

SHERIFFDOM OF NORTH STRATHCLYDE AT DUMBARTON SHERIFF COURT

[2026] SC DUMB 4

DBN-B204-24

NOTE BY SHERIFF F McCARTNEY

in the cause

DR LAURENCE McDERMID

Pursuer

against

NHS GREATER GLASGOW & CLYDE HEALTH BOARD

Defender

Introduction

[1] On 2 December 2025 I refused Dr McDermid's motion seeking that the court exercise certain powers under section 180A of the Data Protection Act 2018. Since then, Dr McDermid has been in correspondence with the Sheriff Clerk's office regarding his request for written reasons for the refusal of the motion.

The summary application and the procedural history of the case

[2] I start with the application and some background to the case.

[3] This summary application was raised by Dr McDermid against Greater Glasgow and Clyde Health Board (the Health Board) in May 2024. The Sheriff Clerk granted a warrant on 31 May 2024. Dr McDermid made various data protection requests to the defenders, and

has been dissatisfied with the response to those applications. He then raised the current proceedings, seeking a compliance order in terms of section 167 of the Data Protection Act 2018. His application has a single substantive crave, split into various parts. The crave seeks that the court appoint a suitably qualified person to be directed to undertake various tasks. Those tasks include that the person appointed act as data processor and oversee the re-processing of the pursuer's subject access requests; that the person appointed "investigate, form an opinion on and communicate an[y] advice" on breaches of data protection legislation; and that the person appointed "investigate, form an opinion on" the defender's adherence to any compliance order granted. Details are provided as to whom a suitably qualified person might be.

[4] The summary application provides a detailed factual background as to the data protection requests made, and what information has not been provided but which, in the pursuer's view, should have been. It runs to 87 paragraphs of condescendence.

[5] The application first called on 2 July 2024. There was no appearance by the Health Board. The Sheriff granted decree in absence. The granting of that decree was then appealed. On 4 March 2025 the Sheriff Appeal Court allowed the appeal and remitted the matter to the Sheriff at Dumbarton. Before the process was remitted and a hearing assigned, the pursuer enrolled a motion before the Sheriff Appeal Court to recall the interlocutor of 4 March 2025 and remit the process to the Court of Session in terms of section 112 of the Court Reform (Scotland) Act 2014. That motion was refused by the Sheriff Appeal Court on 29 July 2025. The matter was then remitted to Dumbarton Sheriff Court and a hearing after service has been assigned for 13 January 2026.

[6] Accordingly, although the action was raised in 2024, the court has not yet made an order for answers. The detailed position of the Health Board as regards the application, and its position on the factual background as averred by Dr McDermid, is not yet known.

The motion

[7] In advance of the first calling of the case on 13 January 2026, the pursuer enrolled a motion. The terms of the motion are that the court should:

“Exercise its powers under section 180A of the Data Protection Act 2018 (the 2018 Act) and pronounce orders in such terms as the court sees fit to make a requirement of the Defender, to make available for inspection by the Sheriff so much of the information relating to the Subject Access Requests of the Pursuer as is available to the Defender.”

[8] I heard argument on that motion on 2 December 2025. The defender sought that the motion be refused *in hoc statu* or, if the court was not minded to do so, to continue consideration of the motion until the first calling on 13 January 2026. The pursuer sought that the motion be granted. I refused the motion *in hoc statu*, providing reasons for my decision in court.

Arguments relative to the motion

[9] Dr McDermid had provided a note attached to the motion, but also provided the court with additional arguments in court. Ms Stevenson appeared from the Health Board to oppose the motion.

[10] Dr McDermid argued that the granting of the motion at this stage would assist with the resolution of the action. A number of subject access requests had been made to the Health Board by him from 2021 onwards. Information had been provided to him, but with various redactions. His note to the motion set out the details of what documents the court

might consider inspecting. It was fair and just for the Sheriff to inspect the documents at the heart of the dispute. Such an inspection would leave the court in a better position to understand the reasons for the summary application, and why it should be granted. If the court had the unredacted material it would be a more favourable position to deal with the summary application. As this was a summary application, the court should deal with matters as expeditiously as possible. That was particularly given that the Health Board had not appeared at the hearing in July 2024, when decree was originally granted. There was an inherent prejudice in any delay. Obtaining the unredacted documents at this stage would allow a quicker disposal of matters. It did not matter that the motion was enrolled before the first hearing. It could be taken as read that the Health Board would be opposing the application. It was therefore unnecessary to delay matters to the hearing already assigned in January 2026. The court should consider the granting of this motion as a step in due diligence to determine the summary application. Granting the motion would preserve the material. The motion could be viewed as similar to the grant of an interim interdict. The Health Board had not advanced any good argument as to why the motion should not be granted.

[11] For the Health Board it was argued that, firstly, the motion was premature. The Health Board appreciated the substantial history to matters, but the fact remained that no answers had yet been ordered or lodged. It was not a straightforward application. The court would better understand the dispute between the parties once answers had been lodged. The motion lacked specification. It was difficult to understand exactly what Dr McDermid sought the court to do. It appeared to duplicate orders sought in the crave of the application. There was the risk that if the court granted the motion, it would pre-determine the summary application at an early stage. The statutory framework required the

court to consider the issue of proportionality (section 45(2A) of the Data Protection Act 2018). The motion did not consider how the issue of proportionality would be addressed.

Reasons for refusal of the motion

[12] I refused the motion for the following reasons.

[13] Firstly, I considered the motion to be premature. The first hearing (following the appeal) has not yet taken place. There has been no order for answers. Accordingly, the position of the Health Board on the detailed averments within the application is not yet known. It is important the court understands the scope of any factual dispute. The court may have to decide if any factual dispute requires resolution before the application can be determined one way or another. It is not clear if the parties agree on the applicable tests within the legislation framework. In other words, the court at this stage does not know the extent of the issues it requires to resolve.

[14] Secondly, the motion invites the court to use its discretion to determine which the documents the Health Board should lodge with the court to be inspected. At this early stage, it is not possible for the court to exercise such discretion without knowing if the Health Board accept that documents (or parts of documents) have been withheld and, if so, why. At this stage, the court is not sufficiently informed to know how to approach such a task, nor the parameters under which it might exercise its discretion. Further, if the court grants the motion and directs which documents should be lodged and inspected, there is the risk that the court, inadvertently or otherwise, is seen to have taken a view on the merits of the summary application. That is a concern whilst the crave of the summary application remains pending.

[15] Lastly, I did not accept Dr McDermid's submission that the motion should be treated as analogous to the grant of an interim interdict. He argued that when viewed in that light, the motion should not be seen as premature but rather as a fairly standard step early in proceedings. I rejected that submission. The analogy does not hold true. The motion before the court was not aimed at preserving the position pending overall resolution. Rather, the court was being asked to take a proactive step, but with unclear parameters and without a detailed understanding of the factual matrix.

[16] On the opposed motion of the defender, the expenses of the motion were granted against Dr McDermid.

The requirement to provide written reasons

[17] Following the refusal of that motion, the pursuer sent emails to the Sheriff Clerk's office seeking written reasons for the refusal of the motion. He first referred to Ordinary Cause Rule (OCR) 12.2, later clarified to OCR 12.2 (5).

[18] Dr McDermid's argument can be summarised as follows. He considers the court rules give him a right to receive written reasons on request. He understands the application is a summary application, but argues the OCR apply. His request is supported by *MacPhail "Sheriff Court Practice"*, 4th ed, at para 26.41. That paragraph supports the application of the OCR to summary applications where there is no rule covering the issue within the Act of Sederunt (Summary Applications, Statutory Applications and Appeals etc. Rules) 1999 ("the summary application rules"). As there is no rule on written reasons within the summary application rules, the OCR rules apply. The terms of OCR 12.2(5) are clear. The language in OCR 12.2(5) is obligatory. The rules of statutory construction means the court has no discretion. If a party asks for reasons to provided, the court must do so.

Consideration of the request for written reasons

[19] I am conscious I have not heard full argument on this point, although Dr McDermid has given detailed submissions in writing. However I do not consider his arguments that he has an entitlement to written reasons for the refusal of the motion are sound.

[20] The starting point is the framework of the provisions governing summary application procedure. In a summary application the Sheriff has a statutory direction to determine the application at the first or any subsequent diet fixed in respect of the summary application, and to deal with the matter summarily with his or her final decision given in writing. That arises from section 50 of the Sheriff Courts (Scotland) Act 1907, part of which reads:

“In summary applications (where a hearing is necessary) the sheriff principal shall appoint the application to be heard at a diet to be fixed by him, and at that or any subsequent diet (without record of evidence unless the sheriff principal shall order a record) shall summarily dispose of the matter and give his judgment in writing....”

[21] Given that emphasis on the prompt disposal of summary applications, the rules governing summary applications allow the court to adopt a flexible procedure within that statutory direction. Rule 2.31 of the summary application rules reads:

“The sheriff may make such order as he thinks fit for the progress of a summary application in so far as it is not inconsistent with section 50 of the Sheriff Courts (Scotland) Act 1907.”

[22] It is correct that *MacPhail* supports the potential to apply individual Ordinary Cause Rules to summary applications. Whilst *MacPhail* refers to circumstances where the summary application rules are silent “on a particular matter” (para 26.41 *MacPhail*, 4th ed), the examples provided in *MacPhail* are not in point. *MacPhail* refers to the application of the OCR to minutes, to amendment, to the withdrawal of agents, to the recovery of evidence

and some issues concerning appeals to the Sheriff Appeal Court. There is no reference in *MacPhail* to the OCR on the provision of written reasons applying to summary applications. In my view, the application of OCR is discretionary and fact specific. That is what *MacPhail* indicates:

“subject to these qualifications, Ordinary Cause Rules consistent with the summary disposal of the application may be applied to summary applications by the Sheriff” (para 26.41 *MacPhail*, 4th ed, emphasis added).

The use of the word “may” is important. The case referred to in *MacPhail* in support of that proposition, *O’Donnell* (1910 SC 799), did not give unequivocal endorsement to the application of other rules to summary applications. Lord Johnston noted:

“it is clear that what is intended is that any application which is summary shall be heard without unnecessary multiplication of forms of procedure.... I think that there is inherent power in the Sheriff—to whom it is remitted to consider such matters in the summary way provided by section 50 of the Act—to see that such proceedings are carried on with reasonable effect.”

[23] Given the myriad of subjects that can arise under summary applications, the flexibility allowed gives the court latitude to determine the most appropriate procedure depending on the circumstances of the case. However, whatever procedure is followed prior to determining a summary application ultimately the court must give its decision in writing (section 50 of the Sheriff Courts (Scotland) Act 1907).

[24] The OCR are different. Chapter 12 of the OCR deals with interlocutors. That chapter starts with provision for correction of interlocutors in some circumstances. It also deals with specific rules on extempore decisions (OCR 12.2(4)(a) and 12.3) and decisions where judgement is reserved (OCR 12.2 (4)(b) and 12.4).

[25] Dr McDermid points to OCR 12.2(5). To understand that particular rule in context, it is helpful to consider the relevant parts of OCR 12.2 starting with OCR 12.2(4) which reads:

“12.2 (4) At the conclusion of any hearing in which evidence has been led, the sheriff shall either—

- (a) pronounce an extempore judgment in accordance with rule 12.3; or
- (b) reserve judgment in accordance with rule 12.4.

(5) In circumstances other than those mentioned in paragraph (4), the sheriff may, and must when requested by a party, append to the interlocutor a note setting out the reasons for the decision.

(6) A party must make a request under paragraph (5) in writing within 7 days of the date of the interlocutor.

(7) Where a party requests a note of reasons other than in accordance with paragraph (6), the sheriff may provide such a note.”

[26] OCR 12.3 deals with an extempore decision. OCR 12.4 deals with the situation where a Sheriff has reserved judgement. Each rule gives further provision as to how the court should approach its task.

[27] There are two points arising from OCR 12.2(5) in particular and from Chapter 12 of the OCR more generally. Firstly, it is unclear whether OCR 12.2(5) provides for the obligatory provision of reasons where a decision is not the final decision. OCR 12.2(4) appears to cover a decision following a proof or proof before answer. Not every case is resolved in the Sheriff Court after evidence is led, and it might be that OCR 12.2(5) envisages the provision of reasons following the resolution of a case at debate or another hearing where evidence has not been led. I have not had the benefit of argument on that point and do not reach a final conclusion. However, more fundamentally, whilst it is true that the summary application rules do not contain an equivalent rule to OCR 12.2(5), that does not mean I accept Dr McDermid’s argument that this rule must then apply to summary applications. As set out in section 50 of the Sheriff Court (Scotland) Act 1907, the Sheriff must give his or her final decision disposing of a summary application in writing. As such,

much of Chapter 12 of the OCR could not apply to summary applications, given its regulation of extempore judgements which cannot apply to summary applications.

[28] There is one further point. Given the statutory direction on dealing with summary applications and the consequential emphasis on flexibility within the summary application rules, the requirement to provide written reasons may not fit comfortably within that statutory aim. The court should, wherever possible, deal with the summary application as quickly as fairness allows. The court should avoid unnecessary forms of procedure. In some circumstances where the summary application rules do not provide for rules regulating a specific procedure, the Sheriff may find it helpful to apply the OCR to ensure fairness between the parties. In this case, providing written reasons at each and every stage of the procedure before the court's disposal of the summary application does not easily fit within the aim of the summary application rules.