



SHERIFF APPEAL COURT

**[2026] SAC (Civ) 18
PAI-SG713-25**

Appeal Sheriff Cruickshank

OPINION OF THE COURT

delivered by APPEAL SHERIFF IAN HAY CRUICKSHANK

in appeal by

JULIE AND TONY FINEGAN

Claimants/Appellants

against

TUI UK LIMITED

Respondent

Claimants/Appellants: Mr A Osborne, lay representative

Respondent: Kennedys Solicitors, Edinburgh

26 February 2026

Introduction

[1] The sheriff dismissed this simple procedure claim at a Case Management Discussion (“CMD”). The sheriff upheld the respondent’s plea of *res judicata* on the basis that the matter had already been adjudicated upon via arbitration proceedings under and in terms of the ABTA Arbitration Scheme Rules 2024 (“the 2024 Rules”). The appellants have appealed this decision to the Sheriff Appeal Court.

[2] The claim related to an all-inclusive holiday purchased from the respondent. Payment in the sum of £3,130 was sought. This sum was broken down into a number of constituent parts. The appellants argued that the holiday did not conform to the one that had been advertised and that there were other material breaches of contract. To that extent they were seeking damages occasioned by these failures.

[3] There was no dispute that the matter had been subject to arbitration under the 2024 Rules. This was referred to in the initial claim form, but the appellants considered there had been procedural irregularities including evidence which had been ignored. The history of the arbitration process is thoroughly documented in the appeal report prepared by the sheriff. In summary, at arbitration, the appellants were awarded £540. After deduction of the arbitration fee of £150, this led to the appellants receiving an award of £390. The appellants' claim advanced at arbitration was in the sum of £5,257.29.

[4] The appellants did not appeal the sum they were awarded by means of the arbitration process. A right of appeal was available, but the appellants elected not to proceed via that route. They considered that the appeal fee of £350 plus VAT was too high and disproportionate. The appellants did seek to raise a complaint against the arbiter as they had concerns about the fairness, and independence of the process. That complaint was lodged internally with the arbiter's organisation and not via a formal review process as permitted for in terms of the Arbitration Act 1996 ("the 1996 Act").

Lay representation

[5] At first instance the appellants were represented by Mr Adi Osborne as a lay representative. No objection was taken to Mr Osborne undertaking that role. He was

actively involved in the preparation of all documents and presented arguments at the CMD at which the sheriff dismissed the claim.

[6] There is provision which allows for lay representation before the Sheriff Appeal Court. In terms of the relevant rules an application to be appointed in that capacity before this court must be made by motion. The motion must be accompanied by a document in prescribed form which is signed by the prospective lay representative. This court may grant permission dependent on all relevant conditions being met and only if the court considers it is the interests of justice to do so (see Chapter 4, and Form 4.3, of the Act of Sederunt (Sheriff Appeal Court Rules) 2021). On receipt of the relevant motion and Form in this case, whilst it was unopposed, I had initial concerns that Mr Osborne did not meet all necessary requirements to act as a lay representative. It is important that all lay representation applications are carefully considered to ensure that all necessary declarations or undertakings given by a prospective lay representative are given and complied with. That is so whether or not the motion for appointment is opposed. I assigned the matter to a procedural hearing in order to make enquiry as I had a concern that Mr Osborne may be receiving remuneration for his services.

[7] The basis of my initial concern was due to the fact that the Simple Procedure Claim Form had been drafted by Mr Osborne in which he was designed as Andrew Osborne of "organisation/firm" OSM Solutions Ltd. The business address of that company was given. I also noted that all written submissions or documents lodged at first instance, and on appeal, were prepared on stationery linked to OSM Solutions Ltd. More often than not, in this documentation Mr Osborne designed himself as "Managing Partner, OSM Solutions Ltd (Lay Representative for the Pursuers)". I also found in the initial bundle prepared for the appellants a letter of engagement. The letter was between the appellants and the Company

and authorised OSM Solutions Ltd to “negotiate settlements, escalate complaints and challenge arbitration awards”. There was no specific mention of any fee arrangement between the appellants and the Company in the letter.

[8] The website of OSM Solutions Ltd confirmed that it offered services, ordinarily on a fixed fee basis, in relation to various forms of dispute resolution. Given that this was a dispute following what the appellants regarded to be an unsatisfactory holiday, I was interested to note, under services which could be offered to private clients (as opposed to corporate clients) the following:

“Helping individuals navigate disputes with insurers, holiday companies, and other third parties, ensuring your rights are protected”

[9] The website confirmed that the Company did not provide legal advice or carry out reserved legal activities. Reference was also made to situations where matters escalated and “formal legal advice, legal representation or advocacy being necessary” then the Company worked alongside solicitors who could provide those services.

[10] At the procedural hearing Mr Osborne confirmed he came to represent the appellants as they were family friends, and he had known several generations of their family. He did not deny that his Company had been involved in the arbitration process but denied that, notwithstanding the fields of work that his Company website offered to individuals, in this case his Company had charged any fees. With regard to paperwork which suggested that OSM Solutions Ltd were involved in the representation of the appellants, Mr Osborne stated it had just been convenient to use Company stationery.

[11] I drew Mr Osborne’s attention to the letter of engagement which suggested a business relationship between the appellants and his Company, and this pointed to the probability that his Company either had or would have a financial interest in these

proceedings. He denied this and advised me that to prevent any misunderstanding the appellants had signed a further letter of engagement re-appointing him as their lay representative in December 2025. He arranged for that to be forwarded to the court.

Furthermore, Mr Osborne stated he had never acted for anyone else in a simple procedure case as a lay representative. This was the only time that he had acted in that capacity and Mr Osborne gave an indication that he was not likely to act in this capacity again.

[12] Upon conclusion of the hearing, I received the further letter of engagement referred to by Mr Osborne. Until disclosure of the second letter of engagement, I had considerable doubt about the extent of Mr Osborne's professional involvement, and I considered it could reasonably be inferred that it was likely there had been, or could in future be, financial gain. However, the further letter made it clear that Mr Osborne, either as an individual or via his Company, had not and would not charge any fees for representation in relation to this matter. On balance, after the enquiry made, I accepted that position in relation this court process. Accordingly, I considered that the necessary declarations and undertakings of a lay representative had been given appropriately and were being abided by. I therefore concluded it was in the interests of justice to grant the application for the purposes of the appeal.

[13] Having determined the matter of lay representation this appeal proceeded on the written submissions lodged on behalf of the parties.

Submissions

[14] On behalf of the appellants, it was submitted that a plea of *res judicata* operates to prevent re-litigation in a matter which has been finally determined between the same parties and in the same cause of action. The matter required to have been determined by a tribunal

of competent jurisdiction and the determination must be final and binding in law.

Section 58 the 1996 Act provided that an arbitration award was final and binding on the parties subject to any available challenge or appeal. That provision did not operate in a vacuum, and the finality of the arbitration process had to be considered on the basis that it had been conducted in a manner consistent with the requirements of law. Whether an arbitral award was capable of founding a plea of *res judicata* was a question of law for the court before which that plea was made.

[15] The appellants submitted that the sheriff erred in law in reaching a decision that the arbitration process in this case was final and binding on the parties. The sheriff erred in concluding that the appellants' failure to appeal in terms of the arbitration process was fatal and justified upholding the plea of *res judicata*. The sheriff failed to examine the arbitration process and, in this case, the failure to exercise an internal appeal mechanism was not equivalent to there being a binding final determination thus justifying the plea to be upheld.

[16] On the matter of expenses occasioned by this appeal the appellants submitted that regardless of the decision there should be no award of expenses due to or by either party. They had pursued the matter in good faith and were party litigants. There had been no unreasonable conduct, delay or procedural abuse on their part.

[17] On behalf of the respondent, it was submitted that the appellants chose to proceed via the arbitration scheme provided for by the 2024 Rules. The scheme operated under the laws of England and Wales. A final award was made in favour of the appellants. Although dissatisfied by the award the appellants did not appeal within 28 days of the award having been made as they were entitled to do in terms of the scheme. Thereafter, in raising this simple procedure claim seeking damages the subject matter was based on the same issues raised via arbitration. The sheriff had not erred in upholding the plea of *res judicata*.

[18] With reference to the appellants submissions, it was wrong to state that the sheriff had failed to examine the arbitration process. The ABTA arbitration process, and its decision, was binding on the parties. The appellants had decided not to exhaust the appeal process provided for by the 2024 Rules. They had neither sought a review nor an appeal and sections 57 and 70 of 1996 Act prevented them seeking further remedy. Reference to the internal appeal mechanism which would have been available under arbitration did not fall to be considered by the sheriff. In any event, the correct forum for a challenge to an ABTA arbitration award would be in the courts of England and Wales per the relevant legislation.

[19] In the event that the appeal was dismissed the respondent sought the expenses of the appeal process.

Decision

[20] The plea of *res judicata* is recognised in many legal systems. It is based upon considerations of public policy, equity, and common sense, which will not tolerate that the same issue should be litigated repeatedly between the same parties on substantially the same basis (see *Earl of Perth v Lady Willoughby de Eresby's Trustees* (1875) 2 R 538, per Lord Gifford at 555-556).

[21] Five conditions must be met for the plea to succeed. I summarise these as follows (for more detailed reasoning and explanation see *MacPhail, Sheriff Court Practice*, Fourth Edition, paragraphs 2.128 – 2.133):

1. The prior determination must have been made by a competent tribunal. This may include a foreign or an inferior court, a statutory tribunal or an arbiter, always provided that in reaching its determination the earlier tribunal did not exceed its jurisdiction.

2. The prior determination must have been pronounced in a contested forum (*in foro contestioso*). In other words, in a process where a claim has been defended. It is not necessary that the action has been fully litigated and it is not material that the prior determination was reached by compromise or consent.
3. The subject matter of both actions must be the same.
4. The points in controversy must be the same but excessive concentration on the precise nature of remedies sought should be avoided. Looking at the first action, by simple inquiry, the question which falls to be answered is what was litigated and what was decided?
5. The parties in both actions must be the same.

[22] The sheriff gave careful consideration to the plea of *res judicata*. Both parties assisted the sheriff in her task by preparing written submissions and by lodging documentary productions in advance of the CMD. The sheriff noted it was agreed that, for the purposes of section 58 of the 1996 Act, there was no agreement between the parties that the arbitration award would not be final and binding. As such, per the terms of that section, the starting point was that the award would be final and binding on the parties.

[23] Section 58(2) of the 1996 Act further provides that the effect of an award, which is to be regarded as final and binding “does not affect the right of a person to challenge the award by any available arbitral process of appeal or review or in accordance with the provisions of this part (of the Act)”. The part of the 1996 Act referred to is Part I, which governs the arbitration process and includes provisions for the powers of the court. These powers include what the relevant court can do if the award is challenged, including a challenge to any serious irregularity, and the court’s powers on appeal. For the avoidance of

doubt, there can be no dispute that an arbitration under the 2024 Rules is governed by the 1996 Act.

[24] Whilst dissatisfied with the award made in arbitration the appellants did not appeal or seek a review of that award per the provisions available in terms of the 1996 Act. They attempted to make a complaint to the arbiter. They did not elect to follow the appeal process due to the possible expense which this would incur. The appellants did not apply to the court, as defined by section 105 of the 1996 Act, to challenge the award on the ground of “serious irregularity”, as defined by section 68 of the 1996 Act. Taking these factors into account, and with further explanation of the arbitration process and the consequences of not proceeding to appeal, the sheriff concluded that the matter had been resolved by a final and binding decision on the parties and accordingly upheld the plea of *res judicata*.

[25] The 2024 Rules state that an arbitration will be subject to the law of England and Wales. That of course is different from agreeing that a dispute will be determined by the courts of England and Wales. Under the Rules however the arbitration process is governed by the 1996 Act. The Act extends to England and Wales and, except as specifically excluded, to Northern Ireland. Only sections 89, 90 and 91 and Schedules 3 and 4 extend to Scotland. The sections relating to Scotland are of no relevance to the matter on appeal. In simple terms, for the purposes of this appeal, the only competent courts who could deal with either matters of appeal or review arising out of the arbitration are the courts of England and Wales as it is only these courts which have competent jurisdiction in terms of the 1996 Act.

[26] Looking to the five conditions which must be satisfied to sustain a plea of *res judicata*, working in reverse from the list I have appended, the parties in the arbitration and this claim are the same. The points in controversy and the subject matter are the same or substantially the same. The arbitration was a decision made in a contested forum. For the purposes of

this claim, the arbitration was concluded in a competent forum. Although the appellants did not agree with the arbitration award, they did not appeal that decision. In the circumstances, a final decision was made as between the parties. The sheriff did not err in law in upholding the plea of *res judicata*.

[27] The appellants criticise the fairness of the arbitration process. That was not of direct relevance for the sheriff. The only relevance for the purposes of the sheriff's decision was that the arbitration had concluded at a stage of the permissible procedure which meant, absent appeal or review, the decision at arbitration was final and binding on the parties. Had the appellants considered that there were sustainable arguments in respect of either the fairness of the arbitration process or in respect of the level of award then they had remedies available to them. They could have appealed the decision. Alternatively, they could have sought a judicial determination from the relevant court under the 1996 Act, on the procedural irregularities which they consider had tainted the arbitration decision as unfair. The fact that the appellants considered the fees payable for lodging an appeal were disproportionate was of no consequence to the sheriff's decision at first instance. It is not a basis for claiming that the matter in dispute between the parties had not been extinguished by the application of *res judicata*.

[28] The sheriff did not err in law. I will therefore dismiss this appeal and adhere to the order of the sheriff dated 3 September 2025.

[29] On the matter of expenses, I have considered all that is said by the appellants in that respect. Expenses ordinarily follow success. The rule is no different in this court. That said, in each case an award of expenses remains a discretionary decision. Notwithstanding submissions made on behalf of the appellants, and whilst noting that the appeal proceeded

on written submissions, I dismiss the appeal with expenses awarded in favour of the respondent as taxed.