SHERIFFDOM OF TAYSIDE, CENTRAL AND FIFE AT STIRLING

[2024] SC STI 41

PER-B157-24

JUDGMENT OF SHERIFF PRINCIPAL GILLIAN A WADE KC

in the Summary Application under section 22 of the Ethical Standards in Public Life etc (Scotland) Act 2000

COUNCILLOR GERRY McGARVEY,
c/o Scottish Labour Party, Donald Dewar House, 139 Norfolk Street, Glasgow, G5 9EA

Pursuer

against

THE STANDARDS COMMISSION FOR SCOTLAND,
a corporate body established under section 8 of the Ethical Standards in Public Life etc (Scotland) Act 2000 and with a place of business at Room T2.21, Scottish Parliament, Edinburgh, EG99 1SP

Defender

Pursuer: Dean of Faculty (Dunlop KC); Balfour + Manson LLP
Defender: Reid KC; Shepherd and Wedderburn LLP

Stirling, 17 October 2024

Introduction and Factual Background

[1] It is essential that the public can have confidence in the integrity, accountability, honesty and suitability of those who hold positions in public life. The Standards Commission for Scotland ("the Commission") is a statutory body established under The Ethical Standards in Public Life etc (Scotland) Act 2000 ("the 2000 Act"). Its purpose is to encourage high ethical standards in public life through the promotion and enforcement of codes of conduct. In addition to its role of promoting awareness and adherence to the codes it has an adjudicatory

role in holding public hearings to decide on alleged breaches of the codes of conduct, and where a breach is found to have occurred, to then determine the appropriate sanction.

[2] The pursuer, Councillor Gerry McGarvey, is an elected Councillor for Stirling Council ("the Council"). In addition, he is a member of Clackmannanshire and Stirling Health and Social Care Partnership Integration Joint Board, and the Board of NHS Forth Valley. Positions on Health Boards and Joint Integrated Boards are remunerated.

[3] On 2 March 2023, during a recess period following a debate about the Council's proposal to cut nursery provision in his ward, the pursuer became involved in an altercation with another Councillor. He stood over her and confronted her in an angry, aggressive and intimidating manner and called her a liar. Other Councillors present witnessed the incident and one intervened to prevent any escalation. Councillor McGarvey apologised immediately thereafter and followed his verbal apology with a text and an email.

[4] Nonetheless the matter was referred to a hearing before the defender and on 16 August 2024 the defender issued a decision in terms of which it found that the pursuer's actions amounted to a breach of Paragraph 3.1 of the Code, which provides: "3.1: I will treat everyone with courtesy and respect. This includes in person, in writing, at meetings…"

[5] Having found the breach established and having heard submissions in mitigation the defender imposed a sanction of suspension as a Councillor of one month in terms of section 9(1)(b) of the 2000 Act.

[6] The result of the imposition of such a sanction is to disqualify the pursuer, for life, from being a member of an integration joint board such as Clackmannanshire and Stirling Health and Social Care Partnership Integration Joint Board, and also to disqualify him, again for life, from being a member of a Health Board such as the Board of NHS Forth Valley all in terms of The Public Bodies (Joint Working) (Integration Joint Boards) (Scotland) Order 2014, Art 8(1) and

(2)(e), and the Health Boards (Membership and Procedure) (Scotland) Regulations 2001, reg 6(1)(j).

[7] These disqualification provisions arise, as a matter of law in consequence of the imposition of a sanction of suspension. No such consequence arises if the sanction is censure. However in terms of the 2001 Regulations, the Scottish Ministers may determine that a disqualification shall not apply to a person or category of persons: Regulation 6(2). Any disqualification under Regulation 6(1)(j) would therefore come to an end if the Scottish Ministers were to make such a determination. There is no such provision in relation to the 2014 Order.

Submissions

Pursuer

[8] The pursuer moved the court to quash the sanction of suspension imposed by the defender and replace it with a censure. There was no challenge to the finding of breach of the code but it was submitted that in the whole circumstances, and having regard to the consequences, suspension of one month was excessive, unreasonable and disproportionate. It was accepted that before this court could interfere with the sanction imposed by the defender the pursuer required to pass through certain "gateways". This involved either:

(1) identification of a serious flaw in the process or reasoning followed by the defender in reaching its decision, such as the failure to take into account a relevant factor ; or

(2) the court coming to the view that the sanction was plainly wrong, manifestly inappropriate , excessive or disproportionate.

[9] It was submitted that each basis was made out. In the first place the defender had failed to follow the laddered approach of looking at the lowest possible sanction and had proceeded directly to a determination that suspension was appropriate contrary to the approach in *Professional Standards Authority for health and Social Care* v *Nursing and Midwifery Council* 2024 EWHC 691 (Admin) at [35]. Secondly the failure to appreciate the seriousness of a censure for someone in the pursuer's position was a serious flaw in the defender's reasoning. Thirdly the defender's discounting of the consequences of the imposition of a suspension amounted to a serious flaw in the reasoning of the defender in respect that it had failed to take into account a material factor; *Mack* v *SCS* 2022 SLT 479 at [12]. Fourthly there was insufficient regard paid to the public interest and finally the failure to take into account the financial consequences for the pursuer represented a further flaw in the defender's reasoning.

[10] It was submitted that individually and cumulatively these factors when viewed in light of the whole circumstances, the absence of aggravating factors and the presence of mitigating factors rendered the suspension plainly wrong, manifestly inappropriate, excessive and disproportionate.

Defender

[11] The defender moved the court to uphold the sanction imposed. The panel had characterised the conduct complained of as "egregious and unacceptable". In the circumstances, the sanction imposed by the defender was within the range of reasonable sanctions appropriate to such a serious breach. It could not be said that the defender was plainly wrong and accordingly there is no basis for this court to intervene.

[12] The grounds of appeal fell into two categories. The first was the "censure issue" and the argument that the defender had failed to consider a lower sanction and the second was the

"disqualification issue" which focussed on the failure to take account of the consequences of the imposition of suspension. It was submitted that neither ground was well founded. Censure had been considered and discounted. The reasoning could not be faulted. The consequence of disqualification flowed from the suspension as a matter of law which had been approved by Parliament and represented a policy choice, endorsed by the legislature. A mechanism existed whereby the pursuer could apply to the Scottish Ministers to consider whether to relieve him from disqualification from Health Boards and that process directly addressed the public interest issue. It was not appropriate for the pursuer to use the appeal process to circumvent the policy choice of the Parliament. Similarly financial consequences attendant upon suspension and therefore disqualification were irrelevant to determination of the appropriate sanction.

Applicable Law

[13] In terms of the 2000 Act an appeal lies from the Commission to the Sheriff Principal of the sheriffdom within which the relevant Council has its principal office (section 22(1)). An appeal in respect of the sanction imposed may be taken on two grounds: (i) that the sanction imposed was excessive; or (ii) that the Commission has unreasonably exercised its discretion (section 22(3)(b)). On such an appeal, the Sheriff Principal may either (i) confirm the sanction; or (ii) quash the sanction and either substitute an alternative sanction or remit the matter back to the Commission (section 22(6)(b)).

[14] Where a Joint Board has been established in terms of the Public Bodies (Joint Working)(Scotland) Act 2014 membership is regulated in terms of The Public Bodies (Joint Working)(Integration Joint Boards)(Scotland) Order 2014. Provision is made for persons who are disqualified from membership in para 8. In particular it provides:

"(1) A person to whom paragraph (2) applies is disqualified from being a member of an integration joint board.

(2) The persons to whom this paragraph applies are –

…

(e) a person who has been subject to a sanction under section 19(1)(b) to (e) of [the 2000 Act]"

[15] A person who has been subjected to any sanction other than censure is therefore disqualified from membership. These is no provision made in the 2014 Order or elsewhere whereby such a person may apply to have such a disqualification disapplied or removed. The defender observes that the provisions of para 8(e) were added following consultation on the terms of the draft Order and can therefore be seen to be the result of legislative intent.

[16] The Health Boards (Membership and Procedure) (Scotland) Regulations 2001 are in somewhat different terms. They were amended by the Health Boards (Membership and Procedure)(Scotland) Amendment Regulations 2016. Regulation 6 (as substituted by Regulation 2(5) of the 2016 Regulations) makes provision for persons who are disqualified from membership. The relevant provision states :

"(1) A person is disqualified from being a member if a person –

…

(j) is or has been subject to a sanction under section 19(1)(b) to (e) (action on finding of contravention) of [the 2000 Act].

(2) Disqualification under this regulation (or part of it) does not apply to such person or category of person as the Scottish Ministers may determine."

[17] Accordingly there is a statutory mechanism by which a person who has been disqualified as a result of a sanction imposed for a contravention of the code may seek to have the Scottish Ministers determine that such disqualification should not apply.

Decision

[18] The starting point is to identify the test which this court is bound to apply in considering whether or not to interfere with the defender's decision given that it is a specially convened and trained body with statutory authority to adjudicate in such matters. There was no dispute between the parties that this was properly articulated in *Professional Standards Authority for Health and Social Care* v *Nursing and Midwifery Council* 2017 SC 542 at [25]:-

> "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. It is in a better position than the court to determine whether, for example, a nurse's fitness to practise is impaired by reason of past misconduct, including whether the public interest requires such a finding. The same would apply in the context of a review of a penalty… The approach is the same whether the question is one of insufficiency or undue harshness."

[19] It was readily acknowledged by the pursuer that unless he could identify a serious flaw in the process or reasoning or the decision could be shown to be plainly wrong or "manifestly inappropriate" the decision must stand and this court would have no basis upon which to interfere.

[20] However the pursuer also invited the court to have regard to *Ghosh* v *General Medical Council* 2002 1 WLR 1915 para 34 which suggested that the court, while affording respect to the judgment of the specialist tribunal should not feel unduly inhibited from intervening if the sanction imposed was "more than was warranted in the circumstances." While this is clearly correct as a generality it should be borne in mind that what is under consideration is the sanction imposed by the relevant tribunal albeit that is to be judged in light of the circumstances. *Ghosh*, in common with other authorities cited, focussed on whether the sanction selected by the committee, namely removal of a doctor from practice was appropriate

and necessary in the public interest or was excessive and disproportionate. In those cases the removal or erasure of the practitioner concerned was entirely a matter for the discretion of the committee when balancing the public interest with the gravity of the misconduct. In those cases the committee required to consider the need to protect the public from a doctor who had failed to adhere to professional standards. One can understand why there might be a difference of approach depending on whether the misconduct related to professional performance or not.

[21] There is a nuanced difference in this case. Although suspension itself may be viewed as a form of short term "removal" it is the consequence of disqualification which would be analogous to "erasure". That was not a matter for the discretion of the defender. That was a consequence of the far less draconian sanction of one month's suspension imposed by the defender. The issue for the defender was one of public confidence rather than public protection.

[22] So far as the first ground of appeal is concerned it is accepted that the range of available sanctions should be considered in ascending order until an appropriate disposal is identified (*Professional Standards Authority for Health and Social care* v *Nursing and Midwifery Council (supra)* para 35). However the argument that the defender failed to follow this approach is one of form rather than substance when one considers the totality of the decision. In imposing the sanction of suspension and providing reasons for so doing the defender considered "first whether the interference (proposed sanction) was the minimum necessary…" (page 16 of the decision). This statement would tend to show that the laddered approach advocated by the pursuer was at the forefront of the defender's mind.

[23] In coming to its decision the defender has had regard first of all to the seriousness of the breach and, having had the benefit of hearing and seeing the witnesses, determined that it was "entirely inappropriate and egregious". It noted that the complainer should be able to attend Council meetings without being the subject of such conduct. The Panel further agreed:-

> "… that the conduct had the potential to lower the minimum standard of public debate and to undermine public confidence in local government, the Council and the role of a councillor."

It therefore viewed the conduct as serious and considered the wider ramifications for third parties and the institutions concerned. Despite the pursuer's submission that this was a momentary loss of control for which an immediate apology had been tendered the effect on the complainer and other councillors who had been subjected to or witnessed the behaviour has perhaps been under appreciated by the pursuer.

[24] The pursuer's submission fails to take account of what is said at page 17 of the decision:

> "The Panel was of the view, however, that a censure, being the minimum sanction available to the Panel, was not appropriate in light of the seriousness of the conduct and impact it would have had on the Complainer and others who witnessed the incident. … The Panel agreed that a censure would not achieve the aims, as outlined in the Policy on the Application of Sanctions, of:
>
> - preserving the ethical standards framework;
> - promoting adherence to [the Code];
> - maintaining and improving the public's confidence that councillors will comply with the Code and will be held accountable if they fail to do so; and
> - achieving credible deterrence."

The defender has therefore expressly considered and excluded censure as an appropriate sanction and provided cogent reasons for so doing. Accordingly it cannot be said that an error arises or that there is any serious flaw in the process.

[25] In relation to ground 2 similar considerations apply. It is accepted that censure is a serious sanction which publicly marks disapproval of the pursuer's conduct and would serve as a marker that future transgressions would be dealt with more severely. *General Medical Council* v *Medical Practitioners Tribunal* 2019 SLT 24 and *General Medical Council* v *Rezek* 2023 EWHC 3228(Admin) para [138]. However the defender would have been aware of the impact of censure as it is bound to have regard to its own policy on the application of sanctions which is hyperlinked in the decision itself and which defines censure at paragraph 2.1;-

> "Censure: Censure is a formal recording of the Standards Commission's severe and public disapproval of the Respondent"

[26] Section 19 obliges the Standards Commission to impose a sanction upon the finding of a contravention. It is not open to them to make a bare finding. Accordingly censure is the least serious option available. Section 19(1)(a) explicitly refers to "censuring, but otherwise taking no action against, the councillor or member"; Section 19(1)(b) and (c) provide for various types of suspension for up to one year. It is clear that the suspension imposed in this case falls at the lower end of the permitted range. Having regard to the available options and the reasoning referred to in paragraph [24] above it is clear that the defender was concerned to address the effect the pursuer's conduct had on his colleagues and was mindful that the complainer in particular should be able to attend meetings without fear of exposure to such conduct. It was in order to meet those objectives that the suspension was imposed. The Panel's reasoning is fully articulated at the end of the second paragraph on page 18. Read as a whole the decision makes clear that censure was considered but deemed to fail to meet the aim of protecting the complainer and others in this case.

[27] In *GMC* v *MPT* the issue was whether the failure to impose a disciplinary sanction on a doctor at all in respect of inappropriate sexual conduct towards a junior doctor adequately met the purposes of public protection, maintaining public confidence and proper professional standards. However at paragraph [31] the Lord Justice Clerk (Lady Dorrian) makes plain that the decision reached in that case was "exceptional" and that in similar circumstances the sanction of suspension might well be required to mark the seriousness of the conduct.

[28] In my opinion little assistance can be derived from this authority other than to underline that each case will turn on its own facts and circumstances and that there is significant discretion afforded to the specialist tribunal to select a sanction which it considers meets the

objectives prescribed. The fact that another tribunal might have selected a different sanction is nothing to the point. In the instant case there was nothing exceptional which would mitigate against the imposition of a sanction greater than the minimum available yet at the lower end of the possible period of suspension. It cannot be said that the defender trivialised censure but rather that it did not consider it appropriate to address the effect which the pursuer's outburst had had on colleagues.

[29] The third ground of appeal relates to the consequences of the suspension and goes to the very heart of the matter. The result of the imposition of the sanction of one month's suspension is to disqualify the pursuer, for life, from being a member of an integration joint board such as Clackmannanshire and Stirling Health and Social Care Partnership Integration Joint Board, *et separatim* to disqualify him, again for life, from being a member of a Health Board such as the Board of NHS Forth Valley: cf, respectively, The Public Bodies (Joint Working) (Integration Joint Boards) (Scotland) Order 2014, Art 8(1) and (2)(e), and the Health Boards (Membership and Procedure) (Scotland) Regulations 2001, reg.6(1)(j). It is not insignificant that these posits are remunerated which is a matter directly relevant to ground 5 and the economic impact on the pursuer. The pursuer argues that the decision to discount the consequences of the imposition of a suspension and its lifetime duration involves a serious flaw in the defender's reasoning and amounts to a failure to take a material factor into account. He relies on *Mack* v *SCS* 2022 SLT 479 at [12] to support the proposition that the consequences of a sanction must be looked at in determining whether the sanction itself is proportionate or excessive.

[30] Looking again at the body of the decision it is evident that, far from failing to take into account the fact that suspension would result in disqualification of the pursuer from sitting on certain Boards, the defender itself raised and addressed this consequence head on. The issue of disqualification is specifically dealt with in the last two paragraphs of page 17. The defender

knew that any sanction other than censure would result in disqualification. The panel had clearly considered whether the consequences for this particular pursuer ought to be taken into account so as to reduce the severity of the sanction it imposed. It concluded:

> "The Panel noted that this meant that the imposition of any sanction, other than a censure, on the respondent, would result in his disqualification from being a member of the Health Board and the Health and Social Care Integration Joint Board. … The Panel did not consider that it would be fair to the Complainer (or other Respondents), or appropriate in terms of promoting adherence to the Codes and maintaining confidence in the ethical standards framework, for a less severe sanction to be imposed on the Respondent, than might otherwise have been agreed, solely to mitigate against the consequences of the Order and Regulations."

[31] It is not the case, as contended for by the pursuer, that the defender failed to take this factor into account. Rather it took full account of the inevitable consequences for the pursuer but nevertheless considered that a short period of suspension was the appropriate sanction in all the circumstances. That being so there is no serious flaw in the reasoning.

[32] In the course of discussions the court considered analogies with other situations in which certain consequences arise as a matter of law such as disqualification following a conviction for a drink driving offence or the imposition of the notification requirements of the Sexual Offences Act 2003 on conviction for a sexual offence. Little if any discretion is given to the sentencer to depart from those inevitable outcomes. That is because Parliament has legislated separately and intentionally for such consequences as a matter of public policy. The fact that an accused will be made subject to notification requirements for a significant period cannot affect either the decision to convict of a sexual offence or the nature of the sentence imposed. The comments in *Fergusson* v *HMA* 2022 S.C.C.R., although obiter are apposite in this respect.

[33] Similarly in this instance disqualification arises as a result of deliberate statutory provision. In relation to membership of a Health Board the door is not firmly closed and the

pursuer may apply to the Scottish Ministers to disapply this provision. That is a matter upon which the Scottish Ministers retain deliberate discretion but addresses concerns about those with an otherwise unblemished record being disqualified from public service indefinitely as a result of a short period of disqualification. The mechanism for relief from any perceived harshness is embodied in legislation should the pursuer seek to avail himself of it. Disqualification on suspension of any duration is intentional.

[34] The decision in *Mack* v *SCS(supra)* paras [12]-[18] may superficially suggest that the consequences of a sanction should be given weight but read in its entirely it states no more than the general principle that each case will depend on its own particular facts and circumstances. The Lord Justice Clerk (Lady Dorrian) said:-

> "[12] The panel required, and this court requires, look at the practical implications of the sanction imposed (*Heesom*, para 221(4)). If not disqualified from doing so, the last date on which the appellant could be nominated to stand in the 2022 election is 30 March 2022. The period between 10 May 2021 and 29 March 2022 is 10 months and 19 days. A disqualification in excess of that period will prevent the appellant's nomination. The next local government elections after those in 2022 will be in May 2027.
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> [13] The weight to be given to the fact that a disqualification period extends past the date for nomination for the next election will vary from case to case. Plainly, since the maximum available disqualification is 5 years, the 2000 Act envisages that in some cases an appropriate sanction may, because of the normal cycle of elections, prevent someone from contesting the next election. Depending on the circumstances, a disqualification period which has that effect may be proportionate and appropriate. However, in other cases it may be a very material factor pointing to the need to select a period which does not have that effect, in order to avoid a sanction which is disproportionate. If the shorter period imposed remains sufficient to serve the sanction's aims, it will be both appropriate and proportionate."

[35] The issue in *Mack* was temporal. It was never the intention of the panel in that case to disqualify the pursuer for an extra 5 years. What happened was therefore unintentional. If the same sanction was imposed at a different time it would have had different consequences. The distinguishing feature in the instant case is that the panel did not consider that a lesser sanction

would serve the aims of the code. Here the sanction imposed would always have the same consequence irrespective of when it was imposed because that is provided for elsewhere in legislation. For these reasons the court does not accept that the defender failed to take the consequences into account as a material factor. On the contrary it expressly balanced these consequences with other considerations and decided that a short suspension met the legitimate aims of the code. Consequent disqualification is the legitimate intention of Parliament.

[36] The fourth ground relates to the public interest. Again a balancing act must take place. The public clearly has an interest in allowing dedicated and experienced politicians to serve on Boards such as Joint Integrated Boards and Health Boards. However the public must also have confidence that those who do so are fit and proper persons to hold office. This is not a case such as *Giele* v *General Medical Council 2006 1 WLR 942* where the sanction in contemplation was potentially career ending. The pursuer in this case is and will remain a councillor. It is not suggested that his skills in this regard are extraordinary albeit he is experienced and has demonstrably contributed a great deal to public life. That, however, is his choice and in doing so he agreed to abide by certain standards. He will not be precluded from serving on all Boards. Indeed, as matters currently stand, he has a legitimate avenue to pursue in order to regain his position on the Health Board. It cannot be said that the wider public interest was overlooked. The defender acknowledged the factors which were advanced in mitigation which included lifelong devotion to public life (pages 15-16). In the circumstances of this case the public will not lose a politician or an experienced councillor. His suspension for a month serves to mark disapproval of his behaviour and gives the complainer protection to go about her duties without intimidation. His route back to Health Board membership will depend on the attitude of the Scottish Ministers who have deliberately retained discretion in this area to ensure the maintenance of control and confidence in who is appointed to such positions. Accordingly I

am not persuaded that the public interest in retaining the services of the pursuer for the period of his suspension nor indeed his disqualification from certain positions outweighs the public interest in addressing his behaviour.

[37] Finally the pursuer invited the court to find that the defender failed to consider the financial consequences for the pursuer of a lifetime ban on holding a position on a Board. I do not accept the submission that the consequence of the suspension is to prevent the pursuer from earning such a salary for the rest of his life. That is a gross overstatement. He has already secured a position on another Board demonstrating his appointability. He can apply to the Scottish Ministers in relation to the Health Board and there is nothing to prevent him taking up other remunerated posts. It is very often the case that convictions for even quite minor offences can affect someone's employment. Adjustments may have to be made. An individual may have to rehabilitate himself in the eyes of an employer. The pursuer here is in no different a position. His suspension as a councillor, his main role, is short. He can and already has sought alternative routes to secure an income. The requirement to do so does not of itself suggest that the sanction imposed was either excessive or disproportionate. Individual hardship incurred by the imposition of a sanction carries little force (*Bolton* v *Law Society* 1 WLR 512).

[38] In summary I am not persuaded that there has been any serious error of process or reasoning on the part of the defender and accordingly those particular gateways remain closed to the pursuer and indeed to the court which cannot interfere with the sanction unless such an error is identified or it can be demonstrated that suspension was plainly wrong, manifestly inappropriate, excessive and disproportionate.

[39] The defender has explained that it considered the behaviour to be serious, and describes it repeatedly as egregious and inappropriate. There is no suggestion that the defender was not entitled to that view on the evidence. The question is whether on any view a sanction of one

month's suspension, being at the lower end of the period of suspension available could be said to be excessive. The panel has explained why the lowest available sanction was not deemed sufficient in the circumstances. In my view a short suspension of itself could not possibly meet the test of being plainly wrong, manifestly inappropriate, excessive or disproportionate. It is only when that suspension is viewed in light of the consequence of disqualification that any issue arises. That disqualification is not a matter within the defender's discretion. It is a legal consequence of the selected sanction and one about which the panel were well aware. The only way in which that consequence could be avoided would be for the defender to select a sanction which it did not consider appropriate in the circumstances and which failed to meet the identified aims of the code, particularly with regard to the effect the pursuer's behaviour had had on the complainer. The existence of Regulation 6(2) of the 2001 Regulations as amended goes some way to mitigate any harshness which may be perceived in respect of the legislative provisions and undermines further any suggestion of disproportionality or excess.

[40] Another panel on another day may or may not have reached a different conclusion. That is not the test. It cannot be said that the defender's panel has erred in the manner suggested by the pursuer and accordingly the sanction of suspension must stand. I shall therefore sustain the defender's second plea in law and repel the pursuer's pleas in law and dismiss the application.

[41] I was not addressed on the question of expenses. In ordinary course expenses should follow success. I will however afford parties 7 days in which to lodge any written submissions should they wish to make representations to the contrary, failing which I shall pronounce an interlocutor making an award of expenses in favour of the defender.