise, conducts the proceedings in a manner that the court considers amounts to an abuse of process.
>
> (5) For the purpose of subsection (4)(a), the standard of proof is the balance of probabilities."

[6] Rule 23A.2(1) of the Act of Sederunt (Summary Cause Rules) 2002 permits another party in a summary cause personal injuries action to make an application to the court for an award of expenses against the pursuer in terms of section 8(4) of the 2018 Act. In terms of rule 23A.3(1), the determination of such an application is at the discretion of the sheriff. The

Chief Constable made an application to the sheriff in terms of rule 23A.2(1) for an order in terms of section 8(4)(b) of the 2018 Act removing QOCS protection and finding Dr Jones liable to the Chief Constable for the expenses of the action on the basis that, in his conduct of the proceedings, he had behaved in a manner which was manifestly unreasonable. The sheriff granted that application at the hearing on 19 December 2025.

[7] Dr Jones lodged an appeal, not against the sheriff's decision to refuse his claim for damages, but against the sheriff's order removing QOCS protection and finding him liable in expenses. The appeal was opposed by the Chief Constable. In addition to her detailed written judgment, explaining why she refused Dr Jones's claim, the sheriff has produced a stated case explaining the basis for her decision with regard to expenses. Paragraph 9 of the stated case poses a single question for this court to determine: "Did I err in law in finding Dr Jones liable for the expenses in this action?"

The proof

[8] Late on the evening of 16 May 2022, two police officers based at Aberdeen Airport were on patrol, in uniform and in a marked police vehicle, when they found a number of cars parked within a car park in a restricted area within the airport grounds, in close proximity to the airport perimeter fence, apparently in breach of the Aberdeen Airport Byelaws 2005. Dr Jones was the lone occupant of one of those cars. It transpired that he was waiting for his son, who was due to arrive on a flight. The airport was subject to a heightened level of security at the time. The officers signalled to the drivers of the vehicles to leave the car park. All did apart from Dr Jones, who remained within his vehicle and did not react to or acknowledge the officers or their signals. One of the officers, PC Duthie, approached Dr Jones's car, concerned that he may be unwell. Dr Jones lowered his window

only after being repeatedly asked to do so. PC Duthie asked Dr Jones if he was alright. Dr Jones replied, "why wouldn't I be?" He then accused PC Duthie of being rude to him by asking him to leave the car park. It appears that he did not otherwise engage with PC Duthie at that time.

[9] The officers withdrew from the car park to allow Dr Jones an opportunity to leave, but remained in their vehicle near to the exit from the car park. Dr Jones moved his car to a point close to the exit, but stopped there and did not leave the car park. This prompted the officers to approach him again. There then followed an interaction between Dr Jones and PC Duthie, during which the sheriff found that Dr Jones was obstructive and confrontational, arguing with the officer about whether the byelaws applied to the car park and refusing to provide his details, as he was obliged to do in terms of the byelaws. As this situation developed, PC Duthie continued to be concerned about Dr Jones's demeanour and behaviour, given his presence in a restricted area in close proximity to the airport perimeter. He reached into Dr Jones's car and removed the keys, apparently to prevent him from driving off before his identity and his reasons for being in that location could be satisfactorily confirmed. Dr Jones grabbed the officer's arm and attempted to retrieve the keys. During these events Dr Jones's son arrived. According to the sheriff's judgment, he began to shout at the officers in an aggressive and demeaning manner. He also began to film the incident on his mobile phone. Having failed in his repeated attempts to persuade Dr Jones to let go of him, PC Duthie arrested him for behaving in a threatening and abusive manner. He intended to handcuff Dr Jones to the rear but quickly abandoned that course due to Dr Jones's apparently limited flexibility. Instead, he handcuffed Dr Jones to the front. Dr Jones was conveyed to the police office within the airport. He was later released without charge.

[10] Dr Jones's written statement of claim stated that he sought reparation for personal injury sustained by him through the fault and negligence of the defender. It went on to narrate a number of allegations of wrongdoing on the part of the police officers, including erroneous reliance on the byelaws as a basis for engaging with him at all and assertions that PC Duthie had adopted an aggressive manner when instructing him to exit the car park, attempted to snatch the keys from his car, twisted his arm behind his back and handcuffed him, all without explanation, which was said to have caused Dr Jones pain in his right arm as a result of twisting by PC Duthie, pain and bruising to both wrists as a result of overtightening of handcuffs, and stress as a result of a combination of being deprived of his liberty without cause, being driven in the police vehicle without a seatbelt and "the emotional trauma these events caused." The statement of claim concluded by asserting that PC Duthie's actions had no legal basis because, in Dr Jones's opinion, the byelaws did not apply to the car park.

[11] The sheriff heard evidence from Dr Jones, his son and PC Duthie. Dr Jones also relied on the contents of a statement given by the airport's head of security, which confirmed that the car park in question was indeed covered by the byelaws, and on the contents of a statement given by the proprietor of a business based in the premises served by the car park, which confirmed that the car park was a restricted area to which employees of and visitors to those premises were allowed access, but that it was not available for general use by members of the public. Dr Jones also relied on the video images recorded by his son.

[12] It is clear from the sheriff's judgment and stated case that she was satisfied that the only aggressive or inappropriate behaviour during the entire incident came from Dr Jones and his son, and that the police officers had maintained their composure and behaved calmly and courteously towards Dr Jones and his son in the face of extreme and unnecessary

provocation and obstruction (judgment, paragraphs 13 and 34). Dr Jones's behaviour reached a stage at which PC Duthie was justified in arresting him for behaving in a threatening and abusive manner. He was not arrested for breaching the byelaws. There was no rough handling of Dr Jones. PC Duthie did not twist Dr Jones's arm deliberately. On the contrary, Dr Jones having refused to comply with PC Duthie's request to place his hands behind his back in order that he could be handcuffed, PC Duthie took hold of his arm and tried to place it behind his back but, on encountering difficulty in doing that, he handcuffed him to the front. The sheriff was satisfied that the allegations made by Dr Jones against the police officers in his written statement of claim were wholly unfounded. She was able to reach that decision not because she preferred the evidence of PC Duthie to that of Dr Jones and his son (although she clearly did), but on the basis of Dr Jones's own evidence, the video images recorded by his son, and Dr Jones's confirmation that he accepted the truth of lengthy passages from a statement given by PC Duthie, all of which completely undermined his case (judgment, paragraphs 7 to 21, 34, 39 to 46; stated case paragraphs 7 and 8). The sheriff found Dr Jones's evidence to be evasive in relation to such straightforward matters as whether he realised that PC Duthie and his colleague were police officers, despite the fact that they were in uniform and in a marked police vehicle (judgment, paragraph 12). The sheriff commented in her stated case (paragraph 7) that not only did she find the version of events given by Dr Jones in his evidence to be "completely incredible," she concluded that his written statement of facts was shown to be "wholly misleading" and she considered that the video images he chose to play in support of his case in fact "completely undermined his whole case." The sheriff was also satisfied that the stress (not vouched by any medical report or the like) and minor bruising which Dr Jones sought to rely upon did not amount to an actionable injury (judgment, paragraphs 31 and 39).

Submissions in relation Dr Jones's appeal

[13] Dr Jones and Ms Cartney each adopted the written submissions they had lodged in advance of the appeal hearing, which they supplemented with further submissions during the hearing. Dr Jones's position was essentially that, although his claim for damages was refused on its merits, the sheriff was not entitled to characterise his behaviour in the conduct of the proceedings as manifestly unreasonable within the meaning of section 8(4)(b) of the 2018 Act, so as to entitle her to disapply QOCS protection. The phrase "manifestly unreasonable" did not appear in the sheriff's judgment, in reference to his behaviour in conducting the proceedings. He had decided to pursue the case without legal representation because he had regarded it as a simple personal injuries claim. He had not fully understood all of the legal rules which applied to the case. Although his written statement of claim made various allegations of wrongdoing on the part of the police officers, which he had departed from at proof, in reality the sole argument he had wanted to make was that, even although the police officers had behaved lawfully and appropriately in approaching him and then arresting and handcuffing him, the handcuffs had been applied too tightly and he had sustained some bruising as a result of that. Even though his bruising had not been serious, he had therefore been entitled to seek compensation. Unlike the pursuer in *Carty* v *Churchill Insurance Co Ltd* 2024 SLT (Sh Ct) 56, he had complied with all of the procedural requirements and time limits which applied to his case. He was not able to explain why his written statement of claim had included wider allegations of wrongdoing on the part of the police officers which had ultimately not formed any part of his evidence at proof, other than to describe them as matters of context.

[14] For the Chief Constable, Ms Cartney argued that, even if the phase "manifestly unreasonable" did not appear in the sheriff's judgment in reference to Dr Jones's behaviour in conducting his case, it did appear in her stated case. The sheriff had clearly identified in her judgment and in her stated case circumstances which entitled her to characterise Dr Jones's behaviour in the conduct of the proceedings as manifestly unreasonable. She had clearly had that test in mind when she made the order in relation to expenses and she was fully entitled to make that order in the particular circumstances of this case. The apparent deficiencies in Dr Jones's case had been brought to his attention by Ms Cartney well in advance of the proof. He had been warned by a sheriff during a hearing on 20 December 2024 about his potential exposure to an adverse award of expenses. The Chief Constable had never been in a position to seek summary decree of dismissal (*Lennox* v *Iceland Foods Ltd*, paragraph 54) because Dr Jones's written statement of claim set forth a relevant case based on alleged wrongful actings on the part of the police officers throughout the incident, not restricted to the alleged overtightening of handcuffs. However, he had totally departed from those allegations at the proof and the evidence he gave, and led, at the proof with regard to the nature and context of his interactions with the two police officers undermined and contradicted the clear impression created by his written statement of claim. It was because Ms Cartney had anticipated that the sheriff who heard the evidence would require to deal with mixed questions of fact, law and relevancy that, on Ms Cartney's motion, the evidential hearing allowed in the interlocutor dated 20 December 2024 had been designated as a proof before answer.

Decision with regard to Dr Jones's appeal

[15] Dr Jones's appeal is refused. As a general proposition it is well established that the first-instance judge who has presided over the case is generally best placed to make decisions with regard to expenses, reflecting the conduct as well as the outcome of the proceedings, and that judicial decisions in relation to expenses are rarely disturbed on appeal (MacPhail, *Sheriff Court Practice*, 4th Edition, paragraph 19.10). Both Dr Jones and Ms Cartney referred to a number of authorities in support of their arguments. However, there was no dispute about the general principles which required to be applied. In the context of section 8(4)(b) of the 2018 Act, "manifestly unreasonable" is a high test. It requires behaviour on the part of the pursuer which was "obviously unreasonable." Circumstances which justify such a finding are likely to be exceptional. The mere fact that the evidence of a pursuer is found to be incredible on a core issue, or that the evidence of the defender's witnesses is preferred to that of the pursuer, may justify the characterisation of the pursuer's conduct of the case as manifestly unreasonable, but will not inevitably lead to that result. Whether it does will depend on the court's reasons. Each case must be considered on its own facts and circumstances. Unusual circumstances may or may not be exceptional. Whether they are is context-specific (*Manley* v *McLeese* [2024] SAC (Civ) 16 at paragraph 55; *Murray* v *Mykytyn* [2023] 10 WLUK 170 at paragraph 11; *Lennox* v *Iceland Foods* at paragraph 61; *Gilchrist* v *Chief Constable* 2023 SLT (Sh Ct) 119 at paragraphs 26 and 27). Manifestly unreasonable behaviour may be constituted by significant failure to comply with procedural requirements, but is not restricted to conduct of that kind (*Carty* v *Churchill Insurance Co Ltd; Musialowska* v *Zurich Insurance* [2023] SC EDIN 36). Even where a ground listed in section 8(4) of the 2018 Act is established, the court retains a discretion to decide whether and if so to what extent QOCS protection should be removed.

[16] I agree with Ms Cartney that the sheriff identified ample grounds which entitled her to make the order which she did with regard to expenses. This was not a case which was decided by the sheriff on the basis of any close comparison of the evidence led by each side, or which turned on the interpretation of disputed issues of law. It is clear from the sheriff's judgment and stated case that she considered that the allegations made by Dr Jones against the police officers in his written statement of claim were wholly unfounded, and that she was able to reach her decision with regard to the merits of his claim not because she preferred the evidence of PC Duthie (which she did), but on the basis of Dr Jones's own evidence. This included the video images recorded by Dr Jones's son and Dr Jones's confirmation that he accepted the truth of passages from a statement given by PC Duthie, all of which completely undermined his case (judgment, paragraphs 7 to 21, 34, 39 – 46; stated case paragraphs 7 and 8). As already noted, the sheriff comments (stated case, paragraph 7) that not only did she find the version of events described by Dr Jones in his evidence to be "completely incredible;" she concluded that his written statement of facts was shown to be "wholly misleading" and she considered that the video images he chose to play in support of his case in fact "completely undermined his whole case."

[17] The sheriff identified a number of factors, in addition to the fundamental lack of any evidential foundation for Dr Jones's case, which she regarded as relevant to her decision with regard to expenses (judgment, paragraphs 40 et seq). Apparent deficiencies in Dr Jones's case had been identified to him by Ms Cartney and by a sheriff well in advance of the proof. A sheriff had warned him during a hearing on 20 December 2024 that he risked an adverse award of expenses (a warning recorded in a note to the interlocutor). The same issue had apparently been raised with him by Ms Cartney during the procedure prior to proof (stated case, paragraph 5). However, although he was fully entitled to present his

own case without legal representation, he had taken no steps to address the deficiencies in his case, whether by seeking legal advice or otherwise. The sheriff also noted that Dr Jones's written statement of claim rested on serious allegations of misconduct made against two police officers, particularly PC Duthie, which the sheriff accepted were demonstrated to be false by the evidence which Dr Jones himself gave and presented. The mere fact that Dr Jones's case rested on allegations against police officers in the course of their duties does not of itself engage any particular issues in the context of QOCS protection, but in my view it was legitimate for the sheriff to consider this factor as part of her assessment of the relevant issues, having regard to the impact which allegations of that nature can have on the officers concerned and the fact that the sheriff found Dr Jones's allegations against the officers to be unsupported even by his own evidence. The sheriff heard evidence from PC Duthie about the stress which Dr Jones's allegations had caused him over a prolonged period.

[18] I agree with Ms Cartney that this case bore significant similarities to the case of *Musialowska* v *Zurich Insurance*, in which the sheriff held that the pursuer's behaviour in relation to the conduct of the proceedings was manifestly unreasonable within the meaning of section 8(4)(b) of the 2018 Act where the evidence given by the pursuer and her witness with regard to a road traffic collision was materially inconsistent with the physical evidence and contained significant inconsistencies and contradictions. Both were evasive during cross-examination and both made unsubstantiated allegations that photographic evidence of damage to the vehicles, which contradicted their evidence, had been tampered with. In granting the defender's motion to remove QOCS protection and find the pursuer liable in expenses, the sheriff observed that "…the pursuer was neither credible nor reliable in relation to the core issues of her claim. In other words, she was a wholly incredible witness.

The significant issues with her evidence went far beyond the more common scenario where there are competing versions of events and the court has preferred one version over another" (*ibid*, paragraph 22). Returning to the present appeal, the sheriff observes in her stated case (paragraph 1) that those observations appear to be equally applicable to Dr Jones's case at proof.

[19] In these circumstances I can find no fault with the sheriff's characterisation of this case as extraordinary, so far as Dr Jones's behaviour in relation to the conduct of the proceedings was concerned (stated case, paragraph 8). Even if the phrase "manifestly unreasonable" does not appear in the sheriff's written judgment issued on 6 November 2025, the sheriff did not make the order with regard to expenses until the subsequent hearing on 19 December 2025 and it is clear from the stated case that the sheriff was well aware when she made that order that that was the test which required to be met. That was clearly also the test which was addressed by Ms Cartney in her submissions to the sheriff on this issue.

[20] The sheriff, having decided to remove QOCS protection, does not appear to have explicitly analysed whether it should have been removed entirely or to some lesser degree. I am satisfied however that the issues identified by the sheriff as justifications for her decision were so significant and fundamental that, if it was appropriate for her to remove QOCS protection, it was appropriate for it to be removed entirely.

[21] Dr Jones has not identified any basis upon which this court would be entitled to recall the sheriff's order removing QOCS protection and finding him liable to the Chief Constable in the expenses of the action. He did not dispute the factors identified by the sheriff as a basis for her decision. He merely disputed her conclusion that they entitled her to remove QOCS protection. Having regard to the factors identified by the sheriff, his behaviour in bringing and persisting in the action was manifestly unreasonable within the

meaning of section 8(4)(b) of the 2018 Act. His appeal against the sheriff's order is refused and the question posed by the sheriff in her stated case is answered in the negative.

The Chief Constable's application

[22] Having refused Dr Jones's appeal, the court was required to determine the Chief Constable's application in terms of Rule 21.2 of the Act of Sederunt (Sheriff Appeal Court Rules) 2021, opposed by Dr Jones, which asked the court to make a further order in terms of section 8(4)(b) of the 2018 Act removing QOCS protection and finding Dr Jones liable to the Chief Constable in the expenses of the appeal on the basis that, in his conduct of the appeal proceedings, he had also behaved in a manner which was manifestly unreasonable. In terms of rule 21.3(1), the disposal of such an application is at the discretion of the Sheriff Appeal Court.

[23] Ms Cartney submitted that Dr Jones's behaviour in pursuing his appeal was manifestly unreasonable because, against the background of the sheriff's emphatic rejection of the merits of his case, which had not been appealed by Dr Jones, and the clear and compelling reasons the sheriff had given for making an order removing QOCS protection in relation to the proceedings in the sheriff court, Dr Jones's appeal had been pursued without any arguable basis. Dr Jones submitted that he was entitled to appeal the sheriff's decision to remove QOCS protection. If the mere fact that a pursuer's case was unsuccessful at first instance did not, of itself, justify a finding of manifest unreasonableness, the same must be true of appeal proceedings. Although Dr Jones initially appeared to suggest that he had not been given an opportunity to respond to the Chief Constable's application for an order removing QOCS protection during the proceedings before the sheriff, he accepted that in fact when the matter was first raised during submissions at the end of the proof, the sheriff

had offered him an adjournment so that he could consider his response but that he had declined that offer. He had then lodged a brief written submission in advance of the hearing on 19 December 2025, opposing the Chief Constable's application by reiterating his closing submissions from the proof. He had simply asked the sheriff to decide the application by "applying precedent."

[24] I was not referred to any authority which addressed this particular situation. However, it is clear that section 8(2)(b) of the 2018 Act extends QOCS protection for a pursuer in a personal injuries action not only to the first-instance proceedings but also to any related appeal proceedings. Chapter 21 of the sheriff appeal court rules contemplates the making of an application for an order removing QOCS protection in relation to appeal proceedings in a personal injuries case. It would appear to follow that the exceptions listed in section 8(4) of the Act also apply to such appeal proceedings. I approach the Chief Constable's incidental application in relation to the expenses of the appeal having regard to the conduct not only of the appeal proceedings but of the proceedings as a whole.

Dr Jones's general position in support of his appeal was essentially that, on a straightforward examination of the procedural history and of the manner in which the proceedings were conducted by him, the sheriff was not entitled to make an order removing QOCS protection. He did not challenge the factors identified by the sheriff as a basis for her decision or introduce any substantive issues in support of his appeal which were not before the sheriff when she made her decision. I am satisfied that the sheriff gave very clear and compelling reasons for making the order which she did. Dr Jones identified no arguable basis during the appeal proceedings upon which this court might have been entitled to disturb that order.

[25] Applying the general principles identified at paragraph 15 above, the mere fact that an appeal is refused would not inevitably justify the conclusion that the unsuccessful appellant had behaved in a manifestly unreasonable manner in pursuing the appeal, even where QOCS protection was removed in relation to the first instance proceedings. Each application for an order to remove QOCS protection requires to be considered in light of the relevant case-specific facts and circumstances. In the particular circumstances of this case, having regard to the clear and compelling reasons given by the sheriff for her decision to remove QOCS protection, the absence of any challenge from Dr Jones to the factors identified by the sheriff as a basis for her decision and the absence of any arguable basis for Dr Jones's appeal against that decision, there is nothing about the circumstances of the appeal, or the arguments presented in support of it, which would require this court to view the appeal in a different light from the first instance proceedings, so far as the issue of QOCS protection is concerned. I am satisfied that it is appropriate for this court to make the order sought by the Chief Constable in terms of section 8(2) and (4)(b) of the 2018 Act finding Dr Jones liable to the Chief Constable in the expenses of the appeal, on the basis that his behaviour in relation to the conduct of the proceedings as a whole, including the appeal proceedings, was manifestly unreasonable within the meaning of section 8(4)(b) of the Act.