



OUTER HOUSE, COURT OF SESSION

[2024] CSOH 21

F16/23

OPINION OF LADY WISE

In the cause

R (MOTHER)

Pursuer

against

S (FATHER)

Defender

**Pursuer: McAlpine, adv; SKO Family Law Specialists
Defender: Laing, adv; TC Young LLP**

28 February 2024

Introduction

[1] In this case, the pursuer, the Australian mother of two young boys whom I will call Charlie and Derek to protect their identities, applies for a residence order and for permission to remove the children from Scotland to live in Australia. Charlie and Derek are aged 6 and 4 respectively. The defender, their Scottish father, opposes their removal to Australia - and seeks orders for contact with them. I heard a proof over a period of 4 days at which the pursuer R, her brother SG and the defender, S, all gave oral evidence. All three had lodged very detailed affidavits setting out their positions on most issues in dispute. The pursuer also lodged three other affidavits, from the teacher and head teacher of Charlie's former

school and from a work colleague of R. The evidence contained in those affidavits was unchallenged, the defender having declined an opportunity given to cross-examine those witnesses.

The applicable law

[2] Both of Charlie and Derek's parents hold full parental responsibilities and parental rights in relation to them. Although unmarried, the defender was living with the boys' mother at the time of their births and is registered as their father. The parental responsibilities and parental rights relevant in this case are outlined in sections 1 and 2 of the Children (Scotland) Act 1995. Section 11(1) of that act provides that the court, in circumstances such as those that arise in this case, may make orders in relation to:

- (a) parental responsibilities;
- (b) parental rights;
- (c) guardianship; or
- (d) the administration of a child's property.

The orders sought by the children's mother in this case are in terms of section 11(2)(c) and (e) which provide as follows:

- “(c) an order regulating the arrangements as to—
 - (i) with whom; or
 - ... a child under the age of sixteen years is to live (any such order being known as a 'residence order');
 - ...
- (e) an order regulating any specific question which has arisen, or may arise, in connection with any of the matters mentioned in paragraphs (a) to (d) of subsection (1) of this section (any such order being known as a 'specific issue order');”

[3] The order sought by the father to regulate contact between him and the two boys is made in terms of section 11(2)(d) of the 1995 Act. The test to be applied by the court where

any order under section 11 of the 1995 Act is sought can be found in section 11(7). It provides:

- “... in considering whether or not to make an order under subsection (1) above and what order to make, the court—
- (a) shall regard the welfare of the child concerned as its paramount consideration and shall not make any such order unless it considers that it would be better for the child that the order be made than that none should be made at all; and
 - (b) taking account of the child’s age and maturity, shall so far as practicable—
 - (i) give him an opportunity to indicate whether he wishes to express his views;
 - (ii) if he does so wish, give him an opportunity to express them; and
 - (iii) have regard to such views as he may express.”

In keeping with modern practice of attempting to elicit the views of even relatively young children, a child welfare reporter ascertained the children’s views and I have considered her report (number 15 of process).

[4] In applying the welfare principle articulated in section 11(7)(a) of the 1995 Act the court must now have regard to certain listed matters. These include, insofar as relevant to this case the following:

- “(7A)
- (a) the need to protect the child from—
 - (i) any abuse;
 - (ii) the risk of any abuse, which affects, or might affect, the child;
 - (b) the effect of such abuse, or the risk of such abuse, might have on the child;
 - (c) the ability of a person—
 - (i) who has carried out abuse which affects or might affect the child; or
 - (ii) who might carry out such abuse, to care for, or otherwise meet the needs of, the child; and
 - (d) the effect any abuse, or the risk of any abuse, might have on the carrying out of responsibilities in connection with the welfare of the child by a person who has (or, by virtue of an order under subsection (1), would have) those responsibilities.

- (7C) In subsection (7B) above—
 ‘abuse’ includes—
- (a) violence, harassment, threatening conduct and any other conduct giving rise, or likely to give rise, to physical or mental injury, fear, alarm or distress;
 - (b) abuse of a person other than the child; and
 - (c) domestic abuse;
- ‘conduct’ includes—
- (a) speech; and
 - (b) presence in a specified place or area.
- (7D) Where—
- (a) the court is considering making an order under subsection (1) above; and
 - (b) in pursuance of the order two or more relevant persons would have to co-operate with one another as respects matters affecting the child, the court shall consider whether it would be appropriate to make the order.”

[5] The central issue in dispute between the parties is the proposed relocation to Australia. Where both parents hold parental responsibilities and rights, the removal of a child who is habitually resident here outside the United Kingdom is unlawful other than with a court order where the parent who will be “left behind” does not consent - section 2(3) of the 1995 Act. The legislation requires parents to have regard to the other person’s views in reaching any major decision in relation to parental responsibilities and rights - section 6 of the 1995 Act. This court has dealt with a number of relocation cases and there was no dispute between counsel as to the applicable law. Decisions of the Extra Division in *M v M* 2012 SLT 428 and *Donaldson v Donaldson* 2014 Fam LR 126 clarify that in this jurisdiction the welfare and best interests of the child or children concerned are paramount, “and fall to be judged without any preconceived leaning in favour of the rights and interests of others” (*M v M* per Lord Emslie at para [9]). In particular, there is no presumption in favour of any particular factor (*Donaldson v Donaldson* per Lady Smith at para [27]). The court does not adopt any checklist approach and cases of this type are so fact sensitive that it is only the

particular circumstances of the dispute and the relevant children that must be carefully scrutinised - *GL v JL* 2017 Fam LR 54; *MCB v NMF* 2018 SCLR 660.

[6] In applying the welfare principle to any section 11 application, the court may require to consider both short and long term considerations, advantages and disadvantages. Where long term considerations support an order that would be to the children's benefit, it may be granted even if it might result in some short term upset or disadvantage - *J v J* 2004 Fam L R 20, at paragraph 13.

Undisputed facts

[7] The mother is now in her late 30s and the father in his early 40s. They were both living in London when they met and moved to a town in the south east of England in the summer of 2018. Charlie and Derek were both born in England. In early 2020 the family moved to Scotland but did not settle in the area in which the father was brought up.

Throughout their relationship the mother has been employed in responsible positions with a banking group, currently as a senior manager. The father has been employed in a number of different roles but was not always in employment. He has suffered from poor mental health for many years and has a diagnosis of bipolar disorder. He is an alcoholic. For some of the parties' relationship he was a functioning alcoholic but as his mental health declined he began drinking alcohol and gambling more heavily. The defender was frequently drunk at home. He used foul and abusive language to the children and in their presence and engaged them in inappropriately rough play. The local social work department contacted the pursuer on 15 December 2022 in relation to allegations made by Charlie at school about things he said the defender had done to him.

[8] On 13 January 2023 S was taken into police custody. He was released on bail on 13 January 2023, with special conditions prohibiting any contact with the pursuer or with Charlie. He has appeared on petition, charged with assaulting Charlie on two occasions and of subjecting the pursuer to a course of conduct constituting domestic abuse. He has not to date been served with an indictment.

[9] The mother and the two children have resided in Women's Aid refuge accommodation since shortly after leaving the family home in January 2023, having been provided with short-term emergency accommodation by the pursuer's employer while waiting for the refuge place.

[10] S has a number of criminal convictions, dating from 2003 to 2010. A list is contained in number 6/28 of process. In particular, in April 2007 he was convicted in an English court of trespassing on premises with an offensive weapon. He was sentenced to 6 weeks' imprisonment and an order for forfeiture of a meat cleaver, a kitchen knife and a dagger was made. The longest sentence imposed on him was for 12 months' imprisonment in September 2006, also in England, for assault occasioning actual bodily harm, dangerous driving and driving having consumed excess alcohol.

[11] In 2019 the parties applied for a visa for S so that they could settle in Australia as a family. They had been concerned about S's criminal record and instructed an Immigration lawyer to assist them. S's application for a visa was refused.

Evidence in the pursuer's case

[12] The pursuer had sworn a lengthy affidavit number 21 of process and adopted that as part of her evidence. The following is a summary of her detailed evidence. S had begun gambling heavy and demanding money from her even before Charlie's birth. Thereafter,

the situation deteriorated further with S being abusive and threatening towards her. In August 2018 S had damaged a hotel room that he and a colleague had stayed in at their company's Christmas party including smashing a television set. S had been asked to leave the company after his employer discovered a scheme that he had devised to earn commission on policies that would then be cancelled. He demanded money from R to cover the repayments on which his employers insisted. In January 2019 he claimed to her that he had stabbed someone while doing bar work in London and that people who held the knife he had used were using it as collateral to hold him ransom. He would disappear for days without warning and his demands for money from her continued. Throughout their relationship S drank heavily but it escalated from 2019.

[13] S's lifestyle was generally chaotic. He made various reports to R which she took at face value. On many occasions he told her that he had been caught shoplifting. He would often frighten her and cause damage to their home. On two separate occasions when living in England, he kicked a hole through the kitchen door of their property. He used knives to exert pressure and threaten violence. Sometimes he would threaten to hurt himself. At times he would threaten her too. He was involved with local drug dealers and would take R's car to help them collect debts. The pursuer began to feel vulnerable at home. She would lock herself in the house, close the curtains and not answer the door. Under pressure from the defender she agreed to pay the debts he told her about.

[14] R was aware that S had a number of mental health difficulties. She paid for him to see a therapist although on one occasion he did not attend and used the credit card she had provided him with to withdraw money instead. She sought advice and support after he attempted suicide. S would promise to attend alcoholic anonymous or other support groups but would fail to attend. On one occasion in June 2019 R was away from home for a

work commitment. She received a call from S informing her that the police had come to the house and picked him up, taking him and Charlie to the police station. R thought this was unlikely to be true but realised that she could no longer leave Charlie in S's care. After Derek's birth the couple came to Scotland to find a property to rent. Shortly before they moved here S attempted suicide and was taken to hospital. On his discharge he demanded that R resolve his financial problems. After the parties moved to Scotland S had some employment here and there was a slight improvement in his behaviour. During the pandemic in 2020 he reverted to a downward spiral of drinking excessively and continuing to be involved with drugs, violence and gambling. He caused physical damage to the home in Scotland, kicking a hole in the main bedroom wall and throwing a medicine case, damaging a wardrobe door. He smashed glasses and vodka bottles against kitchen walls and on the floor. The parties' two children witnessed some of these incidents.

[15] R became concerned about the children being exposed to S's behaviour. Charlie frequently witnessed S shouting at R and R becoming upset. He was scared of S. The pursuer would go to bed early as she was in full-time employment and if one of the children required looking after the defender was supposed to be in charge. On one such occasion when he was looking after Derek, Derek fell on the safety gate at the bottom on the stairs in the parties' home causing injury to his mouth and teeth. S had not noticed the child's injury.

[16] The pursuer estimated that S had taken something in the order of £80,000 - £100,000 from her over the course of the relationship leaving her in debt by the end of the relationship in January 2023. S was regularly unkind and critical of R. He would tell her that she was fat and that she looked horrible, he would blame her for not having sex with him. He would often wake her up during the night demanding that she pay his debts. He would insist that she go to collect him if he had been out drinking or he would come into the room where she

slept demanding money turning the lights on and slamming the door. S manipulated her by telling her she was not permitted to speak to anyone about his condition or anything that went on in the house. He would even reprimand her for speaking to his mother about it. R was left unable to socialise or confide in anyone.

[17] Throughout 2021 and 2022 S continued to threaten violence to R unless she covered his debts. He threatened to take the children away from her and to cause trouble for her with her employer. He threatened her with a knife and would pin down her shoulder to exert his dominance over her. On 23 August 2021 S took the parties' car when under the influence of alcohol. He said he would drive it away as far as he could and then smash it into a wall or through the garage. He threatened to take the children, threatened to cause trouble for the pursuer and said it would be better if she did what he said or it would be worse for her. Some of these threats were made on WhatsApp messages which the pursuer had produced (number 6/21 of process).

[18] On several occasions S claimed that he had been caught shoplifting although these reports were not always substantiated. On 21 April 2022 he told her that he was selling drugs and that he had to pay for a locksmith as he had arranged for someone to break through someone else's front door. His threatening behaviour was heightened when he was drunk. In the presence of the children he would punch items in the house until he bled.

[19] From about the middle of 2022 teachers at Charlie's school began telling R that Charlie was having difficulties such as becoming physical with other children and being disruptive. Instead of supporting and helping Charlie, S promoted violence by asking the boys to hit him, buying violent toys and watching violent TV programmes. On 3 June 2022 when Charlie hit him as requested, S responded "*hit me like that again and I will knock your f'ing teeth out*". On that occasion S was drunk and demanded keys for the parties' car. He

talked to the pursuer about his mate “doing me over”. He went out and sent the pursuer an abusive WhatsApp recording at 12.14am on 4 June 2022 (number 6/20 of process) after she refused to go and pick him up. He said that he would “bury your whole effing life”.

On 5 October 2022 when R refused to give S money he telephoned her employer and made allegations against her. These were investigated and found to be false and malicious.

S also telephoned the police and made allegations against R which were not pursued after the police spoke to her. On 11 November 2022 S told R that he had stabbed someone.

He showed her a knife from a kitchen knife set, broke it and asked her to get rid of it. R refused to touch it. S was intoxicated and told the children to hit him, encouraging them to behave in an aggressive and violent manner. On the same date the pursuer recorded the defender making the following statements about and to Charlie with both children present (number 6/26 of process):

“If he fucking touches me again like that I’m going to set someone him

An even bigger kid to beat him up

You fucking little cunt (directed at Charlie)

You think you’re fucking hard do you (directed at Charlie)

[Charlie] What’s going to happen to you is - some big boy is going to beat you up. And I’m going to set them on you. You think I won’t

I’m, going to set J on him

I’m going to give him one whack. See how he likes it. I think he deserves it. It’s the only way to fucking scare him

I think we set a kid on him. He deserves to be beaten up. He needs to be taught a lesson.”

[20] When the pursuer was contacted by the social work department on 15 December 2022 she learned that Charlie had told his teachers on multiple occasions that he was afraid of his father, that he had been hit by him, that they always played karate and that his mother

was upset all of the time. She continued to live with S over the Christmas period during which he again demanded money and when she said no he became angry and told the children that Christmas was cancelled and he threatened to tell Charlie that Santa did not exist. On 9 January 2023 S was very drunk and again began telling Charlie and Derek to hit him. There was an unpleasant scene which the pursuer recorded (number 6/27 of process) in which S threw Charlie across a sofa and was verbally abusive to him.

[21] Following these incidents the pursuer consulted with social workers and police. She was assisted in leaving the family home with the children and the defender was arrested and charged.

[22] The move to the Women's Aid refuge has involved removing the children from the school and nursery respectively they attended prior to January 2023 and from their friends. R has since been informed about an anonymous allegation to police that she had abused Charlie and further allegations in respect of her employment. None of these has merited further police investigation. Since January 2023 Charlie has attended regular meetings with a domestic abuse practitioner for children, young people and families followed by weekly family sessions. He has been given extra support at school and the pursuer has sought advice in relation to next steps for his support. The pursuer herself meets with a mental health nurse every 3 weeks and periodically with her doctor. She remains extremely distressed and frightened of the prospect of any contact with the defender. Charlie appears to blame himself for speaking up about S's actions resulting in the departure from the family home.

[23] R said that she had been the children's primary carer throughout their lives being responsible for all medical appointments, school and nursery arrangements and care for them when they were unwell. She attended to their hygiene and toilet training, helped them

dress each morning and made packed lunches. She took them out for weekend activities.

The defender tended not to wake until at least lunchtime, although he would occasionally accompany her and the children on a weekend activity.

[24] R felt she and the boys were now free of living in fear of what S would do next.

However, the refuge accommodation was temporary and not a settled home. The location was not somewhere she had chosen to live and the school and nursery currently attended by the boys were not those she would have chosen. She has effectively been living in hiding for a year. Her aim is to secure a settled life and good education for the boys with extracurricular activities that they can enjoy and in a place where they can make long-term friends. She wants them to be surrounded by good role models. She considers that they would have a better life and thrive in Australia where they would have safe surroundings and where the weather and infrastructure supports a healthy and productive lifestyle. The boys have had no contact with their father since January 2023.

[25] With the assistance of her brother, SG, R had obtained information about a suitable primary school in Canberra which has available places for them (number 6/9 of process).

Her brother has a large and attractive home nearby where she could stay with the boys for as long as they wished but certainly until she found suitable permanent accommodation.

She remains fearful that if she remains in this jurisdiction the defender might track her down and she would require to uproot herself again. Her brother has assisted in contacting

recruitment agencies in Canberra where she is confident her qualifications and experience will permit her to find financially rewarding and suitable employment. Correspondence

from relevant recruiters (number 6/11 of process) supported that, confirming the position.

She would be returning to the city in which she grew up. The Australian Capital Territory has an excellent healthcare system which would be readily available. If she and the boys

required to remain in this jurisdiction they would leave the refuge and find rented accommodation. She would feel unsafe and does not know where she would go; the boys would require to move again wherever she went. She has no family or friends in Scotland. She has one or two second cousins in the Somerset area but she could not call upon them to support her. Her immediate family and support network are in Canberra.

[26] R disputed S's assertion that he had played an active role in the children's upbringing until January 2023. He did cook for the family and was present in the home but he did not read to the children or play appropriate games with them. There were occasions when he would join her and the boys on trips she had organised, but he did not take the boys out for activities by himself. R had enjoyed a good relationship with S's mother, MM. She would have liked to maintain contact with her but was currently afraid to do so lest it would lead to S discovering her whereabouts. She would be happy to send photographs of the boys and speak to S's mother if she was settled in a safe place. Thereafter, she would support the children having indirect contact through cards and calls with S but only if she was reassured that he was taking his medication, was sober and well and not engaging in any criminal activity. She would take professional advice on how any such contact should be initiated.

[27] Under cross-examination a limited number of specific allegations were put to R as being untrue. In particular it was contended that S had never physically abused her or told Charlie to hit people at school, or hurt Charlie's neck. In general, the majority of threats that she alleged he had made had not happened. R disagreed with all of that and pointed out that S had in fact followed through on his threats to contact her employers and make allegations. Charlie may not have given details of any knife incident to the social work department; R did not know all the details of what Charlie had said at school but she

maintained that the knife incident in his presence had occurred. R accepted that the conclusions of a report from BioLabs (7/9 of process) appeared to conclude that S was now abstaining from alcohol and that she agreed that that was a positive development.

[28] R agreed that S had sometimes taken Charlie to the babysitter after she returned to work in 2019. However by the time she was pregnant with Derek she took that over. S had been involved with Derek at the beginning and he had joined with her in teaching Charlie to ride a bike. R agreed that the parties had gone on holiday with the children to Aviemore and to Spain, breaks that the children had enjoyed. She agreed that the children had missed S from time to time since January 2023. She did not find that surprising. R agreed too with the description of MM as a caring grandmother with something of real benefit to offer the children. S's mother had encouraged her to leave S and was supportive when R told her that they could resume her relationship with the boys when it was safe to do so. While her health was not particularly good and she probably could not afford to fly to Australia to see the children, R would not rule out bringing the children back to Scotland for a visit in future when things were settled.

[29] R agreed that it was important to listen to what the children had to say about their father. Charlie had undergone issues with his self-esteem and his behaviour. She agreed with a social work interim assessment report from March 2023 (number 6/4 of process) that Charlie had reported mixed feelings towards his father and often spoke of missing him. Charlie had sometimes said to her *"I miss my dad. I don't know why he did what he did"*. He had spoken that way about four times over the course of the last year. R did not find it surprising that Charlie may have reported that his old house was a happy place and that dad made him happy. She agreed that at times that would have been Charlie's perception. Derek had also said to her on one occasion last year that he missed his daddy. It was natural

that the children would be confused as they were so young. Derek had not said to her that he was scared of his father.

[30] When it was suggested to R that a move to Australia would involve more change and a lack of stability, she maintained that what she sought for the boys was a safe and calm environment where she as their primary carer did not have to “*look over my shoulder*”. She had been offered but declined local authority accommodation in the area of the Women’s refuge in October 2023 because she did not want to move the children pending the outcome of these proceedings. If not permitted by the court to take the boys to Australia she would move from the refuge but would be concerned about S finding out where she was. If that happened she would flee again. Following initial difficulties Charlie had made some progress in his first year of formal school. He was beginning to understand its routines and structures. He now understands that he should not hit people although his friendships are erratic and he cannot see friends out of school because of his living circumstances. R’s hope would be that wherever Charlie went to school he could become involved in sports and other extracurricular activities which are not available at his current school. She was unconcerned by the different educational curriculum in Australia as Charlie was only 6 years old. Having been educated in Australia herself she rated that system highly. The academic year in Australia commences in February and although Charlie would inevitably miss that start she would hope that he could be enrolled there early in the 2024/2025 school year.

[31] On contact between the children and S, R confirmed that she had never been asked to give updates about the children and would have given these through solicitors had they been requested. S’s abstinence from alcohol was not the only factor in determining whether contact would be safe. While Charlie had said on occasions that he missed S, at other times

he has said that he does not want to see him. While S would not be able to visit Australia currently, she would not rule out anything for the future. It was not her intention to alienate the whole of S's family, although she was less keen to maintain contact with his father who had made allegations against her. S's parents are divorced.

[32] A letter from the relevant primary school in Canberra (number 6/9 of process) was put to R and the suggestion made that the boys would be enrolled in the school with her surname. R said that her brother had made the enquiry and must have made a mistake about names. She had neither indicated that she would change their surnames nor attempted to do so. In relation to friends she might have in Canberra, the pursuer had spoken to one or two of those named by her brother in his affidavit within the last few months. She could not confirm the addresses of any such friends as contact currently is by WhatsApp or similar medium. She agreed that S appeared to have complied with the orders in place prohibiting him attempting to contact her or subject her to any form of abuse.

[33] R confirmed that her brother SG had already spent significant amounts of money on her legal fees and helping her move from the family home. She accepted that she would still have his support albeit from a distance, if she remained in Scotland. She would probably still have support from Women's Aid and the weekly family sessions she had attended would continue. She disagreed that there were important positive aspects for the children in remaining in Scotland. Any rebuilding of the children's relationship with their father would depend on how he behaved rather than the parties' respective locations.

[34] The pursuer's brother SG had flown to Scotland to support his sister and adopted his affidavit number 18 of process in evidence. It gives a detailed account of the support he had given R as her relationship with S deteriorated. SG confirmed that he had been very close to his sister growing up and remained so. There are less than 2 years between the siblings

chronologically. SG explained that he had contacted the school near to his house that he thought would be suitable for the children. He had referred to his sister by her full name and her two sons by their first names only. He had not intended to suggest that the children had changed their surnames. SG had been in very regular contact with R during the whole of her relationship with S. He knew that his sister had wanted to leave S and come to Australia with the children as early as 2019. She had then decided to stay in the relationship and the parties moved to Scotland. Over the next 2 to 3 years R had confided in her brother about the problems in the relationship. She had asked him to transfer her a substantial amount of money at the beginning of September 2021 which he did. On more than one occasion she had been embarrassed and short of cash. She had been unable to pay bills.

[35] SG lives with his partner, RO who is supportive of R and the children and content to have all three living with her and SG. She and SG had flown to Scotland in January 2023 to assist R after she left the family home. SG and RO have been providing emotional support and advice on an ongoing basis to R and will continue to do so in the longer term. SG and R's parents live in a suburb of Canberra as do RO's parents. All are willing to assist with care and support of Charlie and Derek if they live in Australia. RO's mother is a retired primary school teacher who focused on the care of children with complex special needs. They would make their holiday home at the coast available to R and the boys for breaks. RO's extended family live in nearby suburbs. There were suitable rental properties in Canberra for R and the boys of which SG produced details (number 6/10 of process). However that there would be no limit on the amount of time he would open his home to her and the children. He was confident that R would easily find work in Canberra at a good remuneration package.

[36] Under cross-examination SG confirmed that he had visited the parties on multiple occasions when R lived with S. He recalled that S spent a lot of time in bed asleep. He did recall S being left alone with the children other than on one occasion when he took his sister out for dinner. SG confirmed that he would continue to support his sister, including financially regardless of whether she was in Scotland or in Australia. SG acknowledged that it would be in the boys' best interests to know who their father was and to acknowledge him. However he considered the boys should make their own decision on any level of contact. Given what the children have been through they would need support and it was unlikely that contact could be re-instigated straight away. SG would not be involved in travelling back from Australia to Scotland for contact if the children were living in Australia. He could see that the children might have indirect contact with S and his family. His own good relationship with the children had left him cautious as he had seen the impact on them of living in family with the defender. He felt that time to repair family relationships from a distance was needed. He would be comfortable if that started with FaceTime or similar engagement happening in his own home, to which he would agree without hesitation.

[37] The three further witnesses in the pursuer's case who gave unchallenged affidavit evidence were GC, her former direct line manager at work, SM, Charlie's class teacher at the school he attended from August 2022, and LS, the head teacher of that school. GC's affidavit evidence (number 20 of process) confirmed that he had known R as a colleague since 2016. At that time R struck him as an energetic, engaged, very bright individual with a high capacity for work. She had been a popular member of staff. Between 2017 and 2019 GC was seconded elsewhere in the company and then became R's boss on a return to the team in 2019. GC noticed on his return that R appeared less bubbly and more subdued although still an able professional. At times she seemed distracted and stressed and GC realised that

the source was something external to work. Eventually R told GC certain things about her home life. She would sometimes have to leave work part way through the day to collect her children as S was unable to do so. GC gained the impression that calls received about home matters were stressful for R. The impression GC gained was that R could not rely on S for any childcare arrangements. During the second Covid lockdown R started to disclose more to GC. He noticed during meetings that she looked exhausted and dishevelled on screen. The boys would come into the room where she was working when S was supposed to have been looking after them. He gained the impression that the parties' home was a chaotic environment.

[38] During the pandemic R told GC that she really needed a big bonus. When questioned, she told him that S had "*burned through*" tens of thousands of pounds of her savings. He was now running up debt with undesirable people and she required to pay his debts or people would come to the house. GC could tell that R was genuinely frightened. He felt a responsibility to R and was concerned for her welfare. He raised the matter with his HR partners. In early 2022, R disclosed to GC that S would shout and throw things at her when drunk. She was concerned that the boys' behaviour seemed to be echoing that of S.

[39] On 5 October 2022 S called the bank and made vague allegations about R moving money around. The call was recorded and was duly investigated. The lead investigator considered that it sounded like a domestic abuse situation. GC informed the investigator of some aspects of what R had told him about her home life. The investigation was closed but an HR file was opened because of concerns about R's well-being.

[40] GC and R remained in contact in late 2022. He encouraged her to leave home and indicated that the banking group could help her find a safe house. Following S's arrest in

early 2023 GC instigated help for R and the children by booking a holiday let for them until they could find safe refuge accommodation.

[41] On 7 December 2023 GC was contacted by the same investigator who had dealt with the previous complaint by S. Someone claiming to be S's father had called the banking group alleging that R was forcing her children to shoplift and that she was living in Scotland but claiming a London allowance. There appeared to be someone in the background telling the caller what to say. GC confirmed to the investigator that R was not in receipt of any London allowance and the internal investigation was closed down as unsubstantiated. GC described R as having gone from being an organised worker to disorganised, chasing her tail and struggling with concentration.

[42] SM's evidence (number 19 of process) was that she had been concerned about Charlie's behaviour at school in primary one. There were incidents of him lashing out both in the playground and in the classroom. She rarely saw S but would report her concerns about Charlie's behaviour when R collected him. R would respond appropriately and would ask Charlie to apologise. She did not have the impression R was minimising Charlie's behaviour. In contrast, on the few occasions that she saw S, he seemed annoyed when she raised the issue of Charlie's behaviour. He said "this is ridiculous" and left.

[43] In December 2022 a playground assistant told SM that Charlie had been hurting other children in the playground. She took the child aside and asked him why he was doing this. Charlie told her that his dad had told him to hurt people. He said that his dad did those things to him and that he does not like it and that he hurts him on his neck. SM considered these disclosures worrying and she filled in a care and welfare form (number 6/2 of process) which she passed to LS the head teacher.

[44] LS's affidavit evidence (number 17 of process) confirmed that SM Charlie's class teacher had reported to her concerns about Charlie's behaviour. LS had dealt with the care and welfare form provided to her. She and the school deputy head had spoken with Charlie, and recorded that he said that his dad:

"hits him and scratches his neck. This makes mum sad and mummy tells daddy to stop but he doesn't stop until he gets to make food or something he likes makes him stop."

Charlie said that *"when daddy's angry and mum cries and daddy's strong so mum doesn't want him to get bled."* He said that his dad had been kicking him a couple of days ago and that *"mum said stop but daddy said nothing else"*. Charlie then said *"a long time ago, dad threw me on the couch with no pillows and I hit my head on the wall"*. As a result of this and similar disclosures LS sent a note of concern form to the Social Work Department on 15 December 2022.

[45] In January 2023 the police attended the school and LS assisted in looking after the boys until a social worker came and took over. She has not seen the children or R since they were moved to a place of safety.

Evidence in the defender's case

[46] The defender gave evidence but did not lead any other witnesses. He adopted his affidavit number 26 of process as his evidence. A considerable amount of detailed evidence is given therein about S's mental health difficulties, his diagnosis of bipolar disorder and his suicide attempts. The initial period of his relationship with R had been a happy one although he felt they were very different people. He had told her about his criminal convictions and the likelihood that he would experience a further breakdown.

According to S, R did not take his concerns seriously and told him that her life was in the UK with him.

[47] S described a close relationship with Charlie after his birth and happy family times at least until around the end of 2018. He felt his mental health declining although there were still many periods of happiness. According to S, he had been contemplating leaving R when she fell pregnant with Derek. He was however delighted by the birth of his second son. Derek was a much easier baby than Charlie had been and there were visits to S's family in Scotland. S's position was that he had cared for both children equally with R. His affidavit evidence was that *"from the end of 2019 onwards my mental health and alcohol use became out of control"*. In oral evidence he retracted a little and maintained that these aspects were uncontrolled only periodically. He said he was ashamed of how he had behaved and wished he could go back and change a lot of things.

[48] After the move to Scotland in early 2020 S had secured a job as a sales adviser in a call centre, but his training was cancelled due to the first Covid lockdown and so he was at home with R and the children. He had reduced his gambling and did not drink much alcohol initially after the move to Scotland. However things deteriorated towards the end of 2020. He was struggling with the isolation of lockdown and by 2020 was working remotely for the call centre. He started drinking in the afternoon "to loosen up" which developed into drinking alcohol every day from when he woke up in the morning. By June 2021 he was a functioning alcoholic who depended on alcohol to get through the day. He left his job. Despite the dark times S described happy holidays with R and the boys to Spain and within the UK. On Charlie's first day at school S had wanted to take him together with R but she told him that it would be easier for Charlie to be left by only one parent. S maintained that up until around November 2022 he would pick Charlie up at the end of

the school day bringing his scooter so that he could ride it back home. In November 2022 R told S that she did not want him to collect Charlie from school anymore because he would argue with the class teacher. That followed the teacher raising Charlie's behavioural problems with S.

[49] S said that he looked after the children a number of times by himself. In late 2022 he looked after the boys so that R could spend a day with SG and RO who were visiting from Australia. The couple had enjoyed Christmas as a family with the boys in 2022. S's mother MM spent Christmas day with them and photographs confirmed the happiness of the occasion. Until the parties separated in January 2023 S had never spent more than 4 days away from the children, occasioned by his having to travel for work.

[50] S had been advised by his criminal solicitor that should the assault and domestic abuse case be brought to trial it might not conclude until the end of 2024. He has had much time to reflect and has realised how much he has lost. He maintained he would do anything to spend time with his children and wished he had sought proper help with his addiction much sooner. He missed the children greatly and was certain that they would be confused and missing him. He felt the child welfare report supported that conclusion.

[51] Between January and April 2023 S lived in a homeless hostel in Glasgow. He was continuing to drink heavily at that time. He received medical advice that if he stopped drinking without medical input he could have a seizure. Ultimately he was admitted to hospital to fully detox on 5 May 2023. S was clearly proud of his achievement of being over 8 months sober since May 2023 and had produced his sobriety "coins" awarded at his alcoholics anonymous meetings (number 7/3 of process). He is determined to remain sober and is motivated by remaining well for his children. He has attended gamblers anonymous meetings also and said that his gambling was no longer an issue. However he continues to

suffer from anxiety which can be overwhelming. He takes medication for that but considers he needs further psychiatric support to assist with panic attacks. He has been referred to psychiatry services.

[52] S has now secured permanent local authority accommodation, a two bedroomed property and he would hope to have the boys to stay for contact. He has returned to live in the town in the west of Scotland in which he grew up. He described a great circle of friends and support from extended family. He was ashamed for his behaviour towards R and acknowledged that the boys had witnessed that. He felt he was now in a position to be the father that the children deserve and stated that he would not jeopardise their happiness for anything. He would be content for his mother to be involved in facilitating contact.

[53] S is firmly of the view that a move to Australia was not in the children's best interests. He felt they are settled in the UK and was worried about Charlie in particular given the behavioural difficulties he had experienced. A move to Australia would disrupt their routines, they had never visited Australia and whether they would settle there was unknown. He and R had discussed in the past whether Charlie might have an underlying condition given rise to his behavioural difficulties. If so S would like the opportunity to support him with that.

[54] S's main concern was the impact that a move to Australia would have on his relationship with the children. While he had not seen them since January 2023 he would like to be able to spend time with them on a regular basis. He sought the opportunity to show the boys how improved he was as a person and teach them good morals and behaviour. He did not want them to know him as an alcoholic. He thought that his past criminal convictions would preclude his entering Australia. Were the boys to move there they would also lose their relationship with their paternal grandparents. He claimed that

his mother was hurt and confused as to why R had not contacted her. His own relationship with his parents has been extremely good since he became sober.

[55] S's parents are not particularly financial comfortable and would not be able to visit the children in Australia. MM does not work, is 64 years old and has some long-term health issues. S claimed that R was not able to get on with people and struggled to make new friends. She had a strange relationship with her family and her parents had only visited her in the UK twice staying for 2 or 3 months on both occasions. In any event her parents had the means to travel to the UK relatively frequently to see their grandchildren. S also described a difficult relationship between R and her sister, but accepted that she is very close to her brother SG who he described as a "lovely guy". However as SG and RO do not have any children it would be a big adjustment for them if R and the children lived with them. If R remained in the UK S would not try to prevent her taking the boys to Australia on holiday. He claimed that R had never wanted to return to Canberra and had told them there were not any good job prospects in banking there.

[56] S became emotional at times during his oral evidence. He disputed that he had exerted pressure on R to give him money over the years. He would concede only that he asked her for money on many occasions and she had provided that. He talked of borrowing from her. He had not realised how bad his problem with gambling was and he was very ashamed of that. His position was that he had never physically hurt R although he had said a lot of things that he was disgusted by and accepted that his behaviour had been disgraceful at times. He had complied with his bail conditions since January 2023.

[57] Under cross-examination S rejected the contention that his excessive drinking rendered it unconceivable that he had been caring for the children equally with R. He claimed that his drinking was usually at night when the kids were in bed and he would

go to the casino. He cooked for the family everyday throughout the relationship, with R attending to childcare early in the morning and him caring for the boys later. He conceded that R had been a good mother 90% of the time but was unsure how she had coped for the last year as he had seen notes indicating that Charlie was struggling. Charlie had been exposed to his violent and aggressive manner but he claimed that R was part of that. Following a warning against incrimination being administered to S he declined to answer any questions suggesting that he had subjected R to domestic abuse for a number of years. He pointed out that he had stopped drinking and gambling for a period in 2020 and it was later that year that matters deteriorated again. He disputed smashing up items in a hotel room when living down south and working with a previous employer. When asked whether that was the sort of lie he told R to obtain money from her, S said "there are lots of things I'm not proud of". He stated that he did not always lose when gambling and when he won large sums of money he would share these with R, such as giving her £5,000 for a BMW car. At times he would reiterate that he was really ashamed of all of his behaviour and that R did not deserve it but at other times would either decline to answer questions about the alleged abuse or answer by posing the rhetorical question of why, if he was "such a scary person" R had not separated from him before.

[58] S had grown up in a home in which alcohol was abused and his parents had separated. He pointed out that 45% of bipolar people have an addiction. When various allegations in relation to the reasons given to R for needing money were put to S he declined to answer but said "I can only apologise". When it was put to him that he had turned up drunk when Derek was born and demanded money from R he disputed that saying that he had won £8,000 the night before Derek was born and spent it on the family. He said that if the children and R had been affected by his behaviour all he could do was apologise.

[59] In relation to his suicide attempt S said he was not doing well at that time and he and R thought a fresh start would assist. He accepted that on one occasion he had drunk "a vodka" before driving back down south with the children and that the police had stopped him although he was not charged. He agreed that he and R had considered moving to Australia as a family and he had been supportive of that but could not secure a visa. He would not answer whether he told R that people were monitoring their house and said such allegations would be made in another court.

[60] When the recording number 6/20 of process was played to S in which he had left an abusive voicemail for R after she refused to go and collect him, he described it as "horrific" and said that he had been very drunk. He said he was so ashamed of how he had been and that "that person's gone". He disputed that he had caused damage to the parties' home by kicking a hole in the bedroom wall. He agreed that he had smashed glasses but said it was in the kitchen sink. He had accidentally smashed a vodka bottle and said he had picked up the glass from the floor so that the children would not step on it. He said he was "not admitting" to breaking a door in the parties' home in Scotland. He was adamant that any threatening behaviour put to him would not in any event have taken place in the presence of the children. He accepted that the children would have seen him drunk and he was ashamed of that.

[61] On what Charlie had reported to his primary school teacher S said that some of it was true and some not. In particular he had not told Charlie to hit people at school. He could not say how much money he had taken from the pursuer over the course of the relationship but said he would try to pay her back. He reiterated that he had also spent thousands of pounds on goods and presents that R "chose to keep". On the recorded threat that he would "*f'ing bury your life*" to R, S said that many people say things in the heat of the

moment such as *"you're dead when you get home"* but did not mean it literally. He alleged that it was R who had smacked the children and he would point out that social services could be involved if she did so. He did not dispute that Derek had sustained injury when in his care. His medication knocked him out and he had been unaware that Derek had tried to go downstairs in the middle of the night.

[62] When the recorded voice note number 6/21 of process was played in which S was heard to say *"anymore I'll take a hammer and smash that fucking car to bits"* he responded that he was drunk and angry and it was a stupid thing to say. When messages were viewed in which he had asked R for money he said that these were not demands or threats but simply requests. When the recordings numbers 6/19 of process and 6/25 of process were played to S he claimed that he and the boys had been play fighting although accepted that he should not have used shocking and foul language. He said *"I was overweight, despicable ... they will never see a father like that again"*. When the evidence in GC's unchallenged affidavit was put to him in relation to the allegation he had made about R claiming a London allowance, S maintained that she has done so and said *"If she has committed a crime she would have to pay for it"*. He refused to comment on the recordings numbers 6/26 and 6/27 of process on the basis that he could not make any comment that might incriminate him.

[63] It was suggested to S that he had posted numerous photographs on Facebook of the children as if he had been present at activities when in fact these had been taken by R. He accepted that he had not been present on the day that he posted photographs of Charlie on a tractor. He agreed that his closest family members had been available for him during this difficult period and his father visited him most days. He maintained that his evidence that R had *"aunts in Bristol"* was unaffected by hearing that they were her father's cousins.

Decision

(i) *Credibility and reliability*

[64] I accept R's evidence as both credible and reliable in all of its essential elements.

She came across as a little brittle at times, which was unsurprising in the circumstances and served only to underscore the trauma she has experienced. It was evident that she remains distressed by her experience of living with S and of the circumstances in which she and the children came to depart the family home. Her recall of events was excellent and she was prepared to make concessions where appropriate. For example, she did not rule out a relationship between S and the children in future and she accepted readily that acknowledgement of him as their father would be important for the boys.

[65] SG was an impressive witness. I accept without reservation his evidence of the unqualified emotional support he intends to provide for R and the children regardless of location. His spontaneous response "of course" when asked whether he would permit FaceTime contact between the boys and S within his home if there was a move to Australia appeared genuine and sincere.

[66] I was less impressed by the defender's evidence. He was inconsistent at times, for example in relation to when in the day he drank alcohol, first admitting that he would drink through the day and later claiming that he drank late in the evening when the boys were in bed. He vacillated between apologising for his past behaviour and seeking to apportion blame to the pursuer for the couple's unhappiness. He was cagey when it suited him (for example on how he had secured large sums of money from R for gambling) and garrulous when trying to make a point. I do not wish to underestimate the difficulty for him in giving evidence in a formal setting when his mental health remains poor. He is clearly an intelligent person who has been beset by poor mental health and addiction. However,

he called no witnesses in support of his account of events. Ultimately, where his account differed from that of the pursuer I have rejected his evidence and accepted hers.

(ii) Relocation

[67] In determining whether to grant an order permitting removal of Charlie and Derek from the UK to live in Australia, their welfare is my paramount consideration. I have considered, on the basis of the evidence, how their lives might look should they remain here as compared with what would happen to them in Australia. This case is unusual in that I am not comparing a settled status quo with an untested change. At the conclusion of these proceedings, whatever my decision on relocation, R will move home with the children and they will change school and nursery respectively. It is inconceivable that they will stay in the Women's Aid refuge for much longer. I take into account that R already has, with the support of her brother, the financial ability to move to rented accommodation in this jurisdiction and that she has good employment here. The children's material needs will be met by her whether she lives here or in Australia.

[68] The defender does not seriously suggest that Australia is somehow an unsuitable destination for the children. The parties had considered relocating there before and were prevented only by the defender's inability to secure a visa. On the basis of the available material I am satisfied that the accommodation and physical surroundings for Charlie and Derek would be better in Australia than they are likely to be in this jurisdiction. They would be living in their uncle's spacious and attractive property and attend a suitable local school. They would enjoy the warmer climate and consequential year round outdoor activities. There would be no need for their mother to move them to other accommodation nearby, although she would no doubt wish to do so once she found permanent employment and felt

ready to set up a suitable independent home. As Canberra is her home city, the pursuer would find it easy to resume connections with friends and to provide a social environment for the children. I accept that her employment prospects in Canberra are good. Accordingly I reject the defender's contention that a move to Australia would provide uncertainty or instability for the boys in terms of living arrangements.

[69] So far as education is concerned, Derek has not yet started formal education and Charlie is only 6 years old. There is no evidence to support a conclusion that changing to the Australian education system would be detrimental to Charlie at this very early stage in his schooling. While he has made reasonable progress at his current school recently, I have already acknowledged that he would be changing school even if he remained in Scotland. If the order to remove the children is granted, the pursuer would be able to leave almost immediately and Charlie would be enrolled in the local school in Canberra early in the Australian academic year 2024/2025.

[70] Central to the father's opposition to the move is his desire for contact with Charlie and Derek. He lived in family with them until January 2023. The absence of any contact since then is directly related to the criminal charges he faces, at least in respect of Charlie. There was no application by him during the proceedings for contact with Derek alone. That would have been a contentious application. On his own evidence S continued drinking heavily until May 2023 when he left hostel accommodation. By the date of proof he had been sober for in excess of 8 months and is to be commended for his efforts. I hope that he can maintain that sobriety going forward, although I cannot conclude with any real confidence that he will. I will return to that issue in addressing his conclusion for contact. In relation to the proposed move to Australia, it is significant that there has been no contact between S and the boys for over a year.

[71] The value of the ongoing relationship between parent and child is normally given considerable weight in applications of this kind. When an ongoing positive relationship between one parent and the children is coupled with an application to move to a far distant country, it can be difficult for the applicant to establish that it would be better for the children to move if the nurturing relationship with the other parent would be diminished. That is not the position here. It is indisputable that the boys' current emotional well-being emanates solely from the care and support their mother provides. She alone has provided consistent, stable, loving care of them throughout their young lives to date. Should they relocate to Australia, it is likely that their father's absence from their lives will continue. Any reintroduction would be gradual and indirect at first.

[72] The allegations of domestic abuse of R and the children are a key aspect of this application and consideration of the children's welfare demands that I address those. My findings on the evidence presented in this case are of course made to the civil standard of proof of a balance of probabilities only and I apply the facts found to the relevant provisions of the Children (Scotland) Act 1995. I make no comment on whether any crime has been committed.

[73] I am satisfied on the available evidence that the defender behaved in an abusive way towards the pursuer over a number of years. I find also that he was abusive to Charlie and Derek for most of their short lives prior to January 2023. My narration of the evidence of the pursuer and her witnesses sets out the detail of that abuse. The defender's constant demands to the pursuer for money, his erratic and frightening behaviour in the presence of the children following excessive alcohol consumption and his threats of violence to the pursuer and latterly to the children (or at least Charlie in Derek's presence) created an intolerable domestic environment. R and both children suffered as a result of that abuse.

The evidence of R's former manager GC supports that her capacity to work was badly affected by her lived experience at home. She was frightened, distressed and felt trapped, while Charlie developed behavioural difficulties. Regardless of whether Charlie's difficulties were to any extent attributable to S's behaviour, he was vulnerable and in need of a secure home environment, not the unsettled and chaotic one in which he lived. Derek was physically injured while in S's care. The undisputed summary of Charlie's disclosures to his teacher and head teacher at paras [43] to [44] above illustrate that he was troubled by events at home and concerned about the impact of those on his mother. It is unsurprising that R ultimately started recording some of S's outbursts and behaviour towards the children. The verbal abuse and threats of violence exhibited in the recording number 6/26 of process and summarised at para [19] above were typical of S's behaviour towards the children in the latter half of 2022. From the perspective of the children's welfare, it is what they experienced rather than whether the defender's challenging and frightening behaviour was usually the result of excess consumption of alcohol that matters. I have taken into account the need to protect both children from the risk of further abuse in reaching my decisions in this case.

[74] The children are too young to express reasoned views on the issue of relocating to Australia. The child welfare reporter concluded that to the pursuer's credit it seemed that she had not tried to influence them on the issue. Neither child appeared to have formed any particular view (Number 15 of process, page 6). Charlie expressed a general desire to go with his mum and see SG and RO in Australia. The concept of relocating to another continent was clearly too complex for both children and I have attached very little weight to what they said on this issue. It seems clear that their emotional needs are met by being with

their mother rather than by living in a particular country. I address their views on contact below.

[75] Charlie has exhibited some behavioural difficulties at home (prior to January 2023) and at school. He has no diagnosis of any condition and he has made some progress over the last few months. The evidence does not support a conclusion that a move to Australia would adversely affect his psychological state. In the event that he requires additional support to address any ongoing behavioural issues, that could be accessed just as easily in Australia as in this country.

[76] In conclusion, I am satisfied that it would best promote Charlie and Derek's welfare to relocate with their mother to her home city in Australia. It would be better for them to do so than to require to remain in Scotland (or elsewhere in the United Kingdom) where their primary carer is isolated, fearful and unhappy. R and the children's current circumstances are by their nature temporary. The environment that awaits them in Canberra is more attractive than their current situation and far more settled and predictable than their likely future here. Having reviewed the material lodged by the pursuer confirming her employment prospects, availability of accommodation and schooling (numbers 6/12, 6/10 and 6/9, 6/13 and 6/31 respectively) I accept that she has provided ample evidence illustrative of the arrangements likely to be in place for the children in that jurisdiction. R currently provides the children with everything they need materially and emotionally. In Australia she will have more practical support and assistance from SG and his partner and from extended family and friends. The boys already enjoy a warm relationship with their uncle and RO.

[77] There are no substantive proven advantages for the boys in their remaining in Scotland at this stage. The possibility of renewing contact with a father who has been an

extremely poor role model, has subjected them to extensive verbal abuse and threatening behaviour and whose own future remains uncertain is not a sufficient reason to refuse the order sought. Looking to the future, and as I will elaborate in determining the issue of contact, it may be beneficial for them to rebuild a relationship with their father. That longer term consideration is relevant regardless of whether they relocate. It is plainly in the interests of both boys to be cared for by a mother who is not anxious and does not feel the need to “look over her shoulder” through fear of being found by the defender.

(iii) Residence and contact

[78] I am entirely satisfied that a residence order should be made providing that Charlie and Derek should reside with their mother. She has been their primary carer since birth, notwithstanding her work commitments. The children have lived with her alone since the defender’s behaviour caused the breakdown of the family. While the defender did not dispute that the children should live with the pursuer, I consider that an order is necessary. R has lived in fear of the consequence for her and the children should the defender discover her address. She has been the subject of malicious complaints to the police, including in relation to her care of the children. It would be better for the legal position on residence to be formalised prior to the relocation that I have determined is in the children’s best interests.

[79] The context in which I will now address the issue of contact is that the children will be relocating to Australia with their mother almost immediately. Charlie and Derek have not seen their father for over a year and when they last saw him he was drinking heavily. His mental health remains precarious, although he is taking appropriate steps to secure treatment. Quite apart from the bail condition prohibiting contact between S and Charlie, I consider that it would present a risk for the children to reinstate direct contact at this stage.

The defender's actions in trying to cause trouble for R with her employers (and with the police) and his refusal to accept that such actions were unwarranted, spiteful and would have impacted adversely on his own children supports a conclusion that he has not yet come to terms with the breakdown of the family. He is unable to separate the strong emotions he continues to have about that from his responsibilities as a parent. His desire to see the children tended to be focused on his own needs and desires.

[80] The children's views on contact are mixed. They have said at times that they miss their father and some of Charlie's memories of living with his father are happy ones. These statements require to be considered against a backdrop of their sudden departure from the family home and the pursuer's understandable reluctance to explain the circumstances of that to them. Charlie's tendency to blame himself for what happened is indicative of a child who is not yet able to process the decision that he was removed from a situation that posed a real risk to him. If the relationship between S and his sons can be rebuilt, that could not be achieved immediately through direct contact regardless of the boys' residential location. Trust or at least communication between the parents would first have to be instigated and the pursuer reassured that the defender will not expose the boys to any abuse. In particular, he would have to desist from using foul and threatening language or indulging in other types of threatening conduct, such as that seen on the recordings numbers 6/25 and 6/26 of process. Unfortunately, his assertions in evidence that the boys would not see such a father again are insufficiently reliable at the moment to enable a conclusion that direct contact is in the boys' best interests.

[81] I accept that the boys should know who their father is and that it would be in their best interests to have some form of contact with him if his progress towards sobriety and improved mental health continues. In her evidence the pursuer readily agreed to provide

photographs and other material relevant to the children's welfare to update the defender and his family on the children's lives. She had not been asked to do this prior to giving evidence. She explained that she would be happy to maintain contact with the defender's mother MM either for this purpose or more generally. The lack of contact with MM over the last year had been primarily to avoid the risk of the defender discovering the whereabouts of R and the children. I accept R's explanation in that regard and consider it reasonable that, standing my decision on immediate relocation, such indirect contact commences once the pursuer has returned to Australia. In submissions the defender suggested that I make a Specific Issue Order to that effect and I will do so, but first I will give those representing the pursuer an opportunity to comment on the specific terms and frequency of that.

[82] Once the children have settled in Australia, the issue of possible future contact between them and their father will require to be addressed. I accept that the defender loves his sons and is anxious to maintain contact with them. He was sometimes involved in their early care. While I am not able to conclude that it would best promote Charlie and Derek's welfare to see their father at the moment, I consider that the matter should be revisited once they are living in a happy and secure environment. It may be that some contact could be initiated using FaceTime or a similar medium. Much will depend on the defender's state of sobriety and his mental health. The parties may be able to agree through a third party that such contact could be attempted. SG was clearly open to the idea. R was very clear that she would "rule nothing out" in terms of possible future contact. The defender requires to illustrate his commitment to sobriety over a longer period before any direct contact can take place. I will make no order for such contact meantime.

(iv) *Interdict and power of arrest*

[83] The pursuer remains fearful of the defender and seeks perpetual interdict at common law prohibiting abusive conduct of the type described in her third conclusion. To his credit the defender does not oppose such an order regardless of the outcome of the relocation decision. It was acknowledged on his behalf that the pursuer should expect not to be subjected to any such behaviour and that an order to that effect was not unreasonable. I will make an order for interdict. It was also suggested on behalf of the pursuer that a power of arrest could be attached to the interdict for a period of 3 years, coupled with a determination that the interdict is a domestic abuse interdict, in terms of sections (1) and (2) of the Protection from Abuse (Scotland) Act 2001 and section 3(1) of the Domestic Abuse (Scotland) Act 2011 respectively. In light of the decision I have reached on relocation, I have concluded that it would be unnecessary to attach a power of arrest. In any event, the defender has complied with the interdict ad interim made early in these proceedings and with his current bail conditions. He has managed to do so for a year while the pursuer is in this jurisdiction. He is unlikely to be able to travel to Australia, at least in the short term. A perpetual interdict and the very significant geographical distance will provide sufficient protection.

Disposal

[84] For the reasons given, I intend to make a specific issue order permitting R to relocate to Australia with Charlie and Derek. I will impose an interdict for an indefinite period. I will also make an order for photographs and welfare information to be provided by R to the defender's mother. No orders will be made formally until the frequency and arrangements for the provision of that welfare information, together with all questions of

expenses, which I meantime reserve, have been discussed at a hearing that will take place in early course.