

SCOTLAND / JUDGMENT

JQ v CC [2015] ScotSC 154 (10 March 2016)

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[2015] ScotSC 154 [New search] [Help] SHERIFFDOM OF GLASGOW AND STRATHKELVIN AT GLASGOW F1467/07 JUDGMENT OF SHERIFF AISHA Y ANWAR in the cause JQ Pursuer against CC Defender Act: Moss, Solicitor Alt: Matheson, Solicitor (F590/15 - For DC: Mr Bell, Advocate instructed by Harper Macleod, solicitors) GLASGOW, 1 March 2016. The sheriff having resumed consideration of the cause, finds in fact: (1) The pursuer and the defender are both 35 years of age and are respectively the father and mother of J, born on 10 December 2005. J is currently 10 years old. (2) The pursuer obtained a Masters Degree in Sound Design in 2014. He worked in sound design and toured various art venues and theatres until he took employment with Glasgow City Council as a part time library assistant in 2015. The defender is a graduate of the Glasgow School of Art and is currently employed by the NHS as a physiotherapist assistant. (3) The defender was born in Amiens, France. The pursuer was born in New York but has lived in Glasgow for over 13 years. The parties met in 2004 when the defender came to Glasgow to study at the School of Art. The defender became pregnant in February 2005. The defender had a difficult pregnancy and was diagnosed with Lymphocytic Hypophysitis, an inflammation of the pituitary gland. Her symptoms included intense headaches, temporary partial blindness, and exhaustion. (4) Having lived together for a short period, the parties separated soon after J's birth. The pursuer moved into a property located in close proximity to the defender. (5) The defender returned to her parents' home in France in early 2006 with J. By summer 2006, she had returned to Glasgow, resumed her studies at the Glasgow School of Art and obtained a part-time position at the Centre for Contemporary Arts. (6) Between 2006 and 2008, the pursuer exercised contact with J on an ad hoc and irregular basis. During this time, the pursuer was facing a number of personal difficulties, including in relation to his employment, accommodation and alcohol misuse. (7) On 12 March 2007, the pursuer pled guilty to an offence under section 127 of the Communications Act 2003 in relation to sending the defender threatening text messages. He was admonished. The defender sought and obtained an interim interdict and non-harassment order against the pursuer. The pursuer continued to have ad hoc and irregular contact with J. (8) The pursuer raised proceedings

seeking an order for parental rights and responsibilities and an order for contact in respect of J. On 9 December 2008, the parties having agreed a joint minute, the pursuer was granted an order for parental rights and responsibilities in respect of J. He was also granted an order for (a) residential contact every second weekend from 10am on a Saturday until 5pm on a Sunday (b) contact once a week as agreed between the parties and (c) additional contact as agreed between the parties. (9) From December 2008, the pursuer and the defender worked together to co-parent J. They were able to co-operate and to arrange contact in a manner which was in J's best interests and which reflected their working commitments. Currently, J resides with the pursuer every alternate weekend from Friday at 5pm to Monday at 9am, when the pursuer takes J to school. In addition, the pursuer collects J from school up to three days each week and cares for him until 5pm to accommodate the defender's working hours. J resided with the pursuer for a two week period in the summer of 2015. Until the raising of these proceedings, the pursuer and the defender remained on amicable terms and were able to arrange contact flexibly and by agreement. At all times that J has resided in Glasgow, the pursuer has lived in close proximity to him. (10) The defender met DC in October 2006. DC is 43 years old and was born in Dublin. He is a successful self-employed artist. He has lived in Glasgow since 1996. He moved to Glasgow to be with his partner, KV who is Scottish, and who was at the time, due to give birth to his son, E. Upon separation from KV, DC agreed a shared care arrangement in respect of their son, E. (11) The defender and DC entered into a relationship in early 2007. The defender and J moved into DC's home around early 2009. During periods of residential contact, E resided with DC, the defender and J. (12) Difficulties arose in the relationship between the defender and E, and in the relationship between the defender and DC. The defender wished to move out of Glasgow, however DC refused to leave due to his commitments to his son, E. The relationship between the defender and DC ended in October 2009 and the defender again returned to her parents' home in France with J. J attended pre-school in France. The defender and DC remained in contact with each other. (13) In early 2010, the defender obtained employment as a designer and general manager for a weaving business in the Isle of Mull. The defender moved to Kintra. J began his primary education at a school in a village nearby. (14) DC visited the defender in Kintra. In August 2010, the defender became pregnant. DC was unwilling to move to the Isle of Mull due to his commitments to his son, E, in Glasgow. The defender and DC decided to live together once more, in Glasgow and the defender returned to Glasgow in March 2011. DC purchased a flat in the west end of Glasgow. DC and the defender were registered as the heritable proprietors. (15) F was born on 25 May 2011. F is currently 4 years old. DC is his father. The defender is his mother. (16) Difficulties again arose in the relationship between the defender and DC. On 27 August 2011, while DC attempted to prevent the defender from self-harming by restraining her, the defender fell and broke her finger. The defender and DC separated after this incident with DC moving out of their flat. (17) The defender continued to reside in the flat in the west end of Glasgow with J and F. There was no outstanding mortgage for the flat. For an eighteen month period after separation, DC paid the utility bills, factors fees, communal

repairs and for F's nursery fees. When the defender was struggling to pay the council tax for the property, DC assisted her. After the defender gained employment, DC paid her £300 per month as maintenance for F and continues to do so. During 2012 and 2015, DC and the defender had discussions regarding the sale of the flat and used the services of mediators. The defender and DC entered into a Minute of Agreement in relation to the division of the sale proceeds in early April 2015 (item 5/3/9 of process in F590/15). (18) Currently, DC has care of F (a) each alternate weekend from Friday at 5pm to Monday at 8.45am when F is taken to nursery (b) each Monday, Tuesday and Wednesday after nursery until 6pm and (c) during holiday periods as agreed between the defender and DC. Contact has generally operated flexibly and by agreement. (19) In July 2014, the defender met JB during a trip to the Isle of Mull. They met again in September 2014 and were thereafter in daily contact by telephone and by email. A few weeks later, they met again in Shropshire. JB first met J and F in October 2014 when he spent a weekend in Glasgow. He met the children again in November 2014 when they enjoyed a day trip to the west coast. The longest period of time JB has spent with the children has been a period of 10 days over the Christmas holiday period in 2014/2015. Since then, he has spent time with the children on average, twice a month and for longer periods during holidays. (20) The defender and JB made a decision to cohabit in early 2015 and began looking for suitable accommodation. They got engaged in March 2015. The children first visited JB in Exeter in March 2015. (21) JB is a 37 year old man. He has no children. Since graduating, he has been engaged largely in employment which is related to agriculture. His parents own, work on and reside in, a farm in Devon. Since 2012, he has been a partner of the family farming business which comprises inter alia 170 acres, rears an award winning herd of cattle and produces cider apples. The majority of the day to day tasks involved in the running of the farm are carried out by JB and by his parents. The business cannot meet the costs of employing full time staff. JB's parents are each over seventy years old. It is expected that the farming business will be transferred to him in the future. He currently has a controlling interest in the farming partnership. Selling the farm will give rise to a substantial capital gains tax liability. His drawings from the family business are approximately £300 per month and the profits of the farming business for the year ending September 2014 were approximately £1500. He also derives rental income of approximately £1500 per month from a flat he owns in London. (22) Between late January and mid February 2015, the defender and the pursuer exchanged a number of text messages regarding the defender's desire to relocate. The pursuer repeatedly asked the defender why she wished to move out of Glasgow. The defender insisted that she had never wished to settle in Glasgow and wished to move to be closer to her parents (items 6/90-106 and 6/144 of process). She did not respond directly to questions regarding whether she intended to co-habit with another man. (23) In April 2015, the defender entered into negotiations to purchase a property in Exeter with a purchase price of £292,000. Title was taken in her sole name. She obtained entry to the property in June 2015. The property was purchased with the financial assistance of her parents. The property provides ample and suitable accommodation for the defender, JB and for both J and F. It is located within walking distance of a number of local amenities

including a sports club, a football club and a swimming pool. It is within walking distance of a Junior School and an Infant School both of which are likely to provide the children with a high standard of education. It takes approximately 25 minutes by road to travel to JB's farm from the property in Exeter. J and F visited the property in May and June of 2015 and more recently, have spent alternate weekends with the defender and JB at the property in Exeter. (24) The defender has been offered employment as a physiotherapist technical instructor at an NHS hospital in Exeter. The defender has no family or friends in Exeter upon whom she could rely for support, with the exception of JB and his parents. (25) On 27 April 2015, the defender met with the pursuer. She provided the pursuer with a 'fact sheet' providing details of the property she had purchased, available schooling for both J and F and providing details of travel options to and from Exeter. She also provided the pursuer with information relating to job opportunities for the pursuer in Exeter and encouraged him to consider moving to Exeter. During this meeting, the defender did not advise the pursuer that she was engaged to JB. She insisted that the reason for her decision to relocate to Exeter was to be close to her family in France. (26) On 28 April 2015, the defender informed DC by email that she intended to relocate to Exeter (item 5/37 of process in F590/15). She attached a copy of the same 'fact sheet' which she had provided to the pursuer. DC had not previously been advised of the defender's intention to move out of Glasgow or of her engagement to JB. The defender wrote: "I am writing to tell you that I will be leaving Glasgow to move to Exeter with J and F. I plan to leave in July, so that we will have time to settle before J and F start school together in Exeter in September. As you know, I have always wanted to be closer to France and my family, and Glasgow was never the place I wanted to live nor bring the children up. Furthermore, my personal circumstances have changed, as I am engaged to my partner, [JB], and we wish to live together. . . . I would like to assure you that I would always intend to promote fair and reasonable contact between you and F. I truly hope that we can cooperate and together create a positive and sustainable future for F. I look forward to hearing back from you to discuss the contact arrangements . . ." (27) DC has raised proceedings in this court seeking inter alia interdict preventing the defender from removing F from the jurisdiction of this court (Court Reference F590/15). (28) On 14 August 2015, following the sale of the flat in the west end of Glasgow, the defender received the sum of £113,638.00 from the free proceeds and DC received the sum of £333,094.90. The defender used some of these funds to repay, in part, the loan advanced to her by her parents for the purchase of the property in Exeter. (29) Prior to the sale of the flat in the west end of Glasgow, DC offered to provide financial assistance to the defender to enable her to rent suitable accommodation until the outcome of these proceedings was known. The defender refused that offer. (30) Upon the sale of the flat, the defender moved into a one bedroom flat in Glasgow with J and F. That accommodation is inadequate and unsuitable for the children. The defender moved into this property with limited belongings. She arranged for the family belongings to be sent to the property in Exeter. (31) The defender is a devoted mother who has endeavoured to provide a high standard of care for both J and F following the breakdown of her relationships with their fathers. However, the defender has, on occasion, disciplined the

children by physical means. The defender is prone to emotional and angry outbursts. The defender has experienced episodes of low mood and of self-harming behaviour. She self-harmed during her relationships with both the pursuer and DC. She has not been diagnosed with depression. She does not suffer from any mental health disorder. (32) The pursuer and DC are both devoted fathers who have each played a very significant role in their respective children's lives following separation from the defender. (33) Each of J and F's parents has different parenting styles but they have largely been able to communicate and share information regarding the children's health and wellbeing. (34) J and F each enjoy an extremely close and loving relationship with their respective parents. They each also enjoy a very warm and affectionate relationship with their maternal grandparents who reside in France, and with whom they regularly spend significant periods of time during holidays. Both children speak French fluently. Both children benefit from their relationships with their extended maternal family and in particular with their maternal uncle, maternal aunt, her husband and their children, all of whom also reside in France. Relocating to Exeter may allow the children to spend more time with their maternal family. (35) J also benefits from a warm and affectionate relationship with his extended paternal family, in particular, with his uncle and his grandmother both of whom reside in Glasgow. More recently, he has enjoyed the company of his paternal aunt and her three children each Saturday when he has residential contact with the pursuer, to accommodate the pursuer's working hours. Relocating to Exeter will involve a reduction in the time J is able to spend with his paternal family. (36) F has a very close relationship with his half-sibling, E, with whom he resided during periods of contact with DC. E is now 18 years old and is currently studying at the Glasgow School of Art. He has played a part in F's day to day life. F benefits from a warm and affectionate relationship with his extended paternal family, in particular, with his paternal grandparents, who live in Ireland. Relocating to Exeter will involve a reduction in the time that F is able to spend with his brother, E. Relocating to Exeter may allow F to spend more time with his extended paternal family in London. (37) Since these proceedings commenced, J has exhibited self-harming behaviour. He can become angry and frustrated. He has been assessed by a child psychologist as presenting with particular concerns regarding low self-concept and elevated anxiety symptoms. The child psychologist has noted that there is evidence of mild depression. She has cautioned that specific care will require to be taken to ensure that J can benefit from a stable and calm living situation. J has some understanding that he is mirroring his mother's behaviour. (38) The defender has proposed the following contact arrangements in event that she is able to relocate to Exeter, namely; (a) seven days over the school February half term (b) ten days over the school Easter holidays (c) seven days over the school May half term (d) twenty one days over the school summer holidays (e) seven days over the school autumn half term (f) eight days over the Christmas holidays and (g) each alternate weekend in Glasgow, Exeter or elsewhere in the south of England. The defender has proposed that in the event of contact taking place in Exeter, she would allow the pursuer and DC to reside at her property in Exeter with the children, and she and JB would move into the farm house for a transitional period during 2016. She has also

offered to arrange contact by telephone and by electronic means. The contact arrangements proposed by the defender are of a different nature and level to the contact currently exercised by the pursuer and by DC. They will have an adverse impact on the nature of the relationship each child enjoys with his father. (39) A trial flight route is in operation currently between Glasgow and Exeter. Should that flight route continue to be available, the journey from Glasgow to Exeter, including travel to and from the airports could take around 3 hours. The defender is willing to travel to Glasgow with the children if necessary and to bear one half of the costs of travel. An unaccompanied minors service is available for the flight at a cost of £39 per flight in addition to the airfare. Children can use this service from the age of five and can travel unaccompanied from the age of twelve. The cost of the flight fluctuates significantly and depends, among other matters, upon when the flight is booked. At present, this flight route is not available all year round. (40) A more established flight route is in operation between Edinburgh and Bristol. Using this route would involve the use of a hire car or train for the journey between Bristol and Exeter, which would take over one hour, and a further car or train journey between Edinburgh and Glasgow. Should the pursuer or DC exercise contact in Exeter after 2016, they will require to meet the costs of accommodation in Exeter on each occasion. The cost of bed and breakfast accommodation for a weekend is approximately £200. (41) While it is not possible to accurately estimate the costs to the pursuer or DC of exercising contact with the children in the event of the children relocating to Exeter, the costs are likely to amount to several thousands of pounds each year. (42) The pursuer had limited means. He pays the defender £120 per month by way of maintenance. He cannot afford the cost of travel to and from Exeter or of accommodation in Exeter. (43) DC's income is erratic but on average, he earns £40,000 per annum. He has access to substantial capital assets and trust funds, albeit that these assets and funds are not immediately or readily available to him. The cost of travelling to and from Exeter, and the cost of accommodation in Exeter, is significant, but it is a cost that he can bear. (44) The defender has suggested that the maintenance paid by the pursuer and by DC could be utilised to meet the costs associated with contact. (45) The nature and level of contact proposed by the defender would require good communication, co-operation, goodwill and understanding between the defender and the pursuer, and between the defender and DC, which does not presently exist between them. (46) The current arrangements for the care of the children have operated successfully for a number of years. The children enjoy stability and security in Glasgow. They are happy and settled in Glasgow. J is enjoying a high standard of schooling in Glasgow. It is likely that F will be enrolled in the same school if he remains in Glasgow. Relocating to Exeter will involve disruption to J's schooling and peer relationships. FINDS IN FACT AND LAW: (1) That it is not in the best interests of the children, J and F, for a specific issue order to be granted allowing the defender to remove the children from Glasgow to reside with her in Exeter. ACCORDINGLY (1) Repels the fourth and fifth pleas in law for the defender and refuses to grant decree as first and third craved; (2) Repels the first and second pleas in law for the pursuer and refuses to grant decree as first and second craved and (3) Appoints parties to be heard on the issue of expenses and on the issues of

contact, if any, arising, on a date to be hereafter assigned. NOTE:

Introduction

- [1] The issue at the heart of this anxious dispute (and of that at the instance of DC), is whether the defender should be permitted to relocate to Exeter with her two children, namely J, aged 10, and F, aged 4. The pursuer is J's father. DC is F's father. [2] The defender has sought a specific issue order in terms of section 11(2)(e) of the Children (Scotland) Act 1995 ('the 1995 Act'). There was no question of the defender relocating to Exeter without the children. In that event, the pursuer and DC did not dispute that the children should continue to reside with the defender who has been their primary carer throughout their lives. [3] Disputes such as these are notoriously difficult and anxious. As Lord Fraser explained in *G v G (Minors: Custody Appeal)* 1985 1WLR 647 at page 651: "The jurisdiction in such cases is one of great difficulty, as every judge who has to exercise it must be aware. The main reason is that in most cases there is no right answer. All practicable answers are to some extent unsatisfactory and therefore to some extent wrong, and the best that can be done is to find an answer that is reasonably satisfactory". In this case, it is very clear to me that J and F's parents are devoted, loving parents. J and F are, by all accounts, wonderful, well-adjusted, intelligent children. Until the present proceedings had commenced, J and F's parents had been able to put their differences aside and to focus on what was best for the children. Contact had operated largely flexibly and by agreement. Sadly, these proceedings afforded an opportunity for the parties to open old wounds. That is to be very much regretted. Procedural History [4] The initial writ in this action was warranted in 2007. At that time, the pursuer sought an order for parental rights and responsibilities and an order for contact in respect of J. Those orders were granted on joint motion on 9 December 2008. [5] The pursuer lodged a Minute to Vary on 1 May 2015. An interim interdict was granted prohibiting the defender from removing J from the jurisdiction of this court without either the pursuer's written consent or an order of the court. On 12 May 2015, the defender having provided an undertaking to this effect, the interim interdict was recalled. A three day diet of proof was assigned for 5, 6 and 7 August 2015. The sheriff appointed the proof in this matter 'to be heard conjointly' with the proof assigned for the same dates in the action at the instance of DC (F590/15). [6] On DC's motion, the proof was discharged. A further diet of proof was assigned for 5 days commencing on 7 September 2015, when the actions first called before me. The defender led at the conjoined proof. On the morning of the proof and during her evidence, the defender put forward new proposals for contact between the pursuer, DC and their respective children, in the event that a specific issue order permitting her to relocate with the children was granted. I adjourned to allow parties to consider that offer. No agreement could be reached and the evidence resumed on 8 September 2015 and continued on the subsequent 3 days. The evidence could not be concluded and the proof was continued to 22 September. Unfortunately, owing to an oversight, no shorthand writer had been instructed. The proof was discharged and further evidence was led on 25 September, 26 October, 13 November, 17 November and 18 November. Parties were appointed to lodge

written submissions and thereafter a hearing on submissions was assigned for 4 December. On 4 December, I was addressed by the parties' agents and by counsel. Further information had come to light regarding J's alleged self-harming behaviour and in relation to what were alleged to be inappropriate postings on facebook by the pursuer. Parties were appointed to lodge amended pleadings and an additional proof was assigned for 6 January 2016 restricted to these issues. Thereafter, parties made their final submissions. [7] Every effort was made by the court to re-arrange court business and other cases allocated to me, to accommodate further diets in order to conclude these proceedings expeditiously. The agents are to be commended for working with the court in seeking to have this matter concluded as swiftly as possible. In particular, they are to be commended for their extensive use of affidavits as evidence in chief and for the collaborative and sensitive approach taken by them in identifying and instructing an expert in relation to J's self-harming behaviour, the details of which only became known during the course of the proof. [8] As the actions have not been formally conjoined, I have prepared a separate judgment in the action at the instance of DC. My decision and the reasons for my decision are the same in each case.

Background

- [9] The salient facts of the history of the parties' relationship, of the relationship between the defender and DC, and of the proposals for relocation, are set out in the findings in fact. [10] Since the breakdown of her relationships with the pursuer and with DC, the defender has demonstrated that she is a resourceful, determined and dedicated mother. She has taken great care to support the children academically. Both boys speak fluent French. The defender has encouraged and supported extra-curricular activities, including swimming, climbing, hiking and camping. J plays for a local football team and was delighted to have been awarded Players Player of the Year Award in 2015. There is a very strong bond between both children, and a very strong bond between the defender and the children. The evidence for the defender [11] The defender led at the proof. Affidavits had been lodged for the defender, for JB, her partner, and for Mr Neil Ward, the defender's counsellor (items 15, 29 and 16 of process in F590/15). These were supplemented by their evidence during examination in chief and cross examination. Affidavits were lodged for DCt, the defender's father and SL-T, the defender's friend (items 27 and 28 of process in F590/15). I also heard evidence from Mr Joe Nee, a psychologist and Dr Sivakumar Appan, a Consultant Psychiatrist both of whom spoke to the content of their reports. [12] I found the defender's evidence to be generally reliable and credible, however, chapters of her evidence were, in my judgment, coloured by her clear desire to relocate. The defender exaggerated her accounts of difficulties she had experienced with the pursuer and with DC. Her perception of some of the difficulties she had experienced in these relationships did not reflect the evidence. She downplayed her past self-harming behaviour. Where her evidence conflicted with that of DC or the pursuer, I have preferred the evidence of DC and the pursuer. [13] On behalf of the defender, I also heard evidence from JB, her fiancée. It transpired during JB's evidence that he may have had access to certain affidavits lodged in this case. I did not

however, find any basis for concluding that he had tailored his evidence in light of the content of such affidavits. I found his evidence to be reliable and credible. [14] Dr Appan is a Consultant Forensic Psychiatrist. He spoke to his report (item 6/194-203 of process). He was a confident, articulate, impressive and amply qualified expert witness. He had an excellent command of the information he had considered when he compiled his report, which included the defender's medical records. He met with and interviewed the defender on 22 August 2015 for over four hours. He explained that the interview had been lengthy in particular, because he was aware that the defender had self-harmed in the past and he wished to explore this in detail. I found his evidence to be measured, reliable and credible. [15] Mr Ward is a counsellor and has worked with the defender since 2011. He adopted his affidavit and spoke to assisting the defender with developing coping mechanisms for managing stress. I found his evidence reliable and credible. The evidence for the pursuer [16] An affidavit had been lodged for the pursuer which was supplemented by his evidence during examination in chief and cross examination. The pursuer also relied upon the affidavits of the following witnesses namely (a) CM, the pursuer's mother; (b) IQ, the pursuer's brother; and (c) TS, the pursuer's friend (items 16, 17 and 18 of process). [17] I found the pursuer's evidence reliable and credible. In particular, it was clear to me that the pursuer was not motivated by any desire to interfere with or undermine the defender's relationship with JB. The pursuer was very keen to repair his relationship with the defender which had been damaged by the current dispute and to work with her, in J's best interests. The evidence for DC [18] In respect of the action at the instance of DC, two affidavits had been lodged for DC (items 20 and 21 of process in F590/15) and an affidavit had been lodged for KV, DC's previous partner and mother of his son, E (item 23 of process in F590/15). The evidence of both DC and KV was supplemented by their evidence during examination in chief and cross examination. Affidavits were also lodged for (a) FM, a psychotherapist who had worked with DC; (b) SC, DC's sister; (c) E, DC's son and (d) VC, DC's mother (items 22, 24, 25 and 26 of process in F590/15). I also heard evidence from Professor Thomas MacKay, a psychologist instructed on behalf of DC. [19] I found the evidence of DC and of KV to be reliable and credible. It was clear to me that DC was motivated by a desire to do what was best for F; he wished to see the defender happy in her relationship with JB and was acutely aware that if she were not permitted to relocate to Exeter, the defender would understandably be disappointed. [20] DC's agents had also lodged a report by Dr Jacqueline Law (item 5/5/29 of process in F590/15), a psychologist who had been asked to provide an opinion inter alia upon the defender's mental health based upon an assessment of the defender's medical records, affidavits and the reports of Mr Nee and Dr Appan. She had not met with the defender. In terms of the joint minute between the parties, her report was accepted as her evidence without the necessity of being spoken to. The agreed evidence of Dr Katherine Edward [21] Evidence having been led of J's self-harming behaviour and conflicting evidence having been laid before the court as to J's views, parties addressed me on further procedure. It was agreed that parties would jointly instruct Dr Katherine Edward. Her report dated 3 November 2015 (item 5/6/28 of process in F590/15) was admitted into evidence by agreement without the necessity of being spoken to. I am grateful to Dr Edward

for producing her report in a very short timescale. Dr Edward's report was thorough, well balanced and focussed. It was of considerable assistance.

Submissions

- [22] The parties helpfully produced written submissions and I will not rehearse these at length there. There was no dispute as to the applicable law. Each party addressed me on the issue of the reliability and credibility of the witnesses. [23] In short, on behalf of the defender, Ms Matheson submitted that there existed a tension between Article 8 and Article 2 of Protocol 4 of the European Convention of Human Rights. She submitted that the court must have regard to the detrimental impact upon the children that would be caused by a refusal of the wishes of the primary carer. In particular, she referred me to paragraph 53 of the Inner House decision in *M v M* 2012 SLT 428 . She submitted that I should have regard in addition to the factors set out in the Washington Declaration on International Family Relocation. She then addressed me in relation to the application of each of those factors to the present case. In addition, she submitted that I should also pay regard to (a) the pursuer's purported consent to the proposed relocation,
- (b) the need to treat the children as a family unit, (c) the fact that it is a desirable time for F to move as he is now at school age, and (d) the defender's new relationship. [24] On behalf of the pursuer, Mr Moss adopted the submissions made by Mr Bell. He submitted that the defender had failed to satisfy the court that it was in J's best interests for the specific issue order to be granted; there was no evidence that relocation would be better than the status quo. He submitted that real doubt arose as to the defender's ability to cope in the stressful situation of moving to a new city, a new job, dealing with new schools and a new relationship. He referred to the risk that the relationship with JB may not endure. He submitted that J had expressed no enthusiasm for the move and has in fact expressed the view that he would wish to see more of his father. He submitted that it could be inferred that J had expressed a view to remain in Glasgow. [25] On behalf of DC, Mr Bell submitted that the following considerations were relevant in this case namely (a) the reasonableness of the move, (b) the importance of contact and the extent to which contact can be maintained, (c) the effect of the move on the children,
- (d) the extent to which a child may gain from a relationship with family members as a result of the move, (e) the children's views, and (f) the effect of refusal of a specific issue order on the applicant. He addressed me on the evidence in relation to each factor. He submitted that the two most important factors to be weighed in the balance are (a) that F is settled and happy in Glasgow notwithstanding the defender's attempts to destabilise him, and (b) a move will result in the loss of his current relationship with DC. Mr Bell submitted that caution required to be exercised in applying Sheriff Morrison QC's comments in *M v M* 2008 Fam LR 90 (to the effect that the court will give considerable weight to the wish to move of a custodial parent and that the court will be reluctant to interfere with the right of a person to live where he or she chooses) to this case. He referred to the comments of the Inner House

in *M v M* supra . He submitted that the defender required to discharge the dual burden identified by the Inner House in *M v M* . Discussion [26] I will deal with the following issues, namely (a) the objections to the admissibility of evidence, (b) the disputed issues of fact, (c) the applicable law, and (d) the factors which are relevant to my decision. The admissibility of evidence The admissibility of the expert evidence – Mr Nee and Professor MacKay [27] The parties to this action, and DC, obtained by way of joint remit, a report from Joe Nee, an independent child psychologist. He was instructed to prepare a report commenting upon the following 18 issues: 1. The extent of F and J’s knowledge regarding the relocation. 2. F and J’s views about the proposed relocation to Exeter. 3. F and J’s views about the possibility of remaining in Glasgow, either to live with their mum, or to live with their dad. 4. The degree of weight that could be given to each child’s views, given their respective ages and levels of maturity. 5. The extent of each child’s understanding of what the relocation involves and the consequences of the relocation for them. 6. Are the children’s views their own genuinely held views? 7. Are the children aware that they could remain in Glasgow with their fathers? 8. The likely emotional and psychological impact upon each child of contact following a different pattern to that currently being followed, in the event of the move taking place. 9. The likely emotional and psychological impact upon each child of being separated from their fathers. 10. The likely emotional and psychological impact upon each child of being separated from their mother. 11. The extent to which any impact detailed in response to 9 or 10 above could be mitigated by contact arrangements. 12. The likely emotional and psychological impact upon F of being separated from his half-brother for any length of time and of living apart from him. 13. The likely emotional and psychological impact upon J of being separated from his half-brother for any length of time and of living apart from him. 14. The extent to which any impact detailed in points 12 or 13 above could be mitigated by visits and contact by Skype. 15. The potential impact upon the wider family dynamic of the order sought being refused. 16. The potential impact upon the children’s relationships with their natural fathers in the event that the order is granted. 17. The potential impact upon the children’s relationships with their mother in the event that the order is either refused or granted. 18. The nature of and extent to which any negative effects of refusal of the relocation sought upon the children’s mother would be likely to impact upon the children’s emotional and psychological wellbeing. [28] At a pre-proof hearing on 4 August 2015, the defender’s productions (which included Mr Nee’s report dated 31 July 2015 (item 6/156-193 of process)) were tendered and received. The proof assigned for 5, 6 and 7 August was discharged, on DC’s motion. The proof was re-assigned for 5 days commencing on 7 September. On the morning of the first day of the proof, when this matter first called before me, I was addressed by Mr Bell, Mr Moss and Ms Matheson. Mr Bell explained that the previous proof had been discharged to allow DC to obtain a report from an alternative expert. Mr Bell sought to lodge a report from Professor MacKay, a Consultant Psychologist. Mr Bell referred in particular to page 34 of Mr Nee’s report in which Mr Nee had concluded that “ both J and F should remain together in the care of their mother and move to Exeter and have significant contact arrangements with their father during the school holidays and at other times pre-negotiated ”. Mr Bell submitted that this conclusion vitiated the content of

the report in its entirety as Mr Nee had sought to usurp the function of the court; the remainder of his report was tainted by bias. It was Mr Bell's position that Mr Nee's evidence should not be admitted but that if it were to be admitted, he should be entitled to lodge the report of, and to lead, the evidence of Professor MacKay. On behalf of the defender, Ms Matheson submitted that Mr Nee had been appointed by way of a joint remit and his evidence ought not to be excluded simply because one party had now produced a report from a competing expert. She submitted that Mr Nee had answered all of the questions which he had been asked to address and that his conclusion was simply a summary of his findings. I allowed the report by Professor MacKay to be lodged. [29] On the fourth day of the proof, prior to Mr Nee being called to give evidence, Mr Bell renewed his objection. On this occasion, he objected both on the basis previously stated and also by reference to the Inner House decision of *Kennedy v Cordia (Services) LLP* 2015 SC 154 . He submitted that the opinions expressed by Mr Nee were his own subjective views rather than the result of the application of any scientific principle. He referred to the critique of Mr Nee's report by Professor MacKay and noted that Mr Nee had referred to authorities and research papers which were not listed in the bibliography and that Professor MacKay had criticised the methodology used by Mr Nee. At this stage, no issue was raised in relation to Mr Nee's qualifications or expertise. [30] Having reviewed Professor MacKay's report, I noted that at page 24 of that report, Professor MacKay had concluded " relocation will in my view have significant potential to be the greater of the two risks. It will change, immediately and for the long term future, the nature of the parenting relationships experienced by F and his father, and I could put forward no argument to say that I thought that would be in his best interests ". In my judgment, a preliminary review of these reports suggested that both authors were equally susceptible to the criticism of having sought to usurp the function of this court by opining on the very question to be determined by this court. Whether their conclusions had vitiated the entire contents of their reports was a matter to be assessed after a consideration of their evidence. Whether the remaining criticisms of Mr Nee's report were well founded was also, in my judgment, not a matter upon which I could form a view without hearing the evidence of these witnesses – to do so would have involved a determination of the merits of the criticisms made by Professor MacKay. [31] Moreover, and more importantly, it was acknowledged by all parties that Mr Nee was the only individual (the parties aside) who was in a position to speak to J's views. It would not, in my judgment, have been in the children's best interests to delay the proof nor to have the children required to attend for interview again, with another unfamiliar independent third party; J had already been interviewed by Mr Nee and F had already met with both Mr Nee and Professor MacKay. [32] In those circumstances, I allowed Mr Nee's evidence to be heard subject to all questions of relevancy and competency. [33] While this matter was at avizandum, the Supreme Court issued its judgment in *Kennedy v Cordia (Services) LLP*

[2016] UKSC 6 , which provides very useful guidance in relation to the use of expert evidence. In particular, at paragraph 40 of that judgment, their Lordships considered the admissibility of factual evidence from a skilled witness: "Experts can and often do give evidence of fact

as well as opinion evidence. A skilled witness, like any non-expert witness, can give evidence of what he or she has observed if it is relevant to a fact in issue . . . There are no special rules governing the admissibility of such factual evidence from a skilled witness". [34] Having heard the evidence, I am not prepared to admit either Mr Nee or Professor MacKay's evidence as expert opinion evidence. I have treated as admissible only those parts of their evidence they were able to speak to as witnesses to fact, in particular, in relation to their interviews with, and observations of, the parties and the children. My reasons for so doing are as follows. [35] There would appear to have been an assumption on the part of the agents in this case that it was necessary to lead evidence from a child psychologist. While agents are to be commended for seeking to agree a joint remit in order to expedite the proof, any assumption that a child psychologist is necessary in a case such as this is, in my judgment, ill-founded and misguided. There is a growing practice among practitioners in the sheriff courts to rely upon the evidence of child psychologists in family actions. Child psychologists are highly trained and highly qualified individuals who can provide invaluable assistance to the courts in difficult family cases. They take great care in diagnosing and treating children with the required sensitivity and skill. However, the appointment of a child psychologist will inevitably involve an intrusive and detailed interview with a child which can, by its very nature, be a daunting and distressing experience for him or her, notwithstanding every effort on the part of the interviewer to put the child at ease. Often, it will follow upon meetings which a child may already have had with a child welfare reporter, or after a child has been given an opportunity to express his or her views by completion of a Form F9. A child psychologist ought not, in my judgment, to be instructed as a matter of routine, nor should it be the norm, unless there are objectively justifiable reasons for doing so, in the child's best interests. While each case will turn on its own facts, in the absence of any factual basis for concluding or suspecting that a child is suffering from, or affected by, or is likely to be suffering from or affected by, an underlying psychological issue, requiring the input of a suitably qualified expert, the basis for appointing a child psychologist must be questionable. Careful consideration ought also to be given to the nature of the evidence proposed to be led from such a psychologist, the nature of his or her instruction, and to the weight to be attached to any opinions expressed. [36] In the present cases, at the time of the appointments of Mr Nee and Professor MacKay, there was no factual basis for concluding or suspecting that either J or F was suffering from or affected by, or likely to be suffering from or affected by, any underlying psychological issue which required the input of a child psychologist. There was no suggestion that either child was anything other than a normal, ordinary, intelligent, sensitive and resilient child, facing the ordinary, everyday challenges of other children of similar age and maturity. It transpired that there was no dispute that each child had a strong and loving bond with both parents. There was, in particular, neither a basis nor a need, for a discussion of the theory of attachment (a set of concepts that explain the emergence of an emotional bond between an infant and primary caregiver and the way in which this bond affects the child's behavioural and emotional development into adulthood) or of parental alienation (the unjustified influencing of a child by one parent to

denigrate or reject the other parent, in an effort to undermine and interfere with the child's relationship with that parent). Both the theory of attachment and the issue of parental alienation were referred to at length in Mr Nee's report, during his evidence and during the critique of his report by Professor MacKay. [37] The classic exposition of the role of an expert witness remains that set out by Lord President Cooper in *Davie v Magistrates of Edinburgh* 1953 S. C. 34 at page 40: "Expert witnesses, however skilled or eminent, can give no more than evidence. They cannot usurp the functions of the jury or a judge sitting as a jury ... Their duty is to furnish the judge or jury with the necessary scientific criteria for testing the accuracy of their conclusions, so as to enable the judge or jury to form their own independent judgment by the application of these criteria to the facts proved in evidence ... the decision is for the judge or jury". [38] More recently, in *Kennedy v Cordia (Services) LLP*, supra (at para 44), the Supreme Court set out four considerations which govern the admissibility of skilled evidence, namely (i) whether the proposed skilled evidence will assist the court in its task; (ii) whether the witness has the necessary knowledge and experience; (iii) whether the witness is impartial in his or her presentation and assessment of the evidence; and (iv) whether there is a reliable body of knowledge or experience to underpin the expert's evidence. [39] In relation to the first consideration, the Supreme Court referred with approval to the opinion of the High Court of Justiciary in *Wilson (Brian) v HM Advocate* 2009 JC 336, and in particular to the test set out by Lord Wheatley (at para 58): "[T]he subject-matter under discussion must be necessary for the proper resolution of the dispute, and be such that a judge or jury without instruction or advice in the particular area of knowledge or experience would be unable to reach a sound conclusion without the help of a witness who had such specialised knowledge or experience." [40] Applying that test, was the evidence of Mr Nee and Professor MacKay as to the risks associated with, or of the emotional or psychological impact upon the children of, any orders the court may make, or refuse to make, necessary for the proper resolution of this dispute? In my judgment, it was not. Did it assist the court in its task? In my judgment, it did not. These courts are very familiar with matters involving a judgment of what may or may not be in the best interests of children. Where such cases involve normal, ordinary children, with no underlying diagnosed or suspected psychological condition, facing the ordinary, everyday challenges of other children of similar age and maturity, the courts are well versed in carefully analysing the competing risks and benefits of any order they may make, or refuse to make. How such children may react or adjust to any such orders is a matter which is well within the ordinary human experience, within judicial knowledge and is a matter of common sense. As explained in the decision of the Court of Appeal in *R v Turner*

[1975] QB 834: "An expert's opinion is admissible to furnish the court with scientific information which is likely to be outside the experience and knowledge of a judge or jury. If on the proven facts a judge or jury can form their own conclusions without help, then the opinion of an expert is unnecessary. In such a case if it is given dressed up in scientific jargon it may make judgment more difficult. The fact that an expert witness has impressive

scientific qualifications does not by that fact alone make his opinion on matters of human nature and behaviour within the limits of normality any more helpful than that of the jurors themselves . . .” Those comments are equally applicable to expert opinion evidence offered in civil cases. In my judgment, the evidence of Mr Nee and that of Professor MacKay in relation to the likely impact upon the children of any orders the court may make, or refuse to make, was unnecessary and for that reason, inadmissible. [41] Even if I were persuaded that such evidence was necessary, having examined the evidence in light of the fourth consideration referred to by the Supreme Court in *Kennedy v Cordia (services) LLP*, supra, I am satisfied that there was no reliable body of knowledge or experience to underpin that evidence. In *Wilson (Brian) v HM Advocate*, supra, Lord Wheatley stated the test thus (at para 58): “[T]he subject-matter in question must be part of a recognised body of science or experience which is suitably acknowledged as being useful and reliable, and properly capable of reaching and justifying the opinions offered, and the witness must demonstrate a sufficiently authoritative understanding of the theory and practice of the subject.” Both witnesses had purported to analyse the risks associated with relocation and to compare those risks with the risks of retaining the status quo . Professor MacKay had concluded (on page 24 of his report) that “[r]elocation will in my view have significant potential to be the greater of the two risks ”. However, Professor MacKay noted in his report that “... while psychological risk assessment is highly structured and quite far advanced in other fields, such as offender recidivism, it is relatively poorly developed in relation to many of the key issues here, and there are no standard risk assessments protocols that would cover the issue of relocation ”. Mr Nee accepted the accuracy of that statement during cross examination. [42] What both experts were doing, in my judgment, was the very task that this court is entrusted with – an analysis of all relevant risks and benefits. They were purporting to do so without the advantage of seeing and hearing all parties giving evidence and being cross examined thereon (*X v Y* 2002 SLT (Sh Ct) 161 at page 168). They did not appear to be applying “ a recognised body of science or experience which is suitably acknowledged as being useful and reliable, and properly capable of reaching and justifying the opinions offered ” in relation to any particular psychological risk identified by them. They accepted that there was no recognised psychological standard risk assessment methodology to be applied to the facts of this case. For all of these reasons, I have found the evidence of both witnesses, to the extent that such evidence was presented to the court as expert opinion evidence, to be inadmissible. [43] One further matter requires comment. Rather astonishingly, during cross examination by Mr Bell, Mr Nee’s qualifications and experience to act as an expert witness, were challenged. That challenge was not foreshadowed in Professor MacKay’s report. Indeed, it would appear that those instructing Mr Bell had identified Mr Nee as a suitably qualified child psychologist and had proposed his appointment (page 2 of Mr Nee’s report). Moreover, they had expressed the view that in the absence of a joint remit, they may wish to lead evidence from Mr Nee, as an expert on behalf of DC. At page 3 of his report, Mr Nee notes that he was advised by DC’s agents “ that should [the other parties] prefer not to conjoin in the instruction then [DC] would wish to instruct me directly ”. In those

circumstances, it was, in my judgment, unbecoming and rather surprising for an attack to be mounted upon Mr Nee's credentials. [44] Under cross examination, Mr Nee accepted that he is not a chartered psychologist. He accepted that he is not registered with the Health and Care Professionals Council as a practitioner psychologist. He accepted that he is not subject to the continuing professional development requirements of any professional body. He accepted that his report contained material errors, parts of it had been 'cut and pasted' from other reports, and that he had strayed beyond his remit. He accepted that upon meeting DC, he had told DC that he would face difficulties in preventing the relocation proposed by the defender, however, he maintained that he had not proceeded on the basis that the wishes of the primary carer should be preferred. He maintained that his qualifications and the breadth and depth of his experience qualified him to provide an opinion to the court, as a man of skill, on the 18 questions posed. It is unnecessary for me to form a view as to whether Mr Nee is qualified to act as an expert witness in the area of child psychology. I note in passing however, that Mr Nee is a psychologist who has enjoyed an impressive professional career. Since 1997, he has worked with a number of local authorities, prisons, health boards and voluntary organisations, the Scottish Government and the Children's Hearing System, in an advisory and consultancy role. He has worked extensively with foster families and adoptive parents. He has prepared reports for, and provided evidence in, a number of cases in the Scottish courts. [45] Finally, and very unfortunately, during the course of the proof, I heard evidence from the pursuer that J had engaged in self-harming and violent behaviour. He described him as anxious and his behaviour as extreme. He spoke of J having 'clawed his throat'. The pursuer spoke to these incidents occurring after the proof had commenced. There now appeared to be a factual basis for concluding or suspecting that J was suffering from or affected by, or likely to be suffering from or affected by, an underlying psychological issue which required the input of a child psychologist, and which had not been disclosed to, or addressed by, Mr Nee or Professor MacKay. It was clear that a focussed report from a child psychologist would be of assistance to the court and parties were invited to instruct such a report. A report was obtained from Dr Katherine Edward (item 5/6/28 of process in F590/15) and admitted in evidence without the necessity of being spoken to. I will return to the content of that report. Objections to the admissibility of other evidence [46] The parties also insisted upon their objections to the following evidence which was heard under reservation as to its competency and relevancy. [47] On behalf of the defender, Ms Matheson had objected to questions put to DC during examination in chief, in relation to his engagement in mediation with the defender. Those questions were limited to when, and how often, mediation took place. In addition, at paragraph 24 of his affidavit (item 20 of process in F590/15), DC had referred to various discussions which took place during mediation. Ms Matheson referred me to section 1 of the Civil Evidence (Family Mediation) (Scotland) Act 1995 which, put short, renders inadmissible, in civil proceedings, any evidence of what has occurred (including what is said, written or observed) during a qualifying 'family mediation'. In my judgment, the objection is well founded in relation to those parts of paragraph 24 of DC's affidavit which

refer to what occurred during mediation. Ms Matheson's objection is accordingly sustained in relation to the sentences in paragraph 24 commencing 'I found [M] to be very good . . .' and the subsequent eight sentences. However, in my judgement, section 1 of the Civil Evidence (Family Mediation) (Scotland) Act 1995 does not render inadmissible evidence elicited from DC as to whether the parties had engaged in mediation and if so, how often. The fact that mediation has taken place does not fall with the scope of section 1 of that Act which is confined to 'what occurred during family mediation'. The objection, to that extent, is accordingly repelled. [48] On behalf of DC, objection was taken to parts of Mr Ward's affidavit on the basis that Mr Ward was purporting to provide expert evidence to the court regarding the defender's mental health. Ms Matheson submitted that he was not being led as an expert witness, but rather as a witness to fact. I heard this evidence under reservation. Having considered the evidence, I am satisfied that there was no part of Mr Ward's evidence which was offered as expert opinion evidence. He spoke only to the counselling he had undertaken with the defender and any opinion he may have offered in particular, at paragraph 7 of his affidavit, is one to which I attach no weight. Disputed issues of fact [49] There were a number of factual disputes. Those which I considered to be relevant to my decision were (a) whether the defender was (and is) suffering from a mental health illness, (b) the extent of the defender's self-harming behaviours, (c) the defender's allegations of an assault upon her by DC, (d) the defender's allegations of bullying and controlling behaviour by the pursuer and by DC, (e) whether the defender had assaulted F, and (f) whether the pursuer had consented to the proposed relocation. I deal with each of these below. Is the defender suffering from a mental health illness? [50] Having met with the defender, Dr Appan concluded that there did not appear to be any evidence to suggest that she was suffering from the symptoms of a mental health illness. He assessed her speech, her appearance and her behaviour, together with the information she had imparted to him. He had also examined her medical records. [51] In his report, Dr Appan states: "[I]t is my opinion that [the defender] does not have a mental disorder within the meaning of the Mental Health (Care and Treatment) (Scotland) Act 2003. [The defender] does not have a history of suffering from a major mental illness such as paranoid schizophrenia or severe depression. She has never been admitted to a psychiatric hospital in the past and has never received regular contact with local mental health services. She has presented with isolated episodes of self-harm which appear to have occurred in the context of highly emotional and intense stressful states, more recently in relation to relationship difficulties ." During his evidence in chief, he explained that the defender had experienced discrete periods of low mood during highly stressful situations which had resulted in her use of maladaptive coping strategies, however, there was no underlying mental health illness. He noted that she had not been prescribed anti-depressants and had not been diagnosed as suffering from depression. Finally, he noted that there appeared to be no evidence to suggest that the defender's ability to care for her children had been impaired due to mental health difficulties: several health professionals had consistently opined that she did not pose a risk to her children. In this regard, Dr Appan referred in particular to the opinion expressed by the defender's general practitioner, Dr Cullen (item

6/63-64 of process). During cross examination by Mr Bell, Dr Appan was referred to the photographs of the injury sustained by F (item 5/3/6 of process in F590/15) and it was put to him that this injury had been deliberately inflicted upon F, by the defender. He maintained that it did not affect his opinion on the defender's mental health or her ability to care for the children. [52] At paragraph 2.4 of her report (item 5/5/29 of process in F590/15), Dr Law concluded had that "there is evidence of [the defender] suffering from Major Depressive Episodes . . ." At paragraph 4.16, Dr Law concluded that "[the defender] presents with maladaptive personality traits predominantly relating to histrionic and narcissistic characteristics". Dr Appan was highly critical of Dr Law's analysis which had been a 'paper assessment'. He noted that the defender's medical records did not disclose a finding by any clinical professional that the defender suffered from depression. He noted that Dr Law was a psychologist and not a psychiatrist and moreover that to come to a diagnostic conclusion, it was imperative that a clinician examine and assess an individual. He noted that Dr Law had not done so. He would not be prepared to form a diagnostic view based on third party accounts; Dr Law had relied upon the contents of the affidavits provided to her. I note that at paragraph 3.5 of her report, Dr Law also accepted that "a person requires to be interviewed for assessment purposes". Professor MacKay also addressed the defender's mental health in his report and during his evidence. Again, he did so without the benefit of meeting with and assessing the defender and without access to Dr Appan's report. In those circumstances, I have preferred the evidence of Dr Appan to the evidence of Dr Law and Professor MacKay. [53] I found Dr Appan's evidence compelling. It is clear, in my judgment, that the defender has not suffered from, and is not currently suffering from, any mental health illness which has any bearing upon her ability to care for the children. Indeed, I note that neither father is seeking any order for residence on such grounds, in the event that the defender is not permitted to relocate with the children. They each accepted that she is a loving, caring and devoted mother. The defender has however suffered from discrete episodes of self-harming, the extent and effect of which was the subject of detailed examination and cross examination. The extent of the defender's self-harming behaviour [54] The defender accepted that she had self-harmed in the past, at times of intense stress (para 38 of her affidavit). It was her position that her self-harming was a reaction to the pursuer and DC's abusive behaviour towards her and occurred after she was diagnosed with Lymphocytic Hypophysitis and again during the breakdown of her relationship with DC. It was her position that owing to the work she had done with Neil Ward, her counsellor, her self-harming was not an on-going or recurrent matter, and in any case, that she now understood the triggers and how to control self-harming urges. Mr Ward spoke to assisting the defender to develop coping mechanisms to deal with stressful situations, such as relaxation and breathing techniques. He was asked whether the defender's self-harming behaviours had been the focus of the counselling sessions. He explained that they had not. [55] Both the pursuer and DC spoke to witnessing the defender self-harming during their respective relationships. The pursuer spoke to an incident in July 2014 during which, while dealing with the ill-health of the pursuer's pet cat, the defender had 'clawed at her face', pulled her hair and shouted at him.

The defender did not recognise the pursuer's description of her behaviour. In relation to this incident, I preferred the evidence of the pursuer. It was clear that the defender had been very disturbed by the suffering of the pet cat, describing it as a 'very emotional situation'. The pursuer's description of her reaction to this was very similar to the descriptions provided by both the pursuer and DC of previous episodes of self-harm. It was clear from his evidence that the pursuer had been concerned for the defender's safety upon witnessing the incident. [56] The defender denied that the children, in particular J, had witnessed any of her self-harming behaviour. During interview with Dr Edwards, J described his mother as going 'crazy' sometimes. Dr Edwards concluded that J had some sense of mirroring his mother's behaviour. However, J did not disclose to Dr Edwards any details of his own self-harming behaviour or of the defender engaging in such behaviours. [57] During his evidence, Dr Appan spoke to the defender having sought professional help to understand and manage her previous self-harming behaviours. He formed the view that following a four year period of counselling, the defender had successfully developed better coping mechanisms to deal with stress. It was put to him however, that the defender had been referred to psychiatric services by her general practitioner and had not attended on at least two occasions, prior to 2012. Dr Appan was unable to draw any inference from this non-attendance. He was asked whether he would change his opinion if there was evidence that the defender had self-harmed in 2014. He explained that his opinion might be affected by such evidence, but that he would require to understand the details of the incident. No details of the incident were put to him. He concluded that while it was impossible for any clinician to accurately predict future behaviour, the prognosis with regards to the future of the defender's mental health appeared to be very favourable. [58] The defender referred to the intense stress of the current proceedings. She maintained that she had not, during the currency of these proceedings, resorted to self-harm. Mr Bartley gave evidence that he had not witnessed any episodes of self-harming by the defender. Dr Appan noted that there had been no relapse during the current proceedings of which he was aware. [59] In my judgment, with the exception of the incident in July 2014, there was insufficient evidence before the court to conclude, on a balance of probabilities, that the defender is continuing to engage in self-harming behaviour. It is clear from the evidence that the defender has self-harmed in the past and has developed mechanisms to help her cope with stressful situations. The risk of a re-occurrence cannot however be excluded. [60] It was submitted on behalf of the pursuer and DC that they could monitor the defender's state of mind and any impact that may have upon the children, should the defender and the children continue to reside in Glasgow. Dr Appan questioned whether a lay person could have the skills and expertise to do so. In any event, it was accepted by both the pursuer and by DC that communication between the parties was now very poor and that they barely spent a few minutes together during meetings to drop off or collect J or F. In such circumstances, their ability to monitor the defender's state of mind, even if they had the skills to do so, would be very limited indeed. The allegation of assault upon the defender [61] It was the defender's position that she had been assaulted by DC in August 2011. It was her position that she had attempted to discuss

how she felt about their relationship; that DC had been aggressive and invalidating and would not listen to her; and that he pushed her across the kitchen with force causing her to fall against the kitchen worktop, breaking her finger as she did so. [62] It was DC's position that he had attempted to discuss the defender's self-harming behaviour with her; that she became agitated; that he restrained her as she attempted to slap herself on her face; that she began to hit herself on the head with her shoes; that he had again attempted to restrain her; that she lost her footing and she fell to the ground; that he dialled 999 because he was concerned that she had injured her head; that upon attendance at hospital, she advised medical staff that he had assaulted her; that he advised the medical staff that she had been self-harming and he had restrained her; and that she then admitted to medical staff that she had been self-harming. It was DC's position that, at a later stage, the defender had threatened to take F to France with her and that he had, under legal advice, taken possession of F's passport; when the defender became aware of this, she reported the assault to the police. [63] I preferred DC's evidence in relation to this incident, namely that the defender's injury was sustained when he attempted to restrain her. I found the defender's evidence to be unreliable for the following reasons (a) her affidavit made no mention of her self-harming during the incident (paragraphs 32-34 of her affidavit item 15 of process), the concession that she had done so came during cross examination by Mr Bell; (b) she accepted during cross examination that she had not advised the medical staff that she had been self-harming and accepted that she withdrew the allegation of assault made to the medical staff;

- (c) she accepted that she had been confused and 'not sure of what had happened' during the incident; and (d) she accepted that she made no complaint to the police in relation to the incident until several weeks later when she had discovered that DC had possession of F's passport. [64] On behalf of the defender, I was referred to section 11(7B) of the 1995 Act which lists the matters to which the court is to have regard when considering whether or not to make an order under section 11(1) of the Act. In particular, in terms of section 11(7B)(d), the court shall have regard to "the effect any abuse, or the risk of any abuse, might have on the carrying out of responsibilities in connection with the welfare of the child by a person who has . . . those responsibilities." It was submitted that I did not require to find that there had been abuse nor that there was a risk of abuse – it was sufficient for there to be a finding that the defender believed there to have been abuse or the risk of abuse. No authority was cited in support of such a proposition. That proposition would require an entirely subjective approach to be applied to the legislation. I cannot accept that proposition as being sound in law. The allegations of controlling and bullying behaviour [65] It was the defender's position that she had been subjected to controlling and bullying behaviour at the hands of the pursuer and DC. It was her position that she needed to protect herself physically and emotionally from the pursuer and from DC. It was her position that remaining in Glasgow would expose her to 'continued bullying' from the pursuer and from DC. [66] In relation to the pursuer's conduct, the defender relied upon his previous conviction in 2007 under section 127 of the Communications Act 2003 and upon his reaction to her proposed

relocation. [67] In relation to DC, the defender spoke of her general unhappiness during their relationship. In terms of examples of controlling or bullying behaviour, she made reference *inter alia* to being forbidden from unpacking boxes when she moved into the flat in the west end of Glasgow with DC (relying upon photographs forming items 6/116-119 of process, which DC maintained were photographs of his son, E's room and of parts of the flat which were largely unused); to being forced by DC to remain in bed and rest when she felt it was unnecessary; to being excluded from discussions regarding DC's son, E; to being assaulted by him in August 2011; to his constant involvement in F's life to the point of suffocating her own role as F's mother; to the difficulties in arranging and revising contact or holiday arrangements. [68] With regards to the pursuer, with the exception of the abusive text messages sent by him in 2007 shortly after the breakdown of the relationship, the defender was unable to refer to any other examples of controlling or bullying behaviour which were not related to the pursuer's reaction to the defender's proposed relocation. It was clear that the relationship between the pursuer and the defender has been an amicable one for a number of years with contact operating flexibly and with each supporting the other's parenting role. The defender referred to the pursuer as 'her friend' prior to the commencement of the current dispute. [69] With regards to DC, I have already dealt with the allegation of assault. I accept that there has been a greater degree of hostility between the defender and DC. However, having reviewed the email and text communications between the parties (items 5/3/5 of process in F590/15) it is apparent that they were able to communicate on civil terms following the breakdown of their relationship, and that they had also operated contact flexibly. It is not surprising that on occasion, terse messages have been exchanged when the parties have sought to organise and re-organise holiday and other arrangements. I accept that communication could be better and that DC's response to holiday requests in particular could be more prompt. However, there was no basis for me to conclude that DC has sought to exert any control over the defender or to bully her since the breakdown of their relationship. Indeed, it was apparent from the evidence that parties had sought to work through their differences with the assistance of mediators and solicitors; that DC had, during the currency of the relationship, sought to obtain medical assistance for the defender in relation to her low mood and self-harming behaviour; and that DC has provided considerable financial support to the defender and to F. [70] In my judgment, there was little or no evidential support for the proposition that the defender required to protect herself physically and emotionally from the pursuer or from DC; nor that remaining in Glasgow would expose her to 'continued bullying' from the pursuer or from DC. Indeed, it was the defender's position that her contact with the pursuer and with DC was now limited to a few minutes during handovers, thereby restricting considerably any exposure she could have to any such behaviour in any event. Moreover, the defender's allegations did not sit well (a) with the level and the nature of the contact she proposed in the event that she were permitted to move to Exeter, which included allowing DC and the pursuer to reside in her home during contact, and (b) with her actively encouraging the pursuer to relocate to Exeter and to find employment there, in the event that she were permitted to relocate. The injury sustained by F [71] Photographs showing a lump and bruise to F's forehead were lodged by

DC (item 5/3/6 of process in F590/15). DC spoke to having seen these injuries on 8 June 2015 and to being told by F that ‘mummy hit me’. The pursuer spoke to being told by J that J, the defender, JB and F had gone trekking. The pursuer spoke to J advising him that the defender had hit F because ‘he was moaning all the time’. [72] The defender denied this. She explained that she had been walking through woodlands with the children and JB, holding both a phone and a map in her hand. The phone fell from her hand, striking F on the head. [73] Mr Nee spoke to F regarding this incident during his meeting with F. Mr Nee noted that F smiled when he was asked about it and displayed no signs of trauma. On speaking to J, Mr Nee noted that J recounted that F had been complaining that he did not want to walk and that his mother had accidentally dropped her phone on F’s head. Mr Nee spoke to J ‘acting out’ the scene. Mr Nee formed the impression that he was recounting a real memory and had not been coached to provide a particular account. [74] In relation to this incident, I preferred the evidence of the defender which was supported by that of Mr Nee and JB. [75] However, while in my judgment, the injury sustained by F in June 2015 was accidental, there was sufficient reliable and credible evidence before the court to conclude, on a balance of probabilities, that the defender has used physical means of chastisement. There was sufficient reliable and credible evidence that the defender is prone to emotional and angry outbursts, particularly in times of stress. The defender denied that she was prone to losing her temper or that she had disciplined J by slapping and pulling him. She accepted however, that she had smacked the children on their bottoms (para 59 of the defender’s affidavit) and explained that enforcing discipline by such means is common practice in France although she understood that this was not culturally acceptable in the UK. In her report, having spoken with J, Dr Edward noted “ that he was aware that what makes his mother angry is when he and his brother do not behave or do not listen to her. At this point he stated that sometimes his mother hits him when she is crazy. He told me that he does not like it when this happens and it makes him scared ”. Both the pursuer and DC spoke to witnessing the defender striking J during their relationships with her. The pursuer spoke of noting marks on J’s face and to being told by J that the pursuer had struck him for not doing his homework correctly. Did the pursuer consent to the proposed relocation? [76] It was the defender’s position that she had sought and obtained the pursuer’s consent to the proposed relocation. She spoke to the exchange of text messages between them (items 6/90-106 of process). It was her position that he had withdrawn his consent upon becoming aware of her relationship with JB and had formed an ‘unholy alliance’ with DC to defeat her attempts to relocate. [77] The pursuer had previously consented to the defender moving to France with J in 2009, a move which he believed at the time would be permanent. He accepted that the defender’s parents provided significant emotional and financial support to her and believed that she would benefit from that. While he was surprised to hear of the defender’s desire to move to the Isle of Mull from France, he consented to that move as J would be closer to him. He was delighted to have J back in Glasgow when the defender returned in 2011 to reside with DC. [78] It was the pursuer’s position that the defender had first mentioned the possibility of moving to England in January 2015, in order to be closer to her parents. It was his position that he too was unhappy in Glasgow at the time, and that the exchanges of text messages

between them reflected his own discontent. With reference to the text message in which he stated that he ‘fully approved of the move to Bristol’, he explained that this was one of a number of locations which the defender had mentioned, that he had been in the Bristol area at the time, and that he was simply expressing the opinion that it appeared to be a desirable place to live. In his view, ‘she would have known that I was not serious . . . this was off the top of the head nonsense’. It was his position that he first became aware that the defender was intent on relocating to Exeter to reside with JB during a meeting with the defender in March 2015. He did not believe that the move was in J’s best interests and took legal advice. It was the pursuer’s position that the defender had sought to manipulate him by obtaining his consent to the proposed relocation in order to strengthen her position against any challenge to the relocation by DC. [79] It was clear from the evidence that the pursuer had consented in the past to the defender’s relocations to France and subsequently to the Isle of Mull. However, at the time of the exchange of text messages upon which the defender now relied, the defender had at best been economical with the truth in relation to the proposed relocation, at worst, she had been disingenuous. The pursuer could not, in those circumstances, be said to have provided informed consent. Moreover, I am satisfied, having heard the pursuer’s evidence and having read the nature of the past text communications between the parties, that the pursuer is prone to making casual remarks with little forethought. Knowing the pursuer as well as she does, the defender would have been aware of this. In those circumstances, it is surprising that on a matter as important as this, she would have interpreted an informal text exchange based on a partial explanation of her plans as constituting the pursuer’s consent. The applicable law [80] In terms of section 11(7) of the 1995 Act, in considering whether or not to make a specific issue order, the court: “(a) shall regard the welfare of the child concerned as its paramount consideration and shall not make any such order unless it considers that it would be better for the child that the order be made than that none should be made at all; and (b) taking account of the child's age and maturity, shall so far as practicable—

- (i) give him an opportunity to indicate whether he wishes to express his views; (ii) if he does so wish, give him an opportunity to express them; and (iii) have regard to such views as he may express.” [81] It is now well settled that the welfare of the children concerned is paramount in relation to the determination of an application under section 11(2)(e) of the 1995 Act and falls to be judged without any reliance on any presumptive rule or guideline tending to favour the wishes or interests of either parent. The weight to be given to such wishes or interests must, as with any other factor, be such weight as the court deems appropriate in the particular circumstances of an individual case: *M v M*, supra at paragraph 9. A party seeking such an order must undertake the dual evidential burden of showing (i) that relocation would actually be in the best interests of the children, and (ii) that, again, from the children’s perspective, it would be better for a specific issue order to be made by the court than for no order to be made at all (*M v M*, supra at paragraph 57). A party seeking to alter the status quo has some liability to furnish the court with material potentially capable of justifying the making of the order (*S v S* 2012 Fam LR 32 at page 34, paragraph 10).

However, it is clear that there is no legal onus of proof upon such a party (*White v White* 2001 SC 689). [82] Sheriff Morrison QC's decision in *M v M* supra represents, in my judgment, a very helpful child welfare-centred, presumption-free approach to the factors which may be relevant. The factors which the learned Sheriff sets out in his decision are not guidelines, as he has explained in his subsequent decision, *L v L* 2013 (unreported), but are factors that might be relevant and ought to be considered. The Washington Declaration on International Family Relocation also sets out a non-exhaustive list of factors which might be relevant, but also recognises the paramount consideration as being that which is in the best interests of the child. The factors to be considered Reasonableness of the proposed move and the defender's motive [84] I am satisfied that the defender is not motivated by any desire to seek to undermine the relationship which each child enjoys with his father. She spoke of the importance of contact and she appreciated that each father had a great deal to offer. The defender referred in her evidence to having 'a strong track record of commitment' to contact. I accept that this has generally been the case. However, I consider the submissions by both Mr Moss and Mr Bell, that the defender's approach to the proposed relocation has been demonstrative of a lack of respect for the roles played by the pursuer and DC in the children's lives, to be well founded. [85] The defender described her proposal as constituting a 'comprehensive family plan' allowing her to create a secure family unit which she could not have in Glasgow; 'a personal plan' because she wished to live with JB; and 'a professional plan' because she viewed it as allowing her to build on her career. With regards to the latter, the employment which has been offered to the defender was broadly comparable to that which she currently enjoys in Glasgow and I am not satisfied that the proposed move is motivated by any desire to further her career. With regards to the creation of a secure family unit, while it is true that the defender's proposals would allow her to reside in family with JB, I am not satisfied that it could be said that the children are not currently enjoying a secure family environment and (save for J's self-harming behaviours since the commencement of the proof), both children appear to be thriving. [86] It was the defender's position that she felt isolated in Glasgow. Many of her friends have moved out of the city. It was her position that she lacked emotional and practical support in Glasgow. In my judgment, the defender has underestimated and undervalued the scale and nature of the practical support which both the pursuer and DC have been able to provide to her, the financial support which DC has provided to her (and is willing to continue to provide) and the emotional support which the pursuer had hitherto made available to her. [87] In my judgment, but for the relationship with JB, the defender would not be contemplating a move to Exeter. She stated in her affidavit "my relationship with [JB] is the reason for my proposed move to Exeter." The defender has an entirely legitimate reason for seeking to relocate to Exeter. From her perspective, the proposed relocation is therefore entirely reasonable. She also expressed the view that she wanted to be in a more rural environment, closer to nature and to be able to enjoy outdoor pursuits. However, the reasonableness of the proposed relocation must be considered from the perspective of what is in the children's best interests. In my judgment, the defender has assumed that what is reasonable for her, must be in the best interests of the children. I was not persuaded by the defender's evidence that

Exeter would provide a better environment for the children than Glasgow, nor that there was any child-centred reason for the move. [88] It was submitted on behalf of the pursuer and on behalf of DC that the defender was impulsive and there was a risk that her relationship with JB would not endure. The defender was previously married in October 1999 to a man she had known for under one year. They separated in 2003. She commenced her relationship with the pursuer in 2004. That relationship endured for approximately one year. She entered into a relationship with DC in early 2007. That relationship deteriorated and she returned to France with J between October 2009 and August 2010 where J attended pre-school. In August 2010, she moved to the Isle of Mull where J commenced his primary school education. In April 2011, she moved back to Glasgow to reside with DC. Her relationship with DC ended in around August 2011. She admitted under cross examination that she had been in a brief relationship with another man thereafter in 2013, however, that relationship came to an end as he was unwilling to leave Glasgow. [89] She first met JB in July 2014. JB first met J and F in October 2014 when he spent a weekend in Glasgow. He met the children again in November 2014 when they enjoyed a day trip to the west coast. The longest period of time JB has spent with the children has been a period of 10 days over the Christmas holiday period in 2014/2015. Since then, he has spent time with the children on average, twice a month at weekends, and for longer periods during holidays (a week in May 2015 and a week in June/July 2015). The defender and JB made a decision to cohabit in early 2015, some three months after JB had first met the children. They got engaged in March 2015. The children first visited JB in Exeter in March 2015. The defender purchased a property in Exeter in April 2015. The defender and JB have not yet cohabited. The longest period they have spent together, as a family, is 10 days. JB has no children and no experience of parenting although he is close to his young nephews and nieces. [90] The defender and JB are clearly committed to each other. As the defender pointed out, their relationship was an open and transparent one and through these proceedings, JB had been privy to a great deal of personal information regarding the defender. However, I find that there is some force in the submissions made on behalf of the pursuer and DC. The proposed new living arrangements are untested and appear to have been formulated at a time when JB had spent very little time with the children. Whilst the risk cannot be quantified, there is a risk that their relationship will not endure. In the event of difficulties in their relationship, the defender has no friends or family in Exeter upon whom she could rely for support, nor will she have ready access to her counsellor, Mr Ward. [91] In addition, there was very little evidence of the nature of the bond between the children and JB. Mr Nee did not have the opportunity to observe any interaction between JB and the children. JB certainly spoke of the children in affectionate terms. The defender also spoke to the easy and natural relationship he had with the children. I note however that when Mr Nee asked F to draw an 'eco map', F made no mention of JB. When specifically asked about JB, F said that 'he played games with him' (item 6/116 of process). Mr Nee noted that J had seen the house and the farm in Exeter, however, he does not appear to have noted any comments made by J about JB. Indeed, he notes that J 'said that he was confused why they had to go to Exeter' (item 6/169 of process). When Dr Edwards discussed the possibility of a move to England with J,

she noted that J said ‘there might be some good things about moving’ and referred only to getting better weather and being able to play more football (page 5 of item 5/6/28 of process in F590/15). [92] In the circumstances, the proposed relocation is not, in my judgment, reasonable, when viewed from the perspective of what is in the children’s best interests. The importance of contact with the pursuer and with DC [93] It is clear that J has a very close bond with his father and that contact with his father is very important to him. J described the pursuer as ‘relaxed’ and spoke of spending ‘peaceful’ weekends with the pursuer, when he was interviewed by Dr Edward. The pursuer’s friend, Mr Stuart, described the relationship as ‘grand’ and referred to the exposure that J has had to music and different communities through his relationship with his father (paragraph 7 of his affidavit item 18 of process). The pursuer’s brother, Mr IQ describes them as ‘joined at the hip’ (paragraph 9 of his affidavit item 17 of process). The pursuer’s mother describes J as someone who ‘absolutely dotes on his dad’ (paragraph 6 of her affidavit item 16 of process). The pursuer has sought out accommodation to be close to J. He has been a constant presence in J’s life since J returned to reside in Glasgow. He was visibly moved during his evidence when he contemplated the prospect of J moving to Exeter. [94] The defender did not dispute the strength of the relationship between the pursuer and J, nor that maintaining that relationship was important for J. The strength of that relationship is a matter to which I attach significant weight. The defender referred to photographs of the pursuer and J which had been posted on Facebook by the pursuer and which had been superimposed with inappropriate images representing adult themes. I was not persuaded that these photographs were demonstrative of the pursuer’s poor parenting or lack of judgment nor that they were a matter which I required to take into account in reaching a decision on the proposed relocation. In any event, I preferred the evidence of the pursuer, that he was unaware of the adult nature of the images and that creating the photograph had been a spontaneous act of thoughtless fun. [95] It was also clear that F had a very close bond with his father, DC and that contact with his father is very important to him. DC spoke of F becoming upset in August 2015, when he realised that his father would not be moving to Exeter with him. Their relationship is described as ‘easy and relaxed’ (DC’s mother’s affidavit item 26 of process in F590/15). He is described as ‘utterly devoted’ to F (DC’s sister’s affidavit item 24 of process in F590/15). He too was visibly moved during his evidence when he contemplated the prospect of F moving to Exeter. It is clear that he has successfully co-parented his son E with his ex-partner, Ms KV. [96] The defender did not dispute the strength of the relationship between DC and F, nor that maintaining that relationship was important for F. The strength of that relationship is a matter to which I attach significant weight. The importance of contact with other family members [97] F currently sees his half-sibling, E, up to three times a week and at weekends when F is with DC. E is now 18 years old and is very close to F. F has spoken of his maternal and paternal grandparents and of E as people who love him (Mr Nee’s report item 6/166 of process). [98] J is also very close to his maternal grandparents with whom he has spent most summer holidays in France. He benefits from his relationship with his paternal uncle with whom he enjoys playing football and his paternal grandmother whom he sees around once a month. During his contact with his

father on alternate weekends, J spends time with his paternal aunt and her three children. [99] A move to Exeter will bring the children geographically closer to their maternal grandparents and will bring F closer to some of his extended paternal family in London. It was not disputed that the children benefit from and very much enjoy the time they are able to spend with their maternal grandparents and indeed, J has expressed the view that he would like to see more of them. The strength of their relationship was evident from the terms of the defender's father affidavit (item 27 of process in F590/15). However, the children are already able to enjoy the company of their maternal grandparents during school holidays. Any benefit derived in terms of travelling the shorter distance to France is far outweighed by the distance which the children will require to travel to Glasgow, on a frequent basis, for contact with their fathers and extended families. A move to Exeter will inevitably involve a diminution in the level of contact the children have with their extended paternal families, and is liable to have a negative effect upon those relationships. While I accept that there is a significant age gap between E and F, that E is now studying at university and may not be in a position to enjoy F's company to the extent that he has in past, a move to Exeter would involve a fundamental change to the nature of the relationship between F and E. In light of the nature of the relationship between E and the defender (E's affidavit item 25 of process in F590/15), and E's university commitments, it is likely F and E would only enjoy each other's company during F's visits to Glasgow. The extent to which contact between father and child can be maintained [100] I have set out in the findings in fact the defender's proposed arrangements for contact in the event of relocation. I have set out the costs associated with those arrangements, in so far as they can be estimated. [101] In my judgment, even if the pursuer and DC were able to meet the necessary costs of travel and accommodation, the defender's proposals represent a significant reduction in the level of contact which the children currently enjoy with their fathers and will have an adverse impact upon those relationships. While the defender proposed a generous level of holiday contact, and contact on alternate weekends, such contact could not compensate for the day to day involvement in the children's lives currently enjoyed by their fathers. The pursuer and DC fulfil a 'parenting role' and not a 'visiting role' as spoken to by Professor MacKay during his evidence. In the event of relocation, the pursuer and DC would have very little involvement in schooling or after school activities. There is the risk that the children will, in time, find the travel too onerous and may express a disinclination to travel to Glasgow, even with the encouragement and support of the defender. As they grow older, they are also likely to wish to spend more of their free time with friends in Exeter. While contact can also be maintained by telephone and electronic communication, at his tender years F, in particular, is likely to find such communication difficult and his interest is likely to wane. The strong bond which currently exists between the children and their fathers will be put at risk. Moreover, the level of holiday contact proposed by the defender leaves her with very limited holiday periods with the children, which in my judgment, is likely to become a source of frustration for her. [102] The pursuer has very limited means and would not be in a position to meet the costs of accommodation in, or travel to and from, Exeter, even with the defender sharing the costs of weekend travel, assisting with holiday travelling costs and by using the

unaccompanied minors service on certain airlines, as the defender proposed. DC does have the financial means and the resources to meet the costs of accommodation in, and of travel to and from, Exeter. While I accept that his income is erratic in light of the nature of his work, he has access to substantial capital funds and to trust funds which could be made available to him, if necessary. In passing, I would note that the disparity between the fathers in relation to their financial means could, in the event of relocation, lead to a disparity in the level of contact each child might enjoy with his father. In that event, in light of J's sensitive and anxious nature, there is a risk that J might feel resentful and view the situation as unfair. [103] The defender invited the court to consider the possibility that both fathers could relocate to Exeter, or to a city nearby, in order to maintain their relationships with the children. In the circumstances of this case, that was, in my judgment, an entirely unrealistic and unworkable proposal, and was particularly astonishing in light of the defender's position that part of her motivation for relocating was precisely to remove the degree of proximity which currently exists between herself, the pursuer and DC. The pursuer has family in Glasgow. DC has an established network of colleagues in Glasgow with whom he collaborates to produce his artwork. He also wishes to remain close to his son, E, in Glasgow. [104] The adverse impact upon the children's relationships with their respective fathers is a matter to which I attach significant weight. The extent to which the children may gain from the proposed relocation [105] The defender has purchased a three storey town house in Exeter which is within walking distance of the city centre. It takes 25 minutes to drive to JB's farm from the house. It would provide a high standard of accommodation for the children. The children have enjoyed the time spent in the house and on JB's farm. There are a number of amenities in close proximity. The defender has obtained offers of placements for the children at schools nearby which have been rated as 'outstanding' and 'good' in the latest OFSTED Inspections. The defender has secured a place for J in the local under 11s football team. In the event of a relocation, the defender would propose to use the breakfast club and after school facility to accommodate her working hours. The children will have access to a wide range of outdoor activities, enjoy the benefits of being close to nature and have ready access to a number of beaches. They would benefit from a relationship with JB and his parents, all of whom are keen to be part of the children's lives. I have no doubt that JB and his parents will strive to provide a loving family environment for the children. [106] It was submitted, on behalf of the defender, that the court required to carry out a comparison of what was on offer in Exeter with the uncertainty which existed for the defender and the children in Glasgow. In particular, I was asked to take account of the nature of the defender's temporary and unsuitable accommodation. However, I do not accept that the situation which has been created by the defender in Glasgow is the correct basis upon which to make such a comparison. The defender has acted precipitously by purchasing a house in Exeter without having obtained the pursuer or DC's consent to the proposed move; by moving into temporary accommodation and choosing to send most of the family's belongings, including items such as the children's TV, J's X-box and other toys, to Exeter; by removing J from his football team; and by advising J that he would not be returning to school in August 2015 when the proof in this action had been discharged and re-

assigned. She has sought to mislead both the pursuer and DC, or alternatively she has been very economical with the truth, regarding her proposals and in relation to the purchase of the property. She has steadfastly chosen to remain in the accommodation described as 'unsuitable' despite the offer of financial assistance from DC to secure alternative rented accommodation. It was her position that she had purchased the property in Exeter because she believed that she required to present the court with 'a concrete relocation plan.' I did not find this explanation convincing. According to the defender, she purchased the property at a time when she believed she already had the pursuer's consent to relocate, thus there was no question of her seeking a specific issue order in respect of J. She described the email which she sent to DC in April 2015 as 'her announcement' of her plans to relocate (item 6/37 of process). She invited a discussion on the issue of contact only. She sought to present DC and the court with a fait accompli. [107] On the evidence presented to me, I am not persuaded that Exeter offers better amenities or schooling than that which is available to the children in Glasgow; they are broadly comparable. To the extent that the children enjoy being on the farm and having access to outdoor pursuits, they are able to derive these benefits during their visits to Exeter with the defender at present. While the children will undoubtedly benefit from the relationships with JB and his parents, I am unable to conclude that these would outweigh the very significant losses in the close relationships they have in Glasgow with their fathers and their paternal families. In relation to the issue of accommodation, the defender has the means of securing accommodation in Glasgow. She has a capital asset, namely the house in Exeter, at her disposal. She is in employment. DC has offered to assist her financially with securing alternative accommodation in the short term. The children's views [108] Regarding J's views on the proposed move to Exeter, Dr Edward's report states the following: "I asked J directly how he felt about how things are arranged at the moment, and he told me that he likes things as they are now. He then said that he might like to see more of his father, and also that he enjoys seeing his cousins on a Saturday morning when his father has to work I spoke with J about the possibility of a moving to England, which he clearly understands may happen. He told me initially that he does not really want to move but he "will go along with what mum says". He then said that there might be some good things about moving, and I asked what they were and he referred to getting better weather in England so he could play more football. However, he stated that he also does not want to move as Dad has told him that he is going to try and get a bigger house. . . . I asked J what [his] father thought about the move, and he told me that his Dad thinks that J should be able to choose if he wants to go or stay. I asked what his mother thought and he told me that she wants to move to be closer to her boyfriend and her parents. I asked him about these individuals and he was positive about them but did not give much description of interactions. I specifically asked J what he would choose to do and he told me that he does not know what he wants. He would like for the Judge to choose for him. J understands that if he moves he will see his father less often but when they meet it will be for longer chunks of time. He does not know if that would be better or worse than how things are now because he has not tried it, but he was clear that he does like it how it is". [109] J was asked about the possibility of moving school. While he stated that there was a specific classmate that he

would be happy to get away from, he also stated that he would not like to leave his friends. He stated that he would miss his father and his friends if he were to move, but also stated that he misses his maternal grandparents at present. [110] Dr Edward concluded that “J initially expressed reluctance to move to England and presented the sense that he ‘goes along with’ his mother’s wishes. However, with further exploration it is less clear that J is sure whether moving or staying would be the better option. This uncertainty appeared to me in discussion to be an accurate portrayal of his views. J does appear to have a strong relationship with his father and I strongly suspect that he would not like to see their time together reduced”. [111] I was invited by Mr Moss to conclude that J had expressed no enthusiasm for the move. He submitted that it could be inferred from the statements he has made that J preferred the status quo. I was invited by Ms Matheson to conclude that J had declined to express a view. [112] J presents as a child who does not wish to make a decision as he does not wish to disappoint either of his parents. He did not appear to be keen to discuss the move to Exeter with Mr Nee. However, it can be inferred from J’s discussion with Dr Edward that he prefers the status quo and would in fact wish to see more of his father. I find Dr Edward’s assessment that J would not like to see his time with his father reduced as a fair analysis of his position. It is not surprising that a child in these circumstances would prefer to maintain the status quo and would not wish to be separated from family and friends. I have had regard to J’s view in arriving at my decision, but I have not attached significant weight to his view in light of the ambiguous terms in which it has been expressed. [113] F is not of sufficient age and maturity to express a view. It is clear that he cannot fully comprehend what a move to Exeter would entail at his age. The effect of the move on the children [114] The defender emphasised throughout her evidence that change can be a positive experience and it is good for the children to learn to adapt. I am satisfied that the children, and in particular, F, could eventually adapt to the proposed new living arrangements in Exeter. They would be living in suitable accommodation and their needs would be met by the defender and by JB. [115] However, on the evidence led before me, I am less satisfied that J will learn to adapt in the short and medium term. Having assessed J using the Beck Youth Inventories assessments, Dr Edward concluded that J presented with particular concerns regarding low self-concept and elevated anxiety symptoms. She noted that there was evidence of mild depression. She cautioned that “specific care will require to be taken to ensure that J can benefit from a stable and calm living situation”. For J, the defender’s proposals involve a move to a new city, a new home, a new school, limited contact with his father, paternal family members and friends, and giving up his position in his local football team which he clearly enjoys. [116] J had benefited from a stable and calm living situation prior to the defender’s decision to relocate and prior to her moving the children into temporary accommodation. In particular, he appears to enjoy the relaxing pace of the time with his father. I am satisfied, on the evidence presented to me, including photographs of J’s injuries (item 5/1 of process) that J has engaged in self-harming behaviour and has done so when angry and frustrated. Such behaviours had not been exhibited prior to the commencement of these proceedings. There was little evidence that the defender had given careful consideration to the impact upon J in the event of a move, nor did she explain

satisfactorily how she proposed to manage J's self-harming behaviour. I formed the impression that she was minimising J's behaviour during her evidence, albeit that she expressed her genuine concern for him. Dr Edward was unable to form a view upon the triggers for J's behaviour, however she noted that he had a sense of going 'crazy' like his mother. The defender attributed such behaviour to J's exposure to conflicting parenting styles. It was her position that relocation would remove J from such exposure. She appeared unwilling to consider the possibility that his self-harming behaviour might be linked to the conflict which had been created by her decision to relocate. She accepted during cross examination that she had taken J to see her GP 'out of respect' for the pursuer, but she appeared to have reservations about the value of medical intervention in the circumstances. [117] The need to ensure a stable and calm living situation for J in particular is a matter to which I have attached significant weight. The effect of refusal upon the defender [118] I accept the defender's evidence that she will be 'devastated and crushed' in the event that she is not permitted to relocate. She described life in Glasgow as being a 'life with no hope of being geographically close to the people I love'. She was very tearful and upset during this chapter of her evidence. In her affidavit, she described it as being 'very difficult and extremely painful' to picture herself in Glasgow, 'where the boys would be homeless' and where she perceives that she 'would be at the mercy of the relentless bullying' of both the pursuer and DC. Mr Ward noted that the defender would find living in Glasgow 'very curtailing' and that she would feel trapped. Similar comments were made by Mr Nee, by JB and by the defender's father in his affidavit (item 27 of process). The defender felt that remaining in Glasgow would not allow her to be the mother she knew she could be for the children. [119] I accept also that JB is not in a position to move to Glasgow in light of his commitment to his parents and his involvement in the family farming partnership. JB and the defender have made a commitment to each other and plan to be married. While they both accepted that a long distance relationship would entail difficulties, they were both resolved to make every effort to sustain their relationship. That is exactly what they have done since late 2014. [120] I accept that a refusal of the order sought by the defender may adversely affect the defender's psychological wellbeing and in turn, may have a detrimental impact upon the children. However, the defender has the benefit of the emotional support she derives from JB, and she explained in her evidence that in the event of the court refusing the order she sought, she would seek out any support she required, including from her counsellor, Mr Ward. Dr Appan gave consideration to whether an unfavourable outcome in this process might cause the defender to lapse back into using maladaptive coping strategies (i.e. self-harming behaviours). Dr Appan noted that the defender appeared to be psychologically and emotionally equipped to deal with an unfavourable decision and would continue to cope to the best of her abilities. This was an outcome which she was prepared to deal with.

Conclusion

[121] Having considered all of the relevant factors and having regard to the welfare of the children as the paramount consideration, I am not satisfied that the proposed relocation is in the children's best interests or that it is better that such an order be made than no order be made at all. I have paid due regard to the wishes of the defender and to the effect of a refusal of the order upon her. I recognise that relocation has the potential to improve the quality of the defender's life and this in turn could impact positively upon the children. However, I do not consider that in this case, this factor is one to which significant or dominant weight falls to be attached. As stated in the decision of the Inner House in *M v M* supra (at para 53): "We acknowledge, of course, that there might be cases in which significant — even dominant — weight would incidentally attach to the reasonable relocation plans of a residential parent. By way of illustration, a remarried mother in a stable and settled household might have little option but to consider a move abroad, or to a different part of the UK, for legitimate family or employment reasons. The proposed move might offer children demonstrable advantages. They might be of an age and maturity to support it for themselves. Continuing contact arrangements might not be a major issue. In such circumstances the court might well be inclined to support the mother's freedom to take the course proposed; standing in the way of such a move might evidently risk significant adverse consequences for the mother and for others in the household; and a conclusion along these lines might even more easily be reached if, for instance, children were not thriving at their present school or were at an age when a change of school was in any event inevitable. In other cases, however, the position might be quite different, with a proposed move having much less to commend it and there being strong countervailing factors." [122] In this case, strong countervailing factors exist. Most importantly, the children benefit from a very close bond with their fathers and the proposed relocation will involve a significant diminution in the quality of those relationships. Viewed from the children's perspective, the proposed relocation is not reasonable. The children are happy and settled in Glasgow and I am not persuaded, having regard to the welfare of the children, that interference with the status quo is justified in the circumstances. Decision [123] Accordingly, I shall repel the defender's fifth plea in law and refuse the defender's third crave. In the event that I did so, Mr Moss intimated that the pursuer would not insist upon his second crave seeking an order for residence. I shall repel the pursuer's second plea in law, as not insisted upon. [124] The defender sought an order for residence in respect of J. The pursuer has at no time sought to interfere with or challenge the defender's position as primary carer for J or as the parent with whom J resides. I am not persuaded that it would be better for J that such an order be made than not. Accordingly, I shall repel the fourth plea in law for the defender and refuse the defender's first crave. [125] The pursuer sought interdict preventing the defender from removing J from the jurisdiction of this court. I am not persuaded that the defender has attempted to do so; in relation to her relocation plans, she informed both fathers of her intentions and in the face of their opposition she has sought a specific issue order. At no time has she sought to breach the terms of an

undertaking she has provided to this court. I am not persuaded that an interdict is necessary nor that it would be better for J that such an order be made than not. Accordingly, I shall repel the pursuer's first plea in law and refuse the pursuer's first crave. [126] I shall assign a hearing in this case, to call together with a hearing in the action at the instance of DC, to deal with the issue of expenses and to consider whether any orders in relation to contact are necessary. BAILII: Copyright Policy | Disclaimers | Privacy Policy | Feedback | Donate to BAILII URL: <https://www.bailii.org/scot/cases/ScotSC/2016/2015SC154.html>

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