

SHERIFFDOM OF LoTHIAN AND BORDERS AT EDINBURGH

[2026] SC EDI 90

EDI-F1036-23

JUDGMENT OF SHERIFF WENDY A SHEEHAN

in the cause

JM

Pursuer

against

JR

Defender

**Pursuer: Ulph
Defender: MacDonald**

EDINBURGH, 26 June 2026

The sheriff, having resumed consideration of the cause, finds the following facts to be agreed or established:

Findings in fact

1. The parties' relationship began in 2001 and ended on 7 September 2021. The parties have two sons; M aged 10 (born on 22 August 2015) and R aged 6 (born on 10 June 2019). Both parties have parental rights and responsibilities in relation to both children.
2. Both parties were involved in the care of the children when living together as a family unit. In November 2021, the pursuer moved out of the family home. The children have been in the primarily care of the defender since then.

3. The pursuer exercised contact with the children several times a week by agreement between the parties. Contact initially took place on a non-residential basis in the family home. This arrangement subsisted for some time as the pursuer was unable to secure suitable accommodation at which contact could be exercised until autumn 2023.

4. On 7 and 9 September 2023 the parties entered into a minute of agreement (6/1/1 of process) in which they agreed *inter alia* that they “will endeavour to work towards a shared care arrangement in respect of the children subject to improved communication between the parties”. They further agreed (subject to suitable accommodation) that the pursuer would exercise contact with the children every second weekend from Friday after school until Sunday at 7.00pm and each Monday and Wednesday from after school until 7.00pm. The pursuer decided shortly after signing said agreement that the mid-week contact would be too rushed and too disruptive for the boys and so did not exercise it.

5. On 4 March 2024, Amdeep Kaur, child welfare reporter lodged her report (11 of process) recommending that the pursuer should exercise contact with the children every second weekend from Friday after school (or nursery) until Sunday at 6.00pm and each Wednesday after school (or nursery) until Thursday before school (or nursery). That recommendation was encapsulated in the court’s interlocutor of 11 March 2024 which has regulated the interim arrangements to date.

6. The children are happy, healthy, bright and active boys who are thriving. They attend a fee paying independent school. Both parents are supportive of their education and share the cost of the school fees. M is in primary 6. He is described by his class teacher as an enthusiastic and kind-hearted boy who is respectful to adults, follows instructions, solves problems confidently and is a delight to teach. M has a considerate nature and supports other children. Both child welfare reporters who interviewed M considered him to be

confident, mature and articulate. R is in primary 2. He is described by his class teacher as a delightful boy who is polite, considerate and responsible, approaching all aspects of school life calmly, maturely and with a quiet determination to give his best. He is able to cope with arranging his belongings, volunteers to help others, is hard working and has good focus and attention. He is a pleasure to teach.

7. Both children are very sporty. M's PE teacher describes him as an "awesome athlete" who can turn his hand to any sport with ease. R's PE teacher also notes him to be an impressive and enthusiastic performer who clearly enjoys physical activity. Both boys participate in several extra-curricular activities which they enjoy and benefit from. The defender arranges (and pays for) the children's extra-curricular activities.

8. The children's typical weekly term time routine is as follows:

Monday: the boys are dropped off at school by the defender. M plays football after school. Both children are collected from school by their maternal grandmother and are then joined by the defender at around 4.30-5.00pm for dinner. M plays for a football team and is collected (by the father of his school friend who plays for the same team) and taken to training between 6.00-7.00pm and then brought home again. The pursuer coaches M's team and so is also there throughout. R goes to bed at 8.00pm and M at 9.00pm

Tuesday: the boys are dropped off at school by the defender. Both children are collected from school by their maternal grandmother and are then joined by the defender at around 4.30-5.00pm for dinner. Both boys attend a martial arts class, R between 6.00-7.00pm and M between 7.00-8.00pm. The defender takes them there and waits throughout the classes then takes them home again. The pursuer also attends and observes the classes.

Wednesday: the boys are dropped off at school by the defender. M plays rugby after school until 4.30pm whilst R has a play date with a friend. Both children are collected from school by the pursuer and stay overnight with him. There are no extra-curricular activities.

Thursday: the boys are dropped off at school by the pursuer. Both children are collected from school by their maternal grandmother and are then joined by the defender at around 4.30-5.00pm for dinner. M attends football training and is collected (by the father of his friend who plays for the same team) taken to training between 6.00-7.00pm and then brought home again. R goes to bed at 8.00pm and M at 9.00pm.

Friday: the boys are dropped off and collected from school by the defender every alternate weekend. In the intervening weekends the boys are collected by their paternal aunt R and then spend the weekend with the pursuer. There are no extra-curricular activities on Fridays.

Saturday: M attends football training at 9.00am. During the defender's weekends, she takes him (and his friend) there before dropping both boys off at rugby training. R attends "Tall Oaks" football training and then a swimming lesson. During the pursuer's weekends takes the boys to and supports these activities.

Sunday: M plays in football matches at around 9.00am.

Social events with peers, birthday parties and family socialising fits in with this weekend timetable.

9. The pursuer was a semi-professional football player. He coaches the football team that M plays for each Monday and attends the matches. The pursuer also attends the Tuesday martial classes where he interacts with the boys.

10. Both children have regular weekly homework set for them. On Wednesdays the pursuer completes paper/book homework with the boys. The rest of their homework is set by an App "Seasaw". Tasks/modules are assigned weekly and must be completed within a set timeframe across various subjects for M and with reading and videoclips for R. The defender supports, supervises and ensures completion of this and additional project work set. The parties do not work collaboratively in relation to homework. They attend parents' evenings and speak to the boys' teachers separately.

11. The children were given an opportunity to express their views to Robert Low, child welfare reporter on 18 November and 9 December 2025 (per the report 15 of process). When asked whether there was anything he would like to change about the current care arrangements, M responded "not really". He acknowledged that decisions about arrangements would be made by "grownups" and expressed little concern about that. When pressed further he stated at he would like to spend "slightly more" time with the pursuer as this would be "fairer" before going on to explain the precise arrangement craved by the pursuer in this action. When asked the same question, R replied "no". Both children referred to conversations with the pursuer about arrangements and disclosed a clear understanding of his wishes. Mr Low concluded (as had Ms Kaur, the child welfare reporter appointed in early 2024) that the pursuer had discussed his views and feelings about contact with the children and that this may have influenced M's expressed views. Mr Low opined that weight could be given to the initial spontaneous responses by both children that they do not wish the current arrangements to change.

12. The pursuer is currently attending college to obtain a qualification to enable him to pursue a career as a chiropractor. He attends college on Wednesdays, Thursdays and Fridays between 9.30am - 4.30pm. He also works as an Uber driver on a flexible part-time

basis to support himself until he qualifies. The pursuer was formerly a semi-professional football player. He is active, sporty and enjoys coaching M's football team and supporting him at matches. The pursuer lives in a two-bedroom flat which is a 10-15 minute drive from the boys' school. The boys share a bedroom with bunk beds and are settled and comfortable there.

13. The pursuer is the youngest of ten siblings and has 24 nephews and nieces. He values family relationships and wants the children to feel that they are part of a big extended paternal family. The children's paternal aunt R is the only other family member who lives in Edinburgh. She sees the boys every week, collects them from school on alternate Fridays and has a close relationship with them. The children were taken to London for a holiday in December 2025 to spend time with the pursuer's family which they enjoyed and from which they benefitted.

14. The pursuer describes himself a black Scottish man who is very proud of his family and his cultural heritage. It is important to him to be able to guide the boys in understanding their biracial and cultural identity and in navigating the world as young black men. The pursuer also shares aspects of their shared cultural heritage such as food and music. He takes the boys to a specialist hairdresser to have their hair cut and braided and buys specialist hair products. The boys benefit from all of these elements of their upbringing which are also valued by the defender.

15. The pursuer is a bright, outgoing, warm and assertive person. He is devoted to the children and has a close and loving bond with them. He has strong opinions on many aspects of their care and upbringing which he frequently shares with the defender. He lacks self-awareness as how this may be received or the fact that constant low-level criticism of the defender and assertively expressed views, without any focus on reaching a shared approach,

has and will undermine cooperative co-parenting. The pursuer refuses to speak with the defender face to face or by telephone at all. He communicates by text message or email which he describes as “informing and updating” the defender. He sees no value in compromise or a shared approach to any aspects of parenting, instead adopting a “my house my rules” approach. Whilst recognising the children’s strong bond with the defender, he does not value, trust or respect her as a co-parent.

16. The pursuer feels marginalised and given a secondary role in parenting the boys which he resents. He considers that it would be in the children’s best interests to spend an equal amount of time with both parents. He meets the boys’ needs and supports their activities when they are in his care. He would value more unstructured quality time and to feel that his time with the children is less rushed.

17. The defender is a self-employed business analyst in the financial services sector contracting for corporate clients. She works full-time office hours but generally only needs to go into her clients’ premises one day a week, working the other days from home. She works a late night on Wednesdays and an early morning on Thursdays when the boys are in the pursuer’s care. That enables her to finish earlier on the other weekdays. The defender lives in a three-bedroom house which is also a 10-15 minute drive from the boys’ school. The boys have their own bedrooms. They are happy and settled there. The house has a garden.

18. The pursuer’s mother lives in Edinburgh and she sees the boys 3 days a week after school. They have close relationship with her. The pursuer socialises at weekends with her brother’s family (the children’s maternal uncle) who also live in Edinburgh.

19. The defender is an empathetic, kind and sensitive person who wears her intelligence and business acumen lightly. She values harmony and consensus. She has become

distressed and anxious as result of what she perceives as relentless criticism and undermining of her parenting by the pursuer. She genuinely supports the children's relationship with the pursuer and believes it to be in their best interests to be co-parented. She has consistently believed that a high level of shared care is only workable in circumstances where parents communicate, respect and value each other and endeavour to have a shared approach to caring for the children. She describes the current co-parenting relationship between the parties as "non-existent". She wishes that it could be otherwise and remains willing, even anxious, to try to improve matters.

20. At this juncture, neither party advances any serious criticism of the other party's parenting capacity or their ability to meet the boys' physical, practical, educational or emotional needs when in their care.

21. The parties initially operated a shared care family calendar recording significant events, commitments and appointments in the children's lives. The pursuer removed/deleted the defender as a user of the calendar in 2022 and has declined to use a shared calendar or parenting App since.

22. The pursuer has insisted upon the parties taking turns to arrange birthday parties for the boys and has refused to work collaboratively on dates, guest lists, cakes, party bags and presents. The defender's preference is for discussion, consensus and collaboration.

23. The parties have encountered several issues in respect of the children's health and medical care. In 2022, R experienced gastrointestinal issues. The defender took him to his GP who examined him and gave advice about children's toileting habits, suggested the use of a food diary, and recommended a lactose free or low lactose diet. The pursuer challenged this advice, was resistant to a lactose free/low lactose diet and took R to the GP himself requesting a referral for a scan. He did so without consulting the defender. On 1 August

2023 the pursuer wrote to the defender blaming her for R's digestive issues and stating that he was giving R laxatives and probiotics. In mid-2023 R complained of chest pain. The pursuer took him to his GP and requested a cardiology referral. The first the defender learned of this was when an NHS appointment letter was received. The pain was assessed to be muscular. When the defender questioned the pursuer's decision to take R to medical appointments without involving her, or even notifying her, the pursuer responded, "let me be clear, I will take the boys to the doctor when I see fit" and saying that her receipt of the NHS appointment letter should be notification enough. Both boys have been diagnosed with asthma. Inhalers were prescribed (Soprobec to be taken morning and night and Salbutamol PRN or before exercise). Throughout 2024/2025 the pursuer was reluctant to accept the diagnosis and to administer the prescribed inhalers suggesting that the boys had colds/coughs/viral wheeze, using Vicks VapoRub and telling the defender to "chill out" when she messaged him to insist on use of the inhalers. In January 2024 the pursuer declined to use the spacer for M's inhaler. The defender explained that failure to do so could cause infections, hoarseness and a sore throat. The pursuer initially did not accept this advice and responded that a pharmacist had told him otherwise. After a lengthy message trail in which the defender shared information from third parties, the pursuer eventually backed down, it being apparent that he was only prepared to accept the information provided from the defender once it was independently verified. The pursuer has repeatedly demonstrated over a period of several years firstly, that he does not trust the defender to seek appropriate medical advice and treatment for the boys, secondly, that he will not accept information the defender provides unless he has access to the source material from the relevant professional, thirdly, that he will sometimes apportion blame to the defender for the children's health problems and fourthly, that he has sought and is likely to continue to

seek out his own advice/a second opinion and to act unilaterally with no appreciation of the value of a shared approach across both households and joint decision making.

24. The pursuer has repeatedly criticised the defender for failing to ensure that the boys shower often enough (ideally twice a day) and wash their faces with suitable products (not those provided by the defender and not with a face cloth). He has also purchased adult toothpaste, criticised the defender's supervision of the children's tooth brushing and sent a video clip demonstrating appropriate techniques. His written communication regarding these issues is highly critical, accusatory and disproportionate to the issues raised. Teachers, clinicians, and other professionals who have regular contact with the children note them to be clean and immaculately presented. The boys' dentist notes no issues with plaque build-up or oral hygiene. The pursuer encourages the children to view the defender's routine and products bought for them by the defender as inadequate or unsuitable. This can be divisive and stressful for the children.

25. The parties have different views on the children's use of electronic devices at certain ages and stages of their development. M was initially given a "KidsNav" watch by agreement of both parties. This watch had a tracker facility to ensure that if M wandered off in a park or other public place that he could be quickly located by the parent caring for him at the time. In August 2023 the pursuer bought an Apple watch for M's 8th birthday. He did so with no prior discussion with the defender but in the knowledge that she was unlikely to approve. The watch was set up by the pursuer. The defender was not given user access via her own Apple ID, was given no input or information regarding the parental control settings applied nor access to the "find my device" function to track M. When questioned regarding the appropriateness of such a device at M's young age, the pursuer responded that his nieces and nephews all had mobile phones at that age and that M would only use the watch

when in the pursuer's care if that was preferable. The pursuer failed and fails to appreciate the importance of joint parental decision making on the provision of devices, their settings and parental monitoring. He equally fails to appreciate the potential difficulties caused by a different set of rules in each household. It is more likely than not that similar issues will arise in relation to mobile phones in future.

26. The parties have different views regarding the computer games which the children should play and the amount of screen time which is appropriate. The defender generally restricts screen time to 30 minutes a day and allows the boys to play games which have a PEGI rating consistent with their ages. The pursuer enjoys gaming and has purchased a PS5, X-box and virtual headset. The boys use these devices daily when in his care and with less restrictive time limits. The pursuer allows the boys to play Fortnite (age rating 12) and Battlefront II (age rating 16). When the defender questioned the appropriateness of this the pursuer responded that she had "done zero research". When exchanges followed in which the defender then outlined her knowledge of Fortnite and her specific concerns, the pursuer dismissed them and indicated that she should stop demanding information about what the boys did during their time in his care. The pursuer fails to appreciate the difficulties encountered by the children in navigating two completely different sets of rules between their parents' homes and the potential for conflict caused by the children challenging the defender's boundaries. This situation is not in their best interests.

27. The content and tone of the pursuer's emails and messages to the defender, sent over several years, is concerning. He has stated in terms that he neither respects nor trusts the defender as parent. His repeated exaggerated and largely unfounded criticisms of the defender's care of the children have impacted on her wellbeing, anxiety and stress levels. The pursuer fails to appreciate the destructive and undermining effect which such

communication has on any possible co-operative coparenting. It is more likely than not that pattern will continue in future. The pursuer has made his unwillingness to discuss, compromise, seek consensus or mediate very clear. He refuses to speak to the defender at all and focusses on minimal communication by means of email or text. He seemingly places no value on shared parental values, approaches, routines and boundaries for the children. He fails to understand the challenges and stresses which the children face in navigating two completely different regimes and two parents who do not speak to each other. The children are left to either compartmentalise, carry messages or challenge the regime in the other home unsupported. This is not in their best interests and is likely to cause ever more complex issues as they mature. When challenged on this approach during court hearings, the pursuer indicates a willingness to find a solution to the particular issue under discussion but no appreciation of the bigger picture.

28. The parties are both devoted, able and caring parents who meet the children's needs when in their care and have a close bond with them. They are unable to communicate in a child-centred and respectful manner or to co-parent the children such that a higher level of shared care could operate in the children's best interests.

Finds in fact and law

1. It is in the best interests of the children to reside jointly and periodically with the parties in the terms ordered by the court and it is better for the children that the said order is made than that no such order be made.

2. The order made reflects due weight having been given to the expressed views of the children.

3. It is in the best interests of the children that issues related to foreign travel are regulated by the court and it is better that a specific issue order is made than that no such order is made.

INTERLOCUTOR

Edinburgh, 26 June 2026

The sheriff, having resumed consideration of the cause;

1. Grants a shared residence order under and in terms of section 11(2)(c) of the Children (Scotland) Act 1995, providing that the parties' children M (born 22 August 2015) and R (born 29 June 2019) shall reside jointly with the parties;

- Orders specifically; that during the school term time the children shall reside with the pursuer each Wednesday from after school until Thursday before school and every alternate Friday after school until Sunday at 6.00pm. The children shall reside with the defender at all other times during school term time (unless otherwise agreed between the parties).
- Orders specifically that during the school holidays, shared residence shall operate as follows (unless otherwise agreed between the parties):

February half term: the children will reside with the pursuer for an additional 5 days between Monday to Friday, to be added to his scheduled weekend (whether the weekend preceding or following the half term break) and will otherwise reside with the defender.

Easter holiday: the children will reside with the pursuer for an additional 5 days between Monday to Friday, to be added to his scheduled weekend and will reside with the defender for the remainder of the Easter holiday.

Summer holiday:

During the school summer holiday in 2026 the children will reside alternately with the parties as follows:

- (i) with the pursuer for 9 nights from the first Wednesday of the school holidays (at an agreed time) until the following Friday at 6.00pm;
- (ii) with the defender for the following 9 nights from 6.00pm on that Friday until the following Sunday at 6.00pm;
- (iii) with the pursuer for the following 11 nights from 6.00pm on that Sunday until 6.00pm on the following Thursday;
- (iv) with the defender for the following 10 nights from that Thursday at 6.00pm until the following Sunday at 6.00pm;
- (v) with the pursuer for the following 7 nights from that Sunday at 6.00pm until the following Sunday at 6.00pm;
- (vi) with the defender for 10 nights from that Sunday at 6.00pm until the following Wednesday at 8.00am when the normal term time arrangement will ordinarily resume.
- (vii) In the event that the school holiday period has not yet come to an end, the parties will nevertheless resume the normal term time arrangement at this point.

During the school summer holiday from 2027 onwards the children will reside alternately with the parties as follows:

- (i) with the pursuer for at least 7 nights from after school on the last day of term until the following Friday at 6.00pm;
- (ii) with the defender for the following 9 nights from 6.00pm on that Friday until the following Sunday at 6.00pm;
- (iii) with the pursuer for the following 11 nights from 6.00pm on that Sunday until 6.00pm on the following Thursday;
- (iv) with the defender for the following 10 nights from that Thursday at 6.00pm until the following Sunday at 6.00pm;
- (v) with the pursuer for the following 7 nights from that Sunday at 6.00pm until the following Sunday at 6.00pm;
- (vi) with the defender from that Sunday at 6.00pm until the return of school;
- (vii) The normal term time arrangements will resume on the first day of term.

October break:

The children will reside with the pursuer for an additional 5 days between Monday to Friday, to be added to his scheduled weekend (whether the weekend preceding or following the half term break) and will otherwise reside with the defender in 2026; and will reside with the defender for an additional 5 days between Monday to Friday, to be added to her scheduled weekend (whether the weekend preceding or following the half term break) and will otherwise reside with the pursuer in 2027; future years will alternate on this basis.

Christmas holiday:**In alternating years commencing in 2026/27**

Year one; the children will reside with the pursuer from the end of school term until the following Sunday at 6.00pm, with the defender from that Sunday at 6.00pm until 27 December at 6.00pm, with the pursuer from 27 December at 6.00pm until 3 January at 6.00pm and with the defender from 3 January at 6.00pm until the start of the new school term;

In 2027/28

Year two; the children will reside with the defender from the end of school term until the following Sunday at 6.00pm, with the pursuer from that Sunday at 6.00pm until 27 December at 6.00pm, with the defender from 27 December at 6.00pm until 3 January at 6.00pm and with the pursuer from 3 January at 6.00pm until the start of the new school term;

Note; the intention of this arrangement is to enable the children to spend the weekend immediately after the end of school term with the parent with whom they will not be spending Christmas. As future school holiday dates cannot be predicted, a degree of flexibility may be required in future years to comply with the spirit of this arrangement; namely, some pre-Christmas time with one parent and a return to the other on 23 December at the latest to allow for any planned travel.

Bank holidays/In service days

The children will reside with whichever party has the children in their care during the relevant weekend which will be extended to include the relevant holiday/in service day(s).

2. Grants a specific issue order under and in terms of section 11(2)(e) of the Children (Scotland) Act 1995, providing that the parties may travel outwith the UK with the children M (born 22 August 2015) and R (born 29 June 2019) for up to 4 weeks in any calendar year during the school holiday periods when the children are resident with them.

The written consent of the other party will not be required on the basis that (i) neither party will travel to any country against foreign travel advice issued by the UK Government Foreign & Commonwealth Office; (ii) where the proposed travel is within Europe, at least 2 weeks' notice of the intended destination and details of return flights will be given to the other parent; and (iii) where the proposed travel is outwith Europe, at least 4 weeks' notice of the intended destination and details of return flights will be given to the other parent.

The defender will ensure that the children's passports are kept up to date and those passports will be retained by her. Scanned copies will be provided to the pursuer to enable him to book and check in for flights with the children. When travel with the pursuer is scheduled, the children's passports will be provided to him at least 48 hours before departure and will be returned to the defender when the children are returned to her care.

The parties will share information and co-operate regarding any vaccinations required by the children for safe foreign travel.

3. *Quoad ultra* repels the pursuer's first and the defender's second pleas-in-law, dismisses the pursuer's first and second craves and the defender's first crave and finds no expenses due to or by either party.

NOTE

Introduction/summary of the issues

[1] The parties were in a relationship for just short of 20 years. They have two children M born on 22 August 2015 and R born on 10 June 2019. The parties separated on 7 September 2021. The defender remained in the family home with the children. The pursuer exercised contact at the family home until around October 2023. On 7 and 9 June 2023 the parties entered into a minute of agreement (6/1/1 of process). Paragraph 1 of that agreement provided that;

“the parties are agreed in principle that they will endeavour to work towards a shared care arrangement in respect of the children subject to Mr M obtaining suitable accommodation for the children and subject to improved communication between the parties”.

At paragraph 1(b)(ii) the parties agreed that the children would stay with the pursuer each alternate weekend from Friday after school until Sunday at 7.00pm and that he would exercise contact with them on Mondays and Wednesdays after school until 7.00pm.

[2] These proceedings were raised on 9 November 2023. The pursuer craved a shared residence order providing that children should spend Monday to Wednesday in each week and each alternate weekend from Friday to Monday with him, (amounting to a 50/50 shared care arrangement during school term time) with an equal sharing of school holiday periods. In her defences lodged on 23 December 2023, the defender sought a sole residence order.

The pursuer responded on 4 January 2024 with a minute of amendment (10 of process) seeking a sole residence order.

[3] Following the recommendations of an initial child welfare report (11 of process) lodged on 4 March 2024, the court made an interim order on 11 March 2024 granting contact to the pursuer every second weekend from Friday after school until Sunday at 6.00pm and each Wednesday after school until Thursday before school. That order has regulated the care arrangements for the children during school term time ever since.

[4] The pursuer has repeatedly raised a number of welfare concerns regarding the defender's care of the children throughout this process in support of his contention that the children should reside with him. At the commencement of the proof diet his position reverted to that set out in the crave in his initial writ (for a 50/50 shared residence order). The defender's primary position at proof was that a residence order should be granted in her favour and that a contact order should be granted in favour of the pursuer mirroring the interim order of 11 March 2024, with provision for agreed holiday periods. Her *esto* position was that a shared residence order should be granted for the same periods.

[5] The interlocutor of 11 March 2024 referred the parties to mediation. They attended several sessions. Mediation was not successful.

[6] A proof diet was allowed on 27 August 2025

[7] An updated child welfare report (15 of process) recording the children's expressed views was lodged on 12 December 2025.

[8] Evidence was heard over 4 days during the week commencing 12 January 2026 followed by a hearing on submissions on 27 February 2026. The parties were ultimately able to agree the terms of a detailed operable order for the school holiday periods. They also reached agreement on the terms of a specific issue order regulating foreign travel. They

both consider that these issues require to be regulated by the court given past difficulties and contentious motions enrolled shortly before planned holidays.

[9] The primary issue to be determined by the court is whether a greater level of shared care/shared residence is considered to be in the best interests of the children in circumstances where such an arrangement was recorded by the parties in the minute of agreement to be their shared aspiration. That aspiration was qualified by the need for improved communication. The parties' relationship lacks trust, respect, co-operation, child-centred communication and joint decision making. Each of the parties has a close bond with the children, cares for them well and meets their needs. They parent in parallel rather than jointly. The children understand this and are required to navigate it. In such circumstances is a greater degree of shared care in their best interests?

The legislative framework

[10] Both parties have parental rights and responsibilities in respect of M and R. The relevant parental responsibilities are set out in section 1 of the Children (Scotland) Act 1995 ("the 1995 Act"). The corresponding parental rights are listed in section 2 and include the right to have the child living with them or otherwise to regulate the child's residence and to control, direct or guide, in a manner appropriate to the stage of development of the child, the child's upbringing. In terms of section 2(2):

"where two or more persons have a parental right as respects a child, each of them may exercise that right without the consent of the other... unless any decree or deed conferring the right, or regulating its exercise, otherwise provides".

[11] Section 11(1) of the Act provides that the court, in circumstances such as those which arise in this case, may make orders in relation to parental responsibilities and parental rights. The order sought by the pursuer (and by the defender in terms of her *esto* position)

in this case is in terms of section 11(2)(c); namely, an order regulating the arrangements as to with whom; or if with different persons, alternately or periodically, with whom during what periods, a child under 16 years is to live (any such order known as a “residence order”).

[12] The test to be applied by the court where any order under section 11 is sought is found in section 11(7):

“...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 order unless it considers that it will 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.”

Also, in terms of section 11(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 cooperate with one another as respects matters affecting the child, the court shall consider whether it would be appropriate to make the order.”

[13] Article 12 of the UNCRC is to the effect that a child who is capable of forming his own views must be given the right to express those views freely in all matters affecting him, the views being given due weight in accordance with the age and maturity of the child (which is broadly what section 11(7)(b) of the 1995 Act provides). In its General Comment No 12 (2000 – The right of the child to be heard) – at paragraph 21, the UN Committee on the Rights of the Child emphasised that Article 12 imposes no age limit on the right of the child to express his views, and discouraged state parties from introducing age limits either in law or in practice which would restrict the child’s right to be heard in all matters affecting her or him. The general approach of the Scottish courts has been to look beyond the presumption

contained in section 6 of the 1995 Act to the effect that a child of 12 years or more shall be presumed to be of sufficient age and maturity to form a view, and to give appropriate weight to the expressed views of younger children; eg *LRK v AG* [2021] SAC (Civ) 1 which concerned views expressed by a 6 year old child.

[14] I was referred to the cases of *White v White* 2001 SC 689 and *NGDB v JEG* [2012] UKSC 293 to assist in interpretation of the statutory framework. In *White*, at paragraph 14, the need for the court to have regard to the welfare of the child as its paramount consideration is underlined. There is no legal onus on a party seeking an order but equally no presumption that an order should be made (paragraph 26). "It is a balancing exercise, weighing upon the welfare and interests of the child.". In *NGDB*, at paragraph 31, it is said:

"... The central issue in such a case is therefore the effect of the order upon the welfare of the child. In carrying out the duties imposed by section 11(7)(a), the court is required to have regard to a number of specified matters, including the need to protect the child from any abuse (defined as including conduct likely to give rise to distress), and the need for the child's parents to co-operate with one and other: section 11(7A)-(7E). In addition to the matters which bear directly upon the issues focussed in section 11(7)(a), such as the child's needs and any harm which the child is at risk of suffering, the court is also required to have regard to the views of the child, so far as those may be ascertainable: section 11(7)(b). Against that background, a judgment will most clearly address the central issue in the case if it focuses directly upon the factors which are relevant to the court's exercise of its discretion, rather than concentrating primarily upon the myriad questions of fact which may be in dispute, many of which may be peripheral to that central issue.."

Submissions

Pursuer

[15] The pursuer seeks a residence order providing that during school term time the children should reside with him on a 2-week cycle; in week one from Monday after school until Wednesday before school and in week two from Friday after school until Wednesday before school. This would represent an increase in the shared care arrangement which has

operated since March 2024 and result in an equal split of the boys' time between their parents' homes.

[16] The pursuer's college and work commitments enable him to be personally available to care for the boys after school on Monday and Tuesdays (rather than relying on a family member or school friend to assist). He is well placed to support the boys' extracurricular activities which he already attends each week on those evenings (coaching M's football team on Mondays).

[17] The pursuer is a loving parent who has a close bond with the children. The existing care arrangements are too rushed and do not permit sufficient family time, quality time or time for to him become involved in the boys' education and to help with their homework. It is in the children's best interests to spend a more equal amount of time with each parent.

[18] The children are mixed race. The pursuer is from a large African family. He has an important role to play as a father, male role model and as a black man in a predominantly white country. The children's racial and cultural heritage is an important part of their identity and upbringing. Relationships with their extended paternal family are in their best interests. A greater level of shared care would enable more focus on all these aspects.

[19] Whilst differences in parenting styles are acknowledged and parental communication had been frustrating and ineffective, the extent of this had been over-emphasised by the defender. Communication is a two-way street and the blame for difficulties should not be solely attributed to the pursuer. In any event, these issues should not be a barrier to a greater level of shared care.

[20] The pursuer acknowledged the terms of the child welfare report recording the children's recently expressed views. He had not influenced them. He does not know whether their views have been influenced. He thinks that the children will be happy with

the arrangements he proposes and that they may express this as something they think is fair, a concept of which they have a keen awareness.

[21] It is in the best interests of the children to have equal access to their two loving and supportive parents who can each contribute equally to their progress and development.

[22] The shared residence order sought by the pursuer would work on a settled basis for the foreseeable future avoiding the need for further court proceedings.

Defender

[23] The defender has been the children's primary carer throughout their lives. The *status quo* prevailing for the last 2 years is an arrangement whereby the boys spend 10 nights out of every 14 with the defender. Their main home is with her and that arrangement should remain in place and is best reflected in a residence order in favour of the defender and a contact order in favour of the pursuer. *Esto* the arrangement is reflected in a shared residence order, to which the defender has no strong objection, that order should reflect the interim arrangement currently in place. An increase in the number of nights which the boys spend with the pursuer during school term time is not in their best interests.

[24] Appropriate weight should be given to the clearly expressed views of the children, particularly M who is 10 years old. The children's expressed views are that they are content with the current arrangements and do not wish these to change.

[25] There is no evidence that the current arrangements are detrimental to the children's welfare.

[26] The pursuer's proposed shared care arrangement would require an increased level of communication, cooperation and flexibility with a willingness to work together which is presently lacking between the parties. There are significant difficulties with parental

communication, co-operation and joint decision making which make a shared care arrangement unrealistic, unworkable and not in the best interests of the children.

[27] The parties are engaged in parallel rather than co-operative coparenting. The pursuer lacks insight into why this is problematic and demonstrates no willingness to address it.

[28] The pursuer has been preoccupied with concerns about the defender's perceived shortcomings as a parent, particularly regarding the children's health and cleanliness.

He has avoided direct communication with the defender, instead putting the children in the middle or asking them to carry messages. He has undermined the defender and made unilateral decisions regarding various aspects of the children's care knowing that a different approach has been taken in the defender's home with no attempt to align the two or appreciation of the fact that this situation may be difficult for the children to navigate. The pursuer does not trust, respect or value the defender as a co-parent.

[29] The pursuer has a rigid, transactional approach to arrangements, focussing on his own perceptions of fairness rather than children's wishes or best interests.

[30] The court's focus requires to be on the children's best interests rather than reaching an arrangement which is fair to the pursuer. The level of communication and co-operation required for a shared care arrangement is absent. The current arrangements provide the children with stability, routine and continuity whilst allowing meaningful and regular contact with the pursuer.

[31] Difficulties with the implementation of an arrangement such as that proposed by the pursuer are readily foreseeable and are likely to result in further litigation in the early course.

Analysis and decision

[32] When considering whether or not to make a section 11 order, and if so, what order to make, the court must regard the welfare of the children concerned as its paramount consideration and shall not make any order unless it considers that it will be better for the children that the order be made than that none should be made.

[33] The children at the centre of this case, M and R, aged 10 and 6 are a credit to the parties. They are happy, healthy, bright and active boys who are thriving. They are also polite, respectful, thoughtful and kind. They have learned to manage a complicated and very busy weekly routine and the organisation of belongings and logistics required.

[34] It is evident that both parties adore the boys and have a close and loving relationship with them. It is clearly in the best interests of the children that those relationships are preserved and nurtured.

[35] The children have both Scottish and African heritage. It is in their best interests to understand and embrace both, and to benefit from close relationships with their extended families. I accepted the pursuer's evidence that he has an important part to play in guiding the boys in their biracial heritage and being a good role model for them.

[36] When applying the statutory test in section 11(7), the court is required to give the children an opportunity to indicate whether they wish to express views and if their views are expressed, to have regard to them taking account of the boys' age and maturity. The court has offered the children two opportunities to express their views: initially, in early March 2024 (per finding in fact 5/child welfare report 11 of process) prior to the interim order of 11 March 2024 being made and then again, in late 2025 (per finding in fact 11/child welfare report 15 of process) in the advance of the proof diet. The assessment of the experienced child welfare reporter, Mr Low, was that the children were able to formulate

and express views. When asked about whether there was anything that they would like to change about their current care arrangements, their spontaneous initial responses were “not really” from M and “no” from R. When pressed further it became apparent that M, in particular, was well aware of the pursuer’s objectives in these proceedings and he went on to say that an arrangement such as that craved by the pursuer would be “fairer”. It is noteworthy that both child welfare reporters considered it to be more likely than not that the pursuer had discussed matters with the children and that this may have influenced M’s views. Given M’s personality, as described not just by the parties but also by his teachers, it is entirely likely that he would seek to please his father and would try give the adults making decisions a “fair” answer to questions. I accept Mr Low’s assessment that weight can be accorded to the children’s initial negative responses to the question about whether they would like to change the current arrangements for their care in all the circumstances of this case.

[37] Both parties adore the children and prioritise their welfare. They are both able to meet the boys’ practical and emotional needs. At this juncture, neither suggest that the other has any serious deficits in their capacity to parent the children. Neither party seeks a sole residence order at this stage (albeit that regrettably, this was not apparent until the start of the proof diet). As is perhaps inevitable in a litigation of this nature, much of the evidence related to criticisms and perceived shortcomings of the parties as parents and a rehearsal of past conflicts with reference to exchanges text messages and emails. I have not considered it to be either helpful or productive to make detailed findings in fact about some of this evidence having in mind the *dicta* in *NGDB v JEG supra* at paragraph 31 that

“a judgment will most clearly address the central issue in the case if it focusses upon the factors which are relevant to the court’s exercise of its discretion, rather than

concentrating primarily on the myriad of questions of fact which may be in dispute, many of which may be peripheral to that central issue”.

Where I have made findings in fact in relation to such matters (21-28 inclusive), I have done so in the context of what I consider to be the central issue in this case namely, the difficulties which the parties have encountered and are likely to continue to encounter in co-operatively co-parenting the children with reference to the terms of section 11(7D) which requires the court when considering making an order, where in pursuance of the order two or more relevant persons would have to cooperate with one another as respects matters affecting the children, to consider whether it would be appropriate to make that order.

[38] This is not a case which turns on the reliability and credibility of the parties or their witnesses. I am satisfied that they did their best to tell the truth about the various issues raised and gave their evidence calmly, clearly and in a child-centred manner. It is to the parties’ credit that despite the obvious strain of this litigation and their different views on the children’s care arrangements, they both remained composed, respectful and reflective in their evidence. Given the lack of any in-person or oral communication between them in recent years, it might be cautiously hoped that listening to each other’s perspective in detailed evidence over several days with all the emotions which arose as result, may lead to a degree of insight and empathy which has thus far been elusive and may form a basis for improved communication in future. That is a bridge which still needs to be crossed and sadly, despite the input of the parties’ agents and attempts at mediation, remains a challenge.

[39] The parties met when they were both 18 and embarked upon a 20-year relationship. The pursuer is an outgoing, warm and assertive person. The defender is quieter, kind and sensitive. She values harmony and consensus. I make these observations as they have a

part to play in the situation which the parties now find themselves. The pursuer's sister and the defender's mother both confirmed my impression that the pursuer was the stronger character in the parties' relationship. It is likely that the defender deferred to the pursuer when living with him in a family unit. That dynamic changed when the parties separated and the defender began to quietly but firmly assert her independence. The parties encountered significant financial difficulties at the time of their separation as a result of which the pursuer was unable to secure his own accommodation and to exercise contact there for almost 2 years. Between autumn 2021 and autumn 2023 he largely exercised contact in the former family home. It was inevitable that tensions would arise. The pursuer's evidence exhibited a degree of resentment that he was able to spend significantly less time with the children than the defender following the separation. He is a devoted father. The children are central to his life. He has felt like a secondary parent and fears being marginalised. This fear has perhaps resulted in him asserting himself to an unreasonable extent. It is important to him to exercise his parental rights and responsibilities and to make decisions regarding the boys' welfare. He has found it difficult to follow the defender's lead on some of the issues which have arisen, preferring to simply compartmentalise his own home environment and to act independently when required. The pursuer is an able parent but a woeful co-parent.

[40] The pursuer has stated in terms that he neither respects nor trusts the defender as parent. His repeated, exaggerated and usually unfounded criticisms of her care of the children have impacted on her wellbeing, anxiety and stress levels. He fails to appreciate the destructive and undermining effect which such communication has on any possible child-centred communication or co-operative co-parenting. Unless these proceedings have

brought about some insight into that dynamic, sadly, it is more likely that not that pattern will continue in future.

[41] The pursuer has found communication with the defender to be challenging and stressful. His strategy for dealing with this has been to minimise and streamline communication to the exchange of essential information. He has made his unwillingness to discuss, compromise, seek consensus or mediate very clear. He refuses to speak to the defender at all and focusses on minimal communication by means of email or text.

[42] The pursuer seemingly places no value on shared parental values, approaches, routines and boundaries for the children. He fails to understand the challenges and stresses which the children face in navigating two completely different regimes and two parents who do not speak to each other. The children are left to either compartmentalise, carry messages or challenge the regime in the other home unsupported. Examples of tension points are evident in relation to the boys' personal hygiene, access to electronic devices and the online games which they are allowed to play (per findings in fact 24 – 26). This situation is not in the children's best interests and is likely to cause ever more complex issues as they mature (such as when they first ask for mobile phones). When challenged on this in cross-examination, the pursuer indicated a willingness to find a solution to the particular issue under discussion but no appreciation of the bigger picture. The individual issues are simply illustrative of a bigger problem.

[43] The true extent of that problem is most clearly illustrated when considering the evidence in relation to children's medical treatment (per finding per in fact 23). The pursuer has repeatedly demonstrated, over a period of several years firstly, that he does not trust the defender to seek appropriate medical advice and treatment for the boys, secondly, that he will not accept information the defender provides unless he has access to the source material

from the relevant professional, thirdly, that he will frequently apportion blame to the defender for the children's health problems and fourthly, that he has and is likely to continue to seek out his own advice/a second opinion and to act unilaterally with no appreciation of the value of a shared approach to healthcare across both households and joint decision making. At worst, this could place the children in a dangerous situation and at best, is likely to mean that their health needs are not met, prescribed medication is not consistently administered and that there is an unnecessary duplication of appointments/professional advice.

[44] Given the dispute between the parties in relation to the appropriate care arrangements for the children it is clearly better that a section 11 order is made than that none shall be made. It is undoubtedly in the best interests of the children to continue to have a close relationship with both parents. The parties each have much to offer the children as parents and as role models. They both offer a warm and comfortable home environment. The children consider that they have they have two homes and spend a significant amount of time in each home. I consider that this is best reflected in terms of a shared residence order. That simply records the reality of the arrangement and the children's own understanding of the situation.

[45] The parties are likely to continue to share parental rights and responsibilities in relation to the children for another decade. Neither seeks to deprive or suspend the other's parental rights. There is significant room for improvement in their joint exercise of those rights and responsibilities. The pursuer's approach is reflected in terms of section 2(2) of the 1995 Act:

“where two or more persons have a parental right as respects a child, each of them may exercise that right without the consent of the other... unless any decree or deed conferring the right, or regulating its exercise, otherwise provides”.

Such an approach results in a lack of coherence in many aspects of the children's care, to two different households with two different regimes, sets of boundaries and expectations.

Looking at this situation from the perspective of the boys and walking a mile in their shoes, it becomes readily apparent why this situation is far from ideal. They are left to either compartmentalise and keep secrets or to carry messages and challenge the parent with firmer boundaries. Unnecessary tensions, anxieties and divided loyalties are likely to arise. Navigating stressful transitions and having unnecessary responsibility for logistics, belongings and the sharing of information are also inevitable. The boys are 10 and 6. It is not in their best interests to traverse this potential minefield to any greater degree than they already do.

[46] The current arrangement provides for a term time arrangement whereby the children spend every Wednesday overnight with the pursuer, each alternate weekend, and also additional time at Monday evening football training and Tuesday evening martial arts classes. School holidays are shared and have now been agreed between the parties with the help of their agents and some input from the court. I am not persuaded that a greater level of shared residence is in the boys' best interests at this stage in the circumstances of this case. The evidence that such an order would be better for the children than that no such order is made is not persuasive. An arrangement whereby the children spend equal amounts of time with each parent is unlikely to operate in the children's best interests in circumstances where there is an absence of mutual respect, trust, child-centred communication and co-operation. It is to the parties' credit that they have managed to make the current arrangements work as well as they have. Any greater degree of shared residence may stretch the situation to breaking point, as inevitably there would be a greater need for day-to-day communication

over issues such as homework, logistics for the boys' activities and social lives. The court's focus is not on achieving fairness or parity between the parties but on the children's welfare. Until there is a shift in the parties' relationship resulting in genuine co-parenting rather than parallel parenting, it is not better for the children that a greater degree of shared residence is ordered than that no such order is made.

[47] Accordingly, I make a shared residence order as outlined. *Quoad ultra* the parties' remaining craves are dismissed. I also make *ex proprio motu* a specific issue order regarding foreign travel during school holidays (with the concurrence of the parties), it being better for the children that this is regulated than that no such order is made.

[48] At the conclusion of the diet of proof, I was asked by agents to issue this judgment and the related interlocutor in draft so that the complex arrangements for school holidays may be double checked with parties before finalisation. I issued the first draft of this judgment on 14 April 2026. Thereafter, a change in circumstances took place. The parties agreed that the boys required to move from the fee-paying independent school they attend to a state school. This change will happen in August 2026. I did not hear evidence about it. The change in term dates resulted in the need for further discussions between agents regarding holiday arrangements and a further hearing on supplementary submissions on 26 June. The revised holiday arrangements were largely agreed and are reflected in my interlocutor. I also heard submissions on the publication of this judgment and the issues which required to be addressed to minimise the risk of jigsaw identification. Those submissions are reflected in this final version of my judgment. In the intervening period the parties were also able to agree the issue of expenses.