SHERIFF APPEAL COURT

[2026] SAC (Civ) 43
DNF-SG325-25

Sheriff Principal Gillian A Wade KC

STATEMENT OF REASONS

delivered by SHERIFF PRINCIPAL GILLIAN A WADE KC

in the appeal in the cause

IAIN GRAY

Claimant and Appellant

against

RW MOTOR COMPANY LIMITED

Respondent and Respondent

Claimant and Appellant: Party
Respondent and Respondent: Absent

3 July 2026

[1] Although this appeal arises form a very low value simple procedure claim it raises a number of important matters in relation to the application of The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 which are worthy of clarification.

[2] The appeal is taken against the decision of the sheriff at Dunfermline dated 3 October 2025 to dismiss the appellant's simple procedure claim *ex proprio motu* following a case management discussion and on consideration of the documentary productions which he had before him.

[3] The appellant sought an order for payment against the respondent in the sum of £99.00 which he had paid by way of a deposit to reserve a Citroen C3 car. The deposit was paid online via the PayPal service on 15 December 2024 to reserve the car for a period of 5 days as part of a contract to purchase the vehicle. On 22 December 2024, the appellant advised the respondent that he no longer wished to purchase the car, having become aware that the road tax for the vehicle was higher than advertised. The appellant thereafter asked for the deposit to be refunded and the respondent refused.

[4] The appellant raised a simple procedure claim. His initial claim form was predicated on two grounds: (i) firstly, that the deposit was described as fully refundable via the respondent's website and there were no other terms and conditions ("the refundable ground") (ii) secondly, that the respondent misrepresented the road tax payable for the vehicle at the point the deposit was paid as the respondent advised the road tax payable was £190 whereas it was £345 per annum ("the misrepresentation ground").

[5] The respondent's position was: (i) firstly, that the contract was entered into on 15 December 2024 and per the terms and conditions was governed by the law of England and Wales and, separately, that the courts in England and Wales had exclusive jurisdiction (ii) secondly, that the terms and conditions of the contract, which applied at the time of paying the deposit, provided that the deposit was non-refundable (iii) thirdly, there was no misdescription of the road tax position by the respondent and the road tax payable was £190 per annum and not £345 per annum (iv) the respondent incurred costs or losses as a result of holding the vehicle for a period of 7 days.

[6] The respondent produced the relevant terms and conditions dated March 2024 (the "Terms"). The Terms included the following clauses:

"1.4. 'Goods' refers to any vehicle, including cars, vans, motorcycles, or accessories, sold by the Dealer to the Customer.
1.5. 'Purchase Price' refers to the agreed price for the Goods as specified in the Order.
1.6. 'Order' refers to the contract or order form for the purchase of the Goods.

2. Whole Contract
2.1. These Terms and Conditions, together with the Order, form the entire contract between the Dealer and the Customer. They may only be varied by written agreement signed by both parties.

3. Vehicle Condition and Statutory Rights
3.1. All vehicles are supplied as roadworthy at the time of delivery, in accordance with the Sale of Goods Act 1979 (as amended) and the Consumer Rights Act 2015 for Consumer sales.

5. Payment and Delivery
5.1. The Customer shall pay the Purchase Price in full in cleared funds (by bank transfer or debit card) before or upon delivery, unless otherwise agreed in writing by an authorised representative of the Dealer.
5.2. A non-refundable deposit of £99 (for online reservations) or £350 (for telephone reservations) is required to secure the vehicle for a period of 5 days. This deposit will only be refunded if the vehicle is found not to be as described at the time of inspection or delivery.

8. Consumer Rights and Cancellation
8.1. For Consumer sales conducted off-premises or at a distance (e.g., online or by telephone), the Customer has a 14-day cancellation period starting from the day they take physical possession of the Goods, as per The Consumer Contracts Regulations 2013.
8.2. To cancel, the Customer must notify the Dealer in writing (e.g., by email or post to the Dealer). The Customer is responsible for returning the Goods within 14 days of cancellation at their own cost, unless the Dealer fails to inform them of this responsibility.

13. Governing Law
13.1. This contract is governed by the laws of England and Wales. Any disputes will be subject to the exclusive jurisdiction of the courts of England and Wales."

[7] In light of these Terms, at the initial case management discussion, the sheriff ordered the appellant to lodge the documentary evidence to support his position that the deposit was refundable and that the respondent had misstated the position regarding the road tax payable for the vehicle. In response to that order, the appellant lodged five documents

entitled "C1" to "C5". Document C3 is a screenshot from the respondent's website which provides: "Reserve this Peugeot 2008 for only £99…A £99 fully refundable deposit reserves this car for up to 5 days".

[8] At the end of document C3 there is a "tick-box" which requires to be ticked to accept the "terms". Document C2 bears to be a letter from the respondent to the appellant which provides as follows:

> "Before paying the holding fee a tick box window pops up and doesn't allow you to male [sic] a payment unless the terms are agreed with. The contents of the tick box window clearly states that the holding fee will reserve the vehicle for 5 days.
>
> As a reference for you and ill attach it wit [sic] this document, I have just taken a screenshot from the websites [sic] payment link confirming what I've mentioned above. Its [sic] referenced to a different vehicle…the payment link tick box is auto generated and the exact same for every vehicle".

[9] The appellant produced written submissions in a document C5 in which he stated:

> "The only terms that I agreed to are uploaded as Evidence, Reference C-3. Any other terms, as uploaded by the Respondent, were added to their website after I commenced Court proceedings. The Respondent's document, entitled Terms and Conditions of Sale for RW Motor Co, and conveniently dated March 2024, was not on their website when I paid the fully refundable deposit. This document was subsequently added to their website and is not dated."

Sheriff's judgment

[10] The sheriff dismissed the appellant's claim *ex proprio motu* in accordance with simple procedure rule 1.8(11), which provides: "If a claim, or part of a claim, obviously has no real prospect of success, the sheriff may dismiss the claim or that part of it at any time."

[11] As regards the refundability ground, and the conflict between the Terms (upon which the respondent relied) and the tick box form on the respondent's website (upon which the appellant relied), the sheriff preferred the respondent's position for two reasons. Firstly, document C3 related to a different vehicle entirely and had presumably been raised by the

appellant to demonstrate what the equivalent form looked like for the vehicle when he paid his deposit. Secondly, that the appellant's position that the Terms did not exist and were not available to him when paying the deposit was implausible as it would require the respondent to have produced and uploaded the Terms in response to a claim for £99.
As such, in accordance with the Terms, the party's contract was clear and the deposit was non-refundable per Clause 5.2. If document C3 or something similar applied at the point the appellant paid the deposit, it must be read in light of the Terms including Clause 5.2.

[12] As regards the misrepresentation ground, the sheriff was not satisfied the respondent had any evidence of a misrepresentation having been made.

Grounds of appeal

[13] The appellant relies upon four grounds of appeal:

1. that the sheriff erred in law in failing to apply the Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 ("the 2013 Regulations");
2. that the sheriff erred in law in misinterpreting the contractual term that the deposit was fully refundable as the ordinary meaning of that term was clear under reference to *Arnold* v *Briton* [2015] UKSC 36;
3. that the sheriff erred in law as a result of a procedural irregularity in failing to notice that the person appearing on behalf of the respondent at the two hearings was different yet claimed to be the same person;
4. the sheriff erred in law in failing to take into account the respondent's misrepresentation of the road tax position in relation to the vehicle.

[14] In the appeal report, the sheriff poses four questions for the opinion of this court:

1. Does the court have jurisdiction to deal with the case standing the prorogation clause in the parties' contract.
2. Was the transaction covered by the 2013 Regulations and did the appellant have a right to cancel within 14 days.
3. Was I right to dismiss the claim on the basis that in terms of rule 1.8(11) as the claim obviously has no real prospect of success.
4. Was I right in holding that the claimant had not produced evidence that the vehicle was sold subject to a description of having a road tax of £190 and therefore that section 11 of the Consumer Rights Act 2015 had not been breached.

I shall deal with each in turn.

Jurisdiction

[15] Jurisdiction is *pars judicis* and determines whether this court is properly seized of the remaining questions. The sheriff concluded that he had jurisdiction as a result of paragraph 3(3) of Schedule 8 to the Civil Jurisdiction and Judgments Act 1982 ("the 1982 Act"). For the most part, the rules for jurisdiction in relation to Scotland are found in Schedule 8 to the 1982 Act read with section 20 of the 1982 Act. However, this is subject to any specific provision made in Part II of the 1982 Act. Specific provision is made in section 16 (read with Schedule 4) for the allocation of jurisdiction as between the courts in the three jurisdictions of the United Kingdom. Moreover, sections 15A to 15E of the 1982 Act provide specific provision in relation to the allocation of jurisdiction concerning

inter alia consumer contracts. These provisions are relevant particularly in light of the respondent's plea of no jurisdiction.

[16] Sections 15A to 15E of the 1982 Act were inserted by the Civil Jurisdiction and Judgments (Amendment) (EU Exit) Regulations 2019 (the "2019 Regulations").

In accordance with sections 15A to 15E of the 1982 Act, specific provision is made in relation to establishing jurisdiction for disputes concerning certain consumer contracts. These rules operate to determine jurisdiction as between different parts of the UK and, separately, where the dispute has an international connection (paragraph 2.6 of the Explanatory Memorandum to the 2019 Regulations; Macphail's *Sheriff Court Practice* (4th Edition), Chapters 3.86 - 3.91).

[17] In terms of section 15A of the 1982 Act, the rules apply where the subject-matter of the proceedings and the nature of the proceedings fall within the scope of Article 1 of Council Regulation (EU) No 1215/2012 ("the Regulation") (as it applied immediately before IP completion day). Section 15A(2) defines the scope of application of section 15B (for consumers) to proceedings whose "subject matter" and "nature" are within the scope of the Regulation as determined by Article 1 of the Regulation. Applying these principles, the contract entered into between the parties falls within the subject matter of Article 1 of the Regulation as the action concerns civil and commercial matters and is not an excluded action within the terms of the Regulation.

[18] In turn, section 15E(1) defines "consumer" and the "consumer contracts" to which the jurisdictional protection is afforded using the same language as Article 17 of the Regulation (*Soleymani* v *Nifty Gateway LLC* [2022] EWCA Civ 1297, per Popplewell LJ at paras [55] - [57]). The appellant is clearly a consumer in this context within the meaning of section 15E(1). In this context, a "consumer contract" means a contract concluded with a person who pursues commercial activities and by any means directs such activities to the

part of the UK where the consumer is domiciled. In assessing whether a trader has directed their activities to another part of the UK, the court should consider that (i) there is no need for a specific invitation to the consumer (ii) whether activities are "directed" to a particular jurisdiction requires more than mere accessibility of a website (iii) evidence of an intention to solicit custom from another part of the UK will indicate that the activities have been directed to that part of the UK and (iv) there is no need to show subjective intention of the trader and the question is whether, if viewed objectively from the perspective of the average consumer, a trader's internet activity was targeted at consumers in other parts of the UK (*Bitar* v *Banque Libano-Francaise SAL* [2021] EWHC 2787 (QB), at paras [12] - [14], [17] - [21], [25] - [27]).

[19] In light of the evidence available, including the appellant's position, the respondent's written submissions and extracts from the respondent's website, it is clear that, viewed objectively from the perspective of the average consumer, the respondent's website seeks to solicit customers from throughout the UK. As such, this dispute concerns a consumer contract to which sections 15A to 15E of the 1982 Act apply.

[20] The respondent sought to rely on standing Clause 13.1 of the Terms which provides that the courts of England and Wales have exclusive jurisdiction. However Clause 13.1 can have no effect. Section 15B(2)(a) entitles the appellant to bring a claim in the courts for the place where he is domiciled. The parties can only contract out of that rule after the dispute has arisen and if other conditions are met per section 15B(6)(a). Agreements which confer exclusion jurisdiction (such as Clause 13 of the Terms) have no legal force if they are contrary to section 15B(6).

[21] Accordingly Clause 13 is of no legal effect and this court has jurisdiction as a result of section 15B(2)(b) of the 1982 Act (as opposed to Schedule 8 to the 1982 Act as relied upon by

the sheriff). Although the sheriff was right to conclude that the court had jurisdiction he said so for the wrong reasons. The sheriff's first question falls to be answered in the affirmative.

[22] Although the respondent also raised an issue regarding the applicable law there is no question posed by the sheriff in this regard and neither party has sought to insist upon it. Accordingly I have not addressed the matter further.

The application of the 2013 Regulations

[23] At first instance the sheriff did not consider these Regulations on the basis that they had not been brought to his attention. However, during adjustment of the appeal report, there was a dispute about this which is recorded in the report. Whilst it is competent to raise a new point on appeal that was not raised before the sheriff (*Varney (Scotland) Ltd* v *Lanark Town Council* 1974 SC 245, per LJC Wheatley at 249) there must be a corresponding basis in the pleadings for a party to advance such a case. Following sundry procedure during the course of this appeal, the appellant made an additional orders application to amend his claim form to introduce a claim anent the 2013 Regulations. This was not opposed as both parties wished clarification as to the legal position in relation to the applicability of the Regulations.

[24] These Regulations provide:

> "**4.** In these Regulations—
> 'consumer' means an individual acting for purposes which are wholly or mainly outside that individual's trade, business, craft or profession;
> 'trader' means a person acting for purposes relating to that person's trade, business, craft or profession, whether acting personally or through another person acting in the trader's name or on the trader's behalf."
>
> "**5.** In these Regulations—
> 'business premises' in relation to a trader means—

(a) any immovable retail premises where the activity of the trader is carried out on a permanent basis…
'distance contract' means a contract concluded between a trader and a consumer under an organised distance sales or service-provision scheme without the simultaneous physical presence of the trader and the consumer, with the exclusive use of one or more means of distance communication up to and including the time at which the contract is concluded…
'goods' means any tangible moveable items, but that includes water, gas and electricity if and only if they are put up for sale in a limited volume or a set quantity;
'sales contract' means a contract under which a trader transfers or agrees to transfer the ownership of goods to a consumer and the consumer pays or agrees to pay the price, including any contract that has both goods and services as its object"

"**Making information etc available to a consumer**
8. For the purposes of this Part, something is made available to a consumer only if the consumer can reasonably be expected to know how to access it."

"**Information to be provided before making a distance contract**
13.—(1) Before the consumer is bound by a distance contract, the trader—
(a) must give or make available to the consumer the information listed in Schedule 2 in a clear and comprehensible manner, and in a way appropriate to the means of distance communication used, and
(b) if a right to cancel exists, must give or make available to the consumer a cancellation form as set out in part B of Schedule 3."

"**Requirements for distance contracts concluded by electronic means**
14.—(1) This regulation applies where a distance contract is concluded by electronic means.
(2) If the contract places the consumer under an obligation to pay, the trader must make the consumer aware in a clear and prominent manner, and directly before the consumer places the order, of the information listed in paragraphs (a), (f), (g), (h), (s) and (t) of Schedule 2.
(3) The trader must ensure that the consumer, when placing the order, explicitly acknowledges that the order implies an obligation to pay.
(4) If placing an order entails activating a button or a similar function, the trader must ensure that the button or similar function is labelled in an easily legible manner only with the words 'order with obligation to pay' or a corresponding unambiguous formulation indicating that placing the order entails an obligation to pay the trader.
(5) If the trader has not complied with paragraphs (3) and (4), the consumer is not bound by the contract or order."

"**Right to cancel**
29.—(1) The consumer may cancel a distance or off-premises contract at any time in the cancellation period without giving any reason, and without incurring any liability…

(2) The cancellation period begins when the contract is entered into and ends in accordance with regulation 30 or 31."

"Normal cancellation period

30.—(1) The cancellation period ends as follows, unless regulation 31 applies…

(3) If the contract is a sales contract and none of paragraphs (4) to (6) applies, the cancellation period ends at the end of 14 days after the day on which the goods come into the physical possession of—

(a) the consumer, or

(b) a person, other than the carrier, identified by the consumer to take possession of them.

Effect of withdrawal or cancellation

33.—(1) If a contract is cancelled under regulation 29(1)—

(a) the cancellation ends the obligations of the parties to perform the contract, and

(b) regulations 34 to 38 apply.

Reimbursement by trader in the event of withdrawal or cancellation

34.—(1) The trader must reimburse all payments, other than payments for delivery, received from the consumer, subject to paragraph (10)…

(9) If (in the case of a sales contract) the value of the goods is diminished by any amount as a result of handling of the goods by the consumer beyond what is necessary to establish the nature, characteristics and functioning of the goods, the trader may recover that amount from the consumer, up to the contract price.

(10) An amount that may be recovered under paragraph (9)—

(a) may be deducted from the amount to be reimbursed under paragraph (1);

(b) otherwise, must be paid by the consumer to the trader.

(11) Paragraph (9) does not apply if the trader has failed to provide the consumer with the information on the right to cancel required by paragraph (l) of Schedule 2, in accordance with Part 2…

(13) Where the provisions of this regulation apply to cancellation of a contract, the contract is to be treated as including those provisions as terms."

[25] The contract which forms the subject matter of this appeal is between a consumer and a trader within the meaning of Regulation 4 of the 2013 Regulations. The contract was not concluded at any business premises of the respondent and it was concluded by means of distance communication, namely the respondent's website. On the respondent's own admission, this is a sales contract for the sale of the vehicle and the deposit was part of the

contract to purchase rather than a reservation fee forming part of a different contract because (i) the deposit paid was part of the appellant's "Order" of the vehicle within the meaning of Clause 1.6 of the Terms (ii) Clause 2 of the Terms provides that there is only one contract consisting of the Order and the Terms (iii) Clause 5.2 of the Terms clearly identifies this as a deposit forming part of the overall contract to purchase (iv) the appellant was bound by contract to purchase the vehicle at the point of paying the deposit (v) the ordinary meaning of the word "deposit" in this context is an amount of money you pay as part of a total sum due or which will be returned if the agreed arrangement is completed (vi) this was not merely a holding fee but part of the overall contract of purchase which was concluded at the same time which is evidenced by the deposit only being refundable in the event that the vehicle was found not to be as described at the time of inspection or delivery (vii) document C3 refers to the vehicle being prepared for *delivery* (ie conclusion of the respondent's obligations under the contract). Read in this light, the deposit formed part of the contract to purchase without the appellant ever having seen the vehicle or met with the respondent's agents and it is therefore a contract concluded under an organised distance sales scheme.

[26] The consequence of this is that the respondent was therefore obliged to comply with Schedules 2 and 3 to the 2013 Regulations which require that the appellant is provided with information about how to access the whole terms and conditions of the contract. This would have included ensuring that he was aware that he was liable to pay the whole contract price. While it is not clear from the limited information available that the respondent complied with these requirements this does not form part of the appellant's grounds of appeal.

[27] On the assumption that the respondent did provide the appellant with the required information and it was clear to the appellant that he was under an obligation to pay the

entire contract price the appellant was obliged to complete the purchase of the vehicle subject to his 14 day cancellation rights in accordance with Regulations 29 to 34 of the 2013 Regulations. The effect of Regulation 33(1)(a) is that in the event of cancellation, any obligations incumbent upon the parties fell away. In turn, the appellant was entitled to insist upon a refund of the deposit as a payment received from the appellant pursuant to the cancelled contract.

[28] The 2013 Regulations applied to the party's contract as a distance contract. The appellant is entitled to a refund of the deposit as he validly exercised his right to cancel, which engaged his right to a refund under Regulation 33(1)(a). He was not obliged to provide any reason for his decision to cancel. This being so, the sheriff's second question falls to be answered in the affirmative. The sheriff deals with this issue at paragraphs 25 -27 of his appeal report and concedes that the Regulations do apply, particularly Regulation 34, and had this been brought to his attention he would have allowed the matter to proceed to proof and would not have dismissed the claim. Accordingly the sheriff has fallen into error which then had an impact on his further decisions in the case and the outcome for the appellant.

Dismissal under rule 1.8(11)

[29] In terms of this rule the sheriff may dismiss the appellant's claim if it is obvious, it had no real prospect of success. That power must be read in line with simple procedure being designed to provide a speedy, inexpensive and informal way to resolve disputes (simple procedure rule 1.1(1)), that cases are to be resolved as quickly as possible and at the least expense to the court (rule 1.2(1)) and the spirit of simple procedure which requires candour from the parties and compliance with the orders of the sheriff regarding the

lodging of documents (*Cabot Financial Ltd* v *Williams* [2025] SAC (Civ) 38, at paras [26] - [28]). Simple procedure is supposed to be simple and not difficult: *Cabot Financial UK Ltd* v *Bell* 2024 SC 91.

[30] However, the power must also be read in line with the requirement for informality being only as is appropriate, commensurate to the complexity of the issues (simple procedure rule 1.2(2)) and the need to consider the threshold set by rule 1.8(11). The sheriff must only exercise the power where it is obvious there are no real prospects of success. That term is not defined for the purposes of the simple procedure rules. Some guidance may be derived from the use of the same words in section 27B of the Court of Session Act 1988 which was brought into force around the same time as the wording in rule 1.8(11). In that context the test is higher than "manifestly without substance" and lower than probable success. The test should not be read as an insurmountable barrier preventing a weak case from being fully argued but the case must have substance and mere arguability or statability is not enough (*Wightman* v *Secretary of State* [2018] CSIH 18; 2018 SC 388, per LP (Carloway) at para [9]).

[31] For the power to have been exercisable, the appellant's refundability claim and misrepresentation claims must have obviously been lacking in substance.

[32] In terms of the refundability claim, this is a consumer contract within the meaning of the Consumer Rights Act 2015 ("the 2015 Act") for the same reasons as given above in relation to the 2013 Regulations. The claim was that the terms applicable to the deposit indicated it was refundable. For a conflict in terms to arise, the terms must contradict each other or conflict such that effect cannot fairly be given to both clauses and they cannot sensibly be read together. The appellant's position was that there was a clear and literal contradiction: the deposit was said to be refundable and non-refundable at the same time

(*Alexander* v *West Bromwich Mortgage Company Ltd* [2016] EWCA Civ 496, per Hamblen LJ at paras [30] - [47]) documents C3 (the order form) and C2 (the letter from the respondent's agent about the nature of the order form) would appear to support that claim.

[33] In contrast, Clause 5.2 of the Terms provides that the deposit was non-refundable. The sheriff's reasoning for rejecting the appellant's claim is that document C3, if it applied, had to be read with the Terms and the Terms prevailed. The sheriff rejected that there was a clause relating to refundability because document C3 pertained to another vehicle and the order form was expressly subject to the Terms.

[34] The sheriff fell into error in two ways. Firstly, taking document C3 and document C2 together, the appellant was offering to prove that the order form for the vehicle stated it was a refundable deposit and that the respondent had conceded this given the terms of document C2. That claim was not bound to fail and had some substance that could be tested with the leading of oral evidence.

[35] Secondly, there appears to be no basis for the sheriff to have concluded that the order form was subject to the Terms for two reasons. (i) The Terms included the order form when read with Clauses 1.6 and 2.1 and the sheriff does not address this or provide reasons why the terms of Clause 5.2 would prevail in any event (ii) document C3, if proven to be an accurate representation of the order form, did not state that there were additional terms nor that the Terms had been adequately signposted to the appellant.

[36] Considering matters of new, Clause 5.2 of the Terms could be viewed as lacking in transparency when read with the content of the order form contrary to section 68 of the 2015 Act. This is a matter which could have been tested at probation upon hearing further from the parties. Additionally, there is a *prima facie* conflict between the two terms and sufficient evidence indicating the respondent was aware of the terms of the order form (per

document C2). Several consequences flow from this analysis. Firstly, Clause 5.2 of the Terms could amount to a contract term which is unfair (as it causes a significant imbalance in the parties' obligations to the detriment of the consumer) having regard to the all the circumstances existing including the conflict terms per section 62 of the 2015 Act. Additionally, in the event of an ambiguity in a consumer contract then the meaning that is most favourable to the consumer should prevail (section 69 of the Consumer Rights Act 2015). This court does not need to, and in the absence of evidence and probation cannot, determine these issues. Notwithstanding this, for all of the foregoing reasons, it cannot be said that the appellant's refundability claim obviously had no real prospects of success in light of the respective position of the parties and the evidence available to the sheriff. If anything the opposite is true as the sheriff now concedes having accepted that the Regulations are applicable. The issues with the appellant's claim identified by the sheriff ought not to have prevented the claim from being fully argued and the evidence led and tested.

[37] Turning to the misrepresentation claim, the sheriff decided this had no real prospects as there was no basis to establish a misrepresentation in terms of section 11 of the 2015 Act as a result of the appellant having been specifically ordered to produce documentation showing that the vehicle was described as having a road tax charge of £195.

[38] However , the parties were agreed that the respondent had advertised the vehicle as being liable to £190 road tax. It may be that the sheriff intended to refer to the operative part of the sheriff's order dated 5 September 2025, which required the appellant to lodge "any evidence of [the road tax] not being that rate as respondent has produced clear evidence that the rate is in fact £195"

[39] Considering the matter of new, there was a clear factual discrepancy between the parties. The respondent lodged documents from the DVLA website purporting to show that the annual tax was £190. The only additional evidence lodged by the appellant prior to the sheriff's decision was document C1. Document C1 bears to be a text exchange between the appellant and the respondent's agent, post-dating the conclusion of the contract, that mentions the appellant "not having realised" about the road tax although he provides no further detail. In response the respondent clearly is aware that there is some concern about the level of road tax because he offers to pay the road tax for the first year after which he suggests that the appellant could apply to change the class. This of itself would have been sufficient to warrant further enquiry before the case was dismissed.

[40] However in addition the appellant lodged a written response to the points made by the respondent, (document C5) which explained that he had contacted the DVLA for confirmation of the tax position but a response was delayed.

[41] Subsequent to the sheriff's decision, the appellant provided a letter from the DVLA dated 13 November 2025 confirming that the vehicle was registered with the Ministry of Defence and no tax details were held by DVLA for the vehicle and directing the appellant to contact the Secretary of State for Defence's agent and an extract from the DVLA's "V149" which showed the road tax payable as £360. From the limited information available, it appears that the discrepancy arises between the road tax due for subsequent years of registration (the respondent's position and documents) and the road tax due for first registration of a former Ministry of Defence vehicle (the appellant's position and documents). In light of the parties being agreed that the respondent had indicated the road tax payable was £190, the appellant's contention that he subsequently became aware it was a higher amount (the reason being the vehicle was a former Ministry of Defence vehicle and

liable to first registration with the DVLA), the text exchange at C1 indicating the appellant made his concerns known about the tax situation, the information from the appellant that he was actively trying to obtain confirmation from the DVLA and the update received from the DVLA (that the vehicle had not in fact been registered with the DVLA), it cannot be said the appellant's misrepresentation claim had no real prospects of success. The appellant offered to prove a misrepresentation had occurred and that further vouching was awaited and the sheriff erred in law by placing the bar of real prospects too high. It is worth noting that, in this context, an alternative would have been for the sheriff to exercise his powers to pause the case rather than determining the merits in light of the appellant's position.

[42] For the foregoing reasons, the sheriff erred in law in dismissing the claim and the sheriff's third question is answered in the negative.

Appellant's failure to produce evidence of misrepresentation of the road tax position/misdescription in terms of section 11 of the Consumer Rights Act 2015

[43] This ground of appeal and the associated question is largely dealt with above. Because the sheriff decided wrongly and prematurely that the appellant's case did not have any prospects of success and was approaching the matter without considering the applicable Regulations, he deprived the appellant of the opportunity to obtain the evidence which he told the sheriff that he was seeking to obtain. The case could have been continued or paused for that purpose.

[44] Subsequent to the sheriff's decision, the appellant provided a letter from the DVLA dated 13 November 2025 confirming that the vehicle was registered with the Ministry of Defence and no tax details were held by DVLA for the vehicle and directing the appellant to contact the Secretary of State for Defence's agent and an extract from the DVLA's "V149"

which showed the road tax payable as £360. From the limited information available, it appears that the discrepancy arose between the road tax due for first registration of a former Ministry of Defence vehicle and the amount due for subsequent years. Parties agreed that the respondent had indicated the road tax payable was £190. The appellant subsequently became aware it was a higher amount. The text exchange C1 would suggest that the respondent had become aware of this and may indeed have offered a solution. Had the matter proceeded to proof there is every likelihood that the appellant would have been able to demonstrate that the vehicle had been advertised as being liable to road tax of £190 when in fact, as a first registration the road tax would have been £360. Having misdirected himself on the law the sheriff deprived the appellant of this opportunity. Accordingly his fourth question falls to be answered in the negative.

Disposal

[45] Having answered the first two questions in the affirmative and the final two in the negative it follows that the appeal must be sustained and the sheriff's order of 3 October 2025 recalled. It would then be open to this court to remit the matter back to the sheriff for proof. However given i) the low value of the case ii) the amount of court time which has already been taken up resolving the issues which it raises iii) the fact that the respondent failed to appear at the final appeal hearing and iv) that the legal and factual positions have now been clarified it is expedient for this court to issue a new decision in terms of the powers contained in the simple procedure rules 16(7).

[46] Accordingly having regard to the provisions of The Consumer Contracts (Information, Cancellation and Additional Charges) Regulations 2013 and in particular Regulations 29 to 34 thereof, I shall order that the deposit of £99 paid by the appellant to the

respondent falls to be refunded in full. No reason requires to be given but on the basis of the information now available it is clear that the road tax payable on the vehicle for first registration was £360 rather than £190 which was the amount referred to in the respondent's original advertisement.

[47] Given the low value of the claim and the fact that both parties represented themselves there will be no award of expenses due to or by either party.