

**SHERIFFDOM OF SOUTH STRATHCLYDE, DUMFRIES AND GALLOWAY AT
AIRDRIE**

[2026] SC AIR 81

AIR-A54-23

JUDGMENT OF SHERIFF SCOTT PATTISON

in the cause

MARK LYONS

Pursuer

against

VAUXHALL FINANCE PLC (IN LIQUIDATION)

Defender

and

STELLANTIS FINANCIAL SERVICES UK LIMITED

Party Minuter

**Pursuer: Morrison, Counsel
Party Minuter: Tosh, Counsel**

AIRDRIE 10 May 2026

1. On 9 April 2021, before the pursuer had purchased the vehicle, the vehicle's AdBlue light remained illuminated despite the reservoir being filled.
2. The pursuer entered into a contract with North Lanarkshire Council for the transport of pupils with additional support needs. The contract start date was 1 June 2021 and the contract end date was 30 June 2022
3. On 18 February 2022, the pursuer applied for a taxi operator licence in the North Lanarkshire Council area.

4. On 4 April 2022 a taxi licence was granted to the pursuer by North Lanarkshire Council to operate the vehicle as a taxi within the North Lanarkshire Council area in accordance with the provisions of the Civic Government (Scotland) Act 1982. It became effective on 27 April 2022 and was due to continue to have effect until 31 March 2025
5. On or around 24 March 2022, the pursuer entered into a Conditional Sale Agreement (“CSA”) with the defender to purchase and be supplied with a Peugeot Rifter motor car having a registration number SF19 DFE and Vehicle Identification Number (“VIN”) VR3ECYHYCJJ848351 (“the vehicle”) at a total price of £25,389.905
6. The mileage at the date of purchase was around 22,000 miles.
7. The vehicle was first registered on 17 June 2019⁷ and had a cash price of £17,990. The total purchase price including interest was £25,389.80.
8. The vehicle was 2 years, 9 months and 8 days old on the delivery date.
9. The pursuer purchased the vehicle online from the credit broker, CarMoney’s website and the vehicle was supplied to the pursuer by Ron White Trade Cars Ltd (“Ron White”)
10. The pursuer paid the defender £500 by way of deposit and 10 instalments of £414.83 totalling £4,184.30 towards the total price of the vehicle.
11. The pursuer purchased the vehicle due to his ill health, and it was mainly for personal use and pleasure such as getting out with his dogs. He also used it to go to Southampton a couple of times and to Manchester Airport.
12. The contract was concluded by the pursuer for a purpose wholly or mainly outside any trade or business.
13. The vehicle was also used by the pursuer to transport one girl with additional school needs as part of his contract with North Lanarkshire Council.

14. On 24 March 2022 (the “delivery date”), the vehicle was delivered by three men from Ron White to the pursuer and a number of warning lights including the engine management light (“EML”) and ‘Ad blu’ came on within 3 to 4 minutes on the vehicle’s dashboard. The pursuer and his wife noticed the dashboard had an Adblue with a wavy line and a message “Car unable to start in 500 miles” and the EML was illuminated.

15. The pursuer’s wife, Mrs Donna Lyons, phoned Ron White and was told to take the vehicle on the motorway. The pursuer took the car on the motorway and drove about 60 miles per hour and phoned Ron White later to tell him nothing had happened. Mr White told the pursuer and his wife they had a 6-month warranty and to take it to a garage. On the same date, the pursuer found a repair invoice from Sherwoods Motor Group dated 6 April 2021 tucked behind the owner’s handbook when he was looking through the paperwork which stated “ADBLUE LIGHT STILL ON EVEN AFTER BEING FILLED” The AdBlue light and radio were being investigated

16. The vehicle was not of satisfactory quality on the delivery date, but it was roadworthy in the sense that it was capable of being driven on the road.

17. The pursuer contacted Arnold Clark to put the car into the garage using the Peugeot warranty. On 19 April 2022, Arnold Clark inspected the car and confirmed the AdBlue light was illuminated. They replaced the AdBlue injector and at that time the vehicle had a mileage of 22, 732 miles. On the same date, the pursuer thought the car was faulty due to a blocked ‘pipe’ now known to be an injector. Around 19 April 2022, the pursuer sent the Arnold Clark invoice to the defender.

18. On 27 April 2022, the vehicle was put through its first MOT test and passed.

19. Between March 2022 and June 2022, the pursuer’s wife, Mrs Lyons, regularly used the vehicle to go to her work as a district nurse.

20. The pursuer used the vehicle for school runs for 3 months between delivery of the vehicle in March 2022 and November 2022 with the last school run being in October 2022. The mileage at the time of the last school run was about 40,000 miles. The pursuer stopped using the vehicle for the school run because he considered it to be unsafe.

21. At the start of October 2022, the dashboard EML and AdBlue lights came on as before and the pursuer and/or his wife took the vehicle back to Arnold Clark who reset the computer for no cost. The dashboard EML and AdBlue lights were illuminated again at the end of October 2022 to the start of November 2022

22. On 7 December 2022, the pursuer and his wife took the vehicle back to Arnold Clark and were told it was the turbo and the replacement turbo cost just under £1,300. Three weeks after the turbo had been replaced, the EML and AdBlue lights had come back on again. The vehicle's mileage was 40,590 at that time.

23. The pursuer phoned Reject My Ltd which trades as Reject My Car at the end of December 2022 or start of January 2023 after hearing about them on the radio. He spoke briefly to Mr Ian Ferguson and was told Reject My Car would get a solicitor to contact him. On 11 January 2023, Reject My Car received an email enquiry from the pursuer.

24. The pursuer has not used the vehicle since either December 2022 or start of January 2023. The vehicle is in his possession and is in his driveway.

25. On 20 January 2023, the pursuer became a client of Reject My Car and his case was assigned to a case handler. He agreed that that Reject My Ltd t/a Reject My Car would act on his behalf and electronically signed their authority to act document. On the same date, the first letter in terms of Section 23 of the 2015 Act was written by Reject My Car and sent by email to the defender requesting repair of the AdBlue issue, omissions fault, blocked urea injector, ECU fault and Turbo fault. This was sent on behalf of the pursuer in respect of the

vehicle. The defender responded to confirm they had issued a final response letter to the concerns raised on 26 May 2022.

26. Around January 2023, Mr Muir Smith of Scottish Independent vehicle Inspection Services, Ayrshire, was instructed by Reject My Car to inspect the pursuer's vehicle. On 27 January 2023, Mr Smith inspected the vehicle. At the date of inspection, the vehicle had been driven 44,850 miles.

27. On 2 February 2023 Reject My Car wrote to the defender on behalf of the pursuer intimating rejection of the vehicle via email. On 6 February 2023, the defender responded that they had provided their final decision letter to Mr Lyons on 26 May 2022.

28. The defender arranged for the vehicle to be examined by Mr Douglas Reid, Elite Forensic Services Automotive Engineering Consultancy. On 23 August 2023, Mr Reid inspected the vehicle at the pursuer's home. The mileage was 44,91569.

29. The cause of the faults to the pursuer's vehicle from the delivery date to the date of rejection was a combination of the injector not performing correctly and the software not allowing the system to perform correctly.

30. The Pursuer required to pay £500 for a certificate of conformity to have the vehicle undergo its MOT due to there being a wheelchair ramp in the back. The pursuer incurred costs in getting the car fixed, MOT costs, car insurance and road tax. The pursuer paid £1,232.39 for the replacement turbo in December 2022. The pursuer required to buy another car.

31. The pursuer has suffered a loss of use and enjoyment of the vehicle resulting in inconvenience by having to find alternative transport. The loss of use of the vehicle resulted in the pursuer incurring costs getting taxis and sometimes being transported by his wife. The pursuer suffered inconvenience by having to go back and forth to the garage three or

four times and having the vehicle serviced after he purchased it.

Findings in fact and law

1. That the contract concluded by the pursuer with the defender was for a purpose wholly or mainly outside any trade or business and accordingly the pursuer was a 'consumer' for the purposes of the Consumer Rights Act 2015.
2. That the vehicle was not of satisfactorily quality commensurate with age, price and mileage at the time it was delivered to the pursuer on or around 24 March 2022.

Findings-in-law

1. The defender having supplied a vehicle that was not of satisfactorily quality commensurate with its age, price, and mileage at the time it was delivered to the pursuer on or around 24 March 2022, and therefore having materially breached the consumer contract between the defender and the pursuer, decree for declarator should be granted as craved together with decrees for payment jointly and severally against the defender and party minuter.

THEREFORE

1. Sustains the pursuer's first, second, and third pleas in law and repels the defender's and party minuter's pleas-in-law;
2. Finds and declares in terms of the pursuer's crave one (noting that part (v) is not insisted in) that:
 - (i) the Peugeot Rifter motor car with registration number SF19 DFE, and Vehicle Identification Number ("VIN") VR3ECYHYCJJ848351 (supplied) to the pursuer

by the defender under a contract of Conditional Sale which was entered into on or around 24th March 2022 and subsequently assigned to the party minuter on 4 April 2023 by way of a business and assets transfer agreement between the defender and the Party Minuter, was not of satisfactory quality in terms of Section 9 of the Consumer Rights Act 2015, as at the date it was supplied or at any point thereafter;

- (ii) the pursuer has validly rejected the vehicle in terms of Section 24 of the Consumer Rights Act 2015;
- (iii) by supplying a vehicle that was not of satisfactory quality in terms of Section 9 of the Consumer Rights Act 2015 the defender was in material breach of the purported contract; and
- (iv) the purported contract has been rescinded on account of the defender's material breach no further sums are due to be paid to the defender by the pursuer under the purported contract.

3. Grants decree for payment by the defender and party minuter, in terms of the pursuer's second crave, jointly and severally, to the pursuer of two thousand four hundred and twenty pounds and fifty pence (£2420.50) sterling with interest thereon at the rate of eight per cent (8%) per annum from the date of citation (this to cover a refund of payments pre-rejection of the vehicle less a deduction for the pursuer's use of the vehicle);

4. Grants decree for payment by the defender and party minuter, in terms of the pursuer's third crave, jointly and severally, to the pursuer of three thousand pounds sterling (£3000.00) with interest thereon at the rate of eight per cent (8%) per annum from the date of citation;

- Certifies Mr Muir Smith, Vehicle Inspector, Scottish Independent Vehicle Inspection Services, as a skilled person for the purpose of rules 4.5 and 5.3 of the Act of Sederunt (Taxation of Judicial Expenses Rules) 2019 and to determine that the certification has effect for the purposes of work done before the date of certification;
- Certifies Mr Douglas Reid, Expert Witness and Forensic Practitioner, Elite Forensic Services Limited, as a skilled person for the purpose of rules 4.5 and 5.3 of the Act of Sederunt (Taxation of Judicial Expenses Rules) 2019 and to determine that the certification has effect for the purposes of work done before the date of certification;
- Sanctions the proceedings as suitable for the employment of junior counsel for all parties in terms of Rule 5.4(2)(a) of the Act of Sederunt (Taxation of Judicial Expenses Rules) 2019.

NOTE:

[1] The parties are in dispute about a car, a Peugeot Rifter which the pursuer argues was supplied to him as a consumer by the defender under a Conditional Sale Agreement on 24 March 2022 (“delivery date”). He says it was not of satisfactory quality. He has sought to reject the car. He seeks sums to be paid to him due to that rejection. The defender and the party minuter do not accept that the pursuer is entitled to reject the car.

Procedure

[2] The proof started on 21 October 2024 in Airdrie Sheriff Court and required to be part-heard on a number of occasions. I need not set out the entire history but the following matters are noteworthy.

[3] On 3 October 2024 I granted a minute of sist allowing the party minuter, Stellantis Financial Services UK Limited, to be sisted as an additional defender to the action.

[4] I was advised that the minuter was the sole shareholder of the defender and that by agreement dated 4 April 2023, the minuter contracted to purchase, with effect from 5.00pm. on 4 April 2023, the business and all assets, and to assume all liabilities, of the defender, with some exceptions. The minuter wished to enter appearance in order to defend the action on the same basis upon which it had been defended by the defender for its own interest.

[5] I was told that the minuter had in fact had de facto control of the defence of this action from around 4 April 2023 until around 20 August 2024. On 20 August 2024, the defender resolved that it should be wound up voluntarily and that liquidators should be appointed. I continued the cause to the proof previously assigned for 21 October 2024 and was advised at that time that the liquidators did not intend to apply to sist themselves as defenders.

[6] On the second day of proof, 22 October 2024, the pursuer moved for decree against the defender. I continued consideration of this motion pending further procedure noting that the party minuter undertook that that if the pursuer was successful at proof that they would pay any damages with counsel wishing to confirm this undertaking in writing.

[7] Part heard proof diets scheduled for November 2024 were adjourned administratively and when the case next called for actual proof on 19 February I noted with concern that the solicitor for the pursuer had withdrawn from acting for him 4 days prior to

the diet of part heard proof (this being part way through the pursuer's own evidence in chief). It was of further concern to me that the pursuer Mr Lyons, who suffers from ill-health, had not been advised of the calling of the case on 19 February by his former agent and only received intimation via sheriff officers on 18th and required to break off a family holiday to attend court today. I noted that the pursuer had a new solicitor found for him by the organisation "Reject My Car."

[8] These procedural matters along with a number of challenges including my own availability and that of counsel, and administrative issues which arose when obtaining transcripts, led to this case taking much longer than it should have. I very much regret this and the inconvenience to parties.

[9] On conclusion of evidence I asked parties for written submissions and a note of disputed issues. The issues in dispute are as follows:

- (1) Whether the pursuer was a consumer for the purposes of section 2(3) of the Consumer Rights Act 2015?
- (2) Whether the vehicle was of satisfactory quality on the delivery date in terms of section 9 of the Consumer Rights Act 2015?
- (3) Whether, in terms of section 9 and section 19 of the Consumer Rights Act 2015, the defender materially breached its contract with the pursuer by supplying a vehicle that was not of satisfactory quality so that the contract has been rescinded and no further payments are due under the purported contract?
- (4) Whether the pursuer is entitled to exercise his final right of rejection in terms of section 24 of the Consumer Rights Act 2015?
- (5) Whether the pursuer is entitled to declarator as first craved?

- (6) Whether, in terms of section 20 of the Consumer Rights Act 2015, the pursuer is entitled to a refund on moneys paid by him to the defender under the CSA in terms of crave 2?
- (7) Is any such refund subject to a deduction for the pursuer's use of the vehicle since the delivery date in terms of section 24(8) of the Consumer Rights Act 2015?
- (8) Whether, as a result of the defender's material breach of contract, the pursuer is entitled to common law damages for inconvenience for the loss of use and enjoyment of the vehicle and costs incurred relating to insurance, road tax, replacement turbocharger, and wheelchair certificate?

These appear to me to be the appropriate issues upon which to frame the dispute with issues (1) and (2) being fundamental and upon which all others might be said to rest.

[10] I will summarise the evidence of the key witnesses and deal with the issues in turn.

The evidence

Pursuer's case

Mark Lyons

[11] Mark Lyons gave evidence regarding the problems he experienced with the Peugeot Rifter he had purchased. He bought the car in March 2022, and entered into a conditional sale agreement with the defender. The price was £25,389.905. The mileage at the time he bought the car was around 22,000 miles. He bought it online from the credit broker, CarMoney's website, and it was delivered to him by Ron White Trade Cars Ltd. He paid the defender £500 by way of deposit and 10 instalments of £414.83 totalling £4,184.30 before he ultimately rejected it on the advice of Reject My Car Ltd.

[12] He said he purchased the car due to his ill health, and it was for personal use and for getting out with his dogs. He also used it to go to Southampton a couple of times and to Manchester Airport. He was a taxi driver and had a licence and a contract with the local authority to transport one young girl with additional needs to school and the car was to be used for this too.

[13] On 24 March 2022 the car was delivered by three men from Ron White. A number of warning lights including the Engine Management Light ("EML") and "Ad blu"¹⁸ came on within 3 to 4 minutes on the dashboard. He and his wife both noticed the dashboard had an Adblue warning with a wavy line and a message "Car unable to start in 500 miles" and the illumination of the engine management light.

[14] Mrs Donna Lyons phoned Ron White and was told to take the car on the motorway. Mr Lyons said he did so and drove at about 60 miles per hour. He called Ron White later to tell him nothing had happened. He was told he had a 6-month warranty and to take it to a garage. That day Mr Lyons found a repair invoice from Sherwoods Motor Group dated 6 April 2021 tucked behind the Owner's Handbook when he was looking through the paperwork which stated "Adblue light still on even after being filled."

[15] Mr Lyons took the car to Arnold Clark under the Peugeot warranty. On 19 April 2022, Arnold Clark inspected the car and confirmed the AdBlue light was illuminated. They replaced the AdBlue injector and at that time the Vehicle had a mileage of 22,732 miles. On the same date, Mr Lyons thought the car was faulty due to a blocked "pipe" (now known to be an injector). Around 19 April 2022, Mr Lyons sent the Arnold Clark invoice to the defender.

[16] Mr Lyons confirmed that on 27 April 2022 the car was put through its first MOT test and passed.

[17] Mr Lyons confirmed that he used the car for the school runs for 3 months between March and October 2022. The school run was 17 miles each way. The mileage at the time of the last school run was about 40,000 miles. He stopped using the car for the school run because he thought it was unsafe. His wife also used the car for her district nursing duties.

[18] At the start of October 2022, Mr Lyons noticed the dashboard engine management light and AdBlue light come on as before and he or his wife took the car back to Arnold Clark who reset the computer for no cost. The same lights illuminated again at the end of October 2022 to the start of November 2022

[19] On 7 December 2022 Mr and Mrs Lyons took the car back to Arnold Clark and were told it was the turbo. They paid £1232 for a replacement turbocharger. Three weeks after the turbo had been replaced, the EML and AdBlue came back on again. The mileage at that point was 40,59050.

[20] At this stage Mr Lyons contacted Reject My Ltd (which trades as Reject My Car) at the end of December 2022 or start of January 2023 after hearing about them on the radio. He spoke very briefly to Mr Ian Ferguson and was told Reject My Car would get a solicitor to contact him.

[21] Mr Lyons said he did not use the car after December/January 2022/23. It is still in his driveway. On 20 January 2023 he became a client of Reject My Car and agreed that they would act on his behalf. He confirmed that he stopped making payments at this time.

[22] Mr Lyons said that the ongoing issues, combined with his already poor mental health, contributed to significant stress. During this period he was frequently in and out of hospital. Without a functioning car, he had to rely on taxis or lifts from his wife, who also needed a car for her work as a district nurse.

[23] He said that the car had not been serviced before delivery. He had it serviced and said he believed he had given receipts for servicing and repair work to his solicitor.

Donna Lyons

[24] Donna Lyons, aged 50, works as a nurse. She also gave evidence regarding the circumstances surrounding her husband Mark Lyons' purchase and use of the Peugeot Rifter.

[25] There was an initial objection to her evidence as it transpired she had been present in court during part of her husband's evidence. This was correctly not insisted in in my view. She had been in court inadvertently. She was there to support him as he had been suffering ill-health. It was plain to me that her presence in court was not a consequence of culpable negligence or criminal intent, far from it, and that she was not unduly instructed or influenced by what she heard (in terms of Section 3 of the Evidence (Scotland) Act 1840). There was no injustice done by her presence. The objection was correctly withdrawn.

[26] She explained that Mr Lyons had previously suffered from cancer and had been encouraged to resume activities to improve his mental health. He intended to use the Peugeot Rifter both to transport a young girl to school under a taxi contract, and for personal use, especially long journeys, because both she and Mark struggle to use "lower down" vehicles due to health issues.

[27] She described her own medical conditions (osteoarthritis and a long-term neurological condition) and Mr Lyons need for a higher vehicle. His mother also faced potential wheelchair use, and the car's accessibility was intended to support the family.

[28] When the car was delivered, three or four men arrived with it, which she said she found suspicious. The handover was rushed and neither she nor her husband were given an opportunity to inspect the vehicle before the delivery team left.

[29] Immediately upon starting the car, the dashboard lit up “like Blackpool illuminations”. The engine management light and AdBlue warning lights were both illuminated, among others. The delivery representative (Ron White) instructed them to drive it at speed on the motorway: “to blow the arse out of it.”

[30] She said that the car was not often used as a taxi because it was frequently in the garage due to the warning lights and was ultimately considered unsafe. Mr Lyons continued to be unwell and was often in hospital.

[31] For the school contract, they had to arrange for other taxi drivers to assist or to use another car.

[32] She confirmed the fault and repair history corroborating her husband. She also said that she had used the vehicle quite a lot between March and June 2022 to go to her work as a district nurse.

[33] She confirmed that her husband had contacted Reject My Car and expressed dissatisfaction with the service received citing poor communication and there being confusion over who was representing them.

[34] She said her husband’s credit rating had suffered significantly after he stopped payments. He had followed advice (via Reject My Car) that payments could be paused during the dispute without affecting his credit.

[35] She explained that the loss of the car had badly affected her husband: he struggled to get in and out of their remaining low-down car and his mobility and health problems confined him to the house when unwell. The ongoing dispute caused significant stress,

which she linked to episodes of aspiration pneumonia which he experienced; and they also had to obtain a different car, incurring further expense.

[36] They wanted restoration of his credit rating; reimbursement of the money he paid and removal of the Peugeot from their driveway.

Ian Ferguson

[37] Mr Ferguson confirmed the terms of his affidavit and adopted it as part of his evidence. He is the Managing Director of Reject My Ltd (trading as Reject My Car), a consumer assistance company he has led since December 2018. He had spent his entire career in the retail motor industry and, since 1998, has held senior positions across multiple private and manufacturer owned dealerships. His experience included sales, aftersales, parts, body repair, fleet operations, and complex customer complaint handling. He said he had an in depth understanding of motor vehicles due to the nature of his managerial roles and extensive work with brands such as Peugeot, Citroën, Land Rover, Ford, Renault, Toyota, and others.

[38] He advised that the first enquiry from Mr Lyons arrived by email on 11 January 2023, explaining the problems with the vehicle. Mr Lyons became a client on 20 January 2023, giving authority to Reject My Car to act on his behalf. The Peugeot Rifter in question had been purchased from CarMoney Ltd in Motherwell, and the issues reported included AdBlue malfunctions, emissions faults, a blocked urea injector, ECU problems, and turbo faults.

[39] Mr Ferguson said that Reject My Car wrote to the defenders on 20 January 2023 seeking repair. Vauxhall Finance responded on 25 January 2023, referring to earlier “final response” letters sent to Mr Lyons in May and October 2022. On 2 February 2023, Reject My

Car sent a formal rejection letter on Lyons' behalf. Vauxhall replied on 6 February 2023, reiterating that their position had already been set out in the earlier letters and that their decision remained unchanged.

[40] Mr Ferguson was subject to robust cross-examination on his career history and background and his relationship with Muir Smith. He explained that he founded Reject My Car in early 2019. He acknowledged that Reject My Car previously referred many Scottish cases to Skelly & Co solicitors though that relationship had previously ended. He said that they used multiple engineers across the UK, not just one individual. He acknowledged that Muir Smith, had historically done work for them but denied that he ever handled 80–90% of their inspections. He firmly rejected suggestions of an undisclosed close personal or financial relationship with Mr Smith. He said that Mr Smith had carried out 94 inspections, earning roughly £40,000 over 6 years. He disputed claims (outlined in other court judgments) that Smith had carried out around 1,000 reports for Reject My Car or earned significantly more.

[41] He confirmed that Mr Lyons would have paid £250 for an engineer's inspection. If Mr Smith had carried out that inspection, that sum would have been paid to Mr Smith upon receipt of his report. He said he was willing to provide bank records prove this payment.

[42] He explained that clients engaged in litigation are covered by an ATE insurance policy (held by the solicitors, not by Reject My Car). Reject My Car does not pay the client's legal expenses if the case is unsuccessful. He confirmed further that Reject My Car operated on a no win no fee basis. If successful, the client (e.g., Mr Lyons) would pay a fee of around £2,500. Reject My Car is not a law firm and not a regulated claims management company; it merely assists consumers in vehicle related disputes. He rejected allegations that the company's activities were unlawful.

The “expert” evidence

[43] There was technical evidence led by each party. Objections to certification and admissibility had also been taken by each against the other’s proposed expert. I will deal with these preliminary issues now and then set out the evidence heard.

The issue of certification

[44] The issues of certification and admissibility were distinct but linked. There were competing objections to each party’s motion to certify the witnesses as skilled persons – albeit on different grounds and it was agreed that I should hear them under reservation of all questions of competency and relevancy including whether they were indeed persons of skill who satisfied the tests of independence and impartiality set out in *Kennedy v Cordia (Services) LLP* 2016 SLT 209 per Lord Reed at paras [39] – [53].

[45] In terms of sections 4.5 and 5.3 of the Act of Sederunt (Taxation of Judicial Expenses Rules) 2019 the court may only grant a motion for certification if it is satisfied that: (1) The person is a skilled person; and (2) it is, or was, reasonable and proportionate for that person to be employed.

Mr Muir Smith (led by the pursuer)

[46] The party minuter did not accept that Mr Smith was a skilled person. In the hearing on submissions on the motion for certification Counsel for the party minuter indicated that he was content that the court certify Mr Smith if I found his evidence admissible in terms of *Kennedy* (supra).

[47] Counsel's main objection to the admissibility of his evidence was based on an attack on his impartiality but also on the assertion that he did not have the necessary knowledge and experience. On the latter point having heard his evidence and read his CV which is in process I am satisfied that Mr Smith is sufficiently qualified and experienced in the field of automotive engineering to allow his expert opinion to be heard in a case of this nature.

Mr Smith gave evidence as to his experience in auto mechanical engineering since commencing his apprenticeship. He qualified as a motor mechanic in 2001 and has had extensive experience technically and managerially ever since and has been accepted as an expert in many sheriff court cases.

[48] As to the question of his impartiality, he was said to have an overly familiar relationship with the witness Mr Ian Ferguson and his business Reject My Car, as demonstrated in various productions set out at 6/35 of process. For example (and this was not disputed) he had invited his full Facebook friends list to "like" Reject My Car's Facebook page). He had also set up a Facebook group to encourage complaints against motor dealers; allegedly demonstrating partiality in favour of consumers and others pursuing satisfactory quality claims or complaints against the motor and motor finance industries. (see, eg, 6/35/3 and the screenshot of the Facebook group that Mr Smith set up). His impartiality had been challenged in five out of six cases he had been involved in and successfully so in *Adam v Moneybarn No 1 Ltd* [2025] SC DUM 6 at [46]-[52].

[49] It was also submitted that Mr Smith had not properly explained how he came to tell the Sheriff in *Swan v Startline Motor Finance* (6/37 of process at [41]) that he had prepared over 1,000 reports for Reject My Car and that his annual income from preparing reports for them was in the region of £75,000, when he claimed in this case that the true position was that he had prepared no more than 100 reports and that his income from preparing such

reports had been no more than £25,000 over 3 years. Counsel submitted that his evidence failed the Kennedy test and should be deemed inadmissible (and therefore incapable of certification) *esto* it should be treated with considerable caution and attributed little, if any, weight.

[50] I find Mr Smith's evidence to be admissible and in accordance with Kennedy and I also certify him as a skilled witness. Although he has been unwise in his social media posts the test in *Kennedy v Cordia* is whether the witness is impartial in their presentation and upon an assessment of their evidence. Similar to his evidence in Swan (*supra*) Mr Smith made clear he was independent of Reject My Car and that while that organisation worked on a contingency basis he did not. He had prepared his report for a fixed fee which had been paid. The manner and substance of his evidence was indicative of a professional who knew his subject and he did not exaggerate and made appropriate concessions. To that extent I did not have concerns about his impartiality when I assessed it based upon the content of his evidence.

Mr Douglas Reid

[51] There was no objection to Mr Reid lacking either experience or expertise. It was accepted by the pursuer that he had the same City and Guild 3 qualification as Mr Smith and an appropriate level of experience.

[52] There was an objection to the admissibility of his evidence based on his (lack of) independence. Mr Reid accepted in evidence that he had been working with the Stellantis Group on a regular basis and would maybe take four or five instructions a year from the Group. He had ongoing consultancy work with them and was still being instructed. He had not disclosed this on his CV as he did not think it was relevant. The pursuer submitted there

was a concern about his independence and that his evidence should be found to be inadmissible or *esto* very little weight ought to be given to his evidence.

[53] I preferred the party minuter's submission that Mr Reid is not a consultant **for** Stellantis (my emphasis) but merely acts as an expert witness for them from time to time. Further, based on the manner and substance of his evidence I had no concerns about his independence. He was aware of his duties to the court and made appropriate concessions in the case which demonstrated his independence. The pursuer's objection to the admissibility of his evidence on this basis is repelled.

[54] Moving on, the pursuer's opposition to the certification of Mr Reid was based on the proportionality of his instruction and not his technical skill. As I understood the submission it was conceded that Mr Reid's qualifications and experience in the fields of engineering make him a skilled person in a technical sense. It was suggested that his fees were likely to be disproportionate to the value of the claim. However the pursuer also stated in his written submissions that he was unaware of the costs incurred by the party minuter to Mr Reid after 3 October 2024 but referred to the witness's company's terms and conditions which stated that for attendance at court there is a charge of £1550.00 per day. This was contrasted with the standard position under the Act of Sederunt where a party who cites or requests the attendance of a witness is liable to reimburse financial loss reasonably incurred not exceeding £400 per day.

[55] The party minuter suggested that proportionality in this context is not so much about the individual costings but for example the number of expert witnesses instructed, suggesting that while it would be clearly disproportionate to instruct four mechanics with all giving evidence, that, in a case such as this, it was clearly not disproportionate to employ one expert from a relevant discipline. The thrust of the pursuer's opposition was that

Mr Reid charged too much. This was a point to make to the auditor when expenses are being taxed, it was not for the court to adjudicate at this stage on the amount an expert charges.

[56] I note the cases of *McKay v MCE Insurance Sh Ct* July 7 2021 and *Webster v MacLeod* 2018 SAC (CIV) 16 and the principle that reasonableness and proportionality must be considered objectively at the time of instruction with the emphasis on the need for judicial supervision of litigation costs. However, I do not have accurate information on the likely final costs of Mr Reid or the costs of comparable witnesses who were available at the time of instruction and I feel I am unable to complete a full and fair analysis. I prefer the party minuter's submissions on the matter. I will certify Mr Reid as a skilled witness at this stage with the proviso that detailed questions of costs ought to be dealt with at the taxation stage. If the issue remains live at taxation and still unresolved then a note of objection could be lodged with the sheriff in terms of Ordinary Cause Rule 32.4.

[57] I am content to grant certification on a retrospective basis for both witnesses. Counsel for the party minuter explained that the failure to seek certification at an earlier stage had been an unfortunate oversight. This is enough in the circumstances to establish "cause shown" in my view in that it provides a sufficient explanation for what happened.

[58] The pursuer also argued that the party minuter, in seeking retrospective certification for Mr Reid, was essentially trying to recoup outlays incurred by the defender given his report was instructed in 2023 by the defender and not the party minuter. Neither party fully addressed me on this point and I would require to be addressed with reference to authority to deal with the issue. It can be dealt with at a hearing on expenses in my view and is not a bar to my certifying Mr Reid at this stage.

[59] The pursuer's motion 7/10 of process to certify Mr Smith as a skilled person is therefore granted as is the party minuter's motion to certify Mr Reid (7/9 of process). I will now set out the evidence of both experts relevant to the issue of whether the vehicle was of satisfactory quality on the delivery date in terms of Section 9 of the Act.

Mr Muir Smith

[60] Mr Smith had prepared a report following his examination of the vehicle. He stated that the fault codes he found in the engine management system were relevant to the warning message regarding the Adblue system. He noted that the vehicle had had three visits to the manufacturer, two for Adblue related faults and one for a turbo fault. In his view the vehicle was suffering from a repeated fault which the manufacturer had already attempted to repair. He noted that in April 2022 the Adblue injector failed and was replaced; and in October 2022 that the vehicle went back to the manufacture for the warning light on the dash and the same fault code P20EE was recorded with the manufacture dealership carrying out a software update as part of a technical bulletin released by Peugeot.

[61] He noted that in December 2022 the vehicle went back to the dealership and had a turbo unit replaced. On the relevant invoice it stated that a regeneration was carried out on the vehicle. In his view this indicated that the vehicle had suffered a fault with the diesel particulate filter (DPF), which is part of the Adblue emission reduction system. He reached the view that turbo unit in the vehicle failed due to a blocked DPF unit. He explained that a blocked DPF prevents exhaust gas passing through the exhaust system at the required rate. As a result, back pressure and exhaust gas temperatures increase within the turbine housing, causing problems with efficiency, oil leaks, carbonisation of oil within the turbo and exhaust gas leaks from the turbo.

[62] Mr Smith concluded that the vehicle had a latent fault with the emissions reduction system which had been repaired twice already on two occasions and which ultimately caused the vehicle's turbo to fail in December 2022.

[63] When he inspected the vehicle on 27 January 2023 he noted that the oil level was over the maximum level. He explained that AdBlue was the brand name for diesel exhaust fluid which goes into the exhaust system and is controlled by the diesel particulate filter ("DPF") which allows it to burn off emissions safely before the emissions exit the exhaust. It essentially cleans the emissions. When the AdBlue does not go into the exhaust, it can go the opposite way into the engine, which dilutes the oil and can raise the oil level. His view was that the oil was over the maximum level due to the AdBlue.

[64] Mr Smith identified that the vehicle was not registering new AdBlue (even though the pursuer had attempted to add it) and explained that this could be due to a number of issues: (1) a sensor fault; (2) a software issue; or (3) another underlying fault within the DPF system.

[65] He carried out a diagnostic test of the engine management system using a machine that was plugged directly into the diagnostic port which allowed him to read faults logged within the onboard computer. A single fault code was recorded which was "P20EE." This meant that the powertrain control module, a computer module to store information from the engine, was not receiving the correct information between two engine bank sensors in the diesel exhaust system located on the DPF.

[66] He explained that the three most common symptoms for a P20EE fault code were:

- (1) Excessive black smoke from vehicle
 - (2) Exhaust diminished engine performance
 - (3) Reduction in fuel efficiency.
- Mr Smith also said that he saw black smoke from the

vehicle's exhaust. In his report he considered the most probable causes of the fault code P20EE and listed them as follows:

- (1) Defective O₂, NO_x, or temperature sensor;
- (2) Inoperative SCR system;
- (3) Faulty SCR injector;
- (4) Incorrect or insufficient DEF (diesel exhaust fluid);
- (5) Bad SCR controller or programming error;

[67] In respect of the first cause, the oxygen gas, nitrogen oxides or temperature sensor is on the DPF. The second cause is an inoperative selective catalytic reduction ("SCR") system which is the DPF located at the front end of the exhaust which could become blocked by the injector not performing correctly or the DPF being "overfilled" with soot. The third cause is a faulty SCR injector which is located at the start of the exhaust system and injects AdBlue into the exhaust. The fourth cause is incorrect or insufficient DEF fluid ("AdBlue"). The AdBlue is located in a 17-litre tank located underneath the bonnet or beside the fuel filler cap which has feed lines to the injector which then puts it into the DPF; this is the AdBlue reduction system. The fifth cause is the software that controls the SCR, for example, the timing of the when to inject AdBlue. If the AdBlue is not entering the exhaust system at the right time then DPF will not burn off the emissions quick enough and become blocked. If the DPF is blocked, then the emissions can go backwards to the engine and cause the turbo to fail.

[68] Mr Smith explained that if it was not the software causing the issue, then it could have been a programming error which would have been there since manufacture. The manufacturer would release a software update to try and take the "bugs out the system."

[69] In his report Mr Smith concluded that the fault codes found in the engine management system were relevant to the warning messages regarding the AdBlue system because they were all based around the catalytic efficiency, AdBlue and the DPF, which is all the one system; the emissions system. He said that the turbo fault could be considered the same as an AdBlue fault because if the emissions system, specifically the DPF, is not performing correctly then the emissions can flow backwards into the engine and damage the turbo. His position was that the faults were the same albeit the causes may be different. The fault code P20EE was recorded in April 2022 and in January 2023.

[70] In October 2022, Arnold Clark carried out a software update to the vehicle's ECU which was part of a technical bulletin released by Peugeot. Mr Smith observed this was part of a bug fix to clear any bugs in the system which had been there since manufacture. In December 2022, a "regeneration" was carried out to burn off the soot on the DPF but he said that if the bugs in the software system are not fixed then countless regenerations would not solve the root fault. Likewise, if the bugs were causing the AdBlue to be injected at the wrong time then this would be the same root cause for a blockage which would cause the turbo to fail.

[71] In December 2022, the turbo charger was replaced by Arnold Clark. A turbo charger boosts the performance of the engine by taking the air, blowing it into the engine to make it go faster. In Mr Smith's opinion, this did not fix the fault because the root fault was in emissions system (either the software or the injector). He said it was very uncommon for a turbo charger to fail on its own without being caused by some other fault. A turbo charger is a lifetime part in his opinion and should last 10 to 15 years or 100,000 to 150,000 miles. He opined that the most common reasons for turbo failures were (1) poor maintenance and (2)

other faults on the vehicle putting undue pressure and strain on the turbo charger causing it to fail.

[72] Mr Smith disagreed with Mr Reid's comments that the turbocharger failing was the reason for the DPF requiring to be regenerated in December 2022. He explained that a DPF would not regenerate (get to the high temperature to burn off soot) if it is flooded with oil. The DPF would have to be removed and cleaned to remove the oil components before it would generate. Ultimately Mr Smith stated that the cause of the faults would either be the injector not performing correctly or the software not allowing the system to perform correctly or a combination of both. He acknowledged that further tests could be carried out to determine the probable fault cause by the use of a diagnostic computer machine by a Peugeot dealer or Peugeot192. The vehicle's service book showed servicing to be up to date.

[73] Mr Smith said that the fault, or latent defect, was either in the vehicle at first registration in 2019 or by April 2022. He was unable to say which date was more probable. He would not expect to see AdBlue faults of this nature in a car of the vehicle's age because the emissions system is a lifetime system so should not fail as long as filling it up when required and the countdown does not get to zero.

[74] Mr Smith was cross-examined extensively in relation to his independence, his work history with organisations including Reject My Car, the number of reports he had prepared, and discrepancies in previous evidence regarding income and volume of work. He accepted that earlier estimates given in other proceedings had been inaccurate and stated that these were the result of confusion and poor estimation rather than deliberate misrepresentation. He confirmed that he was paid a fixed fee for the report in the present case and would separately charge for court attendance.

[75] He maintained that: he knew his duty was to the court; his opinions were based on his inspection and experience; and that any limitations in his conclusions were clearly stated in his report.

Mr Douglas Reid

[76] Mr Reid also examined the vehicle and had access to Mr Smith's report. He stated that he carried out an independent inspection of the vehicle and did not observe excessive smoke emissions, oil contamination at the exhaust tailpipe, or other indicators consistent with emissions backflow or DPF-related turbo failure at the time of his inspection. He said he spoke with Mrs Lyons, who did not report excessive smoke from the vehicle.

[77] Mr Reid disagreed with Mr Smith's conclusion that the turbocharger failure was likely caused by a blocked diesel particulate filter. He explained that a DPF is a passive honeycomb filter with no moving parts and that when contaminated with oil or soot it can be regenerated by burning off contaminants. Turbocharger failure would typically result in oil contamination of the intake and exhaust systems, necessitating regeneration as part of standard repair procedure, rather than indicating that a blocked DPF caused the turbocharger failure.

[78] He said that, in his experience, turbochargers do not fail due to exhaust back-pressure in the manner suggested by Mr Smith, and that if a DPF were severely blocked the vehicle would not produce power or may not run, but this would not normally cause turbocharger failure.

[79] Mr Reid identified visible staining and evidence of leakage around the AdBlue injector during his inspection and attributed this to a leaking urea injector. He stated that the vehicle was currently suffering from a leaking injector and this was a separate issue from

earlier AdBlue system events. He explained that injector failure could arise from mechanical, electrical, or casing defects, or fluid contamination, and that further manufacturer-level testing would be required to determine the precise cause.

[80] He pointed to the leaking UREA (SCR) injector which he thought would require replacement. He said this was the reason the warning light was illuminated and why the vehicle was using excessive amounts of AdBlue. He noted that the injector was replaced in April 2022 on the 10/04/2022 when it had a recorded mileage of 22,732 miles. The vehicle currently had a mileage of 44,915 miles which in his mind confirmed that the fault in April 2022 had been rectified. He noted with concern that Mr Smith did not appear to have identified the failed UREA injector in his inspection.

[81] He accepted that software updates were routinely issued by manufacturers for a wide range of reasons, including performance improvements, and did not necessarily indicate defects present from first manufacture. He said that he did not consider the sequence of AdBlue-related invoices to demonstrate the same fault recurring over time. The update occurred 7 months and 14,726 miles since the previous issue and was not the same fault. Software updates were designed to improve service and reliability and are a common occurrence with all vehicle manufacturers.

[82] Under cross-examination, Mr Reid accepted that he had ongoing consultancy work with manufacturers including Stellantis and acknowledged that this should have been disclosed in his report. He maintained, however, that his conclusions were independent and uninfluenced by those relationships. He confirmed his duty to the court and that his conclusions were based solely on the inspection and documentation provided.

[83] He further noted that the vehicle had covered 22,850 miles in the 18 months since purchase. He had reached the view that, in relation to the third visit, the vehicle required a

new turbo charger to be replaced. This was 9 months after purchase, with the vehicle having covered some 17,858 miles since purchase and he noted that Mr Smith had suggested that the turbo charger has failed due to a blocked DPF (Diesel Particulate Filter) that required a regeneration. I will return to this issue below in my discussion of the evidence of the experts.

[84] Mr Reid also pointed to concerns arising from the most recent service of the vehicle on 11 February 2023. He said a number of points had been clearly missed in that (noting that it only took place 600 miles ago, prior to his examination) in that: (a) all four tyre valve dust caps missing. (b) a rear shock absorber was leaking. (c) the engine coolant weak and required replacement. (d) the UREA injector was leaking. (e) the engine oil was overfilled. (f) there were management fault codes as reported by Mr Muir Smith. (g) the brake fluid had not been replaced (this was required every 2 years).

[85] Mr Reid was of the view that, other than general wear and tear items consistent with the mileage covered since purchase, the vehicle had a failed UREA injector, which required replacement. The UREA injector was replaced some 22,183 miles ago, under warranty, but unfortunately this had failed and required replacement again. He expressed concern that the vehicle had not been serviced and maintained to the manufacturer's specifications and that this could be related to the UREA injector having failed.

[86] He noted from the mileage that the vehicle was still being used and had been driven a further 173 miles, with the engine management light illuminated.

[87] He concluded that the vehicle would have been of satisfactory quality and fit for purpose at the point of sale in terms of Section 9 of the Consumer Rights Act 2015 and of suitable quality and fit for purpose, at the point of purchase, in terms of Section 10 of the Consumer Rights Act 2015.

Disputed issues

Whether the pursuer was a consumer for the purposes of section 2(3) of the Consumer Rights Act 2015?

[88] Section 2(3) of the 2015 Act reads as follows: “‘Consumer’ means an individual acting for purposes that are **wholly or mainly** outside that individual’s trade, business, craft or profession” Parties accepted that the issue was whether the contract between the parties was a contract for a trader to supply goods to a consumer; there being no dispute that there was a contract between the pursuer and defender for a trader (the defender) to supply goods. The party minuter submitted that the burden was on the defender (and, by extension, the party minuter) to prove that the pursuer was not acting for purposes wholly or mainly outside his trade, business, craft or profession: 2015 Act, section 2(3) and (4).

[89] There was no dispute on the applicable law. In order to determine if the pursuer was a consumer, a situational perspective must be adopted in relation to the specific legal transaction. *Costea v SC Volksbank Romania SA* 9191 [2016] 1 WLR ,

[90] The pursuer submitted that the court should find Mr and Mrs Lyons to be credible and reliable witnesses and find that the pursuer was mainly entering the contract for personal use and that his occupation should not be a factor in determining whether he was a consumer or not. Both had stated in evidence that the vehicle was purchased for personal use though it was also to be used under the local authority contract to take one girl to school and for use as a taxi if the pursuer was well enough.

[91] The party minuter submitted that whether the pursuer was a consumer fell to be determined objectively, taking account of the sphere of activity in which the transaction concerned took place. It depended on the pursuer’s status in relation to that particular

transaction and not on his status in relation other aspects of his daily life. A person may be a consumer for some or even most purposes, but not for the particular transaction in issue.

An objective approach was required.

[92] It was submitted that when entering the agreement, the pursuer was acting for purposes wholly or mainly connected with his trade as a taxi driver. For example: he was a taxi driver who drove private hire vehicles; he became ill but maintained his taxi licence; he had been awarded a contract for the transport of pupils with additional support needs by North Lanarkshire Council on 22 July 2021. For that purpose, the pursuer took out business insurance and the vehicle was fitted out as a taxi or private hire vehicle. It was supplied by a trade dealer, Ron White Trade Cars Limited. The pursuer was granted a licence to operate the vehicle as a taxi within the North Lanarkshire Licensing Area on 4 April 2022 with effect from 27 April 2022. The pursuer decided to buy the vehicle because it was of a purpose-built type approved by North Lanarkshire Council for use as a taxi and in order to comply with his taxi operator licence. When applying to the defender for finance for the vehicle, the pursuer identified himself as employed with a taxi operator, Swift Cars: 5/2/12 of process. The pursuer told the defender that he wanted the vehicle to do school runs and the odd shift as a taxi driver.

Decision

[93] I found the pursuer and his wife credible and reliable on this issue. There was nothing in the manner or substance of what they said which created a concern. The party minuter made a strong argument but my view on the evidence is that the car was bought mainly for personal use but on the basis it would also be used to fulfil the contract the pursuer had secured and other taxi work if he was well enough to continue to undertake

that self-employment. Both witnesses spoke to the use of the car being mostly personal.

Mrs Lyons mentioned long journeys for her and her husband's health and also spoke frankly to using the car for some of her district nursing. The pursuer had mentioned long-distance journeys to Southampton and Manchester Airport. Both also spoke to the local authority contract and the use of the vehicle as a taxi. There was clearly a dual purpose in mind.

[94] In terms of Costea (*supra*) where a vehicle is bought with a potential dual purpose in mind the issue is whether the trade or professional purpose is *predominant* in the overall context of the contract. I find that it was not and therefore that the pursuer was a consumer in terms of Section 2(3) of the 2015 Act. The factors pointed to by the party minuter are simply consistent with the vehicle having a dual purpose and do not convince me that the predominant purpose in purchasing it was business or professional.

Whether the vehicle was of satisfactory quality on the delivery date in terms of s.9 of the Consumer Rights Act 2015?

[95] In dealing with this disputed issue I require to consider the evidence of the pursuer and his wife and the expert evidence led in the case. Before I do so I should first briefly address the issue of reverse burden.

Reverse Burden of Proof discussion

[96] In terms of Section 19(14) of the Act where goods do not conform to contract at any time within the 6 months from the date of delivery to the consumer, they must be taken not to have conformed to it on that day (of delivery).

[97] The pursuer submitted that there is no obligation on the consumer to explain how the defect occurred or that it existed at the date of delivery simply that the lack of

conformity with the contract became physically apparent within 6 months of delivery of the goods, in this case the vehicle.

[98] In support of this he founded on *Faber v Autobedrijf Hazel BV* [2015] C.M.L.R 43 a case concerning a second-hand vehicle that caught fire 4 months after delivery while the purchaser was driving where the European Court of Justice stated (at paragraphs 70-73 (Page 1289))

“...The consumer is required to prove only that the lack of conformity exists. He is not required to prove the cause of that lack of conformity or establish that its origin is attributable to the seller. In the second place, the consumer must prove that the lack of conformity in question became apparent, that is to say, became physically apparent, within six months of the delivery of the goods. Once he has established these facts, the consumer is relieved of the obligation of establishing that the lack of conformity existed at the time of delivery of the goods. The occurrence of that lack of conformity within the short period of six months makes it possible to assume that, although it became apparent only after delivery of the goods, it already existed in “embryonic form” in those goods at the time of delivery. It is therefore for the professional seller to provide as the case may be, evidence that the lack of conformity did not exist at the time of delivery of the goods by establishing that the cause or origin of the lack of conformity is to be found in an act or omission which took place after that date.”

[99] There was, as I understood it, a difference between parties on this issue. The party minuter stated that it was for the pursuer to prove that the goods were not of satisfactory quality within the first 6 months from delivery, if that is done then they are presumed not to have been so at that date. It was submitted that the first step was for the pursuer to prove a specific lack of conformity. Reference was made to *McCoubrey v Park's of Hamilton (Townhead Garage) Ltd* 2026 SC CAMP 29 where the Sheriff observed that it was not enough for a consumer to point to an outcome without specifying the cause of that outcome. The pursuer has to aver and prove what the lack of conformity was, for example an engine seizure. In this case it was suggested that it was for the pursuer to prove what was wrong with the Adblue injector that caused it to fail within the 6 months before the reverse burden applied.

[100] It is clear that the pursuer cannot just point in general terms to there being an unidentified or undescribed fault and has to point to a specific issue with the vehicle which causes it not to conform to contract. I agree with Counsel for the pursuer that the pursuer has done enough in this case to satisfy what is required by Faber which I do not consider sets out a particularly high bar.

[101] The pursuer and his wife saw a warning light related to Adblue on a number of occasions shortly after the delivery date and the car was taken to Arnold Clark on 19 April for inspection and the Adblue injector replaced. Thereafter the Adblue light came on again around the start of October 2022 and was reset by the dealer. The dashboard warning light came on again at the end of October 2022 and on 7 December 2022 the pursuer and his wife took the car back to Arnold Clark and were told it was the turbo with the replacement turbo costing just under £1,300. Three weeks after the turbo had been replaced, the EML and AdBlue lights came back on again. This evidence together with the supporting documents is enough to highlight a persistent problem with the emission system and the Adblue system. The evidence of Mr Smith thereafter is sufficient in my view to establish the cause of the warnings and the problems experienced. In highlighting a persistent and recurring issue with a specific system in the car and the evidence of Mr Smith the pursuer has done enough in this case to satisfy the Faber test and cause the burden to pass to the defender/party minute to prove that the lack of conformity did not exist at the date of delivery.

[102] The pursuer and Mrs Lyons' evidence was that the faults became apparent within 6 months. The party minuter's *esto* position as I understood it was that the evidence of Mr Reid should be preferred and was sufficient to prove that the defect did not exist at the

date of delivery. The pursuer submitted correctly in my view that the party minuter either needed to:

- (1) Persuade the court to reject the pursuer and his wife's evidence as to when the faults physically manifested, or
- (2) Establish that the vehicle did conform to contract on the delivery date.

For the avoidance of doubt I take the view that in his pleadings and evidence led the pursuer has been specific enough about the nature of the fault to engage the reverse burden set out in Section 19(14).

[103] It was submitted as significant that Mr Reid conceded in evidence that he could not say what the root cause was and was not able to assist the court in determining whether there was a latent defect.

Submissions on the expert evidence and the issue of "satisfactory quality at the date of delivery"

Submissions for the pursuer

[104] The pursuer submitted that the burden had not been discharged by the party minuter's expert. The vehicle was 2 years, 9 months and 8 days old when the pursuer purchased it for a total purchase price (including interest) of £25,389.80. The cash price was £17,990. It was submitted that the vehicle did not meet the standard that a reasonable person would regard as satisfactory given the age and price of the vehicle. A reasonable consumer would expect such faults to occur years further down the line especially given the finance agreement was for 5 years. A reasonable consumer would expect the car to be sufficiently durable to last for all or at least a significant proportion of that 5-year term.

[105] The court was invited to accept the evidence of Mr Smith, that it was a recurring Adblue fault which was not to be expected in a vehicle not yet 3 years old and which had only done around 22,000 miles. My attention was also drawn to Mr Reid's similar evidence that a failed turbo charger would not be expected in a 3-year-old vehicle, which was almost the age of the car when purchased.

[106] The AdBlue fault in April 2021 before purchase was telling. It was not fit for purpose nor durable due to the repeated and continuing faults with the AdBlue emission reduction system. Accordingly, the vehicle did not meet the standard that a reasonable person would consider satisfactory in terms of Section 9(2) of the 2015 Act. It was submitted the court should find that there had been a material breach of the implied term that the quality of the vehicle was satisfactory and that on the balance of probabilities, the fault was present on the delivery date.

Party minuter submissions

[107] In April 2021, the vehicle's diesel exhaust fluid (commonly known as AdBlue) ran low and, once refilled, required to be reset. That is common and does not indicate that there was anything wrong with the vehicle or its software: that was before the vehicle was delivered to the pursuer in March 2022. In April 2022, the AdBlue injector became blocked and required to be replaced; around 12 months after the AdBlue was replaced. Twelve months may be the extent of its shelf life, particularly if it has been stored in poor conditions (such as direct sunlight). So far as the evidence goes, it was submitted that there was no contemporaneous assessment of the cause of the problem. That was no doubt because AdBlue injectors are relatively cheap components and it would not have been worth

assessing why it had failed. There is nothing to suggest that it was a defect present at the time of supply. In any event, the fault was rectified in April 2022:

[108] In October 2022, the vehicle required a software update. These types of update are common across all vehicle manufacturers. They are not evidence that there was anything wrong with the vehicle. In December 2022, the vehicle required a new turbocharger. The reasons for that are unexplained. The diesel particulate filter had to be regenerated because it would have become contaminated with engine oil when the turbocharger failed. It did not cause the failure of the turbocharger.

[109] The pursuer and his wife had also made extensive use of the vehicle which could be seen from the findings in fact the pursuer sought to prove and the mileage travelled. It had also passed its MOT. The pursuer had simply not proved that any of the faults that he complains of were the repeated incidence of the same issue or, indeed, defects arising from the quality of the vehicle at the time that it was delivered to him. The pursuer had not proved that the vehicle was not of satisfactory quality at that time: *McCoubrey v Park's of Hamilton (Townhead Garage) Ltd (supra)*.

Decision

[110] Both experts were doing their best to assist the court in my view and to that extent were credible witnesses.

[111] As to reliability I prefer the evidence of Mr Smith on balance and am satisfied upon it on a balance of probabilities that the vehicle had a latent defect which was present at the delivery date and which related to the emissions system and the Adblue system more specifically. This means, stating the obvious, that I was not satisfied with Mr Reid's

evidence and that it did not discharge the reverse burden which is upon the defenders and party minuters in this case.

[112] Mr Smith's evidence was detailed, specific and had a logical coherence. He was firm and on his technical conclusions did not waver under robust cross examination. His evidence was consistent with the evidence of Mr Lyons and his wife in terms of their sighting of relevant warning lights, the early Adblue entry on the pre-purchase invoice and the repeated faults which I am satisfied were all emissions system and Adblue related as described.

[113] For the avoidance of doubt, although at one point in cross examination Mr Smith conceded that the issue described in the October invoice was not the same fault as the one which occurred in April 2022, I accept the pursuer's submission that the answer was obtained via a leading question which focused on the description rather than the full context and that little weight should be given to it. His evidence was otherwise consistent with his report which I also accept on a balance of probabilities.

[114] On whether he missed the leaking UREA injector his position was that he had identified it in his report as a possible cause. He accepted he had not had sight of any leakage but overall said it would have required a manufacturer's check to have been definitive on the issue raised by Mr Reid and he was not swayed from his overall conclusions as conveyed to the court. This exchange did not cause me to doubt those conclusions. It was clear Mr Smith had conducted a detailed examination of the vehicle and that his conclusions were based on what he observed.

[115] I do not doubt Mr Reid's credentials or his credibility indeed he was very frank and made a number of correct concessions which have led me to place lesser weight on his conclusion and to prefer that of Mr Smith.

[116] For example, Mr Reid accepted in cross-examination that the P20EE code identified by Arnold Clark in October 2022 could have been present in earlier visits to the garage but was not specified because a technician failed to include it on the relevant invoice.

[117] Mr Reid's statement that less than 1% of turbochargers fail because of manufacturing defects was unconvincing and had no identified source that could be tested. He said he acquired this statistical knowledge from experience and that it was possible that a manufacturing defect could cause a turbo charger failure. I was not convinced by his failure to specify a source for such a significant statistic.

[118] Mr Reid also conceded in cross that it was possible that the failure of the injector was due to the scenario identified by Mr Smith namely that the Adblue was not injecting properly and that soot built up which was blocking the exhaust. He further conceded that the Adblue theme was common in the case and ran through it from 2021. Mr Reid accepted that his came down to two conclusions or themes: (1) a urea injector had failed and (2) he had observed the vehicle was not being serviced and maintained which could have been related to urea injector having failed. Although he acknowledged that issues may have arisen after service or not picked up at the service.

[119] His concessions seemed to me to be correctly made. Sometimes such concessions enhance a witness's credibility and reliability. Here they enhanced his credibility but undermined his reliability and the weight to be given to his conclusions given the facts of the case overall which point to an emissions system/Adblue issue and my acceptance of the evidence of Mr Smith.

[120] For completeness I do not think that anything can be taken from the purser and his wife using the vehicle as they did. They had bought a vehicle and were entitled to use it.

This is not inconsistent with their claims that it had repeated problems which I have found to be of the same kind.

Whether, in terms of section 9 and section 19 of the Consumer Rights Act 2015, the defender materially breached its contract with the pursuer by supplying a vehicle that was not of satisfactory quality so that the contract has been rescinded and no further payments are due under the purported contract?

Whether the pursuer is entitled to exercise his final right of rejection in terms of section 24 of the Consumer Rights Act 2015?

[121] I will take these two issues together. They flow from what I have already decided. I accept the pursuer's submission that a breach of the implied term of satisfactory quality entitles the pursuer to a right of enforcement in terms of Section 19 of the Act. This includes the legal remedy of rejecting the vehicle if after one repair or one replacement it does not conform to contract or the pursuer has required the defender to repair or replace but the defender is in breach of the requirement to do so within a reasonable time and without significant inconvenience to the pursuer. In all the circumstances the defender/party minuter materially breached the contract with the pursuer. The contract is now rescinded and no further payments are due.

[122] On the issue of rejection I heard from Mr Ferguson and considered his affidavit. Reject My Car had acted as the pursuer's agent and had requested via email that the defender repair the vehicle in terms of Section 23 of the 2015 Act (by letter dated 20 January 2023) and then via email exercised the right of rejection in terms of Section 24 of the 2015 Act (by letter dated 2 February 2023). The pursuer knew that letters were being sent by Reject My Car to the defender on his behalf. No issue was taken with the competency of this

procedure and the pursuer was entitled to exercise his final right of rejection in terms of Section 24 of the Consumer Rights Act 2015.

[123] An issue arose during the evidence of Mr Ferguson concerning the fact that the responses to his company's rejection letters by the defender had not been lodged. I prefer the pursuer's position on the matter and ultimately the party minuter did not press any significant point based on this aspect of the case.

[124] I agree that common law presumption of *omnia praesumuntur rite et solemniter esse acta* is relevant in that acts are presumed to have been properly performed, unless proven otherwise. It is also clear that the key documents for the purposes of the 2015 Act are the letters that were sent not the replies from the defender and there was no dispute that valid letters for the purposes of the Act were sent timeously.

Whether the pursuer is entitled to declarator as first craved?

[125] I can deal with this briefly. The party minuter accepted that if the pursuer is found to have been entitled to reject the vehicle in terms of Section 24 that he would therefore be entitled to declarator in terms of the pursuer's crave 1 parts (i) to (iv) – I was advised that part (v) was not insisted in. I agree and declarator will be granted in terms of parts (i) to (iv).

Whether, in terms of section 20 of the Consumer Rights Act 2015, the pursuer is entitled to a refund on moneys paid by him to the defender under the CSA in terms of crave 2?

Is any such refund subject to a deduction for the pursuer's use of the vehicle since the delivery date in terms of section 24(8) of the Consumer Rights Act 2015?

[126] The pursuer submits that he should be refunded all payments made to the defender prior to rejection of the vehicle; the sum of £4,648.30 as second craved all in terms of

Sections 20(7)(a), section 20(9) and section 20(10) of the Act. His primary position is that no deduction for use should be applied given that neither the defender nor party minuter have a plea in law seeking a deduction in terms of Section 24(8) of the Act.

[127] He submitted that if a deduction was to be applied I should follow the approach of Sheriff Taylor in *El-Kihel v Santander Consumer Finance*, [2026] SC GLA 16, at paragraphs 150 and 151.

[128] I have decided that the lack of a plea in law is not a bar to a deduction being considered and applied as appropriate. The possibility of a deduction being applied is a point of law and a matter at large in the case. The pursuer's *esto* position is well founded. The party minuter's alternative approach based on the actual mileage driven in the vehicle is too blunt an instrument to calculate a deduction in my view. It would have resulted in no refund being appropriate. It does not give any weight to other relevant matters such as the safety or perceived safety of the vehicle which was being used while it was subject to repeated issues arising and with warning lights appearing on a regular basis. There is an inherent uncertainty and anxiety which happens when one is driving a car which has the engine light on or warning lights appearing regularly. This ought to be factored in and Sheriff Taylor's deduction of 50% in the daily rate extrapolated from the agreement is appropriate in my view.

[129] In practice this means one must extrapolate the daily rate from the hire purchase agreement and then make a reduction of 50%. The pursuer's suggested calculation was not the subject of dispute should the court approve the *El-Kihel* approach. This would result in 316 days (the delivery date to date of rejection) multiplied by the extrapolated daily rate (the total cost of the vehicle being £25,389.80 divided by the 60 months (1,800 days) gives a daily rate of £14.10 reduced by 50% arriving at a daily rate of £7.05). The reduced daily rate

multiplied by 316 days amounts to a total loss of use deduction of £2,227.80. The pursuer had made payments of £4,648.30 and sought refund of this amount. This sum less the deduction for use which I view as appropriate amounts to £2420.50. the pursuer is entitled to this payment and I will grant decree accordingly.

Whether, as a result of the defender's material breach of contract, the pursuer is entitled to common law damages for inconvenience for the loss of use and enjoyment of the vehicle and costs incurred relating to insurance, road tax, replacement turbocharger, and wheelchair certificate?

[130] An award of damages is appropriate in the circumstances. However this will be limited to £3000 and not the £5000 claimed. The pursuer required to pay for the replacement turbocharger at a sum of £1232 and is entitled to damages arising from the loss of use and enjoyment of the vehicle and costs related to need to insure and tax the vehicle. In restricting the sum I find favour with the defender's submissions that there was little or no evidence relating to the need to find alternative transport. Likewise I give weight to the pursuer's submission that claims for damages for loss of use or amenity in consumer claims are often stated in general terms and do not require detailed specification *Parks of Hamilton (Townhead Garage) Ltd v Deas* 2022 S.C.L.R. 292 at page 301, paragraph 38.

[131] In all the circumstances an award of £3000 is appropriate.

Outstanding objections

[132] I now deal briefly with the outstanding objections in the case where evidence was heard under reservation of competency and relevancy insofar as not already dealt with above.

Pursuer's objections

[133] The pursuer's objections (numbers 2 and 3 in written submissions) are both sustained. There was no record for the party minuter's line and on reflection I note that both parties agree that nothing really turned on either chapter of evidence relating to "No win, no fee" as put to Mr Lyons and the matters put to Mr Ferguson.

Defender/Party Minuter's objections

[134] The only objection insisted in was that relating to the admissibility of the evidence of Mr Smith and I have already dealt with this issue (*supra*).

Conclusion***Expenses***

[135] All questions of expenses are reserved. If expenses cannot be agreed parties should enrol a motion to fix a hearing on same and lodge short written submissions with the sheriff clerk 48 hours before that hearing.