

SHERIFFDOM OF GRAMPIAN, HIGHLAND AND ISLANDS AT ABERDEEN

[2026] SC ABE 107

ABE-B802-26

JUDGMENT OF SHERIFF LESLEY JOHNSTON

in the summary application by

(1) M TAUQEER MALIK; (2) RICK BROOKS; (3) JAMES CROCKETT;
(4) DEENA TISSERA; (5) SIMON WATSON; (6) ALEX NICOL; and (7) ROSS GRANT

Pursuers

against

ABERDEEN CITY COUNCIL

Defender

Pursuers: Young, advocate; Solicitors Direct

Defender: Scullion, advocate; Brodies LLP

ABERDEEN, 6 October 2026

Introduction

[1] In this summary application, the pursuers seek a “direction” from the court in terms of section 231 of the Local Government (Scotland) Act 1973.

[2] The pursuers are seven elected members of Aberdeen City Council. In summary, the pursuers wish to convene a “special meeting” of the kind provided for in terms of Schedule 7, paragraph 1(4) of the 1973 Act. The business they propose to discuss at that meeting is a vote of no confidence in the co-leader of the council, and to vote upon removing him as co-leader. Two special meetings have recently been requisitioned for that purpose and have taken place. The first meeting took place on 4 September 2026 at which a vote was held and passed, but on advice from council officers, was treated as non-binding in respect that it had not been convened in accordance with the council’s standing orders (standing

order 5.1). Shortly thereafter, a second special meeting was called by request, again for the purpose of ascertaining whether the elected members had confidence in the co-leader. It took place on 17 September 2026 but was adjourned by the Lord Provost before any substantive business took place on the basis that a future meeting would discuss the issue and to “avoid repetition”.

[3] The pursuers argue that, in terms of section 231, a “difficulty” has arisen in that standing order 5 purportedly disapplies the terms of the 1973 Act by providing for a different (extended) period of notice in the circumstances of a vote to remove an elected member from a leadership position as compared with the notice period required when calling a special meeting. They crave a direction in the following (summarised) terms:

- (i) about the manner in which a “special meeting” in terms of Schedule 7 paragraph 1(4) of the Act shall be convened and (ii) that it shall be competent at that meeting to discuss and hold a vote of no confidence in, any particular member of the council’s leadership and to vote upon the removal of that person from a leadership role; (iii) that it shall be unlawful to adjourn such a meeting without permitting a vote on the business of that special meeting;
- (iv) that a majority vote at such a special meeting to remove a member from a leadership position within the council shall be given effect, regardless of any longer periods of notice required by the council’s standing orders relating to convening a meeting to consider the removal of a member from a leadership position within the council.

[4] The defender’s position can be summarised as this. The defender’s principal argument is that section 231 is invoked by the pursuers incompetently. Alternatively, the defender argues that (i) no direction should be given by this court, because no “difficulty” arises that could give rise to the court making a direction under section 231 of the Act; (ii) even if a “difficulty” does arise, there is already provision in the 1973 Act to address that

difficulty and therefore, it is not necessary for this court to give the direction sought by the pursuers.

Procedural history

[5] The application craved a hearing within 10 days standing the pursuers position that the application is urgent (see further below). A warrant was therefore granted on 23 September 2026, with a hearing on the application fixed to take place on 30 September 2026. No period for lodging answers was granted in the circumstances.

[6] In advance of the hearing on 30 September 2026, parties helpfully confirmed that they intended it to be the substantive hearing on the application, notwithstanding no answers having been lodged. The defender lodged a lengthy written submission with accompanying authorities. The pursuers were content for the written submission to amount to the defender's answers in the circumstances.

The hearing on 30 September 2026

[7] At the hearing, the pursuers were represented by Mr Young, advocate. The defender was represented by Mr Scullion, advocate. I am grateful to them for their submissions and preparation of the case at short notice. I do not consider it necessary to repeat their submissions in full in this decision.

The urgency

[8] Mr Young explained the urgency of the application. A requisition request was made by the pursuers on 23 September 2026 for a further special meeting (the day after this summary application was lodged). The council has 14 days to call the meeting. At the

meeting, the pursuers intend to put forward a motion of no confidence in, and for the removal from leadership office of, the co-leader. For the defender, Mr Scullion submitted that the urgency in the application was not fully set out in the summary application.

However, he submitted that the true nature of the urgency may stem from the forthcoming Midstocket and Rosemount by-election on 8 October 2026 and a potential political advantage in the pursuers holding a vote to remove the co-leader in advance of the by-election. The defender does not recognise the urgency claimed by the pursuers. However, the defender did not defend the application on that basis, in particular due to a concern that to do so might compromise the defender's political neutrality.

[9] Accordingly, parties were content for me to hear the substantive arguments at the hearing and to make an urgent decision on the application. I continued the hearing on 30 September 2026 to today (6 October at 12.00pm) to give my decision to parties on the application. I return to the question of the urgency of the application later in this decision.

The legislative framework

The 1973 Act

[10] Section 231 of the 1973 Act is in the following terms:

“231 Application to sheriff in cases of difficulty

- (1) Where, from failure to observe any of the provisions of this Act or from any other cause, a difficulty arises in carrying into effect any of the provisions of this Act, or where in any case any question arises as to the procedure to be followed, or where any question arises in connection with the election of members of a local authority and no provision is made in this Act for meeting such difficulty or determining such question, it shall be lawful for the local authority or any seven local government electors for the area of the authority or the proper officer of the authority, or in the case of a question relating to an election of members of a local authority for the returning officer at the election, to make application to the sheriff setting forth the

circumstances and after such intimation and inquiry as to the sheriff seems proper, the sheriff may give such directions as in his judgment will enable the provisions of this Act to be complied with as nearly as possible or determine the question as the case may be, and may make such order as seems proper to him with reference to the expenses in connection with the application and the persons by whom such expenses are payable.

- (2) Subject to any order made by the sheriff, all expenses incurred in connection with any application under the preceding subsection shall be defrayed as part of the general expenses of the authority.”

[11] The way in which a special meeting may be convened is provided for by

Schedule 7, paragraph 1(4) to the Act as follows:

- “(4) A special meeting may be called at any time by the convener of the council or on the requisition of at least one-fourth of the whole number of members of the council, which meeting shall be held within 14 days of receipt of the requisition by the proper officer of the council.”

[12] Provision is also made for the notice to be given for a special meeting in terms of

Schedule 7, paragraph 2(1):

- “(1) Three clear days at least before a meeting of a council –

- (a) notice of the time and place of the intended meeting shall be published at the council’s offices and, where the meeting is called by members of the council, the notice shall be signed by those members and shall specify the business proposed to be transacted thereat.

[...]”

[13] The pursuers’ position is that on two occasions now, they have requisitioned a special meeting in accordance with the provisions set out in Schedule 7 to have the co-leader removed, but have been frustrated by the council in doing so owing to the terms of the council’s standing order 5.1.

The standing orders

[14] Subject to the provisions of the Act, a council may make standing orders for the regulation of their proceedings and business, and may vary or revoke any such orders (1973 Act, Schedule 7, paragraph 8). The council's standing orders were produced to the court by the defender, to which no exception was taken by the pursuers. The standing orders were approved by council on 16 April 2025 with amendments approved by council on 2 July 2025.

[15] Standing orders 2 and 3 regulate the election of certain appointments at the first meeting following an election, including appointment of co-leader. In terms of standing order 4, each appointment (including that of co-leader) endures until the next local government election unless and until, amongst other things, a member is removed by the council as set out in standing order 5.

Standing order 5

[16] Standing order 5 provides that any member elected or appointed to certain positions (including that of co-leader) can only be removed from office by "a resolution by Full Council following a Notice of Motion submitted **at least three weeks** (emphasis added) prior to the Council meeting in accordance with Standing Order 12" (standing order 5.1). Any such Notice of Motion forms the first item of business at the next Full Council meeting (standing order 5.2). Any such Notice of Motion can only be heard by Full Council and, "for the avoidance of doubt, not by the Urgent Business Committee" (standing order 5.3). The remainder of standing order 5 deals with the way in which such a motion is voted upon (standing orders 5.4 to 5.6).

[17] The defender's position is, put simply, that any motion for removal of the co-leader, requires to be made in terms of standing order 5 (and related standing order 12) and according to the notice provisions of standing order 5.1 (at least 3 weeks). The pursuers have not complied with that standing order. They have sought instead to convene a special meeting. It remains open to the pursuers to adhere to standing orders 5 and 12 and to submit a Notice of Motion on the removal of the co-leader.

[18] The council's standing orders also provide for the way in which a special meeting is called. Standing order 8 provides that a special meeting may be called at any time by, amongst others, at least a quarter of the members of the council, committee or sub-committee (standing order 8.2). The special meeting "will be held within 14 days of a written request (requisition) being received by the Chief Officer – Governance" (standing order 8.2.1). That accords with the provisions of Schedule 7, paragraph 1 of the Act. In terms of standing order 8.2.2, the written request should:

"specify the business proposed to be transaction at the meeting...if the written request does not specify the business of the meeting, then the Members must, at least three Clear Days before the meeting, provide... a notice signed by those Members which specifies the business proposed to be transacted."

(standing order 8.2.2). That accords with the provisions of Schedule 7, paragraph 2 of the Act. In essence, standing order 8 gives effect to the provisions of Schedule 7, paragraphs 1(4) and 2(1) regarding the convening of a special meeting.

The "difficulty"

[19] The pursuers submit that there is no restriction in the 1973 Act on what business might be discussed and voted upon at a special meeting. Any standing orders placing such a restriction are therefore unlawful, because such a restriction is not found in the Act. The

terms of the Act must be observed by the defender and it is “essential that bureaucracy is kept in its place” (*Bradbury and Others v Enfield London Borough Council* [1967] WLR 133, per Danckwerts LJ at p 16).

[20] In any event, standing orders are not permitted to restrict councillors’ powers under the Act. While Schedule 7, paragraph 8 permits for standing orders to be made by the council to regulate its proceedings and business, any such standing orders are “subject to the provisions of the Act”. The pursuers submit therefore, that there is, in terms of section 231, a difficulty in carrying into effect the provisions of the Act – in other words the ability of the councillors to convene a special meeting to discuss and hold a vote of no confidence in, and removal from office of, the co-leader. In the pursuers’ submission, even if it could be said that there is no difficulty because the councillors can have a meeting (as they did on 4 September 2026), the actions of the defender so far have rendered such a meeting meaningless on account of deciding that the vote held at the special meeting on 4 September 2026 was non-binding owing to a failure to comply with standing order 5. Any special meeting held to discuss this particular business is therefore, in the pursuers’ submission, nothing more than a “talking shop”.

Decision and reasons

[21] I have decided that there is no difficulty of the kind envisaged by section 231. On a straightforward reading of the section, there has been no failure to observe any of the provisions of the Act, and no other cause giving rise to a difficulty in carrying into effect any of the provisions of the Act. There is no question as to the procedure to be followed.

[22] The pursuers have now requisitioned a special meeting on three occasions. Two meetings have been held. Those meetings have been requisitioned and held in accordance

with standing order 8, that standing order giving effect to the way in which such a special meeting is convened in terms of Schedule 7. In other words, the way in which a special meeting can be called for is expressly provided for in standing order 8. It gives effect to Schedule 7. There is no conflict as between the provisions of the Act, and the council's standing order 8.

[23] The Act however, is silent upon the business that might be discussed or voted upon at a special meeting. However, that does not in my view give rise to a difficulty. The council is permitted to make standing orders to regulate their proceedings and business (Schedule 7, paragraph 8). It has done so. The standing orders have been approved by the elected members of the council. Those standing orders include standing order 5 (and related standing order 12) regulating the business (and procedure) of any vote to remove an elected member from a leadership position. That such a vote requires to be made in terms of standing order 5, does not conflict with the terms of the Act. The Act is silent upon the way in which individuals in a leadership position may be removed. There is therefore no conflict as between the Act and standing order 5.

[24] In any event, even if standing order 5 could be said to conflict with the Act, there is a mechanism by which the pursuers can address that conflict. They can vote to vary or revoke standing orders 5 and 12 in terms of Schedule 7, paragraph 8. In terms of section 231, the sheriff can only give directions if "no provision is made in [this] Act for meeting such difficulty or determining such question." Accordingly, this application to the court is unnecessary.

[25] In addition, and in any event, at the heart of this application is the pursuers' dissatisfaction not only with the terms of standing order 5 (which I have already explained, could be the subject of variation or revocation), but with the ultimate decision reached at the

meeting on 4 September 2026 that the vote on that date was not binding; and the decision on 17 September to adjourn the meeting. This court cannot reduce standing order 5; nor the decisions of 4 and 17 September 2026. To bring about that result, the appropriate remedy is a petition for judicial review of those decisions.

[26] I am confirmed in my decision by certain authorities referred to by the defender in its submissions relating to reported decisions from earlier acts of parliament in similar terms, and to unreported decisions relating to the 1973 Act.

[27] Parties agreed that there are no reported cases on the court's application of section 231. Nor are there, I was told, any reported decisions relating to the almost identical provision in section 347 of the Local Government (Scotland) Act 1947, an Act which, like the 1973 Act, also made structural reforms to local government in Scotland. Indeed, the only reported decisions referred to (by the defender in relation to the historical context of section 231) related to a similar provision in section 113 of the Towns Councils (Scotland) Act 1900.

[28] Section 113 of the 1900 Act made provision for applications to the court "in cases of difficulty". The procedure to be followed in such an application was set out in section 17 of the Burgh Police (Scotland) Act 1892 was follows:

"Court of Session may make orders to facilitate adoption or execution of Act

17. Wherever in any burgh in existence before the passing of this Act, and which thereafter continues to be a burgh, or in any burgh the boundaries of which have been determined in terms of this Act, it has, from a failure to observe any of the provisions of this Act, or any other Act, or from any other cause, become impossible to proceed with the execution of this Act, the following provisions have effect:

- (1) it shall be lawful for any seven householders within the burgh to present a petition to the Court of Session, or to the sheriff court, setting forth the failure which has taken place to observe the provisions of this Act, or any other act, or other cause which has made it impossible to proceed with the

execution of this act, and praying the court to pronounce an order in terms of this Act as hereinafter mentioned.

[...]

- (3) ...the court may pronounce any order which, in their judgment, will enable the proceedings for the execution of this Act within such burgh to be continued as nearly as possible as if the said failure to observe the provisions of this Act, or any other Act, or other cause, had not taken place...”

[29] While I accept, as the pursuers submitted, that the precise wording of the 1892 Act is different, in my view the striking similarities between it and the terms of section 231 are so apparent that some guidance can be gleaned from the way in which courts dealt with applications made in respect of that Act. The defender identified three reported cases dealing with applications made in terms of section 113, and the procedure set out in section 17. Two of those cases related to situations in which the Act did not provide for a particular set of circumstances and in which the court therefore made an order. In *M'Callum v Lochhead* (1896) 24 R 26 the First Division made an order where, in the lead up to an election for four police commissions, a fifth police commissioner resigned. The Act did not provide a procedure for such circumstances. The court noted that it was “only entitled to act if and in so far as it appears that... it is impossible to execute the Act.” (per Lord President (Robertson) at p29).

[30] In *Tait, Petitioner* (1905) 8 F 170, the town council consisted of nine councillors. Four councillors fell to be elected but no election took place. Of the remaining five councillors, three intimated their resignation and refused to attend any further meetings, resulting in the business of the burgh coming to a standstill because the council was not quorate. There was no provision in the Act to deal with this situation. The court therefore pronounced an order that there should be a special election of seven councillors.

[31] The third case referred to related to a complaint that an election had been irregular.

The petitioners sought a declarator in those terms and for the court to fill the vacancies. The sheriff-substitute dismissed the action as incompetent, which was upheld on appeal to the sheriff who observed that section 113 of the 1900 Act

“gives a wide power to the Court to do anything that may be deemed necessary to enable the Act to be carried out, or to meet any casus improvises, but again, it gives no power to correct any *ultra vires* or illegal act. These sections seem to me to give the sheriff power to correct sins of omission but not of commission. I therefore think that the crave is incompetent ... the pursuers have mistaken their remedy. They should have sought a reduction of the election and the minute...”

(*Smart v Magistrates of Buckhaven Magistrates* 1914 2 SLT 460 at p 462).

[32] The circumstances of the pursuers’ application align more closely with *Smart*, than of *M’Callum* and *Tait*, in that what the pursuers in this case really seek to do, in my view, is to reduce standing order 5 as being *ultra vires*, and/or reduce the decisions of the meetings on 4 and 17 September 2026. Borrowing the language used in *Smart*, those are sins of commission, not omission.

[33] Further confirming my view, was the reference made to unreported decisions of the court in applications under section 231 of the 1973 Act. Examples of applications akin to those made in *M’Callum* and *Tait* are reported in McFadden’s “*Local Government Law in Scotland: An introduction*” (2nd Edition, 2008), in which the author notes the procedure under section 231 being invoked by Kirkcaldy District Council in 1993 upon discovery that all councillors had failed to make the statutory declaration of acceptance of office within 2 months of their election in 1992. An application was made to the court to avoid a mass by-election. Section 231 was also noted by the author to have been used in 1998 by Dumfries and Galloway Council to determine whether the convener’s letter of resignation was valid.

Neither of those applications deal with a difficulty of the kind presented by this application. They can fairly be described as “acts of omission”.

[34] Further guidance is afforded by a reported decision in a petition for judicial review.

In *Fowler v Falkirk Council* 2005 SLT 404, the petitioner sought a review of a decision by Falkirk Council that the petitioner was no longer a member of the council. Although the petitioner was ultimately successful in his petition to have the decision reduced, of note is the fact that the petitioner had first raised the issue by application to the sheriff under section 231. That application was dismissed by the sheriff as incompetent (see the observations of Lord Macfadyen at paragraph 40).

[35] The defender took me to these authorities in the context of statutory interpretation and the historical context of section 231. While I have decided that the words of section 231 are clear and unambiguous and have reached my decision on an ordinary reading of the statutory provision, I consider that my decision, and in particular, my view that the real remedy the pursuers are seeking is a reduction of standing order 5 and/or reduction of the decisions of the council meetings on 4 and 17 September 2026 is consistent with the limited case law in this area to which I have referred. Such decisions require to be reduced by way of a petition for judicial review. They are not grounds for the sheriff to make directions under section 231.

[36] Accordingly, the pursuers’ first plea-in-law is repelled and the action dismissed.

Expenses

[37] Prior to being addressed on the question of expenses, I raised two matters with parties that might have a bearing on the question of expenses.

[38] Firstly, the pursuers elected to bring the business of removal of the co-leader for a vote by convening a special meeting, rather than complying with the terms of standing order 5 (and related standing order 12). Beyond the pursuers' central argument in this case that it was competent to raise such business by way of special meeting, there were no averments in the writ as to why the pursuers had decided to raise the business of removal of co-leader by way of a special meeting, rather than complying with standing order 5. While the defender suspected that the urgency might arise from a forthcoming council by-election, the pursuers made no submission in that regard.

[39] Secondly, having heard parties on the application on an urgent basis and having been asked at the close of the substantive hearing to issue a decision quickly and in any event before the special meeting which would follow from the requisition of 23 September 2026, I fixed today's hearing at 12.00pm to give my decision. I was therefore surprised to learn from parties yesterday that on Friday 2 October 2026 a decision had been taken to hold the special meeting today at 11.30am. It was not clear to me why the special meeting was arranged to start 30 minutes before the parties were aware I would be giving this decision.

[40] Mr Scullion moved for the expenses of the action to be awarded in favour of the defender.

[41] He first addressed the timing of the special meeting today. He (and his instructing agents) first became aware of the date and time of that meeting after close of business on Friday 2 October. He regretted the inconvenience that may have caused. The pursuers had not considered it necessary to move the court to bring today's hearing forward. Had any such motion been made by the pursuers, there would have been no opposition from the defender.

[42] Notwithstanding the unfortunate development regarding the date and time fixed for the meeting, he submitted that expenses should be awarded in favour of the defender. The court had sustained the objections of the defender. He acknowledged that section 231(2) expressly deals with expenses and therefore displaces the usual general rule that expenses follow success. He submitted that a significant amount of work required to be carried out by the defender at short notice and that the defender had been put to considerable expense in defending the action.

[43] Mr Young opposed the defender's motion. In relation to the urgency of the application, he confirmed that a motion to remove the co-leader was due to be discussed at a regular meeting of the council, today 7 October. However, that meeting was cancelled. When that meeting was cancelled, the pursuers made the requisition request on 23 September. Had the meeting on 7 October gone ahead, these proceedings would not have been raised. The next meeting at which a vote of no confidence could take place is not due to take place until December.

[44] Mr Young submitted that section 231(2) reflects the view that inherent matters of local government will be matters of public importance. Section 231(2) provides a presumption for expenses to be dealt with in the manner set out in that subsection. The proceedings were only brought because of a history of "unusual practices" in holding meetings to discuss a vote of no confidence in/removal of the co-leader. That was illustrated by the Lord Provost's decision to hold the special meeting today, shortly before the court's decision on this application. The pursuers raised these proceedings in good faith because they are trying to fulfil their duties as they saw them. They could not do that because a meeting of Full Council was cancelled today. The next meeting is not until December. In good faith, they thought there was a difficulty and sought to resolve an impasse by raising

this application. In the alternative, he invited me to find no expenses due to or by either party.

Decision on expenses

[45] There are no reported authorities on applications to the sheriff in terms of section 231, and therefore, no reported decisions on the way in which expenses should be dealt with. The defender in this case has been successful in its defence of the action for the reasons outlined above and has doubtless been put to expense in defending the action, and at short notice. However, I was prepared to accept the pursuers' position that the application had been made in good faith and in the belief that there was a difficulty (and urgency) requiring directions from the court. In light of the few authorities relating to applications under section 231, and standing the history of meetings leading up to the application having been lodged, in exercise of my discretion I find no expenses due to or by either party.