SHERIFFDOM OF TAYSIDE, CENTRAL AND FIFE AT DUNDEE

NOTE OF DECISION BY SHERIFF TIMOTHY NIVEN-SMITH

in the cause

BH

Appellant

Against

SCOTTISH SOCIAL SERVICES COUNCIL

Respondent

Parties: -

Act: Mr B Langlands, Advocate instructed by Grampian Community Law Centre.

Alt: Mrs C Larkin, Solicitor.

Dundee, 17th October 2025

Introduction

[1] This is an appeal under section 51 of the Regulation of Care (Scotland) Act 2001 against the decision on 29 October 2024 by the Respondents fitness to practice panel ("FPP") to remove the Appellant from the part of the Register for Social Work students.

The allegations giving rise to the FPP

[2] On 4 June 2019 following a summary criminal trial the Appellant was convicted at Glasgow Sheriff Court of an offence contrary to section 38(1) of the Criminal Justice and

Licensing (Scotland) Act 2010. Said offence was aggravated by involving abuse of his partner or ex-partner in terms of Section 1 of the Sexual Harm (Scotland) Act 2016. In summary that offence was in the following terms: -

> *"That you did on 23 December 2018 at a location in Glasgow behave in a threatening or abusive manner which was likely to cause a reasonable person to suffer fear or alarm in that you did act in an aggressive manner towards your ex-partner, force entry to a property there, repeatedly shout at her and place her in a state of fear and alarm."*

[3] Between 4 June 2019 and 12 July 2019 it was alleged that the Appellant failed to notify the Scottish Social Services Council ("SSSC") of his conviction at Glasgow Sheriff Court.

[4] Between 2 June 2018 and 7 September 2018, the Appellant was employed as a supervisor at Standard Care Recruitment Limited. During that same period a Miss AA was also employed working alongside the Appellant. Several allegations were made by Miss AA against the appellant. Said allegations were in the following terms: -

> *"Between 2 June 2018 and 7 September 2018, while employed as a Supervisor at Standard Care Recruitment Limited, you did harass your colleague AA by:*
>
> *a. On or around 7 September 2018 grabbing AA by her trousers and slamming her against a car.*

b. *repeatedly asking AA to start a personal relationship with you even though AA advised you that she did not want to start a personal relationship with you*

c. *sending numerous messages to AA containing repeated attempts to persuade AA to start a personal relationship with you, phrases such as ' I love you' and 'I miss you', 'you are the only woman I have ever fallen in love with', references to AA as 'princess' and 'my princess', memes declaring love for AA, pictures of flowers, and references to future marriage to AA."*

Evidence led at FPP hearing

[5] The Respondents led parole evidence from Miss AA, the Respondents led no other parole evidence and relied upon documentary productions. The Appellant gave evidence on his own behalf he also led evidence from Ms Grace Ohenewa; she gave evidence from Ghana by telephone.

Procedural History

[6] On 29, 30 and 31 January; 24 and 25 July all 2024 the Respondents convened an independent FPP to consider the various allegations against the Appellant. The allegation at paragraph [2] above was numbered 1 by the SSSC, the allegation at paragraph [3] above was numbered 2 by the SSSC and the allegations at paragraph [4] above were numbered 3a, 3b and 3c by the SSSC. On 29 October 2024 the FPP having heard parties made a ruling that certain of the allegations made against the Appellant were proved, namely allegations 1, 2, 3b and 3c. That as a result the Appellants fitness to practice was impaired and the FPP

imposed a removal order against the Appellants registration in the part of the Register for Social Work student.

[7] The Appellant lodged an appeal against the decision of the FPP timeously on 11 November 2024. After sundry procedure, I heard oral submissions of parties on 29 September 2025 on all aspects of the appeal thereafter, I made avizandum.

Submissions for the Appellant

[8] The court is indebted to Mr Langlands who had lodged focussed written submissions and a note of argument in advance of the hearing of the appeal. This greatly assisted the court in preparing for the appeal and considerably reduced the court time required to deal with the matter. The written submissions and note of argument are available to parties therefore I do not intend to rehearse them for the sake of brevity, Mr Langlands adopted them in their entirety before addressing the court in oral submissions.

[9] Counsel for the Appellants motion was to sustain the first and second pleas-in-law for the Appellant and repel the pleas-in-law for the Respondent. Counsel for the Appellant submitted that the FPP had fallen into error and should not have held allegations 3b and 3c to be established. If I concluded that the FPP had fallen into error in finding these matters established then I should determine that the Appellants fitness to practice was not impaired and accordingly, no sanction should have been imposed. Esto, the Appellants fitness to practice was impaired I should either substitute a six (6) month period of suspension or I should remit to the FPP for them to consider the disposal afresh.

[10] Counsel for the Appellant structured his submissions by reference to three stages namely, (1) "the findings-in-fact made by the panel" (2) "the error in law" and (3) "the import of the error in law on the outcome."

The findings-in-fact

[11] Mr Langlands commenced by taking the court to the decision of the FPP at paragraph 82 where the decision records that: -

> *"82. The Panel considered that AA was a very unsatisfactory witness. It was very cautious about accepting her evidence as reliable. However, in some respects, as indicated below, it was able to accept parts of her evidence, particularly where it was supported by other corroborating evidence or documentary evidence."*

And at paragraph 83 wherein the Panel observed that: -

> *"83. In the Panel's view, AA's evidence had a tendency to be self-serving and to focus on aspects which supported her narrative of events. She did not properly or adequately address issues which seemed to go against that narrative: for example, why she recommended friends and family to work in the business if she was suffering from harassment by you."*

Counsel drew the courts attention to paragraph 104 of the Respondents decision wherein they state: -

> *"104. The Panel were aware that the text messages produced relied upon AA to produce a full set of messages, including those sent by her. It noted that they had no assurance that it was so. It noted your position that you were unable to provide messages from your end as they were on old phones and no longer accessible."*

Finally, in the decision counsel drew the courts attention to paragraph 114 of the FPP's decision: -

> *"114. Some evidence was given in relation to a question of the provision of a car and car finance in the name of AA. Although relevant to the Panel's consideration of credibility, that is a matter not focussed on the allegations in any way, and the panel did not consider that there was any need for them to make any factual findings in relation to that issue."*

Counsel then took the court to the operational statement of Police constable Michael Bent at the third page of his statement wherein the officer had recorded that: -

> *"I then contacted Blue Motor again and spoke to another representative and confirmed that the fiance agreement could not have been signed by another person and would only be valid if signed by the same person it had been sent to."*

Counsel, accordingly, submitted that the FPP erred as having found AA to be an unsatisfactory witness they found support for her evidence in the messages which AA had handpicked and decided to lodge with the SSSC and failed to take account of the fact that the panel recognised there was a credibility issue regarding AA.

The error in law

[12] Counsel for the Appellant took the court to the case of Henderson -v- Foxworth Investments Limited and another (Scotland) 2014 WL 2931297 and commenced by drawing the courts attention to paragraphs 61 and 63 at page 14 and thereafter counsel quoted from paragraph 65 and read paragraph 67 as follows: -

> *"65 Viscount Simon, while disagreeing as to the result of the appeal, also emphasised the need for the appellate court to consider whether the trial judge's decision could reasonably be regarded as justified:*
>
> > *"if there is no evidence to support a particular conclusion (and this is really a question of law), the appellate court will not hesitate to decide……"*

> *"67. It follows that, in the absence of some other identifiable error, such as (without attempting an exhaustive account) a material error of law, or the making of a critical finding of fact which has no basis in the evidence, or a demonstrable misunderstanding of relevant evidence, or demonstrable failure to consider relevant evidence, an appellate court will interfere with the findings of fact made by a trial judge only if it is satisfied that his decision cannot reasonably be explained or justified."*

Counsel submitted that the FPP had fallen into an error of law in reaching a conclusion based on the facts. He submitted that the facts did not support the conclusion reached and the decision of the FPP was illogical. Counsel submitted that because the FPP had made an

error of law as opposed to an error of fact it was for this court to interfere with the decision reached. In the circumstances, allegations 3b and 3c should not have been found proven.

The import of the error of law

[13] Counsel submitted that if allegations 3b and 3c fell away impairment to practice could only arise based upon allegations 1 and 2. Mr Langlands reminded the court that allegation 1 the conviction from Glasgow sheriff court arose in 2019 and related to an event on a single occasion in 2018. Eight (8) years have passed since that behaviour and there has been no repetition of the behaviour that led to that conviction accordingly, it is not enough to say that the Appellants fitness to practice is impaired today, if it is impaired it certainly does not require his removal from the Register. Counsel then commended his written submissions prepared for the FPP and invited the court to consider the authorities lodged in support of those submissions. Further, it was submitted that in those authorities the court would readily accept that they deal with much more severe conduct than the conduct involved here particularly in relation to the first allegation the conviction from Glasgow Sheriff court accordingly, it defies logic to impose a harsher penalty by imposing a greater sanction in this case. All in all, it was submitted that the court should deal with the Appellant by imposing a six-month suspension (potentially with conditions, if the court considered them necessary and appropriate).

Submissions for the Respondent

[14] Mrs Larkin for the Respondent adopted the detailed written submissions lodged in advance of the appeal. Again, the court is indebted to the Respondent for the time and care taken in producing their detailed submissions which significantly reduced the time taken to

conduct the hearing in this case. Parties have these submissions again for the sake of brevity I do not intend to rehearse them.

Discussion and Decision

[15] As indicated at paragraph [1] above this is **an appeal** (my emphasis added) under section 51 of the Regulation of Care (Scotland) Act 2001. It is important to stress -particularly for the Appellant- that I am not engaged here in rehearing the facts: see paragraph 62 in the case of Solicitor Regulation Authority -v- Day [2018] EWHC 2726 (Admin). Accordingly, it is not appropriate for me to substitute my view of the evidence for those of the FPP if I come to a different assessment of the evidence from them.

[16] What then is the role of this Court in this type of appeal? Lord Malcom in delivering the opinion of the Court in the Scottish case of the Professional Standards Authority for Health and Social Care -v- the Nursing and Midwifery Council 2017 SC 542 at paragraph [25] observed that:

> *"The Court was favoured with the citation of a large number of previous decisions in cases of this kind. There is a well-established body of jurisprudence relating to the proper approach to appeals from regulatory and disciplinary bodies. The general principles can be summarised as follows. In respect of a decision of the present kind, the determination of a specialist tribunal is entitled to respect. The Court can interfere if it is clear that there is a serious flaw in the process or the reasoning, for example where a material factor has not been considered. Failing such a flaw, a decision should stand unless the Court can say that it is plainly wrong, or, as it is sometimes put, manifestly inappropriate. This*

is because the tribunal is experienced in the particular area and has had the benefit of seeing and hearing the witnesses."

As with any appeal court I must pay deference to the fact finders at first instance as they had the benefit of seeing and hearing the witnesses and it was for them to assess by reference to the usual touchstones of credibility and reliability which evidence they accepted and which they rejected. The fact that I may having considered the transcripts of the FPP proceedings come to a different assessment of the evidence from them is irrelevant unless citing Lord Malcom above I conclude that the fact finders at first instance were "plainly wrong" then and only then should I interfere. Helpfully, Lord Reed in Henderson -v- Foxworth Investments Limited 2014 WL 2931297 addresses the adverb "plainly" wherein at paragraph 62 he observes the following:

"62. Given that the Extra Division correctly identified that an appellate court can interfere where it is satisfied that the trial judge has gone "plainly wrong", and considered that the criterion was met in the present case, there may be some value in considering the meaning of that phrase. There is a risk that it may be misunderstood. The adverb "plainly" does not refer to the degree of confidence felt by the appellate court that it would not have reached the same conclusion as the trial judge. It does not matter, with whatever degree of certainty, that the appellate court considers that it would have reached a different conclusion. What matters is whether the decision under appeal is one that no reasonable judge could have reached."

In looking at the evidence led and the FPP's decision it is only where I can conclude that no reasonable fact finder could have reached the decision they did, that the appeal can be sustained, respectfully that is a high bar for the appellant to meet.

[17] In my view the decision of the FPP must be considered in its totality and not approached as if it were a commercial banking contract or conveyancing document by seizing upon a clause in the decision in isolation. The decision notice must be read in a straightforward manner, recognising that it is addressed to parties aware of the issues involved and the arguments advanced.

[18] Trite to observe but the FPP as the fact finder must assess the evidence by reference to the usual touchstones of credibility and reliability. Importantly, it is not an all or nothing with the evidence of a witness. As with any fact finder it is always open for the fact finder to accept the witness in their entirety or to reject the witness in their entirety but it is always open for the fact finder to accept parts of a witnesses evidence and reject other parts of the same witnesses evidence, it is entirely a process for the fact finder to evaluate the evidence and decide what to accept and what not to accept. In Monib -v- General Dental Council [2014] EWHC 1911 (Admin) the Honourable Mr Justice Stuart-Smith in delivering the judgement of the court observed at paragraph 60 that: -

> *"Patients A's evidence was shown to be unreliable in a number of significant respects. This did not mean that her evidence should be rejected in its entirety, but it gave rise to the need to consider carefully and in the context of the case as a whole."*

Accordingly, it was not perverse for the FPP to accept some evidence of the witness Miss AA and reject other evidence from the same witness. The key issue is whether in light of rejecting some of her evidence following the observations Mr Justice Stuart-Smith the FPP assessed the evidence "carefully" or not. Fact finders will often accept evidence as both credible & reliable where it is supported or confirmed by other independent evidence which they accept conversely, a fact finder will often reject evidence because it is inconsistent with other evidence they do accept as credible and reliable.

[19] Whilst counsel for the Appellant drew the courts attention to paragraphs 82 and 83 of the FPP's decision wherein it observed that:

> "*82. The Panel considered that AA was a very unsatisfactory witness. It was very cautious about accepting her evidence as reliable….*" The FPP also observed that: "*However, in some respects, as indicated below, it was able to accept parts of her evidence, particularly where it was supported by other corroborating evidence or documentary evidence.*"

In my view the FPP's decision indicates an approach that is an entirely legitimate one to the assessment of evidence. Namely, for the reasons stated they approached her evidence carefully, where the witness's evidence was confirmed by independent evidence -which the FPP accepted- they would find the witness's evidence to be both credible & reliable.

[20] The FPP in issuing their decision at paragraphs 102-109 explain the supporting evidence which allowed them to accept the evidence of Miss AA as follows: -

"Allegations 3.b. and 3.c.

102. These two allegations were similar in nature and the Panel thought it appropriate to consider them at the same time. Both allegations are of repeatedly asking AA to start a personal relationship with you. Allegation 3.c. provides more detail in that it refers specifically to sending repeated messages to AA.

103. All of the types of message referred to in allegation 3.c. – phrases such as "I love you", "I miss you", 'You are the only woman I have ever fallen in love with", references to AA as "princess" and "my princess", memes declaring love for AA, pictures of flowers and references to future marriage to AA were to be found within the copy text messages produced to the Panel. You accepted that the text messages were genuine, although arguing that they were an incomplete record of the full two-way exchanges of messages, and context was therefore lost.

104. The Panel were aware that the text messages produced relied upon AA to produce a full set of messages, including those sent by her. It noted that they had no assurance that this was a complete set, other than AA's assurance that it was so. It noted your position that you were unable to provide messages from your end as they were on old phones and no longer accessible.

105. The messages available to the Panel were accepted as genuine. The messages included some, for example on 5 and 13 July 2018, in which AA rejected your advances. These rejections were not frequent, though, and for the most part your messages expressing love or affection for AA appeared, from the messages produced to the Panel, to have been ignored.

106. However, what was available tended to suggest to the Panel that your expressions of love were not reciprocated. AA had said in her evidence that she had tried to focus on professional matters and to ignore your advances; the evidence available to the Panel in the text messages tended to support this view rather than refute it.

107. The Panel also noted that the only evidence of any relationship between you and AA was your own evidence. AA denied any such relationship. The text messages did not confirm any such relationship. You produced no documentary evidence of the relationship: no texts, no cards, no written notes, no communications of any sort whatsoever. You produced no witnesses who might have confirmed the existence of any personal relationship. From the Panel's point of view, aside from your own evidence, there was a complete lack of any corroboration whatsoever of any personal relationship between you and AA. Scottish Social Services Council (Fitness to Practise) Rules 2016, as amended 17

108. The Panel were persuaded, primarily by the text messages, that you had sent the messages to AA, and that they had been unwanted. Supported by the text messages, the Panel accepted AA's evidence on this matter. In the light of that acceptance, and in the absence of anything from you other than your own evidence, the Panel considered that the SSSC had proved allegation 3.c. on the balance of probabilities.

109. That conclusion also tended to support the SSSC's position in relation to allegation 3.b. The evidence of other requests from you to start a personal relationship with you, and AA's advice that she did not want to start such a relationship, was consistent with the evidence of the text messages. The Panel found AA's oral evidence on this allegation, supported by the information within the text messages, to be persuasive. It accepted her

evidence that you had repeatedly sought to start a personal relationship with her against her wishes. It accordingly found allegation 3.b. proved."

In my view the FPP decision read in its totality gives the informed reader a clear understanding that the fact finders did have difficult accepting the evidence of Miss AA in isolation for reasons such as those expounded at paragraph 83 but when they carried out a careful exercise of evaluating her evidence by reference to the totality of the evidence they found independent evidence -which they accepted "as genuine"- which tended to support or confirm her evidence such that they were minded to accept her evidence. I can detect no error of approach to the process they embarked upon; it was an entirely legitimate one. It is important to stress in deference to the FPP I did not see Miss AA giving her evidence, accordingly, I do not know how she presented but having read the transcript of her evidence and having considered the terms of the messages sent by the Appellant to the witness it is not difficult at all to see why the FPP might conclude that in so far as her evidence related to the messages she was both a credible and reliable witness especially where the Appellant maintained that the messages produced were genuine his issue being that the messages produced were incomplete. The Appellant criticises the FPP's use of the text messages not in principle but in the specifics of this case.

[21] The Appellant submits that the FPP fell into error in accepting the text messages provided to the Respondent were a full set of the messages between the Appellant and Miss AA for several reasons: -

(i) In the course of the evidence the witness produced to the FPP additional messages to those originally provided to the Respondent.

(ii) The nature of the cross-examination identified a period when in all likelihood the witness was working with the Appellant, but no messages were provided.

As is set out above at paragraph [20] at paragraphs 104 and 105 the FPP in their decision accepted the messages provided were genuine. The FPP were seized of the procedural history vis-à-vis the production of additional text messages and highlight this at paragraphs 23, 24 and 25 of their decision wherein they observed that:

"23. Further papers were produced following the adjournment requested by the Panel after Wednesday 31 January 2024, day 3 of the hearing. That adjournment was requested for the purpose of trying to recover further paperwork said by witnesses to exist, but not produced to the hearing or seen by the Panel.

24. When the hearing recommenced on 24 July 2024, further papers had been obtained and submitted, and the Panel considered whether these should be admitted to the bundle of papers for the hearing. The further papers consisted of (1) information from Police Scotland about AA reporting the incident in allegation 3.a. to them; (2) a more complete set of text messages between AA and you (relating particularly to allegation 3.c.; (3) medical records of AA's visit to hospital following the incident at allegation 3.a.; and (4) a written statement from the Presenter based on notes of a phone conversation he had had with AA's daughter in relation to the events of allegation 3.a.

25. Your Representative had no objection to items (1), (2) and (3) – the Police records, additional text messages, and hospital records being received and admitted into the bundle. These were accordingly admitted into the papers in terms of Rule 32.7"

In addition, the FPP were aware of the nature of the cross-examination and its import wherein their decision at paragraph 37 they observe that:

"In cross examination, AA confirmed that there had been more text messages between her and you that had not yet been produced. She was asked to explain periods apparently without messages. She confirmed that after around 21 July 2018, there had been no messages of the type that she had complained of as being harassment."

The FPP in my view were entitled to proceed as they did and use the messages they accepted as genuine to consider as a cross-check on the evidence of Miss AA. There was nothing illogical in that approach having accepted Miss AA's evidence that what was produced was a full set seized of the procedural background and the cross-examination it was a matter for the FPP to determine as they saw fit, the fact that another decision-maker- such as me- might not have accepted the messages produced as a full set is with respect irrelevant. As Lord Levenson at paragraph 47 said in Southall -v- General Medical Council [2010] EWCA Civ 407: -

"as a matter of general law, it is very well established that findings of primary fact, particularly if founded upon an assessment of the credibility of witnesses, are virtually

> *unassailable……..Further, the court should only reverse a finding on the facts if it "can be shown that the findings were sufficiently out of tune with the evidence to indicate with reasonable certainty that the evidence had been misread."*

The FPP found the evidence of Miss AA about the contents of the messages was confirmed or supported by the documentary production the screenshots of the messages. In other words, the independent evidence provided a cross-check on the veracity of the witness against that background it was a matter at large whether the FPP accepted the witness's account that the documentary production was complete or not.

[22] The Appellants argument is that the FPP having found the witness unsatisfactory how could they rely upon her word that the messages were truly the totality of the messages where the FPP rejected her evidence in respect of an entire allegation namely 3a. As previously stated, as a matter of law the fact that the fact finder rejected a witness's account about a particular allegation did not require them to necessarily reject the witness's evidence in its entirety. Standing the FPP's approach to the evidence of Miss AA (in respect of allegations 3b and 3c) it would be arguably illogical for them to find allegation 3a proved to its satisfaction in the absence of independent evidence supporting or confirming her account given their concerns about her evidence generally accordingly, the FPP's decision read in its totality makes total sense that they did not find allegation 3a proved absent independent evidence they accepted notwithstanding, the fact that corroboration is not a requirement in the particular proceedings: Rule 32 of the Scottish Social Services (Fitness to practice) Rules 2016, as amended which provides generally that the Civil Evidence (Scotland) Act 1988 applies to the admissibility of evidence and in terms of rule 32.12 the civil standard of proof applies.

[23] The Appellant further submits that the FPP fell into error and imposed an onus upon the Appellant when the burden of proof lay with the Respondent. The Appellant focuses on the decision of the FPP at paragraph 107 wherein they said that:

> *"107. The Panel also noted that the only evidence of any relationship between you and AA was your own evidence. AA denied any such relationship. The text messages did not confirm any such relationship. You produced no documentary evidence of the relationship: no texts, no cards, no written notes, no communications of any sort whatsoever. You produced no witnesses who might have confirmed the existence of any personal relationship. From the Panel's point of view, aside from your own evidence, there was a complete lack of any corroboration whatsoever of any personal relationship between you and AA."*

As the FPP made clear in their decision they did not accept the evidence of the Appellant, see paragraph 85 wherein they said:

> *"85. The Panel formed the view that your evidence was chaotic, emotional, unfocused and disorganised, with answers to questions provided impulsively and without any proper thought. You seemed to allow your sense of grievance to override all else to influence the nature of your responses. You spoke at length about issues which digressed from the matters at hand. You were quick to assert that there was evidence to support your positions, but slow to provide that supporting evidence. As with AA, the Panel were reluctant to accept evidence from you unless supported by other corroboration or documentary evidence"*

Accordingly, the FPP simply disregarded the evidence of the appellant unless it was supported by independent evidence which they accepted. The FPP were entitled to reject the evidence of the Appellant in the same way as it was entitled to reject the evidence of Miss AA. (albeit it did not reject her evidence). In the generality, where evidence is rejected, it cannot prove the converse. Rejected evidence is simply that, rejected and left out of consideration. The Respondent submits that in this case the Appellant gave evidence that he was in a romantic relationship with Miss AA whilst the onus was upon the Respondent to prove the allegations: Rule 32.11 of the Fitness to Practice Rules 2016, the Respondent submits that the burden of proof in respect of the Appellants positive assertion that he and Miss AA were in a relationship, lay upon the appellant. The Respondent cites Walker & Walker, the Law of evidence in Scotland, 5th Edition paragraph 2.2.4:

> **"2.2.4.** *(b) The burden of proof rests on the party who alleges the affirmative. The maxim is ei qui affirmat, non ei qui negat, incumbit probatio (on he who asserts, not he who denies, is the obligation to prove)……..."*

Although, not submitted by the Respondent in my view the FPP were also entitled to have regard applying the civil standard of proof: Rule 33.12 of the Fitness to practice Rule 2016 to have regard to what is set out in Walker & Walker at paragraph 2.2.5 namely:

> **"2.2.5.** *(c) When a fact is peculiarly within the knowledge of one of the parties, very slight evidence may suffice to satisfy the burden of proof upon the other party on that issue, and to lay upon the party with the knowledge the burden of proving his own averment,……..*"

The relationship was a matter entirely in the knowledge of the Appellant and was for him to introduce into evidence which he did by giving parole evidence about the matter, Miss AA having denied the existence of such a relationship. The FPP rejected his evidence as they were entitled to do and that was because they preferred the evidence of the text messages and Miss AA. Again, I see no flaw in their approach to the evidence. All that the FPP were observing at paragraph 107 of their decision is that had it received some other evidence of the relationship -a matter within the unique knowledge of the appellant- then it might have caused them to accept the evidence of the Appellant and possibly reject the evidence of Miss AA. The FPP were not inverting the onus of proof in relation to the allegations by making the Appellant prove his innocence vis-à-vis allegations 3a, 3b and 3c. The FPP were simply pointing out that having rejected the evidence of the Appellant they were left with no evidence of a relationship to consider and having regard to the factual matrix underlying their decision that is correct.

[24] Finally, the Appellant submits that the FPP erred in not concluding that the witness Miss AA had concocted a false allegation against the Appellant. Such was the nature of the concocted false allegation that the FPP fell into error in not holding that her conduct affected her credibility generally such that the FPP should have rejected the totality of her evidence. In issuing their decision the FPP observed that:

> *"112. Firstly, the Panel were aware of conclusions arrived at in relation to certain legal issues, by the Employment Tribunal. The Panel had no regard to these conclusions in arriving at their own decision. The Employment Tribunal was considering different issues, in a different context, which it was unlikely would be transferable directly into the present proceedings. In addition, the Employment Tribunal had arrived at their decision*

in your absence and without your input. The Panel gave no weight whatsoever to the conclusions of the Employment Tribunal.

113. Similarly, the Panel had no regard to the views of the Police in relation to the investigations into AA's complaints. The Panel reached their own conclusions on the basis of the factual evidence made available to them and took no account of the views or conclusions of other individuals or organisations.

114. Some evidence was given in relation to a question of the provision of a car and car finance in the name of AA. Although relevant to the Panel's consideration of credibility, that is a matter not focused on the allegations in any way, and the Panel did not consider that there was any need for them to make any factual findings in relation to that issue."

The FPP are making it clear that there was certain material before them they had no regard to such as the decision of the Employment tribunal and any investigations conducted by the Police in relation to Miss AA's allegations against the Appellant. The FPP recognised that the evidence relating to the finance on a car was relevant to the consideration of their assessment of Miss AA's credibility, but they did not make any findings-in-fact in that regard because it did not relate to an allegation against the appellant. The evidence about the car finance was largely collateral in nature and was adduced only to impact upon her credibility, the FPP considered it but did not consider that such weight should be attached to it to undermine the credibility of Miss AA in the entirety of her evidence. I can see no error of approach; the matter of weight was entirely for the fact finders at first instance. Considering the decision, it cannot properly be submitted that the FPP did not consider the matter of her credibility and

whether the car finance affected her credibility in the entirety of her evidence. Whilst I may have attached greater weight to the matter than the FPP did, that is not the appropriate test for me.

[25] Having carefully considered both the submissions for the Appellant and those for the Respondent in so far as they relate to the FPP's assessment of the evidence I cannot conclude that the FPP made any of the following:

> *"a material error of law, or the making of a critical finding of fact which has no basis in the evidence, or a demonstrable misunderstanding of relevant evidence, or demonstrable failure to consider relevant evidence,…"*

Nor can I conclude that the FPP reached a decision on the evidence that was "plainly wrong". In my view the FPP reached a decision which was open to them to reach, as stated previously the fact that I may have reached a different assessment is irrelevant absent being satisfied that the FFP reached a decision that no reasonable fact finder could reach. I am not so satisfied accordingly, the FPP were entitled on their assessment of the evidence to conclude that allegations 3b and 3c were established.

[26] The thrust of the Appellants argument was that if I was satisfied that there had been an error in the FPP establishing allegations 3b and 3c such that I was left only with allegations 1 and 2 then I would need to go onto consider the appropriateness of the sanction imposed. At paragraph [10] of the Appellants written submissions it states that: -

> "*If this court is satisfied that those allegations ought to stand, the Pursuer accepts the sanction imposed was reasonably open to the panel and ought not to be disturbed…."*

Accordingly, having found that allegations 3b and 3c were not found established by a decision which was plainly wrong I need not go on to discuss and decern upon the Appellants submissions regarding the import of the error.

[27] In all the circumstances, I refuse the appeal. I refuse the pleas-in-law for the Appellant and sustain the pleas-in-law for the Respondent numbered two through to four.

[27] I find no expenses due or by as a result of this summary application.

Sheriff T Niven-Smith, Advocate

Dundee 17th October 2025