



SHERIFF APPEAL COURT

**[2026] SAC (Civ) 44
GLW-B153-25**

Sheriff Principal A Y Anwar KC
Sheriff Principal G A Wade KC
Appeal Sheriff S Reid

OPINION OF THE COURT

delivered by SHERIFF PRINCIPAL AISHA Y ANWAR KC

in the application for permission to appeal to the Court of Session
in terms of section 113(2) of the Courts Reform (Scotland) Act 2014

by

ADRIAN RUSSO

Appellant and Applicant

against

THE COUNCIL OF THE LAW SOCIETY OF SCOTLAND

Respondent

**Appellant and Applicant: Party
Respondent: No appearance**

2 July 2026

Introduction and background

[1] On 14 April 2026, this court refused the applicant's appeal. The applicant seeks permission to appeal that decision to the Court of Session. The application was considered on written submissions. The respondent chose not to lodge any.

[2] The appeal arose from on-going complaint proceedings before the Scottish Solicitors' Disciplinary Tribunal ("SSDT"). The applicant is a practising solicitor. He is subject to a

complaint of professional misconduct relating to a letter sent by him to Ms Judith Donkor on 22 January 2020 in which it is alleged that he sought to induce or persuade Ms Donkor to swear an affidavit renouncing the factual basis of a complaint by her against the applicant's colleague, Ms Ram. The applicant sought to lead evidence from Ms Donkor during proceedings before the SSDT. She failed to attend. The applicant lodged a summary application seeking warrant for the issue of letters of second diligence to compel Ms Donkor's attendance before the SSDT. The sheriff refused his motion for letters of second diligence. On appeal, this court found that the sheriff had erred by applying the wrong test and had erred in her assessment of the factors relevant to her decision.

[3] The applicant invited this court to consider his application *de novo*. Having done so, we refused the appeal and dismissed the summary application.

[4] The background to the proceedings and our reasons for refusing the appeal are set out in our earlier opinion (*Russo v The Council of the Law Society of Scotland* [2026] SAC (Civ) 22).

The proposed grounds of appeal

[5] The applicant's proposed grounds of appeal, essentially relate to this court's assessment of the relevance of Ms Donkor's evidence to the proceedings before the SSDT. For the reasons given in paragraphs [43] and [44] of our opinion we assessed her evidence as irrelevant for the purposes of the proceedings before the SSDT. The applicant contends that the Sheriff Appeal Court has erred in law in making that assessment. The terms of the application for permission are repeated to a very large extent in the written submissions lodged by the applicant.

Submissions by the applicant

[6] The applicant's submission focussed on paragraph [44] of the court's opinion. He submitted that the court had erred in law by founding upon the absence of pleadings relating to a telephone call between Ms Ram and Ms Donkor on or around 23 January 2020. He submitted that the procedural requirements before a tribunal such as the SSDT are the subject of a lesser degree of procedural formality than a court process (Rules 14(1) and 14(2) of the Scottish Solicitors' Discipline Tribunal Rules 2024). In addition, evidence had already been led before the SSDT regarding the telephone call without objection. The terms of the call were thus already before the SSDT irrespective of the pleadings. He claimed that he had advised the court of this chapter of evidence during his submission at appeal. The importance of the evidence, he submitted was that it "contemporaneously maps out what was going on between the parties" at the date of the letter of 22 January 2020, Ms Donkor's reaction to it and the effect (if any) of that letter. The SSDT had sought to establish that the letter had been designed to attempt to influence Ms Donkor.

[7] The applicant submitted that the court's conclusion that the evidence he intended to lead in terms of Ms Donkor's character was irrelevant constituted both an error in law and a misunderstanding of the applicant's position. The applicant had made detailed averments in the pleadings before the SSDT of Ms Donkor being of "firm character and not susceptible" to influence. The applicant had averred that he knew of Ms Donkor's firm character and tenacity when he issued the letter and that the letter was not capable of influencing her. He submitted that proof of Ms Donkor's firm character and the applicant's knowledge of such firmness was germane to his position before the SSDT. These were the prevailing circumstances at the time the applicant issued the letter of 22 January 2020. In the absence of evidence from Ms Donkor as to the effect of the letter upon her, the applicant could not

defend himself against the allegation of attempted influence. He submitted that this violated his right to a fair hearing. He submitted that the question of Ms Donkor being of vulnerable character was introduced in evidence by the Law Society on 5 and 6 January 2026. That evidence had been allowed to be heard by the SSDT, notwithstanding the absence of averments. The applicant should be entitled to rebut that evidence.

[8] Finally, it was submitted that the court had erred in failing to have regard to the applicant's averments that by signing the affidavit referred to in the letter of 22 January 2020, Ms Donkor would have obtained a considerable benefit; the applicant would have continued to represent her on a pro bono basis.

[9] The applicant submitted that the purposed appeal raised important points of principle or practice because it was concerned with (i) the effect of the repeated ignoring of lawful citations by a hostile witness and the true extent to which the court can intervene to ensure witness attendance in terms of Schedule 4 of the Solicitor's (Scotland) Act 1980 and (ii) the extent of notice of evidential relevancy which must exist in a Record before the SSDT before second diligence can be granted. There was little authority on these matters.

Decision

[10] Section 113(2) of the Courts Reform (Scotland) Act 2014 provides:

“The Sheriff Appeal Court or the Court of Session may grant permission under subsection (1) only if the Court considers that—

- (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.”

[11] As this court noted in *Scott v Frame* [2024] SAC (Civ) 26, section 113(2) of the 2014 Act, commonly referred to as “the second appeals test”, restricts the scope for a second appeal. The approach to be taken to applications under section 113(2) has been considered

in a number of cases, most notably by the Inner House in *Politakis v Spencely* 2018 SC 184.

Applying the dicta in *Uphill v BRB (Residuary) Ltd* [2005] 1 WLR 2070, the First Division provided the following guidance (per Lord President (Carloway) at paragraphs [21] - [22]):

“Raising an important point of principle or practice is a reference to one which has not yet been established (*Uphill*, para 18). It does not include a question of whether an established principle or practice has been correctly applied. ...The existence of some other compelling reason presupposes that no important point of practice or principle has been raised... when considering whether some other compelling reason existed, it was important to emphasise the ‘truly exceptional nature of the jurisdiction’ in relation to second appeals. ‘Compelling’ is a ‘very strong word’...”

[12] In *EBA v Advocate General for Scotland* 2012 SC (UKSC) 1, delivering the judgment of the Supreme Court, Lord Hope observed (at para [48]) that underlying the first of the criterion in section 113(2) is the idea that the issue would require to be one of general importance, not one confined to the applicant’s own facts and circumstances. The second criterion would include circumstances where it was clear that the decision was perverse or plainly wrong or where, due to some procedural irregularity, the applicant had not had a fair hearing at all. As observed by Lord Brodie in *Explore Learning Ltd* [2019] CSIH 53 (at para [7]), while satisfaction of either section 113(2)(a) or (b) is a necessary condition for the grant of permission, the SAC retains a discretion as to whether to grant the application:

“Satisfaction of either criterion only means that the relevant court (the SAC or the Court of Session) may grant permission. In considering the exercise of its power in that situation it accordingly appears to me that the court must have regard to the prospects of success in the proposed appeal and the suitability of the particular case as a vehicle with which to advance such point as it is intended to make (in so far as such a requirement is not already implicit within the statutory criteria). I would see that as illustrated in the court’s approach in *Politakis* and *Aldabe*.”

[13] Applying these principles, the application falls to be refused.

[14] The first important point of principle or practice said to arise is the “effect of the repeated ignoring of lawful citations by a hostile witness” and the extent to which the court can intervene to compel the attendance of a witness under paragraph 12 of Schedule 4 of the

1980 Act. The difficulty for the applicant however is that he has failed to identify the basis upon which he contends that this court erred in its analysis of the law in this regard.

At paragraphs [31] to [40] of its opinion, this court set out the correct approach to applications for letters of second diligence sought under paragraph 12 of Schedule 4 to the 1980 Act. The applicant does not seek to challenge the court's analysis of the law in his proposed appeal to the Court of Session or its articulation of the correct test to be applied. Indeed, as noted at paragraph [38] of the opinion, the applicant accepted that the court required to make an assessment of the value of the evidence sought to be led from a witness and that the court required to be satisfied that the evidence was relevant. Provided the correct test has been applied the question of whether or not to grant letters of second diligence is a discretionary one based on the court's assessment of the facts and circumstances, paragraph [31]. Properly understood, the applicant's proposed appeal seeks to challenge the application of the law to the particular circumstances of his case. In the words of Lord Hope in *EBA*, the proposed appeal raises an issue not of general importance, but rather one confined to the applicant's own facts and circumstances. The test in section 113(1)(a) is not satisfied.

[15] The second important point of principle or practice said to arise is the extent of "evidential relevancy which must exist in a Record before SSDT, before letters of second diligence can be granted". As the court explained at paragraph [38] of its opinion, paragraph 12 of Schedule 4 to the 1980 Act requires the party seeking a warrant to cite or letters of second diligence to lodge certified copies of the complaint and answers. The statutory wording indicates that it is necessary for the court to consider the complaint and the nature of defence advanced in order to assess whether the evidence sought to be adduced is relevant. At paragraph [40] of the opinion, the court explained that the evidence

of the witness should not be merely tangential, or collateral, or superfluous, or liable to cause unnecessary repetition. Again, the applicant does not contend that this court erred in its analysis of the law. Again, properly understood, the applicant's proposed appeal seeks to challenge the application of the law to the particular circumstances of the case; it is restricted to the court's assessment of the relevance of Ms Donkor's evidence and the factors to which the court had regard in exercising its discretion in refusing to grant second diligence. The test in section 113(1)(a) is not satisfied.

[16] Turning to the proposed discrete grounds of appeal, the applicant raised three particular issues, namely: first, the significance of the telephone call between Ms Donkor and Ms Ram on or around 23 January 2020; second, the significance of evidence of Ms Donkor's character, her susceptibility to influence and the applicant's knowledge of the same to establish the effect of the letter of 22 January 2020 upon her; and third, the significance of the purported benefit to Ms Donkor of signing the affidavit referred to in the letter of 22 January 2020. We shall deal with each of these issues. It is important however to consider these issues in light of paragraphs [43] and [44] of the opinion in which this court explained why, applying the law to the particular facts and circumstances, it was not persuaded that the evidence sought to be elicited from Ms Donkor is relevant. Each of the proposed grounds of appeal has poor prospects of success.

[17] Dealing with the first ground, during the course of the hearing, the court invited the applicant to explain why Ms Donkor's evidence was relevant to the proceedings before the SSDT. The reasons advanced are summarised at paragraph [44]. The third reason advanced by the appellant related to the telephone call on or around 23 January 2020. Having explained the need for a court to carefully analyse the complaint and answers lodged with an application for second diligence made under paragraph 12 of Schedule 4 to the 1980 Act,

the court noted the absence of any averments of such a telephone call. The appellant now contends that he advised the court during the appeal hearing that evidence of the telephone call had already been led before the SSDT. That is factually incorrect. No such submission was made.

[18] In relation to the second ground, the question for the SSDT (as set out in the Record) is whether the appellant has acted for a client when a conflict of interest is said to have existed between them and has attempted to resolve that conflict by seeking to persuade his client to act in a manner which serves his own personal interests or those of his firm. It is the applicant's action, and his intentions which are relevant, not the effect of the letter of 22 January 2020 upon Ms Donkor nor her susceptibility to influence. We note in passing that the issue of Ms Donkor's susceptibility to influence was not relied upon by the applicant in the hearing on the appeal in support of his submission as to the relevance of her evidence. His focus then was that he wished to lead evidence of her acting in bad faith and her alleged deliberate deceit of the applicant.

[19] In relation to the third ground, the applicant contends that this court adopted a "one-sided consideration of the issue of benefit" by quoting only the respondent's averments that the execution of an affidavit renouncing the factual basis for the complaint against Ms Ram would not achieve any discernible benefit for Ms Donkor. The applicant has misunderstood the court's reference to the respondent's averments. The court referred to the respondent's averments to explain the nature of the allegation before the SSDT. The applicant is able to speak to his averments on the issue of any benefit derived or potentially derived by Ms Donkor. Had we been addressed on this issue at appeal, we would have concluded that Ms Donkor's evidence on this matter is superfluous and liable to cause unnecessary repetition.

[20] For all of these reasons, we are not persuaded that the test in section 113(1)(a) is met nor that there is any other compelling reason for the Court of Session to hear the appeal.

[21] Even if we had been satisfied that the test in section 113(1) of the 2014 Act was satisfied, we would have refused to exercise our discretion to grant the application, having regard to the poor prospects of success of the particular grounds of appeal advanced.

[22] As the respondent did not lodge any written submissions, we find no expenses due to or by either party.