SHERIFF APPEAL COURT

[2026] SAC (Civ) 73
PER-A163-24

Sheriff Principal G A Wade KC

OPINION OF THE COURT

delivered by SHERIFF PRINCIPAL GILLIAN A WADE KC

in the application for permission to appeal to the Court of Session
(Courts Reform (Scotland) Act 2014, section 113)

by

MJ

Applicant

In the cause

MJ

Pursuer and Appellant

against

STAGECOACH GROUP LIMITED

Defender and Respondent

12 October 2026

[1] The applicant seeks permission to appeal under section 113(2) of the Courts Reform (Scotland) Act 2014. Permission may only be granted if (a) the appeal would raise an important point of principle or practice, or (b) there is some other compelling reason for the Court of Session to hear the appeal.

[2] The test has been considered authoritatively in *Politakis* v *Spencely* 2018 SC 184; [2017] CSOH 74: at paras [20] and [21]. The purpose of the test is to restrict the scope for a second appeal. An appeal raises an important point of principle or practice when it refers to one which has not yet been established and does not include a question of whether the principle or practice has been correctly applied. The existence of some other compelling reason presupposes the first part of the test has not been met and no important point of principle or practice has been realised: *Uphill* v *BRB(Residuary) Ltd* 2005 1 WLR 2070; [2005] EWCA Civ 60: para [19]. This test will only be met in exceptional circumstances. "Compelling" is a very strong word. A good starting point is consideration of the prospects of success. The test can be met if, for example, it is clear that the first appeal court reached a decision which is plainly wrong, or if there has been some procedural irregularity which demonstrates that the applicant did not have a fair hearing.

[3] Even where one of these tests is met, the court is not bound to grant permission to appeal (*Explore Learning Ltd* v *Social Care and Social Work Improvement Scotland* [2019] CSIH 53). It must consider the prospects of success of the appeal and the suitability of the particular case as a vehicle for that.

Factual and procedural background

[4] The appeal to which this application relates arises from an action based on alleged breaches of the Equality Act 2010 ("the 2010 Act") by bus services in England. The applicant raised proceedings against the respondent in Perth Sheriff Court claiming that Pride-themed bus liveries created a hostile environment for his Catholic beliefs. The appellant sought damages under section 119 of the 2010 Act, and an order for his proposed reasonable adjustments to be implemented by the respondent. He averred that the "Ride with Pride"

livery which was sometimes used on buses operating on this route was contrary to the teachings of the Catholic Church. As a devout Catholic with a disability (autism spectrum disorder) the Pride-themed bus livery was a visual sensory trigger which hindered his access to them. The respondent's failure to make reasonable adjustments, and use of the livery was indirect discrimination on the grounds of both disability and religion.

[5] The matter proceeded to proof on a wide range of issues but at first instance the sheriff determined that the matter could be dealt with on a consideration of the different responsibilities and duties incumbent on the operating company and the respondent as the parent company and questioned whether the appellant had sued the correct entity. After considering the evidence the sheriff held that the respondent was not liable for the Pride bus liveries or the alleged discrimination, as these decisions were made independently by the local operating company. In terms of her interlocutor of 6 May 2026 she sustained the respondent's plea to the relevancy and dismissed the action, awarding expenses in favour of the respondent. Her decision was one which was based on the evidence which had been adduced before her. She concluded that Stagecoach South East is an operating company and is a separate company from Stagecoach Group Limited, the respondent in the appeal. She made two findings in fact which were material to her decision.

[6] At finding in fact [12] the sheriff states:

> "At the time of the Pursuer's complaint East Kent Road Car Company Limited trading as Stagecoach South East were completely autonomous from the Defender and made their own branding, marketing and promotional decisions."

In finding in fact [13] she adds:

> "The Pursuer's action relates to services provided by East Kent Road Car Company Limited trading as Stagecoach South East. The Defender had no responsibility for branding, marketing or promotional decisions made by East Kent Road Car Company Limited trading as Stagecoach South East."

[7] The sheriff heard and assessed the evidence of the applicant in light of the documentary productions which he had lodged. In submissions he accepted that in order to succeed, he would have to establish that liability lay with the respondent. He submitted that the terms of section 29(1) of the 2010 Act were sufficiently broad to encompass anyone concerned with the provision of the service and not restricted to the entity that physically drives the bus. He referred to three productions (5/25, 5/20 and 5/30) which he said demonstrated corporate control and pointed to the fact that the respondent had taken up his complaint as an assumption of responsibility. He further submitted that the lodging of defences by the respondent was itself evidence that he had sued the correct party.

[8] The sheriff also heard the evidence of the respondent's witnesses and between paras [28] and [32] of her judgment the sheriff provided the reasons for her decision to dismiss the case which turned upon what she made of the evidence of the witnesses. She considered the evidence of the managing director of East Kent Road Car Company Limited and the marketing manager of the respondent to be clear and unequivocal. The companies were separate entities and decisions about livery were clearly made by the former. The evidence of these witnesses was unchallenged and they were not shown the documents upon which the applicant founds. She did not consider that the central handling of the complaint assisted the applicant and did not attach any weight to the fact that the respondent had defended the proceedings. Had they failed to do so decree would have been granted in absence.

[9] However, as acknowledged in para [32] of the decision of this court the sheriff did not address the construction of section 29 of the 2010 Act. Accordingly that was considered in detail on appeal. After analysing the provisions of the legislation and the EHRC Statutory Code of Practice for Services, Public Functions and Associations, ("the Code") the court

concluded that section 29 is indeed wide enough to permit the interpretation contended for by the applicant , namely that more than one party may be concerned with the provision of a service, this would require each party to be actively involved in the provision of the service, to have a degree of control over how that service was delivered and to have the ability to implement any reasonable adjustments considered necessary. However in this case, on the evidence adduced and the facts established before the sheriff, the respondent had no such involvement or ability. Having decided that the sheriff made no errors, and that the action should indeed be dismissed because on the evidence a) the appellant had directed it against the wrong party and b) the respondent has no liability for the bus service, the livery or the reasonable adjustments contended for, the appeal fell to be refused.

The applicant's position

[10] The applicant submits that the Sheriff Appeal Court has erred in three material respects :

(i) in its approach to the construction and sequencing of section 29(1) of the 2010 Act;

(ii) in failing to determine what has been characterised as "the complete reasonable adjustment case"; and,

(iii) in failing to determine "the preserved disability and effective participation" ground.

[11] The proposed grounds of appeal as articulated in the Form 12.2 are not easy to follow but the application contends that the court should approach matters by first of identifying the relevant "aspect" and the person or persons responsible for providing it before addressing the content, practicability and reasonableness of any adjustment under

section 29(7), sections 20-21 and Schedule 2 of the 2010 Act rather than approaching matters by considering the ability to implement any reasonable adjustment as a threshold test before the "relevant aspect" and duty holder are identified.

[12] Under reference to para [40] of the opinion of this court the applicant seeks to argue that this court erred in its sequential approach to the legislation because it treated capability to implement an adjustment as determinative when it ought to have identified the service or "aspect" and the person concerned with its provision under section 29(1); attach the duty under section 29(7)(a); then determine the reasonable steps under sections 20-21 and Schedule 2.

[13] Under reference to the Code it is submitted that this is statutory guidance and supports the applicant's position in relation to what he classifies as the "passenger -information aspect". The applicant then introduces reference to control of the App which was not the subject of submissions in the appeal before this court. The applicant contends that this court erred in considering only the provision of buses and failing to have regard to this aspect of the service.

[14] In relation to ground 2 the applicant argues that he pleaded two potential adjustments: i) practicable non-allocation of liveried buses and ii) advance passenger information. As the respondent addressed issues such as feasibility, cost, usability and App alteration the issue of the App remained live. It is submitted that the court erred in focussing on removing livery or supplying non-liveried buses, without expressly deciding the separately pleaded case in relation to the provision of advance-information by way of an App. In this regard the applicant submits that he is not, at the stage of seeking permission to appeal, asking the court to find that the respondent controlled the App, reassess factual findings, or decide whether the adjustment was ultimately reasonable but instead to

consider the approach adopted by the Sheriff Appeal Court and, presumably, the court at first instance.

[15] He submits that the issues raised are of wider importance and meet the relevant test as any decision will have an impact where services are split between related companies or contractors, including operational, digital and customer-facing functions. There is no reported authority providing guidance on the issue. Ground 1 therefore identifies an important point of principle or practice and ground 2 explains why the alleged error could have wider effect.

[16] Finally in relation to ground 3 it is argued that this court failed to address an argument about the applicant's disability when considering certain late productions. While some accommodations were made, including receiving late documents, moving the proof to WebEx and providing help displaying productions this was inadequate and failed to address his medically vouched inability to organise files and deal with the overwhelming environment. However the applicant does not claim a further adjustment was requested and refused or seek a re-evaluation of evidence and presents this ground as a possible "compelling reason" for permission because the court relied on the documents not having been put to witnesses.

[17] Accordingly the applicant asks for permission to appeal which if successful, would in turn result in recall of the interlocutors dated 23 July and 6 May 2026 and remission for the correct legal approach to be applied, with any further procedure to be determined by the Inner House of the Court of Session.

The respondent's position

[18] The respondent opposes the application on the basis that the second appeals test is not met. In relation to ground 1 the respondent submits that the applicant's understanding of this court's approach to interpretation of the relevant legislation is flawed. The court did not identify the service provider simply by reference to which entity could or could not implement the reasonable adjustment sought. The applicant's submissions now appear to accept that the respondent was not responsible for running the buses on the route in question including allocation of buses on that route. Instead he has focussed on an argument made at first instance to the effect that he could have been given advance notice of liveried buses operating on his route by way of the Stagecoach App. His position now appears to focus on the respondent's responsibility for the App albeit no evidence was led about that at proof.

[19] The respondent submits that this conflates the provision of the service with the reasonable adjustment. The service with which this case is concerned is clearly the operation of the bus route. The applicant's case on record is not that the respondent provides a service by offering an App, but that they "operate" the bus service which he uses (Stat. 2.1) and are responsible for the policy to use Pride livery on the buses (Stat. 1A). That is the service to which he sought adjustments. Accordingly this court was correct in finding that the respondent was not the service provider. It did not, as the applicant contends, decide that the respondent was not the service provider solely because they could not implement any changes to the bus livery. It correctly found that the "service in this case is the provision of buses" and that the respondent "has no liability for the bus service".

[20] The applicant now focusses on the provision of an advance notice of the particular bus running on the route by virtue of an App. While that case too would be bound to fail, it

represents a new argument that the App itself was the relevant service. That would be materially different from the case pleaded and evidenced at first instance. Determining who is a service provider is fact-specific and not an important point of principle requiring a further appeal.

[21] In relation to the second ground of appeal the respondent has interpreted this as a failure to give adequate reasons for the decision by not specifically discussing the app-based adjustment. However the applicant did not raise that point in any of his appeal submissions. The judgment made clear that the service was operation of the bus route and that the respondent was not its provider. Accordingly it was unnecessary to decide each proposed adjustment once the central issue of service-provider status had been resolved.

[22] Finally in relation to the third ground the respondent disputes that the applicant's evidence was unfairly discounted because of his disability or an inability to put productions to witnesses. Both at first instance and on appeal the productions were considered but did not change the outcome. Accordingly the applicant suffered no prejudice and is effectively seeking a re-assessment of the evidence rather than identifying an appealable error.

[23] There is no compelling reason to permit the appeal which, in any event lacks merit, raises no important issue of principle or practice, and has poor prospects of success. The court is also invited to have regard to the significant expense already incurred in defending the action.

Decision

[24] The applicant correctly identifies that the second appeals test requires that he identifies some important point of principle or practice with general application beyond the limitations of his case or some other compelling reason for permission to be granted. He

maintains that ground 1,which relates to the interpretation of section 29 of the 2010 Act meets that test and that there are other compelling reasons in relation to ground 2 which would merit consideration by the Court of Session because of the wider implications the decision of this court could have.

[25] The first ground is focussed on the approach to the interpretation of the legislation in light of the guidance in the Code. In short, the applicant argues that, where separate entities provide different parts of a public service, the court must first identify the specific service "aspect" at issue and then identify the person responsible for it. His submission is that this court has erred in failing to deal separately with the provision of the App which would enable the respondent to provide passenger information and advance notice of the buses operating on the route used by the applicant rather than focussing on the question of who was responsible for the deployment or livery of buses.

[26] The applicant takes issue with the order in which this court approached the legislative framework. This is dealt with in paras [33]-[41] of the judgment. The approach which the sheriff appeal court took is clearly set out. The duty to make reasonable adjustments in terms of sections 20-22 of the 2010 Act arises in relation to a disabled person as defined in section 6(1) and (2) of the 2010 Act. The first stage is therefore to establish whether or not the person suffers any qualifying disability in order to engage the next set of provisions. If section 20 is engaged, then certain requirements require to be satisfied only one of which was relevant for the purposes of this appeal as there were no pleadings to support the second. The section provides:

> "20 Duty to make adjustments
>
> (1) Where this Act imposes a duty to make reasonable adjustments on a person, this section, sections 21 and 22 and the applicable Schedule apply; and for those purposes, a person on whom the duty is imposed is referred to as A.

> (3) The first requirement is a requirement, where a provision, criterion or practice ('PCP') of A's puts a disabled person at a substantial disadvantage in relation to [the provision of the service] in comparison with persons who are not disabled, to take such steps as it is reasonable to have to take to avoid the disadvantage.

The applicant's case is that the respondent was providing a public service within the meaning of Part 3 of the 2010 Act. Throughout the appeal the only service referred to was the provision of buses. As can be seen from the submissions lodged in writing in support of his position on appeal the applicant made no reference to the App or "passenger information provision" as a service or "aspect" of a service. They are entirely focussed on the provision of the bus service.

[27] The court accepted that the relevant duty, if it arose under reference to section 20, was then to be read with Schedule 2, Schedule 3 and Schedule 21 of the 2010 Act and section 29. That is the generally accepted approach to the construction of the 2010 Act and the only one which makes chronological sense.

[28] Section 29 provides:

> "Provision of services, etc.
>
> (1) A person (a 'service-provider') concerned with the provision of a service to the public or a section of the public (for payment or not) must not discriminate against a person requiring the service by not providing the person with the service.
>
> (7) A duty to make reasonable adjustments applies to
> (a) a service-provider (and see also section 55(7));
> (b) a person who exercises a public function that is not the provision of a service to the public or a section of the public."

There is nothing controversial or novel in the approach to the interpretation of these sections when read together.

[29] It was clear to the Sheriff Appeal Court, as it was to the sheriff, that on the evidence East Kent Road Car Company Limited trading as Stagecoach South East, the operating

company would be a "service provider" within the meaning of section 29(1) and that the operating company would have an obligation to make reasonable adjustments in relation to the provision of the bus service. The applicant's position is that the definition of service provider is wide enough to encompass the respondent also. As a matter of principle that is correct. That is neither novel nor controversial.

[30] At paras [40]-[41] of this court's opinion it is stated:

> "While it is clear that more than one party may be concerned with the provision of a service this would require each party to be actively involved in the provision of the service, to have a degree of control over how that service was delivered and to have the ability to implement any reasonable adjustments considered necessary. In this case, the respondent had no such involvement or ability."

[31] Accordingly the proposed grounds of appeal either misrepresent or misunderstand the basis upon which the sheriff and this court reached their decisions. The applicant argues that this court erred in its sequential approach to the legislation because it treated capability to implement an adjustment as determinative when it ought to have identified the service or "aspect" and the person concerned with its provision under section 29(1); attach the duty under section 29(7)(a); then determine the reasonable steps under sections 20-21 and Schedule 2.

[32] It is important to note that the only adjustment about which the sheriff heard evidence and made any findings in fact related to the ability to change the livery on the buses on the route used by the applicant. However the passage with which the applicant takes issue specifically refers to control over how the service (in this case the provision of buses) was delivered. It is therefore incorrect to say that the Sheriff Appeal Court decided that the respondent was not the service provider solely because they could not implement changes to the bus livery.

[33] Furthermore, and of greater significance to the proposed ground of appeal, the sheriff heard no evidence in relation to the responsibility for the provision of a passenger information App. She made no findings in fact in that regard and this court was bound by the findings in fact which she did make. The fact that there may have been averments about the App on record takes the applicant nowhere as the requirement at proof is to lead evidence to prove the averments upon which the applicant founds. He did not do so. Neither this court nor the Court of Session can afford the applicant the opportunity to rerun his proof on a different factual matrix.

[34] The respondent correctly identifies that the applicant appears now to have accepted that the respondent was not the service provider so far as the provision of the bus service was concerned. The service in question at first instance and on appeal was the provision of the bus service and on the evidence the respondent is not the entity responsible for that.

[35] Whether or not a party is a service provider is a matter of fact. It is not a question of statutory interpretation. The manner in which the courts approach these sections of the 2010 Act is well established and, in any event, even if the approach contended for by the applicant were to be adopted the evidence led at proof and the findings in fact would not support a case based on the provision of an App or the respondent's liability for that. The first ground of appeal of appeal has no prospects of success, does not raise a point of principle or practice and there is no other compelling reason to allow it to proceed. Accordingly leave to appeal is refused.

[36] For broadly the same reasons the second ground of appeal, which relates to this court's failure to deal with the proposed reasonable adjustment to the App and the so-called passenger information aspect of the service must also fail. The applicant did not refer to this in any of his three submissions lodged for the appeal. Had he done so, the matter would

have been referred to but the outcome would have been no different because this was not a matter upon which the sheriff made any finding in fact or heard evidence. Accordingly no error could have been identified in her approach to such evidence or the submissions made by the applicant thereon. This ground proceeds on a fundamental flaw as to what this court is obliged to do having regard to the sheriff's decision and leave is refused.

[37] The final ground relates to the treatment of the applicant's productions. From the written submissions his position in relation to this ground is far from clear. He does not appear to press the point and does not suggest how this court should have approached the issue. In any event this court directly deals with the matter in para [54] of its opinion. None of the documents produced by the applicant contradicted the evidence of the respondent's witnesses and they were not asked about them. The sheriff was entitled to consider the evidence as a whole and make of it what she, in her discretion, considered appropriate. Her findings in fact were not challenged. This ground of appeal has no merit.

[38] In conclusion the proposed grounds of appeal do not disclose a point of principle or practice with wider application. The decision was based on an application of the facts as established at proof to the legislative framework. The contention that there can be more than one service provider is not contentious. In the particular circumstances of this case the respondent was not found to be the service provider in relation to the provision of the bus service and associated livery on the buses. The applicant now seeks to found on the assertion that the service concerned was the provision of a passenger information App but there are no findings in fact upon which such a position can be advanced. There is no other compelling reason why leave should be granted. Accordingly the application is refused.

[39] Parties will have 14 days following issue of the interlocutor associated with this decision to lodge written submissions in relation to the question of the expenses occasioned by the application if agreement cannot be reached.