

SHERIFFDOM OF GRAMPIAN, HIGHLAND AND ISLANDS AT TAIN

[2018] SC TAI 23

B21/17

JUDGMENT

by

SHERIFF CHRISTOPHER DICKSON

in the cause

AB

Pursuer

against

CHIEF CONSTABLE OF THE POLICE SERVICE OF SCOTLAND

Defender

**Tain, 6 February 2018**

The sheriff, having resumed consideration of the summary application, finds the following facts admitted or proved:

**FINDS IN FACT**

1. The pursuer is AB. He is 61 years old. The defender is the Chief Constable of the Police Service of Scotland.
2. On or around 30 November 2011 the pursuer completed an application to the defender for the grant of a shotgun certificate (hereinafter referred to as “the application for the shotgun certificate”).

3. On or around 15 August 2016 the pursuer applied to the defender for the grant of an air weapon certificate (hereinafter referred to as “the application for the air weapon certificate”).
4. By letter of 10 February 2017 from the delegated officer, Chief Inspector Alan Bowater, who was acting on behalf of the defender, the defender refused the pursuer’s applications for both a shotgun certificate and an air weapon certificate.

The letter of 10 February 2017 was in the following terms:

“Dear Mr [*the pursuer*],

I am an officer delegated by the Chief Constable of the Police Service of Scotland to make decisions on his behalf in respect of the revocation of firearm and shotgun certificates and the refusal to grant firearm and shotgun certificates.

I have been made aware that in June 2000 you were reported to the Procurator fiscal for a contravention of section 21 of the Firearms Act 1968.

I am also aware the On [*sic*] 7<sup>th</sup> of February 2010 you were reported to the Procurator Fiscal for a series of domestic incidents carried out over a period of some time.

On 17<sup>th</sup> of February 2013 you were reported to the Procurator Fiscal for a contravention of section 28 A (7) of the Firearms Act 1968.

I have reviewed the circumstances in line with the following legislation, Section 28 of the Firearms Act 1968

The circumstances which are the subject of this report, alongside underlying historical considerations are such that the Chief Officer of Police is satisfied that you cannot be permitted to have shotgun(s) in your possession without danger to the public safety or to the peace.

I hereby refuse your shotgun application.

You may wish to know that in terms of Sections 30A (6) and 44 of the Firearms Act 1968(as amended) you may appeal to the Sheriff in whose Sherifffdom you reside against the revocation of your certificate. Such an appeal must be lodged within 21 days of receipt of this letter and you may wish to consult a Solicitor in this regard.

Section 5 (1) of the Air Weapons and Licensing (Scotland) Act 2015 states:

The chief constable may only grant or renew an air weapon certificate if satisfied that the applicant in all the circumstances, can be permitted to possess an air weapon without danger to the public safety or to the peace.

I am required to be satisfied that you are fit to be entrusted with an air weapon and that in all the circumstances, you can be permitted to possess an air weapon without danger to the public safety or to the peace.

Given the foregoing I am not satisfied that you are fit to be entrusted with an air weapon and that in all the circumstances, you can be permitted to possess an air weapon without danger to the public safety or to the peace. Accordingly I hereby refuse to grant you an Air Weapon Certificate.

You may wish to know that in terms of Section 34 of the Air Weapons and Licensing (Scotland) Act 2015 you may appeal to the appropriate sheriff against the refusal of your application. The appropriate sheriff means in your case a sheriff of the sheriff Dom [*sic*] in which you reside. Such an appeal should be lodged within 21 days of the date of this letter and you may wish to consult a Solicitor in this regard.

#### **GUNS/CERTIFICATES SEIZURE**

In terms of Section 12(1) of the Firearms (Amendment) Act 1988, it is a requirement to surrender your certificates and any firearm(s) you may possess.

Yours sincerely

[*signed*]

Chief Inspector Alan Bowater

Firearms & Explosive Licensing"

5. That in the summer of 1999 the pursuer and his ex-wife (hereinafter referred to as "CD") moved into [*address*], Houston (hereinafter referred to as "the address in Houston"). The pursuer did not notify the police that he had moved to that address.
6. That the address in Houston did not have a shotgun cabinet. When the pursuer and CD were living at the address in Houston the pursuer owned and possessed an AYA side by side shotgun (hereinafter referred to as the "AYA shotgun"). During that time the pursuer stored the AYA shotgun on top of the wardrobe in the master

bedroom of the address in Houston. The AYA shotgun was in one piece whilst being stored on the said wardrobe.

7. Whilst the pursuer and CD were living in the address in Houston their marriage began to break down. The pursuer began to act in an irrational and erratic fashion. He was unpleasant and bullying towards CD. CD was concerned about the shotgun being on the wardrobe and was, in particular, concerned for her own safety due to the pursuer's erratic behaviour coupled with the AYA shot gun being on the wardrobe. As a result, on 22 June 2000, CD took the AYA shotgun to Johnstone Police Office.
8. On 22 June 2000 CD told the police that the AYA shotgun was owned by the pursuer. She told officers that over the past weeks her relationship with the pursuer had become strained and his behaviour had become increasingly irrational and that the shotgun had been lying on top of the wardrobe within the master bedroom of the address in Houston. The address in Houston was a privately owned property situated in a residential area. CD told the officers that the AYA shotgun had been on top of the wardrobe for the past 12 months since they had moved to that address from [*address in Ross-shire*]. She told officers that she believed the pursuer to have a shotgun certificate but was concerned that the shotgun had not been stored in a locked cabinet as it should be.
9. On 24 June 2000 the pursuer attended at Johnstone Police Office stating that he believed that his shotgun had been seized and was at that office. The pursuer produced a shotgun certificate (serial number 035332) issued by Northern Constabulary and requested the return of his shotgun. The shotgun certificate had expired on 6 January 2000. The certificate had included on it a Webley and Scott

shotgun (hereinafter referred to as “the W & S shotgun”). The pursuer did not know the whereabouts of this shotgun. Police officers attended at the address in Houston and, with the permission of the pursuer, searched the premises. During the search of the premises it was observed that there was not any secure gun cabinet within that address. The pursuer admitted that he had failed to comply with the requirement to store his shotgun securely whilst his shotgun certificate had been valid. After a thorough search of the premises, no trace was made of the W & S shotgun. The pursuer advised the police, at this point, that the W & S shotgun may be at his business premises, the [*hotel name and address*], Ross-shire although he had not seen it for some 3 years. The police attended at these premises and, with the pursuer’s permission, searched these premises. No trace was found of the W & S shotgun. To date the W & S shotgun has not been traced by the police and the pursuer has not been able to account for its whereabouts.

10. The pursuer’s shotgun certificate, which expired on 6 January 2000, included the following conditions:

“The holder of this certificate must inform the Chief Officer of Police by whom the certificate was granted within 7 days of the theft, loss or destruction in Great Britain of the certificate and/or the theft, loss, deactivation or destruction of any shotguns to which this certificate relates.

The holder of this certificate must, without undue delay, inform the Chief Officer of Police by whom the certificate was granted of any change of permanent address.

The shotguns to which this certificate relates must at all times (...) be stored securely so as to prevent, so far as reasonably practicable, access to the shotguns by an unauthorised person.”

11. The pursuer breached the said conditions by failing to notify the Chief Officer of Police that he had moved his permanent address to the address in Houston, by

losing and failing to report the loss of the W & S shotgun (which has never been recovered), and by failing to store the AYA shotgun securely.

12. On 13 December 2000, as a result of the circumstances narrated in finding in facts 6 to 9, the pursuer was convicted of a contravention of section 2(1) of the Firearms Act 1968 (possession of a shotgun without holding a certificate). The pursuer was fined £100 and the AYA shotgun was forfeited.
13. On the 26 April 2001, at Paisley Sheriff Court, a matrimonial interdict was placed in force with a power of arrest, with the conditions being that the pursuer was not allowed to molest, abuse, threaten or verbally abuse CD and was also to refrain from putting her in a state of fear and alarm or distress or using violence towards her at her home or anywhere else in the local area.
14. CD obtained the non-molestation interdict due to the pursuer turning up out of the blue and engaging in stalking type behaviour towards her. The pursuer would appear when CD was going to work and, on occasions, when she was leaving her work to go for lunch. The pursuer did not say anything when he appeared but would stare at CD in an intimidating fashion.
15. By 8 June 2001 CD was in a new relationship with EF. In the early morning of 8 June 2001 CD met EF in order to get a lift from him to their mutual work place. At around 07.30 hours CD got into EF's car. The pursuer then appeared without warning. The pursuer drove his car in front of EF's car. CD and EF immediately locked the doors to their car so that the pursuer could not get at CD. The pursuer approached the front passenger door where CD was sitting. He tried to open that door but could not do so due to the door being locked. The pursuer then started kicking the car. CD did not do anything and did not get out of the car she was in. EF did not do

anything. The pursuer did not say anything. EF then pulled off and drove his car away from the pursuer. The pursuer got in his car and was soon driving directly behind EF's car. The pursuer then started deliberately driving into EF's car. The front end of the pursuer's car came into contact with the rear of EF's car, effectively shunting EF's car. CD was absolutely petrified and telephoned the police whilst the incident was occurring. The incident lasted for about half to three quarters of a mile. The police kept CD on the telephone line and asked her to describe what was happening in real time. The incident ended when either the pursuer's car or EF's car went round a roundabout the wrong way.

16. On 26 July 2002 at Paisley Sheriff Court the pursuer pled guilty to the following charges:

“(002) On 10 May 2001 at Bath Street, Glasgow, the M8 motorway, between junctions 19 and 28A road [*sic*] you [*pursuer*] did whilst driving motor vehicle registered number [*registration A*] conduct yourself in a disorderly manner continually follow motor vehicle registered number [*registration B*] occupied by the said [*EF*] and [*CD*] and place them in a state of fear and alarm for their safety and commit a breach of the peace

(003) On 8 June 2001 at [*street name*] you [*pursuer*] did conduct yourself in a disorderly manner, repeatedly kick stationary motor vehicle registered number [*registration B*] parked there and place the occupants of said vehicle namely the said [*EF*] and [*CD*] in a state of fear and alarm for their safety and commit a breach of the peace”

On 20 November 2002 the pursuer was admonished and dismissed in respect of each of the above charges.

17. On 5 October 2001 at Paisley Sheriff Court the pursuer was convicted of breaching bail conditions not to contact CD in contravention of section 27(1)(b) of the Criminal Procedure (Scotland) Act 1995. Sentence was deferred to 9 April 2002 when the pursuer was fined £100.

18. The pursuer's behaviour whilst living at the address in Houston and up to approximately mid 2001 was, at times, reckless, completely lacking in control and demonstrated badly flawed judgement.
19. The pursuer moved to a permanent address in Tain in 2002. After moving to Tain the pursuer stated a new relationship with GH. This relationship lasted for a significant number of years, until about 2010. The pursuer and GH have a child who is now a teenager. During the relationship the pursuer and GH lived together in Tain.
20. Around the Christmas period of 2008 the pursuer and GH were travelling in the pursuer's car. The pursuer was driving along a dual carriageway and GH was in the passenger seat. The pursuer was talking on his mobile phone and GH told him to stop using his mobile phone. The pursuer would not stop talking so GH turned the radio up in an attempt to prevent him talking on the phone. The pursuer slapped GH on the hand on a few occasions and also slapped her once to the right cheek of her face.
21. In the summer of 2009 the pursuer was at the family home setting up a barbeque. The pursuer and GH got into an argument. The argument escalated. At some point during the argument the pursuer threw some of GH's clothes onto either the barbeque or onto coals that had fallen from the barbeque. The pursuer and GH then got into a physical struggle during the said argument.
22. On Thursday 21 January 2010 the pursuer was in the living room of the family home and blocked GH from getting into the living room. The pursuer said that he wanted to sleep in the living room and watch television without GH being in the living room. GH began to force her way into the living room. A physical confrontation

then ensued between the pursuer and GH. At one stage GH ended up on the floor with the pursuer standing above her. Whilst on the floor GH was kicking out her legs to protect herself.

23. Question 14 of the application for the shotgun certificate was in the following terms:

*“Have you been convicted of any offence (see notes at the end of the form)?  
On renewal details need only be given of convictions since the existing certificate was issued”*

Question 14 required either “No” or “Yes” to be ticked and provided a space for details if “Yes” was ticked. The notes at the end of the application form provided:

*“In answering question 14 you are not entitled to withhold information about any offence. This includes motoring offences, convictions in places outside Great Britain, and (by virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975) convictions which are spent under the 1974 Act. Both a conditional discharge and an absolute discharge count as convictions for this purpose.”*

24. The pursuer, despite knowing that he had a number of previous convictions, including a conviction for a contravention of section 2(1) of the Firearms Act 1968, answered question 14 of the application for the shotgun certificate by ticking “No”.

25. Police Constable 772 Christopher Wylie made enquires in relation to the application for the shotgun certificate. As part of those enquires Pc Wylie conducted background checks on the pursuer and went to visit the pursuer. During Pc Wylie’s visit to the pursuer, the pursuer was asked why he had answered question 14 of the application as “no”. The pursuer told Pc Wylie that he did not have any previous convictions. Pc Wylie gave the pursuer a further opportunity to disclose his previous convictions but the pursuer insisted he had no convictions. Pc Wylie completed a Standard Firearm Enquiry Report. At para 36 of the said report Pc

Wylie stated that the application was not recommended and gave the following explanation:

“During the enquiry it was noted that the applicant had marked no to question 14 on Form 103.

I was in possession of his PNC / SCRO printout which clearly showed a conviction for possession of a firearm without authorisation, 2 breach of the peace convictions and 4 motor offences.

The applicant was asked why he had answered this question as a no. He confirmed that he did not have any convictions. He was given a further chance to disclose these convictions however he insisted he had no convictions.

I then ran through his previous convictions with him and he said that he did not consider these as criminal convictions.

Further to this he blamed his first wife for all the convictions. Once the applicant started to discuss his first wife he appeared to have been emotionally scarred by this period in his life and was visibly emotional.

He went on to discuss that he spent 2 days in a police cell when his wife had him arrested. He was very emotional when discussing the break up of his first marriage.

When he had finished discussing his first wife he then advised me that over the past 10 years he has only been in contact with the police for road traffic offences. He also advised me that he had not been in police custody over the last 10 years.

I then reminded him of an incident in January 2010 (NJ/1160/10) where-by the applicant was detained and questioned regarding a domestic incident involving him and his second wife. He again conceded [*sic*] that this had occurred.

I was left wondering if there was anything that I hadn't been told. As every piece of information discussed with the applicant that could have had a negative bearing on his application was only disclosed when he was advised that the information was already known.

Following the enquiry the applicant was cautioned and charged for attempting to procure the grant of a shotgun certificate by making a false statement in relation to disclosure of convictions. (NJ/2522/13)

I will not recommend the grant of a shotgun certificate to the applicant”

The above explanation accurately summarises the discussions Pc Wylie had with the pursuer, the actions that Pc Wylie took and the recommendation that he made.

26. On 17 February 2013 the pursuer was reported to the Procurator Fiscal (hereinafter referred to as "PF") for an offence of knowingly or recklessly making a false statement for purpose of procuring the grant of a shotgun certificate, contrary to section 28A(7) of the 1968 Act. The PF did not raise proceedings in respect of this report.
27. The pursuer by answering question 14 of the application "no" and by maintaining to Pc Wylie that he had no previous convictions, knowingly or recklessly made a false statement of a material particular, for the purposes of procuring for himself the grant of a shotgun certificate.
28. Question 11 of the application for the air weapon certificate was in the following terms:

"Have you ever been convicted of any offence?"

In answer to question 11 the pursuer ticked "Yes" and stated "please see attached sheet". The attached sheet was at page 9 of the application. On that sheet the pursuer wrote:

"In the period 2000/2001 I went through a particularly bitter divorce. My then wife mounted a campaign of nuisance against me for which she was subsequently investigated by D.S. Gallagher of Renfrew Police Station. She was not charged in the end, due to lack of available police time. I did, however, lose my shotgun cert which I am currently re-applying for at Inverness. Please speak to firearms officers at Inverness for more details."

Page 9 of the application lacked candour.

29. The pursuer met with Inspector Henderson and Sergeant Jones on 12 July 2016 in order to discuss the application for the shotgun licence. Sergeant Jones prepared a handwritten summary of the meeting which was in the following terms:

“Introductions made along with purpose of the meeting. Talked through the applications and the concerns therein. [*The pursuer*] was slightly dismissive of concerns. Although he did accept responsibility for possessing a shotgun without a certificate this was only after he blamed his ex-wife for deliberately not telling him it was going to expire. Also quick to point out the police never sent him a reminder. Denied any form of domestic abuse on either ex-wife. Apportioned blame to both personalities. Is on good terms with [*GH*] and sees them on regular...

Gave assurances that he can possess shotguns without danger to public or the peace.”

The above summary accurately reflects the substance of the said meeting.

30. As a result of the meeting on 12 July 2016 Inspector Henderson formed the impression that the pursuer was not someone who was either accountable or who would accept when they were wrong. Inspector Henderson considered that the pursuer passed the blame for his previous domestic difficulties onto CD and GH respectively.
31. At 07.07 hours on 14 September 2004 vehicle registration number W452 UCA was detected by speed camera driving at a speed of 86 miles per hour in a 70 miles per hour speed limit on the A9 Edinburgh to Perth road, Dunblane, District of Stirling near to Allanwater. A section 1 Road Traffic Offenders Act 1988 Notice of Intended Prosecution and a form under section 172 of the Road Traffic Act 1988 was sent to the registered keeper of the vehicle. A Notice of Intended Prosecution was then sent in consequence to the response to that to the Pursuer. He subsequently completed and returned the section 172 form in which he admitted being the driver at the time of the

alleged offence. A conditional offer of fixed penalty was issued to him on 5 October 2004 and returned unpaid.

32. At 6pm on Wednesday 1 November 2006 the police received a call reporting a large trailer being towed between Contin and Maryburgh with no lighting on the rear of the trailer. Officers attended at the Lochussie junction on the A835, Contin to Maryburgh road, where they found a Nissan Navara registered number WJ06 JXD which was towing a large tow-a-van type trailer. This road is an unlit arterial road. Officers recorded that it was dark, the weather was fine and the road was busy. The trailer was large enough to completely obscure the lighting on the towing vehicle. The vehicle was stopped near to Maryburgh roundabout and the driver found to be the pursuer. Earlier in the day the pursuer had been working in particularly inclement weather and had required to take the trailer down a farm track.
33. An inspection of the trailer was carried out and it was found that the lights originally fitted by the manufacturer were completely inoperative. The pursuer was instead relying on a temporary lighting board tied to the back of the trailer. None of the lights on this board were lit. After fiddling with the trailer's electrical connection, the pursuer managed to illuminate the offside positioned lights. None of the other lights, however, operated. There was no registration plate displayed on the trailer. There was a registration number written in felt pen on the lighting board but it did not relate to the towing vehicle. The trailer was an Indispension make, type V674, serial number G044333 and was rated at 2,030 kilograms. It was fitted with automatic overrun brakes. It was noted that the parking brake lever was in the upright or on position. When this was pointed out to the pursuer he claimed that this brake worked the other way round and the lever had to be lowered to apply the

brake. He did this and was then asked to drive the vehicle to and fro. This had no apparent braking effect whatever. On examination it was seen that the cable connecting the trailer brake application mechanism to the offside trailer brake was either disconnected or broken. This in turn prevented any tension being applied to the brakes on the near side wheel.

34. Due to where the vehicle stopped, for safety reasons, it was escorted to Dingwall Lorry Park, where it was to remain until it could be safely moved. The trailer was towed the whole way with the trailer brake lever in what the pursuer had claimed was the on (down) position. When the pulling vehicle was disconnected the trailer wheels had to be chocked to prevent it rolling off. The owner/operator of the trailer at this time was [*company name and address*]. The person responsible for the day to day running of the business at that time was the pursuer. He was the registered keeper of the towing vehicle at the company address. He was cautioned and charged with the contraventions of the three offences, namely section 41A(B) of the Road Traffic Act 1988, regulation 23(1) of The Road Vehicle Lighting Regulations 1989 and section 42 of the Vehicle Excise and Registration Act 1994. In relation to the contravention of the lighting regulations, he replied "I accept that". He made no reply in response to caution and charge to the other offences.
35. On Thursday 20 August 2015, on the A9 Perth to Scrabster road at North Kessock by Inverness, the pursuer was driving motor vehicle registered number SY58 VVD at a speed of 71 miles per hour in a 50 miles per hour limit. The speed was detected by speed gun from a car park a short distance to the north of the Kessock Bridge. The time of driving was at 10.18 hours. The traffic flow was moderate. The visibility was good. The weather was dry, bright and clear. The pursuer was stopped at the time

and shown the speed on the display of the speed camera. He made no reply to caution and charge.

36. The pursuer requires to drive a substantial amount of miles each year for business reasons. The pursuer drives around 50,000 miles a year.
37. In around January 2011, although the pursuer remained separated from GH, his relationship with her improved. The pursuer and GH remain separated but they now have a good relationship. The pursuer provides good financial support to GH and has flexible and regular contact with his child.
38. The pursuer runs a successful business which involves conducting hazardous operations. The pursuer is responsible for the safety of the conduct of those hazardous operations. The pursuer's business results in the employment (either directly or by way of subcontracting) of about 50 persons.
39. A few years ago the pursuer purchased land at Craignock, Fife. This land was part of a former shooting estate. The pursuer, if granted a shotgun and air weapon certificate, would use the shotgun for sporting purposes and air weapon for target practice on the said land.
40. The pursuer currently possesses an air weapon. The pursuer has possessed an air weapon since he was a teenager to the current day without incident.
41. The pursuer, at times, does not take responsibility for his actions and seeks to blame others.
42. The pursuer was dismissive about the potential consequences of the loss of the W & S shotgun
43. Between 1999 and the present the pursuer has, intermittently: (1) acted recklessly; (2) demonstrated badly flawed judgement; (3) acted in an uncontrolled manner; (4)

acted with an element of violence; (5) acted irrationally and irresponsibly; and (6) displayed a cavalier attitude to both the conditions of a shotgun certificate and to the proper procedures to be followed in obtaining a shotgun certificate.

44. There is a risk that the pursuer could, in the future: (1) act recklessly; (2) demonstrate badly flawed judgement; (3) act in an uncontrolled manner; (4) act with an element of violence; (5) act irrationally and irresponsibly; and (6) display a cavalier attitude to the conditions of a shotgun / air weapon certificate. In particular, there is a risk that the pursuer could act in that manner in the future if the pursuer is experiencing difficulties in his personal life.
45. That given the pursuer's past conduct, there is a risk, which is not trivial, that damage to the public safety or peace might occur if the pursuer possessed a shotgun or air weapon.

#### **FINDS IN FACT AND LAW**

1. That the pursuer, for the purposes of section 28(1A) of the Firearms Act 1968 (hereinafter referred to as "the 1968 Act"), has a good reason for possessing, purchasing or acquiring a shotgun.
2. That the court, for the purposes of section 28(1) of the 1968 Act, is not satisfied that the pursuer can be permitted to possess a shotgun without danger to the public safety or to the peace.
3. That the pursuer, for the purposes of section 5(1)(c) of the Air Weapons and Licensing (Scotland) Act 2015 (hereinafter referred to as "the 2015 Act"), has a good reason for possessing, purchasing or acquiring an air weapon.

4. That the court, for the purposes of section 5(1)(d) of the 2015 Act, is not satisfied that the pursuer, in all the circumstances, can be permitted to possess an air weapon without danger to the public safety or to the peace.

**THEREFORE** sustains plea in law 1 and 2 for the defender; repels plea in law 1 and 2 for the pursuer; dismisses both appeals; and fixes a procedural hearing on 6 March at 2pm within the Sheriff Court House, High Street, Tain, to consider the question of expenses.

## NOTE

### Introduction

[1] This summary application is an appeal against the defender's decision of 10 February 2017 (the defender's decision of 10 February 2017 is hereinafter referred to as "the decision" and the defender's letter of 10 February 2017 is hereinafter referred to as "the decision letter") to refuse to grant the pursuer a shotgun and air weapon certificate. The pursuer seeks the decision, in respect of each certificate, to be reversed and the certificates granted. The pursuer did not, in the end, seek the court to remit the matter back to the defender in order for him to reconsider the decision.

[2] The appeal was heard over 3 days, namely 18 October 2017, 13 December 2017 and 10 January 2018. The pursuer was represented by Mr Hunter, solicitor. The defender was represented by Ms Cameron, solicitor. The parties had helpfully agreed a significant amount of evidence in a Joint Minute of Admissions (the agreed evidence will be narrated later in this Note). The pursuer called the following 3 witnesses to give evidence:

1. The pursuer;
2. The pursuer's business partner [*anonymised as "IJ"*]; and
3. The pursuer's former partner [*anonymised as "GH"*].

The pursuer also relied on an affidavit from a friend of the pursuer [*anonymised as "KL"*].

The defender called the following 4 witnesses to give evidence:

1. The pursuer's ex-wife [*anonymised as "CD"*];
2. Pc Christopher Wylie;
3. Inspector Ewan Henderson; and
4. Chief Inspector Alan Bowater.

[3] The evidence focused upon, first, the matters relied on by the defender in the decision letter for refusing the certificates and, second, some further matters that the defender relied on in his pleadings to resist the appeal. The defender relied on the following matters in the decision letter:

1. The pursuer being reported to the Procurator Fiscal (hereinafter referred to as the "PF") in June 2000 for a contravention of section 2(1) of the Firearms Act 1968 (hereinafter referred to as "the 1968 Act");
2. The pursuer being reported to the PF on 7 February 2010 for a series of domestic incidents involving the pursuer's former partner, GH; and
3. The pursuer being reported to the PF on 17 February 2013 for a contravention of section 28A(7) of the 1968 Act.

The defender relied on the following additional matters:

4. Domestic incidents involving the pursuer and his ex-wife, CD, dating from about 2000 / 2001.
5. The pursuer's involvement with the police after 17 February 2013.
6. The pursuer committing several road traffic offences.

[4] In this Note I propose to approach the evidence by considering each matter. To that end, I will consider the totality of the evidence led in relation to each matter and, after

having conducted that exercise, will explain the conclusions I reached in respect of each matter. After completing that task, I will then explain my decision by considering the relevant law and applying it to the facts that I have found proved.

## The Evidence

### *Matters 1 and 4 – contravention of section 2(1) of the 1968 Act and domestic incidents involving the pursuer and his ex-wife, CD.*

[5] The following evidence was agreed in respect of matters 1 and 4:

“On 22 June 2000, the then wife of the pursuer, [CD] attended at Johnstone Police Office stating that she had in her vehicle a 12 bore AYA side by side shotgun [hereinafter referred to as “the AYA shotgun”] owned by the pursuer. She told officers that over the past weeks her relationship with the pursuer had become strained and his behaviour had become increasingly irrational and that the shotgun had been lying on top of the wardrobe within the master bedroom at their home address at [address], Houston. This is a privately owned property situated in a residential area. She told the officers that the shotgun had been in this position for the past 12 months since they had moved to that address from [address in Ross-shire]. She told officers that she believed the pursuer to have a shotgun certificate but was concerned it had not been stored in a locked cabinet as it should be.

On 24 June 2000, the pursuer attended at Johnstone Police Office stating that he believed that his shotgun had been seized and was at that office. The pursuer produced a shotgun certificate (serial number 035332) issued by Northern Constabulary and requested the return of his shotgun. The certificate had expired on 6 January 2000. The certificate had included on it a Webbley [sic] and Scott shotgun [hereinafter referred to as “the W & S shotgun”]. The pursuer did not know the whereabouts of this shotgun. Police officers attended at [address], Houston and with the permission of the pursuer, searched the premises. During the search of the premises, it was observed that there was [sic] no secure gun cabinets within the dwelling house. The pursuer admitted that he had failed to comply with the requirement to store his shotgun securely whilst it had been valid. After a thorough search of the premises, no trace was made of the Webbley [sic] & Scott shotgun. The pursuer advised the police at this point that this shotgun may be at his business premises, the [hotel name and address], Ross-shire although he had not seen it for some 3 years. The police attended at these premises and with the pursuer’s permission searched these premises. No trace was found of this shotgun. To date the Webbley [sic] and Scott shotgun has not been traced by the police and the pursuer has not been able to account for its whereabouts.”

“On the 26 April 2001 at Paisley Sheriff Court, a matrimonial interdict was placed in force with a power of arrest, conditions being that the pursuer was not allowed to molest, abuse, threaten or verbally abuse [CD] and also to refrain from putting her in a state of fear and alarm or distress or using violence towards her at her home or anywhere else in the local area.”

*Pursuer's evidence in respect of matters 1 and 4*

[6] The pursuer gave the following evidence in respect of matters 1 and 4. He was 61 years old. He was the managing director of a business engaged in hazardous operations. He had held a shotgun licence since about the age of 17 years up until the year 2000. He thought there was a point where he owned four shotguns, however, he had handed in two of the shotguns to the police for destruction following the Hungerford shooting. He had used shotguns for sports shooting and clay pigeon shooting. He had previously been a member of a couple of shooting syndicates but had not been a member of a club. He had used air weapons since the age of about 13 years old. He previously used air weapons for target shooting. The pursuer explained that he had purchased land at Craignock, Fife a few years ago. This land was part of a former shooting estate. The pursuer noted that he may, in time, build a cabin on that land, and wished to use a shotgun and air weapon on the land (which I inferred was for the same reasons as above).

[7] In about 2000 the pursuer's business was doing well and it had secured two significant contracts. This necessitated the pursuer working in Ayr and he therefore decided to move his family to Houston. The pursuer explained that he had previously lived in [address in Ross-shire] and the local police there would visit him when his shotgun certificate was due for renewal. At the time of his move to Houston in about 2000, he hadn't used a gun for several years. The police in Houston did not remind him that his shotgun certificate was due for renewal and he simply forgot about the renewal of his shotgun certificate.

When he moved to [address], Houston the AYA shotgun was dismantled. That address did not have a gun cabinet so he decided to store the AYA shotgun behind a hot water storage tank in the upstairs part of the house. The pursuer denied that the AYA shotgun had ever been kept on top of the wardrobe of the master bedroom at [address], Houston.

[8] The pursuer confirmed that he gave permission to the police to search his business premises, [hotel name], for the W & S shotgun. The pursuer noted that that business premises did not have a gun cabinet but explained that the local police in that location did not insist on a gun cabinet and simply required guns to be locked away. He could not recall where he did in fact store his guns in the [hotel name], Ross-shire. He thought that he and his then wife, CD, would have had access to his guns at the [hotel name]. The pursuer advised that, to this day, he did not know what happened to the W & S Shotgun. He last recalled seeing the W & S shotgun at the [hotel name].

[9] In cross examination the pursuer accepted that the following conditions applied to his expired shotgun certificate:

“The holder of this certificate must inform the Chief Officer of Police by whom the certificate was granted within 7 days of the theft, loss or destruction in Great Britain of the certificate and/or the theft, loss, deactivation or destruction of any shotguns to which this certificate relates.

The holder of this certificate must, without undue delay, inform the Chief Officer of Police by whom the certificate was granted of any change of permanent address.

The shotguns to which this certificate relates must at all times (...) be stored securely so as to prevent, so far as reasonably practicable, access to the shotguns by an unauthorised person.”

The pursuer accepted that the W & S shotgun could be in the hands of anyone. When it was put to him that the disappearance of the W & S shotgun posed a risk to the public safety he advised he thought it would be difficult for the W & S shotgun to have fallen into the hands of a third party by mistake. The pursuer accepted that as at June 2000 he did not have a

shotgun certificate. He accepted that on 13 December 2000 he was convicted at Paisley Sheriff Court for contravention of section 2(1) of the Firearms Act 1968 (possession of a shotgun without holding a certificate). He accepted he was sentenced to a fine of £100 and that the AYA shotgun was forfeited. The pursuer accepted that he had been careless with both shotguns but did not accept that he was a careless person.

[10] The pursuer confirmed that he and his ex-wife, CD, were together for 23 years and married for 19 years. They have two daughters who are now aged 31 and 26 years of age. In 2000 he discovered that CD was having an affair with a man (hereinafter referred to as "EF"). As a result CD separated from him and went to live with her mother. Her mother stayed about 4 miles from the former family home in Houston. His daughters (who were about 14 and 9 years old at that time) went to stay with CD. CD would return to the family home in Houston, when he was not there, and remove business information, keys and other items that would cause him difficulty. The pursuer instructed a solicitor to handle the divorce. The divorce negotiations were bitter and his solicitor described the case as one of the most bitter divorces he had ever handled.

[11] The pursuer accepted that he was the subject of the interdict set out in para 5 above. He explained that he was not present in court when the interdict was granted. However, his sister had attended and made a strong case for the interdict not being granted and she had explained that the interdict might be used maliciously.

[12] The pursuer accepted that in the year 2001 he regularly appeared outside the home and workplace of CD. He explained that he found out that the man CD had run off with, EF, had been dismissed from his employment for having illegal pornography on his computer and for having pornography delivered to his work. He made a call to EF's former employer and explained that EF had entered a relationship with his wife, CD. The pursuer

explained to EF's former employer that he had two young daughters and asked whether he had anything to worry about. The answer to the pursuer's question was "yes". The pursuer was concerned that EF wanted access to his daughters. The pursuer explained that he appeared outside CD's workplace and home in order to let his wife know that he was aware of what was going on and that he was still around. He considered that his wife had shown no concern for the welfare of his daughters and also understood that she had offered to take deliveries for EF at her home address (with the inference being that such deliveries may include pornography).

[13] The pursuer was referred to a copy complaint (production 6/1/21). This complaint contained the following 4 charges:

"(001) On 10 May 2001 at West Nile Street and Blythswood Street, Glasgow you [pursuer] did conduct yourself in a disorderly manner stare continually at [CD] and [EF], both c/o Paisley Police Office, place them in a state of fear and alarm and commit a breach of the peace

(002) On 10 May 2001 at Bath Street, Glasgow, the M8 motorway, between junctions 19 and 28A road [sic] you [pursuer] did whilst driving motor vehicle registered number [registration A] conduct yourself in a disorderly manner continually follow motor vehicle registered number [registration B] occupied by the said [EF] and [CD] and place them in a state of fear and alarm for their safety and commit a breach of the peace

(003) On 8 June 2001 at [street name] you [pursuer] did conduct yourself in a disorderly manner, repeatedly kick stationary motor vehicle registered number [registration B] parked there and place the occupants of said vehicle namely the said [EF] and [CD] in a state of fear and alarm for their safety and commit a breach of the peace

(004) On 8 June 2001 on a road or other public place, namely [street name] you [pursuer] did drive a mechanically propelled vehicle, namely motor vehicle registered number [registration A] dangerously and did cause said motor vehicle to repeatedly strike motor vehicle registered number [registration B] then being driven by the said [EF], and occupied by the said [CD], and push motor vehicle registered number [registration B] whereby said [EF] lost control of the motor vehicle driven by him, causing it to swerve onto the opposite carriage way;

CONTRARY to the Road Traffic Act 1988, Section 2 as amended

or alternatively

on on [*sic*] date above libelled and at place above libelled you [*pursuer*] did conduct yourself in a disorderly manner drive motor vehicle registered number [*registration A*] in close proximity to motor vehicle registered number [*registration B*] then being driven by the said [*EF*], in which said [*CD*] was a passenger, did repeatedly strike motor vehicle registered number [*registration B*] aforesaid whereby said [*EF*] lost control of the motor vehicle driven by him, causing it to swerve onto the opposite carriage way, did place the said [*EF*] and [*CD*] in a state of fear and alarm for their safety and commit a breach of the peace”

The pursuer was unclear as regards which charges he had pled guilty to. However, after having been shown the court minutes he accepted that he had pled guilty to an amended charge 2 (charge 2 is set out above in its amended form) and to charge 3. He also accepted that not guilty pleas to charge 1 and 4 had been accepted by the Crown.

[14] As regards charge 2, the pursuer accepted that he maybe followed EF and CD but considered that he did not place them in fear or alarm. He explained that CD was going to take EF back to her house where his daughters were living and he was concerned about that. As regards charge 3, the pursuer stated that he did not remember kicking the car but accepted that it was a possibility. In cross examination he denied kicking the car despite him having pled guilty to charge 3. The pursuer explained that EF and CD had made numerous allegations at that time and stated that many were untrue and malicious.

[15] As regards charge 4 (a not guilty plea was accepted by the crown in respect of charge 4) the pursuer explained that what in fact occurred was that he had been following EF and CD who were in the car in front. EF was driving and he (EF) did an emergency stop in front of the pursuer. The pursuer managed to avoid a collision. EF then drove on and did a second emergency stop in front of the pursuer. The pursuer again managed to avoid a collision. However, EF and CD claimed that he had struck their vehicle and claimed a spoiler was cracked. The pursuer’s vehicle had not been damaged. EF subsequently made

an insurance claim against the pursuer for the cracked spoiler. The pursuer considered that EF and CD were lying about the incident but in the end he accepted he had to pay £200 for the cracked spoiler. The pursuer explained that he subsequently found out, from a relative of CD, that the spoiler was cracked before the incident and that EF and CD thought it was funny that he had to pay for the damage. The pursuer also noted that he in fact had obtained an interdict against EF, preventing EF from being in the same home as his daughters. The pursuer advised that EF did not defend the interdict. The pursuer noted that EF and CD ignored the interdict and he received telephone calls telling him that EF was at home with his daughters. The pursuer explained that he did report this to the police but claimed that the police could not find any record of the interdict and arrested him for harassing EF and CD.

[16] The pursuer was referred to production 6/1/19 which was a police document listing a report made by CD. The police report noted that CD had reported the following to the police: that on 24 June 2001 that the pursuer had telephoned her from a telephone box; that she had previously received a number of nuisance calls from the telephone box number; that the pursuer had asked about contact with his daughters; that CD had hung up; that CD and EF had then immediately gone round to the telephone box and saw the pursuer standing nearby with his hands on his hips; that the pursuer had then driven off. The police report also stated that the pursuer was subsequently arrested for breaching a bail condition of no contact with CD. The pursuer disputed parts of the police report. He accepted he was charged and ultimately convicted for breaching a bail condition (although the pursuer described it as being charged for breach of interdict, however, production 6/1/19 makes clear reference to a breach of bail conditions) that he should not contact CD. The pursuer explained that this charge arose from a Sunday when he was supposed be having contact

with his daughters. His daughters were not brought for the contact. The pursuer knew that his wife did not have his daughters and that she was “off with a man”. The pursuer therefore telephoned CD, most probably from his mobile telephone, to ask where his daughters were. CD just hung up. The pursuer was subsequently arrested and charged. He appeared at Paisley Sheriff Court and the bail conditions were changed to allow the pursuer to contact his wife to discuss contact with his daughters (the pursuer again referred to the interdict being changed but it seems it would have been a bail condition that was relaxed). The pursuer denied making any nuisance calls to CD.

[17] The pursuer explained that there was another occasion when the bail conditions were changed (again the pursuer referred to the interdict being changed). This occurred because the pursuer’s mother lived in the house next to CD’s mother (where CD was staying). The pursuer explained that CD had seen him near to her mother’s house and reported him to the police for breach of bail conditions. All the pursuer had been doing was going to visit his mother, however, he was again arrested and appeared at Paisley Sheriff Court. When he appeared the bail conditions were again modified to allow him to visit his mother’s address.

[18] The pursuer explained that he opened a further business premises in Invergordon in about December 2000. This meant that the pursuer required to spend more and more time in the Invergordon area. This made arranging contact with his daughters very difficult because they remained in Houston. The pursuer tried to make contact arrangements for his daughters but there came a point in early 2002 when CD stopped all contact and the pursuer did not then see his daughters again until about 2015.

[19] The pursuer's ex-wife, CD, gave the following evidence in respect of matters 1 and 4. She had married the pursuer in 1980 and they were together for about 20 years. There came a point in around the summer of 1999 when they moved to the address in Houston. CD thought that the pursuer had a shotgun licence due to him having possession of a shotgun. When they were living at the address in Houston the pursuer had stored his shotgun on top of the wardrobe in their bedroom. CD was in no doubt that that was where the shotgun had been kept. CD did not know how long the shotgun had been stored on top of the wardrobe but suspected it had been the entirety of their time living at the address in Houston. CD confirmed that there was not a locked cabinet in the address in Houston. The shotgun was not stored in a locked cabinet at that address. Whilst the couple were living in Houston the marriage began to break down and the pursuer began to act in an irrational and erratic fashion. He was unpleasant and bullying towards CD. CD was concerned about the shotgun being on the wardrobe and was, in particular, concerned for her own safety due to the pursuer's erratic behaviour coupled with the shotgun being on the wardrobe. CD therefore, on 22 June 2000, took the AYA shotgun to Johnstone Police Office in order to get the shotgun out the house and so that she would be safe from the shotgun. CD accepted that her involvement with the police at that time was accurately recorded in the agreed evidence set out at para 5 above. As far as CD could recall the AYA shotgun had been in one piece when lying on top of the wardrobe and she took it in one piece to Johnstone Police Office. CD rejected a suggestion put to her in cross examination that the shotgun had in fact been broken into pieces and stored behind some sort of storage tank. She clearly remembered picking up a gun and not pieces of a gun.

[20] CD explained that she obtained the non-molestation interdict (see the agreed evidence at para 5 above) due to the pursuer turning up out the blue and stalking her. She

would see him if she was going to work and, on occasions, when she was leaving her workplace to go for lunch. The pursuer did not say anything when he appeared but would stare at her in an intimidating fashion. At that time EF was CD's partner and work colleague (CD explained that EF ultimately became her husband and that he had subsequently passed away). CD was asked about the charges that have been narrated at para 13 above. She did not have much recollection of events relating to charge 2. She did, however, recall the events that occurred in respect of charges 3 and 4. She explained that in the morning she used to meet EF and get a lift from him to their work. CD remembered getting in EF's car and that the pursuer appeared without any warning. The pursuer drove in front of EF's car. CD and EF immediately locked the doors to their car so that the pursuer could not get at CD. The pursuer approached the front passenger door where CD was sitting. He tried to open that door but could not do so due to the door being locked. The pursuer then started kicking the car. CD did not do anything and did not get out of the car she was in. EF did not do anything. The pursuer did not say anything. EF then pulled off and drove his car away from the pursuer. The pursuer got in his car and was soon behind EF's car. The pursuer then started driving into EF's car. The front end of the pursuer's car came into contact with the rear of EF car, effectively shunting EF's car. CD was not sure how many times the pursuer did this but thought that it was 2 or 3 times. CD was absolutely petrified and telephoned the police whilst the incident was occurring. The incident lasted for about half to three quarters of a mile. The incident occurred between about 07.30 and 07.45 hours and there were other cars on the road. The police kept CD on the telephone line when the incident was occurring and asked her to describe what was happening in real time. The incident ended when either the pursuer's car or EF's car went round a roundabout the wrong way. CD was not sure which vehicle did this. CD

remembered then attending Johnstone Police Office on the day of, and very shortly after, the incident. She recalled that there was damage to the rear of EF's vehicle but there wasn't much. Damage was also subsequently discovered underneath EF's vehicle.

[21] CD denied any knowledge of EF having pornographic material at his work. CD accepted that the pursuer had not seen his daughter since 2002. CD explained that she never stopped her daughters seeing their father (the pursuer), rather their daughters made up their own mind. CD completely rejected the suggestion that it was in fact EF who was stopping his car in an attempt to cause a collision with the pursuer's vehicle.

***Matter 2 – the pursuer being reported to the PF on 7 February 2010 for a series of domestic incidents involving the pursuer's former partner, GH.***

*Pursuer's evidence in respect of matter 2*

[22] The pursuer gave the following evidence in respect of matter 2. The pursuer explained that he stayed in Bed and Breakfast accommodation in the Invergordon area between December 2000 and early 2002 and then eventually moved to a permanent address in Tain in 2002. After moving to Tain the pursuer started a new relationship with GH. This relationship lasted until about 2010. The pursuer explained the he and GH have a child who is now a teenager. During the relationship the pursuer and GH lived together in Tain.

[23] The pursuer was asked about 3 incidents involving GH which the defender is relying on to resist this appeal. The pursuer was referred to production 6/2/22 which was a transcript of a statement given to the police by GH on 26 January 2010 where she refers to the 3 incidents. As regards the first incident, GH's transcript narrates:

“He can become quite aggressive at times. During the Christmas time of 2008, I can't be sure of the date exactly, we were in the car travelling to Glasgow, I think, with our [child]. We were on a dual carriageway and he was driving at 70 mph whilst talking on his mobile phone. I told him to stop and he wouldn't, so I put the radio up to

force him and he slapped my hand away a few times and slapped my right cheek of my face. That was the first time he hit me. He said it was an important conversation and that I don't care if he's driving when I call him, but I do. Our [child] witnesses this and [he/she] is only 5 years old."

The pursuer denied that he had ever assaulted GH and explained that her account was not true. He explained he was driving to Glasgow with GH and his child. The pursuer was driving and GH was in the front passenger seat. At this time GH was convinced the pursuer was having an affair with someone from the pursuer's work. The pursuer thinks he received a telephone call from the person GH believed he was having an affair with. The telephone call was received utilising the vehicle's hands free system. GH immediately moved her hand and attempted to push a button on the vehicle console to end the call. The pursuer then held his hand over the said button until he completed his call. There was only a light touching of GH's hand at most.

[24] As regards the second incident, GH's transcript narrates:

"Then sometime in the summer of 2009, [the pursuer] was in the garden cooking on the barbeque. We got into an argument and he took the barbeque into the garage and began to cook in there as I had asked him to leave. Then he got my clothes and began to put them on the barbeque. As I went to lift them off and take them back inside, he grabbed my arms to pull me back and we got into a physical struggle with one another. We were fighting for 4 or 5 minutes, just inside the house at the patio doors. I did not scream or anything, as I did not want to alarm my [child], however my [child] came to the door of the dining room and it stopped."

The pursuer denied GH's version of events. The pursuer explained that he had been working away and phoned to say that he was coming home. At that time relations between the pursuer and GH had not been great. The pursuer thought that it would be a good idea to have a family barbeque. The pursuer came home and lit the barbeque. GH then threw the barbeque over. The pursuer picked the barbeque up. GH then threw the barbeque over 3 times with the pursuer picking it up on each occasion. The pursuer then took a small amount of GH's clothing (not the clothing she was wearing) and threw it over some of the

hot coals that were lying on the ground as a result of the barbeque being thrown over. The pursuer thought perhaps one dress was damaged. The pursuer denied there was any sort of struggle.

[25] As regards the third incident, GH's transcript narrates:

"Then the most recent incident happened on this last stay at home on Thursday 21<sup>st</sup> January 2010. He came home for dinner and later in the evening I had put our [child] to bed and came down stairs to go into the living room. [*The pursuer*] was in the living room and blocked me from getting in. He said he wanted to sleep in their [*sic*] and watch television, but did not want me there.

I began to force my way in and he took hold of the sleeves of my dressing gown and forced me backwards through the hallway and into the dining room. I bumped into an arm chair in the dining room and fell backward onto it. He then grabbed me by the arms and pulled me up and forced me back onto the dining table and then pinned me to the floor. I was on my back and he was standing above me. I was kicking at him, trying to protect myself. I said to him 'do you want to kill me, just do it'. He made no reply and then we heard the wee one call me from the top of the stairs and I went to him. I had a couple of small bruises to my inner left upper arm from his fingers, but they were very small.

No-one else has witnessed any of these incidents ..."

The pursuer explained that the third incident simply did not happen. The pursuer noted that he had huge respect for GH and that she had been a fantastic mother. However, at that time she was convinced that the pursuer was having an affair with a woman from his work (hereinafter referred to as "IJ"). IJ had been put in fear as a result of aggressive behaviour from GH and panic buttons had had to be installed at the business premises at Invergordon due to GH's actions. Around this time GH would launch verbal attacks on the pursuer which could last for 1 or 2 hours. GH only attacked the pursuer once. It took place in the door way to their lounge. GH was punching the pursuer. The pursuer was really worried that he would be badly hurt and grabbed GH's wrist's to stop her punching him. GH was also kicking out at the pursuer and she did go to the floor. All the pursuer did was restrain

her. That, together with the car console incident was the only physical altercations the pursuer had had with GH.

[26] GH's transcript also made allegations about the pursuer possessing pornography involving violence and animals. The pursuer denied possessing such items. The pursuer explained that he purchased a vessel in Rotterdam in 2009. On that vessel some pornography was found in the form of cassettes. The pursuer denied that these items were left around the family home and explained that they were binned.

[27] The pursuer explained that he was so concerned about GH's behaviour towards IJ that he took advice from Anderson Shaw Gilbert, solicitors. On 10 July 2009 Anderson Shaw Gilbert wrote to GH, on behalf of the pursuer's business (see production 5/2/7), to advise GH that she was not welcome at the business premises in Invergordon. The pursuer also explained that in around March 2010 he became aware that GH was telling people that the pursuer had physically assaulted her when this was not true. As a result of these rumours the pursuer instructed Anderson Shaw Gilbert to write to the police to express the pursuer's concerns about further false and malicious allegations being made by GH (see production 5/2/7). The pursuer described GH's actions, at that time, as a malicious campaign against him. He explained that this malicious campaign only lasted for a short period of time.

[28] The pursuer advised that around January 2011, although he remained separated from GH, his relationship with her improved. The pursuer explained that they have remained separated but they now have a good relationship. He continues to support her financially and GH is always very flexible as regards his contact arrangements with their child.

[29] GH gave the following evidence in respect of matter 2. GH was now a primary school teacher at a Highland School. She accepted previously being in a relationship with the pursuer. She agreed that the relationship broke down in around 2010. GH explained that the pursuer had significant amounts of pornography in the family home and this upset her (she referred to the pornography as the pursuer's 'nonsense'). GH was asked about the 3 incidents set out at paras 23 to 25 above. GH could recall all the incidents but, initially struggled to recall some details, however, she was adamant that she told the truth to the police when she spoke to them on 26 January 2010. When GH was taken, in cross examination, to the transcript of what she told the police (production 6/2/22), she confirmed that the three passages narrated in the said paragraphs were the truth. GH accepted that she went to the police 5 days after the third incident but explained that her primary motive of going to the police was stop the pursuer's 'nonsense'. GH advised that the police eventually removed all the pursuer's pornographic material from the family home but brought it back 3 months later. GH then had to destroy all of it herself.

[30] GH accepted that she did not get on well with IJ. GH claimed IJ had pushed her once and GH had reported this to the police. GH denied harassing IJ. GH did appear, by way of inference, to accept that she thought that the pursuer may have been having an affair with IJ or another of his work colleagues. GH explained that she did not, however, state this thought to anyone.

[31] GH explained that she did not, at any point, reconcile with the pursuer. However their relationship had healed over time. They now have a good relationship and the pursuer provides well for GH and their child. The pursuer recently gave GH his half share of the family home that they previously owned jointly. The pursuer sees their child whenever he wants. GH, the pursuer and their child now spend Christmas and other special occasions

together. GH was asked whether she considered that the pursuer was a danger to the public safety or the peace. She said that save for the two year period when they were breaking up, he was not a danger.

*IJ's evidence in respect of matter 2*

[32] IJ gave the following evidence in respect of matter 2. IJ had known the pursuer since 2000 and she set up a business involving hazardous operations with him. IJ and the pursuer were business partners and had never been more than that. IJ met GH in 2001. IJ tried to be friends with her and introduced her to IJ's friends. In or around 2009 IJ stopped being friends with GH when she accused IJ and another of her work colleagues of having an affair with the pursuer. IJ called GH to confirm that she was not having an affair with the pursuer and in an attempt to put the matter behind them. GH chose not to do that and appeared a bit menacing when she was around IJ. IJ felt that GH tried to intimidate her. GH would come to her business premises when the pursuer was not there. In the end the business had to install panic buttons and CCTV as IJ was apprehensive of GH coming to the business premises. IJ explained that the pursuer had to consult a solicitor about GH's actions and confirmed that the pursuer's solicitor wrote to GH to tell her to stop her coming to the business premises. GH did stop but still came to the gate of the premises. IJ recalled that GH had reported her to the police for shouting and swearing at her, pushing her and using racist language. IJ accepted that she may have sworn but denied the other allegations.

[33] IJ had no knowledge of the 3 incidents referred to at para 23 to 25 above other than that the pursuer had put GH's clothes on the barbeque.

[34] IJ was asked whether she considered the pursuer to be a danger to the public safety or the peace. She did not think he was. IJ explained that the pursuer was responsible for all

the technical matters relating to the hazardous operations that are conducted in the business. The pursuer is responsible for all method statements / risk assessment conducted in relation to such operations. IJ described the pursuer as a pacifist who avoids confrontation. She did not consider him to be careless, reckless or dangerous. In all their years working together IJ has never felt threatened by the pursuer. IJ considered that the pursuer was very respectful, caring and generous. IJ explained that the pursuer was and is very accommodating and generous with his staff. He has a fantastic relationship with the child he has with GH.

***Matters 3 and 5 – the pursuer being reported to the PF on 17 February 2013 for a contravention of section 28A(7) of the 1968 Act and the pursuer's involvement with the police after 17 February 2013.***

*Pursuer's evidence in respect of matters 3 and 5*

[35] The pursuer gave the following evidence in respect of matters 3 and 5. The pursuer was shown his application for the shotgun certificate (production 5/1/1). The pursuer accepted that the application was dated 30 November 2011. Question No 14 on the application was in the following terms:

*“Have you been convicted of any offence (see notes at the end of the form)?  
On renewal details need only be given of convictions since the existing certificate was issued”*

Question 14 required either “No” or “Yes” to be ticked and provided a space for details if “Yes” was ticked. The notes at the end of the form provided:

*“In answering question 14 you are not entitled to withhold information about any offence. This includes motoring offences, convictions in places outside Great Britain, and (by virtue of the Rehabilitation of Offenders Act 1974 (Exceptions) Order 1975) convictions which are spent under the 1974 Act. Both a conditional discharge and an absolute discharge count as convictions for this purpose.”*

The pursuer accepted that despite having a number of previous convictions he ticked “No” in answer to question 14. He said it was sheer stupidity. His idea was to get the process

underway and he couldn't remember the details of what he had been convicted of. He thought the police would supply the details of what he had been convicted of. He had very little accurate memory of what he had pled guilty to and honestly expected the police to be supportive. The pursuer explained that his shotgun application was not processed due to his failure to disclose his previous convictions. The pursuer accepted that he had to attend court in respect of a contravention of section 28A(7) of the 1968 Act (making a false statement to procure the grant of a certificate – it was, however, a matter of agreement that the Crown ultimately deserted the complaint against the pursuer).

[36] In cross examination the pursuer was taken to the Standard Firearm Enquiry Report (production 6/1/6) prepared by Police Constable 772 Christopher Wylie (and dated 26 February 2013) in respect of the application for the shotgun certificate. At para 36 of the said report Pc Wylie stated that the application was not recommended and gave the following explanation:

“During the enquiry it was noted that the applicant had marked no to question 14 on Form 103.

I was in possession of his PNC / SCRO printout which clearly showed a conviction for possession of a firearm without authorisation, 2 breach of the peace convictions and 4 motor offences.

The applicant was asked why he had answered this question as a no. He confirmed that he did not have any convictions. He was given a further chance to disclose these convictions however he insisted he had no convictions.

I then ran through his previous convictions with him and he said that he did not consider these as criminal convictions.

Further to this he blamed his first wife for all the convictions. Once the applicant started to discuss his first wife he appeared to have been emotionally scarred by this period in his life and was visibly emotional.

He went on to discuss that he spent 2 days in a police cell when his wife had him arrested. He was very emotional when discussing the break up of his first marriage.

When he had finished discussing his first wife he then advised me that over the past 10 years he has only been in contact with the police for road traffic offences. He also advised me that he had not been in police custody over the last 10 years.

I then reminded him of an incident in January 2010 (NJ/1160/10) where-by the applicant was detained and questioned regarding a domestic incident involving him and his second wife. He again conceded [*sic*] that this had occurred.

I was left wondering if there was anything that I hadn't been told. As every piece of information discussed with the applicant that could have had a negative bearing on his application was only disclosed when he was advised that the information was already known.

Following the enquiry the applicant was cautioned and charged for attempting to procure the grant of a shotgun certificate by making a false statement in relation to disclosure of convictions. (NJ/2522/13)

I will not recommend the grant of a shotgun certificate to the applicant"

The pursuer denied that he had told Pc Wylie that he did not have any convictions. He recalled saying that he didn't know that he had to put driving offences on the application. He accepted telling Pc Wylie about his divorce and that he explained what a struggle that was at the time. The pursuer stated that he did tell Pc Wylie what he had been charged with around the time of his divorce. He explained to Pc Wylie that he did not think it was fair that he had ended up with convictions during the marriage break up. He asked Pc Wylie to allow him to correct the application form but Pc Wylie refused.

[37] The pursuer was referred to the application for the air weapon certificate (production 5/1/2). This application was dated 15 August 2016. Question 11 of that application was in the following terms:

"Have you ever been convicted of any offence?

This time the pursuer ticked "Yes" and stated "please see attached sheet". The attached sheet was at page 9 of the application. On that sheet the pursuer wrote:

"In the period 2000/2001 I went through a particularly bitter divorce.

My then wife mounted a campaign of nuisance against me for which she was subsequently investigated by D.S. Gallagher of Renfrew Police Station.

She was not charged in the end, due to lack of available police time.

I did, however, lose my shotgun cert which I am currently re-applying for at Inverness.

Please speak to firearms officers at Inverness for more details.”

The pursuer explained that he was referring to his ex-wife, CD, and that he was attempting to give the police general information to allow them to refer back to the earlier application for the shotgun certificate. The pursuer explained that he did this to avoid making any omissions in the information he supplied.

[38] The pursuer was then referred to a handwritten note of meeting held between the pursuer, Inspector Henderson and Sergeant Jones on 12 July 2016 (production 6/1/1). The handwritten note was a summary of the meeting and was prepared by Sergeant Jones. The handwritten note was in the following terms:

“Introductions made along with purpose of the meeting. Talked through the applications and the concerns therein. [*The pursuer*] was slightly dismissive of concerns. Although he did accept responsibility for possessing a shotgun without a certificate this was only after he blamed his ex-wife for deliberately not telling him it was going to expire. Also quick to point out the police never sent him a reminder. Denied any form of domestic abuse on either ex-wife. Apportioned blame to both personalities. Is on good terms with [*GH*] and sees them on regular...

Gave assurances that he can possess shotguns without danger to public or the peace.”

The pursuer explained that he was shocked that the police thought he was dismissive. The last thing he wanted to do was to appear dismissive. The applications were really important to him and he was trying to answer the police’s questions in as much detail as possible. That included setting out the background to CD’s claims. The pursuer explained that he thought the separation from CD was behind him and that he may have been dismissive in the respect

that the police were now re-stating what was alleged to have occurred all those year ago as if it were true.

[39] The pursuer noted that in his current address he has an upright solid steel gun cabinet. If his application for a shotgun and / or air weapon certificate were granted he would store any gun in the secure cabinet (and he would buy an additional secure gun cabinet if necessary). No one else would have access to the cabinet and the keys would be hidden. The pursuer explained that he now employs between 50 and 60 people. The work his business conducts is hazardous and the pursuer is responsible for the safety of the hazardous operations conducted. The pursuer advised that his business has a good reputation with clients going back 24 years.

[40] The pursuer did not think he was a danger to the public or the peace. He was not violent. Rather he was a controlled person who makes a positive contribution to society.

*Pc Christopher Wylie's evidence in respect of matter 3*

[41] Pc Wylie gave the following evidence in respect of matter 3. Pc Wylie explained that he had 9 years police service. In 2013 he was tasked with making enquiries in relation to the pursuer's application for the shotgun certificate. This involved ensuring that the application was completed properly, checking what arrangements had been made for storage of the weapons and visiting the pursuer in order to discuss both the application and his knowledge of the relevant legislation.

[42] Pc Wylie's attention was drawn to question no 14 of the pursuer's application for the shotgun certificate and confirmed that the police conducted background checks, which included checking the pursuer's previous convictions. Pc Wylie confirmed that production 6/1/8 set out the pursuer's previous convictions and advised that he would have been aware

of these at the time he visited the pursuer. Pc Wylie was referred to the Standard Firearm Enquiry Report (production 6/1/6) that he had prepared and signed on 26 February 2013. In particular Pc Wylie was referred to his recommendation at para 36 of his report (see para 36 above). Pc Wylie confirmed that para 36 of his report set out his reasons for not recommending the approval of the pursuer's application and confirmed that he cautioned and charged the pursuer for attempting to procure the grant of a shotgun certificate by making a false statement in relation to disclosure of convictions.

[43] In cross examination Pc Wylie confirmed that the pursuer was polite when he first met him and that the storage arrangements were suitable. However, a stumbling block was reached when the pursuer's previous convictions were discussed. Pc Wylie explained that he was fully aware of the pursuer's convictions prior to speaking to him and was concerned that he had answered question 14 in the negative. During his visit to the pursuer Pc Wylie gave the pursuer several opportunities to disclose his convictions but he did not do so until he was told that the police were aware of them. Pc Wylie accepted that the pursuer did become emotional when discussing his convictions surrounding his separation from CD but was not sure exactly why he became emotional. Pc Wylie explained that the pursuer did not consider these to be convictions. Pc Wylie confirmed, save for the issue with the convictions and the pursuer's comments with regard to not being in police custody for 10 years, that the pursuer answered all other questions satisfactorily.

*Inspector Henderson's evidence in respect of matters 3 and 5*

[44] Inspector Henderson gave the following evidence in respect of matters 3 and 5. Inspector Henderson explained that he currently worked in the firearms department and was responsible for firearms licensing for North Command (which includes Dundee,

Aberdeen and Inverness). He had delegated responsibility from the defender in relation to the revocation and refusal of certificates. Inspector Henderson was aware that the pursuer had applied for both a shotgun certificate and an air weapon certificate. Inspector Henderson explained that himself and Sergeant Jones interviewed the pursuer in relation to his application for a shotgun certificate on 12 July 2016 (the pursuer had not applied for an air weapon certificate by this point). Inspector Henderson led the interview and Sergeant Jones made notes. Inspector Henderson confirmed that production 6/1/1 was the note prepared by Sergeant Jones (see para 38 for details of the note). Prior to the interview Inspector Henderson had reviewed the application and the pursuer's background. Inspector Henderson was concerned about the pursuer's previous conviction under the firearms legislation, the history of domestic abuse allegations and his failure to disclose his previous convictions on the shotgun application. Inspector Henderson discussed all of his concerns with the pursuer. He discussed the situation when the AYA shotgun was handed in to the police by CD. The pursuer blamed his wife for not informing him that his then shotgun certificate was coming to an end and felt betrayed that she had taken the AYA shotgun to the police. Inspector Henderson described this incident as a huge oversight on the pursuer's part. Inspector Henderson next discussed the domestic incidents in relation to both CD and GH. Inspector Henderson did think that the pursuer came across well but that he did put the blame for all the domestic incidents squarely on the shoulders of CD and GH. Inspector Henderson was concerned that the pursuer had been physical with GH and that they had been fighting in the home. Inspector Henderson explained that the pursuer blamed GH and downplayed his part. Inspector Henderson explained that he did not write prospective applicants off before speaking to them. However, what he was looking for was someone who was accountable and would accept when they were wrong. Inspector Henderson did

not get that impression from the pursuer and considered that he passed the buck to CD and GH. Inspector Henderson did note that the pursuer did provide him with assurances that he would abide by the law if granted a certificate.

[45] In cross examination Inspector Henderson confirmed that he did not ultimately make the decision to refuse the pursuer's application. That was done by Chief Inspector Bowater. Inspector Henderson noted that Chief Inspector Bowater would have had all the information that was on the police system in relation to the pursuer's applications but he would not have had Sergeant Jones' note of the meeting of 12 July 2016.

*Chief Inspector Bowater's evidence in respect of matters 3 and 5*

[46] Chief Inspector Bowater gave the following evidence in respect of matters 3 and 5. Chief Inspector Bowater had 29 years police service and was based at Govan Police Office. In the early part of 2017 he had been seconded to the firearms department for a period of 3 months. His role in that department was as a decision maker in respect of certificates. He had delegated responsibility from the defender in order to do so. Chief Inspector Bowater explained that he considered the pursuer's applications for both a shotgun and air weapon certificate and made the decision to refuse them. He confirmed that his decision letter was production 5/1/3 (which is set out in full at finding in fact 4). Chief Inspector Bowater explained that the second paragraph of the decision letter should read "section 2(1) of the Firearms Act 1968" instead of "section 21 of the Firearms Act 1968". Chief Inspector Bowater noted that his information was that the pursuer had left one shotgun lying on top of a wardrobe, had lost a second shotgun and had allowed his shotgun certificate to expire. That information was a concern. The unsecured shotgun could have been accessed by anyone breaking into the house. The other shotgun has never been found and could get into

the hands of others. As regards the domestic incidents, Chief Inspector Bowater had considered incidents related to both CD and GH. As regards CD there appeared to be stalking behaviour from the pursuer. The pursuer had also breached bail conditions / breached an interdict. In addition there was information to suggest that the pursuer had followed a vehicle and pushed that vehicle along a carriageway. Chief Inspector Bowater thought that that background demonstrated that the pursuer was reckless and unable control his own behaviour when things were not going his way.

[47] As regards GH, Chief Inspector Bowater considered that the 3 incidents again demonstrated that the pursuer was unable to control himself when things were not going his way. Chief Inspector was also concerned that the pursuer had denied having previous convictions and considered that the pursuer had attempted to mislead the police in that regard. Chief Inspector Bowater was taken to the pursuer's previous conviction (production 6/1/8) and he noted that the road traffic offences were an additional concern. Chief Inspector Bowater considered that the pursuer, had, over a prolonged period of time, been unable to control his own behaviour and was prone to bursts of violence. In the circumstances, he considered that the pursuer did not meet the test to be granted a shotgun or air weapon certificate.

[48] In cross examination Chief Inspector Bowater confirmed that he had never spoken to the pursuer or CD or GH. He confirmed that he had considered all the information that was on the police system in relation to the pursuer's application but that he did not speak to Inspector Henderson nor was he aware of the note of the meeting of 12 July 2016. He also confirmed that he did not know the up to date position between the pursuer and GH and the fact that they were now on good terms. Chief Inspector Bowater accepted that the latest information before him was Pc Wylie's report (dated 26 February 2013), however, he

considered that he had sufficient information to make a decision. Chief Inspector Bowater accepted that when making his decision he was aware that the pursuer was lawfully in possession of an air weapon, although he noted that this was due to the pursuer lodging an appeal against the refusal of his air weapon certificate. Chief Inspector Bowater explained that he was not aware that the pursuer had possessed an air weapon since he was a teenager but accepted that none of the information before him suggested that the pursuer had used an air weapon inappropriately. He accepted that he was not convicted of the vehicle pushing incident but pointed out that the police had corroborative evidence in relation to that incident and inferred that he was entitled to take account of that incident. Chief Inspector Bowater was referred to a letter written to him by the pursuer, dated 27 February 2017 (production 5/1/4) following upon the pursuer being sent the decision letter. Chief Inspector Bowater confirmed that he did not make further enquiries in relation to this letter. Chief Inspector Bowater stated that the pursuer had failed to disclose his previous convictions, had stalked CD and been violent to GH. Under no circumstances would he have granted the pursuer a certificate.

*KL's affidavit*

[49] KL's affidavit explained that he had been a friend of the pursuer for the last 45 years. He did not witness any of the incidents, referred to above, involving CD or GH. KL believed that the pursuer was a caring person who is slow to anger. KL considered him to be a very effective businessman who had built up a highly successful business which involved hazardous operations. KL understood that the pursuer directed his business with good governance and stewardship. KL could not understand how the pursuer could be considered to be unsuitable to hold a shotgun or firearm certificate.

*Matter 6 – the pursuer committing road traffic offences.*

[50] The following evidence was agreed in respect of this matter:

“At 7.07am on 14 September 2004 vehicle registration number W452 UCA was detected by speed camera driving at a speed of 86 miles per hour in a 70 miles per hour speed limit on the A9 Edinburgh to Perth road, Dunblane, District of Stirling near to Allan Water. A Section 1 Road Traffic Offenders Act 1998 [*sic* – *should be* 1988] Notice of Intended Prosecution and a form under Section 172 of the Road Traffic Act 1998 [*sic*] was sent to the registered keeper of the vehicle. A Notice of Intended Prosecution was then sent in consequence to the response to that to the Pursuer. He subsequently completed and returned the Section 172 form in which he admitted being the driver at the time of the alleged offence. A conditional offer of fixed penalty was issued to him on 5 October 2004 and returned unpaid.”

“On Thursday 20 August 2015, on the A9 Perth to Scrabster road at North Kessock by Inverness, the pursuer was driving motor vehicle registered number SY58 VVD at a speed of 71 miles per hour in a 50 miles per hour limit. The speed was detected by speed gun from a car park a short distance to the north of the Kessock Bridge. The time of driving was at 10.18am. The traffic flow was moderate. The visibility was good. The weather was dry, bright and clear. The pursuer was stopped at the time and shown the speed on the display of the speed camera. He made no reply to caution and charge.”

“At 6pm on Wednesday 1 November 2006 the police received a call reporting a large trailer being towed between Contin and Maryborough with no lighting on the rear of the trailer. Officers attended at the Lochussie junction on the A835, Contin to Maryborough road, where they found a Nissan Navara registered number WJ06 JXD which was towing a large tow-a-van type trailer. This road is an unlit arterial road. Officers recorded that it was dark, the weather was fine and the road was busy. The trailer was large enough to completely obscure the lighting on the towing vehicle. The vehicle was stopped near to Maryborough roundabout and the driver found to be the Pursuer.

An inspection of the trailer was carried out and it was found that the lights originally fitted by the manufacturer were completely inoperative. The Pursuer was instead relying on a temporary lighting board tied to the back of the trailer. None of the lights on this board were lit. After fiddling with the trailer’s electrical connection, the Pursuer managed to illuminate the offside positioned lights. None of the other lights, however, operated. There was no registration plate displayed on the trailer. There was a registration number written in felt pen on the lighting board but it did not relate to the towing vehicle. The trailer was an Indispension make, type V674, serial number G044333 and is rated at 2,030 kilograms. It is fitted with automatic overrun brakes. It was noted that the parking brake lever was in the upright or on position. When this was pointed out to the Pursuer he claimed that this brake

worked the other way round and the lever had to be lowered to apply the brake. He did this and was then asked to drive the vehicle to and fro. This had no apparent braking effect whatever. On examination it was seen that the cable connecting the trailer brake application mechanism to the offside trailer brake was either disconnected or broken. This in turn prevented any tension being applied to the brakes on the near side wheel.

Due to where the vehicle stopped, for safety reasons, it was escorted to Dingwall Lorry Park, where it was to remain until it could be safely moved. The trailer was towed the whole way with the trailer brake lever in what the pursuer had claimed was the on (down) position. When the pulling vehicle was disconnected the trailer wheels had to be chocked to prevent it rolling off. The owner/operator of the trailer at this time was [*company name and address*]. The person responsible for the day to day running of the business at that time was the pursuer. He was then employed by [*name of company and position held*]. He was the registered keeper of the towing vehicle at the company address. He was cautioned and charged with the contraventions of the three offences shown in production 6/20 [*should be 6/1/20*] of process. In relation to the contravention of the lighting regulations, he replied "I accept that". He made no reply in response to caution and charge to the other offences."

*Pursuer's evidence in respect of matter 6*

[51] The pursuer gave the following evidence in respect of matter 6. The pursuer explained, in respect of the trailer incident, that, on or around the day in question, the north of Scotland had had the worst rainfall in more than 100 years. The roads were flooded. The pursuer, in his working capacity, had been called to a railway bridge that was in danger of collapse. In order to access the railway bridge it was necessary to drive down a farm track. After completing the work at the railway bridge the pursuer then got called to a harbour that was taking water in. The pursuer completed the work at the harbour and then returned to the Dingwall area. The pursuer was stopped by the police and found out that the brake cable of the trailer had been pulled out. The lights of the trailer were also water logged. The pursuer suspected that the problem with the brake cable had occurred while negotiating the farm track and that the problem with the lights was due to the severe weather. The pursuer accepted that he was convicted of road traffic offences in respect of this incident. The

pursuer explained that his business has a fleet of vehicles and a number of trailers. The business has a system of maintenance for the all the equipment that it operates. That system is audited and the business is very careful about how it operates equipment.

[52] As regard the speeding matters, the pursuer accepted that he had two speeding convictions. He explained that he did not think he was careless. He drove about 50,000 miles a year. Despite this high mileage he had never caused an accident. He considered himself to be a courteous driver with good manners but accepted that sometimes he may not pay attention to the speed he was doing.

### **Conclusions on the evidence**

[53] I considered that the pursuer was, for large parts of his evidence, credible and reliable. I had no difficulty in concluding that the pursuer runs a successful business; that business employs (either directly, or by way of subcontractors) about 50 persons; that the business conducts hazardous operations; and that the pursuer is responsible for the safety of the conduct of those hazardous operations. I also accepted that although he has remained separated from GH, that his relationship with her has improved to the extent that they now have a good relationship; that the pursuer provides good financial support to GH; and that the pursuer has flexible and regular contact with his child. However, there were parts of the pursuer's evidence that I found unsatisfactory and rejected. These parts are detailed below and had the effect of undermining the overall credibility of his evidence.

### *Conclusion in respect of matters 1 and 4*

[54] I considered that CD was a credible and mainly reliable witness throughout the entirety of her evidence. She gave her evidence in a straightforward manner and answered

questions in an open manner. She made clear when she could not recall certain matters due to the passage of time. She gave her evidence in a dispassionate and calm way. I considered CD was doing her best to tell the truth. Her evidence in relation to matter 1 was, in all material respects, consistent with the agreed evidence set out at para 5 above. By contrast there was no other evidence that supported the pursuer's account on matters that were in dispute. I did accept the evidence of the pursuer in respect of matters that were not in dispute in relation to matter 1, however, where the evidence of the pursuer and CD differed I preferred the evidence of CD.

[55] I considered that the pursuer had been involved, for whatever reason, in two unpleasant separations where emotions were likely to be running high on both sides. It is not necessary, in this case, to determine the reasons and cause of these separations. Rather I had to focus on the matters relied on by the defender. As regards the domestic incidents involving CD (matter 4), I again considered CD a credible and reliable witness for the same reasons given at para 54 above. Her evidence of being effectively stalked by the pursuer was accepted by the pursuer. It was also supported by the fact that a sheriff had granted her an interim interdict with a power of arrest, together with the fact that the pursuer pled guilty to charge 2 (charge 2 is narrated at para 13 above and involves the pursuer following CD and EF in a car). Her evidence in respect of charges 3 and 4 (charges 3 and 4 are also narrated at para 13) was consistent with the report CD and EF made to the police on the day of the incident (see production 6/1/19). CD's account was also supported by the fact that the pursuer ultimately pled guilty to charge 3. I of course accept that the pursuer had a not guilty plea accepted to charge 4 but I was nevertheless satisfied that CD's account was truthful. I did not consider the pursuer's evidence as regards charges 3 and 4 to be satisfactory. He denied the events in charge 3 even though he had tendered a guilty plea to

that charge. His account in relation to charge 4 seemed improbable and I simply did not believe that CD and EF would have concocted their versions of events when they spoke with the police on the day of the incident. In the circumstances findings in fact 5 to 18 are based on the agreed evidence, the evidence of CD and the parts of the pursuer's evidence that I did not reject.

*Conclusion in respect of matter 2*

[56] As regards the incidents involving GH, I considered her to be credible and reliable in respect of the 3 incidents set out in paras 23 to 25 above. The transcript of 26 January 2016 is a transcript of the words spoken by GH to police 5 days after the third incident. GH gave her evidence in a matter of fact way. I formed the impression that GH was the type of person who wanted to do the best for her family and, in particular, her child. I considered that she was a person who would voice her concerns to the pursuer if she considered that things were not right and would want to take advice if she thought things were not right. She went to the police, not to make an assault allegation, but because she did not want the pursuer's 'nonsense' in the house (where it could possibly be found by her child). She struck me as an honest witness who was doing her best to tell the truth and who would be entirely honest with the police. GH confirmed that she now had a very good relationship with the pursuer and confirmed that he continued to give her considerable financial support. Despite this continuing financial support GH did not hesitate in giving evidence that was adverse to the pursuer. I considered that GH was telling the truth in respect of the 3 incidents, however, I recognised that her account in the transcript was not probed and accepted that GH's attitude to the pursuer may have been a significant factor in the verbal arguments commencing and continuing. I also considered that the physical confrontations

in incidents 2 and 3 were contributed to by both the pursuer and GH. It is not necessary for me to make any findings as regards what occurred between GH and IJ. I have no doubt that GH believed that IJ was having an affair with the pursuer and that, as a result, there was tension between these two individuals (and between GH and the pursuer). I suspect that GH was turning up at the business premises when her presence was not wanted. However, I did not consider that IJ's evidence affected the credibility of GH's evidence in relation to the 3 incidents. Where the pursuer's evidence materially differed from that of GH's in respect of the 3 incidents, I preferred the evidence of GH. In the circumstances findings in fact 19 to 22 and 37 are based on the evidence I accepted from GH and the parts of the pursuer's evidence that I did not reject.

*Conclusion in respect of matters 3 and 5*

[57] I considered that Pc Wylie, Inspector Henderson and Chief Inspector Bowater were all credible and reliable witnesses. The pursuer accepted that he answered question 14 in the negative despite having a number of previous convictions. The pursuer did not, in my opinion, provide a satisfactory explanation for doing this. Pc Wylie was clear that when he visited the pursuer he gave him more than one opportunity to disclose his previous convictions but the pursuer failed to do so. Pc Wylie gave his evidence in a balanced way and his evidence was entirely in line with the recommendation he had made in February 2013. The pursuer suggested that Pc Wylie's account was inaccurate and that he did disclose his previous convictions when asked. I did not accept the pursuer's evidence on this point and preferred the evidence of Pc Wylie. In the circumstances I considered that the pursuer, by answering question 14 of the application "no" and by maintaining to Pc Wylie that he

had no previous convictions, knowingly or recklessly made a false statement of a material particular, for the purposes of procuring for himself the grant of a shotgun certificate.

[58] I did not consider the pursuer's explanation for what he wrote on page 9 of the application for the air weapon certificate to be satisfactory. By that point the pursuer had been reported to the PF for a contravention of section 28A(7) of the 1968 Act and Pc Wylie had gone over his previous convictions with him. I considered that page 9 lacked candour and sought to blame CD for the pursuer's previous convictions. The evidence of Inspector Henderson supported my interpretation of what the pursuer wrote on page 9. I considered that, overall, the evidence supported Inspector Henderson's assessment of the pursuer. I accepted that Chief Inspector Bowater reached his decision for the reasons that he gave. In the circumstances findings in fact 23 to 30 and 41 are based on the police evidence and the parts of the pursuer's evidence that I did not reject.

#### *Conclusion in respect of matter 6*

[59] The evidence was largely agreed in respect of this matter. I did accept that the pursuer travelled approximately 50,000 miles per year for business reasons. I accepted that the incident with the trailer lights occurred when there was particularly bad weather and in circumstances where the pursuer had to negotiate a farm track earlier in the day. I also accepted that these factors may have contributed to the issues the police found with the trailer. In the circumstances findings in fact 31 to 36 are based on the agreed evidence and the parts of the pursuer's evidence that I accepted. Findings in fact 38 to 40 are based on the general evidence of the pursuer that I accepted.

#### **Submissions**

[60] The solicitors for both the pursuer and the defender helpfully provided detailed written submissions. These are both lodged in process and I do not consider it is necessary to repeat them at length. The pursuer and the defender were in agreement as regards the appropriate test to be applied in respect of the application for both the shotgun certificate and the air weapon certificate, however, the solicitor for the pursuer did submit that the fact that the pursuer had held (and continued to hold) an air weapon since he was a teenager without any incident was an additional consideration when considering the application for the air weapon certificate.

[61] In short, the solicitor for the pursuer submitted that the pursuer's evidence ought to be preferred to other evidence led and that, in any event, the circumstances relied on by the defender, either cumulatively or individually, did not identify a risk of misconduct by the pursuer in the future. That being so, it was submitted that the pursuer could hold both a shotgun and an air weapon without there being a danger to the public or the peace.

[62] By contrast, the solicitor for the defender submitted that the circumstances relied on by the defender demonstrated that the court had various reasons not to be satisfied that the pursuer could be permitted to have a shotgun or air weapon without danger to the public or the peace. Those reasons, it was submitted, also meant that the court should not be satisfied that the pursuer was fit to be entrusted with an air weapon.

## **Discussion**

[63] The relevant provisions of the 1968 Act provide:

**“28.— Special provisions about shot gun certificates.**

(1) Subject to subsection (1A) below, a shot gun certificate shall be granted or, as the case may be, renewed by the chief officer of police if he is satisfied that the applicant can be permitted to possess a shot gun without danger to the public safety or to the peace.

- (1A) No such certificate shall be granted or renewed if the chief officer of police —
- (a) has reason to believe that the applicant is prohibited by this Act from possessing a shot gun; or
  - (b) is satisfied that the applicant does not have a good reason for possessing, purchasing or acquiring one.
- (1B) [...]
- (1C) [...]
- (2) A shot gun certificate shall be in the prescribed form and shall —
- (a) be granted or renewed subject to any prescribed conditions and no others; and
  - (b) specify the conditions, if any, subject to which it is granted or renewed.
- (2A) A shot gun certificate shall specify the description of the shot guns to which it relates including, if known, the identification numbers of the guns.

**28A.— Certificates: supplementary.**

- (1) A certificate shall, unless previously revoked or cancelled, continue in force for five years from the date when it was granted or last renewed, but shall be renewable for a further period of five years by the chief officer of police for the area in which the holder resides.
- (2) [...]
- (3) [...]
- (4) [...]
- (5) [...]
- (6) A person aggrieved by the refusal of a chief officer of police to grant or to renew a certificate under this Act may in accordance with section 44 of this Act appeal against the refusal.
- (7) It is an offence for a person knowingly or recklessly to make any statement which is false in any material particular for the purpose of procuring (whether for himself or another) the grant or renewal of a certificate under this Act."

**"30C.— Revocation of shot gun certificates.**

- (1) A shot gun certificate may be revoked by the chief officer of police for the area in which the holder resides if he is satisfied that the holder is prohibited by this Act from possessing a shot gun or cannot be permitted to possess a shot gun without danger to the public safety or to the peace.
- (2) A person aggrieved by the revocation of a shot gun certificate may in accordance with section 44 of this Act appeal against the revocation."

**"44.— Appeals against police decisions.**

- (1) An appeal against a decision of a chief officer of police under section 28A , 29 , 30A, 30B, 30C , 34 , 36, 37 or 38 of this Act lies—
- (a) in England and Wales, to the Crown Court; and
  - (b) in Scotland, to the sheriff.
- (2) An appeal shall be determined on the merits (and not by way of review).
- (3) The court or sheriff hearing an appeal may consider any evidence or other matter, whether or not it was available when the decision of the chief officer was taken.
- (3A) The court or sheriff hearing an appeal must have regard to any guidance issued under section 55A that is relevant to the appeal.
- (4) In relation to an appeal specified in the first column of Part I of Schedule 5 to this Act, the third column shows the sheriff having jurisdiction to entertain the appeal.

(5) In Schedule 5 to this Act—

- (a) Part II shall have effect in relation to appeals to the Crown Court; and
- (b) Part III shall have effect in relation to appeals to the sheriff.”

[64] The relevant provisions of the Air Weapons and Licensing (Scotland) Act 2015

(hereinafter referred to as “the 2015 Act”) provide:

**“5 Grant or renewal of air weapon certificate**

(1) The chief constable may only grant or renew an air weapon certificate if satisfied that the applicant—

- (a) is fit to be entrusted with an air weapon,
- (b) is not prohibited from possessing an air weapon or other firearm under section 21 of the 1968 Act,
- (c) has a good reason for using, possessing, purchasing or acquiring an air weapon, and
- (d) in all the circumstances, can be permitted to possess an air weapon without danger to the public safety or to the peace.

(2) The chief constable may, when considering an application made under section 3 by an applicant who holds a firearm or shot gun certificate, treat paragraphs (a) and (b) of subsection (1) as being satisfied in relation to the applicant.

(3) The chief constable may, before determining an application made under section 3, require that the applicant permit a constable or member of police staff—

- (a) to visit the applicant at the applicant's usual place of residence,
- (b) to inspect any place where the applicant intends to store or use an air weapon.

[...]

**34 Appeals**

(1) A person aggrieved by a decision of the chief constable under a section listed in subsection (2) may appeal against the decision to the appropriate sheriff.

(2) The sections are—

- (a) section 5(1) (grant or renewal of air weapon certificate),

[...]

(3) An appeal must be made within the period of 21 days beginning with the date on which the decision appealed against was made.

(4) An appeal under this section is to be determined on the merits (and not by way of review).

(5) The sheriff hearing the appeal may consider any evidence or other matter, whether or not it was available at the time the chief constable made the decision appealed against.

(6) On determining the appeal, the sheriff may—

- (a) dismiss the appeal,
- (b) give the chief constable such direction as the sheriff considers appropriate as respects the matter which is the subject of the appeal.

(7) The decision of the sheriff may be appealed against only on a point of law.

(8) In this section, “*the appropriate sheriff*” means—

- (a) in a case where the appellant resides in Scotland, a sheriff of the sheriffdom in which the appellant resides, or

(b) in a case where the appellant resides outwith Scotland, a sheriff of the sheriffdom of Lothian and Borders, sitting at Edinburgh.”

[65] Parties were, in respect of both appeals, in agreement: (1) that they were appeals on the merits (section 44(2) of the 1968 Act and section 34(4) of the 2015 Act); (2) that I was not restricted to considering only the information before the defender and that I was entitled to consider all evidence that was placed before me (section 44(3) of the 1968 Act and section 34(5) of the 2015 Act); and (3) that the pursuer had the burden of satisfying the court that the pursuer can be permitted to possess a shotgun and / or an air weapon without danger to the public safety or the peace. It was also not disputed that the pursuer has a good reason for possessing a shotgun / air weapon (see section 28(1A)(b) of the 1968 Act and section 5(1)(c) of the 2015 Act).

[66] The tests set out in section 28(1) of the 1968 Act and section 5(1)(d) of the 2015 Act are identical. Those sections require the court, on appeal, to be satisfied that the pursuer can be permitted to possess a shotgun / air weapon “without danger to the public safety or the peace”. That is the primary issue in this appeal. Section 5(1)(a) of the 2015 Act also requires the court, on appeal, to be satisfied that the pursuer is fit to be entrusted with an air weapon. However, it will only be necessary to consider the issue of fitness if the pursuer can satisfy the test under section 5(1)(d) of the 2015 Act (the court, on appeal, must be satisfied of each matter specified in section 5(1)(a) to (d)). It is therefore convenient to first consider whether the pursuer can be permitted to possess a shotgun or air weapon without danger to the public or the peace.

[67] In *Davis v The Chief Constable, Central Scotland Police*, unreported, 5 September 2005, Alloa, Sheriff Principal Dunlop refused an appeal from a sheriff’s decision to refuse to reverse and set aside the decision of the Chief Constable to revoke the appellant’s shotgun certificate. In that case the Chief Constable’s decision was founded on an allegation (which

the sheriff found proved) that the appellant had indecently assaulted a 16 year old girl.

Sheriff Principal Dunlop considered the statutory test in section 30C of the 1968 Act (which I have set out above for the sake of convenience). That test, whilst posing a slightly different test to that under section 28(1) of the 1968 Act, requires the court to consider whether it is satisfied that the appellant *cannot* be permitted to possess a shotgun “without danger to the public safety or to the peace”. At para 16 to 19 Sheriff Principal Dunlop stated:

“[16] Whether the statutory test is met in any case will depend on the particular circumstances of that case. It is not in dispute however that the danger to the public safety or the peace must be shown to be a danger related to the possession of a shotgun. In *Evans v The Chief Constable, Central Scotland Police* sup. cit. the sheriff principal put the matter this way:

"...the relevance of past conduct is to be assessed in terms not of whether there is a risk of future misconduct of any kind but whether there is a risk of future misconduct involving the use, or threatened use, of a shotgun."

[17] As the sheriff points out, under reference to that case and others, past conduct involving the use of a shotgun is not a necessary requirement before the statutory test can be met (see also *Spencer-Stewart v The Chief Constable of Kent* and *Meikle v The Chief Constable, Strathclyde Police*). Past conduct relied upon in justification of the revocation of a certificate must nevertheless be capable of yielding the conclusion that the holder of the certificate cannot be permitted to possess a shotgun without danger to the public safety or the peace. Plainly whether conduct does or does not yield that conclusion will depend on the nature of the conduct in question when set against the other circumstances of the case.

[18] Before considering that question in this case it is important to be clear about what is meant by the phrase "without danger to the public safety or the peace." ... It seems to me that, in the context of this section, the word "danger" is synonymous with "risk" or "putting at risk" and that when one speaks in terms of risk one is concerned with a degree of probability which, according to the circumstances, may fall within a range which has highly probable towards one end and improbable though nevertheless possible towards the other. In my view it would be as accurate to speak in terms of a "risk" or "danger" of something happening if it were improbable though possible as it would be if it were highly probable.

[19] This approach appears to accord with that of the sheriff principal in the passage from *Evans v The Chief Constable, Central Scotland Police* to which I have already referred when he talks of the "risk of future misconduct ... involving the use ... of a shotgun (my emphasis)." Risk may be high or low and in relation to future events it is a term apt to cover a wide variety of circumstances, including those which might only possibly emerge. It seems to me therefore that, in addressing the statutory test

in section 30C, the sheriff does not have to be satisfied on a balance of probabilities that damage to the public safety or peace will occur from the appellant's continued possession of a shotgun but that it is sufficient that he is satisfied that there is a risk (which is not trivial) that it might occur..."

[68] Sheriff Principal Dunlop, at para 21, went on to note:

"...The fact that the appellant has exhibited an exemplary character to others does not necessarily mean that that reputation is an accurate reflection of his true character. Misconduct is rarely committed in full public view and it is not uncommon for a witness to speak highly about the character of a person without being aware of the details of a particular incident which may not reflect so favourably on the person whose character is being discussed."

[69] Sheriff Principal Dunlop then went onto to consider, at para 24 to 26, whether the sheriff was correct to hold that the risk he identified at para 19 was present in respect of the appellant:

"[24] The general character of a certificate holder may be such that one can readily conclude that he cannot be permitted to possess a shotgun without danger to the public safety or the peace. In my view the sheriff rightly finds support for such an approach in the comments of Bingham LJ in *Spencer-Stewart v The Chief Constable of Kent* when referring to the danger posed by a drunk man in possession of a gun. By the same token it is a conclusion which is open to be drawn that there is a danger (in the sense that I have already discussed) posed by a man in possession of a shotgun whose character is such that he can behave in an extreme, unpredictable and violent manner or can lose his normal sense of reason and conduct himself irrationally. Indeed I think counsel for the appellant ultimately came to recognise that that was so.

[25] In that event the only remaining question is whether there was a proper basis for the sheriff's characterisation of the appellant in this way. In this branch of the case there was in my view an unfortunate tendency on behalf of the appellant to downplay the seriousness of the assault and the appellant's response to it. The sheriff's reasoning, particularly in paragraph 37 of his note, seems to me unexceptionable. The fact is that the appellant indulged in criminal behaviour, involving a degree of violence, which in my view the sheriff could justifiably describe as reckless in the extreme and manifesting either badly flawed judgment or a complete lack of control or both. The fact that in certain parts of his evidence the appellant had lied and that he was "in denial" bears not only on his character generally but is relevant to explain the absence of any evidence that might have been led to counteract the inference that the sheriff felt should otherwise be drawn from the facts that had been established.

[26] In an appeal of this nature, confined as it is to a point of law, the only question for me is whether the conclusions that the sheriff has summarised in paragraph 39 were open to him. In my opinion they were..."

[70] In *Walker v Chief Constable* 2004 GWD 18-399 Sheriff Principal Macphail allowed an appeal from a sheriff's decision to allow an appeal against the revocation of a shotgun certificate. In that case the Chief Constable's decision to revoke was based on the certificate holder being convicted of a drink drive charge. At para 15, Sheriff Principal Macphail observed:

"[15] For many years chief officers of police, with the approval of the courts, have equiparated irresponsibility when in charge of a motor vehicle with irresponsibility when in charge of a shot gun or firearm. Like them, a motor vehicle is a potentially lethal instrument. That this comparison is frequently made by chief officers of police and is judicially approved is very clear from the cases cited to the Sheriff: *Luke v Little*, *Lubbock v Chief Constable*, *Lothian and Borders Police* and *Meikle v Chief Constable of Strathclyde Police*. There is further authority to the same effect, including *Chief Constable of Essex v Germain* and *Grieve v Chief Constable, Lothian and Borders Police*. As appears from *Germain's* case, a chief officer of police deciding whether to revoke a shot gun licence is entitled to take into account irresponsible conduct by the licence-holder not involving a shot gun. In that case the Chief Constable had revoked the licence following the holder's second drink-driving conviction within five years. The Queen's Bench Divisional Court upheld an appeal by the Chief Constable from the decision of the Crown Court to restore the licence. The report reads in part:

'Lord Justice Stuart-Smith said the Crown Court had wrongly considered itself bound by *Ackers v Taylor* [1974] 1 WLR 405 to take into account only conduct arising out of misuse or abuse of a shot gun.

'The chief constable was entitled to take the view that the drink-driving convictions revealed irresponsible and uncontrolled behaviour making the licence holder unsuitable to have a shot gun under section 30(2) of the Firearms Act 1968.' Section 30(2) of the unamended 1968 Act is in essentially the same terms as section 30C(1), substituted by the 1997 Act. In my opinion the passage quoted is entirely consistent with the law and practice in Scotland.

[16] I consider, accordingly, that the Sheriff's decision relative to the revocation of the shot gun licence is so vitiated by errors of law that it cannot stand."

[71] I agree and adopt the approach of Sheriff Principal Dunlop in *Davis* and am of the opinion that the above passages from *Walker* support that approach.

[72] In the case of *Grieve v Chief Constable* 2009 SLT (Sh Ct) 5, Sheriff Evans considered an appeal against a refusal of the Chief Constable to renew a firearm and shotgun certificate. In that case the certificate holder's premises had been broken into and a rifle stolen in circumstances where the security of the rifle had been poor. At para 28 Sheriff Evans considered the test under section 28(1) of the 1968 and observed:

“...It might be enough that the conduct in question would tend to increase the risk of future irresponsible conduct involving the use of such weapons — i e the preventative approach. Examples from the cited cases would include: drink driving offences (Luke supra), poaching (Ackers supra), inability to avoid associating with known drug offenders (Dabek supra) and indecent assault (Davis supra). The presumptions of future irresponsibility or risk that might arise from such offences in those situations are, however, all rebuttable and the deciding authority would have to weigh up all the circumstances both pro and con. As to the type of possession for this test, I must disagree with the suggestion that the ‘absence of risk’ test is limited to showing what is likely to happen to the public safety or to the peace stemming purely from the applicant's having such a weapon physically on his person. The cases cited by the solicitor for the defender involving stolen weapons show that the considerations are wider than that. As he pointed out, the theft of such items while in the possession of the applicant create a danger or threat to the public safety. That threat is just as real whether or not the possession has been personal or indirect, through mere knowledge and control.”

I agree with those observations.

[73] The solicitor for the defender also drew my attention to para 40 of *Grieve* which states:

“Sheriff Principal McInnes indicated in his supplementary note in that case that the passage of time may act in favour of an appellant and show the unlikelihood that there would be “further repetition of the irresponsible conduct which led to the Chief Constable refusing his application ...”. It is also supported by the dicta of the sheriff principal (Kerr) in *Meikle supra* viz: “A single aberration with a gun may not satisfy the test for revocation if the court can be sufficiently assured that a repetition is unlikely ...”.

[74] Sheriff Evans agreed with the above approach and I also agree with it. I agree that the court is entitled to take into account the effect of the passage of time since the events relied on by the Chief Constable when considering the test in section 28(1) of the 1968 Act.

However, much will depend on the nature of the events and the steps taken by the prospective certificate holder in the intervening period.

[75] In the present case I have found that the pursuer has acted in contravention of the conditions of the shotgun certificate that expired in January 2000 by failing to notify the chief officer that he moved address, by losing and failing to report the loss of the W & S shotgun (which has never been recovered), and by failing to store the AYA shotgun securely (it is an offence for a person to fail to comply with the conditions of a shotgun certificate – see section 2(2) of the 1968 Act). Indeed the pursuer stored the AYA shotgun on the top of his bedroom wardrobe for a considerable period of time. The presence of the AYA shotgun on the wardrobe taken with the pursuer's erratic behaviour resulted in CD fearing for her own safety. CD was sufficiently concerned to take the AYA shotgun to the police. On doing so the police discovered, first, that the pursuer's shotgun certificate had expired (and therefore the pursuer was in possession of the AYA shotgun without a shotgun certificate in contravention of section 2(1) of the 1968 Act – he was subsequently convicted of this offence) and, second, that the W & S shotgun was missing. The pursuer then engaged in stalking behaviour towards CD. This led to a sheriff being persuaded, on 26 April 2001, that CD should be granted a non-molestation interdict with a power of arrest. Despite this interdict being in place, the pursuer continued to follow CD. He was convicted of a breach of the peace, which occurred on 8 May 2001, whereby he followed CD in her car. He was convicted of a further breach of the peace, which occurred on 8 June 2001, whereby he appeared at the stationary vehicle that CD was in and repeatedly kicked the car she was in. Further, on 8 June 2001, he followed the car CD was in and deliberately drove into the rear of that vehicle. In addition the pursuer was convicted of breaching bail conditions preventing him from contacting CD (he was convicted on 5 October 2001). In my opinion

the pursuer's behaviour whilst living at the address in Houston and up to approximately late 2001 was, at times, reckless, completely lacking in control and demonstrated badly flawed judgement. It also demonstrated a cavalier attitude to the safe storage of shotguns.

[76] Had this behaviour been restricted to around the years 1999 to 2001 then it may have been that the passage of time would have been a significant factor. However, in my opinion, the pursuer's behaviour in respect of GH around the year 2010 (involving a slap and two physical confrontations) was again reckless, lacking in control and contained an element of violence.

[77] When the pursuer made the application for the shotgun certificate he was fully aware that he had previous convictions and, in particular, that he had a conviction for a contravention of section 2(1) of the 1968 Act. Despite this he stated that he had no previous convictions. When Pc Wylie went to visit him he again maintained that he did not have previous convictions despite being given more than one opportunity to disclose them. The pursuer was also untruthful about not being in police custody for 10 years (when he had in fact been detained by the police in respect of the allegations made by GH). In my opinion, the pursuer did not provide a satisfactory explanation for the failure to disclose his previous convictions and I considered that this demonstrated recklessness, flawed judgment, irresponsibility and conduct that was irrational. As a result of the pursuer's behaviour he was reported to the PF for an offence of knowingly or recklessly making a false statement for the purpose of procuring the grant of a shotgun certificate, contrary to section 28A(7) of the 1968 Act (I accept the PF did not raise proceedings in respect of this report but I have nevertheless found that he acted in that manner). Despite being made subject of such a report the pursuer was, in my view, less than candid in the completion of page 9 of the application for the air weapon certificate. In my view, the pursuer downplayed the

domestic incidents involving CD and GH and sought to blame CD and GH for them (indeed he claimed that both made malicious allegations about him). He was also, in my view, untruthful in certain respect of his evidence regarding those domestic incidents and in other aspects of his evidence. In particular, I rejected the pursuer's evidence in respect of: (1) how the AYA shotgun was stored; (2) the incident with EF's car on 8 June 2001; (3) his denial of slapping GH; and (4) his explanation for not disclosing his previous convictions to the police. I also considered that the pursuer was dismissive about the potential consequences of the loss of the W & S shotgun.

[78] I did not consider that the road traffic offences were, of themselves, of much weight but, I did consider, when they were viewed against the full background, that they provided some additional evidence of irresponsible actings on the part of the pursuer.

[79] I did accept that there had been significant periods of time where there appeared to be no concerns about the pursuer's behaviour. I also accepted that the pursuer had possessed (and continued to possess) an air weapon since he was a teenager and that there had been no evidence to suggest that there had been any adverse incidents involving the use of an air weapon. However, in my opinion, the facts I have found proved demonstrated that the pursuer had, intermittently, over a significant number of years: (1) acted recklessly; (2) demonstrated badly flawed judgement; (3) acted in an uncontrolled manner; (4) acted with an element of violence; (5) acted irrationally and irresponsibly; and (6) displayed a cavalier attitude to both the conditions of a shotgun certificate and to the proper procedures to be followed in obtaining a shotgun certificate. Such past conduct has seemed to have mostly occurred when the pursuer was suffering difficulties in his personal life (and he could of course enter into further relationships), however, there was no suggestion that he

was suffering such difficulties when he stated on the application for the shotgun certificate (and to the police) that he did not have previous convictions.

[80] Having assessed the past conduct of the pursuer I consider that there is a risk that the pursuer could act in a similar way in the future. I consider that that risk would be heightened if the pursuer was experiencing difficulty in his personal life. In all the circumstances I consider that the pursuer's character is such that he *is* capable of: (1) acting recklessly; (2) demonstrating badly flawed judgement; (3) acting in an uncontrolled manner; (4) acting with an element of violence; (5) acting irrationally and irresponsibly; and (6) displaying a cavalier attitude to conditions of a shotgun / air weapon certificate. In the circumstances I consider that there is a danger (in the sense described by Sheriff Principal Dunlop in *Davis*) posed by a person in possession of a shotgun / air weapon who is capable of acting in that way. I therefore conclude from the pursuer's past conduct that there is a risk, which is not trivial, that damage to the public safety or peace might occur if the pursuer possessed a shotgun or air weapon.

[81] In all the circumstances I am not satisfied that the pursuer can be permitted to possess a shotgun or air weapon without danger to the public safety or the peace. As a result, and for the reasons given at para 66 above, it is not strictly necessary to consider the question of fitness in terms of section 5(1)(a) of the 2015 Act. However, I will briefly do so for the sake of completeness. In *Meikle v Chief Constable of Strathclyde Police*, unreported, 7 May 2003, Sheriff Principal Kerr considered section 27(1)(a) of the 1968 Act, which applies an identically worded fitness test, in respect of firearms, to that under section 5(1) of the 2015 Act. In that case Sheriff Principal Kerr observed that he did not consider it to be a very high test and that "it may be met by a finding of general untrustworthiness in a person". In

*Greive* Sheriff Evans considered the test of fitness under section 27(1) of the 1968 Act and stated the following at para 27:

“The ‘fitness’ test would relate to the question of whether or not the applicant has the necessary qualities, attributes and abilities which would qualify him or her to be entrusted with a firearm. The type of characteristics that might be expected of an applicant would be that he or she would be law abiding, safety conscious, equable in temperament, honest and straightforward, moderate, level headed, restrained, possessing sound judgment, etc — i e all the qualities that represent a minimum risk to public safety from being allowed to possess a firearm. In that context, the applicant's past conduct would be relevant in so far as it demonstrated the presence or absence of such qualities.”

I agree with Sheriff Evans’ general approach to the questions of fitness. In my view the past conduct of the pursuer does not, for the reason given above, consistently display the required characteristics. Therefore, had it been necessary, I would have found that I was not satisfied that the pursuer is fit to be entrusted with an air weapon.

### **Disposal**

[82] In the circumstances I dismiss both appeals.

[83] Parties were not agreed on the approach to be taken in relation to the question of expenses. I have therefore fixed a hearing on expenses to determine that issue.