Glasgow **2 March 2026** **Sheriff S Reid**

The sheriff, having resumed consideration of the cause, and of the pursuer's opposed motion number 7/18 of process, Grants the same, whereby:

1. Repels the defenders' first and second pleas-in-law;
2. Sustains the pursuer's pleas-in-law;
3. Allows the pursuer to uplift and inspect the documents and property listed in the Schedule to the summary application, so far as recovered by the Commissioner and lodged in the hands of the Sheriff Clerk, Glasgow, and to take copies or extracts thereof, and to use them for the purpose of the proceedings which the pursuer decides to bring and to which this summary application relates; meantime,
4. *quoad ultra* Reserves *sine die* to pronounce further thereon.

Sheriff Reid
Sheriff

This document has been electronically authenticated and requires no wet signature.

NOTE:

This is a summary application under the Administration of Justice (Scotland) Act 1972, section 1(1) for orders for commission and diligence for the recovery of documents and property in respect of which questions are said to relevantly arise in future proceedings contemplated by the pursuer. The summary application proceedings have been protracted.

By a previous interlocutor a commissioner was appointed. The commission was executed. Recoveries were lodged in the hands of the Sheriff Clerk.

In June 2025, the pursuer lodged a motion (number 7/18 of process) for uplift and inspection of the recoveries. The motion was opposed. By interlocutor dated 12 June 2025, an opposed motion hearing was assigned, but the hearing was subsequently continued. Eventually, the motion called before me on 18 December 2025.

In advance, parties had lodged detailed written submissions in support of their respective positions, together with multiple authorities.

Having taken time to consider matters more fully, I am persuaded that the pursuer's submissions are to be preferred. Accordingly, I shall grant the pursuer's motion number 7/18 of process and authorise the uplift and inspection of the remaining recoveries for the reasons set out in those submissions.

In issuing only this brief Note appended to my interlocutor, I intend no disrespect to the excellent written and supplementary oral submissions for both parties.

Instead, conscious of the considerable delay that has occurred to date (for various reasons) in these summary application proceedings, I am simply trying to ensure that a decision is issued to parties on this final substantive aspect of the application with all due expedition.

In summary:

1. As a starting point, the 1972 Act permits the recovery of documents and property in respect of which "a question may relevantly arise" in contemplated proceedings.
2. The merit or relevancy of the contemplated proceedings is not to be scrutinised in detail, still less determined, in these pre-action summary proceedings. All that need be presented is a *prima facie* intelligible and stateable case.
3. Likewise, the relevancy of the documents to those contemplated proceedings is not to be subjected to forensic examination. The issue is whether a question "may relevantly arise" in respect of the document or property sought to be recovered.
4. Lastly, it is to be noted that the statutory test is not whether the evidence sought to be recovered is admissible, but whether it *may* be *relevant*. The proper forum for a final adjudication on the issue of admissibility is within the contemplated proceedings, once raised.
5. Further, merely because evidence has been obtained illegally – or is otherwise tainted with some sort of illegality – does not necessarily mean that it is inadmissible in civil proceedings.
6. In Scots law, at common law, the court has a discretion to admit or exclude unlawfully obtained evidence having regard to whether, in all the circumstances, it is fair to admit it. In assessing whether to admit unlawfully obtained evidence, the court may consider *inter alia* (i) the nature of the evidence, (ii) the purpose for which it would be used in evidence; (iii) the manner in which it had been obtained, (iv) whether its introduction would be fair to the party from whom it had been illegally obtained and (v) the extent to which the admission of the evidence would throw light on disputed issues and enable justice to be done (*Duke of Argyll v Duchess of Argyll (No. 3)* 1963 SLT (Notes) 42, 43; *Baronetcy of Pringle of Stichell* 2016 SC (UKSC) 1, paras 76-78).
7. It is also relevant to note that, here, we are not dealing with evidence (i.e. the recoveries) which was itself unlawfully obtained; nor are we dealing with evidence (the recoveries) which was created, or came into being, by unlawful means; rather, the

recoveries have, and always have had, an independent existence, but their discovery is said to *derive* from information (workplace audio recordings) that was allegedly unlawfully obtained in breach of data protection legislation.

8. The defenders' counsel expressly advised at the opposed motion hearing that no argument was advanced (for now) in relation to the admissibility of the recoveries. (Specifically, the arguments to this effect in paragraphs 53 & 54 of the defenders' note of arguments were not advanced.) The defenders' position on the issue of admissibility was merely reserved.
9. In my judgment, that was also a significant concession. No challenge was being taken (at the opposed motion hearing) to the issue of the admissibility of the evidence. That being so, it appeared to me that the court's discretion was *prima facie* firmly weighted in favour of granting the order sought – in order to authorise the uplift and use of manifestly relevant (and, absent argument to the contrary, *prima facie* admissible) evidence. In those circumstances, it is difficult to understand why the judicial discretion would not be so exercised.
10. Instead, the defenders sought to argue that the granting of the order would be unlawful because (i) it would involve the grant of "interim or provisional measures" derived from the pursuer's unlawful conduct, when the pursuer was not coming to court with "clean hands" (*Ben-Arous v Mediouni* [2015] CSOH 124, para 21); and (ii) because it would breach the defenders' right to privacy in the workplace under the UK General Data Protection Regulation and Article 8, ECHR. Much weight was placed on the pursuer's alleged failure to aver "Convention-complaint warnings" to employees as to the potential for workplace surveillance *a fortiori* for such an allegedly disproportionate length of time.
11. In my judgment, none of these arguments for the defenders was persuasive.
12. Firstly, the grant of a Section 1 Order was not an interim or protective order akin to the situation in *Ben-Arous*.
13. Secondly, the circumstances set out in the pursuer's note of arguments (paragraphs 57 & 58) demonstrate that the first defender's could have had no expectation of privacy. The content of the impugned recorded conversations had nothing to do with the first defender's private life. Besides, it was averred that she had been given contractual notice that she would have no such expectation in her work communications. Article 8, ECHR is simply not engaged.
14. Thirdly, even if Article 8, ECHR was applicable (which is not accepted), the alleged interference with that right was justified in terms of Article 8(2), ECHR (*Thorntons Investments Holdings Ltd v Matheson* 2023 SLT 1305, paras 90-91; *Cowie v Vitality Corporate Services Ltd* 2024 SLT 713, paras 105-107). It was done in accordance with law, to pursue a legitimate aim, and was proportionate, for the detailed reasons set out in the pursuer's written submissions.
15. Fourthly, the alleged GDPR breaches were unpersuasive for the reasons set out in the pursuer's written submissions. The Regulation does not create a right of confidentiality; a data protection impact assessment, being merely a "process", does not require to be in writing; the pursuer relevantly avers carrying out such an assessment; the duration of the surveillance was *ex facie* proportionate.
16. In any event, ultimately, the defenders' protestations of GDPR illegality or multiple statutory breaches come to nothing for two key reasons.
17. First, even if the impugned surveillance were unlawful and in breach of multiple GDPR provisions, that does not render the evidence derived from those alleged breaches inadmissible in the contemplated proceedings.
18. Second, even if the impugned surveillance were unlawful and in breach of multiple GDPR provisions, that does not affect the recoverability of the excerpted recoveries, pursuant to a Section 1 Order. The evidence seized by the Commissioner in the dawn raid already existed; it was not "created" by the alleged illegality or data breach; it was there to be discovered, all along, independently of any preceding alleged unlawfulness or statutory breach; the preceding alleged illegality does not contaminate the probative quality of that independently-existing material; and, in any event, the independent intervention of the court in granting the Section 1 Order made the dawn raid the occasion, rather than the cause, of the discovery of that separate and additional evidence then seized; so the excerpted recoveries cannot properly be said to be "derived" from the surveillance evidence (*HM Advocate v P* 2012 SC 108, para 27; *Thorntons Investment Holdings Ltd, supra*, paras 92-93).

For all of these reasons, I have granted crave 3 of the summary application. All other matters (including the issue of expenses) are reserved meantime. I shall leave matters on the basis that a written motion should be intimated and lodged for further orders, if any are to be sought.