



SHERIFF APPEAL COURT

**[2026] SAC (Civ) 51
EDI-A272-23**

Sheriff Principal N A Ross
Appeal Sheriff W A Sheehan
Appeal Sheriff J Kerr

OPINION OF THE COURT

delivered by Sheriff Principal N A Ross

in the appeal in the cause

RICHARD JAMES MADDEN and LEE-ANN GRAHAM MADDEN

Pursuers and Respondents

against

McEWAN FRASER LEGAL

First Defender and Appellant

and

SARAH J JORDAN

Second Defender

and

NIGEL BAILEY

Third Defender

**Pursuers and Respondents: Tosh; Jones Whyte LLP
First Defender and Appellant: Connor; McEwan Fraser Legal**

16 July 2026

[1] The respondents claim reparation from the appellant, a firm of conveyancing solicitors, and two of its partners, for failure to obtain the property title they instructed. The appellant acted for the respondents in the acquisition of farm premises at Northfield Farm, Bathgate. The respondents' position was that they instructed the appellant to obtain sole ownership of an access road which served the property. They did not obtain sole ownership, but ownership in common with the proprietors of other subjects served by the access road. The appellant's position was that the respondents were aware that they would not obtain sole ownership and had instructed them to continue with the purchase in that knowledge. Following proof, the sheriff found liability to be established and granted decree for payment of damages and interest. The appellant appealed against both the finding of liability and the quantum of the award. The action settled at an earlier stage as between the respondents and the second and third defenders.

[2] The sheriff found that in November 2017 the respondents instructed the appellant to purchase the farm subjects. The respondents had encountered difficulties relating to access to a previous property. Their instruction included that they wanted sole ownership of the private access road leading from the nearby public road. The access road is not a through road and serves the subjects. There are nearby properties which have access to the road. The contract was concluded by missives dated 22 February and 6 and 28 March 2018. The appellant's representative, a paralegal, told the respondents that she had examined title, which revealed that the disposition to the sellers in 1989 bore to convey sole ownership to the road. The sellers delivered a disposition for signature which, in relation to the access road, bore to convey sole title. The purchase proceeded and the title was registered, a first registration in the Land Register.

[3] During the purchase transaction, there was a series of telephone conversations and emails between the respondents and the appellant's paralegal. Recordings of these conversations were kept by the appellant and were produced. The sheriff's findings as to discussions about the access road can be briefly summarised as follows:- (i) on 7 December 2017 at 3.07pm the appellant's paralegal advised that the respondents would not obtain sole ownership to the access road, but only a one-half share. The respondents advised that this would affect the deal because it was essential they obtained sole ownership; (ii) later that day at 4.24 pm, the respondents confirmed they had checked the position with the sellers' agents who had said they would get sole ownership, and had emailed a copy letter to confirm; (iii) on 22 February 2018 the first respondent sought clarification. During the conversation he reiterated the importance of sole ownership and that he understood the sale title included that. He referred to this as "biggest thing"; (iv) on 26 March 2018 by email the paralegal advised the respondents that, having examined title, there had been an error in the earlier sale of another property by the sellers, and observed that those other subjects "have right of access and ownership of access road"; (v) on 27 March 2018 the first respondent stated that he thought that observation was incorrect, but the paralegal stated that she thought it was correct and in the title deeds. She sent title sheets for three registered titles for nearby properties to the first respondent; (vi) on 28 March 2018 the first respondent spoke to the paralegal and said the title sheets did not make sense to him. The paralegal told him to note that other subjects had a right of access over part or the whole of the access road. The first respondent told her that access by others was acceptable, but the biggest thing was ownership. He would worry about that once things were "sorted out".

[4] There was in existence a letter from the Keeper of the Registers, dated 8 August 2012, which drew attention to a nearby title with a competing claim in respect of ownership of the

access road. The seller's solicitor referred to that letter in a letter to the appellant dated 6 March 2018.

[5] The paralegal had on 19 March 2018 sent the draft disposition to the sellers, which draft purported to convey sole ownership of the access road, with reference to an erroneous registration of a right in common with the proprietors of other subjects. The paralegal also requested affidavits from the sellers that they had always exercised uninterrupted pedestrian and vehicle access over the access road. At settlement the sellers delivered a disposition which bore to convey sole ownership of the access road. The paralegal also corresponded with the Keeper. The sheriff found that none of those measures by the paralegal were aimed at resolving the ownership question, but rather at procuring registration without exclusion of indemnity.

[6] The purchase transaction settled on 3 April 2018, following concern that the sellers might withdraw from the bargain.

[7] On the basis of the various communications, the sheriff found that the first respondent completed the purchase on their understanding that they would acquire sole right of ownership in the access road. He awarded damages under various heads. The appellant challenged that finding and award.

Submissions for the appellant

[8] Counsel for the appellant advanced two grounds of appeal relating to liability and challenged various heads of award. In relation to liability, the sheriff had erred in finding the *Hunter v Hanley* 1955 SC 200 test to be satisfied. In particular, the sheriff had erred in not accepting the appellant's expert evidence which exonerated the appellant. He had erred in finding that the appellant had failed to adhere to normal practice. Further, he had failed to

regard the first respondent as an informed and experienced client, who was aware of the position. On the particular events, the sheriff had wrongly regarded the paralegal as having confirmed that the Land Register would not be rectified until after the purchase, and that he would acquire a sole right of ownership. She had given no such indications.

[9] On quantum, the sheriff had wrongly awarded the expenses incurred in a sheriff court litigation and had no basis for awarding the future costs of a Lands Tribunal application. The former had been conducted without due regard to mitigation of costs and had not been properly assessed. The latter, in any event, should have been restricted due to future uncertainties. The sheriff had also wrongly awarded interest on the costs incurred. The Lands Tribunal application, as a second court action, was not within the reasonable contemplation of parties. The sheriff had also awarded £3,000 for inconvenience for unsound reasons.

[10] Matters had been complicated by the loss of the recording of the first day's evidence, comprising the first respondent's evidence. Nonetheless the court could consider the remaining evidence.

[11] The appellant did not insist, for evidential reasons, on an argument on causation to the effect that the respondents would have withdrawn from the transaction had they known the true position.

Submissions for the respondents

[12] For the respondents it was submitted that there had been no dispute between parties as to the standard of care and what that required in the present situation. The obligation was, in short, to communicate in a clear and effective manner, to address any

misunderstandings, and to draw the client's attention to any problems. The sole question was one of fact – whether the paralegal had departed from those requirements.

[13] There was evidence to support the conclusion that the failure to obtain sole ownership of the access road would have led to withdrawal from the purchase.

[14] In relation to quantum, the award of damages reflected the cost of restoring the title to its proper position. The heads awarded were therefore recoverable. If mitigation was required, the onus was on the appellant to demonstrate what losses were irrecoverable as a result. This was a new point. In addition, the appellant had pled no such case and had made no such cross-examination.

[15] In relation to future legal expenses, it was within reasonable contemplation that the respondents would attempt to restore the title to its proper position, which required such an application. No remoteness of loss argument was averred. Interest on awards and an award for inconvenience followed principle, albeit it was conceded that interest had been overcalculated by three days (£15.62). Deduction of damages correctly mirrored the actual amount received.

Decision

[16] There was an unfortunate loss of one of the three days of recorded evidence due to no fault of the parties. The court indicated that it would address the arguments in light of what was available having regard to need to do justice between the parties. The appellant accepted that it did not seek to overturn findings of fact. In the event the loss of the recording did not materially affect consideration of the appeal.

[17] It must be observed at the outset that the arguments presented on appeal raised a much wider range of factual disputes than was submitted to the sheriff. This court was

asked to make decisions on matters of fact which had not been decided by the sheriff, and which in some respects had not been the subject of averment. The appellant's approach in expanding and refocusing the issues for resolution was neither acknowledged nor justified. This appeal represented a substantially new approach, presumably in the hope that merit can be found in new arguments.

[18] Although the appellant proposed no amendment to pleadings, the respondents would be substantially prejudiced if we allowed the approach. The sheriff was presented with detailed written submissions following proof, in which each party chose the points on which the dispute was to be contested. He was entitled to regard those submissions as defining the dispute. He was not required to identify and resolve factual disputes which the parties did not present to him for decision. He might, depending on circumstances, have faced criticism for doing so. Similarly, the powers of an appeal court do not extend to identifying error in decisions which were, quite properly, never made. While it is not incompetent to raise new points of law on appeal (Macphail: *Sheriff Court Practice*, 4th edition para 18.14) it can raise substantial difficulties if the appeal founds on facts not led in evidence or considered at first instance.

[19] Against that background, the first ground of appeal related to the sheriff's approach to the expert reports. The appellant submitted that the sheriff failed to carry out the correct analysis of the competing opinions. He had failed to evaluate the competing evidence in accordance with the three-stage test in *Hunter v Hanley* (above). Had he scrutinised the opinions of the appellant's two expert witnesses he would have found them to be reasonable and logical and would have required to accept them as correct (*Honisz v Lothian Health Board* 2008 SC 235). He had made no finding that the third stage of *Hunter v Hanley* had been met but had only preferred one witness over the others. He ought to have accepted the

appellant's experts' evidence that there had been no breach of the standard of care. In assessing breach, he also had to take into account the first respondent's knowledge and experience. He had misconstrued evidence.

[20] The appellant's submission was quite different to the submission made following proof. The submission at proof was that there was no dispute amongst the experts as to the usual and normal practice of ordinarily competent solicitors exercising ordinary skill and care. The agreed requirement of ordinarily competent solicitors in these factual circumstances (recorded by the sheriff at finding in fact 52) was:

"a. to communicate with their clients in a manner that was clear and effective, in plain understandable language and which was tailored to meet the needs and interests of the particular client in order that the client could be put in a position to understand what was being communicated and take informed decisions.

b. in the event that the client stated or demonstrated that they had misunderstood something, to take steps to address that misunderstanding; and

c. in the context of a conveyancing transaction, if a potentially serious problem for a client's stated objective was identified, to draw the problem to the client's attention in the manner outlined in sub-paras (a) and (b) above in order that the client could understand the problem and take an informed decision about what to do about it."

[21] These are questions of fact. The sheriff did not require expert evidence to decide whether communication had been clear, or sufficiently tailored and comprehensive, or whether the client had misunderstood, or whether any problem had been drawn to the client's attention. These are questions of everyday experience, assessed from the point of view of the client, not just of the lawyer. The sheriff had the benefit of listening to phone calls between the first respondent and the appellant's paralegal as well as seeing written communications from the latter to the former. As fact finder he was not only entitled to but required to reach a view as to whether these communications had reached the required standard.

[22] In any event the two expert reports for the appellant were unsoundly based on assumptions which did not reflect the findings of the sheriff. The same was true of their oral evidence. The report by Mr Gerber acknowledged that the first respondent had said on 28 March 2018 that ownership of the road was “essential” but did not explain how it had been made clear that he would not get it. The report treated his acceptance of access by others as acceptance of joint ownership, whereas the first respondent’s evidence was that he was happy with access by others, but wanted sole ownership. The report by Mr Carnan opined that the appellant had informed the first respondent (on 27 March 2018 by telephone and email enclosing copy title sheet) that there were competing titles, and that he would not obtain sole ownership. It did not reflect the fact that the first respondent had subsequently said that the title deeds made no sense to him, that the biggest thing for him was the ownership of the road, and the paralegal had discussed only shared access (which was acceptable) and not shared ownership (which was not). The respondents at purchase still laboured under this misapprehension, which was never addressed.

[23] As such, the reports and evidence by Mr Gerber and Mr Carnan were exculpatory only on their own incomplete understanding of the facts. The appellant’s report, by Professor Brymer, was not exculpatory. It found that, where there was an expressly stated point of concern, advice should have been given about the competing title, the risks and the options. No such advice was given.

[24] Accordingly, there was no basis to disturb the sheriff’s findings as to professional negligence. He adjudicated on the dispute on the basis presented, namely an agreed position as to what the duty of reasonable care required in the circumstances. The dispute was on the facts. The sheriff was entitled to proceed on his own view of the facts.

[25] The appellant advanced two further elements in relation to negligence. The first was that the sheriff failed to take into account the level of the client's experience (*Minkin v Landsberg* [2016] 1 WLR 1489 at [38]). Counsel submitted that the experience, knowledge and character of the first respondent affected both the advice required and the instructions given. The relevant factors were said to be (i) that he intended to run a business from the subjects; (ii) he was not vulnerable; (iii) he was forceful in the recorded calls. Particular reference was made to the content of the calls, set out in some detail. This was relevant to what the client understood, and whether the instruction was informed. It was submitted that the first respondent knew of the existence of dubiety about title to the access road and had given instructions to proceed on an informed basis that there was dubiety.

[26] None of these factors were founded upon before the sheriff, or the subject of averment. More fundamentally, these factors relied upon were, at best, flimsy. Experience of running a business does not equate to expertise in conveyancing. There was no detail and no submission as to the quality or extent of the first respondent's experience of purchasing property. Descriptions of lack of vulnerability, or a forceful personality, have neither any basis in the sheriff's findings nor any evident relevance. It was not explained, and not explicable, why these features moved the client into a category where full explanation was not required. As described by Professor Brymer, the obligation was, where there was an expressly stated point of concern, to give advice about the competing title, the risks and the options. That task was not onerous and was not discharged by making assumptions about the background of the first respondent. The paralegal did not speak to placing any such reliance on background. There was no basis to find error where the evidence did not support or even suggest that these factors lessened the duty of care which otherwise arose.

[27] Even if that were wrong, the submission did not address the question of whether the appellant discharged its duty of care. Parties agreed what was required of the appellant. The obligations are summarised above. The requirement was not discharged by raising the possibility, or even the probability, of a title dispute. It was not discharged by assuming that the client was fully aware of all the problems. The obligation required, as parties agreed, clear and effective communication, the addressing of any apparent misunderstanding, and the application of those requirements to any potentially serious problem for the client's stated objective. The object was to achieve a point where the client could understand the problem and take an informed decision about what to do about it.

[28] There was clear evidence that this standard was not met. The importance to the client of sole ownership of the road was expressly recognised in the conversation of 22 February 2018. The client was well aware of apparent contradictions in the title, but continued to dispute these, accusing others of stealing land (6 March 2018). The paralegal advised that Northfield had rights of ownership in the land (26 March 2018). That was immediately queried by the client (27 March 2018), with the paralegal indicating that she would check. By 28 March 2018, the client was advising that sole ownership of the access road was the "biggest thing", but that he would worry about that once the transaction was complete. These excerpts show that the respondents continued to believe that they would get sole ownership of the road. They completed the purchase on that basis. The duty on the appellant's paralegal was to explain otherwise and to address any apparent misunderstanding. At the very least there was an apparent misunderstanding. The paralegal did not address it. It was not enough to show that the client knew of a potential problem, or that the question of ownership had never been resolved, or that they

understood basic concepts such as access, ownership and the importance of land registration.

[29] For this appeal to succeed the appellant would require to establish that the sheriff's understanding of the facts was plainly wrong, such that no sheriff could reasonably have arrived at this conclusion on the evidence. It cannot do so. The conclusion was not only justified, but compelling. Counsel's submission that the first respondent "was given no impression by the appellant that those matters had been resolved" falls substantially short of demonstrating that the agreed duty of care was discharged.

[30] The second further element in relation to negligence was a submission that the sheriff misunderstood the appellant's evidence. On the basis of the excerpts of evidence chosen by the appellant, discussed above, that was not a sustainable position. The appellant focused on the conversation of 22 February 2018. This was set out in the sheriff's judgment. It contained the following exchanges:-

"[first respondent]: ...Obviously I've seen the title deeds and my understanding of it is obviously they've bought the house and the access road which it states in the deeds. Somebody – there's a yard at the bottom of the road – and somebody has sold the yard to another company or to another person and they have given them a right of access along our road however, nobody has ever gave permission for this and certainly the chap we are buying the house off never gave permission for this. Now it doesn't state that they own the road, but it says that it's given them vehicular and pedestrian access and they've had it done through the Land Registry of Scotland.

[paralegal]: Mmm

[first respondent]: so we spoke to the [sellers'] solicitor who's been dealing with this for many years and is familiar with the road problem and it is just something I want to get clarified, you know, at the end of the day it's my road and I don't mind giving people access to it but I don't want them trying to claim that it's their road and whatever else...

[paralegal]: Mm, hmm...

[first respondent]: ...so I don't know how that would go. I know the problem they have is something to do with the Sasine Register where the road's on the Sasine Register and the Keeper wouldn't change the records over until the house is sold...

[paralegal]: Yes, that's right

[first respondent]: Is that right? Okay. So it's just, as long as I understand that the road is part of the property and it's my road and that's it. You know, I don't mind giving people access to it, we've already agreed who is meant to get access to it and I don't have a problem with that, ehm, I just don't want to see them trying to do a land grab or you know trying to steal the land...

[paralegal]: So you're happy if they have access up the road but you want sole ownership of the road, is that right?

[first respondent]: Yes, yes

[paralegal]: Right, okay.

[first respondent]: In the title deeds it does state the house and access road, ehm, so yeah that's one of the reasons why we are buying the property is that we have sole ownership of the road, ehm, and that's just the biggest thing that I can see being the problem. Everything else we are happy with, there is no other reason why we'd be unhappy with it.

[paralegal]: Mm, hmm..."

[31] That exchange underlined the central importance placed on sole ownership of the access road. On a plain reading, it showed that the first respondent believed throughout that he would obtain sole ownership, on the basis that no valid transfer of part-ownership had occurred to the neighbouring property. The "problem" he referred to was the unauthorised conveyance of a part-share in the road in the title deeds. His statement that "the problem they have is something to do with the Sasine Register where the road's on the Sasine Register and the Keeper wouldn't change the records over until the house is sold.." is instructive. That reference appears to show a belief that the Sasine Register recorded a wrongful transfer of part-ownership, and that the transfer would be corrected by the Keeper

who would “change the records over”, apparently meaning that the wrongful entry would be corrected. The accuracy of that belief was not the issue. It was that he believed it.

[32] The sheriff drew the conclusion that the paralegal’s “Yes, that’s right” extended to confirming that the wrongful transfer would be corrected following the purchase and subsequent registration in the Land Register. Unfortunately, the transcript of the first respondent’s evidence was not available. In the absence of a clear contradiction, we are unable to say that the sheriff incorrectly understood his position, or that it was unreasonable for him to reach that conclusion. The appellant’s reliance on the paralegal’s evidence is both unhelpful and misconceived – the question was not what the paralegal thought she was confirming, but what the client was reasonably to be inferred to have understood. This point did not therefore assist the appellant. The question was whether the sheriff could reasonably be said to have erred in the conclusions he drew. That test was not met, for the foregoing reasons. The findings in fact mirrored the evidence.

[33] The appeal in relation to liability must be refused.

Quantum

[34] There were four heads of damages which were challenged.

[35] The first related to allowing recovery of the costs of two separate court proceedings, before the sheriff court and the Lands Tribunal respectively. The problem arose due to the course of events. The respondents raised an action of declarator in Livingston Sheriff Court that they were sole owners of the access road. The action succeeded. The Keeper, however, refused to rectify the Land Register. The sheriff accepted that the respondents’ remedy thereafter was to apply to the Lands Tribunal for Scotland to compel the Keeper to act (Land Registration (Scotland) Act 1982 section 82). That conclusion was not disputed. The

appellant's position was, however, that the raising of two separate actions was not within the reasonable contemplation of parties, and separately that there had been an intervening event - the sheriff court action failed to result in a decision by the Keeper to rectify because not all parties had been called, the fault of the respondents.

[36] Counsel for the appellant submitted that loss must be both reasonable and foreseeable. Parties agreed at proof that the cost of cure was a competent basis of assessing loss. However, it was not within the reasonable contemplation of parties that two separate sets of litigation would be required to cure the respondents' title to the access road. Further, the second litigation was caused by the respondents' defective conduct of the first litigation.

[37] This was the first time such a submission had been presented in this action. The sheriff was not called upon to consider these points. He recorded that the submission made to him was (i) that the intended future application to the Lands Tribunal was unnecessary, given there was no material risk of dispossession and that access rights existed independently of ownership, and there was also a possibility of recovering expenses from the Keeper if successful, and separately that (ii) the respondents had contributed to the loss by not taking the advice tendered.

[38] The sheriff was not asked to consider the content of the sheriff court action, or the reasons for its failure. He was asked only to consider the route to rectification. He recognised that the Keeper was not able to determine disputed questions of fact and law, and that generally a judicial determination was required. He found that it was therefore not unreasonable to raise the sheriff court action, because it was a necessary step. In relation to the Keeper's subsequent refusal to rectify, the sheriff recorded that this was "due apparently to concerns over procedure followed" and that "The defender firm was not instructed in the Livingston action and the information before this court in relation to it is limited". There

was no averment, evidence or submission that there had been intervening fault by the respondents.

[39] In assessing whether this court should accommodate this new argument, it was instructive to consider the merits. The appellant, in founding on alleged fault in conduct of the litigation, submitted that “As a consequence of [the respondents’] failure to call all proper contradictors, the Keeper refused to adhere to the declarator.” That assertion was made in the absence of any evidence from the Keeper about why that decision was made. The appellant attempted to rely on a production, a letter from the Keeper, which was not examined in evidence and not the subject of submission. A production is not evidence until incorporated by reference during the proof. There was in any event no consideration as to whether the Keeper acted correctly, or foreseeably, in so deciding. A further obstacle for the appellant was that this line of defence was not foreshadowed in averment. The onus was on the appellant to aver and prove points in mitigation. Counsel required to revert to reliance on a general plea that “the sum sued for is excessive” which gave no fair notice of how it was to be supported in argument. There was a further difficulty – as the respondents submitted, the witnesses had not been challenged on quantum, so there was no basis on which to show mitigation had been proved.

[40] The submission was an attempt to find evidence which might have been presented, and to construct a legal submission which might have been justified by that evidence. There was no basis in evidence for this submission. We are unable to consider the justification of the Keeper’s actions, or whether the respondents could have anticipated that state of affairs, or whether the respondents were to any extent at fault for failure of anticipation, because none of those points was ever established. The appellant sought to find support by reference to academic comment in an article written about this action. We were unable to consider

these comments of third parties at the stage of an appeal. To do so would be a de facto admission of expert evidence not presented to the sheriff, not considered by other expert witnesses, being incapable of challenge, discussion or development at the stage of appeal and, as used by the appellant, tending to usurp the function of the appeal court. The authors could not have foreseen their article being used in this manner.

[41] For these reasons, we declined to admit this new argument that the sheriff erred in awarding the expenses of two separate legal procedures. In the absence of evidence of an intervening act, the respondents were entitled, as parties agreed, to recover the cost of cure. The application to the Lands Tribunal appeared to be a necessary and unavoidable step in that cure.

[42] The second challenge on quantum was that the sheriff erred in failing to discount the anticipated costs of the Lands Tribunal application. Parties agreed at proof that these were reasonably estimated at at least £54,203. Again, no such argument was made to the sheriff. A discount was said to be justified by the potential uncertainties as to outcome. The appellant again attempted to enrol assistance from academic commentary on this case, which we could not take into account for the reasons discussed above. Counsel founded on the uncertainty as to prospects and cost consequences, and as to whether the application would proceed at all. We did not accept that reasoning. The primary reason was that parties at proof agreed that the full sum was a reasonable estimate. On customary principles, agreement of evidence served to remove it from the dispute. In any event, the uncertainty of success would not justify a discount because the respondents, not the appellant, would bear the risk of failure. There was no evidence or consideration of how the Lands Tribunal application would proceed, or the risks involved, so there was no evidential basis for this submission. The sheriff did consider a submission that an application was

unnecessary, for the practical reasons set out in submission. The sheriff's approach was that the application was not so unusual to render the costs speculative to the extent of removing them from the losses flowing naturally and directly. We would observe that, whatever the practical alternatives or reasons not to seek rectification, the right of ownership was placed squarely at the centre of what the respondents demanded and what the parties contracted to achieve. Given the centrality of sole ownership, these costs of achieving that could not be regarded as beyond parties' reasonable contemplation, or as unnecessary or unreasonable. We did not find support for this ground of appeal from averment, evidence or the judgment. If there were any doubt on this, it was met by reference to an uncontradicted notice to admit by the respondents which set out that "a reasonable estimate of the costs that the pursuers are likely to incur is at least £54,203...". It would not be fair to consider this ground of appeal, and there was no evidence to sustain it in any event.

[43] The third ground of appeal on quantum was the award of interest of £5,357.73 on the costs incurred in the sheriff court action. The appellant submitted that the sheriff had failed to give adequate reasons for this decision and had not explained the level of award. He had not stated the start date, the rate of interest or the reason. The respondents submitted that calculations had been provided in submission – the submission sought payment of £23,750.60 in past legal costs, plus £4,800.73. The figure of interest was therefore £4,800.73 plus the additional interest for the period from this calculation to the date of decree, namely 5 September 2025. It might be argued to be excessive by three days, or £15.62.

[44] In the situation where the sheriff was reaching the conclusion of a long and complex judgment covering prescription, liability and quantum, the addition of interest on one of those elements might be considered properly as a minor and ancillary matter, not requiring further extensive drafting. All parties had the respondents' written submissions. In this

context, where the figure was explained in submissions and readily understandable, full description was not required. The reader is not left in any doubt, far less substantial doubt, as to the basis of this award. We do not agree with this ground.

[45] The fourth ground of appeal on quantum related to the award of £3,000 in solatium for inconvenience. The appellant identified that this award was solely on the basis that the second respondent, who is visually impaired, did not receive a clear roadway to which she could take access. Logically, this was flawed where all agreed several parties had access. In our view, however, the sheriff was satisfied in general terms not restricted to this point of uninterrupted access. He was recording a submission, not making a finding in fact. The relevant findings in fact are to be found at numbers 57-60. The contractual purpose was in general terms to achieve peace of mind. The breach of contract caused loss of that peace of mind in the form of failure to achieve ownership, as well as the stress of finding a remedy. We regard the sum of £3,000 as modest and appropriate for overall inconvenience, as the sheriff did, and refuse this ground also.

[46] At the outset counsel for the appellant indicated that there was no challenge to the sheriff's findings in fact. In her reply to the submissions made on behalf of the respondents this was departed from and she moved to amend the grounds of appeal to challenge finding in fact 60. We refuse that motion. The sheriff was entitled to find that the respondents' objective throughout was to achieve sole ownership of the access road. That evidence was clear. There is no basis upon which to interfere with the finding in fact. Further, clear prejudice would result to the respondents in allowing such a challenge at the last gasp of procedure in this case.

Disposal

[47] We refuse the appeal. Parties should please attempt to agree the position on expenses, failing which agreement within 21 days the clerk will arrange for a further hearing by written submissions.