



OUTER HOUSE, COURT OF SESSION

[2026] CSOH 84

P1328/25

OPINION OF LADY DRUMMOND

in Petition of

AB

Petitioner

for

Judicial Review of the decision of the Sheriff Principal of Lothian and Borders dated
26 November 2025 refusing to investigate a complaint concerning the conduct of a
curator ad litem

Defender

Petitioner: Party litigant

Respondent: McLean, (sol adv); Brodies LLP

4 September 2026

Introduction

[1] The petitioner seeks judicial review of a decision of the Sheriff Principal of Lothian and Borders, dated 26 November 2025 refusing to investigate her complaint about the conduct of a curator ad litem.

[2] The petitioner asks the court to:

1. Reduce the sheriff principal's decision of 26 November 2025;
2. Grant declarator that the sheriff principal erred in law by refusing to exercise jurisdiction in respect of her complaint;

3. Make any further orders the court considers just and reasonable; and
4. Award expenses in her favour.

[3] The substantive hearing took place on 5 June 2026 when the petitioner represented herself and Mr McLean, solicitor advocate, represented the respondent.

[4] The background is that the petitioner's former partner raised proceedings in the sheriff court seeking a residence order in relation to his and the petitioner's child. During those proceedings the court appointed a curator ad litem. The petitioner had concerns regarding the curator's conduct, including questions about her independence, the handling of evidence by her and the instruction of a court-appointed psychologist. The petitioner was told any complaint should await the end of the court proceedings. In an opinion dated 6 November 2023, the sheriff who heard the proof made a residence order in favour of the petitioner's former partner and a specific issue order that the child be enrolled at her school for the remainder of her education. The sheriff refused the petitioner's craves for residence and contact.

[5] The petitioner thereafter lodged an appeal to the Sheriff Appeal Court. In an opinion dated 1 August 2024 the Sheriff Appeal Court refused the appeal on the grounds that it was incompetent. As is explained in the opinion, the petitioner lodged the appeal on 31 May 2024, only a few days before the child became 16 years old, in June 2024. Any residence or specific issue orders granted by the court expire when a child reaches 16 years of age. Since the orders had expired, there was no longer any live issue between the parties and the court refused the appeal, awarding expenses against the petitioner.

[6] At the same time as her case was being considered in the sheriff court, the petitioner complained to the sheriff principal by email in December 2023 about the conduct of the court appointed curator ad litem. The reply from the sheriff principal was paused to await

the outcome of the sheriff court proceedings and the subsequent appeal. Once the Sheriff Appeal Court had issued its opinion, the sheriff principal replied to the petitioner by letter dated 20 August 2024. In that letter he concluded that there was no sound reason to investigate the complaint further. He stated that if the petitioner wished him to consider an investigation she would have to provide sufficient factual details to allow him to do so. He asked the petitioner to consider the detail of his letter and if she wished to maintain her complaint, he would be willing to consider it.

[7] Thereafter the petitioner provided further information to the sheriff principal indicating that she wished to pursue her complaint against the curator. By letter dated 26 November 2025 the sheriff principal noted her complaints and again advised the petitioner that the complaints did not provide a basis for him investigating the conduct of the curator. He explained that the complaints related directly to the conduct of the case which were adjudicated upon by the sheriff and did not provide grounds to commence an investigation.

The issues for determination

[8] In answering the petition, the respondent averred that the sheriff principal's decision was not amenable to the supervisory jurisdiction of the Court of Session. The respondent also claimed that the petition was time barred, it not having been brought within 3 months of the date that the grounds first arose. However, at the substantive hearing, the respondent did not insist on these arguments. Therefore the issues for determination by the court are:

- (1) Whether the respondent erred in law in refusing to investigate the complaint;

- (2) Whether a legitimate expectation arose that the complaint would receive substantive consideration and that refusing to investigate was procedurally unfair;
- (3) Whether the respondent failed to take account of relevant considerations or took into account irrelevant considerations;
- (4) Whether the decision was irrational;
- (5) Whether the petitioner failed to pursue an alternative remedy.

The petitioner's submissions

(1) *Error of law*

[9] The petitioner submitted that the sheriff principal misunderstood the scope of his powers and jurisdiction. He wrongly concluded that he lacked jurisdiction to consider the complaint concerning the conduct of the curator. The sheriff principal's conclusion in his November letter that he had no power to investigate is inconsistent with his earlier response when he treated the complaint as one capable of investigation, and invited the petitioner to provide further material. The petitioner submitted that this change of position shows a misunderstanding of the true scope of his powers and an error of law (*Anisminic Ltd v Foreign Compensation Commission* [1969] 2 AC 147 and *Padfield v Minister of Agriculture* [1968] AC 997).

[10] The petitioner's complaint was not as to the merits of the sheriff's decision, but as to the conduct of the curator. The sheriff principal exercises supervisory responsibilities in relation to the administration of justice and the conduct of court-appointed officers such as the curator. Complaints about the conduct of a curator fall within those supervisory responsibilities and are matters that can properly be considered by him. The sheriff

principal misdirected himself as to the nature of the curator's role, failed to recognise his supervisory function, and wrongly treated the absence of a specific regulatory framework governing curators as decisive. A lack of formal regulation does not mean there is no power to investigate concerns regarding a court-appointed officer.

(2) *Legitimate expectation*

[11] In the first letter, the sheriff principal made clear and unambiguous representations that the petitioner's complaint about the curator would be investigated and invited her to provide additional material. The petitioner relied upon those representations by gathering extensive evidence, preparing detailed written submissions, and continuing to engage with the complaints process in good faith. She expended significant time and effort providing the additional material requested because she understood that an investigation would take place.

[12] The sheriff principal then acted inconsistently by refusing to investigate the complaint on the basis that he had no power to do so. According to the petitioner, this reversal of position defeated the expectation that had been created by the earlier correspondence and conduct of the complaints process. No fair notice was given to the petitioner that the respondent considered himself to lack jurisdiction, nor was there any adequate or intelligible reason given for departing from his earlier position.

[13] Where a public authority has made a clear representation and an individual has relied upon it, the authority cannot simply change course without a good reason. The refusal to investigate was unlawful because it frustrated a legitimate expectation that the complaint would receive substantive consideration (*R v North and East Devon Health Authority, ex p Coughlan* [2001] QB 213).

(3) *Failure to take relevant considerations into account and taking into account irrelevant considerations*

[14] The respondent failed to take into account relevant material placed before him including: the petitioner's contemporaneous complaints about the curator's role and competence; the lack of regulatory oversight over her conduct; that the petitioner raised concerns about the curator in the sheriff court proceedings including seeking her removal by motion; detailed evidence; the petitioner's repeated requests for reconsideration and clarification of the basis on which the complaint was being addressed; the involvement of a court appointed psychologist acting under instruction from the curator, including the acknowledged instruction from the curator not to consider relevant material, and the implications of that instruction for the fairness and integrity of the process; and the impact on the petitioner's ability to participate effectively in the proceedings. These matters were directly relevant to the question whether investigation of the complaint was required. The respondent's assertion that the complaint lacked specification is inconsistent with the volume and detail of the material provided and demonstrates a failure to engage with that material.

[15] The respondent further erred in taking into account irrelevant considerations such as placing weight on the petitioner's failure to pursue certain matters at proof or cross-examine witnesses during the proceedings. These were not relevant to the question of whether or not the curator's conduct required investigation. The issues in question had been clearly articulated and placed before the court in advance, including in formal submissions. In these circumstances, the absence of oral questioning did not diminish the relevance or

weight of those concerns. In any event, the petitioner was unrepresented and unwell and had been advised that her complaints required to await the conclusion of the proceedings.

(4) Irrationality

[16] The petitioner further argued that the respondent's decision was irrational in the Wednesbury sense. The respondent's position gives rise to the proposition that concerns regarding a curator's conduct cannot be investigated before, during or after proceedings, thereby creating a regulatory gap with no lawful justification. There is accordingly no meaningful mechanism for scrutiny of curators.

[17] The respondent accepted the complaint, indicated that it would be investigated, invited further evidence from the petitioner, and subsequently concluded that he had no power to investigate the complaint at all. A reasonable decision-maker could not both initiate an investigation process and later assert that no power existed to conduct such an investigation at all. No reasonable decision-maker could logically adopt these inconsistent positions (*Associated Provincial Picture Houses Ltd v Wednesbury Corporation* [1948] 1 KB 223).

[18] In oral submission the petitioner explained she had made criticisms of the curator before the sheriff but these had not been mentioned in the sheriff's judgment. That included criticisms that the curator had not reported various factual matters which the petitioner considered relevant, including breach by the petitioner's former partner of a court order to allow contact, and that the curator had not taken into account that her daughter is neurodivergent.

[19] The curator was not a solicitor at the time that she was appointed curator. The petitioner explained to the court that she had complained to the Law Society of Scotland about the curator many times, even before the sheriff court proof. More recently she had

made a complaint to the Law Society of Scotland about the curator's conduct along with a complaint about the solicitor instructed for the petitioner's former partner in the sheriff court proceedings. She advised that both the conduct of the curator and the solicitor are currently under investigation by the Law Society.

The respondent's submissions

[20] The respondent submitted that the sheriff principal acted lawfully and rationally in refusing to investigate the complaint. The complaint was largely a disagreement with the curator's evidence, recommendations and conduct within the underlying proceedings, rather than a complaint disclosing professional misconduct. The allegations were general in nature, lacked sufficient factual detail to establish any *prima facie* wrongdoing, and concerned matters that could have been addressed during the proof or appeal process. The sheriff principal carefully considered the petitioner's complaint in his responses. He summarised the criticisms advanced, and found that the complaint did not contain enough information suggestive of wrongdoing to warrant further investigation. There is nothing in the sheriff's judgment in the court proceedings suggesting concern about the curator's conduct. On the contrary, the sheriff's judgment contains positive comments regarding the curator's experience and handling of the case.

[21] The respondent explained in his response that the material provided did not disclose misconduct but instead challenged evidential and procedural matters that had already been considered by the sheriff. The sheriff principal was entitled to conclude that there was insufficient material to justify an investigation. It was accepted that an authority may not depart from a clear and unambiguous undertaking previously given, unless it is fair for it to do so, the court being the arbiter of fairness: *Re Finucane's Application for Judicial*

Review [2019] UKSC 7, paragraph 62; *School and Nursery Milk Alliance Ltd v Scottish Ministers* [2022] CSOH 11 paragraph [44]. However, no legitimate expectation of an investigation arose from the correspondence, which merely left open the possibility of reconsideration should further information be provided.

[22] The curator was appointed directly by the sheriff and was not serving on a statutory local authority panel established under the Curators ad Litem and Reporting Officers (Panels) (Scotland) Regulations 2001. While those regulations contain provisions allowing local authorities to remove panel members or receive reports from courts regarding their suitability, that they do not create a general regulatory scheme applicable to every curator appointed in family proceedings. It was further noted that the curator was not a practising solicitor at the time of the proof, although she had previously been qualified as a solicitor. Accordingly, the respondent argued that neither the sheriff principal nor bodies regulating solicitors necessarily possessed a straightforward jurisdiction to investigate the conduct complained of.

[23] The respondent maintained that the petitioner had other remedies available with the result that judicial review was not available (*WA v Secretary of State for the Home Department* [2017] CSOH 30; *McCue v Glasgow City Council* [2014] CSOH 124 and *CA v Western Isles Council* [2024] CSOH 103). Concerns about the curator could have been raised before the sheriff during the proceedings, pursued in the appeal process, or potentially advanced through other complaint routes if she had been appointed to a local authority panel.

[24] Even if the court were to identify some legal error in the sheriff principal's reasoning, it should nevertheless refuse to grant the remedy sought. Relying on authorities concerning the court's discretion in judicial review (*Amid v Kirklees Metropolitan Borough Council* [2001]

EWCA Civ 582 per Sedley LJ at paragraphs 17, 20 and 21, followed by the Court of Session in *Kaagobot Ltd v City of Edinburgh Council* [2023] CSOH 10 at paragraph [165]), the respondent argued that this is a case where the outcome would inevitably have been the same. The respondent maintained that the sheriff principal did engage with the complaint, accurately summarised its substance, considered the information provided, and concluded that it did not disclose sufficient evidence of misconduct to justify investigation. On that basis, any error would not have altered the result, and reduction of the decision would serve no practical purpose.

Decision

[25] To consider the submissions made by the petitioner it is necessary to understand the complaints made by her and the response at both stages by the sheriff principal.

The first complaint and response

[26] In the letter dated 20 August 2024, the respondent referred to the petitioner's complaints contained in emails dated 11 December 2023. He began by explaining that the complaint had coincided with the litigation before the sheriff and subsequent appeal. He had awaited the outcome of that process before responding, not least because there was a possibility that he might have to hear the petitioner's appeal, although as it transpired another sheriff principal did so. The appeal being at an end, he could now address the complaint.

[27] Over the next two pages, the sheriff principal set out the terms of the petitioner's complaint about the curator from her emails. He summarised these as complaints that: the curator did not act in a neutral manner; accepted payment from one of the parties and

therefore had a conflict of interest; instructed a psychologist, appointed by the court, not to read the petitioner's submissions or become familiar with the case causing the psychologist to be deprived of relevant information; failed to inform the court that the pursuer had admitted to refusing to adhere to court instructed contact (allowing contact with the petitioner and her daughter) during proof; failed to make investigations into the petitioner and her daughter's disabilities and did not make reasonable adjustments for that, leading to a lack of care for her daughter and the petitioner being demonised; objected to the petitioner during the proof calling a witness, on the basis of relevancy; refused to gather information about an incident in which the pursuer's girlfriend left the house following an incident with the petitioner's daughter. The curator had not acted within the remit of her role and had discriminated against her.

[28] The sheriff principal thereafter explained the role of the curator who is an officer of the court appointed so that the court can be satisfied that the case is properly conducted. The curator is under a duty to exercise independent judgment and to protect the interests of the child in the action. The curator remains accountable to the court for their actions while carrying out their function. The curator is entitled to be paid, generally by the person who required the appointment, or if legal aid has been granted under legal aid provisions.

[29] The sheriff principal explained that the curator had been appointed on 2 December 2020 and joined as a party to the case on 23 April 2021. The pursuer (the petitioner's former partner) undertook to pay the curator's expenses, before legal aid was granted and covered the expenses. The sheriff principal explained that these arrangements were arrived at openly and properly and that the curator remained at all times an officer of the court. There was therefore no validity in the criticism that the curator had accepted payment from one party as wrongdoing.

[30] The sheriff principal explained that it is within a curator's remit to contact a court appointed psychologist and to make representations on behalf of the child to the psychologist. The psychologist as a professional had to inform herself as to what she required to fulfil her professional duties and had herself made a full investigation.

The sheriff at paragraphs [51] to [61] of her judgment recorded that the psychologist fully informed herself speaking directly with not only the petitioner but with other family members, other professionals and the child. Reading the petitioner's submissions would have made no difference since the psychologist spoke directly with the petitioner. There was no evidence that any direction from the curator had an adverse effect on the evidence.

[31] As regards the complaint that the curator had not had regard to the child's disabilities, the sheriff principal noted that the curator met with the child 16 times and spoke to other professionals and family members. The sheriff had noted that the curator had a sound and detailed knowledge of the facts of the case and of the child. The curator had no duty to assess the petitioner's disabilities since she was not acting to protect the petitioner's interests.

[32] The sheriff principal explained that the curator had a part to play at the proof and was entitled to object to witnesses' evidence, the decision on whether the evidence could be led being one for the sheriff. He stated that the petitioner could have led such evidence she considered important. The fact that the curator did not lead certain evidence, such as the dispute between the pursuer and his girlfriend, was not in itself indicative of any wrongdoing by the curator. The child's best interests had been fully considered by the sheriff at paragraphs [104] to [120] of her opinion.

[33] In conclusion the sheriff principal found that he had no factual basis upon which he could responsibly start to investigate the case further. He pointed out that investigating

complaints are time consuming and require resources to be expended, and would not be embarked on without sound reason. He stated that he is always open to considering allegations of unprofessional conduct but that the content of the petitioner's complaint did not indicate that professional standards had not been observed. If the petitioner wished him to conduct an investigation she would require to provide enough information to allow him to form an independent judgment. He stated: "Please consider the detail of the foregoing, and if you wish to maintain your complaint, I remain willing to consider it."

The second complaint and response

[34] The petitioner indicated she wished to pursue her complaint against the curator and provided further information to the sheriff principal. In his second letter, dated 26 November 2025, the sheriff principal summarised the petitioner's complaints that the curator: failed to report breaches of court orders; misrepresented evidence; aligned herself with her ex-partner's narrative; suppressed crucial information and failed to ask the child particular questions. The petitioner complained that she lost residency because the system relied on a curator who did not act impartially.

[35] The sheriff principal again concluded that the complaints did not provide a basis for him investigating the conduct of the curator. He explained that the complaints related directly to the merits of the case and that the petitioner's remedy lay in the conduct of the case itself. The whole point of the litigation had been to allow these issues to be ventilated and considered. The petitioner could have raised complaints about evidence or misrepresentation of evidence before the sheriff. The sheriff had adjudicated on the issues and reached a decision. The fact that the sheriff had reached different conclusions from

those advanced by the petitioner is a function of adjudicating between parties who have conflicting views, with one inevitably not succeeding.

[36] If the curator had aligned herself with the pursuer, or had suppressed evidence, or failed to ask appropriate questions of her daughter, the petitioner had the opportunity to dispute the curator's findings and to present her own evidence and ask questions herself within the proceedings. If the petitioner considered the sheriff to have erred in law in reaching her decision, her remedy was to appeal the decision which she did in fact do. The sheriff principal stated that he could not now open up the sheriff's decision nor that of the Appeal Court since he had no powers to do so. He again concluded that the petitioner's emails did not provide grounds to begin to investigate the allegations against the curator and there was no power for him to investigate the findings of the court.

(1) *Whether the respondent erred in law in refusing to investigate the complaint*

[37] The petitioner's submission that the sheriff principal misunderstood the extent of his powers and wrongly concluded that he lacked jurisdiction, does not withstand examination of his responses. In the first response he has considered her complaints, addressed them and concluded that because they do not disclose apparent misconduct, he would not investigate further. Having reached that conclusion he indicated that he remained open to considering any further material if the petitioner wished to pursue her complaint. In the second response, he again assessed the petitioner's complaints and decided that there was no merit in them which would warrant further investigation.

[38] It is plain from the sheriff principal's responses, that he considered the petitioner's complaints. It is also plain that he understood that the curator, as an officer of the court could be investigated by the sheriff principal if he considered there was substance to an

allegation of professional misconduct. The sheriff principal is empowered both by the Courts Reform (Scotland) Act 2014 and the common law to regulate the practice and procedure of the courts of his sheriffdom. He has responsibilities conferred on him by statute and common law (Macphail: paragraphs 1.10-1.11 and 1.47). He made it clear in his first response that he was open to considering allegations of unprofessional conduct and that it is important that the curator, as an officer of the court, maintain the highest standards, but decided that the petitioner's complaint did not show that those standards had not been observed (p 5). In his second response he again considered her complaint. That approach was consistent with his responsibilities.

[39] The sheriff principal was entitled to assess whether sufficient information had been presented to justify any further action and decided in both responses that it had not been. Public resources are limited and there is nothing unlawful in an authority making an initial assessment of a complaint before deciding whether public money should be spent investigating it further. Such an approach did not amount to a misunderstanding of his powers.

[40] The petitioner is correct that the sheriff principal does refer to a lack of power of review. This occurs at the end of his second response when he states that he cannot challenge or investigate or open up the interlocutor of the sheriff or the Appeal Court and that he does not have powers to review any case. The sheriff principal is clearly referring there to not having any powers to review the findings in the sheriff or Sheriff Appeal Court. That is because these are matters to be decided by the sheriff and the subsequent Appeal Court alone. That is accurate as a matter of law and is not a misunderstanding of his powers.

(2) *Whether a legitimate expectation arose that the complaint would receive substantive consideration and that refusing to investigate was procedurally unfair*

[41] It was not in dispute that an authority may not depart from a clear and unambiguous undertaking previously given, unless it is fair for it to do so, the court being the arbiter of fairness: *Re Finucane's Application for Judicial Review* [2019] UKSC 7 at paragraph [62]; *School and Nursery Milk Alliance Ltd v Scottish Ministers* 2022 SLT 262 at paragraph [44]).

[42] However, the petitioner's submission faces a fundamental obstacle: there was no clear and unambiguous representation that her complaint *would* be further investigated. The first response did not promise an investigation, nor that one would automatically follow from submission of further information. In his first response, under the heading "Further investigation" the sheriff principal made it clear that there was no factual basis to investigate the complaint on the information before him and stated:

"I am always open to considering allegations of concerning or unprofessional conduct. It is important that officers of the court maintain at all times the highest standards of probity. I regret however, that the content of your complaint does not demonstrate, or even indicate, that those standards have not been observed in this case.

If you wish me to conduct an investigation, you would have to provide sufficient factual details to allow me to do so. I would need enough factual material to allow me to form an independent judgment. Please consider the detail of the foregoing, and if you wish to maintain your complaint, I remain willing to consider it".

All that the sheriff principal undertook in these paragraphs was that he would further consider the matter if the petitioner provided additional factual information. Any further investigation was dependent on the petitioner providing sufficient factual detail which the sheriff principal judged to warrant further investigation. The petitioner did provide further information which the sheriff principal did consider, again giving reasons in his second response why her complaint did not warrant further investigation. Far from being procedurally unfair, the procedure shows considerable procedural fairness. The petitioner

may have hoped that the further information would cause the sheriff principal to investigate her complaint further, but she was not given any clear and unambiguous undertaking that would occur. Insofar as there was an undertaking to consider the further information submitted, the sheriff principal complied with that.

(3) *Whether the respondent failed to take account of relevant considerations or took into account irrelevant considerations*

[43] The sheriff principal's first response specifically addressed the petitioner's complaints including allegations of impartiality, payment arrangements, the psychologist's instructions, disability issues, the curator's role and conduct, and the best interests of the child. The second response addressed suppression of evidence, misrepresentation of evidence and failure to ask questions. The respondent engaged fully with the petitioner's complaints as summarised there. There is a distinction between the decision-maker failing to consider relevant material and the decision-maker considering it but making a decision that the petitioner disagrees with. The petitioner's challenge on this ground falls into the latter category.

[44] The matters that the petitioner describes as irrelevant were relevant. The sheriff principal's observations that her concerns could have been raised during proof, that evidence could have been challenged by her and witnesses questioned, were all directly relevant. That is because they showed that the petitioner was complaining about matters that related to the evidence. It is fundamental to adversarial litigation that it provides an opportunity for the petitioner within the sheriff court proceedings to challenge the evidence presented by another party to the proof.

[45] In any event, as the petitioner explained in her submissions in the judicial review proceedings, she did make many criticisms of the curator before the sheriff. She submitted that the issues had been clearly articulated in advance including in formal submissions. That submission is inconsistent with the petitioner's submission that she was not able to put forward her points. I note from paragraph [22] of the sheriff's opinion that a lay supporter was provided to the petitioner and reasonable adjustments were made. In dealing with the evidence the sheriff, at paragraph [62], described the curator as "a very experienced child welfare reporter, safeguarder and curator ad litem (having been appointed in approximately 300 cases)" and made no criticism of the curator's conduct. Whilst the sheriff does not rehearse in her opinion the complaints made by the petitioner about the curator, the clear implication is that she found that the curator had carried out her responsibilities appropriately. The appeal having been exhausted, the sheriff principal had no power to open up the sheriff's decision.

(4) *Irrationality*

[46] A decision is not irrational merely because another decision-maker might have reached a different conclusion. The decision must be one that no reasonable decision-maker, properly directing itself in law, could have made. Nothing in the sheriff principal's decision of November 2025 approaches that standard.

[47] The sheriff principal's reasoning is coherent: a curator is an officer of court and complaints made against a court appointed curator could be considered by him; the complaints raised by the petitioner were capable of being addressed within the litigation; the sheriff heard the evidence and made findings; the Appeal Court dealt with the appeal; the additional material supplied by the petitioner still disclosed no identifiable misconduct

and therefore no further investigation was justified. There is a rational chain of reasoning throughout.

[48] The petitioner is correct to point out that the curator was not appointed by a local authority and is not subject to the Curators ad Litem and Reporting Officers (Panels) (Scotland) Regulations 2001 (SSI 2001/477). Under these regulations, each local authority may, after consultation with the sheriff principal, establish for their area, panels of persons from which curators ad litem and reporting officers may be appointed. The regulations provide a mechanism for the local authority to terminate a person's membership of a panel if satisfied they are unable, unfit or unsuitable to continue to carry out their functions.

[49] However, that is not to say that there is no regulation of a curator appointed by the court. As was recognised in *City of Edinburgh Council v MO's Curator* [2016] CSIH 46 at paragraph [17], the court retains some degree of control to ensure that the work of curators ad litem is done properly and independently. The sheriff principal specifically recognised that at p 4- 5 of his first response and on both occasions by considering the substance of the petitioner's complaints. That was consistent with his responsibilities. There is nothing irrational or unreasonable in that approach.

[50] The argument that the sheriff principal simultaneously accepted and rejected jurisdiction does not withstand scrutiny. On both occasions he considered the complaint to determine whether it warranted further investigation. Considering a complaint in order to determine whether it warrants investigation is not the same as accepting that further investigation should follow. Deciding that a complaint should not be further investigated is not the same as declining jurisdiction ie any power to consider the matter at all. Public authorities routinely assess complaints before deciding whether any further process is justified and there is nothing irrational in such an approach.

(5) *Alternative remedy*

[51] There was no dispute that in general it is not competent to have recourse to the supervisory jurisdiction of the Court of Session where there is an alternative remedy which has not been resorted to or exhausted (*McCue v Glasgow City Council* 2014 SLT 891 at p 897H and p 901H; *CA v Western Isles Council* 2024 SLT 1324). Rule 58.3(1) of the Court of Session Rules provides that a petition for judicial review may not be lodged if the application can be made by statutory appeal or review. The petitioner pursued her concerns about the curator before the sheriff and sought to pursue them on appeal but was unsuccessful. She could not pursue her concerns with the local authority as the authority had not appointed the curator. Nor could she on the face of it pursue her concerns with the Law Society since the curator was not a solicitor. The petitioner complained to the sheriff principal who considered her complaints but refused to investigate further. By that point she had pursued and exhausted all alternative remedies that the respondent pointed to. This submission is without foundation.

Discretion to reduce the decision

[52] I do not agree with the respondent's submission, that even if I had been persuaded that the respondent's decision was unlawful, I should not reduce the decision because the same decision would inevitably be made. The sheriff principal was exercising his judgment about the complaints made and whether they warranted further investigation, and in theory at least might exercise his judgment differently if the court found that there had been an error in his previous decision making (which it has not). Were I to decide differently, I

would be trespassing on the respondent's decision making process which is not for me to do (*Kaagabot Ltd v City of Edinburgh Council* at paragraph [165]).

[53] However, had I been persuaded the respondent's decision was unlawful, I would nonetheless not have quashed the decision, for a different reason. That is because reduction of the decision would serve no purpose. The petitioner's fundamental complaint is that the curator's conduct has not been investigated. However, as the petitioner explained, the curator's conduct is currently under investigation by the Law Society of Scotland who has undertaken to do so at the same time as investigating the petitioner's complaint about a solicitor who acted for the petitioner's former partner in the sheriff court proceedings. It would be pointless to remit the matter back to the sheriff principal to expend valuable public resources on considering whether or not to further investigate when the petitioner's complaints are already under investigation, albeit by a different body. Reduction of the decision would not result in any material benefit to the petitioner.

Expenses

[54] I heard parties' submissions about expenses at the oral hearing. The respondent, if successful, sought expenses against the petitioner. The petitioner, if successful, sought expenses against the respondent. The petitioner resisted an award of expenses being made against her if unsuccessful. She explained the financial toll that the sheriff court and Sheriff Appeal Court proceedings had on her personally.

[55] I recognise that the petitioner has suffered financially in other proceedings. However, she proceeded with the judicial review proceedings in the face of her financial position knowing the possible consequences if she was unsuccessful. She persisted notwithstanding the decision by the Law Society to investigate the curator's conduct. She

has put the respondent to the expense of defending these proceedings. I can see no basis justifying an exercise of my discretion other than to award expenses in favour of the respondent.

Outcome

[56] I therefore repel the petitioner's pleas-in-law. I repel the respondent's first, second, third and fourth pleas-in-law. I sustain the respondent's fifth and sixth pleas-in-law and award expenses in favour of the respondent.