



OUTER HOUSE, COURT OF SESSION

[2026] CSOH 72

F138/25

OPINION OF LADY TAIT

In the cause

DB

Pursuer

against

KO

Defender

Pursuer: Aitken; Burness Paul LLP
Defender: Hogg; Drummond Miller LLP

4 August 2026

Introduction

[1] The disputed issue is contact between the parties' son, NB born March 2022, and the pursuer. The pursuer is the child's father. He seeks residential contact which is consistent with his shift rota and additional holiday contact. He seeks related specific issue orders to allow holiday contact to take place outwith the UK.

[2] The parties were in a relationship from December 2019 until they separated in December 2024. Since separation, the child has resided with the defender. The parties agreed contact arrangements in terms of which there was residential contact between the child and the pursuer. The defender stopped contact on 27 October 2025 after it is claimed

that the child alleged sexual conduct towards him by the pursuer. Further, the pursuer is subject to an undertaking to appear at Paisley Sheriff Court on charges of threatening and abusive behaviour and domestically abusive behaviour. The charges relate to the defender and a third party. The pursuer is subject to a condition not to approach, contact or communicate with the defender.

[3] On 9 January 2026, an interim order was made for contact with the pursuer on a minimum of one and a maximum of two occasions per week for a period of 1 hour to be supervised by Renfrewshire Council.

The law

[4] The pursuer seeks orders in terms of section 11(2)(d) and (e) of the Children

(Scotland) Act 1995 ("the 1995 Act") which provide as follows:

"(2) The court may make such order under subsection (1) above as it thinks fit; and without prejudice to the generality of that subsection may in particular so make any of the following orders—

...

- (d) an order regulating the arrangements for maintaining personal relations and direct contact between a child under that age and a person with whom the child is not, or will not be, living (any such order being known as a 'contact 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')

[5] The test to be applied by the court is set out in section 11(7) which 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."

[6] In terms of section 11(7A) in carrying out the duties imposed by subsection (7)(a) above, the court is directed to have regard to the matters set out in subsections (7B) to (7E) which provide:

"(7B) Those matters are—

- (a) the need to protect the child from —
 - (i) any abuse; or
 - (ii) the risk of any abuse, which affects, or might affect, the child;
- (b) the effect 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.

- (7E) In subsection (7D) above, ‘relevant person’, in relation to a child, means—
- (a) a person having parental responsibilities or parental rights in respect of the child; or
 - (b) where a parent of the child does not have parental responsibilities or parental rights in respect of the child, a parent of the child.”

[7] The current law was summarised in *J v M* 2016 CSIH 52, 2016 SC 835 at paras [11] and [12]:

“[11] ...

(1) In terms of sec 11(7)(a) of the 1995 Act, the judge must treat the welfare of the child as the paramount consideration. The issue is: What is best for the child? ...The court must have regard to a number of specified matters, including the need to protect the child from any abuse (defined as including any conduct likely to cause distress), and the need for co-operation between the parents (1995 Act, sec 11(7A)-(7E)).

(2) Before refusing an application for parental contact, a careful balancing exercise must be carried out with a view to identifying whether there are weighty factors which make such a serious step necessary and justified in the paramount interests of the child (sometimes referred to as ‘exceptional circumstances’). Reference can be made to *M v K* (para 25). This approach is reflective of the general background of it almost always being conducive to the welfare of a child that parental contact is maintained. In *NJDB v JEG* (para 14) Lord Reed explained that there must be ‘a reasonable basis’ for a decision to refuse such an application.

(3) It has been made clear in a number of recent decisions south of the border that, in the context of what are sometimes called intractable cases, it is not appropriate for the court, in effect, to give a veto to a parent who, for no good reason, and come what may, is simply intent on preventing contact...

[12] ... since in general it is strongly in the interests of a child to maintain a relationship with both parents, before a contrary position is taken, the court must, after carefully weighing all the relevant circumstances, identify factors which justify such a serious step and demonstrate that it is conducive to the welfare of the child. ... *M v K* did not lay down a separate test of necessity as a basis for refusing contact...”

[8] The reference to *M v K* [2015] CSIH 54, 2015 SLT 469 at paragraph 25 is as follows:

“where a decision is taken to interfere in an existing, and in practical terms significant, family relationship between a parent and the child by, in substance, bringing that relationship to an end a careful balancing exercise requires to be carried

out and factors require to be identified which clearly make that step necessary and justified in the paramount interest of the child.”

[9] In *R v R* 2010 Fam LR 123 at [27], Sheriff Holligan considered the court’s approach in terms of section 11(7A):

“The expression ‘have regard to’ is not an unusual statutory expression. It appears in various enactments. In the context of this section it appears to me that if the court has material before it which evidences abuse, or the risk of abuse, then in reaching a conclusion as to the welfare and no order principles in s 11(7)(a) it must include in its deliberations the matters set out in s 11(7B). However, it also seems to me that the Parliament has not gone so far as to provide that findings of abuse or the risk of abuse give rise to any presumption against the granting of an order.”

[10] In *B v Scottish Ministers* 2010 SC 472 at [42], delivering the opinion of the court,

Lord Eassie said:

“Where an allegation of criminal conduct is made in civil proceedings, the standard of proof is the balance of probabilities; but the nature of the allegation may be such as to call for evidence of quality and weight and for that evidence to be carefully examined and scrutinised in the course of the forensic process.”

In *CM v ME-M* 2019 Fam LR 125 at [32], the Sheriff Appeal Court approved the foregoing in relation to assessment of evidence of criminal conduct in the course of civil proceedings where the test is one of a balance of probabilities.

[11] In *A v A* [2013] CSIH 7 at [24], delivering the opinion of the court, Lady Dorrian identified that the ultimate question for the court will be whether any hearsay statement is capable of being relied upon, whether it is trustworthy. She referred to Lord Rodger in *T v T* 2001 SC 337 at paragraph 38:

“If evidence of [statements of children] is admitted, the judge or jury will have to use their wisdom and common sense to decide whether the statements are trustworthy. The exercise is not *au fond* different. In carrying it out, in the case of young children in particular, the judge or jury will be able to draw not only on their own expertise of listening to children in everyday life but also on any expert evidence which may be tendered in relation to the individual whose statement is in issue”.

Lady Dorrian continued at [24]:

“In a case such as this, we do not consider that it is particularly helpful to try to confine this matter to one of the credibility and reliability of the maker of the hearsay statement, especially when that person is a young child. There will be many factors which are relevant to the question of whether the hearsay can be relied upon: are the people to whom the statements are said to have been made credible and reliable? Did they have some particular axe to grind, or animus towards the subject of the statement? Can the same be said of the actual maker of the statement? What were the circumstances in which the statements were made? Were they elicited in response to leading questions or was there an element of spontaneity? Did the people to whom the statements were made simply accept them at face value, or did they consider whether there might have been an alternative and innocent explanation for the statements? These are all factors which may have a bearing on the overall question of the weight which the fact finder may satisfactorily feel able to place on the hearsay statement.”

[12] In *Re B (Children) (Care Proceedings: Standard of Proof)* [2008] UKHL 35, (2009) 1 AC 11 at [2], Lord Hoffman sets out the court’s task:

“If a legal rule requires a fact to be proved (a ‘fact in issue’), a judge or jury must decide whether or not it happened. There is no room for a finding that it might have happened. The law operates a binary system in which the only values are zero and one. The fact either happened or it did not. If the tribunal is left in doubt, the doubt is resolved by a rule that one party or the other carries the burden of proof. If the party who bears the burden of proof fails to discharge it, a value of zero is returned and the fact is treated as not having happened. If he does discharge it, a value of one is returned and the fact is treated as having happened.”

This approach was applied in *West Lothian Council v B* [2017] UKSC 15, 2015 SC (UKSC) 67 at [23] and [37]:

“If the allegations are relevant, however, then the Lord Ordinary has to make a finding of fact, on the balance of probabilities, as to whether the allegations are true. If he is unable to make such a finding, then he has to find that the allegations are unproved, and dismiss them from his mind.”

[13] In *West Lothian Council* at [21], the court relied upon Lady Hale’s explanation of a social worker’s role as drawn from *Re S-B (Children) (Care Proceedings: Standard of Proof)* [2009] UKSC 17:

“18. . . . Social workers are the detectives. They amass a great deal of information about a child and his family. They assess risk factors. They devise

plans. They put the evidence which they have assembled before a court and ask for an order. . . .

19. The court subjects the evidence of the local authority to critical scrutiny, finds what the facts are, makes predictions based upon the facts, and balances a range of considerations in deciding what will be best for the child. We should no more expect every case which a local authority brings to court to result in an order than we should expect every prosecution brought by the CPS to result in a conviction. The standard of proof may be different, but the roles of the social workers and the prosecutors are similar. They bring to court those cases where there is a good case to answer. It is for the court to decide whether the case is made out.”

The evidence

Agreed facts

[14] The following facts were agreed in a joint minute of admissions:

- (i) The parties were previously in a relationship with one another. Their relationship commenced in December 2019. The parties commenced residing together in March 2020 at the time of the national lockdown occasioned by the Covid-19 pandemic. They separated for a final time in December 2024.
- (ii) Prior to the parties’ final separation in December 2024, the parties temporarily separated between May 2023 and October 2023. With the exception of that period, the parties resided together with the child from his birth until 30 December 2024.
- (iii) Following the parties’ separation in December 2024, the child has resided with the defender.
- (iv) During the parties’ temporary separation between May 2023 and October 2023, the child resided with the defender. During this period, the pursuer exercised unsupervised non-residential contact with the child. The arrangements for contact fitted around the pursuer’s work rota.

- (v) Between the parties' final separation in December 2024 and 22 October 2025, the pursuer exercised regular, unsupervised, residential contact with the child. Contact took place by agreement between the parties. The parties sought legal advice and arrangements for contact were agreed in advance. Arrangements for contact fitted around the pursuer's work rota. Contact regularly included periods of up to three consecutive nights. With the agreement of the defender, the pursuer took the child to Tenerife in May 2025 for 4 days. With the agreement of the defender, the pursuer took the child to Tenerife in August 2025 for 6 days.
- (vi) Contact between the child and the pursuer did not take place between 22 October 2025 and the raising of these proceedings. These proceedings were signeted on 10 December 2025 (referred to as 2026 in error in the joint minute).
- (vii) The pursuer was informed by a social worker on 10 December 2025 that a police and social work investigation had been commenced in late October 2025 concerning alleged sexual offending by him in respect of the child.
- (viii) The child was interviewed by a police officer and social worker in accordance with the Scottish Child Interview Model on 4 November 2025. The pursuer was interviewed under caution by police officers in respect of the allegations of sexual offending on 23 December 2025. The pursuer has not been charged with any offence in respect of any allegations of sexual offending in respect of the child.
- (ix) In accordance with an interlocutor dated 9 January 2026, contact has operated between 15 January 2026 and the date of the joint minute (15 May 2026). Contact has been for a period of 1 hour for a minimum of one and a maximum

of two occasions per week, supervised by or on behalf of Renfrewshire Council, with the exact days and times arranged between the pursuer and Renfrewshire Council, taking account of the pursuer's work arrangements. Renfrewshire Council has made arrangements for the operation and supervision of that contact.

General

[15] The parties' affidavits are lengthy. It is appreciated that the defender's case as pled involved not only the allegation of sexual conduct by the pursuer towards the child but also of abusive behaviour by the pursuer towards the defender. In addressing these matters, the evidence encompasses their full relationship from December 2019 in considerable detail.

While it is acknowledged that alleged domestic abuse can pervade all aspects of a relationship, I only set out the evidence which is relevant to the child's welfare, namely the relationship between the child and the pursuer; the operation of contact; the alleged sexual conduct; the alleged abusive behaviour towards the defender by the pursuer; and the parties' ability to co-operate. Otherwise, the relevant history of the parties' relationship is agreed in the joint minute of admissions. It may be characterised as an immature and turbulent relationship in which the parties prioritised their own interests, including pursuing other relationships.

Pursuer's evidence

[16] The pursuer swore an affidavit on 12 May 2026. He was subject to cross-examination. He was warned against self-incrimination.

[17] The pursuer is aged 36. He describes the child as affectionate, engaging, intelligent and inquisitive. The child has a vivid, active imagination and sense of fun. He participates enthusiastically in a wide range of activities, both indoors and outdoors. He has a close relationship with both his maternal and paternal families. In particular, he enjoys spending time with his cousins (on the pursuer's side of the family) who are of a similar age. The pursuer's home is child friendly. The child has his own bedroom there. The child is fully toilet trained and uses the toilet independently. He energetically and excitedly greets and engages with the pursuer.

[18] The pursuer describes himself as calm and measured. His professional role requires clear communication and sound judgment. In his relationship with the defender, particularly since the child's birth, he has consistently tried to remain calm and constructive in discussions and to focus on practical solutions rather than escalating disagreements. He was supportive throughout the defender's pregnancy even when not in a relationship. The defender's approach to conflict was more emotional. She became highly agitated and in certain situations, her behaviour became threatening or aggressive. The pursuer had concerns for the defender's emotion wellbeing: on occasions she drank heavily; used cocaine; and had mental health challenges. He did not discourage the defender from seeing friends and family and did not try to isolate her. He contributed practically, emotionally and financially to the defender's wider family. He tried to maintain positive and supportive relationships.

[19] The pursuer denies that he is controlling, abusive and dangerous. The court should understand that on the defender's part there is a pattern of emotional instability, difficulty in regulating emotions under stress, a tendency to escalate and the capacity for behaviour that is irrational and disproportionate. He supported the defender through her difficulties. He

did not cause the difficulties. Rather he inherited them. The allegations made against him need to be understood in that context. A narrative that has been constructed about him because the defender was concerned about losing control over the child.

[20] The pursuer frequently found himself financially supporting the defender and assisting with various expenses, including significant personal expenditure and matters relating to her family. The defender's finances were often unstable. The disposal or sale of the defender's furniture when she moved into the pursuer's home was a practical and mutual process in which the defender was fully involved.

[21] The pursuer denies that he shouted at the pursuer during handovers post-separation. He was consistently calm, appropriate and respectful. He was particularly aware of the child's presence and keeping exchanges settled and positive for him. He denies stalking the defender in the vicinity of Women's Aid accommodation. He was travelling down a one-way street in a car with friends after a business meeting. The defender happened to be present. He did not stop, slow down, or attempt to make any contact.

[22] Following separation in December 2024, communication regarding the child's care took place through WhatsApp. The arrangements were informal and generally involved agreeing dates and times for the pursuer to spend time with the child. The pursuer's employer provides its employees with a full roster schedule months in advance. The roster operates on a 5 days on/4 days off pattern (paragraph 228 of affidavit but said to be 5 days on/5 days off at paragraph 136). Taking into account of his annual leave of 28 days, the pursuer works for approximately 6 months of the year. The schedule was communicated to the defender consistently, first via WhatsApp and then via OurFamilyWizard. Any suggestion that the pursuer's contact was disruptive, unpredictable, or driven by demands made on his terms is not consistent with how his working life operates. Contact

arrangements operated in both directions and the pursuer was co-operative and flexible throughout. Whenever not working, the pursuer prioritised spending time with the child. Over time a consistent pattern developed that worked well for everyone. The pursuer's days off were predictable; he gave advance notice; and the child had regular, meaningful time with the pursuer. That pattern continued successfully until 22 October 2025 when the defender unilaterally brought it to an end. The pursuer and child travelled together on holidays abroad and visited family in England.

[23] The pursuer has demonstrated a genuine and consistent commitment to the child and to the family unit. He has been an involved and active parent from the child's birth. He considers that the defender may have limited his time with the child to increase child maintenance payments. The defender has attempted to impose restrictions on contact and to dictate handover arrangements. She has been inconsistent about the child travelling overseas with the pursuer. On 29 September 2025, the pursuer sought the defender's agreement for the child to travel to Lapland with him. The defender refused and the pursuer renewed the request on 24 October 2025. The defender resisted an equal shared care arrangement which the pursuer believes the child deserves and which had been operating successfully. Any restriction of contact has not been driven by a consistent or genuine concern for the child's welfare.

[24] The staff at the child's nursery spoke positively about the child and his development. His attainment and development were considered to be above average for his age. Before contact was stopped in October 2025, the child was below compulsory school age. Attendance at nursery is optional and primarily intended as a form of childcare support and convenience for parents. Time together was important to the pursuer's relationship with the child. The pursuer tried to make their time both enjoyable and engaging for the child.

Nursery was happy with the pursuer's arrangements. The child loved it. Spending quality time with the child, strengthening family bonds and maintaining a close parental relationship were equally important for the child's emotional stability and development. The child's welfare and best interests have always been the pursuer's primary concern.

[25] On 24 October 2025, the pursuer sent the defender a detailed message via OurFamilyWizard (7/1/16 and 17). He clarified the upcoming contact dates based on his shift pattern; addressed the defender's reference to the solicitor-imposed arrangement and made clear that he did not accept it as a basis for reducing contact; addressed the defender's description of herself as primary carer; and stated that as they both hold parental responsibilities and rights, they are equal parents in the eyes of the law. He advised that he had spoken directly with the nursery manager following the defender's concerns about attendance, and that the manager had confirmed there were no current concerns about attendance or development and that the child was ahead of expectations for his age. The pursuer revisited the Lapland trip, noting that her refusal had included no specific reason. He proposed family mediation as a constructive way forward, with the child's best interests as the priority. The defender did not respond.

[26] On 27 October 2025, the defender sent a message (7/1/18) in which she stated, "Plans need to change for this evening. [The child] will be staying with me until I say otherwise. Please accept that this is not up for discussion." The pursuer now knows that the defender contacted Renfrewshire Council social work department on that date for the first time and reported that the child had made a disclosure to her on 24 October 2025. 24 October 2025 is the same day the defender received the pursuer's message clarifying his position regarding shared care and parental responsibilities; proposing mediation; and his intention to pursue equal shared care. The defender waited 3 days before reporting the disclosure to social

work. Instead of responding to his message, the defender contacted social work, reported a disclosure said to have occurred on the same day as his message, and within days had cut off his contact with the child.

[27] On the last contact visit with the child on 22 October 2025, the child enjoyed a contact visit to his cousins. During the return handover, he was happy, regulated and affectionate towards the pursuer, asking for a second hug, giving a kiss and shouting, "Love you, Dad".

[28] In December 2025, the pursuer attended a voluntary police interview. Shortly prior to attending for interview, he was advised that the specific allegations were that he placed his finger in the child's bottom and placed the child's penis in his mouth. The pursuer denies the allegations. The allegations are false. He has never harmed the child nor acted in any sexual or inappropriate way. On 23 December 2025, the police confirmed that their investigation had concluded and that no further action was being taken against the pursuer. He was informed that the social work department would continue their involvement. He was not given an opportunity to provide his account of events until the court ordered preparation of a social work report.

[29] During interim supervised contact sessions, the child has run to the pursuer; sought physical contact; asked to go home with him; not wanted to leave; and told the pursuer he missed him. The pursuer has been recorded as calm, patient, appropriate, and loving throughout. No safeguarding concerns have been raised across the entire period of supervised contact. The child has been consistently happy and affectionate towards the pursuer. He is excited to see the pursuer and quickly engages in play and conversation. They spend time playing with toys, drawing, building things and talking about what the child has been doing. The child is relaxed and comfortable in the pursuer's presence and interacts with him in the same affectionate and familiar way he always has. At the end of

visits, the child becomes reluctant for the session to end and it can take encouragement for him to say goodbye. All of the sessions have been positive. Recently on several occasions, the child has used swear words in context which would normally be unusual for a child of his age. The pursuer has not previously observed such behaviour from him.

[30] The child deserves to have both of his parents properly and consistently in his life, without being pulled into adult disputes. In practical terms, the arrangement the pursuer seeks works around his work rota which operates on a 5 days on, 4 days off pattern. He seeks alternating periods of contact of 3 nights and 5 nights during his days off. It is a predictable, structured arrangement that can be planned months in advance because his rota is published that far ahead. There is no reason it cannot work. It worked before. From January to October 2025, the child had unsupervised overnight contact which eventually built up around exactly this pattern. The child was dropped at an agreed handover location and returned safely. No professional, no nursery, no health visitor, nobody raised a single concern about the child's welfare. The child thrived; was happy; and was developing well above the average for his age. He went to Tenerife twice and came home safe, happy, and full of stories. That is the baseline. That is what the pursuer seeks to return to. In terms of holidays, he wants to be able to continue to take the child abroad. Travel has always been important to the pursuer. Every country has something to offer a curious, intelligent child. Whether that is Europe, America, or anywhere else, these are experiences that some children never get and that the pursuer is in a position to provide for him. Since January 2026, the pursuer has attended every session. In every session the child has run to the pursuer, held onto him, not wanted to leave, and asked to come home with him. Since January 2026, the pursuer has spent time demonstrating a strong, established, loving relationship between a father and his son.

[31] During cross-examination, the pursuer agreed that the child can be dysregulated. He agreed that routine is even more important where a child can be dysregulated. Asked whether he was aware that the child spits after contact, he responded that he was aware that had been said. Asked whether the child shouted, the pursuer responded that the child is 3 years old; that he is generally regulated in contact; and any shouting is in the context that he refuses to do something. The child is regulated in the pursuer's care. He can see the benefit in routine. He spoke to the nursery manager and discussed the child's attainment. There were no concerns. He elected to take the child on educational trips. The child could afford to take time out for trips and to have experiences to help him to grow. He accepted that the child was fairly frequently out of nursery.

[32] During re-examination, the pursuer stated that various friends and his partner would help out with handovers.

Other evidence for the pursuer

[33] Evidence was led from HES (pursuer's friend and business partner), JIWC (pursuer's friend and colleague), RJH (pursuer's friend), HDB (pursuer's cousin), FD (nursery manager), Sharon Dunn (family support worker), Lorraine Shaw (social worker). Each witness swore an affidavit which principally formed their evidence in chief. They were cross-examined with the exception of HDB for whom there was no cross-examination.

[34] HES first met the pursuer in 2014 when he employed the pursuer. Their relationship developed into one of friendship and sponsorship by the witness of the pursuer to allow the pursuer to obtain his professional qualifications. He and the pursuer are now business partners in the US (distinct from the pursuer's principal employment). HES speaks to the pursuer's dependability, responsibility, maturity and discipline. The pursuer demonstrates

sound judgment. He places a high value on family and relationships. He takes the responsibility of fatherhood seriously. His desire is to create a stable environment for the child.

[35] HES first met the child in 2022 when a baby during a visit by the parties to his home in the US. He found the defender to be demanding, difficult and a bit controlling. He did not like her. He spent time with the child and the pursuer during May and September 2025. He has observed the pursuer's interactions with the child by video. The pursuer was engaged, attentive, patient and appropriate in his parenting. The child was comfortable, secure and at ease with him.

[36] The witness was with the pursuer when the pursuer drove past the defender when she was in the vicinity of her Women's Aid accommodation. He describes the incident as coincidental and that it was not known that the defender stayed in the vicinity.

[37] JIWC first met the pursuer in 2018 as a colleague and is now a friend and colleague. The pursuer is patient, encouraging and measured. The witness liked the defender. He stayed with the parties and child for a day or two around Christmas 2023. He observed the parties to be happy. The pursuer was involved in the child's bedtime routine. The witness visited the pursuer and child on New Year's Eve in 2024 after their separation. The child and pursuer have a wonderful and loving relationship. The pursuer engages the child in many activities. The child is happy, healthy and inquisitive. He is very confident and engaging.

[38] RJH got to know the pursuer through the witness HES. She sees the pursuer a couple of times per year, last seeing him in November 2025. She keeps in contact weekly or fortnightly at present to support him. She met the child once in May 2025. The child became chatty and relaxed; was well spoken; and curious about the world around him.

The child impressed the witness with his vocabulary, curiosity and numeracy skills. He was highly engaged and sociable. The pursuer read to the child. The child was affectionate and cuddly towards the pursuer. They were comfortable together. The pursuer prioritises the child's emotional wellbeing above all else.

[39] HDB is the pursuer's cousin. He lived with the pursuer in Glasgow for a period of time. In 2020, the defender moved in with the pursuer while the witness was there. The witness got on well with the defender. The parties' relationship was often great but it became toxic at times. They could get quite nasty in terms of what they would say to each other. The next day they would be fine. The good times outweighed the bad. The witness only saw the parties argue when the defender was drinking. There was a crazy side to the defender when she had been drinking. One night the defender said she was going to jump out of the window.

[40] The witness moved back to Manchester before the child was born. He met the child once in 2024. He went out with the parties and child. It was a very normal family dynamic. The pursuer is a fantastic dad and fantastic human being. He wants to show the child the world and give him the best opportunities. He is great around the witness' child

[41] FD is the nursery manager at the nursery which the child attended from February 2023 until December 2025. At age three he obtained a 3-year-old funded place providing 2½ days' care. The nursery had no concerns about the child. He was bright and happy; very routine orientated; not happy if things did not go his way; happy to go home with either parent; and good with language, letters and speech. Nursery had no concerns about the child's physical appearance or toileting. On 12 August 2025, the pursuer contacted nursery to ask about a bruise on the child's buttock as reported to him by the defender. The nursery did not see a bruise.

[42] The pursuer shared information about the parties' initial separation as he was concerned about its effect on the child. Their relationship seemed to be toxic. In February 2025, the defender disclosed that she had been emotionally abused by the pursuer and was staying in Women's Aid accommodation. She still thought that the pursuer was a good dad.

[43] The defender discussed the child's attendance and whether it was compulsory. FD advised that attendance is good in the pre-school year but not mandatory. Nursery staff were not concerned about the child's development. They were not concerned about his attendance and how this affected his learning. The witness advised the pursuer that funded hours were not mandatory but were encouraged. When the child is in his pre-school year, attendance will be more beneficial. The nursery would advise if attendance was having an impact on learning. The same information was given to the defender. At collection time, both parents were keen to know about the child's day and progress. The witness did not think that irregular or sporadic attendance was affecting the child's ability to establish peer groups. It could have done. The child knew other children's names and went between different groups. The child did not seem unsettled after a return from holidays with the pursuer. He discussed his adventures and told stories about being on an airplane, in a swimming pool and seeing the Gruffalo.

[44] On 27 October 2025, there was an initial wellbeing check about the child by a social worker. On 28 October 2025, the nursery was advised by police that the pursuer should not collect the child from nursery due to an on-going inter-agency referral discussion. On 25 November 2025, Elizabeth May, social worker, notified the nursery that the child was changing nursery. Prior to social work involvement, the nursery did not see any changes in the child's behaviour. The defender would say that he was dysregulated and tired after

being with the pursuer which affected him going to bed. He was over-stimulated and over-tired. At nursery, the child was resilient. After social work contact, there was a deterioration in the child's behaviour when collected by the defender. He would have tantrums in the corridor when leaving nursery. He had emotional outbursts and found it difficult to regulate his emotions. The pursuer was no longer involved in any way. The child mentioned that he "wanted" the pursuer and sometimes said that he missed him.

[45] In respect of Renfrewshire Council's report (7/2) at page 26 "Contact with nursery", this came from a report written by GS, senior staff member. It was GS' opinion that the trips the pursuer took with the child impacted the child's attendance. FD's view is that there was no evidence to suggest whether this had an impact on the child's social wellbeing or whether it was the child's personality.

[46] Sharon Dunn is a family support worker with Renfrewshire Council, a role held since 2008. Her responsibilities include supporting and supervising family time between family members. She first met the pursuer and child on 13 February 2026 when tasked with supervising family time. She has supervised a further six visits during March and April 2026. Her observations of family time are:

- (i) The pursuer and child are always pleased to see one another. The child runs towards the pursuer shouting "Daddy". The pursuer always lifts the child up, gives him a hug and kiss "hello". Ms Dunn describes the child as very lovely, very articulate, happy and very knowledgeable for his age.
- (ii) The pursuer is prepared for family time, bringing a bag with toys and snacks. They then choose toys from the bag with which to play. The pursuer is focussed on the child throughout with rough and tumble play which the child appears to enjoy.

- (iii) Towards the end, Ms Dunn gives them a reminder that their time is going to end soon. The pursuer generally asks the child to help tidy up the toys and get organised to leave.
- (iv) They say their goodbyes at reception. The ending can be varied. Sometimes the child will separate with a hug, kiss and "Bye, Daddy". On other occasions the ending goes on longer with the child appearing reluctant to leave the pursuer. The child usually runs back for another hug. Regardless of the separation, the child is easily distracted and Ms Dunn has no concerns taking him back to nursery or to the defender.

[47] Lorraine Shaw is a social worker in one of Renfrewshire Council's Children's Services teams. She has been a social worker since 2000. She has undertaken courses in forensic child protection. She has been the allocated social worker for the child since 29 January 2026. She was not involved in the initial investigation into the child's allegations about the pursuer. She had no prior knowledge of the parties or child. As there is a child protection plan, she is required to see the child at least once per week. Currently that requirement is met through a fortnightly schedule whereby she visits the child at home every second week and supervises a family time session in the intervening week.

[48] Ms Shaw describes the child as remarkable, very bright and very articulate. He stands out for very good reasons. Family time has gone well. The pursuer is respectful and engages appropriately with the child. The child is always pleased to see the pursuer. They have affectionate greetings and separations. The child is sad to see the pursuer go at the end of sessions. He has expressed that he wants to go with the pursuer and wants more time with him. He can separate confidently from the pursuer but often there is a protracted separation. The child can be clingy and seeks lots of affection from the pursuer at the point

of saying goodbye. He settles quickly once in the car. The separations have improved. The child is more confident knowing that he will see the pursuer again. The pursuer is exemplary in how he conducts himself in family time. He is prepared, focussed and attuned to the child's needs. The focus for social work is to ensure the child's safety. But for the child's allegations, there would be no reason for contact to be supervised.

[49] The pursuer has asked to increase the length of contact and for it to be at his home on one occasion. Under the current circumstances, the frequency of family time at twice per week is sufficient for the child's schedule. The child has nursery which is important for access to the early years' curriculum. However, the duration could increase from 1 to 2 hours and not be detrimental to the child. The child would really enjoy that. It would be confusing for the contact to be at the pursuer's home as it has not been agreed how contact can progress safely.

[50] The local authority put arrangements in place to ensure that the parties did not meet one another. Those arrangements were changed after the pursuer was present in and around the drop off point on two occasions. Local authority staff now transport the child.

[51] A referral was made to the Scottish Children's Reports Administration. On 14 April 2026, the reporter indicated that they did not intend to arrange a children's hearing. There were no grounds to take further action at this time given the present proceedings. Since supervised contact started, the defender has reported two further allegations by the child of conduct by the pursuer. The information has been shared with the police. It has been documented by social work to be considered at the next review child protection planning meeting. The child is presently kept safe while his family time with the pursuer is fully supervised. Ms Shaw has a good relationship with the child. She has not explored any of the allegations with him. The child has not raised them with her. He has already spoken to

safe adults and to two social workers. It is not good practice to ask repeatedly about the situation. She agreed that there may be a danger in the truth being tainted by repeatedly asking the same thing.

[52] Ms Shaw's assessment of family time indicates that the child has an attachment to the pursuer. Their bond is evident. However, that does not negate the possibility that something inappropriate has happened which has perturbed the child leading to him sharing his allegations.

[53] Social work assessments indicate that the defender acts as a significant protective factor for the child. There are no concerns regarding her ability to care for and protect the child. Social work are supporting her where practical. Her home is kept to a high standard and the child is clearly loved. The child has age appropriate, good quality toys and is achieving ahead of his chronological age. The pursuer has been respectful, polite and engaged throughout the social work process. He appears willing to take advice on board.

[54] The local authority is aware that the pursuer has been charged with domestic abuse offences which will inform its assessment of risk in respect of the child.

[55] Social work has no concerns from observations of family time. The context is of a child who is dysregulated in other aspects of his life: licking, sensory issues, spitting and tip toe walking. Such behaviour has been observed when the child is with the pursuer, at times with the defender and going into nursery after family time. Ms Shaw has not seen the child kicking. She remained firm in her evidence that she has seen the child spit (and not blow raspberries) at the pursuer. There can be, she said, many reasons for this. There are no referrals planned for his behaviour. His health visitor is not concerned by the sensory issues. Watchful waiting is being strategised. Nursery has reported that transitions are difficult regardless of who is dropping off or collecting.

[56] Asked during re-examination whether contact could move on from supervised contact if the court finds the allegations not proved, Ms Shaw agreed but said she would have concerns about the child.

Defender's evidence

[57] The defender swore an affidavit on 12 May and a supplementary affidavit on 21 May 2026. She was subject to cross-examination.

[58] The defender describes the pursuer's behaviour during their relationship as follows: he pursued his own activities; he had limited involvement with the child; he was not supportive of the defender generally and in particular around a termination; he made unpleasant comments; he turned up uninvited during their separation; he sold her furniture and retained the money; he asked the defender to take out a loan for a hot tub (which he retains) and stopped reimbursing the monthly payments; he had a number of relationships with other women; in December 2024 he returned to their home and gave the defender 24 hours to leave; he told her family that she was unstable; he drove past Women's Aid accommodation; and referred to knowing her whereabouts.

[59] The pursuer takes the child on extravagant trips. The defender is grateful that he is able to take the child abroad as she could not afford to do so. However, the child was overstimulated by the volume of adventures. There was no routine; no bedtime; going from house to house; long drives overnight; and staying in different hotels. Contact rarely took place at the pursuer's home. The defender would only find out afterwards that the child had not attended nursery. The pursuer would not communicate that he was taking the child to England. He ignored the defender's requests for the child to attend nursery as it is important for stability, routine and making friends in preparation for school. He was not

honest about who else was on trips with the child. At handovers, the pursuer's focus was on the defender and wanting to talk about the past.

[60] On returning from contact, the child was dysregulated and over-stimulated for 2 to 3 days. It was difficult to settle him for bed. He would scream, cry, hit and spit. He was exhausted and his emotions were all over the place. The defender attributes such behaviour to lack of routine. The child reported that the pursuer said that she, the defender, was stupid. The defender put her own emotions aside. She advocated for the child and pursuer to have a relationship. She wanted to manage a better routine for the child across both homes.

[61] Contact continued for roughly 3 nights per week until October 2025. On the evening of 24 October 2025 (a Friday), the child confided to the defender that "Dad puts his fingers in my bum". She asked him to repeat what he had told her and she videoed him. The child shortly changed the conversation. The defender was unaware of any out of hours social work contact number and sought advice from social work on the Monday morning. She was advised to tell the pursuer that contact would not happen that day. A report was made to the police.

[62] In her supplementary affidavit, the defender described the child blurting out, "Dad puts fingers up my bum". She said, "You mean when he is wiping it". He said "No". The defender became flustered. The child continued to play. The defender panicked and telephoned her mother. She tried to speak to the child again but he was distracted. She did not want to ask multiple questions and did not know what to do. Her mother suggested that she video the child. The defender was worried whether she would be believed that the child said the words. She wanted to have proof. Looking back at the video, it feels like she is trying to get the child to say what he did. The defender stopped recording when the child

stopped saying anything. He was not saying anything different or much more. The defender forgot that she had taken the video until she was asked about it. She had mentioned it to the police. So much has happened since then. She is trying her best for the child. She has spoken to her GP about having nightmares and being on high alert at all times. She is being assessed for post-traumatic stress disorder. She struggles with the stress of the present proceedings and of the criminal proceedings. She would not make up the child's comments and put herself and the child through the resultant current process.

[63] The child had made an unexplained comment about something similar in the presence of the defender's mother and sister but there had been no context to the statement and he did not mention the pursuer. On another occasion the child returned with a large bruise on his buttock. When the defender asked what had happened, the pursuer responded, "would like to think you were not trying to imply or insinuate something ominous". The child's allegations gave the bruise a different context.

[64] The defender did not agree that it was in the child's best interests to do a further Joint Investigative Interview ("JII"). The child was moved to a different nursery with the assistance of the social work department. The details of the new nursery and the whereabouts of the defender and child have not been disclosed to the pursuer.

[65] Since contact has resumed, the child has made further allegations about the pursuer. He has told the defender, "Dad licks my bum"; "he puts his tongue right up my butt crack"; and "he puts my wink in his mouth". The child has demonstrated these actions. The defender believes the child.

[66] When the defender stopped contact, everything was pretty normal. The child had his moments of tantrums but they were settled in their new house. The child was into a good routine and sleeping well. The present process has been stressful but the defender was

happy to take on the weekly visits from social work and grateful for the support to help navigate this time and keep the child safe. The child did not mention the pursuer other than on one occasion when he said, “Oh I don’t have a daddy anymore”. After contact resumed, it took 4 weeks for the child to mention the pursuer. The child’s behaviour worsened when contact resumed: kicking, hitting and spitting sometimes. The child said he hated the defender. The nursery is being watchful of the child’s behaviour as the defender is concerned that some recent behaviour may be a trauma response. On two occasions, the pursuer was waiting outside for the defender to arrive for supervised contact. He should have been inside.

[67] The defender has always encouraged and promoted a healthy relationship between the child and pursuer. Now the defender’s most important role as a mother is to be her child’s voice following what he confided. It is her responsibility to ensure that the concerns are taken seriously and that the child’s emotional safety and wellbeing are the priority. The defender’s concern is what happens if supervision is removed.

[68] The defender accepts that she drank to excess a few times in a year when the parties were together. She no longer drinks. She accepts that she took drugs in the past before the child’s birth.

[69] During cross-examination, the defender rejected any suggestion that when she collected the child from the pursuer on 22 October 2025 that she had a plan to stop contact. She rejected that she had manipulated the child to make the allegations of sexual abuse. She agreed that unsupervised, residential contact took place regularly (depending on the pursuer’s work schedule) despite an alleged history of domestic abuse, tensions over the years and post-separation, and problems at handovers. She agreed to contact because it was about the child’s relationship with the pursuer. She agreed that but for the sexual abuse

allegations the matter would not be in court. The case was not in court because of domestic abuse allegations. The defender agreed that so long as the child is safe and protected against any risk of abuse, it is important for the child to have a relationship with the pursuer. Were the court to find that the allegations were not established, the defender would still be concerned.

[70] The defender rejected that she was jealous of the pursuer's financial ability to take the child on holiday abroad. She declared herself grateful. She agreed that the parties had been able to co-operate around handover arrangements before October 2025. They did so for the child. She did not agree that contact had worked well in the past around the child's routine. The defender was taken to messages between the parties on the OurFamilyWizard App (7/1 PDF pages 2 to 7) in which the pursuer sought to extend contact. He sought residential contact for a period of 5 nights and separately to take the child to Lapland in December 2025. The specific exchange is as follows:

"Message 12 of 50
Sent: 27/09/2025 at 11:42 am
From: defender
To: pursuer
Subject: Next dates [child]

Hey can you please let me know next dates for [child] and if possible dates for the next few months up to Christmas just for making plans etc

Message 13 of 50
Sent: 29/09/2025 at 09:21 am
From: pursuer
To: defender
Subject: Re: Next dates [child]

Hey,
Sorry I was flying all day yesterday on lates and I've just woke up to do it all again.
3rd at 5pm until 4th at 7pm
Flight doesn't get back in until 1400 on the 3rd into Edinburgh from my trip.
As for other dates they will be as normal unless I'm away with work. I'm away to China for 6 days back end of November and then the states in December but all of

these are around my annual leave which I split 50/50 with time with [child]. I'd like to book Lapland for me and him for the first or second week of December so please can you agree to that.

Dates with [child] in October

- 3rd October to 4th October (1 night)
- 9th October to 14th October (5 nights)
- 19th October to 22nd October (3 nights)
- 27th October to 1st September (sic) (5 nights)

I will try to give you more dates but I'm juggling 2 companies and a full time job which can be a little difficult to plan months ahead.

Message 14 of 50

Sent: 02/10/2025 at 08:24 pm

From: defender

To: pursuer

Subject: Re: Next dates [child]

Hey, tomorrow night is all good.

Following dates proposal - Friday the 10th would need to be after his class say 12.30pm - Monday evening or if you would like him the Monday night too you can drop him off at nursery Tuesday morning so he's staying in his routine.

19th - 22nd again is absolutely fine as long as he is attending nursery on these dates as it's what is best for [child].

27th - either Thursday evening or first thing Friday 31st morning about 9.30/10am latest as I have a wee day planned with him on that date.

Thanks

Message 41 of 50

Sent: 16/10/2025 at 11:26 am

From: pursuer

To: defender

Subject: Re: Next dates [child]

Hi - next few weeks of dates for [child] are in the Calendar. Assuming Nursery is the agreed transition

location. I've also gave you advance notice of a holiday (details tbc) for when I'm back from China.

Thanks

Message 42 of 50

Sent: 16/10/2025 at 05:19 pm

From: defender

To: pursuer

Subject: Re: Next dates [child]

Hi.

The dates you've entered do not align with the agreed contact arrangement. I've proposed suitable dates in line with our agreement. Please refer to the agreement made via solicitors earlier this year (maximum 3 nights).

I have also stated twice now that I have a full day planned with [child] - which you have ignored - on the 31st of October so I will need to collect him after nursery on Thursday 30th or first thing Friday 31st 9.30am.

I have not agreed to you taking him out of the country for 6 days in December and do not agree to this.

I noticed that Wednesday the 22nd, pick up says 7.30pm which I need to ask why if his nursery finishes at 6pm? I have stated on numerous occasions I am not happy with you constantly keeping [child] away from his education and I hope that on those days you agree to put him into nursery in order to maintain his routine as it is what is best for him.

The nursery have been in touch recently concerned that there is a large gap in his attendance and it always falls on days that he is with you. I don't want to risk losing his place.

Thanks,

Message 43 of 50

Sent: 18/10/2025 at 11:48 pm

From: pursuer

To: defender

Subject: Re: Next dates [child]

I will revert to your previous message over the next couple days when I have had time to process it. 10am tomorrow please.

Message 46 of 50

Sent: 24/10/2025 at 10:26 pm

From: pursuer

To: defender (First Viewed: 24/10/2025 at 11:43 pm)

Subject: Re: Next dates [child]

Hi [defender],

Thank you for your message.

I'd like to clarify the upcoming contact dates, as there appears to be some confusion. Based on my shift pattern, I will finish my early block on Sunday 27th October and begin my late block the following week. As such, in keeping with my consistent contact I should have [child] from the evening of Sunday 27th October until the morning of Friday 1st November (five nights).

I understand that you have plans with [child] on Thursday 31st October, and although this falls within my usual contact period, I am prepared, as a gesture of cooperation and to ensure [child] doesn't miss out, to let him return to you on the morning of 31st October. This is purely a goodwill compromise on my part, made in

the spirit of co-parenting and doing what's best for[child], rather than any acceptance that contact should be reduced or altered on a regular basis.

For clarity, our current pattern of contact has been based on a verbal agreement we both reached several months ago and have followed consistently since. I think it's important that we both continue to respect this arrangement until we can discuss and agree on any formal changes together.

You've mentioned being [child's] 'primary carer.' To clarify, there is no legal definition of 'primary carer' in Scotland unless determined by a court order. As we both have Parental Responsibilities and Rights, we are considered equal parents in the eyes of the law, and both have an equal say in in [child's] upbringing and routine.

Regarding nursery attendance, I spoke directly with the nursery manager after your message. She confirmed there are no current concerns about [child's] attendance or development, and that he is ahead of expectations for his age. We agreed that if any concerns arise, we'll review things together in [child's] best interests and of course you would be looped in to any such conversations.

I'd also like to revisit the December trip I proposed. This would provide [child] with valuable time and experiences with me, and your refusal didn't include a specific reason. I'd appreciate the chance to discuss this further so we can agree on a fair outcome.

I've worked hard to remain cooperative and child-focused throughout this process, but it's becoming increasingly difficult with ongoing restrictions to my time with [child]. To help us move forward positively, I'd like to suggest family mediation. It would provide a neutral setting to discuss contact schedules, holidays, and routines, ensuring [child's] best interests remain the priority.

Please let me know if you're open to this. I believe it's the most constructive way forward for everyone involved.

Message 47 of 50

Sent: 27/10/2025 at 09:40 am

From: pursuer

To: defender

Subject: Re: Next dates [child]

Hi [defender],

Just confirming [child] will be dropped off at 7:30pm tonight? Tell him I'm really looking forward to seeing him.

Thanks

Message 48 of 50

Sent: 27/10/2025 at 11:08 am

From: pursuer

To: defender

Subject: Re: Next dates [child]

Sorry can we make it 8-8:30pm as I've had something at work with an aircraft that we are dealing with and I'm now having to Dead head back slightly later

Message 49 of 50
 Sent: 27/10/2025 at 12:34 pm
 From: defender
 To: pursuer
 Subject: Re: Next dates child

Plans need to change tonight. [Child] will be staying with me until I confirm otherwise. I will update you in due course, please respect that this is not up for discussion."

[71] Asked whether it was a coincidence that the child made the allegations on 24 October 2025 after the defender received the defender's message 46 of 50 above, she said that she received and read the message after the child made the allegations.

[72] The defender accepted that she did not allege physical abuse by the pursuer when she spoke to Ashleigh McNeil, social worker on 27 October 2025. She disagreed that what occurred between the parties was no more than the normal breakdown of a relationship.

[73] Although the child was toilet trained in October 2025, he would still ask for assistance with wiping. The defender agreed that involved his buttocks being separated. The defender was taken to further OurFamilyWizard messages in relation to a bruise on his buttock and internal redness as follows (7/4 PDF pages 278 and 279):

"Message 221 of 365
 Sent: 05/08/2025 at 05:15 pm
 From: defender
 To: pursuer
 Subject: Re: Checking in

Hi, I only seen your message from last night a few hours ago. [Child] is okay, very tired from all the adventures I think but getting back into his routine now. He said his bum was sore and that's a few times he has came back with a red bottom, are you helping him to clean himself properly as he is just learning this, also wondering if you noticed he had a bruise on his left bum cheek? It looks as if it would have been sore when this happened, wondering how he managed this.

Message 222 of 365

Sent: 06/08/2025 at 11:24 am

From: pursuer

To: defender

Subject: Re: Checking in

Hi,

I only took [child] away for two days/ one night. First day for the Gruffalo playhouse and second day for the aquarium. This was because I deemed the best thing for him after his jags was to rest off as he was feeling a tad fluey. If he is overly tired now 4 -5 days after being back with you then I'd have a review of his diet and or the activities he's maybe been doing with you, then if there's no explanation I would take him to see a doctor in case there is anything underlying. You did tell me that [child] does not have his own bed and his sleeping arrangements have been for him to share a bed with you. That could possibly be a factor also to consider.

As for the sore bum, there has never been a time I have not checked afterwards. I'm completely on top of his toilet training and everything I do with him is planned around regular toilet breaks. I couldn't possibly do any more in that department.

The bruise you mentioned I was not aware of. He has come to me with several in the past though that I have just put down to him being 3 and running around with no fear. He has trips, stumbles and falls and as much as I can try to mitigate this inevitably he's going to pick up some bumps and scrapes as he grows up.

I would like to think that you were not trying to imply or insinuate something ominous in that last message. I am an amazing, caring and attentive Dad to [child] and an extremely patient and understanding co-parent.

Please can you send me the details of [child's] GP and dentist. When he is with me he has access to private 24/7 doctors and specialist care in the event that he needs any medical attention. This has been in place for you both since before he was born. As an extended courtesy and as his mother I've never taken that away from you just to be sure you're always in a position to receive immediate advice/ care if you need it. I'm wanting to take [child] away between the 26th August and 7th September, as I previously mentioned. I would like to take him away for a week. This is a fantastic opportunity for him to experience new and fun activities in a completely safe environment. I am asking you to reconsider your stance on this as there isn't any reasonable reason why he shouldn't go. Even his nursery staff (to whom we both entrust him to) agree that this would be amazing for him. It seems to be more of a control thing than a decision based around [child's] well being - legally I need your written consent to take [child] out of the UK. Conversely if you were to ever take [child] out of the UK then legally you would need mine. I have delayed booking flights but they are becoming more and more expensive which is an unnecessary additional cost that could be spent on [child] instead.

You keep mentioning [child's] routine. So it's easier for me to understand can you please detail his consistent routine with you including set nights/ days away in anybody else's care including who they are. Maybe then it will become easier to keep some sort of consistency across the board.

We want what's best for [child], but I also would like an open environment for us to be direct and honest when it comes to his care and to be able discuss disagreements

as adults and parents. We both have him and his safety/ happiness as a common goal 😊
Thanks"

The defender accepted that faced with what may be indicators of abuse, the pursuer responded by saying to take the child to the doctor.

[74] In relation to the video which she took of the child, the defender stated that she stopped recording because the child went on to speak about his sweets. She had not edited the video. She stopped recording because the child had said enough. Asked about disclosure of the video for the first time on 13 May 2026, the defender accepted that she had not shown it to social workers at any stage. She described herself as extremely upset; trying to keep strong; only seeing one step in front of her; her mind bursting with other things; and keeping the child okay. She could not remember whether she gave the video to police or only showed it to them. The defender denied that further disclosures said to have been made by the child were conveniently linked to the raising of the present action, to significant procedural steps in the action and to contact progressing successfully. She denied making false allegations and manipulating evidence. Rather, she responded to what the child told her and as a mother tried to protect her child. The defender refuted that she put the child up to making the allegations. She would not put the child through what has followed. It was further put to her that she was generally unhappy about the operation of contact and that when the child mentioned finger and "bum", she jumped as a worried mother to the wrong conclusion and the investigation spiralled. The defender described the operation of contact and what the child said as polar opposites. She accepted that a child can repeat what they hear, perhaps at nursery or from adults. No-one speaks to the child about "poo" or "winks". She accepted that children can blurt things out and that the child blurted out that she had a wink and a tail, neither of which are true.

[75] During re-examination, the defender clarified that her concern as at 22 October 2025 was how contact operated, that the child was tired after trips and missing nursery. The pursuer had had the child for 3 or 4 nights. She had not objected to residential contact arranged around the pursuer's work schedule. She believes her child over the pursuer as someone who has consistently lied. She also believes the allegations to be true as some of the domestic abuse allegations are of a sexual nature.

[76] In the event of contact, supervision should be by professionals and not family members or friends.

Other evidence for the defender

[77] Evidence was led from LYO (defender's mother), PO (defender's sister), Elizabeth May (social worker), Ashleigh McNeil (social worker), Hugh O'Connell (social worker) and DC Joseph Peebles (detective constable). Each witness swore an affidavit which principally formed their evidence in chief. They were cross-examined with the exception of Hugh O'Connell for whom there was no cross-examination.

[78] LYO is the defender's mother. Initially the witness liked the pursuer albeit he was intense and flashy. He was determined to be the best he could. She included and welcomed him into their family. It became evident that the pursuer was not faithful, supportive or ready for fatherhood. The defender would return to her family home when she needed a safe haven. The pursuer's priorities did not change when the child was born. He continued to pursue his hobbies. When not working his principal job, the pursuer would not spend time with the child. His attitude was one of superiority. He is the master of grand gestures. Although the defender wanted out of the relationship, it was easier for her to go back to the

pursuer. He promised to change, for there to be a fresh start and for him to be more involved with the child.

[79] After the parties separated in December 2024, the schedule for contact was always on the pursuer's terms. Handovers could be confrontational. When contact was operating until October 2025, the child was in a settled routine with the defender. The pursuer did not have a structured routine with the child. They went on extravagant trips; took overnight car journeys to England; and did not spend time together alone. The pursuer did not take the child to nursery as he asserted that what he did was more educational than nursery. The child's behaviour was extreme on returning from contact. He was exhausted, had big emotions and was dysregulated. There were tears, kicking, punching and biting. It took 3 days for the defender to get the child back into his routine. Then the process repeated.

[80] In August 2025, the witness, the defender's sister and her sister's partner drove the child to meet the pursuer for contact. They had been at a party. While in the car, the child blurted out, "he sticks it right right up my bum". His comment had no context and he went on to speak about something else. The defender was told about the comment by her sister. It gave the witness a knot in her stomach but she did not assume anything had happened. On 24 October 2025, the witness was in Spain when the defender telephoned her very upset and sobbing. The defender told her that the child had said that Daddy puts his fingers in his bottom. The witness told the defender to telephone someone in authority. The witness accepted that she did not mention in her affidavit that she told the defender to video the child. That was not because she had not told her to do so.

[81] The child did not speak about the pursuer and did not say he missed him. After contact resumed, it took 4 weeks for the child to mention the pursuer. After contact, he was either exhausted and withdrawn or dysregulated, jumping up and down, tearful, frustrated

and unable to explain his feelings. On one handover, the pursuer arrived late and so was not in the building before the witness and child arrived. The pursuer feels he is above the rules.

[82] PO is the defender's sister. She was not close to the pursuer as she did not trust him. He made grand gestures and wanted people to think he was rich. The pursuer was only interested in spending time with the child when the defender tried to leave him and when the child was a toddler. The witness observed the child after contact. He was "bouncing off the walls", was angry and said hateful things about the defender. He punched the defender and pulled her hair. He has calmed down since. His behaviour is better now that his time is spent mostly with the defender. When the child was not seeing the pursuer, he settled into his new routine. Without routine, the child was "crazy".

[83] In August 2025, the witness, her partner and her mother were travelling in a car with the child, going to a contact handover. The child said, "he sticks it right right right up my bum". They asked the child to repeat it but he changed the subject to something about going to the toilet. They brushed it off, thinking the child meant something about the pursuer wiping his bottom. The witness told the defender the next day as she felt uncomfortable about it. Nothing had worried the witness terribly until that point. Thinking back, some things stood out as concerns. Around July 2025, she had been sitting on the couch when the child pulled his trousers down and tried to put his private parts in her face and told her "to put it" in her mouth. That was distressing. She jumped up in fear and shouted at him not to do that. She brushed it off as him being a silly boy. She now wonders if it is learned behaviour.

[84] PO's evidence was that she watched the video taken of the child by the defender on 29 October 2025 which was a Sunday. Later she said she spoke to the defender on 31 October and went over on 1 November 2025.

[85] DC Joseph Peebles is a detective constable with Police Scotland. He works in the Child Protection Unit for Renfrewshire and Inverclyde. He has 17 years' service and has worked in child protection for 6 years. He opened an investigation after a report was made in October 2025 that the child had disclosed to the defender and to social work that the pursuer had put fingers "up his bum". Steps were taken to determine whether any criminality had taken place and the context of his comment. There was an attempt to obtain a statement from the child at a JII. The interview did not provide anything. The child was unable to provide any context to his allegation and was overstimulated which is not unheard of for a child of his age.

[86] About November or December 2025, a further disclosure was reported by the defender. The child said, "Daddy puts his wink in my mouth". He told the defender that "Dad is cheeky and he likes it". Whereas the context of the fingers comments was unclear, a view was taken that there was no context in which the later disclosure would make sense regardless of age. An investigation proceeded. The pursuer was arrested and interviewed under caution. At the end of the interview, it was determined that the investigation was complete without further evidence. The defender has routinely updated DC Peebles with things the child has said or done. There were concerns around domestic abuse.

Investigation led to the arrest, interview and charging of the pursuer in May 2026. He was charged with two domestic abuse offences: one under section 1 of the Domestic Abuse (Scotland) Act 2018 relating to the defender. The other charge relates to a third party. The matter has been passed to the procurator fiscal.

[87] DC Peebles had been shown the video recording of the child by the defender. He described the video as not necessarily helpful. While there was a disclosure it was through a question and answer session. The preferred approach was to use a specially trained social worker and police officer at JII. Under cross-examination, DC Peebles confirmed that there was no information as to when or where the alleged conduct took place. There was no context whatsoever to the allegation. He did not tell social work about the video as he was not aware that they did not know about it. No forensic examination was conducted in circumstances where the police did not know about context or timing of the allegation.

[88] Elizabeth May is a social worker in the Initial Response Team with Renfrewshire Council. She obtained her social work diploma in 2009 and has been employed by Renfrewshire Council for 5 years. She was the allocated social worker for the child in October 2025. On 31 October 2025, it was decided the referral would progress to a child protection investigation and the referral was allocated to Ms May. She had to complete the investigation and see the child at home once per week for the period of the investigation. She first met the child on 7 November 2025 and was aware that another social worker had met the child. The purpose of her visit was to introduce herself to the child and for him to familiarise himself with her. She did not ask him what he had said. She undertook weekly visits to see the child at home. The child's needs are met well. Ms May has had no concerns with the defender nor with her parenting.

[89] A JII took place. The child did not make a disclosure during interview. A further interview was planned. It was noted that the child was extremely dysregulated. Ultimately, it was decided that it was not in his best interests to interview him again.

[90] On 11 December 2025, the defender said that the child had made a statement to her. Ms May was asked to interview the child. She saw the child at home with the defender and

his maternal grandmother in another room. The child seemed relaxed and they played with magnets and a jigsaw. Ms May began to speak to him in the broadest terms. She wanted the child to use his words. She asked him to tell her what he had told the defender which made her worried. He responded, “oh yeah finger bum”. She asked him to repeat it and he said, “Dad putted his finger in my bum”. The child left to fix a Christmas decoration and did not settle when he returned. Ms May asked him to tell her what he told the defender. She said, “you told mum something about your wink and your mouth”. The child said, “Daddy puts my wink in his mouth”. He explained that his “wink” was for “peeing”.

[91] Ms May completed her child protection investigation on 19 December 2025. Due to the serious allegations, it was determined matters should progress to a child protection planning meeting to consider child protection registration. As Ms May felt that weekly visits were unsettling the child, it was agreed she would visit fortnightly. At the child protection planning meeting, the case was transferred to Lorraine Shaw, social worker.

[92] After interim contact was ordered, Ms May supervised the first few family times. It went well. The quality of family time and interaction was good. At the first contact, the child and pursuer greeted each other with a hug and smile. There was positive eye contact. As the end of contact approached, the child had to be prompted to say goodbye. The child had arrived settled. On the way home, he was unsettled. He was a different boy. On the second occasion, the child responded well and did not want to leave. There were no issues on the way home.

[93] Ms May’s views remain as in her investigation report (7/2). She fully accepts that there has been good quality contact. There remains concern for a young child who has been very descriptive and said who is responsible. There will be considerable concern going forward. Her concerns have not changed through the observation of family time.

[94] Asked during cross-examination whether she had excluded the allegations relating to the child being cleaned by the pursuer, she responded that that was not what the child's words were about. Cleaning was not a possible explanation for his words. She had significant concerns for the child's safety. Asked about her approach to questioning the child, Ms May repeated that she had posed broad questions. She said to the child that he had told the defender something about his "wink" and mouth. She did not ask when or where any alleged behaviour had occurred. Despite being trained in the conduct of JIIs, she had not set any ground rules.

[95] Ashleigh McNeil is a senior practitioner social worker with Renfrewshire Council. She obtained her degree in social work in 2021 and has been employed by Renfrewshire Council since August 2021. As a member of the Initial Response Team, Ms McNeil was contacted by the defender on 27 October 2025. She was advised that the defender's relationship with the pursuer involved domestic abuse; that on 22 October 2025 the child had returned from the pursuer's care and disclosed that "Dad puts his fingers in my bum"; that the child had disclosed it again later that evening; that the child had had a bruise on his buttock previously; that there was another occasion when "his bum had been internally red"; that she was reluctant to explore these matters with the pursuer as he was manipulative and would flip things around on her; and that the child was often dysregulated and distressed after being in the pursuer's care. The defender had not contacted anyone at the time as the child was not due to go to the pursuer. It was agreed that the child should not be returned to the pursuer's care pending further investigations.

[96] Ms McNeil visited the child on 27 October 2025. The child was very articulate and engaging. The defender agreed to Ms McNeil speaking to the child and went into the kitchen. Ms McNeil worked through an emotions worksheet with the child. She was

satisfied that the child had capacity to understand his emotions. When she spoke to him about worry, he said, “My Dad puts his fingers in my bum”. The child made the allegation directly without prompting during their discussion on the emotional worksheet. She accepted that potentially the child could have been recounting what he had said to someone else rather than a specific worry. She explored whether this was when the pursuer was cleaning him but he said it was “because Dad is cheeky and he likes it”. He shortly became distracted by toys and did not say anything else.

[97] Ms McNeil reported to the defender what the child had said. The defender was visibly upset. She reported that the child had told her “Dad pushes down my wink” which he had demonstrated. While Ms McNeil and the defender spoke, the child became quite dysregulated, pulling at the door and demanding to go to the park. As Ms McNeil left she heard the child shouting and crying. The child had been calm on her arrival but after he spoke about what the pursuer did, he became noticeably dysregulated. The defender responded and was able to reassure him.

[98] Ms McNeil was told by the child’s nursery manager (witness FD) that they had no concerns regarding his attainment. He had not made an allegation in nursery. When in the pursuer’s care, the child does not go to nursery. The pursuer has advised that he plans activities other than nursery to spend time with the child. On 3 November 2025, the role of allocated social worker was transferred to Elizabeth May.

[99] Hugh O’Connell is a team manager in children’s social work with Renfrewshire Council. He obtained his diploma in social work in 1999. He signed off the child protection investigation report prepared by Elizabeth May. The social workers were in support of the defender not allowing contact. They were overtaken by events when the matter called in

court. They took what the child said seriously. The allegations were to a number of different people over a period of time.

[100] The child protection investigation report is dated 19 December 2025 and is 7/2 of process. It records the following comments having been attributed to the child:

- (i) On 24 October 2025 the child said to the defender, "Dad puts his fingers in my bum". Later in the evening, he said "Dad puts his fingers in my bum all day, every night".
- (ii) On 3 November 2025, the defender shared with Emily MacFarlane, social worker (Child Interview Team) other comments including: "It's getting hard again"; "I don't want my wink anymore"; "My Dad smacked my bum because I was pretending to be a rhinoceros. That made me feel sad"; "Daddy said Mummy and [child's] house is disgusting"; "Daddy said you're stupid Mum and I said no she's not she's my beautiful girl"; "He put it right right right right up my bum"; "put my wink in your mouth" (to his aunt PO); and "There was a snake in my bum".
- (iii) On 27 October 2025, Ashleigh McNeil spent time with the child in his home. The child was directed towards anything he had spoken about recently, anything that worried him and he then said "My dad puts his fingers in my bum". Prompted for more information, he said "because dad is cheeky and he likes it".
- (iv) Ashleigh McNeil then spoke to the defender who reported the child telling her that his Dad pushes down his wink and demonstrated this to her.

[101] The child protection investigation report notes that the following information was shared by the child's nursery on 31 October 2025

"[The child] presents as a bright and happy boy who engages positively within the setting. He demonstrates strong communication skills and can listen, comprehend and respond appropriately. He frequently asks questions to seek clarity and shows a clear enjoyment of language, letters and numbers. He is articulate when expressing his thoughts, needs and interests. At times, [child] can present with a strong personal preference for activities. When he does not wish to participate in a task or routine, he may decline to engage and requires additional encouragement or support to transition. Due to periods of irregular / sporadic attendance, he currently does not have a consistent close peer relationship within the setting. He interacts with other children appropriately when present but does not yet display a sustained friendship with any one particular peer. Overall, he is an inquisitive child with good communication ability and clear academic interests emerging, particularly around numbers and letters. [The child] is meeting his developmental milestones at present."

[102] The report's summary and analysis is as follows:

"[The child] is 3 years old. He is a healthy boy, who is thriving and meeting his developmental milestones. It is evident that he has received a high level of parenting but his life has not been without its challenges, which prior to this referral, presented themselves in the form of his parents relationship and his Dad's alleged behaviour towards his Mum.

[The child] made the initial disclosure to his Mum which he has gone on to repeat to social workers. He has been consistent that this Dad is responsible for the behaviour he has described. A number of other factors are of concern; [the child's] regular absence from Nursery when he was in his Dad's care, reports of [the child's] dysregulated behaviour after returning from his Dad's care and observations of his behaviours following the disclosures suggestive of distress and emotional upset.

[The defender] responded appropriately to what [the child] told her by seeking help and advice from services. She has been protective in her response and is receptive to advice to not allow any contact during the investigation period. It is [the defender's] position that contact is not in [the child's] best interests and she has sought legal advice in regards to this. His Dad has parental rights and responsibilities for [the child] and he has instructed a solicitor to pursue contact."

[103] The report recommended that an Initial Child Protection Planning Meeting was convened to consider the serious nature of the concerns and that a period of child protection registration was required.

Joint Investigative Interview (JII)

[104] A JII took place on 4 November 2025. A transcript of the interview is 6/33. The following exchange took place between the child and Emily MacFarlane, social worker:

Child: "This is mummy's winky dink and this is mummy's bum bum. You have a big bum. I going to give her a tail."

EM: "Does mummy have a tail?"

Child: "Yeah.....

I'm going to put a sticker on mummy's winky dink."

[105] The interview was ended as the child struggled to come back into the room and was not able to return. It was considered to be in his best interests to stop the interview and potentially reconvene on a different day. After consideration, no further interview was arranged.

Video recording

[106] Following upon the child's initial comments to the defender, she made a video recording of the child which is 7/7. The following exchange can be heard between the defender and the child:

Defender: "Can you tell/show Mummy what you said Dad did to your bum"

Child: "He putted his hands in my bum"

Defender: "What do you mean inside, do you mean like inside?"

Child: "Yeah"

[distracted]

Defender: "Can you show me what you mean by that. I don't know what that means."

[Distracted]

Defender: "Can you show Mummy what you mean. Can you show Mummy what you mean. Can you show Mummy what that means. I don't know/understand"

Child: "It means my Dad puts it in my bum all night every day"
[distracted]

Defender: "How does that make you feel?"

Child: "Tickly. It tick.."

Defender: "Is it not sore?"

Child: "No"

Defender: "Can you show me with your finger what you mean"

Child: [demonstrate] "my finger in my bum." [holds up finger and motions finger to backside]

[107] The recording plays for 1 minute 15 seconds. The child is opening sweet wrappers.

The recording stops while the child is speaking.

Child's views

[108] It is agreed between the parties and acknowledged by the court that it is not practicable to seek to obtain the child's views. The court is invited by the pursuer to have regard to the undisputed evidence that the child enjoys contact and to see that as reflective of the child's positive attitude towards ongoing contact.

Discussion

[109] I have to determine what is in the child's best interests. I am mindful that the welfare of the child is the paramount consideration; that I must not make an order unless it would be better for the child that the order be made than not; and that, taking account of the child's age and maturity, I must have regard to any views of the child. I am directed also to

have regard to the factors in section 11(7B) and (7D) of the 1995 Act as set out above, if applicable on the facts.

[110] The principal dispute is whether the pursuer has sexually abused the child. Whether or not sexual abuse is established, the court will require to determine whether contact is in the child's best interests and how any contact should operate. Specific regard must be had to the impact of any abuse and the parties' ability to co-operate. The pursuer submits that only during cross-examination did the defender's case become clear; that but for the child's allegations in October 2025 contact would have continued to operate on a regular, unsupervised, residential basis largely in line with the order sought by the pursuer; and that the issues in the case are not multi-faceted but rather the single issue is whether the pursuer sexually abused the child. I disagree with that characterisation of the relevant matters to be determined. The defender rejected that she had a plan to stop or reduce residential contact; rejected that she had manipulated the child to make the allegations; agreed that despite tensions (especially at handovers) and any history of domestic abuse, unsupervised, residential, regular contact took place; agreed that the present action was not because of domestic abuse allegations; and agreed that so long as the child is safe and protected against any risk of abuse, it is important for him to have a relationship with the pursuer. Undoubtedly contact was stopped following the child's allegation. The present proceedings were raised because contact was stopped. It does not follow that contact was taking place without concern. Nothing in the foregoing passage of evidence excludes the court's consideration of the operation of contact. The operation of contact is part of the defender's case as pled, forms a significant part of the evidence and relevant submissions are before the court. The multi-faceted issues include difficulties at handovers; the child's routine; his absence from nursery; his dysregulation after contact; and the pursuer's

conduct towards the defender. Standing the evidence and, in particular the OurFamilyWizard messages at 7/1 as set out above, the pursuer's submission that "(no) allegations of concerns about the pursuer's care of the child had been raised prior to" 22 October 2025 has no basis. The defender repeatedly raised the importance of the child's attendance at nursery and of routine.

[111] The pursuer's concern is that the sexual abuse allegations were reactionary to the deterioration in the parties' relationship and what is described as the pursuer's forcefully put position that he should have extended time with the child. It is said not to be known whether there was deliberate manipulation of the child, that is bad faith, or an ill-conceived over-reaction to innocent comments made by the child which snowballed into a social work and police investigation and additional allegations, that is misplaced but good faith. The timing of the allegations is submitted to demonstrate that they occurred at a time when the defender was seeking to restrict contact and the parties' relations were becoming increasingly tense. It appears to be accepted that the defender video recorded the child repeating the allegations before she gave a statement to DC Peebles on 28 October 2025 albeit the defender employed leading questions and abruptly stopped the recording. It appears to be accepted that the child made comments to both Ashleigh McNeil and to Elizabeth May albeit criticism is made of the way in which the child was questioned, an absence of safeguards and a resultant lack of spontaneity. It was not challenged that the child made an allegation to the defender's mother and sister while travelling in the car to contact during August 2025. That allegation did not identify the pursuer but alleged similar behaviour. It was not challenged that around July 2025, the child pulled his trousers down in front of the defender's sister PO, tried to put his private parts in her face and told her "to put it" in her mouth. Each of the child's comments is capable of being interpreted as sexual

in nature. The pursuer urges upon the court and urged upon professional witnesses that the comments do not exclude innocent explanation.

[112] The defender reported further allegations by the child to police and social workers. Those are submitted by the pursuer conveniently to coincide with significant dates in these proceedings namely when the defender became aware of the present action and the last day for lodging productions. I am not persuaded that the child made comments spontaneously in July and August 2025 to family members, made an allegation in October 2025 to the defender and later repeated allegations to social workers but that thereafter the defender fabricated the allegations. For whatever reason, the child made comments capable of sexual connotation on various occasions from July 2025. During the JII while not making any allegation, he drew a picture of the defender referring to her “winky dink” and her tail. I accept the evidence of the defender, of her mother and sister and of Ashleigh McNeil and Elizabeth May that the child made the various comments attributed to him. The defender has not fabricated the comments. She has not manipulated the child into making the comments.

[113] I am mindful of what was said by Lord Eassie in *B v Scottish Ministers* above:

“Where an allegation of criminal conduct is made in civil proceedings, the standard of proof is the balance of probabilities; but the nature of the allegation may be such as to call for evidence of quality and weight and for that evidence to be carefully examined and scrutinised in the course of the forensic process.”

Further, I am mindful of what was said by Lord Rodger in *T v T* 2001 SC 337 at paragraph 38:

“If evidence of [statements of children] is admitted, the judge or jury will have to use their wisdom and common sense to decide whether the statements are trustworthy.... In carrying it out, in the case of young children in particular, the judge or jury will be able to draw not only on their own expertise of listening to children in everyday life but also on any expert evidence which may be tendered in relation to the individual whose statement is in issue”.

[114] The child's statements demand careful consideration. No evidence was led from a child psychologist. Absent the child repeating the allegations at JII and absent further evidence, the police have concluded their investigation. Social workers take the allegations seriously and the child is subject to child protection registration. They await the outcome of the present proceedings. The social workers' evidence speaks to ongoing concern for the child while acknowledging the positive relationship between the child and the pursuer.

[115] The child's words in their totality have to be assessed. His language describes extreme and constant behaviour: "he sticks it right right right up my bum"; and "my Dad puts it in my bum all night every day". Yet at the same time, he uses almost playful language: that it is "tickly"; and "because Dad is cheeky and he likes it". In response to the defender's question, the child lightly states that it is not sore. The child has not displayed distress when making the allegations although the social work evidence is that he has been dysregulated following making allegations to them.

[116] Other than a bruise on his buttocks and an instance of reddening in around August 2025, there have been no physical signs and nothing which caused him to be taken to a doctor or examined. The defender clearly attributed the redness to whether the child was wiping himself properly after going to the toilet. There is considerable force in the pursuer's counsel's submission that the pursuer's response when asked about the bruise and redness was to suggest that the child see a doctor. It is unlikely that an abuser would prompt medical investigation.

[117] The first allegation of potential sexual abuse made no mention of the pursuer. While it unsettled the defender's mother LYO, it was thought to refer to toileting. When the child earlier made sexual references to the defender's sister PO, she corrected the child and

thought that he was being silly. No one escalated these to child protection concerns. The defender sought advice when there was a specific allegation relating to the defender. It is hard to criticise her seeking advice from social workers and what has transpired since has been driven by child protection procedure.

[118] I consider that it is improbable that digital penetration of the child's anus by an adult finger (which is the sexual connotation of the pursuer putting his finger up the child's "bum" and the reason for child protection proceedings) is "tickly" and not sore. I consider it improbable that the pursuer put his hands or finger(s) in the child's "bum all night every day".

[119] The court's first task is to determine whether the pursuer has sexually abused the child. I am not satisfied that on the balance of probabilities that it has been established that has happened. I accept the pursuer's denial of any such conduct. I cannot conclude that the available evidence is of sufficient quality and weight to lead to the conclusion that the pursuer sexually abused the child. On the evidence led, I cannot establish why the child has used apparent sexual language and made these allegations. It having been established that the child did say the words attributed to him and was not manipulated to do so by the defender, there may be focus for professional advice.

[120] The pursuer's position is that in the event of no sexual abuse being established, it is in the child's best interests for extensive residential contact to resume. His second conclusion is said largely to reflect the contact taking place at October 2025 and as necessitated by his work schedule. There are, however, further considerations for the court in terms of section 11 of the 1995 Act and in particular section 11(7B) and (7D).

[121] Since the parties' final separation in December 2024, the pursuer has demonstrated that he is a loving father who can engage in imaginative play and fun activities with the

child. He and the child have a warm and affectionate relationship. Aside from her safety concerns, the defender does not dispute that. The evidence led of supervised contact confirms that. While I prefer the evidence of the defender and her family as to the level of the pursuer's engagement with the child before December 2024, it matters little as the pursuer has shown a consistent commitment since the parties' separation.

[122] However, I do consider that the pursuer approaches contact in terms of entitlement and can be domineering and demanding in his correspondence with the defender. Their use of the OurFamilyWizard App shows an ability to co-operate but the pursuer becomes quickly critical and dismissive if he does not get his own way. In terms of his own counsel's submission, the pursuer has a forcefully put position.

[123] I reject the pursuer's narrative that the defender frustrates his attempts to co-parent. Against a background of the child returning tired from contact; of his unsettled behaviour; and of limited attendance at nursery, it is not unreasonable for the defender to ask that the child's routine of attending nursery is respected. She has done so appropriately and not in a way which properly read seeks to restrict the pursuer's contact. The pursuer's insistence that nursery is not mandatory is artificial and far from child centred. In any event, the child will shortly enter his pre-school year and his nursery routine should not be disrupted. That is especially so given the evidence which I accept of the child's dysregulated behaviour. At points the pursuer appeared to accept that the child's behaviour could be dysregulated. When he sought to characterise the child's spitting as blowing raspberries, I prefer the evidence of Lorraine Shaw, social worker, that the child spits and has spat at the pursuer. The pursuer insists that the child's nursery had no concerns about the child's attendance. That is consistent with the evidence of FD, the nursery manager. However, she observed that a colleague took a stricter view and the nursery position as reported to social workers is

that “(d)ue to periods of irregular / sporadic attendance, he currently does not have a consistent close peer relationship within the setting”. It is not beneficial for the child to be in a settled routine when predominantly in the defender’s care and to be removed from that routine when in the pursuer’s care. While the pursuer seeks contact for up to 5 nights (at the end of his early shift rota) and asserts such a pattern, the evidence does not indicate that there was such a pattern. Rather, in terms of the joint minute at paragraph 5 contact regularly included periods of up to 3 consecutive nights. In addition, it is agreed that the pursuer took the child to Tenerife in May 2025 for 4 days and in August 2025 for 6 days.

[124] On the evidence led in isolation, I am not satisfied that the pursuer was financially abusive of the defender either directly or indirectly through family members albeit I accept the defender’s evidence about the pursuer not reimbursing her for the hot tub payments. In relation to the incident when the pursuer and friends drove past the defender in the vicinity of her Women’s Aid accommodation, I accept the pursuer’s evidence and that of HES as to why they drove along the particular street. Nonetheless, the defender was distressed by the pursuer’s presence. Otherwise, I consider that the parties had a dysfunctional relationship and that the pursuer spoke in unpleasant terms to and about the defender on occasions. A legacy of that is poor communication between the parties. I accept the evidence of the defender that the pursuer prolonged handovers and wanted to discuss the parties’ relationship. I consider that section 11(7D) is engaged, that is the parties’ ability to co-operate. It is engaged in the wider context that the pursuer faces charges of abusive and threatening behaviour and domestically abusive behaviour. He is subject to an undertaking to appear at Paisley Sheriff Court. Further, the defender is being assessed for post-traumatic stress disorder.

[125] Aspects of the pursuer's evidence are self-serving, for example when he portrays himself as supportive and calm in all situations. He gives little credit to the defender for her role in caring for the child for the majority of the time. The child is described in delightful terms by his nursery manager and social workers. From the OurFamilyWizard messages led in evidence, my impression is that the defender seeks to accommodate the pursuer within the confines of his work rota; to respond to changes to handover times; and tentatively to raise issues of concern. The defender largely responded positively to the pursuer's requests including for overseas travel. On occasion, she alerted the pursuer to alternative arrangements with the child. Given the relatively short notice of the pursuer's proposed contact (as seen in message 13 of 50 at 7/1 above), that is hardly surprising.

[126] For the most part, I found the defender to be credible and reliable. She freely accepts that she abused alcohol and cocaine on occasions before her pregnancy. While her affidavit and pleadings speak to different dates of separation, she accepted in her oral evidence that separation was in December 2024 at the end of a troubled relationship.

[127] The exception to my acceptance of the defender's evidence relates to the video recording. I accept her evidence as to the circumstances of making the recording.

As confirmed by DC Peebles, the defender produced the video to him on 28 October 2025.

As such I do not understand why she did not show it the previous day to Ashleigh McNeil.

It makes little sense to suggest that she was concealing the video or otherwise, when she volunteered it to the police. Her very late production of the video to her solicitors is difficult to understand. There is force in the pursuer's submission, as acknowledged by the defender, that the recording shows that she led the child's statements.

[128] In terms of section 11(7D) of the 1995 Act, I must consider whether it would be appropriate to make a contact order where the parties would have to co-operate with one

another. It is known that the pursuer is subject to an undertaking to appear on charges of threatening and abusive behaviour and domestically abusive behaviour. The defender is one of two complainers. The specifics of the charges are not known and, in any event, they remain allegations. The undertaking conditions and any subsequent bail conditions must be respected and should not be undermined by any order which this court makes, provided that the child's best interests can be met by an appropriate order.

[129] I consider that it is in the child's best interests to have consistent contact with the pursuer. I disagree that the child's best interests are met by an order in terms of the pursuer's second conclusion. Contact at the level sought by the pursuer (alternating 5 nights and 3 nights) did not take place before October 2025 although there were some holiday trips. I have rehearsed fully why I consider that the pursuer should not disrupt the child's pattern of care, especially as the child will shortly be in his pre-school year. Since January 2026, only supervised contact has taken place for up to 2 hours per week when the pursuer is available. While I shall assign a by order hearing to address handover arrangements, I consider that contact should proceed in a way which allows the contact to develop from the current limited contact through non-residential unsupervised contact to residential contact. I consider that the pursuer should have 2 nights' residential contact during each period of his 4 days off. That means that there can be a consistent pattern rather than the pursuer intimating those dates when he can have the child given his business commitments (as seen in message 13 of 50 at 7/1 above). It means that the pursuer is not collecting the child on the day his rota finishes and dropping him off on the day his rota resumes, with the potential for last minute changes to times. The order is made on the basis that the pursuer will respect the child's nursery attendance and sleep routine. Following upon the by order hearing, the contact should be non-residential and unsupervised for eight sessions over a

2-month period (the dates and times to be agreed or ordered) and thereafter residential. I do not make any order for holiday contact at this stage as I consider that it is in the child's best interests to settle into his pre-school year and a proper routine of contact with the pursuer. Provided that happens over a sustained period and is supported by the pursuer, there should be no reason why holiday contact cannot take place during nursery holidays. It is premature to make the related specific issue orders at the current time. I am mindful that the court is being more prescriptive than normal but that is necessary given the breakdown in trust between the parties; the pursuer's inability to respect the child's routines in the past; the parties' ability to co-operate; and to minimise any potential for conflict given the current criminal proceedings. While the court has determined that the pursuer has not sexually abused the child, some trust will require to be rebuilt between the parties. The court seeks to establish a stable base for contact after a period of instability and where the parties face the stresses and uncertainties of criminal proceedings.

[130] On behalf of the defender, it is submitted that I should refer this matter to the principal reporter under section 62 of the Children's Hearings (Scotland) Act 2011 to allow for further determination and assistance with or supervision of contact as deemed necessary in the circumstances. I decline to make a referral standing the conclusions reached and the orders which will be made.

Decision

[131] Applying then the overarching principles of the 1995 Act, I am satisfied that it is in the best interests of the child to make an order for contact between the child and the pursuer as outlined above. It is better to make an order to ensure certainty and to minimise dispute

between the parties. As requested, I shall assign a by order hearing to discuss commencement and handover arrangements.

[132] I reserve all questions of expenses meantime.