

Form 6.2 Note of appeal

Rule 6.2(1)

APPEAL

to

THE SHERIFF APPEAL COURT

Lisa Keogh, residing at [REDACTED]

PURSUER and APPELLANT

against

The University Court of Abertay University, Bell Street, Dundee, DD1
1HG.

DEFENDER and RESPONDENT

1. The appellant appeals to the Sheriff Appeal Court against the final judgment being the interlocutor of the Sheriff at Dundee dated 20 January 2023 finding the appellant liable for expenses of the action following the decision to sustain the respondent's second plea in law and to repel the appellant's pleas in law.

The court reference number is DUN-A247-21.

GROUND OF APPEAL

2. (i) The Sheriff erred in law by holding that the averments on direct discrimination were irrelevant (at [60] to [63] of the Sheriff's decision). The Sheriff erred by failing to consider whether on a fair reading of the pleadings the appellant's case was bound to fail (*Jamieson v. Jamieson*,

1952 SC (HL) 44, at page 48). The Sheriff erred by reaching conclusions and drawing inferences from

matters referred to in the pleadings. He should have confined himself to a consideration of whether the pleadings disclosed a situation in which it would be impossible to conclude other than that the respondent had not discriminated against the appellant (*Wilson v. Norwich Union Fire Insurance Society Ltd*, 1999 SLT 1139). Specifically, the Sheriff drew inferences from the functions and powers of the student disciplinary panel, the allegations made against the appellant, and the referral to the Student Disciplinary Board to reach his conclusions (at [61], Sheriff's decision). In doing so, he failed to consider or attach weight to the other factors in the pleadings, which on a fair reading, meant that the appellant's case was not bound to fail (at [44] to [57], Sheriff's decision). Namely, he failed to consider or attach weight to: the subject matter of the course focusing on gender, feminism and the law given the appellant's gender critical beliefs (Article 3 of Condescence, line 11 to 13); the nature of the allegations against the appellant which included "transphobia" and the timing of them (Article 3 of Condescence, line 13 to 19); the absence of any investigation by the respondent into the allegations raised by the appellant (Article 5 of Condescence, line 18 to 22; Article 8 of Condescence, line 6 to 9); the allegation being framed in a different manner before the Student Disciplinary Board (Article 6 of condescence, line 1 to 6); the level of publicity surrounding the matter (Article 6 of Condescence, line 6 to 11); the escalation of the complaint to the Student Disciplinary Board (Article 8 of Condescence, line 12 to 17); and, the finding that there was insufficient evidence to support the charge (Article 6 of Condescence, line 4 to 8).

- (ii) The Sheriff erred in law in his interpretation of detriment (at [61] and [62], Sheriff's decision). The Sheriff erred by not assessing detriment from the perspective of the appellant and by concluding that she had an unjustified sense of grievance (*Shamoon v RUC*, (2003) UKHL 11, at [105]). The Sheriff failed to address the absence of an investigation by the respondent into the allegations raised by the appellant. The respondent's Code of Conduct states that the University has jurisdiction over students where the conduct is likely to cause injury or damage the reputation of the University (production 7.3). The appellant averred that she had been subjected to "vile comments" and mocked by the course organiser (Article 5 of Condescence, line 18 to 22). The Sheriff also failed to address the impact on the appellant's final exams and submission dates for completion of course work (Article 9 of Condescence, line 11 to 24). Further, the Sheriff erred by failing to consider or attach weight to the averments that the appellant felt unable to make a formal complaint because of the stress which she was under (Article 9 of Condescence, line 7 to 11). Accordingly, the Sheriff erred when he concluded that the appellant had conflated her beliefs with the reasons for the respondent's investigation (at [62], Sheriff's decision).
- (iii) The Sheriff erred in law by stating that the appellant did not aver that she was treated less favourably than other students (at [63], Sheriff's decision). The appellant averred that she had been treated less favourably (Article 8 of Condescence, line 6 to 17). The Sheriff failed to consider that the appellant's protected characteristic may have been a subconscious or unconscious reason for the less favourable treatment (*R(R(E) v. JFS Governing Body*, [2009] UKSC 16, at [64]).

AVAILABILITY OF SHERIFF'S NOTE

3. The Sheriff has provided a note setting out the reasons for the decision appealed against, and a copy is appended.

INITIAL CASE MANAGEMENT: APPELLANT'S VIEWS

4. The appellant considers that the appeal should be appointed to the Chapter 7 appeal procedure because it would be proportionate to do so having regard to:
 - (i) The importance of the claim; and,
 - (ii) The complexity of the issues of fact and law raised by the appeal.

IN RESPECT WHEREOF

(Electronic Signature)
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AGENT FOR PURSUER &
APPELLANT