SHERIFFDOM OF TAYSIDE CENTRAL AND FIFE AT FALKIRK

[2025] SC FAL 25

FAL-A159-24

JUDGMENT OF SHERIFF S G COLLINS KC

in the cause

MOHAMMED IMTIAZ, MOHAMMED SAFDAR AND LIAQUAT ALI

Pursuers

against

ARIF SADDIQ, MASHOOD UL HAQ, MUHAMMAD JAWWAD, NADEEM RABBANI, NAEEM RASHID, SHRAZ ABDUL KHALIQ, TAHIR ZAHEER KHAN, TAIMUR SHAKIR, WASEEM ANWAR, AND MUHAMMED HAJA

Defenders

Pursuers: Sanders, Advocate; Sandemans
Defenders: McGeough; Harper McLeod

FALKIRK, 15 April 2025

The sheriff, having resumed consideration of the cause, dismisses the action; reserves all questions of expenses meantime.

Introduction

[1] In this action the pursuers seek declarator that meetings of the Falkirk Muslim Association (otherwise known as the Falkirk Islamic Centre, and hereinafter "the Association"), held on 17 September 2023 and 1 October 2023, were not held in accordance with the provisions of the constitution of the Association, and that accordingly any purported decisions made at these meetings are *ultra vires*, void and of no effect. The pursuers also seek interdict against the defenders from continuing to operate and manage the Association in accordance with the said purported decisions.

[2] The defenders tabled a plea of no jurisdiction, accompanied by a rule 22 Note, and also lodged a motion for summary decree. The pursuers tabled a plea to the relevancy of the defences, and also lodged a rule 22 Note. A hearing was fixed to determine these preliminary pleas and to consider the defender's motion. When the case called, however, and after discussion, parties' agents were content that the defenders' motion for summary dismissal could fall for want of insistence, and that the real issue to be resolved centred on the defenders' first plea in law. Accordingly I heard debate on this plea. The defenders' position was that it should be sustained, and the action dismissed. The pursuers' position was that it should be repelled and the action appointed to a proof before answer, all remaining pleas still standing.

Background

[3] The Association is a voluntary association, governed by a Constitution, and is a registered charity. Three different copies of the Constitution have been lodged, but there was no dispute that the relevant copy for present purposes was that lodged as the first production for the pursuers, revised and amended by the Association in 2002.

[4] In terms of clause 4 of the Constitution, membership of the Association is open to all Muslims over the age of 18 years who live in Falkirk District, Linlithgow and Kincardine, who have signed a membership form and paid a prescribed subscription. In terms of clauses 5 and 6, the General Council of the Association comprises all subscribed members. The General Council elects a President. The President selects six other members, one of whom is appointed as Secretary. Collectively these seven members comprise the Executive Committee. In terms of clause 5.5 the Secretary, with the approval of the Executive

Committee, can call an "emergency general meeting" of the membership, on 7 days' notice. What constitutes an "emergency" is not defined.

[5] In terms of clause 7, the General Council elects nine Trustees, being members of the General Council, who through a trust hold title to all real property and funds acquired by or held by the Association. Clause 7.9 provides that the Trustees "must participate in the interest" of the Association, and "attend at least four meetings per year", and that "neglecting these duties shall be reported to the General Council for expulsion from the trust board." Clause 7.7 provides that "it shall be in the power of the general election (sic.) to expel any trustee in the event of such a trustee's conduct when decision shall be made by majority."

[6] As at the start of September 2023 the pursuers were all Trustees of the Association. A meeting of the membership was called to take place on 17 September 2023. At this meeting a vote of no confidence was passed in the pursuers as Trustees. A further meeting of the membership took place on 1 October 2023. On this occasion a vote was passed to expel the pursuers as Trustees and to appoint the defenders as Trustees instead.

[7] The pursuers aver that the said meetings were not competently convened in terms of the Constitution, and that in any event they had no power to vote to expel the pursuers as Trustees. In particular, the pursuers aver that the notice calling the meetings ran in the name of the "Masjid committee" and the "representatives of the General Council", but that there are no such bodies in terms of the Constitution. Further, there was no "emergency" and so no basis for calling the meetings. Accordingly the meetings were not validly called. In any event there was no quorum, according to the available voting list. Nor was notice given that a motion was to be made to remove the pursuers as Trustees, which was a breach of natural justice. A Trustee could only be expelled in the two circumstances specified in

clause 7.9, neither of which was present. Accordingly the decisions to expel the pursuers as Trustees and appoint the defenders instead were invalid.

[8] The defenders aver that the meetings were validly called, and that the decisions to expel the pursuers and appoint the defenders were validly made. Masjid is another word for mosque: the reference to the "Masjid committee" in the notice of meeting was a reference to the Executive Committee. The meetings were quorate. They were emergency meetings in terms of clause 5.5. There was no lack of fair notice, as the agenda for the meeting of 17 September 2023 was posted on the notice board at the Association's premises. Grounds for expulsion of a Trustee under rule 7.7 were not confined to the two specific circumstances mentioned in clause 7.9 but could include the Trustees' conduct more generally. The vote of no confidence in the pursuers was valid, as was the vote to expel them and appoint the defenders in their place.

Submissions

[9] The defenders' agent submitted that the pursuers were seeking to regulate the administrative powers of the Association under its Constitution. But the power to do so lay exclusively with the supervisory jurisdiction of the Court of Session. The decisions challenged by the pursuers were made (i) by the Association, (ii) under powers delegated by the Constitution, and (iii) for the benefit of the members. The decisions were paramount examples of the "tripartite" relationship which invoked the supervisory jurisdiction: *West* v *Secretary of State for Scotland* 1992 SC 385. Exercise of the supervisory jurisdiction was not confined to persons or bodies exercising powers under public law. It also applied to the exercise of tripartite powers under the constitutions of unincorporated associations: *Crocket* v *Tantallon Golf Club* 2005 SLT 663; *Wiles* v *Bothwell Castle Golf Club* 2005 SLT 785.

Any challenge to the decisions complained of in the present case could only be brought by way of application for judicial review in the Court of Session. The sheriff court had no jurisdiction to entertain the action and it should be dismissed.

[10] In a brief reply counsel for the pursuers referred to section 38 of the Courts Reform (Scotland) Act 2014. He submitted, in substance, that this provision had given to the sheriff court powers which it had not had previously, and in particular the powers to grant declarator and reduction. This meant that the sheriff court did have jurisdiction to entertain the present action. This was not a public law action akin to *Brown* v *Hamilton District Council* 1983 SC (HL) 1, where it was clear that the Court of Session had exclusive jurisdiction. There were reported examples of the sheriff court regulating the affairs of voluntary associations carried out under their constitutions: *Bell* v *The Trustees* 1975 SLT (Sh Ct) 60; *Abbot* v *Forrest Hills Trossachs Golf Club* 2000 SLT (Sh Ct) 155. The present action was competently brought in the sheriff court and should go to proof before answer.

Analysis and decision

[11] In *McDonald* v *Secretary of State for Scotland (No 2)* 1996 SC 113 the pursuer raised proceedings in the sheriff court seeking declarator, interdict and damages in respect of personal searches carried out on him in prison and which he claimed were unlawful. When the case reached the Inner House Lord Clyde (at page 116H) said that:

> "The single question in this appeal is whether the case is within the jurisdiction of the sheriff court. If it is an ordinary action for reparation it may properly proceed within the sheriff court. If it involves the supervisory jurisdiction of the Court of Session then the action must be dismissed. The question can be framed in terms either of jurisdiction or of competency and the defender raises it in his first two pleas in law respectively in each of these formulations.... However it is formulated the question falls to be answered essentially by identifying the issue which is raised in the case. The form of action and the remedies sought may be of

> assistance towards solving the problem but the final answer is to be found in a proper understanding of what the action is truly about…"

On examination, the court was satisfied that what the case was "truly about" was the validity or otherwise of standing orders issued by the Secretary of State, and which authorised the searches to which the pursuer had been subjected by prison officers. The action was therefore an attempt to invoke the supervisory jurisdiction, a jurisdiction exclusive to the Court of Session. It was incompetently brought as an ordinary action in the sheriff court, and so had to be dismissed.

[12] The starting point, in deciding whether a particular dispute truly amounts an application to the supervisory jurisdiction, remains the decision in *West*. In what are now familiar passages the court set out (1992 SC 385 at 412) certain propositions which were intended "to define the principles by reference to which the competency of all applications to the supervisory jurisdiction" were to be determined. It rejected the proposition that the scope of the supervisory jurisdiction depended in any way upon a distinction between public law and private law. Rather:

> "The cases in which the exercise of the supervisory jurisdiction is appropriate involve a tri-partite relationship, between the person or body to whom the jurisdiction, power or authority has been delegated or entrusted, the person or body by whom it has been delegated or entrusted and the person or persons in respect of or for whose benefit that jurisdiction, power or authority is to be exercised."

The facts were that the petitioner, a serving prison officer, had been refused reimbursement of relocation expenses following a transfer. But this was effectively a bi-partite contractual dispute about his conditions of employment. There was no tri-partite relationship whereby the petitioner had been subject to an exercise of power, authority or jurisdiction conferred on a third party (pages 413 - 414). Accordingly the action was incompetent, and was dismissed.

[13] *West* was explained and applied in *Crockett*, where the petitioner challenged his expulsion from a golf club. The club was an unincorporated association, governed by a set of rules, agreed as a condition of membership. These rules provided for election of a council, which had the power to refer a complaint about a member to a meeting of the whole membership. The rules also provided that at such a meeting the member concerned could be expelled by a qualified majority vote of those members present and voting. By this process the petitioner was duly expelled, and he challenged the decision by way of judicial review. The respondent conceded that the club's council had exercised a jurisdiction as described in *West* when it referred the complaint regarding the petitioner to a general meeting, but submitted that the membership at the meeting had not done so when it voted for expulsion. This latter decision was therefore not amenable to judicial review, and so the action should be dismissed.

[14] Lord Reed, then sitting in the Outer House, held that the respondent's submission proceeded upon a misunderstanding of the effect of the rules of the club, and an overly inflexible application of what had been said in *West*. In general terms:

> "[37] …the essence of the supervisory jurisdiction is that it is the means by which, under the common law, the court ensures that bodies which possess legally circumscribed powers to take decisions or actions, affecting the rights or interests of other persons, exercise their powers in accordance with the limitations and requirements to which they are subject. Those limitations and requirements may be set by legislation, or by contract, or by some other instrument, or by the common law. They may concern such matters as the extent of the powers themselves, the purposes for which they can be exercised, the factors which the body in question requires to take into account, and the procedures which the body must follow. Since the court's function is confined to ensuring that the powers are exercised in accordance with the limitations and requirements to which they are subject, it follows that its jurisdiction is of a restricted nature, which is aptly described as supervisory. It cannot interfere with an act or decision taken by the body in question within the limits of its powers, since to do so would be incompatible with the existence of those powers, but can only review the decision to ensure that it is intra vires."

The earlier quoted dicta in *West* was not to be applied in "an excessively literal fashion, as if [it] contained a statutory definition". Although the concept of a tripartite relationship, was "valuable as a paradigm" of the situation in which a body exercises a limited power or authority, it was not to be applied inflexibly (paragraph 40).

[15] Accordingly the distinction which the respondent in *Crockett* sought to draw between the amenability to judicial review of the council and the general meeting was not well founded:

> "[41] …The club council are a group of members of the club, whom the members as a whole have agreed *inter se* are to have authority to take certain decisions affecting a member whose conduct is in issue. A qualified majority of those present and voting at a general meeting are equally a group of members of the club, whom the members as a whole have agreed *inter se* are to have authority to take a decision affecting such a member. Each of these situations appears to me to be capable of being characterised as involving a tripartite relationship. More significantly, perhaps, each of them involves the exercise of a limited power, to take a decision affecting the rights or interests of the member in question, by a body on whom that power has been conferred; each of them results in the taking of a decision with which the court cannot interfere, provided the power is exercised lawfully within the limits by which it is circumscribed; and each of them results in the taking of a decision which is ex facie binding upon the members, unless set aside by the court. In these circumstances, it appears to me that each of these situations falls equally within the ambit of the court's supervisory jurisdiction."

The challenge to the competency of the proceedings was therefore rejected.

[16] Lord Reed's reasoning in *Crockett* was agreed with and applied by Lord Glennie in *Wiles*, which again concerned a challenge to a decision of a golf club to expel a member. His Lordship expressed the view that it was now "clearly established that proceedings in court by a [golf club] member to vindicate his rights are, in Scotland, properly to be taken by way of judicial review" (at paragraph 21). Reference was also made to Lady Smith's decision in *Irvine* v *Royal Burgess Golfing Society of Edinburgh* 2004 SCLR 386, in which no objection was

taken to the petitioner challenging his suspension from membership by way of judicial review.

[17] The pursuers in the present case, on the other hand, sought to rely on the decisions of the sheriffs principal in *Bell* and *Abbott*. In *Bell* a longstanding member of a dissenting church sought interdict of its trustees for debarring him for entering the hall in a manner averred to be contrary to natural justice. The sheriff principal refused to grant interdict, but on the grounds that the court could only interfere with the decisions of controlling bodies of voluntary associations if the member had shown injury to some patrimonial interest or civil right. There was no suggestion that the action was incompetently brought in the sheriff court. In *Abbot*, members of an unincorporated association for persons holding timeshares in lodges raised proceedings against the association and management company alleging unlawful interference with peaceful enjoyment of their property rights. Again, the sheriff principal accepted that a court could interfere with the actings of an unincorporated association where its actings affect the patrimonial interests or civil rights of its members, and allowed a proof before answer.

[18] The first difficulty with these authorities is that they both pre-date *Crockett*. Indeed *Bell* predates *West* as well. The second difficulty is that, with all respect to the sheriffs principal, greater weight must be given to the opinion of Lord Reed insofar as there can be said to be any difference between them. The third difficulty is that no argument was made in either *Bell* or *Abbott* that the actions were incompetent because they involved an application to the supervisory jurisdiction. That is not necessarily surprising. It does not follow that every action against an unincorporated association must be brought by judicial review. The question will always be, as explained above, whether what a given action is truly about is a challenge to a decision or act of a body with legally limited powers which

affects the pursuer's rights or interests, and where the court's jurisdiction is limited to supervising the exercise of that power to ensure that it has been exercised *intra vire*s of the limitations placed on it. That is the question in the present case also, and the answer to it depends not just on the legal characterisation of the defenders, but on the nature of the complaint averred against them.

[19] Nor does section 38 of the 2014 Act assist the present pursuers. This section provides, insofar as material:

> **"38 Jurisdiction and competence of sheriffs**
> (1) A sheriff continues to have the jurisdiction and competence that attached to the office of sheriff in relation to civil proceedings immediately before this section comes into force.
> (2) Without limiting that generality, a sheriff has competence as respects proceedings for or in relation to—
> (a) declarator,
> …
> (g) reduction, other than reduction of a decree of any court…"

As is said in MacPhail, *Sheriff Court Practice*, (4th Edition), at paragraph 2.66, although certain statutes expressly confer jurisdiction upon the sheriff to determine specific questions arising from the manner of the exercise of particular powers by statutory bodies, there is no process whereby the sheriff may review and quash any decisions of other courts or bodies without express statutory power to do so. Accordingly:

> "The fact that the sheriff now has power in relation to actions of declarator or reduction [as a result of section 38(2) of the 2014 Act] is procedural only; it does not confer upon the sheriff court any new substantive jurisdiction of judicial review, falling within the exclusive preserve of the Court of Session."

Put another way, section 38(2) deals with remedies, not jurisdiction. That brings the matter back to Lord Clyde's dicta in *McDonald (No 2)*, quoted above. The remedies sought in an action may assist in identifying whether it truly involves an application to the supervisory jurisdiction of the Court of Session, but they are not determinative. If what the present

action is truly about is an application to the supervisory jurisdiction, as that must be understood and analysed in the light of *West* and *Crockett*, then section 38 of the 2014 Act does not make such an action competent in the sheriff court.

[20] In the light of all this, it is clear that the action must be dismissed. The Association is an unincorporated association. The members of the association have agreed a Constitution. This Constitution, like the rules of the club in *Crockett*, provides for the election of an executive committee, and for the calling by the secretary of this committee of a general meeting of members to consider expulsion of the Trustees. Again as in *Crockett*, and for essentially the same reasons, both the executive committee and the members voting in general meeting have been given limited powers by the membership in this regard. There can be seen to be a tri-partite relationship per the analysis in *West*: (i) the membership have agreed to confer powers (ii) on the executive (to call a meeting) and on the voting members (to expel) (iii) a trustee or trustees. The essence of the pursuers' complaints - what this case is truly about - is a claim that the committee and the general meeting have acted *ultra vires* of their powers under the Constitution in this regard in relation to their expulsion. The remedies sought by them are with a view to confining these powers within the limits of the Constitution. The jurisdiction being invoked in this action is therefore the supervisory jurisdiction, which is exclusive to the Court of Session. I will therefore sustain the defender's first plea in law and dismiss the action.

Expenses

[21] The defenders' agent moved that the question of expenses be reserved in the event of success. I will therefore do so. The appropriate motion can be enrolled in due course.