

Case Name: Iain Scott v Scottish Water

Case Ref No: XA31/23

Date, Time and Duration of Hearing: Thursday 8 and Friday 9 February 2024

Division and Senators: First Division (Lord President, Lord Pentland and Lord Boyd of Duncansby)

Livestreamed Hearing?: Yes No

Agents and Counsel:

Agents / Counsel for the Appellant (*Iain Scott*):

Currie Gilmour & Co

Alan McLean KC

Agents / Counsel for the Respondents (*Scottish Water*):

Clyde & Co LLP

Simon Di Rollo KC and Neale Tosh

Link to Judgment Appealed:

[2022-sac-\(civ\)-030.pdf \(scotcourts.gov.uk\)](#)

Case Description:

This is an appeal to the Court of Session from a decision of the Sheriff Appeal Court under section 113 of the Courts Reform (Scotland) Act 2014.

Mr Scott is a farmer on the Isle of Lewis. He used to graze beef cattle on Stoneyfield Farm. Between May 2008 and August 2010, 14 of his cattle became ill and died. Those cattle which survived the illness suffered an adverse effect on their health and condition. Their value was reduced as a result. As a result of the stress of this episode, Mr Scott suffered a deterioration in his mental health.

A sewer network runs through land adjacent to Stoneyfield. In August 2010, Mr Scott noticed sewage in the field drain of the field where he kept his cattle. He removed the cattle from the field and pastured them elsewhere. Meanwhile, Scottish Water sent operatives to clear the drains and carry out investigation and any necessary repairs to the sewer.

Mr Scott contends that Scottish Water were aware that the sewer was blocking and overflowing from 2008, and that they were aware that the discharge might contain substances which would be harmful to human or animal health. He alleges that they undertook only temporary and short-term repairs to solve the problem, and that they took no steps to warn him of the potential contamination of the field. He claims damages from them in relation to the loss of profit on the cattle affected, vets' bills, restocking costs, his mental health and other associated costs.

Scottish Water dispute Mr Scott's claim. They aver that they fulfilled their duties to inspect and maintain the sewer in line with their statutory obligations and the service levels they have agreed with the Scottish Environmental Protection Agency and other regulatory bodies. They say that, in any event, there was no evidence of sewage being discharged onto the field at the material time, nor any evidence that there were toxins which would adversely affect cattle in the field.

The sheriff found Scottish Water in breach of their duty to inspect, maintain and repair the sewer. He found that the cattle had drunk polluted water and grazed

polluted grass and that this had caused their illness or death. He found Scottish Water liable to pay Mr Scott £272,711.88 in damages.

On appeal, the Sheriff Appeal Court overturned the sheriff's decision. This was on the basis that there was a lack of evidence that Scottish Water had known that there was a persistent issue with sewer leakage, and that, in any event, Scottish Water was not under a duty to ascertain the uses of the land surrounding the sewers and whether that land had suffered pollution. The SAC found that there were gaps in the evidence heard by the sheriff, and therefore there was no definitive proof of the cause of the death of or damage to the cattle.

Mr Scott appeals the decision of the SAC. The First Division will hear the appeal on Thursday 8 and Friday 9 February 2024.