

**SHERIFFDOM OF SOUTH STRATHCLYDE, DUMFRIES AND GALLOWAY
AT HAMILTON**

[2026] SC HAM 105

HAM-F503-23

JUDGMENT OF SHERIFF J SPEIR

in the cause

BLACK

Pursuer

against

WHITE

Defender

Pursuer: Thompson Family Law, solicitors

Defender: Cartys, solicitors

HAMILTON, 10 September 2026

The sheriff, having resumed consideration of the cause:

(1) Sustains the first plea-in-law for the pursuer and grants decree divorcing the defender from the pursuer on the ground that the marriage has broken down irretrievably as established by the parties' non-cohabitation for a continuous period of 2 years or more.

(2) Sustains the fourth plea-in-law for the pursuer and the third plea-in-law for the defender and makes a shared residence order in the following terms:

(a) In term time:

Week 1

Monday - the children to reside with the pursuer overnight;

Tuesday - the children to reside with the defender overnight;

Wednesday and Thursday - the children to reside with the pursuer overnight;

Friday, Saturday and Sunday - the children to reside with the defender overnight.

Week 2

Monday - the children to reside with the pursuer overnight;

Tuesday, Wednesday and Thursday - the children to reside with the defender overnight;

Friday, Saturday and Sunday - the children to reside with the pursuer overnight.

(b) During school holidays:

(i) The school summer holidays will be shared on the basis of the children residing full alternate weeks with each party unless changed by mutual agreement; and

(ii) All other school holidays to be shared on an alternating pattern to be agreed between parties.

(3) Makes an incidental order in terms of section 14 the Family Law (Scotland) Act 1985 and directs Messrs Thompson Family Law, solicitors, Glasgow to disburse the net free proceeds from the sale of the parties' former matrimonial home, together with any interest accrued thereon, presently held by them on behalf of the parties forthwith as follows:

(a) A first tranche payment to the defender or her nominated agents of the sum of £1,628; and

- (b) the remaining balance to be divided equally between the parties with the defender's share to be paid to her directly or to her nominated agents.
- (4) *Quoad ultra* dismisses all remaining craves for both parties save their respective craves in relation to expenses and appoints parties to be heard thereon at a date to be afterwards fixed in the event that they are incapable of agreement.

Overview and summary

The primary issue in this case is whether an equal shared care arrangement in respect of the parties' two daughters, Olivia and Poppy, aged 12 and 10, respectively, which had subsisted broadly since September 2021, and formalised in an interlocutor from this court on 30 November 2023, should continue or, as the pursuer, contended should be altered such that they spend 8 nights per fortnight with him and 6 nights with their mother, the defender. He further contended that such unequal division should also be reflected by a sole residence order in his favour. In all the circumstances of the case I considered that proposition to be without merit and that the best interests of the children will be met by crystallising the current arrangement into a final order, that outcome also being aligned with the clearly expressed wishes of the children.

A subsidiary issue in the case concerned what deviation if any from an equal sharing of the net value of matrimonial property on divorce was appropriate to take account of the defender's contributions to the mortgage over the parties' jointly owned property from the date of separation in July 2020 until its sale in March 2025.

My determination in relation to both these issues is set out in the foregoing interlocutor and is explained in the findings in fact and law and note hereafter. For the purposes of anonymity both parties, the children and witnesses are referred to by unrelated pseudonyms which I have created for the purposes of this judgment.

Findings in fact:

1. The parties were married on 31 December 2011.
2. There are two children of their marriage under the age of 16 years, namely Olivia aged 12 and Poppy aged 10.
3. The parties ceased to co-habit on 18 July 2020.
4. Since that date the parties have not lived together as husband and wife nor had marital relations.
5. There is no prospect of reconciliation between the parties, and their marriage has broken down irretrievably.
6. Both parties have had relationships with other people since separation and they are each now in separate settled relationships.
7. Neither party intends to cohabit with their respective new partners for the immediate future.
8. Prior to cessation of cohabitation the parties and the children resided together at a property in Lanarkshire which was the Former Matrimonial Home (FMH).
9. Title to the FMH was in the joint names of the parties and it was the single most valuable item of matrimonial property at the relevant date.
10. The FMH was subject to a mortgage also in the joint names of the parties.
11. Said property was sold in March 2025 producing net free proceeds of £51,956.09.

12. By agreement between the parties said net free proceeds have been retained on their behalf by the pursuer's agents pending resolution of all financial issues on divorce.

13. The defender met all of the mortgage payments due in respect of said property from the date of separation until it's sale. These amounted to just under £25,000 inclusive of capital and interest. She also met the cost on insuring and maintaining the property.

14. While the care of the children was broadly shared during this period the pursuer made contributions to the defender in respect of alimentering the children.

15. The outstanding mortgage at the date of separation was £76,625. As at the date of sale that had reduced to £69,358.81 being a difference of £7,266.19.

16. The parties have agreed a division of the remainder of the matrimonial property with the exception of the said retained sum.

17. At the relevant date the remaining matrimonial property and liabilities held by the parties had values as follows:

Asset / Liability	Joint	Pursuer	Defender
RBS Saver a/c		£0	
RBS Reward a/c	£1,466.32		
SPPA Pension		£3,213.91	
Strathclyde Pension		£532.24	
Aviva Pension 1			£7,367.46
Aviva Pension 2			£5,066.46
Suzuki M/cycle		£6,450.00	
Mercedes Car		£2,300.00	
Ford Car			£2,910.00
Clydesdale a/c			£150.71
Aviva Shares			£181.59
MBNA Cr.Card		-£2,078.98	
Hitachi Loan		-£12,626.04	
Barclay Cr.Card		-£5,100.95	
Loan from M			-£3,000.00
Totals	£1,466.32	-£7,309.82	£12,676.22

18. Although the pursuer had been left with the majority of the parties' liabilities the defender made payments to him in respect thereof following separation totalling £7274.

19. Following separation the parties agreed that the defender could reside in the FMH with the children for an initial period of 2 years with a view to her being able to then apply for and obtain a mortgage.

20. At a point relatively shortly after expiry of that initial 2 year period the defender proposed that the property be sold but the pursuer refused to agree to that due his concerns relating to there being stable arrangements in place for the children.

21. The defender and the children continued to reside at the FMH from the date of separation until its sale except for a period of approximately 7 months commencing around June 2023 when they lived in the home of Mr ABC in Glasgow.

22. After some temporary living arrangements the pursuer has resided in a rental property since December 2020.

23. After the sale of the FMH the defender was able to obtain a permanent tenancy in a local authority property. That had not been an option available to her prior to said sale and until she obtained said tenancy she required to reside in temporary accommodation.

24. Both parties' properties are suitable for the children.

25. Both parties aspire to purchase their own properties.

26. In the first part of 2023 significant disputes arouse between the parties in relation to the sale of the FMH.

27. Relations and communications between the parties continued to sour following upon the defender's decision to go and live with Mr ABC.

28. The pursuer became concerned that the defender would seek to change the children's school to one closer to Mr ABC's address.

29. The pursuer raised these proceedings in August 2023.

30. At a child welfare hearing on 30 November 2023 the court pronounced an interlocutor providing for the shared care of the children. That order reflected the recommendation contained in a comprehensive child welfare report. The arrangements set out in that order have subsisted until the present time.

31. In or about January 2024 the relationship between the defender and Mr ABC ended and she and the children returned to the FMH.

32. During the course of 2024 the relationship between the parties continued to deteriorate.

33. In May 2024 the pursuer was arrested as a consequence of allegations of domestic abuse made by the defender to the police. No charges followed upon that arrest.

34. Several disputes arose between the parties in relation to welfare issues concerning the children including whether Olivia required spectacles, certain medical issues and the girls' appearance in particular the use of make-up.

35. Communication between the parties became dysfunctional and ceased altogether in April 2025.

36. The catalyst for the complete breakdown in communication was the pursuer sending a message to the defender in April 2025 stating that he had been advised by the police that she was to be arrested for a sexual crime against the children.

37. The defender did not commit any such crime.

38. The defender was not arrested or charged with any such crime.

39. In the first part of 2025 a further significant and discrete contentious issue arose between the parties in relation to the choice of secondary school for Olivia.

40. The pursuer unilaterally and without consultation enrolled her in school Y.

41. Olivia wished to attend school Z and the defender supported her in that.
42. The issue was determined by the court and in terms of an interlocutor pronounced on 10 June 2025 the pursuer's application for a specific issue order for Olivia to attend school Y was refused.
43. Olivia has attended school Z since August 2025. She is happy and settled there.
44. Both parties are agreed that in due course Poppy should also attend school Z.
45. Both children are happy and settled within the present shared care arrangement.
46. There are no significant welfare issues affecting the children's wellbeing save for the ongoing conflict and poor communication between the parties.
47. Both parties have in the past inappropriately used Olivia as a conduit for communication.
48. Both parties accept that going forwards they should not do this.
49. The continuation of the present arrangement is in the children's best interests.

Findings in fact and law:

1. The relevant date, in terms of section 10(3) of the Family Law (Scotland) Act 1985 was 18 July 2020.
2. It is in the best interest of the children that a final shared residence order in the terms set out in the interlocutor of 30 November 2023 be made with comparable provision for school holiday periods.
3. It is better for the children that said order is made than none at all.
4. The defender having suffered an economic disadvantage from having made payment of a matrimonial debt after the relevant date, and the pursuer having gained an economic advantage arising from that payment, and the resulting imbalance not having been corrected

by a sharing of the net value of the matrimonial property, it is appropriate to make an order to take fair account thereof in accordance with section 9(1)(b) of the Family Law (Scotland) Act 1985

Finding in law

1. The parties' marriage having broken down irretrievably as established by the parties' non-cohabitation for a continuous period of 2 years or more, grounds for decree of divorce under section 1(2)(e) of the Divorce (Scotland) Act 1976 are established.

Note

Introduction

[1] Despite the parties having separated in July 2020 the proof in this action only concluded at the end of June 2026. This was not a case, however, where parties rushed into court despite evident antipathy and distrust between them prior to and following upon separation. For well over 2 years they were on the whole able to agree on significant matters in particular the arrangements for the care of their children. Since September 2021 a broadly shared care arrangement has operated albeit in the early years the children spent more time with the defender. The present action was raised in August 2023 shortly after the defender decided to move with the children to the home of her then new partner. That change in living arrangements subsisted for only a short period and like a number of other factual averments still on record had ceased to have relevance by the time of proof. Ultimately the proof was concerned with only two issues: what arrangements were in the best interests of the children and what if any financial consequences should flow from the defender's

payment of the mortgage over the former matrimonial home from the date of separation until sale.

[2] In relation to the latter issue parties had been able to agree most of the relevant financial matters in terms of two joint minutes of agreement. Further areas of consensus emerged during the evidence in particular in relation to the amount of a loan due to the defender's mother for which the defender has assumed the liability to repay. Accordingly the discussion of the evidence which follows omits reference to any non-contentious matters.

[3] At proof the pursuer was represented by Mr Thompson, solicitor, and the defender by Ms Agyako, solicitor. Evidence was led from both parties, the pursuer's partner ("P"), the pursuer's mother ("G") and the defender's friend ("F"). The children's views had been obtained shortly prior to commencement of the proof by the same experienced child welfare reporter who had prepared the original comprehensive report in the case.

Evidence for the pursuer

Pursuer

[4] The pursuer was aged 45 at proof. He is employed as a college lecturer. He referred to and adopted his affidavit as his evidence in chief and then elaborated on certain aspects during oral evidence. Following the parties' separation on 18 July 2020, the pursuer left the FMH, while the defender and the children remained there. This arrangement was not intended to be permanent, as he had agreed that the defender could remain in the property for approximately 2 years to allow her sufficient time to demonstrate financial independence and obtain a mortgage, either to take over that on the FMH or for the property to be sold and a new one purchased. He was also motivated by a wish to minimise disruption for the

children. Ultimately, the defender was unable to take over the mortgage which he attributed in part to poor economic decisions, in particular her acquisition of a high-end car in 2021 or 2022. He had a close and loving relationship with both children and their welfare had been at the forefront of his decision-making. After an initial period following separation, while he obtained permanent accommodation and employment with more compatible hours, the parties successfully operated a shared-care arrangement which allowed the children to maintain meaningful relationships with both parents. It was an equal arrangement whereby each parent cared for the children for 7 nights out of 14. His objective in these proceedings was not to weaken the children's relationship with their mother but to establish arrangements that provided greater structure, consistency and stability. From his perspective, significant difficulties arose between the parties from 2023 onwards. There was a deterioration in co-parenting and communication, together with increasing conflict regarding decisions affecting the children. He became concerned about the defender's decision-making in relation to the children's welfare and considered that his genuine concerns had been misconstrued as controlling behaviour. A particular focus of his concerns, and what he regarded as the catalyst for the deterioration in relations, was the defender's decision to move with the children to the home of a new partner, Mr ABC, whom she had known for a relatively short period. Those concerns were heightened by changes he observed in the children's behaviour and further exacerbated by information he received from a former partner of Mr ABC. He considered that ongoing poor decision-making by the defender required greater vigilance on his part regarding the children's welfare. Areas of concern included his belief that the children disclosed inappropriate knowledge of matters said in court; the defender's transient lifestyle, evidenced by frequent house moves; and the early exposure of the children to her new partners. Other concerns related to education and

healthcare. A particularly contentious issue was where Olivia would attend secondary school. The pursuer felt strongly that she should attend a school that performed significantly better in educational rankings than the geographical default school. He felt that the defender resented or obstructed his involvement and did not share his wish for a joint approach that prioritised the children's welfare. A significant issue for him was online safety. After watching the television drama "Adolescence", he decided to carry out a welfare check of the children's mobile devices. In the course of that, he discovered material on Poppy's phone that caused him concern. This consisted of internet search history and sexually explicit photographs and videos of the defender and others linked to an account belonging to the defender. He stated that the material was readily accessible by clicking on the Google icon. The screenshots made by him covered a period extending back to 2022. He did not make screenshots or copies of the material he described as sexually explicit but regarded some of the screenshots retained as inappropriate for children. He initially took the phone from Poppy while he established the source and nature of the material. He did so, he said, as a precautionary measure expected of a responsible parent rather than out of curiosity regarding the defender's private affairs. The pursuer considered that the defender acted vindictively when she made allegations of domestic abuse against him to the police in May 2024. Being arrested was highly distressing both personally and professionally. The allegations were unfounded and no criminal conviction resulted. This incident exacerbated the increasingly hostile atmosphere surrounding the parties' co-parenting relationship. He was concerned that Olivia was unduly conscious of appearance, a tendency he attributed to the defender and, in particular, her mother. He also felt excluded from important matters concerning the children. He gave examples of not being aware that Poppy was absent from school through illness when he attended to watch her in a school

play and not being informed promptly when she broke two fingers in an accident at a play park. Communication broke down completely in March or April 2025 after he sent the defender a message that the police wished to speak to her in relation to sexual content he had found on Poppy's phone. Against that background, he considered that the children's best interests would be served by an arrangement whereby they resided with him for 9 nights out of 14 and with the defender for the remaining 5. He contended that this would promote stability and continuity and better meet the children's emotional needs. It would also mean they spent less time being looked after by the defender's mother, whom he considered overly focused on appearance. He further considered that it would address what he perceived as his alienation from the children. The pursuer believed that the defender communicated with the children in a manner intended to undermine their time with him. By contrast, he maintained that he always promoted their relationship with the defender. He hoped for the re-establishment of effective communication to facilitate co-parenting and was enthusiastic about the potential use of the "Our Family Wizard" app for that purpose. In due course, following the conclusion of the proceedings, he hoped to purchase a house in which each child would have their own bedroom. Although the pursuer had paid the mortgage over the FMH, he had also met other financial obligations and liabilities incurred during the marriage, in addition to the expenses associated with maintaining his own accommodation.

[5] In cross-examination he stated that his decision to change his position from one of shared care to a 9/5 split had only been made around a month before commencement of the proof. It was because he considered his alienation was becoming more prominent. He thought that a change in his favour could improve communication. If he was recognised as main carer the defender would be unable to abuse her position. He had never abused his

position. He would have more control over the girls days to day life and as such the custodian of information. If he was the main carer the defender would be brought to the table to communicate. He agreed that shortly after separation he had introduced the children to the male friend with whom he had been staying but at no time had he left them alone with him. He has lived in 3 houses since separation. He accepted that there was no evidence that Mr ABC was a paedophile. Regarding financial matters he had contributed to the home insurance and £70 month towards the children's upkeep. He had felt pressured by defender into agreeing to wait 2 years before FMH was sold albeit he had accepted it was in the children's interests to have stability. After 2 years passed he had been reluctant to force the issue. He was not prepared to agree to the proposal whereby the house would be sold to a friend of the defender for less than its value as it appeared to be a fraudulent scheme. It was correct that he had not agreed to the defender's proposal that the house be sold when she moved in with Mr ABC as he did not want property sold until satisfied that the girls were secure. In his view that new relationship did not offer such security. If it broke down the defender and the girls would be homeless. If the defender had been caught in situation where she was unable to apply for local authority housing while still owning and paying the mortgage on FMH it was her own fault for not sticking to the 2 year agreement. He had raised proceedings in August 2023 because he became concerned that with the move into Mr ABC's property the girls would be moved to a school in that area. He agreed that no such application had ever been made. He accepted that Olivia was now settled in school Z. He was supportive of her sister following her there. He had disagreed with her preference for that school Z. His preference had been for school Y because it had a much better performance record. He had unilaterally made a placing request for that school and had sought a court order. He did not discuss or advise the defender prior to making the placing

request. He was critical of messages sent by the defender to the children when they were with him albeit he would message them with her saying that he loved them or missed them or when he would next see them. He wanted a residence order so it would be clear he was main carer to “counterbalance” the current situation where defender was “abusing her position as mum” of which he claimed to have “provided lots and lots of evidence”. If he was the main carer it would “remove control” from the defender. He accepted that his position was more or less the same as that recorded in the first child welfare report from November 2023 but his comments at that time had been taken out of context. The defender would have been aware if someone had attempted to access her Google account without her consent whether or not 2-step authentication was in place. The children had had devices from which they could access the internet from a very young age. Olivia had been 9 when she got her phone but had a tablet before that. Poppy had been 7. He had been able to see the defender’s account on Poppy’s device as it already logged in as that was apparent when carrying out the welfare check. Poppy’s photo account contained images and videos of defender but in addition he noticed that the defender’s content was also visible. Her past search history was not immediately displayed and some degree of delving had to be carried out by him. He was unsure how long he had spent looking at this search history. He considered that he was justified in doing so after being arrested in May 2023 on the basis of a false allegation. He had taken the phone to the police but that they did not examine it. He was unable to explain why the police were considering charging defender with a sexual offence without them actually looking at any images on the phone. He accepted that it was incorrect to describe his arrest as a false arrest rather than one based on a false allegation or allegations by the defender. He had made so many screenshots of searches he thought significant because these related to issues that arose as the litigation progressed albeit he had

searched back even prior to action being raised. He accepted that that defender was not charged by the police. He had some discussions with children in relation to this but did not tell them she could be arrested. He told them there had been some incident at work that police needed help with. He had not contacted the social work department as there was no indication that the children had ever seen the material which concerned him. He was unable to explain how the images could have “popped” up for him but not for Poppy. He returned the phone to her 2 days after police contacted defender and after checking the images were no longer there. He still had some concerns in relation to online safety as the game “Roblox” had been set up as an adult account on Poppy’s phone. Olivia’s false eyelashes and nails were not contrary to school policy and the latter did not prevent her playing the piano. He remained of the view that both false eyelashes and nails along with and make up were inappropriate for her age. He was concerned that she may want piercings. His issue with the defender’s tattoos was because of the expense in obtaining them rather than appearance. He accepted that there was no evidence Olivia was starving herself nor were any medical issues raised. His family did weigh themselves in front of one another especially after big meals. That was different from calorie counting. Olivia’s favourite food was chicken dippers and when she ate them at his house she did not ask about calories. The defender was neither a good nor bad mum. She prioritises herself. He accepted that children had a close relationship with her and loved her. They would not be upset if their time with her was reduced and compared it to them getting used to time away from their cats. His original proposal for a change in the current arrangement was to try and ensure that the children were never more than 3 nights away from either parent. He had had three partners since separation all of whom he had introduced to the children. No safeguarding checks had been carried out but that was not an issue because of his knowledge of them and the

nature of their employment. He had been with his current partner for 3 years but they had no intention to live together in the near future.

[6] Nothing of significance arose in re-examination which the pursuer used to re-affirm his position and reasoning for it. In response to questions from the court he considered that during the summer holiday the children should not be away from either parent for more than a week at a time. He now recognised that both parties making holiday arrangements through Olivia was inappropriate. He had not really thought through how the mechanism of nights being shared 9:5 in his favour would work in terms of periods away from each parent. He envisaged that if he had an order in his favour then that could form the basis for future discussions.

P (the pursuer's partner)

[7] She adopted her affidavit and gave additional oral evidence by way of examination in chief, cross-examination and re-examination. She was aged 42 and employed as a fraud officer by the Department of Work and Pensions. She also had two children aged 14 and 11. Care of them is shared with her ex-husband on a broadly equal basis with a fair degree of flexibility. She has been in a relationship with the pursuer since April 2022. They have deliberately chosen not to live together full-time because both have children from previous relationships and wish to prioritise stability and individual time with their own children. The pursuer was a caring, reliable and child-focused father. He was not abusive or controlling to them or her. She first met Olivia and Poppy in 2022 and has developed a close relationship with them. The girls are relaxed, affectionate and secure in his care and she has never witnessed anything causing concern about their safety or wellbeing. The pursuer is actively involved in all aspects of parenting, including school routines, holidays, healthcare

and emotional support. Homelife is welcoming and centred around the children. She knew of the deterioration in the parties' co-parenting relationship after 2023. She considered the pursuer's concerns to be genuine and well-founded. The pursuer had told her of the sexual images he had seen on the defender's phone but she had not seen them herself. He had been distressed by it. He has shown her some of the other search history including searches relating to domestic violence and compensation, schools and individuals connected to him including her. She thought it came across as a vendetta related to the court action. In her view the pursuer did not have the skill or knowledge to hack into the pursuer's phone. She believed that the ongoing conflict has had a significant emotional impact on the pursuer and those around him. His arrest in May 2024 negatively affected his mental health and led him to seek medical support and counselling. She supported the pursuer's proposed alteration to the current arrangements. She believed the children were anxious about the court proceedings and saw signs of emotional distress in them. She thought it possible that the defender had influenced the children's views. She was aware that the defender had blocked communications from the pursuer. She considered that communication through the children was inappropriate. She properly accepted that she had never witnessed the defender parenting directly; that parts of her evidence was based on what she was told or inferred; and that children have close relationships with both parents.

G (the pursuer's mother)

[8] She adopted her affidavit and added to that by way of oral evidence in chief and cross-examination. She is aged 65 and employed as a nurse. She sees the children regularly approximately twice a fortnight when she looks after them from when school finishes until picked up by the defender. She was fully supportive of her son. After separation she had

understood that the agreement was that the defender could remain in the matrimonial home for about 2 years with the children until she was able to find alternative accommodation. This arrangement was intended to minimise disruption for the children. She had also been concerned about the defender's decision in 2023 to move the children into the home of a new partner only a short time after that relationship began. She considered the move too rapid and saw a change in the children's behaviour during that period in that they became quieter, more guarded and defensive when discussing their lives. When that relationship ended and the children returned with the defender to the former family home she noticed a marked improvement in their mood and behaviour. She had limited knowledge of the parties' financial affairs. She supported the pursuer's proposed amendment to the care arrangements, believing children should not spend extended periods away from either parent. She had been concerned about the allegedly inappropriate online material discovered on Poppy's phone and agreed with her son's actions in restricting access to the devices pending investigation. She believes the children have become more distant and guarded and less physically affectionate in recent times possibly because of their knowledge and exposure to the conflict issues raised in the court action. Nonetheless she supported a continuation of the shared care arrangement subject possibly to reducing the gaps away from either parent. She shared the pursuer's concerns around "calorie counting" and denied that there was any harmful intended around her family weighing one another. Her son was a good and caring father. She properly accepted that aspects of her evidence were based on what she had been told by the defender rather than through direct observation.

Evidence for the defender

The defender

[9] The defender is 41 years old and is employed as an advisor for an insurance company. She adopted her affidavit as her evidence in chief. As with that of the pursuer it contained details in relation to certain financial issues no longer in dispute. She also proceeded to elaborate in her oral evidence of some matters and in response to the pursuer's evidence. She and the pursuer began a relationship in 2006 and married in December 2011. They had two children and built their family life together. Problems developed gradually. She perceived the defender becoming increasingly critical and controlling. He made her feel belittled and he engaged in inappropriate behaviour with other women. That was the direct cause of the parties separating in July 2020. She saw herself as the primary carer of the children throughout the marriage and after separation. After separation she remained in the FMH with the children and continued paying the mortgage entirely on her own. The house was sold in March 2025, and the net proceeds are currently retained by the pursuer's solicitors pending resolution of the dispute. She should receive a greater share of the proceeds because she solely maintained the mortgage for years, prevented default, and protected both parties' equity. For a period after separation the contact routine between the pursuer and the girls was *ad hoc* in part to accommodate the pursuer's work shifts. She had never stopped contact despite being advised by solicitors to do so in October 2022 because of the pursuer's lack of commitment and lifestyle. Since November 2023, a shared-residence arrangement has operated with week-about care and designated mid-week overnights during each parent's week. These arrangements were stable, predictable, and working well for the children. She understands that the girls have repeatedly confirmed that they are happy with this routine. The defender has structured her employment around it. She was

strongly opposed to the pursuer being awarded sole residence. She considered that he had repeatedly attempted to change arrangements to suit himself, often without consulting her or considering the girls' wishes. A very significant example of this was him applying for Olivia to attend a high school outside the catchment without her knowledge and contrary to what she understood Olivia's wishes to be. This issue ultimately required to be determined by the court which ruled against the pursuer and determined that Olivia should attend the school preferred by the defender and Olivia. She feared that if the pursuer had a sole residence order he would use this to override decisions, diminish her parental involvement, and encourage him to act unilaterally. She did not accept the characterisation and criticism of subjecting the girls to several house moves following the separation. After remaining in the family home for several years, financial pressure and the pursuer's refusal to share mortgage payments forced her to consider alternatives. Temporary accommodation followed the sale of the home, and she eventually accepted a permanent council tenancy in Wishaw, where she and the children now reside. She stresses that the moves were due to external circumstances and safety concern - not instability - and that she protected the continuity of the children's schooling throughout. She also felt unsafe while still in the family home as the pursuer had entered it without her knowledge or consent to remove personal items. She considered this behaviour to be intrusive and unsettling and had sought advice from the police. There were other invasions of privacy including him setting up mail redirection from the former home to his new address and opening private correspondence addressed solely to her. She also reported receiving notification that the pursuer accessed her personal email account and cloud-based data, including her messages, photographs, and search records. She found this to be highly distressing and an escalation of previous controlling behaviour. She denied any wrongdoing in relation to allegations the pursuer

made to the police. She was subsequently informed by Police Scotland that a device linked to her Google account had been accessed but that police also confirmed that no criminal proceedings were being pursued against her and that no criminal findings had been made. She referred to documentation obtained through a subject access request which, in her understanding, confirmed that no action had been taken against her. She had limited understanding of the operation of Google accounts and believed that she merely possessed an email account rather than a cloud-based storage facility. Because of concerns regarding unauthorised access to the account, she decided to delete it, change her email address and discontinue use of the account. This resulted in the loss of a substantial quantity of personal information, including years of family photographs and correspondence. The pursuer had communicated alarming and unfounded claims to the children, causing them distress and anxiety. She was concerned about his management of the children's mobile phones. She had been told by them that he took them for prolonged periods, reviewed private conversations, and controlled access to social-media features. This contrasted unfavourably with her approach which was based on transparency, joint review, and education to support safe usage. She was concerned that the pursuer's approach amounted to an invasion of privacy which had the potential to adversely affect their wellbeing. Although the pursuer's mother had originally assisted with childcare following separation that was not sustainable due to differences between them. She believes that the pursuer continues to rely heavily on his mother during his contact periods. She on the other hand was a stabilising presence providing consistent routines, managing school and medical appointments, and generally promoting their healthy emotional development. Both girls have shown signs of anxiety at times, particularly before going to the pursuer. She encourages them to express their feelings. She listens to the girls' wishes but also considers their ages and maturity. She

supported either a continued shared-residence arrangement or a residence order in her favour but was opposed to the pursuer having sole residence due to concerns about control, unilateral decision-making, and the effect on the children's welfare. She considered the pursuer's 9:5 proposal as "absolutely ludicrous" not least because the children were already being looked after by their gran twice in the week when they were meant to be with the pursuer. She had become concerned recently over things the children had said about the pursuer discussing the court action with them and trying to influence their views. There were no issues over Olivia's weight. She had taken a stretch recently. She loved her food. Olivia had joined the same gym as her as she was keen on football and her coach had encouraged her and her teammates to improve their fitness levels. She had taken her to a spin class as it was a fun thing to do together and was nothing to do with weight loss. They did this and other gym activities while Poppy was attending gymnastics class. She regretted that she and the pursuer had lost the ability to communicate well because when they had they were "amazing at co-parenting". Now though it was "horrible" and each could be as "nasty" as the other. She freely volunteered that she was equally to blame as the pursuer for difficulties that had arisen. She is open to exploring mechanism for improving communication.

[10] In a robust cross-examination the defender denied many of the allegations made by the pursuer. Those allegations were false or exaggerated. She specifically denied that there was any sexual content on her google account. She accepted that some of the searches could have been hers as they related to issues and circumstances in focus at time they were made. Those included searches relating to "Clare's Law", school catchment areas, various child-related matters and some financial and legal matters including pensions tax and entitlement to benefits. She could not recall carrying out several of the searches put to her for comment.

Generally she could not accept that any or all the searches were attributable to her as she could not identify her phone or account from the screenshots lodged as productions. She accepted that she had carried out searches in relation to the issue that had arisen in relation to Olivia's eyesight being tested. She denied discouraging the wearing of glasses. She encouraged it and had repeatedly supported follow-up appointments. She accepted that it had been inappropriate that to have used the children as a conduit for messaging after direct communication had broken down but this was not one sided and generally it was to convey practical arrangements. She was open to other solutions. She defended her decision to encourage PIN protection on the children's phones as a means of protecting their privacy. That did not prevent her from checking them openly and transparently with the children present. It was repeatedly suggested to her that the pursuer had not texted her stating she would be arrested for sexual crimes involving children and that she was lying to justify blocking the pursuer. She was adamant that such a message had been sent and if necessary she could produce it.

[11] The only additional evidence to emerge in re-examination beyond repetition was clarification that although she had initially contacted Purplebricks regarding sale of the house, the eventual sale took place in March 2025 by agreement. She accepted the pursuer's reasons for preferring school Y but Olivia understood the issues and made an informed choice. She never obtained a second opinion in relation to Olivia's eyesight. She generally checked the children's phones monthly and openly with the children. They had never refused her access. In response to questions from the bench she clarified: that she agreed the children should not be drawn into significant parental communication, that more structured arrangements would be beneficial, that so far arrangements for school holidays had generally worked well on a broadly shared basis in particular that the summer school

holidays and should continue on a week-about basis and that Christmas should continue to alternate; that indirect contact should be child led without any requirement for formal orders; and it was expected that Poppy would also attend school Z.

F, the defender's friend

[12] F is 41 years old and employed as a solicitor. She is a long-standing friend of the defender. For the purposes of examination in chief she was content to adopt the terms of her affidavit. In that she describes the marriage as appearing loving initially but says she observed the pursuer to be possessive, jealous, argumentative and sometimes aggressive. She also states that the pursuer frequently criticised the defender with affected her adversely. After separation the pursuer's behaviour became increasingly controlling. He sent abusive messages, frustrated communication regarding the children, and made it difficult to sell the FMH. She was aware of police involvement concerning the defender's welfare and privacy concerns. She was concerned for the welfare of the children due to the ongoing dispute between the parties. The defender was a caring and responsible mother. She had no concerns regarding her parenting. She prioritised the children's best interests. In a brief cross-examination she accepted that some but not all of her evidence was based on hearsay from what she had been told by the defender. During the marriage she had witnessed the pursuer's aggressive behaviour and had seen abusive text messages from him. After separation she had been present with the defender in 2023 to collect their respective children after school and Olivia and Poppy were not there. This was during a time when the defender had blocked contact from the pursuer because of abusive messaging. At the defender's request she contacted the pursuer to clarify why the children were not at school but he refused to speak to her. She believed that the pursuer had kept the children off

school to force the defender to contact him. She saw the parties' children regularly and Poppy attended the same school as her two children.

Submissions

[13] I am grateful to both parties agents for their written submissions and draft proposed findings in fact. I do not propose to rehearse them at length suffice to say that the core propositions in each mirrored the position adopted by parties in evidence. The submissions in relation to financial issues largely proceeded on the basis of the evidence agreed in terms of the joint minutes of admission or during the course of the proof, including that it was now accepted that there was a loan due to the defender's mother of £3000.

Pursuer

(i) Children

[14] The pursuer had modified once again his position in relation to the appropriate division of care. While it was contented that there remained a basis for a 9:5 division of care split in his favour his instructions were now to seek a residence order on the basis of an 8:6 division again in his favour. In terms of this arrangement there would be a two cycle from Monday to Sunday as follows:

Week 1: children reside with him Monday, Wednesday and Thursday and the other 4 nights with the defender.

Week 2: children reside with him Monday, Tuesday, Friday, Saturday and Sunday and the other 2 nights with the defender.

[15] It was submitted that this unequal division was in the children's best interests as it would mean he would be recognised as the primary carer. This was necessary to rebalance

the defender's conduct in undermining his parental role and influencing the children's views against him. The defender had repeatedly prioritised her own interests over those of the children in particular in pursuing the new relationship with Mr ABC. She had responded vindictively to his legitimate concerns by inappropriate retaliatory conduct, including allegations of domestic abuse and police involvement. She lacked insight into the children's welfare needs with reference to the healthcare issues raised in evidence and lacked judgment in supporting an inappropriate school for Olivia. A particular emphasis was placed on material he discovered on Poppy's phone and the defender's delay in removing it.

(ii) *Financial issues*

[16] The only significant financial issue related to whether and to what extent the defender should receive credit for the mortgage payments paid in the period following separation up until sale of the house. In contending that she should not reliance was placed on the fact that she had the benefit of occupation of the property whereas he had had to obtain alternative accommodation and incur the expenses of establishing a separate household. It was also argued that the property could have been sold much earlier and that any delay in sale benefited the defender because she continued to enjoy occupation of the home. The pursuer also contended that he had paid more by way of alimentary support for the children than was due. If there was to be any adjustment then that should be restricted to around £4,000. This would result in him receiving more of the net free proceeds of sale albeit it was accepted that the schedule or matrimonial property prepared for the purposes of submissions contained several errors and ultimately the figures in that prepared for the defender, including the treatment of the loan due to the defender's mother, was accepted.

*Defender**(i) Children*

[17] The defender was opposed to any change in the existing shared care arrangement.

If there had to be a residence order then it should be in her favour or, alternatively, a shared residence order. That was the outcome supported on the evidence. She had always been the children's primary carer both during the marriage and after separation. Despite the parties' disagreements, the children have remained settled, attending the same schools throughout the proceedings, and have enjoyed an equal shared-care arrangement since approximately September 2021, apart from a brief interruption in 2022. The current court-regulated arrangement has operated since November 2023 and has worked effectively. The views of the children supported her position and conflicted with that of the defender. The children have consistently said they are happy with the present arrangements and if anything Olivia had recently expressed a preference to possibly spend more time with her mother in the future and indicated that she would rather the defender assist her in making decisions. Given Olivia's age and maturity, these views should carry substantial weight. Significantly less weight should be attached to much of the pursuer's evidence. He exaggerated concerns regarding her parenting, including allegations about school changes, weight loss, childcare arrangements, online material, and her former partner, Mr ABC. There was no evidence before the court that he posed a risk to the children a point which the pursuer required to also accept. The pursuer's investigations into her Google account and search history were unreliable and largely irrelevant to the welfare issues before the court. The children are thriving under the present arrangements.

(ii) *Financial issues*

[18] On behalf of the defender it was submitted that account should be taken of her sole maintenance of the mortgage and other household outgoings after separation. She had paid approximately £24,732 in mortgage instalments and reduced the mortgage capital balance by £7,266 while the pursuer made no contributions. This created an economic advantage for the pursuer and an economic disadvantage for herself under section 9(1)(b) of the Family Law (Scotland) Act 1985. In support of that proposition reference was made to the recent sheriff court decision in *Middleton v Middleton* [2025] SC PHD 28 as an example of an application of the principle contained in section 9(1)(b) to give credit to one party for mortgage payments made by one party after the relevant date.

Children's views

[19] The views of the children have been taken on three occasions during the currency of the action by an experienced child welfare reporter. They were initially obtained as part of a comprehensive child welfare report completed and lodged in November 2023. At that time Olivia was aged 9 and Poppy 7 and they were living between the defender's then home in Glasgow with Mr ABC and the pursuer's home in Motherwell. They continued to attend the same school. They each expressed contentment with the arrangements then in place and the time they spent with each parent. Somewhat pertinently the reporter observed that the children's "positivity about their lives and obvious love for their parents is in sharp contrast to the presentation of the parties in their interviews." But he also noted that "there was no hint of either party trying to influence the children. What the children said and how they said it presented authentically given their ages".

[20] By the time of a supplementary child welfare report prepared in March 2025 the defender and the children had returned from Glasgow around a year prior and were once again residing at the FMH. The catalyst for the report appears to have been the issue that arose in relation to Olivia's schooling. In addition to obtaining her views on that, she also indicated that she wished the ongoing arrangements to continue. That view was also shared by Poppy. The reporter considered that, viewed through the children's eyes, the arrangements in place at that time appeared to be settled, enduring and going well.

[21] A further supplementary child welfare report was prepared and lodged at the end of November 2025. This was very shortly before the proof commenced at the beginning of January 2026. It records that both children still have strong attachments to both parents and that both are content with the current arrangement albeit Olivia is gravitating towards spending more time with defender. While the reporter considered that there was no indication that the children had been influenced in their views as expressed to him, it was equally clear that the ongoing conflict between the parties was beginning to take its toll on them especially Olivia. Olivia also repeatedly expressed concern that she did not want to hurt either parent. Somewhat surprisingly the reporter then took it upon himself to reassure Olivia that her views could be kept private. In furtherance of that when his report was submitted he did not share it with the parties and requested that the court keep the contents of the report private as he did not wish to breach Olivia's trust. In my view it was inappropriate for the reporter to have given such a reassurance without the court's prior approval. When the case called for proof neither the parties nor their agents were aware of the terms of this report which I considered to be material. In the circumstances I directed the sheriff clerk to disclose it to parties' agents on the basis that only the substance of it

would be discussed with parties in order that their instructions could be taken thereon but without the parties being provided with copies of it.

[22] At the hearing on submissions the solicitor for the defender suggested that it would be appropriate for a further updated report to be obtained in respect of the children's current views. This was opposed by the pursuer on the basis that it was suspected that those views have been influenced by the defender. I determined that it was unnecessary in the circumstances of the case to obtain the children's views once more on the basis that those expressed most recently were still relatively current having regard to the ages and stages of development of the children and that their views had remained consistent throughout the process. I was also mindful of the emerging discomfort of Olivia being asked repeatedly for her views and not wishing to be seen as partisan by either parent.

Decision and reasons

[23] I propose to deal first with the primary issue in dispute, that is the arrangements for the children, and thereafter the remaining discrete financial issue. Before doing so I would briefly comment on credibility and reliability which only really arose to any material extent in relation to the former issue.

Credibility and reliability

[24] A significant tenet of the submissions made on behalf of the pursuer was that the issues between the parties were more significant than those between quarrelling parents. I disagree. By way of both of introduction and summary I can do no better than repeat the prescient assessment of the parties' attitude towards each other as set out at the beginning of the first child welfare report:

“At interview a significant aim of both parties was to be negative about the other, particularly the pursuer who sought to undermine the defender’s parenting of the children. The occasion for the emergence of this negativity are the defender’s decisions to enter into a relationship with Mr [ABC] in April 2023 and move to Glasgow in July 2023. The fault lines between the parties revealed by these decisions are likely to be manifestations or more longstanding problems in the parties’ relationship. These fault lines prevent both parties from finding a way forward to settle into the new circumstances. Being unable to do so is not in the children’s best interests...Their disaffection with each other also acts to obscure that since separation both parties have demonstrated a commitment to ensuring the children continue to enjoy significant and meaningful relationships with both their parents. The parties reconnecting to that positivity whilst resolving the negativity they currently prioritise is likely to promote the wellbeing and welfare of the children going ahead.”

[25] Although that was the reporter’s assessment as of November 2023 it is equally apt to describe the dire mutual antipathy pervasive throughout both parties’ evidence, though I am clearly of the view that the more trenchant of the two is the pursuer. I was unimpressed by him as both a party to this litigation and as a witness. I found it both extraordinary and troubling that he embarked on the proof without a clear idea of the detail of the arrangements he considered to be in the best interests of the children beyond a clearly stated desire that he be given the status of the parent with control. His position at the outset of his evidence was that the children should be with him 9 nights out of every 5, this position having only been adopted a month or so before the proof and at significant odds with his affidavit dated 9 May 2025 in which the only change proposed to the existing schedule was to remove the existing single night with each parent on the basis that these were disruptive. The number of nights, 7 in 14, would remain the same but his proposed change would mean that no more than 3 nights would pass without the children seeing one or other parent. The proposed revised schedule was also set out in the note of disputed issues, revised and signed by both parties, and lodged on 4 December 2025. Although I am prepared to accept the pursuer’s agents assurance that this note had been drafted and finalised by a junior

member of staff within the firm without obtaining the pursuer's up to date instructions, this caveat was immaterial standing the pursuer's own assertion that he had only decided to depart from this in favour of a 9:5 split a month or so before the proof commenced.

Of greater significance was the profound inability of the pursuer to advance a cogent basis for why a change to a 9:5 split was in the children's best interests. He was equally unable to detail how such a split would work in practice and how it would be consistent with his previous objective of avoiding single nights and periods in excess of 3 nights without the children seeing one or other parent. That equivocation was carried forward to the stage of submissions by which time his proposal was for an 8:6 split which differs from the existing schedule by changing Tuesday night in week 2 from the girls staying with the defender to them staying with him. That change still fails to meet the purported objective at least so as the children's time with the defender is concerned.

[26] This self-serving and blinkered view tainted his evidence. While I completely accept his devotion to the parties' children he seemed incapable of looking at any issue involving the defender on anything approaching an objective manner. Where there was any possibility that the defender had acted with malign intent that was his touchstone for interpretation. I am prepared to accept that he got to that place because of the defender's own concession of mutual nastiness but it is disappointing that he is still there despite over 2 years having passed since the reporter's assessment. To be clear, I am not absolving the defender of any culpability in the present state of affairs. I formed the clear impression that she knew what buttons to press to get an adverse reaction from the pursuer, be that through targeted messaging to the children or refusing to engage with him in matters that she would have understood to be important to him in his joint stewardship of the children's welfare.

[27] As the main difference between the parties were primarily ones of interpretation (or misinterpretation) of the other's actions there were few material issues of credibility and reliability. The most significant to these was whether the pursuer had overcome the security of the defender's Google account using Poppy's phone and thereafter what he was able to view on that account. On balance I am prepared to accept that he was able to access the defender's account from the phone because it was linked to her account. But I do not accept the suggestion that the information he was then able to extract from the phone was freely available without some scouring on his part. I also accept that what was spoken to in evidence by both parties were screenshots taken from the defender's search history going back a number of years. I am not however prepared to accept that there was sexually explicit material on that account. If there was, my impression, from the totality of his evidence, is that the pursuer would have copied it. It also beggars belief that if the material was as suggested by the pursuer that the police would appear to have been so uninterested as to not to either examine the phone or investigate matters further. Against that background the pursuer's threat to the defender that she was to be arrested imminently was patently without foundation. Finally, it seems odd that the pursuer's partner, with whom he had been with for about 3 years at the time of the mobile phone search not only did not see any such material but offered no meaningful description of what it was. Aside from images there were certain screenshots which had the potential characterisation of being searches of a sexual nature. One related to a search on the "only fans" website from sometime before 2022 though the subject matter of the search is not described. The other searches related to certain trading names used by the pursuer when undertaking part-time employment of an adult nature. I did not consider any of this historic search activity a

matter of concern, especially as both parties appeared to accept it had not been reviewed by either child at any stage prior to deletion.

[28] Although I formed the view that the defender was somewhat evasive as to whether the search history captured by the screenshots was hers, on the whole what was disclosed by it was anodyne and not unexpected standing the issues raised during the course of the parties' dispute. In this context it should also be noted that the only screenshots produced were those which the pursuer considered sufficiently important or relevant from his perspective. Despite a significant amount of proof time being devoted to questioning both parties in relation to these screenshots I considered that this chapter of evidence was at best peripheral to the principal and overriding issue as to what arrangements were most conducive to securing a long-term arrangement in the best interests of the children. One example serves to demonstrate this. The pursuer made screenshots of searches made by the defender in relation to how often children's hair should be washed. He considered that significant because he had raised concerns with the defender because he thought they were not being bathed properly. I remain perplexed as to why he thought it ominous that the defender had carried out an online search for any guidance on the issue. The other point which was well made in cross-examination is that the existence of the Google account link on the phone and the detail of any images and search history was already known to the pursuer at the time he swore his affidavit in May 2025. Accordingly his subsequent significant reliance on this material at proof, even if it had been relevant, in furtherance of his belated change of position may be thought to be disingenuous opportunism rather than well intentioned concern for the children's welfare.

[29] Another significant issue of credibility arose during the cross-examination of the pursuer. She was repeatedly accused of lying as to having received a text message from the

pursuer as being the basis for ceasing communication with him in April 2025. This challenge was ill-founded. The pursuer had given evidence confirming that he had sent such a text message in short advising her that the police were going to arrest her. He also accepted that she blocked him at around that time. This text message from 3 April 2025 was subsequently produced and included the following statement:

“...explicit images, videos and images were still accessible through your Google account. The police advised me that this is a serious safeguarding issue and said you will be arrested for a sexual crime against children”.

[30] I was unimpressed with P as a witness as she bore to offer blanket acceptance and support for the pursuer’s position including his proposed split of 9:5 despite that being somewhat different from his long standing position based on an equal division. G was somewhat more impressive and importantly demonstrated a degree of neutrality by not simply supporting the pursuer’s new position but rather a continuation of the current arrangement. I was also satisfied as to the credibility and reliability of F in relation to those matters she was able to speak to from her own observations. Although in some respect those observations were historic, her account of the incident at the school gates does tend to support the impression of the pursuer having a controlling disposition.

Decision on arrangements for children

[31] Both parties recognised that the applicable law was to be found in section 11(7) of the Children (Scotland) Act 1995 and in particular the tripartite test which may be summarised as:

- welfare of the children is the paramount consideration;
- the minimum intervention principle; and
- regard be had to the children’s views.

[32] Parties respective submissions did not elaborate on the application of this test beyond their well-defined positions: the pursuer for an uneven split with a residence order and the defender for a continuation of the *status quo*. There was no reference for instance to the well-known guidance to the approach to these statutory provisions, where one party seeks to change an established arrangement, as set out in the case of *S v S* [2012] CSIH 17; 2012 Fam LR 32:

“[9] ... the correct approach to these statutory provisions was reflected in the recent decision of this court in *M v M*. In particular, the welfare and best interests of the relevant child or children are paramount, and must be judged without any preconceived leaning or presumption in favour of the rights and interests of either parent... this approach falls to be applied in all cases whether childcare responsibilities are shared between both parents or primarily undertaken by one.

[10] There was, it was suggested, no strict legal onus of proof in such cases, conform to the views expressed by the Lord President (Rodger) and other members of the court in *White v White* (2001 SC 689). That may well be so, but as recognised by the House of Lords in *Sanderson v McManus* (1997 S.C.(H.L.) 55 and by this court in *M v M* at 2011 Fam. L.R., p.136, para.57, a party who seeks to alter the status quo must have some liability to furnish the court with material potentially capable of justifying the making of a relevant order. Even the Lord President in *White*, at 2001 S.C., pp.698–699; 2001 S.L.T., p.491; 2001 Fam. L.R., pp.26–27, para.21... What Lord Clyde had envisaged in *Sanderson* was an evidential, as opposed to a legal, burden on the person seeking an order from the court.”

[33] Applying this approach to the present case I have little hesitation in rejecting the pursuer’s application for a change to what is now a long established arrangement with which the children, the defender and even his own mother is content. The basis upon which he seeks a change with a resultant order for residence in his favour was to give him recognition as the parent with control. While it is clear that he wanted this to head off or redress his perceived alienation I do not accept that perception was validated by the evidence. Even if it had been there was no causal connection between that and the best interests of the children. I was not satisfied on the evidence that he was any better than the defender in making the normal welfare decisions required on behalf of the children.

Properly analysed this is not a case in which any serious concerns have been established rather it is characterised by entrenched parental conflict. The apotheosis of this is the pursuer's suggestion that if he was seen as the main carer then this would lead to better communication with the defender. I regard this proposition as fatuous.

[34] In relation to the issue of communication neither party's solicitor referred to the terms of section 11(7D) which *inter alia* states that:

"Where a court is considering making an order...and in pursuance of the order two or more relevant persons would have to cooperate with one another as respects matters affecting the child the court shall consider whether it is appropriate to make the order".

This provision is primarily engaged in proposed shared care arrangements. It follows from the observations I have already made, as indeed is accepted by parties, that communication and cooperation is a significant fault line in this case. Despite that both children appear to continue to thrive and are content with the present arrangements. For that reason I do not propose to make any change to those and am not satisfied that changing the present arrangement would be better for their welfare. The children shall continue to reside with each parent on a shared care basis as set out in the interlocutor from November 2023. I have also made provision for what should happen during the school holidays to reflect parties' preferred position as given in their evidence though I was informed during submissions that there has been some recent modification of that by consensus. I would strongly encourage both parties to build on that and I hope that with the conclusion of this action they will each find it possible to move on, put their mutual antipathy to the side and find a way of effectively communicating and working together for the best outcome for their children. Perhaps the use of the Our Family Wizard app will assist with that. I would urge both parties not to use the children to convey messages between them save in exceptional

circumstances. I have no doubt that both parties clearly care for their children and it is incumbent upon them to place the children's welfare above their differences.

Decision on the financial issue

[35] There was no valuation of the FMH at the relevant date. Leaving that out of account the remainder of the matrimonial property and liabilities were as follows:

Asset / Liability	Joint	Pursuer	Defender
RBS Saver a/c		£0	
RBS Reward a/c	£1,466.32		
SPPA Pension		£3,213.91	
Strathclyde Pension		£532.24	
Aviva Pension 1			£7,367.46
Aviva Pension 2			£5,066.46
Suzuki M/cycle		£6,450.00	
Mercedes Car		£2,300.00	
Ford Car			£2,910.00
Clydesdale a/c			£150.71
Aviva Shares			£181.59
MBNA Cr.Card		-£2,078.98	
Hitachi Loan		-£12,626.04	
Barclay Cr.Card		-£5,100.95	
Loan from M			-£3,000.00
Totals	£1,466.32	-£7,309.82	£12,676.22

[36] The foregoing table brings out a net value for the matrimonial property excluding the FMH of £6832.72. Each party is therefore entitled to receive £2683.20, on the basis that the balance on the joint bank account was shared equally between the parties, which I was advised was the case during the hearing on submissions. Thus before consideration is given

to the defender's arguments in relation to what account should be taken of her payments to the pursuer in respect of matrimonial debts and her contributions to the mortgage, both post-separation, she is due to make a balancing payment to the pursuer of £9,993.02.

[37] It is a matter of agreement that following separation the defender made payments to the pursuer in respect of her share of the matrimonial debts in his name of £7274. Another way of looking at this is as advance payment of capital due on a fair division of the net value of the matrimonial property. Accordingly this serves to reduce the balancing payment due by her to £2,719.02.

[38] That leaves the issue of the defender's mortgage payments. In my view the appropriate way to treat these is to take account only of the net reduction in the mortgage liability, that is £7266.19, between the relevant date and the date of sale. That is both an advantage to the pursuer and disadvantage to the defender. There was no clear indication in the evidence that the resultant imbalance had been set off by a corresponding disadvantage or advantage, respectively. While it is correct that the defender had the benefit of remaining in the FMH whereas the pursuer required to obtain alternative accommodation, she also assumed the liability to pay the mortgage interest and the other expenses of upkeep to protect the parties' joint asset. Further I do not accept that the defender can be held solely responsible for the delay in the property being marketed after expiry of the initial period of 2 years following separation. Similarly I am unable to conclude on the basis of the evidence that the alimentary payments made by the pursuer to the defender for the children amounted to a balancing disadvantage to him or advantage to her having regard to the parties' mutual obligation to aliment the children from their available resources. Lastly, it seems clear that the resultant imbalance has not been corrected by the *de facto* sharing of the net value of the matrimonial property as set out in the

foregoing table. Accordingly I consider it appropriate to take fair account of this imbalance in determining parties' respective share of the net free proceeds from the sale of the FMH.

In determining this issue I did not find the example case of *Middleton* referred to in the submissions for the defender to be particularly in point but the principle contained in section 9(1)(b) has long been recognised as having application in similar circumstances: see for example *Trotter v Trotter* 2001 S.L.T. (Sh Ct) 42.

[39] In the present case both parties have each benefitted from the reduction in the mortgage liability by £3533.10. When that is factored into the foregoing balancing calculation then the net result is that the pursuer is due the defender a balancing payment of £814.08.

[40] Both parties have financial craves for payment of a capital sum from the other. However as I pointed out during the hearing on submissions those craves have been overtaken by the resolution of most of the issues initially raised in relation to financial matters and most significantly the sale of the FMH. In view of that observation both parties were content that I achieve the resultant outcome by the form of order I thought fit, including the making of an incidental order in terms of section 14 of the 1985 Act.

[41] The net free proceeds from the sale of the FMH amounted to £51,956.09. These are currently being held on behalf of both parties by the pursuer's agents so no doubt there will also be some accrued interest. Once divided the pursuer will require to pay the defender from his share the sum of £814.08, which in substance means she will receive some £1628 more than him. Thus to achieve that outcome neatly and expeditiously I have made an incidental order directing that pursuer's agents distribute said funds on the basis that (1) in the first instance the defender shall receive the sum of £1628; and (2) the remaining balanced to be divided equally between the parties.

Expenses

[42] Both parties were agreed that whatever the outcome I should reserve the issue of expenses for a further hearing unless they can be agreed extra-judicially. Failing agreement within 28 days parties are directed to provide the sheriff clerk's office with suitable dates for a hearing thereon.