



SHERIFF APPEAL COURT

[2026] SAC (Civ) 62

Sheriff Principal N A Ross
Appeal Sheriff Sheehan
Appeal Sheriff Shead

OPINION OF THE COURT

delivered by Appeal Sheriff C M Shead

in the appeals in the cause

under section 163(1)(a)(iii) of the Children's Hearings (Scotland) Act 2011

by

EF

Appellant

against

LOCALITY REPORTER MANAGER, SCOTTISH CHILDREN'S REPORTER
ADMINISTRATION

Respondent

Appellant: Party

Pursuer and Respondent: S Flannigan; Anderson Strathern LLP

8 September 2026

Introduction

[1] These conjoined appeals are brought under section 163(1)(a)(iii) of the Children's Hearings (Scotland) Act 2011 ("the 2011 Act"). On 25 February 2026, a Children's Hearing decided to continue compulsory supervision orders in respect of the appellant's children AB and CD for a period of 1 year. The children were to continue to reside with their father and

contact between the appellant and AB and CD was restricted to indirect contact which was to be supervised by the social work department. The Children's Hearing proceeded upon the basis that a ground of referral (within the meaning of the 2011 Act) had been found to be established by the sheriff at Alloa on 12 November 2020 to the effect that AB and CD were likely to suffer unnecessarily or their health and development was likely to be seriously impaired due to a lack of parental care provided by both their mother and father, and concluded that compulsory supervision orders were necessary for the protection, guidance, treatment or control of the children in terms of the Act.

[2] AB and CD have been subject to compulsory supervision orders since 21 January 2021 which have required them to live with their father. Contact with the appellant has been regulated by compulsory supervision orders throughout that period and the appellant's last direct contact with the children was in 2024.

[3] A number of Children's Hearings have taken place since grounds of referral were established at which written reports from social workers and other relevant professionals were considered and formed part of the factual context against which the hearing's decisions regarding the terms of the compulsory supervision orders were made. It was incumbent on the Children's Hearing to resolve disputed questions of fact based on all the material available to them and the submissions advanced by the interested parties. Those factual findings were not challenged in this appeal. The sheriff was not invited to hear further evidence by the appellant in terms of *JLM v SCRA* 2019 (CSIH) 37 para [51].

[4] The appellant appealed the decision of 25 February 2026 to the sheriff in terms of section 154 of the 2011 Act. Following a hearing in April 2026 the sheriff confirmed the decision of the Children's Hearing in terms of section 156(1)(a) of the 2011 Act having been satisfied that the decision was justified.

[5] The appellant is living with an acquired brain injury. She lodged various documents in process outlining the nature of that injury and the impact it has upon her. Both the Children's Hearing and the sheriff were aware of the appellant's circumstances, took these into account and made reasonable adjustments to accommodate the appellant.

The appeals by stated case

[6] In accordance with section 163(1) the sheriff stated a case. In terms of section 163(9) an appeal may be made only on a point of law or in respect of any procedural irregularity.

[7] In the application for the stated case it was contended that (i) the sheriff erred in law by determining the appeal on the basis of a legal test derived from *W v Schaffer* 2001 SLT (Sh Ct) 86 which was lodged late by the reporter and upon which the appellant did not have a fair or realistic opportunity to consider, process or respond to and (ii) allowing reliance on the authority, without affording a fair opportunity to address it, was contrary to the requirements of procedural fairness and equality of arms.

[8] In the stated case the sheriff noted the appeal proceeded, by agreement, without the need for evidence to be led. The sheriff provided succinct reasons for concluding that the decision of the Children's Hearing was justified and comments on the points raised in the appellant's application. The questions posed related to the issues under appeal.

[9] He posed the following questions for the opinion of this court:

1. Did I err in proceeding with the hearing without providing further time to the appellant to consider the authorities provided?
2. If so, did this amount to a procedural irregularity in the determination of the appeal?

3. Did I err in applying the test in *W v Schaffer* in how I approached the determination of the appeal?

Submissions for the appellant

[10] Notwithstanding the questions posed in the stated case, the appellant conceded in her written submissions that the sheriff had been correct to apply the law in *W v Schaffer* read with *CF v MF* 2017 SLT 945. However, the appellant also introduced new grounds of appeal, not raised in the original application. These were:

1. the sheriff's decision gave rise to procedural unfairness through failure to ensure the appellant's effective participation in the hearing and took insufficient account of her disability related disadvantage;
2. the sheriff erred by failing to properly apply the test for determining whether the decision of the Children's Hearing was justified in light of the conflicting accounts and material changes in professional assessment that had been put in issue by the appellant;
3. the sheriff erred in considering the Children's Hearing decision could be justified in relation to contact on the basis of the children's views as there were unresolved issues concerning the reliability, context and development of the children's expressed wishes;
4. the sheriff erred by failing to adequately address whether relevant safeguarding information had been properly investigated, reconciled and carried forward into later decision-making and that the multitude of safeguarding concerns and information had not been collated in a complete and coherent picture;

5. the sheriff erred by failing to engage with the appellant's position that the initial safeguarding concerns in relation to her children had evolved through "narrative reversal" and that the concerns had turned the Children's Hearings focus from examination of the underlying concerns towards scrutiny of the appellant as the person having raised them;

6. the sheriff erred in law by failing to properly assess the impact on family relationships that can arise from prolonged family separation read with the appellant's Article 8 ECHR rights.

[11] During her oral submissions, the appellant clarified that her complaint was against the Children's Hearing, not the sheriff. The Children's Hearing had failed to ensure her effective participation in the hearing on 25 February 2026 by failing to ask questions of her and by the members' body language. In contrast the appellant submitted that the sheriff was very fair, allowed her time to stop and process and tried hard to enable her to effectively participate in proceedings. Nevertheless, the appellant maintained that she had struggled to engage with the decision in *W v Schaffer* and would have framed her submissions differently if she had understood the import of the decision.

[12] The appellant submitted that there was a lot of information and "pieces of the jigsaw" which had not been pieced together properly. She argued that the Children's Hearing had failed to interrogate how the views of the children about contact had been formed and had failed to take into account material which did not support the social work department's narrative. Her position was that the Children's Hearing failed to consider the totality of the information because it did not fit the narrative which had been built up.

Submissions for the respondent

[13] The respondent moved the court to answer the three questions in the negative, to refuse the appeals and to remit to the sheriff in terms of section 163(10) of the 2011 Act. The respondent submitted that the role of this court was even more restricted than the role of the sheriff had been. The issues raised in the stated case were narrow. The appellant had accepted in her written submissions that the sheriff had been correct to apply the decision in *W v Schaffer* and that the sheriff had been fair to her in his handling of the appeals. The sheriff had found the appellant did not require more time and that she had understood the scope of the appeal. The new points raised in the appellant's written submission did not form part of the stated case.

Decision

The scope of the appeals

[14] An appeal lies to this court only on a point of law or where there has been a procedural irregularity in the conduct of the hearing before the sheriff. The grounds for an appeal are set out in section 163 of the 2011 Act and the rules of procedure are contained in the Child Care and Maintenance Rules 1997.

[15] Rule 3.59 provides, so far as material, that:

“(1) An application to the sheriff to state a case for the purposes of an appeal shall specify the point of law upon which the appeal is to proceed or the procedural irregularity, as the case may be.

and

(3) The sheriff shall, within 21 days of the lodging of the application for a stated case, issue a draft stated case-

- (a) containing findings in fact and law or, where appropriate, a narrative of the proceedings before him;
- (b) containing appropriate questions of law or setting out the procedural irregularity concerned; and
- (c) containing a note stating the reasons for his decisions in law"

[16] In due course the sheriff issued his draft stated case which contained findings in fact and law, the questions which have been set out and a note stating his reasons for his decision in law. The appellant proposed a number of adjustments to the draft stated case one of which sought to expand the number of questions for the opinion of this court. That adjustment was refused for the reasons given by the sheriff. The appellant did not challenge this approach on appeal. Some of the grounds of appeal placed before us in the written submission attempted to re-raise issues which had already been rejected by the sheriff.

[17] Against that background the first issue is to identify the proper scope of the appeal. Rule 32.3 of the Sheriff Appeal Court Rules restricts the scope of this appeal to questions posed in the appellant's application for a stated case unless leave of court is given to raise additional questions of law or procedural irregularities. The questions in the application for a stated case are identified by the appellant and delineate the parameters of the appeal. While we permitted the appellant to present argument under the other grounds of appeal set out in her written submission, we did so as a matter of courtesy only. There are no exceptional circumstances which would permit us to consider those other grounds. The reason was explained by Lord Justice Clerk (Thomson) in *Drummond v Hunter* 1948 JC 109 at 113:

"If a legal issue is to be raised, it ought to be properly raised by a question defining the issue precisely. Unless this rule is followed, there is no real guarantee that a point taken in this Court was a live point in the lower Court ... There are two obvious advantages in adhering to this rule. First, the Judge called on to state a case

can do so in the light of the issue raised, and second, the issue is properly focussed for the consideration of this Court”.

The questions considered

[18] In considering the questions we have had the benefit of the sheriff’s observations. He confirms that there were only two authorities lodged the day before by the reporter. The sheriff was aware of the appellant’s brain injury and asked whether she required any reasonable adjustments to be made to enable her to participate in the hearing. She asked to be allowed to read from written submissions which she had prepared and the sheriff allowed her to do so. He explained the parameters of the appeal and by reference to *W v Schaffer* that the court’s task was to determine whether the decision was justified or not. He also explained that it would be for the appellant to demonstrate that there had been an error of law or procedural irregularity in the decision. He explains he was satisfied that the appellant was aware of the test in *W v Schaffer* which was to be applied in determining the appeal. He also rejected the criticism that he had erred in applying that test.

[19] The scope of the appeals before us is narrow. In respect of the first question there is no substance in that criticism. The appellant had the matter explained to her and did not ask for more time to be given to her to make submissions either orally or in writing. In her oral submissions the appellant suggested that she might have been in a position to make more detailed submissions about how the case law should be applied to the circumstances of the present appeals but we are not persuaded that this would have made any difference to the sheriff’s determination of the appeals. The appellant accepted that the sheriff correctly applied the principles of *W v Schaeffer*. As has been noted the appellant expressly acknowledged in her submissions that the sheriff had treated her fairly in the hearing of the appeals. The appellant neither raised in her grounds of appeal nor submitted that the

sheriff's reasons for concluding that the decision of the Children's Hearing was justified were inadequate.

[20] Accordingly we will answer the first question in the negative. The sheriff correctly applied the law, and further submissions would have made no difference. Since the second question is predicated on the first being answered in the affirmative we need not answer it.

[21] The third question, as it is framed, also falls to be answered in the negative. It was the sheriff's duty to apply the test in *W v Schaffer* to his determination of the appeal. He cannot be criticised for having done so.

[22] That being so the appeals fall to be refused.

The other grounds of appeal

[23] We have explained why we are not able to entertain any grounds which go beyond the questions posed in the stated case.

[24] However had we been able to do so we would still have refused the appeals. Stripped to its essentials the appellant's criticism was that the Children's Hearing did not listen properly to the points which she made. She accepted that she had been allowed to address the relevant points at the hearing but she argued that the panel were swayed by the other submissions most notably those made by the social work department and the children's advocacy worker. It was said that the sheriff had erred in concluding that the decision was justified without first adequately addressing whether the competing explanations had been subjected to sufficient scrutiny before being rejected and whether the decision making process had progressively shifted from an examination of the welfare concerns being raised to an examination of the individual raising them.

[25] These criticisms were not made before the sheriff and appear to us to be without foundation. There was no material which in any way supports those contentions. The decision demonstrates that the Children's Hearing properly considered the issues in relation to the welfare of the children. There was nothing in the summary of the reasons given for the decision which suggests that they failed to do so.

[26] While the appellant made general criticisms of the Hearing's approach she failed to identify any particular failures in the assessment of the material before them which could constitute an error in law or a reason to regard the decision as unjustified. In essence, this appeal amounted to an attempt by the appellant to compel this court to undertake a rehearing of the merits of the competing arguments presented to the panel. As the appellant accepted in her written submissions that would be an illegitimate exercise of this court's appellate function. We cannot do so.

Concluding observations

[27] As the agent for the Reporter pointed out in his submissions, given the passage of time since the decision, it would be open to the appellant to seek a review of that decision in terms of section 132(3) of the 2011 Act. The appellant explained to us she has been involved in a proof before the same sheriff dealing with questions of residence and contact in an action at the instance of her former partner. A decision is awaited. It may be that once the decision is available the appellant may be able to rely on it in seeking such a review. In any event there is nothing which prevents that review being sought now.

[28] The appellant was anxious to emphasise that she was pursuing these appeals because of her concerns for the welfare of her children. We had no reason to doubt the sincerity of her motivation for taking the course which she has. We recognise the stress that

doing so has placed on the appellant in preparing for and presenting these appeals. We would like to commend her for the courtesy with which she conducted the appeals and her acknowledgment that she had been fairly treated by the sheriff at the hearing in April 2026.

[29] Before parting from these appeals we would make two observations. The first relates to the form of the stated case. We have drawn attention to the terms of Rule 3.59. Rule 3(a) provides that the stated case should contain findings in fact and law or, where appropriate, a narrative of the proceedings before the sheriff. Where, as here, the sheriff did not hear evidence we consider that there was no factual basis on which to make findings in fact and law. It would have been sufficient to include a narrative of the proceedings instead of making such findings. Helpfully the sheriff set out the competing submissions, a summary of the reasons for his decision and his comments on the grounds of appeal. In our view it was unnecessary to go further to comply with the requirements of the rule.

[30] Secondly, we were informed that no safeguarder had been appointed for the proceedings before the Children's Hearing. Nevertheless the sheriff appointed a safeguarder for the purposes of these appeals. He explains that he did so given the high level of conflict between the appellant and the children's father to assist the court in representing the children's interests. The safeguarder made enquiries and a submission to the sheriff that the decision of 25 February 2026 should be upheld.

[31] Without being prescriptive, in our view a safeguarder should not normally be appointed by the court in an appeal where further evidence is not being led. The nature of the appellate jurisdiction being exercised by the sheriff will not generally be assisted by such an appointment. As will be readily appreciated the court's focus is a narrow one in deciding whether the decision of the hearing was justified or not. In this case there was material available to the sheriff which contained the children's views and which had been

put before the Children's Hearing. There was nothing to be gained from trying to ascertain those views again given the nature of the decision the sheriff required to make.

[32] Neither party moved for expenses and accordingly we will make no order in that regard.