



Neutral citation [2022] CAT 40

**IN THE COMPETITION**  
**APPEAL TRIBUNAL**

Case No: 1418/5/7/21

Salisbury Square House  
8 Salisbury Square  
London EC4Y 8AP

14 September 2022

Before:

THE HONOURABLE LORD ERICHT  
(Chairman)  
THE HONOURABLE LORD YOUNG  
PETER ANDERSON

Sitting as a Tribunal in Scotland

BETWEEN:

**BLUE PLANET HOLDINGS LIMITED**

Pursuer

- v -

**(1) ORKNEY ISLANDS COUNCIL**  
**(2) ORKNEY FERRIES LIMITED**  
**(3) SINCLAIR HAULAGE LIMITED**

Defenders

Heard at the Court of Session, Edinburgh, on 26 May 2022

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**JUDGMENT: APPLICATION FOR STRIKE-OUT / SUMMARY JUDGMENT**

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## APPEARANCES

Mr Kenneth Murray appeared on behalf of the Pursuer.

Mr Mark Lindsay QC and Mr Dan Byrne (instructed by DWF LLP) appeared on behalf of the First and Second Defenders.

Mr Dave Neil appeared on behalf of the Third Defender.

## A. INTRODUCTION

1. The pursuer, a company registered in Malta, purchased a house called Marygarth on the island of Sanday in the Orkney Isles to be used by its directors Mr and Mrs Murray and their family. The pursuer raised a claim for damages in the Competition Appeal Tribunal (the “Tribunal”). The claim was brought against Orkney Islands Council (the “Council”), the Council’s wholly-owned ferry subsidiary Orkney Ferries Limited (“Orkney Ferries”) and a haulier based on Sanday, Sinclair Haulage Ltd (“Sinclair Haulage”). The claim was in respect of breach of competition law in respect of haulage services to Sanday. The pursuer sought damages against all three defenders jointly and severally under two heads. The first head of damages (in the sum of £569,729.42) was the difference between what it had cost the pursuer to buy and renovate the house and what it was now worth. The second head (in the sum of £840.20) was in relation to various specific incidents involving Sinclair Haulage or its then directors and shareholders, Mr and Mrs Sinclair. On 8 February 2022 Mr and Mrs Sinclair sold Sinclair Haulage to Weil Holdings Limited. Mr and Mrs Sinclair ceased to be directors of Sinclair Haulage and Mr Neil became a director.
  
2. The case called before us on the motion of Orkney Islands Council and Orkney Ferries Limited to strike out the claim or alternatively grant summary judgement against the pursuer. Sinclair Haulage adopted that motion. The argument focused on two issues:
  - (1) the damages sought; and
  
  - (2) the alleged breaches of competition law.

## **B. THE PARTIES' CASES**

### **(1) The pursuer's case**

3. The pursuer's case is set out in its claim form and witness statements and summarised in its skeleton argument and reply, and can be summarised as follows.
4. A cartel exists involving the Council, Orkney Ferries, Sinclair Haulage and others. The Council and Orkney Ferries funnelled all goods destined for Sanday and other Islands into a Freight Centre in Kirkwall. They appointed one haulier per island and only these hauliers were allowed to remove goods from the Freight Centre and deliver them to that island. The effect of these arrangements was to capture the market for the transportation of goods to the islands, carve it up into a series of monopolies and give the monopolies to a handful of private businesses in a secret process devoid of competition and public scrutiny. This ensured that those monopolies, including the one given to Sinclair Haulage, were protected from competition and made consumers captive customers of these monopolies. It provided Sinclair Haulage with a dominant market position (monopoly) and facilitated Sinclair Haulage's abuse of that, to the detriment of the pursuer and other customers. It resulted in the pursuer having to sell Mr Murray's home to escape the Sinclair's abusive practices and caused the pursuer to suffer loss as a result. The arrangements put in place by the first and second defenders had the effect of preventing, restricting or distorting competition within the UK and breached the Chapter I prohibition (Competition Act 1998 (the "Act") sec 2).
5. The Council and Orkney Ferries set the fares that Orkney Ferries charges its customers and the preconditions applicable to discounted fares, in particular the requirements to be resident on the island and to make a minimum of 50 journeys a year. While the discounted fares for ferry passage to Sanday were ostensibly available to any haulier, they were in practice only available to those hauliers who had been given monopolies: only such hauliers could prove that they would make a minimum of 50 journeys a year. The effect was to benefit the small group of private businesses that had been given monopolies. It gave them lower

operating costs and higher profit margins than competitors who could not access discounted fares because they could not meet the onerous preconditions, thus enabling them to undercut these competitors on price and force them out of business. It distorted the market and gave the companies with monopolies an unfair competitive advantage. The effect was to distort, prevent or restrict competition in the UK in breach of the Chapter I prohibition.

6. Sinclair Haulage abused its position of market dominance in breach of the Chapter II prohibition (sec 18 of the Act). Sinclair Haulage abused its monopoly to *inter alia* overcharge and defraud customers, abuse the island's refuse collection, embezzle, delay the delivery of goods, extort money, cut off access to essential services, misappropriate and destroy property and defame, harass and intimidate.

**(2) The defence for the Council and Orkney Ferries**

7. The Council and Orkney Ferries pled that there was no cartel as alleged by the pursuer. The Council and Orkney Ferries had not entered into a covert arrangement with the effect of preventing, restricting or distorting competition within the UK. Any licensed haulier is entitled to operate between the Orkney Islands. The price charged by Orkney Ferries is the same for all licensed hauliers. The use of the Freight Centre is open to all island hauliers who are licensed hauliers and set up a direct debit with Orkney Ferries. All licensed hauliers are treated equally.

**(3) The defence for Sinclair Haulage**

8. Sanday has two haulage operators. Sinclair Haulage is licensed as a haulage operator by the Vehicle and Operator Services Agency (VOSA) and requires to meet the same onerous requirements as national and international haulage operators. The other operator is unlicensed and uses non-HGV vehicles. Mr Murray has been using the other operator. Sinclair Haulage does not have a monopoly on Sanday but is the only company which has sought and paid for the legally required insurances and qualifications to operate HGV vehicles.

9. Sinclair Haulage carried out haulage services for several years for Mr Murray without complaint by him. There was a dispute as to the payment of an international banking fee and Sinclair Haulage stopped providing services until a large debt was cleared or sorted out. In view of increasing harassment by Mr Murray of Sinclair Haulage's staff and friends and neighbours, Sinclair Haulage informed him that they did not want to do business with him. Mr Murray started doing all his business with the other operator. Mr Murray sent a file of complaints about Mr and Mrs Sinclair to the local police. Spending nearly a million pounds on an old manse which was never going to be worth more than a third of that was not a very smart thing to do and neither Sinclair Haulage, the Council nor Orkney Ferries should be liable for Mr Murray's lack of financial acuity. Sinclair Haulage was not a profitable concern. Mr and Mrs Sinclair had operated it as a service to the island. As a result of Mr Murray's ongoing vexatious bullying and harassment, Mr and Mrs Sinclair decided to put Sinclair Haulage up for sale. Mr Murray had been welcome to buy it. It was purchased by Weil Holdings Limited.

## **C. THE PARTIES' SUBMISSIONS**

### **(1) The Council and Orkney Ferries**

10. Senior Counsel for the Council and Orkney Ferries submitted that the dispute was not in substance a competition law dispute at all but a neighbour dispute between Mr Murray and Mr and Mrs Sinclair with the appropriate remedy being damages and interdict in the Sheriff Court. Although the pursuer raised two competition law points in the abstract (the operation of the Freight Centre and the discount) these were immaterial. Even on the pursuer's averred case there was no monopoly: the pursuer uses the other operator for smaller deliveries. There is no monopoly for larger deliveries: any haulier may transport goods if they pay the published fare. There was no requirement to use the Freight Centre. Further, there was no causal connection with the losses sustained: the reason why the pursuer says it has to sell the house is because of the on-going feud with the Sinclairs. Further, the loss on the value of the house was not a relevant measure of loss for the alleged breaches of competition law. Because of market failure, the Council had had to step in and provide a distribution depot and

subsidised fares. If it was left to the free market no-one would deliver to Sanday. For similar reasons the state subsidises the island ferry network. No liability attaches to the Council and Orkney Ferries just because their actions may have created a dominant position for Sinclair Haulage.

**(2) Sinclair Haulage**

11. Mr Neil on behalf of Sinclair Haulage adopted the submissions made by Senior Counsel for the Council and Orkney Ferries. He submitted that there was no monopoly for the carriage of goods to Sandy. To receive the discount, hauliers require to be licensed by VOSA and have a registered address on the island. As in the Western Isles, island-based hauliers receive a discount in order to preserve remote communities. Having recently taken over the business from Mr and Mrs Sinclair, Mr Neil could not make an explanation for their behaviour.

**(3) Blue Planet Holdings Limited**

12. Mr Murray on behalf of the pursuer submitted that the pursuer's case was sound in law, supported by robust evidence, well particularised, clearly set out and had a realistic prospect of success. The defenders had not notified the pursuer of the alleged deficiencies and if there were deficiencies the pursuer should be given an opportunity to amend and make them good. Allowances should be made for the pursuer not being legally represented. Significant numbers of people and businesses had suffered loss because of the defenders' breaches of the Act and it would not be in the public interest for the case to be struck out on a technicality. In its conduct of the case the Council had shown deceit, dishonesty, contempt for the law, obstruction and tampering with evidence. He further submitted that a situation where a haulier based on an island gets a discount and one outwith the island does not get a discount distorts competition.
13. In relation to causation in respect of the £569,729.42, Mr Murray submitted that "because of the Sinclair's abuse of the monopoly and defrauding us, harassing us, etc, etc, we were forced to sell our property on the island, like others before us". One of their employees trespassed on the pursuer's land, and when the pursuer instructed their solicitors to do something about it, the Sinclairs cut off

the pursuer's access to all haulage services. The pursuer could not carry on with the restoration of the house because all the materials needed came from Sinclair Haulage. Contractors from other islands would not compete because they have non-compete agreements. The cartel included the Council, Orkney Ferries and the other haulage companies receiving monopolies. The minute the Sinclairs cut off the pursuer's access to haulage services the pursuer could not finish the restoration of the house and was forced to sell it.

14. In relation to the damages of £840.20, Mr Murray confirmed that the pursuer sought this sum jointly and severally against all three defenders. What the Sinclairs did was only possible because of the breaches of the Chapter I prohibition. If the Council had not breached the Chapter I prohibition the Sinclairs would not have had a monopoly.
15. In response to a query from the Tribunal as to whether there was still a need to sell Marygarth now that the Sinclairs had sold Sinclair Haulage, Mr Murray submitted that there was. His wife would not take their children up there because the family had been subjected to terrible things, e.g. people parking at the end of the driveway watching them. Instead of ringing the bell and delivering a parcel, people had broken into their car and hidden things under the seat like an IRA bomber. There were no police on the island. A lot of people had been doing things that left her feeling so uncomfortable that she and he did not want to live there. Mr and Mrs Sinclair still had a vice-like grip on the island and there were people there who did their bidding for them.

**D. THE BREAKDOWN IN THE RELATIONSHIP BETWEEN THE MURRAYS AND THE SINCLAIRS**

16. This dispute is between a Maltese company and a Scottish local authority, ferry company and haulage company. The genesis of the dispute is the breakdown in the personal relationship between the directors of the Maltese company, Mr and Mrs Murray, and the previous owners and directors of the Haulage Company, Mr and Mrs Sinclair. However it is the Maltese company, and not Mr and Mrs Murray, who is the pursuer in this case: any award for damages would be to compensate the company for any losses suffered by the company in breach of

competition law, and not to compensate Mr and Mrs Murray for any losses incurred by them personally.

17. There are extensive pleadings and witness statements on the details of the breakdown of the relationship and the conduct of Mr Murray and Mr and Mrs Sinclair towards each other. Mr Murray says that having endured years of appalling behaviour by the Sinclairs, the situation became so intolerable that we (by which we understand he means he and his wife) could stand it no more and were forced to abandon our plans of living on the island and decided to put our home up for sale. The Sinclairs say that because of Mr Murray's ongoing vexatious bullying and harassment they decided to cease to offer haulage services and leave the island. Senior Counsel for the Council and Orkney Ferries described the breakdown as an ongoing feud between Mr Murray and Mr and Mrs Sinclair and their supporters on the island of Sanday.
18. There are two sides to every story. At this stage in the proceedings, where the defenders are seeking to strike out the pursuer's case, the focus of the Tribunal is on the case pled by the pursuer and it is not necessary to set out in detail Sinclair Haulage's side of the story on the breakdown. The Tribunal cannot at this stage make any factual findings on the circumstances of the breakdown as it has not heard evidence.
19. The jurisdiction of this Tribunal is in competition law matters. It is not here to grant remedies for the breakdown of the personal relationship between the Murrays and the Sinclairs or for their conduct towards each other. It is Blue Planet Holdings Limited, and not Mr Murray personally, which is a party to the proceedings in this Tribunal. It is Sinclair Haulage, and not the Sinclairs personally, which is a party, and the Sinclairs are no longer directors or shareholders in Sinclair Haulage. The breakdown of the relationship is relevant to these proceedings only to the extent that it is relevant to the competition law issues between the parties. It is to these competition law issues that we now turn.

## **E. THE DAMAGES SOUGHT**

### **(1) Introduction**

20. It is important to bear in mind that these proceedings are a claim for damages. If the pursuer has not made out a relevant case on damages its claim must fail.

21. A claimant seeking damages for breach of Chapter I or II of the Act is entitled to the sum of money which will put him in the same position as he would have been had he not suffered the breach (Brealey and George, *Competition Law and Practice* para 16.02). The loss must be caused by the breach.

22. The Tribunal may strike out a claim if, *inter alia*, it considers that there are no reasonable grounds for making the claim (The Competition Appeal Tribunal Rules 2015 Rule 41(1)(b); *Forrest Fresh Foods Ltd v Coca-Cola European Partners Great Britain Ltd* [2021] CAT 29). The Tribunal may give summary judgment if it considers that the claimant has no real prospect of succeeding on the claim or issue and there is no other compelling reason why the case or issue should be disposed of at a substantive hearing (Rule 43(1)).

23. The primary position for the defenders was strike-out rather than summary judgment. Accordingly it is necessary for us to consider whether there are reasonable grounds for making the claims for damages for £569,729.42 and £840.20.

### **(2) The damages sought for breach of the Chapter I prohibition: the claim for £569,729.42**

24. The damages sought by the pursuer for breach of the Chapter I prohibition represent its loss on the value of Marygarth. The pursuer purchased Marygarth for £122,000 with a date of entry in November 2013. The pursuer has summarised its expenditure on Marygarth between 2013 and 2021 as comprising £776,886 for capital items; £96,559 for other expenses; and £41,285

for travel and subsistence. This totals £914,729. The pursuer has quantified the damages as the difference between the amount of money which the pursuer has spent on purchasing and renovating Marygarth (£914,729) and will spend on getting it ready for sale (£30,000), and the mid-price valuation by a surveyor in August 2021 (£375,000).

25. In our opinion, the pursuer has not set out any reasonable grounds on which it could be said that the £569,729.42 loss was caused by breach of competition law by the defenders.
26. We note from Mr Murray's submissions that the reason he gives as to why the pursuer is selling the house is the breakdown of relations between the Murray family and Mr and Mrs Sinclair: the Murray family no longer wishes to visit the house because of the conduct of Mr and Mrs Sinclair and others on the island. That is a different reason from the competition law issues raised in the case. The competition law issues are between the pursuer (Blue Planet Holdings Limited) and the Council, Orkney Ferries and Sinclair Haulage. Mr and Mrs Sinclair are no longer shareholders or directors of Sinclair Haulage. Even if Sinclair Haulage were still owned by the Sinclairs, Mr and Mrs Murray's reasons for the sale of the house are personal to the Murrays rather than being reasons for a limited company to sell at a substantial loss. On Mr Murray's own submissions, the pursuer's loss is caused by the breakdown of the personal relationship between the Sinclairs and the Murrays rather than breach of competition law.
27. Further, Mr Murray argues that the house must be sold because it is not possible to complete the renovation of the house as Sinclair Haulage is abusing its monopoly. His position is that the pursuer cannot carry on with the restoration of the house because all the materials needed came from Sinclair Haulage: haulage contractors from other islands would not compete because they have non-compete agreements. In our opinion there are no reasonable grounds for that position. The Sinclairs have sold Sinclair Haulage and the pursuer does not aver that the new management is refusing to provide services to it. The pursuer offers no evidence to substantiate its assertion that there are non-compete clauses with other haulage contractors.

28. Further and in any event, even if the pursuer is correct to say there has been a breach of competition law, that would not entitle the pursuer to the sum which it seeks. The pursuer would be entitled to the sum of money which would put it in the same position as it would have been had it not suffered the breach. That would not be the difference between what the pursuer spent on the house and what it is now worth. It would be the difference between the price the pursuer paid for haulage services provided to it by Sinclair Haulage and any lower price which would have been charged by another haulier operating within the hypothetical market in which there is no breach of competition law. In relation to Marygarth, the pursuer appears to have expended considerable capital sums well in excess of the ultimate re-sale value of the property. If that is seen as a loss to the pursuer, it is a loss caused by the pursuer's decision as to the scope and nature of the renovations rather than from any breach of competition law.
29. For these reasons, we find that there are no reasonable grounds for the claim for damages for £569,729.42 and we strike out that claim.

**(3) The damages sought for breach of the Chapter II prohibition: claim for £840.20**

30. In considering whether the pursuer's claim for damages under this head should be struck out, it is necessary to consider whether the pursuer has reasonable grounds for recovering the damages sought in respect of the alleged breaches of the Chapter II prohibition.
31. The pursuer sets out its claim for damages for breach of the Chapter II prohibition under the following headings. The pursuer quantifies the damages as totalling £840.20. We note that the sum of £840.20 is the total amount sued for under all of these headings.

***(a) Overcharging and price discrimination***

32. The pursuer claims abuse of dominant position to discriminate and overcharge the pursuer in respect that it was overcharged in relation to five deliveries of one-tonne bags from Heddle Quarry. The charge should have been £12 per bag

but were £14, £23, £22, £28.60 and £22 respectively. Additional costs were incurred for unloading in relation to certain other deliveries even though the unloading cost was included in the cost of delivery.

33. In our opinion the pursuer does not have reasonable grounds for recovering damages in respect of these matters. The amounts claimed to have been overcharged are *de minimis*. The disputes as to whether they have been charged the correct amounts in respect of the five bags, and as to whether an additional charge was due for unloading, are a contractual matter for which the pursuer has other remedies insofar as the claims have not prescribed.

**(b) Fraud**

34. The pursuer claims that Sinclair Haulage committed fraud as follows:
- (i) charging £24 for a delivery of a heated towel from Rutland Radiators when the pursuer had paid Rutland Radiators to deliver it to Marygarth;
  - (ii) charging £26.40 for delivery of a pallet of coal, which was refunded;
  - (iii) invoicing £158.40 for delivery of six pallets of coal, which was not paid;
  - (iv) issuing an invoice for £205.92 on 9 October 2017, which was paid; and
  - (v) charging £381.60 in November 2017 for the supply of sand rather than just the delivery of sand, which was subsequently corrected other than in respect of £43.13 for a bogus unloading charge.
35. In our opinion the pursuer does not have reasonable grounds for recovering damages under the Chapter II prohibition in respect of these matters. If there

was fraud in these invoicing errors, that would fall to be dealt with in the civil courts rather than in this Tribunal. Little or no loss was suffered as on most occasions Sinclair Haulage corrected their error.

***(c) Abuse of the Council's Special Refuse collection***

36. There was a dispute as to the collection of builder's refuse which Mr Murray categorised as abuse of Sinclair Haulage's dominant market position and extortion. In 2017 Mr Murray entered into an agreement with the Council for a special collection of refuse at a fee of £153.60, which was entered into and paid by Mr Murray personally. The Council sub-contracted the collection to Sinclair Haulage. There was a dispute between Mr Murray and Sinclair Haulage as to whether the refuse was too large for hand loading in which case an additional charge would be due for machine loading. In the end no additional charge was made and no loss was suffered.
37. In our opinion the pursuer does not have reasonable grounds for recovering damages under this heading. Neither the pursuer nor Sinclair Haulage were parties to the agreement for special collection, which was between Mr Murray and the Council. The claim under this heading is not about haulage of goods to the island. No loss was suffered.

***(d) Abuse of the island's refuse collection service to punish and harass the Murrays***

38. There was a dispute about collection of the Murray's household refuse. Sinclair Haulage had a contract from the Council to collect refuse on the island. On 24 June 2019 Mr Murray complained to the Council that his refuse had not been collected that day and it was not the first time it had happened. Mr Murray categorised this as an abuse of the Sinclair's monopoly on collecting refuse on the island in order to punish and harass the Murrays. His position was that not collecting the refuse was part of the process of the Sinclair's defaming, harassing and persecuting the Murrays until such time as the Murrays could stand it no more and left the island, and was a vindictive and wholly improper use of a public service that had been entrusted to them. The Sinclair's position

was that Mr Murray was putting building rubble in the refuse (which Sinclair Haulage was not allowed to collect) and had been abusive to the driver.

39. In our opinion the pursuer does not have reasonable grounds for recovering damages under this heading. This was not a dispute between the pursuer and Sinclair Haulage. It was a dispute with Mr Murray and not the pursuer. It was not a dispute about haulage of goods to the island. It was a contractual matter concerning the Council's contract with Sinclair Haulage for the collection of refuse on the island.

***(e) Abuse of monopoly and breach of trust to embezzle and delay the delivery of goods, harass and extort money***

40. The pursuer claimed that Sinclair Haulage used its monopoly on haulage to misappropriate and damage the pursuer's property, delay delivery, extort money, embezzle and intimidate and harass and acted like thugs. Sinclair Haulage left deliveries in a shed. They entered the Murray's car on two occasions without permission to leave parcels there. There was a dispute as to whether a tractor should have been delivered on a day on which it rained, and whether it should have been delivered when the pursuer's account was in arrears, and whether it was in fact in arrears. There was a delay in delivering an oil tank, which was subsequently damaged by the pursuer's builders moving it from the place it was left to its proper location.

41. In our opinion the pursuer does not have reasonable grounds for recovering damages under Chapter II under this heading. These are contractual matters between the pursuer (or Mr Murray) and Sinclair Haulage in respect of these particular deliveries.

***(f) Refusal to supply and tying. Abuse of monopoly to cut off access to essential services and to restrict access to the law***

42. The pursuer's claim is that Sinclair Haulage abused their monopoly by supplying the pursuer with haulage services only if the pursuer agreed to let two islanders moor their boats and park their cars on the pursuer's land. The claim

is founded on an email sent by Mr and Mrs Sinclair to the pursuer's financial controller on 24 July 2018 as follows:

“It has come to our attention that Mr Murray is threatening a number of local residents with legal action relating to having boats on the foreshore, where the [sic] have been berthed for generations. Furthermore it is my understanding that he does not allow parking on the verges near his property. People in Sanday are being bullied, exploited and intimidated by Mr Murray. As you are aware from our recent communications regarding his tone with my staff, we will not put up with this behaviour. I feel it is incumbent upon us having an influential position within this community, to stand up for the local people. This kind of behaviour is not acceptable in a small community whether or not he has the legal right to do so.

Despite maintaining an unacceptable credit record, I have striven to keep Mr Murray's account open. However I am now closing his account forthwith and would ask that he arranges haulage services elsewhere. We wish to support our friends and neighbours by making crystal clear that this kind of behaviour has no place on this island.

I'm sure we can reconsider providing goods and services if the legal threats to our friends cease”

43. The background was a dispute between two islanders (Mr Poole and the Sinclair's employee Mr Anderson) and Mr Murray about the mooring of the two islanders' boats on the foreshore opposite Marygarth. There was a dispute between these islanders and Mr Murray about whether they had a legal right to do so. On 16 June 2018 Mr Poole wrote to Mr Murray. It is clear from his letter that his understanding was that he had a right to do so under Scots law. On 6 July Mr Murray's solicitor wrote to Mr Poole and Mr Anderson. She explained that the foreshore in Orkney was governed by Udal law so the Scots law rights Mr Poole had referred to did not apply, and asked Mr Poole and Mr Anderson to remove their boats and cease mooring there. By further letter dated 20 July Mr Murray's solicitor gave a deadline for removal of the boats and stated that if this was not met she expected that she would be instructed to raise a legal action against them.
44. Mr Murray also complains that one day several cars stopped at the end of his drive in succession and watched before moving on and this was organised by Mr Anderson and/or the Sinclairs. Mr Murray's position is that Mr Poole and Mr Anderson are criminals who show nothing but contempt for the law, people's property rights and wishes, and who subjected Mr Murray to a

terrifying campaign of intimidation and harassment when he was in his own home minding his own business simply because he sought to enforce his legal rights, and that Mr Poole and Mr Anderson “are Sinclair Haulage’s henchmen”.

45. In our opinion the pursuer does not have reasonable grounds for recovering damages under this heading as part of the total of £840.20 sought in respect of damages under the Chapter II prohibition under all of his headings. The pursuer does not quantify the amount which it seeks in respect of this part of his claim, nor how much of the £840.20 is sought in that respect. In order to have reasonable grounds for recovering a sum for damages, a pursuer requires to set out the amount sought and how it is calculated. The pursuer has done neither. Further, on the pursuer’s account of events, Sinclair Haulage continued to provide services despite the wording of the email: the deliveries left in the car and shed which the pursuer complains about in (e) above were in 2019.

***(g) Misappropriation of sixty sanding belts for electric floor sander and harassment***

46. The pursuer claims that Mr Sinclair used Sinclair Haulage’s monopoly to take goods and deprive the pursuer of them. On Thursday 31 January 2019 the pursuer ordered sixty sanding belts from MacGregor Industrial Supplies. These were in the Freight Centre for collection by Sanday Community shop to deliver to the pursuer but were collected by Sinclair Haulage. Sinclair Haulage returned them to the Freight Centre the following Monday 4 February, from where they were collected and delivered by Sanday Community Shop.
47. In our opinion the pursuer does not have reasonable grounds for recovering damages under Chapter II under this heading. The ground of the pursuer’s claim in respect of the sanding belts is that Sinclair Haulage abused its monopoly. However that is contradicted by the pursuer’s own case on the sanding belts which makes it clear that there was no monopoly and that services were also available from an alternative supplier: the pursuer’s position is that the belts should have been, and ultimately were, collected from the Freight Centre by Sanday Community Shop and delivered by Sanday Community Shop.

***(h) Exploitative abuse of the monopoly to misappropriate and destroy property***

48. The pursuer claimed that Sinclair Haulage had abused its monopoly position by collecting from the Freight Centre and delivering to Marygarth lead bar sash weights and cord which should have been collected and delivered by Sanday Community Shop. These were found to be damaged. The pursuer claims that they were wilfully destroyed by Sinclair Haulage.
49. In our opinion the pursuer does not have reasonable grounds for recovering damages under the Chapter II prohibition under this heading. The ground for the claim is that Sinclair Haulage abused its monopoly but again this is contradicted by the pursuer's own case which makes clear that no monopoly existed: the pursuer's case was that the belts should have been collected from the Freight Centre by Sanday Community Shop and delivered by Sanday Community Shop. If Sinclair Haulage did wilfully destroy the pursuer's property, the pursuer would have a legal remedy in the Sheriff Court for damages and there is no need to found such a remedy on an alleged breach of competition law.

***(i) Defamation Harassment and intimidation, putting the Murrays under surveillance in their own home***

50. The pursuer's position was that the Sinclairs deliberately defame and malign people that they want to harm with the objective of setting other locals against them, then encourage the others to harass and intimidate the people they have decided to victimise and force off the island.
51. There was a dispute between the Sinclairs and Mr Murray about whether it was legal under Covid restrictions for workmen to travel to the island and work on Marygarth during Covid restrictions between 21 March to 4 April 2020. Mrs Sinclair took the view that it was not, and in an email to Mr Murray dated 21 March 2020 stated that the workmen would not be served in the Sinclair's shop, but noted that the other shop on the island (ie Sanday Community Shop) may do so.

52. The pursuer complains that on 23 March 2020 the Sinclairs stepped up their harassment and intimidation by involving Mr Anderson and his wife. The pursuer complains that Mr Anderson and his wife harassed and intimidated the Murrays by having cars drive up to the end of the Marygarth drive, stop on the road there for ten to fifteen minutes while their occupants put the Murrays under surveillance before driving off and being replaced by another car that did the same thing, and repeated this threatening behaviour on 23 March.
53. In our opinion the pursuer does not have reasonable grounds for recovering damages under Chapter II under this heading. The matters complained of by the pursuer are not breaches of competition law in respect of haulage services to Sanday.
54. As there are no reasonable grounds for the claim for damages totalling £840.20 under any of the pursuer's headings, the claim for damages of £840.20 is struck out.

**(4) Conclusion on damages**

55. As both claims for damages are struck out, the case fails and it is not necessary to consider the alleged breaches of competition law. However, for the sake of completeness we shall now briefly set out our views.

**F. ALLEGED BREACHES OF COMPETITION LAW**

56. The Orkney Islands are a group of islands off the north coast of Scotland. The capital of the Orkney Islands is Kirkwall, which is on the largest island, known as Mainland. There are around 70 islands in the group. Orkney Ferries runs ferries between Mainland and thirteen of the islands, including Sanday. Sanday has a population of around 550 people.
57. Haulage services to Sanday and other islands are provided by hauliers whose vehicles are transported between Mainland and Sanday or another island by ferry.

58. There are two key elements to the pursuer's claim that there have been breaches of competition law in respect of haulage services between Mainland and Sanday: the role of the Freight Centre, and the giving of discounts to certain hauliers. There is a factual dispute in relation to each of these elements.
59. The Council has established a freight depot in Kirkwall known as the Outer Isles Freight Centre. Further to a public tender exercise for warehousing services, the depot is operated by JBT Distribution Ltd. There is a factual dispute between the parties as to the role of the Centre. The pursuer's position is that the role of the Centre is as set out in an email to Mr Murray from Mr Neil dated 7 February 2019 at 15.07 but recalled by Mr Neil at 16.53 that day. At that time, which pre-dates the sale of Sinclair Haulage by the Sinclairs, Mr Neil was manager of the Freight Centre. In that email Mr Neil states:

“I would however like to clarify some facts regarding the use of the Outer Isles Freight Centre.

The freight centre is operated by JBT Distribution under contract to the local authority. The terms of this contract require JBT to provide a holding and consolidation point for the principle haulier from each island (as directed by the local authority). The principle haulier for each island is determined by the local authority and as such receives discounted ferry rates and the consolidation service provided under contract in the freight centre. In the case of Sanday this is Sinclair Haulage. Under the terms of the contract no other haulier (or anyone else) is permitted to remove goods heading to the isles. This means that JBT is obliged to manifest and load all goods delivered into the freight centre and addressed to Sanday to Sinclair Haulage.”

The position of the Council and Orkney Ferries is that, contrary to what is said in that email, the Freight Centre is open to all island hauliers.

60. What is said in the email, if true, may give rise to significant competition law issues. No explanation has been given for the withdrawal of the email. The whole circumstances of the operation of the Freight Centre and the sending and withdrawal of the email would have required to have been explored in an evidentiary hearing had the case not been struck out on the damages ground.
61. Discounted ferry fares are available to hauliers who meet certain conditions. A letter from Orkney Ferries Ferry Services Manager to hauliers dated 25 February 2019 sets out the following conditions:

“General Criteria

The haulier must be conducting the carriage of goods for others for hire and reward

The haulier must hold an Operator’s Licence for carriage of goods (use of vehicles in excess of 3,5T)

The haulier must sign a direct debit mandate in favour of Orkney Ferries

Isles based discount criteria

The haulier must be resident on the island to qualify for full haulier discount rate

The haulier must carry goods to/from the island of residence

The haulier must use own vehicles for the purpose of haulage

Where a vehicle is hired in (eg breakdown) this must receive prior approval from Kirkwall office

Discount applies to driver only”.

62. There is a dispute between the parties as to whether there is an additional condition that the haulier must prove that a minimum of 50 journeys will be made each year. Such a condition is included in a letter from Orkney Ferries Ferry Services Manager to hauliers dated 13 April 2007 and the Council’s response dated 14 June 2018 to a Freedom of Information request from Mr Murray.
63. Had we not struck out the claim on the damages issue, we would have refused the defenders’ motion for strike-out on the alleged breaches of competition law issue. The pursuer’s case that the Council and Orkney Ferries captured the market and carved it up into a series of monopolies is supported by the disputed evidence of Mr Neil’s email and the disputed evidence of the conditions for the discount. We would have allowed the case to proceed to a full hearing at which evidence would be led and we could be addressed in detail on the issues raised by the parties, including market failure and subsidy.

**G. CONCLUSION**

64. For the reasons given above, the case is struck out. We reserve all questions of expenses in the meantime.

The Hon. Lord Erich  
Chairman

The Hon. Lord Young

Peter Anderson

Charles Dhanowa O.B.E., K.C. (*Hon*)  
Registrar

Date: 14 September 2022