SHERIFFDOM OF LOTHIAN AND BORDERS AT EDINBURGH
IN THE ALL-SCOTLAND SHERIFF PERSONAL INJURY COURT

[2026] SC EDIN 66

PIC-PN2242-25

JUDGMENT OF SHERIFF KOMOROWSKI

in the cause

QAISAR GUNDAL

Pursuer

against

EUI LIMITED

Defender

Pursuer: Perriam, advocate; Jones Whyte
Defender: Bergin, advocate; HF Scotland LLP

EDINBURGH, 23 APRIL 2026

The sheriff, having resumed consideration of the cause:

i. disapplies Qualified One-Way Costs Shifting due to the legal representative's manifestly unreasonable conduct of the proceedings (Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018, section 8(4)(b)) and finds the pursuer's legal representatives Jones Whyte liable to the defender in the expenses of the cause including motion number 7/4 and the hearing of date 2 April 2026, as taxed on a party-and-party scale; allows an account thereof to be given in and remits same, when lodged, to the auditor of court to tax and report;

ii. sanctions the proceedings as suitable for the employment of junior counsel.

NOTE:

Introduction

[1] This case concerns the expenses arising from an action where I awarded damages of £1,640 with interest to the pursuer, the victim of a road traffic accident resulting from the defender's insured's negligent driving. Certain claims for outlays made initially on the pursuer's behalf and then abandoned were fictious but not, I found, the responsibility of the pursuer. The question is what consequences those fictious claims should have for expenses.

The rules on expenses

[2] A successful pursuer in an action for damages is normally entitled to their legal expenses.

[3] A pursuer, successful or otherwise, seeking damages for personal injuries is generally immune from an award of expenses against them provided that they have conducted the proceedings appropriately (Civil Litigation (Expenses and Group Proceedings) (Scotland) Act 2018 , section 8(1)(b)). This is known as Qualified One-Way Costs Shifting ("QOCS").

[4] Proceedings are conducted appropriately for the purposes of QOCS unless the pursuer or their legal representative have: in connection with the claim or proceedings, made a fraudulent representation or acted fraudulently, or have acted in a manifestly unreasonable manner; or, otherwise conducted the proceedings in a manner that constitutes an abuse of process (section 8(4)).

The claims handler and the breakdown recovery service

[5] Jones Whyte was provided with documentation regarding supposed recovery, storage and replacement costs by a claims handler. That documentation all supposedly emanated from the same business, which I shall dub the "breakdown recovery service". I am in some doubt as to whether the breakdown recovery service ever existed. Sheriff officers instructed by the defender to cite a witness from that service could find no trace of the business at its supposed address. Given that what I say in this Note implicates the claims handler and the breakdown recovery service (if it exists) in an attempt to commit fraud, I shall not name them, for reasons which I trust are obvious.

Chronology

[6] The following chronology is derived from the evidence and productions at the proof, along with a written timeline provided by Jones Whyte, and what was represented to me by counsel for the pursuer at the hearing on expenses.

[7] On 2 November 2023, the pursuer was involved in a road accident. He contacted a claims handler that day.

[8] On 3 November 2023, the claims handler contacted Jones Whyte with a "claims pack", which included the pursuer's signed mandate, and documentation concerning outlays.

[9] On 20 December 2023, the first contact between the pursuer personally and Jones Whyte occurred by means of a telephone call.

[10] On 5 February 2024, the defender made a pre-litigation offer to settle.

[11] On 19 March 2024, a paralegal of the pursuer's agents, Jones Whyte, sent an e-mail stating that: "We have been instructed to recover the hire, storage and recovery costs in the sum of £10,527.60."

[12] A further e-mail was sent on 7 May 2024, said: "we have not received your response in relation to hire, storage & recovery costs. We await confirmation the costs are agreed."

[13] On 23 May 2024, the defender withdrew their offer.

[14] On 22 April 2025, Jones Whyte sent the initial writ to court for warranting. It stated that the pursuer was issued with an invoice for a hire vehicle for 49 days hire, that he had incurred costs of £8,526 as a result, that he was impecunious at the time, that his vehicle was recovered and put in storage, and that this cost a further £2,001.60. The claims listed included for vehicle hire costs, and recovery and storage costs.

[15] With the writ were lodged a supposed vehicle hire agreement, a credit hire invoice, and a recovery and storage invoice, each from the same breakdown recovery service. These set out the pursuer's name and other details. The agreement purported to have the pursuer's signature in three places added on 2 and 3 November 2023.

[16] That same day, the pursuer spoke by telephone with Jones Whyte, disputing the recovery, storage and replacement costs. Jones Whyte called the claims handler to seek clarification. It is at this point that Jones Whyte, in my assessment, ought to have known (not merely suspected) that the claims for replacement, recovery and storage were fictitious.

[17] Given the pursuer's reaction to the recovery, storage and replacement claims, I presume that his personal instructions were never taken on this. I do not know on what basis Jones Whyte considered it proper to aver that the pursuer was impecunious. I was not told that the pursuer gave instructions on this. Counsel for the pursuer suggested that it

might well have been assumed from the hire being on credit. I do not consider that a sufficient basis to make such an averment.

[18] On 28 April 2025, the warranted writ was returned to Jones Whyte.

[19] On 8 May 2025, the writ was served on the defender. The action would have become barred by limitation on 2 November 2026, so there was no urgency in this being done.

[20] On 3 July 2025, the purser deleted by adjustment the claims for recovery, storage and replacement.

[21] On 4 July 2025, the defender lodged a specification of documents, in respect of which their motion for commission and diligence was unopposed, which included a call for financial documents concerning the funds available to the pursuer around the time of the supposed hire of the replacement vehicle.

[22] On 1 September 2025, the last day for adjustment, the defender adjusted their answers. The defender maintained a position of agnosticism as to whether any accident ever occurred. As for quantum, somewhat unusually the defender averred that the pursuer instructed the breakdown recovery service to intimate a claim for losses from the accident, and that a claim for recovery, storage and replacement was made by that service on behalf of the pursuer. The defender called upon the pursuer to aver if his vehicle was recovered, whether it was in storage, and whether he was provided with a replacement.

[23] The pursuers did not attempt to alter their pleadings to answer those calls whether by seeking to adjust late or to amend.

[24] On 13 January 2026, the defender lodged a further copy of some of the supposed documents from the breakdown recovery service.

[25] On 11 February 2026, in a notice to admit, the defender called upon the pursuer to admit that he had instructed the breakdown recovery service, that he signed both a recovery

and storage agreement and a hire agreement with them, that the service intimated claims on behalf of the pursuer for £8,526 and £2,001.60, that the pursuer sought to include such claims at the point of serving proceedings on the defender, and that the "claims are no longer insisted on". None of this would be admitted.

[26] The defender also called upon the pursuer to admit that he did not receive a vehicle from the breakdown recovery service, that his vehicle was not recovered by them, nor was it stored by them, and that he continued to use his own vehicle after the accident. This was later admitted.

[27] On 12 February 2026, at a pre-trial meeting, the defender called upon the pursuer to admit that his signature appeared on the breakdown recovery service documentation that had been lodged. He denied this. Jones Whyte provided that day a copy of his signature from their medical mandate for comparison. They explained at the meeting their client's position was that he had never had a credit hire vehicle, or had his vehicle recovered or replaced.

[28] On 20 February 2026, the pursuer responded to the notice to admit in the way I have noted above.

[29] In response to a request on 5 March 2026 by the defender, Jones Whyte provided the same day a copy of the pursuer's driving licence for comparison of the signatures.

[30] In their accompanying e-mail, a solicitor from Jones Whyte said that:

> "There seems to be a fixation on this hire that the Pursuer has clearly stated he did not have. There is no relevant defence on record. Can you please provide a clear explanation as to why you are proceeding with taking this case to Proof. Do you truly believe that the pursuer is not being truthful here or has done something untoward."

[31] I take from this last e-mail that those at Jones Whyte, even at this point, were sincerely in some doubt as to the defender's concerns. The absence of an explicit allegation

of fraud either in the pleadings or otherwise would have contributed to that lack of certainty. That being said, I think it manifest to any disinterested reader of the record that the circumstances were indicative of some kind of fraud having been attempted by or on behalf of the pursuer. I say that because this was my immediate reaction when reading it in preparation for the proof. Clearly Jones Whyte knew there might be some concern about fraud, otherwise there would be no need to check whether the defender truly believed the pursuer was being truthful or had done something untoward. Indeed, immediately upon their own client querying these matters on 22 April 2025, Jones Whyte should have realised the implication of their client's instructions was that the documents they had been provided with, had lodged, and had relied upon in averments they drafted, were false.

Parties' motions for expenses

[32] The pursuer sought his expenses following success. Expenses for the entire litigation were sought; alternatively, the court could award of expenses for the period from 3 July 2025 only, when the claims for recovery, storage and replacement were removed by adjustment.

[33] Counsel for the pursuer submitted that Jones Whyte acted reasonably on what they had been told by the claims handler and that there was no duty to check the contents of the initial writ directly with the pursuer. He said it would have been negligent not to include the apparent outlays when drafting the writ and that, had the action settled without inclusion of legitimate outlays, such outlays would have been irrecoverable.

[34] The defender opposed the pursuer's motion for expenses and instead sought its expenses on an agent-and-client, client paying basis.

[35] The defender alleged in the hearing on expenses that Jones Whyte has committed fraud, or had acted unreasonably, or had committed an abuse of process.

[36] If awarded expenses, the pursuer sought certification of a general medical practitioner who had examined the pursuer for this litigation. Each party sought sanction for counsel.

Disapplication of QOCS

[37] Assuming it is correct that Jones Whyte could proceed on what the claims handler told them without verification from the client, it does not explain on what basis Jones Whyte were entitled to aver impecuniosity. It has not been said that any documentation was provided which vouched that. More significantly, Jones Whyte had their own client's word before serving the writ that the recovery, storage and replacement costs were fictitious. Yet they proceeded to serve the writ anyway, and did not remove the fictious claims till 8 weeks later.

[38] The concern expressed by counsel for the pursuer about the negligent omission of claims betrays an unbalanced understanding of the solicitor's responsibilities. The effect of serving the writ in that form, rather, created the potential for the defender to offer settlement at a level calculated partly with reference to the fictitious claims included in it. It left it liable to be the victims of fraud.

[39] When those fictitious claims were removed, nothing was done to explain how they came to be included in the first place. The defender was not required to assume that they must have been advanced without the personal instruction or knowledge of the pursuer. It was legitimate to suspect that they would only have been included at the pursuer's instigation or his connivance. It should have been clear from the defender's adjustments of

1 September 2025, more so with everything that followed, that this was a concern for the defender. Jones Whyte understood this to have become a "fixation". It could hardly be otherwise. There was no room for an honest mistake about a car being recovered, or stored, or a replacement being provided. Instead of making clear that this had all been advanced by Jones Whyte based on what the claims handler provided, without any instruction from their client, and that the claims were deleted following their client's personal instruction, suspicion inevitably fell upon the pursuer.

[40] I am not satisfied that Jones Whyte have acted fraudulently. I think it more likely that the writ was served by unthinkingly following through a process that had already been set in train, with a failure to think through properly the implications of what the pursuer had said and what their responsibilities as officers of the court were, rather than as part of an intention to obtain a settlement or award based on fictitious claims. But it was manifestly unreasonable to serve the writ in that form. Jones Whyte acted in defiance of their client's instructions. They compounded that error by their delay in removing those claims and their failure to candidly explain how the fictious claims were ever included.

[41] I am therefore satisfied that the action was not conducted appropriately in that the legal representatives for the pursuer acted with manifest unreasonableness in connection with the proceedings.

Consequences for expenses

[42] That finding permits me to make an award against the pursuer, but does not require it.

[43] In my assessment, the conduct of Jones Whyte materially contributed to the litigation from the service of the initial writ onwards. The service of the writ in that form, in itself,

was manifestly unreasonable. They never did enough subsequently to dispel the suspicion arising from the fictious claims. This failure precluded any realistic prospect of settlement. Where even the existence of an accident was entirely reliant on the pursuer's word, anything that, to use Jones Whyte's phrase, would show he had "done something untoward" would put in question the veracity of his entire case. It was reasonable for the defender not to admit anything given the unexplained inclusion and then removal of the recovery, storage and replacement claims. Given there was a pre-litigation offer of settlement, which I am told was at a level higher than that for what I granted decree, there was at least a substantial prospect of settlement had Jones Whyte acted reasonably. It is too much to expect the defender to revisit settlement unless and until fears of there being something untoward had been adequately addressed. Insurance companies cannot be expected to settle claims that appear may have been dishonestly advanced. They cannot be expected to conduct litigation in a way that might incentivise fraud.

[44] Accordingly, it would be inappropriate to make an award of the expenses attributable to any part of the litigation in favour of the pursuer. Some award of expenses would be appropriate in favour of the defender.

[45] On the other hand, the pursuer did have a well-founded claim for compensation. I am not satisfied that Jones Whyte acted in a manifestly unreasonable way before service of the writ. They will have performed some legitimate and reasonable work, and likely incurred some outlays, in preparing the claim.

[46] I am not satisfied that the outlay of the general practitioner who gave evidence was reasonably incurred. The injury to the pursuer was straightforward and limited both in duration and impact. His recovery was complete long before the GP's assessment. There appeared to be no doubt about causation, if the pursuer's account of the accident was

accepted, for the modest injury claimed. Given their simple and limited nature, there was nothing about the pursuer's injuries that could not be adequately explained in his own oral testimony supported by the medical notes made at the time; those particular notes were readily intelligible without skilled assistance being required to interpret them. Given those circumstances, the GP's opinion evidence could not have been of material value to the court. The only evidential value of the GP's evidence, in this case, was in showing the pursuer's consistent position regarding his injuries. Had I made any award of expenses in favour of the pursuer, I would have refused certification.

[47] The defender's concerns about wrongdoing ought to have been obvious but were only ever stated by implication. The absence of an explicit allegation of fraud does not excuse the failure of Jones Whyte to properly explain and take responsibility for the inclusion of fictitious claims, but does make that aspect of their wrongdoing less pronounced.

[48] Balancing the degree of fault with the mitigating features I have set out, whilst the conduct of Jones Whyte is reprehensible, I consider that the proportionate response is an award of expenses on the conventional party-and-party scale only.