SHERIFF APPEAL COURT

[2026] SAC (Civ) 64
EDI-L34-26

Sheriff Principal N A Ross

OPINION OF THE COURT

delivered by SHERIFF PRINCIPAL N A ROSS

in the appeal in the cause

by

ADVOCATE GENERAL FOR SCOTLAND on behalf of THE COMMISSIONERS FOR HIS MAJESTY'S REVENUE AND CUSTOMS

Petitioner and Respondent

against

EDINBURGH RESIDENTIAL RENT LIMITED

Respondent and Appellant

14 September 2026

[1] The appellant challenges a decision not to permit Mark Fortune to appear as lay representative on its behalf. These are proceedings at the instance of His Majesty's Revenue and Customs to wind up the appellant.

[2] The action first called on 7 April 2026. Mr Fortune purported to appear on behalf of the appellant company. He was permitted to appear for the purposes of that hearing only and to present a motion in terms of section 97 of the Courts Reform (Scotland) Act 2014 to be permitted to conduct proceedings on its behalf as lay representative.

[3] Having heard parties, the sheriff refused that motion. He also allowed the appellant 14 days to adjust its answers, and thereafter a period of mutual adjustment. A further hearing on the petition and answers was fixed for 3 June 2026. By the time of the hearing on 3 June, a motion on behalf of the appellant for permission to appeal had been enrolled. On 3 June 2026, having heard parties, the sheriff granted permission to appeal. The appeal proceeded by written submissions.

Submissions for the appellant

[4] The appellant submitted that there were no available funds to instruct solicitors. Mr Fortune as sole director had full knowledge of the relevant facts and was the only individual capable of presenting the appellant's position. Refusal meant the appellant's position would not be properly presented. The sheriff had erred in the exercise of his discretion by taking into account references to his conduct. He had acted to deny justice to the appellant and had failed to take into account the consequences. The appellant would not receive a fair hearing.

[5] The decision was based on an overly rigid application of the ordinary rule requiring solicitor representation, failed to take into account the exceptional circumstances of the case, and the decision amounted to a disproportionate denial of access to justice. There was no realistic alternative to granting the motion.

Submissions for the respondent

[6] The respondent submitted that the sheriff had correctly exercised his discretion. Section 97 limited the grant of permission for a lay representative to three circumstances. These were: that the company was unable to pay for legal services; that the lay

representative was a suitable person to conduct the proceedings; and that it was in the interests of justice to grant permission. A discretionary decision could only be challenged in limited and well-recognised circumstances. Under Mr Fortune's guidance, the appellant had submitted an apparently unrecognised postal address as a trading address to the Registrar of Companies. It had recently changed its name, following service of the present petition.

[7] The sheriff refused permission on the basis he was not persuaded that Mr Fortune was a suitable person to represent the appellant. It was clear also that he was not satisfied on the other two criteria under section 97. There was no basis to overturn his decision.

Decision

[8] In these proceedings the respondent founded on an estimated tax liability of £188,000. The respondent submitted that Mr Fortune was not a suitable representative due to his conduct. The sheriff noted that Mr Fortune was the directing mind of the appellant and is an experienced company director. Mr Fortune is also an experienced party litigant and has a number of actions in dependence in Edinburgh Sheriff Court.

[9] The sheriff had reference to the criteria in section 97 of the 2014 Act, and considered the decision in *Hastings* v *Day 41 Ltd* [2025] SAC (Civ) 26. In the present case, the sheriff noted that Mr Fortune presented no informative account of the appellant's financial position. The appellant's bank was restricting access to funds, but no further explanation was given, even though an explanation must have been available. Mr Fortune stated that many of the appellant's records were in the hands of the police because of ongoing criminal proceedings against him personally. That did not explain why basic management accounts or information were not made available to the court.

[10] Mr Fortune was a director but not a shareholder. He has received fees and other payments from the company, and he is a director of a number of other companies. The sheriff regarded this combination of circumstances as tending to show a direct financial interest. When combined with the unconventional entries in the Register of Companies, the sheriff concluded that Mr Fortune was not a suitable person to conduct litigation as a lay representative.

[11] Before a lay representative can act on behalf of a non-natural person, the court must grant permission (Courts Reform (Scotland) Act 2014 section 97). It can only do so if satisfied as to three criteria, namely that the non-natural person is unable to pay for the services of a legal representative to conduct the proceedings; that the lay representative is a suitable person to conduct the proceedings, and that it is in the interests of justice to grant permission.

[12] The sheriff's decision was taken "in the round" having regard, amongst other features, to the appellant's financial interest in the appellant and further concerns about probity. A personal interest is a disqualifying feature (section 97(4)(d)). The sheriff noted that Mr Fortune did not present any relevant financial information about the company, despite his position as sole director. This he described as unsatisfactory. He noted also that Mr Fortune had received fees for rent from the company, albeit he had not received such fees for some time. As such these payments were not simply director fees. In the circumstances the sheriff had little option but to find that Mr Fortune had not presented material to allow the court to conclude that he had no personal interest in the appellant. The onus was on the appellant and Mr Fortune to satisfy the court on these points. The fact that the motion was presented by the sole director who was not able to give basic financial information about the company was by itself a significant indication that the director was

not a suitable representative. The sheriff so regarded the position. It also followed that the appellant was unable to present material to demonstrate an absence of personal interest under section 97(4)(d). The sheriff cannot be said to have erred. The appeal must be refused.

[13] While not relevant to the decision made on 7 April 2026, it is at least of anecdotal interest that the respondent was able, at the subsequent hearing on 3 June 2026, to provide the court with the appellant's most recent accounts to 31 July 2024. These showed net assets of £717,300. It demonstrated that the absence of financial information on 7 April 2026 was of critical importance. Such a financial position would require a vouched explanation of how the company was nonetheless unable to pay for the services of a legal representative. It demonstrated also that Mr Fortune, the director, did not satisfactorily and openly explain the appellant's financial position on 7 April 2026.

Disposal

[14] The appeal is refused. I will allow parties a further period of 14 days to make written submissions on expenses.