

SHERIFFDOM OF LoTHIAN AND BORDERS AT EDINBURGH

[2024] SC EDIN 27

EDI-B218-23

NOTE BY SHERIFF JULIUS KOMOROWSKI

in the application of

SCOTTISH CHILDREN'S REPORTER ADMINISTRATION

Applicant

for a stated case

Applicant: Deighan, Reporter

**Defender: Aitken, Advocate for the Natural Mother
Conroy, solicitor, for the Natural Father**

EDINBURGH, 18 April 2024

The sheriff, having heard parties on the reporter's application to state a case, refuses to state same.

Note

[1] Where a period of days is said to run "beginning with" a certain event, the day of that event is counted in that period (*Guyen v Secretary of State for the Home Department* [2010] CSIH 4, 2010 SC 555).

[2] Where some juridical act can be completed unilaterally, that the last day of a period permitted for that act falls on a day when the court offices are closed (such as a Sunday) is irrelevant to how long is in fact permitted for the act to be done (*B v Kennedy* 1992 SC 295).

An application for a stated case is an example of such a unilateral act (*M'Vean v Jameson* (1895) 23 R (J) 25); at or by the point of delivery the act is complete.

[3] An appeal against a sheriff's determination of whether a ground of referral to a children's hearing is established may be made by stated case (Children's Hearings (Scotland) Act 2011, s. 163(1)(a)(i)). Such an appeal "must be made before the expiry of the period of 28 days beginning with the day on which the determination ... appealed against was made" (s. 163(8)).

[4] Where, therefore, I determined on Monday 11 March 2024 that certain facts stated in support of a ground by the reporter were not established, the reporter's application for a stated case made on Monday, 8 April 2024 was late. The period of 28 days began on the date of decision, which is Day 1, and accordingly Day 28 was Sunday 7 April. The reporter conceded that the application could have been made on Sunday as it was a unilateral act which did not require any co-operation from the offices of court, but rather could have been done by e-mail.

[5] A court has no power to allow a statutory time limit to be extended except so far as statute provides. The extension of time by a day for acts that require the court's co-operation does not involve the court exercising any discretionary power to extend time but is rather concerned with legislative intent being honoured by avoiding the period permitted by the legislature being reduced by the closure of the court office (*Henderson v Henderson* (1888) 16 R 5). The Human Rights Act 1998, section 3, requires a *prima facie* absolute time limit to be read as including an exception where to apply the time limit would effectively deny the litigant the substance of their appeal rights (such as where the litigant has done all they reasonably could do to bring the appeal timeously) contrary to their right to a fair trial under the European Convention on Human Rights, Article 6 (*Pomiechowski v District Court of Legnica, Poland* [2012] UKSC 20, [2012] 1 WLR 1604). But the reporter, as a public authority, cannot rely on ECHR, Article 6. In any event, the reporter was no

prevented from appealing in a timely manner by some *force majeure* or the like but by what was described on behalf of the reporter as a “miscalculation as to time”.