SHERIFF APPEAL COURT

[2026] SAC (Civ) 61
PIC-PG109-22

Sheriff Principal A Y Anwar KC
Sheriff Principal N A Ross
Appeal Sheriff S Reid

OPINION OF THE COURT

delivered by APPEAL SHERIFF S REID

in the appeal in the cause

by

DAVID DOWNIE (AP)

Pursuer and Appellant

against

NHS FIFE HEALTH BOARD

Defender and Respondent

Pursuer and Appellant: Allardice, advocate; Livingstone Brown Limited
Defender and Respondent: McConnell KC; NHS Scotland Central Legal Office

27 August 2026

Introduction

[1] In this action, the appellant sought damages from the respondent for loss, injury and damage said to have arisen as a result of the alleged negligence of a consultant psychiatrist, employed by the respondent, in revoking a Short-Term Detention Certificate ("STDC") pertaining to the appellant in terms of the Mental Health (Care and Treatment) (Scotland) Act 2003 (the "2003 Act"). The appellant claimed that having been discharged from hospital

detention, he suffered personal injury and loss, including a prolonged period of untreated mental illness, deterioration in his mental health, homelessness, reputational damage, and wage loss.

[2] All issues of liability, causation, and quantum were disputed. The action proceeded to proof. In a judgment dated 26 February 2025, the sheriff assoilzied the respondent. The sheriff concluded *inter alia* that the appellant had failed to establish (i) a breach of duty by the psychiatrist and (ii) the occurrence of any loss, injury or damage resulting from the alleged breach.

[3] The appellant appealed against the sheriff's decision on two grounds. First, the appellant submitted that the respondent's expert witness, Dr Muzaffar, was biased and partial; that the witness did not therefore qualify as an expert witness; and that the sheriff erred in repelling the appellant's objection thereto and admitting the witness's testimony. Second, the appellant submitted that his claim was founded, in part, upon an allegation that the clinician negligently misdiagnosed the appellant; that the appellant's averments on record gave fair notice of that ground of action; and that the sheriff erred in sustaining the respondent's objection thereto and excluding the appellant's line of evidence anent alleged negligent diagnosis. The respondent cross-appealed on the issue of quantum, but the cross-appeal was only insisted upon in the event that the appeal was allowed.

Background

[4] The appellant had a long history of mental ill health, including periods of voluntary and compulsory hospital admissions for psychiatric care. In around February 2004, he was diagnosed with bipolar affective disorder. On 14 January 2016, whilst in police custody, the appellant was detained in hospital on a Short-Term Detention Certificate ("STDC") in terms

of the 2003 Act. On 18 January 2016, the respondent's clinician, Dr Narayan, revoked the STDC. The appellant discharged himself from hospital against medical advice. Following his discharge, he claimed to have suffered a deterioration in his mental health which remained untreated for a prolonged period, damage to his employment prospects and personal relationships, embarrassment, humiliation, and reputational damage. He was also convicted of a number of criminal offences.

[5] This action was raised at Kirkcaldy Sheriff Court on 8 January 2019. The appellant contended that Dr Narayan breached various duties in relation to him. Those duties were said to arise "in diagnosing the [appellant] *et separatim*, before revoking the STDC". The duties included (i) a duty to undertake and record a detailed mental examination of the appellant; (ii) a duty to consider all relevant factors and information about the appellant; (iii) a duty to listen to and take account the views of the appellant's named person (within the meaning of the 2003 Act); (iv) a duty to apply recognised diagnostic criteria to that information; (v) a duty to consider whether the appellant was likely to be a risk of harm to himself or others if the STDC was revoked; (vi) a duty to consult with a senior colleague following Dr Narayan being a complainer in respect of an alleged crime committed by the appellant; and (vii) a duty to not revoke the STDC. The appellant averred that the decision to revoke the STDC was one which no reasonably competent consultant psychiatrist would have taken if acting with ordinary care. Further, the appellant averred that had Dr Narayan not revoked the STDC, he would not have suffered the loss, injury and damage now claimed.

[6] The action proceeded to a debate in July 2021. The respondent challenged the relevancy of the appellant's averments by virtue of the doctrine *ex turpi causa non oritur actio* (namely, that a claimant cannot base a cause or head of claim upon his own wrongdoing).

The sheriff sustained the respondent's preliminary plea and excluded from probation the claim so far as founded upon the appellant's own criminal activity. The remainder of the claim was allowed to proceed to proof. The appellant appealed the decision at debate. The Sheriff Appeal Court refused the appeal, adhered to the sheriff's interlocutor, and remitted the action to proceed as accords (*DD* v *NHS Fife Health Board* [2022] SAC (Civ) 27).

[7] On 29 November 2022 the action was transferred to the All-Scotland Sheriff Personal Injury Court. A proof commenced on 13 August 2024. Evidence was led over 7 days. A judgment was issued on 26 February 2025. The sheriff assoilzied the respondent. Expenses were dealt with subsequently.

[8] This appeal was lodged on 25 April 2025. Originally, three grounds of appeal were advanced. The first ground related to the sheriff's decision at debate in July 2021 (on the application of the doctrine *ex turpi causa non oritur actio)* and the related decision of this court in the previous appeal *(DD* v *NHS Fife Health Board, supra)*. By interlocutor dated 23 September 2025, this court held that this first ground of appeal was incompetent insofar as it invited the Sheriff Appeal Court to convene a larger bench to review its previous decision, on the same matter, in same cause (*Downie* v *NHS Fife Health Board* [2025] SAC (Civ) 29). The second ground of appeal was that the sheriff erred in admitting the evidence of the respondent's expert witness (Dr Muzaffar) because she was allegedly biased and partial. The third ground of appeal was that the sheriff erred in disallowing evidence led for the appellant anent alleged negligent misdiagnosis by Dr Narayan.

The sheriff's judgment

[9] The sheriff concluded that the appellant had not suffered loss, injury or damage as a result of the fault and negligence of the respondent's employee. In relation to the issue of

negligent diagnosis, the sheriff concluded that the claim, as averred, was properly understood as being founded upon negligent revocation of the STDC, not upon negligent misdiagnosis. The multiple specific duties enumerated in Article 10 all pertained to the decision to revoke the STDC. Averments sufficient to meet the test in *Hunter* v *Hanley* 1955 SC 200 were identifiable as pertaining to a case of negligent revocation of the certificate, but not of negligent misdiagnosis. Averments of earlier hospital admissions and diagnoses were merely part of the context for the former case. The sheriff sustained the respondent's objection to the appellant's line of evidence on this issue.

[10] In relation to the evidence of Dr Muzaffar, the appellant had objected to the admissibility of her expert testimony in its entirety on the bases that she was neither independent nor impartial (*Kennedy* v *Cordia* 2016 SC (UKSC) 59, [51] per Lord Hodge). Her independence was challenged on the ground that she was employed by the NHS in Scotland, of which the defender formed part. Her partiality was challenged on the ground that that her report was selective and disclosed bias. Both arguments were rejected by the sheriff. As regards the former, the structure of the NHS in Scotland was well established. No authority was offered to vouch the objection and there was no relationship of sufficient proximity to any party to cause any material concern to an informed bystander that Dr Muzaffar lacked independence. The sheriff was satisfied, from his assessment of the witness and her testimony, that she had properly engaged with the relevant averred duties and was neither biased nor partial.

Submissions for the appellant

[11] The appellant invited the court to uphold the appeal, recall the sheriff's interlocutors, and remit the cause to a fresh proof before answer before a different sheriff.

[12] In respect of the second ground of appeal, the appellant submitted that Dr Muzaffar's failure to engage with the appellant's case of negligent misdiagnosis indicated partiality or bias on her part. She had demonstrated a selective approach to the evidence, notably by omitting multiple references to the appellant's prior diagnosis of bipolar affective disorder and had failed to give adequate consideration to other views. She had failed to give adequate consideration to the appellant's subsequent treatment for bipolar affective disorder and to the progress made by him. Dr Muzaffar's explanations for these alleged deficiencies were said to be untenable. Her report was said to be so poor that the only proper inference was that she was biased, consciously or unconsciously. This was not a question of weight; the witness failed to meet the threshold of impartiality necessary to act as an expert. As a result, the sheriff ought to have excluded her evidence as inadmissible applying the dicta in *Kennedy* v *Cordia* 2016 SC (UKSC) 59, paras [51] - [55]. (The discrete challenge to Dr Muzaffar's independence, as advanced at first instance, was not insisted upon.)

[13] In respect of the third ground, the appellant submitted that there were two key time periods. The first time period related to events from November 2015 to 18 January 2016 and the second time period related to events after that. The appellant's averments anent the events of, and immediately surrounding, 18 January 2016 could only relate to the averred breach of duty in revoking the STDC. However, on a proper reading of the pleadings the wider averments about events prior to, and after, the revocation could only relate to a claim for negligent misdiagnosis. The use of the words "in diagnosing the pursuer *et separatim* before revoking the STDC" (in Article 10) made clear there were two grounds of action. The averments in Article 9 covered both negligent misdiagnosis and negligent revocation of the STDC. Whilst the pleadings were not perfect, there was enough in the round for a case

of negligent misdiagnosis to be made out. The respondent's objection had arisen unexpectedly and insufficient time had been allowed by the sheriff for consideration of these finer points. There had also been a previous debate in the action at which the issue of the adequacy of the negligent diagnosis averments was not raised and the appellant's averments had been admitted to probation.

[14] Notwithstanding the absence of a ground of appeal directed against the sheriff's conclusions on causation, and the sheriff's undisturbed findings-in-fact about the actions of other clinicians, the appellant's position was that if Dr Muzaffar's evidence were excluded then the entire defence would fail. If the third ground were upheld, various aspects of the appellant's case, which necessarily impacted upon causation and quantum, had not yet been considered. In order to assess whether the revocation of the STDC had been reasonable it was necessary to consider whether there had been a preceding misdiagnosis which impacted the decision to revoke the STDC. The whole issue of the STDC revocation would have to be re-assessed in the context of a prior negligent misdiagnosis. The appellant submitted that clinicians who were involved in the appellant's care in the period shortly after his discharge had been influenced by the preceding misdiagnosis, even if they disagreed with it.

[15] Finally, on the respondent's cross-appeal, there were sufficient facts before the sheriff entitling him to conclude as he did.

Submissions for the respondent

[16] The respondent's position was briefly stated. As regards the third ground, even in a case involving abbreviated pleadings there required to be sufficient averments of a breach of duty to meet the *Hunter* v *Hanley* test. The appellant's pleadings focussed upon procedural

breaches of duty culminating in a substantive breach in not revoking the STDC.

The appellant did not aver that there had been a misdiagnosis. The respondent had been unaware that the appellant intended to construct a case of negligent misdiagnosis until the proof diet. This went some way to explaining much of the criticism of Dr Muzaffar. She did not focus upon a case of negligent misdiagnosis because no such case was made. The appellant's case was said to be predicated upon the revocation of the STDC. In any event, it was difficult to see what difference another diagnosis would have made. Either way, the first statutory criteria for a STDC in the terms of the 2003 Act (namely that there was a mental illness) would have been satisfied. Nothing turned on the specific issue of diagnosis in the decision to revoke the STDC because that decision was made on grounds other than there being no mental illness at all.

[17] As regards the second ground, the sheriff had duly considered the appellant's objections to Dr Muzaffar's evidence. The challenge to her independence was no longer insisted upon on appeal. The issue of Dr Muzaffar's partiality was addressed at length at para [92] of the sheriff's judgment. The first-instance judge enjoyed the benefit of seeing and hearing the testimony. The appellate court should be slow to interfere with the sheriff's assessment of the evidence on this factual issue.

[18] In relation to the third ground of appeal, the appellant's pleadings on causation (at Article 9(ii)) opened with an averment of the consequences of revoking the STDC. The appellant was able to lead evidence about all of the consequences of the STDC being revoked. The sheriff was entitled to take that into account in assessing causation. Even if this court were minded to uphold the third ground, it was submitted that the appeal must still fail given the limited averments on record about causation. In short, there was no point in remitting to a different sheriff about a different breach of duty because the appellant was

not offering to prove a different form of causation arising from a negligent misdiagnosis case. This was fatal to the appellant's ground of appeal. In relation to the second ground of appeal, the appellant's own experts, in response to questions during cross-examination, accepted that there was a range of reasonable opinion in relation to the revocation of the appellant's STDC. Even if Dr Muzaffar's report were excluded entirely, this did not alter (i) the concession of the appellant's experts that there was a range of reasonable opinion or (ii) the evidence anent the decisions of a series of other clinicians shortly after the appellant's STDC was revoked.

[19] The appeal should be refused. If the appeal were upheld, the cross-appeal on quantum should be granted.

Decision

[20] The two remaining grounds of appeal (being the second and third grounds in the Note of Appeal) fall to be refused. We will address these in reverse order, as the answer to the third ground of appeal informs, to some extent, the answer to the second ground.

Negligent misdiagnosis

[21] The function of written pleadings is to give fair notice to the opponent of the case to be met and to give fair notice to the court of the issues on which a judicial decision is required. A party is not entitled to lead evidence of a case of which the other party has not received fair notice upon record.

[22] This is an action of damages alleging professional negligence. To establish liability in such a case, the claimant must aver, and satisfy at proof, the tripartite test set out in *Hunter* v *Hanley* 1955 SC 200. It reads (at p 206, per Lord President Clyde):

> "To establish liability by a doctor where deviation from normal practice is alleged, three facts require to be established. First of all, it must be proved that there is a usual and normal practice; secondly it must be proved that the defender has not adopted that practice; and thirdly (and this is of crucial importance) it must be established that the course the doctor adopted is one which no professional man of ordinary skill would have taken if he had been acting with ordinary care. There is clearly a heavy onus on a pursuer to establish these three facts, and without all three his case will fail. If this is the test, then it matters nothing how far or how little he deviates from the ordinary practice. For the extent of deviation is not the test. The deviation must of a kind which satisfies the third of the requirements just stated".

[23] It is not strictly necessary for a pleader to adhere, in averment, to the exact wording of the tripartite test as set out in *Hunter* v *Hanley*, and alternative articulations of the relevant test have been tolerated. However, deviating from the language used in *Hunter* v *Hanley*, whether in the pleadings or in an expert report, "runs the serious risk of not corresponding with its meaning" (*James McGraw* v *Greater Glasgow Health Board* [2022] CSOH 83, [21] per Lord Clark).

[24] This is also a personal injury action. While chapter 36 of the Ordinary Cause Rules 1993 ("OCR") provides for an abbreviated and simplified form of written pleadings in such actions, it does not relieve a pursuer of the obligation to give fair notice of his or her case. In *Baird* v *Cowie* [2006] CSOH 168, [19], Lord Carloway observed:

> "The customary rules of relevancy (including fair notice) will be applicable to those pleadings, subject to the new abbreviated styles of averring fault or breach of statutory duty…"

In a similar vein, in *Clifton* v *Hayes plc*, Outer House, 7 January 2004, unreported, Lady Smith stated (at paragraph 11):

> "Whilst the rules [chapter 43, Rules of the Court of Session] are designed to simplify written pleadings and avoid complexity where possible, I do not understand anything in those rules as detracting from the principle that defenders are entitled, when presented with a summons, to be able to ascertain without undue difficulty the nature of the case against them… The new rules are directed towards relieving pursuers of the burden of setting out in the pleadings all the flesh needed to clothe the bare bones of the case but they are still, in my opinion, obliged to set out those bones in the summons. Unless they do so, I cannot see that they are complying with

> the requirement to state the facts necessary to establish the claim, as set out in Rule of court 43.2".

Lord Emslie's approach to the pleadings in *Slessor* v *Vetco Gray UK Ltd* 2007 Rep LR 83, [20] is broadly to the same effect. These dicta may be said to apply with particular force in the present case which, since 29 November 2022, has proceeded as a case-managed clinical negligence claim under chapter 36A, OCR.

[25] Against that legal background, we agree with the sheriff's conclusion that, on a proper reading of the pleadings, there was no fair notice on record that the claim was predicated upon an allegedly negligent misdiagnosis of the appellant.

[26] The appellant argued that certain averments in Articles 9(ii) and 10 of condescendence permitted the leading of evidence of an alleged breach of duty based upon negligent misdiagnosis. Those averments were:

a) Article 9(ii): "Wage Loss: As a result of his negligent diagnosis, delayed treatment and reputational damage, the pursuer has suffered loss of earnings".

b) Article 9(ii): "All such behaviour took place after Dr Narayan's negligent misdiagnosis of the pursuer".

c) Article 10: "In diagnosing the pursuer *et separatim*, before revoking the STDC, Dr Narayan had a duty to undertake and record a detailed mental state examination of the pursuer".

[27] None of these averments, read individually or cumulatively, provided an adequate foundation for a case based upon negligent diagnosis. On a fair reading, the first was an averment of quantum, the second was an averment of causation, specifically of the chronology of events, and the third related to an alleged breach of duty of a procedural nature, not a substantive misdiagnosis.

[28] In Article 10 the appellant enumerated six specific duties. Each of these duties was procedural in nature: (i) a duty "to undertake and record a detailed mental state examination…"; (ii) a duty "to consider all relevant factors and information…"; (iii) a duty "to listen to and take account of the views of the named person"; (iv) a duty "to apply recognised diagnostic criteria to the information"; (v) a duty to consider whether the appellant was likely to be at risk of harm "if the order were revoked"; and (vi) a duty to consult with a senior colleague in circumstances where Dr Narayan's independence was allegedly compromised, because he had reported a criminal act committed against him by the appellant. These six duties culminated in the catch-all averment that Dr Narayan "failed to discharge all such duties", followed, critically, by the key averment that "No ordinarily competent consultant psychiatrist exercising ordinary care would have failed to do so." That latter formulation replicated the third leg of the *Hunter* v *Hanley* test. It alleged a deviation from the standard of care exercisable by other psychiatrists of ordinary competence, but only by reference to those six specific breaches of duty, none of which related to a substantive case of misdiagnosis. Indeed, the appellant then went on to aver: "The decision to revoke the STDC was one which no reasonably competent consultant psychiatrist would have taken if acting with ordinary care". Accordingly, the alleged deviation was linked only to the decision to revoke the STDC, not to an alleged erroneous diagnosis.

[29] That conclusion was fortified by the appellant's averments about causation. These appeared in Article 9(ii). They were prefaced by the introductory words: "As a consequence of the revoking of the order…" While there was an averment that: "Wage Loss: As a result of his negligent diagnosis, delayed treatment and reputational damage, the pursuer has suffered loss of earnings." that was an isolated reference appearing in the

context of averments about causation (specifically, pertaining to just one head of loss), not any substantive breach of duty. Further it failed to link the supposedly "negligent diagnosis" with any deviation from the standard to be expected of a psychiatrist of ordinary competence exercising reasonable care. The high water mark for the appellant was a separate averment in Article 10 which read: "In diagnosing the pursuer *et separatim*, before revoking the STDC, Dr Narayan had a duty to undertake and record a detailed mental state examination of the pursuer". The appellant submits that the opening words in this sentence (ie "In diagnosing the pursuer…") provide a sufficient foundation on record for a substantive case of negligent misdiagnosis. We disagree. This averment was consistent with the occurrence of the same procedural failing on two separate occasions, namely, the failure by Dr Narayan "to undertake and record a detailed mental state examination" both when diagnosing the appellant and when revoking the STDC. The averment formed the preamble to an immediately following series of procedural failures culminating in the allegedly negligent revocation of the STDC. No fair notice was given of a substantive case of negligent misdiagnosis.

[30] If the appellant had wished to construct a case of negligent misdiagnosis he required to aver and to offer to prove the diagnosis actually made by Dr Narayan, the diagnosis that should have been made and that no psychiatrist of ordinary competence, exercising reasonable care, would have made the impugned diagnosis. Critically, there was no finding in fact that a diagnosis of personality disorder was ever actually made by Dr Narayan. The discharge letter, which refers to personality issues, was not even written by Dr Narayan: finding-in-fact 37. On appeal, the appellant did not contend that the sheriff ought to have made such a finding in fact. That was a significant omission because such a finding in fact would be an essential precursor to an allegation that the (presumably erroneous) diagnosis

of personality disorder was made in breach of duty. Separately, even if a diagnosis of personality disorder had been averred and proved, there was no averment that such a diagnosis was one that no psychiatrist of ordinary competence acting with reasonable care would have made. The third limb of the *Hunter* v *Hanley* test was absent in relation to negligent misdiagnosis. This was not a mere technical omission. The pleadings failed to give fair notice of any such case. In the event, the omission is unsurprising because the appellant's own expert expressly acknowledged, in evidence, that differing diagnoses could reasonably have been reached. They acknowledged that, in this case, the diagnosis was particularly difficult because of the overlap in symptoms between bipolar disorder and emotionally unstable personality disorder. While there was a stark difference of opinion between Dr Muzaffar (led on behalf of the respondent) and Dr Scott (led on behalf of the appellant), their views were accepted as falling within a scale of reasonable professional opinion. As the sheriff observed: "The experts were in any event agreed that there was diagnostic uncertainty in the pursuer's case at this time". There was no averment or evidence to the contrary. The diagnostic uncertainty, and the reasonable range of professional opinion that existed, was compellingly borne out by subsequent events. In the period after Dr Narayan had revoked the STDC, the appellant was examined by Dr Rose on 19 January 2016, by Dr Morris between January and February 2016, by Dr Olley and Charge Nurse Lomax on 21 January 2016, by Dr Morris on 8 February 2016, by Dr Howson on 9 February 2016, and by Dr Ahammed on 19 February 2016. None of these medical professionals considered that the appellant met the criteria for detention. None of them granted a STDC. In the absence of any criticism of the diagnoses made by each of these medical professionals, it is not surprising that the sheriff and the respondent did not

consider the case advanced by the appellant to be one of a negligent misdiagnosis by Dr Narayan.

[31] It is also difficult to see what difference a different diagnosis would have made. The decision to issue or revoke a STDC was multi-factorial. The statutory criteria for the making and revocation of a STDC appear in section 44 of the 2003 Act. The statutory conditions to be satisfied are numerous and cumulative, namely:

a) That the patient has a mental disorder;

b) That, because of the mental disorder, the patient's ability to make decisions about the provision of medical treatment is significantly impaired;

c) That it is necessary to detain the patient in hospital for the purpose of determining what medical treatment should be given to the patient or giving medical treatment to the patient;

d) That if the patient were not detained in hospital there would be a significant risk

   (i) to the health, safety or welfare of the patient;

   (ii) to the safety of any other person; and

e) That the granting of the STDC is necessary.

Regard must also be had to the overarching principles in section 1 of the 2003 Act (such as the present and past wishes and feelings of the patient and the views of the patient's named person). The appellant sought to argue that, in revoking the STDC, Dr Narayan diagnosed the appellant with personality disorder when he ought to have been diagnosed with relapse of manic bipolar disorder. However, both diagnoses satisfied the first statutory criterion, namely that the appellant had "a mental disorder". On the face of the limited pleadings nothing turned on the differing diagnoses, because the impugned decision (to revoke the

STDC) was made for reasons other than there being no mental illness at all. In other words, whether the appellant's diagnosis was bipolar disorder or personality disorder, the first statutory condition in section 44(4) of the 2003 Act was met. If there was alleged to be some more nuanced significance to the differing diagnoses which would have affected the balancing of the remaining criteria, it ought to have been fairly averred. It was not.

[32] For the foregoing reasons, the third ground of appeal is refused. No case of negligent misdiagnosis was supported by averment and such a case was contradicted by the evidence, including the evidence of the appellant's expert witness.

[33] The appellant advanced an ancillary argument that the sheriff's decision (to sustain the respondent's objection of no record) contravened or was inconsistent with the prior interlocutors of Sheriff Williamson dated 17 August 2021 and the interlocutor of the Sheriff Appeal Court dated 20 September 2022 (appellant's note of argument, ground 3, paragraphs (3) to (4)).

[34] We rejected this ancillary argument. Firstly, no notice of the argument was advanced in the appellant's Note of Appeal. Secondly, by interlocutor dated 20 September 2022 this court refused an earlier appeal and remitted to the sheriff to proceed as accords. No finding or observation was made at that stage by this court on the averments to proceed to proof. The sheriff allowed parties a proof of their respective averments. That interlocutor, which was conventional and unremarkable in its terms, did not preclude any party from objecting to a line of evidence on the basis of a lack of foundation on record or otherwise. It remained a matter for the presiding sheriff at proof to determine whether there was a sufficient basis on record to permit specific lines of evidence.

The admissibility of Dr Muzaffar's evidence

[35] The second ground of appeal was that the sheriff erred in admitting the expert testimony and report of Dr Muzaffar, the defender's expert witness.

[36] At proof, the appellant had objected to the admissibility of Dr Muzaffar's expert testimony on two grounds: first, that Dr Muzaffar could not be independent as she was employed by the NHS in Scotland; second, that her report and testimony disclosed bias and partiality. On appeal before this court, the first ground of objection was abandoned, rightly in our view.

[37] The second ground of objection was made up of multiple, diffuse points. In his judgment (at para [92]), the sheriff dealt with them at length. In our view his reasoning was unimpeachable. He understood the nature of the objection and gave proper reasons for his decision to reject it.

[38] There was no dispute as to the law in relation to expert witnesses (*Kennedy* v *Cordia* 2016 SC (UKSC) 59, paras [51] - [55]). Further, the principles engaged in appeals of this nature (where, in essence, a sheriff's assessment of witness testimony is being criticised) are also well known (*Woodhouse* v *Lochs and Glens (Transport) Ltd* [2020] CSIH 67, [31] to [33]; *Kinloch* v *Kinloch* [2025] SAC Civ 39, [22]; Macphail, *Sheriff Court Practice*, 4th Edition, 18.152). The appellate court must be conscious of the full advantage the trial judge enjoyed and a court should not look at some isolated passages in the evidence to justify an argument that the wrong conclusions had been reached, as it will almost certainly be fruitless and sterile to do so (*Greater Glasgow Health Board* v *Multiplex & Others* [2026] CSIH 16, paras [79] to [81]). Applying these dicta to Dr Muzaffar's report, we discerned no error in the sheriff's conclusion that this expert witness, in her report and testimony, engaged properly with the issues in dispute (as fairly disclosed on record), and disclosed no bias or partiality.

[39] The appellant criticised Dr Muzaffar for not appreciating that the appellant's case encompassed an allegation of breach of duty by reason of negligent misdiagnosis. For the reasons explained above, there was no such case on record and such criticism was misconceived.

[40] The appellant contended that Dr Muzaffar made "…a clear attempt to mislead the court". That was a serious allegation to advance. It required responsible treatment and to be clearly substantiated. It was not. It followed a regrettable pattern of ill-conceived allegations made by the appellant against this witness and Dr Narayan (see paras [89] to [92] and [97] to [99] of the sheriff's judgment). The gravamen of the appellant's criticism seemed to be a perception that Dr Muzaffar downplayed the appellant's history of bipolar affective disorder. The sheriff explained why the evidence did not support such a proposition. The appellant's case was not about negligent misdiagnosis, and it was natural and appropriate for Dr Muzaffar to focus on the claim as properly understood on a fair reading. Besides, in her report and evidence, Dr Muzaffar consistently explained that the appellant's presentation was complex and that his history of early traumatic experiences, emotional instability, employment and relationship difficulties, and substance abuse, interacted with bipolar affective disorder. In any event, the question whether there was a "clear attempt to mislead the court" was primarily a matter of fact for the judge at first instance to determine on the evidence before him. He had the benefit of seeing and hearing the witness and of watching the examination develop, all in context. This brings advantages which the appellate court does not enjoy to the same degree (*Kinloch*, *supra*). The sheriff concluded that Dr Muzaffar, while firm in defending her opinion, was not dogmatic in her rejection of the conclusions of Dr Scott or Dr Qureshi. The sheriff recognised that the focus of Dr Muzaffar's attention was on the period immediately around the revocation of the STDC on 18 January

2016, consistent with the case pled on record. His assessment of this witness was that she had engaged directly and properly with the legal duties averred in Article 10; that she was "plainly seised of the issues in dispute"; that she was willing to engage with other issues in the course of cross-examination (para [92], sheriff's judgment); that the threshold tests of independence and impartiality were satisfied; and that, thereafter, such weaknesses as may have emerged in her evidence were relevant only to his assessment of the weight to be attached to it. We discerned no material error in the sheriff's approach, or any fair basis to undermine that evidence. Accordingly, there was no legitimate basis on which the appellate court should interfere with his assessment and factual conclusions.

Causation

[41] Finally, even if the whole of Dr Muzaffar's evidence were to be excluded as inadmissible, a submission which we reject, that would not assist the appellant.

[42] The appellant's averments on causation appeared in Article 9(ii). They set out the alleged consequences of the revocation of the STDC. The appellant was free to lead evidence on all of those averred consequences. He did so. The sheriff assessed the evidence and rejected the conclusions sought to be drawn from it, for the detailed reasons set out in paras [139] to [157] of his judgment. He concluded that no loss, injury or damage was proved to have been caused by the revocation of the STDC. Specifically, many of the losses said to have been incurred by him (loss of employment prospects, damage to the appellant's relationship with his family, his criminal behaviour, and his perceptions of embarrassment and humiliation) were either experienced prior to the revocation of the STDC or as an inevitable consequence of events which had occurred prior to the revocation of the STDC. No appeal was taken against any of the sheriff's findings on the issue of causation.

[43] The appellant did not offer to prove any different form of causation arising from negligent revocation of the STDC (or, indeed, from negligent misdiagnosis). The appellant's evidence anent causation, as averred, was led in its entirety, was assessed and adjudicated upon by the sheriff, and the sheriff's findings on causation have not been challenged in this process.

[44] Significantly, Dr Muzaffar's testimony had no bearing on the issue of causation. Even if it were excluded in its entirety, the appeal would still fail because the appellant did not prove that he suffered any of the loss, injury or damage averred by him (*MacLeod's Legal Representatives* v *Highland Health Board* 2016 SC 647).

[45] The same logic applies to the third ground of appeal. Even if it were correct that he was negligently misdiagnosed, the appeal would still fail because the appellant did not prove that he suffered, as a consequence, any of the loss, injury or damage averred by him.

Disposal

[46] For the foregoing reasons, we refuse the appellant's remaining grounds of appeal (grounds 2 and 3). We shall also refuse the respondent's cross-appeal as unnecessary. The issue of expenses is reserved meantime. We encourage parties to seek to agree the disposal of expenses, failing which agreement within 21 days the clerk will arrange for a further hearing by written submission.