OUTER HOUSE, COURT OF SESSION

[2026] CSOH 15

P1197/25

OPINION OF LORD BRAID

In the Petition of

X

Petitioner

for

Judicial Review of a decision of the children's hearing dated 18 September 2025 in respect of the petitioner's contact with his sister, Y

Petitioner: Byrne KC, McGowan; Drummond Miller LLP
Respondent: Moynihan KC; Anderson Strathern LLP
Interested party: Allison; Turcan Connell

27 February 2026

Introduction

[1] The importance of sibling contact where children are in care is well recognised. In many, perhaps most, cases the interests of siblings will coincide: it will be in the interests of all that they have the same level of contact with each other. The problem lying at the heart of this case is what happens when the interests of the siblings do not necessarily coincide; where it is in the interests of child A to have contact with child B, but not in the interests of child B to have contact with child A. Assuming both are the subject of a Compulsory Supervision Order (CSO), how are those competing interests to be reconciled? What

happens where the children's hearing for child A orders contact with child B, but the children's hearing for child B orders that there be no contact with child A?

[2] The petitioner, X, is a child, aged 17. In 2021 his siblings, including his sister, Y, now aged 7, were taken into care. In 2022, X too was taken into care. He is before the children's hearing in terms of the Children's Hearings (Scotland) Act 2011, and is subject to a CSO under that Act, such an order being necessary for his protection, guidance, treatment or control. One of the measures imposed by his CSO is a direction that contact between himself and Y is to be a minimum of once per month, supervised to the satisfaction of the social work department for the area in which they reside. Y is likewise the subject of a CSO, necessary for her protection, guidance, treatment or control. On 18 September 2025, the children's hearing in her case made a direction that Y should have only letterbox contact with X, supervised by the social work department and at Y's discretion. Thus, there are conflicting decisions of the children's hearing system.

[3] While the main issue before the court is whether the children's hearing of 18 September 2025 erred in law in its approach to contact, a peripheral issue is the correctness of paragraph 58 of Practice Direction 33 issued by the Principal Reporter, "Participation Rights and Legislative Changes in July 2021", which paragraph is in the following terms:

> "In making [a] decision about a contact direction, the children's hearing is required to apply the usual welfare principle in relation to the child who is the subject of the hearing, regarding the need to safeguard and promote the welfare of that child throughout the child's childhood as the paramount consideration. A contact direction should be made only if making the measure would be better for the child than not making the measure. The duty to consider whether to make a contact direction does not create a presumption that a contact direction should be made."

It is pertinent also to note the terms of paragraph 59 of the Practice Direction, which acknowledges that children's hearings' decisions may conflict (without suggesting how children's hearings might resolve the conflict):

> "It is possible that the hearing may make a contact direction that conflicts in some way with an order in relation to a sibling or a person with a sibling-type relationship. The reporter at the hearing should be aware of the terms of any existing contact direction affecting contact between the child and the individual and intervene to inform the hearing if it is not otherwise aware. However, it is for the hearing to decide what decision to make and it is not obliged to avoid any conflict. If the decision results in conflict between orders, it will be for the local authority to deal with the situation and may involve the local authority requiring a review of the other order."

[4] Although the petitioner was granted status as a "participation individual" in respect of children's hearing proceedings for review of Y's CSO, and his representative made submissions at the hearing on 18 September 2025 he has no right of appeal against the decision of that date. Instead, in this petition for judicial review he asserts that the children's hearing in Y's case fell into error in a number of respects, and he seeks the following orders (orders (a) and (b) being sought in the alternative):

a. declarator that it was unlawful and in breach of section 6(1) of the United Nations Convention on the Rights of the Child (Incorporation) Scotland Act 2024 for the children's hearing in Y's case to have failed to consider, as a primary consideration in its decision of 18 September 2025, how it might safeguard and promote the petitioner's welfare, insofar as the decision was about a matter relating to him as a child;

b. declarator that section 25 of the 2011 Act requires that in any decision about the petitioner's contact with Y, the children's hearing is required to regard the need to safeguard and promote the welfare of the petitioner throughout his

childhood as a paramount consideration, even if the children's hearing is convened in respect of Y's CSO.

c. declarator that paragraph 58 of the Principal Reporter's Practice Direction discloses an error of law insofar as it provides that the welfare principle should be applied "to the child who is the subject of the hearing".

d. reduction of the contact direction made on 18 September 2025.

The petition is opposed by the Principal Reporter (the respondent) (who, although not the decision-maker, appears as a contradictor to support the decision) and by the safeguarder appointed to Y by the children's hearing, who was the only interested party to lodge answers.

[5] There is no dispute that by virtue of Article 3 of the United Nations Convention on the Rights of the Child (UNCRC), the children's hearing of 18 September 2025 required, at the very least, to have regard to the petitioner's welfare as a primary consideration, although there is an issue as to whether or not it complied with that requirement. The main controversial issue of principle before the court is that raised by the second of the orders sought by the petitioner, namely, whether the sole child whose interests are to be regarded as paramount, in terms of section 25 of the 2011 Act (set out below at para [11], is the child who is the subject of the proceedings before the children's hearing; or whether, as the petitioner contends, the wording of section 25 is broad enough to subsume any other child who might be affected by the decision, such that the welfare of two (or more) children require to be regarded as the paramount consideration irrespective of which child the hearing is about. There is also an issue as to the competency of the petition, which raises the questions: (a) whether the petitioner has an alternative effective remedy, in the form of his right to request a review of his sister's CSO, bearing in mind that a review is now scheduled

for 5 March 2026, a matter of days after the date of this opinion; and (b) whether, in those circumstances, the petition is of academic interest only.

[6] For completeness, in order to ensure that the judicial review proceedings themselves were UNCRC compliant, I appointed the interested party as curator *ad litem* to Y to represent her interests and to obtain her views. It was agreed that, although party to the proceedings, she was the most appropriate person to fulfil that role, having already met Y in her role as safeguarder. Y's views in brief are that she would like to see the petitioner although not necessarily at the frequency he desires. The curator considers that some direct contact is in Y's best interests, although of course that is not the question before this court.

Chronology

[7] On 8 May 2025 a children's hearing was convened in respect of the petitioner to review his CSO which was otherwise due to expire. At section 4 of the record of proceedings, the issue of contact with Y was addressed. The hearing ordered that contact should be a minimum of once a month, the recorded reasoning being that the petitioner "cared for her [Y] whilst she was little and has a strong attachment with her…" There is no indication that any consideration was given to Y's welfare.

[8] Following that hearing, a children's hearing was convened in respect of Y on 18 September 2025. At section 7 of the record of the proceedings, it is stated that the hearing addressed the issue of contact with the petitioner and ordered: "Contact between the child and her sibling, [X], is to be letterbox contact only, supervised by Social Work and should be at [Y']s discretion". The narrative provides the reasoned basis for that decision:

> "There was an in-depth discussion regarding contact between [X] and [Y]. Through majority decision the panel decided that letterbox contact would be in the best interest of [Y]. It needs to be supervised by Social Work to ensure [Y] only receives

> the items when the time is right for her and she is stable emotionally. She has shown signs of emotional dysregulation recently both before and after contact. She has recently moved to a new placement with prospective adopters. It is important to safeguard this placement and [Y's] emotional and mental well-being. A period of stability in her new placement is needed. This is what is best for [Y] at this time. This can be reviewed in the future as the panel understand the importance of sibling contact."

Thus, Y was ordered to have no in-person contact with the petitioner, and to have restricted letterbox contact. There is no express indication that any consideration was given to the petitioner's welfare. A different chair convened the hearings for the petitioner and for Y. The petitioner was involved in Y's hearing only to the extent of his agent making submissions to the panel on contact, in pursuance of his right to participate in her hearing in terms of section 79 of the 2011 Act and rule 2A of the Children's Hearings (Scotland) Act 2011 (Rules of Procedure in Children's Hearings) Rules 2013/194 (Scottish SI) (neither of which it is necessary to refer to in detail for present purposes).

[9] Thus, the petitioner finds himself in the situation posited in the opening paragraph of this opinion, where there are two conflicting orders regulating contact, and despite the terms of the contact direction in his own order, he has had no contact with Y since September 2025. In addition to presenting this petition, he has sought a review of his sister's CSO, pursuant to section 132 of the 2011 Act, with a view to seeking a variation of the contact direction therein, so as to allow direct contact. Two review hearings were convened to take place on 8 January 2026, one for the petitioner and the other for Y. It was intended that the same panel would deal, consecutively, with both hearings and both children. The petitioner's review proceeded, whereas Y's was adjourned to 29 January 2026, on which date it was further adjourned, now being scheduled for 5 March 2026.

[10] At the petitioner's review of 8 January 2026 the children's hearing, as before, ordered in-person contact with Y specifically at a minimum of once per month, its reasons being set out at section 8 of the record of proceedings:

> "We discussed this point for a significant amount of time as it was the main point of this early review….After considering all points made the panel all agreed that regular contact would be good for [X] and [Y]. There was no suggestions directly that [X's] contact with [Y] caused her negative impact. In fact we only heard positive things about his demeanour his attitude and feelings towards his sister."

It may be observed that on this occasion, some regard was had to Y's welfare, without the hearing expressly stating what weight was attached to that.

The legal framework

The Children's Hearings (Scotland) Act 2011

[11] Sections 25 and 26 of the 2011 Act provide, insofar as material:

> **"25 Welfare of the child**
>
> (1) This section applies where by virtue of this Act a children's hearing, pre-hearing panel or court is coming to a decision about a matter relating to a child.
> (2) The children's hearing, pre-hearing panel or court is to regard the need to safeguard and promote the welfare of the child throughout the child's childhood as the paramount consideration**.**
> (3) The children's hearing, pre-hearing panel or court is to have regard to any risk of prejudice to the child's welfare that delay in proceedings would pose.
>
> **26 Decisions inconsistent with section 25**
>
> (1) A children's hearing or a court may make a decision that is inconsistent with the requirement imposed by section 25(2) if—
> (a) the children's hearing, pre-hearing panel or court considers that, for the purpose of protecting members of the public from serious harm (whether physical or not), it is necessary that the decision be made, and
> (b) in coming to the decision, the children's hearing, pre-hearing panel or court complies with subsection (2).
>
> (2) The children's hearing, pre-hearing panel or court is to regard the need to safeguard and promote the welfare of the child throughout the child's

childhood as a primary consideration rather than the paramount consideration."

[12] Section 29A provides, insofar as material:

"**29A.— Duty to consider including contact direction**

(1) A children's hearing must, when making, varying or continuing a compulsory supervision order in relation to a child, consider whether to include in the order a measure of the type mentioned in section 83(2)(g).

...

(3) In considering whether to include a measure of the type mentioned in section 83(2)(g), the children's hearing ... must in particular consider the inclusion of a measure regulating contact between the child and any person mentioned in subsection (4) with whom the child does not reside.

(4) The persons referred to in subsection (3) are—
...
(b) a sibling of the child,
...

(5) For the purposes of subsection (4), two people are siblings if they have at least one parent in common."

[13] Section 83 provides, insofar as material:

"**83 Meaning of 'compulsory supervision order'**

(1) In this Act, 'compulsory supervision order', in relation to a child, means an order—
(a) including any of the measures mentioned in subsection (2),
(b) specifying a local authority which is to be responsible for giving effect to the measures included in the order (the 'implementation authority'), and
(c) having effect for the relevant period.

(2) The measures are—
(a) a requirement that the child reside at a specified place,
(b) a direction authorising the person who is in charge of a place specified under paragraph (a) to restrict the child's liberty to the extent that the person considers appropriate having regard to the measures included in the order,
(c) a prohibition on the disclosure (whether directly or indirectly) of a place specified under paragraph (a),
(d) a movement restriction condition,
(e) a secure accommodation authorisation,

(f) subject to section 186, a requirement that the implementation authority arrange—
(i) a specified medical or other examination of the child, or
(ii) specified medical or other treatment for the child,
(g) a direction regulating contact between the child and a specified person or class of person,
(h) a requirement that the child comply with any other specified condition,
(i) a requirement that the implementation authority carry out specified duties in relation to the child."

[14] Section 132 provides, insofar as material:

"**132 Right to require review: child, relevant person and person afforded opportunity to participate**

(1) This section applies where a compulsory supervision order is in force in relation to a child.

...

(3A) An individual who is entitled to do so by subsection (6) may by giving notice to the Principal Reporter require a review of the order.

(4) The order may not be reviewed—
(a) during the period of 3 months beginning with the day on which the order is made,
(b) if the order is continued or varied, during the period of 3 months beginning with the day on which it is continued or varied.

...

(6) An individual is entitled to require a review under subsection (3A) if—
(a) the Principal Reporter was satisfied at the relevant time, or
(b) a pre-hearing panel or children's hearing determined, that the individual met the criteria to be afforded an opportunity to participate in relation to the children's hearing that most recently made a decision in respect of the order (whether that was a decision to make, vary or continue it).

(7) Where a children's hearing is arranged as a result (solely or partly) of an individual requiring a review under subsection (3A), the individual is to be treated as an individual whom a pre-hearing panel has determined meets the criteria to be afforded an opportunity to participate in relation to the children's hearing.

(8) For the purposes of subsections (6) and (7)—
(a) 'the criteria to be afforded an opportunity to participate' means the criteria specified in rules under section 177 to be afforded the rights mentioned in section 79(5ZA) in relation to a children's hearing..."

[15] Where a review is required or initiated by section 132, the Principal Reporter is under a duty to arrange a children's hearing to review the CSO: section 137. At the review hearing, the children' hearing may vary the CSO, but only if satisfied that it is necessary to do so for the protection, guidance, treatment or control of the child: section 138(3)(b), read with section 138(4). In deciding whether to exercise that power, the hearing must consider whether to require the Principal Reporter to obtain any report which it considers relevant to any matter to be determined at the hearing (section 138(3A).

UNCRC (Incorporation) Scotland Act 2024

[16] Section 4 of the UNCRC (Incorporation) Scotland Act 2024, insofar as material, provides:

> "4 **Interpretation of the UNCRC requirements**
>
> (1) A court or tribunal which is determining a question in connection with the UNCRC requirements which has arisen in proceedings before it may take into account the things mentioned in subsection (2) so far as it is relevant to the interpretation of the UNCRC requirements in those proceedings.
>
> (2) The things are—
> ...
> (c) General Comments (whenever prepared),
>
> (3) In subsection (2)—
> ...
> 'General Comments' means comments prepared by the United Nations Committee on the Rights of the Child under rule 77 of its rules of procedure..."

[17] Section 6 of that Act provides, insofar as material:

> "**6 Acts of public authorities to be compatible with the UNCRC requirements**
>
> (1) It is unlawful ... for a public authority to act, or fail to act, in connection with a relevant function in a way which is incompatible with the UNCRC requirements.

UNCRC

[18] Article 3 of the UNCRC provides, insofar as material:

> "1. In all actions concerning children, whether undertaken by public or private social welfare institutions, courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration".

[19] Article 12 provides:

> "1. States Parties shall assure to the child who is capable of forming his or her own views the right to express those views freely in all matters affecting the child, the views of the child being given due weight in accordance with the age and maturity of the child.
>
> 2. For this purpose, the child shall in particular be provided the opportunity to be heard in any judicial and administrative proceedings affecting the child, either directly, or through a representative or an appropriate body, in a manner consistent with the procedural rules of national law."

UNCRC Committee on the Rights of Children General Comment No 14 (2013)

[20] The UNCRC Committee on the Rights of Children General Comment No 14 (2013) on the right of the child to have his or her best interests taken as a primary consideration, which is an interpretative guide by virtue of section 4 of the 2024 Act, contains the following:

> 6. The Committee underlines that the child's best interests is a threefold concept:
>
> (a) A substantive right: The right of the child to have his or her best interests assessed and taken as a primary consideration when different interests are being considered in order to reach a decision on the issue at stake, and the guarantee that this right will be implemented whenever a decision is to be made concerning a child, a group of identified or unidentified children or children in general. Article 3, paragraph 1, creates an intrinsic obligation for States, is directly applicable (self-executing) and can be invoked before a court.
>
> (b) A fundamental, interpretative legal principle: If a legal provision is open to more than one interpretation, the interpretation which most effectively serves the child's best interests should be chosen. The rights enshrined in the Convention and its Optional Protocols provide the framework for interpretation.

(c) A rule of procedure: Whenever a decision is to be made that will affect a specific child, an identified group of children or children in general, the decision-making process must include an evaluation of the possible impact (positive or negative) of the decision on the child or children concerned. Assessing and determining the best interests of the child require procedural guarantees. Furthermore, the justification of a decision must show that the right has been explicitly taken into account. In this regard, States parties shall explain how the right has been respected in the decision, that is, what has been considered to be in the child's best interests; what criteria it is based on; and how the child's interests have been weighed against other considerations, be they broad issues of policy or individual cases.

4. 'Shall be a primary consideration'

36. The best interests of a child shall be a primary consideration in the adoption of all measures of implementation. The words 'shall be' place a strong legal obligation on States and mean that States may not exercise discretion as to whether children's best interests are to be assessed and ascribed the proper weight as a primary consideration in any action undertaken.

37. The expression 'primary consideration' means that the child's best interests may not be considered on the same level as all other considerations. This strong position is justified by the special situation of the child: dependency, maturity, legal status and, often, voicelessness. Children have less possibility than adults to make a strong case for their own interests and those involved in decisions affecting them must be explicitly aware of their interests. If the interests of children are not highlighted, they tend to be overlooked.

38. In respect of adoption (art. 21), the right of best interests is further strengthened; it is not simply to be 'a primary consideration' but 'the paramount consideration'. Indeed, the best interests of the child are to be the determining factor when taking a decision on adoption, but also on other issues.

39. However, since article 3, paragraph 1, covers a wide range of situations, the Committee recognizes the need for a degree of flexibility in its application. The best interests of the child – once assessed and determined – might conflict with other interests or rights (e.g. of other children, the public, parents, etc.). Potential conflicts between the best interests of a child, considered individually, and those of a group of children or children in general have to be resolved on a case-by-case basis, carefully balancing the interests of all parties and finding a suitable compromise. The same must be done if the rights of other persons are in conflict with the child's best interests. If harmonization is not possible, authorities and decision-makers will have to analyse and weigh the rights of all those concerned, bearing in mind that the right of the child to have his or her best interests taken as a primary consideration means that the child's interests have high priority and not just one of several considerations. Therefore, a larger weight must be attached to what serves the child best.

40. Viewing the best interests of the child as 'primary' requires a consciousness about the place that children's interests must occupy in all actions and a willingness to give priority to those interests in all circumstances, but especially when an action has an undeniable impact on the children concerned."

Human Rights Act 1998

[21] Section 3 of the Human Rights Act 1998 provides:

"**3.— Interpretation of legislation.**

(1) So far as it is possible to do so, primary legislation and subordinate legislation must be read and given effect in a way which is compatible with the Convention rights.

(2) This section—
(a) applies to primary legislation and subordinate legislation whenever enacted;
(b) does not affect the validity, continuing operation or enforcement of any incompatible primary legislation; and
(c) does not affect the validity, continuing operation or enforcement of any incompatible subordinate legislation if (disregarding any possibility of revocation) primary legislation prevents removal of the incompatibility."

[22] Section 6(1) of the 1998 Act provides that it is unlawful for a public authority to act in a way which is incompatible with a Convention right. Section 6(3) provides that "public authority" includes a court or tribunal.

ECHR

[23] Article 8 of ECHR, Right to respect for private and family life, provides:

"1. Everyone has the right to respect for his private and family life, his home and his correspondence.

2. There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."

Submissions

Petitioner

Meaning of section 25 of the 2011 Act

[24] Counsel for the petitioner submitted that the reference to "child" in section 25 must be read as meaning any child in respect of whom the children's hearing was coming to a decision, which in this case included not only Y, but the petitioner. The following principles of statutory interpretation ought to be applied by the court in construing section 25:

i) The court's task is to ascertain the meaning of the words used in a statute in the light of their context and the purpose of the statutory provision (*Re JR222's application for Judicial Review* [2024] 1 W.L.R. 4877, at [73]).

ii) The court must also, within the permissible bounds of interpretation, give effect to Parliament's purpose. Controversial provisions should be read in the context of the statute as a whole, and the statute as a whole should be read in the historical context of the situation which led to its enactment: *R (Quintavalle)* v *Secretary of State for Health* [2003] UKHL 13.

iii) Where two constructions of the legislation are possible, that which supports the legislative intention ought to be followed (*Nokes* v *Doncaster Amalgamated Collieries Ltd* [1940] A.C. 1014 at 1022).

iv) The court ought to avoid a construction which produces absurd, impracticable, inconvenient, anomalous or illogical results (*R* v *McCool* [2018] 1 W.L.R. 2431, at [23] and [24]).

v) There is a long-standing presumption that legislation is not intended to place the United Kingdom in breach of its international obligations. Those

international obligations include those arising under the ECHR and the UNCRC: *S* v *L* 2013 UKSC 20 per Lord Reed at [16] and [46].

vi) When an issue arises as to the compatibility of legislation with the ECHR or UNCRC, it is necessary to decide in the first place what the legislation means, applying ordinary principles of statutory interpretation: *S* v *L* 2013 UKSC 20 per Lord Reed at [16].

vii) There is an interpretative obligation arising under section 4 of UNCRC and section 3 of the Human Rights Act 1998 which requires legislation to be read in accordance with the UNCRC and ECHR respectively.

[25] Applying those principles, on a literal interpretation of section 25, the matter before the children's hearing was one "relating to" two children: the petitioner and Y. There was nothing in the Act to restrict the application of section 25 only to children who were the subject of the CSO being reviewed. Rather, the reference to 'a' child in subsection (1) denoted a non-specific child, or class of children. That was the gateway to subsection (2), in which "a" child became "the" child whose welfare had to be treated as a paramount consideration. That was confirmed by the requirement that the matter before the hearing need only be one 'relating to' a child, which merely required a connection, although not necessarily a close one, between the decision and a child (*cf Lewisham LBC* v *Malcolm* [2008] 1 AC 1399). Section 25 was effect-driven, rather than driven by the form of the procedure. It did not demand that "the" child must be the child to whom the hearing related. To construe the provision in that way meant that the decision reached turned on the arbitrary feature of which child's name happened to be on the door of the hearing rather than the substantive effect of the decision on the children concerned. There was nothing anomalous about the court having to regard the interests of more than one child as paramount: *M* v *M* 2012 SLT

428 at [9], where the court referred to the "welfare and best interests of the child *or children*" and [53] where it was said that "the welfare of *the children* must at all times be the paramount consideration" [emphasis added]. That case showed that there was no difficulty in treating the interests of children as a class as paramount.

[26] That the literal interpretation was correct could be confirmed by having regard to statutory context, the rule against absurdity, statutory purpose and the interpretative obligations of the court. The 2011 Act and 2013 regulations permitted the petitioner to participate in the decision-making of the panel dealing with Y. It was apparent from the context of the Act that he was a person entitled to contact and to request a decision about a matter relating to him. Where he was both a sibling and a child, then any determination of the panel about his contact with another child was a decision about a matter relating to a child. The court could also have regard to the history of a statute in the process of decision making. Section 25 was a statutory restatement of section 16(1) of the Children (Scotland) Act 1995, which was in the following terms:

> "(1) Where under or by virtue of this Part of this Act, a children's hearing decide, or a court determines, any matter with respect to a child the welfare of that child throughout his childhood shall be their or its paramount consideration."

That section was not designed to be specific to one child.

[27] The petitioner's proposed analysis gave rise to no absurdity: it would result in a situation where the petitioner's welfare was taken into account in a manner co-equal to that of Y, both being children whose interests were affected, irrespective of which child the hearing happened to be about. Conversely, the children's hearing's analysis would arbitrarily peril the rights of a child purely on a matter of form, with no substantive justification, especially when both were subject to a CSO. No child's rights were more paramount than those of another: from a Strasbourg viewpoint, the petitioner's Article 8

rights were as much engaged as Y's: *cf Beoku-Betts* v *Secretary of State* [2008] 4 All ER 1146. The result of the decision of 18 September 2025 was that there were two conflicting orders regarding contact, which was capricious, arbitrary, unforeseeable and irrational and therefore not in accordance with law: (*R (T)* v *Chief Constable of Greater Manchester Police* [2015] AC 49, paragraphs 30 and 125; *AB* v *Lord Advocate* 2017 SC (UKSC) 101, paragraphs 24 to 27). Furthermore, the hearing's approach did not achieve proportionality, because it arbitrarily subordinated the petitioner's Article 8 rights below the paramountcy of his sister's without serving any legitimate aim. The respondent's approach therefore violated Article 8 ECHR under reference to the four-stage approach in assessing proportionality, because: (a) there was no justification to merit negating one child's interests over another; (b) a less intrusive measure would be to assess both children together and give their interests paramountcy; and (c) negating one child over another did not strike a reasonable balance.

[28] As regards purpose, the purpose of the 2011 Act was to provide an accessible form of decision-making for children. The legislative intention (as explained by the Policy Memorandum) was that the system had the child's interests as its paramount consideration and that children should have their say on issues which affect them by having their views heard. The petitioner did have his say at the hearing on 18 September 2025 and his welfare and best interests were present for the panel's consideration. If the purpose of the legislation was to promote the welfare principle so far as possible, then it did not serve that purpose to syphon off consideration of the rights of each child into separate self-contained forums where a question such as contact had a direct bearing on the rights of each of Y and the petitioner. The children's hearing's practice of issuing conflicting orders did not improve efficiency. The petitioner's proposed interpretation would serve the purpose of the

legislation by promoting children's rights. Finally, as regards interpretive obligation, it arose by virtue of section 3(1) of the 1998 Act and section 4(1) of the 2024 Act. A reading of section 25(1) in light of the UNCRC requirements and the ECHR would produce the result that any panel ought to take the best interests of any child into account as a paramount consideration when making a decision which related to him or her.

Error in law

[29] It followed from the foregoing that the children's hearing of 18 September 2025 had erred in not treating the petitioner's welfare as a paramount consideration. That subordination of the petitioner's interests was arbitrary, which was the antithesis of legality: (*R (Gillan)* v *Commissioner of the Metropolitan Police* [2006] UKHL 12; [2006] 2 AC 307, para [34]). Even if that were incorrect, the children's hearing must nonetheless act in accordance with the 2024 Act section 6(1) and schedule 1 (Article 3(1)) and if the petitioner's welfare was not a paramount consideration, it was a primary one. There was no proportionality test set out in the 2024 Act, or in respect of Articles 3(1), 5, 8 and 20. The rights were absolute. If proportionality was the approach, the children's hearing failed to conduct a balancing exercise or to have regard to less intrusive measures: *R (Friends of Antique Cultural Food and Rural Affairs)* [2020] EWCA Civ 649*; Bank Mellat* v *HM Treasury* (No. 2) 2015 AC 700 per Lord Reed at page 791. The record of the hearing on 18 September 2025 revealed that no consideration was given to the petitioner's position. An "in-depth" discussion regarding contact between the petitioner and Y was insufficient, because it appeared to have been only about whether contact was in the best interests of Y. While it was accepted that no submissions were made about UNCRC by the petitioner's representative, that did not absolve the children's hearing of its duty to have regard to the

petitioner's welfare as a primary consideration. The UNCRC Committee's General Comments, 6(c), underlined that the child's best interests was a threefold concept, one of which was the procedural right, not only to have that child's interests evaluated in any decision which affected him or her, but also to have a decision that showed that the right had been explicitly taken into account.

[30] In any event, the decision was an interference with the petitioner's rights under the ECHR. The children's hearing had failed to discharge its positive obligation to promote family life between siblings and when promoting family life to have regard to the best interests of the child(ren): *ABC* v. *Principal Reporter* 2020 SC (UKSC) 47, paras [29] and [46]. The state, including the children's hearing, must not cut off family relations except in very exceptional circumstances; everything must be done to preserve personal relations and when appropriate rebuild the family; family unity and reunification in the event of separation were inherent considerations in Article 8 and the state must take active measures to facilitate contact: *Strand-Loben* v *Norway* (2020) 70 EHRR 14, paragraph 208 to 211.

Competence/practical utility

[31] Section 132 of the 2011 Act, which provided for review of a CSO, did not provide an effective remedy. The review could not hold a previous decision to have been wrongly made. The classical alternative remedy was one within a vertical structure: to a body sitting between the decision-maker and the court: *cf Bridgeport Estates Ltd* v *Highland Council* 2025 SLT 1120 and the authorities referred to therein. The right of review under the 2011 Act sat on a horizontal plane, namely to the same body which had made the original decision. The fact that Parliament had conferred a right of appeal on certain persons (of whom the petitioner was not one) showed that it did not consider that the right of review was an

effective remedy. Further, the facts of this case had shown that the review procedure did *not* provide an effective remedy, since no review had in fact yet taken place, having been adjourned for a variety of reasons. There was nothing in section 132 to suggest that it was intended to oust the jurisdiction of the court. The petitioner could find himself in a revolving door of flawed decisions if he were not able to invoke the court's supervisory jurisdiction. The Court of Session was the appropriate, indeed only, forum which could decide the crisp question of law at issue: *cf R(Business Energy Solutions Ltd)* v *Preston Crown Court* [2018] 1 WLR 4887. There was a strong air of unreality about raising the petitioner's arguments before the children's hearing, a non-legally qualified body: *cf R (Tucker)* v *London Borough of Sutton* 40 BMLR 137, admittedly an English case where the approach to alternative remedy was different, but where the court, in allowing judicial review, had regarded as highly persuasive the fact that the alternative remedy would involve points of law to be argued before a non-qualified body. The fact that the point in issue may affect a large number of people beyond the petitioner and Y, and that a speedy decision was required also pointed towards judicial review being a competent remedy: *Watt* v *Strathclyde Council* 1992 SLT 324, LP Hope 329 F to I, Lord Clyde at 332 I [albeit the issue in that case was whether judicial review was competent where the petitioners also had a contractual remedy available to them, not the situation here]. That case was cited by *Clyde and Edwards,* Judicial Review (1st Edn) at 12.18 in support of the proposition that where the decision is of general effect, judicial review may be competent. It was also stated in *Clyde and Edwards*, at 12.19, that the jurisdiction of the court was not ousted where the statutory means for redress were optional, as here, rather than mandatory. As regards the need for a remedy, the petitioner had an interest in sweeping the decision of 18 September 2025 away. The normal remedy was to reduce a decision of a public authority where it was unlawful: *Greenpeace*

Ltd v *Advocate General for Scotland* 2025 SLT 303, Lord Ericht at [90] [although see also para [92], where Lord Ericht referred to the dictum of Lord President Rodger in *King* v *East Ayrshire Council* at p 194C to the effect that even where a court is satisfied that an administrative body has erred in law in reaching a decision, it is not bound to reduce that decision, and in particular it was relevant to consider that practical effect reduction would achieve]. Here, there would be practical effect in reducing the decision insofar as it related to contact, because the petitioner would be entitled to ask the social work department to implement the contact direction in his own case which would be the only contact direction in force. As for the declarators sought, they were not academic. The petitioner and others who might be affected were entitled to know how the law fell to be interpreted. The petitioner was entitled to know whether the rights under section 25 and Article 3 of UNCRC applied to him. Similarly, if the Principal Reporter's practice direction contained an error of law, that error should be corrected by the court. As it stood, it gave rise to a risk that a reporter would give incorrect advice to a children's hearing.

Respondent

[32] Senior counsel for the respondent moved the court to refuse the petition, on the ground either that it was incompetent, or that it was irrelevant, or that the children's hearing had not erred. The petition served no practical purpose because, whether it was granted or not, the review of Y's CSO would proceed on 5 March 2026 and would be unaffected by whatever decision the court reached: nothing the court ordered would or could result in the outcome which the petitioner desired, which was contact with Y. Further, the court should not reach a decision as to the correct interpretation of section 25 in circumstances where, as the petitioner accepted, that issue had not previously been argued before the children's

hearing, the expert statutory tribunal charged with taking a decision in relation to the terms of Y's CSO and what sibling contact measure there should be, and the court did not have the benefit of its view on the matter. It was incompetent for the same argument to be pursued simultaneously before the children's hearing and this court on judicial review. As a matter of judicial comity this court ought to afford the children's hearing an opportunity to consider the arguments and to reach its own conclusion.

[33] Further still, it ultimately was nothing to the point whether the petitioner's welfare required to be taken into account as a paramount, or as a primary, consideration: in either case, a balance would require to be struck between what his welfare, and that of Y, demanded, and that was so irrespective of which CSO was under consideration. An analogy could be drawn with the approach in an ordinary civil case to onus of proof. Onus seldom mattered and the expectation was that the judge will determine the case on the evidence that had been led: *SSE Generation* v *Hochtief* 2018 SLT 579 at [273] (LP Carloway, who dissented in the result but spoke for the whole court on this point). It would be open to a children's hearing to conclude that it did not matter which child's interest was "paramount" in terms of section 25(2) and which child's interest was "primary" in terms of Article 3, UNCRC, if, for example, the evidence pointed to an overwhelming detriment to one of the children.

Interpretation of section 25

[34] Although the respondent professed himself reluctant to advance a view as to the correct interpretation of section 25 before the children's hearing had considered the competing arguments (although paragraph 58 of Practice Direction 33 might suggest that ship has already sailed) *quantum valeat*, senior counsel for the respondent submitted that the

petition proceeded on a misreading of the 2011 Act. Although section 25(1) used the indefinite article, 'a' child, it was clear from the terms of the Act as a whole that the (only) child in contemplation in section 25(2) was the child the subject of the children's hearing and, in this case, at the hearing on 18 September 2025, that was Y. While it was acknowledged that certain sections of the 2011 Act (senior counsel for the respondent referred to section 7A(2), but senior counsel for the petitioner, in response, cited several other examples which could not be gainsaid) explicitly refer to "the child to whom the hearing relates", there was otherwise a "rhythm" in the drafting of the Act whereby in the first part of a section, there was a reference to "a" child, but the remainder of the section made clear that it was concerned with "the" child to whom the hearing related. Section 25 was one example, but another was section 29A, which dealt with contact, and in which it was clear that the child referred to was the child to whom the CSO applied. Another consideration which supported that conclusion was that the word "paramount" assumed one consideration superior to all others. Article 3 of the UNCRC referred to a "primary" consideration and there may be several of them but, in the event of conflict, section 25(2) indicated which one was paramount. That interpretation was supported by a consideration of the Act as a whole. The whole focus of a children's hearing was to provide protection, guidance, treatment or control to a child. Where the reporter considered that a child may be in need of same, the child was referred to the children's hearing, and where a ground of referral was made out, the hearing then considered whether it was necessary to make a compulsory supervision order in relation to that child. The *de quo* of the whole process was a child who may need protection, guidance, treatment or control and that was the child whose welfare must be treated as a paramount consideration. Finally, the respondent's proposed definition of section 25 was supported by an *obiter* observation by

Baroness Hale of Richmond and Lord Hodge in *ABC* v *Principal Reporter* 2020 SC (UKSC) 47 at para [13]:

> "And whenever they come to any decision about a child, the children's hearing, a pre-hearing panel, and a court must regard the need to safeguard and promote the welfare of the child throughout the child's childhood as the paramount consideration (sec 25(2)). The primary focus of the children's hearing must therefore be on the welfare of the child who is the subject of the proceedings, although it is, of course, the duty of the hearing to act compatibly with the Convention rights."

Error in law?

[35] Senior counsel for the respondent staunchly and robustly defended the reasons given by the children's hearing for suspending (as he put it) Y's direct contact with the petitioner on 18 September 2025 [although neither the decision nor the reasoning states in terms that it is a mere suspension]. The proper reading of the decision was that the children's hearing had given paramount consideration to the transient interests of Y at that time, being conscious that it was taking a temporary decision that could be reviewed in three months. Y needed a period of stability while she adapted to her recent move to a new home, which might change with the passage of time. Read in conjunction with decision 5 (that Y's address not be disclosed), the hearing had plainly decided what was best for Y at that particular time. That was a justifiable balance of the respective interests of the two children at that time. It did not mean that contact could not be reinstated. There was no relevant basis to infer that the argument now advanced would have had any practical impact on that decision. There had been no error. A children's hearing must give consideration to contact: that was underpinned by the recognition in *ABC* v *Principal Reporter*, above, at para. [20], that contact was mutually beneficial for all family members and not just the child who was the subject of the CSO proceedings. Insofar as those family members were themselves children they benefited from the protections in the UNCRC, both procedurally and

substantively. The substantive provision was in Article 3(1): the best interests of a child were "a primary consideration". That applied equally to the petitioner and to Y, irrespective of which CSO was being reviewed, which reflected that contact was potentially beneficial to each of them. Insofar as contact may be beneficial to the petitioner, that was a primary consideration, although not the only one. Section 25(2) went further and specified the "paramount" consideration, which was the welfare of the child who was the subject of the CSO. Thus, section 25(2) told us that where there were two conflicting "primary" considerations, precedence could be given to one of them. On that interpretation the petitioner's interests would be paramount in relation to his CSO and his sister's interests would be paramount in hers. That said, to apply section 25(2) mechanistically would risk two conflicting CSOs resulting in a stalemate. A balance must therefore be struck, irrespective of which child's CSO was being reviewed. In carrying out that balancing exercise, each child had the right under UNCRC Article 3 to have their interest treated as being at least a primary consideration. While one child's interests were paramount under section 25(2), that child's interests included fostering a good family relationship where possible, and it might not be in one child's interests to insist that contact with a sibling takes place where that contact would be harmful to the sibling.

Competency Remedy

[36] The petition was incompetent because the petitioner had an alternative effective remedy, viz his right to request a review under section 132 of the 2011 Act, as he had done. That process was ongoing and should be allowed to run its course. The petitioner was not stuck in a "doom loop", where the same wrong decision would necessarily be reached over and over. Even if the decision of 18 September 2025 was in error through a failure to

consider Article 3 of UNCRC, there was no decision which barred a full and proper analysis of this issue at the review hearing, where the question of contact had to be considered *de novo* by the hearing. If inconsistent decisions on contact were reached by different hearings separately considering the petitioner and Y, the remedy was for the social work department to seek a review of one of the orders. Even if the remedy of reduction might otherwise have been appropriate, reduction should not be granted if matters had moved on since the decision complained of: *R (Edwards)* v *Environment Agency* [2008] Env LR 705. Matters had moved on in the present case, or would have done by 5 March 2026. Reduction should therefore be refused, even if a declarator were granted. A further reason why reduction was inappropriate was that it would lead to a difficulty in that the only contact measure then in force would be that in the petitioner's CSO, allowing contact once per month. Where review of Y's CSO was ongoing, it would be entirely inappropriate for the court to create a temporary vacuum in that way. Y was not represented at the petitioner's review hearing. The lawfulness of the decision reached at that hearing would be questionable on the basis of breach of natural justice if it were now also to regulate Y's position by default. A partial reduction of Y's CSO creating a vacuum to be filled by the petitioner's CSO would itself be a breach of section 6(1) of the 2024 Act and Article 3(1) of UNCRC. This court, when considering the petitioner's CSO, must regard the best interests of Y as a primary consideration, but this court could not know what was in her interests. The same point could be put in more traditional terms. The purpose of judicial review is to promote good administration. A remedy may be refused if it would prejudice good administration: *King* v *East Ayrshire Council*, above, applied in *A* v *Principal Reporter* 2025 SC 262 at [136].

Interested party

The interpretation of section 25

[37] Counsel for the interested party supported the respondent's position insofar as it was argued that the petition was incompetent, but, in part, supported the merits of the petition were it held to be competent. Counsel submitted that applying section 6(1) of the 2024 Act, and Article 3 of the UNCRC, the children's hearing had fallen into error by failing to have regard to the welfare of the petitioner as a primary consideration (or indeed, at all). The petitioner's proposed interpretation of section 25, was not the proper reading of that section, was unnecessary and would be unworkable. Though superficially attractive on a literal reading, it made no sense when viewed in the context of the 2011 Act as a whole. There was a raft of provisions to be worked through before a child fell within the jurisdiction of a children's hearing. It was that child whom the hearing had satisfied itself was in need of a particular compulsory measure. It must therefore necessarily be that child's welfare that was the paramount consideration when deciding upon that measure. It would be anomalous for section 25, distinct from the entire focus and structure of the 2011 Act, to introduce the welfare of other children as a consideration of equal importance to the welfare of that child. The petitioner's construction was not necessary either in terms of UNCRC, ECHR or otherwise to ensure justice was done for the petitioner, since his welfare was not simply a mandatory consideration, but a primary one. An interpretation which identified both the petitioner's and Y's welfare as mandatory considerations attracting special importance, but which discriminated between the level of importance to be attached in situations where their respective welfare may push or pull in different directions, was entirely logical. It was also consistent with the intention and anticipation of UNCRC Article 3. Further, the petitioner's construction was unworkable in two respects. First, as a

matter of ordinary language there could not be more than one paramount consideration; such a consideration was one which was capable of being determinative if it fell into conflict with other considerations. If children's interests pulled in different directions, a paramount interest would allow the one to outweigh the other. Y's welfare was before the children's hearing in a far broader context than what contact there should be with the petitioner; the hearing had to make a number of inter-connected decisions concerning her, in which her welfare was the paramount consideration. A related issue was that the petitioner might be affected by other aspects of the decision beyond the order for contact; if the petitioner's proposed interpretation were correct, was his welfare also to be treated as paramount in a question, say, as to whether a CSO should be made at all? Second, an unfortunate side effect of the petitioner's interpretation was that a children's hearing making a decision about a subject child and a sibling's contact would be required to treat both of equal importance, whilst inevitably having different standards and levels of information about them, and having no automatic means to secure information about them.

Competency

[38] While nominally opposed to the competency of the petition, counsel modified his position in the course of the hearing. While he opposed reduction, he conceded that the court might take the view that there was some practical utility in pronouncing a declarator that the children's hearing had gone wrong, which might be of value to all parties, and the panel members, in advance of the next review.

Decision

Competency

[39] The principal objection to the competency of the petition is that it is said that the petitioner has an alternative effective remedy in the form of his right to seek a review under section 132 of the 2011 Act, once three months have elapsed from the date of the decision. There are three short answers to that. The first is that Parliament clearly did not think that the right to seek a review was an adequate remedy, since other categories of person, unlike the petitioner, *do* have a right of appeal against a decision of the children's hearing in addition to their right to seek a review. This perhaps reflects the petitioner's argument that the review is a horizontal, rather than vertical, form of remedy, that is to the same body which made the original decision rather than to one sitting above it. To hold the petition incompetent would be to deny the petitioner any recourse to the courts where the children's hearing had erred. The second is that a remedy which requires the person aggrieved by the decision to wait for three months before seeking a remedy can hardly be said to be effective, particularly when compared with the requirement that an application for judicial review must ordinarily be made within three months. The third is that by the time the petitioner actually achieves his review, almost six months will have elapsed from the date of the decision.

[40] Two further considerations persuade me that a petition for judicial review is competent in the circumstances of this case. The first is that the court is better placed than the non-legally qualified children's hearing to decide what is a question of law, there being nowhere else for the point to be tested, that being a factor taken into account in *R(Business Energy Solutions Ltd)* v *Preston Crown Court*, above, at [126]; and the other, that the outcome

of the case has wider implications than simply for the parties: *cf Watt* v *Strathclyde Council*, above.

[41] For these reasons, I find that the petition is competent, and the respondent's first plea-in-law falls to be repelled.

The correct construction of section 25 of the 2011 Act

[42] There is no significant dispute between the parties as to the correct approach to statutory interpretation, or as to the rules which should be applied. Rather, they differ as to the result achieved by the application of those rules. However, rather than work through the principles suggested by the petitioner, set out in para [24], a more concise summary of the approach to statutory construction was, as counsel for the interested party submitted, given by Lady Wise, delivering the opinion of an Extra Division, in *Glasgow City Council* v *MM* 2025 SLT 178 at para [31] as follows:

> "In any exercise of statutory interpretation the general rule is that the language should bear its ordinary meaning in the general context of the statute (*Crozier* v *Scottish Power 2024 SC 373*, per Lord President (Carloway) at paragraph 27). As Lord Burrows emphasised in the 2022 article (Statutory Interpretation in the Courts Today, the Christopher Staughton Memorial Lecture, 24 March 2022), referred to by the appellant, the modern approach is to regard the object of the exercise as "contextual and purposive". The courts are seeking to ascertain the meaning of the words used in a statute in the light of their context and the purpose of the statutory provision (*JR 222* [2024] 1 WLR 4877, per Lord Stephens at paragraph 73). The context will include the group of statutory provisions within which the words to be interpreted are included and the statute as a whole."

[43] Applying that approach, the purpose of the 2011 Act is to provide protection, guidance, treatment or control to children in need of same. The gateway into the children's hearing system is that a children's reporter decides whether to refer a child to a children's hearing for it to determine whether to make a CSO, which if made may contain any of the requirements listed in section 83(2) (see para [13]). These include a requirement as to where

the child is to reside, which can result in the child being removed from their family home, as well as a direction regulating contact between the child and a specified person or class of persons. Fundamental to that scheme is section 25, which requires the children's hearing (and a pre-panel hearing, and, where it becomes involved, a court) to regard the need to safeguard and promote the welfare of the child throughout the child's childhood as the paramount consideration. It fits with the purpose of the Act that it is only the child who is the subject of the hearing whose welfare is the paramount consideration. That is the child who has embarked upon his or her journey through the children's hearing system because a CSO may be necessary for him or her. That is the child who may be in need of protection, guidance, treatment or control, and whose welfare throughout his or her childhood is to be safeguarded and promoted. Any measure which is imposed as a condition of a CSO, including a contact direction, must be necessary when measured against that metric.

[44] That that is the natural and correct meaning of section 25 is confirmed by a textual analysis. "Paramount" denotes a factor which not only carries more weight than other factors, but which is to be determinative in the event of a conflict. The concept of there being two or more paramount considerations, potentially pointing in different directions, simply does not work. Counsel for the petitioner placed reliance on *M* v *M* above, in support of the contrary argument, but that case, and the *dicta* therein, does not do the heavy lifting required of it in the present context. There, the issue was as between the children as a group, and the parents, and it was entirely natural that the court should speak of the welfare of the children, in the plural.

[45] Further, the reference in section 25 to "a matter relating to a child" reflects the fact that the decision in question may be on a range of matters other than whether to make a CSO and is intended to emphasise that in all such matters, the child's welfare is the

paramount consideration, rather than to bring the welfare of other children into the mix as a paramount consideration of equal importance.

[46] Other features of section 25, read as a whole, point to the petitioner's suggested interpretation being wrong. Even if another child's interests could theoretically be taken into account as a paramount consideration, it is hard to see why Parliament should have intended that the children's hearing should be under a duty to promote that child's welfare *throughout childhood* when that is not the child with which it is primarily dealing. Apart from anything else, it is unlikely to have sufficient information to enable it to fulfil such an exacting requirement. In a similar vein, it is clear that "the" child referred to in subsection (2) is the same child as that referred to in subsection (3), which provides that the children's hearing is to have regard to any risk of prejudice to the child's welfare that delay in proceedings would cause, the natural reading of which is that it refers to the child who is the subject of the proceedings.

[47] I do not place a great deal of reliance, one way or the other, on the drafting "rhythm" of the Act. While it is true that some provisions of the Act refer to the child who is the subject of the proceedings, and others do not, it seems to me that largely turns on the context of each provision and the best means of identifying the child referred to. Sometimes that is the neatest way of achieving that, sometimes not. Nor do I attach any significance to the wording of section 16(1) of the Children's (Scotland) Act 1995, which section 25 replaced. My reading of it is that it, too, was intended to refer to the child who was the subject of the children's hearing or court action, as the case may be, and at best for the petitioner it is neutral to his argument. Certainly, I was cited to no authority to the contrary effect.

[48] One fallacy of the petitioner's argument was to assume that the two or more children whose interests should be given equally paramountcy are siblings or in a sibling

relationship, and that the only matter under consideration is whether to make a contact direction which will affect both equally. However, neither assumption is necessarily correct. It happens from time to time that the mother of a baby which is the subject of a children's hearing is under the age of 18 and is herself a child. I put that example to counsel during the hearing without receiving a persuasive riposte, but it is also discussed by *Wilkinson and Norrie*, The Law Relating to Parent and Child in Scotland (3rd Edition) at 9.08. While the discussion there is in the context of private law proceedings under the Children (Scotland) Act 1995, the view is expressed that in care proceedings, at least in England, the interests of a mother who is herself a child although protected under Article 8 of ECHR, will not be paramount. It is inconceivable that Parliament intended, in enacting section 25, that the interests of the parent(s) of a young child who might be at risk (say) of physical abuse, should, where the parents are under the age of 18, carry the same weight as those of the child in need of protection when a children's hearing is deciding whether to make a CSO, one measure of which might be (for example) that a child should reside with foster carers, or that the child's whereabouts should not be disclosed.

[49] Nor do I consider that construing section 25 as referring only to the child who is the subject of the proceedings leads to absurdity or arbitrariness. There is nothing absurd about the welfare of the child who is the subject of the hearing and who is in need of protection, guidance, treatment or control being treated as the paramount consideration in deciding what order to make. On the contrary, the petitioner's proposed interpretation could lead to absurdity, as the example in the previous paragraph shows. Much of the petitioner's argument was also predicated on an assumption that unless both (or all) children's welfare was given equal status as a paramount consideration, the risk identified at the outset of this opinion, of conflicting decisions depending on which child's CSO was under consideration

at any given time, could lead to arbitrary and absurd results. However, as counsel for the respondent submitted, whichever proposed construction of section 25 is correct, there will always be a need for a balancing exercise to be carried out where two or more siblings are the subject of separate CSOs, and so, at best for the petitioner, this is a neutral consideration. Again in a private law context, *Norrie and Wilkinson* at paragraph 9.08 say that:

> "[i]f a single case involves the interests of two children, which are in conflict, the court's decision must attempt to balance out the interests of both, but if the interests of one greatly outweigh the interests of the other the decision may be made that is in fact detrimental, even fatally so, to that other", citing *Re A (Children: Conjoined Twins)* 2000 4 All ER 961."

The answer is likely to lie in the further submission by senior counsel for the respondent that it is unlikely to be in the interests of one child to have contact with his or her sibling if that contact will be harmful to the sibling. The balancing exercise should be carried out in the CSO reviews of both children, and provided the law is applied properly, the same result should always be reached. That outcome is neither capricious nor arbitrary and is consistent with UNCRC General Comment 14, paragraph 39, quoted above at paragraph [20].

[50] The foregoing all points towards the construction of section 25 proposed by the respondent and interested party as being the correct one, unless it requires to be read down by virtue of section 3 of the Human Rights Act 1998 or section 4 of the UNCRC (Incorporation) (Scotland) Act 2024. In that context, I turn now to consider the UNCRC. A children's hearing is a public authority exercising a relevant function within the meaning of the 2024 Act. It is therefore unlawful, in terms of section 6 of that Act, for it to act in a way which is incompatible with the provisions of the UNCRC. One of those provisions is Article 3 which provides that in all actions concerning children the best interests of the child shall be a primary consideration. It is not disputed that that provision is broad enough that the interests of a child affected by a decision of the children's hearing, although not a

paramount consideration, must be taken into account as a primary consideration. Provided a children's hearing follows that requirement, it will have paid due regard both to the respective children's UNCRC, and their Article 8, rights. I therefore consider that there is no need to read section 25 down so as to achieve compatibility.

[51] For all these reasons, I have concluded that the correct interpretation of section 25 is that it requires only the welfare of the child who is the subject of the children's hearing proceedings to be taken into account as a paramount consideration, and insofar as the petition avers otherwise, it is irrelevant. To that extent, I will sustain the respondent's second plea-in-law.

Did the children's hearing err in its decision of 18 September?

[52] Despite the staunch defence of the children's hearing decision mounted by senior counsel for the respondent, the reasoning given in the decision of 18 September 2025 cannot be read as showing that the welfare of the petitioner was taken into account at all, let alone as a primary consideration. In any event, it falls foul of paragraph 6(c) of the General Comment No 14, since it contains no evaluation of the possible impact of the decision on the petitioner, nor does it show that his right to have his interests evaluated has explicitly been taken into account. The decision is therefore not UNCRC compliant, and as such, it was unlawful by virtue of section 6 of the 2024 Act. For that matter, the decision taken at the petitioner's review of 8 May 2025 was equally unlawful, in that the hearing on that occasion failed to respect Y's UNCRC rights.

Article 8 ECHR

[53] Having so found, it is unnecessary to make any finding as to whether the decision of 18 September 2025 was also non-Article 8 compliant. The petitioner does not seek a declarator to that effect. To the extent that he asserts, under reference to *Strand-Loben* v *Norway*, above, that the state must take steps actively to preserve family life, a decision to terminate contact with other family members may be lawful if it is taken in accordance with the law, serves a legitimate aim and is proportionate. That will be a matter for the children's hearing to consider at the review hearing on 5 March 2026.

Practice Direction Paragraph 58

[54] While it could perhaps be made clearer by specifying that the children's hearing must also treat as a primary consideration the welfare of children who are not the subject of the hearing but who will be affected by the decision made, paragraph 58 cannot be said to include any errors of law, and no order in relation to it is appropriate. I would however observe that the guidance in paragraph 59 is all very well, but perhaps begs the question of how the children's hearing is to resolve any conflict which might have arisen.

Remedy

[55] It follows from my decision on competency that there is practical utility in issuing a declarator that the decision of 18 September 2025 was unlawful and in breach of section 6(1) of the 2024 Act in respect that insofar as the decision was about the petitioner as a child, the children's hearing failed to consider, as a primary consideration, his best interests (to reflect the wording of the UNCRC Article 3), and I shall so order. A more difficult question is whether also to reduce that decision. Ordinarily, reduction would pave the way for

reconsideration of the decision, but, as pointed out by senior counsel for the respondent, the decision of 18 September 2025 does not stand in the way of a *de novo* reconsideration of the entire question of contact, which is to happen in any event on 5 March 2026. Reduction is therefore neither necessary nor would it serve any real practical purpose. Additionally, the benefit perceived by the petitioner, that in the very short interval between the issuing of this opinion, and the review hearing, the social work department would then be compelled to arrange contact between him and Y, even if that were realistically possible, is in reality a downside to reduction, since it is yet to be determined whether the necessary balancing exercise will in fact result in a decision that direct contact should resume. As senior counsel for the respondent submitted, this court is not in a position to carry out that exercise, nor would such an exercise be appropriate when that is properly a decision for the children's hearing. The declarator I propose to issue is sufficient guidance that the review hearing approach the decision within the proper legal framework.

Disposal

[56] I will sustain the petitioner's second plea-in-law to the extent that it refers to the decision of 18 September 2025, repelling the petitioner's remaining pleas insofar as not previously dealt with. I will also repel the respondent's first and third pleas-in-law and his second plea in law in part, and I will repel the interested party's single plea-in-law (to competency). I will thereafter grant declarator in the terms set out in para [55], *quoad ultra* (otherwise) refusing the petition. I will reserve all questions of expenses.