SHERIFF APPEAL COURT

[2026] SAC (Civ) 39
STI-SD33-24

Sheriff Principal Gillian A Wade KC

OPINION OF THE COURT

delivered by SHERIFF PRINCIPAL GILLIAN A WADE KC

in the appeal in the cause

[REDACTED] HOUSING ASSOCIATION LIMITED

Pursuer and Respondent

against

L AND R

Defenders and Appellants

Pursuer and Respondent: Anderson, advocate
Defenders and Appellants: Party

27 May 2026

[1] This appeal addresses the approach which the court must take when applying the provisions of sections 14 and 16 of the Housing (Scotland) Act 2001 ("the 2001 Act") in an action for recovery of heritable property.

[2] The appellants are the tenants of a property at [REDACTED] ("the property"). The respondent is a housing association (a registered social landlord in terms of the Housing (Scotland) Act 2010) and the heritable proprietor of the property. The appellants became tenants of the property on 10 June 2022 in terms of a Scottish Secure Tenancy Agreement

("the tenancy agreement"). They reside at the property with their son and daughter who were aged 12 and 3 at the time of the proof.

[3] In terms of Clause 3.1 of the tenancy agreement they undertook not to act in an anti-social manner or pursue a course of anti-social conduct against any person in the neighbourhood.

[4] Following a number of complaints by neighbours about the appellants' anti-social behaviour the respondent eventually served notice of proceedings on the appellants on 29 May 2024. These proceedings were commenced in October 2024. After sundry procedure there then ensued a 3-day proof before the sheriff at the conclusion of which she granted an order for recovery of possession of the property on 15 January 2026. It is against that decision which the appellants now appeal.

Scope of the appeal

[5] In terms of the section 38 of the Sheriff Courts (Scotland) Act 1971 appeals to this court are limited to points of law only. The appeal proceeds by way of stated case. This court must answer the questions posed by the sheriff in the stated case (*Hart* v *Kitchen* 1989 SC 391, per Lord Justice Clerk (Ross) at 395-396). Furthermore it is not the function of this court to carry out its own assessment of the evidence. It is not an opportunity to rerun the proof in the hope of a different outcome. Matters of credibility and reliability are primarily for the court of first instance unless it can be demonstrated that the sheriff has gone plainly wrong, misunderstood the evidence, made a finding in fact which has no basis in the evidence or there is a demonstrable failure to consider relevant evidence (*Henderson* v *Foxworth Investments Ltd* 2014 SC (UKSC) 203; *Woodhouse* v *Lochs and Glens (Transport) Ltd* 2020 SLT 1203, per Lord President (Carloway) at [31]).

[6] In coming to her decision in this case the sheriff was bound to consider the test of reasonableness in terms of section 16(2)(a)(i) of the 2001 Act. That assessment is also one for the sheriff and if the reasons which she gives justify the decision she is bound to grant the order sought(*East Lothian Council* v *Duffy* 2021 SLT (Sh Ct) 113, per Sheriff Braid (as he then was), at [72]). Again, this court may only intervene if the appellants can demonstrate that the sheriff has erred. It is not enough to demonstrate that there may have been other options open to the sheriff which may have been equally reasonable.

Questions for this court

[7] At the end of the stated case the sheriff posed three questions for this court:

1. On the established facts, was I entitled to grant decree for recovery of possession?
2. Did I err in law by failing to take account of, or make findings in fact, based upon, material medical evidence lodged on behalf of the defenders in relation to vulnerability, despite that evidence being relevant to the statutory test of reasonableness?
3. Did I err in law by failing to have proper regard to the defenders' disability, being a non-visible disability within the meaning of section 6 of the Equality Act 2010, when assessing reasonableness and proportionality, and in failing to properly apply the relevant statutory duties in that context?

The applicable law

[8] There is no dispute about the applicable law. The action is one of recovery of possession of the subjects of a secure tenancy in terms of section 14 of the 2001 Act. Section 16(2)(a) of the 2001 Act provides:

> **"16 Powers of court in possession proceedings**
>
> (2) Subject to subsection (1), in proceedings under section 14 the court must make an order for recovery of possession if it appears to the court—
> (a) that—
> (i) the landlord has a ground for recovery of possession set out in any of paragraphs 1 to 7 of that schedule and specified in the notice required by section 14, and
> (ii) it is reasonable to make the order,
> (3) For the purposes of subsection (2)(a)(ii) the court is to have regard, in particular, to—
> (a) the nature, frequency and duration of—
> (i) where the ground for recovery of possession is one set out in any of paragraphs 1 and 3 to 7 of schedule 2, the conduct taken into account by the court in concluding that the ground is established,
> …
> (b) the extent to which that conduct is or was conduct of, or a consequence of acts or omissions of, persons other than the tenant,
> (c) the effect which that conduct has had, is having and is likely to have on any person other than the tenant, and
> (d) any action taken by the landlord, before raising the proceedings, with a view to securing the cessation of that conduct."

[9] In this case the respondent founded on ground 7 contained in paragraph 7 of Part 1 of Schedule 2 of the 2001 Act:

> "7(1) The tenant (or any one of joint tenants), a person residing or lodging in the house with, or any subtenant of, the tenant, or a person visiting the house has-
> (a) Acted in an anti-social manner in relation to a person residing in, visiting or otherwise engaged in lawful activity in the locality,
> …
> and it is not reasonable in all the circumstances that the landlord should be required to make other accommodation available to the tenant."

[10] It was a matter of agreement that the appellants' Article 8 rights were engaged in terms of the Human Rights Act 1998. That Article provides that "Everyone has a right to

respect for his private and family life, his home and his correspondence". Accordingly the interference with that right, namely recovery of possession and consequent eviction, must be lawful, pursuant to a legitimate aim, and be proportionate.

The sheriff's decision

[11] The sheriff found it established that the appellants had acted in an anti-social manner in that they had engaged in a course of conduct that had and is likely to continue to cause alarm, distress, nuisance and annoyance to persons living in the locality. She further determined that it was not reasonable that the respondent be required to make other accommodation available to the appellants. In coming to that conclusion, she had regard to a number of factors:

i) The relationship between the parties had clearly broken down.

ii) There was no mutual respect or trust between them.

iii) The behaviour of the appellants has had a deleterious effect on the respondent's employee, MH , and is likely to adversely affect other employees.

iv) The respondent had attempted to address the appellants' behaviour before raising the action and before the proof commenced.

v) The appellants have twice refused to accept the offer of a management transfer to another property and have refused to sign an acceptable behaviour agreement.

[12] In those circumstances the sheriff determined that it was not reasonable to expect the respondent to offer alternative accommodation to the appellants. Accordingly she found that the respondent had established a ground for recovery of possession, in terms of paragraph 7 of Part 1 of Schedule 2 of the 2001 Act.

[13] She then turned to the question of reasonableness of the order sought having regard to the factors set out in section 16(3) of the 2001 Act. She explained at para [54] of her report for this court the reasons for her assessment. In particular, she had regard to:

i) The appellants 'prolonged and sustained course of conduct which has caused alarm and distress to neighbours.

ii) The nature of their behaviour which she assessed as serious and demonstrated a disregard for the interests of others.

iii) The respondent's attempts to secure a resolution of the problem without resorting to litigation have been rebuffed by the appellants. These attempts included meeting with the appellants, writing to them, offers of management transfers, request to sign an acceptable behaviour agreement, and service of the notice of proceedings.

[14] Having regard to all of these matters she determined that it was reasonable to grant the order for recovery of possession.

[15] Having regard to the acknowledged position of all parties that eviction would constitute an interference with the appellants' Article 8 rights she then went on to assess proportionality. She took account of the fact that the appellants had two young children and the submissions which the appellants advanced in the most general terms regarding section 6 of the Equality Act 2010 which sought to protect those with disabilities and vulnerabilities.

[16] The sheriff notes at para [56] that there was no detailed evidence led by the appellants about any particular vulnerability of their children or what the effect of eviction would be. Although there was passing reference during the proceedings to health issues and mention of the first appellant having a "cracked pelvis" which led to some discomfort,

no further details were provided and no witness was called to speak to the first appellant's GP records. On that basis the sheriff was unable to make any findings in fact about medical matters upon which she had heard neither evidence nor submissions.

[17] The sheriff, mindful of the consequences of eviction for the family as a whole undertook a balancing exercise in order to assess whether her actions were proportionate. She applied the test in *Main* v *Scottish Ministers* 2015 SC 639 and considered the task for the court to be:

> "the evaluation of the balance between the importance of the objectives and the extent to which they are furthered on the one hand and the degree of intrusion on the rights and liberties of the affected individual on the other."

[18] Having regard to the objectives of the respondent which included enforcement of tenancy conditions, management of housing stock, and the protection of residents in the locality and the protection of the respondents' staff, she concluded that the granting of the order was proportionate and did not, therefore, breach the appellants' ECHR rights.

Appellant's submissions

[19] The appellants lodged written submissions in advance of the hearing which were supplemented by oral argument. Although it was accepted that the appeal proceeded on a point of law only it was submitted that the sheriff had erred in her approach to the evidence particularly in relation to her findings in fact [24] and [28] to the effect that the appellants had been offered and had refused a management transfer on 13 February 2024 and again shortly before the commencement of the proof on 18 February 2025. Under reference to a screenshot of an email sent after a meeting on 4 April 2024 which had taken place to discuss the offer of a transfer it was submitted that the appellants had accepted at that date that a move would be best for them. It was further submitted that they had not been offered an

alternative property and turned it down. The sheriff's conclusions were not justified because she had been misled on that point. The theme of the appellants' refusal of a management transfer ran though the sheriff's judgment and as those findings proceeded on misrepresentations that alternative accommodation had been offered, her decision on reasonableness was undermined.

[20] Further points in relation to the sheriff's assessment of the evidence were advanced on the basis that the appellants now maintained they could show that they were not actually in the vicinity at the time of certain of the incidents, that they themselves were the victims of a campaign of malicious complaints at the instance of others and that despite numerous reports the police had never charged the appellants with any offence.

[21] The first appellant accepted that her medical records had not been spoken to in evidence but as a lay representative had assumed that the sheriff would have read everything which was lodged in process. There was procedural unfairness in that the respondent was represented by experienced junior counsel while the appellants had been unable to secure legal representation. In any event the sheriff was or ought to have been aware of their vulnerabilities because she had allowed the first appellant to sit during the hearing as she was in discomfort. The sheriff had taken over the cross examination of one of the witnesses and the appellants had not been able to prepare a list of questions for her to answer. The appellants did not know how to navigate the court process and unfairness had resulted.

The respondent's submissions

[22] The respondent began by adopting the written submissions and addressed the various points made by the appellants in oral submissions. Mindful of the scope of the

appeal and the limitations on the court regarding interference with the sheriff's findings in fact it was submitted that the email to which the appellants referred in support of their willingness to accede to a management transfer did not undermine the sheriff's findings. Counsel could not specifically recall that email having been before the sheriff and as it was not mentioned in the stated case it was his position that it had not been. However it did not detract from the sheriff's finding that the second appellant had advised that he would remain at the property to get "accountability and vengeance". Nor did it deal with the appellants' confrontational manner which caused MH to feel intimidated.

[23] In any event whatever the position of the appellants was as at 4 April 2024, by 18 February 2025 they refused a further offer to consider a managed transfer and sign an acceptable behaviour contract. Finding in fact [28] was therefore unaffected by the earlier email.

[24] Addressing the appellants' argument that they had been ambushed by this evidence which had only emerged in closing submissions counsel drew the court's attention to the affidavit of JL which had been lodged in process and which formed the basis for the sheriff's finding in fact.

[25] There had been no misrepresentation anent the offer of another property. Identification of another property would not have taken place until the appellants agreed to a management transfer in principle. They did not do so. That matter is of relevance in relation to the assessment of reasonableness and the issue of whether or not it was reasonable to require the respondent to make alternative accommodation available to the appellants. Accordingly even if findings in fact [24] and [28] were to be revisited within the scope of the appeal the outcome would not be different for the appellants.

[26] It was accepted that while the sheriff had a duty to assist the appellants as party litigants that was limited to assisting with presentation and teasing out the arguments which were being presented. It did not extend to ignoring the law of evidence. It was not for the sheriff to trawl through the documentation lodged by the appellants to determine what was relevant and what might assist their case.

[27] With regard to the second and third questions posed in the stated case it was submitted that there had been no evidence of vulnerability upon which the sheriff could have made findings in fact. However even if there had been that would not necessarily preclude eviction . Under reference to *City of Glasgow Council* v *Jaconelli* 2011 Hous LR 17, per Sheriff Principal Taylor at para [20], it was submitted that there would require to be evidence that because of the particular vulnerabilities that eviction would have disproportionate consequences. The alternative would be for the appellants to aver and prove that because of the vulnerability or disability they had been treated differently from other tenants. That argument had not been made out in this case.

[28] Finally, while the sheriff could not be criticised for addressing proportionality under a separate heading there was no requirement for her to have done so as an analysis of reasonableness must necessarily encompass proportionality if done properly. The onus is on the tenant to raise and establish the breach of Article 8. The appellants had not done so. There was no identifiable error in the sheriff's approach to reasonableness, and the appeal should therefore be refused.

[29] Finally insofar as there had been criticism of the evidence of Ms M in submissions lodged by the appellants, her evidence was not to be seen in isolation as had been made clear by the sheriff at paras [43] to [45] of the stated case. On a similar note insofar as the appellants seek to rely on exculpatory evidence in relation to some allegations, the sheriff's

decision turned on multiple reports of anti-social behaviour and those formed the basis of her finding that the ground for making the order had been established.

Discussion and decision

[30] Before dealing with the merits of the appeal I shall address the question of whether and to what extent the court should intervene to assist a party litigant. There is something of a misconception that the latitude which should be afforded to those representing themselves extends to ignoring rules of practice and procedure, the law of evidence and in some cases the substantive law itself. Furthermore the party litigant cannot rely on the sheriff to act as their legal representative and make their case for them.

[31] The point was well made by Lord Menzies in *Wilson* v *North Lanarkshire Council* 2014 CSIH 26, at para [12] onwards:

> "[12] Mr. Wilson's submissions to us were peppered with complaints that the Lord Ordinary had not shown enough sympathy towards him, and that the Lord Ordinary should have exercised discretion in his favour to excuse failures to comply with the rules of court or contraventions of the laws of evidence because the pursuer was a party litigant. These complaints were linked to general references to equality of arms. Time and again Mr Wilson observed that he was unrepresented, while the defenders were represented by senior and junior counsel instructed by solicitors, and 'one would have hoped the court would show a little more sympathy in this regard'. He complained that the Lord Ordinary did not suggest to him that he might seek to recall a witness, and that he failed to give other procedural advice to him.
>
> [13] This suggests to us a misunderstanding of the proper function of a judge at first instance in civil proceedings in which one party is without legal representation. In many civil cases there are written pleadings which in our procedure have a special status and importance. The case is shaped and limited by the pleadings. A proof is not at large but takes place in the context of the written pleadings designed to give fair notice to the parties about the issues in dispute. The role of a judge when hearing evidence or dealing with motions made by parties in the course of a proof is not generally a proactive one. It is not his function to give advice to a party as to how that party should present his case or what procedural steps he should seek to take. The main role of a judge during the course of a proof is to listen to and note the evidence of the witnesses called by the parties and assess that evidence (having due

> regard to the demeanour of the witness and the way in which the evidence is given), and to deal with any procedural matters which may arise in a generally impartial and fair way. In order to decide the issues, a judge must be able to understand the evidence and submissions put forward by a party and intervention to achieve this should be expected. But it is not the role of a judge to try to find facts to support a party's case when the party does not seek to advance and rely on such facts. It would be wrong for a judge to favour one party, or exercise any discretion which he may have on a particular issue in favour of that party, simply because the party is not legally represented. The Rules of the Court of Session are intended to provide, so far as possible, a framework for the conduct of litigation which is fair to all parties. Parties are entitled to make their preparations and present their cases in the expectation that the rules will be applied. The fact that one party to a litigation is not legally represented does not absolve that party from the requirement to comply with the rules. Where the court has a discretion to excuse non-compliance with a rule, and where the failure is of a minor or peripheral nature or will result in little or no prejudice to the other party, it may be that the court will have regard to the lack of legal representation as a factor in the exercise of its discretion. However, a judge must be careful not to be perceived as favouring a party just because that party is not legally represented; the judge is in the position of an umpire or referee in an adversarial system and must be seen to apply the rules fairly and consistently to both sides. The concept of equality of arms does not operate to enable a judge to join forces with the weaker army, in order to make the battle more evenly balanced."

[32] Accordingly , in this case it was not for the sheriff to read and extract from the medical records or the appellants' productions, such evidence as she thought might assist them and insofar as the appellants submit otherwise, they are incorrect.

[33] Turning then to the questions in the stated case, the first question posed is whether the sheriff was entitled to grant decree for recovery of possession. That requires the application of the provisions of section 16(2)(a) of the 2001 Act. First of all, the sheriff requires to be satisfied that the landlord had a ground for possession set out in any of the paragraphs 1 to 7 of Schedule 2 of the 2001 Act. If that test is satisfied the sheriff has to go on to consider whether it is reasonable to make the order sought.

[34] There was no attack on finding in fact [25] which recorded that the respondents had served a notice of proceedings on the appellants on 29 May 2024 and finding in fact [34] to

the effect that such notice was duly served and proceedings were commenced timeously in terms of section 14 of the 2001 Act.

[35] The sheriff then made a number of findings in fact anent the appellants' anti-social conduct. Findings in fact [6] to [23] set out a detailed chronology of the facts and incidents which the sheriff found proved. Those are matters which fall to be determined having regard to the credibility and reliability of the witnesses as the sheriff assessed them at the time. This court will not interfere with those findings unless satisfied that the very limited grounds on which it is entitled to do so exist. The sheriff carried out a detailed analysis of the evidence and her assessment of it at paras [37] - [48]. The onus was on the respondent to establish the grounds upon which it sought the order and the sheriff found that onus to have been discharged. She did indeed place weight upon the appellants' refusal of a management transfer on two occasions and found that this had a negative impact on their credibility and reliability. Even if, as submitted by the appellants, the email of 4 April 2024 was available to her and drawn to her attention it does not undermine her findings in that respect. The email does not address the appellants' unacceptable behaviour at the meeting or the effect it had on staff members. It predates the second offer of 18 February 2025 and indicates that even if the email could be construed as demonstrating an agreement to a management transfer and all that that would entail, the appellants' position had changed by the time of the second offer which would again call into question their credibility and reliability. I am not of the view that the email of 4 April 2024 assists the appellants for the purposes of this appeal.

[36] Although it may be that the appellants now can offer exculpatory evidence for some of the incidents the sheriff was relying on there are reports of incidents from various parties from 17 July 2022 until May 2024 to justify her finding in fact and law that the appellants

had engaged in antisocial conduct for the purposes of ground 7 in Schedule 2 of the 2001 Act and finding in fact and law [33].

[37] Insofar as it was suggested that the sheriff proceeded on a misrepresentation that the appellants had been offered specific alternative accommodation but had refused that it appears that the appellants have misunderstood her conclusions. This is specifically dealt with at paragraph 53 of the stated case albeit more properly in relation to the question of whether it was or was not reasonable for the respondent to make an offer of alternative accommodation. There is no finding in fact to the effect that a property had been identified and refused. On the contrary at para [60] the sheriff states:

> "I am, and was aware at the time of my decision, that the offer of a management transfer does not involve the offer of a specific alternative property. I proceeded on my understanding that a management transfer is a fast-track procedure to relocate tenants who are experiencing problems at their current home. Had the defenders accepted the offer of a managed transfer, their transfer to an alternative, suitable property would have been prioritised by the pursuer. Their acceptance of the offer would have been an essential prerequisite to the pursuer identifying a specific property. The defenders' refusal was indicative to me of a lack of goodwill on their part. As set out above, this undermined the defenders' credibility and had a bearing on my findings in respect of reasonableness."

[38] Accordingly no error of law arises in relation to the first part of the test. The sheriff then requires to address the second part of the test: reasonableness. In this regard reasonableness requires that the decision must be based on reason. Those reasons must have regard to all the circumstances of the case and in particular the mandatory considerations in section 16(3) of the 2001 Act. As articulated in *East Lothian Council* v *Duffy (supra)*:

> "[72] Since the existence of the ground is not disputed, the real point of controversy between the parties is the issue of reasonableness. Before considering the particular factors which bear upon that issue in this case, it is appropriate to comment on the nature of the test to be applied. I do not consider that the court should approach the issue of reasonableness by asking whether eviction is the most reasonable course or one of several equally reasonable but conflicting courses. A particular course of

> action can either be reasonable or unreasonable but it cannot be both. A reasonable course of action does not cease to be reasonable simply because there are other actions which might be equally, or more, reasonable. The court is not concerned here with whether a decision already reached falls within a range of reasonableness. Rather, the court must form its own view as to whether it is reasonable to make the order sought. If the answer to that question is yes, then the order must be granted. If it would not be reasonable to make the order, it must be refused."

[39] That is precisely the process of analysis which the sheriff then undertakes in para [54] of the stated case. No error of law arises in her approach or to her application of the mandatory considerations to which she was obliged to have regard.

[40] The sheriff then goes on to deal separately with the question of proportionality. An interesting point arose in the course of the appeal as to whether it was strictly necessary for her to do so if she had adequately addressed reasonableness because, the respondent submitted, proportionality would almost always be present where there is a test of reasonableness properly considered.

[41] Under reference to *Manchester City Council* v *Pinnock* 2011 AC 104, per Lord Neuberger at para [61], it was submitted that the onus was on the tenant to put in issue and establish proportionality under Article 8 and it was not incumbent on the sheriff to do so *ex propria motu* in the ordinary course of events. Albeit, in that case the court was considering proceedings brought by a local authority in the county court against the secure tenant of a dwelling house of which it was the landlord, was seeking a demotion order under section 82A of the Housing Act 1985, the interaction of a reasonableness test and proportionality in terms of Article 8 were considered. At para [55] it is stated:

> "55. The conclusion that, before making an order for possession, the court must be able to decide not only that the order would be justified under domestic law, but also that it would be proportionate under article 8(2) to make the order, presents no difficulties of principle or practice in relation to secure tenancies. As explained above, no order for possession can be made against a secure tenant unless, inter alia, it is reasonable to make the order. Any factor which has to be taken into account, or any dispute of fact which has to be resolved, for the purpose of assessing

> proportionality under article 8(2), would have to be taken into account or resolved for the purpose of assessing reasonableness under section 84 of the 1985 Act.
>
> Reasonableness under that section, like proportionality under article 8(2), requires the court to consider whether to order possession at all, and, if so, whether to make an outright order rather than a suspended order, and, if so, whether to direct that the outright order should not take effect for a significant time.
>
> 56. Moreover, reasonableness involves the trial judge 'tak[ing] into account all the relevant circumstances … in … a broad common-sense way': Cumming v Danson [1942] 2 All ER 653 , 655, per Lord Greene MR. It therefore seems highly unlikely, as a practical matter, that it could be reasonable for a court to make an order for possession in circumstances in which it would be disproportionate to do so under article 8."

[42] This view is reinforced by Sheriff Principal Taylor in *Glasgow City Council* v *Jaconelli (supra),* at para [15]. Unless there is powerful evidence to the contrary the court can assume that a local authority (and by extension a registered social landlord) will act in accordance with its duties.

[43] Accordingly, unless proportionality is expressly placed before the court at first instance as a separate issue and the tenant provides fair notice on record as to why possession and eviction would in the particular circumstances of that case be disproportionate as opposed to unreasonable then the sheriff may legitimately proceed to deal with the matter on the basis of the test referred to above and the mandatory considerations in section 16(3) of the 2001 Act which inherently embrace issues of proportionality in all but exceptional cases.

[44] Nonetheless in this case the sheriff has carried out a detailed evaluation of the competing interests of a number of parties in granting the order at para [58]. These include weighing the consequences of eviction for the appellants and their children against the objectives of enforcement of tenancy conditions, management of housing stock, the

protection of the respondent's staff and the consequences for the other families and children in the development should the appellants remain in occupation.

[45] As the sheriff notes there was no evidence of specific vulnerabilities for either the appellants or their children which would have enabled her to make findings in fact to support a submission that the order would be disproportionate. In any event standing her conclusions on reasonableness it was not necessary for her to do so.

[46] Accordingly there has been no error of law in the sheriff's approach to the second part of the test in relation to reasonableness and as such the first question in the stated case falls to be answered in the affirmative.

[47] The second and third questions posed can be answered quite shortly. The second question asks:

> "Did I err in law by failing to take account of, or make findings in fact, based upon, material medical evidence lodged on behalf of the defenders in relation to vulnerability, despite that evidence being relevant to the statutory test of reasonableness?"

[48] As the sheriff explains, although the appellants made passing reference to disabilities and vulnerabilities these were not developed and no witnesses were led to speak to the first appellant's GP records. It was not open to the sheriff to take account of any passage in any document, the terms of which are not agreed, and to which reference was not made in the course of the evidence of any witness (*McTear* v *Imperial Tobacco* 2005 2 SC 1 (Part I), Lord Nimmo Smith at [1.37]). I accepted the submissions of the respondent in that regard. The duties incumbent on a sheriff when dealing with a party litigant have already been discussed.

[49] Even if the sheriff had an awareness of some form of disability or vulnerability that would not be a bar to eviction per se (*Glasgow City Council* v *Jaconelli (supra)* para [20]). Even

if a disability or vulnerability had been established for it to have any relevance it would have to be established that she would be adversely affected in a specific manner. The mere fact of a disability/vulnerability takes the appellants no further. Accordingly the second question falls to be answered in the negative.

[50] The third question is formulated in the following terms:

> "Did I err in law by failing to have proper regard to the defenders' disability, being a non-visible disability within the meaning of section 6 of the Equality Act 2010, when assessing reasonableness and proportionality, and in failing to properly apply the relevant statutory duties in that context?"

[51] Once again there was no evidence before the sheriff upon which she could determine that the appellants, or either one of them, had a disability as defined in section 6 of the Equality Act 2010. On that basis, she cannot have failed to have regard to a disability. The short answer to the question must also be in the negative.

[52] However for the sake of completeness such a disability would only be relevant for the purposes of a possession claim if either a) as a consequence the effect of eviction is more harsh than it would otherwise be, which might in turn impact on questions of reasonableness or proportionality, or b) some form of discrimination is identified which would suggest that the disabled person is being treated less favourably. No such arguments were advanced.

[53] In conclusion I shall answer the first question in the affirmative, the second and third in the negative. That being so I shall refuse the appeal and adhere to the interlocutor of the sheriff. There was no motion for expenses. I shall therefore make no order to or by either part in relation to the expenses of the appeal.