



SHERIFF APPEAL COURT

**[2026] SAC (Civ) 59
WCK-B17-23**

Sheriff Principal G A Wade KC
Sheriff Principal A Miller
Appeal Sheriff I M Fleming

OPINION OF THE COURT

delivered by SHERIFF PRINCIPAL ANDREW MILLER

in the appeal in the cause

SIR IAIN LIVINGSTONE QPM, CHIEF CONSTABLE OF SCOTLAND

Pursuer and Respondent

against

KEVIN BOOTH

Defender and Appellant

**Pursuer and Respondent: Watts KC; Arnott; Legal Services Department, Police Scotland
Defender and Appellant: Webster KC; Crabb; Levy & McRae Solicitors LLP**

27 August 2026

Introduction

[1] This is the opinion of the court, to which all members have contributed.

[2] The respondent is the Chief Constable of the Police Service for Scotland. By summary application at Wick Sheriff Court, the respondent sought a civil trafficking and exploitation risk order (“TERO”) in respect of the appellant in terms of section 26 of the Human Trafficking and Exploitation (Scotland) Act 2015 (“the 2015 Act”). In essence, the

summary application averred that, over a period of decades, the appellant, who lived in a remote location in Caithness, had engaged in a course of conduct which included human trafficking and sexual exploitation. This was said to include hiring vulnerable young women from financially impoverished environments overseas to work as his housekeepers under contracts which purported to require them to engage in sexual acts and submit to forms of physical abuse and exploiting them, including by sexually and physically abusing them and restricting their access to money and to means of communication with friends, family and other support networks. Some of the contracts provided that payments due to women would be forfeited if they failed to carry out the foregoing obligations to the appellant's satisfaction.

[3] The summary application averred that these acts of abuse had taken place both at the respondent's home in Scotland and in a number of foreign countries and that many such acts of sexual and physical abuse perpetrated by the respondent had been filmed by him. It also averred that foreign travel had been a central feature of the respondent's activities, that he had abused or at least met a number of his victims in foreign countries and that he had arranged and paid for travel, passports, visas and accommodation for a number of his victims in order to facilitate his abuse of them.

[4] In the course of police investigations into the appellant's activities, police officers obtained statements from a number of women who had been victims of the appellant's activities. Police officers also searched the appellant's home in Scotland under warrant in 2019 and recovered evidence including hundreds of video recordings of acts of physical and sexual abuse of multiple women by the appellant, apparently committed at his home in Scotland and in other locations including foreign countries. Also recovered were a significant quantity of emails and Skype messages and documents relating to arrangements

the appellant had made or sought to make to find or meet women, and in some cases boys, for the purposes of physical or sexual abuse, including contracts of the kind described above.

[5] The TERO sought in the respondent's first crave included nine separately numbered conditions, intended to restrict the appellant's ability to pursue activities of the kind described. Condition (vii), which came to be the focus of the appeal, was in the following terms: "The defender shall be prohibited from travelling to any country outwith the United Kingdom in terms of Section 28(2)(c) of the Act."

[6] The respondent was made subject to an interim TERO in terms of Section 30 of the 2015 Act on 5 April 2023 in terms of the respondent's second crave. Although that order originally included all of the conditions craved in relation to the TERO, at a hearing after service on 21 April 2023 the interim TERO was varied to replace condition (vii), the prohibition on foreign travel, with a condition requiring the appellant to notify the police in writing at least 14 days in advance of travelling to any country outwith the United Kingdom, of his destination, proposed length of stay, the address(es) where he would reside during his trip and the contact details of any such residence, and also requiring him to notify the police within 48 hours of any changes to his travel or residence plans.

[7] Answers 19 and 20 to the respondent's averments on record were construed for the purposes of the proof as admitting that the criteria for the making of the TERO craved by the respondent were met, and that the orders sought by the respondent within the scope of the TERO were proportionate, with the exception of the travel ban forming condition (vii). Following a proof which focussed on whether the travel ban was necessary and proportionate, the sheriff issued a judgment dated 14 February 2025 and, by interlocutor

dated 20 February 2025, made the TERO craved by the respondent, including the travel ban in terms of condition (vii), for a period of 5 years.

[8] At a hearing on expenses on 13 May 2025, the sheriff found the appellant liable to the respondent in the expenses of the action and granted the respondent's motion for an increase in the charges allowed at taxation in terms of paragraph 5.2 of the Act of Sederunt (Taxation of Judicial Expenses Rules) 2019 (the 2019 Rules), which the sheriff set at 80%. The appellant appeals against the sheriff's decision to grant the TERO and against his orders with regard to expenses.

Legislation

[9] The 2015 Act makes provision about human trafficking and slavery, servitude and forced or compulsory labour, including provision about offences and sentencing, provision for victim support and provision to reduce activity related to these offences.

[10] Part 4 of the Act introduced trafficking and exploitation prevention orders (which are not relevant to the present appeal) and TEROs. The Chief Constable may apply for, and the court may make, a TERO in terms of Section 26 of the Act in relation to a person who has not been convicted, where there is a risk that he will commit a relevant trafficking or exploitation offence within the scope of Section 16. Section 16 (read with section 34(1)) lists the relevant trafficking and exploitation offences for these purposes, which include the offence of human trafficking within the meaning of Section 1 of the 2015 Act.

[11] Section 26(3) of the 2015 Act, which empowers the Sheriff to make a TERO, is in the following terms:

“(3) The sheriff may make a trafficking and exploitation risk order only if the sheriff is satisfied that the adult in respect of whom the order is sought has acted in a way which means that—

- (a) there is a risk that the adult may commit a relevant trafficking or exploitation offence, and
- (b) each prohibition or requirement in the order is necessary for the purpose of protecting persons generally, or particular persons, from the physical or psychological harm which would be likely to occur if the adult committed such an offence.”

[12] In terms of Section 27(2) of the Act, both the TERO and any conditions contained within the TERO must be in place for at least 2 years unless the condition is a foreign travel ban or the only condition in the TERO is a foreign travel ban. In terms of section 28, the maximum period for a foreign travel ban in a TERO is 5 years. Where a TERO prohibits a person from *any* international travel, the TERO must include a condition that the person surrenders their passport (section 28(2)(c) and 28(4)).

[13] Two convention rights, within the meaning of section 1 of (and Schedule 1 to) the Human Rights Act 1998 were of particular relevance to the issues raised in this appeal. The first is the appellant’s right to respect for his private and family life, in terms of Article 8. The second is the right of others, specifically potential future victims, not to be held in slavery or servitude or to be required to perform forced or compulsory labour, in terms of Article 4.

Sheriff’s judgment

[14] The sheriff’s judgment contains the following findings in fact of particular relevance to the travel ban in terms of condition (vii) of the TERO:

“[4] That the Defender, on numerous occasions, over many years, at [his address in Scotland] and elsewhere, violently whips women and girls causing them obvious extreme distress and pain. In doing so, the Defender uses his hands, and a variety of implements such as canes, wooden brushes, riding crops and belts. Specifically, that the Defender restrains women to the metal bench within [his address in Scotland] using handcuffs for the purposes of whipping them. These assaults are videoed by the Defender;

[5] That a consistent feature of these assaults is that the Defender takes pleasure in assaulting his victims, justifies them as 'punishment beatings' for minor real or imagined infringements, takes great care in inspecting and filming the injuries inflicted, and that in counting the set number of blows to be administered threatens to start again if the victim struggles or resists in any way.

...

[8] That the Defender has a history of offending...;

...

[10] That the Defender, since 1998 to at least December 2022, has engaged in a consistent course of conduct of recruiting women, both from the United Kingdom and abroad, for the purposes of isolating them, either at [his address in Scotland] or elsewhere far from their homes, and thereafter submitting them to violent beatings and forcing them, through threats of violence, to perform sexual acts on him;

[11] That in doing so the Defender travelled abroad to a variety of countries to target financially vulnerable women and induce them, through the promise of employment and financial gain, to travel to join him in a variety of locations distant from their home countries;

...

[15] That in July 2023 a complaint was made to Police Scotland by a Ms J regarding the Defender's conduct towards her whilst she was employed by him at [his address in Scotland] between June and December 2022. Further, that this conduct constituted a further instance of trafficking and exploitation;

[16] That the resources available to the Pursuer, both in terms of officers directly employed by Police Scotland, and in terms of assistance available from the appropriate authorities in other countries both within and outwith the European Union, are wholly inadequate to the task of monitoring the Defender's movements and actions outwith the United Kingdom."

[15] The sheriff was satisfied that the appellant had carried out a systematic course of conduct of acts of human trafficking and exploitation, that he presented a substantial risk of continuing to commit said acts and that restricting his conduct without a travel ban or restriction on holding a passport would not provide sufficient protection to potential further victims. Accordingly, the sheriff was satisfied that it was necessary and proportionate,

having regard to the applicable provisions of the 2015 Act and the appellant's Article 8 rights, that the appellant should be made subject to a TERO which prohibited him from travelling to any country outwith the United Kingdom.

Appeal

[16] It was submitted on behalf of the appellant that, in making the TERO, the sheriff had erred in law in five respects:

- (i) by failing to specify the relevant trafficking and exploitation offence(s), within the scope of section 16 of the 2015 Act, to which the appellant's risk of further offending related, such specification being required in order to enable the sheriff to assess the future risk of that offence occurring and hence the necessity and proportionality of any prohibition or restriction.
- (ii) by making findings arising from evidence given by a police officer, DS Hughes, with regard to the limited capacity of Police Scotland to monitor the appellant's activities in foreign countries, which frustrated the legislative purpose of section 26 of the 2015 Act, *et separatim* by failing to carry out a "high intensity review" into the justification for the travel ban.
- (iii) the sheriff's judgment demonstrated a closed mind and a failure to properly weigh relevant considerations, predicated upon an erroneous and prejudicial assessment of the evidence.
- (iv) by refusing to allow the appellant to amend his pleadings so as to enable him to present evidence of legitimate reasons for him to travel abroad for purposes connected to his private and family life and foreign business interests.

- (v) by imposing the travel ban for the maximum period of 5 years, prohibiting all foreign travel and failing to limit the travel ban to particular countries where the respondent had evidence to support the concern that the appellant was likely to carry out a relevant trafficking or exploitation offence.

[17] The appellant appealed against the sheriff's decision in relation to expenses on the grounds that the appropriate disposal was no expenses due to or by because of the administrative nature and novelty of the application *et separatim* that the additional charge allowed was excessive.

Submissions for the appellant

[18] In relation to the first ground, the gravamen of the appellant's submission was that (i) the TERO involves a fundamental interference with the appellant's Article 8 rights, (ii) for the TERO to be lawfully imposed, the requirements of the 2015 Act must be met (viz. there is a risk that the appellant may commit a relevant trafficking or exploitation offence and that each condition of the TERO is necessary for the purposes of protecting persons from such offences) and (iii) this required the Sheriff to make pertinent findings in fact and law anent the relevant offence the appellant was at risk of committing and the necessity of making the TERO to protect against the risk of the offence identified. The assessment of proportionality required a corresponding identification of the mischief against which protection was necessary. To achieve this there had to be proper specification of the particular offence the appellant was at risk of committing within the range of potential offences in respect of which a TERO could be sought. Answer 19 on record was not intended to be an admission of the risk posed by the appellant but simply an acknowledgment of the sheriff's statutory powers. Regardless of any concession made by the appellant, it was for the court to be

satisfied that the risk criteria had been met. Answer 19 acknowledged what the sheriff could do, provided the strict statutory test had been satisfied. In any event, even if Answer 19 could be construed as an admission, it did not cover the travel ban for which the risk had to be separately explored after a high level of inquiry which was absent from the sheriff's reasoning. Because the sheriff did not identify whether the offence which the appellant was at risk of committing was one of slavery or human trafficking, the proportionality and necessity of the order could not be assessed. An inference would not suffice and the entire order should be recalled and remitted to the sheriff. Alternatively, this court could carry out the assessment of new.

[19] In relation to the second ground, it was submitted that the sheriff erred in four respects. He had accepted DS Hughes's evidence that the limited resources of Police Scotland would be incapable of adequately monitoring the appellant's activities when he was outwith the UK. He had drawn an inference of fact from DS Hughes's evidence that no individual could be monitored effectively outside the United Kingdom, a conclusion which frustrated the legislative purpose of section 26(3)(b) of the 2015 Act (*Padfield v Minister of Agriculture, Fisheries and Food* [1968] AC 997). He had failed to properly take into account other conditions of the proposed TERO, which were capable of adequately managing the risk presented by the appellant. Finally, he had failed to carry out the high intensity review required under the 2015 Act, having regard to the appellant's Article 8 rights, in relation to the factual justification for the travel ban (*R v Shayler* [2002] UKHL 11 at para [33]).

[20] The third ground was related to the first, in that it was submitted that it was not possible for the sheriff to carry out a proper assessment of the proportionality of the travel ban without first identifying the particular trafficking or exploitation offence(s) to which the risk posed by the appellant related. The appellant's Article 8 rights ought not to be

restricted without proper justification. The sheriff had failed to “show his working” so as to demonstrate that he had carried out a proper assessment before reaching his conclusion that the travel ban was necessary and proportionate (*Bank Mellat v HM Treasury* [2013] UKSC 39, per Lord Reed at para [74]). He had failed to explain why less restrictive forms of interference with the appellant’s Article 8 rights were not adequate to manage the risk he presented. His assessment of the evidence demonstrated a prejudiced approach. His conclusion that a travel ban was necessary and proportionate was inconsistent with the absence of any allegations since 2018 or a criminal conviction for a human trafficking offence, despite a significant police investigation. However, it remained open to this court to decide that the sheriff had reached the correct conclusion and to explain by reference to the evidence why that was so.

[21] In relation to the fourth ground, it was submitted that the appellant’s minute of amendment addressed his sole defence, namely the disproportionate impact of the travel ban on his Article 8 ECHR rights. Previously instructed counsel withdrew in February 2024. Upon new representation being instructed, the minute of amendment was lodged on 18 February 2024, which identified issues relating to the appellant’s Article 8 rights which had not previously been pled. In relation to some, but not all, of the contents of the minute of amendment, the appellant’s motion was opposed on behalf of the respondent because the passages objected to, if given effect, would have required to be answered, which would necessitate investigation and the adjournment of the proof which was due to begin on 4 March 2024. Disproportionate weight was given to this issue. The interest of justice had been subordinated to convenience.

[22] However, the proof was ultimately adjourned due to the appellant’s health difficulties and a new diet of proof was assigned for 18 November 2024. In answer to a

question from the bench as to why a further motion to allow amendment was not lodged during the intervening period, senior counsel submitted that such a course would have been incompetent because the sheriff had no power to review his own interlocutor, even following a material change in circumstances (*Bremner v Martin* 2006 SLT 169; *Collie & Co v Mitchell* 1935 SLT 16; MacPhail, *Sheriff Court Practice*, 4th Edition paragraph 10.06).

[23] In considering whether to allow amendment, the interests of justice favoured allowing a defence to be stated, especially if it is the only defence (*Darbazi v HMA* 2021 JC 158 at para [26]). The sheriff's refusal to give effect to the whole of the minute of amendment meant that the appellant had been deprived of the opportunity to set out fully his defence of necessity and proportionality. In para [97] of his judgment, the sheriff acknowledged that he was not presented with any direct evidence of the appellant's private, family and foreign business life. By refusing to give effect to the relevant parts of the minute of amendment, the sheriff precluded himself from carrying out the requisite high intensity review of proportionality (*R v Shayler*).

[24] In relation to the fifth ground, it was submitted that, if a travel ban was justified, the sheriff had erred by imposing a prohibition on all foreign travel for a period of 5 years, the maximum period available in terms of Section 28(1) of the 2015 Act. By the date of the sheriff's order, the appellant had been subject to the restrictions imposed by the interim TERO for around 18 months. The video evidence founded on by the respondent appeared to have been created between 2013 and 2018, which was significant having regard to the case of *O'Neil v HMA* 2018 SCCR 335, in which the High Court recalled a travel restriction order imposed under Section 33 of the Criminal Justice and Police Act 2001 partly because the offender had not offended in the previous 5 years. The sheriff had failed to consider the possibility of limiting any travel ban, for example by restricting the ban only to certain

countries which had featured in the evidence, by excluding the whole of Europe from any ban, by allowing travel to the Republic of Ireland (having regard to DS Hughes's evidence about the potential for cooperation from the Irish authorities in relation to monitoring the appellant's activities there), by permitting certain forms of foreign travel such as cruises or by permitting foreign travel only when the appellant was accompanied by his wife, who was said to have family in South Africa.

[25] Finally, in relation to the sixth ground counsel for the appellant submitted that, due to the administrative nature of the proceedings, the normal rule that expenses follow success should not have been applied (*Milton v Argyll and Clyde Health Board*, 1997 SLT 565) and that, having regard to that and the novelty of the summary application, there should have been a finding of no expenses due to or by either party (*Muir v Chief Constable of Edinburgh*, 1961 SLT (Sh Ct) 41; *Society of Accountants in Edinburgh v Lord Advocate*, 1924 SLT 194). If an award of expenses was appropriate, the additional charge allowed by the sheriff was excessive. The proceedings were not complex. There was only a short point for determination at proof. No specialised knowledge was required of the respondent's legal representatives. Very little documentation was actually relied on at proof. The respondent's application was no more important than any other statutory application. The appellant had sought to restrict the scope of the proof. In these circumstances the additional charge awarded was grossly excessive and disproportionate (*Centenary 6 Limited v TLT LLP* 2024 SLT 1106).

Submissions for the respondent

[26] In response to the first ground, counsel for the respondent submitted that (i) the sheriff did make pertinent findings in fact and law anent the risk of the appellant

committing an offence of human trafficking, (ii) the risk of the appellant committing a relevant offence was a matter of admission in terms of Answer 19 on record and that was the basis upon which the entire proof was conducted, (iii) the appellant's attempt to deviate from that position on appeal lacked candour and (iv) in any event, this court could vary the interlocutor if necessary to provide the required specification. The appellant did not challenge any of the findings in fact made by the sheriff and had not disputed any of the summary of evidence which had been provided to the sheriff by the respondent for the purposes of submissions after the proof. This court was invited to read that summary and the respondent's closing submissions alongside the sheriff's judgment. Both sides had agreed that the respondent's summary of evidence was accurate and the sheriff had proceeded on that basis.

[27] Counsel for the respondent took the court to the evidence upon which the respondent's application was based, which included evidence from the police officers, video evidence, Skype messages, witness statements and misleading correspondence which the appellant had authored. The evidence led by the respondent was directed at the offence of human trafficking in terms of section 1 of the Act. The sheriff makes express reference to "human trafficking" and his findings in fact (particularly findings in fact 10 and 12) when read in conjunction with his conclusions make clear that he was referring to the offence of human trafficking. The sheriff needed to go no further than he did. If the court was not satisfied that there had been sufficient specification, it could make an amendment to the finding in fact from its own assessment of the evidence and refuse the appeal on this ground.

[28] It was submitted that the second ground of appeal overlooked the highly fact-specific nature of DS Hughes's evidence. He had not given evidence that Police Scotland

could never monitor any person who had travelled outwith the UK. His evidence, which the sheriff had accepted, was that the resources available to Police Scotland would be insufficient to monitor the appellant when he was abroad, due to the nature of his previous activities, the complexity of the foreign travel arrangements he had made in order to carry out those activities and his proven propensity to mislead authorities with regard to his travel plans and activities. The sheriff had correctly concluded, having regard to DS Hughes's evidence as well as the other evidence presented by the respondent, that a travel ban was necessary and proportionate.

[29] In relation to the third ground, it was submitted that, on the unchallenged evidence, the sheriff was entitled to make each of the findings or observations criticised by the appellant. The appellant had not identified any relevant considerations which the sheriff had not taken into account in his assessment of the proportionality of the travel ban, nor explained why no reasonable sheriff could have reached the same decision in relation to that issue. This ground amounted to no more than a disagreement with the sheriff's assessment of the evidence and consequent decision. Having elected not to offer any evidence, it was not open to the appellant on appeal to complain that the sheriff had failed to have regard to other, unidentified considerations in his assessment of proportionality.

[30] In relation to the fourth ground, counsel for the respondent submitted that the allowance or otherwise of a minute of amendment is a discretionary decision for the sheriff, which should not readily be interfered with on appeal (*Thomson v Glasgow Corporation* 1962 SC (HL) 36, per Lord Reid at 66). Deference should be given to the sheriff's knowledge and understanding of the proceedings before him (*Grubb v Finlay* 2018 SLT 463, per Lord President (Carloway) at para [37]). The circumstances of *Darbazi v HMA* could be distinguished from the circumstances surrounding the appellant's motion to amend his

pleadings. The test was whether it was in the interests of justice to allow the amendment. Parts of the minute of amendment had been opposed because: (i) they came very late in the day; (ii) they would necessitate investigations and a subsequent response which would have jeopardised the proof diet set for 4 March 2024; (iii) the allowance of those parts of the minute of amendment would prejudice the respondent in a way that could not be compensated for in an award of expenses; and (iv) the objectionable passages would not resolve issues of specification and relevancy arising from the appellant's pleadings. The allowance of the minute of amendment in its entirety would not have been in the interests of justice (MacPhail, paragraph 10.14). The appellant had had ample opportunity to introduce averments about his private and family life and his business interests at an earlier stage in the proceedings. Following the adjournment of the proof diet of 4 March 2024 for other reasons, no further motion was lodged on behalf of the appellant between March and November 2024 to allow a revised minute of amendment which provided greater specification. An amplified minute of amendment moved after the discharge of the proof in March 2024 may not have been opposed.

[31] In relation to the fifth ground, counsel for the respondent submitted that the sheriff had adopted the correct approach to the assessment of the appropriate scope and duration of the travel ban. He considered the nature of the risk posed by the appellant and whether a complete prohibition on travel or a lower level of restriction was required in order to protect others from that risk. He explicitly recognised the need to focus on future risk and acknowledged that the imposition of a TERO was not an exercise in punishment for past behaviour. He explained why he was satisfied that no less restrictive measure would be effective in achieving the legislative aim of protecting potential victims from the risk presented by the appellant, having regard to the sheriff's entirely justified conclusion on the

evidence that foreign travel was a necessary and integral part of the appellant's trafficking and exploitation activities. DS Hughes had not given evidence that it would be safe for the appellant to travel to the Republic of Ireland. This ground of appeal also amounted to no more than an expression of the appellant's disagreement with the outcome of the sheriff's assessment of the evidence, and his resulting conclusions in relation to the necessity and proportionality of the travel ban.

[32] Finally, in relation to the sixth ground, it was submitted that the sheriff did not err in his decision to award expenses to the respondent, or in his assessment of the appropriate additional charge. The 2015 Act being silent on the question of expenses, the usual principles applied. The principle relied upon by the appellant was in fact intended to allow public authorities to exercise public functions in the public interest without fear of exposure to undue financial pressure if their decision is successfully challenged (Macphail, paragraph 26.111). Generally, expenses will only be awarded against a public authority where it has acted improperly or unreasonably in the exercise of its statutory powers. However, there is no corresponding rationale for displacement of the usual rule with regard to expenses when the public authority is successful. Given the circumstances of this case, there was a clear public interest in the public purse not bearing the expense of this litigation, which was entirely necessitated by the appellant's unacceptable conduct. The appellant did not challenge the sheriff's decision to allow an increase in charges in principle; he merely contended that the level of increase allowed was excessive. The sheriff was best placed to decide whether an increase was appropriate and, if so, at what level. The Sheriff's decision was consistent with the principles set out in *Centenary 6 Limited v TLT LLP* 2024 SLT 1106.

Decision

First ground

[33] Despite the appellant's criticisms of the sheriff's decision, he does not dispute any of the facts upon which the sheriff proceeded and does not challenge any of the findings in fact. Accordingly, this court can proceed on the basis of those facts, the joint minute and the factual summary which was provided to the sheriff by the respondent in the course of the submissions before him. No issue was taken with its content either then or before us. This court is therefore in as good a position as was the sheriff to assess the factual basis upon which the respondent's application for a TERO proceeded.

[34] As summarised above, the first ground of appeal complains that the sheriff erred by failing to identify and specify a relevant trafficking and exploitation offence which the appellant is at risk of committing as required by section 26(3)(a) of the 2015 Act. However, that submission has to be considered in the context of the undisputed evidence led in this case, the pleadings and in particular the appellant's Answer 19 to the respondent's averments of fact and the clear understanding of the sheriff as to the scope and nature of the proof. By the time of the proof those pleadings were in the following terms:

"19. Recruiting or transferring a person with a view to their exploitation constitutes Human Trafficking in terms of the Act. Requiring a person to perform compulsory labour in circumstances that show that the person requiring the labour knows that a person is being forced to carry out the labour constitutes holding a person in slavery or servitude. Consent does not preclude a determination that a person is being held in slavery or servitude. The pursuer's (sic) behaviour constitutes Human Trafficking and holding women in Slavery/Servitude for the purposes of the Act. His behaviour also constitutes exploitation, and in particular sexual exploitation. The pursuer's officers reasonably believe that, if the present application is not granted, the defender will continue with his established practice (in relation to which he is believed to have been engaged for at least 22 years) of trafficking vulnerable young women from poor countries for the purposes of holding them in slavery/servitude and sexually exploiting them. The pursuer's officers also have reasonable grounds to believe he will continue to travel overseas for the purpose of trafficking and sexually exploiting vulnerable females. He has the means to continue to do so. There is a material risk

that the defender will commit a relevant trafficking or exploitation offence if the application is not granted, and the orders sought in this application are necessary for the purpose of protecting persons from the physical or psychological harm which would likely occur if the defender were to commit a relevant offence. The order is designed to protect persons who are out with the EU and Great Britain. Those persons are believed to be at risk and vulnerable to exploitation by the Defender. The defender's averments in answer are denied except insofar as coinciding herewith. Any decision by the Crown to discontinue criminal proceedings is irrelevant.

Ans 19. The legal requirements for human trafficking, slavery, servitude and forced or compulsory labour are contained in the 2015 Act. Reference is made to 6 (sic) statements 2 to 4 of the pursuer's application. *Quoad ultra* denied. Explained and averred that for the purposes of these proceedings, the Court may make an order under section 26 because it can be satisfied that there is a risk that the defender may commit a relevant trafficking or exploitation order (sic) and that the prohibitions and requirements contained in Craves 1(i), (ii), (iii) -as per amended terms of the interim order made by Sheriff Anderson on 21 April 2023, (iv), (v), (vi), (viii) and (ix) are necessary for the purposes of section 26."

We have identified what appear to be three clear clerical errors in these passages, which do not affect their meaning.

[35] The effect of the admission in Answer 19, particularly when read in light of Answer 20, made clear that the scope of the proof was restricted to whether the travel ban sought in paragraph (vii) of the TERO was proportionate and necessary, having regard to the appellant's Article 8 rights. The suggestion that Answer 19 was intended to be permissive only was never made at proof and that was not the basis upon which either of the parties approached matters in their submissions.

[36] Paragraph 2 of the submissions lodged by the appellant at first instance reads:

"The defender only disputes the removal of his passport and the imposition of a world-wide travel ban. His position is that such restrictions are neither necessary nor proportionate. He is willing to agree to an order in the same terms as the interim order imposed on 23 August 2023. An interim order has been in place for some eighteen months and has worked well" (emphasis added).

[37] If the appellant was willing to agree to any order being made, he would have had to accept that the risk criteria for such an order were met. That is entirely consistent with the

terms of Answer 19 as they were understood by the sheriff and the respondent at first instance. In particular the words “the Court ...can be satisfied that there is a risk that the defender may commit a relevant trafficking or exploitation order (sic),” where they appear in Answer 19, could bear no other meaning than the concession that the risk element of the statutory test was met, so as to enable the court to impose any order at all. It is clear that the word “order” where it appears is a typographical error and the word “offence” was intended. Accordingly, the basis upon which ground 1 was advanced represented a departure from the clear terms of the admission in Answer 19, subverted the basis upon which the proof was conducted and lacked candour.

[38] In any event we are satisfied that it is plain from the sheriff’s judgment when read as a whole that he is referring to the offence of human trafficking under section 1 of the Act. There is no reference to slavery, servitude or forced or compulsory labour in his judgment and no reference to section 16 offences. We are satisfied that findings in fact 10 and 12, together with the conclusions that the appellant had engaged

“in a course of conduct involving the targeting of financially vulnerable women whom he subsequently coerces into submitting to abuse, and in doing so committed acts of human trafficking and exploitation.”

provides the reasonable reader with the requisite degree of specification of the offence which the appellant was considered to be at risk of committing.

[39] Accordingly, we find it unnecessary to exercise the power which the court has in terms of section 111(1)(a)(iii) of the Courts Reform (Scotland) 2014 to vary the sheriff’s interlocutor of 20 February 2025. Ground 1 therefore falls to be refused.

Second ground

[40] We refuse the appellant's second ground of appeal. We can find no fault with the sheriff's approach to the assessment of DS Hughes's evidence. The sheriff summarises and assesses the significance of DS Hughes's evidence between paras [36] and [46] of his judgment. These were matters for the sheriff. We agree with counsel for the respondent that DS Hughes's evidence focussed on the risk presented by the appellant as an individual. The appellant's characterisation of DS Hughes's evidence as amounting to an assertion that the resources of Police Scotland were not capable of monitoring anyone outwith the UK who was subject to a TERO was not a fair summary. DS Hughes highlighted the scale of the appellant's human trafficking activities, the centrality of foreign travel to those activities, the complexity of his foreign travel arrangements and his attempts to mislead the police as recently as late 2023 with regard to the nature of a planned trip to South Africa and his prior contacts with a woman he intended to meet there. He gave evidence that, if the appellant was permitted to travel to any country, it would be impossible for Police Scotland to prevent him from travelling onwards to a third country, beyond the reach of any monitoring arrangements.

[41] The sheriff was entitled to accept DS Hughes's evidence that the resources available to Police Scotland were not capable of monitoring the appellant when he was outwith the UK. That approach did not frustrate the legislative purpose of section 26(3)(b) of the 2015 Act. We also agree that DS Hughes did not suggest that the cooperation of the authorities in the Republic of Ireland in relation to monitoring the appellant's activities if he was able to travel there was likely; merely that the Irish authorities were potentially more likely than the authorities in other countries visited by the appellant to offer cooperation. He did not suggest that the Republic of Ireland would be a safe place for the appellant to

visit. The sheriff heard evidence that in 2015 the appellant had been accused of rape in the Republic of Ireland by a woman whom he had trafficked there from Botswana, and that he had thereafter sought to manipulate both the complainer and the Irish authorities to bring about the discontinuation of the criminal investigation.

[42] The passage from the opinion of Lord Bingham in the case of *R v Shayler* which was founded on by the appellant is authority for the proposition that, in the context of judicial review proceedings, the court will conduct a more rigorous and intrusive review of a decision which is alleged to violate a convention right than would otherwise be required by the general principles of judicial review. At paragraph 33 of his opinion in *Shayler*, Lord Bingham quotes with approval dicta of Lord Steyn in *R (Daly) v Secretary of State for the Home Department* [2001] 2 AC 532 (at pages 546-548) in relation to the difference between general principles of judicial review and the assessment of proportionality in the course of judicial review proceedings where convention rights are at stake. Lord Steyn noted that:

“The starting point is that there is an overlap between the traditional grounds of review and the approach of proportionality. Most cases would be decided in the same way whichever approach is adopted. But the intensity of review is somewhat greater under the proportionality approach.”

[43] The sheriff was not conducting judicial review proceedings. Thus, in the context of this appeal, the high intensity review which counsel for the appellant submitted that the sheriff had failed to carry out was therefore simply an assessment of the proportionality of the travel ban sought by the respondent, having regard to its likely impact on the appellant’s Article 8 rights, in the context of the evidence led at proof. The sheriff clearly did carry out an assessment of the necessity and proportionality of the travel ban (judgment, paras [70] to [100]). For the reasons given below in relation to the appellant’s third and fifth grounds

of appeal, we are satisfied that his conclusion, that the travel ban was both necessary and proportionate, was justified by the evidence which was available to him.

Third and fifth grounds

[44] The appellant's third and fifth grounds of appeal are closely related. The sheriff was criticised for failing to "show his working" in relation to his assessment of the necessity and proportionality of the travel ban (ground 3) and, having decided to impose a travel ban, he was criticised for failing to explain why travel restrictions short of a complete ban, for the maximum available period of 5 years, were not sufficient to address the risk presented by the appellant (ground 5). Between paras [70] and [100] of his judgment, the sheriff set out in detail the process by which he endeavoured to assess the necessity and proportionality of the travel ban, an exercise required with regard to both section 26(3)(b) of the 2015 Act and Article 8 ECHR. He approached the issue by considering the following questions: had it been proved that the appellant had committed acts of human trafficking and exploitation; if so, did foreign travel form an integral and necessary part of the appellant's proven human trafficking and exploitation; was there a risk of that conduct continuing and, if so, what was the level of that risk; and were the measures sought by the respondent necessary and proportionate to addressing the determined risk. Against the background of the unchallenged evidence which supported the findings in fact made by the sheriff, this process of reasoning led him to the conclusion that a travel ban for a period of 5 years was necessary and proportionate in the particular circumstances of this case.

[45] The sheriff did not follow the four-stage approach to the assessment of proportionality explained by Lord Reed in *Bank Mellat v HM Treasury*. However, we are satisfied that the sheriff reached the correct conclusion with regard to the proportionality of

the travel ban and that the approach set out in *Bank Mellat* would have led to the same result. Applying that approach, the legislative objective of section 28 of the 2015 Act, namely the protection of individuals, including vulnerable women, from the risk of being subjected to conduct of the kind perpetrated by the appellant, is sufficiently important to justify the limitation of the appellant's Article 8 rights. The travel ban sought by the respondent in terms of section 28 is rationally connected to that objective. Both of these elements of the *Bank Mellat* approach were explicitly conceded on behalf of the appellant in paragraph 18 of the note of argument lodged on his behalf in the sheriff court. As to the third element of the *Bank Mellat* approach we are satisfied that, having regard to the evidence led in relation to the appellant's activities, the sheriff's findings arising from the evidence, the centrality of foreign travel to those activities and the appellant's attempts to mislead the Irish authorities and Police Scotland, a less intrusive measure in the form of a TERO without a travel ban or including a travel ban in the restricted terms proposed on behalf of the appellant could not have been selected without unacceptably compromising the achievement of the objective of protecting people, including vulnerable people from the risk presented by the appellant. No evidence was available to the sheriff about how monitoring arrangements might operate effectively in the event of a restricted travel ban. Finally, balancing the effect of the travel ban on the appellant's Article 8 rights against the objective of protecting people, including vulnerable people, from the risk presented by the appellant, we are satisfied that the travel ban will contribute to the achievement of that objective to a degree which significantly outweighs the effect of the travel ban on the appellant's Article 8 rights.

[46] The sheriff's description of the women in the video recordings recovered from the appellant's home as "victims" was consistent with the agreed summaries of the video

images which were available to us. In any event, apparent consent is irrelevant in the context of the crime of human trafficking in terms of Section 1 of the 2015 Act (section 1(3)). The sheriff's use of the words "cruelty and depravity" to describe the appellant's activities as depicted on the video images is unusual but requires to be considered in the context of the video images which the sheriff had seen, and which he described as "at times, utterly harrowing" (judgment, para [102]). In that context, we are satisfied that the sheriff's use of those words did not indicate a closed mind or a prejudicial assessment of the evidence.

[47] At para [93] of his judgment, having noted in para [92] that he had not been presented with any direct evidence about the potential impact of a travel ban on the appellant's private and family life and foreign business interests, the sheriff makes comments to the effect that, even if direct evidence of those matters had been led, he would still have concluded that the travel ban sought by the respondent was proportionate. Although we consider that those comments, in relation to evidence which had not been led, were inadvisable, once again we consider that they must be understood in the context in which they were made. They appear at a very late stage of the sheriff's judgment, after the sheriff's discussion of the evidence and his analysis of the necessity and proportionality of the travel ban which had been the focus of the evidence and submissions. Viewed in the context of the highly unusual circumstances of this case and the highly unusual nature of the evidence the sheriff had seen and heard, the sheriff's comments amounted to an indication that, in the assessment of the proportionality of the travel ban sought by the respondent in the particular circumstances of this case, the appellant's Article 8 rights would not have outweighed the Article 4 rights of potential victims of his activities. Once again, we do not agree that the sheriff's comments indicated a closed mind or a prejudicial assessment of the evidence.

[48] As reflected in the respondent's agreed summary of the evidence and the sheriff's findings, the sheriff heard evidence of the deliberate selection by the appellant of financially vulnerable women and (less frequently) boys and of his exploitation of them based on that financial vulnerability. Although many of the video recordings recovered by the police were undated, some were dated. According to paragraphs 117 and 118 of the respondent's agreed summary of evidence, the earliest timestamp was 1998, the latest 2018 and the passage of time was apparent in the appellant's appearance in video images apparently recorded during the intervening period. To the extent that most of the evidence related to the appellant's activities in and prior to 2018, we accept the submission on behalf of the respondent that that was unsurprising, given that police officers searched the appellant's home in Scotland under warrant in 2019 and that a criminal investigation into his activities commenced then. However, the sheriff was entitled to conclude (finding in fact 15) that the evidence concerning the appellant's activities in December 2022 amounted to a further incident of human trafficking, even though not prosecuted as such. In relation to that matter, the sheriff's judgment recorded that he had available to him a police statement in which a woman described being pressured to provide sexual services during her employment by the appellant at his home in Scotland. The nature of the resulting criminal charge was irrelevant. Further, the sheriff was entitled to conclude that the appellant had deliberately attempted to mislead police officers with regard to his planned trip to South Africa in late 2023, in breach of the terms of the interim TERO (judgment, para [85]).

[49] The travel ban does not prevent the appellant from conducting family life with his wife and family within the UK. It prevents him from travelling outside the UK. Although the appellant was subject to an interim TERO for some time prior to the making of the TERO to which the appeal relates, section 30 of the 2015 Act explicitly provides for the making of

an interim TERO prior to the grant of the final order, and a significant proportion of the duration of the interim TERO arose from the fact that the proof required to be adjourned from March 2024 until November 2024 due to the appellant's ill health. Further, as previously noted, although the interim TERO as originally imposed on 5 April 2023 did contain a travel ban, that provision was removed from the interim order on 21 April 2023 and replaced with a provision requiring the appellant to provide Police Scotland with written notice of his travel plans and related matters. The case of *O'Neil v HMA* did not set out any principle which assisted the appellant. It was concerned with different legislation, in the context of criminal sentencing, and was highly fact specific.

[50] At para [93] of his judgment, the sheriff explicitly acknowledged the need to consider whether a worldwide prohibition on travel was necessary to stop the appellant's activities, or whether a lesser level of restriction would offer sufficient protection to future potential victims. The sheriff gave ample reasons, by reference to the evidence, for his conclusion that only a total ban on travel outside the UK for a period of 5 years would suffice. We are satisfied that he was entitled to reach that conclusion on the evidence. The appellant's third and fifth grounds of appeal are refused.

Fourth ground

[51] The fourth ground of appeal requires to be considered in light of the relevant procedural history. A warrant to cite was granted on 29 March 2023. On 3 November 2023 the record was closed and proof was fixed, to commence on 4 March 2024, with a pre-proof hearing on 11 January. The appellant's minute of amendment was intimated on 18 February 2024. Following continuation and consideration, at a hearing on 29 February the sheriff allowed the minute of amendment to be received and to form part of the process, but only to

the extent that the minute was not opposed by the respondent. In due course the proof diet of 4 March 2024 required to be discharged due to the appellant's ill health. A new diet was thereafter fixed for November 2024. The partial refusal of the minute of amendment is not specifically addressed within the sheriff's judgment. However, counsel who appeared before us had also appeared at the hearing before the sheriff and was able to explain what had taken place.

[52] This ground of appeal is refused. We are not persuaded that the sheriff erred in refusing to give effect to the opposed passages of the appellant's minute of amendment. By the time the minute of amendment was lodged, the appellant had had at least 18 weeks to lodge answers and adjust his pleadings, prior to the record closing on 3 November 2023. The only explanation for the lateness of the minute of amendment which appears to have been tendered related to the change of counsel. The minute of amendment extended to eight pages and introduced a new aspect to the appellant's defence and new averments of fact, relating to matters which had been known to the appellant from the outset. Allowance of the minute of amendment in its entirety would have been prejudicial to the respondent. Some of the passages objected to were arguably irrelevant due to a lack of specification. Had the disputed passages been allowed, the respondent would have had to investigate and answer the appellant's new averments, which would have jeopardised the imminent proof diet.

[53] Against this background, we are not satisfied that the sheriff erred in refusing to give effect to the minute of amendment in its entirety. The sheriff clearly had regard in particular to the procedural history, the imminence of the proof and the likelihood of prejudice to the respondent, had he given effect to the passages of the minute of amendment which were objected to (*MacPhail*, paragraph 10.14; *Clark v Greater Glasgow Health Board* [2017] CSIH 17).

The fact that the proof assigned for 4 March 2024 was ultimately discharged because the appellant became unwell does not affect our assessment of the decision the sheriff made on the basis of the information then before him. The case of *Darbazi* does not assist the appellant. Not only was *Darbazi* concerned with very different circumstances, in the context of criminal procedure; the allowance of the late special defence in *Darbazi* did not necessitate an adjournment of the trial.

[54] No further effort was made on behalf of the appellant to bring a further, amplified minute of amendment before the court during the eight months between the proof diets in March and November 2024. The appellant's submission about the competency of so doing are without merit. Indeed, senior counsel for the respondent confirmed that she would not have been in a position to object to the introduction of such a minute, at least at an early stage of that intervening period. This ground of appeal is refused.

Sixth ground

[55] Decisions with regard to expenses are discretionary and will not be interfered with lightly (*Grubb v Finlay*). The sheriff explains that he applied the general principle that expenses follow success. Having managed the case throughout, he had extensive knowledge of the procedural history. He found those previously instructed by the appellant to be uncooperative to an unacceptable degree, particularly with regard to the agreement of evidence.

[56] It was argued before us on the appellant's behalf that, having regard to the essentially administrative nature and novelty of the case, the appropriate finding was one of no expenses due to or by either party (*Milton v Argyll and Clyde Health Board*). However, the 2015 Act postdates *Milton* and we do not accept that this case was administrative in nature

in the sense contemplated by *Milton*. In this case, the Chief Constable had no power under the 2015 Act to make a TERO or to ask the sheriff to ratify a TERO in terms decided by her. Her only power was to make an application to the sheriff for a TERO in relation to the appellant, who opposed the application robustly in the context of what was clearly a highly contentious litigation. That is very different from the administrative decision-making context to which the principle relied on by the appellant on the basis of *Milton* might apply. The sheriff's conclusion that expenses should follow success was one which he was entitled to reach in the context of this litigation, which senior counsel for the respondent fairly described as "hard fought."

[57] *Milton* refers (at page 569) to the case of *Liddall v Ballingry Parish Council* 1908 SC 1082 in which Lord McLaren noted a potential exception to the principle that an award of expenses may not be appropriate in proceedings of a purely administrative nature, where a party to the proceedings puts himself in the position of a contentious litigant. Lord Gill accepted in *Milton* that such an exception may apply. Had we concluded that this case was purely administrative in nature, we would have been satisfied that the conduct of the case by the appellant in the sheriff court was such as to put him in the position of a contentious litigant and that the sheriff would also have been entitled to find him liable in expenses on that basis.

[58] The sheriff has fully explained his decision to award the increase in charges sought by the appellant, a decision which requires the exercise of judicial discretion. The note of appeal does not challenge the allowance of an increase in charges in principle; it contends only that the percentage increase allowed in terms of rule 5.2 of the 2019 Rules was excessive. The sheriff had regard in particular to the serious nature of the subject matter and the resultant weight of responsibility borne by the appellant's legal representatives, together

with his view that those previously representing the appellant had been unco-operative to an unacceptable degree in the conduct of the proceedings. The sheriff's assessment was consistent with the principles set out in *Centenary 6 Limited v TLT LLP* 2024 SLT 1106. We can find no basis on which we would be entitled to disturb the sheriff's conclusion. This ground of appeal is refused.

Disposal

[59] For the foregoing reasons, we refuse the appeal and adhere to the sheriff's interlocutor. The respondent has been successful in resisting all grounds of appeal. Parties should endeavour to agree the matter of expenses. If they are unable to do so within two weeks a hearing on expenses will be assigned.