



SHERIFF APPEAL COURT

**[2026] SAC (Civ) 7
PIC-PN3745-24**

Sheriff Principal N A Ross

OPINION OF THE COURT

delivered by SHERIFF PRINCIPAL ROSS

in the appeal in the cause

GARY BOWERS

Pursuer and Appellant

against

AVIVA INSURANCE LIMITED

Defender and Respondent

27 January 2026

[1] This is an appeal against an award of expenses in a low value personal injury action. It was raised in the All-Scotland Personal Injury Court. It alleged injury arising out of a road traffic accident, to a taxi driver who was working in the course of his employment. The action was valued by the pursuer at £3,923.48 and settled extra-judicially for £3,750 plus expenses. The sheriff, having heard parties, refused the appellant's motion for expenses on the ordinary cause scale and awarded expenses on the summary cause scale. He did so because of the low value of the action, which had been both valued and settled at a sum

lower than the ordinary action threshold of £5,000. This appeal is solely against the award of expenses.

The appellant's submissions

[2] The appellant submitted that the sheriff erred in failing to recognise that workplace accidents, valued above £1,000 but below £5,000, could not be raised as a summary cause in the All-Scotland Personal Injury Court (ASPIC). Only ordinary cause procedure was available in that court. It was therefore not open to the sheriff to consider summary cause expenses. The jurisdiction was concurrent with the sheriff court summary jurisdiction. The sheriff had erred in failing to recognise that an action raised under ASPIC procedure was automatically an ordinary action. The expenses should be awarded on that basis. The choice of forum was a reasonable one. The decision was capable of having a deterrent effect on the willingness of parties to use ASPIC.

[3] Although it was accepted that appeals related to expenses are to be severely discouraged, this appeal should be heard because it related to a point of principle of wider importance, not merely the award itself.

The respondent's submissions

[4] The respondent submitted that this appeal should not be considered, because it related solely to expenses, and the authorities did not permit an exceptional view to be taken of this appeal. Further, this was a discretionary decision, and not susceptible to reversal unless it had been exercised on a wrong principle, or was so plainly wrong as to demonstrate a wrongful exercise of discretion. The appellant had misunderstood the sheriff's decision. He had considered the reasonableness of raising the cause in ASPIC

against the availability of summary cause procedure. The possible wider consequences had not been argued before the sheriff, and in any event this was not a complex case which would justify ASPIC procedure irrespective of its low value.

Decision

[5] Appeals against decisions on expenses will normally not be considered (Macphail: *Sheriff Court Practice*, 4th edition, (2022), paragraph 18.166). An award of expenses is regarded as properly a matter for the discretion of the court which heard the case. The parties have recognised this principle. Departure from this rule may be made where there has been an obvious miscarriage of justice, the expenses have become a great deal more valuable than the merits, or a question of principle is involved. The present appeal does raise a question of principle, namely whether an award of expenses on the summary cause scale can be made where the procedure itself does not permit use of the summary cause procedure. It is therefore appropriate that the appeal be heard.

[6] The appellant's position was, primarily, that the sheriff erred in law in failing to recognise that the case was competently raised as an ordinary action. The appellant's submission relied on the impossibility of raising a summary cause action before ASPIC. Proceedings in the jurisdiction of ASPIC could only be under ordinary cause procedure. It was therefore factually incorrect to treat this action as not automatically an ordinary action.

[7] The appellant's position was to the effect that: (i) there was no discretion available to the sheriff, and ordinary cause scale expenses were "automatic"; and (ii) alternatively, if the sheriff did have discretion to award summary cause expenses, the decision showed a wrong exercise of discretion because the decision failed to take into account a number of factors, namely that ASPIC procedure was positively promoted by Parliament as suitable for low

value actions, that a litigant should not be deprived of a choice of forum where that choice was available, and it was perverse to punish the appellant for using available procedure, and likely to deter others.

Whether the sheriff had discretion to refuse ordinary cause expenses

[8] All actions raised under the ASPIC jurisdiction are ordinary actions, and are regulated by ordinary cause procedure under chapters 36 or 36A (together with the directions in the Sheriffdom of Lothian and Borders Practice Note No 1 of 2017).

[9] The Courts Reform (Scotland) Act 2014 provided for the creation of ASPIC (s.73). That Act also created simple procedure (s.72) but expressly excluded the application of simple procedure from the new court (s.73). The application of summary procedure is also excluded from ASPIC (Courts Reform (Scotland) Act 2014 (Commencement No 3, Transitional and Saving Provisions) Order 2015/247, regulation 9(1), disapplying section 35(1) of the Sheriff Courts (Scotland) Act 1971).

[10] The new court was duly created by the All-Scotland Sheriff Court (Sheriff Personal Injury Court) Order 2015. Regulation 2 awarded jurisdiction over specified civil proceedings, and regulation 3 specified the proceedings as actions of damages for, or arising from, personal injuries or death of a person from personal injuries, but only where either (i) proceedings would not be subject to simple procedure if brought under a local jurisdiction (in other words, the claim must be valued at in excess of £5,000) (reg.4) or (ii) they were a workplace-related action (reg.5). The present action did, however, qualify as a workplace-related action, because it was an accident at work (reg.5(1)) and the claim exceeded £1,000 (reg.5(2)). The overall effect is that the present action qualifies as an action which could competently be raised in ASPIC.

[11] Summary cause procedure is regulated by the Act of Sederunt (Summary Cause Rules) 2002. It is available for actions for personal injury such as the present case. Claims with a value of not more than £5,000, such as the present case, must be brought as summary causes. That jurisdiction has not (yet) been affected by the introduction of simple procedure in a variety of other causes. The summary cause rules remain in force and available in relation to smaller value personal injuries cases. The appellant opted not to utilise summary cause procedure, but to invoke the jurisdiction of ASPIC, where only ordinary cause procedure applied.

[12] The effect is that, in raising an action in ASPIC, the pursuer is not able to utilise summary cause procedure. That is not to say, however, that the pursuer has no choice of forum or of procedure. An action for damages for personal injury may be raised under ordinary cause procedure under the ASPIC jurisdiction. It may alternatively be raised under the ordinary cause procedure in a local sheriff court (including in Edinburgh Sheriff Court). It may also be raised under summary cause procedure in a local sheriff court. The pursuer retains a choice of forum and, with it, of procedure.

[13] The appellant placed reliance on the legislative intentions behind the creation of the ASPIC jurisdiction. The appellant's submissions included quotations from various government ministers and MSPs during the passage of the bill which led to the 2014 Act. These are to the effect that the rights of victims would be maintained by not excluding low-value claims from ASPIC, and that a fixed-cost regime would not be appropriate. The appellant submitted that "there can therefore be no doubt that Parliament clearly and deliberately intended actions such as the appellant's to be raised in the ASPIC".

[14] As a preliminary point, I do not accept that these parliamentary references are available to the appellant in support of the submission, or would be of assistance in any

event. The primary reason is that such references are only available to a court in restricted circumstances (see the line of authority from *Pepper v Hart* [1993] AC 593 onwards), the primary circumstance being ambiguity. I have set out the law surrounding personal injury actions, above. There is no ambiguity or lack of clarity. This court is unable, therefore, to commence an investigative process into the genesis of the 2014 Act provisions. In any event, the limited quotations contain only selected *ipse dixits*, and each of these is limited to broad principles. They do not reveal that they do in fact reflect the settled intentions of the legislature, particularly on the specifics of the issue of awards of expenses. I have therefore not had regard to the various quotes from ministers and others during the passage of the 2014 Act.

[15] In any event, the appellant's submission that the legislature must have intended that cases such as the present, when raised in ASPIC, be raised and proceed as ordinary actions, is incomplete. The proposition is, as a matter of applying the provisions, correct. It does not, however, assist the appellant. There are two reasons. The first is that the legislature did not remove a pursuer's choice to use ordinary cause procedure in a local court, or to use summary cause procedure. The pursuer retains that discretion, and the legislature did not compel the use of the ASPIC jurisdiction. The second is that the mere fact of use of ordinary cause procedure, whether in ASPIC or in the local sheriff court, does not compel an award on the ordinary cause scale.

[16] The sheriff correctly identified that the 2015 Order says nothing about the form of procedure and the scale of expenses. There is nothing inconsistent with an action proceeding as an ordinary action yet being subject to an award on the summary cause scale. The award has always been, and remains, a matter for the court's discretion. That is a

complete answer to the appellant's primary submission. The sheriff had discretion in the matter.

Whether the sheriff properly exercised discretion

[17] The question is then whether the sheriff properly exercised that discretion. He noted the low value of the case, and that the settlement figure of £3,750 was consistent with the averred symptoms and their duration. The value of the case was, and had always been, below the ordinary action threshold. Summary cause expenses were therefore justified.

[18] Before examining the sheriff's decision, it is necessary to recognise that it was a discretionary decision. An appeal against a discretionary decision is only available if the decision maker has exercised their discretion upon a wrong principle or that, the decision being so plainly wrong, they must have exercised their discretion wrongly (*Britton v Britton* 1986 SLT 207).

[19] The appellant relied on three factors in describing the exercise of discretion as wrong. These were: (i) that ASPIC procedure was positively promoted by Parliament as suitable for low value actions; (ii) that a litigant should not be deprived of a choice of forum where that choice was available; and (iii) that it was perverse to punish the appellant for using available procedure, and likely to deter others.

[20] In relation to the intention of the legislature, I have already indicated that in the absence of ambiguity or other lack of clarity I am unable to have regard to statements made during passage of the Bill. In any event, the sheriff's decision was not inconsistent with promoting the use of ordinary cause procedure in ASPIC. The tenor of the statements was that low-value workplace accidents might be complex in nature, and their low value should not be a deterrent to full preparation and argument. The sheriff's decision does not deprive

such actions of such a procedural remedy. No doubt an action of low value would, if properly regarded as complex or raising important issues, attract an award of expenses on the ordinary cause scale.

[21] In relation to choice of forum, this was addressed by the Inner House in *McIntosh v British Railways Board* 1990 SC 338:

“The pursuer is entitled to avail himself of the jurisdiction of whichever court he finds more convenient or appropriate to his own circumstances. It is not for the court to deprive him of his choice on grounds which could apply generally to every case of that type...It is not right that litigants should be deprived of these advantages just because their claims are small and simple, so long as they are claims which can competently be made in this court.” (per Lord President (Hope) at p343).

[22] *McIntosh*, however, does not assist the appellant. It was concerned with a specific statutory power, namely the ability of the Court of Session to remit cases to the sheriff court in terms of the Law Reform (Miscellaneous Provisions) (Scotland) Act 1985, section 14. That allowed remit when it was appropriate to do so. The court held that the purpose was to avoid remitting inappropriate cases. The fact that a claim was small and straightforward was not itself enough to justify remit, because there were remedies in the Court of Session, such as optional procedure and the right to a civil jury trial, which would also be removed. However, the court added the caveat that size and simplicity were not enough except in extreme cases, meaning: “where it was obvious from the pleadings...that on no possible view could the pursuer recover more than the upper limit to the privative jurisdiction of the sheriff court” (at p343). That is, in essence, the test that the sheriff applied in the present case. Secondly, the court observed that the power to modify the award of expenses at the end of a case on the sheriff court ordinary or summary cause scale provided a “valuable safeguard in the defenders’ interest against their being exposed to claims in this court where the award was trivial in relation to expenses” (at p345).

[23] Accordingly, *McIntosh* expressly provides the remedy which the sheriff employed in this case. On the authority of *McIntosh*, the sheriff was justified in identifying that the case was of minor value compared to the exposure of the defender in expenses, and there had been no good reason to choose ASPIC (and therefore ordinary cause procedure) over raising summary cause proceedings. The sheriff applied the “valuable safeguard” of awarding expenses on the summary cause scale.

[24] In relation to the alleged perversity of the decision, for the reasons discussed above it was not perverse, or even particularly controversial. The sheriff required to have regard to justice in the individual case, and any deterrent effect on litigants was not part of that assessment. It is difficult to see how administrative or political considerations, such as encouraging the use of a court, could ever be regarded as judicial in nature.

[25] Accordingly, these reasons do not support the appellant’s position. The sheriff’s decision was not irrational, or based on a misunderstanding of fact or error of law. It was a not a decision which no reasonable sheriff could have reached. It reflected the legitimate interests of both parties, and of the court. There is no basis to interfere with the sheriff’s award.

Disposal

[26] The appeal is refused. Parties should please attempt to reach an agreed disposal on expenses, failing which within 21 days the clerk will fix a hearing by written submission.